

The Impact of the Hong Kong National Security Law on Civil Society Engagement with the United Nations (UN)

Submission to the UN Human Rights Committee ahead of the review of Hong Kong during the 1335th session

Table of Contents

- [EXECUTIVE SUMMARY](#)
- [INTRODUCTION](#)
- [1. AN OVERVIEW OF THE NATIONAL SECURITY LAW \(NSL\) AND ITS ACTUAL AND POTENTIAL IMPACTS ON HUMAN RIGHTS ADVOCACY](#)
- [2. CRACKDOWN ON NGOS AND HUMAN RIGHTS DEFENDERS UNDER THE NATIONAL SECURITY LAW \(NSL\)](#)
- [3. ACTS OF INTIMIDATION AND REPRISALS AGAINST THOSE ENGAGING WITH THE UN UNDER THE NATIONAL SECURITY LAW \(NSL\)](#)
- [4. THE NATIONAL SECURITY LAW'S DETERRENT EFFECT ON CIVIL SOCIETY'S ENGAGEMENT WITH THE UN](#)
- [5. RECOMMENDATIONS](#)

Executive Summary

On 30 June 2020, the National People's Congress Standing Committee (NPCSC)¹ of the People's Republic of China (PRC) announced the [full legislative text of the Hong Kong Special Administrative Region \(SAR\) National Security Law](#) (the NSL), that entered into force on 1 July 2020. Its promulgation directly from Beijing by mainland China's legislative, and not Hong Kong's Legislative Council, was an act that broke away from the 'One Country, Two Systems'. Under Hong Kong's new legal system, the NSL sits above all local Hong Kong legislations including the Bill of Rights and the constitutional guarantees under the Basic Law and the International Covenant on Civil and Political Rights (ICCPR). The [List of Issues](#) adopted by the UN Human Rights Committee in relation to the fourth periodic report of Hong Kong in August 2020, posed questions on the imposition of the NSL and its ill-defined, broad provisions on 'secession', 'subversion' and 'terrorist activities', the scope of its extraterritorial application, and the powers and immunities it grants to new law-enforcement bodies.

This report aims at raising concerns to the Human Rights Committee on the substantive and qualitative impact that the NSL has had on Hong Kong's civil society, with a focus on its ability to engage with the UN.

It provides an overview of the NSL and its actual and potential impacts on human rights advocacy from the perspectives of Hong Kong civil society and international NGOs, considering recent cases and judgments demonstrating how the courts and the law enforcement authorities (i.e. the National Security Commission and the Hong Kong Police National Security Bureau) in Hong Kong have implemented and interpreted the NSL. It details how the four major national security crimes under the NSL, and the way in which they have been interpreted, fail to meet the standards of legality, necessity, and proportionality², by conflating the expression of critical opinions on a wide range of topics, and human rights advocacy, including cooperation with the UN, as a threat to national security.

From the imposition of the NSL (30 June 2020) to January 2022, [dozens](#) of civil society groups have dissolved, including political parties. The largest number of such dissolutions happened between June and September 2021, following the crackdown on major independent news [outlet](#) Apple Daily in June 2021. At least 44 individuals related to civil society groups and media were arrested under NSL offences or by the national security police, including from Apple Daily, Stand

¹ The National People's Congress (NPC) is China's rubber-stamp parliament, that gathers yearly to vote on major bills, appointments, and adopt the budget, all previously decided by China Communist Party (CCP) leaders. Its Standing Committee (NPCSC), which meets every two months, is responsible for most of its regular work.

² The 1996 '[Johannesburg Principles](#)', endorsed by UN Special Rapporteur on freedom of expression and the UN Commission on Human Rights, recall that invoking national security 'is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force.' This excludes 'protecting a government from embarrassment or exposure of wrongdoing.'

News, the Alliance, Civil Human Rights Front, Hong Kong Confederation of Trade Unions, the General Union of Hong Kong Speech Therapists, and several student groups. [Civil society](#) groups disbanded either because their leaders or members were arrested, or because of a fear of being targeted under the NSL, including international groups such as Amnesty International. Furthermore, it is noted that many activists and political figures have left Hong Kong due to safety concerns.

The ability for any individuals and organisations that are based in, or have any links to Hong Kong, to safely engage with the UN over human rights issues is now gone under the new legal environment in Hong Kong. The Hong Kong authorities would most likely perceive the engagement with UN bodies as falling under the crime of 'foreign collusion' – carrying the maximum sentence of life imprisonment – especially if it involves comments critical of Hong Kong and/or the Central People's Government.

The NSL has had a significant impact on Hong Kong civil society's ability to engage with the UN. Some of the human rights organisations who engaged regularly in this work disbanded after their leaders or members were arrested. Many NGOs have become dormant to avoid stepping over the 'red line', constantly reassessing their risks under the NSL. In addition, civil society in Hong Kong cannot access resources freely and safely; many experienced human rights workers have left Hong Kong due to safety concerns. For NGOs in Hong Kong that are still operating, willingness to engage with the UN has significantly lowered, mainly because the risk outweighs the expected impact, but also because there are no coordinating organisations anymore, nor assistance with capacity-building.

Lastly, this report also analyses where it appears the political trends in Hong Kong are heading and endeavours to present some possible scenarios regarding new laws in the field of national security that will be enacted in 2022 targeting, inter alia, 'fake news', foreign espionage and the activities of foreign organisations in Hong Kong and/or their local branches. The Hong Kong authorities have also announced plans to enact laws regarding cybersecurity – likely targeting the internet. Whilst the details of these new laws are not yet made public, it is widely expected that they will be passed within 2022, further completing the overall change in the legal and political environment of Hong Kong into an authoritarian society led by a former senior police officer and security minister, [John Lee](#), as the next Chief Executive.

ISHR therefore encourages the Human Rights Committee to recommend to the Government of Hong Kong SAR to:

- **Repeal the National Security Law, and Implementation Rules for Article 43;**

- **Ensure that any legislation relating to national security, including foreseen new legislation, fully complies with international human rights standards, including the Johannesburg Principles, and does not hinder any form of access to or cooperation with the United Nations, its bodies and representatives; and that any restriction to human rights guaranteed under the ICCPR meet the tests of legality, necessity and proportionality;**
- **Promptly release all individuals investigated, detained, and sentenced under the National Security Law, and guarantee their right to seek redress;**
- **Ensure that any case of individuals or organisations investigated, prosecuted or tried on national security grounds, complies with the right to a fair trial and due process guarantees as established under the ICCPR and relevant international human rights standards, and is tried by independent courts in line with the UN Basic Principles on the Independence of the Judiciary.**

Introduction

On 30 June 2020, the National People's Congress Standing Committee (NPCSC)³ of the People's Republic of China (PRC) announced the [full legislative text of the Hong Kong Special Administrative Region \(SAR\) National Security Law](#) (the NSL), that entered into force on 1 July 2020.

Earlier, on 22 May 2020, the National People's Congress (NPC), had approved a decision to authorise the NPCSC to enact a national security law for Hong Kong if Hong Kong did not 'legislate national security law according to the Basic Law as soon as possible.'⁴ The decision authorised the NPCSC to enact laws for 'a sound legal system' in the territory. Prior to its announcement, the full text of the NSL was kept secret by the NPCSC. Even top officials in Hong Kong were not given details of the law until 30 June, beyond brief outlines and elements of this new legislation. Its promulgation directly from Beijing by mainland China's legislative, and not Hong Kong's Legislative Council, seemed designed to have a 'shock and awe' effect on Hong Kong society, especially the political opposition, media and civil society: it was an act that broke away from the 'One Country, Two Systems' model whereby the Hong Kong People were supposed to govern their own domestic affairs. Never has a substantive PRC law, that carries maximum criminal penalties of life imprisonment, includes broadly drafted offences, and gives the legal authority to PRC officials to direct and instruct the Hong Kong Government and Police on enforcement, been imposed by the NPCSC directly onto Hong Kong.

Since the promulgation of the NSL, Hong Kong's once vibrant civil society has undergone a sea change. Many prominent and long-standing NGOs were forced to cease operations or move out of Hong Kong, and some of their leaders have been arrested and imprisoned before trial. The chilling effect of the NSL has effectively ended Hong Kong civil society with many activists now in jail, forced into exile or silenced. As many [scholars](#) have observed in the past, Hong Kong is 'a paradox in democratisation and modernisation theory: it has a vibrant civil society and high level of economic development, but very slow democratization.' This paradox has now come to an end under the shadow of the NSL.

Under Hong Kong's new legal system, the NSL sits above all local Hong Kong legislations including the Bill of Rights and the constitutional guarantees under the Basic Law and the International Covenant on Civil and Political Rights (ICCPR). No person could bring a legal challenge to the NSL on the grounds that its provisions violate the Basic Law. This is confirmed by the Court of Final Appeal in [the case](#) concerning Jimmy Lai's bail application. This fundamentally

³ The National People's Congress (NPC) is China's rubber-stamp parliament, that gathers yearly to vote on major bills, appointments, and adopt the budget, all previously decided by China Communist Party (CCP) leaders. Its Standing Committee (NPCSC), which meets every two months, is responsible for most of its regular work.

⁴ Article 3 of the National People's Congress Decision on Hong Kong national security legislation

departs from the legal system under the Basic Law – which could no longer be regarded as Hong Kong’s mini constitution.

Since its implementation, the NSL has had a substantial impact on civil society in Hong Kong. Many NGOs, including international ones such as Amnesty International, have had to pull their operations and staff out of Hong Kong due to fear of prosecution. As explained by the Chairman of Amnesty’s International Board, the decision to pull out of Hong Kong was driven by the NSL ‘*which has made it effectively impossible for human rights organisations in Hong Kong to work freely and without fear of serious reprisals from the government.*’⁵

The Civil Human Rights Front (CHRF), which was established in 2002 with the aim of giving a platform to different organisations to promote the development of human rights in Hong Kong, was forced to disband on 15 August 2021. The CHRF was responsible for organizing the largest peaceful protests in Hong Kong’s history, notably the anti-National Security Law protests in 2003 with half million Hong Kongers taking to the streets, as well as the one million and two million anti-extradition protests on 9 and 16 June 2019 respectively.

Many other NGOs and trade unions have since followed the path of the CHRF. Active members of Hong Kong civil society, such as the journalist [Allan Au](#), notable barrister [Margaret Ng](#), and former Legislative Councillor [Nathan Law](#) are now either in prison, forced into exile or silenced. There are many more examples.

The Hong Kong Legislative Council (LegCo) used to provide a platform for NGOs and civil society in general to express their views on a range of issues from human rights, and the rights of LGBTI people, to the environment and climate change. These groups were frequently invited to make submissions and participate in various panels, bills committees and subcommittees in the LegCo premises. Under the new ‘patriots only’ LegCo, these alternative or civil society voices would no longer be heard when even the new [LegCo members have been told](#) to ask fewer questions themselves. We have not seen any official agenda item where civil society groups in Hong Kong were invited to give their views in [LegCo meetings](#).

The NSL has global jurisdiction which claims to have enforcement powers over all citizens irrespective of their nationality or whereabouts. Most recently the UK based NGO [Hong Kong Watch](#) received a notice from the national security police in Hong Kong requesting Hong Kong Watch to remove the contents of its website that is based in the UK, citing that its contents are in breach of the NSL. This is but the latest evidence of the global reach of the NSL. The former pro-democracy member of the Legislative Council, Ted Hui, who fled to Australia, had all his assets and bank accounts, including those of his wife and mother, [frozen by a](#)

⁵ Amnesty International Public Statement on 25 October 2021

[HK Court order](#) at the request of the Hong Kong police national security department.

Apart from using the NSL to oppress civil society and jailing pro-democratic opposition members, the Hong Kong authorities are also using old colonial offences such as sedition to charge anyone who is outspoken and critical of the Hong Kong and Central Government. Seditious is an old colonial offense which has not been used by the Hong Kong Government since the 1970s. This offense has not been widely revived by the Hong Kong authorities to silence [all critical voices](#) and [expression](#). Anyone charged with this offense could land in jail immediately without trial as the harsh bail conditions under the NSL are also applicable to offenses such as sedition. This report sets out the details of these latest developments and analyses the court rulings coming out of the Hong Kong courts.

This report examines the substantive and qualitative impact that the NSL has had on Hong Kong's civil society, with a focus on its ability to engage with the UN. This report first analyses the provisions of the NSL, and their impact on human rights advocacy from the perspectives of Hong Kong civil society and international NGOs. In doing so, the report also considers recent cases and judgments demonstrating how the courts and the law enforcement authorities (i.e. the National Security Commission and the Hong Kong Police National Security Bureau) in Hong Kong have implemented and interpreted the NSL. In summary, the ability for any individuals and organisations which are based in Hong Kong or have any links to Hong Kong to safely engage with the UN over human rights issues are gone under the new legal environment in Hong Kong. The singer Denise Ho was targeted for speaking out [in UN forums](#) and she was arrested in late 2021 for her involvement in a digital media news outlet [Stand News](#) as a former board member. The Hong Kong authorities would most likely see such engagement with the UN or UN related bodies as 'foreign collusion' especially if it involves comments critical of Hong Kong and/or the Central People's Government. 'Foreign collusion' is a crime under the NSL which carries the maximum sentence of life imprisonment.

This report also analyses where it appears the political trends in Hong Kong are heading and endeavours to present some possible scenarios regarding new laws in the field of national security that will be enacted in 2022 targeting, inter alia, 'fake news', foreign espionage and the activities of foreign organisations in Hong Kong and/or their local branches. The Hong Kong authorities have also announced plans to enact laws regarding cybersecurity – likely targeting the internet. Whilst the details of these new laws are not yet made public, it is widely expected that they will be passed within 2022, further completing the overall change in the legal and political environment of Hong Kong into an authoritarian society led by a former senior police officer and security minister, [John Lee](#), as the next Chief Executive.

1. An Overview of the NSL and its Actual and Potential Impacts on Human Rights Advocacy

The NSL creates four major criminal offences each carrying up to a maximum penalty of life imprisonment:

- Subversion (Article 22).
- Collusion with a Foreign Country or with External Elements to Endanger National Security (Article 29);
- Secession (Article 20); and
- Terrorist Activities (Article 24).

Observations on the crime of ‘Subversion’ (Article 22)

‘Subversion’⁶ is a broadly worded offence that involves overthrowing, seriously interfering in, disrupting, or undermining the bodies of power in the Hong Kong SAR, including the legislature and judiciary. No violence is required to be proven by the prosecution. Anyone who incites, assists in, abets or provides financial assistance to those acts would also be in contravention of the NSL.

UN Special Procedures experts have highlighted that ‘the term subversion is problematic given the requirement of legal certainty elucidated under article 15 of the International Covenant on Civil and Political Rights (ICCPR).’ They point that ‘subversion is almost uniformly directed towards the regulation of activity viewed as political under domestic law (...) generally understood as a ‘political crime’.⁷

Under this crime, activities that were previously allowed under the Basic Law (Hong Kong’s ‘mini constitution’ under the ‘One Country, Two Systems’ framework) are now illegal from the perspective of the authorities under the NSL, e.g. using the legislature’s constitutional power to force the resignation of the Chief Executive (Head of Government of Hong Kong).⁸ The biggest charge against 47 opposition members involved allegations of a conspiracy to use the democratic primary election to subvert the Hong Kong government. Candidates pledged to use their legislative council seats (once elected) to force the Hong Kong government to respond to the demands of the Hong Kong people including forcing the Chief Executive to resign, as allowed under the Basic Law (i.e. Articles 50 and 51). None of the 47 cases involving subversion or conspiracy to subversion has gone through a full trial in the Hong Kong courts. We are awaiting to see how a HK court would interpret this offense after a full trial.

⁶ Article 22 and 23 of NSL

⁷ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

⁸ <https://www.bbc.com/news/world-asia-china-56228363>

Observations on the crime of ‘Collusion with a Foreign Country or with External Elements to Endanger National Security’ (Article 29)

The offense of ‘collusion with a foreign country or with external elements’ is broad and vaguely worded. It includes, inter alia, conspiring with a foreign individual or organisation “to provoke by unlawful means hatred against the Hong Kong Government or [the PRC] Central People’s Government”. For example, if the members of a Hong Kong NGO discuss the serious human rights violations by the PRC Government in both Hong Kong and Xinjiang with members of an international NGO or a UN expert, this could amount to (i) seditious speech, which is of course considered unlawful conduct and (ii) collusion with foreign or external elements as the communication was made with members outside of mainland China and Hong Kong. [Jimmy Lai](#), the owner of Apple Daily, was charged with ‘foreign collusion’ under the NSL – his offense includes allegations that he shared the [Twitter messages](#) of foreign politicians on his own Twitter account.

A New Security Apparatus under the NSL

Article 54 of the NSL creates a national security apparatus mandated to strengthen the management of NGOs and foreign organisations in Hong Kong. It includes a Committee for Safeguarding National Security and an Office for Safeguarding National Security (the Office), both of which are under the direct authority and supervision of the PRC Government. This is another fundamental change to the power structure in Hong Kong. Having Mainland officials directly in charge of security to direct the Hong Kong officials and police forces to enforce the NSL and other related matters.

Under Article 43(5) of the NSL, the authorities have the power to request an organisation to provide information about its members, funding and any other related matters. Several NGOs in Hong Kong have been requested to provide a full list of members and donors since incorporation, in some cases requiring disclosure of information going back more than 10 years.⁹ ‘Foreign agents’ are specifically mentioned in this provision though the provision itself does not define who they are – presumably it would include anyone working for foreign governments and NGOs. Personal privacy of data is no defense to such a request under the NSL.

In addition, even if there is no investigation under the NSL, the authorities are now increasingly using their powers under the Societies Ordinance to investigate NGOs and request them to turn over information about their memberships and

⁹ <https://hongkongfp.com/2021/08/25/hong-kong-national-security-police-demand-info-from-tiananmen-massacre-vigil-organiser/>

financial details.¹⁰ The Societies Ordinance dates back to the colonial era when it was used to regulate the formation of local societies. Under the British, this law was primarily used against triads (or other criminal gangsters groups) to prevent them from forming gangs that were notorious for their criminal network and conducts. This law was never used to prevent or to investigate civil society organisations in the past even after the handover. In recent years, we are seeing the use of the powers under the Societies Ordinance to disband political groups including the pro -independence [Hong Kong National Party](#), and other civil society groups such as the former senior members of the Professional Trade Union who were arrested in March 2022 for their alleged breach of the Societies Ordinance.

Observations on the crime of ‘Secession’

Under [Article 20](#) of the NSL, anyone who organizes, plans, commits or participates in any acts, whether or not by force or threat of force, with a view to commit secession or undermine national unification is guilty of an offence. This includes calling for the separation of Hong Kong from the PRC, altering the legal status of Hong Kong, and surrendering Hong Kong to a foreign country. UN Special Procedures experts have expressed concerns that they are ‘broad and imprecise,’ and that ‘a range of legitimate activities expressly protected by the ICCPR will be redefined domestically as secession by this legislation.’¹¹

To be found guilty of secession, it is not necessary for the defendant to have advocated for violence or engaged in the actual planning of overthrowing the government. For example, a 20-year old student leader was sentenced to 3.5 years imprisonment for publishing social media posts that called on the public to ‘get rid of Chinese colonial rule’. He did not have actual plans to do so nor has he called for specific actions or violence. The charge of secession does not require to prove the existence of tangible plans.¹²

The mere display of a slogan that could be understood as having a secessionist meaning is a serious crime. In the first case brought to court under the NSL, a motorcyclist was sentenced to 9 years imprisonment for recklessly charging his vehicle at a police line. Part of his crime was displaying a political banner atop his motor vehicle. As pointed out by legal scholar Michael Davis, ‘although both the Basic Law and Article 4 of the NSL call for continuing application of the ICCPR, the court took no notice of generally applicable human-rights standard for incitement, which requires (i) that a speaker imminently intends to spark violence, and (ii) that such is likely to occur in the given speech setting.’¹³ UN Special

¹⁰ s. 12 of Societies Ordinance; https://www.elegislation.gov.hk/hk/cap151?xpid=ID_1438402725223_002

¹¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

¹² <https://hongkongfp.com/2021/11/23/breaking-hong-kong-activist-tony-chung-sentenced-to-3-years-and-7-months-for-secession-and-money-laundering/>

¹³ Professor Michael Davis – How Beijing Perfected Repression, Journal of Democracy Jan 2022 by John Hopkins University Press

Procedures experts indicate that ‘articles 20 and 22 of the [National Security] law which define organizing, planning, committing or participating in secession or subversion, appear to criminalise speech acts, including political writing.’¹⁴

General observations on the scope and jurisdiction of the NSL

The NSL has a global reach: it applies to persons and acts outside of Hong Kong.¹⁵ Articles 37 and 38 of the NSL specifically state that anyone who is a Hong Kong permanent resident could commit an offence under the NSL even if outside of Hong Kong. In addition, and crucially, a non-Hong Kong resident could also commit an offence under the NSL from outside of Hong Kong. That is to say the citizen of any foreign country who spoke critically of the Hong Kong government or ask their own government to impose punitive measures against Hong Kong could be committing an offence under the NSL. Any foreigners who post comments on social media critical of the Hong Kong government or inciting hatred towards Hong Kong could be committing an offence under the NSL even if he or she is located outside of Hong Kong. After the promulgation of the NSL, many Western countries have suspended the extradition arrangements with Hong Kong. However, there have been cases of dissidents being arrested in [Thailand or Dubai](#) and deported to the PRC for trial. The PRC has made use of the red notice system in INTERPOL to include dissidents whom they wish to arrest internationally.¹⁶ It is documented that such operations to bring fugitives back to PRC for trial has been ongoing in the West, including the United States, for years e.g. [Operation Fox Hunt](#).

The provisions governing the NSL offences are vaguely drafted, which creates many legal uncertainties. Article 4 of the NSL states that all human rights shall be respected and protected in safeguarding national security in Hong Kong including all rights protected under the ICCPR. Article 4 of the NSL ostensibly protects basic human rights; however, the actual enforcement and interpretation of the NSL by the Hong Kong law enforcement authorities and courts have completely disregarded basic rights such as freedom of expression, freedom of association and presumption of innocence before trial. Defendants have been charged simply for what they publish in books or on social media, and bail before trials has been denied to many defendants charged under the NSL. Speech crimes are now a common event in Hong Kong — simply clapping and cheering in a court room could land someone in jail for sedition.

UN Special Procedures experts noted that ‘the terms secession and subversion appear to be used interchangeably in national legislation [and that] this conflation may lead to the potential misuse of these legal categories against human rights defenders, journalists and civil society actors.’ They highlight that ‘secession and

¹⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

¹⁵ Article 38 of NSL

¹⁶ <https://safeguarddefenders.com/en/blog/chinas-use-interpol-exposed-new-report>

subversion often function as over-inclusive legal categories, mopping up a range of acts that if placed in the counter-terrorism category would be found inconsistent with a strict reading of the global counter-terrorism obligations of the state, which are constrained by the Suppression Conventions and by United National Security Council Resolution 1566.¹⁷

‘National security’ in itself is not defined under the NSL. Therefore, the law enforcement authorities have the power to arbitrarily determine the meaning of ‘national security’ and such decisions are binding on the Hong Kong Courts.¹⁸ For practical purposes, the concept of ‘national security’ must be understood in the framework of the laws of the People’s Republic of China (PRC). Under the [PRC National Security Law](#), ‘national security’ includes non-traditional security fields such as economic activity, finance, culture, science and technology, societal and environment.¹⁹ This broad definition of national security has been echoed by top Hong Kong government officials.²⁰ It is expected that the new laws on national security to be enacted under Article 23 of the Basic Law (said to be targeting foreign espionage and foreign organisation activities in Hong Kong) will follow the regime in place in the jurisdiction of the PRC of tightening management and regulation of NGOs and foreign organisations, especially those engaged in human rights advocacy on an international level.

The 1996 ‘Johannesburg Principles’²¹ determine that invoking national security ‘is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force.’ This therefore excludes ‘protecting a government from embarrassment or exposure to wrongdoing.’²²

Cases involving national security are presided over by a list of national security judges.²³ These judges are handpicked by the Chief Executive in consultation with the Committee for Safeguarding National Security for Hong Kong. The Committee for Safeguarding National Security for Hong Kong consists of mainland China security officials, the director of the China Liaison Office (Beijing’s representative office in Hong Kong), the Chief Executive, and other senior members of the Hong Kong government. However, the Chief Justice recently acknowledged that he does not know what criteria the Chief Executive follows when it comes to the selection of national security judges.²⁴ In addition,

¹⁷ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

¹⁸ Article 47 of NSL

¹⁹ <https://ash.harvard.edu/publications/risks-international-business-under-hong-kong-national-security-law>

²⁰ <https://www.cso.gov.hk/eng/blog/blog20210411.htm>

²¹ <https://undocs.org/pdf?symbol=en/E/CN.4/1996/39>

²² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/278/27/pdf/N1627827.pdf?OpenElement>

²³ Article 44 of NSL

²⁴ <https://www.reuters.com/world/asia-pacific/hong-kongs-top-judge-defends-citys-rule-law-face-international-concern-2022-01-24/>

the Secretary for Justice and prosecution authorities also have the power to prohibit jury trials for national security cases.²⁵

The NSL effectively stands above the Basic Law. The Court of Final Appeal (CFA) confirmed in the Jimmy Lai (owner of Apple Daily)'s bail application case that one cannot challenge the NSL on the grounds that it has contravened the Basic Law or the human rights protection therein.²⁶ The CFA has no power to review the NSL on grounds of non-conformity with the Basic Law. In constitutional terms, the NSL is an act of the PRC State, which could not be challenged by the Hong Kong courts.

The NSL presumes against bail. For anyone charged with national security related offences – including the colonial offence of ‘sedition’ as analysed below – the defendant would need to satisfy the court that upon release on bail he or she would not continue to commit acts endangering national security. This effectively displaces the presumption of innocence. Subsequent court decisions on refusal to grant bail have shown how elusive the standard is: having regular contacts with foreign journalists or foreign consulate staff could be regarded as acts that would ‘endanger national security’.²⁷ All factors could be considered by the national security judge including the defendant’s political background and experience, his or her record in public service, how long he or she has been in politics and how committed he or she is in her political beliefs. The extent to which one has been vocal and ‘radical’ in the past, could be used as grounds for denying bail. In one case, criticizing the human rights situation in Hong Kong to a foreign journalist was grounds to justify a denial of bail.²⁸

National security offences are not limited to the four main offences under the NSL. They also include old colonial offences such as ‘sedition’ that is still on the statute books in Hong Kong but was rarely used before 2020. Sedition²⁹ is a broadly worded criminal offence that includes political speech aimed at criticizing the Government, the PRC and the administration of justice by the courts³⁰. The Hong Kong authorities recently arrested the former directors and editor of a digital news media outlet on grounds of publishing seditious articles.³¹ Some of the articles involve criticism of the Hong Kong courts and legal administration. The same presumption against bail applies to the charge of sedition. The case of radio host and activist ‘Fast Beat’ Tam Tak-Chi was remanded into custody for over a year without bail on the charge of sedition. He [was later convicted](#) for uttering verbal criticisms against the Hong Kong government and police capable

²⁵ Article 46 of NSL

²⁶ <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/06/HongKongNSLRightToFairTrial.pdf>

²⁷ <https://www.aljazeera.com/news/2022/1/27/hong-kong-bail>; HKSAR v Lai Chee Ying 2021 HKCFA 3

²⁸ <https://www.ifj.org/media-centre/news/detail/category/surveillance/article/hong-kong-former-lawmaker-denied-bail-for-talking-to-foreign-journalists.html>; HKSAR v Jeremy Tam 2021 HKCFI 791; HKSAR v Claudia Mo 2021 HKCFI 1435

²⁹ See s. 9 of the Crimes Ordinance for full definition

³⁰ [Crimes Ordinance Cap. 200 s. 9](#);

³¹ <https://www.state.gov/stand-news-arrests-and-closure/>

of inciting hatred. He used words such as “damned black cops”. He received 40 months in imprisonment.

Another recent arrest concerns a popular singer posting anti-vaccine messages on his social media page.³² Public health policies are now within the realm of national security and cannot be publicly questioned or criticized. [Clapping](#) inside the Courtrooms could be sedition.

The ‘Special Branch’ for national security within the Hong Kong Police has wide powers under the NSL implementation regulations³³, enacted alongside the NSL. Pursuant to Article 43 of the NSL, they define the powers of the Hong Kong police in the investigation of crimes under the NSL. They include the permit for warrantless searches, the confiscation of travel documents (applicable to foreign passport holders), property seizures and freezing of bank accounts, communication interception and secret surveillance on anyone suspecting of planning or being involved in national security related offences. Property seizures could include freezing the shares of a company³⁴.

Observations on immigration exit bans

In addition to the passage of the NSL, the adoption of legislation on other areas raises concerns at the use of other tools to target individuals accused of national security crimes. This includes the Immigration (Amendment) Ordinance passed in 2021. The Director of Immigration now has the power to ban anyone from leaving Hong Kong. The authorities justify this power by claiming that it would be used to [target illegal immigrants](#) only and that subsidiary legislation would be enacted to clarify the usage of this power. Such subsidiary legislation is still nowhere in sight and the law came into effect 1 August 2021. International travel in and out of Hong Kong has drastically reduced in the past year or so due to the territory’s stringent Covid measures. We are yet to see how the authorities would make use of this broad power. Suffice to say that [exit bans](#) on foreigners are frequently imposed in Mainland China.

Observations on the current political environment

In trying to understand the NSL and its implementation, we must take into account recent political developments in Hong Kong and China. Hong Kong’s new Legislative Council has now taken office following a heavily controlled ‘election’ by the Central People’s Government whereby only [‘patriots’](#) were allowed to take part. As discussed above, the Government and the new lawmakers are now calling for more laws to target foreign espionage and foreign organizations or local organizations with foreign links.

³² <https://variety.com/2022/music/news/hong-kong-arrests-singer-tommy-yuen-1235183234/>

³³ L.N. 139 of 2020

³⁴ L.N. 139 of 2020 Schedule 3; <https://www.reuters.com/article/us-hongkong-hsbc/former-hong-kong-lawmaker-rejects-hsbc-explanation-over-frozen-accounts-idUSKBN29N0HP>

In the old setup of the Legislative Council since 1997 (i.e. before large scale ‘patriots only’ election reform by Beijing in 2020), there was a longstanding tradition for the Constitutional Affairs Panel (the Panel) to receive submissions (both oral and written) from NGOs and civil society generally on the human rights situation in Hong Kong. The scope of submissions would range from freedom of assembly and freedom of speech, to special education rights, and minority and refugees issues. Members of civil society groups would be given the opportunity to speak at the Panel and/or its subcommittees. Officials from the Hong Kong Government would attend the sessions and reply to the submissions made. There were also special meetings scheduled ahead of Hong Kong’s review by the UN Human Rights Committee and related report submitted to the Human Rights Committee by the Government. Before finalising the report, officials were required to attend the Legislative Council to be questioned and held accountable to members of the Legislative Council. Under the new ‘patriots only’ Legislative Council, all of these hearings and traditions are no longer held.

As evidenced by the NSL’s imposition on Hong Kong by the NPCSC, and subsequent legislation passed by an almost entirely pro-Beijing Legislative Council, the trajectory for Hong Kong going forward will be within the firm orbit of the PRC. The Central People’s Government is now issuing [edicts](#) to the Hong Kong Government on all [important policy](#) areas.

Groups such as the Hong Kong [Foreign Correspondents Club \(FCC\)](#) are constantly under attack by the Ministry of Foreign Affairs in Hong Kong and PRC State media. The **Hong Kong Bar Association** has historically been one of the most outspoken professional unions in Hong Kong. It now remains silent due to fear of prosecution under the NSL—it will no longer openly issue position papers in relation to important legal and constitutional issues. The former Bar Chairman, Paul Harris, was held in the police station for hours whilst being questioned by the national security police. He had to leave Hong Kong that same evening. He was allegedly questioned by the Hong Kong police about his recent book on freedom of assembly and demonstration, and his other human rights work. Other professional unions such as the **Teachers Union** and the **Hong Kong Federation of Trade Unions** were forced to disband following warnings from the Hong Kong authorities related to national security.³⁵

The foreseen sustained tensions between China and the United States are likely to impact the behaviour of Hong Kong officials and legislators, in the form of increased demonstrations of patriotism. The Hong Kong authorities are likely to firmly follow the path of the Central People’s Government on all main policies. It

³⁵ <https://www.reuters.com/world/asia-pacific/hong-kong-teachers-union-disband-due-drastic-political-situation-2021-08-10/>; <https://www.reuters.com/world/asia-pacific/hong-kong-trade-union-disbands-impact-security-law-deepens-2021-10-03/>

is expected that the NSL – and other new laws relating to national security yet to be enacted – will likely be used as a tool to target foreign groups or local groups with foreign links.

In the medium term, once the new laws targeting foreign espionage and the prohibition of certain foreign organisations in Hong Kong are enacted by local legislature – expected in 2022 – it is likely that the Central People’s Government, and local pro-Beijing State media outlets, will build pressure on the Hong Kong Government to make use of these laws in order to remove ‘unwelcome’ or unwanted external groups from Hong Kong. Further analysis will be necessary once the new draft laws are released for consultation.

2. Crackdown on NGOs and Human Rights Defenders under the NSL

Scholars observed that the Chinese Government views Hong Kong civil society as a threat to Hong Kong's stability. Lau Siu-kai, Member of the Chinese People's Political Consultative Conference since 2003 and Vice-President of the Chinese Association of Hong Kong and Macao Studies, explained the Chinese Government's view on Hong Kong's civil society: 'Beijing did not want to pay too high a political cost to clear up these 'tumours' when the situation was not so bad. But as the situation has gotten worse, Beijing felt it had to take action before it gets too late, and must make sure they don't get to come back.'

Amnesty International also made the same observation when it decided to close its offices in Hong Kong: 'the recent targeting of local human rights organisations and trade unions signals an intensification of the authorities' campaign to rid the city of all dissenting voices.'

From the imposition of the NSL (30 June 2020) to January 2022, [dozens](#) of civil society groups have dissolved, including political parties. The largest number of such dissolutions happened between June and September 2021, following the crackdown on major independent news [outlet Apple Daily](#) in June 2021, which, to many, pointed to a relentless attitude of the authorities to clampdown on dissident voices. At least 44 people related to civil society groups and media were arrested under NSL offences or by the national security police, including from **Apple Daily, Stand News, the Alliance, Civil Human Rights Front, Hong Kong Confederation of Trade Unions, the General Union of Hong Kong Speech Therapists, and some student groups**. [Civil society](#) groups disbanded either because their leaders or members were arrested, or because of a fear of being targeted under the NSL. Furthermore, it is observed that many activists and political figures have left Hong Kong due to safety concern.

The UN Special Rapporteur on counter-terrorism and human rights recalled that the Government has 'confirmed that the ICCPR is applicable to the NSL and its enforcement in its submissions to the UN Human Rights Committee.'³⁶ Yet, its implementation disregards such commitments and legal provisions with regards to human rights protections.

The NSL has such sweeping impact on the survival of independent civil society organisations because it is broad, vague, and unchecked. The legislative process of the NSL did not involve Hong Kong people; in practice, it disregards human rights protections offered in the Basic Law, including the ICCPR; the NPCSC has

³⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27082>

the power to interpret the NSL;³⁷ it creates new institutions such as the National Security Committee and election screening procedures that are not conducive to the protection of human rights nor are their actions subject to judicial review by the Courts. Furthermore, the way the NSL is actually applied by the law enforcement, prosecution, the judiciary shows that there is no expectation for tolerance of a free civil society.

For example, a primary election to select the strongest candidates in the pro-democracy camp to participate in the Legislative Council election was [alleged](#) to be a conspiracy of ‘subversion’. **Forty-seven democracy activists and political group leaders** were arrested and charged with the offence. If found guilty of having a key role in the crime, the architect of the primary election, **Professor Benny Tai**, would face a minimum of 10 years and maximum of life in prison, in accordance with what’s stipulated in the NSL.

The authorities also found a way to apply the NSL to the **612 Humanitarian Relief Fund (“612 Fund”)**. The 612 Fund was formed in June 2019 by way of a trust to raise funds from the general public to aid people arrested or injured in relation to the protest movement, bearing in mind that the Hong Kong Police Force (HKPF) was accused of using excessive force in handling the protests, and making mass arrests. The trustees were reputable people, including Dr. Margaret Ng Ngoi-yee, a barrister in Hong Kong, former representative elected by the legal sector to the Legislative Council, and winner of international human rights prizes. As a trust, the 612 Fund did not have its own bank account; it made an arrangement with another pro-democracy organisation for the use of their bank account. Pro-government lawmakers claimed that the 612 Fund had a role in sustaining violent protests by providing legal assistance and described the operation as money laundering.³⁸ The organisation that allowed the 612 Fund to use its bank account later decided to dissolve due to the worsening of political situation and stopped the arrangement with the 612 Fund. The 612 Fund had to hastily cease operations in August 2021 as a result.

After insinuating that the 612 Fund could be involved in money laundering, the Hong Kong Secretary of Security issued it with a court order under Article 43 of the NSL to compel the production of information for the investigation of a matter related to national security. The Police are reportedly investigating whether the funding source involves ‘collusion with foreign elements’, as per the scope of the NSL. The Secretary of Treasury and Finance also said the 612 Fund was not registered as a society, company or trade union and urged Hong Kongers to distance themselves from the 612 Fund to avoid being scammed or face legal

³⁷ NSL Article 65 “The power of interpretation of this Law shall be vested in the Standing Committee of the National People’s Congress.”

³⁸ 網上眾籌政府拒管 議員轟縱容黑暴資金鏈, Oriental Daily, 29 October 2020 (https://orientaldaily.on.cc/cnt/news/20201029/00176_032.html)

risks.³⁹ These are tactics to alienate a civil society organisation and the access to resources.

The **Hong Kong Alliance in Support of Patriotic Democratic Movements of China**⁴⁰ (the Alliance) and its leadership are charged with subversion. It was first determined by the Hong Kong Police to be a ‘foreign agent’ under Article 43 of the NSL, and was compelled to provide information of its accounts, activities, and personnel. The board members of the Alliance refused to provide the information and were arrested and charged. The Government also invoked the Companies (Winding Up and Miscellaneous Provisions) Ordinance to strike the Alliance off the company registry in the interest of national security; its assets became also vested in the Official Receiver. So far neither the Police nor the Prosecution have substantiated their claim that the Alliance is a ‘foreign agent.’

For defendants in cases related to national security offences, there is an assumption against bail unless the judge is satisfied that he/she would not commit any act endangering national security if granted bail.⁴¹ Therefore if the prosecution opposes the bail, they may endeavour to paint the defendants as persons who have the tendency of endangering national security. In recent cases, the prosecution has relied in this regard on activities related to human rights advocacy. In one case, evidence filed against the defendant for the bail application included that he said he would appeal to the international community to continue to keep track of the human rights situation in Hong Kong.⁴² In another case, the defendant’s contact with the NGO **Hong Kong Human Rights Monitor** in relation to monitoring police brutality was cited against him.⁴³

In addition to the overbroad application of the NSL, the authorities are also actively using other laws against dissidents, such as the law on sedition, laws with national security elements such as the Societies Ordinance, and other laws and regulations such as the Trade Unions Ordinance, anti-money laundering and public health emergency regulations.

Koo Sze Yiu and others planned to protest at The Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region⁴⁴ against the NSL on 4th February 2022, the day of the opening of the Winter Olympics hosted by Beijing. Before they even departed for the protest, Koo was arrested for inciting subversion under the NSL, and was later charged with attempting to, or making any preparation to, do any act with a seditious intention under Crimes

³⁹ 許正宇抨 612 基金 以款項蠱惑人心, Hong Kong Economic Times, 9 September 2021 (<https://paper.hket.com/article/3054823?r=cpsdlc>)

⁴⁰ The Hong Kong Alliance in Support of Patriotic Democratic Movements of China was founded in the year of the 1989 Tiananmen Massacre. It fought for accountability from Beijing, advocated the democratisation of China, and sought an end to one-party rule. It was the organizer of Hong Kong’s annual Tiananmen Massacre vigil.

⁴¹ HKSAR v LAI Chee-ying [2021] HKCFA 3

⁴² During the bail proceeding of Lee Yue Shun on 15 March 2021, case number HCCP 120/2021.

⁴³ During the bail proceeding of Chung Kam Lun on 31 March 2021, case number HCCP 137/2021.

⁴⁴ The Liaison Office is the agency that represents the Chinese Central People’s Government in Hong Kong

Ordinance s.10(1)(a). He was refused bail based on the above-mentioned NSL bail restrictions. This is the first case where a defendant has been charged with attempt or preparation for sedition.⁴⁵

Other than Koo Sze Yiu's case, a wide range of activities have been deemed seditious: journalists interviewing activists in exile or printing their blog posts (**Apple Daily**⁴⁶ and **Stand News**⁴⁷), criticising judges' decisions (Stand News), mocking the death or injuries of police officers (**a former police officer**⁴⁸, singer **Tommy Yuen**⁴⁹).

The Police oversees the registration of societies under the Societies Ordinance. It invoked the Ordinance's national security clause to outlaw the Hong Kong National Party in 2018. It is using other clauses to clampdown on civil society organisations. **The Civil Human Rights Front** is a network of NGOs, and is not registered as a society, which may be an offence under the Societies Ordinance section 5. The Police, despite having worked with the Front for years on the arrangement of peaceful protests, issued a letter in April 2021 concerning the unregistered status of the group. In the letter, the Police also required the Front to explain the purpose of a joint letter it sent to the UN High Commissioner for Human Rights in December 2020, along with information concerning its sources of funding.⁵⁰ The Front's convenor **Figo Chan** was later charged with failing to comply with a notice served under section 15 of the Societies Ordinance, an offence stated in section 16. He was convicted and fined. During the arrest, the Police searched various premises related to Chan and the Front.

The **Confederation of Trade Unions (CTU)** was also issued with such a letter. The information requested includes: the operation of the organisation, past activities, income sources, expenditures, connection with its sub-groups, and connection with foreign organisations. A pro-Beijing media outlet, Wen Wei Po, wrote 'according to a source, ...it is believed that the Police is investigating allegations against the CTU that it had colluded with foreign elements and

⁴⁵ Case number: KCCC351/22.

⁴⁶ Jimmy Lai Chee-ying, six senior employees of Apple Daily/Next Digital, and three companies were arrested and charged with conspiracy to publish seditious publications, in addition to the charge of conspiracy to commit collusion. Case numbers: WKCC2379/2021 and WKCC2879/2021.

⁴⁷ Former Chief Editor Chung Pui-kuen and Acting Chief Editor Patrick Lam of the Stand News were arrested and charged with conspiracy to publish seditious materials. Four former board members were arrested but released on police bail: Denise Ho, Margaret Ng, Chow Tat-chi, and Christine Fang Meng-sang. Case number: WKCC 5281/2021.

⁴⁸ Chui Chun-man, a former police officer, was arrested and charged with sedition for mocking on social media the death of a policewoman who died while on duty. Case number: WKCC 4617/2021.

⁴⁹ Tommy Yuen, singer and pro-democracy advocate, allegedly made social media posts to curse judges, mock police officers who were injured or died on duty, and advocate against Government's COVID-19 measures. He is also alleged for singing in an online music concert which part of the lyric of the song contains words of "Liberate Hong Kong, revolution of our times". He was arrested for money laundering and sedition, and charged with sedition. Case number: WKCC 626/2022.

⁵⁰ The content of the letter was reported by InMedia in "陳皓桓報到遭警索取民陣六項資料 包括 15 年收支 指涉違《社團條例》" InMedia, 26 April 2021, at https://www.inmediiahk.net/node/1082253?fbclid=IwAR3Q6r_liS7khkYrB1mt-PnnkZijRSEsm63wz04SQgUxLbU2lu7DQ8AU4Q

received political funding, disrupted Hong Kong, and other illegal activities.⁵¹ Its leaders were arrested by the national security police in April 2022 for allegedly failing to comply with the information request.

Trade unions have played a significant role in civil society in Hong Kong; they are registered and regulated under the Trade Unions Ordinance (Cap 332). Section 34 of the Ordinance prohibits registered trade unions from applying funds either directly or indirectly for any political purpose; or paying or transferring funds to any person or body of persons in furtherance of any political purpose. The definition of ‘political purpose’ is ambiguous and can now be used by the authorities to target any activities aimed at demanding policy changes, in line with similar moves under the NSL. The authorities had rarely invoked this section in the past. Yet, since 2021, the Government started using it to investigate pro-democracy trade unions. In September 2021, the **Hospital Authority Employees Alliance (HAEA)** received a letter from the Registry of Trade Unions about an investigation according to the Section 34 from the Registry of Trade Unions, requesting them to provide information on eight events, including a strike demanding the authorities bar entries from mainland China in view of the pandemic in early 2020, former chairwoman Winnie Yu Wai-ming’s participation in the 2021 pro-democracy camp primaries, and a film screening about the 1989 Tiananmen Square massacre.⁵² Apart from the HAEA, it is [reported](#) that a number of other trade unions have also been under investigation by the Registry of Trade Unions on the ground of Section 34.

State media, government officials of China and Hong Kong, and pro-government lawmakers have also made wide use of national security language in public statements to threaten civil society groups. As some of the threats may later materialise, this has created an atmosphere of fear and uncertainty.

The **Hong Kong Professional Teachers’ Union (PTU)** was a long-standing trade union of teachers in Hong Kong and supported democracy. It was the largest teachers’ organisation in Hong Kong with some 95,000 members at the time of disbandment. Its candidates represented the education sector in the Legislative Council’s Functional Constituency since 1985. In July 2021, two of China’s major media outlets, the Xinhua News Agency and the People’s Daily published commentary articles criticizing the operation of the PTU for deviating from its original purpose to become an out-and-out political organization. ‘For Hong Kong education to return to the right track, the PTU must be investigated,

⁵¹ “消息人士指，警方要求「職工盟」提供收支情況以及與外國或境外組織聯繫等資料，相信警方正就「職工盟」多年來涉勾結外部勢力及收受政治「黑金」，擾亂香港或其他違法行為的指控展開進一步調查，而「職工盟」的屬會亦在警方調查範圍之內。” - “警方促「職工盟」交運作收支資料” Wen Wei Po, 18 February 2022, <https://www.wenweipo.com/epaper/view/newsDetail/1494377940715180032.html>

⁵² Candice Chau, “Hong Kong Hospital Authority union denies gov’t allegation it broke law” Hong Kong Free Press 17 September 2021 (<https://hongkongfp.com/2021/09/17/hong-kong-hospital-authority-union-denies-govt-allegation-it-broke-law/>)

and the tumor must be eradicated,’ said Xinhua.⁵³ A member of the Executive Council of Hong Kong⁵⁴ (ExCo) and lawmaker Regina Ip echoed that PTU was subversive, and called for the authorities to ban the PTU. She posted on her social media, ‘the union claims to be a professional teacher’s union, and has been using many benefits and perks to attract a large number of teachers to become their members, luring them to follow the union’s radical anti-China stance.’⁵⁵ PTU announced its decision to dissolve soon after.

The **Foreign Correspondents Club**, **Amnesty International Hong Kong** (now disbanded) and the **Hong Kong Journalists Association** had co-organised the **Human Rights Press Awards** since 1995 to recognise rights-related reporting from around Asia. According to the Awards’ website, ‘[t]he goal of the Awards is to increase respect for people’s basic rights and to focus attention on threats to those freedoms.’⁵⁶ In 2021, Ta Kung Pao, the two main pro-Beijing newspapers in Hong Kong, wrote that the Human Rights Press Awards recognised a documentary by BBC Beijing, ‘China’s Hidden Camps’, thereby ‘supported lies about forced labour in Xinjiang, creating excuses for the west to sanction China.’⁵⁷ In 2022, Ta Kung Pao continued to accuse the Human Rights Press Awards for recognizing reports that smeared the Hong Kong police and Central Government of China. An article by a Taiwanese scholar WU Rwei-ren, ‘For an Unfinished Revolution,’ was awarded merit in 2021. Ta Kung Pao criticized the article for inciting Hong Kong independence and violence, and inciting subversion and sedition; it wrote that ‘the writer and the organizer may have violated the offence of seditious intention.’⁵⁸ The Awards is organized by the Foreign Correspondents Club alone this year (2022).

Pro-government media has also adopted paparazzi style reporting to invade the privacy of activists and NGOs. Beijing-backed newspaper Ta Kung Pao allegedly stole bags of rubbish thrown out by the **Hong Kong Journalists Association** containing shredded [documents](#). Ta Kung Pao pieced the shredded documents

⁵³ 香港教育要正本清源必须铲除“教协”这颗毒瘤, Xinhua Net, 31 July 2021. http://www.xinhuanet.com/2021-07/31/c_1127715136.htm; also see “香港“教协”这颗毒瘤必须铲除” People’s Daily, 30 July 2021. <https://wap.peopleapp.com/article/6265861/6162500>

⁵⁴ The Executive Council of Hong Kong is the cabinet of the Government of Hong Kong Special Administrative Region

⁵⁵ “Regina Ip slams on PTU for luring teachers with perks” The Standard, 1 August 2021, <https://www.thestandard.com.hk/breaking-news/section/4/177944/Regina-IP-slams-on-PTU-for-luring-teachers-with-perks>

⁵⁶ Website of the Human Rights Press Awards: <https://humanrightspressawards.org/>

⁵⁷ “作賊心虛的記協欲蓋彌彰” Ta Kung Pao, 11 October 2021,

<http://www.takungpao.com.hk/opinion/233114/2021/1011/641708.html>; “记协自爆毁证会员私隐当垃圾丢 法律专家促执法部门调查” Ta Kung Pao 11 October 2021, <http://www.takungpao.com/news/232109/2021/1011/641856.html>;

⁵⁸ “夥 FCC 搞黑箱選舉 頒獎予「台獨」分子 記協無視法紀煽「獨」撐暴” Ta Kung Pao, 6 January 2022, a copy is available at https://dw-media.tkwk.hk/epaper/tpk/20220106/A6_Screen.pdf

together to make stories.⁵⁹ The Hong Kong Journalists Association’s chairperson **Ronson Chan** said in August 2021 that ‘he was told by sources that he was tailed by two media. One would accuse him of going to a problematic massage parlor, while another would say he hired a prostitute.’⁶⁰ A video of him entering a massage parlor was posted online in December 2021.

Safe access to resources has become extremely difficult for civil society groups working on human rights issues. Foreign funding has become extremely sensitive as any organisation or activist receiving it could be accused of being a foreign agent, or even charged with collusion under the NSL. There were cases where crowdfunding campaigns in support of protestors of the 2019 movement and protestors in exile were accused of money laundering; the funds were frozen, and pro-government media threatened citizens who donated to the funds, saying they could also be charged for supporting unlawful activities. Civil society organisations now have to avoid raising funds by crowdfunding. On the other hand, organisations that have financial reserves have to worry about the Government freezing or even confiscating their assets.

Civil society organisations also face difficulty in securing necessary services as service providers want to avoid association with NSL risks. The auditing firm for Hong Kong Journalists Association ceased service for it in January 2022 on the same day the Association received a probing letter from the unions registry about its activities during the 2019 protest movement. The artist of a statue commemorating the June 4th massacre, the Pillar of Shame, also told the press that more than 10 crane and transport companies have refused to help move the statue, which was removed from display by the University of Hong Kong due to NSL. These examples show how the fear of NSL has alienated and isolated civil society in Hong Kong.

⁵⁹ Kelly Ho, “Hong Kong press group apologises for ‘suspected theft’ of members’ info as Beijing-backed paper publishes shredded papers” Hong Kong Free Press 11 October 2021, <https://hongkongfp.com/2021/10/11/hong-kong-press-group-apologises-for-suspected-theft-of-members-info-as-beijing-backed-paper-publishes-shredded-papers/>

⁶⁰ “Head of journalists association accused of visiting massage parlor” The Standard 28 December 2021, <https://www.thestandard.com.hk/breaking-news/section/4/185191/Head-of-journalists-association-accused-of-visiting-massage-parlor>

3. Acts of Intimidation and Reprisals Against those engaging with the UN under the NSL

Civil society organisations and activists that have international networks are at higher risk under the NSL, as the offence of ‘collusion’ is overly-broad, in both legal scope and implementation. From the outset, there were deep concerns among civil society that engagement with the UN may incur legal risks under the NSL, in particular under its clause on collusion with foreign institutions and organisations. As explained in Section 1, the act of providing state secrets or intelligence concerning national security to a foreign institution constitutes the crime of collusion. State secrets and intelligence concerning national security are not defined in NSL. Article 47 of the NSL states that the Chief Executive can issue a certificate ‘to certify whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The certificate shall be binding on the courts.’ Moreover, article 65 of the NSL states that ‘[t]he power of interpretation of this Law shall be vested in the Standing Committee of the National People’s Congress.’ There is no certainty as to whether making submissions to the UN treaty bodies, Special Procedures or the Human Rights Council would constitute collusion, as it involves providing information that could be determined by the authorities as ‘State secrets’ or ‘intelligence concerning national security’ arbitrarily.

While no activist or civil society organisation has been prosecuted for their engagement with the UN so far, some have faced stigmatization and intimidation for past engagement.

Professor Kapai is an associate professor at the Faculty of Law of the University of Hong Kong, and former Director of the **Centre for Comparative and Public Law of the University of Hong Kong (CCPL)**. CCPL had provided capacity building sessions for NGOs in Hong Kong to participate in UN treaty body reviews of Hong Kong, and took part in coordinating joint submissions of Hong Kong civil society. In July 2021, an article was released on Bastille Post, an online media outlet, as a blog [post](#) by an unknown source, titled ‘The Secret Identity of Professor Puja Kapai Revealed’. It claims that she collaborated with foreign elements in the name of academics to conduct various projects to cause chaos in Hong Kong. The article stressed her connection with an overseas non-profit –the National Democratic Institute (NDI), and accused the NDI of being a proxy for U.S. influence in Hong Kong. It also pointed out that she used CCPL to coordinate a joint submission of Hong Kong civil society organisations along with other NGOs to the Office of the High Commissioner for Human Rights (OHCHR) and the UN’s Committee on the Elimination of Racial Discrimination (CERD), in

an attempt to invite foreign intervention in Hong Kong matters.⁶¹ Under the atmosphere of fear and uncertainty due to the NSL, the article could cause immense stress to its subjects.

Denise Ho, an activist and singer from Hong Kong, was [stigmatised](#) in pro-Beijing media outlets as a ‘political pawn’ after making a speech at the UN Human Rights Council in 2019. After the imposition of the NSL, her agreement to rent a venue for her concert was [rescinded](#), citing a concern that ‘public safety would be endangered.’

The **Hong Kong Bar Association (HKBA)** and the **Hong Kong Law Society** are the professional bodies of the legal profession in Hong Kong. The HKBA had made submissions to the Hong Kong Government regarding matters of Constitution, human rights, judicial independence and the rule of law, and to United Nations bodies, such as the Human Rights Committee during its consultation in the elaboration of General Comment 37 on the Right of Peaceful Assembly. Pro-Beijing media in Hong Kong repeatedly accused the HKBA of condoning violent protestors during the protest movement in 2019. The Hong Kong Government [commented](#) that HKBA had become ‘political’, and warned the Hong Kong Law Society that if they were to also elect council members who are ‘political’, the Government would sever ties with it.⁶²

The **Hong Kong Human Rights Monitor** is a local human rights organisation founded in Hong Kong in the 1990s, focusing on the monitoring of the implementation of international human rights standards in Hong Kong, and actively engaged with the United Nations’ human rights mechanisms. It suffered from stigmatization by pro-China media outlets for a long time, but used to enjoy a certain degree respect from the Hong Kong authorities. Pro-Beijing media outlets have from time to time reported that the group received funding from the National Endowment for Democracy (NED) and repeated the narrative that human rights organisations are planted in Hong Kong by foreign forces to do their bidding. Its founding chairperson Paul Harris, a veteran human rights lawyer and former chairperson of the HKBA, was questioned by the national security police in March 2022 and [fled](#) the city shortly after. It’s reported that the meeting was related to the Hong Kong Human Rights Monitor.⁶³

⁶¹ Times Media, “Puja Kapai 教授背後的身份浮出水面”, Bastille Post, 25 July 2021, <https://www.bastillepost.com/hongkong/article/8867637-puja-kapai-教授背後的身份浮出水面> (accessed on 26 February 2022)

⁶² “Govt may cut ties with Law Society too, CE warns” RTHK, 17 August 2021, <https://news.rthk.hk/rthk/en/component/k2/1606252-20210817.htm>

⁶³ “Hong Kong Bar Assoc. ex-chief Paul Harris reportedly leaves city hours after meeting with national security police” Hong Kong Free Press 2 March 2022, <https://hongkongfp.com/2022/03/02/hong-kong-bar-assoc-ex-chief-paul-harris-reportedly-leaves-city-hours-after-meeting-with-national-security-police/>

4. The NSL's Deterrent Effect on Civil Society's Engagement with the UN

Until the imposition of the NSL, Hong Kong civil society organisations had been eager to engage with the UN. Civil society organisations used to react warmly to calls for submissions from UN Treaty Bodies and Special Procedures; UN comments on Hong Kong were widely shared. Many saw the UN as a venue of justice. These engagements have come to a screeching halt after the imposition of the NSL.

The NSL has had a significant impact on Hong Kong civil society's ability to engage with the UN. Some of the human rights organisations who engaged regularly in this work disbanded after their leaders or members were arrested. By January 2022, [dozens](#) of civil society groups had dissolved, including political parties. The largest number of such dissolutions happened between June and September 2021, following the crackdown on [independent](#) news outlet **Apple Daily** in June 2021, which, to many, pointed to a hardening of the authorities' clampdown on dissident voices.

Many NGOs have become dormant to avoid stepping over the 'red line', constantly reassessing their NSL risks. Unfortunately, the only way to find out whether it would still be safe to continue their work, including human rights advocacy and engagement with the UN and with the international community, was to wait for the police to conduct arrests, and for the prosecution to make a case. The fear of reprisal was enough to freeze action by Hong Kong's once vibrant civil society.

In addition, civil society in Hong Kong cannot access resources freely and safely; many experienced human rights workers have left Hong Kong due to safety concerns. These factors have also impacted the ability of Hong Kong civil society to engage with the UN.

The organisations and individuals experienced in making submissions and coordinating efforts among civil society in Hong Kong to engage with the UN face enormous risks under the NSL. Amnesty International closed its offices in Hong Kong. Others have dissolved, or become dormant. Not all civil society organisations are familiar with international human rights conventions, or the working methods of Treaty Bodies or Special Procedures. They may not even know of opportunities to engage with the UN. Without the leadership and guidance from experienced bodies, the capacity of the civil society actors remaining in Hong Kong has been severely undermined.

For NGOs in Hong Kong that are still operating, willingness to engage with the UN has significantly lowered, mainly because the risk outweighs the expected

impact, but also because there are no coordinating organisations anymore, nor assistance with capacity building.

Some activists and scholars vocal on human rights matters have relocated overseas. Many of them left in secret and maintain a lower profile fearing repercussions. For example, the assets of activist **Ted Hui** were frozen after he was known to have fled Hong Kong. Some NGOs moved out instead of being dissolved, such as **the New School for Democracy**, which moved to Taiwan. Some individuals and organisations continue to want to advocate for human rights and democracy in Hong Kong.⁶⁴ They may have joined existing groups⁶⁵ or formed new groups overseas. Some of them may want to engage with the UN on Hong Kong matters, including in Treaty Body reviews and the Universal Period Review of China. For some, there is the fear that the safety of their relatives or colleagues still in Hong Kong could be endangered by their advocacy overseas.

Other than personal risk and risk for relatives, overseas activists and groups also face the difficulty of accessing information from the ground. Anyone from Hong Kong who shares information overseas can potentially be accused of sedition, a catch-all offence, or collusion (NSL Article 29). Any such attempt would have to be extremely discreet or could cause severe harm to civil society actors still remaining in Hong Kong.

In the bail proceeding of an NSL case, the prosecution opposed bail on the ground that the defendant had chat history on her phone with foreign journalists.⁶⁶ The defendant was not granted bail. The NSL empowers the Chief Executive to sanction covert surveillance without the scrutiny of the court.⁶⁷ The NSL and other legislation also empowers the law enforcement authorities to compel individuals and organisations to provide information on details of their activities.⁶⁸ It is reasonable to presume that communication or information sharing for the purpose of engaging with the UN, especially in relation to the political situation, could be intercepted or acquired by the authorities, and could be dangerous for parties in Hong Kong.

The enactment of further national security legislation following the appointment of the new Chief Executive on 1 July 2022 are expected to come very soon (which is widely rumoured to be John Lee, a former senior police officer and the Secretary for Security who was in charge of introducing the extradition bill to LegCo). These new laws include a ban on fake news, foreign espionage, a ban on foreign organisations and a ‘super’ sedition charge. These developments should be monitored closely.

⁶⁴ See for example the 2021 Hong Kong Charter, available at <https://www.2021hkcharter.com>

⁶⁵ Such as the Hong Kong Democracy Council based in the US, Hong Kong Watch.

⁶⁶ During the bail proceeding of Claudia Mo on 14 April 2021, case number HCCP 134/2021.

⁶⁷ Implementation Rules of the NSL Article 43, schedule 4.

⁶⁸ Article 43 (6)

5. Recommendations for the review of Hong Kong

ISHR encourages the Human Rights Committee to recommend to the Government of Hong Kong SAR to:

- Repeal the National Security Law, and Implementation Rules for Article 43;
- Ensure that any legislation relating to national security, including foreseen new legislation, fully complies with international human rights standards, including the Johannesburg Principles, and does not hinder any form of access to or cooperation with the United Nations, its bodies and representatives; and that any restriction to human rights guaranteed under the ICCPR meet the tests of legality, necessity and proportionality;
- Promptly release all individuals investigated, detained, and sentenced under the National Security Law, and guarantee their right to seek redress;
- Ensure that any case of individuals or organisations investigated, prosecuted or tried on national security grounds, complies with the right to a fair trial and due process guarantees as established under the ICCPR and relevant international human rights standards, and is tried by independent courts in line with the UN Basic Principles on the Independence of the Judiciary.