

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
HIGH COURT CRIMINAL CASE NO. 69 OF 2022

BETWEEN

HKSAR

and

[D5] NG Gordon Ching-hang (吳政亨)
[D8] CHENG Tat-hung (鄭達鴻)
[D10] YEUNG Suet-ying Clarisse (楊雪盈)
[D11] PANG Cheuk-kei (彭卓棋)
[D14] HO Kai-ming Calvin (何啟明)
[D17] WONG Pik-wan (黃碧雲)
[D24] SZE Tak-loy (施德來)
[D28] NG Kin-wai (伍健偉)
[D33] HO Kwai-lam (何桂藍)
[D36] CHAN Chi-chuen Raymond (陳志全)
[D37] CHOW Ka-shing (鄒家成)
[D38] LAM Cheuk-ting (林卓廷)
[D41] LEUNG Kwok-hung (梁國雄)
[D42] LAM King-nam (林景楠)
[D43] OR Yiu-lam Ricky (柯耀林)
[D47] YU Wai-ming Winnie (余慧明)

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
HIGH COURT CRIMINAL CASE NO. 70 OF 2022

BETWEEN

HKSAR

and

[D1] TAI Yiu-ting (戴耀廷)
[D2] AU Nok-hin (區諾軒)
[D3] CHIU Ka-yin Andrew (趙家賢)
[D4] CHUNG Kam-lun (鍾錦麟)
[D6] YUEN Ka-wai Tiffany (袁嘉蔚)
[D7] LEUNG Fong-wai Fergus (梁晃維)
[D9] CHUI Chi-kin (徐子見)
[D12] SHAM Tsz-kit (岑子杰)
[D13] MO Man-ching Claudia (毛孟靜)
[D15] FUNG Tat-Chun Frankie (馮達浚)
[D18] LAU Chak-fung (劉澤鋒)
[D19] WONG Chi-fung (黃之鋒)
[D20] TAM Man-ho Jeremy Jansen (譚文豪)
[D21] LI Ka-tat (李嘉達)
[D22] TAM Tak-chi (譚得志)
[D23] WU Chi-wai (胡志偉)
[D25] CHU Hoi-dick Eddie (朱凱迪)
[D26] CHEUNG Ho-sum (張可森)
[D27] WONG Ji-yuet (黃子悅)

| | | | |
|---|-------|-----------------------------|---|
| A | | | A |
| | [D29] | WAN Siu-kin Andrew (尹兆堅) | |
| B | [D30] | KWOK Ka-ki (郭家麒) | B |
| | [D31] | NG Man-yee Carol (吳敏兒) | |
| C | [D32] | TAM Hoi-pong (譚凱邦) | C |
| | [D34] | LAU Wing-hong (劉穎匡) | |
| D | [D35] | YEUNG Alvin Ngok-kiu (楊岳橋) | D |
| | [D39] | FAN Gary Kwok-wai (范國威) | |
| E | [D40] | LUI Chi-hang Hendrick (呂智恆) | E |
| | [D44] | SHUM Lester (岑敖輝) | |
| F | [D45] | WONG Pak-yu (王百羽) | F |
| G | | | G |
| H | | | H |
| I | | | I |
| J | | | J |
| K | | | K |
| L | | | L |
| M | | | M |
| N | | | N |
| O | | | O |
| P | | | P |
| Q | | | Q |
| R | | | R |
| S | | | S |
| T | | | T |
| U | | | U |
| V | | | V |

Before: Hon Andrew Chan J, Hon Alex Lee J and Hon Johnny Chan J
in Court

Dates of Hearing: 25 June 2024, 26 June 2024, 2 July 2024, 3 July 2024,
5 July 2024, 8 July 2024, 10 July 2024, 11 July 2024, 27 August 2024,
28 August 2024, 2 September 2024, 3 September 2024

Date of Reasons for Sentence¹: 19 November 2024

REASONS FOR SENTENCE

1. A number of legal issues were raised during the course of
the mitigation hearing, they were summarised as follows:

The Applicability of the Penalty Bands under NSL 22

2. Challenge was made by a number of defendants to the
applicability of the penalty band as prescribed in NSL 22. It was
submitted by all defendants that as they were convicted of the offence of
Conspiracy to Commit Subversion contrary to NSL 22(3), section 159A
and 159C of the Crimes Ordinance, the penalty band had no application.
It was because the offence of conspiracy was different from the
substantive offence as the actus reus and mens rea for each were different.
In the case of conspiracy, the agreed course of conduct might never be
carried out, yet the offence of conspiracy had been committed once the
agreement was made. A conspiratorial agreement to commit any offence

¹ This Reasons for Sentence was written by the above three, each contributed to different parts. Despite the difference in styles and formats, we unanimously agreed to the contents and the outcome of all the decisions. This Reasons for Sentence should also be read in conjunction with our Reasons for Verdict.

might never go further than the agreement itself. A sentence ought to reflect the exact criminality and its consequences. The applicable penalty provision should therefore be section 159C of the Crimes Ordinance.

3. The penalty band as prescribed in NSL 22 stated as follows:

“A person who is a principal offender or a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; a person who actively participates in the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction.”

(犯前款罪，對首要分子或者罪行重大的，處無期徒刑或者十年以上有期徒刑；對積極參加的，處三年以上十年以下有期徒刑；對其他參加的，處三年以下有期徒刑、拘役或者管制。)

4. On the other hand, section 159C of the Crimes Ordinance provided as follows:

“(1) A person guilty of conspiracy to commit any offence or offences by virtue of section 159A shall be liable on conviction on indictment—

(a) in a case falling within subsection (3) or (4), to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences in question (referred to in this section as *the relevant offence or offences*); and

(b) in any other case, to a fine.

...

(4) Where in a case other than one to which subsection (3) applies, the relevant offence or any of the relevant offences is punishable with imprisonment, the person convicted shall be liable to imprisonment for a term not exceeding the maximum term provided for that offence or (where more than one such offence is in question) for any one of those offences (taking the longer or the longest

term as the limit for the purposes of this section where the terms provided differ).”

5. It was submitted that in the case of a conspiracy offence under NSL 22, this Court should follow section 159C sub-section (1)(a) and (4) of the Crimes Ordinance, Cap 200. Such approach would be consistent with the general sentencing principle in Hong Kong and also well-established principle as found in the United Kingdom authorities.

6. In *R v Sajid Khan*² in which the defendant pleaded guilty to a charge of conspiracy to possess with prohibited weapon and ammunition, section 51A of the Firearms Act 1968 in UK provided a minimum of five years’ imprisonment for the offence of possession of firearms under section 5. The sentencing judge in that case applied the minimum and on appeal, Dyson LJ stated:

“66. The other principal ground of appeal concerns the judge’s approach to the firearms conspiracy charges. Mr Greaney submits that the judge was wrong in principle to proceed as if this were a section 5 case such as to warrant the imposition of a minimum sentence pursuant to section 51A. We accept that submission. This was not a section 5 case. The provision which requires a court to impose a minimum sentence of five years’ imprisonment must be strictly construed like all penal provisions.

67. We have been told by Mr Capstick that it was for reasons of evidential difficult that the decision was taken not to charge the appellant with the offence of possession, but to charge him with conspiracy. He submits, and justified a conviction for possession if those facts could be proved.

68. But, in our judgment, the judge was wrong to sentence the appellant as if he were being sentenced for the offence of possession. ...”

² [2007] EWCA Crim 687

7. In *AG's Reference Nos.48 and 49 of 2010*³, two defendants were charged with conspiracy to possess and distribute prohibited firearms and ammunition contrary to s.51A of the Firearms Act, which also carries a minimum 5 years sentence. Hughes L.J. stated:

“10. The legislative framework within which the judge had to operate presented him with some challenge. The maximum sentence effectively was 10 years. By s.51A of the Firearms Act 1968 the possession of a prohibited weapon now carries a minimum sentence of five years from which no further allowance for a plea of guilty can be made. It follows that if someone is convicted of possessing a prohibited weapon, effectively the sentencing range available to the judge is limited to seven-and-a-half years to 10. Part of the question which we have had to address in this case is to what extent s.51A is relevant to the present sentencing exercise.

11. For the Attorney General Miss Whitehouse submits that although s.51A does not apply directly to the offence of conspiracy and although the weapons in this case had not yet achieved the status of prohibited weapons so that it could not apply, nevertheless, it is such an important indication of Parliamentary intent that a sentencing judge should regard a five-year sentence, even after a plea of guilty, as the minimum in a case of this kind.

12. We think that goes too far. If s.51A had been intended to apply offences of attempt, which effectively this was, or conspiracy then that could easily have been done and it has not been. On the other hand, we have no doubt whatever, just as the Court in Attorney General's Reference (No.43 of 2009) had no doubt whatever, that the Parliamentary indication of public concern, which is reflected in s.51A, has a considerable impact on sentences which need to be imposed for cases of this kind.”

8. On the other hand, the prosecution submitted that when the law was amended in 1983 to provide for the same penalty for conspiracy, the legislative intent showed clearly that the purpose was to allow the Court to impose the same punishment in respect of attempts, conspiracies

³ [2011] 1 Cr App R (S)

A and incitements as they might impose in response of the substantive
B offence. As a result, section 90 of the Interpretation and General Clauses
C Ordinance, Cap 1 was amended to provide as follows:

D “... where a person is convicted of ... (b) conspiring ... to
E commit an offence for which a maximum penalty is provided
F by any Ordinance, and no penalty is otherwise provided by any
Ordinance for such conspiracy ... he shall be liable to be
sentenced to that maximum penalty.”

G We noted only the maximum had been mentioned.

H 9. The common law offence of conspiracy was codified in
I Hong Kong by the Crimes (Amendment) Ordinance in 1996. When it
J was introduced to the Legislative Council, it was made clear that the
K penalty under section 159C was to “bring the penalty for conspiracy into
L line with that of the substantive offence.” As such the prosecution
M submitted that section 159C should be construed in such a way that the
penalty for the conspiracy and for the substantive offence (including the
maximum and minimum) should be the same. We also noted that the
present 159C only mentioned the maximum.

N 10. After a careful consideration of all the authorities, we came
O to the view that in respect of the present case which all the defendants
P faced was only a conspiracy charge, the penalty banding as prescribed in
Q NSL 22, whilst of reference value, should not be strictly applicable. Our
reasons were as follow.

R 11. In interpreting penal provision, it was trite law that the
S relevant provision should be interpreted strictly and narrowly. When the
T wordings of the relevant provision appeared to be clear and without any
U ambiguity, the relevant provision should be read as such.
V

12. NSL 22 made no mention of the offence of conspiracy. NSL 23 provided clearly penalty for accessory offences such as incitement, aiding and abetting.

13. NSL 30 mentioned a more severe penalty for those who conspired with foreign country or institution in committing NSL 22.

14. The wordings of section 159C were very specific and without any ambiguity. It mentioned the maximum only. Nowhere was the term minimum penalty being mentioned. Notwithstanding that, we were of the view that that however did not preclude this Court from looking at how the legislative body viewed the gravity of the offence.

15. Apart from a few defendants notably the first Defendant, counsel for the majority defendants agreed that the Court could make reference to the penalty banding, depending on each defendant's role and circumstance, in order to determine the starting point for each individual defendant.

16. It was also to be noted that in both *Sajid Khan and AG's reference Nos 48 and 49 of 2010* which held that although the minimum sentence for the offence of possession of a prohibited weapons did not strictly apply to conspiracy charge, it was "unreal however not to acknowledge the potential relevance of such a minimum term." The Court further held that the trial judge had erred in sentencing the particular defendants below the minimum sentence where there were no exceptional circumstances.

17. The prosecution submitted further that section 109 of the newly enacted Safeguarding National Security Ordinance could be used as an aid to ascertain the intention of the legislature with regard to the penalty provision for conspiracy to commit offence under the NSL. Section 109 of the Safeguarding National Security Ordinance provided as follows:-

“109. Penalty for conspiracy, incitement or attempt to commit offence under HK National Security Law

To avoid doubt, despite any other Ordinance—

(1) if a person is convicted of conspiracy to commit any offence under the HK National Security Law (*NSL offence*), any provision concerning the penalty for the NSL offence under the HK National Security Law also applies to the penalty for the conspiracy;”

18. The Safeguarding National Security Ordinance was a piece of domestic legislation enacted in March 2024 by the Legislative Council in Hong Kong. The Law of the People’s Republic of China on Safeguarding National Security in Hong Kong Special Administrative Region (The NSL) was however a piece of national legislation enacted in 2020 by the National People’s Congress in Beijing. The two legislative bodies were different entities occupied their respective positions at wholly different levels. As a matter of logic, it would be difficult to see how a local piece of legislation could be used to ascertain the legislative intent of the National People’s Congress.

19. Further when the Safeguarding National Security Ordinance was enacted, it was explicitly stated that the provisions of the ordinance had no retrospective effect. As such, we were of the decision that section 109 of the Safeguarding National Security Ordinance was of little assistance in this particular case.

General Principles on Sentencing of NSL Offences

20. In *HKSAR v Lui Sai Yu*⁴, it was held by the Court of Final Appeal that:

(1) The NSL functioned coherently with the HKSAR's legal system, and sought "convergence, compatibility and complementarity" with local laws unless they were expressly or impliedly displaced in the event of inconsistency pursuant to NSL 62. This principle applied to the interpretation of sentencing provisions within the NSL where local sentencing laws and principles operated within that framework.

(2) In fulfilling their duty of enforcing the NSL and local laws with a view to preventing, suppressing and punishing acts that endangered national security, *the courts would faithfully give effect to the NSL's offence-creating provisions, and where convictions resulted, apply local sentencing laws and principles in tandem with the NSL's sentencing provisions.* In the process of convergence, selected elements of the local sentencing laws and principles should not be excluded from consideration.

(3) There was no general principle that regard may be had to the Mainland law to inform the construction of the NSL. Extrinsic materials admissible in aid of construing the NSL had a narrower ambit. Statements made as part of the

⁴ (2023) 26 HKCFAR 332

promulgation process, such as Decisions and Explanations of the National People's Congress and the Standing Committee, were admissible because they bore directly on the context, purpose and constitutional status of the NSL. The Address to the Standing Committee on 30 June 2020 on adoption of the NSL as a law of the HKSAR made it clear that the NSL converged with the Mainland Law on National Security, rather than more generally with the Mainland system so as to require courts to search for similarly-worded Mainland laws as possible aids to construction. (*emphasis added*)

21. According to the judgment of *Court of Appeal in HKSAR v Ma Chun Man*⁵, although the NSL did not provide for how cases were to be classified into the serious or minor categories, since it was the legislative intent of the NSL to converge and be complementary with the local laws, when the courts dealt with this issue, the local legal principles on sentencing were applicable. Whether a case should be classified as “serious” or “minor” depended on the overall actual circumstances of the case. When the court assessed the seriousness of the circumstances of the case, the prime focus was on the offender's acts, as well as the actual consequences, potential risks and possible influence entailed.

22. In that case, which was about a charge of “incitement to secession”, contrary to NSL 20 and 21, the Court of Appeal in considering whether the offence fell within the category of “serious nature”, took into account factors including (but not limiting to) the following: (i) Hong Kong was still facing a high risk of endangerment to

⁵ [2022] 5 HKLRD 246

national security and the rule of law during the period of the offence; (ii) the defendant's undermining of the NSL induced others to believe that the behaviour related to "Hong Kong independence" was, as he said, "not unlawful"; (iii) the defendant's modus operandi was aimed at enhancing the effect of his incitement on others to secession; (iv) the defendant called for the public to join the activities initiated by him on dates of relatively high risk of violent confrontations in Hong Kong at the time; (v) the defendant perpetrated the crime with premeditation; and (vi) the defendant incited others to convey the message of secession through multiple means.

23. Hence, in sentencing the defendants, the Court should give effect to the NSL's offence creating provisions as well as our common law principles on sentencing. However, reliance should not be placed on sentencing examples of the mainland courts.

Impossibility

24. It was submitted by some of the defendants that the ultimate consequences of serious interfering in, disrupting or undermining the performance of duties and functions of Hong Kong Special Administrative Region government depended very much on the Scheme being carried to the fruition and that would have never materialised. Hence in the present case they said even without disqualification or calling off the LegCo election, the Scheme was bound to fail because the participants simply failed to secure sufficient seats.

25. Whether the Scheme would ultimately succeed, it was not for this Court to speculate. What we were sure was that all the participants had put in every endeavor to make it a success.

26. From the evidence, the two principal organisers were optimistic about its success. It was not disputed that a great deal of time and money had been spent by the organisers into holding press conferences, coordination meetings and election forums. Opinion poll company was engaged. Fundraising programme was organised too. Political parties held high level meetings to discuss election finance, strategy and selection of potential candidates. Individual or independent participant called for volunteer to assist. Election teams were formed. Election slogans, manifests, leaflets were carefully considered and designed.

27. In order to participate in the Primary Election, participants had to gather sufficient number of signatures for their nominations. Election deposits had to be paid to the organisers. All these pointed to the fact that all participants wanted a successful Primary Election.

28. Extensive debates and discussions took place regarding the issue of replacement system in case of disqualification. In short, possible scenarios and consequences had been considered and discussed in coordination meetings.

29. In addition to the participants of Primary Election, D5, a non-participant, engineered the “Say No to Primary Dodgers” campaign. He spent substantial amount of money on advertisement. But for the COVID pandemic that led to the postponement of the 2021 LegCo

A election, the Scheme, in our view, was not doomed to fail. When the
B Primary Election took place on the 10 and 11 July, no one had remotely
C mentioned the fact that Primary Election was no more than an academic
D exercise and that the Scheme was absolutely unattainable. 610,000
ordinary citizens also did not think so.

E
F 30. In order to succeed, the organisers and participants might
G have hurdles to overcome, that however was expected in every
H subversion case where efforts were made to overthrow or paralyse a
government. We therefore rejected the proposition that the Scheme was
doomed to fail and that a lighter sentence should be imposed.

I
J **Ignorance of the Law**

K 31. It was submitted by some of the defendants that as they were
L reassured by D1 on many occasions, they did not know the Scheme was
M an unlawful one. We accepted that to be the case for some of the
N defendants, but notable not for D1 and D35 given the fact that both of
O them were lawyers. We did not accord any discount to D1 and D35 not
P only they were lawyers but also both were absolutely adamant in pushing
for the implementation of the Scheme. To them whether the Scheme was
lawful or not was neither here nor there. They sold their idea to others.

Q 32. In the case of D1, he held the extreme view of “Ten Steps to
R Mutual Destruction”. Although D1 in his mitigation letter stated that the
S steps were never intended to be used as blueprint for any political action,
T that might be so for one article. However he published a series of articles
U over a period of months, one had no difficulty in tracing D1’s progressive
V thinking. In essence, D1 advocated for a revolution. In the case of D35,

he too was very aggressive as very strong words came out of his statements in the Civic Party's press conference. As to those who pleaded "ignorance of the law" as mitigation, we were satisfied that they might have been misled by D1 into thinking that the Scheme was not unlawful. On the other hand, there were a number of defendants who did not put this forward as mitigation in their written and oral submission. Nor did they raise the point in their mitigation letters. For these defendants, we take it that they have made an informed decision not to rely on it as mitigation.

Pre-NSL Conducts

33. It was submitted essentially by Counsel for D1 that this Court should not look at any pre-NSL conducts as they were not unlawful at the time.

34. We accepted that what the defendants had agreed to do was not criminal until after the enactment of the NSL. However, they remained willing parties to that agreement and continued their participation in the Scheme after it had been rendered criminal by the NSL. On this basis, although the charge period only commenced on the 1 July 2020, this Court could not, in our view, be prohibited from looking into facts or circumstances prior to the charge period in order to assess the seriousness and extensiveness of the conspiracy charged as well as the respective roles of the defendants in the Scheme. We however need to emphasize that the defendants are not sentenced for any of their individual acts prior to the NSL.

The Seriousness of NSL 22(3)

35. It was submitted by some of the defendants that the seriousness of NSL 22 could be discerned from the descending order of the Article given the fact that NSL 22(1) and (2) aimed at preventing the attack of the fundamental political structure and system of the Central People's government, hence they were the most serious two. As NSL 22(4) only confined to the attacks of government premises and facilities, they were of the least serious.

36. We did not agree. Firstly, we noted that the same penalty was applicable to all limbs of NSL 22 without distinction. Secondly if there were in fact any differences in seriousness among the four limbs, then it would be difficult to understand why the four limbs were not arranged in the order of their seriousness as counsel for some defendants had suggested that NSL 22(3) was the least serious one. Thirdly we were of the view that it was unhelpful to compare the relative seriousness of the four limbs of NSL 22. The seriousness of the offence depended on many factors: the degree of planning, the ways and means employed, the number and extent of the attacks, the number of people involved, the potential harms generated, the actual outcomes and consequences. It had to be a holistic assessment, after a careful consideration of all the circumstances.

37. In this case, candidates for the Primary Election were essential character of the Scheme, without them, the Scheme simply could not get off the ground. They lent their support to and actively participated in the Scheme. They therefore in our view should be categorised into the "active participant" category. Had the Scheme been

carried out to the very end, the adverse consequences would be far reaching and no less serious than overthrowing the Government of the HKSAR.

Individual Sentence

D1 Tai Yiu-ting

38. D1 is now aged 60, a former associate professor of law at the University of Hong Kong. He has two criminal records (2019 and 2022).

39. As to D1's role in the Scheme, we, in essence, stated that in paragraphs 109-125, 132-133, 137-141, 144,159-161, 172-173, 175, 186-190 of our Reasons for Verdict. For more details, one might wish to look at the Summary of Facts admitted by D1.

40. Mitigation letters from D1, family members, former university colleagues and pastor had been submitted to this Court. They praised D1 for his contribution to the teaching of public law at the University of Hong Kong and a firm supporter of the rule of law.

41. We were mindful of the fact that we were sentencing all the defendants on a conspiracy offence. It was the unlawful agreement that we sentenced them on. In determining the criminality of the conspiracy offence, we took note of the elaborate planning of the Scheme as described in paragraphs 26 to 30 stated above and the seriousness of the offence as stated in paragraph 36 above. In short, D1 was not only the initiator of the Scheme, but also an organiser of the Primary Election. It was his article that caught the attention of the pro-democracy camp. He

was the mastermind behind, hence could well be placed in the “principle offender” category.

42. D1 might not be the one standing in the Primary Election or the actual LegCo election, he however provided the necessary platform for those who intended to exercise the vetoing power under the Scheme. In order to succeed, D1 agreed with D5 in staging the “Say No to Primary Dodgers” campaign.

43. D1 did not cease his involvement after the Primary Election. When D2 withdrew from the Scheme, D1 simply told D2 that he needed a break.

44. In determining D1’s culpability, we took into account facts and circumstances prior to 1 July 2020 as the backdrop only in coming to the assessment of D1’s criminality.

45. We took note of the penalty band. We also noted the minimum sentence for a principal offender would be one of 10 years imprisonment and that the maximum would be life imprisonment. As to his past contribution, we had no doubt that that had been taken into account in his previous criminal proceedings.

46. After a careful consideration of D1’s role, we were of the view that a notional starting point of 15 years imprisonment would be appropriate in his case. The only mitigation in D1’s case was his early plea of guilty. To that, the customarily one-third discount would be given.

47. For the sole offence D1 stands convicted, he is sentenced to 10 years’ (120 months) imprisonment.

D2 Au Nok-hin

48. D2 is now aged 37, a former LegCo Councillor and District Councillor. The Primary Election was intended to be his last political event before his departure from Hong Kong to Japan for a PhD studies. Since his remand, his savings had been exhausted due to various legal proceedings arising from his political activities. He has two criminal convictions.

49. D2 was one of the organisers. His role could be seen in essence from paragraphs 111-114, 126-131, 134-142, 145-147, 155, 172 of our Reasons for Verdict. Likewise, one might like to read the Summary of Facts admitted by D2.

50. In the present case, D2 pleaded guilty to the charge at the committal and gave evidence for the prosecution in the trial. His evidence was summarised in our Reasons for Verdict at Annex A. In our view, his evidence was crucial in piecing all the evidence together and provided this Court with a full picture of all the events that took place in 2020 in a systematic and logical manner.

51. Mitigation letters had been submitted from his parents, academic supervisor and Mr Zimmerman, they pleaded for leniency on his behalf. They all spoke highly of him.

52. In term of culpability, we took the view that as one of the organisers, his degree of participation in the Scheme was more or less the same as D1. His involvement in the Scheme started at its inception. Notwithstanding the fact that D2 was not as radical as D1, the notional

A starting point, given his role, would similarly be one of 15 years
B (180 months) imprisonment. Given the importance of his evidence, we
C were minded to grant a 50% discount to D2 for testifying for the
D prosecution. Further, it was not disputed that D2 withdrew from the
E Scheme once he came to know that red flag had been raised by the Hong
F Kong and China officials. He also went to see D3 and tried to persuade
G the latter to withdraw. As such we granted D2 an additional 5% credit for
that. This additional 5% would also include the discount for his
ignorance of the law and his past contribution to public service.

H 53. For the sole offence D2 stands convicted, he is therefore
I sentenced to 6 years and 9 months' (81 months) imprisonment.

J **D3 Chiu Ka-yin Andrew**

K 54. D3 is now aged 39 and married. He served as chairperson of
L the Hong Kong Society of Accredited Mediators and Vice-President of
M the Hong Kong Mediation Centre. He has a clear record.

N 55. D3 had been a member of the Democratic Party since 2004.
O He had served as a member of the Eastern District Council for Taikoo
P Shing West since 2008. Prior to his arrest, he was the Vice Chairman of
Q the Eastern District Council. At all material times D3 was the Convener
R of Power for Democracy. Reference is also made to D3's background
and career as stated in our Reasons for Verdict.

S 56. Concerning the present case, D3 entered a timely plea of
T guilty at the committal and subsequently gave evidence for the
U prosecution at the trial. His evidence was summarized in our Reasons for
V

Verdict which we are not going to repeat. It suffices for us to say that his evidence was by and large accepted and relied upon by this Court in reaching the verdict.

57. Having considered Mr Lee's mitigation made on D3's behalf in full, we are unable to agree with him that D3's role in the conspiracy was just that of an "active participant". Rather, we find that D3 was a "principal offender" in that he was one of the organizers of the Scheme which was the subject matter of the charge. In view of the seriousness of the offence, D3's important role and the extent of involvement in the matter, we adopt 15 years' (180 months) imprisonment as the starting point of his sentence. In so doing, we have also taken into account the non-violent nature of the Scheme.

58. Turning to mitigation, firstly we give a 50% discount to D3 for his timely plea and material assistance to the prosecution which reduces his sentence to 7 years and 6 months (90 months): see *Z v HKSAR* (2007) 10 HKCFAR 183.

59. Secondly, as we have already said, we do not accept the submission made on behalf of some of the defendants that the Scheme was objectively "impossible" on the basis that it was "open" and therefore could have been stopped in time by the Government. That said, when fixing the respective starting points of the defendants, we have already taken into account the fact that the Scheme, for reasons beyond the control of the defendants, was unable to proceed further and was eventually unsuccessful.

60. Thirdly, we are prepared to accept that D3 might have been misled by D1 as to the lawfulness of the Scheme: *R v Rahman* [2008] EWCA Crim 1465. For this factor, we grant D3 a deduction of 3 months, thus reducing the sentence to 7 years and 3 months' (87 months) imprisonment.

61. Lastly, there are mitigation letters (written by D3's family members, friends and residents from Taikoo Shing) and D3's public service records. We are told, among other things, that D3 was dedicated to the promotion of mediation in Hong Kong and was active in his service as a District Councilor. We do not intend to go into all the details. It suffices for us to say that, based on the materials contained in D3's mitigation bundle, we are satisfied that D3 is of positive good character as evidenced by his long-term public service. For this, we grant him an additional 3 months reduction.

62. Apart from the above, we are unable to see any other factors which may further reduce D3's sentence. Therefore, D3 is sentenced to 7 years' (84 months) imprisonment.

D4 Chung Kam-lun

63. D4 is now aged 36. He was a District Councillor and the Chairman of the Sai Kung District Council at the material time. He has a clear criminal record.

64. Ms. Valerie Chan, counsel for D4, submitted that D4's culpability might fall in the middle of the middle spectrum, i.e. "active participant". She suggested that a starting point of 4 to 5 years be

adopted for D4's sentence. Ms. Chan asked us to take rehabilitation into account.

65. Ms. Chan submitted that D4 gave evidence for the Prosecution in this case, given D4's assistance to and co-operation with the authorities, and his valuable contribution to the prosecution case, we should reduce the penalty to be imposed from the appropriate tier to a lower tier as per paragraph 60(b) of *Lui Sai Yu* or alternatively, we should pass a lighter penalty within the applicable tier as per paragraph 60(a) of *Lui Sai Yu*.

66. We received mitigation letters from D4, his wife, ex-colleagues, former employer and Dr. Ho Ka-ki, Assistant Professor of the Education University of Hong Kong, who had taught D4 at Lingnan University. They all asked for a lenient sentence be passed. In D4's own mitigation letter, he promised he would never reoffend. He expressed remorse for his actions.

67. D4 pleaded guilty to the charge at the committal and admitted the facts. The individual acts of D4 are set out in paragraphs 104 to 110 of the Summary of Facts. D4 gave evidence for the Prosecution. We summarised his evidence in our Reasons for Verdict at Annex A. In our view, the evidence of D4 was useful, albeit not as useful as the evidence given by D2 and D3.

68. Paragraphs 104 to 110 of the Summary of Facts show the extent of D4's involvement in the Scheme. In our judgment, D4's culpability falls within the category of "principal offender". D4 was one of the organisers, albeit he was less involved than D1, D2 and D3.

69. Based on the role of D4 in the Scheme, we would adopt a starting point of 12 years' imprisonment (144 months).

70. Given the guilty plea of D4 and the extent of assistance to the authority provided by D4, a reduction close to 45% would be given, which would bring D4's sentence down to 79 months' imprisonment.

71. We gave 3 months each for his ignorance of the law and past public service, which would bring D4's sentence further down to 73 months.

72. In conclusion, for the offence D4 stands convicted, he is sentenced to 6 years and 1 month's (73 months) imprisonment.

D5 Ng Gordan Ching-hang

73. D5 is now aged 46. He has a clear record.

74. Concerning D5's role in the conspiracy, he was neither an organizer of the Primary Election nor a candidate. At the time D5 launched the "Say No to Primary Dodgers" Campaign, he was not yet a party to the Scheme. Based on the evidence before us, we find that D5 became a party to the Scheme through his communication and contacts with D1, even though his identity was not known to the other parties. It is also our finding that after the enactment of the NSL, D5 continued to embrace the idea of "mutual destruction", this is to say, to cause a serious interference in, disruption or undermining of the performance of the duties and functions of the Government, should the Government refuse to accede to the Five Demands. Moreover, he willingly and intentionally continued to facilitate the Scheme by putting pressure on others so as to

see that only those who joined and won in the Primary Election would take part in the coming LegCo election. This was exemplified by the fact that he placed a full-page advertisement in Apple Daily on 3 July 2020 urging candidates who lost in the Primary Election not to participate in the LegCo election and asking people not to vote for anyone who had not participated in the Primary Election.

75. Bearing in mind D5's role in the Scheme, we are of the view that he was an "active participant". In our assessment, the appropriate starting point for D5 is 7 years and 6 months (90 months) imprisonment. In so doing, we have already taken into account, among other things, that D5 was not after any personal gain and that the Scheme did not involve any use of violence.

76. Turning to mitigation, having fully considered the submission of Mr Shek, we grant him a 3 months reduction for the possibility that D5 might have been misled by D1 and acted in the mistaken belief as to the lawfulness of the Scheme.

77. We have considered in full the materials contained in D5's mitigation bundle including the letters written by D5 himself, his family members and friends. However, apart from ignorance of the law, we are unable to see any factors which may reduce D5's sentence. Therefore, D5 is sentenced to 7 years and 3 months' (87 months) imprisonment.

Candidates for Hong Kong Island

78. D6 Yuen Ka-Wai, D7 Leung Fong-Wai Fergus and D9 Chui Chi-kin pleaded guilty at committal, whereas D8 Cheng Tat-hung, D10

Yeung Suet-ying Clarisse and D11 Pang Cheuk-kei were convicted after trial.

79. At the material time, D6-D11 were candidates for the Hong Kong Island Constituency in the Primary Election. D7 was one of the drafters of the IWR Declaration which was personally endorsed by D6, D10 and D11. In the case of D8, the IWR Declaration was endorsed by the Civic Party collectively. D9 was the only one in this group who had not endorsed the IWR Declaration;

80. D7-D11 attended coordination meetings of Hong Kong Island either personally or by a representative. D6-D11 attended the election forum on 27 June 2020; and D6 and D7 also attended the press conference of the localist resistance camp held on 15 July 2020.

81. We are fully alive that the defendants are to be sentenced only for their conduct during the charge period which started on 1 July 2020. Nevertheless, as discussed above, their respective activities prior to 1 July 2020 provide the context for us to assess their respective roles in the Scheme. We have no doubt that the candidates were essential characters of the Scheme, as without them the Scheme simply could not get off the ground.

82. Having considered all the cases of the defendants in this group individually, we are of the view that all of them were “active participants” of the offence. For D6, D8, D9, D10 and D11, based on their respective roles in the Scheme, we adopt 7 years (84 months) imprisonment as the starting point. For D7, his starting point is 8 years (96 months) imprisonment because of his more proactive role in relation

to the Scheme as evidenced by his involvement in the drafting of the IWR Declaration. In fixing their respective starting points, we have already taken into account that the Scheme did not involve any use of violence. However, as aforesaid, we do not accept that the Scheme was “impossible”.

D6 Yuen Ka-wai Tiffany

83. D6 is now aged 31. She ran for the District Council election in 2019 and subsequently served as a member of the Southern District Council in 2020. She has a previous conviction of taking part in an unauthorized assembly for which she was sentenced to 6 May 2021 for 4 months’ imprisonment.

84. Turning to mitigation, we trust that Mr Kat SC has put eloquently all that can be said on D6’s behalf in mitigation. We grant her a one-third discount (of 28 months) for her timely plea; and a 3-month deduction for her possible mistake as to the lawfulness of the Scheme.

85. We have also considered the mitigating letters written by D6, her parents, former colleagues and friends and her public service records. Unlike the case of D3 and some other defendants in this case who were seasoned politicians and participated in public service for many years, D6’s public service only began from 1 January 2020. In this aspect, we grant her a 2-month deduction. In this regard, we note that D6’s public service had not been put forward as mitigation nor had it been given any credit in her past sentences. Apart from the aforesaid, we can see no other mitigating factors which may further reduce her sentence.

86. As regards D6's previous sentence passed on 6 May 2021, we take the view that it related to a separate and distinct offence from the present one. Having stepped far back and considered the issue of totality in the round, we do not consider it appropriate to make any upward or downward adjustments of her present sentence.

87. Therefore, D6 is sentenced to 4 years and 3 months' (51 months) imprisonment.

D7 Leung Fong-wai Fergus

88. D7 is now aged 27. He was a university student studying Biomedical Sciences. In 2019, he ran for the District Council election and served as a member of the Central and Western District Council in the following year. He has a clear record.

89. We trust that Mr Pang SC has said all that can be said on D7's behalf. We have taken into account the mitigating letters written by him, his family members, schoolmates, friends, teachers and a former colleague. We grant him a one-third discount (32 months) for his timely plea; a 3-month deduction for his possible mistake as to the lawfulness of the Scheme; and another 2-month deduction for his public service as a District Council member. We do not see any other mitigating factors which may further reduce his sentence.

90. Therefore, D7 is sentenced to 4 years and 11 months' (59 months) imprisonment.

D8 Cheng Tat-hung

91. D8 is now aged 36. He lives with his parents and fiancée. He was a member of the Civic Party and had been a member of its Executive Committee since 2014. He served as a member of the Eastern District Council from January 2016. He left the Civic Party on 15 December 2020. He has clear record. Reference is also made to D8's background and political career as stated in our Reasons for Verdict.

92. D8 is convicted after trial. We trust that Mr Pun SC has said all that can realistically be said on his behalf. We have also considered the mitigating letters written by D8, his fiancée, family members and residents from North point. Despite his legal qualifications, D8 was not yet a fully qualified lawyer and he had no legal experience. We are prepared to accept that he had been misled by others and in this regard we grant him a 3-month deduction for his possible mistake as to the lawfulness of the Scheme. We also grant him a 3-month deduction for his relatively longer public service as a District Councillor.

93. Apart from the above, we are unable to see any other mitigating factors which may further reduce D8's sentence. Therefore, D8 is sentenced to 6 years and 6 months' (78 months) imprisonment.

D9 Chui Chi-kin

94. D9 is now aged 57. Between 1995 and 2014, he was a businessman running his own company. He won the District Council election in October 2015 and subsequently served full-time as a member of the Eastern District Council up to his remand for the present case in

February 2021. He has two previous convictions, one of incitement to knowingly take part in an unauthorised assembly and one of holding/assisting in holding / organising an unauthorised assembly, for both of which he was sentenced to a concurrent term of 6 months' imprisonment on 16 October 2021.

95. Mr Albert Wong, with his customary pragmatism, has said all that could be said on behalf of D9 in mitigation. We have also considered the mitigating letters from the community he served, colleagues, family and friends. We grant D9 a one-third discount (of 28 months) for his timely plea; 3 months for his possible mistake as to the lawfulness of the Scheme; and 3 months for his relatively longer public service as a District Councillor.

96. Apart from the above, in our view there are no mitigating factors which may reduce his sentence. In particular, regarding his health condition, we are told that he is suffering from a bone spur, chronic pancreatitis, diabetes and eczema. However, there is nothing to suggest that he cannot receive adequate and proper medical attention and treatment in prison. We are not satisfied that his health condition is of such an exceptional nature or degree as to merit any reduction in sentence.

97. We have not neglected D9's two previous sentences passed on 16 October 2021 in relation to an unauthorized assembly. However, having stepped far back and considered the matter in the round, we decide that no adjustments should be made to the present sentence.

98. Therefore, D9 is sentenced to 4 years and 2 months' (50 months) imprisonment.

D10 Yeung Suet-ying Clarisse

99. D10 has just turned 38. After graduating from university, D10 first worked as an art consultant in 2011. Between 2014 and 2015, she taught cultural policies at universities. Since 2016, she served as a member of the Wan Chai District Council and became its Chairlady in 2020. She has a clear record. Reference is also made to her background and political career as stated in our Reasons for Verdict.

100. D10 is convicted after trial. We have considered all the mitigations put forward by Mr Cheung on her behalf. We grant her a 3-month deduction for her possible mistake as to the lawfulness of the Scheme. We have also taken into account the mitigating letters written by D10, her father, colleagues and friends and her public service. In view of her public service as a District Councillor as well as her contribution to local cultural policies and charitable works, we grant her an additional 3 months reduction.

101. Apart from the above, we are unable to identify any mitigating factors available which may reduce her sentence. Therefore, D10 is sentenced to 6 years and 6 months' (78 months) imprisonment.

D11 Pang Cheuk-kei

102. D11 is now aged 30. After graduation, he established the "Youth Business Alliance" which aimed at guiding young people towards the path of entrepreneurial development in the Greater Bay Area. In 2020, D11 became a member of the Southern District Council. He married with his fiancée on 20 May 2021 which was after his arrest in January 2021.

In the past two years, D11 was employed by the Hong Kong Basic Law Foundation and worked as its Chief Executive Officer. He has a clear record. Reference is also made to his background and political career as stated in our Reasons for Verdict.

103. D11 is convicted after trial. We have considered all the mitigations put forward by Ms Lo on his behalf. We grant him a 3 month reduction for his possible mistake as to the lawfulness of the Scheme.

104. Having considered the materials contained in D11's mitigation bundle including the mitigating letters written by D11's family, former teachers, colleagues and friends, we give him credit for his voluntary public service both before and after charge. We note that the Chairman of the Hong Kong Basic Law Foundation, Mr Paul Yip Kwok Wah, has written a letter commending D11 for his post-charge voluntary work in promoting the Constitutional of the PRC, the Basic Law, the NSL and the principle of "One Country, Two Systems" among primary and secondary students and also tertiary educational institutions in Hong Kong. For his voluntary public services, before and after charge, we grant him a 3 months reduction.

105. Apart from the above, we do not see any mitigating factors which may reduce D11's sentence. Therefore, D11 is sentenced to 6 years and 6 months' (78 months) imprisonment.

Candidates for Kowloon West

D12 Sham Tsz-kit

106. D12 is now aged 37, married. He was a serving District Councillor of Sha Tin District and one of the vice-chairmen of the League of Social Democrats at the time of the offence. He has a spent criminal record.

107. Mr. Douglas Kwok, counsel for D12, submitted that D12 ought not to be identified as an active participant. Mr. Kwok submitted that D12 should properly be regarded as a normal participant to the Scheme. Mr. Kwok submitted that the time that D12 spent in remand (more than 3 years 4 months/40 months) might be regarded as having served a notional sentence of 5 years if remission were granted. Mr. Kwok submitted that as a result of the enactment of the Safeguarding National Security Ordinance (SNSO) and the amendment to rule 69(1) of the Prison Rules, D12 would not be granted remission by the Commissioner.

108. We took into consideration the role played by D12 as revealed in the Summary of Facts. In our judgment, the Summary of Facts revealed that D12 was an active participant in the Scheme.

109. We took the view that whether D12 would be granted remission was a matter for the Commissioner, not a matter to be taken into consideration by the sentencing court.

110. Mitigation letters from D12, the cohabiting partner of D12, D2, the spokesperson of Rainbow Action and residents who D12 had

served as a District Councillor had been produced. They all spoke favourably for D12 and asked for a lenient sentence be passed.

111. D12 agreed that if he were successfully elected into the LegCo, he would veto the Budgets indiscriminately with others in pursuant to the Scheme. Based on the role of D12 in the Scheme, we adopted a starting point of 7 years' imprisonment (84 months).

112. Given the guilty plea of D12, a full one-third discount would be given. We further gave 3 months reduction for D12's ignorance of the law and 2 months reduction for his past public service as a District Councillor.

113. In conclusion, for the offence D12 stands convicted, he is sentenced to 4 years and 3 months' (51 months) imprisonment.

D13 Mo Man-Ching Claudia

114. D13 is now aged 67, married and a mother to two sons. She was a serving LegCo Member at the material time. She has a clear criminal record.

115. Mr. Albert Wong, counsel for D13, submitted that D13 should not be considered as a principal offender or a fully committed active participant and that she committed the present offence out of ignorance of the law.

116. Mr. Wong submitted that D13 had been in custody for almost 2 years which limited her time with her husband whose health had been declining. Mitigation letters from D13, her husband, former

colleagues and people who had worked with D13 had been produced. They all asked for a lenient sentence be passed. In D13's own mitigation letter, she apologized and expressed her regret for her involvement in the Scheme.

117. We took into consideration the role played by D13 as revealed in the Summary of Facts. In our judgment, the Summary of Facts revealed that D13 was an active participant in the Scheme. She agreed that if she were successfully elected into the LegCo, she would veto the Budgets indiscriminately with others in pursuant to the Scheme.

118. In our judgment, based on the role of D13 in the Scheme, 7 years (84 months) would be adopted as the starting point.

119. Given the guilty plea of D13, a full one-third discount would be given. We further gave 3 months reduction each for her past public service and ignorance of the law.

120. We are sympathetic to the ailing health of D13's husband. However, the health condition of D13's husband is not a matter that can militate against the sentence to be passed on D13.

121. In conclusion, for the offence D13 stands convicted, she is sentenced to 4 years and 2 months' (50 months) imprisonment.

D14 Ho Kai-ming Calvin

122. D14 is now 36, single. He was a serving District Councillor of Sham Shui Po District at the material time. He has a clear criminal record.

123. Mr. Anthony Yuen, counsel for D14, submitted that D14 was just an ordinary participant of the Scheme and should fall under the band of “other participant”. Mr. Yuen submitted that D14’s culpability fell more to the 3 years side than the 10 years side.

124. We received mitigation letters from D14, his parents and siblings, girlfriend and many others. They all asked for a lenient sentence be passed. In D14’s own mitigation letter, he said he reflected after his arrest. He stopped any activities which might breach the law of national security and was prepared to leave politics to serve the Church in future. D14 asked for leniency.

125. In our judgment, the role of D14 in the Scheme was that of an active participant. He agreed that if he were successfully elected into the LegCo, he would veto the Budgets indiscriminately with others in pursuant to the Scheme.

126. Based on the role of D14, 7 years (84 months) would be adopted as the starting point.

127. We gave 3 months reduction for D14’s ignorance of the law and 2 months reduction his past public service as a District Councillor.

128. As D14 was convicted after trial, no further discount would be given.

129. In conclusion, for the offence D14 stands convicted, he is sentenced to 6 years and 7 months’ (79 months) imprisonment.

D15 Fung Tat-chun Frankie

130. D15 is now aged 29. He was a lifestyle magazine editor and sales and marketing consultant. He has a clear criminal record.

131. On the role played by D15, Mr. Nigel Kat SC together with Ms. Yvonne Leung, counsel for D15, submitted:

“13. Others with greater prominence, activity or participation in the agreement and its overt acts than Mr. Fung include the prime mover or ‘brains’ behind the Scheme (say, level 1); organisers and facilitators (levels 2 and 3); the leaders of organised parties, groups and associations, who would have been expected to lead others (level 4); then other active participants (level 5). Mr. Fung was a “level 5” participant, considering his absolute lack of political influence.”

132. Counsel for D15 submitted that a sentence between 4 and 5 years’ imprisonment would enable D15 to be released immediately or very shortly, so that he could start afresh in his newly married life.

133. We received mitigation letters from D15, his mother, professors and lecturers at HKBU, the headmaster and teachers of D15’s former school, friends and D15’s tutor in his childhood. They all asked for a lenient sentence be passed.

134. In D15’s own mitigation letter, he apologised for his misdeeds and said he did not wish to return to politics. He only wished to reunite with his family and lived a new life with his newly wedded wife.

135. We took into consideration the role played by D15 as revealed in the Summary of Facts. In our judgment, the Summary of

Facts revealed that D15 was an active participant in the Scheme. He agreed that if he were successfully elected into the LegCo, he would veto the Budgets indiscriminately with others in pursuant to the Scheme.

136. Based on the role of D15 in the Scheme, 7 years (84 months) would be adopted as the starting point.

137. Given the guilty plea of D15, a full one-third discount would be given. We further gave 3 months reduction for his ignorance of the law.

138. In conclusion, for the offence D15 stands convicted, he is sentenced to 4 years and 5 months' (53 months) imprisonment.

D17 Wong Pik Wan

139. D17 is now aged 65, a retired university lecturer. She was a serving LegCo member at the material time. She has a clear criminal record.

140. Mr. Erik Shum, together with Ms. Christy Wong, counsel for D17 submitted that D17 had a positive good character. Her approach in politics was moderate/pragmatic. Counsel submitted that D17 did not assume any planning, organization or directing role in the conspiracy. Her role in the conspiracy was only peripheral. Counsel submitted that D17 should be put in the "other participant" category and be sentenced on that basis.

141. We received mitigation letters from her husband, former senior government officials and many others. They all asked for a lenient sentence be passed on D17.

142. In our judgment, the role of D17 in the Scheme was that of an active participant. She agreed that if she were successfully elected into the LegCo, she would veto the Budgets indiscriminately with others in pursuant to the Scheme.

143. Based on the role of D17 in the Scheme, 7 years (84 months) would be adopted as the starting point.

144. We gave 3 months reduction each for her ignorance of the law and her past public service as evidenced by the mitigation letters placed before us. D17 was convicted after trial. We could see no other effective mitigating factor.

145. In conclusion, for the offence D17 stands convicted, she is sentenced to 6 years and 6 months' (78 months) imprisonment.

D18 Lau Chak-fung

146. D18 is now aged 28, he was the former chairman of the Hong Kong Federation of Students ("HKFS"). He identified himself as a political amateur and a member of the local resistance camp. He has a clear criminal record.

147. Ms. Catherine Wong, together with Ms. Christy Chak, counsel for D18 submitted that D18 was not a principal offender or a person who had committed an offence of a grave nature. D18 did not

hold a leadership position nor wield significant political influence or backing. He stopped his election campaign after he lost in the Primary Election on 12 July 2020.

148. Counsel submitted that D18 fell into Band 3 (“other participant”) or at most the lower end of Band 2 (“active participant”). Counsel submitted that given the limited role played by D18, he should be given a sentence at the lower end of the sentencing scale.

149. We received mitigation letters from D18’s mother and people who came to know D18 in church activities, friends and classmates, voluntary community workers. They all asked for a lenient sentence be passed.

150. In our judgment, the role of D18 in the Scheme was that of an active participant. He agreed that if he were successfully elected into the LegCo, he would veto the Budgets indiscriminately with others in pursuant to the Scheme.

151. Based on the role of D18 in the Scheme, 7 years (84 months) would be adopted as the starting point.

152. Given the guilty plea of D18, a full one-third discount would be given. We gave a further reduction of 3 months for his ignorance of the law.

153. In conclusion, for the offence D18 stands convicted, he is sentenced to 4 years and 5 months’ (53 months) imprisonment.

Candidates for Kowloon East

D19 Wong Chi-fung

154. D19 is now aged 28. He has a number of criminal records between 2016 and 2023.

155. Mr. Marco Li, together with Ms. Toni Chan, counsel for D19 submitted that D19's role in the Scheme could be distinguished from other defendants who played a more leading role. Counsel submitted that D19 should be placed in the category of "active participant" for the purpose of sentencing. We accepted that to be the case.

156. We received mitigation letters from the mother of D19, clergy and a former teacher of D19. They all asked for a lenient sentence be passed on D19.

157. We took into consideration the role played by D19 as revealed in the Summary of Facts. In our judgment, the Summary of Facts revealed that D19 was an active participant in the Scheme. He agreed that if he were successfully elected into the LegCo, he would veto the Budgets indiscriminately with others in pursuant to the Scheme.

158. Based on the role of D19 in the Scheme, 7 years (84 months) would be adopted as the starting point. Given the guilty plea of D19, a full one-third discount would be given. It was not raised in his mitigation that D19 committed the offence under a mistake of the law, hence we gave no reduction under this head.

159. Given the criminal records of D19, we did not consider him to be a person of good character.

160. We considered the chronology of D19's convictions in WKCC 2289/2020, ESCC 2097/2020, DCCC 876,885,890 & 892/2020 and HCMP 585/2020. In our judgment, these matters had no direct relationship to the present case. It should be noted that D19 committed the present offence while he was on court bail. We did not think we should give further reduction because D19 could not have all the offences sentenced in the same proceedings. The sentence we passed on D19 also would not have a crushing effect on him.

161. In conclusion, for the offence D19 stands convicted, he is sentenced to 4 years and 8 months' (56 months) imprisonment.

D20 Tam Man-ho Jeremy Jansen

162. D20 is now aged 49. He was a serving LegCo member at the time of the offence. He has a clear criminal record.

163. Mr. Ambrose Ho, S.C., together with Mr. Kevin Leung, counsel for D20, submitted that D20 was not a principal offender or a person who had committed an offence of a grave nature. Counsel submitted that upon consideration of D20's involvement in the Scheme, even when taken at its highest, he fell within the middle band for "active participant" in the Scheme.

164. We received an affirmation from the former assistant of D20 with attachments, copy of WhatsApp screenshots of D20's chat with Wallace Lau. The attachments and screenshots served as proofs that D20

had a track record of either voting in support of and/or working alongside the Government on a wide range of social issues.

165. We received mitigation letters from D20, his mother, wife, friends and neighbours. They all asked for a lenient sentence be passed.

166. In D20's own mitigation letter, he expressed remorse and apologised for his misdeeds and promised to reform himself.

167. We took into consideration the role played by D20 as revealed in the Summary of Facts. In our judgment, the Summary of Facts revealed that D20 was an active participant in the Scheme. He agreed that if he were successfully elected into the LegCo, he would veto the Budgets indiscriminately with others in pursuant to the Scheme.

168. Based on the role of D20 in the Scheme, 7 years (84 months) would be adopted as the starting point.

169. Given the guilty plea of D20, a full one-third discount would be given. We gave 3 months each for his ignorance of the law and his past public service.

170. In conclusion, for the offence D20 stands convicted, he is sentenced to 4 years and 2 months' (50 months) imprisonment.

D21 Li Ka-tat

171. D21 is now aged 33, single. At the material time, he was a District Councillor of Kwun Tong District. He has a clear criminal record.

172. Mr. Edward Chan, counsel for D21, submitted that D21 was not a principal offender or a person who had committed an offence of a grave nature. Mr. Chan submitted that the penalty band of “active participant” should be applied to D21’s case.

173. We received mitigation letters from D21, his fiancé, family members and many others. They all asked for a lenient sentence be passed.

174. In D21’s own mitigation letter, he expressed remorse for his misdeeds and his determination to reform.

175. In our judgment, the role of D21 in the Scheme was that of an active participant. He agreed that if he were successfully elected into the LegCo, he would veto the Budgets indiscriminately with others in pursuant to the Scheme.

176. Based on the role of D21 in the Scheme, 7 years (84 months) would be adopted as the starting point.

177. Given the guilty plea of D21, a full one-third discount would be given. We gave 3 months reduction for his ignorance of the law and a further 2 months reduction for his past contribution as a District Councillor.

178. In conclusion, for the offence D21 stands convicted, he is sentenced to 4 years and 3 months’ (51 months) imprisonment.

D22 Tam Tak-chi

179. D22 is now aged 52, a radio host. He has 2 previous convictions.

180. It can be seen from the Court of Appeal's judgment in *HKSAR v Tam Tak Chi* [2024] 2 HKLRD 565 that for D22's second conviction, he was convicted in the District Court of seven counts of sedition offences and three counts of public order offences. He was sentenced to a total of 40 months' imprisonment. The Court of Appeal dismissed his appeals against conviction and sentence.

181. Miss Pauline Leung, counsel for D22 submitted that D22 was not a principal offender or a person who had committed an offence of a grave nature. She submitted that D22's culpability fell within the "Other Participation Band".

182. Miss Leung submitted that some of the charges in the District Court case were post-NSL in that they were committed between 4 July to 19 July 2020, during D22's running in the Primary Election. These offences were committed in close proximity with the present offence.

183. Miss Leung submitted that this Court should apply the totality principle when sentencing D22 for the present offence as if this case and the District Court case were heard together.

184. In our judgment, the role of D22 in the Scheme was that of an active participant. He agreed that if he were successfully elected into

A the LegCo, he would veto the Budgets indiscriminately with others in
B pursuant to the Scheme.

C 185. Based on the role of D22 in the Scheme, 7 years (84 months)
D would be adopted as the starting point. A full one-third discount would
E be given for his guilty plea. It was not raised in D22's mitigation that he
F committed the offence under a mistake of the law, hence we gave no
reduction under this head.

G 186. We accepted that some of the seditious words uttered by
H D22 in the District Court case were related to the Primary Election.
I Some of those charges were committed between 4 to 19 July 2020. We
J were aware that the gravamen of the offence of "Uttering seditious words
K to the public" and "Conspiracy to commit subversion" were different.
L However, we took the view that as those charges and the present charge
M were committed in close proximity, we should apply the totality principle
N in sentencing D22 as if this case and the District Court case were heard
together. Given the fact that D22 had already completed his sentence in
the District Court case, we would give a reduction of 3 months to reflect
the totality of the 2 matters.

O 187. In conclusion, for the offence D22 stands convicted, he is
P sentenced to 4 years and 5 months' (53 months) imprisonment.

Q **D23 Wu Chi-wai**

R 188. D23 is now aged 62. He was a serving LegCo member and
S the Chairman of the Democratic Party at the material time.
T
U
V

189. D23 has 2 conviction records. For DCCC107/2021, he was convicted on his own pleas of one count of “Incitement to knowingly take part in an unauthorized assembly” (Charge 1) and one of “Holding or organizing an unauthorised assembly” (Charge 2). The offence dates of these two charges were 30 June 2020 and 1 July 2020 respectively. D23 was sentenced to a total term of 10 months’ imprisonment. He had served the sentence. For DCCC 857-875, 877-884, 886-889, 891 & 893/2020, D23 was convicted on his own plea of one count of “Knowingly taking part in an unauthorised assembly”. He was sentenced to 4 months and 2 weeks’ imprisonment. The offence date was 4 June 2020.

190. Ms. Breanne Kwok, counsel for D23 submitted that D23 was not a principal offender or a person who had committed an offence of a grave nature. She submitted that D23 was at best an active participant in the Scheme

191. We received mitigation letters from D23, his wife, former senior government officials, LegCo members and many others, including people who had received D23’s help. They all asked for a lenient sentence be passed.

192. In our judgment, the role of D23 in the Scheme was that of an active participant. He agreed with others to veto the Budgets indiscriminately in pursuant to the Scheme if he were successfully elected into the LegCo.

193. Based on the role of D23 in the Scheme, 7 years (84 months) would be adopted as the starting point. Given the guilty plea of D23, a full one-third discount would be given.

194. We gave 3 months reduction for his ignorance of the law.

195. Ms. Kwok submitted that D23 was a man of positive good character. He had a clear record at the time of the present offence.

196. From the Reasons for Sentence, D23 was given a further reduction of 2 months over and above the reduction for his guilty plea for his past contribution to the Hong Kong community in DCCC 107/2021.

197. In the other District Court cases, i.e. DCCC 857-875, 877-884, 886-889, 891 & 893/2020. The judge in sentencing D23, had also taken into account his past contribution and public service. As such no further reduction would be given to D23 in this case for his past contribution and public service.

198. The two District Court cases were unrelated to the present case. Stepping back and taking a global view of the criminal conducts of the two District Court cases and the present case, we came to the conclusion that the application of the totality principle did not call for a further reduction.

199. In conclusion, for the reasons given, for the offence D23 stands convicted, he is sentenced to 4 years and 5 months' (53 months) imprisonment.

D24 Sze Tak-loy

200. D24 is now aged 42, he was the Chairman of ADPL and a District Councillor for Wong Tai Sin District. He has a clear criminal record.

201. Mr. Peter Wong, Mr. Mark Leung and Ms. Larissa Wong counsel for D24, submitted that D24 was not a principal offender and was no more than an “active participant”. We accepted that to be the case.

202. We received mitigation letters from D24, his wife, parents and siblings, Mr. Frederick Fung, former Chairman of ADPL and many others. They all asked for a lenient sentence be passed. In D24’s own mitigation letter, he promised he would be law-abiding and would not reoffend in future. He vowed to serve Hong Kong and the disadvantaged groups in future.

203. In our judgment, the role of D24 in the Scheme was that of an active participant. He agreed that he would veto the Budgets indiscriminately with others in pursuant to the Scheme if he were successfully elected into the LegCo.

204. Based on the role of D24 in the Scheme, 7 years (84 months) would be adopted as the starting point.

205. We gave a 3 months reduction for D24’s ignorance of the law and a further 2 months reduction for his past public service as a District Councillor.

206. As D24 was convicted after trial, we could see no other mitigating factor.

207. In conclusion, for the offence D24 stands convicted, he is sentenced to 6 years and 7 months' imprisonment (79 months).

Candidates for New Territories West

D25 Chu Hoi-dick Eddie

208. D25 is now aged 47, a former LegCo Councillor. He is married with a daughter. He has three criminal records.

209. All participants of the Primary Election from New Territories West pleaded guilty to the charge at the committal stage except Ng Kin-wai (D28), his plea only came on the first day of the trial.

210. D25 in his mitigation informed this Court that he realised that he had been overzealous, irresponsible and too narrow-minded in fighting for universal suffrage. He realised that he had failed to take into consideration of the political development and social stability in Hong Kong at the time. He felt sorry for his mistakes and was willing to take full responsibility.

211. Mitigation letters from D25, his family had been produced and they understandably asked the Court for leniency. Judging from D25's own letter and his mother's solemn promise, it seemed to us that D25 had demonstrated a genuine remorse. We were of no doubt that the appropriate authority would take that into account, if genuinely held when the issue of remission was under consideration in the future.

212. For D25, based on his role in the Scheme, 7 years (84 months) would be adopted as the notional starting point. A full one-third discount would be given for his plea. A further 3 months would be given for his ignorance of the law. We however did not think further discount could be given for his past service given the fact that he had two criminal records. No doubt that ought to have been taken into consideration in the past.

213. For the offence D25 stands convicted, he is sentenced to 4 years and 5 months' (53 months) imprisonment.

D26 Cheung Ho-sum

214. D26 is now aged 31, a former District Councillor. He has a clear record.

215. D26 was elected to the Tuen Mun District Council in November 2019. He identified himself to be a member of the localist resistance camp. In his lengthy hand written mitigation letter, D26 expressed his remorse and reflected deeply upon the effect of his acts to the society. During remand, he had experienced the joy and sadness of the circle of life of his family. He was pursuing a PhD programme. Mitigation letters from his wife, mother, school teachers and university professors had been submitted. They asked the Court for leniency.

216. Together with Leung Fong-wai Fergus (D7) and Chow Ka-Shing (D37), they initiated the IWR Declaration. In addition to that, he also attended the press conference held by the localist resistance camp on 15 July 2020.

217. We accepted that D26 was not an organiser. The Scheme was also not initiated by him. As such, he was at most placed in the “active participant” category. However he did more than just a mere participant to the Scheme. The purpose of the IWR Declaration was meant to bind the participants from deviating from the Scheme. He and other initiators put in place an undertaking to ensure the success of the Scheme. He rendered his assistance to the grand scheme. As such the notional starting point would be set at 8 years’ (96 months) imprisonment. A full one-third discount would be given for his plea. An additional 3 months would be given for his ignorance of the law. Two months would also be given for his past public service.

218. Judging from his mitigation letters, it seemed to us that D26 had demonstrated a genuine remorse. We were of no doubt that the appropriate authority would take that into account, if genuinely held when the issue of remission was under consideration in the future.

219. For the offence D26 stands convicted, he is sentenced to 4 years and 11 months’ (59 months) imprisonment.

D27 Wong Ji-yuet

220. D27 is now aged 27, an assistant to an art therapist. She has one criminal record and is now serving a 37 months’ imprisonment for riot. The riot took place on 18 November 2019.

221. It was accepted by Mr Pun, counsel for D27 that although D27 actively participated in the Scheme, she however was not a principal

offender or a person who had committed an offence of grave nature. We accepted that to be the case.

222. Similar to other defendants, mitigation letters from husband and parents, friends and university professors had been produced. All of them spoke highly of her. They asked for leniency from this Court. In her own handwritten mitigation letter, D27 explained the mental illnesses she had been suffering in the past and accepted full responsibility for her acts. We were of no doubt that the appropriate authority would take that into account when the issue of remission was under consideration in the future.

223. For D27, based on her role in the Scheme, 7 years (84 months) would be adopted as the notional starting point. Given her plea, a full one-third discount would be given. An additional 3 months would be given for her ignorance of the law.

224. The riot case to which D27 pleaded guilty pre-dated the present case. The two cases had no direct relationship to each other and related to two distinct and separate incidents. We had carefully considered the issue of totality and failed to see why a concurrent sentence should be imposed.

225. For the offence D27 stands convicted, she is sentenced to 4 years and 5 months' (53 months) imprisonment, to be served consecutively to the sentence imposed on her in the riot case.

D28 Ng Kin-wai

226. D28 is now aged 29, a former District Councillor. He has no criminal record.

227. D28 pleaded guilty to the charge on the first day of the trial. He informed the Court that as the Scheme failed, he therefore chose to enter a plea of guilty.

228. In two letters D28 addressed to us, D28 was of the view that he should be placed in the “active participant” category with a starting point of 4 to 5 years’ imprisonment.

229. In his letter dated 10 July 2024, D28 explained his cause for taking part in the Scheme. He also stressed the fact that he took full responsibility for his actions and would not apologise for all the values he and his voters believed in and stood for. D28 accepted that apart from his plea, there was no other mitigating factor in his case.

230. For D28, based on his role in the Scheme, 7 years (84 months) would be adopted as the notional starting point, a 20% discount would be given for his late plea.

231. For the offence D28 stands convicted, he is sentenced to 5 years and 7 months’ (67 months) imprisonment.

D29 Wan Siu-kin Andrew

232. D29 is now aged 55. He was a serving LegCo member and a District Councillor of Kwai Tsing District Council. He has 4 previous

convictions which occurred subsequent to the present case. He had a clear criminal record at the time of the commission of the present offence.

233. Miss Tina Mok, counsel for D29, submitted that D29 acted as an “active participant” in the conspiracy, and a starting point of 4 year’s imprisonment would be appropriate to reflect his level of involvement and culpability.

234. We received mitigation letters from former senior government officials, LegCo members and many others. They all asked for a lenient sentence be passed.

235. In our judgment, the role of D29 in the Scheme was that of an active participant. He agreed that he would veto the Budgets indiscriminately with others in pursuant to the Scheme if he were successfully elected into the LegCo.

236. Based on the role of D29 in the Scheme, 7 years (84 months) would be adopted as the starting point.

237. Given the guilty plea of D29, a full one-third discount would be given. It was not raised in the mitigation that D29 committed the offence under a mistake of the law, hence we gave no reduction under this head.

238. Miss Mok asked us to give further reduction for D29’s positive good character and that he had a clear record at the time of the offence.

239. D29 was D6 in DCCC 857-875, 877-884, 886-889, 891 & 893/2020. From the Reasons for Sentence given by the judge, it was obvious that the judge was aware of the contribution and public service of D29.

240. In the present case, we would not give any additional reduction on the ground of positive good character.

241. After stepping back and taking a global view of the criminal conducts of the District Court case and the present case, we came to the conclusion that the application of the totality principle did not call for a further reduction.

242. In conclusion, for the offence D29 stands convicted, he is sentenced to 4 years and 8 months' (56 months) imprisonment.

D30 Kwok ka-ki

243. Both D30 and D35 were candidates in the Primary Election who were from the Civic Party. Based on the evidence before us, both of them were members of the Caucus of the Civic Party and D35 was also the Party Leader. Both D30 and D35 pleaded guilty at the committal. There is no dispute and we accept that both D30 and D35 were "active participants" in the Scheme.

244. Having considered D30's role in the Scheme, we adopt 7 years' (84 months') imprisonment as the starting point. In so doing, we have already factored in the non-violent nature of the Scheme.

245. D30 is now aged 63. He is married with two daughters and a son. His father had passed away. He shares a close relationship with his mother. D30 was educated in Hong Kong and is a surgeon by profession specialized in urology. Besides, he started his political life by served as a District Councillor in 1994. He was a LegCo member in the Medical Functional Constituency between 2004 and 2008. Between 2003 and 2006, D30 served in various roles for the Hospital Authority, the Hong Kong Medical Council and Tung Wah Hospital. In 2012, D30 returned to the LegCo through election in the New Territorial West geographical Constituency and remained in that office until late 2020. He has a clear record.

246. We trust that Mr Choy SC has said all that could be said on D30's behalf. We grant D30 the full one-third discount (28 months) for timely plea which also covers his post-arrest co-operation with the Police. There is an additional deduction of 3-month deduction for his possible mistake as to the lawfulness of the Scheme. We give full weight to the materials contained in his mitigation bundle and his long-term public service and grant him 3-month deduction.

247. Apart from the above, we are unable to identify any other mitigating factors which may reduce the sentence of D30. Therefore, D30 is sentenced to 4 years and 2 months' (50 months) imprisonment.

248. We are prepared to accept that the chance of D30 re-offending is low and we trust that the authorities would take this into account when considering remission.

D31 Ng Man-yee Carol

249. D31 is now aged 54, formerly a flight attendant. She has no criminal record.

250. It was submitted that D31's participation was only of a low degree as she did not attend any coordination meeting or press conference. She only attended the election forum. Further she lost the Primary Election by coming second last among the eight participants for New Territories West. After losing the Primary Election, she said or did nothing in furtherance of the Scheme.

251. Mitigation letters from her daughter, mother, former colleagues, friends and classmates had been produced. They spoke highly of her and asked the Court to pass a most lenient sentence.

252. Based on her role in the Scheme, 7 years (84 months) would be adopted as the notional starting point. A full one-third discount would be given for her plea. An additional 3 months would also be given for her ignorance of the law.

253. In her own handwritten mitigation letter, D31 accepted that she had broken the law, a very serious law and took full responsibility for her acts. We noted the apology D31 had tendered. We had no doubt that the appropriate authority would take note of her apology, if genuine held in assessing her chance in remission.

254. For the offence D31 stands convicted, she is therefore sentenced to 4 years and 5 months' (53 months) imprisonment.

D32 Tam Hoi-pong

255. D32 is now aged 44, a District Councillor. He has no criminal record.

256. It was submitted that although D32 belonged to the Neo-Democrats, he was essentially an environmentalist advocating for a greener Hong Kong. His desire to run for the 2020 LegCo Election was simply to add more green voice into government policies. Unfortunately, he came last in the Primary Election for New Territories West. There was no denial that D32 had attended coordination meeting and that his political party, the Neo Democrats, had signed the IWR Declaration.

257. Mitigation letters from his wife, parents, university professors, environmental and animal group, fellow District Councillors and residents from Ma Wan had been produced. They asked for leniency from this Court. In his own mitigation letter, D32 tendered his apology to the Court and accepted his responsibility.

258. Likewise it was submitted that his degree of participation was low for he did not attend any press conference held by the localist resistance camp.

259. We noted that D32 had been suffering from various skin problems. That sometimes necessitated in-patient treatment in hospital. We were fully aware of his health issue. However, we were of the view that his health issue did not cause extra hardship and could not justify any further discount.

260. Based on his role in the Scheme, 7 years (84 months) would be adopted as the notional starting point. The major mitigation in his case would be his plea. For that he would be given the full one-third discount. In addition, we would also give 3 months and 2 months each respectively for his ignorance of the law and past community work in environmental and animal care.

261. In conclusion, for the offence D32 stands convicted, he is sentenced to 4 years and 3 months' (51 months) imprisonment.

Candidates for New Territories East

D33 Ho Kwai-lam

262. D33 is now aged 34, a former journalist. She has one criminal conviction in 2021.

263. D33 did not wish to address this Court on mitigation.

264. For the role that D33 participated in the Scheme, we were of the view that 7 years (84 months) should be adopted as the notional starting point. D33 was convicted after trial. As no mitigation was put forward, for the offence D33 stands convicted, she is sentenced to 7 years' (84 months) imprisonment.

D34 Lau Wing-hong

265. D34 is now aged 31, formerly a community worker. He identified himself to be a member of the localist resistance camp. D34 has one criminal record of riot. In March 2024, he was sentenced to

54 months and 20 days imprisonment for participating in the riot taken place on 1 July 2019 inside the LegCo chamber. It was accepted that given the overall circumstances of D34's role and involvement, he should be placed in the "active participant" category.

266. Mitigation letters from his friends and employer had been produced. They spoke highly of him. They pleaded for leniency on his behalf. D34 addressed us eloquently in court. He took full responsibilities for his actions and expressed his remorse and promised not to infringe the law in years ahead. We were of the view that the appropriate authority would no doubt take note of his change, if genuinely held, in assessing his remission in the future.

267. The riot case in which D34 pleaded guilty predated the present case. The two cases had no direct relationship and concerned two separate matters. We had considered the issue of totality and failed to see why a concurrent sentence should be imposed.

268. Based on his role in the Scheme, 7 years (84 months) would be adopted as the starting point. A full one-third discount would be given for his plea. We would also give him 3 months for his ignorance of the law.

269. For the offence D34 stands convicted, he is therefore sentenced to 4 years and 5 months' (53 months) imprisonment, to be served consecutively to the sentence imposed on his riot case.

D35 Yeung Alvin Ngok-kiu

270. We are unable to accept the submission made on D35's behalf that the appropriate starting point for D35 should be in the "lower end of the spectrum". Given D35's position in the Civic Party and the admissible evidence before us for sentencing purpose, we have no doubt that D35 took a pro-active and leading role in the Civic Party's participation of the Scheme. This is in part evidenced by the press conference of the party on 25 March 2020. This is not to say that D35 is to be punished for what he did before the enactment of the NSL. As we have said, however, D35's conduct before the NSL provides the context for us to assess the extent and degree of participation during the charge period. Having considered D35's role in the Scheme, we adopt 8 years (96 months) imprisonment as the starting point. In so doing, as aforesaid, we have already factored in the non-violent nature of the Scheme.

271. D35 is now aged 43, married. He was raised by his mother with whom he maintains a close relationship. D35 received secondary and tertiary education in Canada. He joined the private Bar in Hong Kong in 2009. D35 started his political career as a candidate of the Civic Party in the 2012 LegCo election and eventually won the seat in 2016. He served as a LegCo member until late 2020. He, too, has a clear record.

272. We trust that Mr Choy SC has said all that could be said on D35's behalf. We accept that D35 is now remorseful and that his chance of re-offending is low. In this regard, we grant D35 the customary one-third discount (32 months) which also covers his post-arrest co-operation with the Police.

273. Having considered the materials contained in his mitigation bundle and his long-term public service, we grant him 3-month deduction.

274. Apart from the above, we are unable to identify any mitigating factors which may reduce D35's sentence. We are fully aware of D35's mother declining health and her subsequent demise. We note that Mr Choy did not put forward "ignorance of the law" as mitigation. In any event, we are satisfied that no deduction should be given to D35 on this. Therefore, D35 is sentenced to 5 years and 1 month's (61 months) imprisonment.

275. Similar to the case of D30, we are prepared to accept that the chance of D35 re-offending is low and we trust that the authorities would take this into account when considering remission.

D36 Chan Chi-chuen Raymond

276. D36 is now aged 52, a former LegCo Councillor for New Territories East.

277. It was accepted that D36 should be considered to be placed in the active participant category. However it was submitted that he was in the low or medium spectrum for he did not attend any press conference and coordination meeting personally. He seldom spoke in the election forum for New Territories East. He also did not draft or initiate the IWR Declaration. Nor did he attend the press conference held by the localist resistance camp on 15 July 2020.

278. Mitigation letters from family members, friends and former government officials had been produced to this Court. They spoke highly

of him. Understandably, they pleaded for leniency on his behalf. D36 expressed his wish in his own written mitigation letter for an early release.

279. D36 was convicted after trial. For the role D36 participated in the Scheme, we were of the view that 7 years (84 months) should be adopted as the notional starting point. We gave 3 months each for his ignorance of the law and his past public service.

280. In conclusion, for the offence D36 stands convicted, he is sentenced to 6 years and 6 months' (78 months) imprisonment.

D37 Chow Ka-shing

281. D37 is now aged 27, a student studying nursing. He has two criminal records. He was sentenced in March 2024 to 61 months and 15 days imprisonment for riot which took place on 1 July 2019 inside the LegCo chamber. The commission of the riot predated the present offence.

282. It was accepted that D37 should be placed in the active participant category as he was neither an organiser nor a "principal offender". It was further admitted that he had attended all the coordination meetings, election forum and press conference held by the localist resistance camp.

283. D37 was one of the initiators of the IWR Declaration. The IWR Declaration might not add a great deal to the Scheme, it certainly pointed to the fact that D37 was putting every effort in binding the participants to ensure its success. We were of the view that the IWR Declaration did constitute as aggravate factor in this case.

284. Mitigation letters from his girlfriend and mother had been produced. They asked understandably for leniency from this Court.

285. For the role D37 participated in the Scheme, 8 years (96 months) would be adopted as the notional starting point. Three months would be given for his ignorance of the law. As D37 was convicted after trial, no further discount would be given.

286. In conclusion, for the offence D37 stands convicted, he is sentenced to 7 years and 9 months' (93 months) imprisonment. As the riot case predated the present case and the two had no direct relationship to each other, they were two separate and distinct incidents. As such, the 93 months imposed would be ordered to serve consecutively to the riot case. In so ordering, we had considered the issue of totality.

D38 Lam Cheuk-ting

287. D38 is now aged 47, a former LegCo Councillor for New Territories East. He has four criminal convictions, three relating to disclosing identity of person under ICAC investigation and one assaulting, interfering with officer of the LegCo while in the execution of duty.

288. It was submitted that D38 was one of the least involved defendants. He did not attend any coordination meeting. Nor did he sign the IWR Declaration. He also had never mentioned about vetoing the budgets.

289. Mitigation letters from his son, mother, friends and former colleagues of the Democratic Party had been produced. They asked for leniency from this Court.

290. For the role D38 participated in the Scheme, we were of the view that 7 years (84 months) should be adopted as the notional starting point. Three months would be given for his ignorance of the law. No doubt, his past contribution to public work had been taken into account previously and as D38 was convicted after trial, no further discount would be given.

291. In conclusion, for the offence D38 stands convicted, he is sentenced to 6 years and 9 months' imprisonment (81 months).

D39 Fan Gary Kwok-wai

292. D39 is now aged 58, a former LegCo Councillor for New Territories East.

293. It was submitted that given the limited role D39 played and that he was not involved in the planning, organisation or instigation of the Scheme, he should be placed in the "other participant" category with a starting point of 3 years imprisonment.

294. Mitigation letters had been produced by residents of his district, friends and colleagues, community leaders and family members. They spoke highly of D39 and understandably asked the Court to deal with him as lenient as possible. Whilst in remand, his father passed away and his other family members also suffered from serious illnesses.

295. Handwritten mitigation letter from D39 indicated that he was remorseful for infringing the law and had chosen to admit his guilt. Again we had no doubt that the appropriate authority would take note of D39's attitude, if genuinely held in assessing his remission in future.

296. For the role D39 participated in the Scheme, we were of the view that 7 years (84 months) should be adopted as the notional starting point. Given his plea, a full one-third discount would be given. Three months each for his ignorance of the law and past public service contribution would also be given.

297. In conclusion, for the offence D39 stands convicted, he is sentenced to 4 years and 2 months' (50 months) imprisonment.

D40 Lui Chi-hang Hendrick

298. D40 is now aged 42, formerly a social worker. He has a clear record.

299. It was submitted that as D40's involvement in the Scheme was minimal, he should be placed in the "other participants" category. It was further submitted that he participated in the Scheme because of his naivety in politics. His reason in joining the Primary Election was aiming to seek response from the Government for the betterment of the society.

300. Mitigation letters from foster mother, church pastor, friends and lecturers had been produced. They praised him for his works. It was also submitted that as a result of his conviction, he was unlikely to go back to be a social worker again after discharge from prison.

301. D40 stated that he felt sorry for his misdeeds. We were sure that had D40 felt truly remorseful, the appropriate authority would take note of that in considering his remission.

302. For the role D40 participated in the Scheme, we were of the view that he should be placed in the “active participant” category. 7 years (84 months) would be adopted as the notional starting point. Because of his plea, a full one-third discount would be given. This would reduce the sentence to one of 56 months imprisonment. Three months and two months each respectively would be given for his past contribution or service to the community and ignorance of the law.

303. In conclusion, for the offence D40 stands convicted, he is sentenced to 4 years and 3 months’ (51 months) imprisonment.

D41 Leung Kwok-hung

304. D41 is now aged 68, a former LegCo Councillor from 2004 to 2016, a radio programme host prior to his arrest. D41 has 24 convictions involving 38 offences.

305. It was submitted that D41 should be placed in the “other participant” category as his involvement was not substantial.

306. Mitigation letters from social workers, trade union officers and friends had been produced to demonstrate his dedication in working for the underprivileged and grassroots. Counsel for D41 asked this Court to take into account of D41’s positive good character and contribution to the community. Given his past criminal records, we did not think we were in a position to describe D41 as having a positive good character. Nor could we grant him further discount for past contribution to the community. No doubt, such had been given in the past.

307. For the role D41 participated in the Scheme, we were of the view that 7 years (84 months) would be adopted as the notional starting point. Three months would be given for his ignorance of the law. As D41 was convicted after trial, no further discount would be given.

308. In conclusion, for the offence D41 stands convicted, he is sentenced to 6 years and 9 months' (81 months) imprisonment.

D42 Lam King-nam

309. D42 is now aged 36, a businessman. He is married with 3 young children. He has a clear record.

310. It was submitted that D42 should be placed in the "other participants" category as he had provided two non-prejudicial statements to the police. Counsel for D42 also requested this Court to consider community service order.

311. We were of the view that the offence of which D42 was convicted was very serious in nature. Community service was inappropriate in such case. The non-prejudicial statements given by D42 were of little usefulness in this case. The statements merely described D42's involvement in the Scheme. His evidence in court also added nothing to the prosecution case. We had, in fact, hardly referred to his evidence in our Reasons for Verdict. As such, we declined to call for a community service order suitability report.

312. It was also submitted that D42's role in the Scheme was minimal. He was not the initiator of the Scheme. He also did not attend any of the coordination meetings. He only submitted his nomination

form after the close of the deadline. Nor did he sign for the IWR Declaration or attend any press conference.

313. For the role D42 participated in the Scheme, we were of the view that 7 years (84 months) should be adopted as the notional starting point. D42 only pleaded guilty before the commencement of the trial. As such he was only entitled to 20% discount. His sentence would therefore be reduced to 67 months. Three months and two months each respectively would be given for his ignorance of the law and his service in sourcing and providing protective equipment during the COVID pandemic.

314. In conclusion, for the offence D42 stands convicted, he is sentenced to 5 years and 2 months' (62 months) imprisonment.

D43 Or Yiu-lam Ricky

315. D43 is now aged 53, a former District Councillor. He has a clear record.

316. It was submitted that D43 should be placed in the "other participants" category as all he had done was participating in the Scheme and that his conducts were peaceful. His speeches in the election forum were limited. Further D43 only had limited influence as he came second last in the Primary Election.

317. Mitigation letters from parents, sister, friends and residents from Tseung Kwan O, former colleagues in the Sai Kung District Council had been produced. They spoke highly of him and asked for leniency from this Court.

318. For the role D43 participated in the Scheme, 7 years (84 months) would be adopted as the notional starting point. Three months and two months each respectively would be given for his ignorance of the law and past contribution to public service. As D43 was convicted after trial, no further discount would be given.

319. In conclusion, for the offence D43 stands convicted, he is sentenced to 6 years and 7 months' (79 months) imprisonment.

Candidates for District Council (Second) and Health Services

320. D44 Shum Lester and D45 Wong Pak-yu were candidates for the District Council (Second) Constituency and they pleaded guilty at the committal. D47 Yu Wai-ming Winnie was a candidate of the Health Services Constituency and she was convicted after trial.

321. Based on the Summary of Facts relating to D44 and D45 and the evidence adduced at the trial relating to D47 and having considered their respective culpability, we find that they were "active participants" in the Scheme.

322. As regards D47, we do not ignore the fact that she was a "latecomer" to the Scheme and that she had not participated in any coordination meetings or election forum. However, we do not consider that calls for a lower starting point. This is because the defendants are to be punished for their respective participation in the Scheme during the charge period. Their pre-NSL conduct, as we have said, only provides a backdrop for us to assess the extent and degree of their respective post-

NSL participation and culpability. In this regard, the evidence shows that D47 was active and vocal even after the Primary Election.

323. Having considered all the relevant evidence, we adopt a starting point of 7 years' (84 months) imprisonment for each of them. In so doing, we have taken into account that the offence did not involve any use of violence.

D44 Shum Lester

324. D44 is now aged 31. He married in January 2021. Prior to his arrest, from 2016 he worked as a policy research assistant to a Legislative Councillor. In 2019, he won in the District Council election and subsequently served as a member of Tsuen Wan District Council. He has two previous convictions, namely "Contempt of court" in January 2018 and "Taking part in an unauthorized assembly" in May 2021. For the latter offence, he was sentenced to 6 months' imprisonment.

325. We trust that Mr Albert Wong has said all that could be said on behalf of D44 in mitigation. We grant D44 a one-third discount (of 28 months) for his timely plea and remorse. We also take into account the materials contained in his mitigation bundle including letters written by D44, his wife, colleagues who speak highly of him concerning his public service and for this we grant him an additional 2-month deduction. In so doing, we have checked the Reasons for Sentence of D44's two previous convictions and found that his public records had not been put forward as a mitigation factor and no deduction were made on those occasions.

326. Apart from the above, we do not see any factors which may reduce D44's sentence. In particular, we note that D44 did not raise "ignorance of the law" as a mitigation factor, either through Mr Wong or in his own very well written mitigating letter. We take that to be a deliberate and informed choice. In the circumstances, we do not consider it appropriate to grant him any reduction in that regard.

327. We are fully alive that D44 has two previous sentences and in particular that he was last sentenced to 6 months' imprisonment passed on 6 May 2021. However, we take the view that D44's last conviction related to a separate and distinct offence. Having fully considered the issue of totality by stepping far back, we do not consider that there should be any adjustments for his present sentence.

328. As a result, D44's sentence is reduced to 4 years and 6 months' (54 months) imprisonment.

329. Finally, based on the materials contained in D44's mitigation bundle, we are prepared to accept that D44 is now genuinely remorseful and a different person than before. Whilst any deduction for remorse has already been subsumed in the one-third discount for plea, we trust that the authorities would take D44's remorse if genuinely held, into account when considering remission.

D45 Wong Pak-yu

330. D45 is now aged 33. After graduation, he worked in IT area of the financial sector and also engaged in voluntary service to help the underprivileged in Tin Shui Wai. In 2019, he won the District Council

election and then served as a member of Yuen Long District Council. He has a clear record.

331. We have considered the mitigation put forward by Mr Esmond Wong on D45's behalf. We grant D45 a one-third discount (of 28 months) for his timely plea; a 3-month deduction for his possible mistake as to the lawfulness of the Scheme. We also take into account the materials contained in his mitigation bundle including letters written by D45, his family, schoolmates, colleagues and friends and his public service, for which we grant him an additional 2-month deduction.

332. Apart from the above, we are unable do not see any factors which may reduce the sentence of D45. Thus, D45's sentence is reduced to 4 years and 3 months' (51 months) imprisonment.

333. Similar to the case of D44, we are prepared to accept that he is now a changed man. We trust that the authorities would take this into account when considering remission.

D47 Yu Wai-ming Winnie

334. D47 is now aged 37 and married. Prior to her arrest, she was a registered nurse and worked for the Hospital Authority as a Health Informatics Analyst. She has a clear record.

335. D47 is convicted after trial. We have considered in full the mitigation put forward by Mr Shek on her behalf. We grant D47 a 3-month deduction for her possible mistake as to the lawfulness of the Scheme.

336. We have scrutinized the materials contained in D47's mitigation bundle including the mitigating letters written by D47's family members, schoolmate and colleague. However, we are unable to identify any factors which may further reduce her sentence.

337. In the circumstances, D47 is sentenced to 6 years and 9 months' (81 months) imprisonment.

Conclusion

338. In conclusion, the following defendants are sentenced to the following respective imprisonment terms:

D1: 120 months

D2: 81 months

D3: 84 months

D4: 73 months

D5: 87 months

D6: 51 months

D7: 59 months

D8: 78 months

D9: 50 months

D10: 78 months

D11: 78 months

D12: 51 months

D13: 50 months

D14: 79 months

D15: 53 months

| | | |
|----------|----------------|----------|
| A | | A |
| | D17: 78 months | |
| B | | B |
| | D18: 53 months | |
| C | | C |
| | D19: 56 months | |
| D | | D |
| | D20: 50 months | |
| E | | E |
| | D21: 51 months | |
| | D22: 53 months | |
| F | | F |
| | D23: 53 months | |
| G | | G |
| | D24: 79 months | |
| H | | H |
| | D25: 53 months | |
| | D26: 59 months | |
| I | | I |
| | D27: 53 months | |
| J | | J |
| | D28: 67 months | |
| K | | K |
| | D29: 56 months | |
| L | | L |
| | D30: 50 months | |
| | D31: 53 months | |
| M | | M |
| | D32: 51 months | |
| N | | N |
| | D33: 84 months | |
| O | | O |
| | D34: 53 months | |
| P | | P |
| | D35: 61 months | |
| | D36: 78 months | |
| Q | | Q |
| | D37: 93 months | |
| R | | R |
| | D38: 81 months | |
| S | | S |
| | D39: 50 months | |
| T | | T |
| | D40: 51 months | |
| | D41: 81 months | |
| U | | U |
| V | | V |

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

D42: 62 months

D43: 79 months

D44: 54 months

D45: 51 months

D47: 81 months

| | | |
|-----------------------|-----------------------|-----------------------|
| (Andrew Chan) | (Alex Lee) | (Johnny Chan) |
| Judge of the Court of | Judge of the Court of | Judge of the Court of |
| First Instance | First Instance | First Instance |
| High Court | High Court | High Court |

Mr Jonathan Man, DDPP, Mr Anthony Chau, DDPP, Mr Andy Lo, ADPP (Ag), Ms Karen Ng, SPP, Ms Crystal Chan, SPP (Ag) and Ms Jennifer Tsui, SPP(Ag.) of the Department of Justice, for the Prosecution/HKSAR

Mr Stewart Wong, SC and Mr Partrick Lau, instructed by Ho, Tse, Wai & Partners, for D1 Tai Yiu-ting

Ms Valerie Chan, instructed by Paul W. Tse, for D2 Au Nok-hin and D4 Chung Kam-lun

Mr Summly Sim Lee, instructed by Joseph M.K. Chan, Solicitors, for D3 Chiu Ka-yin Andrew

Mr Randy Shek, Ms Yvonne Leung and Mr Colman Li, instructed by

O Tse & Co, for D5 Ng Gordon Ching-hang and D47 Yu Wai-ming
Winnie

Mr Nigel Kat, SC and Ms Yvonne Leung, instructed by O Tse & Co., for
D6 Yuen Ka-wai Tiffany and D15 Fung Tat-Chun Frankie

Mr Robert Pang, SC, Ms. Winnie Li and Mr Max Chan, instructed by
Bond Ng Solicitors, for D7 Leung Fong-wai Fergus

Mr Hectar Pun, SC, Mr Anson Y Y Wong and Ms Chan Hiu-in, Ferrida,
instructed by Kenneth Lam, Solicitors, assigned by the Director of
Legal Aid, for D8 Cheng Tat-hung and D41 Leung Kwok-hung

Mr Albert Wong and Ms Hayley Wong, instructed by M.H. Tang & Co.,
for D9 Chui Chi-kin

Mr Cheung Yiu-leung and Mr Fong Yan-hon, Enoch, instructed by
Johnnie Yam, Jacky Lee & Co, assigned by the Director of Legal Aid,
for D10 Yeung Suet-ying Clarisse

Ms Money Lo, instructed by Paul W Tse, for D11 Pang Cheuk-kei

Mr Douglas Kwok, instructed by Ho, Tse Wai & Partners, for D12 Sham
Tsz-kit

Mr Albert Wong, instructed by Kenneth Lam, Solicitors, for D13
Mo Man-Ching Claudia

Mr Yuen Wai-ming, Anthony, instructed by Chan & Chan, assigned by
the Director of Legal Aid, for D14 Ho Kai-ming Calvin

Mr Erik Shum and Ms Wong Yuen-pui, Christy instructed by Ho, Tse,
Wai & Partners, for D17 Wong Pik-wan

Ms Catherine Wong and Ms Christy Chak, instructed by W K To & Co.
assigned by the Director of Legal Aid, for D18 Lau Chak-fung

Mr Marco Li and Ms Toni Chan, instructed by Ho, Tse, Wai & Partners,
for D19 Wong Chi-fung

Mr Ambrose Ho, SC and Mr Kevin Leung, instructed by C&Y Lawyers,
for D20 Tam Man-ho Jeremy Jansen

Mr Edward Chan, instructed by S.T. Cheng & Co., for D21
Li Ka-tat

Ms Pauline Leung, instructed by Ho, Tse, Wai & Partners, for D22 Tam
Tak-chi

Ms Breanne Kwok, instructed by Ho, Tse, Wai & Partners, for D23 Wu
Chi-wai

Mr Wong Ting-kwong, Peter, Mr Mark Leung and Ms Wong Lok-kei,
Larissa instructed by Tang, Wong & Chow, assigned by the Director
of Legal Aid, for D24 Sze Tak-loy

Mr Jerry Chung, instructed by Ho, Tse, Wai & Partners, for D25 Chu Hoi-dick Eddie

Ms Queenie Ng, instructed by C&Y Lawyers, for D26 Cheung Ho-sum

Mr Chase Pun, instructed by Ho, Tse, Wai & Partners, for D27 Wong Ji-yuet

D28 : Ng Kin-wai appeared in person

Ms Tina Mok, instructed by Ling & Lawyers, for D29 Wan Siu-kin Andrew

Ms Edwin Choy, SC and Mr Kevin Leung, instructed by C&Y Lawyers, for D30 Kwok Ka-ki and D35 Yeung Alvin Ngok-kiu

Ms Gladys Li, SC, Mr Benson Tsoi and Ms Yvonne Leung, instructed by Bong Ng Solicitors, for D31 Ng Man-yee Carol

Ms Winnie Li, instructed by Bong Ng Solicitors, for D32 Tam Hoi-pong

Mr Trevor Beel and Ms Priscilla Lau, instructed by Ip, Kwan & Co, assigned by the Director of Legal Aid, for D33 Ho Kwai-lam

D34 : Lau Wing-hong appeared in person

Mr David W K Ma, Mr Richie Lai and & Ms Denise Or, instructed by O Tse & Co, for D36 Chan Chi-chuen Raymond

Mr Chan Sai-kit, Kevin, instructed by Chan & Chan, assigned by the
Director of Legal Aid, for D37 Chow Ka-shing

Mr Erik Shum, Ms Christy Wong and Mr Isaac Wu, assigned by Ho, Tse,
Wai & Partners, for D38 Lam Cheuk-ting

Mr Margaret Ng and Mr Ko, Lun Jason, instructed by Bond Ng Solicitors,
for D39 Fan Gary Kwok-wai

Mr Chan, Sai-kit Kevin, instructed by Kenneth Lam, Solicitors, for D40
Lui Chi-hang Hendrick

Mr Fan, Hoi-kit, Alex and Ms Szeto, Jung-hei Joanne, instructed by
Raymond Chan, Kenneth Yuen & Co., for D42 Lam King-nam

Mr Richard H L Yip and Mr Elson Tong, instructed by JCC Cheung &
Co. for D43 Or Yiu-lam Ricky

Mr Albert Wong and Jason Szeto, instructed by Heyman Tang & Wong
for D44 Shum Lester

Mr Esmond Wong, instructed by Ho, Tse, Wai & Partners, for D45 (A29)
Wong Pak-yu