



**HONG KONG:  
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 Chinese citizens by promoting international human rights and advancing the institutional protection of these rights in the People's Republic of China. For almost thirty years, led by Chinese and supported by a diverse board, HRIC is committed to short-, near-, and long-term work to support the activists and rights defenders in China trying to peacefully exercise fundamental rights and press for rule of law.

Since 1996, we have also maintained a presence in Hong Kong, initially as a listening and reporting post. HRIC's mission has evolved to include the protection of human rights in Hong Kong, with a focus on freedom of expression, association, and assembly.



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## I. Introduction: ICCPR Implementation Facing Steep Challenges

1. Human Rights in China (HRIC) makes this submission to the United Nations (UN) Human Rights Committee as input into its consideration and adoption of the List of Issues (LOI) in advance of review of the Hong Kong SAR government's Fourth Periodic Report. Since the submission of the Fourth Periodic Report (February 2020)<sup>1</sup>, significant and ongoing legal and policy developments have created serious obstacles and challenges to effective and meaningful progress on implementation of the ICCPR in Hong Kong. HRIC welcomes this opportunity to submit information and to highlight concerns related to recent legal and policy developments that impact adversely on rights under the ICCPR, Hong Kong's Basic Law, and Hong Kong's Bill of Rights Ordinance.<sup>2</sup>
2. The LOI submissions of civil society groups to the Committee for the next review extensively document a broad range of ongoing concerns and issues including: the lack of meaningful progress on 2013 Committee recommendations,<sup>3</sup> gender discrimination affecting rights of LGBTI persons,<sup>4</sup> rights of migrant workers and sex workers,<sup>5</sup> undermining of judicial independence, freedom of expression and peaceful assembly, systematic use of excessive force by law enforcement, arbitrary arrests,<sup>6</sup> serious election process distortions and abuses, and absence of any meaningful progress towards implementing universal suffrage.<sup>7</sup>
3. These concerning developments, trends, and ongoing pattern of rights violations reflect concerns repeatedly addressed by Committee in its prior reviews of implementation progress and follow-up procedure and unfortunately, also highlight the failure by the Hong Kong government to respond to the concrete and constructive recommendations advanced and reiterated by the Committee.<sup>8</sup>

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<sup>1</sup> *Fourth periodic report submitted by Hong Kong, China under article 40 of the Covenant, due in 2018*, United Nations Human Rights Committee, fourth review of Hong Kong under the *International Covenant on Civil and Political Rights*, CCPR/C/CHN-HKG/4 (February 14, 2020).

<sup>2</sup> Cap 383, *Hong Kong's Bill of Rights Ordinance*, <https://www.elegislation.gov.hk/hk/cap383>.

<sup>3</sup> The submission by *Sounds of the Silenced* and Human Rights Now provides updated information regarding concerns and recommendations advanced in the 2013 Concluding Observations of the Committee following its last review and responds to related sections of the Hong Kong SAR government's Fourth periodic report, including restrictions on freedom of peaceful assembly, Public Order Ordinance notification, the Hong Kong Police Force's use of excessive force; the inadequate system for police complaints and infringement of media and academic freedom, [INT CCPR ICO HKG 42030 E Sounds of the Silenced and Human Rights Now](#).

<sup>4</sup> Joint submission by 12 Hong Kong LGBTIQ+ Organisations, [INT CCPR ICO HKG 42056 E Joint Submission by 12 Hong Kong LGBTIQ+ Organisations; submission by Amnesty International, INT CCPR ICO HKG 42137 E Amnesty International](#).

<sup>5</sup> Submission by Justice Centre Hong Kong, [INT CCPR ICO HKG 42097 E Justice Centre](#).

<sup>6</sup> Submission by Amnesty International, [INT CCPR ICO HKG 42137 E Amnesty International](#).

<sup>7</sup> Submission by Hong Kong Election Observation Project (EOP), [INT CCPR ICO HKG 42184 E HK Election Observation Project](#).

<sup>8</sup> Following the 2013 review, in accordance with the Committee's follow-up procedure, a Rapporteur was appointed to engage the Hong Kong government on implementation of three recommendations relating to universal and equal suffrage, rights of workers, and quality of Chinese language education or ethnic minorities and non-Chinese speaking students. After two rounds of requests from the Special Rapporteur on follow-up to the HK government in [2014](#) and [2015](#), and review of responses received, on [August 16, 2016](#), the Rapporteur informed the China's Ambassador that the Committee that the follow-up procedure had

4. HRIC’s submission focuses on the rule of law issues presented by pending national security legislative efforts and actions by the Central and Hong Kong SAR governments that challenge Hong Kong’s core values, rule of law, and rights and freedoms guaranteed by the ICCPR, Hong Kong’s Basic Law, and Bill of Rights Ordinance.<sup>9</sup> We highlight the critical importance of maintaining the integrity of the “One Country, Two Systems” principle as key to the effective and meaningful implementation of the ICCPR (Articles 1 and 2). We also flag questions regarding the impact of a National Security Law (expected to be passed by the National People’s Congress in next few months) on the availability of effective remedies (Article 2) and claims for remedies determined by competent judicial, administrative, legislative, or other competent legal authorities (Article 4).

## II. Summary of HRIC’s Concerns and LOI Suggestions

5. In light of the concerning record of the Hong Kong government’s failure to provide meaningful responses to the Committee’s concerns and recommendations, the Committee’s review comes at a time of escalating social and political crisis in Hong Kong that seriously threaten the peaceful exercise of rights and undermine a safe and enabling environment for civil society. The Committee’s review offers an important opportunity to press the authorities on compliance with their international obligations and to promote concrete actions.
6. Within the timeframe of the Committee’s consideration and adoption of a List of Issues at its next session, in addition to the national security legislation underway, there are several sensitive anniversaries, including the 31<sup>st</sup> anniversary of the June 4 1989 military crackdown, and the one-year anniversary of the mass protests on June 9 and 12, and July 1. HRIC looks ahead to anticipate some of the concerns and issues arising from what will be undoubtedly fast moving and complex developments to frame projected issues related to the One Country-Two Systems Principle and the impact of the anticipated national Security Law. Concrete, current and detailed information provided by the Hong Kong government will hopefully contribute to a robust and relevant interactive dialogue.
7. Maintaining the “One Country, Two Systems” Principle (ICCPR Articles 1 and 2)  
HRIC urges the Committee to consider the following issues and questions to advance to the Hong Kong government:
  - Please clarify the status of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG).
  - What is the source of its authority to assert “supervision” power? What is meant by “supervision”?
  - Please provide an update on any concrete measures taken to ensure the effective of exercise of rights, to ensure that Hong Kong people can “freely determine their political status and freely pursue their economic, social and cultural development” within the One Country, two Systems framework.

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come to an end. It noted that HK had not taken action on the Committee’s recommendations, including arrangements for universal suffrage, and reiterated the Committee’s recommendations.

<sup>9</sup> Cap 383, *Hong Kong’s Bill of Rights Ordinance*, <https://www.elegislation.gov.hk/hk/cap383>.

- What measures and protections have been adopted to ensure that people can exercise their rights to peaceful assembly, freedom of opinion and expression?
- Please provide information on the progress and outcome of the cases of 15 pro-Democracy figures arrested on April 18, 2020.

8. Impact of Anticipated National Security Law on Rule of Law and Restrictions  
On Rights (ICCPR Articles 2 and 4)

HRIC urges the Committee to consider the following issues and questions to advance to the Hong Kong government:

- Please provide information on measures the Legislative Council adopts to extent possible to promote *transparency and wide and diverse public consultation* during the Legislative Council’s promulgation of the anticipated National Security Law?
- Please provide information regarding any *Central government national security entities* that might be set up in the Hong Kong SAR under the National Security Law now being drafted by the Central authorities.
  - What kind of entities will they be and will they be subject to the Basic Law under Article 22? If not, please explain what measures will be adopted to ensure that individuals in Hong Kong are not exposed to the risks of the different law enforcement practices of the Central government.
  - If they are afforded broad powers, including investigation, arrest, and interrogation, will individuals investigated be detained in Hong Kong?
  - Where will individuals alleged to have violated the provisions of the National Security Law be tried? What procedural measures will be in place to ensure the full due process protections required under international law are provided?
  - Please provide updated information on any action taken to implement the Committee’s recommendation to amend Hong Kong’s Anti-Terrorism Law and Sedition law to conform to international standards. Please provide information on any measures adopted to respond to concerns expressed by the UN special procedures in a joint statement (April 23, 2020) regarding the use of anti-terrorism legislation to regulate protest.<sup>10</sup>

**III. Maintaining the “One Country, Two Systems” Principle is Key to Effective and Meaningful implementation of the ICCPR (Articles 1 and 2)**

*Erosion of high degree of autonomy*

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<sup>10</sup> UN Special Rapporteurs’ Communication to China on potential misuse of terrorism and sedition legislation in Hong Kong.  
[EN](#)

9. In accordance with *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 (Sino-British Joint Declaration),<sup>11</sup> China would resume the exercise of sovereignty over the Hong Kong Special Administrative Region (HKSAR) from July 1, 1997, but provided 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 HK. Administered “directly under the authority” of the Central People's Government of the People's Republic of China, the Joint Declaration states that the Hong Kong SAR shall enjoy a “high degree of autonomy.”<sup>12</sup>
10. While the principle of “one country, two systems” is not explicitly mentioned in the Joint Declaration, it underpins the framework for the return of sovereignty to China and is enshrined in Hong Kong’s governing constitution, *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (Basic Law).<sup>13</sup> The Basic Law Article 3 provides: “The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication.”<sup>14</sup>
11. The Hong Kong SAR government’s Fourth periodic report (SAR Report) asserts that since the establishment of the Hong Kong SAR, the Central 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.”<sup>15</sup>
12. However, actions since 2013 by the Central government authorities, with the cooperation or support of the Hong Kong government, highlight official efforts to exert greater control over Hong Kong people’s fundamental rights and freedoms, in particular freedom of opinion, expression, rights to participate, and an independent media. Civil society voices have raised concerns about the increasing encroachment on their exercise of rights and Hong Kong’s core values and the Committee has addressed many of these government actions in previous reviews of the Hong Kong government.
13. Actions and policies by the Hong Kong SAR government and the Central authorities include: attempts to introduce “patriotic education” in Hong Kong schools; a “Decision” issued on August 31, 2014 by the Standing Committee of the National People's Congress reversing its

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<sup>11</sup> *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>.

<sup>12</sup> Article 2 (2), *Ibid*.

<sup>13</sup> *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, effective July 1, 1997 <https://www.basiclaw.gov.hk/en/basiclawtext/index.html>.

<sup>14</sup> Article 3, *Ibid*.

<sup>15</sup> *Fourth periodic report submitted by Hong Kong, China under article 40 of the Covenant, due in 2018*, United Nations Human Rights Committee, fourth review of Hong Kong under the *International Covenant on Civil and Political Rights*, CCPR/C/CHN-HKG/4 (February 14, 2020), paras. 4-6, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhsr2bAznTlRtkyo4FUNHETCR0%2bONq2tc0rHr5HeWTwCKr7veqP5BgZAAHQCP2rxUwNp7ykgF04umS%2fW%2bDrX2AZJkBJ4axLdF6qDBT53FEgDA2>.

earlier pledge that the election of the Hong Kong Chief Executive in 2017 “may be implemented by the method of universal suffrage”—which triggered the Umbrella Movement of 2014; disqualification of elected Legislative Council members who support universal suffrage; and increased pressure on the freedom of the press, highlighted by a ten-year criminal sentence announced on February 25, 2020 against a Hong Kong bookseller and Swedish citizen who was abducted while abroad and transported to mainland China.

14. Speaking on the twentieth anniversary of the Handover, Xi Jinping stated: “It is my hope that in the next five years, the HKSAR government will unite people of all sectors in Hong Kong to fully and faithfully implement the principle of “one country, two systems”, stay committed to the basis of “one country”, well leverage the benefits of “two systems”, and make solid efforts to ensure success of its various endeavours.” He continued “First, it is imperative to have a correct understanding of the relationship between “one country” and “two systems”. “One country” is like the roots of a tree. For a tree to grow tall and luxuriant, its roots must run deep and strong. The concept of “one country, two systems” was advanced, first and foremost, to realise and uphold national unity.”<sup>16</sup>

#### ***Role and Status of the Liaison Office of the Central People's Government in Hong Kong Special Administrative Region (LOCPG)***

15. Another significant development contributing to undermining Hong Kong’s high degree of autonomy is the increasing assertion and expansion of influence in Hong Kong by the Liaison Office of the Central People's Government in Hong Kong Special Administrative Region (LOCPG), at the direction of the Hong Kong and Macau Affairs Office (HKMAO) of the PRC’s State Council. The Basic Law prohibits branches of the Central government and their representative offices in Hong Kong from interfering in the affairs “which the Hong Kong SAR administers on its own” (Art. 22).
16. On April 13, 2020, the Hong Kong and Macau Affairs Office (HKMAO) of the PRC’s State Council and the Liaison Office of the Central People's Government in Hong Kong Special Administrative Region (LOCPG) issued statements attacking opposition lawmakers for procedural delay in the House Committee of the Legislative Council (Legco)<sup>17</sup> and accusing Dennis Kwok, a Legco member, of abuse of power.”<sup>18</sup>

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<sup>16</sup> “Full text of President Xi Jinping’s speech on ‘one country, two systems’ and how China rules Hong Kong,” South China Morning Post, July 1, 2017, <https://www.scmp.com/news/hong-kong/politics/article/2100856/full-text-president-xi-jinpings-speech-one-country-two>.

<sup>17</sup> Statement by the spokesman for the Hong Kong and Macao Affairs Office of the State Council in response to reporters’ questions about the disorder in the Legislative Council of the Hong Kong SAR (April 13, 2020) (in Chinese), [https://www.hmo.gov.cn/xwzx/xwfb/xwfb\\_child/202004/t20200413\\_21779.html](https://www.hmo.gov.cn/xwzx/xwfb/xwfb_child/202004/t20200413_21779.html).

<sup>18</sup> “Statement by the spokesman for the Hong Kong Liaison Office on the issue of the Legislative Council’s House Committee and in reprimand of some Legco members’ maliciously unfurling banners when taking oath” (April 13, 2020) (in Chinese), [http://big5.locpg.gov.cn/jsdt/2020-04/13/c\\_1210556359.htm](http://big5.locpg.gov.cn/jsdt/2020-04/13/c_1210556359.htm).

17. After pro-democracy lawmakers criticized the HKMAO and the LOCPG for violating Article 22 of the Basic Law,<sup>19</sup> the LOCPG declared it and HKMAO are not bound by the Basic Law, and “have the power to represent the central government . . . [and] exercise supervisory power.”<sup>20</sup> The Hong Kong SAR government then issued in succession three conflicting statements, on April 18-19, 2020, on the status of the LOCPG.<sup>21</sup> In the final statement, it stated that the LOCPG is not bound by the Basic Law.<sup>22</sup> On April 27, Secretary for Justice Theresa Cheng supported the Hong Kong SAR administration’s view by stating, “Article 22 of the Basic Law does not apply to the liaison office [LOCPG].”<sup>23</sup>
18. However, legal experts have challenged this position as contrary to logic and law. The Hong Kong Bar Association (HKBA) has challenged the Hong Kong SAR government’s position on the LOCPG in a statement on April 20, and has sought clarification of the status and functions of the LOCPG in two letters from the HKBA chair to the Secretary for Constitutional and Mainland Affairs on April 27 and May 15.<sup>24</sup> The HKBA pointed out that “there is no provision in the Basic Law which confers on the HKMAO and LOCPG the power of ‘supervision’ over affairs which the HKSAR administers on its own.” (April 20 statement) and raised several issues regarding accountability and source of claimed authority to “supervise.”
19. The HKBA also pointed to a set of amendments enacted by Hong Kong’s Legislative Council in 2009 (“ALO 2009”) to ensure that four ordinances were applicable to offices of the Central People’s Government in Hong Kong, included the LOCPG as one of three such offices. “If LOCPG is the CPG incarnated in the HKSAR, and not just one of its “departments” and that makes all the difference, then Article 22 would have no application to it and thus making the ALO 2009 a statutory anatomy” and “cannot be squared with the [Hong Kong] Government’s current view of the meaning of Article 22 and its scope and application.” (May 15 letter)

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<sup>19</sup> “Response of Legco member Dennis Kwok to the remarks of the HKMAO and LOCPG” (April 13, 2020) (in Chinese), <https://www.facebook.com/cpdenniskwok/posts/3497061880321656>; “Hong Kong democrats reject Beijing’s warning over legislative stalling tactics as ‘interference,” *Hong Kong Free Press* (April 14, 2020), <https://hongkongfp.com/2020/04/14/hong-kong-democrats-reject-beijings-warning-over-legislative-stalling-tactics-as-interference/>.

<sup>20</sup> “Statement by the LOCPG: The so-called ‘interference of the Central authorities in Hong Kong’s internal affairs’ is a deliberate misunderstanding of the Basic Law” (April 17, 2020) (in Chinese), [http://www.locpg.gov.cn/jsdt/2020-04/17/c\\_1210563621.htm](http://www.locpg.gov.cn/jsdt/2020-04/17/c_1210563621.htm).

<sup>21</sup> Statement 1: <http://archive.is/5KMcv>; Statement 2: <https://www.info.gov.hk/gia/general/202004/18/P2020041800802.htm>; Statement 3: <https://www.info.gov.hk/gia/general/202004/19/P2020041900045.htm>.

<sup>22</sup> From Statement 3: “The Liaison Office of the Central People’s Government in the HKSAR (LOCPG) is an office set up in the HKSAR by the Central People’s Government, not ‘offices in the HKSAR set up by departments of the Central People’s Government’ as stated in Article 22(2) of the Basic Law.”

<sup>23</sup> “Basic Law’s Article 22 ‘does not apply’ to Beijing’s liaison office, Hong Kong justice secretary says,” *South China Morning Post* (April 27, 2020), <https://www.scmp.com/news/hong-kong/politics/article/3081816/basic-laws-article-22-does-not-apply-beijings-liaison>.

<sup>24</sup> Hong Kong Bar Association, April 20, 2020 statement: <https://www.hkba.org/sites/default/files/20200420%20-%20HKBA%27s%20Further%20Statement%20on%20Article%2022%20of%20the%20Basic%20Law%20%28English%29.pdf>;

April 27, 2020 letter: <https://www.hkba.org/sites/default/files/20200427-Letter%20to%20Secretary%20for%20Constitutional%20%26%20Mainland%20Affairs.pdf>;

May 15, 2020 letter: [https://www.hkba.org/sites/default/files/20200515%20-%20Letter%20to%20Secretary%20for%20Constitutional%20and%20Mainland%20Affairs\\_0.pdf](https://www.hkba.org/sites/default/files/20200515%20-%20Letter%20to%20Secretary%20for%20Constitutional%20and%20Mainland%20Affairs_0.pdf).

## Judicial independence

20. Article 85 of the Basic Law provides for independence of the judiciary:

“The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.”<sup>25</sup>

21. However, high-level policy statements by the Central government assert positions that raise serious concerns about their compatibility with normative understanding of core values necessary to ensure an independent judiciary crucial to protection of rights. In spring 2013, shortly after Xi Jinping came to power, the General Office of Communist Party of China issued a communique to Party members that warned of seven political “perils.” Among them are constitutional Democracy; universal values, civil society, and “the West’s idea of journalism.” The paragraph relating to judicial independence in what came to be known as “Document 9” states: “Western Constitutional Democracy has distinct political properties and aims. Among these are the separation of powers, the multi-party system, general elections, independent judiciaries ...”<sup>26</sup>

22. In January 2017, Zhou Qiang, the president of the Supreme People’s Court said the following: “We should resolutely resist erroneous influence from the West: ‘constitutional democracy,’ ‘separation of powers’ and ‘independence of the judiciary . . . . We must make clear our stand and dare to show the sword.”<sup>27</sup> These pronouncements must not be dismissed as political rhetoric but as the authoritative statements of policy, they are intended to be. They contribute to exacerbating fundamental tensions for the One Country-Two Systems principle.

23. While the high-level policy pronouncements may be putting the Hong Kong government between a “rock and a hard” place, this does not relieve it of its international treaty obligations to effectively and meaningfully implement the ICCPR in Hong Kong. As One Country-Two Systems is increasingly undermined, this is the crux of the dilemma. However, the Central government also has international obligations. While the People’s Republic of China signed the ICCPR on October 5, 1998, it still has not yet ratified the treaty, despite repeated statements of its intention to do so.<sup>28</sup> While the PRC has not yet ratified the ICCPR, it is obligated under international law to not take any actions that would defeat object and purpose of the treaty.<sup>29</sup>

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<sup>25</sup> *The Basic Law*, [https://www.basiclaw.gov.hk/en/basiclawtext/chapter\\_4.html](https://www.basiclaw.gov.hk/en/basiclawtext/chapter_4.html).

<sup>26</sup> “Communiqué on the Current State of the Ideological Sphere: A Notice from the Central Committee of the Communist Party of China’s General Office” English translation: <https://www.chinafile.com/document-9-chinafile-translation#start>

<sup>27</sup> English media report: <https://www.nytimes.com/2017/01/18/world/asia/china-chief-justice-courts-zhou-qiang.html>

<sup>28</sup> In response to recommendations by UN member states, treaty bodies, and civil society groups, to ratify the ICCPR, including during all three of its UPRs, China has consistently responded that it will do so when the domestic conditions for its ratification are present. <https://www.upr-info.org/en/review/China>

<sup>29</sup> *Vienna Convention on the Law of Treaties*, Art. 18(a): Obligation not to defeat the object and Purpose of a treaty prior to its entry into force. A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) **it has signed the treaty**...until it shall have made its intention clear not to become a party to the treaty...(emphasis added).

**IV. Impact of Anticipated National Security Law on rule of law and restrictions on rights (ICCPR Articles 2 and 4)**

24. Hong Kong's *Basic Law* Article 23 provides: "The Hong Kong Special Administrative Region **shall enact laws on its own** to prohibit any act of **treason, secession, sedition, subversion** against the Central People's Government, **or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities** in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with **foreign political organizations or bodies.**"<sup>30</sup> (Emphasis added)
25. On May 28, 2020, the National People's Congress approved the *Decision of the National People's Congress on establishing and completing the Hong Kong Special Administrative Region's legal system and implementing mechanisms for protecting national security*<sup>31</sup> (Decision). The Decision authorizes the NPC Standing Committee (NPCSC) to draft the legislation, to be added directly into Annex III of the Basic Law—which contains a list of national laws relating to defense and foreign affairs that are applicable to Hong Kong. In effect, the Decision prescribes a legislative process that will bypass the Hong Kong SAR's own legislative process. The Decision passed with 2878 votes in favor, one against, and 6 abstentions. There were two changes to the draft that had been reviewed by the NPC Standing Committee (NPCSC) on May 18. The preamble was made longer, and under article 6, "activities" was added to "conduct" to the scope of authorization.<sup>32</sup>
26. The Decision highlighting an intensification of control exerted by the Central authorities over Hong Kong has been widely condemned by the international community.<sup>33</sup> In a press conference on May 20, 2020, the Chief Executive echoing the Central authorities' rationale and urgent necessity for a National Security Law, stated that the Hong Kong SAR government will

<sup>30</sup> *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, adopted at the Third Session of the Seventh National People's Congress (April 4, 1990),

[https://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw\\_full\\_text\\_en.pdf](https://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf).

<sup>31</sup> 全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定 (*Quanguo renmindai biao dahui guanyu jianli jianquan xianggang tebie xingzhengqu weihu guojia anquan de falv zhidu he zhixing jizhi de jue ding*, Decision of the National People's Congress on establishing and completing the Hong Kong Special Administrative Region's legal system and implementing mechanisms for protecting national security), 13<sup>th</sup> National People's Congress of the People's Republic of China, 3<sup>rd</sup> Session (May 28, 2020), available at [http://www.xinhuanet.com/politics/2020-05/28/c\\_1126046490.htm](http://www.xinhuanet.com/politics/2020-05/28/c_1126046490.htm).

<sup>32</sup> NPC Observer, "2020 NPC Session: NPC's Decision on National Security in Hong Kong Explained (Updated)," May 28, 2020, <https://npcobserver.com/2020/05/22-npc-session-npcs-imminent-decision-on-national-security-in-hong-kong-explained/>

<sup>33</sup> See e.g. U.S. Department of State, Secretary of State press release, "PRC National People's Congress Proposal on Hong Kong National Security Legislation," May 27, 2020, <<https://hk.usconsulate.gov/n-2020052701/>>; Governments of the United States of America, Australia, Canada, and the United Kingdom, "Joint Statement on Hong Kong," May 28, 2020, available at <<https://www.state.gov/joint-statement-on-hong-kong/>>; Agence France-Presse, "China slams 'senseless' US move at UN over Hong Kong," May 29, 2020, <<https://www.afp.com/en/news/15/china-slams-senseless-us-move-un-over-hong-kong-doc-1sg8a53>>; Human Rights in China, "Onslaught of 'Rule of Law' with Chinese Characteristics on Hong Kong," May 23, 2020, <<https://www.hrichina.org/en/press-work/statement/onslaught-rule-law-chinese-characteristics-hong-kong>>; Human Rights Watch, "Hong Kong: Beijing Threatens Draconian Security Law," May 22, 2020, <<https://www.hrw.org/news/2020/05/23/hong-kong-beijing-threatens-draconian-security-law>>.

fully cooperate with the NPCSC in the enactment of the legislation.<sup>34</sup> Fears or concerns expressed by Hong Kong people of the impact on the legitimate peaceful exercise of rights have been brushed aside as unfounded and the product of “imagined fears”.

27. The Decision sets out in the preamble the legislative aims of a national security law: to “safeguard national sovereignty, security, and development interests, uphold and improve the ‘one country, two systems’ system, preserve Hong Kong’s long-term prosperity and stability, and safeguard the lawful rights and interests of Hong Kong residents.” It explicitly references “illegal activities such as ‘Hong Kong independence,’ splitting the country, and violent terrorist activities have seriously endangered the sovereignty, unity, and territorial integrity of the country.”
28. The Decision cites articles 31 and 62 of the P.R.C. Constitution authority for the NPC’s Decision. Article 31 empowers the NPC to prescribe by law the systems to be instituted in a special administrative region like Hong Kong. Article 62 allows the NPC to “oversee the implementation of the Constitution” and to exercise any unenumerated functions and powers that it thought it should exercise. However, Constitutional law expert Professor Johannes Chan has argued that the P.R.C Constitution provisions cited by the Central authorities do not empower the NPC to simply ignore the Basic Law. While the NPC can amend the Basic Law, it must do so according to procedures set out, but it cannot disregard the Basic Law. Legal experts have also pointed out that the Decision’s goes beyond the scope of Article 23 of the Basic Law and could potentially target any foreign activity or group deemed to threaten national security under the Central government’s all-encompassing definition of national security.<sup>35</sup>
29. The next step will be for the NPCSC Legislative Affairs Commission to draft the new national security law in consultation with the NPCSC Hong Kong Basic Law Committee and the HKSAR government. The NPCSC will most likely meet in late June for its next regular session where the first out of possibly only two reviews can take place. As the NPCSC meets every two months, the bill can be approved at the earliest in late August. The new law then needs to be separately listed in Annex III of the Basic Law, which can be done at the same session.<sup>36</sup>
30. The Committee’s [Concluding Observations](#) (April 29, 2013) also expressed its concerns with existing security related laws and recommended the legislation regarding offences of treason and sedition and ensure foreseen legislation under Article 23 of Basic Law is consistent with Covenant (para. 14). “A state of emergency, or any other security measures, should be guided by human rights principles and should not, in any circumstances, be an excuse to quash dissent.” Even during the ongoing global Covid19 health pandemic, international experts and United Nations human rights bodies have highlighted the importance of respect for human

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<sup>34</sup> Hong Kong Chief Executive Carrie Lam meets the press (May 22, 2020), [https://www.facebook.com/watch/live/?v=3065107380178000&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=3065107380178000&ref=watch_permalink).

<sup>35</sup> <https://www.bbc.com/news/world-asia-china-52765838>

<sup>36</sup> Ibid.

rights across the spectrum, including economic, social, and cultural rights, and civil and political rights, as fundamental to the success of the public health response and recovery from the pandemic.

31. In the face of the assertions by the Central authorities and the Hong Kong government that Hong Kong faces serious threats of terrorism, succession, and foreign forces, in the absence of an official declaration of an emergency, any derogations must carefully be within the permissible categories set forth in ICCPR Article 4(1) which states: In time of **public emergency** which threatens the life of the nation and the **existence of which is officially proclaimed**, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.” (Emphasis added)
32. Any proposed national security law must also comply with applicable international standards, including the principles of legality, necessity, and proportionality that govern the permissibility of any reasonable restrictions on rights and the Hong Kong SAR’s international obligations. The provisions of any security law must also adhere to international standards and norms on national security law, including the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*.