
Submission of the Citizen Lab (Munk School of Global Affairs & Public Policy, University of Toronto) to the United Nations Human Rights Committee: A review of Hong Kong's freedom of speech obligations under the ICCPR

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Preamble

This document serves as the Citizen Lab’s submission to the United Nations Human Rights Committee’s (UNHRC) fourth periodic review of Hong Kong. It addresses Hong Kong’s implementation of the International Covenant on Civil and Political Rights (ICCPR), specifically in relation to the [UNHRC’s List of issues in relation to the fourth periodic report of Hong Kong](#). Our review specifically documents the Citizen Lab’s research relevant to Hong Kong’s commitment to freedom of speech and is not intended to serve as a comprehensive overview of Hong Kong’s ICCPR implementation.

About the Citizen Lab, Munk School of Global Affairs & Public Policy, University of Toronto

Founded in 2001 by Professor Ronald J. Deibert, the Citizen Lab is an interdisciplinary laboratory based at the Munk School of Global Affairs & Public Policy, University of Toronto, focusing on research, development, and high-level strategic policy and legal engagement at the intersection of information and communication technologies, human rights, and global security. We use a “mixed methods” approach to research combining methods from political science, law, computer science, and area studies. Our research includes investigating digital espionage against civil society; documenting Internet filtering and other technologies and practices that impact freedom of expression online; analyzing privacy, security, and information controls of popular applications; and examining transparency and accountability mechanisms relevant to the relationship between corporations and state agencies regarding personal data and other surveillance activities.

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OBSERVATION 1: We have found excessive and disproportionate limits on speech in Hong Kong

Our research shows that Apple has been conducting excessive and disproportionate freedom of expression restrictions in Hong Kong since at least as early as May 2021, including but not limited to keyword filtering rules in their product engraving service.¹ We also found in our follow-up report to this research that Apple eliminated the political censorship in its Taiwanese engraving service, but that political censorship remained in Hong Kong through broad keyword based filtering.² Nearly three years before we conducted our censorship tests on Apple's engraving services, the Hong Kong Free Press already reported in November 2018 that the company deemed the names of some Chinese state leaders and activists as sensitive "inappropriate words" and prohibited their usage in product engravings in both mainland China and in Hong Kong.³

Especially worrisome is our observation that the heaviest filtered category in Hong Kong is the category of social and politically-themed keywords.⁴ Apple's filtering practices are excessive and disproportionate, and the censorship of terms relating to the 2019 pro-democracy protests indicates the conditions for this censorship are at least partially shaped and influenced by the changing legal, political, and cultural environment under the Hong Kong government, especially after the 2019 protests and the promulgation of the National Security Law (NSL). In this changing environment, it is increasingly unclear where the red lines are vis-à-vis freedom of expression rights. We assess that this has left even a global company like Apple – with notable advertising campaigns highlighting its commitment to privacy and human rights – to reappropriate censorship terms in an attempt to avoid infringing upon the unclear red lines the NSL has created and to maintain their market access in mainland China. As a result, the company has engaged in proactive, excessive, and disproportionate filtering practices, infringing on the people of Hong Kong's right to free speech.

1 Knockel, Jeffrey, and Lotus Ruan. "Engrave Danger: An Analysis of Apple Engraving Censorship across Six Regions." Toronto: The Citizen Lab, August 18, 2021. <https://citizenlab.ca/2021/08/engrave-danger-an-analysis-of-apple-engraving-censorship-across-six-regions/>.

2 Knockel, Jeffrey, and Lotus Ruan. "Engrave Condition: Apple's Political Censorship Leaves Taiwan, Remains in Hong Kong." Toronto: The Citizen Lab, March 22, 2022. <https://citizenlab.ca/2022/03/engrave-condition-apples-political-censorship-leaves-taiwan-remains-in-hong-kong/>.

3 Cheng, Kris. "Apple Censors Sensitive Names and Phrases from Gadget Engraving Offer on Hong Kong and China Websites." *Hong Kong Free Press*, November 2, 2018. <https://hongkongfp.com/2018/11/02/apple-censors-sensitive-names-phrases-gadget-engraving-offer-hong-kong-china-websites/>.

4 Knockel and Ruan, *Engrave Danger*.

Apple's excessive filtering practices have to be understood within the changes of Hong Kong's larger civil society and media environment, where punitive actions by the Hong Kong authorities have negatively impacted news organizations and civil society organizations. As former law professor at University of Hong Kong Michael Davis argues: "Opposition organizations of all stripes have been shuttered. The press and the universities have largely been cowed into silence."⁵ Our research, together with other reports taken as a whole, paint a picture of a structural environment in Hong Kong that favors excessive and disproportionate restrictions upon freedom of expression, sometimes resulting in entire organizations announcing their closure or their relocation from the city.⁶

Freedom of expression constraints are sometimes necessary to protect national security, but these constraints should be prescribed by law, and be necessary and proportional.⁷ Adopted on October 1, 1995 the Johannesburg Principles stipulate that "Everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, [...] through any other media of his or her choice."⁸ Sub-section C of this Principle clarifies that the exercise of the right to the freedom of opinion, expression, and information may be subject to restrictions on grounds established in international law, such as the protection of national security.⁹ Importantly, sub-section D (and Principle 1.2) stipulate that these restrictions must be demonstrated by the government in question to be "prescribed by law and [to be] necessary in a democratic society to protect a legitimate national security interest."¹⁰ A restriction may be deemed illegitimate if its "genuine purpose or demonstrable effect is to protect interests unrelated to national security."¹¹ Furthermore, the peaceful exercise of the right to freedom of expression is not considered as a threat to national security when it "(i) advocates non-violent change of government policy or the government itself;" or "(ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials."¹²

5 Davis, Michael C. "Hong Kong: How Beijing Perfected Repression." *Journal of Democracy* 33, no. 1 (January 2022): 100. <https://muse.jhu.edu/article/843615>.

6 BBC. "New York Times to Move Hong Kong Staff to Seoul over Press Freedom Fears," July 15, 2020, sec. China. <https://www.bbc.com/news/world-asia-china-53413057>; AlJazeera. "Hong Kong's Citizen News to Close, amid Fears for Staff's Safety," January 3, 2022. <https://www.aljazeera.com/news/2022/1/3/hong-kongs-citizen-news-to-close-amid-fears-for-staffs-safety>.

7 "The Johannesburg Principles on National Security, Freedom of Expression and Access to Information." Article 19, November 1996. <https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf>.

8 The Johannesburg Principles, Principle 1(b).

9 The Johannesburg Principles, Principle 1(c).

10 The Johannesburg Principles, Principle 1(d).

11 Ibid.

12 The Johannesburg Principles," Articles 7(a) i & ii.

In this light, it is important to note that the Hong Kong authorities consistently and vehemently deny that the NSL is being used to curb freedom of speech. For example, In January 2022, following the closure of three professional news outlets, Hong Kong Chief Executive Carrie Lam addressed allegations of the “extinction” of press freedom, stating that “This morning I read news about, because of the closure of online medium, press freedom in Hong Kong faces extinction ... I just cannot accept that sort of allegations.”¹³ Similarly, in an April 25, 2022 interview, when John Lee was asked if he would defend press freedom responded: “I think there’s no need to use the word ‘defend’ because it exists.”¹⁴

Between May to June of 2021, we conducted censorship tests on Apple’s engraving services in Hong Kong. Our research shows that Apple filtered keyword combinations relating to critiques of the Hong Kong and Chinese government.¹⁵ For example, keyword combinations referencing “Chairman Mao” (“毛主席”) and “XiDaDa” (“习大大”, a common nickname for Xi Jinping) were found to be censored.¹⁶ In doing so, these censorship decisions are a violation of Article 19 of the ICCPR, and fall under the purview of Principle 7(a) subsections i and ii, which stipulate that speech is not considered a threat to national security when it “constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials.”¹⁷

To identify the keywords that would trigger censorship, our research focused on the keyword filtering step of Apple’s engraving review process. We utilized sample testing to investigate Apple’s filtering decisions across an aggregated list of 505,902 previously discovered censored keywords from a variety of Chinese applications (including WeChat) and across a range of open source GitHub projects. Once an engraving is found to be filtered, we undertake an iterative trimming process to isolate the exact keyword that triggers its filtering. We found 542 keyword filtering rules within Apple Hong Kong’s engraving service.¹⁸ For example, the keyword combinations “Freedom of the press” (“新聞自由”), “Umbrella Revolution” (“雨傘革命”), “Hong Kong Democratic Movement” (“香港民運”), and “double universal suffrage” (“雙普選”) are censored by Apple’s engraving service in Hong Kong.¹⁹

13 AlJazeera. “Hong Kong Leader Rejects Claims of Press Freedom ‘Extinction,’” January 4, 2022. <https://www.aljazeera.com/news/2022/1/4/hong-kong-leader-rejects-claims-of-press-freedom-extinction>.

14 HKFP Fast News. “No Need to ‘Defend’ Press Freedom ‘Because It Exists,’ Hong Kong Leadership Candidate John Lee Says.” *Hong Kong Free Press*, April 25, 2022. <https://hongkongfp.com/2022/04/25/no-need-to-defend-press-freedom-because-it-exists-hong-kong-leadership-candidate-john-lee-says/>.

15 Knockel and Ruan, *Engrave Danger*.

16 Ibid.

17 International Covenant on Civil and Political Rights (1966). <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

18 Knockel and Ruan, *Engrave Danger*.

19 Ibid.

As a six-month update to our August 2021 study of Apple's filtering practices, we reported that Apple has eliminated the Chinese political censorship that we previously found had bled into Taiwan from mainland China. However, while Apple eliminated the political censorship in its Taiwanese engraving service, we found that political censorship remained in Hong Kong through broad keyword based filtering.²⁰

This phenomenon of disproportionate and excessive restrictions to freedom of expression is not exclusive to Apple and appears to extend to broadcast and print media in Hong Kong as well. In May 2020, the Hong Kong Communications Authority suspended a long-running satirical show called *Headliner* shortly after the Authority warned the broadcasters against "insulting" the Hong Kong police force.²¹ In a February episode of *Headliner*, the show made a joke about the Hong Kong police force having more protective gear than the frontline government agencies and medical personnel working during the COVID-19 outbreak.²² Additionally, in July 2021, five individuals in Hong Kong were arrested for their publication of a children's book about sheep and wolves due to allegations that the books aimed to simplify "political issues not comprehensible by children" and to "beautify illegal behaviour."²³ The individuals were accused by Hong Kong's national security police for allegedly "conspiring to publish seditious publications," a crime found under section 10 of the Crimes Ordinance.²⁴

The increasingly hostile and punitive environment in Hong Kong has resulted in restriction of freedom of expression excessive enough to force journalistic organizations to shut down. Most pertinently, on January 3, 2022, independent Hong Kong media organization Citizen News announced its closure.²⁵ Originally established in 2017 by veteran journalists committed to serving the Hong Kong public, the organization announced that "Sadly, we can no longer strive to turn our beliefs into reality without fear because of the sea

20 Knockel and Ruan, *Engrave Condition*.

21 Grundy, Tom. "Hong Kong Public Broadcaster Suspends Satirical Show Hours after Gov't Demands Apology for 'Insulting' Police." Hong Kong Free Press, May 19, 2020. <https://hongkongfp.com/2020/05/19/hong-kong-public-broadcaster-axes-satirical-show-hours-after-govt-demands-apology-for-insulting-police/>.

22 Ibid.

23 Chau, Candice. "Hong Kong National Security Police Explain Why Children's Picture Books about Sheep Are Seditious." Hong Kong Free Press, July 22, 2021. <https://hongkongfp.com/2021/07/22/hong-kong-national-security-police-explain-why-childrens-picture-books-about-sheep-are-seditious/>.

24 Ibid. For other reports on how freedom of expression has deteriorated in Hong Kong, see also: Chan, Johannes M. M. "National Security Law in Hong Kong: One Year On." *Academia Sinica Law Journal* 30 (October 25, 2021). <https://doi.org/http://dx.doi.org/10.2139/ssrn.3956272>; Wong, Lydia, Eric Yan-ho Lai, and Thomas Kellogg. "Tracking the Impact of Hong Kong's National Security Law." ChinaFile, April 5, 2022. <https://www.chinafile.com/tracking-impact-of-hong-kongs-national-security-law/>; McLaughlin, Timothy. "The End of Free Speech in Hong Kong." *The Atlantic*, July 7, 2021. <https://www.theatlantic.com/international/archive/2021/07/end-free-speech-hong-kong/619577/>; Hargreaves, Stuart. "Past as Prologue: Intercept and Surveillance Rules Under Hong Kong's National Security Law." *Santa Clara Journal of International Law* 20 (2021). <https://ssrn.com/abstract=3911756>.

25 AlJazeera, "Hong Kong's Citizen News to close, amid fears for staff's safety," 3 January 2022, <https://www.aljazeera.com/news/2022/1/3/hong-kongs-citizen-news-to-close-amid-fears-for-staffs-safety>.

change in our society over the past two years and the deteriorating media environment.”²⁶ Specifically, they also said that “Amid this crisis, we have to first make sure everyone on the boat is safe,” with Citizen News chief editor Daisy Li adding that she didn’t know what “safe” news was any more.²⁷ Citizen News’ closure came in the wake of the closure of two major online news organizations in 2021: the first closure occurred following a police raid of Apple Daily’s offices on June 17, 2021.²⁸ Around 500 police officers entered the offices of Apple Daily, a newspaper with over 3.8 million registered web users, and subsequently detained the publication’s five most senior staff, confiscated files, and seized hard drives.²⁹ Officials accused the paper’s leadership of collusion with “foreign forces” in their publication of articles calling for sanctions against China for their actions in repressing Hong Kong.³⁰ The government also cited violations to the recently-passed NSL as justification to freeze the bank accounts of Next Digital Ltd., the paper’s parent company.³¹ Just six days after the raid, Apple Daily announced its closure.³² The management of the newspaper stated that “in view of staff members’ safety,” their team made the decision “to cease operation immediately after midnight.”³³ The second closure was on December 29, 2021, when the Hong Kong police raided the offices of news organization Stand News. Over 200 police officers raided the newspaper’s offices and arrested six individuals for “conspiracy to publish seditious publications,” including acting Chief Editor Patrick Lam.³⁴ Head of the NSD Steve Li reported that the police also seized assets amounting to HK\$61 million, as well as the publication’s laptops, phones, and journalistic materials.³⁵ Stand News announced its closure on the same day its offices were raided by police.³⁶ The

26 Ibid.

27 The Guardian, “Hong Kong’s Citizen News to close citing fears for staff safety”, 3 January 2022 <https://www.theguardian.com/world/2022/jan/02/hong-kong-citizen-news-close-fears-staff-safety>.

28 Marlow, Iain. “The Assault on Apple Daily.” *Bloomberg*, February 3, 2022. <https://www.bloomberg.com/features/2022-apple-daily-china-hong-kong-crackdown/>.

29 Ibid.

30 Ibid.

31 Lindberg, Kari Soo, Natalie Lung, and Pablo Robles. “How Hong Kong’s National Security Law Is Changing Everything.” *Bloomberg*, October 5, 2021. <https://www.bloomberg.com/graphics/2021-hong-kong-national-security-law-arrests/>; BBC. “Apple Daily: Hong Kong pro-Democracy Paper Announces Closure,” June 23, 2021.

32 Ibid.

33 Ibid.

34 AlJazeera, “Hong Kong’s Stand News outlet shuts down after police raid,” 29 December 2021, <https://www.aljazeera.com/news/2021/12/29/hong-kong-police-arrest-6-current-or-former-staff-of-online-media-outlet>.

35 Edmond Ng and James Pomfret, “Hong Kong pro-democracy Stand News closes after police raids condemned by U.N., Germany,” Reuters, December 29, 2021, <https://www.reuters.com/business/media-telecom/hong-kong-police-arrest-6-current-or-former-staff-online-media-outlet-2021-12-28/>.

36 AlJazeera. “Hong Kong’s Stand News Outlet Shuts down after Police Raid,” December 29, 2021. <https://www.aljazeera.com/news/2021/12/29/hong-kong-police-arrest-6-current-or-former-staff-of-online-media-outlet>.

newspaper issued a statement saying that it was ceasing operations imminently and shutting down both its website and social media.³⁷

News organizations are not only forced to shut down, but they are also choosing to move away from Hong Kong, citing the legal uncertainty in the wake of the NSL. For example, in July 2020, the New York Times announced that it would move its digital editing division from Hong Kong to Seoul, stating that the promulgation of the NSL "unsettled news organizations and created uncertainty about the city's prospects as a hub for journalism."³⁸ The news organization had maintained a presence in the city for decades, and stated that they would be relocating up to a third of their personnel to Seoul.³⁹ Most recently, on April 25, 2022, Hong Kong's Foreign Correspondents' Club (FCC) suspended its annual Human Rights Press Awards. FCC President Keith Richburg stated to the club's members that "Over the last two years, journalists in Hong Kong have been operating under new 'red lines' on what is and is not permissible, but there remain significant areas of uncertainty and we do not wish unintentionally to violate the law."⁴⁰

The legal uncertainty of the NSL has not only had a large negative impact on press freedom, but it also affects civil society organizations, including human rights advocacy groups. For example, in October 2021, Amnesty International announced the closing of its two offices in Hong Kong by the end of that year and the relocation of its regional operations to its other offices in the Asia-Pacific region.⁴¹ Amnesty International Board Chair Anjuhula Mya Singh Bais stated that their decision was "driven by Hong Kong's National Security Law, which has made it effectively impossible for human rights organizations in Hong Kong to work freely and without fear of serious reprisals from the government," adding that it was "increasingly difficult for us to keep operating in such an unstable environment."⁴² The organization cited that the "sweeping and vaguely worded definition of 'national security'" was employed arbitrarily as justification for the restriction of a wide range of human rights, including the freedom of expression, peaceful assembly and association, and the repression of dissent and political opposition.⁴³ Amnesty reported in their announcement that at the time of its writing, over 35 civil society organizations

37 Ibid.

38 BBC. "New York Times to Move Hong Kong Staff to Seoul over Press Freedom Fears," July 15, 2020, sec. China. <https://www.bbc.com/news/world-asia-china-53413057>.

39 Ibid.

40 Davidson, Helen. "Hong Kong's Human Rights Press Awards Scrapped over Security Law Fears." *The Guardian*. April 25, 2022. <https://www.theguardian.com/world/2022/apr/25/hong-kong-human-rights-press-awards-foreign-correspondents-club-scrapped-security-law-fears>.

41 Amnesty International. "Amnesty International to Close Its Hong Kong Offices," October 25, 2021. <https://www.amnesty.org/en/latest/news/2021/10/amnesty-international-to-close-its-hong-kong-offices/#:~:text=Amnesty%20International%20will%20close%20its,by%20the%20end%20of%202021>.

42 Ibid.

43 Ibid.

were disbanded since the promulgation of the NSL, and that “The pattern of raids, arrests and prosecutions against perceived opponents has highlighted how the vagueness of the law can be manipulated to build a case against whomsoever the authorities choose.”⁴⁴

OBSERVATION 2: We have found excessive freedom of expression restrictions in mainland China regarding Hong Kong events

We have found excessive and disproportionate freedom of expression restrictions in mainland China on Hong Kong events, infringing on the people of Hong Kong’s right to free speech. The people of Hong Kong should be able to communicate with each other and with their government, especially about critical events such as COVID-19 or the 2019 anti-extradition bill, but it is extremely difficult if not impossible for the people of Hong Kong to communicate with their fellow citizens in mainland China or the authorities in Beijing, in large part due to the excessive and disproportionate restrictions on freedom of expression found in mainland China.

We reported in March 2020 on the excessive filtering of keywords regarding COVID-19 and the 2019 Hong Kong protests on two major social media platforms in China: WeChat, the most popular platform in China with 1.2 billion monthly users, and YY, a Chinese live-streaming platform with 157.8 million monthly users.⁴⁵ Hong Kong makes significant use of WeChat, accounting for 15.94% of WeChat’s total traffic (as of April 2021) and with a penetration rate of 53.1%, making it the highest outside mainland China.⁴⁶

We found censorship on WeChat, including related to government criticism and COVID-19 responses in Hong Kong, Taiwan, and Macau.⁴⁷ Of the 99 keyword combinations that referenced COVID-19 responses in Hong Kong, Taiwan, and Macau, 68% of these

44 Ibid.

45 Smith, Craig. “YY Statistics and Facts.” DMR, March 10, 2022. <https://expandedramblings.com/index.php/yy-statistics/>; Vuleta, Branka. “WeChat Statistics.” *99 Firms* (blog), n.d. <https://99firms.com/blog/wechat-statistics/#gref>.

46 Ibid.

47 Ruan, Lotus, Jeffrey Knockel, and Masashi Crete-Nishihata. “Censored Contagion: How Information on the Coronavirus Is Managed on Chinese Social Media.” Toronto: The Citizen Lab, March 3, 2020. <https://citizenlab.ca/2020/03/censored-contagion-how-information-on-the-coronavirus-is-managed-on-chinese-social-media/>.

combinations focused upon Hong Kong and included criticism of Hong Kong Chief Executive Carrie Lam. Specifically, we found that:

“The majority of keyword combinations referencing Lam criticize her administration’s failure to respond to the health crisis (e.g., “民心背離 [+] 供應不足 [+] 積極搜購,” lost public trust + in short supply + proactively search and purchase (masks)) and on local protests demanding the closure of the borders between Hong Kong and mainland China (e.g., “封關 [+] 林鄭 [+] 醫護 [+] 香港 [+] 罷工,” close border + Carrie Lam + Medical workers + Hong Kong + go on strike).”⁴⁸

Furthermore, in August 2021, we released a report composed of thousands of images on the topic of the Hong Kong 2019-2020 protests which we found to be censored by WeChat.⁴⁹ While the censored content in China included many mundane images simply of people gathering for a protest and humorous memes of Xi Jinping, it also blocked images capturing police brutality against protesters, signs outlining protester demands, social media posts detailing future mass gatherings, and depictions of the 1989 Tiananmen Square Massacre.⁵⁰ For example, an image of text detailing recent arrests and attacks of prominent pro-democracy protesters in Hong Kong was found to be blocked; this is critical information, and the restriction of such information holds potential to distort how WeChat users in mainland China understand the facts surrounding how the protest events unfolded.⁵¹

In 2013, the UNHRC issued recommendations to the Hong Kong government within its third periodic report for Hong Kong: they encouraged Hong Kong to “take vigorous measures to repeal any unreasonable direct or indirect restrictions on freedom of expression, in particular for the media and academia, to take effective steps including investigation of attacks on journalists and to implement the right of access to information by public bodies.” Our research indicates that users of mainland Chinese platforms are subject to excessive restriction of information relating to Hong Kong, which ultimately restricts the ability of the people of Hong Kong to exercise their rights to free speech.

48 Ibid.

49 Knockel, Jeffrey. “Lennon Wall: A Mosaic of Censored Images Commemorating the Hong Kong Protests.” Net Alert, August 24, 2021. <https://netalert.me/hk-images.html>.

50 Knockel, “Lennon Wall,”; Lokman, Tsui. “The Evil of Banal Censorship.” *GlobalVoices* (blog), August 24, 2021.

51 Ibid., <https://netalert.me/resources/en/hk-images/lennon-wall/#58a68c498003fee82559073569a5607d20b3da1b09dafa0b65dc8618513b0647.jpeg>.

Summary

Scholars, human rights groups, and news media alike have reported on the lack of legal certainty in the NSL.⁵² The NSL was ostensibly established to safeguard the city from “secession,” “subversion,” “terrorism,” and “collusion with foreign organizations,” but our research and other reports demonstrate that these and other legal provisions are being used to censor expression including political expression such as criticism of government.

A fundamental component of international human rights law is the principle of legal certainty, a concept outlined in Article 15(1) of the ICCPR. It posits that criminal laws ought to be sufficiently narrowly defined so as to avoid confusion in a society’s people regarding which specific behaviors constitute a criminal offense.⁵³ The risk of a lack of legal certainty is explained in Lydia Wong and Thomas E. Kellogg’s human rights and rule of law analysis of the NSL: “Overly-broad laws can be arbitrarily applied to political opponents of a given government, and thus invite political targeting and other forms of abuse.”⁵⁴ In line with this concept, observers and advocacy groups alike argue that Apple’s compliance with Hong Kong’s laws and regulations exceeds the bare minimum, in an effort to avoid non-compliance with unclear red lines vis-a-vis freedom of expression restrictions under the NSL and to not “offend the Chinese government.”⁵⁵ Furthermore, the crackdown and closure of local pro-democracy news outlets Apple Daily and Stand News; the relocation of staff from the New York Times’ offices from Hong Kong to Seoul; and the ensuing closures of Amnesty International’s Hong Kong offices together indicate an environment of excessive and disproportionate freedom of expression restrictions and the self-censorship of entities, civil society organizations, and individuals.⁵⁶ Importantly,

52 Wong, Lydia, and Thomas E. Kellogg. “HONG KONG’S NATIONAL SECURITY LAW: A Human Rights and Rule of Law Analysis.” Georgetown University Center for Asian Law, February 2021. <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/02/GT-HK-Report-Accessible.pdf>; Datt, Angeli. “The Impact of the National Security Law on Media and Internet Freedom in Hong Kong.” *Freedom House*, October 19, 2021. <https://freedomhouse.org/article/impact-national-security-law-media-and-internet-freedom-hong-kong>; Ho, Kelly. “Hong Kong Security Law: Journalists and Scholars ‘at a Loss’ in Trying to Predict New Red Lines, Says Media Law Prof. Sharron Fast.” *Hong Kong Free Press*, July 6, 2020. <https://hongkongfp.com/2020/07/06/security-law-journalists-and-scholars-predicting-new-red-lines-at-a-loss-says-hong-kong-media-law-expert-sharron-fast>.

53 International Covenant on Civil and Political Rights, Article 15(1), (1966). <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

54 Wong and Kellogg, “HONG KONG’S NATIONAL SECURITY LAW: A Human Rights and Rule of Law Analysis”, p. 18.

55 Knockel and Ruan, Engrave Danger; GreatFire. “Apple’s Policy Regarding China’s App Store Management and User Privacy.” May 25, 2021. <https://appcensorship.com/greatfire-asks-apple-about-app-stores-management-in-china-open-letter/>.

56 More examples of cases highlighting the degradation of the environment of freedom of speech rights in Hong Kong can be found here: “Fair Game: The Endangered Media Space for Foreign Correspondents Inside China 2022.” IFJ Fair Game Reports. Redfern: International Federation of Journalists, February

these examples provide only a glance at the impact of the NSL on freedom of expression rights of those in Hong Kong. Stories depicting the arrests of protesters and journalists; civil society organization closures; the relocations of pro-democracy and media organizations; and the manifold other impacts the NSL has had, should be equally considered alongside the findings we provide in this report.

We also found that it is increasingly challenging for the people of Hong Kong to communicate with the people and the government in mainland China, due to excessive and disproportionate restrictions on freedom of speech practiced by Chinese social media. Social media platforms, such as WeChat, routinely censor critical events in Hong Kong, distorting the ability of mainland users, including the government, to properly and accurately understand what is happening in Hong Kong, and thus infringing on the people of Hong Kong's right to free speech.

In the Hong Kong government's response to the ICCPR's 2020 list of issues in relation to the fourth periodic report for Hong Kong, they claimed that "The HKSARG is firmly committed to protecting and respecting the freedom of the press, which is a fundamental right guaranteed by the Basic Law. The Government is also committed to maintaining a facilitative environment for the media to report news and perform its role as a watchdog over public affairs."⁵⁷ However, the findings in our research and the examples listed above indicate that the legal, political, cultural environment in Hong Kong is not facilitative of speech, but instead is excessively restrictive of it.

Recommendations

- Hong Kong authorities should acknowledge the current problematic situation of excessive and disproportionate freedom of expression restrictions, documented by us and by many others. The constant and consistent denials by the Hong Kong authorities that there is no need to defend press freedom or freedom of speech is not helpful and suggests that the authorities are not ready to face the serious erosion of freedom of speech in Hong Kong, let alone change it for the better. It is furthermore also important that the Hong Kong government raises the issue of censorship

2022. https://www.ifj.org/fileadmin/user_upload/Fair_Game_-_IFJ_Report_2022.pdf; "Hong Kong: Downward Spiral for Press Freedom Continues after Arrests." Amnesty International, December 29, 2021. <https://www.amnesty.org/en/latest/news/2021/12/hong-kong-downward-spiral-for-press-freedom-continues-after-arrests/>.

57 "Replies of Hong Kong, China to the List of Issues in Relation to its Fourth Periodic Report*." United Nations Human Rights Committee, September 28, 2021.

with the central government in Beijing, in particular the issue of censorship of Hong Kong events.

- In addition, we recommend that the Hong Kong authorities provide legal clarity regarding what speech is permissible and what is not, including under the NSL and the Crime Ordinance (especially what counts as seditious). However, merely providing legal clarity is necessary, but not sufficient.
- Finally, we recommend that the Hong Kong authorities take into account international standards such as the Johannesburg Principles when it comes to decisions and governance regarding free speech and national security. Specifically, these Principles stipulate that it is insufficient to only prove that speech can infringe on national security; to censor such speech, the authorities also need to prove that the specific constraint is prescribed by law, necessary, and proportional. For example, it would be helpful if courts would explain and argue how, in arriving at their judgment, their decision is not only serving a legitimate national security interest, but that the limitations on free speech are also necessary and proportional.

