

**Civil Society Submission to the United Nations
Human Rights Committee**

135th Session

27 June 2022 – 29 July 2022



Leitner Center
for International Law and Justice

AT FORDHAM LAW SCHOOL, NEW YORK CITY

The Leitner Center for International Law & Justice

Fordham Law School

30 May 2022

I. Introduction

The Leitner Center for International Law and Justice at Fordham Law School (the “*Leitner Center*”) provides the following information to the United Nations (UN) Human Rights Committee (the “*Committee*”) in advance of the fourth periodic review of the Hong Kong Special Administrative Region of the People’s Republic of China (the “*HKSAR*” or “*Hong Kong*”) at the Committee’s 135th session to be held 27 June to 29 July 2022.

Since the submission of the State Party’s Fourth Periodic Report in September 2019, there have been significant developments in the HKSAR that have had a serious impact on the enjoyment of the rights protected by the International Covenant on Civil and Political Rights (the “*Covenant*” or the “*ICCPR*”). The Leitner Center thanks the Committee for this opportunity to submit updated information on these developments to facilitate a comprehensive review of the State Party’s obligations.

This submission sets forth the Leitner Center’s key concerns regarding the implementation of the Covenant by the government of the HKSAR, particularly with respect to (i) laws on national security (Articles 7, 9, 10, 14, 15, 17, 18, 19, 21, 22, and 25), (ii) access to justice, independence of the judiciary, and the right to a fair trial (Articles 2 and 14), (iii) freedom of expression (Articles 19, 20, and 21), (iv) right of peaceful assembly (Articles 7, 9, 10, 19, and 21), (v) freedom of association (Article 22), and (vi) participation in public affairs (Articles 2, 3, 25, 26, and 27).¹

Throughout this submission, we respond and make reference to (i) the fourth periodic report of the HKSAR, dated 19 September 2019 (the “*State’s Report*”), (ii) the list of issues in relation to the State’s Report, dated 26 August 2020 (the “*List of Issues*”), (iii) the replies of the HKSAR to the List of Issues, dated 26 March 2021 (the “*State Response to the List of Issues*”), and (iv) the concluding observations on the third periodic report of the HKSAR, adopted by the Committee at its 107th session, dated 29 April 2013 (the “*Concluding Observations*”).

The Leitner Center is a public international law education and research center based at Fordham Law School that aims to make international human rights protections an everyday reality for marginalized communities around the world. The Leitner Center provides education and training to law students, facilitates capacity-building and advocacy with activists and grassroots groups around the world, and contributes to critical research among legal scholars in international human rights. The Leitner Center regularly engages the UN human rights mechanisms in the countries and regions where we work, including in North America, Asia, Europe, and Africa. To focus our submissions, we partner with local civil society organizations and networks in the places where we work.

II. Laws on National Security (Articles 7, 9, 10, 14, 15, 17, 18, 19, 21, 22, and 25)

The framework of “One Country, Two Systems,” was agreed to in the 1984 Sino-British Joint Declarationⁱⁱ to ensure that HKSAR would maintain a “high degree of autonomy” and that residents would continue to enjoy rights and freedoms not guaranteed in mainland China.ⁱⁱⁱ This framework, which also enables the application of the ICCPR to Hong Kong even though the People’s Republic of China (“PRC”) has yet to ratify it, creates separate legal systems, including laws, institutions, and policing authorities. However, in the years that have passed since the Committee’s last review of the State Party, this principle of “One Country, Two Systems” has been comprehensively and severely undermined, as demonstrated most acutely by the passage of new national security measures in 2020.

Beijing’s Standing Committee of the National People’s Congress (the “NPCSC”) endorsed a decision to introduce national security measures in the HKSAR during its annual plenary session on 18 June 2020. The decision authorized the NPCSC to adopt legislation targeting separatism, subversion of state power, terrorism and foreign interference. It also allows central government agencies responsible for national security to operate in the HKSAR. On 30 June 2020, the NPCSC passed the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the “NSL”). Contrary to the State Party’s assertion that “the enactment of the NSL underwent a process that is transparent” and “the views of Hong Kong residents have been taken into account,”^{iv} it was promulgated hastily overnight and without public consultation, bypassing the HKSAR’s Legislative Council (the “LegCo”), the HKSAR’s local legislative body.^v The full text of the NSL in Chinese was only made public on the evening of 30 June 2020; shortly thereafter on the first day of its implementation (1 July 2020), ten individuals were arrested (many before they had had a chance to read the text of the law and understand the charges).

In 2015, the PRC passed a national security law on the mainland that gave authorities sweeping powers to crack down on and suppress human rights, covering areas including politics, culture, finance, and the Internet. When the Hong Kong NSL was passed, its reach remained unclear. While some observers believed that the enactment of the law might serve more as a latent threat than as an active tool to be used by the government, others feared that the new law would be applied in Hong Kong in much the same way as the 2015 national security law was applied on the mainland, leading to the silencing of dissent against the government and the cutting off of international support to civil society organizations. Over the past two years, these fears have unfortunately been substantiated. As of 28 March 2022, 183 individuals had been arrested for alleged national security crimes since the NSL’s enactment on 1 July 2020, and 113 of those had been subsequently charged.^{vi} Of these cases, very few would constitute national security-related crimes in jurisdictions that uphold and respect civil and political rights, and the majority of the arrests were for activities that would be considered peaceful and lawfully-protected exercises of basic civil and political rights (such as free speech) in such other jurisdictions.^{vii}

The arrests thus far suggest that the NSL is being used to punish the exercise of basic political rights by peaceful critics of the government, which is fundamentally at odds with the State Party’s obligations under the Covenant. In general, the law has been used in three key ways: (i) to limit certain forms of political speech, (ii) to limit foreign contacts (and in particular to sever ties between Hong Kong civil society and the international community), and (iii) to target opposition politicians and activists.^{viii} These arrests have resulted in a strong chilling effect throughout Hong Kong society of any behaviour that may be seen as running afoul of the NSL, including the ordinary operations of civil society.

In the State Response to the List of Issues, the HKSAR states that:

“Although the human rights guarantees have been provided in Chapter III of the Basic Law, Article 4 of the NSL clearly stipulates that human rights shall be respected and protected in safeguarding national security in the HKSAR, and reaffirms that the rights and freedoms which HKSAR residents enjoy under the Basic Law and the provisions of the ICCPR and the

International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall be protected in accordance with the law. Any measures or enforcement actions taken under the NSL must observe this principle.”^{xix}

The above statement seems to be made in bad faith. HKSAR’s courts have thus far interpreted the NSL in such a way that prioritizes the NSL over human rights protections under international covenants (including the Covenant) and domestic laws. Despite the NSL’s textual recognition of “rights and freedoms” incorporated in the HKSAR laws,^x the HKSAR’s highest court held that where local laws are inconsistent with the NSL, the NSL shall prevail.^{xi} This holding directly opposes the Committee’s holding in *Tae Hoon Park v. Republic of Korea*, which states that a prioritization of national law over a state’s obligations under the Covenant is incompatible with the Covenant and constitutes a violation of Article 2 of Covenant.^{xii}

An example of the HKSAR’s interpretation of the NSL in such a way that prioritizes the NSL over human rights protections under the Covenant is the case of *Tong Ying Kit v. Secretary for Justice*. A key issue at trial was a popular slogan on a banner Tong was displaying that read “*Liberate Hong Kong. Revolution of Our Times.*” While Article 19 of the Covenant allows for the restriction of freedom of expression on the grounds of national security (subject to certain specified caveats), General Comment 34 by the Committee held that such restrictions “must meet a strict test of justification.”^{xiii} In the event that a state party wishes to restrict freedom of expression, the Committee places the burden on the state to (i) demonstrate “*in specific and individualized fashion the precise nature of the threat,*” (ii) demonstrate the “*necessity and proportionality of the specific action taken,*” and (iii) establish a “*direct and immediate connection between the expression and the threat.*”^{xiv} If the state fails to meet the requirements, then the restriction of an individual’s right to freedom of expression would not constitute a “legitimate purpose” under Article 19(3) of the Covenant. In the Tong case, not only was the slogan symbolic of the general sentiment among protestors and lacked a precise call to action, but Tong also acted alone and was apprehended at the scene immediately. He was nevertheless convicted of “incitement to secession.” The court failed to consult international legal authorities on Covenant rights and failed to discuss the legitimacy of restrictions of such rights.^{xv}

As the passage and application of the NSL actively erodes the civil liberties of the people of Hong Kong, we share the concern for all citizens tried under the new law as stated by four UN Special Rapporteurs in 2021: “*Terrorism and sedition charges are being improperly used to stifle the exercise of fundamental rights, which are protected under international law, including freedom of expression and opinion, freedom of peaceful assembly and the right to participate in public affairs.*”^{xvi}

Conclusion and Recommendation:

Due to the entirety of the above, we maintain that the NSL is inconsistent with the HKSAR’s obligations under the Covenant, and we urge the HKSAR government to respect the rights they are obligated to uphold under the Covenant while acting under the NSL. As such, we request that the Committee ask the HKSAR government to clarify whether its intent is to prioritize the NSL where local laws are inconsistent with the NSL (including wherein the local laws incorporate the provisions of the Covenant). In addition, in light of the last sentence in paragraph 10 of the State Response to the List of Issues (stating that, “*Indeed, many rights and freedoms recognised by the ICCPR are not absolute. For instance, the rights and freedoms under Articles 12, 13, 14, 17, 19, 21, and 22 of the ICCPR may be restricted for the protection of national security and/or public order (ordre public).*”), we would like the Committee to request that the HKSAR government clarify its interpretation of terms and phrases such as “national security” and “public order.” Furthermore, we urge the Committee to ask the HKSAR government to provide concrete steps that it plans to take in order to respect the rights that they are obligated to uphold under the Covenant while acting pursuant to the NSL.

II. Access to Justice, Independence of the Judiciary, and the Right to a Fair Trial (Articles 2 and 14)

The HKSAR has long enjoyed strong rule of law and a reputation of having an independent judiciary. The “One Country, Two Systems” framework has been crucial to maintaining a separation between the legal systems of the PRC and the HKSAR, as one of the general premises of “One Country, Two Systems” was that the legislature and judiciary would continue to perform the roles they had performed prior to the 1984 Sino-British Joint Declaration (the “*Joint Declaration*”).^{xvii} Furthermore, the legal framework of human rights protection in Hong Kong is robust on paper. As noted in the State’s Report, the rights set forth in the Covenant are incorporated into, and thus enshrined in, the Hong Kong Basic Law (the “*Basic Law*”) and the Hong Kong Bill of Rights Ordinance.^{xviii}

This presumption of the strong rule of law in the HKSAR is a precondition of the protection of individual rights and freedoms. Since the last review of the State Party, rule of law in the HKSAR has deteriorated, and the subsequent infringements on rights and freedoms (owing in part to, but not limited to, the introduction of the NSL) have propelled the HKSAR further away from adhering to its obligations under the Covenant to uphold the civil and political rights of its people.^{xix}

Erosion of the rule of law and the functioning of the judiciary in Hong Kong is evident in the aftermath of the mass protests and the mass arrests that have occurred since 2019. As of the end of July 2021, 10,265 arrests had been made in relation to the anti-extradition bill protests (the “*Protests*”) that had erupted across Hong Kong beginning in June 2019.^{xx} Among them, the prosecution brought charges against 2,684 individuals and 1,173 cases were ongoing as of the end of July 2021. There are not enough specialized criminal legal aid lawyers in Hong Kong who may properly represent those arrested. As of April 2021, Hong Kong’s legal talent pool consists of only about 1,585 barristers with rights of audience in courts and 10,812 solicitors as of April 2021.^{xxi}

The combination of the sheer volume of cases and lack of resources has resulted in the prolonged detention of too many defendants. The HKSAR fails to adhere to Article 9 of the Covenant, which states that a person detained is entitled to trial “within a reasonable time or to release.”^{xxii} As of December 2021, 31.3% of the people held in the Hong Kong Correctional Services Department’s facilities (a record number of 2,462) were being held on remand (meaning they are innocent until proven guilty and are awaiting trial).^{xxiii}

The appointment of specific NSL judges under Article 44 of the law also creates a transparency problem due to the fact that the Hong Kong judiciary and Beijing do not seem to fully agree on the selection criteria for judges.^{xxiv} By the end of 2020, almost 6 months and dozens of arrests after the promulgation of the NSL in Hong Kong, legal scholars and practitioners continued to express concerns that the rules of engagement for the appointment of NSL judges lack transparency and a clear set of selection criteria.^{xxv}

Although the State Party asserts that “*the NSL does not undermine judicial independence at all,*”^{xxvi} it is clear that the NSL does in fact threaten judicial independence and has applied growing pressure to the Hong Kong judiciary. Articles 62 and 65 of the NSL (which limit the judiciary’s role in interpreting the NSL and state that the NSL takes precedence over other Hong Kong Laws (including the Bill of Rights)) make the judiciary’s role in protecting basic civil rights more difficult.^{xxvii} In addition, Articles 55 and 56 give the central government the authority to remove cases from the HKSAR and bring them to mainland courts; the threat of this happening in the event of a judgment unfavorable to the central government undermines judicial independence.^{xxviii} The implications of the utilization of Article 55 also threatens the right of individuals to a fair trial: violations of fair trial rights in cases where government interests are concerned in mainland China are widely documented.^{xxix} Furthermore, Article 65 of the NSL gives the NPCSC the ultimate power to interpret the NSL.^{xxx} The pressure on Hong Kong’s judiciary reached global headlines with the recent resignation of Lord Reed and Lord Hodge from the

Hong Kong Court of Final Appeal (“HKCFA”). They stated that they cannot “*continue to sit in Hong Kong without appearing to endorse an administration which has departed from values of political freedom, and freedom of expression, to which the Justices of the Supreme Court are deeply committed.*”^{xxx1}

Conclusion and Recommendation:

We recommend that the Committee urge the State Party to respect and strengthen Hong Kong’s judicial independence pursuant to Article 85 of the Basic Law,^{xxxii} and to ensure the protection of the rights enumerated in the Covenant, the entirety of which are reflected in Article 39 of the Basic Law.^{xxxiii} We also request that the Committee ask the State Party to provide concrete steps that it plans to take in order to (i) ensure that each individual arrested during the Protests receives adequate and proper representation from a criminal legal aid attorney, (ii) ensure that each defendant suffering from prolonged detention is released and/or stands trial as soon as possible, (iii) increase transparency by identifying a clear set of selection criteria for the appointment of NSL judges, and (iv) strengthen Hong Kong’s judicial independence in light of the growing pressure the passage and implementation of the NSL has placed on the judiciary.

III. Freedom of Expression (Articles 19, 20, and 21)

For decades, Hong Kong was home to a vibrant civil society. Prior to the implementation of the NSL, Hong Kong's rule of law protected civil freedoms enumerated in both the Basic Law and in the Bill of Rights Ordinance that gives effect to the Covenant (which applies to the region), as well as in numerous other pieces of legislation. Protection of the freedom of expression is measured by the ability of individuals, publishers, academics, political and rights advocates, and civil society organizations to speak, act, and organize freely and to seek legal redress, and in the years that have passed since the issuance of the Concluding Observations, freedom of expression in the HKSAR has drastically deteriorated. Over these years, "national security" has become the premise upon which the government may exert greater control over the freedom of expression by both public and private institutions. This infringes upon the very nature of the function of a thriving civil society, which requires participants to scrutinize and criticize political powers and parties in order to build a better society for all. A free and open society therefore requires safeguards for groups to do just that, including through legislative protections for journalists, free expression protections for individuals, and freedom for groups for assembly and association.

Many of these safeguards were in place in Hong Kong prior to the implementation of the NSL, but the new legislation's vague and broad terms creates new barriers for civil society organizations in Hong Kong because there is a distinct lack of clarity around the type of advocacy statements that may be categorized as "provoking hatred" (Article 29 of the NSL), or "seriously interfering in, disrupting, or undermining" government activity (Article 22 of the NSL). The NSL, therefore, has made it so difficult for civil society to act and speak freely that many feel it is no longer possible to safely operate within the territory. The impact, which has broadly resulted in the shuttering of numerous human rights organizations, generalist civil society groups, unions, and media organizations, has been disproportionately great for advocates of human rights and freedom of speech in Hong Kong. Specific impacts on individual speech, academia, the arts, the media, and publications include, but are not limited by, the selected examples detailed below.

Individual Speech. As organized protest activities have become increasingly unavailable to Hong Kong citizens due to a crackdown on free speech, people have resorted to other forms of protest art and slogans. In June 2021, a man hung a flag with the protest chant "*Liberate Hong Kong. Revolution of Our Times*" outside the window of his private home. He received a knock on the door and was immediately arrested for "utter(ing) any seditious words."^{xxxiv} With no violent acts in question, the mere display of a protest signs remains well within the boundaries of the right to peaceful protest protected by the Covenant.^{xxxv}

Expressions of encouragement for Hong Kong became taboo. Tattoos or clothing displaying the phrase "*Hong Kong add oil*" ("come on Hong Kong") sent runners to the police booth at the Standard Chartered Marathon, as the phrase was classified as a "political slogan."^{xxxvi} During the 2021 LegCo election, voters were told to cover up the same ubiquitous phrase before they could vote.^{xxxvii} The Hong Kong Tourism Board threatened to hand participants wearing attire with political elements over to law enforcement at two major sports events.^{xxxviii} On 24 December 2021, a wine seller at a Christmas fair was told that after a government official inspected the event and took pictures of his booth, he had to stop selling a sake labeled "*Hongkonger*."^{xxxix} These are not isolated incidents. The government's interpretation of the powers of the NSL are so far-reaching that the Secretary for Security threatened Hong Kong consumers with potential NSL prosecutions.^{xl}

Academia. In 2021, the Academic Freedom Index documented the largest annual declines in academic freedom globally in Hong Kong, Belarus, Sri Lanka and Zambia.^{xli} Internationally respected professors, including legal scholars Johannes Chan and Benny Tai,^{xlii} among others,^{xliii} had their employment terminated for political reasons, or chose to resign after being targeted by state-supported media. The

right to autonomy and academic freedom of educational institutions is supposed to be protected under Article 137 of the Basic Law.

Arts. In October 2021, Hong Kong introduced a movie censorship law on “national security” grounds.^{xliv} This law confirmed previous fears that censorship would seep into the creative industry.^{xlv} In the past year, filmmakers and festival organizers of the political genre have experienced police raids during screenings of films depicting the Protests as well as cancellations of protest documentary screenings on university campuses.^{xlvi} The Office for Film, Newspaper and Article Administration has censored artwork on the grounds of NSL violations, among other incidents. In July 2021, independent film group Ying E Chi lost their grant from the taxpayer-funded Hong Kong Arts Development Council due to its designation as a “bad influence on society,” resulting from the popularity of its documentaries on the Protests, and soon lost the lease for their office. In 2021, for the first time since 1969, no Hong Kong broadcaster aired the Oscars, following an offensive orchestrated by China’s state media against a documentary about the Protests.^{xlvii}

In June 2021, a long running political satire and current affairs show *the Headliner* was cancelled by the public broadcaster RTHK after a High Court judge’s ruling in a judicial review hearing upholding a warning by the Communication Authority for “insulting the police.”^{xlviii} Ng Chi-sum, a host of the show, noted in an interview that in the show’s lengthy history (since 1989), *the Headliner* had never had to submit to government pressure until the Hong Kong police became “uncriticizable” in 2019 and 2020.^{xlix} This sealed the fate of a show that had been televised for over 30 years. In effect, the ruling created a special “social status” for the police based on their occupation and exempted them from “free and unrepressed criticism.”^l

Media. Hong Kong’s ranking in the World Press Freedom Index has been in decline for two decades, having slipped from 18/180 in 2002 to 80/180 in 2021, losing its status as a place with an internationally recognized free press.^{li} By multiple accounts, journalists are no longer safe from harassment and intimidation at work, and some have even been arrested on charges for the work they produce. Media workers also risk losing their livelihood when their employers are shut down due to NSL charges or threats thereof.^{lii} In one case, an award-winning journalist was dismissed following high-profile media attacks from the pro-establishment camp for her reporting work. Her former colleagues faced who had worked for Apple Daily, Citizen News, and other outlets deemed pro-democracy faced similar challenges. Many veteran journalists have given up on seeking formal employment in the journalism industry, she said.^{liii}

Since the 2019/2020 protests, there have been multiple incidents of police violence directed at journalists and multiple journalists (including student reporters) have been arrested.^{liv} In 2021, Hong Kong made its debut on the Committee to Protect Journalists’ annual “prison census,” going from zero to eight journalists behind bars in one year.^{lv}

The rising tension between law enforcement and the press means that many journalists in Hong Kong face new obstacles in their day-to day jobs. The 2021 Annual Report of the Hong Kong Journalists Association highlighted Article 43 of the NSL. This provision gives the police special powers “to require persons in possession of information or material” relevant to a national security investigation “to answer questions or furnish such information or produce such material.”^{lvi} This provision deepens the power imbalance between the state and the press—it increases the investigative powers of the state by giving the authorities further power to access privileged information, while simultaneously diminishing the powers and protection of independent journalism.

In a poll run by the Foreign Correspondents’ Club in Hong Kong in November 2021, some 46% of Hong Kong-based respondents said they were contemplating leaving Hong Kong due to “a decline in press freedom.”^{lvii} The domino effect of media closures and arrests in Hong Kong has stoked fear among independent media.

In particular, the government's actions taken against Apple Daily (such as the crackdown and prosecution of Apple Daily's former senior management personnel, editors, and writers), and the newspaper's subsequent closure, confirm that repression of dissent and erosion of press freedom in Hong Kong continue to increase to unprecedented levels in the territory.^{lviii} The case of Stand News also made prominent headlines—over 200 police officers from the Police's National Security Department raided the office of the independent news outlet at 6:00 am on a Wednesday and searched the homes of former and current staff.^{lix} Senior Editor Chan Long-sing, who also headed the Hong Kong Journalists Association, was one of the seven people arrested over sedition charges.^{lx} Stand News removed seven-years' worth of online digital content within the same day. Police officers reportedly stopped the staff from filming the raid, which is inconsistent with best practices of transparency and due process.

Publications. In addition, the five members of the General Union of Hong Kong Speech Therapists (which published a set of children's books last year depicting anti-government activism in Hong Kong) were arrested in July 2021 under the NSL, and two of the members were denied bail.^{lxi} The Hong Kong government claims that the books contained seditious information with the intent of instilling hatred of the government in children.^{lxii} The latest Hong Kong Book Fair in July 2021 saw far fewer controversial titles as sellers and publishers shunned politically sensitive titles after the implementation NSL, wanting to "stay out of trouble."^{lxiii} Not only are new publications being censored, but Hong Kong's public libraries pulled nine books about democracy off the shelves in May citing the NSL,^{lxiv} and removed at least 29 titles related to the Tiananmen Square incident by November 2021.^{lxv}

The Committee noted in its Concluding Observations that even in 2013, there had been a deterioration in media and academic freedom, including arrests, assaults, and harassment of journalists and academics. Nearly ten years later, media and academic freedom has deteriorated even further.

Conclusion and Recommendation:

We recommend that the Committee urge the State Party to take vigorous measures to remove any direct or indirect restrictions on freedom of expression (in particular for media and academia) that are incompatible with its obligations under the Covenant. In addition, we recommend that the Committee ask the State Party to deliver effective steps to (i) preserve freedom of expression for individuals (including, but not limited to, clarifying the broad terms in the NSL and specifying which advocacy statements may be categorized as "provoking hatred" or "seriously interfering in, disrupting, or undermining" government activity), (ii) release the individuals that have been arrested or detained for peaceful protest, (iii) preserve and strengthen academic freedom pursuant to Article 137 of the Basic Law, (iv) cease to censor the arts, (v) release the members of the media who have been arrested in violation of their rights to the freedom of expression and terminate its targeting and intimidation of independent media, and (vi) reverse the censorship of books and authors.

IV. Right of Peaceful Assembly (Articles 7, 9, 10, 19, and 21)

In the latter half of 2019, Hong Kong experienced protests on a scale not seen since the 1960s. According to credible reports by local and international human rights organisations,^{lxvi} as well as the United Nations Office of the High Commissioner for Human Rights,^{lxvii} police responded to the protests with indiscriminate and excessive force resulting in human rights violations, including restrictions on the right to peaceful assembly, arbitrary arrest, and injuries, some amounting to ill-treatment. Defying the UN's early and urgent call for restraint, the Hong Kong Police Force (the "*Police*") continued to use anti-riot weapons against protestors which are "prohibited by international norms and standards," in acts of violations of human rights.^{lxviii} Officials were seen firing tear gas canisters into crowded and enclosed areas, as well as at individual protestors, on multiple occasions. Water cannons were used with water that contained chemical irritants. Threats of live rounds against protestors also became reality when an unarmed student protestor was shot in close range in November 2019.^{lxix} The government has rejected a call for an independent commission of inquiry into the policing of the protests, despite widespread public support for such an independent commission.^{lxx} As a result, the police continue to act with impunity.

Police play a crucial role in upholding the rule of law. Where they are seen to break the law without accountability, including by the disproportionate use of force, it undermines public confidence and trust in the police and the overall rule of law. It is therefore fundamentally important that the Police not only abide by international standards for the policing of assemblies and the use of force, but that the Police are also held accountable where they do not, and that victims of police violence receive adequate redress.

In the HKSAR, however, there is no independent mechanism which could investigate complaints against the Police or assist victims to access reparations (including compensation) in cases of torture or ill-treatment and abuse of power amounting to acts of serious acts of brutality. In the absence of investigations of the Police, victims have few options available to access justice other than bringing civil lawsuits. In addition, the government has refused widespread calls for the establishment of an independent commission of inquiry to look into the policing of the protests. Under these circumstances, there is a real risk that police violence, including in response to protests (current and future) will continue unabated. This also presents a severe challenge for the success of any independent inquiry to be carried out on what has taken place in the HKSAR when victims cannot rely on the state for the collection and preservation of evidence. The appointment of the former chief of the Police, Chris Tang, to the position of Secretary of Security, and the promotion of John Lee (formerly Secretary of Security) to Chief Secretary (2nd to the Chief Executive) on 25 June 2021 suggests the current crack-down on activists will not only continue, but intensify, making domestic mechanisms even less likely to hold police officers to account. Soon after his appointment the new police chief, Raymond Siu Chak-ye, announced that the negative public image of the Police was due to "fake news" (and so presumably not due to the violations they had perpetrated). The Police seem to enjoy a blanket of impunity that is difficult to challenge domestically.

To date, no officers have been investigated or held to account for their actions. In its 2013 Concluding Observations, the Committee noted its concern that the Independent Police Complaints Council (the "*IPCC*") has only advisory and oversight functions to monitor and review the activities of the Complaints Against Police Office (which is run by the Police itself), and that the members of the IPCC are appointed by the Chief Executive.^{lxxi} The Committee urged the State Party take necessary measures to "establish a fully independent mechanism mandated to conduct independent, proper, and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints."^{lxxii} The IPCC is not seen as being truly independent from the government, nor does it have the powers required to investigate police abuses effectively.^{lxxiii} The State Response to

the List of Issues notes that the IPCC published a report in May 2020 called the “*Thematic Study Report on the Public Order Events arising from the Fugitive Offenders Bill since June 2019 and the Police Actions in Response*.”^{lxxiv} This report was widely perceived as one-sided and characterised police excessive use of force as a perception issue. Amnesty International called the report, “impotent and biased.”^{lxxv} In June 2021, the newly appointed chair of the IPCC, Priscilla Wong, rather than address the shortcomings of the council, instead emphasised that they would protect police from “false claims.”^{lxxvi}

The Police have increasingly refused to grant letters of no objection for assemblies,^{lxxvii} thus criminalizing anyone who subsequently exercises their right to peaceful assembly. Where permission has been granted, a worrying pattern has emerged where permission for the assembly is withdrawn during the event and mass arrests subsequently take place. As noted in a previous section hereto, as of July 2021, 10,265 people had been arrested relating to these events, of which 2,684 had been charged, with 1,173 cases ongoing as of the end of July 2021. Of those, approximately 883 people have been convicted with offences ranging from unlawful assembly to organizing unlawful anti-Government protests.^{lxxviii} Many of those who were arrested were charged with “participating in a riot,” an offence that carries a maximum sentence of ten years imprisonment. In 2021, numerous people were brought up on charges related to the protests and other politically charged offenses under the city’s still-new NSL.^{lxxix}

Since the start of the COVID-19 pandemic, the Police have unequally applied social distancing regulations set forth by the government in order to prevent activists and organizations protesting in public spaces. The enforcement of these regulations has largely focused on small scale, spontaneous or semi-structured gatherings to mark key dates related to the Protests. They were also used to prevent the annual 4 June Tiananmen commemoration vigils in 2020 and 2021, as well as the 1 July protest march in 2020. Restrictions against more than four individuals meeting outside have been maintained despite the lifting of other restrictions that allow larger groups to gather indoors, which pose a greater health risk. With no public demonstrations permitted to proceed by the Police, mass arrests for “unauthorized” assemblies regularly occur. The combined approach of restrictive administrative measures and punitive consequences has led to the result where protesting freely and safely has not been possible in the HKSAR for over two years now.^{lxxx} According to specific guidance from the UN Special Rapporteur on Freedom of Peaceful Assembly and of Association, State Parties must still respect the freedom of assembly and association during Covid-19, and the public health emergency may not be used as a pretext for rights infringements.^{lxxxi}

Conclusion and Recommendation:

We strongly urge the Committee to recommend that the State Party establish an independent mechanism mandated to conduct independent, proper and effective investigation into complaints about inappropriate use of force or other abuses of power to investigate and hold the Police to account for their excessive use of force against protests, both during the Protests and in any future protests that may occur. We request that the Committee ask the State Party to set forth the steps necessary to accomplish the foregoing.

V. Freedom of Association (Article 22)

Over 50 civil society organizations, NGOs, professional guilds, and unions have been disbanded since 2021, one of which had been active for 59 years.^{lxxxii} Organizations focused on a wide range of important social concerns, from student activities to community welfare, legal studies, promoting religious freedom, citizen media, and prisoners' rights, have been targeted by the HKSAR government in the almost two years since the passage of the NSL.^{lxxxiii} The implementation and enforcement of the NSL has had a significant chilling effect on civil society, and the future of Hong Kong's once-thriving civil society is at a critical junction. Respect for an individual's freedom of association is crucial to the functioning of a strong civil society.

Civil society organizations that had once hoped to work together with the HKSAR government to improve the human rights situation in their city have now been sidelined, silenced, threatened with criminal charges, and/or had staff or supporters detained, charged and face criminal charges.^{lxxxiv} For example, the government continues to investigate the Hong Kong Alliance and Civil Human Rights Front while the Chair and Vice-Chair of the Hong Kong Alliance remain imprisoned. A number of legal and civil society organizations, including Civil Rights Observer (a renowned Hong Kong human rights organization) and the Progressive Lawyer's Group ("PLG") have disbanded. PLG disbanded in June 2021 after the members of the group conducted a risk assessment and concluded that it should disband in light of the way the NSL was being enforced. In connection with PLG's disbandment, PLG deleted its website and social media presence in order to minimize any legal liabilities that such internet presence might create for PLG and its members.

A sampling of other disbanded civil society groups follows:

- **612 Humanitarian Relief Fund:** The 612 Humanitarian Relief Fund, a crowd-sourced treasury born out of the early days of demonstrations against the proposed extradition bill 2019, was short-lived. The group primarily provided legal, medical, psychological, and emergency financial assistance to persons who were injured, arrested, attacked, or threatened with violence during the Protests. A series of investigations into the fund by pro-Beijing lawmakers, pressure from the authorities to reveal personal information about its thousands of supporters,^{lxxxv} and criticism by government-supported media organizations such as People's Daily (Hong Kong), caused the organization to disband after just two years. In May 2022, Police arrested prominent barrister Margaret Ng, Cardinal Joseph Zen, and singer-activist Denise Ho in connection with their positions as trustees of the 612 Humanitarian Relief Fund, on suspicion of colluding with foreign forces.^{lxxxvi}
- **Civil Human Rights Front ("CHRF"):** The practice by government officials and law enforcement officers of making assertions in state-supported media that civic groups are breaking the law has become widespread in the HKSAR in recent years.^{lxxxvii} On 13 August 2021, Raymond Siu Chak-ye, Hong Kong Commissioner of Police, gave an exclusive interview to the state-backed newspaper Ta Kung Pao stating that CHRF, the organization that has historically applied for permits from the Police for the annual 1 July demonstration and other peaceful demonstrations, had potentially violated the NSL.^{lxxxviii} The group disbanded on the same day, citing "*unprecedented challenges*" faced by civil society.^{lxxxix}
- **Amnesty International Hong Kong:** Even organizations with international ties have left the HKSAR. Amnesty International's Hong Kong office has shut down. Anjhula Mya Singh Bais, chair of Amnesty International's International Board of Directors, commented that the NSL made it "*effectively impossible for human rights organizations in Hong Kong to work freely and without fear of serious reprisals from the government.*"^{xc}

In a mini survey run by Hong Kong Project Resilience in August 2021, 50 civil society participants submitted responses regarding the impact of the NSL on their lives:^{xc}

- 65% reported that “*they themselves or their organizations have been subject to various kinds of political disruption.*”
- 46% reported attacks from pro-government media. 9 experienced phone harassment, 8 were followed, and 8 were interrogated.
- 10% had members of their organizations arrested.

Conclusion and Recommendation:

In light of the above, we recommend that the Committee ask the State Party to identify and take steps to rebuild the HKSAR’s once-thriving civil society by (i) refraining from directly or indirectly forcing the disbandment of organizations due to fear of reprisal by the government, (ii) cease harassment of individuals on the basis of association and their involvement with civil society organizations, and (iii) release those previously arrested in violation of their rights to freedom of association.

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

The call for democratic reforms and universal suffrage has remained a consistent theme throughout the HKSAR's modern history, predating the British handover to the People's Republic of China. By the summer of 2019, "true universal suffrage" remained one of the five main demands throughout the Protests.

However, over the last few years, the Hong Kong people's ability to exercise their civil and political rights have been further restricted, rather than expanded as promised, via changes to the HKSAR's policies and procedures, created without the participation of Hong Kong residents. Electoral changes have been made in a closed and opaque manner, with a view to reduce people's representation in government, both qualitatively and quantitatively, as shown in the enactment process and substance of the electoral reforms, and in the data and election results since 2019.^{xcii} The three main problems with the current state of the electoral system are set forth as follows: (i) undemocratic electoral reforms made by the HKSAR government which have resulted in disproportionately skewed voting powers, (ii) suppressing voter representation by reducing the percentage of LegCo seats that may be elected by the Hong Kong people, and (iii) restricting eligibility for potential candidates by deciding which candidates may run for office, thereby reducing choice of representatives for voters. We elaborate on each of these three points below.

Undemocratic electoral reforms. Hong Kong's political system has always been structured such that the powers of separate, yet often overlapping, classes of constituencies yield unequal levels of participation in government. Since the third periodic report, progress has not been made and the electoral system has regressed in terms of equal representation. Instead of moving towards equalizing voting powers and empowering the general constituency, the State Party, via the NPCSC and the Hong Kong government, invented more privileged electorates with "super" voting power and pro-Beijing tendencies.^{xciii} The post-reform LegCo election in 2021 showed that due to the ability of individuals to participate and belong to multiple constituencies, at least 41 individuals were eligible to place four votes each (as opposed to the single vote that most Hong Kong people were allowed), allowing them to decide 1.47% of the seats for a city of 7.69 million people. Therefore, one vote from each of these 41 individuals in actuality equaled the voting power of 7,215 civilian voters.^{xciv}

Suppressing voter representation. The immediate effect of the political reform brought forth by the NPCSC is a significant suppression of Hong Kong people's representation in government. Seats from direct votes by civilians dropped from 50% in 2016 to 22% in 2021, a percentage of seats that would yield no real power in the city's lawmaking body.^{xcv} The impact of such political reform on Hong Kong people's rights pursuant to Article 25 of the ICCPR is quantifiable. Specifically, the newly-created Election Committee Constituency was a further departure from and contrary to broad representation: the smallest electoral college was allocated the most seats. The resultant composition was that a special class of 1,500 individuals in the Election Committee Constituency, vetted by the NPCSC, elected 40 lawmakers, when the 4,472,863 eligible voters were allowed to pick 20.^{xcvi} Since the votes are unevenly weighted among three constituencies, the ballot of the Functional Constituency and the Election Committee Constituency engendered inequality. The fact that over 4.5 million voters were only able to claim 20 seats (out of 90) in LegCo is in diametric opposition to the Covenant-protected rights of the individual to participate in government. Meanwhile, NPCSC-approved members of the Functional Constituency and the Election Committee Constituency were empowered to elect most of the seats (70 out of 90) under the new system. The votes in the two special constituencies are virtually inaccessible to the vast majority of Hong Kong voters. This contravenes the Article 25 right safeguarded in the Covenant which states that every citizen has the right:

"(a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free

expression of the will of the electors; (c) to have access, on general terms of equality, to public service in his country.”^{xcvii}

Restricted candidate eligibility. Even within the 20 seats to be decided by civilian voters, the choice is not free. Arbitrary disqualifications of opposition candidates and lawmakers have increased, in contravention of the object and purpose of the Covenant’s provisions, in particular Article 25(c), guaranteeing the right to “*have access, on general terms of equality, to public service in his country.*” The unfairness was evident in both the process and the criteria of the disqualifications, including but not limited to the requirement of oath-taking or pledges of allegiance. On 25 July 2020, a Saturday, opposition candidates in the LegCo election received emails from the election’s Returning Officers, imposing a deadline for a response by Sunday. In November 2020, the Hong Kong government disqualified four elected LegCo members: Alvin Yeung, Dennis Kwok, Kwok Ka-ki, and Kenneth Leung^{xcviii} “in accordance with” Beijing’s decision by the NPCSC, a state-level committee outside of Hong Kong’s electoral system where the eligible voters of Hong Kong had no meaningful representation.^{xcix}

In view of the three obstacles above, by the time of the 2021 LegCo general election, opposition candidates were practically absent. As a result, the election recorded the lowest voters’ turnout since 1991, at 30.2%. After the 2021 election, only one LegCo member identified as non-establishment, working with 89 pro-establishment lawmakers; the ratio in the 2016 election was 30 seats for pan democrats and localists (anti-establishment), and 40 for pro-establishment lawmakers.^c

Hong Kong’s new “patriot-only” election was extremely effective in silencing dissent. By placing a test of “patriotism” (requiring “loving... the leadership of the Chinese Communist Party”),^{ci} the State Party and the Hong Kong administration divided the candidates into two political camps: the pro-establishment camp (members of which were free to run in elections) and those in opposition (who were denied the right to run). The Hong Kong people’s right to elect candidates on the pro-democracy end of the political spectrum was also effectively removed. This is incompatible with the “One Country, Two Systems” design, as well as Articles 25 and 26 of the Covenant.

Conclusion and Recommendation:

We recommend that the Committee urge the State Party to cease creating distinctions in candidate eligibility by political and ideological differences and embedding special and narrow classes of constituencies with extra voting power while suppressing voter representation of the general public. Furthermore, we strongly urge the State Party to provide a clear and detailed plan as to how universal and equal suffrage might be instituted, such that all citizens shall enjoy an equal right to vote and freedom of choice for those candidates who choose to run in elections.

VII. Conclusions and Recommendations

We submit that the HKSAR has failed to deliver its promise to retain civil and political rights safeguards in Hong Kong that enable it to adhere to its obligations under the Covenant. The rapid pivot away from a free and open society and rising incompatibility with international standards of human rights protection deeply impacted peoples' lives in the short space of three years.

Therefore, to summarize, we make the following recommendations:

Laws on National Security. We request that the Committee ask the HKSAR government to clarify whether its intent is to prioritize the NSL where local laws are inconsistent with the NSL (including wherein the local laws incorporate the provisions of the Covenant). In addition, in light of the last sentence in paragraph 10 of the State Response to the List of Issues (stating that, “*Indeed, many rights and freedoms recognised by the ICCPR are not absolute. For instance, the rights and freedoms under Articles 12, 13, 14, 17, 19, 21, and 22 of the ICCPR may be restricted for the protection of national security and/or public order (ordre public).*”), we would like the Committee to request that the HKSAR government clarify its interpretation of terms and phrases such as “national security” and “public order,” and its understanding of how such restrictions may be justified in Hong Kong. Furthermore, we urge the Committee to ask the HKSAR government to provide concrete steps that it plans to take to respect the rights that they are obligated to uphold under the Covenant while acting pursuant to the NSL.

Access to Justice, Independence of the Judiciary, and the Right to a Fair Trial. We recommend that the Committee urge the State Party to respect and strengthen Hong Kong's judicial independence pursuant to Article 85 of the Basic Law, and to ensure the protection of the rights enumerated in the Covenant, the entirety of which are reflected in Article 39 of the Basic Law. We also request that the Committee ask the State Party to provide concrete steps that it plans to take in order to (i) ensure that each individual arrested during the Protests receives adequate and proper representation from a criminal legal aid attorney, (ii) ensure that each defendant suffering from prolonged detention is released and/or stands trial as soon as possible, (iii) increase transparency by identifying a clear set of selection criteria for the appointment of NSL judges, and (iv) strengthen Hong Kong's judicial independence in light of the growing pressure the passage and implementation of the NSL has placed on the judiciary.

Freedom of Expression. We recommend that the Committee urge the State Party to take vigorous measures to remove any direct or indirect restrictions on freedom of expression (in particular for media and academia) that are incompatible with its obligations under the Covenant. In addition, we recommend that the Committee ask the State Party to deliver effective steps to (i) preserve freedom of expression for individuals (including, but not limited to, clarifying the broad terms in the NSL and specifying which advocacy statements may be categorized as “provoking hatred” or “seriously interfering in, disrupting, or undermining” government activity), (ii) release the individuals that have been arrested or detained for peaceful protest, (iii) preserve and strengthen academic freedom, (iv) cease to censor the arts, (v) release the members of the media who have been arrested in violation of their rights to the freedom of expression and terminate its targeting and intimidation of independent media, and (vi) reverse the censorship of books and authors.

Right of Peaceful Assembly. We strongly urge the Committee to recommend that the State Party establish an independent mechanism mandated to conduct independent, proper, and effective investigation into complaints about inappropriate use of force or other abuses of power to investigate and hold the Police to account for their excessive use of force against protests, both during the Protests and in any future protests that may occur. We request that the Committee ask the State Party to set forth the steps necessary to accomplish the foregoing.

Freedom of Association. We recommend that the Committee ask the State Party to identify and take steps to rebuild the HKSAR's once-thriving civil society by (i) refraining from directly or indirectly forcing the disbandment of organizations due to fear of reprisal by the government, (ii) cease harassment of individuals on the basis of association and their involvement with civil society organizations, and (iii) release those previously arrested in violation of their rights to freedom of association.

Participation in Public Affairs. We recommend that the Committee urge the State Party to cease creating distinctions in candidate eligibility by political and ideological differences and embedding special and narrow classes of constituencies with extra voting power while suppressing voter representation of the general public. Furthermore, we strongly urge the State Party to provide a clear and detailed plan as to how universal and equal suffrage might be instituted, such that all citizens shall enjoy an equal right to vote and freedom of choice for those candidates who choose to run in elections.

ENDNOTES:

- ⁱ Please note that our concerns include, but are not limited to, the issues discussed in this submission.
- ⁱⁱ 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, China-U.K., Dec. 19, 1984, 1399 U.N.T.S. 33
- ⁱⁱⁱ State's Report, UN Doc. CCPR/C/CHN-HKG/4, para. 4. See further *infra* Sec. III.
- ^{iv} State Response to the List of Issues, UN Doc. CCPR/C/CHN-HKG/RQ/4, para. 24.
- ^v UK Parliament, *Hong Kong: National Security Law and recent events*, (20 September 2021), <https://commonslibrary.parliament.uk/research-briefings/cbp-9318/>
- ^{vi} ChinaFile, *Tracking the Impact of the Hong Kong's National Security Law*, (5 April 2022), <https://www.chinafile.com/individuals-arrested-under-hong-kong-national-security-law-or-national-security-department>
- ^{vii} ChinaFile, *Arrest Data Show National Security Law Has Dealt a Hard Blow to Free Expression in Hong Kong*, (5 April 2022), <https://www.chinafile.com/reporting-opinion/features/arrest-data-show-national-security-law-has-dealt-hard-blow-free>
- ^{viii} *Id.*
- ^{ix} State Response to the List of Issues, UN Doc. CCPR/C/CHN-HKG/RQ/4, para. 9.
- ^x The Government of the HKSAR, *National Security Law in line with international practice of safeguarding national security*, <https://www.info.gov.hk/gia/general/202110/13/P2021101300754.htm>
- ^{xi} See *HKSAR v. Lai Chee Ying (2021) HKCFA 3*, where Article 62 of the NSL was upheld in the Court of Final Appeal (the “CFA”) providing that the NSL “shall prevail” where local laws are “inconsistent” with the NSL. In the cited case, the defendant was denied bail as a result of the way the CFA construed Articles 41 and 42 of the NSL, even though he would have otherwise been afforded the right to bail under local laws.
- ^{xii} See *Tae Hoon Park v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/628/1995, which states that: “The Committee observes that the State party by becoming a party to the Covenant, has undertaken pursuant to article 2, to respect and to ensure all rights recognized therein. It has also undertaken to adopt such legislative or other measures as may be necessary to give effect to these rights. The Committee finds it incompatible with the Covenant that the State party has given priority to the application of its national law over its obligations under the Covenant. In this context, the Committee notes that the State party has not made the declaration under article 4(3) of the Covenant that a public emergency existed and that it derogated certain Covenant rights on this basis.”
- ^{xiii} *General Comment No. 34*, Human Rights Committee, International Covenant on Civil and Political Rights, UN Doc. CCPR/C/GC/34
- ^{xiv} *Id.*
- ^{xv} See *The Tong Ying-Kit NSL Verdict: An International and Comparative Law Analysis*, Thomas E. Kellogg & Eric Yan-Ho Lai, Georgetown Center for Asian Law, (20 October 2021), which states: “In a way, the High Court’s verdict is difficult to parse: it simply ignored virtually all of the human rights protections in Hong Kong law... At the same time, the court also completely ignored all international human rights covenants to which Hong Kong is a party, and all comparative jurisprudence seeking to balance national security and human rights concerns, including the authoritative UNHRC commentaries and well-known case law cited above.”
- ^{xvi} UN News, *Hong Kong: Arrests under security law are serious concern*, (12 October 2021), <https://news.un.org/en/story/2021/10/1102882>
- ^{xvii} Yash P. Ghai, *Hong Kong’s New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law 305* (2nd ed. 1999).
- ^{xviii} State's Report, UN Doc. CCPR/C/CHN-HKG/4, para. 9.
- ^{xix} Human Rights Watch, *Dismantling a Free Society: Hong Kong One Year after the National Security Law*, (25 June 2021), <https://www.hrw.org/feature/2021/06/25/dismantling-free-society/hong-kong-one-year-after-national-security-law>
- ^{xx} Hong Kong Headline Daily, *Over 10,000 people arrested over anti-extradition bill protests, 2,684 arrested & 40% students*, (29 September 2021), <https://hd.stheadline.com/news/realtime/hk/2243887/>
- ^{xxi} HKTDC, *Legal Services Industry in Hong Kong*, (20 May 2021), <https://research.hktdc.com/en/article/MzEzODc5NTk5>
- ^{xxii} *International Covenant on Civil and Political Rights*, General Assembly Resolution 2200A (XXI), (16 December 1966)
- ^{xxiii} *Number of people in custody in facilities managed by the Hong Kong Correctional Services Department*, (31 December 2021), <https://webb-site.com/dbpub/jail.asp>
- ^{xxiv} In July 2020, then Chief Justice Geoffrey Ma cited Article 92 of the Basic Law and the Chief Executive’s remarks that NSL-designated judges were “to be appointed on the basis of their judicial and professional qualities” in line with standard practice of other judicial appointments in Hong Kong, assuring the public that these qualities should be “the only criteria relevant to the appointment of judges”. This was immediately countered by Tian Feilong, Director of the Chinese Association of Hong Kong and Macau Studies, a political think tank under the Hong Kong and Macau Affairs Office of the State Council of China. Tian said that merit was not the “only” criterion, and NSL judges should swear to uphold the Basic Law and swear allegiance to the HKSAR pursuant to Article 104 of the Basic Law, thus foreign judges would not be on equal footing as Chinese judges in Hong Kong.
- ^{xxv} Oriental Daily, *Legal sector and academics criticized the NSL judge selection rules, concerned about public confidence*, (23 December 2020), https://hk.on.cc/hk/bkn/cnt/news/20201223/bkn-20201223201758720-1223_00822_001.html
- ^{xxvi} State Response to the List of Issues, UN Doc. CCPR/C/CHN-HKG/RQ/4, para. 17.
- ^{xxvii} Lydia Wong & Thomas E. Kellogg, *Hong Kong’s National Security Law: A Human Rights and Rule of Law Analysis*, (February 2021), pg. 25, <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/02/GT-HK-Report-Accessible.pdf>
- ^{xxviii} *Id.*
- ^{xxix} See, generally Human Rights Watch, *Why China’s ‘diplomatic assurances’ are not to be trusted* (April 21, 2022); Leitner Center for International Law and Justice and the Committee to Support Chinese Lawyers, *Plight and Prospects: The Landscape for Cause Lawyers in China* (2015); New York City Bar Association, *City Bar Decries Continued Persecution of Lawyers in China* (July 8, 2020).
- ^{xxx} Lydia Wong & Thomas E. Kellogg, *Hong Kong’s National Security Law: A Human Rights and Rule of Law Analysis*, (February 2021), pg. 25, <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/02/GT-HK-Report-Accessible.pdf>
- ^{xxxi} *The Supreme Court of the United Kingdom, Role of UK judges on the Hong Kong Court of Final Appeal – update*, (30 March 2022), <https://www.supremecourt.uk/news/role-of-uk-judges-on-the-hong-kong-court-of-final-appeal-update-march-2022.html>
- ^{xxxii} Basic Law - Chapter IV – Article 85 (EN), <https://www.basiclegal.gov.hk/en/basiclaw/chapter4.html>
- ^{xxxiii} Basic Law - Chapter III – Article 39 (EN), <https://www.basiclegal.gov.hk/en/basiclaw/chapter3.html>

- ^{xxxiv} Hong Kong Free Press, *Over 20 police deploy to arrest man for alleged 'sedition' over Hong Kong protest flag outside window*, (22 June 2021), <https://hongkongfp.com/2021/06/22/over-20-police-deploy-to-arrest-man-for-alleged-sedition-over-hong-kong-protest-flag-outside-window/>
- ^{xxxv} A man was apprehended by several policemen, handcuffed and taken away for shouting the same protest chant in public without acts of violence in February 2021.
- ^{xxxvi} Business and Human Rights Resources Centre, *Hong Kong: Marathon runners targeted by police over "political attire"; Organiser Standard Chartered declines to comment*, (26 October 2021), <https://www.business-humanrights.org/en/latest-news/hong-kong-marathon-runners-targeted-by-police-over-political-attire-organiser-standard-chartered-declines-to-comment/>
- ^{xxxvii} Ming Pao, *Voters must cover up "add oil Hong Kong" signs on clothing before entering voting stations*, (08 December 2021), <https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20211208/s00001/1638900684409/%E8%BA%AB%E6%9C%89%E3%80%8C%E9%A6%99%E6%B8%AF%E5%8A%A0%E6%B2%B9%E3%80%8D%E6%A8%99%E8%AA%9E-%E9%80%B2%E7%A5%A8%E7%AB%99%E9%A0%88%E9%81%AE%E8%93%8B>
- ^{xxxviii} AM730, *Participants of swimming and biking event forbidden from displaying political statements including "Hong Kong add oil"*, (17 November 2021), <https://www.am730.com.hk/news/%E6%96%B0%E8%81%9E%E7%B6%AD%E6%B8%AF%E6%B3%B3%E5%96%AE%E8%BB%8A%E7%AF%80%E5%BE%A9%E8%BE%A6%E3%80%80%E9%81%B8%E6%89%8B%E7%A6%81%E5%B1%95%E7%A4%BA%E3%80%8C%E9%A6%99%E6%B8%AF%E5%8A%A0%E6%B2%B9%E3%80%8D%E7%AD%89%E6%94%BF%E6%B2%BB%E6%A8%99%E8%AA%9E-293393>
- ^{xxxix} Wind and Mac Media, *Sake labeled "Hongkonger" banned at Christmas fair*, (December 2021), <https://www.winandmac.com/2021/12/hong-konger-is-censored-in-hongkong/>
- ^{xl} Now News, *Chris Tang: Boycotting businesses for political reasons could be in violation of the National Security Law*, (15 September 2021), <https://news.now.com/home/local/player?newsId=449920>
- ^{xli} Education International, *Global index finds most countries do not respect academic freedom and shows signs of decline*, (14 April 2021), <https://www.ei-ie.org/en/item/24856:global-index-finds-most-countries-do-not-respect-academic-freedom-and-shows-signs-of-decline>
- ^{xlii} The Economist, *Academics in Hong Kong suffer curbs on their freedoms*, (21 July 2021), <https://www.economist.com/china/2021/07/21/academics-in-hong-kong-suffer-curbs-on-their-freedoms>
- ^{xliii} Hong Kong Free Press, *Hong Kong's Lingnan University sacks two adjunct associate professors critical of gov't*, (01 October 2021), <https://hongkongfp.com/2021/10/01/hong-kongs-lingnan-university-sacks-two-adjunct-associate-professors-critical-of-govt/>
- ^{xliiv} Reuters, *Hong Kong passes film censorship law to 'safeguard national security'*, (27 October 2021), <https://www.reuters.com/business/media-telecom/hong-kong-passes-film-censorship-law-safeguard-national-security-2021-10-27/>
- ^{xli v} The Hollywood Reporter, *Hong Kong Film Festival's Opening Movie Canceled Due to Suspected Censorship*, (29 March 2021), <https://www.hollywoodreporter.com/movies/movie-news/hong-kong-film-festivals-opening-movie-canceled-due-to-suspected-censorship-4158045/>
- ^{xli vi} Hong Kong Free Press, *Hong Kong campus protest documentary screening cancelled hours before showing following attack by pro-Beijing paper*, (15 March 2021), <https://hongkongfp.com/2021/03/15/hong-kong-campus-protest-documentary-screening-cancelled-hours-before-showing-following-attack-by-pro-beijing-paper/>
- ^{xli vii} Hong Kong Free Press, *Oscars won't show in Hong Kong for first time since 1969 as state media rails against protest film nomination*, (29 March 2021), <https://hongkongfp.com/2021/03/29/oscar-wont-show-in-hong-kong-for-first-time-since-1969-as-state-media-rails-against-protest-film-nomination/>
- ^{xli viii} Once a strong-hold for journalistic quality and impartiality, the public broadcaster's growing censorship under new management was documented by veteran RTHK presenter of 35 years, Steve Vines, who came to find red lines everywhere from the planning stage to the filming stage, sometimes even cuts "minutes" before air. See South China Morning Post, *I covered Hong Kong for decades. Now I am forced to flee China's 'white terror'*, (28 July 2021), <https://www.scmp.com/news/hong-kong/politics/article/3139022/hong-kong-police-deny-groups-application-july-1-rally>
- ^{xli ix} 100 Most TV, *Interview with former Headliner host Ng Chi-sum*, (23 May 2020), <https://www.facebook.com/watch/?v=1305646929825427>
- ^l *Radio Television Hong Kong Programme Staff Union and Another v. Communications Authority* (25/11/2021, HCAL1685/2020) [2021] 5 HKLRD 509, [2021] HKCFI 3497
- ^{li} Reporters Without Borders, *Hong Kong*, <https://rsf.org/en/country/hong-kong>
- ^{lii} Bloomberg, *How Xi's China Put 1,000-Plus Hong Kong Journalists Out of Work*, (19 January 2022),
- ^{liii} Interview with former Hong Kong Journalist under conditions of anonymity, (21 April 2022)
- ^{li iv} Committee to Protect Journalists, *Hong Kong police fire pepper spray, arrest 2 journalists covering protests*, (4 November 2019), <https://cpj.org/2019/11/hong-kong-police-fire-pepper-spray-arrest-2-journa/>
- ^{li v} Committee to Protect Journalists, *'Taken into a cage': Hong Kong's sad media milestone*, (8 December 2021), <https://cpj.org/2021/12/hong-kongs-sad-media-milestone/>
- ^{li vi} Hong Kong Journalists Association, *Freedom in Tatters: 2021 Annual Report*, (2021), https://www.hkja.org.hk/wp-content/uploads/2021/07/HKJA_AR2021_eng_outline_single-1.pdf
- ^{li vii} Bloomberg, *Nearly Half of Hong Kong's Reporters Considering Leaving, Survey Finds*, (4 November 2021), <https://www.bloomberg.com/news/articles/2021-11-05/nearly-half-of-hong-kong-s-reporters-mulling-exit-survey-finds>
- ^{li viii} New York Times, *'Forbidden Fruit': Apple Daily, Pro-Democracy Newspaper in Hong Kong, is Forced to Close*, (4 July 2021), <https://www.nytimes.com/2021/06/23/world/asia/apple-daily-hong-kong.html>
- ^{li x} New York Times, *Hong Kong Police Raid Office of Pro-Democracy News Site and Arrest 7*, (30 December 2021), <https://www.nytimes.com/2021/12/29/world/asia/hong-kong-stand-news-arrest.html>
- ^{li x} RTHK, *Stand News folds, seven arrested in NSL probe*, (29 December 2021), <https://news.rthk.hk/rthk/en/component/k2/1626475-20211229.htm>
- ^{li xi} Hong Kong Free Press, *Hong Kong national security police explain why children's picture books about sheep are seditious*, (22 July 2021), <https://hongkongfp.com/2021/07/22/hong-kong-national-security-police-explain-why-childrens-picture-books-about-sheep-are-seditious/>
- ^{li xii} New York Times, *The Latest Target of Hong Kong's Crackdown: Children's Books*, (30 July 2021), <https://www.nytimes.com/2021/07/22/world/asia/hong-kong-children-book-arrests.html>

^{lxiii} The Guardian, *Self-censorship hits Hong Kong book fair in wake of national security law*, (15 July 2021), <https://www.theguardian.com/books/2021/jul/15/self-censorship-hits-hong-kong-book-fair-in-wake-of-national-security-law>

^{lxiv} Hong Kong Free Press, *Hong Kong pulls more democracy books from library shelves citing security law concerns*, (10 May 2021), <https://hongkongfp.com/2021/05/10/hong-kong-pulls-more-democracy-books-from-library-shelves-citing-security-law-concerns/>

^{lxv} Hong Kong Free Press, *Hong Kong public libraries purge 29 titles about the Tiananmen Massacre from the shelves*, (21 November 2021), <https://hongkongfp.com/2021/11/21/hong-kong-public-libraries-purge-29-titles-about-the-tiananmen-massacre-from-their-shelves/>

^{lxvi} Amnesty International, *Verified: Hong Kong police violence against peaceful protesters*, (21 June 2019), <https://www.amnesty.org/en/latest/news/2019/06/hong-kong-police-violence-verified/>

^{lxvii} OHCHR, *UN experts urge China to respect protesters' rights*, (12 September 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24979&LangID=E>

^{lxviii} UN News, *'Act with restraint' UN human rights chief urges Hong Kong authorities and protestors, following airport disruption*, (13 August 2019), <https://news.un.org/en/story/2019/08/1044141>

^{lxix} Washington Post, *Day of rage plunges Hong Kong into turmoil after police shoot protester*, (11 November 2019), https://www.washingtonpost.com/world/asia-pacific/day-of-rage-plunges-hong-kong-into-turmoil-after-police-shoot-at-protesters/2019/11/11/4ae92456-0443-11ea-9118-25d6bd37dfb1_story.html

^{lxx} Reuters, *Exclusive: Support for Hong Kong protesters' demands rises even as coronavirus halts rallies: poll*, (27 March 2020) <https://www.reuters.com/article/us-hongkong-protests-poll/exclusive-support-for-hong-kong-protesters-demands-rises-even-as-coronavirus-halts-rallies-poll-idUSKBN21E11L>

^{lxxi} Concluding Observations, UN Doc. CCPR/C/CHN-HKG/CO/3, para. 12.

^{lxxii} *Id.*

^{lxxiii} The Guardian, *Foreign experts quit Hong Kong police brutality inquiry over lack of powers*, (11 December 2019) <https://www.theguardian.com/world/2019/dec/11/foreign-experts-quit-hong-kong-police-brutality-inquiry-over-lack-of-powers>

^{lxxiv} State Response to the List of Issues, UN Doc. CCPR/C/CHN-HKG/RQ/4, para. 73.

^{lxxv} Amnesty International, *Hong Kong: Impotent and biased IPCC report into protests fails to bring justice any closer*, (May 2020), <https://www.amnesty.org/en/latest/news/2020/05/hong-kong-impotent-and-biased-ipcc-report-into-protests-fails-to-bring-justice-any-closer/>

^{lxxvi} Hong Kong Free Press, *New Hong Kong Police Watchdog Chief Pledges to Act Without Bias and Protect Officers*, (23 June 2021) <https://hongkongfp.com/2021/06/23/new-hong-kong-police-watchdog-chief-pledges-to-act-without-bias-and-protect-officers/>

^{lxxvii} Under the Public Order Ordinance, those organising an assembly must apply for a letter of no objection from the police. This essentially amounts to a *de facto* licensing system, and as such means that those attending an assembly without such a letter can be arrested and prosecuted for “participating in an unlawful assembly.”

^{lxxviii} https://www.hkprotestdb.com/?fbclid=IwAR1usVOnYr2wcVG7yJUvw_L9j4-iS_69-4GS9B14Bm4MZdrI4ong-75PgrY

^{lxxix} South China Morning Post, *National security law: 47 Hong Kong opposition figures charged with subversion facing potential life sentences after trial moved to High Court*, (31 May 2021), <https://www.scmp.com/news/hong-kong/law-and-crime/article/3135525/national-security-law-47-hong-kong-opposition-figures>

^{lxxx} “Nobody should be subjected to administrative or criminal sanctions for taking part in a peaceful protest, even if the regime governing protests requires an authorization”, three UN Special Rapporteurs said of the violations in May 2020. See UN News, *Hong Kong urged to drop prosecutions of leading activists, not to silence peaceful protest*, (May 2020), <https://news.un.org/en/story/2020/05/1063842>

^{lxxxi} Guidelines from the UN's Special Rapporteur on Freedom of Peaceful Assembly and of Association were readily available for Member States on the State's role in balancing people's right to peaceful assembly and public health concerns during Covid-19 in a reminder that states should stay “compliant with their human rights obligations.” See OHCHR, *Covid-19 and freedom of assembly and association*, (09 April 2020), <https://www.ohchr.org/en/statements/2020/04/states-responses-covid-19-threat-should-not-halt-freedoms-assembly-and?LangID=E&NewsID=25788>

^{lxxxii} Hong Kong Free Press, *Explainer: Over 50 groups disband – how Hong Kong's pro-democracy forces crumbled*, (28 November 2021), <https://hongkongfp.com/2021/11/28/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>

^{lxxxiii} The Stand News, *At least 58 organizations to disband by end of 2021*, (Note: the original news report is no longer accessible in the wake of the arrests of the Stand News staff on 29 December 2021 on national security charges).

^{lxxxiv} Hong Kong Free Press, *Hong Kong coalition's demos may have violated security law, says police chief, despite holding no rallies since law's enactment*, (14 August 2021), <https://hongkongfp.com/2021/08/14/hong-kong-coalitions-demos-may-have-violated-security-law-says-police-chief-despite-holding-no-rallies-since-laws-enactment/>

^{lxxxv} Hong Kong Free Press, *Hong Kong police serve court order to protester support fund for info in national security probe*, (1 September 2021), <https://hongkongfp.com/2021/09/01/hong-kong-police-serve-court-order-to-protester-support-fund-for-info-in-national-security-probe-reports/>

^{lxxxvi} Hong Kong Free Press, *Cardinal Zen, barrister Margaret Ng and 4 others deny charges over failure to register protester relief fund as society*, (24 May 2022), <https://hongkongfp.com/2022/05/24/cardinal-zen-barrister-margaret-ng-and-4-others-deny-charges-over-failure-to-register-protester-relief-fund-as-society/>

^{lxxxvii} The Atlantic, *How China weaponized the press*, (9 September 2021), <https://www.theatlantic.com/international/archive/2021/09/hong-kong-china-media-newspaper/620005/>

^{lxxxviii} Wen Wei Po, *CHRF may have violated NSL; police "big brother": enforcement could come any time*, (13 August 2021), <https://www.wenweipo.com/a/202108/13/AP6115b0e9e4b08d3407d3e3e8.html>

^{lxxxix} Hong Kong Free Press, *Organiser of mass Hong Kong demos Civil Human Rights Front disbands citing 'unprecedented challenges'*, (15 August 2021), <https://hongkongfp.com/2021/08/15/breaking-organiser-of-mass-hong-kong-demos-civil-human-rights-front-disbands-citing-unprecedented-challenges/>

^{xc} Amnesty International, *Amnesty International to close its Hong Kong offices*, (25 October 2021), <https://www.amnesty.org/en/latest/news/2021/10/amnesty-international-to-close-its-hong-kong-offices/>

^{xci} Hong Kong Project Resilience, *Newsletter – September 2021*, (September 2021), <https://mailchi.mp/740355355aea/digest202109-en?e=155b391179>

^{xcii} By the metrics of the Human Rights Measurement Initiative (“HRMI”), Hong Kong’s score for the right to participate in government was “very bad” at 2.3/10 in 2020, the second lowest among the 35 countries evaluated, recording a sharp drop from 2019 (3.6/10) and overtaken by Kazakhstan, Venezuela and Vietnam in a year’s time. It has one of the worst performances among high-income societies.

^{xciii} DW, *China endorses Hong Kong’s ‘patriots only’ election*, (22 December 2021), <https://www.dw.com/en/china-endorses-hong-kongs-patriots-only-election/a-60230437>

^{xciv} FactWire, *41 Privileged voters’ power is 7,200 times a single-vote holder’s under new LegCo electoral system*, (15 December 2021), <https://www.factwire.org/en/investigation/41-privileged-voters-power-is-7200-times-a-single-vote-holders-under-new-legco-electoral-system/langen/>

^{xcv} In 2016, 50% of the 70 seats were results of direct votes of the average civilian voter; after the reform in 2021, the percentage dropped by more than half to 22% (20 out of 90 seats). See *Composition of the Legislative Council*, https://www.legco.gov.hk/education/files/english/Exhibition_Panels_Supplementary_Notes/Composition-of-the-LegCo.pdf; See also *LegCo Today*, <https://www.legco.gov.hk/en/about-legco/legco-today.html>.

^{xcvi} *2021 LegCo Election Brief*, <https://www.elections.gov.hk/legco2021/eng/brief.html>

^{xcvii} *International Covenant on Civil and Political Rights*, General Assembly Resolution 2200A (XXI), Article 25, (16 December 1966).

^{xcviii} Of the four lawmakers, two had been remanded pending trial and one had left Hong Kong at the time of this report.

^{xcix} Hong Kong Government News, *4 lawmakers disqualified*, (11 November 2020), https://www.news.gov.hk/eng/2020/11/20201111/20201111_130632_671.html

^c In 2016, 35 seats were decided by direct votes of civilian registered voters, the majority of the votes were cast in the pro-democracy camp who won 30 seats out of 70. See *The Initium, Results of the 2016 Hong Kong LegCo election*, (04 September 2016), <https://theinitium.com/article/20160905-hongkong-legco-liveresult/>

^{ci} Wall Street Journal, *China All but Ends Hong Kong Democracy With ‘Patriots Only’ Rule*, (11 March 2021), https://www.wsj.com/articles/china-all-but-ends-hong-kong-democracy-with-patriots-only-rule-11615462663?mod=article_inline