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# THE NATIONAL SECURITY LAW FOR HONG KONG: IMPACTS ON CIVIC SPACE AND CIVIL SOCIETY ENGAGEMENT WITH THE UN SEPTEMBER 2022

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The authors note views by the UN and relevant States on the issue of correct terminology. For the purposes of brevity, this paper will use 'Hong Kong' in place of 'Hong Kong Special Administrative Region'.

Cover photo: Rally by the Civil Human Rights Front.  
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# INTRODUCTION

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On 22 May 2020, the National People's Congress (NPC) of the People's Republic of China (PRC) approved a decision supporting 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.'<sup>1</sup> The decision purportedly sought to enact laws for 'a sound legal system' in the territory.

Just over a month later, on 30 June 2020, the National People's Congress Standing Committee (NPCSC)<sup>2</sup> announced and adopted the National Security Law for Hong Kong (hereafter, the NSL). It entered into force on 1 July 2020.<sup>3</sup>

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. With its promulgation directly from Beijing by mainland China's legislative body, and not Hong Kong's Legislative Council, **the law seemed designed to have a 'shock and awe' effect on Hong Kong society**, especially the political opposition, media and civil society. It was a clear break from the 'One Country, Two Systems' model, whereby the Hong Kong people were supposed to govern their own domestic affairs. Never before has a substantive PRC law – not to mention one 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.

As [scholars](#) have observed in the past, Hong Kong represented 'a paradox in democratisation and modernisation theory: it has a vibrant civil society and high level of economic development, but very slow democratisation.' This paradox has now resolved – respect for rule of law, an engaged public, democratic institutions and an open market are coming to an end under the shadow of the NSL and authoritarian encroachment by Beijing.

The **NSL has reshaped Hong Kong's legal system**, effectively trumping all local Hong Kong legislation, including the Bill of Rights and the guarantees under the Basic Law – long regarded as Hong Kong's 'mini constitution'. These are the very laws which flow from and reaffirm Hong Kong's obligations under the International Covenant on Civil and Political Rights (ICCPR).

Since the promulgation of the NSL, Hong Kong's once vibrant environment for civil society has undergone a sea change. Many activists have been prosecuted and jailed for their activities. Many NGOs, both local and international, have made the decision to pull their operations and staff out of Hong Kong, while other activists and NGO workers have chosen to – or been forced to – abandon their rights work, or leave the city and continue work in exile. As explained by the Chairman of the Board of Amnesty International, whose regional office was located in Hong Kong until December 2021, the NSL 'has made it effectively impossible for human rights organisations in Hong Kong to work freely and without fear of serious reprisals from the government'.<sup>4</sup>

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<sup>1</sup> Article 3 of the National People's Congress Decision on Hong Kong national security legislation.

<sup>2</sup> 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.

<sup>3</sup> The full text of the law in English can be accessed at <https://hongkongfp.com/2020/07/01/in-full-english-translation-of-the-hong-kong-national-security-law/>

<sup>4</sup> Amnesty International Public Statement on 25 October 2021.

The relationship between government and civil society is facing new strains, directly linked to the NSL, that has impacts on the political climate in the city. 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 human rights issues – from the rights of LGBTI people to the environment and climate change – and would encourage participation in various panels, bills committees and subcommittees. However, subsequent to the adoption of the NSL, Hong Kong’s new LegCo has now taken office following a heavily controlled ‘election’ by the Central People’s Government whereby only ‘patriots’ were allowed to take part. As a result, there here is no longer a commitment to allowing alternative or civil society voices to be heard. Since 2021 there has been no public official agenda item where civil society groups in Hong Kong were invited to give their views in in the LegCo. Indeed, the new [LegCo members have been told](#) to ask fewer questions themselves.

It is against this backdrop that we situate this report as a part of the ongoing effort to examine 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 provides extensive analysis of the provisions of the NSL**, and the potential impacts of specific legal provisions on human rights advocacy on the work of Hong Kong civil society and international NGOs – whether or not they are present on the territory of Hong Kong.

The report also **considers recent cases and judgments targeting civil society** that demonstrate how Hong Kong courts and law enforcement authorities have implemented and interpreted the NSL in practice, while also availing themselves of outdated, colonial-era laws for the first time in decades.

As a result of the legal landscape and practical evidence of enforcement, the authors conclude that individuals or organisations based in Hong Kong – or even having links to Hong Kong – cannot reasonably continue to assume the ability to safely engage with the UN on human rights issues. The NSL directly places them in a situation of **new and heightened risk of reprisals and intimidation**.

This report seeks **to forecast where the political trends in Hong Kong are heading** and endeavours to present some possible scenarios regarding new laws in the field of national security. For the year 2022, this likely includes laws 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 undermining free access to the internet.

Finally, the report concludes with **recommendations to the international community**. The evolution begun with the NSL, and more general changes in the legal and political environment of Hong Kong, continue to shape this once-vibrant democratic city into an authoritarian society, led by a Chief Executive ([John Lee](#)) who is also a former senior police officer and security minister. A clear understanding of what is at stake, and prompt action to safeguard the civic space that remains, are essential to solidifying international support for a rights-respecting Hong Kong.



Hong Kong National Security Law.  
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Apple Daily founder Jimmy Lai outside Hong Kong Court of Final Appeal, December 2020.  
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## 1. De jure: The National Security Law and its potential impacts on protected rights in Hong Kong

### Observations on new crimes in the NSL

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

#### The crime of **'Subversion' (Article 22)**

'Subversion'<sup>5</sup> 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 out that 'subversion is almost uniformly directed towards the regulation of activity viewed as political under domestic law (...) generally understood as a "political crime"'.<sup>6</sup>

<sup>5</sup> Article 22 and 23 of NSL.

<sup>6</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25487>

Under this crime, experts have cited ongoing cases to argue that activities that were previously allowed under the Basic Law are now illegal from the perspective of the authorities under the NSL. A court has yet to issue a ruling providing further jurisprudence.

### 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.

### 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.'<sup>7</sup>

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. The mere display of a slogan that could be understood as having a secessionist meaning can be considered a serious crime. The charge of secession does not require evidence for the existence of tangible plans.<sup>8</sup>

### The crime of **'Terrorist Activities'**

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 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.'<sup>9</sup>

UN Special Procedures experts further add indicate that 'articles 20 and 22 of the [National Security] law which define organising, planning, committing or participating in secession or subversion, appear to criminalise speech acts, including political writing.'<sup>10</sup>

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

<sup>8</sup> <https://hongkongfp.com/2021/11/23/breaking-hong-kong-activist-tony-chung-sentenced-to-3-years-and-7-months-for-secession-and-money-laundering/>

<sup>9</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

<sup>10</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

## Scope and definitions

**The NSL has a global reach:** it applies to persons and acts outside of Hong Kong.<sup>11</sup> 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.

**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, specifically including all rights protected under the ICCPR.

'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.<sup>12</sup> 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.<sup>13</sup> This broad definition of national security has been echoed by top Hong Kong government officials.<sup>14</sup>

The 1996 'Johannesburg Principles'<sup>15</sup> 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.'<sup>16</sup>

**The NSL effectively stands above the Basic Law, and is not subject to legal challenge.** The Court of Final Appeal (CFA) has confirmed that one cannot challenge the NSL on the grounds that it has contravened the Basic Law or the human rights protection therein.<sup>17</sup> 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'.<sup>18</sup>

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<sup>11</sup> Article 38 of NSL.

<sup>12</sup> Article 47 of NSL.

<sup>13</sup> <https://ash.harvard.edu/publications/risks-international-business-under-hong-kong-national-security-law>

<sup>14</sup> <https://www.cso.gov.hk/eng/blog/blog20210411.htm>

<sup>15</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/118/04/PDF/G9611804.pdf?OpenElement>

<sup>16</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/278/27/pdf/N1627827.pdf?OpenElement>

<sup>17</sup> Specifically, in the Jimmy Lai (owner of Apple Daily)'s bail application case; <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/06/HongKongNSLRightToFairTrial.pdf>

<sup>18</sup> <https://www.aljazeera.com/news/2022/1/27/hong-kong-bail>; HKSAR v Lai Chee Ying 2021 HKCFA 3.

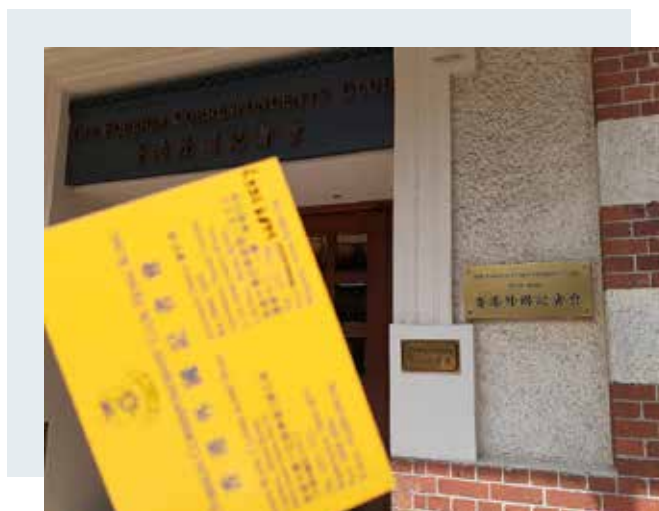
All factors could be considered by the national security judge including the defendant's political background and experience, his or her record in public service, how long he or she has been in politics and how committed he or she is in her political beliefs. The extent to which one has been vocal and 'radical' in the past, could be used as grounds for denying bail. In one case, criticising the human rights situation in Hong Kong to a foreign journalist was grounds to justify a denial of bail.<sup>19</sup>

## Enforcement

In order to strengthen enforcement, the NSL includes a range of new measures that are characterised by fundamental departures from traditional legal enforcement and accountability structures.

Article 54 of the NSL **creates a new national security apparatus**. It includes a Committee for Safeguarding National Security, consisting 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. It additionally creates an Office for Safeguarding National Security (the Office); both bodies are in practice under the direct authority and supervision of the PRC Government. 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 is a fundamental change to the power structure in Hong Kong.

With this structure in place, the NSL reshapes Hong Kong's justice system, muddling a separation of powers that is essential for an independent judiciary. Cases involving national security are presided over by a list of **national security judges**.<sup>20</sup> These judges are handpicked by the Chief Executive in consultation with the Committee. 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.<sup>21</sup> In addition, the Secretary for Justice and prosecution authorities also have the power to prohibit jury trials for national security cases.<sup>22</sup>



Hong Kong's Foreign Correspondents' Club.  
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<sup>19</sup> <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

<sup>20</sup> Article 44 of NSL.

<sup>21</sup> <https://www.reuters.com/world/asia-pacific/hong-kongs-top-judge-defends-citys-rule-law-face-international-concern-2022-01-24/>

<sup>22</sup> Article 46 of NSL.



The NSL also compels and resources a more robust set of powers for existing enforcement structures. **The 'Special Branch' for national security within the Hong Kong Police Force** has wide powers under the NSL implementation regulations,<sup>23</sup> 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 company.<sup>24</sup>

The NSL also gives authorities a mandate **to strengthen the 'management' of NGOs and foreign organisations in Hong Kong**. 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.<sup>25</sup> 'Foreign agents' are specifically mentioned in this provision though the provision itself does not define who they are – leaving open the real possibility, currently playing out in courts, that the term could include anyone working for foreign governments and NGOs.

The NSL empowers the Chief Executive to sanction covert surveillance without the scrutiny of the court.<sup>26</sup> The NSL and other legislation also empowers the law enforcement authorities to compel individuals and organisations to provide information on details of their activities.<sup>27</sup> Data privacy has not been accepted as a defence against these charges.

## Beyond the NSL

National security offences are not limited to the four main offences under the NSL. They also include old colonial offences that are still on the statute books in Hong Kong.

**Sedition**<sup>28</sup> is a broadly worded criminal offence that includes political speech aimed at criticising the Government, the PRC and the administration of justice by the courts.<sup>29</sup> Sedition had not been used by the Hong Kong Government since the 1970s, but in the wake of the NSL has now been widely revived by the Hong Kong authorities to silence [critical voices](#) and suppress free [expression](#). The harsh bail conditions under the NSL are also applicable to offenses such as sedition. The Hong Kong authorities recently arrested the former directors and editor of a digital news media outlet on grounds of publishing articles,<sup>30</sup> some involving criticism of the Hong Kong courts and legal administration, which are now deemed 'seditious'.

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<sup>23</sup> L.N. 139 of 2020.

<sup>24</sup> L.N. 139 of 2020 Schedule 3; <https://www.reuters.com/article/us-hongkong-hsbc/former-hong-kong-lawmaker-rejects-hsbcs-explanation-over-frozen-accounts-idUSKBN29N0HP>

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

<sup>26</sup> Implementation Rules of the NSL Article 43, schedule 4.

<sup>27</sup> Article 43 (6).

<sup>28</sup> See s. 9 of the Crimes Ordinance for full definition.

<sup>29</sup> Crimes Ordinance Cap. 200 s. 9; [https://www.elegislation.gov.hk/hk/cap200?xid=ID\\_1438402821397\\_002](https://www.elegislation.gov.hk/hk/cap200?xid=ID_1438402821397_002)

<sup>30</sup> <https://www.nytimes.com/2021/12/29/world/asia/hong-kong-stand-news-arrest.html>

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 gangs) to prevent them from forming gangs that were notorious for their criminal network and conducts. 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 financial details.<sup>31</sup> The use of the powers under the Societies Ordinance has also led to disbanding political and other civil society groups.

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, as of 2021, the Government started using it to investigate pro-democracy trade unions.

In addition to the passage of the NSL and use of outdated laws – almost all of which have been identified as non-compliant with Hong Kong's international obligations under the ICCPR – 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, despite the law taking effect on 1 August 2021. And while there are no cases to help assess how the authorities would make use of his broad power, due to drastic decreases in travel linked to the city's stringent COVID measures, the demonstrated use of [exit bans](#) by mainland Chinese authorities to target foreigners and nationals alike gives cause for concern.

Finally, **character defamation** has become increasingly common. 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.

In sum, the Central People's Government is now issuing [edicts](#) to the Hong Kong Government on all [important policy](#) areas, mirrored by state media messaging. 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, it appears clear that the trajectory for Hong Kong going forward will be within the firm orbit of the PRC.

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<sup>31</sup> s. 12 of Societies Ordinance; [https://www.elegislation.gov.hk/hk/cap151?xpid=ID\\_1438402725223\\_002](https://www.elegislation.gov.hk/hk/cap151?xpid=ID_1438402725223_002)



Police officers in Hong Kong. © Elton Yung / Unsplash

## 2. De facto: Recent use of the National Security Law to crackdown on NGOs and human rights defenders

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.

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.'

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.

Below are a few illustrative cases that show the impacts of criminalisation under the NSL and other security laws, as well as the toxic environment for activists and organisations that seeks to push out those operating or silence those trying to dissent.

## Dissolution or disbandment

**Amnesty International** summarised the situation with an observation made when it decided to close its offices in Hong Kong, stating: '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.'

**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 organising the largest peaceful protests in Hong Kong's history, notably the anti-National Security Law protests in 2003 with half a million Hong Kongers taking to the streets, as well as the one million and two million person-strong anti-extradition protests on 9 and 16 June 2019 respectively.

## Access to resources and financial and other services

The **612 Humanitarian Relief Fund ("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, in the absence of a credible mechanism for lodging complaints against the HKPF. The trustees were reputable people, including Dr. Margaret Ng Ngoi-ye, 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.<sup>32</sup> 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.

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 have been 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.

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<sup>32</sup> 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](https://orientaldaily.on.cc/cnt/news/20201029/00176_032.html))

Civil society organisations also face difficulty in securing necessary services as service providers want to avoid association with NSL risks. The auditing firm for the 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.

## Excessive administrative burdens/right to privacy

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 facing legal risks.<sup>33</sup> These are tactics to alienate a civil society organisation and the access to resources.



Chow Hang-tung, chairwoman of the Hong Kong Alliance, sentenced on 4 January to 15 months prison.  
© Used with permission of The 29 Principles

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.<sup>34</sup> 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 for ‘political activities’.

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 a 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.

<sup>33</sup> 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=cpsdle>)

<sup>34</sup> 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/>)

## Arrests

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.'<sup>35</sup>

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.**

Journalist and radio commentator **Allan Au** was arrested in April 2022 by national security police for his engagement with now-defunct media outlet Stand News, but later charged under the colonial-era sedition law for 'conspiracy to publish seditious materials'.

In another example, a primary election in July 2020 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 in February 2021 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 is stipulated in the NSL.

In 2021, the renowned barrister and 18-year LegCo member **Margaret Ng** was been arrested on charges of unauthorised assembly and sentenced to twelve months' prison, suspended. However, in May 2022, she was [again arrested](#) and under suspicion of the NSL crime of 'colluding with foreign forces' for her role as trustee of the 612 Humanitarian Fund. She was released on bail, and her passport confiscated.

Leaders of the **Hong Kong Confederation of Trade Unions (CTU)** were arrested by the national security police in April 2022 for allegedly failing to comply with an information request under the NSL (see below).

## Presumption against bail

For defendants in cases related to national security offences, there is an assumption against bail unless the judge is satisfied that the individual would not commit any act endangering national security if granted bail.<sup>36</sup> 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.

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<sup>35</sup> Professor Michael Davis – 'How Beijing Perfected Repression', Journal of Democracy Jan 2022 by John Hopkins University Press

<sup>36</sup> HKSAR v LAI Chee-ying [2021] HKCFA 3.

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.<sup>37</sup> 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.<sup>38</sup>

**Koo Sze Yiu** and others planned to protest at The Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region<sup>39</sup> against the NSL on 4 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 Ordinance s.10(1)(a). He was refused bail based on the above-mentioned NSL bail restrictions.

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.<sup>40</sup> The defendant was not granted bail.

## Severe limits on free speech

**Koo Sze Yiu's** case is the first where a defendant has been charged with attempt or preparation for sedition.<sup>41</sup> However, informally it appears that a wide range of activities have been deemed seditious: journalists interviewing activists in exile or printing their blog posts (**Apple Daily**<sup>42</sup> and **Stand News**<sup>43</sup>), criticising judges' decisions (**Stand News**), mocking the death or injuries of police officers (**a former police officer**,<sup>44</sup> singer **Tommy Yuen**<sup>45</sup>).

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

In other cases, speech has been criminalised not as sedition (under the colonial law) but as crimes defined in the NSL. A recent arrest concerns a popular singer posting anti-vaccine messages on his social media page. Public health policies are now within the realm of national security and cannot be publicly questioned or criticized.<sup>46</sup> And **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.

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<sup>37</sup> During the bail proceeding of Lee Yue Shun on 15 March 2021, case number HCCP 120/2021.

<sup>38</sup> During the bail proceeding of Chung Kam Lun on 31 March 2021, case number HCCP 137/2021.

<sup>39</sup> The Liaison Office is the agency that represents the Chinese Central People's Government in Hong Kong.

<sup>40</sup> During the bail proceeding of Claudia Mo on 14 April 2021, case number HCCP 134/2021.

<sup>41</sup> Case number: KCCC351/22.

<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> 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.

<sup>45</sup> 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.

<sup>46</sup> <https://variety.com/2022/music/news/hong-kong-arrests-singer-tommy-yuen-1235183234/>

Finally, in the case of the speech therapists union – two members of which have been [charged with sedition for the production of children's books](#) – the prosecution has argued that sedition is as serious as other crimes such as treason, thus strengthening the view that although sedition is not specifically included in the NSL, it will fall under a broad array of 'security-related' crimes that could be increasingly weaponised against dissent.

## State media intimidation

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.'<sup>47</sup> In 2021, Ta Kung Pao, one of 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.'<sup>48</sup> In 2022, Ta Kung Pao continued to accuse the Human Rights Press Awards for recognising 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.'<sup>49</sup>

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 together to make stories.<sup>50</sup> 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.'<sup>51</sup> A video of him entering a massage parlor was posted online in December 2021.

The **Hong Kong Confederation of Trade Unions** was also requested by the HKPF, under the NSL, to provide information including: 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 that 'according to a source...it is believed that the Police is investigating allegations against the HKCTU that it had colluded with foreign elements and received political funding, disrupted Hong Kong, and other illegal activities.'<sup>52</sup>

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

48 "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>

49 "影FCC搞黑箱選舉 頒獎予「台獨」分子 記協無視法紀 煽「獨」擄暴" Ta Kung Pao, 6 January 2022, a copy is available at [https://dw-media.tkww.hk/epaper/tkp/20220106/A6\\_Screen.pdf](https://dw-media.tkww.hk/epaper/tkp/20220106/A6_Screen.pdf)

50 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/>

51 "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>

52 "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>



The **Hong Kong Professional Teachers' Union (PTU)** was a long-standing trade union of teachers in Hong Kong and supported democracy. Its candidates represented the education sector in the Legislative Council's Functional Constituency since 1985. It was the largest teachers' organisation in Hong Kong with some 95,000 members at the time of disbandment in 2021. In July of that year, two of China's major media outlets, the Xinhua News Agency and the People's Daily, published commentary articles criticising the operation of the PTU for deviating from its original purpose to become an out-and-out political organisation. 'For Hong Kong education to return to the right track, the PTU must be investigated, and the tumour must be eradicated,' said Xinhua.<sup>53</sup> A member of the Executive Council of Hong Kong<sup>54</sup> 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.'<sup>55</sup> PTU announced its decision to dissolve soon after.



Hong Kong's legal profession held a silent black-clothed parade against the National People's Congress on 08.11.2016.  
© VOA\_Hai Yan

<sup>53</sup> 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](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>

<sup>54</sup> The Executive Council of Hong Kong is the cabinet of the Government of Hong Kong Special Administrative Region.

<sup>55</sup> “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>



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### 3. In focus: Acts of intimidation and reprisals against those engaging with the UN, following the passage of the National Security Law

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.

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. 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.

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 formally prosecuted for their engagement with the UN so far, some have faced stigmatisation and intimidation for past engagement.

**Professor Puja 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, a blog [post](#) by an unknown source was released on Bastille Post, an online media outlet, 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 U.S.-based National Democratic Institute, or 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.<sup>56</sup>

**Denise Ho**, an activist and singer from Hong Kong, was [smeared](#) 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.' She was arrested in late 2021 for her involvement as a former board member in a digital news media outlet, [Stand News](#).

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.<sup>57</sup>

**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.<sup>58</sup> The Front's convener **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 case was included in the 2021 'reprisals report' of the UN Secretary-General.

<sup>56</sup> 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)

<sup>57</sup> "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>

<sup>58</sup> 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.inmediahk.net/node/1082253?fbclid=IwAR3Q6r\\_lIS7khkYrB1mt-PnnkZijjRSESm63wz04SQgUxLbU2lu7DQ8AU4Q](https://www.inmediahk.net/node/1082253?fbclid=IwAR3Q6r_lIS7khkYrB1mt-PnnkZijjRSESm63wz04SQgUxLbU2lu7DQ8AU4Q)



Tiananmen candlelight vigil in Victoria Park. © Baycrest

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 stigmatisation by pro-China media outlets for a long time, but used to enjoy a certain degree of respect from the Hong Kong authorities. In recent years from 2014 onwards, 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 Hong Kong Bar Association, 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 reporting and monitoring work of the Hong Kong Human Rights Monitor.<sup>59</sup>

<sup>59</sup> "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/>



The UN Human Rights Council. © Elma Okic

## 4. In the future: The National Security Law's deterrent effect on civil society engagement with the UN

The NSL has had a significant impact on Hong Kong civil society's ability to continue to engage with the UN in the future, whether through in-country work or travel and participation in-person in Geneva or elsewhere.

A serious casualty of the NSL is the ability to dialogue with government about its international human rights obligations. Under the previous format of the LegCo, there were 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' LegCo, however, these hearings are no longer held.

The organisations and individuals experienced in participating in this policy process, and 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. For NGOs in Hong Kong that are still operating, willingness to engage with the UN has significantly ebbed, mainly because the risk outweighs the expected impact, but also because there are no coordinating organisations anymore, nor assistance with capacity building.

Not all civil society organisations are familiar with international human rights conventions, or the working methods of Treaty Bodies or Special Procedures. 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, but don't have the experience. Others 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.

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** which, to many, pointed to a hardening of the authorities' clampdown on dissident voices.

Other 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, even civil society in Hong Kong that considers it possible to mitigate these risks cannot access resources freely and safely. These factors have also impacted the ability of Hong Kong civil society to engage with the UN.

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.<sup>60</sup> They may have joined existing groups or formed new groups overseas. However, 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 or collusion. Under the present circumstances, 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.

During the review of Hong Kong by the UN Human Rights Committee in July 2022, experts specifically asked several times whether the government delegation could confirm that individuals engaging with the Committee would be protected from reprisal or retaliation. At each instance, the delegation failed to provide clear guarantees, noting only that 'normal interactions' with international groups would not be considered prohibited activities under the NSL and, later, that 'it would depend' on the nature of the engagement. This provides additional justification for the concerns of activists that the UN may be considered a 'foreign actor' as per the definition of collusion in the NSL.

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<sup>60</sup> See for example the 2021 Hong Kong Charter, available at <https://www.2021hkcharter.com>

## 5. Conclusion and recommendations

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 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. These developments should be monitored closely.

In the medium term, once the new laws targeting 'fake news', 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.

- Hong Kong must be included in the follow-up to the visit by UN High Commissioner for Human Rights Michelle Bachelet and her team to China in May 2022. The High Commissioner should conduct an in-person visit to Hong Kong in the context of follow-up to Hong Kong's Human Rights Committee review, and should conduct substantive meetings with Hong Kong civil society ahead of and during her visit.
- The UN Secretary-General should continue to monitor and document the situation in Hong Kong in his annual report on reprisals.
- The international community should increase the visibility of individual cases, and patterns of restrictions to civil society space under the NSL, in statements at the multilateral and bilateral levels.
- The UN and the international community should allocate further resources to enable the rebuilding of civil society outside of Hong Kong.
- The UN and the international community should call on the PRC to repeal the NSL, and on the PRC and the Hong Kong government to comply with its commitments and human rights protections under the Basic Law, the ICCPR and other normative frameworks – including the 'One Country, Two Systems' understood in its original intent under the Sino-British Joint Declaration – and to immediately release all those arbitrarily detained, in particular under NSL charges.



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#### **GENEVA OFFICE**

Rue de Varembé 1, 5th floor, P.O. Box 16,  
CH-1211 Geneva 20 CIC, Switzerland

#### **NEW YORK OFFICE**

777 UN Plaza, 7th floor, New York,  
NY 10017, USA