

**Civil Society Report Submitted to**  
**The United Nations Human Rights Committee**  
**For its 4th periodic review of**  
**the Hong Kong Special Administration Region**  
**of the People’s Republic of China**  
**At the 135th session (27 June to 29 July 2022)**

**Submitting organizations:**

*Hong Kong Democracy Council (HKDC)*

A Washington, D.C.-based nonpartisan, nonprofit organization founded in 2019 by Hong Kongers amid the pro-democracy movement. HKDC aims to foster a coherent and collaborative diasporic community to enrich the global dialogue about Hong Kong’s democratic development and human rights issues. Our work focuses on educational outreach, community empowerment, and policy advocacy.

info@hkdc.us  
<https://hkdc.us/>

*Network of Chinese Human Rights Defenders (CHRD)*

A coalition of Chinese and international human rights non-governmental organizations. The network is dedicated to the promotion of human rights through peaceful efforts to push for democratic and rule of law reforms and to strengthen grassroots activism in China.

ramonali@nchr.org  
<https://www.nchr.org/>

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## I. Executive Summary

Since the Human Rights Committee raised its List of Issues for its review of the fourth periodic report for Hong Kong, China on August 26, 2020, the people of Hong Kong have experienced dramatic changes in the nature and scale of civil and political rights violations by political authorities. A primary feature and instrument of this decline has been the arrest, detention, prosecution, and sentencing of Hong Kong citizens for exercising those rights guaranteed by the International Covenant on Civil and Political Rights (the Covenant or ICCPR).

By HKDC’s count, there are 1,024 political prisoners<sup>1</sup> in Hong Kong—people who have been imprisoned, placed in juvenile detention, or in pre-trial detention for their political speech and actions, their political identity, and/or have been charged with inherently political crimes such as sedition, or the four under the National Security Law (secession, subversion, collusion with foreign forces and terrorist activities). In all, more than 10,500 people have been arrested for

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<sup>1</sup> This data is based on Hong Kong Democracy Council’s report of May 2022, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners” (<https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>). The report, in turn, is based on HKDC’s Hong Kong Political Prisoners Database, which has recorded 1,022 political prisoners between June 9, 2019—the start of mass protests in Hong Kong—and May 23, 2022.

their political speech and actions since June 2019. So far, about 3,000 of them have been prosecuted, with over 600 political defendants still awaiting trial.

This criminalization of civil and political engagement in Hong Kong is the focus of this submission.

- The first section of this report covers the role played by **laws on national security, anti-sedition, and antiterrorism** in the criminalization of the exercise of civil and political freedoms guaranteed by the Covenant. The aforementioned laws are applied by specially designated judges in court proceedings, with jury trials subject to directives from the Secretary of Justice—compromising the **independence of the judiciary**.
- These court proceedings feature significant violations of the right of defendants to **fair trials** and raise concerns about their **access to justice**. The violations include the mandatory presumption of recidivism resulting in prolonged pre-trial detentions and the denial of the right to choose representation for legal aid recipients.

The following sections give an overview of how this criminalization has led to a complete transformation of civil and political life in Hong Kong during the review period:

- **Freedom of expression** has been severely curtailed, with authorities arresting and prosecuting people for a wide range of expression, from chanting political slogans or posting online to publishing children's books. The prosecution of journalists and news executives has led to the closure of sixteen media outlets since 2021.
- **Freedom of peaceful assembly**, already under assault for some time, has been indefinitely suspended following the implementation of pandemic restrictions on public gatherings on March 28, 2020, leading to an immediate cessation of public demonstrations and events like the annual candlelight vigil commemorating the 1989 Tiananmen Massacre that drew tens of thousands of participants in previous years. Even as infection rates have fallen and other pandemic measures, such as those for indoor gatherings, have been lifted, this restriction continues to be strictly enforced. In addition, dozens of organizers of peaceful demonstrations have been charged with organizing and inciting unlawful assembly under the Public Order Ordinance.
- **Freedom of association** has likewise deteriorated precipitously, as authorities pursue the leaders and staff of civil society organizations through prosecution or threats of prosecution under the National Security Law. Authorities have also mandated closure of some organizations outright, but the political intimidation emanating from the prosecutions has led to the closure of more than 80 organizations as of 2021, ranging from labor unions to political parties and religious groups.
- **Freedom to participate in public affairs**—the very freedom Hong Kongers espoused in history-making demonstrations during the period of this review—has been essentially abolished. The rights to vote, stand for election, and to hold public office on general terms of equality were only ever partially realized, but they have since become the subject of criminal

prosecution and imprisonment. All participants and organizers in an opposition party primary—47 total—were arrested and charged in early 2021 under the National Security Law, and to date, 180 opposition party leaders have been arrested and prosecuted.

## II. Thematic Issues and Findings

### A. Laws on National Security, Anti-Sedition, and Anti-Terrorism (LOI pars. 3, 4(c), 6)

On June 30, 2020, the PRC government’s National People’s Congress enacted the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the National Security Law). HKDC has recorded 135 people arrested on National Security Law charges in Hong Kong and 95 prosecuted as of May 27, 2022; eight people have so far been convicted, and no one has yet been acquitted.<sup>2</sup> The government has also charged people with pre-existing national security crimes, with 47 arrested and 33 formally charged with “sedition.”<sup>3</sup>

The National Security Law offenses of “secession,” “subversion,” “terrorist activities” and “collusion with foreign forces” and the colonial-era charge of “sedition” have been used by the government to prosecute numerous cases in ways that violate the provisions of the Covenant. In addition to being used to target guaranteed civil and political freedoms, the legal proceedings have also incurred numerous due process violations, including executive interference with the independence of tribunals and discriminatory denial of trial by jury and release on bail.

#### 1. National Security Law: Secession (LOI par. 3(a); art. 19)

The government has used secession charges to target free expression guaranteed under Article 19 of the Covenant such as chanting slogans, displaying banners, social media posts, membership in activist groups, and possession of materials advocating independence—for example, several were arrested for inciting secession under the new law for chanting slogans and waving banners for independence at a university graduation day protest.<sup>4</sup>

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<sup>2</sup> This data is based on Hong Kong Democracy Council’s report of May 2022, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners” (<https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Hong Kong Free Press*, “Hong Kong police confirm 8 arrested for unlawful assembly and ‘inciting secession’ during peaceful CUHK campus demo,” December 7, 2021, <https://hongkongfp.com/2020/12/07/hong-kong-police-confirm-8-arrested-for-unlawful-assembly-and-inciting-secession-during-peaceful-cuhk-campus-demo/>; *South China Morning Post*, “National security law: Hong Kong student arrested over independence calls at Chinese University protest,” February 18, 2021, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3122251/national-security-law-hong-kong-student-arrested>.

In pursuing charges for such activities, law enforcement and prosecutors have failed to “specify the precise nature of the threat”<sup>5</sup> posed by these activities and to justify the proportionality<sup>6</sup> of punitive measures, both of which the Committee has asserted is necessary to justify restrictions on Article 19 rights. Thus far, Hong Kong courts have likewise found all those tried for secession to be guilty simply for expressing pro-independence sentiments without establishing that such expression was intended and likely to incite violence.

At least three people have been tried and convicted for secession or inciting secession for activities such as:

- Driving a motorcycle with an attached banner that read “Liberate Hong Kong, Revolution of Our Times” during a demonstration and colliding into three officers (also tried for “terrorist activities,” defendant was found guilty of both charges and sentenced to nine years; the alternative charge of dangerous driving was not considered, although it would have been used for the same conduct had it not been prosecuted in the context of national security);<sup>7</sup>
- Chanting slogans in public and posting messages on social media advocating independence (judged to be a crime of a “serious nature,” sentenced to five years and nine months pursuant to mandatory requirement of more than five years imprisonment under the law);<sup>8</sup>
- Being a member of a disbanded activist group, social media posts, and possession of materials advocating independence (sentenced to 40 months for secession).<sup>9</sup>

## 2. National Security Law: Subversion (LOI par. 3(a); arts. 19, 21, 22, 15(2))

The Hong Kong government’s application of the anti-subversion provisions of the National Security Law has also violated rights guaranteed under the Covenant. The State report claims that this is “a dangerous crime” for which “[m]ere verbal expression cannot constitute the offence,” and that it requires “specific intent of bringing harm to society.”<sup>10</sup> However, the government has arrested people under this provision for activities protected by the right to free expression under Article 19, assembly under Article 21, and association under Article 22 without

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<sup>5</sup> *Tae-Hoon Park v. Republic of Korea* (1998), Comm No. 628/1995, 20 October 1998, par. 10.3; *See also* Georgetown Center for Asian Law, “The Tong Ying-Kit NSL Verdict: An International and Comparative Law Analysis,” October 20, 2021, p. 11-12, <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/10/TongYingKitVerdictGCAL.pdf>.

<sup>6</sup> United Nations Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, par. 30.

<sup>7</sup> *Hong Kong Free Press*, “Activist Tong Ying-kit jailed for 9 years in Hong Kong’s first national security case,” July 30, 2021, <https://hongkongfp.com/2021/07/30/breaking-activist-tong-ying-kit-jailed-for-9-years-in-hong-kongs-first-national-security-case/>; *Vice*, “Inside the Surreal Trial of the ‘Most Benevolent Terrorist in the World’,” September 20, 2021, <https://www.vice.com/en/article/93y47p/hong-kong-national-security-trial-tong-ying-kit>; *CNN*, “First person charged under Hong Kong’s national security law sentenced to 9 years in prison,” July 30, 2021, <https://www.cnn.com/2021/07/30/asia/tong-ying-kit-hong-kong-sentencing-intl-hnk/index.html>.

<sup>8</sup> *Hong Kong Free Press*, “Security law: Nearly 6 years jail for Hongkonger who ‘incited secession’ with pro-independence chants and slogans,” November 11, 2021, <https://hongkongfp.com/2021/11/11/breaking-hong-kong-man-jailed-for-5-years-9-months-for-inciting-secession-in-citys-2nd-security-law-sentencing/>.

<sup>9</sup> *The Guardian*, “Hong Kong activist Tony Chung jailed under national security law,” November 23, 2021, <https://www.theguardian.com/world/2021/nov/23/hong-kong-activist-tony-chung-jailed-under-national-security-law>.

<sup>10</sup> State report, par. 13(2).

any clear showing that such speech was an intended and likely incitement to imminent violence, as required under the Johannesburg Principles<sup>11</sup>:

- One 75-year-old was arrested for incitement of subversion for planning to demonstrate outside the Beijing Liaison Office—the headquarters of the PRC government administration in Hong Kong—in opposition to the Beijing 2022 Winter Olympics and in support of detained Hong Kong activists;<sup>12</sup>
- Four student activists were arrested for “conspiracy to incite subversion” based on their activities collecting donations for activists in prison, setting up street booths, and for their social media posts;<sup>13</sup>
- Three leaders of the Hong Kong Alliance in Support of Democratic Movements of China were charged for inciting subversion in connection with their organization of the annual candlelight vigils commemorating the Tiananmen Square Massacre putting a brutal end to the 1989 pro-democracy demonstrations in China;<sup>14</sup>
- Fifty-five pro-democratic legislators and activists were arrested for running in unofficial primary elections or helping to organize them.<sup>15</sup>

The corresponding PRC legal provisions with respect to subversion<sup>16</sup> have been found repeatedly to violate international human rights law by the United Nations Working Group on Arbitrary Detention. The Working Group called upon the Chinese government in 2019 to repeal article 105(2) of the Criminal Law or bring it into line with its obligations under international human rights law.<sup>17</sup> The Working Group also determined that the restrictions and the mandatory sentencing provisions were “neither necessary to protect public or private interests against injury nor proportionate to guilt.”<sup>18</sup> The Working Group has also described the provisions in the PRC Criminal Law as so “vaguely and broadly worded” that they “could be used to deprive individuals of their liberty without a specific legal basis and violate the due process of law

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<sup>11</sup> Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 1 October 1995, <https://www.refworld.org/docid/4653fa1f2.html>.

<sup>12</sup> *Hong Kong Free Press*, “Hong Kong national security police arrest veteran democracy activist on morning of planned Winter Olympics demo,” February 4, 2022, <https://hongkongfp.com/2022/02/04/hong-kong-security-law-police-arrest-veteran-democracy-activist-on-morning-of-planned-winter-olympics-demo/>.

<sup>13</sup> *Al-Jazeera*, “Snacks, books for prisoners spark Hong Kong security law arrests,” September 21, 2021, <https://www.aljazeera.com/news/2021/9/21/snacks-books-for-prisoners-spark-hong-kong-security-law-arrests>; *Yahoo News*, “Hong Kong national security law: bail denied to fourth Student Politicism member accused of state subversion,” September 23, 2021, <https://sg.news.yahoo.com/hong-kong-national-security-law-093924261.html>.

<sup>14</sup> *Hong Kong Free Press*, “Hong Kong Tiananmen Massacre vigil group leader denied bail over ‘inciting subversion’ national security charge,” September 10, 2021, <https://hongkongfp.com/2021/09/10/hong-kong-tiananmen-massacre-vigil-group-leader-denied-bail-over-inciting-subversion-national-security-charge/>.

<sup>15</sup> *The Guardian*, “Hong Kong police release all but three of those held in crackdown,” November 23, 2021, <https://www.theguardian.com/world/2021/jan/07/hong-kong-police-release-american-citizen-arrested-in-purge-of-democracy-figures>

<sup>16</sup> Article 105 (2) of the Criminal Law of the People’s Republic of China (“inciting subversion of state power”) stipulates: “Whoever incites others by spreading rumors or slanders or any other means to subvert the State power or overthrow the socialist system shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; and the ringleaders and the others who commit major crimes shall be sentenced to fixed-term imprisonment of not less than five years.”

<sup>17</sup> [A/HRC/WGAD/2019/15](https://www.refworld.org/docid/4653fa1f2.html), para. 33-4.

<sup>18</sup> [A/HRC/WGAD/2019/36](https://www.refworld.org/docid/4653fa1f2.html), para. 45.

upheld by the principle of legality in article 11(2) of the Universal Declaration of Human Rights,”<sup>19</sup> also upheld by Article 15(2) of the Covenant.

The National Security Law’s anti-subversion provisions exhibit the same problems identified by the Working Group in the subversion provisions of the PRC Criminal Law. The National Security Law is similarly vague, failing to define what conduct amounts to “overthrowing or undermining the basic system of the PRC,” or “overthrowing the body of central power of the PRC or the body of power of the HKSAR.” This gives authorities broad discretion to prohibit activities that individuals cannot know were restricted before being charged for engaging in them. Thus, this provision also violates the Article 15(2) principle of legality.

### **3. National Security Law: Terrorist Activities (LOI par. 3(a); arts. 19, 22)**

Authorities have also implemented an extremely broad interpretation of “terrorist activities” under the National Security Law. As with the other provisions, this interpretation has been used to restrict and punish activities that involve solely the exercise of free expression and association protected by Articles 19 and 22 of the Covenant. Authorities have maintained that these actions are terrorist activities even when they cannot be shown to demonstrate “intent to cause harm” or “provocation of terror in the general public,” which are required under the National Security Law.

In one example, after a university student union passed a motion mourning a man who had stabbed a police officer and then committed suicide, Hong Kong authorities arrested four student union leaders for “advocating terrorism,” and raided their union office as part of their investigation.<sup>20</sup> This case illustrates the wider impacts of terrorist activity charges—even after the students retracted the statement and resigned, the university prohibited 30 students who had signed the motion from setting foot on campus.<sup>21</sup>

### **4. National Security Law: Collusion (LOI par. 4(c); arts. 19, 22)**

Hong Kong authorities have used the National Security Law provision against “collusion with a foreign country or with external elements to endanger national security” to arrest leaders of media and civil society organizations supporting the pro-democracy movement. Under color of this provision, ten former executives and journalists of independent media outlet *Apple Daily* have been charged.<sup>22</sup> Authorities have also arrested five leading figures of Hong Kong civil society, including Cardinal Joseph Zen, singer Denise Ho, and former lawmaker Margaret Ng, for past administration of an already-dissolved legal aid and medical fund for pro-democracy protestors.<sup>23</sup>

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<sup>19</sup> [A/HRC/WGAD/2020/11](#), para. 43-4.

<sup>20</sup> *Reuters*, “Hong Kong students charged with 'advocating terrorism' denied bail,” August 19, 2021, <https://www.reuters.com/world/asia-pacific/hong-kong-students-charged-with-advocating-terrorism-denied-bail-2021-08-19/>.

<sup>21</sup> *Ibid.*

<sup>22</sup> *The New York Times*, “Hong Kong Cracks Down on a Pro-Democracy Newspaper,” June 16, 2021, <https://www.nytimes.com/2021/06/16/world/asia/hong-kong-apple-daily.html>.

<sup>23</sup> *Reuters*, “Hong Kong police bail Catholic cardinal arrested on national security charge,” May 11, 2022,

Prosecutions such as these have created a widespread chilling effect on news media outlets and civil society organizations, resulting in a negative impact on rights under Articles 19 and 22 of the Covenant (see Section II). Such targeting by authorities has prompted closures of 16 media outlets since 2021, including the three best-known independent media outlets. Over 80 civil society groups since the start of 2021 have also shut down, including student groups, labor unions, grassroots neighborhood groups, political parties, religious groups, and human rights organizations.<sup>24</sup>

## 5. Sedition (LOI par. 6; art. 19)

Although not a provision of the National Security Law itself, the administrative architecture created by the Law has been extended to sedition offenses. A December 2021 ruling by the Court of Final Appeal stipulated that National Security Law Implementing Regulations could be applied to national security crimes other than those in the National Security Law.<sup>25</sup> This authorized, for example, expanded law enforcement surveillance and search powers without judicial oversight to investigation of offenses like sedition. This amounts to a significant legislative change imposed by the PRC central government's National People's Congress Standing Committee without input from the Hong Kong legislative or executive branches.

Sedition is among the offenses most frequently investigated by the National Security Department, the unit within the Hong Kong Police Force primarily charged with NSL investigations. Sedition offences in Hong Kong law derive from the Crimes Ordinance, which originated with the colonial British government, and the post-handover government had refrained from pursuing sedition-related charges until 2020.<sup>26</sup> Since then, 47 people have been arrested for "sedition," and 33 have been formally charged with the offense in a court of law.<sup>27</sup>

The allegedly seditious activities for which people have been arrested include publishing children's books with political allegories;<sup>28</sup> operating major news outlets that reported on the

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<https://www.reuters.com/world/asia-pacific/hong-kong-police-arrest-catholic-cardinal-alleged-collusion-with-foreign-forces-2022-05-11/>.

<sup>24</sup> *ChinaFile*, "Arrest Data Show National Security Law Has Dealt a Hard Blow to Free Expression in Hong Kong," April 5, 2022, <https://www.chinafile.com/reporting-opinion/features/arrest-data-show-national-security-law-has-dealt-hard-blow-free>.

<sup>25</sup> *Hong Kong Free Press*, "How a ruling by Hong Kong's top court opens the door to a more intrusive security law," December 17, 2021, <https://hongkongfp.com/2021/12/17/how-a-ruling-by-hong-kongs-top-court-opens-the-door-to-a-more-intrusive-security-law/>.

<sup>26</sup> *The Diplomat*, "Hong Kong's Sedition Law Is Back," September 3, 2021, <https://thediplomat.com/2021/09/hong-kongs-sedition-law-is-back/>.

<sup>27</sup> This data is based on Hong Kong Democracy Council's report of May 2022, "Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners" (<https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>).

<sup>28</sup> *The Guardian*, "Five arrested in Hong Kong for sedition over children's book about sheep," July 22, 2021, <https://www.theguardian.com/world/2021/jul/22/five-arrested-in-hong-kong-for-sedition-over-childrens-book-about-sheep>.



democracy protests, such as *Apple Daily*<sup>29</sup> and *Stand News*;<sup>30</sup> and clapping during the court hearings of pro-democracy activists.<sup>31</sup> One pro-democracy party leader was sentenced to 40 months in prison for “uttering seditious words”—he had publicly shouted slogans such as “Liberate Hong Kong, Revolution of Our Times” at protests, as well as other nonviolent public order offenses.<sup>32</sup>

These are activities that constitute free expression under Article 19 of the Covenant. Hong Kong law enforcement and prosecutors have failed to “specify the precise nature of the threat”<sup>33</sup> posed by these activities, which the Committee has asserted is necessary to justify restrictions on Article 19 rights. In turn, Hong Kong courts have not required prosecutors to identify any specific threat posed by the defendant’s activities to reach guilty verdicts in sedition cases.<sup>34</sup>

## **6. National Security Law: Appointment of Judges and Judicial Independence (LOI par. 3(b); art. 14)**

Article 44 of the National Security Law grants authority to the Chief Executive to designate judges specifically to preside over trials under the law. The aforementioned December 2021 ruling by the Court of Final Appeal has extended the purview of these judges to all national security crimes, even those not under the law.<sup>35</sup>

In its reply to the Committee’s List of Issues, the State argues that designating judges to take on particular categories of cases allows judges to “become more expert in the particular area that they are sitting.”<sup>36</sup> However, this justification is belied by the term limits of the designations to one year. Neither the law nor the Chief Executive’s implementation of it indicates that there is any transparent mechanism or procedure preventing the Chief Executive from exclusively selecting judges that are sympathetic to the government. To the contrary, the government has

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<sup>29</sup> *Reuters*, “Hong Kong Apple Daily founder and staff face new sedition charge,” <https://www.reuters.com/world/asia-pacific/hong-kong-apple-daily-founder-staff-face-new-sedition-charge-2021-12-28/>.

<sup>30</sup> *South China Morning Post*, “Hong Kong company behind now-defunct Stand News portal can face sedition trial without representative, court rules,” February 25, 2022, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3168421/hong-kong-company-behind-now-defunct-stand-news-portal>.

<sup>31</sup> *Radio Free Asia*, “Hong Kong police arrest six for 'sedition' over courtroom protests, support,” April 6, 2022, <https://www.rfa.org/english/news/china/sedition-arrests-04062022111814.html>.

<sup>32</sup> *The Guardian*, “Hong Kong jails pro-democracy activist and former DJ for ‘uttering seditious words’,” April 20, 2022, <https://www.theguardian.com/world/2022/apr/20/hong-kong-jails-pro-democracy-activist-and-former-dj-for-uttering-seditious-words>.

<sup>33</sup> *Tae-Hoon Park v. Republic of Korea* (1998), Comm No. 628/1995, 20 October 1998, par. 10.3; *See also* Georgetown Center for Asian Law, “The Tong Ying-Kit NSL Verdict: An International and Comparative Law Analysis,” October 20, 2021, p. 11-12, <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/10/TongYingKitVerdictGCAL.pdf>.

<sup>34</sup> *The Guardian*, “Hong Kong jails pro-democracy activist and former DJ for ‘uttering seditious words’,” April 20, 2022, <https://www.theguardian.com/world/2022/apr/20/hong-kong-jails-pro-democracy-activist-and-former-dj-for-uttering-seditious-words>.

<sup>35</sup> *Hong Kong Free Press*, “How a ruling by Hong Kong’s top court opens the door to a more intrusive security law,” December 17, 2021, <https://hongkongfp.com/2021/12/17/how-a-ruling-by-hong-kongs-top-court-opens-the-door-to-a-more-intrusive-security-law/>.

<sup>36</sup> CCPR/C/CHN-HKG/RQ/4, par. 15.

announced that designations are not to be made public to avoid security risks.<sup>37</sup> At the same time, the government has not identified any particular security threats or any instances of outside actors attempting to pressure the judiciary in national security cases. The public only becomes aware of a designated judge once a trial has begun—there are currently at least 16 known designated judges.<sup>38</sup>

Taken together, the government's actions suggest that the designations are not tailored to accumulate expertise so much as to shield the executive and an unknown, constantly changing cast of select judges from public criticism and accountability for handing down unpopular verdicts in national security cases. The one-year terms also allow the Chief Executive to remove judges who issue verdicts unfavorable to the government. All of this severely compromises the rights of defendants in security law cases to a trial before an impartial and independent tribunal rights, as guaranteed under Article 14 of the Covenant.

### 7. National Security Law: Jury Trials (LOI par. 3(b); art. 14)

The National Security Law authorizes exceptions to procedural rights for defendants charged with national security crimes, violating the right to “equality before courts and tribunals” under Article 14 of the Covenant. In its General Comment No. 32, the Committee has stated that “equality before courts and tribunals” under Article 14 “requires that similar cases are dealt with in similar proceedings,” and that “objective and reasonable grounds” must be provided to justify exceptional procedures or specially constituted tribunals.<sup>39</sup>

Article 46 of the National Security Law authorizes the Secretary of Justice to determine whether a national security case may be tried by a jury if it is necessary to guard state secrets, prevent foreign interference, or to protect the safety of the erstwhile jurors and their family. To date, no defendant in a National Security Law case has been granted a trial by jury. The first defendant charged under the law was denied a trial by jury by the High Court, which ruled that “there is nothing inherently unreasonable in directing a trial by a panel of three judges sitting without a jury, when there is a perceived risk of the personal safety of jurors and their family members or that due administration of justice might be impaired.”<sup>40</sup>

The Committee's General Comment No. 32 explicitly notes with concern the exclusion of certain categories of offenders from jury trials, citing the example of the “Diplock court” system in Northern Ireland, which likewise left the right of defendants to a jury trial for certain offenses to

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<sup>37</sup> *CitizenNews*, “特首辦：毋須公開國安法官名單 [CE's Office: No need to disclose the list of national security judges],” December 23, 2021, <https://www.hknews.com/article/3667/指定法官-港版國安法-公開資料守則-36683/司法機構公開民刑事法官名單-特首辦：毋須公開國安法官名單>.

<sup>38</sup> This data is based on Hong Kong Democracy Council's report of May 2022, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners” (<https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>).

<sup>39</sup> CCPR/C/GC/32 (2007), sec. II.

<sup>40</sup> *Reuters*, “Hong Kong court denies jury trial to first person charged under national security law,” May 20, 2021, <https://www.reuters.com/world/asia-pacific/hong-kong-court-denies-jury-trial-first-person-charged-under-national-security-2021-05-20/>.

the discretion of the Attorney General for Northern Ireland.<sup>41</sup> The UK government also justified this as a necessary measure for the safety of would-be jurors.<sup>42</sup>

The safety of jurors in Hong Kong is neither objective nor reasonable grounds for authorizing exclusions from jury trials based on the executive's discretion. Hong Kong courts have held jury trials for decades, and previous jury trials of pro-democracy activists in Hong Kong have proceeded without any reports of interference of any kind from outside parties, let alone risks to the jurors' personal safety. At the same time, the government's other justification of hypothetical 'impairment of due administration of justice' is overly broad and vague. Without reasonable or objective justification, the National Security Law has made it possible for the government to shield the prosecution of national security crimes from an important form of public accountability. Authorities have thus carved out a forum for trying national security cases that favors the government in violation of Article 14 of the Covenant.

### **8. Access to Counsel (art. 14)**

The Hong Kong government has also changed rules regarding the assignment of lawyers to legal aid applicants in a way that diminishes access to adequate representation guaranteed by Article 14 of the Covenant. Whereas previously applicants could select their legal aid attorney, legal aid lawyers are now assigned by the government except under "exceptional circumstances."<sup>43</sup> This development has raised concerns about manipulation of the appointment process. Also, defendants being prosecuted for pro-democracy activities may be assigned legal aid lawyers who are sympathetic to the government and thereby fail to fully represent their clients' interests. For example, the first person to be convicted under the National Security Law uncharacteristically dropped his appeal of his nine-year sentence following the appointment of a new lawyer to his case by the government's Legal Aid Department.<sup>44</sup> This lawyer was a former member of a major PRC political body, the Chinese People's Political Consultative Conference, and therefore known to be aligned with the government.

Further impeding the right of defendants to counsel of their choosing, Hong Kong authorities have targeted civil society groups raising funds for the legal defense of political defendants. (*See Section D: Freedom of Association for more information about the government crackdown on legal aid groups.*)

### **9. Prolonged Pre-Trial Detention (arts. 9, 14, 18, 19, and 26)**

Among the most serious ongoing rights violations in Hong Kong are prolonged pre-trial detentions for political defendants. Implementation of the National Security Law has been a

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<sup>41</sup> CCPR/C/GC/32 (2007), footnote 16; CCPR/CO/73/UK, par. 18.

<sup>42</sup> *Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland*, Lord Diplock, H.M.S.O., 1972, p. 17.

<sup>43</sup> *Reuters*, "Hong Kong's planned legal aid changes could breach constitution - Bar Association," December 8, 2021, <https://www.reuters.com/world/china/hong-kongs-planned-legal-aid-changes-could-breach-constitution-bar-association-2021-12-08/>.

<sup>44</sup> *Hong Kong Free Press*, "First Hong Kong activist jailed under national security law drops appeal in 'surprise' move," January 13, 2022, <https://hongkongfp.com/2022/01/13/first-hong-kong-activist-jailed-under-national-security-law-drops-appeal-in-surprise-move/>.

major factor in these detentions. Under Article 42 of the Law, a judge must find “sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security.” In February 2021, the Court of Final Appeal ruled in one of the first National Security Law cases that this article creates a presumption against bail for those charged under the law—a reversal of the existing standard and generating a presumption of guilt for those who have expressed pro-democratic political positions.<sup>45</sup>

This shift in presumption has prompted a surge in the rejection of defendants for release on bail in national security cases. From the beginning of mass protests in June 2019 to the imposition of the National Security Law in June 2020, the number of political defendants<sup>46</sup> remanded in custody had varied between 60 and 90, and most were charged with violent crimes. As of March 11, 2022, 129 political defendants were remanded in custody pending completion of trial and 50 others pending sentencing, an all-time high.<sup>47</sup>

The remanding of these defendants in custody for long periods is contrary to Article 9(3) of the Covenant, which, as stated by the Committee in its General Comment No. 35, “requires that detention in custody of persons awaiting trial shall be the exception rather than the rule,” and that “[p]retrial detention should not be mandatory for all defendants charged with a particular crime.”<sup>48</sup> The Committee has further expressed that detention pending trial requires a showing that it is reasonable and necessary, and alternatives to detention should be considered.

Contrary to these requirements, Hong Kong courts have denied bail to around three out of four defendants charged by prosecutors with National Security Law crimes<sup>49</sup>—as of May 27, 2022, there were 70 National Security Law defendants remanded in custody.<sup>50</sup> The courts have also abandoned inquiry into the reasonableness and necessity of denying bail. Instead of determining whether defendants charged with non-violent offenses pose any real danger if released, they have instead scrutinized their political beliefs and denied bail explicitly for espousal of pro-democracy ideological stances.<sup>51</sup> This is effectively using pre-trial custody to suppress speech protected under Article 19 of the Covenant and applying it in a discriminatory manner to target certain political beliefs in violation of Articles 14 and 26.

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<sup>45</sup> Georgetown Center for Asian Law, “Hong Kong’s National Security Law and the Right to a Fair Trial,” June 28, 2021, p. 16, <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/06/HongKongNSLRightToFairTrial.pdf>.

<sup>46</sup> This data is based on Hong Kong Democracy Council’s report of May 2022, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners” (<https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>). See *Section I* for more details about categorization of political defendants.

<sup>47</sup> *Ibid.*

<sup>48</sup> CCPR/C/GC/35, par. 38.

<sup>49</sup> *BBC*, “Denial of bail is silencing Hong Kong’s democrats,” April 28, 2022, <https://www.bbc.com/news/world-asia-china-61235777>.

<sup>50</sup> This data is based on Hong Kong Democracy Council’s report of May 2022, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners” (<https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>).

<sup>51</sup> *See, e.g., Bloomberg*, “Hong Kong Cites WhatsApp Chats With Media to Deny Critic’s Bail,” May 28, 2021, <https://www.bloomberg.com/news/articles/2021-05-28/hong-kong-cites-whatsapp-chats-with-media-to-deny-critic-s-bail>; *Al-Jazeera*, “‘Assumed as criminals’: Hong Kong defendants find bail elusive,” January 27, 2022, <https://www.aljazeera.com/news/2022/1/27/hong-kong-bail>.

Article 9 of the Covenant holds that anyone held on a criminal charge is “entitled to trial within a reasonable time or to release.” Instead, Hong Kong authorities have delayed the trials of numerous political defendants in pre-trial detention, and this has not prompted courts to reconsider alternatives to custody as General Comment No. 35 says the State must to uphold the Covenant.<sup>52</sup> Of those political defendants remanded in custody pending completion of trial, the average time spent in custody is 12.4 months.<sup>53</sup> Seventeen political defendants have been detained for more than 24 months; 11 for 18 to 24 months; and 41 for 12 to 18 months.<sup>54</sup> By holding defendants in custody for such long periods based on a determination that they have pro-democratic sympathies, authorities are violating Article 18 of the Covenant by using pre-trial detention to punish people for holding political beliefs.

### **10. Pre-Trial Detention of Minors (art. 9)**

There are eleven minors at the time of arrest among the 129 political defendants remanded in custody pending completion of trial, ranging in age from 15 to 17.<sup>55</sup> Of these, two have been remanded since 2019, more than two years, and seven have been remanded since their arrest on July 5, 2021.<sup>56</sup> Those seven are allegedly members of a group called Returning Valiant, four of whom are charged with “conspiracy to incite subversion” and three with “conspiracy to commit terrorism,” all under the National Security Law.<sup>57</sup> In its General Comment 35, the Committee has expressed that “[p]retrial detention of juveniles should be avoided to the fullest extent possible.”<sup>58</sup>

According to Article 3 of the Convention on the Rights of the Child, which applies in Hong Kong, “In all actions concerning children,” including those undertaken by courts of law, “the best interests of the child shall be a primary consideration.” It is unclear whether any of the authorities involved, from the police to the Department of Justice to the judges to the Correctional Services Department, have given primary consideration to the best interests of these children when keeping them on long-term remand pending completion of trial. The long-term pre-trial detention of minors may constitute cruel, inhuman or degrading treatment.

### **B. Freedom of expression: closures of independent news media (art. 19)**

Hong Kong authorities have used national security crimes to target journalists and publishers, which has had a profound impact on press freedom in Hong Kong. Independent media outlets in particular have found it difficult to impossible to continue operating—the three best-known outlets, *Apple Daily*, *Stand News* and *Citizen News*, were all forced to close between 2021 and

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<sup>52</sup> CCPR/C/GC/35, par. 37.

<sup>53</sup> This data is based on Hong Kong Democracy Council’s report of May 2022, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners,” (<https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>).

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Hong Kong Free Press*, “Hong Kong ‘revolutionary’ group members arrested over alleged plot to wage citywide campaign of terror,” July 6, 2021, <https://hongkongfp.com/2021/07/06/hong-kong-revolutionary-group-members-arrested-over-alleged-plot-to-wage-citywide-campaign-of-terror/>.

<sup>58</sup> CCPR/C/GC/35, par. 38; *see also* CCPR/C/GC/32, para. 42 and CRC/C/GC/10, para. 80.

early 2022.<sup>59</sup> In total, 16 media outlets have closed since the start of 2021, all indicating that they were forced to shut down because the political risks of continued operation. As mentioned in the previous section, ten former executives and journalists at *Apple Daily* are being prosecuted for “collusion with foreign forces” under the National Security Law, and seven of them face additional charges of sedition.<sup>60</sup> Two *Stand News* executives are being prosecuted for sedition.<sup>61</sup>

Other outlets that remain in operation are nonetheless severely compromised in their ability to report independently. Public broadcaster Radio Television Hong Kong formerly maintained a policy of editorial independence, but recently appointed a new director charged with implementing the Party line.<sup>62</sup> Numerous popular programs have been discontinued on political grounds and many journalists have resigned, having determined that it is impossible to maintain professional standards in their reporting at the station.<sup>63</sup>

### **C. Right of peaceful assembly: prohibitions and prosecutions (arts. 19, 21)**

As of March 28, 2020, all public demonstrations have been suspended indefinitely in Hong Kong on the pretext of pandemic prevention, including the June 4th candlelight vigil commemorating the Tiananmen Massacre of 1989 that had drawn tens of thousands of participants in years previous.<sup>64</sup> The government has persisted in prohibiting public gatherings of more than four people even as it relaxed pandemic restrictions on indoor gatherings and an art festival was held indoors.<sup>65</sup>

Prior to March 2020, the government had taken other measures to unreasonably restrict the right of peaceful assembly. According to data gathered by HKDC, from July 12, 2019 to March 28, 2020, fifteen protests were outright banned by law enforcement and six others were unreasonably restricted. At eleven protests, law enforcement fired on protestors with tear gas, rubber bullets, pepper grenades, and water laced with abrasive chemicals. In all, police banned, attacked, suspended, unreasonably restricted or otherwise hindered at least 38 protests from July 12, 2019 until imposing a blanket ban on all protests on March 28, 2020.

The most common criminal charge government prosecutors have levied against pro-democracy activists targets the right to public assembly. In 2017, the Court of Final Appeal upheld a lower

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<sup>59</sup> *Reuters*, “Hong Kong's Citizen News says closure triggered by Stand News collapse,” January 3, 2022, <https://www.reuters.com/world/china/hong-kongs-citizen-news-says-closure-triggered-by-stand-news-collapse-2022-01-03/>.

<sup>60</sup> *The New York Times*, “Hong Kong Cracks Down on a Pro-Democracy Newspaper,” June 16, 2021, <https://www.nytimes.com/2021/06/16/world/asia/hong-kong-apple-daily.html>.

<sup>61</sup> *South China Morning Post*, “Hong Kong company behind now-defunct Stand News portal can face sedition trial without representative, court rules,” February 25, 2022, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3168421/hong-kong-company-behind-now-defunct-stand-news-portal>.

<sup>62</sup> *Public Media Alliance*, “Hong Kong: The dire state of public media,” 14th December 2021, <https://www.publicmediaalliance.org/hong-kong-the-dire-state-of-public-media/>.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Hong Kong Free Press*, “Hong Kong police ban annual July 1 democracy demo again citing Covid-19,” June 28, 2021, <https://hongkongfp.com/2021/06/28/hong-kong-police-ban-annual-july-1-democracy-demo-citing-covid-19/>.

<sup>65</sup> *Bloomberg*, “Hong Kong Protests Fall Silent Under Never-Ending Covid Rules,” June 1, 2021, <https://www.bloomberg.com/news/articles/2021-06-01/hong-kong-protests-fall-silent-under-never-ending-covid-rules>.

court's adoption of harsher sentencing guidelines for those convicted under the Public Order Ordinance of unlawful assembly in public gatherings where some violence occurred. Prior to this decision, imprisonment for non-violent unlawful assembly was rare, but the sentencing guidelines essentially ensured prison sentences for the nonviolent offense of unlawful assembly. Since that decision, Hong Kong authorities have sentenced 234 people for unlawful assembly, with terms averaging 6.7 months per person.<sup>66</sup> For the dozens of high-profile opposition leaders sentenced for organizing and inciting unlawful assembly, sentences have typically been longer, ranging from 12 to 18 months.<sup>67</sup>

The Human Rights Committee has previously recommended that the Hong Kong government revise the Public Order Ordinance to bring it into compliance with international standards for the right to peaceful assembly, expressing concern that the ordinance “may facilitate excessive restriction of the right of peaceful assembly.”<sup>68</sup> To the contrary, the Hong Kong government has since further restricted this right under the Ordinance by using it as one of the main charges for imprisoning protesters.

#### **D. Freedom of association: mass closures of civil society organizations (art. 22)**

Government actions against civil society organizations have severely curtailed the right to freedom of association in Hong Kong. These actions have included freezing bank accounts, arresting leaders—often using the charge of “colluding with foreign forces,” threatening prosecution under the National Security Law, and otherwise intimidating organizations to render it virtually impossible to continue operating.<sup>69</sup> In a few cases, authorities have also directly shut down civil society organizations.<sup>70</sup>

According to data gathered by HKDC, such actions by authorities have forced the closure of over 80 different civil society groups since the start of 2021. This includes student groups, labor unions, grassroots neighborhood groups, political parties, religious groups, and human rights organizations. The list of civil society organizations forced to close includes many of Hong Kong's biggest, best-known and oldest, such as the Hong Kong Professional Teachers Union, Hong Kong Confederation of Trade Unions, Hong Kong Alliance in Support of Patriotic Democratic Movements of China, Civil Human Rights Front, Amnesty International's Hong Kong section, and student unions which had been in existence for more than half a century.

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<sup>66</sup> This data is based on Hong Kong Democracy Council's report of May 2022, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners,” (<https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>).

<sup>67</sup> *Ibid.*

<sup>68</sup> CCPR/C/CHN-HKG/CO/R.3, par. 10.

2013, [www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-CHN-HKG-CO-3\\_en.doc](http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-CHN-HKG-CO-3_en.doc)

<sup>69</sup> *Hong Kong Free Press*, “Explainer: Over 50 groups disband – how Hong Kong's pro-democracy forces crumbled,” November 28, 2021, <https://hongkongfp.com/2021/11/28/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>; *Made in China Journal*, “The Annihilation of Hong Kong's Civil Society,” March 8, 2022, <https://madeinchinajournal.com/2022/03/08/the-annihilation-of-hong-kongs-civil-society/>.

<sup>70</sup> *Hong Kong Free Press*, “Explainer: Over 50 groups disband – how Hong Kong's pro-democracy forces crumbled,” November 28, 2021, <https://hongkongfp.com/2021/11/28/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>.

Just two examples from this crackdown on civil society are groups targeted by the government for providing legal assistance to protesters:

- In December 2019, police arrested members of Spark Alliance—a defense fund for protesters in need—and froze HK\$70 million in donations.<sup>71</sup> To date, none of the arrested have been charged in court but the funds are apparently still frozen.
- In September 2021, Hong Kong police issued a court order to the 612 Humanitarian Relief Fund, the largest defense fund for protesters, demanding information in relation to their investigation into the organization’s compliance with the National Security Law. The fund stopped operating in November 2021.<sup>72</sup> As of May 2021, it had spent HK\$236,383,746 in donations to aid 22,938 protesters. In May 2022, all five trustees of the fund, including 90-year-old Cardinal Joseph Zen, were arrested on suspicion of “colluding with foreign forces.” The five were released on bail without charge but now will be prosecuted for violating the Societies Ordinance for “failing to apply for registration or exemption from registration within the specified time.”

### **E. Participation in public affairs (art. 25)**

During the review period, the people of Hong Kong have lost the limited scope that existed for taking part in public affairs through freely chosen representatives. The Hong Kong government has used national security measures to stymie the heretofore active participation of those with opposition sympathies in public affairs, initially by disqualifying pro-democracy candidates from election to public office.<sup>73</sup> Such measures have since escalated to the criminalization of ordinary engagement with electoral activities.

In November 2019—despite pro-establishment groups claiming that they represented the “silent majority” during the mass protests—opposition candidates won a landslide victory in the District Council elections, capturing more than 80 percent of the seats.<sup>74</sup> Since then, the Hong Kong government has taken successive steps to effectively bar anyone with opposition views from holding elected office and to prevent the expression of opposition through electoral activity:

- In November 2020, the National People’s Congress Standing Committee passed a resolution banning Legislative Council members on political grounds. The Hong Kong

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<sup>71</sup> *Hong Kong Free Press*, “Hong Kong police arrest 4 for ‘money laundering’,” December 19, 2019, <https://hongkongfp.com/2019/12/19/hong-kong-police-arrest-4-for-money-laundering-and-freeze-hk70m-used-to-support-pro-democracy-protesters/>.

<sup>72</sup> *Reuters*, “Hong Kong police bail Catholic cardinal arrested on national security charge,” May 11, 2022, <https://www.reuters.com/world/asia-pacific/hong-kong-police-arrest-catholic-cardinal-alleged-collusion-with-foreign-forces-2022-05-11/>.

<sup>73</sup> In 2017, the Hong Kong government sought, and the High Court agreed, to invalidate the oaths of office sworn by Legislative Council members without regard to the electoral will of their constituents, hundreds of thousands of whom had cast ballots for the disqualified members. *Reuters*, “Hong Kong court expels four democracy-activist lawmakers,” July 14, 2017, <https://www.reuters.com/article/us-hongkong-politics/hong-kong-court-expels-four-democracy-activist-lawmakers-idUSKBN19Z0NY>.

<sup>74</sup> District Council elections were the only elections in Hong Kong run almost entirely in accordance with the principles of universal and equal suffrage. By contrast, the Chief Executive is selected by a highly unrepresentative committee, and only half of the Legislative Council was elected according to principles of genuine and equal universal suffrage. *New York Times*, “Hong Kong Election Results Give Democracy Backers Big Win,” November 24, 2019, <https://www.nytimes.com/2019/11/24/world/asia/hong-kong-election-results.html>.



government immediately used the resolution to disqualify four Legislative Council members elected by Hong Kong voters. All other opposition members of the Legco resigned in protest;<sup>75</sup>

- The government postponed the scheduled 2020 Legislative Council elections on the pretext of pandemic prevention, even as successful elections were carried out throughout the world;<sup>76</sup>
- In February 2021, the government charged 41 opposition candidates and six organizers with “conspiracy to commit subversion” under the National Security Law for holding an unofficial primary election in July 2020;<sup>77</sup>
- In May 2021, the government passed an “electoral reform” law creating a screening committee that will work with national security authorities to approve electoral candidates, ensuring that only “patriots” (that is, those loyal to the Chinese Communist Party) can stand for election;<sup>78</sup>
- In April 2021, the government enacted a new law criminalizing the incitement of voters to cast blank ballots or refrain from voting, even though both actions are entirely legal under Hong Kong law.<sup>79</sup> In September, several people who reposted a message on social media calling on voters to cast blank ballots were arrested and prosecuted;<sup>80</sup>
- To date, the government has also targeted at least 176 opposition leaders with arrest and/or prosecution.<sup>81</sup>

When the postponed Legislative Council elections were finally held in December 2021 under the new “electoral reforms,” no opposition candidates were on the ballot and only “patriots” were elected, with an all-time low voter turnout.

These actions by the government undermine the prospect of fulfilling Hong Kong’s obligations under Article 25 of the Covenant to vote and to be elected by universal and equal suffrage. This failure is especially acute given that universal suffrage has been the object of mass public demonstrations between 2019 and 2020 and an avowed commitment by the PRC government to honor it as an obligation enshrined in the Basic Law.

### III. Recommendations

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<sup>75</sup> *The Diplomat*, “Hong Kong’s Pro-Democrat Legislators Resign After Controversial Disqualifications,” November 12, 2020, <https://thediplomat.com/2020/11/hong-kongs-pro-democrat-legislators-resign-after-controversial-disqualifications/>.

<sup>76</sup> *New York Times*, “Hong Kong Delays Election, Citing Coronavirus. The Opposition Isn’t Buying It.,” July 31, 2020, <https://www.nytimes.com/2020/07/31/world/asia/hong-kong-election-delayed.html>.

<sup>77</sup> *NPR*, “47 Democracy Activists Charged Under Hong Kong ‘Subversion’ Law,” February 28, 2021, <https://www.npr.org/2021/02/28/972341741/hong-kong-democracy-advocates-charged-under-national-security-law>.

<sup>78</sup> *Reuters*, “Hong Kong passes sweeping pro-China election rules, reduces public’s voting power,” May 27, 2021, <https://www.reuters.com/world/asia-pacific/patriots-rule-hong-kong-sweeping-pro-beijing-electoral-rules-passed-2021-05-27/>.

<sup>79</sup> *South China Morning Post*, “Law on blank ballots, polls boycott full of pitfalls, Hong Kong experts warn,” April 15, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3129570/making-it-criminal-offence-people-encourage-hong-kong>.

<sup>80</sup> *France24*, “Hong Kong arrests three for urging voters to cast blank ballots,” September 11, 2021, <https://www.france24.com/en/live-news/20211109-hong-kong-arrests-three-for-urging-voters-to-cast-blank-ballots>.

<sup>81</sup> Hong Kong Democracy Council, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners,” May 2022, p. 4, <https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>.

The PRC and Hong Kong governments must fully comply with the ICCPR by taking the following steps:

- Cease prosecuting all defendants for peaceful political speech and actions;
- Immediately release all those who have been detained merely for exercising their human rights and attempting to engage in public affairs;
- Introduce genuine and equal universal suffrage without further delay in accordance with legal obligations stipulated in the Basic Law;
- Abolish the National Security Law and dismantle the national security apparatus including the National Security Department of the Hong Kong Police Force; the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region; the Committee for Safeguarding National Security of the Hong Kong Special Administration Region; and the practice of designating national security law judges;
- Abolish the sedition law (sections 9 and 10 of the Crimes Ordinance, Cap. 200)
- Cease persecution of civil society organizations;
- Cease persecution of media outlets;
- Cease the practice of long-term pre-trial detention of suspects related to crimes that are political in nature and not in conformity with the ICCPR;
- Reform legal aid guidelines to allow defendants to select lawyers of their choosing, as they have previously been allowed to do;
- Rescind pandemic regulations barring public gatherings;
- Rescind the Public Order Ordinance or reform it substantially to bring it into compliance with international standards, especially in regard to reducing the power of the police force to prevent public gatherings and to arbitrarily declare public gatherings unlawful;
- Rescind the harsh sentencing guidelines that prescribe prison terms for those convicted of the nonviolent offense of unlawful assembly;
- Cease persecution of organizations which provide legal aid to political defendants;
- Abolish loyalty oaths;
- Cease codification of "patriotism";
- Cease the persecution of members of the political opposition;
- Rescind the law criminalizing advocacy of not voting and of casting a blank ballot;
- In line with the introduction of genuine and equal universal suffrage, rescind the so-called "patriots-only electoral reforms."