

**Submission by Human Rights Now to the UN Human Rights Committee
in advance of the examination of the State Party report for
Hong Kong Special Administrative Region, People's Republic of China
at the 135th Session**

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Human Rights Now (“**HRN**”) is a Tokyo-based international human rights NGO focusing on human rights issues in the Asia region through fact-finding, advocacy, and empowerment work. HRN was founded in 2006 by lawyers, academics, and journalists; has over 700 members; and received special consultative status with the Economic and Social Council in 2012.

HRN appreciates the questions and issues which were raised in the List of Issues adopted by the Committee (CCPR/C/CHN-HKG/Q/4). This report responds to and supplements the Hong Kong Government's reply to the List of Issues (CCPR/C/CHN-HKG/RQ/4) (“**the Government's Reply**”). It will also provide additional evidence of on-going human rights abuses connected to the 2019 Anti-Extradition Bill Movement (“**the 2019 Movement**”).

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Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and liberty and security of person (Articles 6, 7, 9, 10 and 14)

Item 10 of the LOI

On the police guidelines on use of force and their compliance with international human rights standards:

1. The government's Reply at [66] stated that "[t]he Police have clear guidelines on the use of force which are consistent with the international human rights norms and standards".
2. HRN is of the view that the police guidelines do not comply with the 1990 Basic Principles on the Use of Force and Firearms ("**UN Principles on Use of Force**") and the 2020 UN Human Rights Guideline on the use of Less Lethal Weapons in Law Enforcement ("**UN Guideline on Less-Lethal Weapons**"). The reasons are as follows.
3. The Police General Order ("**PGO**") and its related Force Procedures Manual ("**FPM**") contain guidance on the police use of force. Whilst the PGO are internal guidelines compliance of which is mandatory for all police officers, the FPM is a practice manual formulated based on the PGO. Both Chapter 29 of the PGO and FPM covering the police guidelines on use of force and firearms are not disclosed to the public.¹
4. Issues pertaining to access to information will be discussed below in the section on Item 21 of the LOI.
5. In May 2020, the Independent Police Complaints' Council ("**IPCC**") published a study titled "Thematic Study Report on the Public Order Events arising from the Fugitive Offenders Bill since June 2019 and the Police Actions in Response" ("**the Thematic Report**") (see para. 73 of the Government's Reply).² It put forward a total of 52 recommendations for improvement covering five main areas, including review of guidelines on the use of force.³ A task force was then set up to follow up on the implementation progress of the recommendations. In the IPCC's Annual Report 2020/2021 ("**the Annual Report**"), which covers the period of 1 April 2020 to 31 March 2021, it was reported that the police have completed follow-up actions on 32 recommendations, 22 of which concerns "Operation planning and strategy".⁴

¹ Legislative Council Secretariat, Information Note. Policy on police use of force in public order events in selected place (13 July 2020) at [2.4], <https://www.legco.gov.hk/research-publications/english/1920in14-policy-on-police-use-of-force-in-public-order-events-in-selected-places-20200713-e.pdf>

² IPCC, "A Thematic Study by the IPCC on the Public Order Events arising from the Fugitive Offenders Bill since June 2019 and the Police Actions in Response" (May 2020) ("Thematic Report"), https://www.ipcc.gov.hk/en/public_communications/ipcc_thematic_study_report.html.

³ Thematic Report at [16.32].

⁴ IPCC, "Annual Report 2020/21" (May 2020) ("Annual Report"), <https://www.ipcc.gov.hk/doc/en/report/report2020.pdf>

6. It is observed that the wording in the Annual Report is vague, making it difficult to tell whether and in what way the recommendations have been implemented.
7. Even assuming that all 32 recommendations have been strictly compiled with, HRN observed that some recommendations in the Thematic Report are in fact deficient, presumably because of the IPCC's own "structural limitations" (see HNR's response to Item 11 LOI below). This casts doubt on the police guidelines' purported compliance with international human rights standards. The Committee's attention is drawn to the following areas of concern.
8. In relation to the use of chemical weapons:
 - (a) The use of chemical weapons during the 2019 Movement was extensive. According to the Thematic Report, during the period between June 2019 and February 2020, the police used more than 16,191 rounds of tear gas and 10,100 rounds of rubber bullets.⁵
 - (b) However, the police or government to date has refused to release all information about the chemical weapons, including their exact chemical composition and manufacturing details.⁶
 - (c) The withholding of relevant information on chemical weapons is inconsistent with the UN Guidance on Less-Lethal Weapons which provides:

4.1.2 Publicly available data should include each weapon's design features and parameters (in the case of a chemical irritant, for example, this would encompass its strength and the type of solvency used) with a view to facilitating medical treatment and public acceptance.
 - (d) The IPCC recommended that an expert committee be set up to advise the police on whether the "current and future stocks of tear gas come within acceptable toxicological limits for use in Hong Kong streets".⁷ If it is impossible to define such a limit, then they were recommended to release information concerning the manufacturer, model and any developed jurisdictions using the same model.⁸
 - (e) The IPCC's recommendations are welcome by HRN. However, the release of information should not be restricted to tear gas. The duty of disclosure applies to all kinds of chemical weapons, including pepper

⁵ Thematic Report at [6.32].

⁶ Hong Kong's watchdog of public administration, the Office of the Ombudsman, supported the Administration's refusal in disclosing such information when concluding multiple relevant complaints in March and June 2020. The investigation reports: (i) https://ofomb.ombudsman.hk/abc/files/HKPF_code_EN202003.docx, (ii) https://ofomb.ombudsman.hk/abc/files/HKPF_code_EN202006.docx, and (iii) https://ofomb.ombudsman.hk/abc/files/HKPF_code_EN202006_02.docx.

⁷ Thematic Report at [6.72].

⁸ Ibid.

spray and pepper-based solutions ejected by water cannons, both of which are also used extensively used during the 2019 Movement.⁹

- (f) In any event, according to the Annual Report, IPCC's recommendations pertaining to use of tear gas has not been followed up upon by the Police Force.
9. In relation to the obstruction of medical care, attack and arrest of medical volunteers:
- (a) According to General Comment No. 37, in policing assemblies, the police must protect, inter alia, medical personnel. It must also ensure that adequate medical facilities are available.¹⁰ The UN Guidance on Less-Lethal Weapons also provides that:
- 4.6.3 Law enforcement officials shall at all times facilitate and cooperate with those providing medical assistance, including by making available pertinent information relating to the less-lethal weapon or related equipment that has been used.
- See also: Principle 5(c) of the UN Principles on Use of Force.
- (b) There are numeral reports of attack and arrest of medical volunteers during the 2019 Movement. For instance, on 12 June 2019, the police repeatedly fired tear gas at tents affixed with the medical cross which were set up as a first aid station.¹¹
- (c) For a detailed overview into the police's treatment of medical volunteers, see All-Party Parliamentary Group on Hong Kong, "*The Shrinking Safe Space for Humanitarian Aid Workers in Hong Kong*" (August 2020).¹²
- (d) These issues were not raised in the Thematic Report.
10. Other issues of non-compliance that arose during the 2019 Movement but were not addressed in the Thematic Report:
- (a) Arbitrary and indiscriminate use of force and arrest of non-violent protesters, reporters, human rights observers and bystanders¹³ (see General Comments No. 37 at [30] & [74]);

⁹ For a detailed overview into the police's use of chemical report during the 2019 Movement, see Sounds of the Silenced & HRN, Joint Report to the UN Human Rights Committee for its 129th Session concerning the implementation of ICCPR in Hong Kong (April 2020), https://hrn.or.jp/eng/wp-content/uploads/2020/04/HRN_SOS-Joint_Report_on_Police_Abuses_in_Hong_Kong.pdf.

¹⁰ See [74], [88].

¹¹ HK01 "Tear gas fired at first aid station" (in Chinese), (15 June 2019), <https://www.hk01.com/突發/340914/逃犯條例-催淚彈擊中急救站-陳沛然-警可區別救護員與示威者>

¹² <https://www.hkinquiry.org/the-inquiry-report>

¹³ Front Line Defenders, "Arrest of human rights monitors in breach of the Hong Kong Government's International Human Rights Obligations" (12 February 2020), <https://www.frontlinedefenders.org/en/statement-report/arrest-human-rights-monitors-breach-hong-kong-governments-international-human>. See also: Sataline, "Hong Kong's Worsening Press Climate", The

- (b) Frequent use of less-lethal weapons, particularly tear gas, to disperse peaceful assemblies¹⁴ (see Principle 13 of the UN Principles on Use of Force and UN Guidance on Less-Lethal Weapons at [6.3.3]); and
 - (c) Kinetic impact projectiles targeted at head, face or neck, or firing from a far distance¹⁵ (see UN Guidance on Less-Lethal Weapons at [7.5.4] & [7.5.8]).
11. The lack of transparency has made it difficult for civil society members to assess whether the current guidelines on use of force comply with the international human rights standards. But in light of (i) the repeated incidents non-compliance during the 2019 Movement; and (ii) the deficiency in the Thematic Report, HRN opines that the current guidelines do not comply with the UN Principles on Use of Force or UN Guidance on Less-Lethal Weapons.
12. HRN recommends that the Hong Kong government should:
- (a) Conduct an independent investigation into the allegations of excessive use of force by the police during the 2019 Movement;¹⁶
 - (b) Ensure that the suspected perpetrators are duly prosecuted, tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts, including acquiescence and/or the common law offence of aiding, abetting, procuring and counseling;
 - (c) Provide full redress to the victims, including fair and adequate compensation; and
 - (d) Publish the police general orders and related guidelines on the use of force and make sure that they are in compliance with international standards.

Item 11 of the LOI

On the establishment of an independent mechanism to investigate complaints about human rights violations committed by the police:

13. The Committee has previously questioned the overall competence of the two-tier police complaints system and called for reform of the IPCC.¹⁷

Atlantic (11 October 2019), <https://www.theatlantic.com/international/archive/2019/10/hong-kong-police-are-targeting-press/599815/>

¹⁴ For instance, on 12 June 2019, the police deployed tear gas indiscriminately, without clear audible warning, at an authorised and peaceful assembly outside a building called Citic Tower. Video evidence: <https://youtu.be/Z2g6qFRlbX0>.

¹⁵ For instance, on 12 June 2019, the police headshot a protester with projectile when he was not posing any threat to anyone. Video evidence accessible at: <https://youtu.be/cy36sveUfyw>. On 5 August 2019, police fired sponge rounds from the top floor of the Kwun Tong police station without prior warning. The firing of projectiles from such a far distance violates international norms because it heightens the risks of hitting sensitive parts of the body unintentionally. Video evidence: <https://www.facebook.com/RTHKVNEWS/posts/2711815252259847>

¹⁶ This is in line with the High Court holdings at [92] and [124] in *Chan Kung Shun & Anor v Commissioner of Police* [2020] HKCFI 2882, <https://www.hkii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2020/2882.html>

14. In its 2016 Concluding Observations, the UN Committee Against Torture also stated that “the Committee reiterates its previous recommendation that Hong Kong, China consider establishing a fully independent mechanism mandated to receive and investigate complaints against all officials and ensure that there is no institutional or hierarchical relationship between the investigators of that particular body and the suspected perpetrators of the acts that form the basis of a complaint.”¹⁸
15. The Government’s Reply at [70] merely reiterated the current mechanism without explaining whether any steps have been taken to establish an independent mechanism with adequate investigative powers.
16. The Committee’s attention is drawn to the fact that on 5 July 2019, the IPCC commenced a study into the police conduct with the assistance of a panel of international experts (“**the Panel Experts**”).¹⁹ Clifford Stott, one of the panel members recruited by the IPCC, published a progress report (“**the Progress Report**”) in November before all the members resigned from the panel in December.²⁰
17. The Progress Report stated, inter alia, that the IPCC “lacks the powers, capacity, and independent investigative capability necessary to match the scale of events and the standards required of an international police watchdog operating in a society that values freedoms and rights.”²¹ As a result, the Panel Experts commented that there are “structural limitations in the scope and powers of the IPCC inquiry.”²²
18. Notwithstanding this, the Panel Expert’s findings are nowhere to be found in the IPCC’s subsequent Thematic Report. (See also paragraph 73 of the Government’s Reply.)
19. In fact, the IPCC itself seems to have acknowledged its own institutional inadequacies by stating in the Thematic Report that, “[t]here have been public comments that if the IPCC had the capability to call for evidence direct, that it could have achieved more. These are matters for the public discussion in the future. The IPCC meanwhile works within the limitations of the IPCC Ordinance.”²³

¹⁷ UN Human Rights Committee (1999) CCPR/C/79/Add.117.; UN Human Rights Committee (2013). CCPR/C/CHN-HKG/CO/3.

¹⁸ CAT/C/CHN-HKG/CO/5

¹⁹ IPCC, “IPCC’s statutory power and duties to address public concerns the Chairman’s perspective” (2 July 2019), https://www.ipcc.gov.hk/doc/en/pr/pr_20190702_e.pdf

²⁰ Mahtani, “Hong Kong watchdog absolves police over protest crackdown, dimming prospects of accountability”, The Washington Post (15 May 2020), https://www.washingtonpost.com/world/asia_pacific/hong-kong-watchdog-absolves-police-over-protest-crackdown-dimming-prospects-of-accountability/2020/05/15/2df17f7e-9679-11ea-87a3-22d324235636_story.html

²¹ Gunia, “Hong Kong’s Police Watchdog Is Unable to Do Its Job, Experts Say”, Time (11 November 2019), <https://time.com/5723615/hong-kong-ipcc-police-complaints/>

²² Ibid.

²³ Thematic Report at [16.42].

20. The Committee's attention is further drawn to a High Court judgment handed down on 19 November 2020.²⁴ It was held that the Hong Kong Government was under a positive obligation, as part of its obligation to prevent torture and cruel treatment, to maintain an effective and independent system for investigating complaints of ill-treatment by police officers. At paragraph 103 of the Judgment, the Court concluded that the two-tier mechanism for handling complaints fails to meet the requirement of independent investigation under the procedural limb of BOR 3.²⁵
21. In light of the Government's Reply and Thematic Report's lack of insight into its own "structural limitations", HRN opines that the Hong Kong Government has failed to take sufficient steps, if any, to implement the Committee's recommendation in this regard. It has also failed to fulfill its positive obligation to prevent torture and cruel treatment under Article 7 of the Covenant.

On the current identification system of police officers:

22. In the High Court judgment abovementioned, the applicants challenged the deployment by the Commissioner of Police of officers without clearly visible, unique identity markings (particularly in relation to the "Special Tactical Contingent" officers ("**STC**")). The Court found that this practice violated the Hong Kong Government's positive duty pursuant to Article 7 of the Covenant to ensure that allegations of misconduct police officers could be effectively investigated, leaving officers potentially unaccountable for misconduct and fostering a culture of impunity.²⁶
23. At [75] of the Government's Reply (made after the judgment had been handed down), it was stated that "[t]he Police have put in place guidelines governing the production of warrant cards. In general, uniformed police officers on duty would display their unique identification numbers or identifiable operational call signs." However, there was no mentioning of whether the Police Force has taken any steps to address, follow up on or appeal against the Court's findings.
24. In fact, the IPCC was of the onerous view that the practice of showing assigned alphabets on the helmets for STC is "in conformity with prevailing international practices."²⁷ Whilst the Thematic Report, published before the judgment was handed down, noted that the result of the judicial review might "result in adjustment to relevant measures",²⁸ the issue of police identification has not been taken up subsequently in its Annual Report.
25. HRN therefore recommends that the Hong Kong government and Police Force should improve its identification system to ensure that police officers

²⁴ Chan Kung Shun & Anor v Commissioner of Police [2020] HKCFI 2882, <https://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2020/2882.html>

²⁵ Article 3 of the Hong Kong Bills of Rights is equivalent to Article 7 of the ICCPR.

²⁶ See [69] – [95] of the judgment.

²⁷ Thematic Report at [13.54].

²⁸ Id. at [13.56].

deployed at the scene of protests and assemblies would wear clear and visible identity markings.

26. As a last point of note, one of the applicants, Mr. Raymond Yeung Tsz Chun, participated in the peaceful, police-approved sit-in outside the Legislative Council. He was arrested on 12 June 2019 in Admiralty and released unconditionally in October 2019. On 15 April 2022, Mr. Yeung was re-arrested and charged with participating in an unauthorized assembly.²⁹ HRN opines that the re-arrest, which was made nearly three years after his first arrest, is apparently an act of retaliation by the government for his judicial and civil activism. (See also the section on “Additional issue requiring urgent attention: Article 9 (arbitrary arrest of trustees of 612 Humanitarian Relief Fund)”).

Item 12 of the LOI

On the independence and effectiveness of monitoring and complaints mechanisms for persons in places of detention, and the steps taken to prevent reprisals against complainants in places of detention:

27. At [78] of the Government’s Reply, it was stated that persons in custody who feel aggrieved at their treatments may lodge complaints via various channels provide by the Correctional Services Department.

28. According to the Correctional Services Department, this includes:

Internal channels include complaining to the institutional management, directorate officers of the CSD Headquarters during their inspection to the correctional institutions or the Complaints Investigation Unit (CIU) of the CSD. CIU is an independent unit appointed by the Commissioner of Correctional Services which will carry out investigation on each and every complaint case in a fair, impartial and comprehensive manner, or make referral to other law enforcement agencies for follow-up according to its circumstances. As for external channels, persons in custody may write to members of the Legislative Council, The Ombudsman, statutory bodies, other law enforcement agencies or government bureaux, etc. to lodge their complaints. Besides, they can choose to seek assistance from or lodge their complaints to the visiting Justices of the Peace during the latter's surprise inspections to their institutions. (emphasis added)³⁰

29. In the Fourth Periodic Report submitted by the Hong Kong Government (CCPR/C/CHN-HKG/4), it was stated that the Justice of the Peace (JP) Visit Programme provides an “independent monitoring system that safeguards the rights and interests of persons in custody” (Annex 10A). See also [81] of the Report.

²⁹ Hong Kong In-media, (15 April 2022), <https://www.inmediakh.net/node/社運/事隔近3年突被上門拘捕-楊子俊嘆活在陰影下-盼靠賣書支付法律開支>

³⁰ Hong Kong Government Press Release (8 March 2019), <https://www.info.gov.hk/gia/general/201903/08/P2019030800833.htm>

30. HRN observes that the internal channels by no means provide an independent monitoring and complaints mechanism for persons in custody. As for the external channels, persons in custody often lack access to these external channels.³¹ The JP Programme in particular is ineffective and has failed to prevent reprisals against complainants.
31. The Committee's attention is drawn to a recent Legislative Council document in which the Government has provided statistics on the number of complaints received during the JP visits to correctional institutions in 2019 and follow-up actions taken in respect of these complaints.³² There was a total of 155 complaints received, among which 67 cases (43%) the JPs directed that no further actions be taken (45 due to a lack of solid information), 45 cases (29%) had been referred to the CIU, CSD's own internal complaint unit for investigation, and 30 cases (19%) had been referred to institution management for investigation or follow up (one of the reasons being that there was no further action as directed by JPs).
32. In other words, the JPs had no statutory power nor competence/resources to investigate and follow up on such complaints, hence a majority of them had been referred back to those "internal channels".
33. Further, Mr. Shiu Ka-chun, a former legislator, social worker and prisoners' rights advocate, had filed 16 complaints during his time in prison, including the challenges he faced in lodging a complaint.³³ Among these 16 complaints filed, 13 were found to be invalid by the CIU due to a lack of evidence, when there was no practical means for him, or any other detainees, to collect such evidence in jail.
34. Moreover, Mr. Shiu revealed that CSD officers often persuade detainees not to lodge any complaints. The officers also demanded that detainees notify them of the intent to lodge a complaint with the JPs before JP visits and threatened that they would be subject to less favourable treatment if they circumvent the CSD and make a direct complaint to the JPs.³⁴ As a result, the JPs visits lack an "element of surprise", thus further hampering its effectiveness.
35. HRN therefore opines that the Hong Kong government has failed to ensure that there is an independent and effective monitoring and complaints

³¹ Joint submission of 29 NGOs in Hong Kong to the UN Human Rights Committee for its 129th Session concerning the implementation of ICCPR in Hong Kong (June 2020)

<https://www.ecoi.net/en/document/2033869.html>

³² Replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2021-22 at pp.9-13. Available at: https://www.legco.gov.hk/yr20-21/english/fc/fc/w_q/cso-e.pdf

³³ Tse, Lama, "Prison rights group calls for transparency in complaint system", The Young Reporter (20 April 2021), <http://tyr.jour.hkbu.edu.hk/2021/04/20/prison-rights-group-calls-for-transparency-in-complaint-system/>

³⁴ Hong Kong In-media (16 July 2021), <https://www.inmediahk.net/node/政經/申訴專員調查太平紳士巡獄計劃-邵家臻：懲教屢阻囚犯投訴>

mechanisms for persons in custody, contrary to its obligations under Article 9 of the Covenant.

36. HRN recommends that the Hong Kong government should, in line with Principle 29 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UNGA resolution 43/173, ensure that places of detention are visited regularly by qualified and experienced persons appointed by and responsible to a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.³⁵

Additional issue requiring urgent attention: Article 9 (arbitrary arrest of trustees of the 612 Humanitarian Relief Fund)

37. The 612 Humanitarian Relief Fund, which provided legal assistance, as well as funds for psychological counselling, medical treatment and emergency relief for protesters arrested during the 2019 Movement, announced on 18 August 2021 that they would cease operations, following the closure of its affiliated company, the Alliance for True Democracy Limited.³⁶
38. On 11 May 2022, the four trustees of the Fund, including cardinal Joseph Zen, barrister Margaret Ng, singer activist Denise Ho and scholar Hui Po-keung were arrested by the national security police for alleged conspiracy to collude with foreign powers, with all four being granted police bail the following day.³⁷ The four trustees also had their travel documents confiscated by the police while facing a possible charge for failing to register the Fund under the Societies Ordinance (Cap. 151).³⁸
39. HRN opines that the arrest is politically motivated and violates the absolute prohibition on arbitrary arrest under Article 9 of the Covenant. HRN urges the Hong Kong government to drop the charges against the trustees.

Access to justice, independence of the judiciary and the right to a fair trial (Articles 2 and 14)

Item 17 of the LOI

On the accessibility and adequacy of legal aid.³⁹

³⁵

<https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/GConArticle9/AmnestyInternational.pdf>

³⁶ Kwan, “Humanitarian fund helping arrested Hong Kong protesters will halt operations by October 31”, HKFP (18 August 2021), <https://hongkongfp.com/2021/08/18/humanitarian-fund-helping-arrested-hong-kong-protesters-will-halt-operations-by-october-31/>

³⁷ HKFP, “A political show: Beijing hits back at Western criticism of Hong Kong national security arrests” (13 May 2022), <https://hongkongfp.com/2022/05/12/a-political-show-beijing-hits-back-at-western-criticism-of-hong-kong-national-security-arrests/>

³⁸ The Initium (12 May 2022), <https://theinitium.com/article/20220512-612humanitarian-relief-fund-trustees-arrested/>

³⁹ See also: HRN’s statement “Hong Kong Authorities Must End their Harassment and Prosecution of Civil Society and Journalists”, 9 February 2022, https://hrn.or.jp/eng/news/2022/02/09/hrc49_ws_hong_kong/

40. According to a consultation paper tabled at the legislature in October 2021, legal aid recipients will no longer have the right to choose their own criminal lawyers.⁴⁰ Instead, the Department of Legal Aid will assign lawyers to them unless “exceptional circumstances” exist.
41. Granting that there is not a right to have a lawyer of one’s own choosing when legal aid is provided by the state,⁴¹ HRN worries that such development indicates an early step towards a system under which criminal defendants, especially those in politically sensitive cases, can only be represented by government-assigned lawyers, which clearly violates the right to be represented by a lawyer of one’s own choosing and basic requirements of fair trial pursuant to Article 14, para. 3(d) of the Covenant. (See also General Comment No. 32 at [37].)
42. The rhetoric surrounding the reform justifies the concern. After the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“**NSL**”) was passed in June 2020, some pro-establishment legislative councilors criticized that the legal aid system was being “abused” by the 2019 anti-extradition bill protesters, with the reform designed to limit such “abuse”.⁴²
43. This suggests that one purpose of the reform is for appointed lawyers to have an agenda different from their clients’ protection, which would be inconsistent with relevant standards in the Basic Principles on the Role of Lawyers which provides that:
14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.
15. Lawyers shall always loyally respect the interests of their clients.⁴³
44. The imposition of disloyal lawyers would be a particular problem in NSL cases, which incur large expenses that may pressure defendants to either hire a legal aid lawyer assigned by the state, whose independence is now in credible doubt, or to plead guilty under undue pressure. This coercive effect can be seen in a recent case of eight legal aid applicants charged under the

⁴⁰ Cheng, “Legal aid reform: Critics fear right to choose lawyer will be undermined but Hong Kong gov’t advisor says plan will be ‘fairer’”, HKFP (28 October 2021), <https://hongkongfp.com/2021/10/25/legal-aid-reform-critics-fear-right-to-choose-lawyer-will-be-undermined-but-hong-kong-govt-advisor-says-plan-will-be-fairer/>

⁴¹ *Teesdale v Trinidad and Tobago*, Communication 677/1966, UN Doc. CCPR/C/74/D/677/1996 at [9.6], http://www.worldcourts.com/hrc/eng/decisions/2002.04.01_Teesdale_v_Trinidad_and_Tobago.htm

⁴² Wong, “Hong Kong authorities could tighten limits on number of legal aid cases individual lawyers can take on as pressure rises for reform of system”, South China Morning Post (16 June 2021), <https://www.scmp.com/news/hong-kong/law-and-crime/article/3137551/hong-kong-authorities-could-tighten-limits-number>

⁴³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>

NSL who were suddenly prohibited from nominating the counsels who were originally in charge of their cases. As a result, three of them are planning to withdraw from the scheme.⁴⁴

45. HRN recommends that the Hong Kong government should:

- (a) Ensure that the defendants are protected according to their rights and international and common law standards, including presumption of bail and the right to a lawyer of their own choosing; and
- (b) Put in place effective measures taken to ensure that lawyers act freely and always loyally in their client's interests.

On the independence of the judiciary:

- 46. According to General Comment No. 32, the requirement of competence, independence and impartiality of a tribunal pursuant to Article 14 of the Covenant is an absolute right that is not subject to any exception, and the requirement of judicial independence refers to, inter alia, the conditions governing promotion, transfer, suspension and cessation of judges' functions, and the actual independence of the judiciary from political interference by the executive branch and legislature.
- 47. In response to the upsurge in complaints against judicial conduct, the Judiciary announced in May 2021 putting in place a new two-tier structure for handling relevant pursuable complaints from August 2021, which includes a newly formed Advisory Committee on Complaints against Judicial Conduct.⁴⁵ This announcement came after months of repeated calls by pro-Beijing legislators for the creation of both a sentencing council and an independent judiciary monitoring committee, in addressing what they observed as leniency towards defendants in protest cases.⁴⁶
- 48. HRN opines that it remains to be seen whether the appointment mechanism for this Advisory Committee will be leveraged as a way to undermine judicial independence, such as by installing laypeople and/or officially recognised "patriots" in favour of conservative judges as opposed to liberal judges across the complaints that the Advisory Committee handles.
- 49. The official rhetoric surrounding how Hong Kong's constitutional order should be understood post-2019 Movement and the enactment of the NSL also justifies this concern. In September 2020, Chief Executive Carrie Lam asserted that "there is no separation of powers in Hong Kong" given that "the executive, legislative, and judicial branches... balance each other and

⁴⁴ Stand News, (23 November 2021), <https://collection.news/thestandnews/articles/155897>

⁴⁵ See [10]-[17], Legislative Council Panel on Administration of Justice and Legal Services, "Enhancement to the Mechanism for Handling Complaints Against Judicial Conduct" (May 2021), <https://www.legco.gov.hk/yr20-21/english/panels/ajls/papers/ajls20210514cb4-956-5-e.pdf>

⁴⁶ Lau, "Hong Kong's judiciary under fire over alleged leniency in protest cases: will a sentencing council redress claims of bias and lead to tougher penalties?" (25 September 2020), <https://www.scmp.com/news/hong-kong/politics/article/3102949/hong-kongs-judiciary-under-fire-over-alleged-leniency>

cooperate with each other, but the ultimate authority lies with the appointed representative of the Central People's Government, namely, the chief executive."⁴⁷ In March 2021, the doctrine of "patriots administering Hong Kong" was announced alongside the election overhaul for the Legislative Council.⁴⁸

50. Moreover, there lacks clarity on what recommendations the Advisory Committee could make against judges and how that may affect judicial appointments. In the Judiciary Administration's submission to the LegCo cited above, it only provided that removal of judges shall be by the Chief Executive upon the recommendation of a tribunal comprising judges only, on the grounds that they are unable to discharge their duties, or for misbehaviour,⁴⁹ but it did not provide for an exhaustive list of the types of recommendations that the Advisory Committee could make, how the Advisory Committee would deliberate on these recommendations, and particularly how these recommendations, if adopted by the Chief Justice, would affect the promotion, transfer, suspension and cessation of judicial officers, given all appointments of judges and judicial officers shall be made upon the recommendation of the Judicial Officers Recommendation Commission, under the current established appointment procedures.⁵⁰
51. The international standards governing judicial conduct are stipulated in the Basic Principles on the Independence of the Judiciary⁵¹ and the Bangalore Principles of Judicial Conduct,⁵² where it is provided that "[a] judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary."
52. The Committee should also take note that the Judiciary updated the Guide to Judicial Conduct in May 2022 for the first time since the Guide was published in 2004, adding new guidance on recusal and apparent bias, and the use of social media in the daily life, among other topics.⁵³ Particularly, judges are asked at [87] to "avoid expressing views to the media, even on an anonymous basis", raising doubt on whether this suggestion was based on multiple anonymous interviews that judges took over the past two years.⁵⁴

⁴⁷ RFA, "No Separation of Powers' in Hong Kong: Leader Carrie Lam" (1 September 2020), <https://www.rfa.org/english/news/china/powers-09012020144755.html>

⁴⁸ Hong Kong Government press release (5 March 2021), <https://www.info.gov.hk/gia/general/202103/05/P2021030500393.htm>

⁴⁹ See Legislative Council Panel on Administration of Justice and Legal Services, "Enhancement to the Mechanism for Handling Complaints Against Judicial Conduct" (May 2021) at [7(c)], <https://www.legco.gov.hk/yr20-21/english/panels/ajls/papers/ajls20210514cb4-956-5-e.pdf>

⁵⁰ Hong Kong Government press release (24 December 2020), <https://www.info.gov.hk/gia/general/202012/24/P2020122400197.htm>

⁵¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>
⁵² https://www.unodc.org/res/ji/import/international_standards/bangalore_principles/bangaloreprinciples.pdf

⁵³ Hong Kong Government press release (16 May 2022), <https://www.info.gov.hk/gia/general/202205/16/P2022051600194.htm>

⁵⁴ Vice News, "Inside the Surreal Trial of the 'Most Benevolent Terrorist in the World'" (20 September 2021), <https://www.vice.com/en/article/93y47p/hong-kong-national-security-trial-tong-ying-kit>
Reuters, "Hong Kong judges battle Beijing over rule of law as pandemic chills protests" (14 April 2020), <https://www.reuters.com/investigates/special-report/hongkong-politics-judiciary/>

53. HRN recommends that the Hong Kong government should:

- (a) Ensure the independence of the judiciary and observe that justice must not merely be done but must also be seen to be done (see 3.2 of the Bangalore Principles); and
- (b) Duly fulfil its positive duty to allow for any judge and judicial officer to exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason (see 1.1 of the Bangalore Principles).

Freedom of expression (Articles 19, 20 and 21)

Item 21 of the LOI

On access to information:

54. Article 19, para. 2 of the Covenant embraces a right to access to information held by public bodies. See also [18] – [19] of the General Comments No. 34.
55. The Citizen News submitted an access to information request to the police requesting the release of all PGO chapter names.⁵⁵ After their request had been turned down, a complaint was filed with the Ombudsman. On 13 May 2022, the Ombudsman decided that the complaint was substantiated.⁵⁶ Nonetheless, the police has hitherto refused to disclose the information.
56. Even though the current framework allows for the Ombudsman to monitor the implementation of recommendations,⁵⁷ the above example shows the police's blatant disregard for this mechanism and for the Ombudsman's statutory role in identifying and correcting administrative deficiencies. At the same time, it shows that the Ombudsman lacks the competence and power to rectify and penalise non-compliance with existing rules governing access to information.
57. Furthermore, the Committee's attention is also directed to cases where the Ombudsman supported the police's refusal to disclose details on the procurement, deployment and composition of chemical weapons as elaborated in Footnote 6, as well as the police's refusal to provide the names and identification numbers of police officers who were suspected perpetrators of human rights abuses, when concluding a relevant complaint according to its interpretations of the Code on Access to Information in March 2020.⁵⁸

⁵⁵ Citizen News (7 October 2020), <https://www.hkcnews.com/article/34568/申訴專員公署-警察通例-公開資料守則-34575/>【警察通例】申訴專員裁定投訴成立 5 個月-警方仍拒提供《警察通例》「消失」的章節標題

⁵⁶ Ibid.

⁵⁷ See "Flow Chart on Handling of a Complaint", Ombudsman's website at https://www.ombudsman.hk/en-us/handling_of_complaints/complaint_handling_flow_chart.html

⁵⁸ https://ofomb.ombudsman.hk/abc/files/HKPF_code_EN202003_0.docx

58. Although this investigation report came before the November 2020 judgment confirming the Government's relevant positive duty pursuant to Article 7 of the Covenant as discussed above, this highlights the watchdog's failure to take account and/or inadequate understanding of relevant constitutional requirements, as well as international standards stipulated in Report of the Office of the United Nations High Commissioner for Human Rights on access to information held by public bodies, A/HRC/49/38,⁵⁹ raising questions about its competence in investigating complaints of maladministration, especially concerning matters of high political sensitiveness.
59. While the Office of the Ombudsman's decisions on and handling of complaints are also subject to judicial oversight by way of judicial review, this does not weaken the Office's role and responsibility to exert administrative checks and balances on public bodies so as to redress grievances and improve public administration.
60. HRN recommends that the Hong Kong government should:
- (a) Enact laws on access to information with adequate disclosure requirements, including limitations on the current broad exceptions, to safeguard Hong Kong people's right to know in line with international standards and good practices;
 - (b) Ensure effective review procedures in cases of denial of access to information, and strengthen the independent oversight of the Office of the Ombudsmen in enforcing compliance with the right of access to information; and
 - (c) Proactively publish the police general orders, related guidelines on the use of force, and other data/information in fulfilling the government's positive duty pursuant to Article 7 of the Covenant.

Additional issues requiring urgent attention: Articles 19 (unlawful restriction on freedom of political opinion and expression)

On the "de-radicalization" programme:

61. In a Legislative Council document issued in April this year, the Security Bureau revealed that the Correctional Services Department has put in place a "de-radicalisation" rehabilitation programme which aims to "help" those who were involved in the 2019 Movement "disengage from radical thoughts and behaviours and re-establish correct values" through lessons about Chinese history, the Basic Law and the NSL.⁶⁰

⁵⁹ <https://digitallibrary.un.org/record/3956409>

⁶⁰ Hong Kong Legislative Council, Replies to initial written questions raised by Legislative Council Members in examining the Estimates of Expenditure 2022-23 at pp. 90-92, https://www.legco.gov.hk/yr2022/english/fc/fc/w_q/sb-e.pdf

62. There is only limited public information regarding the details of this programme. According to media interviews, two interviewees who were held in custody and participated in the 2019 Movement said that whilst serving their sentences, the authorities forced them to watch video clips praising China as government social workers tried to change their political views.⁶¹
63. HRN opines that the use of re-education tactics, political indoctrination and rewiring the political thinking of detainees are incompatible with Article 19 of the Covenant. In this regard, the fact that the detainees had participated in the 2019 Movement, or that they had a particular political stance, are not a legitimate grounds on which their freedom of political expression and opinion could be lawfully restricted. (See General Comment No. 34 at [28] – [32].)

On limitations on alleged expression of political opinion in Court:

64. The Committee’s attention is also directed to how an alleged expression of political opinion was construed and limited in the case of several members of the public observing Court proceedings in a protest case while wearing yellow face masks.⁶²
65. The presiding judge instructed these citizens to change their masks before continuing to attend the proceedings in another courtroom, which then gave rise to a complaint filed against the judge. Meanwhile the Chief Justice told the press “there should be absolutely nothing wrong... with wearing clothes or facemasks of any colour” and refused to comment on the specific incident,⁶³ the relevant complaint that went through the above-explained two-tier mechanism was found in favour of the judge’s consideration of the yellow face masks as a political slogan.⁶⁴
66. HRN recognises a judge’s power to give certain instructions in the courtroom in order to secure fair and just proceedings pursuant to Article 14 of the Covenant. However, even if the yellow face masks worn by those citizens were indeed a political expression (which was not adequately examined and established in this case), restrictions on any form of expression must be necessary, proportional and for a legitimate purpose in applying Article 19(3) of the Covenant (see [21]-[36] of General Comment 34).

On Personal Data (Privacy) (Amendment) Ordinance 2021:

⁶¹ Cheng, VOA News, “Hong Kong Authorities ‘Brainwashing’ Convicted Pro-Democracy Activists”, Voice of America, <https://www.voanews.com/a/hong-kong-authorities-brainwashing-convicted-pro-democracy-activists-6534809.html>

⁶² Mok, “Judge bars yellow-masked lawyer from court” (12 January 2021), <https://www.thestandard.com.hk/section-news/section/11/226494/Judge-bars-yellow-masked-lawyer-from-court>

⁶³ Kwan, “Hong Kong chief justice says court attendees can choose what to wear after judge orders people with yellow facemasks to leave” (12 January 2021), <https://hongkongfp.com/2021/01/12/hong-kong-chief-justice-says-court-attendees-can-choose-what-to-wear-after-judge-orders-people-with-yellow-facemasks-to-leave/>

⁶⁴ Judiciary’s Response to Complaints (DCCC 153/2020 and 453/2020), https://www.judiciary.hk/en/about_us/complaints_responses/responses_dccc153_dccc453.html

67. HRN is aware of the Hong Kong government's obligations pursuant to Article 17 of the Covenant and takes notes of various doxxing incidents against journalists, pro-democracy demonstrators, anti-government demonstrators and public officers over the last few years.⁶⁵
68. However, HRN is equally concerned about the far-reaching implications of the amendments to the Personal Data (Privacy) Ordinance (Cap. 486) on the freedom of expression. Whilst these amendments served to tackle doxxing, what constitutes doxxing was not explicitly defined in the amendments beyond being described as "intrusive to personal data privacy and in effect weaponize personal data." An industry leader was also worried that the amendments could lead to overly broad interpretations that criminalize innocent acts of information sharing.⁶⁶ Despite these grievous concerns voiced in civil society, the relevant amendment bill received a speedy passage through the LegCo and took effect in less than 3 months after being initially gazetted.⁶⁷
69. In May 2022, a privacy watchdog was reportedly mulling over invoking one of the new provisions for the first time to restrict public access to messaging app Telegram, which was found to be rampant with doxxing by the Office of the Privacy Commissioner for Personal Data.⁶⁸

On intimidation of the "yellow economic circle" under the pretext of epidemic prevention:

70. The "yellow economic circle" is a loosely defined label for businesses, which emerged during 2019 Movement, allowing movement supporters to identify, support, and sustain the livelihoods of like-minded pro-democracy business owners.
71. Prior to the NSL's implementation in June 2020, "yellow shops" filled with street posters, slogans and photos critical of the administration were one of the essential peaceful means by which Hong Kong people exercise their freedom of political expression. Notwithstanding the subsequent crackdown on pro-democracy activists and politicians under the NSL, the yellow economic circle still exists, and has become further targeted by the authorities.

⁶⁵ Hale, "Hong Kong protests: tech war opens up with doxxing of protesters and police" (20 September 2019), <https://www.theguardian.com/world/2019/sep/20/hong-kong-protests-tech-war-opens-up-with-doxxing-of-protesters-and-police>

⁶⁶ Asia Internet Coalition, "Industry Response on the Proposed Amendments to Hong Kong's Personal Data (Privacy) Ordinance and Request for Virtual Meeting with PCPD" (25 June 2021), <https://aicasia.org/wp-content/uploads/2021/07/Industry-Response-on-the-Proposed-Amendments-to-Hong-Kongs-Personal-Data-Privacy-Ordinance-and-Request-for-Virtual-Meeting.pdf>

⁶⁷ The Personal Data (Privacy) (Amendment) Bill 2021 was gazetted on 16 July 2021, passed on 29 September 2021 and came into effect on 8 October 2021. See: <https://www.info.gov.hk/gia/general/202107/14/P2021071400867.htm> <https://www.info.gov.hk/gia/general/202110/08/P2021100800392.htm>

⁶⁸ RFA, "Hong Kong could move to block Telegram app, citing 'privacy violations'" (18 May 2022), <https://www.rfa.org/english/news/china/hongkong-telegram-05182022152743.html>

72. The authorities has used the Prevention & Control of Disease (Requirements & Directions) (Business & Premises) Regulation (“**the Covid-19 Regulations**”) as means to intimidate members of the yellow economic circle.
73. By way of background, from February 2021, catering premises are not allowed to provide dine-in services until 9:59 p.m. unless they adopt a series of infection control measures, including asking customers to scan a government contact-tracing app, LeaveHomeSafe, or alternatively, register their names, contact numbers and the dates and times of their visits on a paper form before they were allowed enter.⁶⁹ From 9 December 2021, the use of the LeaveHomeSafe has become a mandatory requirement in all eateries, gyms, cinemas, etc.⁷⁰
74. Restaurant owners or other operators are required to take “reasonable steps” to check the information provided by customers.⁷¹
75. Since then, yellow restaurants have become repeatedly targeted by the authorities, as evidenced by the fact that:
- (a) The responsibility owed by operators or restaurants owners is hard, if not impossible, to discharge. For instance, there are no viable means to ensure that customers will not delete the app whilst still on the premises and hence breach the Covid-19 Regulation.
 - (b) Nonetheless, “yellow restaurants” were subjected to more frequent inspections than the other “ordinary restaurants”. Taking the Kwong Wing Catering as an example, its three branches were inspected and subsequently penalised within the same week preceding Christmas for similar purported violations and were barred from providing dine-in services during the holiday season.⁷²
 - (c) The way in which the inspections were carried out was suspicious. For example, on 18 December 2021, Thai Cool was penalized after the police had found out during an inspection that two customers had failed to scan the app. According to the restaurant owner, the police forced their way into the restaurant “less than a minute” after the customers had entered, and the police instantly knew which of those customers had failed to scan the app.⁷³

⁶⁹ Hong Kong Government Press Release (19 February 2021), <https://www.info.gov.hk/gia/general/202102/19/P2021021900048.htm>

⁷⁰ Hong Kong Government Press Release (6 December 2021), https://www.news.gov.hk/eng/2021/12/20211206/20211206_175552_090.html

⁷¹ Ho, “Hong Kong pro-democracy restaurants penalised again for allegedly breaching Covid-19 rules”, HKFP (23 December 2021), <https://hongkongfp.com/2021/12/23/hong-kong-pro-democracy-restaurants-penalised-again-for-allegedly-breaching-covid-19-rules/>.

⁷² Ibid. During the same period, a number of other “yellow restaurants” were also barred from providing dine-in services after 6pm, including Kabo Burger, Dine Inn, Explorer Fusion Restaurant, Thai Cool, DK Pizza Cafe, WE TIME CAFE, Santgria Kitchen. They all faced 14-day suspension order during the week preceding Christmas after the authorities alleged that some customers failed to comply with the Covid-19 app requirement.

⁷³ Citizen News (21 December 2022), <https://www.hkcnews.com/article/49508/光榮冰室-禁堂食-安心出行-49508/安心出行>

- (d) The rhetoric surrounding such intimidations also justifies this concern. In January this year, some pro-establishment legislators announced that the Legislative Council is mulling legislation to stop “yellow circle” from using “unfair ways” to do business.⁷⁴ The state-owned media has often unjustifiably labelled yellow businesses as supporters of independence and urged the government to crack down on the yellow restaurants.⁷⁵
- (e) Another example justifying this concern would be the case of bubble tea shop Royaltea, whose owner testified in the trial of Tong Ying-kit, a regular Royaltea customer since 2019 and later the first person to be convicted under the NSL in July 2021. Royaltea’s owner and a staff member were taken into the Mong Kok Police Station to assist with an investigation that the police refused to offer more information about on 12 April 2022 without arresting them.⁷⁶ Within two weeks, Royaltea announced that it was shutting down its business while its owner refused to disclose details on what prompted the decision.⁷⁷

76. HRN opines that such intimidation violates Article 19 of the Covenant in that the restriction on people’s freedom of political opinion and expression by the use of Covid-19 Regulation services no legitimate purposes.

77. HRN recommends that Hong Kong government should take vigorous measures to repeal any unreasonable direct or indirect restrictions on freedom of political opinion and expression, in particular for the detainees and activists who participated in the 2019 November and members of the yellow economic circle.

Freedom of association (Article 22)

Item 26 of the LOI

On registration of society under the Societies Ordinance:

78. The Committee has previously singled out the Societies Ordinance as needing reform.⁷⁸

79. A detailed overview into the de facto application system in registration is contained in the Joint submission of 20 NGOs in Hong Kong to the

⁷⁴ The Standard, “Lawmakers mull legislation to stop ‘yellow economic circle’” (25 January 2022), <https://www.thestandard.com.hk/breaking-news/section/4/186436/Lawmakers-mull-legislation-to-stop-yellow-economic-circle>

⁷⁵ See for example: Wenweipo (27 September 2021), <https://www.wenweipo.com/a/202109/27/AP61511e21e4b08d3407dca9a1.html>

⁷⁶ HKFP, “Hong Kong police take away 2 linked to pro-democracy bubble tea shop to assist with investigation” (12 April 2022), <https://hongkongfp.com/2022/04/12/hong-kong-police-take-away-2-linked-to-pro-democracy-bubble-tea-shop-to-assist-with-investigation/>

⁷⁷ Hong Kong In-media (25 April 2022), <https://www.inmediak.net/node/社運/曾被警帶走助查黃店皇茶結業-引《warrior》歌詞：「大不了死亦不會避」>

⁷⁸ Concluding Observation of the UN Human Rights Committee: Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999) at [20].

Committee for its adoption of List of Issues in the 129th Session (“**the Joint Submission**”).⁷⁹

80. In the interest of brevity, HRN would like to emphasize the following developments in relation to the police’s use of the Societies Ordinance to crack down on civil society organizations (**CSOs**):

- (a) As part of an investigation into whether Civil Human Rights Front (“CHRF”) had breached the Societies Ordinance, in April 2021 police asked the coalition to explain why it was not registered under the Ordinance after CHRF cancelled its registration in 2006 (notwithstanding the fact that as the organizer of mass Hong Kong demonstrations, CHRF has in fact coordinated and communicated with the police during the period between 2006 and 2021).⁸⁰ CHRF was also asked to provide details about its funding and explain why it had co-signed a petition to the United Nations High Commissioner for Human Rights in December 2020 about excessive use of force by police in Hong Kong.
- (b) Even after announcing its disbandment, the Hong Kong Confederation of Trade Unions is still receiving requests from the police (citing the Societies Ordinance) to hand over materials relating to the organization’s activities, operations and ties to foreign countries and overseas organizations.⁸¹
- (c) There is also a crackdown on university student unions. Over the past year, universities had moved to sever ties with their student unions on national security grounds. For instance, the Chinese University of Hong Kong demanded its student union to register with the government agencies under the Companies Ordinance or Societies Ordinance, forcing the student union into dormancy.⁸²
- (d) Another example is that in April 2021, the University of Hong Kong decided that it would stop collecting membership fees for and providing financial management services to its student union,⁸³ which has been independently registered under the Societies Ordinance since 1948. Weeks after the HKUSU Council passing, then repealing, a controversial motion on the 1 July Police Stabbing incident, the University announced a penalty against the those who attended the concerned HKUSU Council meeting without complying with the due

⁷⁹ See [204] – [225], <https://www.ecoi.net/en/document/2033869.html>

⁸⁰ Chau, “Organiser of mass Hong Kong demos Civil Human Rights Front disbands citing ‘unprecedented challenges’”, HKFP (15 August 2021), <https://hongkongfp.com/2021/08/15/breaking-organiser-of-mass-hong-kong-demos-civil-human-rights-front-disbands-citing-unprecedented-challenges/>

⁸¹ Leung and Lo, “Hong Kong national security police ask former Confederation of Trade Unions members to provide information on disbanded group’s finances, operations”, HKFP (17 February 2022), <https://www.scmp.com/news/hong-kong/law-and-crime/article/3167371/hong-kong-national-security-police-ask-former>

⁸² Kwan, “Chinese University of Hong Kong seeks to reinstate student union, asks campus clubs to sign pledge not to break law”, HKFP (27 November 2021), <https://hongkongfp.com/2021/11/27/chinese-university-of-hong-kong-seeks-to-reinstate-student-union-asks-campus-clubs-to-sign-pledge-not-to-break-law/>

⁸³ “HKU statement regarding the HKU Students’ Union” (30 April 2021), <https://www.hku.hk/press/press-releases/detail/22732.html>

process requirement in the HKU Statute in the name of “immediate risk containment measure”.⁸⁴ The HKU Students’ Union later had four of its student leaders arrested and charged by national security police and its building on campus reclaimed by the University, while other of its student leaders were encouraged, if not forced, to report on one another’s involvement in the concerned HKUSU Council meeting, neglecting the common law privilege against self-incrimination.⁸⁵

- (e) The HKU Students’ Union has since then become dormant with its sub-organisations, which are integral parts of the HKUSU, under the Societies Ordinance registration, facing increasing pressure from the University to drop its ties with the HKUSU, such as the initials of “HKUSU” in their names. This has become a Catch-22 where if these student bodies refuse to take the University’s suggestion, they risk losing their access to students on campus and to university facilities, whereas if they decide to take the University’s suggestion, they risk becoming operating entities that are not registered under the Societies Ordinance, thus liable for prosecution the same way CHRF was.

- 81. HRN recommends that the Hong Kong government should review and reform the Societies Ordinance so as to ensure full protection of the freedom of association, including trade union rights, under Article 22 of the Covenant.

Additional issue requiring urgent attention: Articles 22 (forced disbandment of civil society organisations)

- 82. HRN observes that four government policies, which have been used to harass or punish CSOs and have led to justified fears of their further application, have created particularly coercive pressure on CSOs to dissolve. These are the criminalization of: (1) legitimate expression under an over-broad application of sedition; (2) legitimate international engagement as “collusion with foreign forces”; and (3) legitimate fundraising efforts; as well as (4) the repressive political atmosphere creating fears of future harassment and prosecution.⁸⁶

- 83. A representative list of CSOs disbanded in 2021 is shown in HRN’s statement submitted to the 48th Session of the Human Rights Council on 23 August 2021.⁸⁷ However, this is far from a complete list, as many

⁸⁴ “HKU Council statement” (4 August 2021), <https://www.hku.hk/press/press-releases/detail/23091.html>
RTHK News, “Over 1,000 HKU alumni call for end to entry ban” (11 August 2021),
<https://news.rthk.hk/rthk/en/component/k2/1605438-20210811.htm>

⁸⁵ <https://hongkongfp.com/2021/08/25/university-of-hong-kong-asks-student-leaders-to-report-their-role-and-votes-during-controversial-council-meeting/>

⁸⁶ See also: HRN’s statement “The Collapse of Civil Society Organizations in Hong Kong” submitted to the 48th Session of the Human Rights Council on 23 August 2021, <https://hrn.or.jp/eng/news/2021/08/23/hrc48-statement-hong-kong/>

⁸⁷ Ibid.

organization dissolutions are not reported by the media. It is a shame that many of these organisations in fact contributed to the Joint Submission.⁸⁸

84. HRN recommends that the Hong Kong government should immediately stop the harassment and arbitrary punishment of CSOs and take steps to create and promote a safe political environment where CSO activities can flourish and not be cowed into silence and disbandment by fears of government retribution.

Additional issue requiring urgent attention: Articles 22 (registration and regulation of trade and labour unions)

85. The right to form and join trade unions is not only integral to the Covenant and relevant international human rights standards,⁸⁹ but it is also central to international labour standards.⁹⁰ In the absence of a democratic electoral system in line with Article 25(b) of the Covenant in Hong Kong, this right has also proved to be a crucial way to participate in public affairs, as evidenced by the new wave of trade union movements that started alongside the 2019 Movement.⁹¹
86. Following multiple citywide strikes organised with and without the facilitation of pre-existing trade unions in August 2019, a vast number of supporters of the 2019 Movement began forming and joining trade unions as a more formal and organised way to amplify their political voices with the goal to force the government's concession to relevant demands.⁹² This was in turn translated into a spike in the number of new registrations of trade unions: the Registry of Trade Unions ("RTU") received a total of 158 applications for registration of new trade unions across 2018 and 2019, but it received 1,578 such applications in the first quarter of 2020 alone.⁹³ This number continued to grow as the RTU received a total of 4,427 applications between November 2019 and March 2022.⁹⁴
87. While 495 trades unions successfully registered in 2020, in contrast to just 13 and 25 of them in 2018 and 2019 respectively,⁹⁵ many of the new unions

⁸⁸ Available at: <https://www.ecoi.net/en/document/2033869.html>. Disbanded groups that contributed to the joint submission include Civil Human Rights Front, Civil Rights Observer, Demosisto, Hong Kong Human Rights Monitor, Progressive Lawyers Group, Progressive Scholars Group, 18 District Councils Liaison and Hong Kong Confederation of Trade Unions.

⁸⁹ Committee on Economic, Social and Cultural Rights, "General Comment No. 18: The Right to Work", E/C.12/GC/18, <https://digitallibrary.un.org/record/566942>

⁹⁰ International Labour Association, "International Labour Standards on Freedom of association", <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang--en/index.htm>

⁹¹ Chan. "From unorganised street protests to organising unions" (27 July 2020), <https://lausan.hk/2020/from-unorganised-street-protests-to-organising-unions/>

⁹² Ibid.

⁹³ Hong Kong Government press release (22 April 2020), <https://www.info.gov.hk/gia/general/202004/22/P2020042200492.htm>

⁹⁴ Legislative Council Panel on Manpower, Creation of one additional supernumerary post of Chief Labour Officer (D1) in the Labour Department to head the Registry of Trade Unions (19 April 2022), <https://www.legco.gov.hk/yr2022/english/panels/mp/papers/mp20220419cb2-215-4-e.pdf>

⁹⁵ Hong Kong Government press release (25 August 2021), <https://www.info.gov.hk/gia/general/202108/25/P2021082500246.htm>

were not able to complete their registrations in time, due to inadequate administrative resources with the RTU, to be eligible for the vote in the Labour Functional Constituency of the Legislative Council election scheduled for September 2020, and on the Election Committee in June 2021.⁹⁶ As of 31 March 2022, there were still 1,519 applications for registration of new trade unions pending the RTU's determination, and this has negatively impacted workers.

88. In addition to the administrative barrier to the full enjoyment of the right to form and join trade unions, pro-democracy trade unions also became increasingly targeted by the authorities even before the enactment of the NSL. For example the Hospital Authority Employees Alliance was barred from setting up booths at public hospitals to facilitate member registration and was questioned by the employer, the Hospital Authority, on the purpose of the trade union in December 2019,⁹⁷ contravening international labour standards.⁹⁸ As for several trade unions which set up street booths to facilitate member registration alongside the 1 January 2020 march, a volunteer was subdued and arrested by the police although only a water bottle, towel and leaflets were found among the volunteer's belongings.⁹⁹
89. Leading up to the enactment of the NSL, trade unions and student groups called for a referendum on strike and class boycotts to oppose the relevant decision by the Chinese National People's Congress on 20 June 2020,¹⁰⁰ and it received strong criticism by the government with particular scrutiny on the Union for New Civil Servants calling on civil servants to part take in the referendum and District Council members using their offices as polling stations.¹⁰¹ Within seven months after the referendum and enactment of the NSL, the Union for New Civil Servants was among the first civil society groups disbanded, citing the new oath-taking law that requires civil servants to pledge allegiance.¹⁰²

⁹⁶ Chan. "From unorganised street protests to organising unions" (27 July 2020), <https://lausan.hk/2020/from-unorganised-street-protests-to-organising-unions/>

⁹⁷ Inmedia Hong Kong (31 December 2019), <https://www.inmediahk.net/node/1069643>

⁹⁸ International Labour Organization, "Freedom of Association and Collective Bargaining", <https://www.ilo.org/global/topics/dw4sd/themes/freedom-of-association/lang--en/index.htm>

⁹⁹ Apple Daily, "防暴突襲街站 棍毆義工" (2 January 2020), <https://collection.news/appledaily/articles/LCF3HKDO7C3CGQTTJA7RN7WUDA>

¹⁰⁰ HKFP, "Hong Kong students and labour unions kick off 'referendum' on national security law strike" (20 June 2020), <https://hongkongfp.com/2020/06/20/hong-kong-students-and-labour-unions-kick-off-referendum-on-national-security-law-strike/>

¹⁰¹ Hong Kong Government press release (7 June 2020), <https://www.info.gov.hk/gia/general/202006/07/P2020060700748.htm>

Hong Kong Government press release (20 June 2020), <https://www.info.gov.hk/gia/general/202006/20/P2020062000501.htm>

Hong Kong Government press release (19 June 2020), <https://www.info.gov.hk/gia/general/202006/19/P2020061900951.htm>

¹⁰² Ho, "Hong Kong civil servants union formed during 2019 demos disbanded, cites gov't loyalty pledge" (18 January 2021), <https://hongkongfp.com/2021/01/18/hong-kong-civil-servants-union-formed-during-2019-demos-disbanded-cites-govt-loyalty-pledge/>

90. Following the enactment of the NSL, the Hong Kong government further stepped up its scrutiny of trade unions.¹⁰³ The Hospital Authority Employees Alliance, Hong Kong White Collar (Administration and Clerical) Connect Union, Hong Kong Journalist Association, among others, received official inquiries from the RTU,¹⁰⁴ alongside continued harassment and intimidation by state-affiliated media.¹⁰⁵ The Secretary for Education publicly called for teachers to reassess their membership in the pro-democracy Hong Kong Professional Teachers' Union after ending the years-long partnership between the Education Bureau and the union,¹⁰⁶ followed by the union's dissolution in a week's time after 48 years of history.¹⁰⁷ The entire executive committee of five of the General Union of Hong Kong Speech Therapists was arrested and charged with sedition over children's cartoon books featuring sheep and wolves in August 2021,¹⁰⁸ with two of the five still remaining in custody pending trial as of the end of May 2022.

91. HRN recommends that the Hong Kong government should:

- (a) Ensure applications for registration of new trade unions are handled as soon as practicable in compliance with international human rights standards on the freedom of association;
- (b) Eliminate arbitrary and unjustified restrictions on the operations of trade unions in fulfilling the state's positive duty pursuant to Article 22 of the Covenant; and
- (c) Ensure workers' participation in trade unions in line with international labour and human rights standards and without risks of reprisals.¹⁰⁹

¹⁰³ Cheng, "Hong Kong labour activists fear 'political purge' as gov't says trade unions must comply with national security law" (17 May 2021). Available at <https://hongkongfp.com/2021/05/17/hong-kong-labour-activists-fear-political-purge-as-govt-says-trade-unions-must-comply-with-national-security-law/>

¹⁰⁴ Cheung, "Medical group aligned with opposition in Hong Kong comes under official scrutiny for range of criticisms" (15 September 2021), <https://www.scmp.com/news/hong-kong/politics/article/3148868/medical-group-aligned-opposition-hong-kong-comes-under>

Lee, "Hong Kong authorities grill union which held street stalls on Covid-19 and national security law" (12 January 2022), <https://hongkongfp.com/2022/01/11/hong-kong-authorities-grill-union-which-held-street-stalls-on-covid-19-and-national-security-law/>

Chau, "Unions registry demands answers from Hong Kong Journalists Assoc. over film screenings, book events, social media posts" (21 January 2022), <https://hongkongfp.com/2022/01/21/unions-registry-demands-answers-from-hong-kong-journalists-assoc-over-film-screenings-book-events-social-media-posts/>

¹⁰⁵ Wenweipo (12 August 2021), <https://www.wenweipo.com/a/202108/12/AP611469bee4b08d3407d3ad9d.html>

¹⁰⁶ Chau, "Hong Kong education chief urges teachers to reassess union membership in open letter" (6 August 2021), <https://hongkongfp.com/2021/08/06/hong-kong-education-chief-urges-teachers-to-reassess-union-membership-in-open-letter/>

¹⁰⁷ Kwan, "Explainer: A 48-year-old union gone in 11 days – how Hong Kong teachers lost a powerful voice" (15 August 2021). Available at <https://hongkongfp.com/2021/08/15/explainer-a-48-year-old-union-gone-in-11-days-how-hong-kong-teachers-lost-a-lost-a-powerful-voice/>

¹⁰⁸ Chau, "Security law: Hong Kong court denies bail to speech therapists behind kid's book about sheep and wolves" (30 August 2021), <https://hongkongfp.com/2021/08/30/security-law-hong-kong-court-denies-bail-to-speech-therapists-behind-kids-book-about-sheep-and-wolves/>

¹⁰⁹ Leung, "Coronavirus: pay deductions for Hong Kong medical workers who joined strike, but no further action by hospital chiefs" (27 November 2020), <https://www.scmp.com/news/hong-kong/health-environment/article/3111711/coronavirus-pay-deductions-hong-kong-medical>