



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

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**140th session** regarding the  
**United Kingdom** of Great Britain and Northern Ireland's  
**compliance** with the  
**International Covenant on Civil and Political Rights**

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## About the Hong Kong Scots

The Hong Kong Scots is a Scotland-based Community Interest Company (SC728635). It aims to facilitate better integration of Hongkongers into Scottish society. All our co-founders have extensive experience in politics and the civil society of Hong Kong before residing in Scotland.

Our organisation incubates initiatives launched by Hongkongers, regardless of their immigration status in the United Kingdom, to continue their civic way of life in Scotland. At the same time, we organise events and activities to facilitate dialogue and understanding between Scotsmen and Hongkongers in Scotland.

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# Impact of the British Nationality Act and relevant provisions on Hongkongers exercising rights guaranteed under ICCPR in the United Kingdom

## Introduction

1. This submission highlights the rights of Hongkongers born before 30 June 1997, the last date on which the United Kingdom held the sovereignty of Hong Kong, in the United Kingdom (UK).
2. Hongkongers, especially with the extinguished British Dependent Territories Citizen – Hong Kong (BDTC-HK) status, are facing substantial challenges when exercising their rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR).
3. The United Nations (UN) delisted Hong Kong from a list of colonies in the 1970s, making it a claim by PR China for not granting Hongkongers participation in Sino-British negotiations on the future of Hong Kong. There was also no self-determination process of any kind for Hongkongers before the United Kingdom gave up its sovereignty.
4. Various legislations by the UK Government in the 1980s and 1990s further discriminated against Hongkongers, still living in the British territory at the time, from exercising the rights guaranteed by the ICCPR. The creation of British National (Overseas) (BN(O)) status made discriminatory treatment against Hongkongers as other former British Dependent Territories Citizens (BDTCs), now called British Overseas Territories Citizens (BOTCs), were granted pathways to live and work in the UK without subject to immigration controls.
5. The implementation of the BN(O) Visa in 2021 did not rectify the discriminatory treatment against Hongkongers in the UK. Although Visa holders are allowed to live and work in the UK, Hongkongers are still subjected to other types of immigration control, such as not being allowed to use electronic gates at the UK border. It is also to be taken into the context that Hongkongers have to pay visa fees, pay the Immigration Health Surcharge (IHS), and show the UK Government that they have sufficient funds before being granted a visa.

6. For Hongkongers without applying for the BN(O) Visa and those who obtained BDTC-HK status but did not register as BN(O)s, their actual treatment in the UK is no different from foreign nationals if they are not getting their types of visas or entry clearances. They are subject to immigration controls when entering the United Kingdom and do not have the automatic right of abode in the UK.
7. This submission is going to highlight the historical background of Hongkongers and their nationalities that have been discriminated against by the UK, along with the decade-long legal and political developments. It is followed by the impact of such developments on Hongkongers in the UK and why we think the treatment is discriminatory under the ICCPR, which the UK signed and ratified. The submission ends with what we hope members of the Human Rights Committee will consider when assessing the UK's obligation to ICCPR.

## Background of the status of Hongkongers in the UK

8. In 1972, PR China proposed to take Hong Kong and Macau off the list of Non-Self-Governing Territories in a bundle of resolutions regarding decolonisation, and the chair of the Special Committee on Decolonisation assented to PR China's protest<sup>1</sup>. Although the UK voted against the resolution at the UN General Assembly, the resolution unfortunately went through<sup>2</sup>. The delisting of Hong Kong from the list of non-self-governing territories effectively stripped the right to self-determination through the UN perspective.
9. In 1976, ICCPR came into force. Nevertheless, the UK government tabled reservations on Art. 12(1) and 12(4) of the Covenant upon ratification. Those reservations are

*"The Government of the United Kingdom reserve the right to interpret the provisions of article 12 (1) relating to the territory of a State as applying separately to each of the territories comprising the United Kingdom and its dependencies.*

*"The Government of the United Kingdom reserve the right to continue to apply such immigration legislation governing entry into, stay in and departure from the United Kingdom as they may deem necessary from time to time and, accordingly, their acceptance of article 12 (4) and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom. The United Kingdom also reserves a similar right in regard to each of its dependent territories.*

10. The above reservations demonstrated the intention of the UK government to impose different, or even discriminatory, interpretations of Art. 12(1) and 12(4), based on race, birth, and other status (Art.26).

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<sup>1</sup> A/AC.109/396

<sup>2</sup> A/RES/2908(XXVII)



11. British Nationality Act (1981) was enacted in 1981, which splits the Citizens of the United Kingdom and Colonies (CUKCs) into British Citizens and BDTCs. Such reclassification is based on the ancestry and birthplace of the people living in the British-governed mainland and territories. The Act made the majority of Hongkongers at the time become BDTC-HK, stripping their right of abode in the United Kingdom unless they have resettled in the UK before 1 January 1983.
12. The PR China and the UK government began to negotiate on the future of Hong Kong in the 1980s. However, Hongkongers were left out of the negotiation upon the request by PR China. The UK did not insist on the involvement of Hongkongers in any form. In 1984, the two states signed the Joint Declaration, with the UK government “*declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997*”<sup>3</sup>. The UK government’s memorandum of the Joint Declaration stated a new nationality would be established for Hongkongers who did not have the right of abode in the UK.
13. Subsequently, the UK government passed the British Nationality (Hong Kong Act) 1985, creating the BN(O) status. It also means that BDTC-HK would cease to exist for Hongkongers after PR China took over the sovereignty of Hong Kong in 1997.
14. After the Tiananmen massacre in Beijing in 1989, the UK government enacted the British Nationality (Hong Kong) Act 1990 to launch the British Nationality Selection Scheme (BNSS). The BNSS allows around 50000 Hongkongers with connections to the UK, such as BDTC-HKs and BN(O)s, to apply for resettlement in the UK mainland along with their spouses and children. However, the BNSS only allowed four categories of people to apply, leaving ordinary Hongkongers ineligible.
15. BDTC-HK ceased to exist on 1 July 1997, as China took over the sovereignty of Hong Kong.
16. After PR China enacted the National Security Law of Hong Kong (NSL) in June 2020, the UK government responded that PR China breached the Sino-British Joint Declaration. Subsequently, the UK government announced the BN(O)Visa scheme would be in force in 2021. The scheme allows BN(O) holders and their dependents to live and work in the UK mainland after paying a visa fee, IHS, and showing at least 6 months of funds to live in the UK mainland.

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<sup>3</sup> Joint Declaration on the question of Hong Kong Art. 2



## The problems

17. From the historical development regarding the rights of Hongkongers in the UK, four problems are found, and they are intertwined with each other.

### Problems associated with historical developments

18. Since the UN removed Hong Kong from the list of non-self-governing territories in 1972, the right to self-determination of Hongkongers has not been respected by the UK government, the PR China government, or the international community. The disrespect could also be seen from the reservation of the ICCPR by the UK Government, which reserves its right to interpret the right to self-determination under the ICCPR and the UN Charter, and also the fact that PR China barred Hongkongers from participating in the Sino-British negotiations in the 1980s.
19. Therefore, treating Hong Kong as another UN non-self-governing territory, in which Hongkongers have exercised a self-determination process to accept Beijing's rule since 1997, is factually incorrect. Hongkongers, who were BDTCs, were left by Britain and ruled by PR China against their will, and the territory has been "recovered" by PR China.

### *Discriminatory treatment against Hongkongers based on race, birth and other status in the 1980s*

20. The British Nationality Act (1981) stripped the rights of all BDTCs to enter into their own country (Art. 12(1)) and freedom of movement and choice of residence within the territory (Art. 12(4)). They once had such a right before the new Act, as there was only one nationality, namely CUKC, for all citizens living in the UK and in other colonies.
21. Further amendments to the definition of British Nationality under the Hong Kong Act 1985, which created BN(O) nationality, further discriminated against Hongkongers who were BDTC-HKs. Unlike other people holding BDTCs elsewhere, BDTC-HK would expire by 1 July 1997, when PR China took over the sovereignty of Hong Kong. Moreover, BDTC-HKs who did not register as BN(O)s had lost their British connections from 1 July 1997 onwards. The BN(O) status is also non-transferable.
22. After the Tiananmen massacre, the UK Government enacted the British Nationality (Hong Kong) Act 1990, which only allowed around 50,000 people and their spouses and children a pathway to become British citizens on the basis of four dedicated groups (the scheme called classes). Ordinary Hongkongers, who were out of these categories, were ineligible to apply.

23. All the above arrangements demonstrated the UK government at the time discriminated against Hongkongers for simply being Hongkongers (Art. 26), having their rights to enter their own country (Art. 12(4)) and choosing their residence (Art. 12(1)) stripped based on race, birth and other status.

### *Absence of rectification when other BDTCs are offered pathways to be settled in the UK*

24. While the UK filed reservations on ICCPR Art. 12(1) and 12(4), they should not be observed out of context. BDTCs, renamed into BOTCs in 2002, automatically became British citizens on 21 May 2002 if their British overseas territories citizenship was gained by connection with those British Overseas Territories. People born after 21 May 2002 with at least one parent are BOTC or settled in those overseas territories are also eligible to become British citizens. That means they have the rights in ICCPR Art. 12(1) and 12(4) guaranteed by the UK government.
25. That is not the case for BN(O)s. As said in para. 44, BN(O) status is non-transferable, and there was no pathway to become British citizens by application, just as other BOTCs, who were once also BDTCs. The unequal treatment between Hongkongers and BOTCs, with the former facing unequal treatment, was not rectified by the UK government when they made amendments to the provision on nationality in 2002.
26. It is also noted that the UN Committee on the Elimination of Racial Discrimination identified the issue of discrimination of treatment of citizens' status in 1996<sup>4</sup>.

### *Differential treatment between BN(O)s and BOTCs on the pathway to settle in the UK*

27. While the UK government implemented the BN(O) Visa as a pathway for Hongkongers holding BN(O)s and their partners and dependents to settle in the UK, the treatment is not as equal as that of BOTCs. Although BN(O) Visa holders and their dependents have the right to live and work in the UK, they do not automatically become British citizens. What is more, BN(O) Visa holders have to stay within the UK mainland for most of the time for 5 years before they can apply for Indefinite Leave to Remain (ILR) and British citizenship.
28. BN(O) Visa holders are also subjected to other restrictions to which BOTCs do not apply, such as No Right to Public Fund (NRPF) and not eligible to use electronic gates (e-gates) at the UK border.

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<sup>4</sup> CERD/C/304/Add.9. Paras. 20,36

29. For BDTC-HKs who did not register as BN(O)s, they have lost all rights to enter the UK as British nationals of any kind. During the 1990s, the British Hong Kong government advertised the BN(O) status as a travel document without explicitly stating the status itself as the only proof of connection with Britain after the sovereignty of Hong Kong was taken by PR China in 1997. BDTC-HKs at the time might reasonably think of BN(O) as a travel document and did not register themselves with the status. That perception made them lose connection with the UK, unlike other BDTCs, now BOTCs, who can continue having such status and, in 2002, be given a pathway to settle in the UK. They are also ineligible to apply for a BN(O) Visa at the time of writing.

## Impact of the discriminatory treatment of British Nationality against Hongkongers without getting BN(O)s even once obtained BDTC-HKs

30. As said in the last paragraph, BDTC-HKs who did not register as BN(O)s in 1997 have lost the eligibility to apply for a BN(O) Visa to live and work in the UK.

31. The non-transferable nature of BDTC-HKs also impacted Hongkongers born on or before 30 June 1997, with either of their parents having only the BDTC-HK status. These Hongkongers, who were children at that time, are not eligible to apply for a BN(O) Visa. As of the time of writing, Hongkongers who are 18 years old or older and a child of a BN(O) born on or after 1 July 1997 can apply for the Visa.

32. Therefore, BDTC-HKs without BN(O)s can only attempt to gain resettlement in the UK by claiming asylum at the UK border. The rules for granting them asylum would be those aligned with the UN Refugee Convention, which the UK ratified. Their previous status of BDTC-HKs would be irrelevant in such a context.

33. Our organisation is aware that the UK Home Office granted asylum to BDTC-HKs and even BN(O)s. Our organisation has been in touch with asylum claimants from Hong Kong.

## Relevant ICCPR Articles involved

34. Article 12(1)

*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

35. Article 12(4)

*No one shall be arbitrarily deprived of the right to enter his own country.*

36. Article 26

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

## What we believe Hongkongers are entitled to in the UK under ICCPR

37. Those born in Hong Kong on or before 30 June 1997, who obtained BDTC-HK status by then, should not be deprived of the right to enter the UK under immigration control (i.e. deprived of the right to live and work in the UK). (Art. 12(4)). The differential treatment between Hongkongers and other BDTCs, which treated the former with a disadvantage, is arbitrary.
38. All Hongkongers who obtained BDTC-HK status on or before 1997, regardless of whether they have obtained BN(O) or not, should have the right to enter the UK without being subject to immigration control (Art. 12(4)) and should have the right to live and work in the UK (Art. 12(1)), without being charged for fees in the name of a visa scheme.
39. Therefore, a new resettlement scheme, not BN(O) Visa, should be launched by the UK Government for Hongkongers who were once registered as BDTC-HKs in order to fulfil their ICCPR obligations (Art 12(1), 12(4), 26).
40. The current BN(O) Visa is a visa scheme, not a right. Applicants are required to pay a processing fee and IHS, showing a substantial amount of funds to prove they can live in the UK for at least six months upon arrival, and the UK government can reject the Visa applications. The scheme should not be a distraction that makes anyone view the UK as fulfilling the ICCPR obligations.
41. For Hongkongers who were eligible to register as BDTC-HK but have not done so, we believe they should be given an opportunity to apply for living and work in the UK as a way to fulfil the state's ICCPR obligations. Hongkongers at that time may not have registered for BDTC-HK status for any reason, but it could also preclude the possibility of unclear or misleading government messages at that time which only marketed BN(O) status mainly as a travel document, not proof of British connection after 1997. For Hongkongers falling into such a category, provisions of the BN(O) Visa scheme can serve as a reference, with an independent set of application rules that can be applied.

## What we hope the UN Human Rights Committee can do

42. Question the UK on the reservations of ICCPR Art. 12(1), 12(4) and its impact on applying such reservations selectively across different dependent (and now overseas) territories. Specifically, whether such differential applications disadvantaged Hongkongers with British connections from exercising rights guaranteed under ICCPR, provided that BDTC-HKs had no say on the future of Hong Kong in the Sino-British negotiations in the 1980s.
43. Challenge the UK on the discrepancy of rights guaranteed by ICCPR Art. 12(1) and 12(4) entitled between BDTC-HK-turn-BN(O)s and BOTCs, and whether such discrepancy is based on race, birth and other status and other grounds which might contravene the UK's obligation to ICCPR Art.26.
44. Recommend the UK to treat BOTCs and BN(O)s equally in the UK so as to fulfil their obligations to the ICCPR.