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BEIJING'S "RED LINE" IN HONG KONG

RESTRICTIONS ON RIGHTS TO PEACEFUL ASSEMBLY AND FREEDOM
OF EXPRESSION AND ASSOCIATION

AMNESTY
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Cover photo: An estimated 1.03 million people in Hong Kong took to the streets to protest the Extradition Bill on 9 June 2019. (Photo credit: Amnesty International)

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EXECUTIVE SUMMARY

“I keep on saying there is still hope for Hong Kong, but most of the time I am frustrated about Hong Kong’s future ... Hong Kong is not far from being a part of the closed system of China, completely without freedom and democracy”

Lam Wing-hang, former student union leader

The handover of Hong Kong from the United Kingdom to China in 1997 was founded on the principle of “one country, two systems”, a guarantee to preserve Hong Kong’s separate legal and economic system for 50 years agreed in the 1984 Sino-British Joint Declaration. To this end, the Basic Law, enacted to serve as mini-constitution for the new Hong Kong Special Administrative Region of the People’s Republic of China (HKSAR), stipulated that Hong Kong would exercise “a high degree of autonomy and enjoy executive, legislative and independent judicial power”.

The Basic Law also stipulated that the HKSAR would safeguard a range of rights and freedoms according to law. Under the Basic Law, the provisions of the International Covenant on Civil and Political Rights (ICCPR), extended to Hong Kong in 1976, would remain in force and Hong Kong residents should expect to enjoy rights and freedoms without restriction, unless such restriction were prescribed by law and did not contravene the provisions of the ICCPR. In this way, Hong Kongers enjoyed a degree of legal human rights protection unknown to those living across the border in mainland China.

These promises of autonomy and human rights protection have increasingly come under attack through a series of policies and actions taken by the Beijing government in tandem with the Hong Kong authorities. Having set out a “red line” on Hong Kong that targets “any attempt to endanger China’s sovereignty or security, challenge the power of the Chinese government, or use Hong Kong to carry out infiltration and sabotage activities against the mainland”, the vague and all-encompassing definition of national security regularly employed to target activism and speech in mainland China has been gradually introduced into Hong Kong in recent years.

The people of Hong Kong have repeatedly demonstrated deep concern about encroachment on the Basic Law’s promised rights and “one country, two systems”. In 2003, half a million marched to protest the government’s proposal for national security legislation, leading to its withdrawal. The 2014 pro-democracy Umbrella Movement protests and Occupy Central campaign galvanized an even larger degree of participation, as student groups and other members of the public occupied major roads over an 11-week period to protest a decision by Beijing authorities to limit “universal suffrage” by placing restrictions on how candidates for Hong Kong’s Chief Executive elections would be selected.

These protests have since been dwarfed by the turnout for a series of protests in 2019, which were sparked by fears that the government’s proposed Extradition Bill would lead to people in Hong Kong being sent to face trial under mainland China’s criminal justice system, which has a well-documented record of arbitrary detention, torture and other ill-treatment, serious violations of fair-trial rights, enforced disappearances and

various systems of incommunicado detention without trial. More than 2 million people marched peacefully in the streets of Hong Kong on 16 June 2019, a record far surpassing the turnout for previous marches.

The huge numbers of people who have taken part in these protests over the years reflect not only their determination to protect human rights and rule of law in Hong Kong but also concern – and increasingly anger – over the way that authorities in Hong Kong and mainland China have responded to these demands. Chief among their concerns have been increasingly unwarranted restrictions on the rights to peaceful assembly and free expression; lack of police accountability for unnecessary and excessive force, as well as failure to act against harassment and violence by third parties against protesters; politically motivated prosecution and harsh punishment of protest leaders, sometimes years after their initial arrest; and rhetoric from both Beijing and Hong Kong that paints protest and activism as threats to national security being orchestrated from abroad.

Despite repeated criticism from human rights groups and UN human rights bodies, these aggressive tactics have increased in frequency since the Umbrella Movement, affecting many Hong Kongers' perceptions of how much human rights protection they can expect from their government. Since 2014, political parties, labour unions and NGOs have come under attack, accused of crossing the “red line”. Educational institutions, the media, the entertainment industry, social service providers and other civil society groups have come under an atmosphere of censorship and self-censorship. The police use the notification requirement of the Public Order Ordinance to ban or place unreasonable limits on peaceful protest.

Commenting on police use of the Public Order Ordinance provisions, Jimmy Sham, convener of the Civil Human Rights Front, an umbrella organization of approximately 50 local groups, told Amnesty International: “We submit a proposal to the police about the protest, the police send a Notice of No Objection to us, with or without negotiation. We have no choice but to sign, or the protest will become an ‘unauthorized assembly’.” The examples of obstruction, harassment, intimidation and prosecution collected by Amnesty International help to explain in part what has motivated much of the unprecedented mobilization during the Extradition Bill protests. The fact that authorities in both Hong Kong and mainland China have continued to use many of the same tactics in responding to the Extradition Bill protests suggests that the influence of the “red line” remains deeply felt.

The authorities appear to hope that, by treating the ordinary exercise of rights to association, expression and peaceful assembly as threats to national security or “one country, two systems” that must be severely dealt with, people in Hong Kong (and elsewhere in China) would be discouraged from demanding their rights. Many of the people who spoke to Amnesty International described how their uncertainty about whether their rights would be protected had in fact led them or others to refrain from engaging in public participation and activism after the Umbrella Movement. Yet, the huge turnout for the Extradition Bill protests also suggests that the more Hong Kongers have seen their rights come under attack, the more determined they seem to have become. In the meantime, the aggressive response from police has only escalated tensions rather than calming the violence of protesters and counter-protesters.

KEY RECOMMENDATIONS

The Hong Kong authorities should reaffirm their commitment to the human rights and freedoms that are enumerated in Hong Kong's Basic Law and uphold its obligations under international law and domestic law to respect, protect and fulfil the rights specified in the ICCPR and elsewhere.

To meet these obligations, the Hong Kong government must ensure that the police are facilitating peaceful assemblies, instead of meeting protesters with unnecessary or excessive force, and promote an environment in which freedom of expression is protected. Authorities also must stop using vague laws, some of which have been specifically criticized by United Nations human rights bodies, to prosecute peaceful protesters and other members of civil society for exercising their human rights. Rather than charging people with little-used offences with harsh penalties, the Hong Kong government should review and amend laws as necessary to bring them in line with its international human rights obligations.

Key recommendations in this report include:

- Respect and protect the rights of all individuals to assemble peacefully and associate freely, on line as well as off line, and ensure that those participating in peaceful assemblies are not subjected to the threat of criminal sanctions and, notably, the threat of deprivation of liberty;
- Stop using politically motivated prosecutions and other legal procedures against peaceful protesters to silence critical voices and deter people from participation in the public sphere;

- Take necessary measures to establish a fully independent mechanism mandated to conduct investigations into inappropriate use of force or other abuse by police;
- Amend relevant provisions of the Public Order Ordinance to bring it in line with the ICCPR and specifically ensure that assemblies that do not receive Notices of No Objection are not labelled as unauthorized or unlawful and subject to dispersal or criminalization; that conditions placed in the notifications are legitimate, necessary and proportionate; and that the Ordinance and its implementation are in conformity with the ICCPR and adequately allow for spontaneous assemblies.

METHODOLOGY

This report is based on interviews conducted between April and September 2019. Amnesty International conducted face-to-face and telephone interviews with 54 protesters, lawyers and lawmakers, activists, journalists, NGO workers, students, teachers, academics and other civil society actors. Desk research was carried out, including analysis of court documents, media reports and audio and visual evidence.

Interviewees featured in the report are referred to by their real name where possible. However, some interviewees preferred to remain anonymous for fear of potential negative repercussions, and some interview information including location and exact date were omitted when requested. All pseudonyms are indicated with quotation marks.

All those interviewed were informed of the purpose of the interview, its voluntary nature and how the information would be used. All interviewees provided verbal or written consent to be interviewed and were told they could decline to answer questions and end the interview at any time. None of the interviewees received compensation for providing information. The quotes from the interviews reported here were lightly edited for brevity and clarity only.

Amnesty International shared the findings of the report with the office of the HKSAR Chief Executive, the Liaison Office of the Central People's Government in the HKSAR and the Hong Kong Police Commissioner prior to publication. The Office of the Chief Executive responded on 20 September 2019. The full response can be found on Amnesty International's website. Prior to publication Amnesty International also approached the private actors which feature prominently in the report in order to obtain their response to the report's draft findings. Responses received from TVB and Hong Kong Polytechnic University are reflected in the relevant parts of the report.

Amnesty International wishes to thank all the people who shared their views and experiences with us.

1. BEIJING'S "RED LINE" IN HONG KONG

"President Xi Jinping drew the 'red line' for handling relations between the mainland and Hong Kong, warning against attempts to undermine national sovereignty or challenge the central government's power."

Xinhua, China's state news agency, reported Xi Jinping's remarks in Hong Kong to mark the 20th anniversary of Hong Kong's handover to China, 1 July 2017¹

On 1 July 2017, President Xi Jinping gave a speech at a ceremony marking the 20th anniversary of the handover of Hong Kong. In it, he said: "Hong Kong needs to improve its systems to uphold national sovereignty, security and development interests". He further warned that "[a]ny attempt to endanger China's sovereignty and security, challenge the power of the Central Government and the authority of the Basic Law of the HKSAR or use Hong Kong to carry out infiltration and sabotage activities against the mainland is an act that crosses the 'red line', and is absolutely impermissible."²

The Hong Kong government has progressively embraced the mainland's "national security" concept that Xi Jinping and the mainland government are increasingly introducing into Hong Kong. Hong Kong authorities have restricted the rights to freedom of peaceful assembly, association and expression under the pretext of "national sovereignty and security" and misused Hong Kong's laws and regulations as tools to target people and groups that have crossed the vague "red line" as defined by mainland authorities.

1.1 THE SINO-BRITISH JOINT DECLARATION AND THE BASIC LAW

The principle of "one country, two systems", which was to guarantee Hong Kong a separate legal and economic system and protect the region's freedoms for a period of 50 years, was first outlined in the 1984 Sino-British Joint Declaration when the two countries decided the People's Republic of China (China) would "resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997".³

¹ "Xi draws 'red line' for handling mainland-HK relations", *Xinhua News*, 1 July 2017, www.xinhuanet.com/english/2017-07/01/c_136409560.htm.

² "Full Text: Xi's speech at meeting marking HK's 20th return anniversary, inaugural ceremony of 5th-term HKSAR government", *China Daily*, 1 July 2017, www.chinadaily.com.cn/china/hk20threturn/2017-07/01/content_29959860.htm.

³ Constitutional and Mainland Affairs Bureau, *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong*, 19 December 1984, www.cmab.gov.hk/en/issues/jd2.htm.

In 1997, the Chinese government established the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) and enacted the Basic Law, Hong Kong's mini-constitution.⁴ The Basic Law further expanded the principle of “one country, two systems” and stipulated that Hong Kong would exercise “a high degree of autonomy and enjoy executive, legislative and independent judicial power”.⁵

The Basic Law also stipulates that the HKSAR shall safeguard the rights and freedoms of HKSAR residents and other persons in Hong Kong in accordance with the law. It states Hong Kong residents shall have freedoms of speech, press and publication, association, assembly and demonstration; the right and freedom to form and join trade unions; and the freedom to engage in academic research, literary and artistic creation and other cultural activities. It further stated that the provisions of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by the UK and extended to Hong Kong in 1976, shall remain in force and shall be implemented through the laws of the HKSAR. Under the Basic Law, the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law and any such restrictions shall not contravene the provisions of the ICCPR.⁶

1.2 NATIONAL SECURITY LEGISLATION

To fulfil its obligations to safeguard national security, Article 23 of the Basic Law stipulated Hong Kong has to:

enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in HKSAR, and to prohibit political organizations or bodies of the HKSAR from establishing ties with foreign political organizations or bodies.⁷

In 2003, the Hong Kong government introduced the National Security Bill pursuant to Basic Law Article 23. Half a million people took to the streets in July 2003 to protest the bill, which could have been used to criminalize or restrict the exercise of human rights, such as freedom of expression, association and peaceful assembly. The Hong Kong government eventually withdrew the bill and has to date made no further attempt to re-introduce a national security bill. However, mainland authorities have repeatedly pressed the Hong Kong government to push through national security legislation.⁸

Since Xi Jinping assumed the posts of general secretary of the Chinese Communist Party in 2012 and president of the People's Republic of China in 2013, the Chinese government has created a comprehensive “national security” legal architecture in mainland China. This series of sweeping laws and regulations use a vague and overly broad concept of “national security” in contravention of international human rights law and standards and present severe threats to the rights to freedom of peaceful assembly, association, expression and other human rights.⁹

While international human rights law permits restrictions on the rights to freedom of peaceful assembly, association and expression, any such restrictions are only permissible if they are provided by law, are for the purpose of protecting certain limited public interests, including national security, and are demonstrably necessary and proportionate to that purpose. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles) state that any restriction sought to be justified on the ground of 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”. The Johannesburg Principles also emphasize that such restrictions are not legitimate if their “genuine purpose or demonstrable effect is to protect interests unrelated to national security, including to protect a government from embarrassment or exposure of wrong-doing ... or to entrench a particular ideology”.¹⁰

⁴ Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, www.basiclaw.gov.hk/en/basiclawtext/index.html, (hereinafter: “Basic Law”).

⁵ Preamble and Article 2 of the Basic Law.

⁶ Article 4, 27, 34 and 39 of the Basic Law.

⁷ Article 23 of the Basic Law.

⁸ “張德江在紀念中華人民共和國香港特別行政區基本法實施 20 周年座談會上的講話” (Speech by Zhang Dejiang at the Symposium to Commemorate the 20th Anniversary of the Implementation of the Basic Law of the Hong Kong Special Administrative Region), *People's Daily Online*, 27 May 2017, cpc.people.com.cn/BIG5/n1/2017/0528/c64094-29305595.html; Cindy Wan, “Beijing point man lays down law on Article 23”, *The Standard*, 11 March 2019, www.thestandard.com.hk/section-news.php?id=205780&sid=4.

⁹ Amnesty International, *China: Human Rights Violations in the Name of National Security*, (Index: ASA 17/8373/2018).

¹⁰ Principles 2(a) and 2(b) of The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (hereinafter: “Johannesburg Principles”). The Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre

Mainland China enacted its National Security Law on 1 July 2015. The law contains a definition of “national security” that is virtually limitless, including “sovereignty, unity, territorial integrity, the welfare of the people, sustainable economic and social development, and other major interests of the state.”¹¹ This law also stipulates that Hong Kong and Hong Kong residents should fulfil the responsibility of safeguarding China’s national security.¹² Yet the Basic Law stipulates that national laws in mainland China shall not be applied in Hong Kong, except for those in the list of laws in Annex III of the Basic Law. National laws falling under this category should relate to defence, foreign affairs and other matters outside the scope of the autonomy of the HKSAR.¹³ Mainland China’s broad “national security” concept, however, has increasingly been introduced into Hong Kong by mainland authorities through policy papers, statements and opinions.

1.3 THE WHITE PAPER ON “ONE COUNTRY, TWO SYSTEMS”

On 10 June 2014, the Information Office of the State Council, the chief administrative authority in mainland China, issued a white paper on the practice of “one country, two systems” that marked a shift in China’s policy regarding Hong Kong.¹⁴

The white paper replaced the fundamental principle that Hong Kong enjoys “a high degree of autonomy” with “the central government exercises overall jurisdiction over the HKSAR”. It also added that the “one country” is the basis of the “two systems” and the “two systems” is subordinate to the “one country”. It further stated: “The most important thing to do in upholding the ‘one country’ principle is to maintain China’s sovereignty, security and development interests, and respect the country’s fundamental system and other systems and principles.”¹⁵

The white paper also stated that “it is necessary to be alert to the attempt of outside forces to use Hong Kong to interfere in China’s domestic affairs, and prevent and repel the attempt made by a very small number of people who act in collusion with outside forces to interfere with the implementation of ‘one country, two systems’ in Hong Kong”.¹⁶ The power of the central government over foreign affairs related to the HKSAR, stipulated in the Basic Law, was extended in the white paper to include preventing foreign forces from interfering in Hong Kong’s affairs.

On 27 June 2014, hundreds of lawyers staged a silent march in black to demonstrate their concerns about the white paper’s threat to Hong Kong’s rule of law and judicial independence.¹⁷ In June of 2014, the Hong Kong Bar Association expressed concern about the white paper’s inclusion of the new “basic political requirement” for judges and other judicial personnel of “loving the country” and their responsibility to safeguard the country’s sovereignty, security and development interests, emphasizing instead that the judiciary needed to be “truly independent”.¹⁸

The independence of the judiciary is requisite for the rule of law and essential to a fair trial as enshrined in Article 14 of the ICCPR. Under international standards, this means that judges must be free from political or other interference and selected primarily on the basis of their legal expertise and integrity, without any discrimination because of their political or other opinion.¹⁹

for Applied Legal Studies of the University of the Witwatersrand in Johannesburg, www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf.

¹¹ Article 2 of the National Security Law of the People’s Republic of China, eng.mod.gov.cn/publications/2017-03/03/content_4774229.htm.

¹² Article 11 and Article 40 of the National Security Law of the People’s Republic of China.

¹³ Article 18 of the Basic Law.

¹⁴ The State Council Information Office of the People’s Republic of China, *Full Text: The Practice of the “One Country, Two Systems” Policy in the Hong Kong Special Administrative Region*, 10 June 2014, english.www.gov.cn/archive/white_paper/2014/08/23/content_281474982986578.htm (hereinafter: *The Practice of the “One Country, Two Systems” Policy*).

¹⁵ *The Practice of the “One Country, Two Systems” Policy*.

¹⁶ *The Practice of the “One Country, Two Systems” Policy*.

¹⁷ “Hong Kong lawyers in mass silent protest over China’s white paper”, *Radio Free Asia*, 27 June 2014, www.rfa.org/english/news/china/silent-06272014145550.html.

¹⁸ Hong Kong Bar Association, *White paper on the practice of ‘one country, two systems’ policy in the Hong Kong Special Administrative Region: Response of the Hong Kong Bar Association*, 11 June 2014, www.hkba.org/sites/default/files/White_Paper_Response_eng.pdf.

¹⁹ Principles 1 and 10, Basic Principles on the Independence of the Judiciary, adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx.

2. OCCUPY CENTRAL AND THE UMBRELLA MOVEMENT

Occupy Central and the subsequent Umbrella Movement protests were a major test of the new articulation of the “one country, two systems” principle in 2014. While the mainland government defined both Occupy Central and the Umbrella Movement protests as illegal, and although police used excessive force and failed to protect protesters from counter-protesters’ attacks on several occasions, the Hong Kong government demonstrated restraint and tolerated the peaceful protests for over 11 weeks before finally dispersing the protesters. After the Umbrella Movement, however, the arrests, prosecution and imprisonment of prominent figures in the protests have shown that the Hong Kong government has taken a harder line and that the human rights guaranteed in international law and in the Basic Law – particularly the rights to freedom of expression, association and peaceful assembly – are under attack.

2.1 THE MOVEMENT’S BEGINNINGS

Between September and December 2014, Hong Kong witnessed 79 days of overwhelmingly peaceful large-scale pro-democracy protests. These protests started as a civil disobedience action known as Occupy Central.

Launched officially in March 2013, Occupy Central advocated for direct, democratic election of the city’s Chief Executive in the election scheduled for 2017. Campaign organizers said they would use dialogue to achieve their goals and only use civil disobedience if that did not work.²⁰ Both mainland and Hong Kong governments labelled Occupy Central as illegal and warned it would not be tolerated.²¹

On 31 August 2014, China’s Standing Committee of the National People’s Congress (SCNPC) announced its decision on how “universal suffrage” would be implemented in Hong Kong, including restrictions and procedures on how candidates for Chief Executive would be selected.²² On 26 September 2014, two youth-led organizations, the Hong Kong Federation of Students and Scholarism, launched a sit-in protest outside the HKSAR government headquarters to protest Beijing’s decision.

At the end of the sit-in that evening, a group of protesters climbed into the fenced-off forecourt of the Hong Kong government headquarters, known as “Civic Square”. The police responded with pepper spray and arrests, which in turn brought more people to the streets in protest. On 28 September, police deployed tear gas in an attempt to disperse the protesters. This act instead triggered an additional influx of people to the

²⁰ Occupy Central with Love and Peace, *Manifesto*, oclphkenglish.wordpress.com/about-2/manifesto/.

²¹ Joseph Li and Kahon Chan, “Li Fei warns against ‘Occupy’, ‘public nomination’”, *China Daily*, 21 August 2014, www.chinadailyasia.com/special/electoralreform/2014-08/21/content_15159611.html; 新聞公報 (HKSAR government Press Briefing), 行政長官於行政會議前會見傳媒談話全文 (Transcript of remarks by CE at media session before ExCo meeting), 16 June 2015, www.info.gov.hk/gia/general/201506/16/P201506160378.htm.

²² Instrument 23 of the Basic Law.

scene of the protest – many carrying umbrellas to shield themselves from the tear gas – thus launching what soon became known as the Umbrella Movement.²³ Protesters occupied main roads in Admiralty, Mongkok, Causeway Bay and other areas of Hong Kong over the next 11 weeks, until police eventually dispersed them in early December.

Mainland China and Hong Kong officials, including a Chinese Ministry of Foreign Affairs spokesperson and then-Hong Kong Chief Executive Leung Chun-ying, remarked at the time of the Umbrella Movement that foreign forces were attempting to interfere with Hong Kong affairs and had incited the illegal Occupy Central action.²⁴ Chinese authorities further stated that China resolutely opposed any form of interference by any foreign country.²⁵ A senior general of the People's Liberation Army commented that “hostile forces have always attempted to make Hong Kong the bridgehead for subverting and infiltrating mainland China” and that Occupy Central was an “elaborately orchestrated Hong-Kong-version colour revolution” under the instigation and support of external forces.²⁶

The detention of at least 101 people in mainland China for peacefully expressing support for the Umbrella Movement protests demonstrates the level of the Chinese government's concern about “external forces” using Hong Kong's pro-democracy protests to carry out infiltration and sabotage activities against mainland China.²⁷ In the reply to the communication from the UN Special Rapporteurs, Chinese authorities claimed that “Occupy Central” protesters shared illegal information via the internet, incited people to hold illegal assemblies, and threatened social stability in mainland China.²⁸

2.2 POLICE USE OF FORCE AND INACTION

Throughout the protests, Amnesty International documented unnecessary and excessive use of force by Hong Kong police but also inaction from police when counter-protesters and other people attacked protesters.²⁹

An example of inaction occurred on 3 October 2014, when counter-protesters attacked hundreds of peaceful pro-democracy protesters in Mongkok and Causeway Bay. Women and girls were among those targeted, and there were incidents of sexual assault, harassment and intimidation but police stood by and took no action.³⁰

On 15 October 2014, a local TV news channel filmed seven police officers beating and kicking pro-democracy activist Ken Tsang after he had already been put under police control in a case of unnecessary and excessive force. The seven officers were sentenced to two years' imprisonment on charges of “common assault” and “assault occasioning actual bodily harm” in 2017, but on 26 July 2019, the Court of Appeal quashed the convictions of two of the seven policemen and reduced the sentences of the other five from 15 to 18 months' imprisonment.³¹

On 24 October 2014, in another case of inaction, more than 20 people, whom protesters believed to be members of organized crime groups appeared at the protest site in Mongkok to tear down barriers set up by protesters. According to a protester present at the time, the police took away one of the individuals only after a journalist and a protester brought that person under control and handed over him to the police.³²

²³ Amnesty International, *Hong Kong: Police Response to Student Pro-democracy Protest an Alarming Sign*, (Press Release 27 September 2014), www.amnesty.org/en/latest/news/2019/04/hong-kong-guilty-verdicts-pro-democracy-leaders-crushing-blow/.

²⁴ 新聞公告(HKSAR government Press Briefing), 行政長官會見傳媒談話全文 (*Remarks by Chief Executive at media session*) (in Chinese only), 21 October 2014, www.info.gov.hk/gia/general/201410/21/P201410210368.htm; Ministry of Foreign Affairs of the People's Republic of China (hereinafter PRC MOFA), *Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on 4 December 2014*, 4 December 2014, www.fmprc.gov.cn/ce/cggb/eng/fyrth/t1216788.htm.

²⁵ PRC MOFA, *Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on 4 December 2014*, www.fmprc.gov.cn/ce/cggb/eng/fyrth/t1216788.htm.

²⁶ 熊爭艷 (Xiong Zhengyan), “孫建國副總參謀長答《望東方周刊》記者問” (General Sun Jianguo's interview with *Oriental Outlook* magazine), reposted on *China Military* [official website of China's People's Liberation Army], 3 March 2015, www.81.cn/big5/11/jwzg/2015-03/03/content_6376746_4.htm.

²⁷ Amnesty International, *Chinese activists detained for supporting Hong Kong protests*, (Press Release 7 November 2014), www.amnesty.org/en/latest/news/2014/11/chinese-activists-detained-supporting-hong-kong-protests/.

²⁸ Response of the Chinese government to the communication of the UN OHCHR [AL CHN 11/2014] dated 5 December 2014, 18 March 2015, spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=32477.

²⁹ Amnesty International, *Hong Kong: Heavy-handed Policing Will Only Inflammate Protests*, (Press Release 28 November 2014), www.amnesty.org/en/press-releases/2014/11/hong-kong-heavy-handed-policing-will-only-inflammate-protests/.

³⁰ Amnesty International, *Hong Kong: Women and Girls Attacked as Police Fail to Protect Peaceful Protesters*, (Press Release 3 October 2014), www.amnesty.org/en/press-releases/2014/10/hong-kong-women-and-girls-attacked-police-fail-protect-peaceful-protesters/.

³¹ High Court (2019), *HKSAR v Wong Cho-shing, Lau Cheuk-Ngai, Pak Wing-bun, Lau Hing-Pui, Chan Siu-tan, Kwan Ka-ho and Wong Wai-ho* (CAC38/2017).

³² Interview with Avery Ng on 16 May 2019.

Police arrested 235 people, including two reporters, when they cleared protest sites in the Mongkok area between 25 and 28 November 2014.³³ During this clearing action, Amnesty International observers witnessed several incidents of police beating passers-by with batons. Pictures on local TV and social media showed protesters who were about to be arrested being dragged behind police lines and encircled by officers so that onlookers were blocked.³⁴

Protest leader Raphael Wong said that during the police clearance of the protest site in Mongkok on 26 November, policemen knelt on his head and body and beat his head during the arrest, causing injuries. He also alleged that the police tried to hide his bleeding ear from journalists and others as they took him to the police car.³⁵ On 17 January 2018, he was sentenced to four months and 15 days' imprisonment for questioning the execution of an injunction order and obstructing the clearance of the protest site.³⁶

PROTESTER RAPHAEL WONG WAS INJURED WHEN POLICE ARRESTED HIM DURING THE CLEARANCE OF AN UMBRELLA MOVEMENT PROTEST SITE IN MONGKOK



Image clipped from video recorded by the police on 26 November 2014. (Photo credit: Raphael Wong).



2.3 ASSOCIATED ARRESTS

According to the Hong Kong government, 955 people who had taken part in the protests were arrested during the Umbrella Movement and another 48 were arrested after the protests had ended.³⁷ Many were soon released, but protesters told Amnesty International that police notified them that criminal investigations were still ongoing and they would be re-arrested and charged should there be sufficient evidence to prosecute them.³⁸

In July 2016, more than 18 months after Joshua Wong, Alex Chow and Nathan Law climbed into “Civic Square” at the start of the Umbrella Movement, the three student leaders were convicted on “unlawful assembly” charges. Prosecutors appealed the non-custodial sentences handed down to the three men, seeking harsher penalties. In August 2017, an appellate court gave the student leaders jail terms of 6–8 months.³⁹ Joshua Wong and Nathan Law were released on bail pending appeals in October 2017, followed by Alex Chow in November 2017. On February 2018, the Court of Final Appeal overturned the jail sentences.⁴⁰

³³ The Government of the Hong Kong Special Administrative Region Press Releases, (hereinafter HKSAR government Press Releases), *LCQ2: Police assistance in executing injunction orders in Mong Kok*, 10 December 2014, www.info.gov.hk/gia/general/201412/10/P201412100759.htm.

³⁴ Amnesty International, *Hong Kong: Heavy-handed policing will only inflame protests*, (Press Release 28 November 2014), www.amnesty.org/en/press-releases/2014/11/hong-kong-heavy-handed-policing-will-only-inflame-protests/.

³⁵ Interview with Raphael Wong on 21 April 2019.

³⁶ High Court (2018), *Secretary for Justice v. Wong Ho-ming* (HCMP798 /2015).

³⁷ HKSAR Government Press Release, *LCQ4: Prosecution work relating to “Occupy Movement”*, 8 February 2017, www.info.gov.hk/gia/general/201702/08/P2017020800526.htm.

³⁸ Interviews with Johnson Yeung and Avery Ng on 16 May 2019.

³⁹ High Court (2017), *HKSAR v. Wong Chi Fung, Law Kwun Chung and Chow Yong Kang Alex* (CAAR4/2016).

⁴⁰ Court of Final Appeal (2018), *HKSAR v. Wong Chi Fung, Law Kwun Chung and Chow Yong Kang Alex* (FACC8,9&10/2017).

In April 2019, nine Umbrella Movement leaders were convicted of “public nuisance”-related charges, including “conspiracy to commit public nuisance”, “incitement to commit public nuisance” and “incitement to incite public nuisance”.⁴¹

The pattern of long intervals between initial arrests and decisions to prosecute has meant that, five years after the start of the Umbrella Movement protests, only a small proportion of the arrested protesters have faced trial to date. Scores of protesters are uncertain whether police will proceed with the charges against them, and this had a chilling effect on participation in assemblies between the Umbrella Movement and the 2019 Extradition Bill protests. Unsure to what extent their freedoms of peaceful assembly and expression are still protected in Hong Kong, individuals have had to re-assess the risks associated with their actions.

The impact of this legal uncertainty can be seen in the 2019 Extradition Bill protests. Tse Kee-on, a young protester arrested during the peaceful protest on 9 June 2019 and released on bail the next day, told Amnesty International he worried that the authorities would arrest and prosecute large numbers of protesters and then imprison some of them several years later.⁴² The fact that the government had already arrested 420 people from 9 June to 5 August indicated that a large number of protesters could be in legal limbo or struggle with legal procedures for years to come, as happened in the Umbrella Movement.⁴³

⁴¹ Amnesty International, *Hong Kong: Guilty verdicts against pro-democracy protest leaders a “crushing blow” for freedom of expression*, (Press Release 9 April 2019), www.amnesty.org/en/latest/news/2019/04/hong-kong-guilty-verdicts-pro-democracy-leaders-crushing-blow/.

⁴² Interview with Tse Kee-on on 19 June 2019.

⁴³ Hong Kong Police Force verified Facebook page, 4pm Press Briefing (2019-08-05) (四點鐘傳媒簡報[2019-08-05]) (live), www.facebook.com/HongKongPoliceForce/videos/490832305029799/.

3. CROSSING THE “RED LINE”

“The ‘red line’ is a false proposition. They extend the ‘red line’ indefinitely. Whether it is pro-establishment media, ‘blue-ribbons’ or pro-government voices, they strategically simplify and frame anything we do for our own freedoms without touching their sovereignty as a part of the Hong Kong independence movement and blame us.”

Avery Ng, activist and president of Leagues of Social Democrats⁴⁴

President Xi Jinping’s 2017 speech and the State Council’s white paper both define national security and threats against national sovereignty in vague and ambiguous terms, which allows authorities and pro-Beijing groups in Hong Kong to frame peaceful protests and the protest organizers and participants as challenges to the “red line”.

By accusing organizations and individuals of crossing that “red line”, authorities have rationalized censorship, harassment and prosecutions that violate human rights. These accusations are frequently echoed and amplified in Hong Kong by pro-Beijing groups and media, as well as in universities and the entertainment industry, and the harassment, intimidation and censorship have had a negative impact on the operations and work of individuals, groups and events in these fields.

3.1 RESTRICTIONS ON FREEDOM OF ASSOCIATION

Many civil society actors interviewed for this report recounted that their peaceful advocacy for Hong Kong’s democracy, self-determination or independence, or for human rights and democracy in China made them targets of the Hong Kong and Beijing authorities. These actors have been criticized for crossing the “red line” and for threatening China’s sovereignty or national security and violating “one country, two systems”. The attacks and pressure are more serious if Beijing considers these activities to be challenges to the authority of the Chinese Communist Party or done in collusion with foreign forces.

⁴⁴ “Blue-ribbons” represented counter-protesters who supported pro-establishment views, in contrast to the “yellow ribbons” that represented people who supported the protests. “Blue-ribbons” staged protests to support the police, including in cases of assault against protesters; Interview with Avery Ng on 15 May 2019.

Hong Kong and mainland authorities have sometimes directly targeted political parties, unions and NGOs in Hong Kong, including through banning political parties, as well as through prosecution and obstruction of the associations' operations and fund-raising activities. More broadly, the authorities' statements and actions have created an environment that has allowed and even encouraged private actors to similarly harass and interfere with these organizations' operations.

HONG KONG NATIONAL PARTY

After the Umbrella Movement, new political groups advocating for independence and self-determination were established. The Hong Kong government misused Hong Kong's law to criminalize or target these groups, often on the grounds they threatened "national security".

The Hong Kong National Party, a small local organization established in March 2016 that advocates for Hong Kong independence, was banned by the Hong Kong government in September 2018 under Hong Kong's Societies Ordinance. The authorities claimed banning the party was necessary "in the interests of national security, public safety, public order and the protection of the rights and freedoms of others".⁴⁵ Any operations undertaken by an individual in the banned party's name, such as recruitment or fundraising, could result in imprisonment for up to two years under Hong Kong law. On 19 February 2019, the Chief Executive dismissed the organization's appeal.⁴⁶

In support of the ban, the mainland government stated its position of "zero tolerance for any organization preaching 'Hong Kong independence' or engaging in activities of splitting the country".⁴⁷

The Societies Ordinance has been criticized by human rights groups for its potential negative impact on the freedoms of expression and association.⁴⁸ In 1999, the United Nations Human Rights Committee (HRC) – the body monitoring implementation of the ICCPR, which is binding on Hong Kong – agreed and called on the Hong Kong government to review that ordinance, noting that it currently could be applied in a way that would unduly restrict the right to freedom of association.⁴⁹

In the UN's Universal Periodic Review of China in November 2018, the Hong Kong government claimed that Hong Kong people enjoyed freedom of association and expression but that such freedom was not absolute. It noted that the ICCPR provides that restrictions may be imposed by law if it is necessary to protect national security or public safety, public order or the rights and freedom of others.⁵⁰

However, the Hong Kong government has never demonstrated that the Hong Kong National Party posed any real and imminent danger of violence or otherwise posed a serious and genuine threat to the state, which is required under international law and standards.⁵¹

DEMOSISTŌ

In 2016, leaders of Scholarism, one of the key organizations behind the Umbrella Movement, formed Demosistō together with other young activists in order to advocate for democratic self-determination through non-violent means.⁵² Key members of Demosistō, such as Joshua Wong and Nathan Law, had played prominent roles in the Umbrella Movement protests. Demosistō's members had also actively worked with other

⁴⁵ Information Services Department, *Gov't orders group banned*, news.gov.hk, 24 September 2018, www.news.gov.hk/eng/2018/09/20180924/20180924_122352_622.html.

⁴⁶ HKSAR Government, *Report on the prohibition of the operation of the 'Hong Kong National Party' by the Hong Kong Special Administrative Region Government and related circumstances*, para 4, gia.info.gov.hk/general/201904/18/P2019041800429_308626_1_1555572180892.pdf.

⁴⁷ "Central government voices firm support for HKSAR's ban on 'Hong Kong National Party'", *Xinhua News*, 24 September 2018, www.xinhuanet.com/english/2018-09/24/c_137489732.htm.

⁴⁸ 香港天主教正義和平委員會 (Justice & Peace Commission of the H.K. Catholic Diocese), 香港言論及集會自由 (Freedoms of expression and association in Hong Kong), 21 March 2002, www.hkjp.org/focus.php?cid=2&topic=39&id=154; Hong Kong Human Rights Monitor, *Submission to the Legislative Council Panel on Home Affairs regarding the SAR Government's ICCPR report 1999 to the UN Human Rights Committee*, September 1999, www.legco.gov.hk/yr99-00/english/panels/ha/papers/2916e01.pdf.

⁴⁹ Concluding Observation of the UN Human Rights Committee (hereinafter HRC): Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para. 20.

⁵⁰ Constitutional and Mainland Affairs Bureau of HKSAR government, *The formal adoption by the United Nations Human Rights Council of the report by its working group on the Universal Periodic Review on the third review of the Hong Kong Special Administrative Region*, April 2019, www.legco.gov.hk/yr18-19/english/panels/ca/papers/ca20190415cb2-1179-3-e.pdf.

⁵¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Special Rapporteur on peaceful assembly), UN Doc. A/68/299 (2013), para. 55; Principles 6 and 7(b) of the Johannesburg Principles.

⁵² Demosistō, *About us*, www.demosisto.hk/about?lang=en.

groups in civil society on smaller-scale protests related to issues that challenged mainland China's "red line", such as against patriotic education, integration of Hong Kong with mainland China and Beijing's decisions on Hong Kong legal issues.

Demosistō's activism was peaceful but frequently used non-violent direct action as a tactic. This, together with its stance to advocate for self-determination, made it a target of attacks from both the Hong Kong and mainland governments, as well as lawmakers from pro-Beijing political parties, Chinese state-owned media in Hong Kong, pressure groups and others in political alignment with the central government in Beijing.

Any advocacy of self-determination for Hong Kong – even peaceful advocacy – is considered impermissible by the mainland government. In 2017, the then-chairman of the SCNPC, Zhang Dejiang, criticized calls for self-determination as an "attempt to turn Hong Kong into an independent or semi-independent political entity, and to split Hong Kong from the country."⁵³ Likewise, in response to criticisms from the UK government that discussion of independence should be protected by the right to freedom of expression,⁵⁴ a spokesman for the Hong Kong government stated that "'Hong Kong independence' is a blatant violation of the Basic Law and a direct affront to the national sovereignty, security and territorial integrity of the PRC".⁵⁵

Many members of Demosistō have been arrested and prosecuted, with a few imprisoned for exercising their rights to freedom of expression and peaceful assembly. In addition, the party has had to deal with other legal challenges, such as the court case to disqualify its chairman Nathan Law from taking office after winning a seat in the Legislature in 2017.⁵⁶ Demosistō's leader, Agnes Chow, was disqualified by officials from running for election in 2018 because election officials found the party's stance on self-determination was in contravention of the Basic Law. On 2 September 2019, the High Court overturned the government's decision because of procedural irregularities but reaffirmed that election officials may ban candidates if they find evidence that they did not genuinely intend to uphold the Basic Law.⁵⁷

In 2018, Demosistō's application to register as a company, first filed in 2016, was rejected by the Hong Kong Company Registry after multiple delays.⁵⁸ As a result, Demosistō is unable to set up an official bank account. A party leader opened a personal bank account to accept donations to the group but then was accused of corruption in an article in *Ta Kung Pao*, a China state-owned newspaper in Hong Kong, that quoted pro-Beijing politicians and online comments by netizens.⁵⁹ The party also had difficulty renting office space until they approached property owners under another identity, according to vice-president of Demosistō Isaac Cheng.⁶⁰

Cheng told Amnesty International that the inability to register as a company means Demosistō also cannot apply for a licence or permit for fundraising. As a result, members who staff booths during demonstrations with donation boxes are at risk of illegal fundraising charges. On many occasions, police have collected information at these booths, including addresses, telephone numbers and other personal information of those staffing the booths. Cheng felt this could deter some new members from continuing to participate in the party's activities. He said it was even more threatening that three Demosistō members were detained arbitrarily when traveling in mainland China for private purposes and interrogated for information about the party and its members.⁶¹

The ability of associations to access financial and other resources, including from private donors, is an integral element of the right to freedom of association.⁶² States must ensure an environment that enables associations to carry out their work without undue interference by the state or third parties.⁶³

⁵³ "張德江在紀念中華人民共和國香港特別行政區基本法實施 20 周年座談會上的講話" (Speech by Zhang Dejiang at the Symposium to Commemorate the 20th Anniversary of the Implementation of the Basic Law of the Hong Kong Special Administrative Region), *People's Daily Online*, 27 May 2017, cpc.people.com.cn/BIG5/n1/2017/0528/c64094-29305595.html.

⁵⁴ Foreign & Commonwealth Office, *The Six-monthly Report on Hong Kong 1 January to 30 June 2018*, 6 September 2018, www.gov.uk/government/publications/six-monthly-report-on-hong-kong-january-to-june-2018.

⁵⁵ HKSAR government Press Releases, *Response to UK report on Hong Kong*, 7 September 2018, www.info.gov.hk/gia/general/201809/07/P2018090700354.htm.

⁵⁶ High Court (2017), *Chief Executive of the HKSAR, Secretary for Justice V. President of the Legislative Council and Nathan Law Kwun Chung* (HCAL223/2016).

⁵⁷ High Court (2019), *Chow Ting vs. Teng Yu-yan Anne (the returning officer for the Hong Kong Island Constituency)* (HCAL804/2018).

⁵⁸ Catherine Lai, "Activist Joshua Wong files legal challenge against Hong Kong companies registry for denying registration for his party", *Hong Kong Free Press*, 18 April 2018, www.hongkongfp.com/2018/04/18/activist-joshua-wong-files-legal-challenge-hong-kong-companies-registry-denying-registration-party/; interview with Isaac Cheung on 3 June 2019.

⁵⁹ "黃之鋒代'眾志'收捐款惹質疑 政界：或涉'黑金'" (Joshua Wong receiving donations for Demosistō raised doubts, Politician: may involve 'black gold'), *Ta Kung Pao*, 24 May 2016, news.takungpao.com.hk/hkol/topnews/2016-05/3324015.html.

⁶⁰ Interview with Isaac Cheng on 3 June 2019.

⁶¹ Interview with Isaac Cheng on 3 June 2019.

⁶² Report of the Special Rapporteur on peaceful assembly, UN Doc. A/HRC/23/39 (2013), paras. 8, 11.

⁶³ Amnesty International, *Laws designed to silence: The global crackdown on civil society organizations* (Index: ACT 30/9647/2019).

HONG KONG CONFEDERATION OF TRADE UNIONS

The Hong Kong Confederation of Trade Unions (HKCTU) was founded as an independent trade union after the 1989 Tiananmen crackdown and represents more than 90 affiliates and 190,000 members in Hong Kong from different sectors.⁶⁴ The HKCTU and its leaders have often been the target of criticism from pro-Beijing entities due to its firm stance on democracy in Hong Kong and mainland China. For instance, an HKCTU staff member was accused by pro-Beijing politicians of collusion with forces advocating for Tibetan independence after attending a seminar held in India by the Tibetan Youth Students in his personal capacity. The allegations, reported by China state-owned media in Hong Kong, were accompanied by calls for the government to enact national security legislation to prevent the growth of forces that advocate for Hong Kong's independence.⁶⁵

In October 2014, Chinese state-owned media in Hong Kong, followed by state media in China itself, accused HKCTU general secretary Lee Cheuk-yan of colluding with outside forces by receiving a huge amount of funding from the United States for disturbing Hong Kong's stability. The money in question was a grant from the American Center for International Labor Solidarity for HKCTU's labour rights programmes, and HKCTU had filed all necessary financial reports with Hong Kong's Inland Revenue Department as required. According to Mung Siu-tat, chief executive of HKCTU, the attacks by media and the pro-Beijing representatives created doubts among some union members that could negatively impact the union's member recruitment and mobilization in future social campaigns. The union was forced to spend lots of resources to mitigate this impact.⁶⁶

The right of associations with regard to funding includes the right to seek, receive and utilize resources from foreign sources.⁶⁷ The UN Human Rights Council has called on states not to criminalize or delegitimize activities in defence of human rights on account of the origin of funding.⁶⁸

HONG KONG ALLIANCE IN SUPPORT OF PATRIOTIC DEMOCRATIC MOVEMENTS OF CHINA

The Hong Kong Alliance in Support of Patriotic Democratic Movements of China (Hong Kong Alliance) was established in May 1989 during Hong Kong's demonstrations in support of the pro-democracy protests in Tiananmen Square in Beijing and in other cities in mainland China. The goals of the Hong Kong Alliance, which hosts the annual 4 June candlelight vigil in Hong Kong's Victoria Park, are to "release the dissidents, rehabilitate the 1989 pro-democracy movement, demand accountability [for] the June 4th massacre, end one-party dictatorship and build a democratic China".⁶⁹

In order to educate the public about what happened during the Tiananmen crackdown and to counteract censorship of the topic in mainland China, the Hong Kong Alliance opened the "June 4th Museum" in Hong Kong in 2014 but was forced to close it in 2016 due to repeated complaints from property owners and other harassment that disrupted its operation. In April 2019, the museum reopened in a new location.

Weeks before the scheduled re-opening, people broke into the museum and poured salt water in electrical sockets and switch boxes.⁷⁰ According to Richard Tsoi, the vice-chairperson of the Hong Kong Alliance, some of the people who were working on the re-opening of the museum told the organization's leaders they were threatened by mainland authorities, in both Hong Kong and mainland China, to provide information about the museum and cause damage to it. Tsoi said that, days after the break-in, people poured sewage at the rear stairs of the building. Some property owners around the new museum told the Hong Kong Alliance that the museum was causing them "inconvenience". During the opening ceremony and in the first few days after re-opening, different government departments entered the museum to investigate its fire service equipment, electricity system and building structure, claiming they had received complaints but found nothing wrong.⁷¹

In April 2019, more than 10 young men gathered outside the building every day. Hong Kong Alliance leaders believed they were members of organized crime groups because some of the police officers who took up the

⁶⁴ HKCTU, *About HKCTU*, en.hkctu.org.hk/content/about-hkctu; Interview with Ming Lam on 29 May 2019.

⁶⁵ "職工盟鄧建華印度勾連藏獨" (HKCTU Tang Kin-wa colluded with 'Tibetan independence-ists' in India)", *Wen Wei Po*, 28 May 2018, news.wenweipo.com/2018/05/28/IN1805280002.htm.

⁶⁶ Interview with Mung Siu-tat on 10 May 2019.

⁶⁷ Report of the Special Rapporteur on peaceful assembly, UN Doc. A/HRC/23/39 (2013), para. 11.

⁶⁸ Human Rights Council Resolution, 22/6, Protecting human rights defenders, UN Doc. A/HRC/Res/22/6, para. 9(b).

⁶⁹ Hong Kong Alliance in Support of Patriotic Democratic Movement of China, *About Hong Kong Alliance*, hka8964.wordpress.com/hkaeng/#eng_who.

⁷⁰ Interview with Lo Wai-ming on 8 May 2019 and Richard Tsoi on 22 May 2019.

⁷¹ Interview with Richard Tsoi on 22 May 2019.

case in response to the Hong Kong Alliance's complaint belonged to the team handling organized crime and triads.⁷² Tsoi told Amnesty International:

We have had no dispute with any criminal groups and the guys did not ask us for money. If they were paid for the acts, it must be for political reasons and possibly by Chinese authorities. I believe no one in Hong Kong would spend money on taking action against us.⁷³

In addition to the groups mentioned above, the Civil Human Rights Front, the League of Social Democrats (both discussed elsewhere in this report) and several other groups told Amnesty International they are targeted due to their views or activism. Chinese and Hong Kong authorities' accusations of crossing the "red line", together with harassment from Chinese state media, have created an environment that discourages people and civil society groups from activism and political participation.

3.2 CENSORSHIP AND SELF-CENSORSHIP

The "red line" imposed by Beijing on Hong Kong's civil society has given rise to a political environment of censorship and self-censorship, which creates hurdles even for individuals and groups who advocate for grassroots rights and provide social services. NGO staff, social workers, academics and students limit their own expression and political engagement out of fear of being accused of threatening mainland China's sovereignty or of colluding with external forces. These types of accusations can result in loss of funding or income, as well as removal from academic institutions.

TERTIARY INSTITUTIONS

The Hong Kong government exercises significant influence over most universities in Hong Kong. These universities rely heavily on public funding, most members of their governing units are appointed by the government and the Chief Executive serves as the formal head of these institutions. Individuals or institutions that express dissenting views or views not in line with government policies could therefore face consequences in terms of resource allocation or job security, and even penalties or other sanctions.

"Hong Kong independence cannot be tolerated anywhere, and it is impossible to promote Hong Kong independence in institutions funded by public money. In addition, the students behaved badly... just like members of 'black society'."

Lau Ping-cheung, a member of the Council of the Hong Kong Polytechnic University and member of the National Committee of the Chinese People's Political Consultative Conference, March 2019⁷⁴

STUDENTS DISCIPLINED

In September 2018, the Polytechnic University student union established a "Lennon Wall", which takes its name from the 1980s Prague mural that was covered in Beatles-inspired lyrics of dissent against the Czechoslovakian Communist regime, to mark the fourth anniversary of the Umbrella Movement protests. Among other comments, messages supporting Hong Kong independence were posted on the wall. University management asked the student union to remove the "Lennon Wall" and covered the wall with red paper when the student union refused.⁷⁵

On 4 October 2018, students went to the office of the school management to request a meeting to discuss the "Lennon Wall". According to student leader Lam Wing-hang, several students and security personnel got into

⁷² Interview with Lo Wai-ming on 8 May 2019 and Richard Tsoi on 22 May 2019.

⁷³ Interview with Richard Tsoi on 22 May 2019.

⁷⁴ "Black society" in Hong Kong refers to organized crime groups, also referred to as "triad society" or triads, which are unlawful in Hong Kong. According to Hong Kong's Societies Ordinance, any society which uses rituals, titles or terminology commonly used by triad society is an unlawful society; "劉炳章：涉事學生像「黑社會」" (Lau Ping Cheung: Students involved are like members of "black society"), *NowNews*, 2 March 2019, news.now.com/home/local/player?newsId=339432.

⁷⁵ Interview with Lam Wing-hang on 6 June 2019 and two other Polytechnic University students in May and June 2019.

a physical altercation that resulted in a student, a professor and a security guard falling to the ground.⁷⁶ Student leaders then conducted a hunger strike in October, during which a pro-Beijing pressure group marched on campus to protest against the hunger strike and the students' promotion of independence.⁷⁷

A disciplinary committee initiated an investigation into the incident in November 2018 and later ruled that the students misbehaved by assaulting university staff, refusing to comply with regulations or orders during the 4 October altercation and conducting themselves in a manner that damaged the university's reputation.⁷⁸ In March 2019, the Polytechnic University took disciplinary action against four students connected to the dispute over the "Lennon Wall". Former student union leader Lam Wing-hang was suspended for a year, another student was expelled from the university and two more students were ordered to do community service.⁷⁹ In a response to Amnesty International, the university stated that the disciplinary ruling against the students was made on the basis of their misconduct, after a detailed investigation and in accordance with their codes and procedures, and "the ruling bears no relation to the freedom of speech".⁸⁰

A statement from 19 student organizations from local universities argued this process was a "farce", however, and that the true intent was to create a chilling effect and stop any discussion on campus that the authorities deemed "sensitive".⁸¹

Universities influenced by the Hong Kong government, which in turn has adopted the mainland government's "red line" against any advocacy of independence, are concerned about "promotion" of independence on campus. Yet this cannot be an excuse to stifle freedom of expression, including through creation of "Lennon Walls", as protected in international human rights law and the Basic Law. The right to education depends on enjoyment of academic freedom by staff and students alike.⁸²

TEACHING STAFF DISCIPLINED

Former Polytechnic University staff member Cheng Chung-tai is a member of Hong Kong's Legislative Council (LegCo) and the chairperson of Civic Passion, a political party that advocates for Hong Kong's autonomy.⁸³

In October 2016, Cheng Chung-tai inverted the small national flags of China and the HKSAR on several LegCo members' desks in the legislature chamber to protest against the pro-Beijing lawmakers who had intervened to disqualify several pro-democrat and pro-independence lawmakers from taking office. Police arrested him in April 2017 and a court convicted him of "desecrating the national flag and regional flag" and fined him in September that year.⁸⁴

In January 2018, the Polytechnic University informed Cheng that the staff discipline committee had found his conduct at LegCo and the related conviction to be "inconsistent with the university's commitment to quality education and aspiration to embrace internationalization".⁸⁵ Cheng said the university informed him his teaching contract would therefore not be renewed after it expired in June 2018.⁸⁶

In its response to Amnesty International the university said the disciplinary decision was made in accordance with established personnel management procedures after taking into account the seriousness of Cheng's behaviour, the judgement of the court and the nature of his work. The university further stressed that it recognizes academic freedom and freedom of speech as its core values and accommodates various forums on academic topics, including contentious social issues.⁸⁷

⁷⁶ Interview with Lam Wing-hang on 6 June 2019.

⁷⁷ "‘珍惜群組’ 理大校園抗議學生會絕食 支持收回民主牆管治權" (Treasure Group protested at campus of Polytechnic University against Student Union's hunger strike, supported taking back the right to manage the Democratic Wall), *Sing Tao Daily*, 6 October 2018, bit.ly/2TfVBud.

⁷⁸ "Reasoning of the SDC's decision" sent by the Polytechnic University to Lam Wing-hang on 1 March 2019; Interview with Lam Wing-hang on 6 June 2019 and two other Polytechnic University students in May and June 2019.

⁷⁹ Interview with Lam Wing-hang on 6 June 2019 and other Polytechnic University students in May and June 2019.

⁸⁰ Letter to Amnesty International from Miranda Lou, Executive Vice President of the Polytechnic University of 12 September 2019.

⁸¹ HKUSU verified Facebook page, 學子不愚爾益愚 千里函關囚獨夫 - 大專學界就理大民主牆事件紀律聆訊之聯合聲明 (The Leaky Dam Over the Cornerstone - Statement from Students' Unions of Higher Institutions on the Hearing on the HKPUSU's Democracy Wall Incident [2018-03-02]), www.facebook.com/hkusupage/photos/a.512349045490265/2137084119683408/?type=3; "Reasoning of the SDC's decision" sent by the Polytechnic University to Lam Wing-hang on 1 March 2019.

⁸² Committee on Economic, Social and Cultural Rights General Comment 13, para. 38.

⁸³ Interview with Cheng Chung-tai on 3 July 2019.

⁸⁴ Legislative Council, *Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon Cheng Chung-tai*, April 2018, www.legco.gov.hk/yr16-17/english/invest/ic_cct/report/ch2-e.pdf.

⁸⁵ Letter from the Director of Human Resources of the Polytechnic University sent to Cheng Chung-tai on 12 January 2018.

⁸⁶ Interview with Cheng Chung-tai on 3 July 2019.

⁸⁷ Letter to Amnesty International from Miranda Lou, Executive Vice President of the Polytechnic University of 12 September 2019.

Hong Kong's law that criminalizes "desecration" of the national and regional flags violates the right to freedom of expression.⁸⁸ It is not in line with international standards, which provide that no one may be punished for simply criticizing or insulting a nation, the state or its symbols. The university's response to Cheng Chung-tai's actions in LegCo further compounds the restriction of his right to freedom of expression imposed by Hong Kong authorities.

ATTACKS ON LAW PROFESSOR BENNY TAI'S SPEECH

Benny Tai has been targeted by the Chinese authorities since he initiated the Occupy Central campaign in 2013. One of the strongest reactions followed his remarks at a seminar in Taiwan on 25 March 2018. During his remarks, Tai commented that when China becomes a democracy, one option for Hong Kong to exercise its right to self-determination was through independence.⁸⁹

Pro-Beijing Hong Kong media covered Tai's remarks extensively, but their commentary distorted the original content by claiming he had colluded with groups advocating independence of Tibet, Xinjiang, Mongolia and Taiwan from China and was plotting Hong Kong's independence.⁹⁰ The Hong Kong government issued a statement on 30 March 2018, saying the HKSAR government was "shocked by the remarks made by a university teaching staff member that Hong Kong could consider becoming an independent state, and strongly condemns such remarks".⁹¹

On 31 March 2018, mainland China's two major Hong Kong affairs authorities, the State Council's Hong Kong and Macau Affairs Office (HKMAO) and the Liaison Office in Hong Kong, gave statements to China's state media Xinhua News condemning Benny Tai for "preaching Hong Kong independence", "colluding with external separatist forces" and violating the principle of "one country, two systems". They urged the Hong Kong government to "regulate" such acts by law in order to safeguard China's sovereignty and security.⁹² Almost all of Hong Kong's pro-establishment lawmakers immediately issued a joint denunciation echoing the central government's statements.⁹³

In the following weeks, various Chinese and Hong Kong government officials continued to condemn Benny Tai's comments. Media in both the mainland and Hong Kong published commentaries echoing the official line that freedom of speech was not an excuse when it came to threats to national security and calling on the Hong Kong government to expedite enactment of national security legislation as required under Article 23 of the Basic Law.⁹⁴ The calls in the media began to allege that Benny Tai had committed treasonable offenses and should not be allowed to teach at the University of Hong Kong.⁹⁵

On 16 May 2018, pro-Beijing LegCo member Junius Ho raised a formal question to the government in LegCo as to whether Benny Tai had committed any criminal offence.⁹⁶ A motion from another pro-Beijing lawmaker, Chan Hak-kan, was adopted that month and a debate was subsequently held on "the impact on the interests of Hong Kong and the country arising from the remarks made by Mr Benny Tai ... at a forum held in Taiwan

⁸⁸ HRC General Comment 34, para. 38.

⁸⁹ Jeffie Lam, "Can Benny Tai be prosecuted for independence remarks under Hong Kong Law? No, experts say", *South China Morning Post*, 2 April 2018, bit.ly/2ISXWhV.

⁹⁰ "「五獨合流」禍港 市民必須警惕" (The collusion of five factions of separatists detrimental to Hong Kong, public must be alert), *Wen Wei Po*, 24 March 2018, paper.wenweipo.com/2018/03/24/HK1803240014.htm; "「五獨」台北合流 戴耀廷鼓吹「建國」" (Five separatist factions collude in Taipei, Benny Tai advocated "founding a state"), *Ta Kung Pao*, 26 March 2018, www.takungpao.com.hk/hongkong/text/2018/03/26/154756.html.

⁹¹ HKSAR government Press Releases, *Response by HKSAR Government to media enquiries*, 30 March 2018, www.info.gov.hk/gia/general/201803/30/P2018033000690.htm.

⁹² "香港中联办负责人就戴耀廷发表「港独」言论表示极大愤慨和强烈谴责" (Liaison office head expressed great resentment and strong condemnation to Benny Tai's remarks about Hong Kong independence), *Xinhua News*, 31 March 2018, www.xinhuanet.com/2018-03/31/c_1122620238.htm; "国务院港澳办：坚决支持香港特别行政区政府依法规管「港独」分子与外部分裂势力的勾连活动" (HKMAO: Resolutely support the Hong Kong Special Administrative Region Government to control the collusion of "Hong Kong independence" elements with external separatist forces in accordance with the law), *Xinhua News*, 31 March 2018, www.xinhuanet.com/politics/2018-03/31/c_1122620087.htm.

⁹³ "立會建制派議員強烈譴責戴耀廷「港獨」言論損市民福祉" (Pro-establishment camp Legislative Council Members strongly condemned Benny Tai's 'Hong Kong independence' remarks for damaging the public interests), *Wen Wei Po*, 1 April 2018, news.wenweipo.com/2018/04/01/IN1804010030.htm.

⁹⁴ "Tai reveals his separatist ambitions", *China Daily Hong Kong edition*, 28 March 2018, www.chinadaily.com.cn/hkedition/2018-03/28/content_35930023.htm; "Topnews: Beijing supports Hong Kong authorities' lawful handling of independence activities", *Global Times*, 2 April 2018; Liu Lulu, "Editorial: HK must enact Basic Law Article 23 to rein in secession", *Global Times*, 2 April 2018, www.globaltimes.cn/content/1096380.shtml; Zhu Jianjian, "Hong Kong must uproot seeds of secession", *Global Times*, 3 April 2018, www.globaltimes.cn/content/1096507.shtml.

⁹⁵ Song Sio-chong, "Benny Tai may have committed treasonable offenses, sedition", *China Daily Hong Kong Edition*, 9 April 2018, www.chinadaily.com.cn/hkedition/2018-04/09/content_35994332.htm; Tony Kwok, "Tai must not be allowed to get off the hook this time", *China Daily Hong Kong Edition*, 9 April 2018, www.chinadaily.com.cn/hkedition/2018-04/09/content_35994334.htm.

⁹⁶ The Government of the Hong Kong Special Administrative Region, *LCQ5: Issues relating to the promotion of "Hong Kong independence"*, 16 May 2018, www.info.gov.hk/gia/general/201805/16/P2018051600529.htm?fontSize=1.

in March 2018”.⁹⁷ In answer to the motion, the Hong Kong government reiterated its condemnation of Benny Tai’s remarks and its stance that any remarks or advocacy relating to “Hong Kong independence” are absolutely unacceptable and intolerable.⁹⁸

Benny Tai was found guilty of “public nuisance”-related charges in April 2019 for his leading role in the Occupy Central campaign and the Umbrella Movement protests. The University of Hong Kong initiated a disciplinary proceeding against him after the conviction.⁹⁹

The condemnation of Benny Tai’s remarks about democracy, self-determination and independence from both the mainland and Hong Kong governments, under the guise of safeguarding “national security”, contradicts the right to freedom of expression as provided in international law and the Basic Law. Any restriction of the exercise of that right on the ground of “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”.¹⁰⁰

NGOS

Several staff members of NGOs in Hong Kong told Amnesty International that they have had difficulties navigating the changing political environment and its impact on their work. This is particularly so for organizations funded by the Hong Kong government. People reported they often felt they had to self-censor in order to continue their work.

“Kong”, an experienced social worker in charge of a youth centre, stated that most NGOs could not challenge the government or its policies in order to secure funding from the government and donations from the business sector.¹⁰¹ Concerning CSSA and Low-income Alliance, an umbrella organization that mobilizes other grassroots groups to participate in protests and assemblies, maintains networks with pan-democrat groups and advocates for policy change for the poor and vulnerable. However, because the organization lacks resources, it is vulnerable to government pressure and harassment and intimidation by Chinese state-media. Lee Tai-shing, the Chief Community Organizer of Concerning CSSA and Low-income Alliance, told Amnesty International:

We definitely are not able to pay for lawyers, we must abide by the law, we cannot get involved in anything which could have legal consequences ... The government video-records everything and prosecutes activists for minor issues. We have no idea who, when and what situations will be prosecuted, and what laws they will use to prosecute people.¹⁰²

He also noted that among the low-income and social security recipients the organization serves, the effect of the government’s prosecution and detention of protesters is even more chilling and that many of them believe that simply participating in protests and holding dissenting views are criminal offences.¹⁰³

Lee Tai-shing told Amnesty International about the reaction to his organization’s decision to provide office space to volunteers for politician Lee Cheuk-yan, who was campaigning for a seat in LegCo in 2018. According to Lee Tai-shing, it is common practice for various neighborhood social and political groups to use their space. But a China state-owned newspaper in Hong Kong reported this arrangement and criticized the organization, labelling it part of the “anti-China faction”.¹⁰⁴

Lee Tai-shing said that the newspaper report intimidated the organization’s staff, who, after warnings from funders, worried about the stability of the organization’s funding and whether they would be able to find another job in the social service sector if they needed to. One staff member told Lee that he was leaving the organization because of this concern.¹⁰⁵

In May 2019, a government-funded NGO issued mildly worded statements about the Umbrella Movement protests. According to the NGO head, “Christine”, other government-funded NGOs informally expressed their

⁹⁷ Legislative Council, *Motion for the Adjournment of the Council to be moved by Hon Chan Hak-kan*, 24 April 2018, www.legco.gov.hk/yr17-18/english/counmtg/motion/m_papers/cm20180509cb3-532-e.pdf.

⁹⁸ Legislative Council, *Official Record of Proceedings Thursday, 24 May 2018, The Council continued to meet at Nine o'clock*, 24 May 2018, p. 10982, www.legco.gov.hk/yr17-18/english/counmtg/hansard/cm20180524-translate-e.pdf#nameddest=r4a.

⁹⁹ Interview with Benny Tai on 28 August 2019.

¹⁰⁰ Principles 2(a) and 2(b) of the Johannesburg Principles.

¹⁰¹ Interview with “Kong” on 24 May 2019.

¹⁰² Interview with Lee Tai-shing on 20 May 2019.

¹⁰³ Interview with Lee Tai-shing on 20 May 2019.

¹⁰⁴ “李卓人「獨」椿腳滲油尖旺社區” (Pro-independent affiliated group of Lee Cheuk-yan infiltrated into the Yaumatei, Tsimshatsui and Mongkok communities), *Ta Kung Pao*, 17 November 2018, www.takungpao.com.hk/news/232109/2018/1117/206235.html.

¹⁰⁵ Interview with Lee Tai-shing on 20 May 2019.

concerns to her, including asking whether her NGO “was going too far”. She essentially felt this was peer pressure and that these warnings “created an atmosphere of fear”. “Christine” told Amnesty International:

As most government funded NGOs seemingly avoid challenging the government publicly, my NGO felt more pressure to issue critical public statements, such as the statements about the Extradition Bill issued in May 2019.¹⁰⁶

Front-line social workers face censorship when providing social services, according to “Ray” and “James”. One example they cited was not being permitted to rent out a room at a youth centre to partners wanting to show the award-winning film *Ten Years*, because the film, which was banned in mainland China, was deemed too sensitive.¹⁰⁷

For NGOs promoting human rights, including economic, social and cultural rights, freedom of association is essential not only for their own work and existence, but also for the enjoyment of human rights by their beneficiaries. Restrictions on freedom of association therefore threaten the enjoyment of all human rights.¹⁰⁸

MEDIA

Journalists working on China issues encountered the mainland “red line” earlier than many others in Hong Kong and have experienced direct censorship and interventions from mainland authorities. According to the annual press freedom index launched by the Hong Kong Journalists Association (HKJA) in 2013, Hong Kong has never scored above 50 on a scale of 1 to 100.¹⁰⁹ Journalists, NGOs and other civil society actors spoke to Amnesty International about deteriorating press freedom in Hong Kong and the pressure they felt to self-censor.

INTERVIEW ON 11 JUNE 2019 WITH “MICHAEL”, VETERAN JOURNALIST, ABOUT HIS EXPERIENCE WITH PRESSURE FROM MAINLAND OFFICIALS

“Michael” described to Amnesty International how his experience with pressure from Chinese authorities has changed over the last several years:¹¹⁰

Before 2013, Chinese officials suggested Hong Kong journalists use the positive news stories they provided if they found there was too much negative news. After 2013, these Chinese officials told us minutes after we reported negative news that we shouldn’t report it, especially news about Xi Jinping that did not follow the [official] line set by Xinhua or CCTV, such as when we reported about petitioners during his visits. Most of the pressure we journalists received was related to negative reporting about Xi Jinping or on Taiwan’s independence.

But the pressure has increased over the years. Last year, I received calls from government officials in Beijing once a week on average. They put pressure not just on me but also on the head of the news department and the owner of the media outlet. For example, mainland authorities demanded front-line journalists “play down” news about Taiwan’s independence. When journalists ignored the demand, the head of the news department delivered the same message. Then, the owner complained about the pressure from mainland authorities and warned the journalists to be cautious. My supervisor told me that people from the Liaison Office slammed the owner’s desk as they gave him instructions. The owner also asked me to seek sponsors from Chinese state-owned corporations to produce a news programme to promote the Guangdong-Hong Kong-Macau Greater Bay Area.

SELF-CENSORSHIP IN NEWS ORGANIZATIONS

Television Broadcasts Limited (TVB) is Hong Kong’s major television broadcaster, providing free television services and operating paid news channel TVBN.

In the early morning of 15 October 2014, a TVB news crew filmed several policemen assaulting an Umbrella Movement protester. According to “Peter”, a TVB journalist working on the Umbrella Movement protests at the time, when the footage first aired, the accompanying script read: “One of the protesters was dragged by the policemen to a dark corner, punched and kicked”. “Peter” said that, half an hour after the news was first broadcast, the head of the newsroom intervened and the script was changed to “The police had allegedly used

¹⁰⁶ Interview with “Christine” on 28 May 2019.

¹⁰⁷ Interviews with “Ray” and “James” on 20 June 2019.

¹⁰⁸ Report of the Special Rapporteur on peaceful assembly, UN Doc. A/HRC/23/39 (2013), para. 9.

¹⁰⁹ Hong Kong Journalist Association, *2019 Annual report*, July 2019, www.hkja.org.hk/PDF/HKJA_Annual_Report_2019_eng_s.pdf.

¹¹⁰ Interview with “Michael” on 11 June 2019.

physical force against the protester”.¹¹¹ In audio recorded secretly by an attendee at the editors’ meeting and subsequently uploaded online, the head of the newsroom can be heard scolding the journalists and saying the terms “dark corner” and “punch and kick” were too subjective.¹¹² “Peter” said the editor who handled the report was removed from further coverage of the Umbrella Movement the following week and subsequently assigned to a new position doing data collection. “Peter” told Amnesty International that, in the months following that incident, other journalists in the newsroom who issued a joint statement against the censorship were also assigned to other positions.¹¹³

In February 2015, at least seven of the 15–20 journalists in the TVB newsroom resigned. According to “Peter”, the resignations were not just related to the incident but, more generally, to TVB’s self-censorship when reporting on Occupy Central and Umbrella Movement protests.¹¹⁴

In a letter to Amnesty International, TVB did not comment on the specific case, but claimed that Amnesty’s reporting was a “blatant attempt to interfere with freedom of the press and [TVB’s] editorial judgement”.¹¹⁵

When journalists or news media refuse to self-censor, they may be subjected to pressure by other, more direct, means. In 2018, after the ban of the Hong Kong National Party, the “red line” of “national security” was extended to the mere discussion of independence. In August 2018, former Chief Executive and current mainland state leader Leung Chun-ying criticized the Foreign Correspondents’ Club (FCC) of Hong Kong for hosting the convenor of the Hong Kong National Party, Andy Chan, to give a luncheon talk during which he spoke about Hong Kong independence. In a post on Facebook, Leung wrote that Hong Kong independence was a “clear and absolute ‘red line’”.¹¹⁶

In October 2018, the moderator for the event, Victor Mallet, then vice-president at the Hong Kong FCC and Asia editor for the *Financial Times*, was denied extension of his Hong Kong work visa and refused entry into Hong Kong. The Hong Kong government has refused to disclose the reason for the denial.¹¹⁷ In the UN’s Universal Periodic Review of China in November 2018, the Hong Kong government claimed that “any concerns that Hong Kong’s freedom of speech and of the press is under threat are totally groundless” when talking about the refusal of Mallet’s visa extension but gave no further explanation.¹¹⁸

A free, uncensored and unhindered press or other media, which is able to comment on public issues and inform the public without restraint, is essential in any society to ensure freedom of opinion and expression and the enjoyment of other human rights.¹¹⁹ In its duties to protect and promote freedom of expression, a state must ensure that local laws, policies and practices, including pressure by third parties, do not compound the risk of self-censorship.

THE ENTERTAINMENT INDUSTRY

In the past decades, companies in the entertainment industry in Hong Kong have been working more closely with the industry in China. At the same time, there have been increasing reports of celebrities being

¹¹¹ Interview with “Peter” on 29 May 2019.

¹¹² 混沌 (Chaos), 暴徒當道 「懷疑」袁志偉堅持刪「拳打腳踢」聲帶流出 (Rioters in power: “Alleged” audio of Keith Yuen insisting deletion of “punch and kick” leaked), 16 October 2014, lin99percent.blogspot.com/2014/10/blog-post_12.html.

¹¹³ Hong Kong Journalists Association, *Seven news unions throw their weight behind TVB journalist*, 15 October 2014, www.hkja.org.hk/en/statements/seven-news-unions-throw-their-weight-behind-tvb-journalists/; Hong Kong Journalists Association, *HKJA express regrets over Ho’s re-assignment by TVB*, 3 November 2014, www.hkja.org.hk/en/statements/hkja-expresses-regrets-over-hos-re-assignment-by-tvb/; Interview with “Peter” on 29 May 2019.

¹¹⁴ Interview with “Peter” on 29 May 2019.

¹¹⁵ Letter from Stephanie Wong, TVB Senior Manager of Corporate & Community Relations Department to Amnesty International, 12 September 2019.

¹¹⁶ Leung Chun-ying verified Facebook profile, 外國記者協會應該知道港獨是絕對的和清晰的紅線 (Foreign Correspondents’ Club should know Hong Kong independence is the absolute and clear red line), 8 August 2018, www.facebook.com/leung.cy.108/posts/678101259219021; The Foreign Correspondents’ Club, Hong Kong verified Facebook page, *Video of FCC Club Lunch: Andy Chan Ho-tin, Convenor, Hong Kong National Party, on Hong Kong nationalism*, 14 August 2018, www.facebook.com/fccchk.org/videos/fcc-club-lunch-andy-chan-ho-tin-convenor-hong-kong-national-party-on-hong-kong-n/321168738655457/.

¹¹⁷ Amnesty International, *Hong Kong: Denial of Visa for FT journalist a chilling move against press freedom* (Index: ASA 17/9218/2018); HKSAR government Press Releases, *Transcript of remarks by CE at media session before Exco meeting*, 9 October 2018, www.info.gov.hk/gia/general/201810/09/P2018100900465.htm.

¹¹⁸ Constitutional and Mainland Affairs Bureau of HKSAR government, *The formal adoption by the United Nations Human Rights Council of the report by its working group on the Universal Periodic Review on the third review of the Hong Kong Special Administrative Region*, April 2019, www.legco.gov.hk/yr18-19/english/panels/ca/papers/ca20190415cb2-1179-3-e.pdf.

¹¹⁹ HRC General Comment 34, paras. 13 and 20.

“blacklisted” by the Chinese and Hong Kong entertainment industry for making public remarks on political issues that did not align with the official stance of the Chinese government.¹²⁰

Anthony Wong is a Cantopop star known for his band Tat Ming Pair and his solo work starting in the late 1990s. In 2012, he co-founded the Renaissance Foundation, an NGO that provides training and resources for independent artists. In 2013, he co-founded Big Love Alliance, an NGO promoting sexual minority equality, and actively participated in the Umbrella Movement in 2014.

Wong said that altering musical work to cater to the censorship in China was the norm in the music industry.

Asked if an artist could resist the censorship, Wong replied: “You could try, but most people in the record label company would not fight [to resist] with and for you.”¹²¹

Wong told Amnesty International that self-censorship among artists on China is very common on Facebook and Weibo, China’s microblog platform:

We have a huge following [on social media]. Through the interaction and the online discussions, you could feel the “red line”. When you use social media, you think about the “red line” very frequently – you think about what you should and should not say.¹²²

Wong used to have a Weibo account with more than 550,000 followers. He said his posts about Tiananmen and some natural disasters in China were deleted by the Weibo administrator and his account was permanently deleted in June 2014 after he posted about the civil referendum on the election of the Chief Executive held in June 2014.¹²³

Wong came out as gay in 2012 on stage during a Tat Ming Pair concert. At the time, it was very rare for celebrities to openly disclose their sexual orientation, but Anthony recalled the positive response after he came out compared to negative industry response to his political activities:

For a short period of time, I lost one or two jobs. But overall, I think more people approached me for collaboration after I came out. I don’t think coming out has impacted my work. The world was ready for this. It was my participation in the Umbrella Movement that got me into trouble.¹²⁴

3.3 DETENTION OF MISSING BOOKSELLERS IN MAINLAND

Five booksellers associated with a bookshop in Hong Kong went missing in Thailand, mainland China and Hong Kong between October and December 2015.¹²⁵ Each of the men worked for Mighty Current Media, a Hong Kong publishing company known for its books on Chinese leaders and political scandals. These books are banned in China but have long been popular with mainland Chinese tourists visiting Hong Kong.

On 4 February 2016, the Guangdong provincial government informed the Hong Kong government that three of the missing men who are Hong Kong residents – Lui Por, Cheung Chi-ping and Lam Wing-kee – had been placed under “compulsory criminal measures” on suspicion of involvement in “illegal activities in mainland China”.¹²⁶ When Lam Wing-kee returned to Hong Kong in June 2016, he held a press conference in which he said he had been arbitrarily detained, ill-treated in detention and forced to “confess”.¹²⁷

¹²⁰ Alice Su, “Defying China blacklist some Hong Kong celebrities are speaking out during the protests”, *Los Angeles Times*, 10 July 2019, www.latimes.com/world/asia/la-fg-hong-kong-denise-ho-un-china-censorship-20190710-story.html; Adam Wright, “Banned in China: why some of music’s top stars are blacklisted by Beijing”, *South China Morning Post*, 6 December 2017, bit.ly/2lQ3eul.

¹²¹ Interview with Anthony Wong on 28 July 2019.

¹²² Interview with Anthony Wong on 28 July 2019.

¹²³ “微博帳號被封鎖 黃耀明：箝制自由的手終於按到頭上了” (Weibo account blocked Anthony Wong: the hand that clamps down on freedom is finally pressing on our heads), *ET Today*, 21 June 2014, star.ettoday.net/news/370250.

¹²⁴ Interview with Anthony Wong on 28 July 2019. Alice Su, “Defying China blacklist some Hong Kong celebrities are speaking out during the protests”, *Los Angeles Times*, 10 July 2019, www.latimes.com/world/asia/la-fg-hong-kong-denise-ho-un-china-censorship-20190710-story.html; Adam Wright, “Banned in China: why some of music’s top stars are blacklisted by Beijing”, *South China Morning Post*, 6 December 2017, bit.ly/2lQ3eul.

¹²⁵ Amnesty International Hong Kong, *Open letter to Chief Executive on 5 missing booksellers*, 4 March 2016, www.amnesty.org.hk/en/open-letter-to-chief-executive-on-5-missing-booksellers/.

¹²⁶ HKSAR government Press Releases, *Police receive reply letter from the mainland on the four missing persons*, 4 February 2016, www.info.gov.hk/gia/general/201602/04/P201602041116.htm.

¹²⁷ Amnesty International Hong Kong, *Submission to Hong Kong Government on ICCPR implementation*, January 2018, p. 8, www.amnesty.org.hk/wp-content/uploads/2018/12/ICCPR-HKG-submission-final-20180112.pdf.

Another bookseller, Gui Minhai, went missing in Thailand in October 2015. On 17 January 2016, he appeared on Chinese state television broadcaster CCTV making a “confession” in which he said he had voluntarily surrendered to the Chinese authorities over his supposed involvement in a hit-and-run accident in 2003. He was released in October 2017 but detained again in January 2018.¹²⁸

The mainland authorities’ arbitrary detention of the booksellers for their legitimate publishing activities in the HKSAR was a direct attack on freedom of expression in Hong Kong. The Hong Kong government’s failure to seek a full and proper explanation of the booksellers’ vanishing and subsequent reappearance on the mainland fostered an environment of fear and increased self-censorship in Hong Kong’s publishing industry.¹²⁹

3.4 ADMINISTRATIVE RESTRICTIONS ON PROTESTS

PUBLIC ORDER ORDINANCE

Under Hong Kong’s Public Order Ordinance, those wishing to organize a protest are required to obtain a “Notice of No Objection” (NoNO) from the police before an assembly may proceed. Police have the power to prohibit public gatherings or impose requirements or conditions on public gatherings where the police “reasonably consider it necessary in the interest of national security or public safety, public order or for the protection of the rights and freedom of others”.¹³⁰

Under this ordinance, people who intend to organize any public meetings of more than 50 people or public processions of more than 30 people must normally give notice to the police at least seven days in advance.¹³¹ If an assembly or procession is not approved by the police, or does not receive a NoNO, the event is considered to be “unauthorized” and individuals organizing and participating in such activity can be subject to fines and imprisonment.¹³²

According to the ordinance, notice to the police to hold a public event should contain information on the organizers; the date, time, duration, location and route; the subject-matter of the event and the estimated number of participants.¹³³ According to Hong Kong Police’s General Information for Public Meetings/ Processions, the organizer “should with due diligence appeal to all participants to comply forthwith with any direction given to them by any police officer, and obey the existing laws and regulations” and needs to apply for permission to other government departments, as appropriate, to use premises under their administration.¹³⁴

Several Hong Kong NGOs told Amnesty International that the police often use this notification as a means to curtail and obstruct the right to peaceful assembly.¹³⁵

ENFORCEMENT OF THE PUBLIC ORDER ORDINANCE

The Civil Human Rights Front (CHRF), which organized three massive protests against the Extradition Bill in June–July 2019, has a long history of organizing social movements in Hong Kong. It was first founded in 2002 after pan-democrat and other civil society groups worked together to stage a protest of half a million people against the government’s National Security Bill. Since then, it has organized the annual 1 July protest rally to demand democracy and freedom and on other issues of public concern.¹³⁶

As an umbrella organization for approximately 50 local groups, the CHRF carries a certain amount of weight into negotiations with authorities. According to its leadership, however, the organization’s ability to mobilize large numbers of individuals to participate in events can also cause problems, including added scrutiny from

¹²⁸ Amnesty International, *Urgent Action: health fears for detained Hong Kong booksellers*, (Index: ASA 17/7817/2018).

¹²⁹ RTHK, *Publishers say self-censorship creeping in*, 17 July 2019, news.rthk.hk/rthk/en/component/k2/1468857-20190717.htm; China Digital Times, *Fear and Self-censorship at the Hong Kong Book Fair*, 31 August 2019, chinadigitaltimes.net/2017/07/fear-self-censorship-hong-kong-book-fair/.

¹³⁰ Article 9 and 11 of the HKSAR Public Order Ordinance, www.elegislation.gov.hk/hk/cap245.

¹³¹ Articles 7, 8 and 13 of the HKSAR Public Order Ordinance, www.elegislation.gov.hk/hk/cap245.

¹³² Articles 13 and 13A of the HKSAR Public Order Ordinance, www.elegislation.gov.hk/hk/cap245.

¹³³ Article 8 and 13A of the HKSAR Public Order Ordinance, www.elegislation.gov.hk/hk/cap245.

¹³⁴ Hong Kong Police Force, General information for public meetings / processions – other relevant legislation and advisory notes, revised August 2019, www.police.gov.hk/ppp_en/03_police_message/nono/generalinformation05.html.

¹³⁵ Interviews with Jackie Hung on 2 May 2019, “Daniel” on 8 May 2019, Mung Siu-tat on 10 May 2019, Avery Ng on 15 May 2019, Johnson Yeung on 16 May 2019, Jimmy Sham on 17 May 2019, Lee Tai-shing on 20 May 2019 and Ming Lam on 29 May 2019.

¹³⁶ Civil Human Rights Front, 成立背景及信念 (Founding background and beliefs), www.civilhrfront.org/?q=article/成立背景及信念.

the Hong Kong authorities and pro-Beijing groups if the events in question touch on topics authorities deem to be related to “national security” or Hong Kong’s democracy.¹³⁷

According to CHRF’s convenor, Jimmy Sham, during protests there have been lots of disputes between the police and protesters about logistics, such as when to pause protester marches to give way to vehicles, how many lanes of traffic should be given to the protesters and how to arrange booths set up by different groups during large-scale protests.¹³⁸

According to the CHRF’s former convenor, Johnson Yeung, and a key member of the group, Ivy Chan, five people were arrested in 2014 for allegedly “violating the Notice of No Objection” and for other charges stemming from the alleged failure to follow police orders during the 1 July 2014 protest rally, but were released after a short time.¹³⁹ A year later, in September 2015, the police informed them there was not enough evidence to prosecute. Johnson Yeung believes the arrests were simply meant to intimidate them.¹⁴⁰ Jimmy Sham told Amnesty International:

We submit a proposal to the police about the protest, the police send a NoNO to us, with or without negotiation. We have no choice but to sign, or the protest will become an “unauthorized assembly”. The NoNO is to regulate protesters, violating any requirement in the notification could lead to prosecution, and the police have the power to decide when to initiate a prosecution ...¹⁴¹

Other NGOs reported similar problems with notification requirements. In September 2016, the Hong Kong Alliance staged a demonstration of 32 people at the Liaison Office to call for the release of several villagers in mainland China without notifying the police, who then sent both oral and written warnings that the activity had been an “unauthorized assembly.”¹⁴² In June 2017, the police denied an application from the Hong Kong National Party to hold a vigil to mourn the “fall” of Hong Kong following its handover to China, on the grounds that the group’s advocacy for Hong Kong independence was not in accordance with the Basic Law.¹⁴³

The testimonies from interviewees and other cases documented echo the HRC’s concerns that the Public Order Ordinance and its implementation are not in line with international human rights law and standards on the right to peaceful assembly.¹⁴⁴ Any restrictions on qualified rights must be prescribed by law that is “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”.¹⁴⁵ The Hong Kong Commissioner of Police has the power to prohibit or impose conditions on peaceful public gatherings when he or she “reasonably considers [it] ... to be necessary ... in the interest of national security or public safety, public order or the protection of the rights and freedoms of others”.¹⁴⁶ These wide-ranging provisions in the Public Order Ordinance are vague and fail to meet the criteria of precision, as the commissioner is afforded sweeping discretion, no explicit safeguard as to the application of these powers is specified, the grounds of “public order” and “protection of the rights and freedoms of others” by themselves are not sufficiently “prescribed by law”, and “national security” is vaguely defined as “the safeguarding of the territorial integrity and the independence of the People’s Republic of China”.¹⁴⁷

In effect, the provisions of the Public Order Ordinance establish a system in which permission from police, not mere notification, is required to stage a protest. This runs counter to international law and standards that state authorities cannot require prior approval, although they can request notification to help facilitate orderly assemblies.¹⁴⁸

International human rights law and standards require authorities to actively assist organizers and participants of a peaceful assembly to exercise their rights. Any restrictions on the rights to peaceful assembly must meet the criteria of necessity and proportionality to meet a legitimate purpose. The burden is on the state to

¹³⁷ Interviews with Jackie Hung on 2 May 2019, “Daniel” on 8 May 2019 and Johnson Yeung on 16 May 2019.

¹³⁸ Interview with Jimmy Sham on 17 May 2019.

¹³⁹ Interviews with Ivy Chan on 11 May 2019 and Johnson Yeung on 16 May 2019.

¹⁴⁰ Interview with Johnson Yeung on 16 May 2019.

¹⁴¹ Interview with Jimmy Sham on 17 May 2019.

¹⁴² “支聯會接警方警告信指聲援烏坎遊行人數超出規定兩個人” (HKA received police warning as number of Wukan solidarity protest participants surpassed the regulated number (2 people), *Stand News*, 22 September 2016, bit.ly/2MOHQ4d).

¹⁴³ Elson Tong, “Hong Kong Police bans pro-independence group’s handover eve vigil”, *Hong Kong Free Press*, 28 June 2017, www.hongkongfp.com/2017/06/28/hong-kong-police-bans-pro-independence-groups-handover-eve-vigil/.

¹⁴⁴ Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/CHN-HKG/CO/3 (2013), para. 10; Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para. 19.

¹⁴⁵ See HRC communication No. 578/1994, *de Groot v. The Netherlands*, Views adopted on 14 July 1995.

¹⁴⁶ Article 9 and 11 of the HKSAR Public Order Ordinance, www.elegislation.gov.hk/hk/cap245.

¹⁴⁷ Article 2 of the Public Order Ordinance, www.elegislation.gov.hk/hk/cap245.

¹⁴⁸ Joint report of the Special Rapporteur on peaceful assembly and the Special Rapporteur on extrajudicial, summary or arbitrary executions (Special Rapporteur on extrajudicial executions) on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para. 23.

demonstrate this.¹⁴⁹ Police demands on the pace of CHRF's march in 1 July 2014, which led to the subsequent arrest of several protesters who led and organized the march, did not meet the relevant criteria when implementing the law, especially when the police provided no justification to demonstrate that the demands were necessary and proportionate to meet any legitimate purpose.

The government's barring of the Hong Kong National Party's peaceful assembly simply because the party advocated dissenting views was a violation of the rights to freedom of expression and peaceful assembly enshrined in Articles 21–22 of the ICCPR. Political parties have the freedom to promote ideologies unpopular with the government or the wider public without fear of retaliation.¹⁵⁰ Any restriction of human rights on the ground of national security is legitimate only when it is to protect a country against imminent violence or the use or threat of force.¹⁵¹

The UN Special Rapporteur on peaceful assembly and of association (Special Rapporteur on peaceful assembly) has stressed that assemblies should be presumed lawful and not to constitute a threat to public order.¹⁵² Although international law agrees that authorities could request prior notification of protest, the purpose is for the state to help facilitate orderly assemblies. Police's warnings to the Hong Kong Alliance that the completed peaceful demonstration was "unlawful" ran counter to the requirement on the role of the police to facilitate orderly assemblies.

3.5 POLICE USE OF FORCE AND INACTION

In addition to the excessive and unnecessary use of force cited in Chapters 3 and 5 of this report, there have been other instances where individuals and groups have complained about police use of force or inaction over the past five years.

PHYSICAL VIOLENCE

One incident involving excessive use of force by police occurred at a protest on 13 June 2014 against the North East New Territories New Development Project. Activists and affected villagers have protested for years against this major infrastructure project proposed by the government, criticizing the problematic policy-making process and raising concerns about alleged collusion between government and property developers, the potential forced evictions of local villagers and the creation of residential areas designated specifically for people from mainland China.¹⁵³

In the early hours of 14 June 2014, more than 300 protesters remained at the LegCo Complex after the protest had officially ended, waiting for police to arrest them in an act of non-violent direct action. Chow Nok-hang, Wong Weng-chi and three other people were taken outside the protest site, where many journalists were watching, and placed inside a police van.

According to Chow, police then beat the five protesters. There was no CCTV in the police van, the window curtains were closed, the lights switched off and he was told to lower his head.¹⁵⁴ He therefore was not able to identify who beat him in the darkness. Several policemen randomly beat the group after the van set off for the police station.

Wong and Chow filed a court case against the police officers seeking remedy. Wong told Amnesty International it had been very stressful. The Legal Aid Department rejected his application because the chance to win the case was very low, and he could not provide enough evidence of the assault as there was no CCTV in the police van.

Chow told Amnesty International:

¹⁴⁹ Report of the Special Rapporteur on peaceful assembly, UN Doc. A/HRC/23/39(2013), paras. 24.

¹⁵⁰ Report of the Special Rapporteur on peaceful assembly, UN Doc. A/68/299 (2013), para. 38.

¹⁵¹ Principle 2(a) of the Johannesburg Principles.

¹⁵² Report of the Special Rapporteur on peaceful assembly, UN Doc. A/HRC/23/39 (2013), para. 50.

¹⁵³ Updated background brief on the proposed North East New Territories New Development Areas, *Legislative Council*, 15 July 2013, www.legco.gov.hk/yr12-13/english/panels/dev/papers/dev0715cb1-1461-2-e.pdf.

¹⁵⁴ Interview with Chow Nok-hang on 13 June 2019.

It is useless to complain about the police. The success rate of accusing police of assault is almost zero ... Regarding the case for compensation, policemen are very skilful when beating others, and the benefit of the doubt would go to the accused police [so] the success rate is very low.¹⁵⁵

The government has installed CCTV surveillance systems at areas in police stations where police handle arrestees. In 2014, lawmakers requested that the government install CCTV in the compartments of police cars to record possible assaults on police and also to prevent abuse by police officers. However, the government refused, claiming it involves “complicated and sensitive issues”, such as privacy.¹⁵⁶

According to the Hong Kong government, in the years between 2009 and 2013, none of the complaints alleging assault by police officers could be “substantiated”.¹⁵⁷

The current police complaint mechanism has been criticized for its lack of independence. The UN HRC expressed concern that investigations of police misconduct were carried out by the police through the Complaints Against Police Office (CAPO) and that the Independent Police Complaint Council (IPCC) has only advisory and oversight functions to monitor and review the activities of the CAPO. The HRC recommended that the Hong Kong government establish an independent mechanism mandated to conduct independent, proper and effective investigations into complaints about the inappropriate use of force or other abuse of power by the police.¹⁵⁸

OBSTRUCTION, HARASSMENT AND INTIMIDATION

Civil society groups have reported many instances of surveillance, harassment and intimidation, both by government authorities and unidentified people. Activists interviewed believed individuals who followed them and assaulted them at protests were in fact not plain-clothes police officers but members of organized crime groups.¹⁵⁹

On 28 June 2017, ahead of President Xi Jinping’s visit to Hong Kong, police arrested 26 protesters for staging a sit-in at the Golden Bauhinia Square, a space symbolic of Hong Kong’s handover to China. According to Avery Ng, chairman of the League of Social Democrats (LSD), who was among those arrested, the police extended their detention so that they were not able to carry out other protests during Xi’s visit.¹⁶⁰

Before the flag-raising ceremony started on the morning of 1 July 2017, protesters gathered for a march. They found themselves surrounded by hundreds of pro-Beijing counter-protesters who had already gathered approximately 10 meters from the march’s starting location and blocked it from moving forward. Protesters urged the police officers to intervene, but the police did not separate the groups to facilitate the protests. Several people attacked LSD members and destroyed a prop in front of the police. The police made several arrests only after the prop was destroyed. It was later revealed in court that one of the persons arrested was a member of an organized crime group.¹⁶¹

While protesters continued to urge police to facilitate the march, the police took away LegCo member Leung Kwok-hung and protester Raphael Wong. Police placed them into a police van, drove them to the police headquarters several blocks away and then released them, claiming they had removed the pair from the protest to protect their security.¹⁶² Avery Ng, Joshua Wong and another activist were also taken away from the protest site in another police van. All three were handcuffed and the police released the three hours later, again claiming that the police removed them from the protest site to protect their security, but the result was that these protest leaders were deterred from staging a protest before the flag-raising ceremony.¹⁶³ Avery Ng commented on the men who attacked the protesters:

I am not convinced that the “black society” members attacked us because of political views, their love of the Communist Party or hatred for the League of Social Democrats ... The only rule is that what the “black society”

¹⁵⁵ Interview with Chow Nok-hang on 13 June 2019.

¹⁵⁶ Legislative Council, *Official Record of Proceedings Wednesday, 9 July 2014*, p.16055–16064, www.legco.gov.hk/yr13-14/english/counmtg/hansard/cm0709-translate-e.pdf#nameddest=orq.

¹⁵⁷ Legislative Council, *Official Record of Proceedings Wednesday, 9 July 2014*, p.16056, www.legco.gov.hk/yr13-14/english/counmtg/hansard/cm0709-translate-e.pdf#nameddest=orq.

¹⁵⁸ Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/CHN-HKG/CO/3 (2013), para. 12.

¹⁵⁹ Interview with Raphael Wong on 21 April 2019, Avery Ng on 15 May 2019 and Tse Kee-on on 19 June 2019.

¹⁶⁰ Interview with Avery Ng on 15 May 2019.

¹⁶¹ Interview with Avery Ng on 15 May 2019.

¹⁶² Interview with Raphael Wong on 21 April 2019.

¹⁶³ Interview with Avery Ng on 15 May 2019 and Raphael Wong on 21 April 2019.

does is done for money ... The difficulty is, we could never get the evidence to prove who paid them and for what purpose.¹⁶⁴

In the handling of public assemblies, it is the primary responsibility of the police to facilitate and protect the exercise of the right to freedom of peaceful assembly. The duty to facilitate assemblies applies equally to simultaneous assemblies and to counter demonstrations.¹⁶⁵ However, counter-demonstrations should not seek to impede participants from the initial assembly. Police have a duty to protect the main assembly from any unlawful interference by counter-demonstrators,¹⁶⁶ including from violent acts. Violent intention or actions of counter-demonstrators should not be used as a justification to prohibit the initial assembly.¹⁶⁷

The police failed to fulfil their duty to enable people to exercise their right to peaceful assembly on 1 July 2017 by not protecting the protesters from the counter-protesters. Moreover, taking the protest leaders away from the site appears to have been undue interference in the protest.

Police have also collected information through surveillance at protests, which has intimidated activists and negatively impacted their ability to exercise their rights to freedom of association and peaceful assembly. The HRC also expressed concerns based on the right to privacy about use of camera and video-recording during demonstrations by the Hong Kong police and recommended the police establish clear guidelines for their use and make these public.¹⁶⁸

On many occasions, police video-recorded activist Wong Weng-chi as he used loudspeakers to lead or facilitate protests. On 4 June 2014, when protesters marched to the Liaison Office after the candlelight vigil held by the Hong Kong Alliance, Wong Weng-chi noticed that a team of police jotted down the details of people who were leading the march.¹⁶⁹

“Kelvin”, an ex-staff member of an international NGO, used to work very closely with human rights defenders in mainland China. He described an experience of being harassed by an unknown individual:

Last year, I was meeting a group of human rights defenders at a cafe. During the meeting, I discovered a man who kept taking pictures of us. I confronted him, asking why he was taking pictures. He only said he was waiting for someone. After the meeting, the man followed me all the way back to our office building. He then stood outside of our office building for at least an hour.¹⁷⁰

Amnesty International has documented numerous cases in which NGO workers and activists in China have faced surveillance and harassment by non-state actors while doing human rights work.¹⁷¹ “Kelvin” said his experience was strikingly similar to that of some of the NGO workers in China:

I was very shocked ... It had never happened to me before. I felt that the risk of working with human rights defenders in Hong Kong is now more similar to that faced by NGO workers in China. I felt very scared.¹⁷²

3.6 PROSECUTIONS

In the past few years, the Hong Kong government has prosecuted increasing numbers of peaceful protesters for crossing the “red line”. Most protesters have been charged under vaguely defined clauses in the Public Order Ordinance, but authorities have also used some rarely used offences, often to seek harsher penalties. Activists said the lengthy legal procedures and the increasing likelihood of imprisonment has created a chilling effect among individuals and civil society groups.

¹⁶⁴ Interview with Avery Ng on 15 May 2019.

¹⁶⁵ Joint report to the Human Rights Council, Special Rapporteur on peaceful assembly and the Special Rapporteur on extrajudicial executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para.14.

¹⁶⁶ European Court of Human Rights Chamber (1988), *Plattform “Ärzte für das Leben (Doctors for the Right to Life) v. Austria* (10126/82).

¹⁶⁷ European Court of Human Rights Fourth Section (2010), *Christian Democratic Party v. Moldova (No.2)*, (25196/04).

¹⁶⁸ Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/CHN-HKG/CO/3 (2013), para. 10.

¹⁶⁹ Interview with Wong Weng-chi on 23 May 2019.

¹⁷⁰ Interview with “Kelvin” on 19 June 2019.

¹⁷¹ See, for example, Amnesty International, *Urgent Action: Labour activists held in secret detention* (Index: ASA 17/0790/2019); Amnesty International, *Urgent Action: Two activists released in China* (Index: ASA 17/2097/2015); Amnesty International, *China: Drop charges against five women detained for campaigning against sexual harassment* (Press Release, 12 March 2015).

¹⁷² Interview with “Kelvin” on 19 June 2019.

PUBLIC ORDER ORDINANCE AND CHARGES FREQUENTLY MISUSED

The Hong Kong government has prosecuted more than 100 people for their peaceful activism since 2014. Many of the prosecutions were on vague charges related to “unlawful assembly”, “unauthorized assembly” and “public disorder”. These charges are based on the Public Order Ordinance, the provisions and application of which have been repeatedly criticized by the HRC for failing to meet international human rights law and standards on the right to peaceful assembly.¹⁷³

In addition, the government has also tried to prosecute peaceful protesters on other charges, such as criminal “contempt of court” and “public nuisance”.

The government, for instance, prosecuted more than 30 people on the charge of criminal contempt of court when police officers and court bailiffs were clearing protest sites during the 2014 Umbrella Movement protests. Most of these people were not involved in any violent acts but were found guilty of criminal contempt for questioning the execution of injunction orders to clear the protest site or for staying at the protest site. Most received suspended sentences, but several were imprisoned.¹⁷⁴ The prosecutions have caused hardship and uncertainty for activists, even when they did not result in imprisonment.

CHIU CHI-SUM, 70, ACTIVIST¹⁷⁵



Chiu Chi-sum distributing leaflets in Mongkok in 2017. (Photo credit: LSD).

Chiu Chi-sum took care of a booth in Mongkok during the Umbrella Movement protests. On 26 November 2014, the police, together with court bailiffs and others, cleared protest sites in Mongkok. Chiu Chi-sum and other protesters did not leave the site as required but questioned the clearing and retreated slowly. They were then arrested by police, detained overnight and released on bail. He was prosecuted on the criminal charge of contempt of court.

Chiu had worked as a maintenance worker in an NGO for 12 years, providing home safety services for elderly blind people. In May 2015 to November 2017, he had to frequently take leave to handle legal assistance and other case procedures. He was convicted of criminal contempt of court in October 2017. NGOs usually do not employ people with criminal records to provide social services. In November 2017, he was informed that he would be sentenced in December. To prepare for this, Chiu repeatedly asked his employer about the arrangements if he was imprisoned but received no answer. To avoid affecting his clients, he resigned and left his job by the sentencing date but found himself sentenced to suspended imprisonment. At 68 years old, he could not find another full-time job but only manual labour and is now employed on a daily basis without any benefits.

¹⁷³ Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/CHN-HKG/CO/3 (2013), para. 10; Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para. 19.

¹⁷⁴ High Court (2018), *Secretary for Justice v. Chau Wan-ying, Chu Wai-lun, Chu Pui-yan, Kwok Yeung-yuk, Shum Lester, Chiu Chi-sum, Chan Po-ying, Cheung Kai-hong, Kwan Siu-wang, Hung Cheuk-lun, Fung Kai-hei, Choi Tat-shing, Szeto Tze-long Jason, Wong Chi-fung, Mak Ying-sheung, Wong Ho-ming* (HCMP 774, 776, 778, 780, 781, 783, 784, 787-789, 791-793, 795, 796, 798 /2015); High Court 2016, *Secretary for Justice v. Siew Yun-long, Law Wai-yan, Chan Jeffrey, Chan Wai-fung, Au Yuk-kwan, Wong Ka-yee, Chan Ao-tien, Chan Pak-tao, Lou Tit-man, Leung Hon-lam* (HCMP 2917, 2920-2923, 2926, 2928-2929, 2931-2932/2015); High Court 2019, *Secretary for Justice v. Wong Chi-fung* (HKCA548/2019).

¹⁷⁵ Interview with Chiu Chi-sum on 19 June 2019.

The government prosecuted eight protesters on charges of “unlawful assembly”, “obstructing a police officer in the execution of duties” and other charges for a protest against the interpretation of the Basic Law by the SCNPC held outside the Liaison Office on 6 November 2016. Seven were found guilty, mainly for shaking and trying to scale the metal barriers set up by police to protect the entrance of the Liaison Office.¹⁷⁶

Fifteen land rights activists were imprisoned for protests staged in 2014 against the North East New Territories New Development Project. The 15 protesters were convicted of “unlawful assembly” and other charges, and most of them sentenced to suspended or short sentences of imprisonment.¹⁷⁷

These cases also demonstrate the government’s approach to prosecuting the protesters and seeking harsh sentences. For example, in 2016, the government appealed against the non-custodial sentences granted by the Magistrates’ Court to 13 of the protesters. The Court of Appeal sentenced the protesters to 8–13 months’ imprisonment in 2017.¹⁷⁸ Although the Court of Final Appeal reduced the sentences to less than six months, activists said the imprisonment has created a chilling effect.¹⁷⁹

Activist Yip Po-lam staged a sit-in at the LegCo chambers against the North East New Territories New Development Project in 2014. She told Amnesty International how the authorities were using any means to charge protesters. At the time, the court usually awarded non-custodial sentences to peaceful protesters who were convicted of “unlawful assembly”. To seek a harsher sentence in her case the authorities chose an obscure LegCo “administrative instruction” that would allow for a term of imprisonment. She said:

As the administrative instruction is not very precise and was seldom used to prosecute, there was more space for the government to interpret the rules as needed to convict me.¹⁸⁰

She was sentenced to two weeks’ imprisonment.¹⁸¹

Prosecuting protesters has also substantially impeded the function of some civil society groups. According to Avery Ng, LSD had to deal with more than 10 prosecutions in 2016 and 2017. All of the organization’s office-holders, except the treasurer, were prosecuted. In addition to psychological stress, the court cases also led to financial stress and cost the party lots of resources and time.¹⁸²

SEEKING THE MAXIMUM PENALTY

When the Court of Final Appeal overturned the jail sentences handed down to student leaders Joshua Wong, Alex Chow and Nathan Law in February 2018 (see Chapter 3), it agreed that the court needed to emphasize deterrence and punishment in large scale unlawful assembly cases involving violence. This sentencing guideline could result in heavier sentences for organizers and participants of future assemblies.

After the prosecution of the three student protesters in 2017 for “unlawful assembly”, civil society organizations became more cautious about whether to stage protests that could be charged under the Public Order Ordinance. Activists have said that because of their limited human and financial resources they are cautiously thinking through whether to organize peaceful protests or not, as they could not bear to divert their energy and limited resources to defend themselves in court if they were to stand trial.¹⁸³

When nine Umbrella Movement leaders were prosecuted on “public nuisance”-related charges in April 2019 (see Chapter 3), prosecutors took the relatively rare step of charging them under a common-law offence, which carries a maximum penalty of seven years’ imprisonment, instead of imposing the charges of “public nuisance” under statutory law, which carries a maximum penalty of three months’ imprisonment and a fine. It was the first time the Hong Kong government had used such charges against peaceful protesters. On 24 April 2019, law professor Benny Tai and sociology professor Chan Kin-man were sentenced to 16 months’

¹⁷⁶ West Kowloon Magistrates’ Courts (2019), *Secretary for Justice v. Ng Man-yuen Avery, Ip Chi-hin, Chan Man-wai, Lo Tak-cheong, Chau Shu-wing, Chau Dickson Ka-faat, Cheng Pui-lun* (WKCC3654/2017).

¹⁷⁷ High Court (2017), *Secretary for Justice v. Leung Hiu Yeung, Wong Ho Ming, Lau Kwok Leung, Leung wing Lai, Lam Long Yin, Chu Wai Chung, Ho Kit Wang, Chow Koot Yin, Yim Man Wa, Chiu Hin Chung, Kwok Yiu Cheong, Wong Kan Yuen and Chan Pak Shan* (CAAR3/2016); Court of Final Appeal (2019), *HKSAR v. Yip Po Lam and Wong Kan Yuen* (FAMC54/2018).

¹⁷⁸ High Court (2017), *Secretary for Justice v. Leung Hiu Yeung, Wong Ho Ming, Lau Kwok Leung, Leung wing Lai, Lam Long Yin, Chu Wai Chung, Ho Kit Wang, Chow Koot Yin, Yim Man Wa, Chiu Hin Chung, Kwok Yiu Cheong, Wong Kan Yuen and Chan Pak Shan* (CAAR3/2016).

¹⁷⁹ Interviews with “Daniel” on 8 May 2019, Lee Tai-shing on 20 May 2019, Avery Ng on 15 May 2019, Wong Weng-chi on 23 May 2019 and Chow Nok-hang on 13 June 2019.

¹⁸⁰ Interview with Yip Po-lam on 3 May 2019.

¹⁸¹ Court of Final Appeal (2019), *HKSAR v. Yip Po Lam and Wong Kan Yuen* (FAMC54/2018).

¹⁸² Interview with Avery Ng on 15 May 2019.

¹⁸³ Interviews with Lee Tai-shing on 20 May 2019, Avery Ng on 15 May 2019, “Daniel” on 8 May 2019 and Wong Weng-chi on 23 May 2019.

imprisonment, and political party leader Raphael Wong and lawmaker Shiu Ka-chun were each sentenced to eight months' imprisonment.¹⁸⁴

These convictions and sentences could have a long-term negative impact on the enjoyment of the freedoms of expression and peaceful assembly in Hong Kong. Prosecutors cited press conferences, media interviews and public meetings in which the pro-democracy leaders discussed their non-violent campaign of direct action as key evidence to support their accusations of unlawful behaviour.¹⁸⁵

¹⁸⁴ District Court (2019), *HKSAR v. Tai Yiu Ting, Chan Kin Man, Chu Yiu Ming, Shiu Ka Chun, Cheung Sau Yin, Wong Ho Ming, Raphael and Lee Wing Tat* (DCCC480/2017).

¹⁸⁵ District Court (2019), *HKSAR v. Tai Yiu Ting, Chan Kin Man, Chu Yiu Ming, Shiu Ka Chun, Cheung Sau Yin, Wong Ho Ming, Raphael and Lee Wing Tat* (DCCC480/2017).

4. THE EXTRADITION BILL PROTESTS

“If we can’t stop [the bill], everything would come to an end. It was a very simple thought – if we could not stop them that day, Hong Kong would be finished. There wouldn’t be another movement.”

“Samuel”, protester and university student¹⁸⁶

On 13 February 2019, the Hong Kong government announced a 20-day consultation for the proposed Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation Bill (the Extradition Bill), which would have allowed the handover of persons in the territory of Hong Kong to mainland China as well as other jurisdictions.¹⁸⁷ If enacted, the law would extend the power of the mainland authorities to target critics, human rights activists, NGO workers and anyone else in Hong Kong. It would expose individuals to mainland China’s justice system, which has a well-documented record of arbitrary detention, torture and other ill-treatment, serious violations of fair-trial rights, enforced disappearances and various systems of incommunicado detention without trial.¹⁸⁸

From March to June 2019, different parties, including foreign governments, publicly voiced their concerns about the proposed amendments.¹⁸⁹ A series of protests started in April 2019 demanding that the Hong Kong government withdraw the proposed amendments.

“Rachel”, who had joined the Umbrella Movement when she was a university student, told Amnesty International why she joined the protests against the Extradition Bill after being inactive since 2014:

I joined the protests against the Extradition bill because it has imminent threat to all of us. After the Umbrella Movement, many people of my age were arrested just for assembling peacefully to express their views. Once convicted, their future will be doomed. I therefore had hesitated to participate in protests in the past few years. The Extradition Bill protests are an explosion of the accumulated discontent with the government.¹⁹⁰

¹⁸⁶ Interview with “Samuel” in June 2019.

¹⁸⁷ Legislative Council, *Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019*, www.legco.gov.hk/yr18-19/english/bills/b201903291.pdf.

¹⁸⁸ Amnesty International, *China: “Where are they?”* (Index: ASA 17/9113/2018); Amnesty International, *China’s deadly secrets* (Index: ASA 17/5849/2017); Amnesty International, *No end in sight-Torture and forced confessions in China* (Index: ASA 17/2731/2015).

¹⁸⁹ David Brunnstrom, “U.S. warns extradition law changes may jeopardize Hong Kong’s special status”, Reuters, 11 June 2019, www.reuters.com/article/us-hongkong-extradition-usa/us-warns-extradition-law-changes-may-jeopardize-hong-kongs-special-status-idUSKCN1TB2EJ; Karen Zhang, “Britain voiced concerns over Hong Kong extradition law changes”, *South China Morning Post*, 8 April 2019, bit.ly/2lQ3552.

¹⁹⁰ Interview with “Rachel” on 2 September 2019.

She went on to say:

Compared to police's use of tear gas, I am more concerned about the threat of sexual abuse if I am arrested or detained. Young women who went with me to manage the Lennon Walls frequently faced verbal sexual harassment by men who do not like the protests. I was frustrated when the Amnesty video profiling me and two other women protesters aroused lots of sexually abusive on-line posts.¹⁹¹

Many protests that took place after 31 March were given NoNOs by the Hong Kong Police Force. Starting in July 2019, however, police started increasingly objecting, banning and adding conditions to notifications for protests.

4.1 UNNECESSARY AND EXCESSIVE USE OF FORCE BY POLICE ON 12 JUNE

Amnesty International collected and verified footage of at least 14 incidents of excessive use of force by the Hong Kong Police on the ground during the 12 June protest against the Extradition Bill. These incidents included the dangerous use of rubber bullets, officers beating protesters who were not resisting, aggressive tactics used by police to obstruct on-site journalists and the misuse of tear gas and pepper spray. The use of force by police in the largely peaceful protest violated international human rights law and standards.¹⁹²

According to the Hospital Authority, which manages Hong Kong's public hospitals, 81 casualties related to the protest activities were seen at the Accident and Emergency departments of 10 public hospitals as of 10pm on 13 June.¹⁹³ Dr Pierre Chan, a LegCo member, looked into reports of people being arrested in hospital. He later published information pointing to a leak of patients' information to the police.¹⁹⁴ There were also reports of injured protesters not going to hospitals due to the fear of being arrested.¹⁹⁵

Police continued to use unnecessary and excessive force and violate international laws in numerous protests after 12 June. On 5 August, police fired 800 rounds of tear gas in residential areas in different districts during the citywide strike.¹⁹⁶ There are numerous media reports and testimonies citing police using expired tear gas and shooting directly at protesters.¹⁹⁷ The excessive use of police force fuelled tensions and was one of the contributing factors in the escalating violence.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials clearly establishes that law enforcement official can use force only if non-violent means are unlikely to be effective.¹⁹⁸ In the use of force, law enforcement official must seek to minimize harm and injury.¹⁹⁹ Priority must be given to voluntary dispersal without the use of force. Use of less lethal weapons and equipment must follow the principles of necessity and proportionality and to minimize harm and injury.²⁰⁰ States must ensure the full accountability of law enforcement agencies for all their actions, and in particular for incidents related to the use of force. Superior and commanding officers must be held accountable for any action or omission that led to human rights violations being committed.²⁰¹

¹⁹¹ Interview with "Rachel" on 2 September 2019.

¹⁹² Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong Police* (Index: ASA 17/0576/2019).

¹⁹³ HKSAR government Press Releases, *Hospital Authority clarified unfounded rumours*, 13 June 2019, www.info.gov.hk/gia/general/201906/13/P2019061301082.htm.

¹⁹⁴ Kris Cheng, "Police can access full details of injured protesters in hospital, says medical sector lawmaker following patient arrests", *Hong Kong Free Press*, 17 June 2019, www.hongkongfp.com/2019/06/17/police-can-access-full-details-injured-protesters-hospital-says-medical-sector-lawmaker-following-patient-arrests.

¹⁹⁵ "被打至大小便出血不敢求診,公院醫生黃任匡籲傷者求醫" (Dare not seek medical help even with blood in urine and stool due to beatings, public hospital doctor Wong Yam-hong advises injured to seek medical attention), *Sing Tao Daily*, 18 June 2019, bit.ly/2L4cWEn.

¹⁹⁶ Hong Kong Police Force verified Facebook page, *4pm Press Briefing (2019-08-06)* (四點鐘傳媒簡報[2019-08-06]), www.facebook.com/HongKongPoliceForce/videos/462515987906510/.

¹⁹⁷ Mary Hui, "In Hong Kong, almost everyone, everywhere – including pets – is getting tear gassed", *Quartz*, 8 August 2019, qz.com/1683024/police-have-fired-a-record-amount-of-tear-gas-in-hong-kong/; *Hong Kong Free Press* verified Twitter account, 5 August 2019, [HongKongFP/status/1158375573728530433?s=20](https://twitter.com/HongKongFP/status/1158375573728530433?s=20).

¹⁹⁸ Principle No.4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter: UN BPUFF).

¹⁹⁹ Principle No. 5b of UN BPUFF.

²⁰⁰ Principle No. 2 of UN BPUFF.

²⁰¹ Principle No. 24 of UN BPUFF.

4.2 DECLARING THE PROTESTS ON 12 JUNE A “RIOT”

On the afternoon of 12 June, Police Commissioner Stephen Lo declared that day’s largely peaceful protest a “riot”.²⁰² That evening, Chief Executive Carrie Lam called the protest “a blatant and organized riot” in a video addressing the public.²⁰³

“Oliver”, a university student who took part in the protest on 12 June, discussed the impact of the comments made by Carrie Lam and Stephen Lo:

Everyone deleted photos of themselves at the 12 June protest from social media as we were all afraid of being charged with rioting for just being there.²⁰⁴

EXPERIENCE OF “TOM”, 23, UNIVERSITY STUDENT²⁰⁵

“Tom” joined the protest against the Extradition Bill organized by the CHRF on 12 June 2019. At around 3pm, after police had begun using force to disperse the protesters, he found himself crossing a flyover near the LegCo Complex into the second floor of CITIC Tower, a nearby commercial building.

CITIC Tower was chaotic and overcrowded. The CHRF protest staged outside CITIC Tower had obtained a NoNO from police, so most participants of the approved protest were unprepared when police deployed tear gas. Many people had been injured. “Tom” gave some people first aid and other support.

“Tom” told Amnesty International that riot police followed protesters into the building, using batons to break doors and their shields to shove the protesters. The exit to the flyover on the second floor was full of tear gas so protesters could not leave.

According to Amnesty International’s examination of video footage submitted by members of the public and uploaded by LegCo member Eddie Chu, hundreds of largely unarmed protesters were cornered by the police while trying to get into CITIC Tower to escape the tear gas outside.²⁰⁶

“Tom” left CITIC Tower and headed back to nearby Queensway. Halfway along his route, at Harcourt Road, he found police shooting tear gas canisters at a group of protesters. Because his original plan had been to avoid confronting the police, he stayed in the back row and only helped to pass protective gear, saline solution and other materials to front-line protesters.

Seeing that some of those protesters were teenagers and elderly people, “Tom” felt obliged to help protect them. He moved to the front row and opened an umbrella in an attempt to shield protesters from tear gas. Protesters dispersed, rinsed away tear gas and then tried to block the road again.

At around 9pm, “Tom” suffered an injury to his left thigh, possibly by a tear gas canister or bean bag round, leaving a red double circle bruise.

“Tom” saw a row of police in full riot gear with shields standing guard on a flyover as he was leaving the protest but when he looked at them, they avoided eye contact. He felt that the police he saw might have been recruited to perform duties but certainly not to protect people. He cried on his way home. His experience left him mentally exhausted and he closeted himself at home for days afterward.

4.3 ARRESTS

According to media reports, as of 17 June, Hong Kong police had arrested 32 people who participated in the 12 June protest, including five for riot-related offences and 10 for crimes related to violence, unlawful assembly

²⁰² Shanshan Kao and Chieu Luu, “Hong Kong police chief declares anti-Extradition Bill protests a ‘riot’, raising stakes for those arrested”, *South China Morning Post*, 13 June 2019, bit.ly/2lQAsdk.

²⁰³ “Extradition Bill protests: Lam slams ‘rioting’; says no betrayal”, *ejinsight.com*, 13 June 2019, www.ejinsight.com/20190613-extraditionbill-protests-lam-slams-rioting-says-no-betrayal/.

²⁰⁴ Interview with “Oliver” in June 2019.

²⁰⁵ Interview with “Tom” on 4 July 2019.

²⁰⁶ Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong Police* (Index: ASA 17/0576/2019).

and assaulting police officers.²⁰⁷ Both Stephen Lo and Carrie Lam later clarified that only those who committed “riotous” acts on 12 June would be accused of rioting.²⁰⁸

Article 19 of the Hong Kong Public Order Ordinance stipulates that any person taking part in a riot is “riotously assembled”. As some protesters on 12 June were accused of committing riot-related offences, this means that others who participated in that protest remain at risk of being accused of participating in a riot as well.

On the evening of 11 June, police arrested on “public nuisance” charges the administrator of a Telegram app group that shared information related to the Extradition Bill protests.²⁰⁹ Another university student who joined the protest on 12 June “Anson” said:

I was scared by the arrest of the Telegram group administrator. People around me and I started to use euphemisms to discuss our plans to join protests, such as “going to a picnic” and “sleepwalking”.²¹⁰

While these arrests happened during or very soon after the protest, police subsequently dropped charges against some of the arrested and released them unconditionally. On 19 June, police dropped loitering charges against seven men and one woman.²¹¹ According to media reports, “Old Ng”, a protester shot by rubber bullets and arrested on 12 June, was subsequently released unconditionally, less than a month after the protest.²¹²

As demonstrated by the re-arrest of the Umbrella Nine, however, those unconditionally released can still be re-arrested over the same incident in the future.

On 28 July, police arrested 49 people at protests in Sheung Wan and Central. Three days later, 43 of them were formally charged with rioting and later all released on bail.²¹³ On 5 August, police arrested 148 people in different districts during the citywide strike.²¹⁴ According to Kong Wing-cheung, Police Public Relations Branch Senior Superintendent, police had arrested 420 people between 9 June and 5 August 2019.²¹⁵

The swift and large-scale arrests during the protests against the Extradition Bill sent a strong message to members of the Hong Kong public that the cost of participating in peaceful assemblies and exercising the right to freedom of expression can be extremely high.

4.4 POLICE INACTION

In the late evening of 21 July, a large group of people in white T-shirts armed with wooden sticks, metal tubes and bamboo rods indiscriminately attacked protesters returning from the Sheung Wan protest, as well as reporters and bystanders, at the Yuen Long West Rail station. Videos captured by different media outlets,

²⁰⁷ Kris Cheng, “‘Very restrained’ – Hong Kong police say 150 rounds of tears gas, 20 bean bag shots fired during anti-extradition law ‘riot’”, *Hong Kong Free Press*, 13 June 2019, www.hongkongfp.com/2019/06/13/just-restrained-hong-kong-police-say-150-rounds-tears-gas-20-bean-bag-shots-fired-anti-extradition-law-riot/.

²⁰⁸ Tony Cheung, Victor Ting and Jeffie Lam, “Hong Kong police chief Stephen Lo steps back from riot label as Carrie Lam keeps low profile”, *South China Morning Post*, 18 June 2019, bit.ly/2kL3Hht; Alvin Lum and Christy Leung, “When is a riot not a riot? Carrie Lam’s latest attempt to pacify Hong Kong public does little to clear muddy waters”, *South China Morning Post*, 18 June 2019, bit.ly/2lO90Nj.

²⁰⁹ Natalie Ma, “Telegram group admin arrested in Hong Kong over anti-extradition protests”, *Shanghaiist*, 14 June 2019, shanghaiist.com/2019/06/14/telegram-group-admin-arrested-in-hong-kong-over-anti-extradition-protests/.

²¹⁰ Interview with “Anson”, June 2019.

²¹¹ Kang-chung Ng and Lok-kei Sum, “Police roll back on categorisation of Hong Kong protests as a riot, with only those who threw bricks or used metal poles now likely to face most severe charges”, *South China Morning Post*, 17 June 2019, bit.ly/2mhNqkz.

²¹² Kris Cheng, “Police unconditionally release Hong Kong protester ‘Old Ng’, after he was shot with rubber bullet during June 12 protest”, *Hong Kong Free Press*, 12 July 2019, www.hongkongfp.com/2019/07/12/police-unconditionally-release-hong-kong-protester-old-ng-shot-rubber-bullet-june-12-protest/.

²¹³ Jasmine Siu, “First wave of alleged Hong Kong rioters – including teacher, 16-year-old and Cathay Pacific pilot – released on bail with most handed curfew”, *South China Morning Post*, 31 July 2019, bit.ly/2mhNAsb.

²¹⁴ Hong Kong Police Force verified Facebook page, *4pm Press Briefing (2019-08-06)* (四點鐘傳媒簡報 [2019-08-06]) (live), www.facebook.com/HongKongPoliceForce/videos/462515987906510/.

²¹⁵ Hong Kong Police Force verified Facebook page, *4pm Press Briefing (2019-08-05)* (四點鐘傳媒簡報 [2019-08-05]) (live), <https://www.facebook.com/HongKongPoliceForce/videos/490832305029799/>.

including online live-streaming videos, show the group of people beating people indiscriminately in the station and even in train carriages.²¹⁶ At least 45 people were injured in the attack, including a pregnant woman.²¹⁷

According to Johnny Mak, district councilor for Yuen Long District, he received text messages about possible attacks targeting protesters in Yuen Long from villagers living in the district at around noon on 21 July. He forwarded these messages to a police officer of the Yuen Long Public Relations Branch and asked if police had been informed of the possible attacks (see below). The officer replied that police were aware of the information and would be prepared.²¹⁸ Mak contacted the police about possible fighting again before 9pm.²¹⁹



Screenshots of a WhatsApp conversation on 21 July between Johnny Mak and a police officer, provided by Johnny Mak.

²¹⁶ See Stand News verified Facebook page, *Yuen Long West Rail Station (live video)* (元朗西鐵站), 21 July 2019, www.facebook.com/standnewshk/videos/407353793207073/; Avery Choi and Jeffie Lam, "Rod-wielding mob dressed in white storms Hong Kong's Yuen Long MTR station, attacks protesters and passers-by", *South China Morning Post*, 22 July 2019, bit.ly/2mk4gPR; Kris Cheng, "Chaos and bloodshed in Hong Kong district as hundreds of masked men assault protesters, journalists, resident", *Hong Kong Free Press*, 22 July 2019, www.hongkongfp.com/2019/07/22/just-chaos-bloodshed-hong-kong-district-hundreds-masked-men-assault-protesters-journalists-residents/.

²¹⁷ "Over 40 injured as 'gangsters' attack protesters in Yuen Long", *ejinsight*, 22 July 2019, www.ejinsight.com/20190722-over-40-injured-as-gangsters-attack-protesters-in-yuen-long/.

²¹⁸ Interview with Johnny Mak on 23 August 2019.

²¹⁹ Interview with Johnny Mak on 23 August 2019; RTHK31 Hong Kong Connection, *721 Dark night of Yuen Long*, 29 July 2019, www.rthk.hk/tv/dtt31/programme/hkcc/episode/579157?lang=en, (hereinafter: RTHK31, *721 Dark night of Yuen Long*).

12:06pm	Johnny:	Officer, some friends sent me this, do police need to look into this?
12:07pm	Officer:	(Police) have already arranged manpower to respond
12:08pm	Johnny:	🙏🙏
12:09pm	Officer:	Police have been watching the situation in Yuen Long today. You can let me know if you have more information 🙏
12:11pm	Johnny:	We also encouraged people to join the activity organized by CHRF, so there should be no activities in Yuen Long today.
12:11pm	Officer:	Hope so 🙏
12:12pm	Officer:	Let's stay safe 🙏

08:36pm	Johnny:	(a picture of people in white T-shirts gathering in Yuen Long)
08:38pm	Johnny:	Do they have the approval of the police?
09:12pm	Johnny:	Officer, if there's anything, please let me know. I am observing at Fung Yau Street North
09:39pm	Officer:	Of course, please stay safe 🙏

Translation of the WhatsApp conversation on 21 July between Johnny Mak and a police officer.

In a press conference later that evening, the commanding officer of New Territories North Police headquarters said the police “were only 39 minutes late” in responding to the attacks.²²⁰ According to the officer, police had received information about the attack the day before. However, only two police officers were deployed to the scene at first. It was explained that they had retreated to call for help because they decided that they did not have enough equipment to deal with the situation. According to media reports, the armed men left the scene when police reinforcements arrived.²²¹

RTHK, a public broadcaster in Hong Kong, reviewed CCTV footage from shops around Yuen Long on the night of 21 July.²²² Some footage showed that police vehicles passed by the big group of people in white, some of whom were holding rods in their hands, at 9:29pm and 10:13pm.²²³ There are also reports of police stations in Tin Shui Wai and Yuen Long closing their report rooms at the time citizens were trying to report the attack in Yuen Long.²²⁴

Police inaction in the face of attacks on protesters, journalists and bystanders on 21 July represents a clear failure to protect the rights to life and security of persons. The Universal Declaration of Human Rights Article 3 and ICCPR Article 9 recognize and protect the right to life, liberty and security of persons, which obliges the government to take appropriate measures to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. Governments must take measures to prevent injury and enforce criminal law in response to injury.²²⁵ The government defining protests as riots and the police inaction in face of violence targeting protesters exacerbated tensions between protesters and counter-protesters.

In a letter to Amnesty International, the Hong Kong government stated that the IPCC is undertaking a fact-finding study on the handling of protests that took place after 9 June 2019 and has established a panel of international experts to assist in this work.²²⁶ However, it remains to be seen if this will address the UN HRC's criticisms of the IPCC process.²²⁷

²²⁰ Hong Kong Police verified Facebook page, *Police Press Conference • Live* (警方記者會 • 直播), 25 July 2019, tiny.cc/d6dkaz.

²²¹ Christy Leung and Victor Ting, “Hong Kong police chief defends officers arriving 35 minutes after first reports of Yuen Long mob violence against protesters and MTR passengers”, *South China Morning Post*, 22 July 2019, bit.ly/2mk4l67.

²²² RTHK31, *721 Dark night of Yuen Long*.

²²³ RTHK31, *721 Dark night of Yuen Long*.

²²⁴ Next Magazine verified Facebook page, *Multiple Hong Kong police stations close at 19:20? Citizens reporting crimes at Tin Shui Wai Police Station realized that the gates of the station were closed. Even though citizens clearly asked to report a crime, police in the police station did not take any action* (19:20 全港多間警署拉閘? 有市民到天水圍警署, 並發現已拉閘, 即使市民明確指出要報案, 警署內警方依然不為所動), 21 July 2019, www.facebook.com/nextmagazinefansclub/videos/455346465303194.

²²⁵ HRC General Comment 35, Para. 9.

²²⁶ Office of the HKSAR Chief Executive, letter to Amnesty International, 20 September 2019.

²²⁷ Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/CHN-HKG/CO/3 (2013), para. 12.

5. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The Hong Kong Special Administrative Region has obligations to respect, protect and fulfil human rights both through domestic legislation, including the Basic Law, and through the extension of international law that is binding on Hong Kong. This includes the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women, and other international treaties.²²⁸ Hong Kong is also obligated to adhere to customary international law.

5.1 FREEDOM OF EXPRESSION

The right to freedom of expression is enshrined in Article 19 of the Universal Declaration of Human Rights and Article 19 of the ICCPR, which applies to Hong Kong. This right is reiterated in Article 39 of the Basic Law, which states that the provisions of the ICCPR as applied to Hong Kong shall remain in force. The HRC has stated that “freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association”.²²⁹

The UN Special Rapporteur on the right to freedom of opinion and expression has stated that the right to freedom of expression is also a collective right that “endows social groups with the ability to seek and receive different types of information from a variety of sources and to voice their collective views. This freedom extends to mass demonstrations of various kinds”.²³⁰

Any restrictions on the right to freedom of expression must be prescribed by law that is “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”.²³¹ The base for such legal restrictions must also be accessible to the public and the restriction necessary for a legitimate purpose.²³² The HRC has observed that restrictions must not be overly broad and “must conform to the principle of proportionality ... be appropriate to achieve their protective function ... be the least intrusive instrument amongst those which might achieve their protective function, [and] they must be proportionate to the interest to be protected.”²³³ This principle of proportionality applies not only in framing legislation to establish such restrictions but also in the application of such laws by administrative and judicial authorities.²³⁴ The burden is on the state to demonstrate the necessity and proportionality of the restriction. Restrictions must be consistent

²²⁸ Observations of the HRC specifically on Hong Kong are referenced in relevant sections.

²²⁹ HRC General Comment 34, para. 4.

²³⁰ Report of the Special Rapporteur on freedom of opinion, UN Doc. A/HRC/14/23 (2010), para. 29.

²³¹ See HRC communication No. 578/1994, *de Groot v. The Netherlands*, Views adopted on 14 July 1995.

²³² HRC General Comment 34, paras. 25, 33.

²³³ HRC General Comment 34, para. 34, with reference to General Comment 27, para. 14.

²³⁴ HRC General Comment 34, para. 34.

with all other human rights recognized in international law, may not impair the essence of the right affected and may not be applied in a discriminatory or arbitrary manner.

The HRC has further highlighted that states must take “extreme care” to ensure that provisions relating to national security are compatible with the requirements of the ICCPR.²³⁵

The Johannesburg Principles state that any restriction justified on the ground of 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 or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government”.²³⁶ The Johannesburg Principles emphasize that such restrictions are furthermore not legitimate if their “genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest”.²³⁷

Furthermore, the threshold for restricting the right to freedom of expression is especially high within political discourse and public debate. The HRC is of the opinion that public figures must endure criticism, even insult, and it has expressed concern about laws punishing “disrespect for flags and symbols”.²³⁸ Just because a form of expression is deemed deeply offensive by some does not mean it is any less protected.²³⁹ The Johannesburg Principles underline that no one may be punished for criticizing or insulting the nation, the state or its symbols or the government, its agencies or public officials.²⁴⁰ Any legislation that criminalizes such “insult”, which is not intended and not likely to incite imminent violence, violates the right to freedom of expression.

5.2 FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION

The rights to peaceful assembly and freedom of association are enshrined in Article 20 of the UDHR and Articles 21 and 22 of the ICCPR, respectively. These rights are separate, but in the words of a former UN Special Rapporteur on peaceful assembly: “[I]t is essential today to consider how the two rights are closely interrelated and interdependent.”²⁴¹

Any restrictions on the rights to peaceful assembly and freedom of association must meet the same criteria outlined above, namely be prescribed in law, have a legitimate purpose and be necessary and proportionate to that purpose. The UN Special Rapporteur on peaceful assembly has stressed that assemblies should be presumed lawful and not to constitute a threat to public order.²⁴²

The state’s duty to facilitate peaceful assemblies requires authorities to actively assist organizers and participants of an assembly in exercising their right. According to the Special Rapporteur on peaceful assembly, the authorities should make an effort to enable people to have their voices heard within “sight and sound” of the intended target audience and provide them with access to public space including public streets, roads, and squares.²⁴³ Full bans on permissible times and locations are prohibited because they do not allow authorities to make a case-by-case evaluation of specific circumstances.

Authorities can request notification to help facilitate orderly assemblies but cannot require prior approval. Spontaneous assemblies are legal in international law. Two UN Special Rapporteurs, in a joint report on managing assemblies, have stated that where there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.²⁴⁴

²³⁵ HRC General Comment 34, para. 30.

²³⁶ Principle 2(a) of the Johannesburg Principles.

²³⁷ Principle 2(b) of the Johannesburg Principles.

²³⁸ HRC General Comment 34, para. 38.

²³⁹ HRC communication No. 736/97, *Ross v. Canada*, Views adopted on 18 October 2000.

²⁴⁰ Principle 7(b) of the Johannesburg Principles.

²⁴¹ Report of the Special Rapporteur on peaceful assembly, UN Doc. A/72/135 (2017), para. 22.

²⁴² Report of the Special Rapporteur on peaceful assembly, UN Doc. A/HRC/23/39 (2013), para. 50.

²⁴³ Report of the Special Rapporteur on peaceful assembly, UN Doc. A/HRC/23/39 (2013), paras. 60, 65, 66.

²⁴⁴ Joint report of the Special Rapporteur on peaceful assembly and the Special Rapporteur on extrajudicial executions on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para. 23.

Furthermore, according to these two UN Special Rapporteurs: “While organizers should make reasonable efforts to comply with the law and encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.”²⁴⁵ In his report on South Korea, Special Rapporteur Maina Kiai explicitly stated: “Charging assembly participants with certain criminal offences, such as the general obstruction of traffic, de facto criminalizes the right to peaceful assembly.”²⁴⁶

The use of public space, including roads, for the purpose of assemblies is as legitimate as is traffic use. The two UN Special Rapporteurs note: “[T]here are many legitimate ways in which individuals may use public spaces. A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance.”²⁴⁷

Political parties enjoy freedom of association as contained in Article 22 of the ICCPR, among others.²⁴⁸ In analogy with the right to freedom of expression, political parties further have the freedom to promote ideologies unpopular with the government or the wider public without fear of retaliation.²⁴⁹ The dissolution of any association is the most severe restriction on freedom of association and must therefore be permissible only when milder measures are insufficient. Specifically, the dissolution of political parties has far-reaching effects also for discussions on public policy in a state and should therefore be undertaken with utmost restraint. Such cases must be limited to real and imminent dangers, and all laws setting out permissible restrictions must be interpreted narrowly.²⁵⁰

The HRC has held that the benefits of a “plurality of associations, including those which peacefully promote ideas not favourably received by the government or the majority of the population”, require states to “demonstrate that the prohibition of an association and the criminal prosecution of individuals ... are in fact necessary to avert a real, and not only a hypothetical danger ... and that less intrusive measures would be insufficient”.²⁵¹

²⁴⁵ Joint report of the Special Rapporteur on peaceful assembly and the Special Rapporteur on extrajudicial executions on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para. 26.

²⁴⁶ Maina Kiai, Report of the Special Rapporteur on peaceful assembly on his mission to the Republic of Korea, UN Doc. A/HRC/32/36/Add.2 (2016), para. 42.

²⁴⁷ Joint report of the Special Rapporteur on peaceful assembly and the Special Rapporteur on extrajudicial executions on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para. 32.

²⁴⁸ On the regional level, the European Court of Human Rights usually assesses the legality of restrictions on political parties under Article 11 of the ECHR (freedom of association); see also the 1999 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures adopted by the European Commission for Democracy Through Law (Venice Commission).

²⁴⁹ Report of the Special Rapporteur on peaceful assembly, UN Doc. A/68/299 (2013), para. 38.

²⁵⁰ Report of the Special Rapporteur on peaceful assembly, UN Doc. A/68/299 (2013), para. 55.

²⁵¹ For example, HRC Communication No. 1119/2002, *Jeong-Eun Lee v. Republic of Korea*, Views adopted on 20 July 2005, para. 7.2.

6. CONCLUSION

Huge numbers of people took to the streets of Hong Kong to demand their human rights during two large-scale protests, the Umbrella Movement in 2014 and the Extradition Bill protests in 2019. But the response to these protests has also demonstrated that the Hong Kong authorities are willing use aggressive policing and prosecution tactics to enforce China's vague definition of national security, even when it violates international human rights laws and standards.

The Hong Kong government, often echoing Beijing's policy and directives, has been increasingly restricting the rights to peaceful assembly, freedom of expression and freedom of association over the course of the last decade. The Basic Law, sometimes referred to as Hong Kong's mini-constitution, includes these rights among others, yet its very tenets are also under attack from Beijing.

The increasing curtailment of these human rights in Hong Kong must end. The Hong Kong government needs to respect its obligations under international human rights law and standards, as well as the rights enumerated in Hong Kong's Basic Law. Hong Kong authorities must stop using Beijing's ever-changing "red line" as justification to restrict people's rights. Authorities should respect, promote and protect these rights rather than encouraging an environment where censorship and self-censorship thrive.

RECOMMENDATIONS

Amnesty International calls on the Hong Kong government to:

- Respect and protect the rights of all individuals to assemble peacefully and associate freely, on line as well as off line, and ensure that those participating in peaceful assemblies are not subjected to the threat of criminal sanctions and, notably, the threat of deprivation of liberty;
- Stop using politically motivated prosecutions and other legal procedures against peaceful protesters to silence critical voices and deter people from participation in the public sphere;
- Ensure that any use of force by law enforcement officials during assemblies, and especially any decision to disperse an assembly, is only made if this measure is strictly unavoidable and is in line with the principles of necessity and proportionality – taking due account of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials – and, in particular, that force is not used to disperse assemblies merely because they are considered unlawful under Hong Kong's law;
- Take necessary measures to establish a fully independent mechanism mandated to conduct investigations into inappropriate use of force or other abuse by police and ensure:
 - That there is an independent, impartial, effective and prompt investigation into the use of force, including tear gas, rubber and pepper bullets, beanbag rounds, batons and pepper spray by Hong Kong police against protesters on 12 June 2019 and at other Extradition Bill protests and
 - That the results of the investigation are made public to allow for public scrutiny;
- Convey a clear message to all law enforcement officials involved in policing assemblies that they must facilitate, and not restrict, peaceful public assemblies and ensure this is understood by all law enforcement officials taking part in the management of assemblies;

- Drop the intimidating appearance through deployment of excessive numbers of police officials and visible heavy anti-riot equipment, which is likely to be perceived as a threat and increase tension and lead to violence, and adopt instead a facilitative and supportive approach to the policing of assemblies;
- Ensure that any law enforcement official responsible for the unlawful use of force, as well as their superior officer(s), are brought to justice and subjected to civil and/or criminal liability, as well as disciplinary action;
- Ensure that all law enforcement officials deployed for managing assemblies are clearly and individually identifiable, for example by displaying name tags or identification numbers;
- Take immediate measures to end any unreasonable direct and indirect restrictions on freedom of expression, in particular in the media and academia, and take effective steps to protect this right, including investigations of attacks on journalists;
- Amend relevant provisions of the Public Order Ordinance to bring it in line with the ICCPR and specifically ensure that assemblies that do not receive Notices of No Objection are not labelled as unauthorized or unlawful and subject to dispersal or criminalization; that conditions placed in the notifications are legitimate, necessary and proportionate; and that the Ordinance and its implementation are in conformity with the ICCPR and adequately allow for spontaneous assemblies;
- Ensure that all interpretations of the Basic Law, including on “national security” and public affairs issues, are in full compliance with the ICCPR and, in particular, ensure that any new national security legislation under Article 23 is in compliance with the provisions of the ICCPR;
- Establish clear guidelines for police on the use and storage of video-recordings, in compliance with international human rights standards, and make such guidelines accessible to the public;
- Set up an independent and pluralistic human rights institution to promote and protect human rights, in accordance with the Paris Principles, with adequate financial and human resources, with a broad mandate covering all international human rights standards applicable to Hong Kong and with competence to consider and act on individual complaints of human rights violations by public authorities and to enforce the Hong Kong Bill of Rights Ordinance.

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BEIJING'S "RED LINE" IN HONG KONG

RESTRICTIONS ON RIGHTS TO PEACEFUL ASSEMBLY AND FREEDOM OF EXPRESSION AND ASSOCIATION

Huge numbers of people took to the streets of Hong Kong to demand their human rights during two large-scale protests, the Umbrella Movement in 2014 and the Extradition Bill protests in 2019. But the response to these protests has also demonstrated that the Hong Kong authorities are willing use aggressive policing and prosecution tactics to enforce China's vague definition of national security, even when it violates international human rights laws and standards.

The increasing curtailment of these human rights in Hong Kong must end. The Hong Kong government needs to respect its obligations under international human rights law and standards, as well as the rights enumerated in Hong Kong's Basic Law. Hong Kong authorities must stop using Beijing's ever-changing "red line" as justification to restrict people's rights. Authorities should respect, promote and protect these rights rather than encouraging an environment where censorship and self-censorship thrive.