



HONG KONG (CHINA):
CIVIL SOCIETY SUBMISSION
TO THE UNITED NATIONS
HUMAN RIGHTS COMMITTEE

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HRIC was founded in March 1989 by overseas Chinese students and scientists with a mission to support rights defenders and advance the institutional protection of international human rights in the People's Republic of China.

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I. Introduction: Hong Kong (China) Fourth Periodic Review in Context

1. Human Rights in China (HRIC) makes this submission to the United Nations (UN) Human Rights Committee in advance of the Human Rights Committee's Fourth Periodic Review of the government of Hong Kong, China (HKG). Since the HKG's submission of its Fourth Periodic Report (February 14, 2020)¹ and its written responses to the Committee's List of Issues (LOI, September 28, 2021),² ongoing developments and trends continue to present steep challenges and obstacles to effective implementation of the *International Covenant on Civil and Political Rights* (Covenant or ICCPR) by the HKG.³ Since its passage on June 30, 2020, the *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* (National Security Law or NSL)⁴ has ushered in a rapid succession of government measures that seriously undermine fundamental rights and freedoms, including the rights to freedom of expression, to peaceful assembly, to participate in public affairs, and the right to education. Government actions include: the banning of protest slogans and other forms of expression of political dissent;⁵ ongoing mass arrests and prosecution of pro-democracy activists under the NSL;⁶ tightening of restrictions on the media;⁷ postponement of legislative elections for a year;⁸ and disqualification of pro-democratic lawmakers.⁹

¹ United Nations Human Rights Committee, "Fourth periodic report submitted by Hong Kong, China under article 40 of the Covenant," (UN Doc. CCPR/C/CHN-HKG/4), February 14, 2020, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr2bAznTlRtkyo4FUNHETCR0%2bONq2tc0rHr5HeWTwCKr7veqP5BgZAAHQCP2rxUwNp7ykgF04umS%2fW%2bDrX2AZJkBJ4axLdF6qDBT53FEgDA2>.

² United Nations Human Rights Committee, "Replies of the Hong Kong Special Administrative Region of the People's Republic of China to the List of Issues in relation to the Fourth Periodic Report," (UN Doc. CCPR/C/CHN-HKG/RQ/4), September 28, 2021, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr2bAznTlRtkyo4FUNHETCS%2b5CcemsKMjTwdqhnEGSqZcHm%2fbYopL87eUSPXE0mvG%2babIedLL4AASNv0OMGRhNkgevOH8ieesNsYZrxqcrP7TQ8hEKskkb1IbKLPtNiSZw%3d%3d>.

³ As civil society LOI contributions to the Committee also documented, these include: the lack of meaningful progress on the Committee's recommendations; gender discrimination affecting rights of LGBTI persons; rights of migrant workers and sex workers; undermining of judicial independence; freedom of expression and peaceful assembly; systematic use of excessive force by law enforcement; arbitrary arrests; serious election process distortions and abuses; and absence of any meaningful progress towards implementing universal suffrage. Human Rights in China, "Hong Kong: Civil Society Submission to the United Nations Human Rights Committee for 129th Session, 29 June – 24 July 2020, List of Issues," May 31, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HKG/INT_CCPR_ICO_HKG_42251_E.pdf.

⁴ *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* (2020), <https://www.elegislation.gov.hk/hk/A406>.

⁵ Iain Marlow and Natalie Lung, "Hong Kong Says Common Protest Slogan Calling for 'Revolution' Is Now Illegal Under National Security Law," *Bloomberg*, July 3, 2020, <https://time.com/5862683/hong-kong-revolution-protest-chant-security-law/>.

⁶ Jennifer Jett and Austin Ramzy, "From Protester to Prisoner: How Hong Kong Is Stifling Dissent," *The New York Times*, May 28, 2021, <https://www.nytimes.com/2021/05/28/world/asia/hong-kong-arrests-court.html>.

⁷ Ewelina U. Ochab, "The End Of Media Freedom In Hong Kong?," *Forbes*, January 3, 2022, <https://www.forbes.com/sites/ewelinaochab/2022/01/03/the-end-of-media-freedom-in-hong-kong/?sh=1a7e04d01acb>.

⁸ "Hong Kong postpones elections for a year 'over virus concerns'," *BBC News*, July 31, 2020, <https://www.bbc.com/news/world-asia-china-53563090>.

⁹ "Hong Kong disqualifies legislators for 'endangering security'," *Al Jazeera*, November 11, 2020, <https://www.aljazeera.com/news/2020/11/11/hong-kong-disqualifies-four-opposition-legislators>.

2. Throughout the periodic reviews of the HKG's implementation progress, the Committee has had to reiterate its structural and constitutional concerns related to the "One Country, Two Systems" framework and recommendations for concrete implementation steps. The level of responsiveness of the HKG's engagement and cooperation has been highlighted by the Committee's assessment. Within the Committee's follow-up process to the second and third reviews,¹⁰ information provided has been assessed as incomplete,¹¹ or, under the revised assessment criteria, given a grade of "C," indicating that the information provided/action taken is not relevant or that the recommendations have not been implemented.¹²
3. The HKG's Fourth Periodic Report and written responses to the Committee's List of Issues reflect this ongoing pattern of non-responsiveness to recommendations and concerns repeatedly reiterated by the Committee, including: necessary measures to implement universal and equal suffrage in conformity with the Covenant as a matter of priority for all future elections; proper functioning of judicial structures; ensuring legislation is in line with international standards; implementation of the Public Order Ordinance in conformity with the Covenant; training police on proportionality principle when using force and establishment of an independent mechanism to investigate police abuse of power; repealing unreasonable restrictions on freedom of expression; and amending legislation on treason and sedition.¹³
4. The Committee's Fourth Periodic Review will take place against this dismal record of demonstrated lack of political will, cooperation, and meaningful implementation efforts by the State party. The statement made during the Chief Executive campaign by the sole candidate, John Lee Ka-chiu, is not a reassuring policy signal. He declared "political reform would not be my priority," and that he would consider working towards universal suffrage only when "all problems in society have been solved."¹⁴ In addition, in response to the Committee's recommendations and concerns, the HKG in its written responses (28 September 2021) indicated it has no plans to establish an independent legal aid authority (para. 109) and no current plans to amend the Public Order Ordinance (para. 135). It also reiterated its position that existing mechanisms for protecting human rights work well, including institutional framework of statutory organizations, and public scrutiny of the Legislative Council ("LegCo") by the media and various NGOs, and through "regular reports to the United Nations," and

¹⁰ United Nations Human Rights Committee, "Note by the Human Rights Committee on the procedure for follow-up to concluding observations," (UN Doc. CCCP/C/161), 23 December 2021, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshqklMUepdCnP%2f377cZfL5z5VIDvWc8OEzGJDIGDs%2fR46XezUYHW5N2na1KzuBynNIH5cAw4%2bJLxJ4q2OvHaJhQiuLh5kP%2fhxs1RUZ40Ov>.

¹¹ United Nations Human Rights Committee, "Report of the Special Rapporteur for Follow-Up On Concluding Observations," (UN Doc. CCPR/C/96/2), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstmlju%2f14z6o8I4G3YTJPAT1xxstaEipY7HnWLe%2bxqyo%2btAQahjdVDjHmBHwQaB63z6JdQWnRt%2bVr2FPeenbXhBQI%2bxIyvcEeQpkP5eOEw>.

¹² Communication from Special Rapporteur for Follow-Up to Concluding Observations of the Human Rights Committee to Mr. Ma Zhaoxu, August 16, 2016, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HKG/INT_CCPR_FUL_HKG_24975_E.pdf.

¹³ Human Rights Committee, "Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11-28 March, 2013)," (UN Doc. CCPR/C/CHN-HKG/CO/3), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/430/32/PDF/G1343032.pdf?OpenElement>.

¹⁴ Natalie Wong and Sammy Heung, "Hong Kong chief executive election 2022: no work on political reform unless all problems in society solved, sole candidate John Lee says," *South China Morning Post*, May 1, 2022, <https://www.scmp.com/news/hong-kong/politics/article/3176187/hong-kong-chief-executive-election-2022-no-work-political>.

that therefore there is no need to establish another human rights institution (para. 9). These examples highlight the HKG's repeated failures to address the concerns of the Committee and their rejection of concrete recommendations.

5. *The Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong of 1984*¹⁵ (Joint Declaration) provides that the “previous capitalist system and way of life shall remain unchanged for 50 years” and that “the socialist system and policies” of China would not be practiced in Hong Kong. Administered “directly under the authority” of the Central People's Government of the People's Republic of China (CPG), the Joint Declaration states that the Hong Kong SAR shall enjoy a “high degree of autonomy.”¹⁶ (Emphasis added.)
6. The Committee’s Fourth Periodic Review will also take place at the midway point of this treaty protected 50-year period following China’s resumption of sovereignty over the Hong Kong Special Administrative Region (HKSAR) in 1997. Despite the HKG’s systematic dismantling of rights and lack of meaningful progress in implementing the Covenant, this longer timeframe of at least 25 more years from this point forward presents diverse stakeholders opportunities to develop near-, medium-, and longer-term measures to protect and promote the rights under the Covenant. The international community and the Committee cannot simply concede that the next 25 years during which the promises for the preservation of the rights, values, and way of life of the Hong Kong people can be continually ignored.

II. Executive Summary

7. Since the conclusion of the Third Periodic Review cycle for the HKSAR in 2016, the rapid, unprecedented deterioration of fundamental freedoms in Hong Kong’s once vibrant civil society space has continued, especially after promulgation of the *National Security Law* in 2020. The draconian implementation of the NSL has severely exacerbated restrictions on peaceful exercise of rights, in particular freedom of association, rights to peaceful assembly, freedom of expression, and participation in public life. One recent report documents that Hong Kong authorities, within the span of a mere three-year period from June 2019 to May 2022, have imprisoned 1,014 political prisoners, three quarters of them under the age of 30. There are currently more than 1,000 ongoing political trials. As of May 2022, there have been 1,198 convictions, compared with just 359 acquittals. The Hong Kong Democracy Council’s report, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners,” bluntly states, “the grim reality is that Hong Kong today is one big open-air prison.”¹⁷
8. The Fourth Periodic Review therefore takes place at a particular critical time of serious rights deterioration in the HKSAR, and also at a moment of historic opportunity as the HKSAR is only at the midway point of the promised 50 years period under the “One Country, Two Systems” framework. To contribute to a robust constructive review of HKG’s progress in implementing the Covenant, HRIC’s submission follows the thematic structure of the Committee’s LOI and the HKG’s written responses, highlights key concerns presented by the HKG’s Fourth Periodic Report and

¹⁵ *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong*, <https://www.cmab.gov.hk/en/issues/jd2.htm>.

¹⁶ Ibid.

¹⁷ Hong Kong Democracy Council, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners,” May 2022, <https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>.

written responses, and shares comments, additional information on select concerns, and recommendations for the Committee to consider.

9. HRIC's overarching concerns focus on the HKG's engagement with the Committee. To promote more meaningful implementation progress and cooperation by the HKG, HRIC makes the following specific suggestions and recommendations to the Committee:
- Support measures to ensure that civil society participation in the review process is inclusive, diverse, and safe;
 - Continue to raise concerns and press for more meaningful cooperation by the HKG and concrete implementation measures;
 - Urge the CPG to review and amend the *National Security Law*; and
 - Urge the HKG to ensure full transparency and procedural adequacy of the Article 23 legislative exercise and public consultation.

These recommendations are elaborated in greater detail in the recommendations portion of our submission.

III. Constitutional and Legal Framework within which Covenant Implemented (Articles 2 and 14) (LOI item 1)

10. The Committee expressed concerns that interpretations of the *Basic Law* by the Standing Committee of the National People's Congress (NPCSC) do not undermine the obligations of the HKG under the Covenant or conflict with the principle of the rule of law and requested clarification and information on related interpretation issues. (Committee, LOI, para. 1). The HKG's written responses simply restated the normative legal framework described in its Fourth Periodic Report and asserted that the CPG authorities "have been upholding Hong Kong's high degree of autonomy, supporting the Government to act according to the law, and respecting Hong Kong's judicial independence in accordance with the principle of 'one country, two systems' and the Basic Law" (State party Fourth Report, paras. 4, 5, and 6). It also states that the "NPCSC has a duty to oversee HKSAR's implementation of the Basic Law and to protect the high degree of autonomy enjoyed by HKSAR" (HKSAR Written responses to LOI, para. 5). These invocations of formal law do not respond to the Committee's request to explain how the HKG deals with the situation in which the interpretation of the *Basic Law* is not in conformity with the Covenant.

IV. State of Emergency and Laws on National Security, Anti-sedition and Anti-terrorism (Articles 2, 4, 7, 9, 10, 14, 15, 17, 18, 19, 21, 22 and 25) (LOI items 3, 4)

11. In 2019, millions of Hong Kong people took to the streets to protest against proposed amendments to Hong Kong's extradition law that would have exposed Hong Kong people to a mainland legal system widely viewed as lacking transparency and adequate due process protections. In a rushed and non-transparent process, the National People's Congress promulgated the *National Security Law* in 2020, citing the protests as one of the urgent national security problems to be addressed by the NSL.¹⁸ After the first year of aggressive implementation, Carrie Lam, Hong Kong's Chief Executive, even stated: "After the implementation of the National Security Law, stability has been restored in society and riots have disappeared. People's life and property are protected and they can once again enjoy their

¹⁸ "Too Soon to Concede the Future: The Implementation of The National Security Law for Hong Kong--An HRIC White Paper," Human Rights in China, October 16, 2020, <https://www.hrichina.org/en/press-work/press-release/too-soon-concede-future-implementation-national-security-law-hong-kong-hric>.

legitimate rights and freedoms.”¹⁹ This official narrative (reflecting a collapsing of terrorism, separatism, and public order within a comprehensive securitized framework approach) is echoed in the HKG’s Fourth Periodic Report and its LOI responses (HKSAR Written responses to LOI, paras. 22 and 23).

• **NSL and ICCPR**

12. The Committee has expressed concerns regarding the definitions and scope of the NSL, the relationship between the NSL and the Covenant, measures in place/envisioned to ensure that application and enforcement of the NSL are not contrary to the Covenant (Committee, LOI para. 3). The HKG’s responses focuses on describing formal provisions in the NSL, including pointing to Article 4 provision that human rights shall be respected and protected and the inclusion of reference to the ICCPR and the International Covenant on Economic, Social and Cultural Right (ICESCR). It also points to Article 5 which mandates that the principle of the rule of law shall be adhered to in safeguarding national security (HKSAR Written responses to LOI, paras. 9, 10, 11). These responses simply restate formal law and assert compliance with the Covenant and sidestep obligation to address structural challenges and need for concrete safeguards, monitoring, and accountability measures.

• **Offences and Implementation Bodies**

13. The NSL prohibits and penalizes four key categories of offenses: secession; subversion; terrorist activities; and collusion with a foreign country or external elements to endanger national security. The NSL establishes four new government entities and a corresponding new structure of oversight and accountability that allow the CPG to assert direct and indirect pervasive control over all national security matters—from policy to investigation to prosecution and adjudication—in Hong Kong. These four entities are: a) the Committee for Safeguarding National Security (CSNS), the executive and policy arm of Beijing’s national security enterprise in Hong Kong; b) the Office for Safeguarding National Security with on-the-ground rules relating to operation and coordination, oversight, policy, and cooperation with key Beijing representative bodies in Hong Kong; c) the Department for Safeguarding National Security of the Hong Kong Police Force or the national security police; and d) the Specialised National Security Crimes Prosecution Division of the Department of Justice responsible for the prosecution of offences endangering national security and other related legal work.
14. The vaguely defined offenses created by the NSL and the centralized implementation structure present ongoing implementation concerns (that also impact the “One Country, Two Systems” framework), including: expansion of police powers (including national security police) without safeguards for those targeted; an expansion of the mainland national security regime into Hong Kong; substantive NSL provisions that are marked by their broad scope and extraterritorial reach and lack of clear definitions; and draconian implementation targeting the peaceful exercise of rights and present serious challenges for civil society organizations. A number of UN special procedures have addressed some of these concerns in communications to China and in public statements.
15. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism issued a communication on February 14, 2022 which concluded that the NSL does not conform with China’s international obligations, particularly the Universal Declaration of Human Rights (UDHR) and the ICCPR. The Special Rapporteur concludes the NSL

¹⁹ “Speech by CE at National Security Law Legal Forum – Security Brings Prosperity,” The Government of the Hong Kong Special Administrative Region, July 5, 2021, <https://www.info.gov.hk/gia/general/202107/05/P2021070500357.htm>.

lacks precision in key respects and does not meet required thresholds of necessity, proportionality, and non-discrimination under international law. Further, the communication stresses that the ICCPR is still applicable to the NSL even if NSL prosecutions of individuals occur in mainland China, i.e., if cases from the HKSAR are transferred to the mainland.²⁰

- **Retrospectivity of NSL**

16. UDHR Article 11(2) and ICCPR Article 15 clearly enshrine the principle that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. The HKG report states that “Article 15 of the Covenant has been implemented by Article 12 of the [Bill of Rights]” and that “there is no significant update in relation to Article 15.” It also claims that the NSL “does not have retrospective effect” (HKSAR Written responses to LOI, para. 11). However, several individuals or entities have been penalized, arrested, or charged under the NSL related to their behavior, actions, or expressions that had occurred before the promulgation of the NSL on June 30, 2020.
17. **Studentlocalism:** Studentlocalism was a Hong Kong pro-democracy group advocating localism and was particularly active on social media.²¹ Ahead of the enactment of the NSL on June 30, 2020, Studentlocalism announced in a statement that it had disbanded and dismissed all its Hong Kong members with immediate effect and that overseas members would set up a branch abroad instead to continue its advocacy.²² Four student members were arrested on July 29, 2020 on charges of inciting secession (Article 21, NSL). The prosecution argued that former convenor Tony Chung Hon-lam Chung's setting up Studentlocalism in April 2016 was an indication of his active role in promoting the independence of Hong Kong, and Chung's efforts to recruit members overseas via social media platforms like Facebook, Instagram, and Telegram was evidence, although many posts were written before June 30, 2020. These social media posts stated the group's mission to transform Hong Kong into a republic. On October 26, 2021, Chung was sentenced to 43 months in prison after pleading guilty.²³
18. **Apple Daily:** On June 17, 2021, after 500 police officers raided the offices of *Apple Daily*, a prominent independent news outlet in Hong Kong,²⁴ five top editors and executives were arrested on

²⁰ Communication from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, (OL CHN 3/2022), February 14, 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27082>.

²¹ Kang-chung Ng, “Who are Studentlocalism and are they a national security threat for Hong Kong?,” *South China Morning Post*, July 31, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3095412/who-are-studentlocalism-and-are-they-really-national>.

²² Rachel Wong, “4 ex-members of pro-independence student group arrested on suspicion of ‘inciting secession’ under Hong Kong’s security law,” *Hong Kong Free Press*, July 29, 2020, <https://hongkongfp.com/2020/07/29/breaking-pro-independence-student-group-leader-arrested-on-suspicion-of-inciting-secession-under-hong-kongs-security-law/>.

²³ HKSAR v Chung Hon Lam (香港特別行政區 訴 鍾翰林 CHUNG Hon Lam) [2021] HKDC 1484, https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=140366&QS=%28%E9%8D%BE%E7%BF%B0%E6%9E%97%29&TP=RS; and Press Summary of HKSAR v Chung Hon Lam, District Court Criminal Case No. 27 of 2021, https://legalref.judiciary.hk/doc/judge/html/vetted/other/ch/2021/DCCC000027_2021_files/DCCC000027_2021ES.htm.

²⁴ HK's Apple Daily raided by 500 officers over national security law,” *Reuters*, June 18, 2021, <https://www.reuters.com/world/asia-pacific/hong-kongs-apple-daily-newspaper-says-police-arrest-five-directors-2021-06-16/>

charge of collusion with foreign forces under Article 29 of the NSL. The prosecution relied on the fact that *Apple Daily* published more than 30 news reports and articles in 2019 (before the enactment of the NSL), that had urged foreign countries to sanction China and Hong Kong.²⁵ The prosecution also alleged that foreign collusion was evident in *Apple Daily* editors and executives' "close association with the USA and foreign political groups" since such groups had "prompt reactions condemning law enforcement actions... and the condemnation of NSL."²⁶

19. **Hong Kong Alliance in Support of Patriotic Democratic Movements in China (Hong Kong Alliance HKA):** Members of the HKA were charged with "not complying with the requirement to provide information" under Article 43 of the NSL, when the police accused HKA of being backed by "foreign agents" and demanded that it provide information for the police investigation.²⁷ However, national security police requested information for investigation purposes that dated back all the way to 2014, which included personal details of the group's members and full-time staff and details on financial dealings in connection with other groups such as New School for Democracy and the U.S.-based National Endowment for Democracy (NED).²⁸

• **Article 23 Legislative Exercise**

20. The Committee raised concerns regarding the scope of the offences of "treason" and "sedition" and that the phrase "foreign political organizations or bodies" is appropriately and narrowly defined in the Hong Kong *Crimes Ordinance* (Committee LOI, para. 6). The HKG responded that the adoption of the NSL is without prejudice to the HKSAR's duty under Article 23 of the *Basic Law* and these offences and the definition of "foreign political organizations or bodies" should "more appropriately be dealt with in the context of the legislative exercise for Basic Law Art. 23 when it is launched in future" (HKSAR Written responses to LOI, para. 45; emphasis added). However, any future Article 23 exercise should draw upon the lessons and experience of the first attempt to introduce Article 23 legislation in 2003.²⁹
21. Legal experts and the Hong Kong Bar Association had even argued at that time that existing legislation already complied with the Article 23 requirement and provided mechanisms for

²⁵ "National Security Office: More than Apple Daily 30 articles calling for sanctions on Hong Kong and China allegedly violate National Security Law (搜壹傳媒 | 國安處: 蘋果逾 30 篇文籲制裁香港及中國涉違國安法)," *HK01*, June 17, 2021, <https://www.hk01.com/%E7%AA%81%E7%99%BC/639183/%E6%90%9C%E5%A3%B9%E5%82%B3%E5%AA%92-%E5%9C%8B%E5%AE%89%E8%99%95-%E8%98%8B%E6%9E%9C%E9%80%BE30%E7%AF%87%E6%96%87%E7%B1%B2%E5%88%B6%E8%A3%81%E9%A6%99%E6%B8%AF%E5%8F%8A%E4%B8%AD%E5%9C%8B%E6%B6%89%E9%81%95%E5%9C%8B%E5%AE%89%E6%B3%95>.

²⁶ *HKSAR v. CHEUNG KIM HUNG* [2021] HKCFI 3372; HCCP 418/2021 (10 November 2021), available at: [https://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2021/3372.html?stem=&synonyms=&query=\(CHEUNG%20KIM%20HUNG\)%20OR%20cootherjcitiationtitles\(CHEUNG%20KIM%20HUNG\)](https://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2021/3372.html?stem=&synonyms=&query=(CHEUNG%20KIM%20HUNG)%20OR%20cootherjcitiationtitles(CHEUNG%20KIM%20HUNG)).

²⁷ Kelly Ho, "Hong Kong Tiananmen vigil organiser acted as agent for foreigners, national security police claim," *Hong Kong Free Press*, August 26, 2021, <https://hongkongfp.com/2021/08/26/hong-kong-tiananmen-vigil-organiser-acted-as-agent-for-foreigners-national-security-police-claim/>.

²⁸ Candice Chau, "Hong Kong Tiananmen Massacre vigil group leader denied bail over 'inciting subversion' national security charge," *Hong Kong Free Press*, September 10, 2021, <https://hongkongfp.com/2021/09/10/hong-kong-tiananmen-massacre-vigil-group-leader-denied-bail-over-inciting-subversion-national-security-charge/>.

²⁹ Human Rights in China, "Human Rights Concerns Regarding Article 23 Legislation: Background and Key Issues," April 28, 2020, <https://www.hrichina.org/en/press-work/issues-brief/human-rights-concerns-regarding-article-23-legislation-background-and-key>.

proscribing groups on the ground of national security, citing both the *Societies Ordinance* (Cap. 151) and the *United Nations (Anti-Terrorism Measures) Ordinance* (Cap. 575)).³⁰ In addition to public criticism of the lack of transparency and adequacy of government consultation, substantive concerns were raised regarding the consultation document and the subsequent drafts of the Bill including the impact on Hong Kong’s rule of law and on the legitimate exercise of rights protected by Hong Kong and international law.³¹

22. Concrete recommendations were also advanced in the 2003 Article 23 legislative exercise including:³²
- Political and social criticisms of the government—whether constructive or not—should not be criminalized under any definition of “proscribed act;”
 - Definition of “national security” should expressly exclude protection of the government from embarrassment or exposure of wrongdoing or concealment of information about the proper functioning of public institutions;
 - Distinction should be made between political advocacy and private solicitations of criminal activities because political advocacy should not be treated as national security crimes;
 - The burden of proof with regard to the offenses of sedition and handling seditious publications should not be shifted from the prosecution to the defendant; and
 - Criminal liability should not apply to “extraterritorial subversion and secession” without appropriate limitations, such as actual impact or effect on Hong Kong itself.
23. Unfortunately, many of these concerns remain relevant to addressing the challenges presented by the NSL as promulgated and implemented. Any future Article 23 legislative exercise should be an opportunity to address the Committee’s concerns regarding the compatibility of national security laws with the Covenant. The public, legal experts, and human rights experts and mechanisms could also leverage the legislative exercise to clarify or limit the application of the NSL, for example, by re-strengthening the presumption of bail, developing safeguards against inappropriate retrospective application of any criminal provisions, including requirements of legality, necessity, and proportionality.

³⁰ Deryk Yue, “How Article 23 of the Basic Law has already been enacted,” Medium, February 19, 2019, <https://medium.com/@derykyue/how-article-23-of-the-basic-law-has-already-been-enacted-af01111c567>; The University of Hong Kong Faculty of Law Centre for Comparative and Public Law, “Group Submission to the Legislative Council and the Security Bureau of the Hong Kong SAR on the National Security (Legislative Provisions) Bill,” May 2003, <https://www.legco.gov.hk/yr02-03/english/bc/bc55/papers/bc55-s162-e.pdf>.

³¹ See, for example, Hong Kong Bar Association, “Hong Kong Bar Association’s Views on the National Security (Legislative Provisions) Bill 2003,” April 11, 2003, https://www.hkba.org/sites/default/files/20030411_eng.pdf; The University of Hong Kong Faculty of Law Centre for Comparative and Public Law, “Group Submission to the Legislative Council and the Security Bureau of the Hong Kong SAR on the National Security (Legislative Provisions) Bill,” May 2003, <https://www.legco.gov.hk/yr02-03/english/bc/bc55/papers/bc55-s162-e.pdf>; Human Rights in China, “Article 23 and the Attack on Human Rights,” 2003, <https://www.hrichina.org/sites/default/files/PDFs/CRF.2.2003/Article23.pdf>.

³² The Hong Kong Bar Association pointed out that the proposed Bill had “fundamental flaws.” See “Hong Kong Bar Association’s Views on the National Security (Legislative Provisions) Bill 2003,” <http://www.law.hku.hk/ccpl/wp-content/uploads/2018/03/updated/14062003b-hkba.pdf>. See also The University of Hong Kong Faculty of Law Centre for Comparative and Public Law, “Group Submission to the Legislative Council and the Security Bureau of the Hong Kong SAR on the National Security (Legislative Provisions) Bill,” May 2003, <https://www.legco.gov.hk/yr02-03/english/bc/bc55/papers/bc55-s162-e.pdf>.

V. Right to Life, prohibition of torture, and other cruel, inhuman or degrading treatment or punishment, and liberty and security of the person (Articles 6, 7, 9, 10 and 14) (LOI items 10, 11)

• **Police Powers, Immunity, and Use of Force**

24. The Committee requested information “on the laws regulating the use of force by the police, and the extent to which they comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020)” (Committee LOI, para. 10). The Committee specifically referenced its previous concluding observations regarding establishment of an independent mechanism with adequate investigative powers, including by strengthening the existing mechanisms, to effectively handle complaints about human rights violations committed by the police, including the excessive use of force (Committee LOI, para. 11). The Committee also requested updated information on the complaints filed with the Complaints Against Police Office (CAPO), and any steps taken to improve the regulations governing the use of force by law enforcement officials in accordance with relevant international norms and standards and to strengthen training for law enforcement officials.” (CCPR/C/CHN-HKG/CO/3, para. 12) (Emphasis added.)
25. In response, the HKSAR authorities have maintained that all existing police powers of the Hong Kong Police Force are in line with relevant international norms and standards and claimed that police enjoy no special immunity (HKSAR Written responses to LOI, para. 66). However, during the 2019 Anti-Extradition Law Amendment Bill (Anti-ELAB) protests, questions about police legitimacy, police brutality and the supposed “qualified immunity” of police officers were raised, for example, regarding the death of a young student, Alex Chow, during a police clearance operation in November 2019, and documented police shootings at unarmed protestors. The general public’s sense that police officers are immune is compounded by the HKSAR authorities and the Hong Kong Police Force’s unwillingness to acknowledge any wrongdoing, and the lack of any independent investigation of allegations of excessive use of force against demonstrators and ordinary citizens.
26. International standards define torture and ill-treatment as including excessive police violence.³³ The disproportionate use of force by state agents in extra-custodial settings, particularly police brutality in the course of policing of assemblies during the 2019 Anti-ELAB protests, has been widely documented,³⁴ and has greatly eroded public trust. The instances of extra-custodial use of force by the police during the 2019 Anti-ELAB protests included: unnecessarily tackling demonstrators to the ground, including pregnant women, children, and older people;³⁵ beating protestors even when

³³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, “Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment” (U.N. Doc. A/72/178), July 20, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/223/15/PDF/N1722315.pdf?OpenElement>. See: para. 34.

³⁴ Kanis Leung, “Hong Kong protests: police used disproportionate force and made poor decisions, says British expert who resigned from IPCC review,” *South China Morning Post*, May 23, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3085775/hong-kong-protests-police-used-disproportionate-force-and>; and James Palmer, “Hong Kong’s Violence Will Get Worse,” *Foreign Policy*, November 11, 2019, <https://foreignpolicy.com/2019/11/11/police-killing-protests-beijing-lam-xi-hong-kong-violence-will-get-worse/>.

³⁵ Rachel Wong, “Video: Pregnant woman ‘pepper-sprayed and pushed to ground’ by Hong Kong police during Mong Kok demo,” *Hong Kong Free Press*, September 1, 2020, <https://hongkongfp.com/2020/09/01/video-pregnant-woman-pepper-sprayed-and-pushed-to-ground-by-hong-kong-police-during-mong-kok-demo/>; and “Hong Kong: Police tackle 12-year-old to the ground in Hong Kong,” *BBC News*, September 7, 2020, <https://www.bbc.com/news/av/world-asia-china-54065743>.

already restrained³⁶ or “powerless”;³⁷ improper use of riot control agents like pepper spray,³⁸ water cannons,³⁹ and tear gas⁴⁰ in dangerous or enclosed situations; shooting⁴¹ and blinding several people;⁴² and sexual violence against female protestors. The statement by the HKG regarding alleged “less-lethal” weapons such as batons and rubber bullets were also used unlawfully,⁴³ in addition to the use of live fire.⁴⁴ These extensive documented incidents of excessive and inappropriate use of force by the police, fly in the face of the HKG’s claims that such use of force follows clear guidelines of minimum and necessary use of force and occurs only when no other means available (HKSAR Written responses, para 66). Most alarming of all is how detailed protocols on the use of force in police guidelines and manuals were routinely ignored by the police.⁴⁵

27. Regarding concerns raised about the lack of an independent mechanism and adequate regulations on use of force, the HKG points to the IPCC report published in May 2020 “Thematic Study Report on the Public Order Events arising from the Fugitive Offenders Bill since June 2019 and the Police Actions in Response” and the creation of a Task Force to follow up on the IPCC’s recommendations.⁴⁶ Chief Executive Carrie Lam also repeatedly insisted the existing mechanism is sufficient,⁴⁷ in line with the authorities’ collective denial.⁴⁸ A panel of five overseas experts, recruited by the IPCC to provide international experience and advice on police practices and procedures during the 2019 Anti-ELAB protests, stepped down from the panel on December 11, 2019, citing doubts over IPCC’s independence and capacity to conduct independent investigation into police conduct.⁴⁹ In response to the resignation, IPCC acknowledged its lack of investigative

³⁶ “Hong Kong’s Violence Will Get Worse,” op. cit.

³⁷ “Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment” (U.N. Doc. A/72/178), op. cit. See: Conclusions.

³⁸ Chris Lau and Danny Mok, “Hong Kong protests: pepper spray used, at least 14 arrested in mall during national security law demonstration,” *South China Morning Post*, June 25, 2020, <https://www.scmp.com/news/hong-kong/society/article/3090623/hong-kong-protests-pepper-spray-used-least-12-arrested-mall>.

³⁹ Shibani Mahtani, “While U.S. tackles police brutality, Hong Kong is in denial,” *The Washington Post*, June 19, 2020, https://www.washingtonpost.com/world/asia_pacific/hong-kong-police-brutality-black-lives-matter-george-floyd-protests/2020/06/18/911454a4-aeec-11ea-98b5-279a6479a1e4_story.html.

⁴⁰ “Police fire tear gas into Hong Kong railway station,” *BBC News*, August 12, 2019, <https://www.bbc.com/news/av/world-europe-49315367>.

⁴¹ Raymond Zhong and Tiffany May, “Hong Kong Police, Seen as ‘Hounds After Rabbits,’ Face Rising Rage,” *The New York Times*, October 3, 2019, <https://www.nytimes.com/2019/10/03/world/asia/hong-kong-protests-police.html>.

⁴² Lily Kuo, “Hong Kong: reporter blinded covering protests on her bid to sue police,” *The Guardian*, December 30, 2019, <https://www.theguardian.com/world/2019/dec/31/hong-kong-reporter-blinded-covering-protests-on-her-bid-to-sue-police>.

⁴³ Amnesty International, “How not to police a protest: Unlawful use of force by Hong Kong police,” 2019, <https://policehumanrightsresources.org/how-not-to-police-a-protest-unlawful-use-of-force-by-hong-kong-police>.

⁴⁴ “Hong Kong’s Violence Will Get Worse,” op. cit.

⁴⁵ Shibani Mahtani, Timothy McLaughlin, Tiffany Liang, and Ryan Ho Kilpatrick, “In Hong Kong crackdown, police repeatedly broke their own rules — and faced no consequences,” *The Washington Post*, December 24, 2019, <https://www.washingtonpost.com/graphics/2019/world/hong-kong-protests-excessive-force/>.

⁴⁶ United Nations Human Rights Committee, “Replies of the Hong Kong Special Administrative Region of the People’s Republic of China to the List of Issues in relation to the Fourth Periodic Report,” (U.N. Doc. CCPR/C/CHN-HKG/RQ/4), op. cit. See: paras. 73 and 74.

⁴⁷ Cynthia Wan, “Calls Grow for Police Accountability in Hong Kong,” *Voice of America*, December 5, 2020, <https://www.voanews.com/east-asia-pacific/calls-grow-police-accountability-hong-kong>

⁴⁸ “While U.S. tackles police brutality, Hong Kong is in denial,” op. cit.

⁴⁹ Twinnie Siu and Sarah Wu, “Foreign experts quit Hong Kong police probe questioning its independence,” *Reuters*, December 11, 2019, <https://www.reuters.com/article/us-hongkong-protests-idUSKBN1YF0AW>.

powers under the current legal framework.⁵⁰ A November 2020 court ruling that the current system is inadequate for investigating police violations and runs contrary to Hong Kong's Bill of Rights prohibiting torture and ill-treatment.⁵¹

VI. Freedom of expression (Article 19, 20, 21) (LOI item 20)

28. In the nearly two years since the implementation of the NSL, arrests of scores of pro-democracy activists, including eminent barristers and many former lawmakers, have chilled, criminalized, and punished the exercise of fundamental rights and citizen participation. Further, an expanding national security apparatus and a rash of policies and edicts have steeply eroded freedom of expression and freedom of the press. New educational guidelines have been put in place to instill students' loyalty to the mainland government and curb their thinking critically and independently. Last but not least, an electoral overhaul have eviscerated all political opposition.

• Attacks on Media

29. The Committee expressly noted that the attacks on media in Hong Kong is a serious concern, as evidenced in reports that journalists, academics, students, politicians and human rights defenders are increasingly facing threats, physical attacks, cyberattacks, harassment and intimidation, reports of increased self-censorship by and intensified external pressure on journalists, Hong Kong authorities' refusals to extend working visas or to grant entry into Hong Kong for foreign journalists and human rights activists, incidents of disappearance, arbitrary detention, and torture and ill-treatment of publishers and booksellers, and censorship of social media. In its Fourth Periodic Report, the HKG simply claimed that "freedom of expression and freedom of the press are guaranteed by the Basic Law and the HKBORO" and that they "[support] the principle of editorial autonomy for journalistic work, and [do] not interfere with the internal operations of media organisations."⁵²

30. The Hong Kong Journalists Association (HKJA) chairman Ronson Chan Ron-sing called 2021 "the worst year of press freedom." HKJA's 2020 Press Freedom Index recorded a historic low of 32.1 points in average for press freedom in Hong Kong since 2013 and 91% of respondents surveyed who are journalists said press freedom grew worse in the preceding 12 months. In the 2021 World Press Freedom Index by Reporters Without Borders (RSF), Hong Kong ranked 80th out of 180 countries and regions, sliding further from 73rd in 2019, and RSF particularly highlighted that the National Security Law "seriously threatens journalists." State-run media which often help to promote the propaganda of the CPG authorities, also resort to smear campaigns to discredit the independent media in Hong Kong and target media organizations that speak out against such practices.

31. The promulgation of the sweeping *National Security Law* has weaponized various laws to arrest and prosecute individuals and raid newsrooms or freeze assets of media organizations. The crackdown on media also involves pro-Beijing figure taking over media entities, senior staff members stepping down, having content removed and programs terminated. Following the arrests of senior executives of pro-democracy newspaper *Apple Daily* under this law which led to its closure, a chilling effect and

⁵⁰ Independent Police Complaints Council, "Press Release: Press Statement from the Independent Police Complaints Council," December 11, 2019, https://www.ipcc.gov.hk/doc/en/pr/pr_20191211_e.pdf.

⁵¹ "Calls Grow for Police Accountability in Hong Kong," op. cit.; and *THE HONG KONG JOURNALISTS ASSOCIATION v. THE COMMISSIONER OF POLICE AND ANOTHER* [2020] HKCFI 3101; [2021] 1 HKLRD 427; HCAL 2915/2019 (21 December 2020), available at: [https://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2020/3101.html?stem=&synonyms=&query=\(HKCFI%203101\)%20OR%20ncother%20citationtitles\(HKCFI%203101\)](https://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2020/3101.html?stem=&synonyms=&query=(HKCFI%203101)%20OR%20ncother%20citationtitles(HKCFI%203101)).

⁵² "Fourth periodic report submitted by Hong Kong, China under article 40 of the Covenant," op. cit. See: para. 112.

self-censorship have further undermined an independent press in Hong Kong. The vagueness of the law makes it impossible for journalists to report freely under the fear of stepping across shifting and unknown “red lines.” In the face of the changing political and media environments, *Initium Media*, an award-winning online news outlet founded in Hong Kong in 2015, announced the relocation of its headquarters to Singapore on August 3, 2021, becoming the first Hong Kong media organization to move overseas since the promulgation of the law.

VII. Peaceful Assembly (Articles 7, 9, 10, 19 and 21) (LOI item 23)

32. In addition to measures to combat the COVID-19 pandemic which deeply affected Hong Kong residents and civil society organizations, the necessity of pandemic-related restrictions has been invoked as a convenient excuse by the authorities to restrict public gatherings, and their ability to do fundraising and access resources. However, in addition to the failure of HKSAR authorities to effectively controlled COVID-19, especially the Omicron wave, the corruption scandal of Hong Kong officials blatantly ignoring COVID-19 restrictions on group gatherings highlights the politicized weaponization of pandemic restrictions against civil society groups.⁵³
33. Two major annual Hong Kong events where civil society organizations in Hong Kong assemble to call for support and raise fund are: the annual July 1 pro-democracy march, marking the anniversary of the transfer of Hong Kong’s sovereignty in 1997; and the annual June Fourth candlelight vigil in Victoria Park commemorating 1989 June Fourth victims. These public gatherings had attracted large crowds of Hong Kongers since 1990, exceeding 100,000 participants in some years. Pro-democracy political parties and advocacy groups used to set up street booths along the marching route and at the entrance to the vigil at Victoria Park, where thousands of people support these diverse civil society groups by donating money.⁵⁴
34. The annual June Fourth vigil has now been banned for two consecutive years, in 2020 and 2021, by the government, citing public gatherings restrictions and public health concern due to the COVID-19 pandemic, leaving many pro-democracy groups in dire financial situation and impeding their operations. Both the Civil Human Rights Front and the Hong Kong Alliance, organizers of the July 1 march and June Fourth vigil, respectively, disbanded in 2021, following arrests of their leaders and accusation by the authorities of their foreign ties. Five Special Rapporteurs and the Working Group on Arbitrary Detention also criticized Article 29 of the NSL in September 2020, agreeing that the NSL’s Article 29 offense of “collusion with a foreign country or with external elements to endanger national security,” could affect both assemblies and speech acts.⁵⁵
35. In 2021, the Leisure and Cultural Services Department suspended the processing of applications by the Hong Kong Alliance, to lease Victoria Park for the annual vigil. The police also refused to issue

⁵³ Kari Soo Lindberg, Felix Tam, and Olivia Tam, “Hong Kong Officials Under Fire for Partying Despite Covid,” *Bloomberg*, January 6, 2022, <https://www.bloomberg.com/news/articles/2022-01-06/hong-kong-home-minister-in-quarantine-after-party-hk01-says>.

⁵⁴ Progressive Lawyers Group, “HK20: Why Hong Kong’s July 1 democracy march isn’t ‘just another protest’,” *Hong Kong Free Press*, June 27, 2017, <https://hongkongfp.com/2017/06/27/hk20-hong-kongs-july-1-democracy-march-isnt-just-another-protest/>; and Lok-kei Sum, “Explainer | Hong Kong’s annual Tiananmen vigil, banned for the first time in 30 years: what you need to know about June 4 event in the city,” *South China Morning Post*, June 4, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3087431/banned-first-time-30-years-heres-what-you-need-know-about>.

⁵⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/20/27),” op. cit.

the Letter of No Objection to the Alliance to host the vigil, despite the fact that COVID-19 in Hong Kong was under control then and other large-scale events were allowed to be held. The COVID-19 restrictions have been repeatedly invoked not only to restrict civil society organizations' right to freedom of peaceful assembly, but also their abilities to solicit donations from the general public, a major source of their support.

VIII. Freedom of Association (Article 22) (LOI item 26)

36. Article 22 (1) of the ICCPR states that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” This includes the freedom of civil society groups to associate with other groups, regardless of whether they are domestic or foreign, political in purpose or otherwise. Article 22 (2) of the ICCPR states that “no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” (Emphasis added.)

• Access to Resources

37. Under international human rights standards, the ability to seek, receive, and use resources is inherent to the right to freedom of association and essential to the existence and effective operations of any association and any undue restrictions on resources available to associations impact the enjoyment of the right to freedom of association and also undermine civil, cultural, economic, political, and social rights as a whole.⁵⁶ Under Article 29 of the NSL on “collusion with a foreign country or external elements to endanger national security,” an individual could be guilty if one, inter alia, “directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People’s Republic of China.”

38. According to the HKSAR authorities, this offense was aimed at “driving away foreign agents, drying up funding from overseas for anti-government activists.” In October 2021, four UN Special Rapporteurs raised concerns about the qualification of “foreign agent” in the NSL, noting that “[s]uch regulatory measures, by imposing undue restrictions on funding and punishing recipients of foreign funding, infringe on the right to freedom of association as well as other human rights.” (Emphasis added.)⁵⁷

• Registration under the *Societies Ordinance*

39. The *Societies Ordinance*: The Ordinance places regulatory restrictions on connections with foreign political organization. Article 5D (1)(b) of the *Societies Ordinance* states that a society or a branch may lose its registration or exemption from registration “if the society or the branch is a political body that has a connection with a foreign political organization. . . .”⁵⁸ This imposes a regulatory restriction that undermines the right to association with any group including “domestic or foreign,

⁵⁶ Human Rights in China, “Input for report on disinformation: To the Special Rapporteur on the rights to freedom of peaceful assembly and of association,” February 18, 2022. This submission focuses on the trends, developments, and challenges regarding the ability of civil society organizations (CSOs) to access resources, including foreign funding. This submission has not been made public. MS on file.

⁵⁷ “Hong Kong: Arrests under security law are serious concern, UN experts call for review,” United Nations Office of the High Commissioner on Human Rights, October 12, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27648&LangID=E>.

⁵⁸ *Societies Ordinance (Cap. 151)* (1949), <https://www.elegislation.gov.hk/hk/cap151>.

political in purpose or otherwise.” Notably, subsection (1)(a) of Article 5D and its “national security” rationale, among others have been invoked to deregister CSOs, especially pro-democracy groups such as the Civil Human Rights Front.

40. The *Trade Unions Ordinance*: The Ordinance provides for the “registration and better control over trade unions.” Article 33 of the Ordinance provides for how registered trade unions may apply their funds and enumerates a list of permissible uses such as salaries, expenses, legal defense, or prosecution of actions, and “any other purpose *which* the Chief Executive may approve.” Subsection (2) of Article 33 highlights, further, that “a registered trade union that contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine at level 1.”⁵⁹ On its face, the Ordinance appears to set out a reasonable registration framework and list of permissible uses of union funds, with the exception of the open-ended approval authority of the Chief Executive. However, the Ordinance has been used by the HKSAR authorities to question some CSOs on how they apply their funds and to accuse them of using their funds for political purposes and activities which do not fall under the list of approved activities in Article 33, such as in the case of the Hong Kong Journalists Association.
41. Notably, Section 10(1)(b)(v) of the Ordinance provides that a union’s registration can be cancelled if “the funds of the trade union have been expended in an unlawful manner or for an unlawful purpose or for any purpose not authorized by the rules of the trade union,” such as for political purposes or activities. A union’s registration can also be cancelled if “any funds of the trade union that have been utilized for any purpose connected with the trade union, or any members thereof, have willfully and after notice in writing from the Registrar requiring the same to be entered in the accounts of such trade union been omitted from the accounts thereof” (Section 10(1)(b)(vi), *Trade Unions Ordinance*).

- **Deregistration under the *Societies Ordinance***

42. The *Societies Ordinance* provides for the registration of societies and the prohibition of the operation of certain societies. Applications for exemptions from registration may be made by societies “established solely for religious, charitable, social or recreational purposes or as a rural committee or a federation or other association of rural committees” (Article 5A (2), *Societies Ordinance*).⁶⁰ Article 5D of the *Societies Ordinance* on the cancellation of societies’ registration provides that “[t]he Societies Officer may, after consultation with the Secretary for Security cancel the registration or exemption from registration of a society or a branch—(a) if he reasonably believes that the cancellation is necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others; or (b) if the society or the branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan.”⁶¹

- **Impact of Registration Requirements**

43. Various types of organizations are officially registered according to respective ordinances. However, these registrations have put these groups into vulnerable positions to be restricted, or even de-registered by the government, under, for example, Section 10(1)(b) (v)-(vi) of the *Trade Unions Ordinance*. The Hong Kong Journalists Association (HKJA), the Hospital Authority Employees

⁵⁹ *Trade Unions Ordinance (Cap. 332)* (1962),

https://www.elegislation.gov.hk/hk/cap332?xpid=ID_1438403018316_001.

⁶⁰ *Societies Ordinance (Cap. 151)*, op. cit.

⁶¹ *Ibid.* While Article 5A(3) is worded similarly and also provides that a society’s / its branch’s registration may be refused or be “exempted from registration,” Article 5D is more concerned about the cancellation of an existing society’s registration.

Alliance (HAEA), and the Hong Kong White Collar (Administration and Clerical) Connect Union, registered under the *Trade Unions Ordinance*, received inquiry from the Registry of Trade Unions to explain whether their union activities complied with the ordinance, while the General Union of Hong Kong Speech Therapists was de-registered after members were arrested for publishing seditious materials.⁶² Even if these groups are compliant with the requirements of their registrations, they could be stripped off their legal statuses since the power to determine their legality is in the hands of the authorities.

IX. Participation in Public Affairs (Articles 2, 3, 25, 26, and 27)

44. On March 11, 2021, the National People's Congress (NPC) passed the *Decision on Improving the Electoral System of the Hong Kong Special Administrative Region* to amend the method for the selection of the Chief Executive and the formation of the Legislative Council (LegCo). Under the overhauled electoral system to ensure only “patriots” rule Hong Kong, adopted by the HKSAR government after the NPC decision, former Chief Secretary and Security Secretary John Lee Ka-chiu won as the sole candidate in the chief executive election on 8 May 2022 Hong Kong’s next Chief Executive.⁶³ Lee was elected under an overhauled electoral system to ensure only “patriots” rule Hong Kong, adopted by the HKSAR government after the NPC Decision.
45. In order to become a candidate for the office of the Chief Executive, one has to obtain not less than 188 nominations from the 1,500-member Election Committee, of which the number of members’ nominations from each of the five Committee sectors should not be less than 15. In the election, contested or uncontested, the candidate shall obtain no less than 750 valid votes to be returned at the election. Under the new rules, a 1,500-member Election Committee is empowered to elect 40 of the 90 members of the LegCo and the Chief Executive, but fewer than 30,000 voters were eligible to elect members of the Committee with 7,891 of them registered eventually—and vastly diminished representation—from the 246,000 registered voters in the 2016 election.
46. John Lee, who was the Chief Secretary at that time, headed a seven-person committee in 2021 that vetted nominees for the Election Committee, to ensure they “sincerely support” the Basic Law and swear allegiance to the government. So essentially, all 1,500 Election Committee members who casted their votes in the Chief Executive election were screened by the committee led by Lee a year ago. He won the election with 1,416 votes (99.16% of the vote).

X. Conclusion and Recommendations

47. The potentially irreconcilable tensions between the implementation of the *National Security Law* and the obligations of the HKG under the Covenant, however, does not relieve the HKG (or the CPG) of its international treaty obligations.
48. With a view towards contributing to a robust meaningful review and strengthening the state party engagement and cooperation with the Committee, HRIC respectfully advances the following recommendations for the Committee to consider.

⁶² “Hong Kong Hospital Authority union denies gov’t allegation it broke law,” op. cit.; “Hong Kong’s largest journalist group faces scrutiny from authorities, asked to justify activities amid media crackdown fears,” op. cit.; “Hong Kong authorities grill union which held street stalls on Covid-19 and national security law,” op. cit.; and “Govt to revoke registration of speech therapists’ union,” op. cit.

⁶³ Alexandra Stevenson and Austin Ramzy, “In a One-Man Race in Hong Kong, China Is Guaranteed to Win,” *The New York Times*, May 7, 2022, <https://www.nytimes.com/2022/05/06/world/asia/john-lee-hong-kong-election.html>.

- **Interactive Dialogue with the HKG Delegation and Follow-up Procedure**

49. *Recognizing there may be logistical challenges of the upcoming Fourth Review, support measures to ensure that civil society participation is inclusive, diverse, and safe:*

- Enable safe remote participation of civil society stakeholders via remote video monitoring of the interactive dialogue with the HKG delegation; and
- Provide secure opportunities for civil society groups to meet with members of the Committee.

50. At a time of deep social and political crisis in Hong Kong that is undermining the peaceful exercise of rights protected by the Covenant, unless there is a sharp turn towards constructive engagement,⁶⁴ the Committee needs to apply a concrete indicator of the State party's progress and a benchmark to incentivize compliance with the Covenant. A blatant failure to meaningfully address challenges and adopt concrete measures to comply with its obligations under the Covenant should result in a failing grade of "E" in any final assessment.

51. *Continue to raise concerns and press for more meaningful cooperation by the HKG and concrete implementation measures including:*

- Clarification of the HKG's policy priorities and how it will develop concrete measures to implement its obligations under the Covenant and the address the concerns and recommendations reiterated by the Committee;
- Regarding the identification of issues to prioritize for a follow-up process, give strong consideration to including concrete measures to address structural rule of law issues, challenges to meaningful civil society participation, and specific benchmarks and indicators of progress for any measures identified; and
- The outcomes of the Fourth Periodic Review, including the follow-up process and the assessment should be widely disseminated including via educational and public materials on the NSL with a focus on Article 4.

- **Review and Amendment of the NSL**

52. While China still has not yet ratified the ICCPR despite repeated statements of its intention to do so, it is obligated under international law to not take any actions that would defeat object and purpose of the treaty, including national security or other legislation that applies to HKSAR. The CPG and the NPCSC have treaty obligations to engage in ongoing review and revision of the NSL to address the concerns raised by the Committee and other UN human rights experts.

53. *The CPG should initiate a legislative exercise to review the NSL and with relevant HKG bodies to address the substantive and implementation concerns raised by the Committee, as well as by UN Special Procedures, legal experts, civil society, and other concerned stakeholders, including:*

⁶⁴ The State party has adopted measures that are contrary to or have results or consequences that are contrary to the recommendations of the Committee or reflect rejection of the recommendation. "Note by the Human Rights Committee on the procedure for follow-up to concluding observations," op. cit. See: para. 21.

- Clarification of NSL provisions to ensure that the formal definitions are in compliance with the Covenant;
- Review the provision on bail to ensure it is consistent with a presumption of bail in conformity with international standards, the applicable common law and Hong Kong's legal system; and
- Review the formal retrospectivity provision and clarify that its application is not expanded beyond permissible exceptions under international law.

- **Pending Article 23 National Security Legislation**

54. *In any Article 23 legislative exercise launched, the HKG should address the procedural deficits of the Article 23 exercise in 2003 to ensure full transparency and procedural adequacy of the exercise and public consultation.*