



## **Submission to the United Nations Human Rights Committee**

**135th Session (27 June 2022 - 29 July 2022)**

### **Hong Kong**

#### **1. Introduction**

The Asian Network for Free Elections (ANFREL) is an international NGO headquartered in Bangkok that unites 29 member organisations across 18 countries in promoting democratic elections throughout Asia. Since its formation in 1997, ANFREL has to date observed 72 elections across Asia. ANFREL is a signatory to the Declaration of Principles for International Election Observation.

ANFREL provides this submission to the United Nations Human Rights Committee in advance of the examination of the fourth periodic report of Hong Kong, China at the 135th session of the Committee scheduled for June 2022. The submission features information in relation to ANFREL's research on Hong Kong's electoral changes published in April 2022,<sup>1</sup> and is based on an evaluation of the degree to which commitments in Article 25 of the Covenant have been met.

Since the handover of sovereignty back to the People's Republic of China in 1997, democratic development in Hong Kong has always been a critical concern. The Sino-British Joint Declaration of 1984 and Hong Kong's Basic Law entrench the city's "capitalist system and way of life" and provide it with "a high degree of autonomy," including executive, legislative, and independent judiciary powers for 50 years.

The "one country, two systems" principle has indeed allowed Hong Kong to enjoy a certain degree of freedom and democracy over the years compared to mainland China. Hong Kong citizens are allowed to directly elect local district councillors and part of the legislation council members. While the territory has never enjoyed real electoral democracy, it has seen additional democratic deterioration in the two decades since the handover.

Following the enactment of the repressive National Security Law in June 2020, China's National People's Congress decided in March 2021 to amend Annexes I and II of Hong Kong's Basic Law, which would largely overhaul the electoral system in the city. The move, which occurred in the aftermath of major anti-government protests and the pro-democracy camp's landslide victory in the 2019 local district council elections, aims to further erode the pro-democracy camp's influence.

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<sup>1</sup> <https://anfrel.org/elections-without-choice-state-controlled-elections-in-hong-kong/>

Among the controversial electoral system changes are the introduction of a candidate vetting committee, the expansion in size and power of the election committee, and the reduction of popularly elected seats in the Legislative Council. The changes now provide effective mechanisms to systematically exclude pro-democracy candidates from participating in elections and holding elected positions in the city, which do not meet the standards set in Article 25 of the Covenant.

## **2. Introduction of the Candidate Eligibility Review Committee**

A Candidate Eligibility Review Committee (CERC) is introduced to assess and validate the eligibility of election candidates in Hong Kong. Its seven members, all appointed by the Chief Executive, form an opaque, undemocratic body that has absolute power to pre-screen all candidates and disqualify those believed to be insufficiently patriotic.

In order to vet the candidates' eligibility, the CERC receives opinions from the Committee for Safeguarding National Security, which would decide if a candidate meets the requirements of "upholding the Basic Law" and "swearing allegiance to HKSAR"<sup>2</sup>. Such an ambiguous and subjective requirement is a tool to disqualify those believed to be adversaries of Beijing.

Disqualifying candidates on vague grounds is not something new in Hong Kong. Previously, returning officers disqualified six candidates in the 2016 LegCo elections, three in the 2018 LegCo by-elections and 12 the 2020 LegCo elections (before postponing to 2021) over their political stance. However, they were able to file a judicial review against the returning officer's decision in the court. The most noteworthy instance is that of Agnes Chow and Ventus Lau, who were both disqualified in the 2018 LegCo by-elections and successfully appealed their disqualification in court. The court ruled that the two seats be vacated since the winners were unduly elected as a result of the returning officers' unlawful decisions.

However, the latest electoral changes in Hong Kong shield the CERC from any legal challenge against its decision. Those who are disqualified by the CERC would be denied due process and the right to appeal in court. It is clear that the CERC is established to act as a veto point for the government, which can stop any members of the pro-democracy camp from running in the elections.

The CERC disqualified two candidates in the 2021 Election Committee elections on the basis that one of them did not comply with the requirement of "upholding the Basic Law" and "bearing allegiance to Hong Kong", and the other did not register as a voter<sup>3</sup>. The CERC also disqualified a candidate from running in the 2021 LegCo elections due to his status as a public officer<sup>4</sup>. While the number of candidates being disqualified may seem little, the existence of CERC has already effectively demoralised the pro-democracy camp and deterred a large number of people from running for office before the nomination.

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<sup>2</sup> Hong Kong Basic Law Annexes I and II

<sup>3</sup> [https://www.news.gov.hk/eng/2021/08/20210826/20210826\\_165312\\_191.html](https://www.news.gov.hk/eng/2021/08/20210826/20210826_165312_191.html)

<sup>4</sup> [https://www.news.gov.hk/eng/2021/11/20211119/20211119\\_111607\\_345.html](https://www.news.gov.hk/eng/2021/11/20211119/20211119_111607_345.html)

Such a candidate vetting mechanism in Hong Kong is in violation of the democratic norm and would only serve to further weaken democracy in the city. Voters are effectively able to vote only for candidates favourable to the establishment as any others would have been filtered out by the CERC.

### **3. Changes to the Election Committee**

The new electoral changes introduced in March 2021 have given more power to the Election Committee. The Election Committee would no longer be restricted to nominating and electing the Chief Executive, but will also be given the power to nominate and elect the Legislative Council (LegCo) members. Indeed, LegCo candidates must now offer at least two nominations from each of the Election Committee's five sectors, according to a revised nomination threshold. Since members of the Election Committee are largely pro-Beijing appointees, these new rules, especially having to gain nominations from the fifth sector, further increase the difficulty for pro-democrat candidates to participate unless they are approved by Beijing as "patriots". In other words, the filter has been made more restrictive.

Moreover, an Election Committee Constituency, which was abolished in 2004, has been re-established in the LegCo. The small Election Committee will now elect 40 out of 90 LegCo members, or 44%. This effectively guarantees a veto power to the pro-Beijing camp in the LegCo.

In addition, the size of the Election Committee was enlarged from 1,200 to 1,500 members, as a new sector and some subsectors were added. This does not mean however that it has become more representative of the wider electorate since there are several significant differences in the new electoral system leading to a massive reduction in the number of popularly-elected seats in the Committee.

The previous fourth sector, which included National People's Congress (NPC), Legislative Council, Chinese People's Political Consultative Conference (CPPCC), Heung Yee Kuk<sup>5</sup>, Hong Kong and Kowloon District Councils and New Territories District Councils subsectors, has now been divided into the fourth and fifth sectors.

The Legislative Council and Heung Yee Kuk sub-sectors remain in the fourth sector, while the NPC and CPPCC sub-sectors have been moved to the newly created fifth sector and combined with a new "Hong Kong members of relevant national organisations"<sup>6</sup> subsector. The bottom line is that the number of seats earmarked for Beijing-aligned government bodies has been doubled.

At the same time, the changes reduced the influence of the district councillors in the Election Committee. In 2019, the pro-democratic camp won a landslide victory of 388 seats (86%) in the District Council elections, before oath-taking controversies ensued and resulted in most pro-democrats being expelled or resigning. Under the previous electoral system, and if the integrity of the popularly elected District Council had not been attacked, the pro-democratic

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<sup>5</sup> The rural council of Hong Kong's New Territories, a pro-establishment body.

<sup>6</sup> Article 2 of Basic Law Annex I

camp would most likely have secured all 117 seats filled by district councillors in the fourth sector.

Incidentally, these seats were entirely removed and replaced instead by representatives from the Area Committees, District Fight Crime Committees, and District Fire Safety Committees. Members of these local advisory committees under the Home Affairs Department, who are all appointed by the government, are either pro-Beijing local influencers or losing candidates in the 2019 District Council elections. In addition, a new sub-sector of representatives from associations of Hong Kong residents in the mainland was added to the fourth sector. By removing the main seat reserved for pro-democrats and replacing it with guaranteed seats for pro-establishment figures, the latest electoral changes have double-secured an outcome favourable to Beijing, even if pro-democrats were to regain a majority in the District Councils in the future.

The new system also reduces the participation of individual voters and favours the interests of large corporations and organisations. Even if the previous Election Committee was a flawed college, there were 13 of 35 sub-sectors comprised of individual voters and 10 that were made up of both individual and corporate voters. Unfortunately, only four subsectors (293 seats, or 19.5%) are now left to be elected by individual voters, with the remaining 36 sub-sectors being elected by corporate voters, filled by appointment, or filled by ex-officio members.

Furthermore, these four sub-sectors that are left to be elected by individual voters are from the Heung Yee Kuk, Area Committees, District Fight Crime Committees, and District Fire Safety Committees and Hong Kong members of relevant national organisations. As members of these organisations are either appointed or assigned by the government, it can be assured that the only remaining members of the Election Committee elected by individual voters are likely to be pro-Beijing.

Ten traditional professional industries' sub-sectors in the second sector, for instance medicine, education, legal and accountancy, were elected by individual voters in the previous Election Committee elections, except for the information technology subsector having both corporate and individual voters. They are now all elected by corporate voters following the electoral changes. In many ways, Hong Kong today is functionally a corporatocracy where selected interest groups effectively govern the territory instead of the wider electorate.

The electoral overhaul also merged some sub-sectors that have traditionally been strongholds for pro-democrats. For instance, the higher education and education sub-sectors are now merged into a single education subsector, and the medical and health services sub-sectors are merged into a unique medical and health services subsector, where the number of seats for each respective sub-sector was halved.

These changes have led to a drastic decrease in the number of registered voters for the second sector, from over 200,000 individual voters to less than 2,500 corporate voters. For instance, voters for the newly merged education sub-sector declined by 98% from 88,140 individual voters to 1,750 corporate voters, and the merged medical and health services subsector saw a decline of more than 99.8%, from 48,576 individual voters to only 82 corporate voters. Seven of the ten subsectors now have less than 100 voters to elect 14 or 15 members each, further narrowing the magnitude of the already small-circle elections.

In the past, elections for the second sector were known to be competitive. Pro-democrat candidates tended to occupy more seats in these sub-sectors since they traditionally had more support from professionals. For instance, in the 2016 elections, the “Democrats 300+” won 238 of the 300 seats in the second sector, while the pro-Beijing camp won only 57 seats<sup>7</sup>. Now that the sector has been changed to predominantly corporate voters, it would easily be dominated by the pro-Beijing camp through appointing bodies favouring them.

#### **4. Changes to the Legislative Council (LegCo)**

According to article 68 of the Basic Law, Hong Kong people are promised to have all LegCo members to be elected by universal suffrage through a ‘gradual and orderly’ progress. Before 2021, half of the total seats were returned through popular vote while the other half belonged to the functional constituencies, which were voted among professional or special interest groups.

One significant change in the LegCo electoral procedure is the introduction of a new nomination threshold. All candidates of the election must be nominated by at least two members from each of the five sectors of the Election Committee upon the original nomination requirements, after being screened and vetted by the CERC. The newly formed Election Committee has no pro-democracy members (only one non pro-Beijing member was elected to the Election Committee), leaving no room for any pro-democracy candidates to meet this new nomination threshold.

The number of members of the LegCo has increased from 70 to 90, but the most significant change is that the number of seats that would be returned by popular vote has fallen from 35 to 20. Originally, 35 MPs were elected by popular vote from five geographical regions, accounting for half of the LegCo. However, it has now been reduced to 20 seats, accounting for barely 22% of the LegCo. In addition, the number of geographical constituencies and their border lines have been altered. There are currently ten constituencies, according to a reapportionment that favours pro-Beijing candidates in the more rural border and in the Eastern Hong Kong Island districts<sup>8</sup>.

Regrettably, the remaining 70 seats are not up for grabs in a popular vote. Instead, a new 40-seat Election Committee constituency has been re-established after it was repealed in 2004. In this new constituency, the Election Committee's 1,500 members have sole authority to nominate and vote for 40 LegCo members, representing 44% of the LegCo. The members of the Election Committee are thus considerably overrepresented and endowed with an undemocratic degree of authority, despite the fact that only a small percentage of them were chosen by the people. Given that they can vote for their representative from their geographical constituency as well as any functional constituencies to which they belong, a member of the

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<sup>7</sup> [https://orientaldaily.on.cc/cnt/news/20161213/00176\\_021.html](https://orientaldaily.on.cc/cnt/news/20161213/00176_021.html)

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<https://www.reuters.com/world/asia-pacific/hong-kong-announces-more-electoral-system-changes-favouring-pro-beijing-camp-2021-04-13/>

Election Committee could choose up to 42 candidates in a single LegCo election<sup>9</sup>. While ordinary persons can only vote once in their geographical constituencies, it is undeniably a violation of the principle of one person one vote in an election.

The previous existence of the functional constituencies was already criticised as a “coterie election”, the new electoral reform further tightens this small circle. Five seats of District Council (II), which were known as “super seats of District Councils”, were removed to further restrain the public’s representation in the LegCo. In addition to removing district councillors from being eligible voters of the Election Committee, there has been no public power for any district councillors within the institution, who are directly elected by the people, as a response to the pro-democrats’ landslide victory in the 2019 district council elections.

Besides, only nine functional constituencies, which are traditional professional constituencies, remain to be voted for by individual voters. The other 19 constituencies will be voted by corporate voters, who could only register as an eligible voter for a specific constituency if they have been operating for not less than three years after acquiring relevant qualifications under this reform. Such changes are intended to secure the seats for corporate interests and minimise individual voters’ impact on the selection of functional constituency representatives, preventing pan-democrats’ supporters from having any impact in these small group elections.

Certain legislative procedures have also changed as a result of the changes in the LegCo’s composition. A simple majority of the Election Committee constituency, as well as a simple majority of the geographical constituencies and functional constituencies, are now required for the passage of a private member’s bill. Submitting private member’s bills is the only avenue for legislators to highlight issues of vital public interest that are not on the government’s agenda in LegCo. Further constraining such an avenue is an unfortunate development in Hong Kong’s democracy.

Every change in the LegCo has resulted in a complete domination by the pro-Beijing camp and reducing the people’s power in the legislature. The promise of universal suffrage for LegCo elections, as expressed in Article 68 of the Basic Law, is becoming increasingly distant from Hong Kong citizens.

## **5. Chief Executive**

The Chief Executive sits atop the government of the Hong Kong Special Administrative Region (HKSAR). Supported by a cabinet named the Executive Council, he or she exerts a wide range of powers granted by the Hong Kong Basic Law. The Basic Law also says that the Chief Executive should eventually be elected by universal suffrage and “in accordance with democratic procedures.”<sup>10</sup> However, as the halfway mark for the “one country, two systems”

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<sup>9</sup> If an Election Committee member is also a voter in a functional constituency, they could vote for up to 40 LegCo members in the Election Committee constituency, one candidate in the functional constituency and one candidate in the geographical constituency.

<sup>10</sup> Article 45 of the Hong Kong Basic Law

arrangement approaches,<sup>11</sup> the position has never been further away from being a democratically elected one, and faces a legitimacy crisis among the territory's population.

Despite the purported aspiration to universal suffrage contained in the Basic Law, the general public is not involved whatsoever in the selection of the Chief Executive. Instead, it is the Election Committee that nominates the candidates and elects one by an absolute majority before the winner is formally appointed by the central government in Beijing.

The legitimacy of the Chief Executive therefore only goes so far as that of the Election Committee, which is far from a "broadly representative" body as the language in the Basic Law would have it. Indeed, the election reform bill introduced by the National People's Congress in March 2021 drastically reduced the number of voters involved in the process: only 7,971 electors were able to vote in the Election Committee subsector elections on 19 September 2021, a 97% decrease from five years earlier.<sup>12</sup> Moreover, 75% of the seats (1,136) were filled ex-officio, appointed or elected without contest, making the Election Committee an exclusive group of insiders with no representation of the pro-democrat camp.

By contrast, the vast majority of Hong Kong's 4,472,863 registered voters are not consulted about their choice for Chief Executive. There is no accountability of the office holder before his or her constituents, and district councillors, many of whom were pro-democrats after the 2019 elections, are no longer members of the Election Committee. Instead, the fifth Election Committee sector is now composed entirely of members approved by Beijing. This change, together with the introduction of a new rule mandating that candidates for the position of Chief Executive must receive 15 nominations from each sector<sup>13</sup>, effectively bars all pro-democrat candidates from being able to run for the position.

Another noteworthy aspect of the electoral system for Chief Executive is that the incumbent has numerous responsibilities that can place him or her in a position to exert influence over the candidacy review process. Most democracies have taken steps to prevent potential conflict of interest in elections. However, the latest electoral changes in Hong Kong overtly concentrated into the hands of Chief Executive powers that are usually carried out by election management bodies or third parties.

For instance, the newly introduced Candidate Eligibility Review Committee (CERC), tasked with screening candidates to the positions of Chief Executive and members of the Legislative Council and Election Committee, is entirely appointed by the Chief Executive. Even if the CERC was a genuine institution instead of a gatekeeper for Beijing, this would leave it vulnerable to abuse of power by a Chief Executive who would want to keep his or her opposition at bay.

In addition, the Chief Executive also chairs Hong Kong's Committee for Safeguarding National Security, which also helps to vet candidates by issuing recommendations to the CERC under the new National Security Law. It gives the Chief Executive leverage over the selection process

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<sup>11</sup> The "one country, two systems" framework is set to expire in Hong Kong on 1 July 2047 unless extended.

<sup>12</sup> <https://www.voterregistration.gov.hk/eng/statistic20214.html> and <https://www.voterregistration.gov.hk/eng/statistic20164.html>

<sup>13</sup> Clause 384 of the Improving Electoral System (Consolidated Amendments) Bill 2021

to dismiss any undesirable candidates, if not to straightforwardly select her replacement or facilitate her reelection.

Such blatant conflicts of interest should be proscribed in a genuine democracy. The People's Republic of China, however, has no qualms about establishing complicated and redundant screening procedures so that Hong Kong's electoral system can only produce predictable outcomes desirable to Beijing. Instead of a level playing field open to candidates of all backgrounds, Hong Kong now sees an endless feedback loop of pro-Beijing institutions letting only the most "patriotic" candidates run for office at the expense of all others.