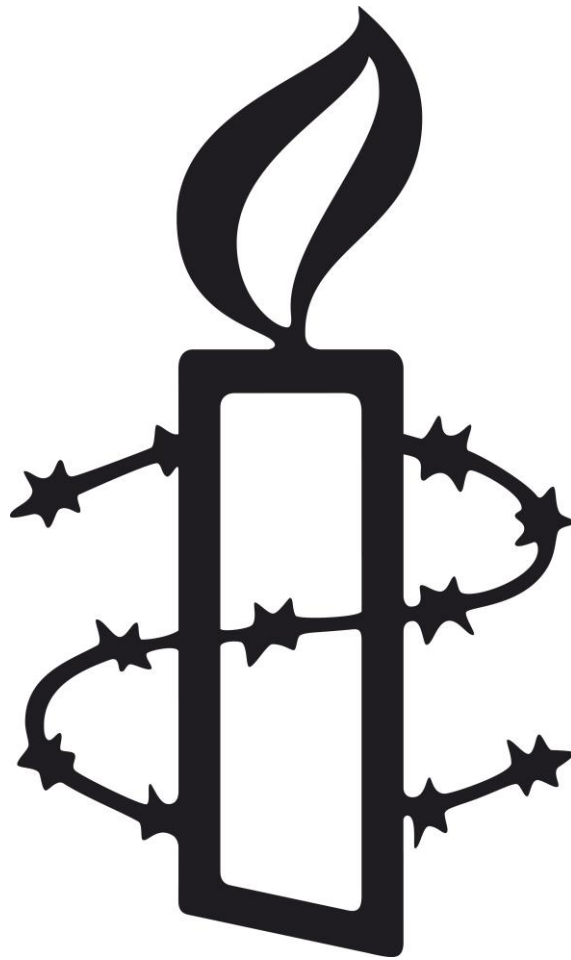


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HONG KONG

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135TH SESSION, 27 JUNE 2022 - 29 JULY 2022

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1. INTRODUCTION

Amnesty International provides the following information to the UN Human Rights Committee ahead of the 4th periodic report of Hong Kong at the Committee's 135th session in July 2022.

This submission sets out some of Amnesty International's key concerns and recommendations related to the implementation of the International Covenant on Civil and Political Rights (the Covenant) by the government of the Hong Kong SAR (HKSAR). It highlights concerns with regard to Emergency Regulations Ordinance, National Security, Sedition; freedom of expression; freedom of association; freedom of peaceful assembly; use of force by law enforcement officials; arbitrary arrest of detention and torture or other cruel, inhuman or degrading treatment; right to liberty and fair trial; discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics; asylum-seekers and refugees; migrant workers; and sex workers. It is not an exhaustive account of Amnesty International's concerns with regard to the implementation of the Covenant.

It must be noted that the civil society landscape has changed drastically since the last review session. After the 2019 protests, the government weaponized laws, including the overly broad National Security Law and laws that had not been used for prosecution since 1967, to crackdown on civil society groups. Local civil society groups that used to take part in the review process were forced to disband, prosecuted, or deterred from continuing international advocacy work for fear of prosecution.¹

2. EMERGENCY REGULATIONS ORDINANCE, NATIONAL SECURITY, SEDITION (ARTICLES 2,4,21)

2.1 EMERGENCY REGULATIONS ORDINANCE

On 4 October 2019, the government invoked the Emergency Regulations Ordinance 1922 (ERO) to adopt the Prohibition on Face Covering Regulation (PFCR), which imposes an almost total ban on mask-wearing at public assemblies. In response to a judicial review challenging the adoption of the PFCO, the Court of Final Appeal ruled that the Chief Executive should be given discretion, and so the ban was not unlawful.²

When the Chief Executive announced the adoption of the PFCR, she did not state that Hong Kong was in a state of emergency. Instead, she said there was a "state of serious public danger".³ This raises the concern

¹ See Section 4.1 Crackdown on civil society organization.

² *Kwok Wing Hang and Others v Chief Executive in Council and Another; Leung Kwok Hung v Secretary for Justice and Another* (HKCFA 42), Hong Kong Court of Final Appeal (2020), [legalref.judiciary.hk/doc/judg/word/vetted/other/en/2020/FACV000006_2020.docx](https://www.legalref.judiciary.hk/doc/judg/word/vetted/other/en/2020/FACV000006_2020.docx)

³ "Hong Kong leader rolls out emergency mask law to quell anti-government protests", *South China Morning Post*, 5 October 2019, [scmp.com/news/hong-kong/politics/article/3031657/hong-kong-leader-rolls-out-emergency-mask-law-quell-anti](https://www.scmp.com/news/hong-kong/politics/article/3031657/hong-kong-leader-rolls-out-emergency-mask-law-quell-anti)

that the ERO is being used, and could be used in the future, in situations that are not sufficiently serious to warrant the more substantial limitations on human rights that are permissible in times of emergency only.⁴

In April 2020, the Court of Appeal overruled a Court of First Instance judgment and held that the ERO is constitutional and the Chief Executive has the power to issue emergency regulations on grounds of “public danger”.⁵ The current wording and application of the Emergency Regulation Ordinance (ERO) mean that it can be used in situations that are not states of emergency, despite the fact that the extensive powers provided under the ERO reflect those normally under international law reserved only for the duration of an officially proclaimed state of emergency that threatens the life of the nation. When imposing the “mask ban” in October 2019, Chief Executive Carrie Lam stressed that Hong Kong was not in a “state of emergency”.

The adoption of the PFCR was fast-tracked using the Emergency Regulations Ordinance (ERO), a colonial law dating back to 1922 that provides the power to introduce “any regulations whatsoever” the Chief Executive in Council considers “desirable”.⁶ The wording of the ERO essentially provides a blank cheque for the Government to restrict human rights without any time limit, conditions or safeguards. The ERO is an outdated and deeply flawed piece of legislation that grants the executive branch extensive unchecked power. Under its wording, emergency measures in a broad range of areas can only be imposed and then repealed by the executive branch of government; they supersede any other piece of legislation or other rule in case of conflict, seemingly regardless of which rule is more recent or its position in the legal hierarchy. Moreover, there are no requirements of periodic review, explicit renewal or any other prescribed form of emergency regulations ceasing to have effect. Both the decision to declare that an “emergency or public danger” exists and all measures taken in response are at the exclusive discretion of the executive, without expressly requiring involvement of the Legislative Council. In terms of process, using the ERO means that Hong Kong’s legislature is bypassed during the law-making process. However, it should be noted that the Hong Kong Government has confirmed that any “regulations under the ERO would be subsidiary legislation and therefore subject to vetting by the Legislative Council”.⁷

In its reports to the Human Rights Committee, the Hong Kong Government has always referred to the ERO in the context of states of emergency as set out in Article 4 of the Covenant. For example, when responding to concerns about the absence of detailed legislation covering emergencies and that the provisions of Article 18 of the Basic Law did not correspond with those of Article 4 of the ICCPR, it stated that any regulations necessitated by future “emergencies” would be consistent with Article 4.⁸ At no point did it state that the ERO could be applied outside of situations as contemplated by Article 4, or that “occasions of ... public danger” would be subject to a separate framework. Instead, it acknowledged that the power granted under the ERO “appears to be very wide” but that it was subject to the human rights protection of the Covenant, among others.⁹

2.2 NATIONAL SECURITY

In May 2020, China’s National People’s Congress (NPC) approved a decision authorizing its Standing Committee to pass the National Security Law (NSL). On 30 June 2020, the National People’s Congress Standing Committee (NPCSC) issued legislation directly adding the NSL to Annex III of the Hong Kong Basic Law and announcing that the new law would be directly promulgated by the Hong Kong government, instead of being made into local legislation. Despite the government’s claim that the NPCSC had sufficiently gauged the view of different sectors in Hong Kong, the NSL, enactment of the law in this way meant that the Hong Kong legislature was effectively bypassed, and the sequence of events left no other channels for any formal

⁴ Amnesty International Hong Kong, *Submission to Legislative Council Subcommittee on the Prohibition on Face Covering Regulation*, 8 November 2019, [amnesty.be/IMG/pdf/hk_submissionlegcosubcommittee.pdf](https://www.amnesty.be/IMG/pdf/hk_submissionlegcosubcommittee.pdf)

⁵ *Kwok Wing Hang and Others v Chief Executive in Council and Another*; *Leung Kwok Hung v Secretary for Justice and Another* (HKCFI 2820), Hong Kong Court of First Instance (2019), [legalref.judiciary.hk/doc/judg/word/vetted/other/en/2019/HCAL002945A_2019.docx](https://www.legalref.judiciary.hk/doc/judg/word/vetted/other/en/2019/HCAL002945A_2019.docx), paras 166, 193; *Kwok Wing Hang and Others v Chief Executive in Council and Another*; *Leung Kwok Hung v Secretary for Justice and Another* (HKCFA 42), Hong Kong Court of Final Appeal (2020), [legalref.judiciary.hk/doc/judg/word/vetted/other/en/2019/CACV000541A_2019.docx](https://www.legalref.judiciary.hk/doc/judg/word/vetted/other/en/2019/CACV000541A_2019.docx), paras 346, 348, 349, 351, 352.

⁶ Article 2(1) of the Emergency Ordinance Regulation, [elegislation.gov.hk/hk/cap241](https://www.elegislation.gov.hk/hk/cap241)

⁷ Amnesty International Hong Kong, *Submission to Legislative Council Subcommittee on the Prohibition on Face Covering Regulation*, [web.archive.org/web/20200529195333/www.amnesty.be/IMG/pdf/hk_submissionlegcosubcommittee.pdf](https://www.web.archive.org/web/20200529195333/www.amnesty.be/IMG/pdf/hk_submissionlegcosubcommittee.pdf)

⁸ UN Human Rights Committee, Report of the Hong Kong Special Administrative Region of the People’s Republic of China in the light of the International Covenant on Civil and Political Rights: supplementary information, 23 May 2000, UN Doc. CCPR/C/HKSAR/99/1/Add.1, para 43. A public hearing on the ERO and the mask ban based thereon took place on 8 November 2019; see Amnesty International Hong Kong, *Submission to Legislative Council Subcommittee on the Prohibition on Face Covering Regulation*, 8 November 2019, [web.archive.org/web/20200529195333/www.amnesty.be/IMG/pdf/hk_submissionlegcosubcommittee.pdf](https://www.web.archive.org/web/20200529195333/www.amnesty.be/IMG/pdf/hk_submissionlegcosubcommittee.pdf)

⁹ UN Human Rights Committee, Report of the Hong Kong Special Administrative Region of the People’s Republic of China in the light of the International Covenant on Civil and Political Rights: supplementary information, 23 May 2000, UN Doc. CCPR/C/HKSAR/99/1/Add.1, para 43.

and meaningful public consultation or scrutiny.¹⁰ The full text of the law was only published for the first time after it had come into effect.¹¹

Despite the government's attempts to justify the definition of crimes set out in the NSL, including generalizations such as "the Chinese people have a profound and clear understanding of 'national unity'",¹² the arrests and prosecutions made under national security charges since the enactment of the law provide clear evidence that the law's expansive definition of "national security" lacks clarity and legal predictability. It follows the wording of the NSL of the Chinese central authorities which has long been used arbitrarily as a pretext to restrict the rights to freedom of expression, peaceful assembly and association, as well as to repress dissent and political opposition.¹³ The ways in which the NSL was adopted and its expansive definitions mirroring the vagueness of mainland China's national security law all severely undermine the principle of "One Country Two Systems", threatening the human rights safeguards set out in the Basic Law.¹⁴

Immediately after the law was implemented, the government began using it extensively to target peaceful dissent. By accusing political parties, academics and other organizations and individuals actually or perceived to be critical of the present government and political system in Hong Kong or mainland China of "threatening national security", the authorities have sought to justify censorship, harassment, arrests and prosecutions that violate human rights.¹⁵

There is clear evidence indicating that the so-called human rights safeguards set out in the NSL are effectively useless.¹⁶ The law abrogates human rights protections existing in both local case law and international treaties. The law's lack of exemption for any legitimate expression, peaceful protest or work defending human rights allows the law to be used to limit rights and freedoms in ways that exceed what is permitted under international human rights law and standards.¹⁷

The NSL authorizes extensive investigative powers and can potentially exempt law enforcement agencies from fulfilling existing obligations to respect and protect human rights stipulated in Hong Kong laws,¹⁸ the new law makes the already incomplete human rights safeguards in Hong Kong's criminal process even less effective.¹⁹ The NSL grants immunities and vast exemptions to the national security institutions and their personnel and in fact states explicitly that it trumps any Hong Kong laws in case of conflict. The central government Office for Safeguarding National Security and its staff do not fall under Hong Kong's jurisdiction, meaning that their operations or other actions in the city are not reviewable by local courts or subject to local laws.

2.3 SEDITION

Since 2020, for the first time since the ICCPR has come into effect in Hong Kong, the government has weaponized colonial-era sedition laws to prosecute political activists, journalists and authors who exercised their right to freedom of expression. No one has been prosecuted under these laws since 1967. In July 2021, five speech therapists were arrested and later charged for conspiring to publish "seditious materials" after publishing a series of children's books.²⁰ In December 2021, executives and board members of the defunct media outlet Stand News were arrested for "seditious publications".²¹ On 6 April 2022, national security police

¹⁰ Replies of Hong Kong, China to the list of issues in relation to its fourth periodic report, CCPR/C/CHN-HKG/RQ/4 (2021) para 24.

¹¹ Han Zhu, "A Chinese Law Wedge into the Hong Kong Common Law System: A Legal Appraisal of the Hong Kong National Security Law", 17 March 2022, Northwestern University Journal of Human Rights (Forthcoming), Volume 21, Issue 2, ssrn.com/abstract=4093471

¹² Replies of Hong Kong, China to the list of issues in relation to its fourth periodic report, CCPR/C/CHN-HKG/RQ/4 (2021) para 13(1)

¹³ See Amnesty International, *China: Scrap draconian new national security law* (News, 1 July 2015),

[amnesty.org/en/latest/news/2015/07/china-scrap-draconian-new-national-security-law/](https://www.amnesty.org/en/latest/news/2015/07/china-scrap-draconian-new-national-security-law/); see also, Amnesty International, *Hong Kong: In the name of national security* (Index: ASA 17/4197/2021), 29 June 2021, [amnesty.org/en/documents/asa17/4197/2021/en/](https://www.amnesty.org/en/documents/asa17/4197/2021/en/)

¹⁴ Basic Law Article 27 and 39, www.basiclaw.gov.hk/en/basiclaw/chapter3.html

¹⁵ See Section 3 Freedom of expression.

¹⁶ Amnesty International, *Hong Kong: In the name of national security* (Index: ASA 17/4197/2021), 29 June 2021, [amnesty.org/en/documents/asa17/4197/2021/en/](https://www.amnesty.org/en/documents/asa17/4197/2021/en/), pp 12-18

¹⁷ See Section 8 Right to liberty and fair trial.

¹⁸ Article 43 of NSL, [elegislation.gov.hk/fwddoc/hk/a406/eng_translation_\(a406\).en.pdf](http://elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406).en.pdf); Amnesty International, *Hong Kong: In the name of national security* (Index: ASA 17/4197/2021), 29 June 2021, [amnesty.org/en/documents/asa17/4197/2021/en/](https://www.amnesty.org/en/documents/asa17/4197/2021/en/), pp 12-13

¹⁹ UN Committee against Torture (CAT), Concluding observations: Hong Kong Special Administrative Region, 19 January 2009, UN Doc. CAT/C/HKG/CO/4 (2009), para. 12; CAT, Concluding observations: Hong Kong Special Administrative Region, 3 February 2016, UN Doc. CAT/C/CHN-HKG/CO/5, para. 8; Amnesty International, "Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed" (News, 19 September 2019), www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/

²⁰ "National security police arrest 5 Hong Kong trade union members for conspiracy to publish 'seditious' children's books", *Hong Kong Free Press*, 22 July 2021, hongkongfp.com/2021/07/22/national-security-police-arrest-5-hong-kong-trade-union-members-for-conspiracy-to-publish-seditious-material/

²¹ Amnesty International, *Hong Kong: Downward spiral for press freedom continues after arrests* (News, 29 December 2021), [amnesty.org/en/latest/news/2021/12/hong-kong-downward-spiral-for-press-freedom-continues-after-arrests/](https://www.amnesty.org/en/latest/news/2021/12/hong-kong-downward-spiral-for-press-freedom-continues-after-arrests/)

arrested six people on sedition charges because they “caused nuisance” during a court hearing.²² Two were subsequently charged with sedition for clapping and chanting slogans in court.²³ On 10 April 2022, a journalist was arrested for allegedly publishing “seditious materials”.²⁴ On 20 April 2022, a political activist was convicted of “uttering seditious words” and sentenced to 40 months’ imprisonment for chanting slogans such as “down with the Communist Part” and “five demands, not one less” in public.²⁵

2.4 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF HONG KONG TO:

- Clarify which powers and procedures allowed under the ERO are applicable to states of emergency and how situations of “public danger” are defined in contrast to emergencies, on the one hand, and to disturbances of public order in normal times, on the other
- Expressly limiting the application of the ERO to states of emergency in the sense of Article 4 of the Covenant in order to clarify the law and limit the scope for abuse
- Amend the ERO in order to bring it into line with the requirements under the Covenant, especially Article 4, by subjecting any use of the ERO to a time limit, mandatory periodic review and express renewal to consider whether each regulation needs to be continued, and allowing for full legislative and judicial scrutiny of both the declaration of an “occasion of emergency or public danger” and any implementing measure; in accordance with the Covenant use of emergency powers will require a derogation
- Remove the effectively complete immunities and vast exemptions from local courts and laws granted to national security institutions and their personnel
- Review and amend all laws and regulations, and end all related policies and measures, that violate the exercise of human rights, in particular the rights to freedom of expression, peaceful assembly and association, and ensure that any legal provisions aimed at protecting national security or created in the name of counterterrorism are clearly and narrowly defined and include provision of adequate safeguards and effective remedies against abuse, conforming with international human rights law and standards
- Ensure that any new legislation applicable to the territory is subject to genuine and meaningful public and political scrutiny before entering into force
- Ensure that restrictions to ICCPR rights permissible on grounds of national security are not used to prevent relatively isolated threats to law and order, but are only invoked when “necessary to preserve the State’s capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force”. Ensure also that where such clear and imminent danger is demonstrated, only the least intrusive measures to achieve the stated purpose are used

²² Amnesty International, *Hong Kong: ‘Sedition’ arrests after clapping in court a new low for human rights* (News, 6 April 2022), [amnesty.org/en/latest/news/2022/04/hong-kong-sedition-arrests-after-clapping-in-court-a-new-low-for-human-rights](https://www.amnesty.org/en/latest/news/2022/04/hong-kong-sedition-arrests-after-clapping-in-court-a-new-low-for-human-rights)

²³ “2 face sedition charges after allegedly ‘causing nuisance’ in Hong Kong courts”, *Hong Kong Free Press*, 8 April 2022, [hongkongfp.com/2022/04/08/2-face-sedition-charges-after-allegedly-causing-nuisance-in-hong-kong-courts](https://www.hongkongfp.com/2022/04/08/2-face-sedition-charges-after-allegedly-causing-nuisance-in-hong-kong-courts)

²⁴ “Hong Kong journalist arrested for alleged sedition”, *Al Jazeera*, 11 April 2022, [aljazeera.com/news/2022/4/11/hong-kong-journalist-arrested-for-alleged-sedition-reports](https://www.aljazeera.com/news/2022/4/11/hong-kong-journalist-arrested-for-alleged-sedition-reports)

²⁵ “Hong Kong activist jailed for 3 years over protest slogans”, *Nikkei Asia*, 20 April 2022, asia.nikkei.com/Spotlight/Hong-Kong-security-law/Hong-Kong-activist-jailed-for-3-years-over-protest-slogans

3. FREEDOM OF EXPRESSION

(ARTICLE 19)

3.1 FREEDOM OF EXPRESSION IN THE CONTEXT OF LEGISLATIVE BODIES

As part of the campaign to silence dissent in Hong Kong, the government effectively removed political opposition in the Legislative Council and district councils. In the name of safeguarding national security, peaceful political expression was disproportionately restricted and even criminalized.²⁶ The authorities arrested and charged individuals wanting to participate in the conduct of public affairs solely for promoting particular opinions or criticizing the government, forcing opposition figures and their supporters to self-censor their political discourse.

Pro-democracy candidates were disqualified from running in elections in an apparent effort to specifically target candidates who expressed viewpoints at odds with those of the government including on Hong Kong's political status.²⁷ The government cited behaviours including advocating for Hong Kong independence and objecting to the National Security Law in principle as reasons that lawmakers could not genuinely uphold their constitutional duties.

In 2016, the authorities started to bar candidates who supported Hong Kong independence from running in elections. In 2018, two candidates were barred from running in Legislative Council by-elections as the authorities deemed candidates advocating the right to self-determination had failed to pledge allegiance to the Hong Kong Special Administrative Region. Citing failure to pledge allegiance to Hong Kong as an inalienable part of China, the authorities also unseated elected lawmakers.²⁸

On 11 November 2020, China's National People's Congress Standing Committee (NPCSC) passed a resolution that allows the Hong Kong government to disqualify lawmakers over peaceful political dissent.²⁹ Minutes after the resolution was adopted, the government announced the disqualification of four pro-democracy lawmakers with immediate effect.³⁰ A mass resignation of all remaining opposition law makers followed the same day.

On 6 January 2021, police arrested 53 pro-democracy lawmakers and activists, under the NSL charge of "conspiracy to subversion". The charge was related to the organization and participation in self-organized "primaries" in July 2020 to select candidates for that year's Legislative Council election (which was eventually postponed). 47 of those arrested were subsequently charged and await trial.

²⁶ Amnesty International, *China: Disqualification of Hong Kong lawmakers deals another blow to rule of law* (News, 11 November 2020), [amnesty.org/en/latest/news/2020/11/china-disqualification-of-hong-kong-lawmakers-deals-another-blow-to-rule-of-law-2/](https://www.amnesty.org/en/latest/news/2020/11/china-disqualification-of-hong-kong-lawmakers-deals-another-blow-to-rule-of-law-2/)

²⁷ Amnesty International, *Hong Kong: Mass disqualification of pro-democracy candidates reeks of political repression* (News, 30 July 2020), [amnesty.org/en/latest/news/2020/07/hong-kong-mass-disqualification-of-prodemocracy-candidates-reeks-of-political-repression/](https://www.amnesty.org/en/latest/news/2020/07/hong-kong-mass-disqualification-of-prodemocracy-candidates-reeks-of-political-repression/)

²⁸ HKSAR Government Press Release, *Government statement on matters in relation to oath-taking*, 2 December 2016, [info.gov.hk/gia/general/201612/02/P2016120201005.htm](https://www.info.gov.hk/gia/general/201612/02/P2016120201005.htm)

²⁹ The National People's Congress of the People's Republic of China, *China's top legislature adopts decision on HKSAR LegCo members' qualification*, 12 November 2020, [npc.gov.cn/englishnpc/c23934/202011/d2a89c95fb3d4db5b8bedd5988445ad1.shtml](https://www.npc.gov.cn/englishnpc/c23934/202011/d2a89c95fb3d4db5b8bedd5988445ad1.shtml) The decision sets out that LegCo members shall be disqualified if they fail to meet the requirements of upholding the Basic Law and pledging allegiance to the HKSAR. Such failures would include advocating or supporting "Hong Kong independence", refusing to recognize the state's sovereignty and seeking interference in HKSAR affairs by foreign countries or external forces.

³⁰ HKSAR Government Press Release, *HKSAR Government announces disqualification of legislators concerned in accordance with NPCSC's decision on qualification of HKSAR legislators*, 11 November 2020, [info.gov.hk/gia/general/202011/11/P2020111100779.htm](https://www.info.gov.hk/gia/general/202011/11/P2020111100779.htm)

3.2 PRESS FREEDOM

Publishers, writers, and journalists in Hong Kong face harassment, prosecution, and even violence for merely peacefully exercising their right to freedom of expression. Five Hong Kong-based publishers and booksellers disappeared in 2015 after printing books critical of the Chinese government.³¹ One of the booksellers, Gui Minhai, a Swedish national, reappeared on Chinese state media in 2016 to give what appeared to be a forced “confession”. Under tight surveillance after a brief release in 2017, Gui was seized by plainclothes police while travelling to Beijing for medical reasons with two Swedish diplomats in 2018.³² Gui Minhai was subsequently sentenced by a Chinese court to 10 years in prison for “illegally providing intelligence to foreign entities”.³³ The detention and disappearances of Gui Minhai and the other booksellers had a chilling effect on the climate for freedom of expression and publishing in Hong Kong.

The Hong Kong government has used national security and sedition charges to prosecute media outlets and journalists whose work is critical of the government. When founder of pro-democracy paper *Apple Daily* was arrested on 10 August 2020, police raided the Apple Daily office and newsroom, rifling through documents that may have contained journalistic materials.³⁴ With a warrant issued under Article 43(1)(2) of the NSL that granted police the power to search and seize journalistic materials, a reported 500 police officers cordoned off the building and seized computers and documents.³⁵ On 17 June 2021, police once again raided the Apple Daily office building to arrest five senior executives under the provisions of the NSL. The protection of journalistic materials is crucial to enabling the media to expose wrongdoing without fear of retribution, which is the reason why these materials have generally received legal protection from seizure. In addition to damaging press freedom, the removal of such protection also puts confidential sources and informants at imminent risk.³⁶

Citing national security concerns, police have taken unprecedented measures against Apple Daily resulting in its closure on 24 June 2021. In less than a year, the founder, five senior executives and two editorial writers for the newspaper were arrested under the NSL. Police accused the newspaper of “colluding with foreign forces” by publishing articles related to foreign countries imposing sanctions on Chinese and Hong Kong government officials. Authorities subsequently froze HK\$18 million (US\$2.32 million) of assets owned by companies linked to Apple Daily, forcing the media company to cease operation due to insufficient funds.

On 29 December 2021, senior executives and board members of Stand News were arrested for “seditious publication”, an archaic colonial-era provision last amended in the 1970s. National security police officers raided the online news outlet and froze more than HK\$61 million (approximately US\$7.8 million) in assets. Stand News ceased operation on the same day.³⁷

In less than two years since the national security law was enacted, at least nine independent media outlets have closed due to the threat of the law.

In 2021, the government heavily restructured public broadcaster Radio Television Hong Kong (RTHK), removing all the videos in its online archive, dismissing hosts who were critical of the government, and cancelling shows that did not follow official lines.

The authorities also targeted the Hong Kong Journalists Association (HKJA). In January 2021, the Registry of Trade Unions demanded the HKJA provide additional financial information and justify previous activities. The Secretary for Security also criticised HKJA for “infiltrating” campuses and urged the group to publicise information of its members. State media has routinely targeted HKJA, citing journalistic work critical of the authorities and international partnerships as “evidence” of “endangering national security”. For example, state

³¹ Amnesty International Hong Kong, *Open letter to Chief Executive on 5 missing booksellers*, 4 March 2016, [web.archive.org/web/20200309040119/https://www.amnesty.org.hk/en/open-letter-to-chief-executive-on-5-missing-booksellers/s](https://www.amnesty.org/web/20200309040119/https://www.amnesty.org.hk/en/open-letter-to-chief-executive-on-5-missing-booksellers/s)

³² Amnesty International, *China: Bookseller handed outrageous 10-year sentence must be released* (Press Release, 25 February 2020), [amnesty.org/en/latest/news/2020/02/china-bookseller-handed-outrageous-10-year-sentence-must-be-released](https://www.amnesty.org/en/latest/news/2020/02/china-bookseller-handed-outrageous-10-year-sentence-must-be-released)

³³ Amnesty International, *Urgent Action: Imprisoned bookseller at risk of ill-treatment* (Index: ASA 17/5268/2022), [amnesty.org/ar/wp-content/uploads/2022/02/ASA1752682022ENGLISH.pdf](https://www.amnesty.org/ar/wp-content/uploads/2022/02/ASA1752682022ENGLISH.pdf);

Amnesty International, *China: Bookseller handed outrageous 10-year sentence must be released* (Press Release, 25 February 2020), [amnesty.org/en/latest/news/2020/02/china-bookseller-handed-outrageous-10-year-sentence-must-be-released](https://www.amnesty.org/en/latest/news/2020/02/china-bookseller-handed-outrageous-10-year-sentence-must-be-released)

³⁴ Amnesty International, *Hong Kong: Targeting of pro-democracy newspaper threatens press freedom* (News, 10 August 2020), [amnesty.org/en/latest/news/2020/08/hong-kong-targeting-of-pro-democracy-newspaper-is-threat-to-press-freedom](https://www.amnesty.org/en/latest/news/2020/08/hong-kong-targeting-of-pro-democracy-newspaper-is-threat-to-press-freedom)

³⁵ Amnesty International, *Hong Kong: Apple Daily raid, arrests a brazen attack on press freedom* (News, 17 June 2021), [amnesty.org/en/latest/news/2021/06/hong-kong-apple-daily-raid-arrests-a-brazen-attack-on-press-freedom](https://www.amnesty.org/en/latest/news/2021/06/hong-kong-apple-daily-raid-arrests-a-brazen-attack-on-press-freedom)

³⁶ Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report, 8 September 2015, UN Doc. A/70/361; UN Human Rights Committee, General Comment 34: Article 19: Freedoms of opinion and expression, 12 September 2011, UN Doc. CCPR/C/GC/34, para 45

³⁷ Amnesty International, *Hong Kong: Downward spiral for press freedom continues after arrests* (News, 29 December 2021), [amnesty.org/en/latest/news/2021/12/hong-kong-downward-spiral-for-press-freedom-continues-after-arrests](https://www.amnesty.org/en/latest/news/2021/12/hong-kong-downward-spiral-for-press-freedom-continues-after-arrests)

media accused HKJA of “colluding with foreign forces” because of its involvement in the Human Rights Press Awards (HRPA), an award recognizing human rights reporting around Asia previously organized by The Foreign Correspondence Club Hong Kong (FCCHK) and now disbanded Amnesty International Hong Kong.³⁸ On 25 April 2022 the FCCHK announced the suspension of the HKPA due to the “uncertainty” engendered by the national security law.³⁹

3.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF HONG KONG TO:

- Drop all criminal charges against and release those who have simply exercised their right to freedom of expression or other human rights, and end the practice of bringing such charges in future
- Implement measures in line with Article 19 of the Covenant, so as to take effective steps to guarantee a free, uncensored and unhindered press, including repealing any unreasonable direct or indirect restrictions on freedom of expression, in particular for the media
- Address threats, attacks, harassment and intimidation of journalists, including by thoroughly, promptly and independently investigating human rights violations and abuses against them and bringing the suspected perpetrators to justice in fair trials, and by providing effective remedies and adequate reparations to the victims

4. FREEDOM OF ASSOCIATION (ARTICLE 22)

4.1 CRACKDOWN ON CIVIL SOCIETY ORGANIZATIONS

Since the enactment of the NSL, near 100 civil society organizations operating in Hong Kong have been forced to disband or relocate facing similar threats posed by the law. The NSL created an unprecedented chilling effect among civil society groups. Among the 15 groups and networks that submitted information to the UN Human Rights Committee in 2020 in advance of the adoption of the list of issues prior to reporting, nearly half of the groups have either closed, left Hong Kong, or stopped all activities due to threats posed by the NSL.⁴⁰ Local human rights groups that used to facilitate civil society groups’ participation in the UN human rights mechanisms disbanded in 2020. Several of their leaders are currently detained awaiting trial on national security charges, and others have been forced into exile. Amnesty International has collected evidence of groups that have been deterred from participating in this review for the fear of being accused of “colluding with foreign forces”. In this context, the government’s assertion of business as usual, that its efforts safeguarding human rights “are open to public scrutiny of the Legislative Council of the HKSAR (“LegCo”), the media and various non-governmental organisations (“NGOs”)” is simply a falsity.⁴¹

The national security police used extensive powers granted by the national security law to investigate activists and civil society organizations. The authorities targeted those civil society groups which had broad support and the capacity to mobilize people. They sent letters to civil society organizations demanding information, including the personal details of their members, staff and partner organizations, as well as their finances and activities. Members of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (the

³⁸ “Behind the news, voluntary dissolution is the only way out for Hong Kong Journalist Association” (新聞背後 自行解散是記協唯一出路), *Taikunpao.com.hk*, 25 April 2022, taikunpao.com.hk/opinion/233119/2022/0425/712243.html

³⁹ Hong Kong Foreign Correspondence Club, *Important Notice from the President*, 25 April 2022, fcchk.org/press-freedom/hrpa/

⁴⁰ United Nations Human rights treaty bodies, CCPR - International Covenant on Civil and Political Rights 135 Session (27 Jun 2022 - 29 Jul 2022), tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2572&Lang=en

⁴¹ Replies of Hong Kong, China to the list of issues in relation to its fourth periodic report, CCPR/C/CHN-HKG/RQ/4 (2021) para 8.

Alliance) and the Civil Human Rights Front (CHRF) were charged under the NSL after they refused to comply with these requests.

The police accused the Alliance and the CHRF of “being a foreign agent” and “colluding with foreign forces”. The police used the annual June 4th candlelight vigil as evidence of the Alliance “endangering national security”. On 6 September 2021, the Alliance and four of its former committee members were charged with inciting subversion. The police also froze the assets of the Alliance. In October, Hong Kong’s Chief Executive ordered the Alliance to be struck off the Company Registry on the grounds that the group’s goal to end one-party leadership in China threatened national security.

On 25 October 2021, Amnesty International announced the closure of its two offices in Hong Kong because of risks and restrictions posed by the NSL.⁴²

In a dangerous blow to freedom of association and expression, in 2018 the government prohibited the operation of the Hong Kong National Party under Section 8 of the Societies Ordinance (Cap. 151), adopting the Hong Kong Police’s view that such a ban would be “in the interests of national security, public safety, public order and the protection of the rights and freedoms of others”.⁴³ The Societies Ordinance has previously been singled out by the Human Rights Committee as needing reform.⁴⁴

The National Security Crackdown on civil society organizations extended to groups operating outside of Hong Kong. In March 2022, Hong Kong National Security Police sent a letter to the Chief Executive of UK organization Hong Kong Watch, accusing the group of engaging in activities “jeopardising national security” such as “lobbying foreign countries to impose sanctions” and “other hostile activities”. The police accused the group of violating Article 29 of the national security law, which criminalizes collusion with foreign forces. As a result of the accusation, police blocked Hong Kong Watch’s website in Hong Kong.⁴⁵

Since 2021, the authorities have banned at least four websites affiliated with civil society groups critical of the Hong Kong government.

4.2 CRACKDOWN ON TRADE UNIONS

Since the implementation of the NSL, dozens of trade unions were forced to dissolve, including two of Hong Kong’s largest trade unions. The city’s largest teachers’ union, the Hong Kong Professional Teachers’ Union (HKPTU), and the largest pro-democracy confederation of trade unions, the Hong Kong Confederation of Trade Unions (HKCTU) ceased operation in August and October 2021 respectively in the face of enormous pressure from the authorities.

HKPTU, with over 90,000 members, was the biggest sectoral union in Hong Kong. Since July 2021, it has faced a torrent of criticism from China’s state media outlets, with some referring to the union as a “malignant tumour” that must be “eradicated”. The Hong Kong Education Bureau subsequently announced that it would cease all working relationships with HKPTU. In August 2021, HKPTU announced its plan to disband, citing “enormous pressure”.

Soon after HKPTU was forced to stop its operation, in September 2021, HKCTU announced its plan to dissolve due to political pressure. HKCTU comprises of 90 affiliated unions, representing 150,000 members from different sectors. It was Hong Kong’s only independent and autonomous confederation of trade unions. Similar to the case of HKPTU, the Chinese state media outlets initiated a smear campaign against HKCTU’s work in August 2021. Mung Siu Tat, the then Chief Executive of HKCTU, later said in a media interview that he was contacted by proxies from Beijing three times in a month, threatening him that the NSL department would take action if he declined to answer questions.⁴⁶ The HKCTU announced it was disbanding on September 19, 2021 and passed a resolution to that effect on October 3, 2021. However, the harassment from the authorities continued. In March 2022, the national security police brought in four former members of HKCTU for

⁴² Amnesty International, *Amnesty International to close its Hong Kong offices* (News, 25 October, 2021), [amnesty.org/en/latest/news/2021/10/amnesty-international-to-close-its-hong-kong-offices](https://www.amnesty.org/en/latest/news/2021/10/amnesty-international-to-close-its-hong-kong-offices)

⁴³ Amnesty International, *Hong Kong: Proposed ban on pro-independence political party a dangerous blow for freedom of association and expression* (Press Release, 17 July 2018), www.amnesty.org/en/latest/news/2018/07/hong-kong-political-party-ban

⁴⁴ Concluding Observation of the UN Human Rights Committee (hereinafter HRC): Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para. 20.

⁴⁵ Amnesty International, *Hong Kong: Targeting of UK human rights charity signals disturbing expansion of repression* (News, 14 March 2022), [amnesty.org/en/latest/news/2022/03/hong-kong-targeting-of-uk-human-rights-charity-signals-disturbing-expansion-of-repression](https://www.amnesty.org/en/latest/news/2022/03/hong-kong-targeting-of-uk-human-rights-charity-signals-disturbing-expansion-of-repression)

⁴⁶ “Beijing loyalists stalk Hong Kong civil society leaders”, *Financial Times*, 28 December 2021, [ft.com/content/4947c416-1d16-40a4-94d2-3b4c7dff1584](https://www.ft.com/content/4947c416-1d16-40a4-94d2-3b4c7dff1584)

questioning. The police also searched HKCTU's premises and took away computers and documents for investigation.

In addition, Hong Kong's Registry of Trade Unions launched an investigation into at least four trade unions, including Hong Kong Journalists Association, questioning if the unions' activities are relevant to their principles. Over 20 trade unions were pressured into disbanding under this climate of threat and fear.

The Hong Kong authorities also vowed to step up control over trade unions through legal regulations. Hong Kong's Secretary for Labour and Welfare Law Chi-kwong, stated that under the NSL, the authorities are responsible for supervising and regulating social organizations, including trade unions registered under the Trade Unions Ordinance. He warned that trade unions' registrations would be revoked if they violated the NSL.⁴⁷

4.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF HONG KONG TO:

- Ensure that no one is criminalized for exercising the right to freedom of association, nor subjected to threats, attacks, harassment, smear campaigns, intimidation or reprisals for their human rights work
- Immediately and unconditionally release all individuals detained or imprisoned solely for peacefully exercising their human rights, including the right to association.
- Guarantee in law and practice the right of associations to seek, receive and utilize funding from national, foreign and international sources without prior authorization or undue interference

5. FREEDOM OF PEACEFUL ASSEMBLY (ARTICLE 21)

5.1 THE CRACKDOWN ON PROTESTS IN 2019-2020

During the review period, the government increasingly imposed disproportionate restrictions on the right to freedom of peaceful assembly. As of May 2022, it is virtually impossible for individuals or groups critical of the government to organize peaceful assembly without facing the risks of prosecution.

The proposal of the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation Bill (Extradition Bill) triggered a series of protests beginning in March 2019, including three mass peaceful protests on 9 June, 16 June and 18 August, each attracting an estimated 1– 2 million participants. Protests became more frequent and larger in 2019 as the government refused to respond to the protesters' demands. The Hong Kong police gradually adopted a tougher approach to restricting public assemblies, ranging from revoking "notices of no objection" for marchers to objecting to protests outright on the grounds of "public security concerns".⁴⁸ While the vast majority of protesters were peaceful, as the year went on there was violence, which appears to have been fueled in large part by the use of unnecessary, reckless and excessive force by the

⁴⁷ "Trade unions may be revoked if violated the national security law", *The Standard*, 16 May 2021, thestandard.com.hk/breaking-news/section/4/172337/Trade-unions-may-be-revoked-if-violated-the-national-security-law

⁴⁸ "Don't forget our original intentions": Thousands protest in Kowloon, as Hong Kong police fire tear gas", *Hong Kong Free Press*, 2 December 2019, hongkongfp.com/2019/12/02/pictures-hong-kong-police-fire-tear-gas-whampoa-tsim-sha-tsui-mong-kok-disrupting-protest-calm/; "Riot police move in, end rally in support of Uighurs", *RTHK*, 22 December 2019, news.rthk.hk/rthk/en/component/k2/1499065-20191222.htm; Kris Cheng, "Hong Kong police ban major protest against anti-mask law, citing risk of bombs, arson and unrest", *Hong Kong Free Press*, 18 October 2019, hongkongfp.com/2019/10/18/hong-kong-police-ban-major-protest-anti-mask-law-citing-risk-bombs-arson-unrest

police and the persistent impunity of such behaviour.⁴⁹ In October 2019, the government announced a sweeping ban on full or partial face coverings such as face masks at protests. The mask ban has far-reaching repercussions for the human rights to peaceful assembly, privacy, dignity, health and protection against discrimination.

Since 2019 the police have effectively adopted a zero-tolerance approach for disruptions caused by protesters when policing assemblies. Between June 2019 and January 2021 Amnesty International documented an alarming pattern of reckless and indiscriminate tactics being employed by the Hong Kong Police Force to control crowds.⁵⁰ There was only minimal willingness from the police to facilitate assemblies and no willingness to negotiate in case of problems or tension.

The authorities used the Public Order Ordinance (Cap. 245), to prosecute and imprison activists for taking part in peaceful assemblies and exercising their right to freedom of expression. 24 activists were sentenced to between four and 16 months in prison for “unauthorized assembly” for their participation in Hong Kong’s annual vigil to commemorate the Tiananmen Square crackdown of 4 June 1989. On 13 December 2021, human rights lawyer and one of the organizers of the Tiananmen commemoration vigil Chow Hang-tung was sentenced to 12 months’ imprisonment for taking part in an unauthorized assembly after joining a peaceful candlelight vigil commemorating the Tiananmen crackdown on 4 June 2020. On 4 January 2022, she received a 15-month prison sentence in a second conviction on the charge of “inciting others to take part in an unauthorised assembly” after she published a social media post asking people to commemorate the Tiananmen crackdown on 4 June 2021.

The provisions and application based on the Public Order Ordinance fail to meet international human rights law and standards on the right to peaceful assembly.⁵¹ United Nations Human Rights Treaty Bodies and experts have long been expressing concern about the Hong Kong government imposing excessive restrictions on the right to freedom of peaceful assembly. According to Articles 14–15 of Hong Kong’s Public Order Ordinance (POO), those wishing to organize a protest are required to obtain “a notice of no objection” from the police before an assembly may proceed. Twenty-four activists who participated in last year’s peaceful Tiananmen vigil have since been arrested, and some have been jailed. Vague and ambiguous charges such as “inciting others to participate in unauthorized assembly” appeared to be politically motivated and intended as a pretext to deter peaceful exercise of the rights to peaceful assembly and expression.

Repression of the right to peaceful assembly significantly worsened following the protests in 2019 and intensified under COVID-19 emergency measures. The Hong Kong government invoked the Prevention and Control of Disease Ordinance and announced public health emergency laws in response to COVID-19 that virtually banned all peaceful protests. Despite allowing other large-scale open-air events to take place, police banned the Tiananmen crackdown vigil for two years on public health grounds.

The authorities also cracked down on freedom of expression and peaceful assembly on university campuses. Seven students were arrested and charged with national security charges for joining peaceful protests or peacefully expressing opinion in study body meetings.⁵²

5.2 RECOMMENDATIONS

- Ensure that police handling of protests is necessary and proportionate to public order concerns and conforms to guarantees of the rights to freedom of expression and peaceful assembly enshrined in Articles 19 and 21 of the Covenant and Article 27 of the Basic Law

⁴⁹ Amnesty International, *Hong Kong: Lack of accountability for police violence could fuel unrest* (News, 5 March 2020), [amnesty.org/en/latest/news/2020/03/hong-kong-lack-accountability-police-violence-fuel-unrest](https://www.amnesty.org/en/latest/news/2020/03/hong-kong-lack-accountability-police-violence-fuel-unrest); Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019), 21 June 2019, [amnesty.org/en/documents/asa17/0576/2019/en](https://www.amnesty.org/en/documents/asa17/0576/2019/en)

⁵⁰ Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019); Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed* (Press Release, 19 September 2019), [amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed](https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed)

⁵¹ Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para. 19; Concluding observations of the HRC: Hong Kong, UN Doc. CCPR/C/HKG/CO/3 (2013), para. 10.

⁵² Hong Kong University student leaders arrested by national security police over mourning of police attacker, *Hong Kong Free Press*, 18 August 2021, [hongkongfp.com/2021/08/18/hong-kong-university-student-leaders-arrested-by-national-security-police-over-mourning-of-police-attacker](https://www.hongkongfp.com/2021/08/18/hong-kong-university-student-leaders-arrested-by-national-security-police-over-mourning-of-police-attacker/); Amnesty International, *Hong Kong: Crackdown over CUHK student protest is blatant attack on human rights* (New, 7 December 2020), [amnesty.org/en/latest/news/2020/12/hong-kong-arrest-of-students-over-peaceful-cuhk-protest-is-blatant-attack-on-human-rights](https://www.amnesty.org/en/latest/news/2020/12/hong-kong-arrest-of-students-over-peaceful-cuhk-protest-is-blatant-attack-on-human-rights)

- Drop prosecutions and other legal procedures regarding activists that deter participation in peaceful protests and other measures that unduly restrict the freedom of peaceful assembly
- Bring the Public Order Ordinance into line with Hong Kong's obligations under the Covenant to respect, protect and fulfil the rights to freedom of expression, association and peaceful assembly
- Repeal authorization requirements that require permission to be granted for public assemblies to take place
- Ensure that measures to prevent the spread of the Covid-19 pandemic are necessary and proportionate and do not impose undue restrictions on the rights to freedom of peaceful assembly

6. USE OF FORCE BY LAW ENFORCEMENT OFFICIALS

Amnesty International documented numerous instances of unnecessary and excessive use of force by Hong Kong police during protests in 2019. These include the dangerous misuse of less-lethal weapons such as rubber bullets, bean bag and foam rounds, which led to serious eye injuries in some cases; assaults against protesters, bystanders and others who were not resisting, including beating them with batons and shields; misuse of chemical irritants such as pepper spray and tear gas;⁵³ aggressive tactics to obstruct journalists and other observers at protest sites;⁵⁴ and use of water cannons to shoot liquid mixed with irritants and dye that indiscriminately marked individuals for later identification regardless of their involvement in the protests or involvement in violent activities. The use of water cannon also indiscriminately endangered the health of people as a result of the chemical irritant added.⁵⁵ Police fired live ammunition as “warning shots” in at least eight instances and directly against protesters in three other cases, allegedly in self-defence, resulting in serious injury.⁵⁶

From 12 June 2019 to 29 February 2020, police fired a total of 19 rounds of live ammunition; 16,191 rounds of tear gas; 10,100 rounds of rubber bullets; 2,033 beanbag rounds and 1,880 rounds of sponge bullets.⁵⁷ During the siege of Polytechnic University, police fired 3,293 rounds of tear gas and 3,188 rounds of rubber bullets on 18 November 2019 alone.⁵⁸

There was a clear pattern of police officers using unnecessary and excessive force during arrests of protesters, with anti-riot police and a Special Tactical Squad (commonly known as “raptors”) responsible for the worst violence. Almost every arrested person who was interviewed described being beaten with batons and fists during their arrest, even when they posed no resistance.⁵⁹

⁵³ Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019), 21 June 2019, [amnesty.org/en/documents/asa17/0576/2019/en](https://www.amnesty.org/en/documents/asa17/0576/2019/en); Amnesty International, *Hong Kong: Rampaging police must be investigated* (Press Release, 1 September 2019), [amnesty.org/en/latest/news/2019/09/hong-kong-rampaging-police-protest](https://www.amnesty.org/en/latest/news/2019/09/hong-kong-rampaging-police-protest)

⁵⁴ Amnesty International Hong Kong, *24 NGOs to Carrie Lam: Cease the criminal investigations of human rights observers, drop all related charges* (Open Letter, 12 February 2020), tinyurl.com/cazrmre

⁵⁵ Amnesty International, *Hong Kong: Water cannons pose real danger in hands of trigger-happy police* (Press Release, 9 August 2019), [amnesty.org/en/latest/news/2019/08/hong-kong-police-water-cannon-danger](https://www.amnesty.org/en/latest/news/2019/08/hong-kong-police-water-cannon-danger)

⁵⁶ HKSAR Government Press Releases, *Police severely condemn law-breaking acts of extremely violent protestors*, 26 August 2019, bit.ly/3cmWAlS; *Police severely condemn violent protests in multiple districts*, 1 September 2019, bit.ly/2VHan05; *Police strongly condemn continued violent protests*, 30 September 2019, bit.ly/2l1QrNm; *Police severely condemn massive violent protests*, 2 October 2019, bit.ly/2Prpwio; *Open fire in Yuen Long*, 5 October 2019, bit.ly/2vI0iv8; *Radical protestors vandalised facilities in various districts and police officers drew their service arms from their holsters*, 11 November 2019, bit.ly/32xGOzB; *Police open fire in Yau Ma Tei*, 18 November 2019, bit.ly/39514ef

⁵⁷ Hong Kong Legislative Council, *Replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2020-21*, legco.gov.hk/yr19-20/english/fc/fc/w_q/sb-e.pdf, p. 341.

⁵⁸ Radio Television Hong Kong verified facebook account, *Police use of firearms in the past half year (警方過去半年彈藥使用詳細列表)*, 9 December 2019.

⁵⁹ Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed* (Press Release, 19 September 2019), [amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed](https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed)

In November 2019, the police laid siege to the Hong Kong Polytechnic University campus as part of a standoff with protesters. The Police deployment of tear gas and water cannon included an apparent attempt to keep people, including hundreds of protesters, volunteer medics, social workers, journalists and other observers, from leaving the scene.⁶⁰

The IPCC decided in July 2019 to conduct a fact-finding study into several public order events connected to the protests. The report, released in May 2020,⁶¹ disproportionately focused on the ‘hatred and violence targeting police’ by a small section of the protesters. The report also makes an alarming claim of the advent of terrorism in the city without any substantial support. A foreign expert panel hired to help with this study had stepped down in December 2019, saying that the IPCC lacked the investigative powers and capabilities necessary to “begin to meet the standards citizens of Hong Kong would likely require of a police watchdog operating in a society that values freedoms and rights.”⁶² Indeed, during a related judicial review, the IPCC made clear that the study was not an investigation and would not reach any conclusions related to complaints filed against the police.⁶³

As of 24 November 2021, 9,143 complainants had filed 1,949 complaints regarding alleged police misconduct during the 2019 protests. 123 complaints had been reviewed by the IPCC and 19 were upheld as valid.⁶⁴ Investigation of police misconduct, including excessive use of force, remains in the hands of the police themselves through the Complaints Against Police Office (CAPO), with the Independent Police Complaint Council (IPCC) having only advisory and oversight functions. International human rights treaty bodies and local stakeholders have repeatedly pointed out that the Independent Police Complaints Council (IPCC) is institutionally limited in its capacity and ability to carry out an independent, impartial, effective and thorough investigation of the human rights violations related to the protests.⁶⁵

As of 28 February 2022, 1,172 people have been convicted for their participation in the 2019 protests.⁶⁶ However, there has been no independent investigation into police excessive use of force during the protests.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF HONG KONG TO:

- Ensure that the law and regulations governing the use of force by law enforcement officials are in line with international law and standards, including the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials, and that all law enforcement officials are properly trained accordingly
- Take necessary measures to establish a fully 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 and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints

⁶⁰ Amnesty International Hong Kong, *Hong Kong: Police must defuse campus standoff to avoid more tragedy* (Press Release, 18 November 2019), [amnesty.org/en/latest/news/2019/11/hong-kong-police-must-defuse-campus-standoff-to-avoid-more-tragedy/](https://www.amnesty.org/en/latest/news/2019/11/hong-kong-police-must-defuse-campus-standoff-to-avoid-more-tragedy/); Amnesty International Hong Kong, *24 NGOs to Carrie Lam: Cease the criminal investigations of human rights observers, drop all related charges* (Open Letter, 12 February 2020), tinyurl.com/27hskntz

⁶¹ Independent Police Complaints Council, *A Thematic Study by the IPCC*, ipcc.gov.hk/en/public_communications/ipcc_thematic_study_report.html (accessed 23 May 2022)

⁶² “Foreign Panel Steps Down From Probe of Hong Kong Police”, *The Wall Street Journal*, 10 December 2019, [wsj.com/articles/foreign-panel-steps-down-from-probe-of-hong-kong-police-11576018800](https://www.wsj.com/articles/foreign-panel-steps-down-from-probe-of-hong-kong-police-11576018800); Amnesty International, *Hong Kong: Impotent and biased IPCC report into protests fails to bring justice any closer*, 15 May 2020, [amnesty.org/en/latest/news/2020/05/hong-kong-impotent-and-biased-ipcc-report-into-protests-fails-to-bring-justice-any-closer](https://www.amnesty.org/en/latest/news/2020/05/hong-kong-impotent-and-biased-ipcc-report-into-protests-fails-to-bring-justice-any-closer)

⁶³ *Lui Chi Hang Hendrick v Independent Police Complaints Council* (HKCFI 614), Hong Kong Court of First Instance (2020).

[legalref.judiciary.hk/doc/judg/word/vetted/other/en/2019/HCAL002924A_2019.docx](https://www.legalref.judiciary.hk/doc/judg/word/vetted/other/en/2019/HCAL002924A_2019.docx), paras 25, 89, 93.

⁶⁴ “Anti-ELAB incident 1949 complaints against police. Police did not show identification no., used mobile to film citizens. Complaints were upheld (反修例風波 1949 宗投訴警察 警無編號涉用手機反拍市民 投訴屬實)”, *HK01*, 13 December 2021, tinyurl.com/5e97r33d

⁶⁵ UN Human Rights Committee, Concluding Observations: Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para 11; Concluding Observations: Hong Kong, UN Doc. CCPR/C/HKG/CO/2 (2006), para 9; Concluding Observations: Hong Kong, UN Doc. CCPR/C/HKG/CO/3 (2013), para 12; UN Committee against Torture, Concluding Observations: Hong Kong, UN Doc. CAT/C/HKG/CO/4 (2009), para 12; Concluding Observations: Hong Kong, UN Doc. CAT/C/CHN-HKG/CO/5 (2016), para 9; Amnesty International, *Hong Kong: Missing Truth, Missing Justice* (Index ASA 17/1868/2020), 5 March 2020, [amnesty.org/en/documents/asa17/1868/2020/en](https://www.amnesty.org/en/documents/asa17/1868/2020/en)

⁶⁶ HKSAR Government Press Release, *LCQ14: Statistics on criminal cases*, 27 April 2022, info.gov.hk/gia/general/202204/27/P2022042700446.htm

7. ARBITRARY ARREST OR DETENTION; AND TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT (ARTICLES 6, 7, 9)

7.1 ARBITRARY DETENTION 2019 PROTESTS

Amnesty International documented multiple instances of arbitrary and unlawful arrests during the protests in 2019. Most of the arrested people interviewed by Amnesty International did not know what behaviour they were engaging in that was considered suspicious or criminal at the time of arrest.⁶⁷

Amnesty International has also found evidence of torture and other ill-treatment in detention. According to individuals arrested during the 2019 protests who were interviewed by Amnesty International, unlawful use of force by police most commonly occurred before and during arrest. In some cases, detained protesters also reported being severely beaten in custody and suffering treatment that constated torture or other ill treatment. In multiple instances, the abuse appears to have been meted out as “punishment” for talking back or appearing uncooperative.⁶⁸

7.2 RECOMMENDATIONS

- Ensure that arbitrary detention is prohibited in all circumstances
- Ensure individuals in detention are protected from coerced “confessions”, torture and other ill-treatment
- Establish an adequately resourced and independent mechanism to investigate all allegations of torture and other ill-treatment by members of law enforcement agencies and bring to justice those complicit in use of torture or other ill-treatment through fair trials

⁶⁷ Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed* (Press Release, 19 September 2019), [amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed](https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed)

⁶⁸ Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed* (Press Release, 19 September 2019), [amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed](https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed)

8. RIGHT TO LIBERTY AND FAIR TRIAL (ARTICLES 9,14,15)

8.1 STRINGENT THRESHOLD FOR BAIL AND PROLONGED PERIOD OF PRETRIAL DETENTION

Article 42 of the NSL stipulates that individuals suspected of violating the NSL are to be denied bail “unless the judge has sufficient grounds for believing that they will not continue to commit acts endangering national security”. As such, the burden of establishing these grounds is placed on the suspect, rather than the state being required to prove the necessity and proportionality of pretrial detention. This effective reversal of the presumption of bail runs counter to the normal practice in criminal prosecutions in Hong Kong and to international human rights law and standards.

Following a legal challenge, the Court of Final Appeal ruled that the court should make safeguarding national security a top priority when considering bail.⁶⁹ The NSL in its wording and application makes “negation of bail” the default position, but it appears that Hong Kong courts see themselves unable to do anything about it. The top court stated clearly it has “no power to hold any provision of the NSL to be unconstitutional or invalid as incompatible with the Basic Law and Bill of Rights” because the NSL explicitly stated that the courts have no review power over the law.⁷⁰ In that case, the court further ruled that judges should only grant bail when an individual can prove that they will not commit any “acts of that nature capable of constituting an offence under the NSL or the laws of the HKSAR safeguarding national security”.⁷¹ The judgment sets out that judges should “consider everything that appears to the court to be relevant to making the bail decision, including the possible imposition of appropriate bail conditions and materials which would not be admissible as evidence at the trial”.⁷² According to barristers and lawyers handling NSL cases, this interpretation means that virtually anything said and done by the defendant at any point of their life can be used as evidence against their bail applications.⁷³

When defendants face an unreasonably stringent threshold for bail and repeated rejection of their bail applications, even after agreeing to very extensive and sometimes unprecedented restrictions, and when they then cannot file a judicial review for the compatibility of the law and the human rights safeguards in local and international laws because the courts have decided that the law deprives them of the power to do so, it effectively leaves them without a remedy. Those defendants, some of whom have been arrested solely for exercising the right to freedom of expression, are consequently being held in extended periods of pretrial detention. As of 5 April 2022, 44 individuals charged with the NSL have been remanded in custody for more than 360 days after being denied bail.⁷⁴

⁶⁹ “Hong Kong national security law: media tycoon Jimmy Lai sent back behind bars as top court allows prosecutors to appeal against release on HK\$10 million bail”, *South China Morning Post*, 31 December 2020, scmp.com/news/hong-kong/politics/article/3115991/hong-kong-national-security-law-jimmy-lai-back-custody

⁷⁰ Hong Kong Court of Final Appeal (CFA), *HKSAR v. Lai Chee Ying*, [2021] HKCFA 3, final appeal judgement, 9 February 2021, legalref.judiciary.hk/doc/judg/word/vetted/other/en/2021/FACC000001_2021.doc The decision has been criticized for failing to subject the stringent bail conditions to the tests of necessity and proportionality. See Johannes Chan, “Judicial Responses to the National Security Law: *HKSAR v Lai Chee Ying*”, 12 May 2021, *Hong Kong Law Journal*, Volume 51, Issue 1, papers.ssrn.com/sol3/papers.cfm?abstract_id=3842790

⁷¹ CFA, *HKSAR v. Lai Chee Ying*, final appeal judgement (previously cited).

⁷² CFA, *HKSAR v. Lai Chee Ying*, final appeal judgement (previously cited).

⁷³ “The cage of the NSL Part 1: Criminalizing speech, no bail, what are arrestees under the NSL experiencing?” (國安法之籠：上以言入罪、保釋無門，國安法被告在經歷什麼?), *Stand News*, 25 May 2021, tinyurl.com/3xspcfwb

⁷⁴ “Tracking the Impact of Hong Kong’s National Security Law”, 5 April 2022, *ChinaFile*, chinafile.com/tracking-impact-of-hong-kongs-national-security-law

8.2 SPECIALLY APPOINTED JUDGES FOR NATIONAL SECURITY LAW CASES

Under Article 44 of the NSL, the Chief Executive of the HKSAR has the power to designate judges at each court level to handle cases including appeals in relation to the National Security Law. According to an official booklet introducing the NSL, before doing so, the Chief Executive may consult the Chief Justice of the Court of Final Appeal and the Committee for Safeguarding National Security.⁷⁵

The independence and impartiality of tribunals tasked with criminal proceedings, as required by Article 14(1) of the ICCPR, is essential to a fair trial, protects the integrity of the justice system itself, and is a prerequisite of the rule of law. The courts as institutions and each judge must be independent. This means that the people appointed as judges must be selected primarily on the basis of their legal expertise and integrity.⁷⁶

According to international human rights standards, the requirement of independence and impartiality of the court, including tribunals specially constituted for exceptional and specifically justified categories of cases, is an absolute right that is not subject to any exception.⁷⁷ The Hong Kong government is bound by obligations stipulated in the ICCPR and other international legal standards to take specific measures guaranteeing such independence.⁷⁸ A situation in which the executive is able to control the judiciary is incompatible with the notion of an independent tribunal. Selection and appointment procedures should be transparent, based on clear and objective criteria, without discrimination such as on the basis of political opinion, and must “safeguard against judicial appointments for improper motives”.⁷⁹ For this purpose, an independent commission on the appointment of judges plays a crucial role in ensuring judicial independence. Authorizing Hong Kong’s Chief Executive to appoint judges without the participation of an independent commission removes an important safeguard for an impartial and independent judiciary.

8.3 RIGHT TO LEGAL COUNSEL

On 10 August 2020, a student activist and 11 other individuals were arrested for “illegally crossing borders” in mainland China when they reportedly left Hong Kong by boat to seek asylum. He was transferred back to Hong Kong on 22 March 2021 after serving a seven-month prison sentence in mainland China. Following his return to Hong Kong, he faced multiple charges including “colluding with foreign or external elements to endanger national security”. His family said police and correctional service officials refused to disclose his whereabouts. They only saw him at his trial on 7 April 2021. His sister said the lawyer representing his case in Hong Kong was not hired by the family.⁸⁰ According to media reports, his lawyer said he “is not obligated” to discuss his instructions with his family. Also, according to media reports, he has not applied for legal aid or the duty lawyer service.⁸¹

In October 2021, the government proposed to change the legal aid system, removing legal aid applicant’s right to choose legal counsel unless there are “exceptional circumstances”. The government also proposed to reduce the number of legal aid civil cases and judicial review cases solicitors can take each year.⁸² A range of international human rights standards set out a person’s right to access legal assistance during pretrial proceedings, trials and appeals.⁸³ The state has the responsibility to ensure that everyone should be represented by counsel of their choice or an appointed lawyer who is able to provide advice free from intimidation, hindrance or other improper interference.⁸⁴

⁷⁵ HKSAR, The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, 2020, p. 29.

⁷⁶ UN Basic Principles on the Independence of the Judiciary, Principle 10.

⁷⁷ UN Human Rights Committee, General Comment 32, July 2007, UN Doc. CCPR/C/GC/32, para. 19.

⁷⁸ The relevant international legal standards include the Basic Principles on the Independence of the Judiciary and the Bangalore Principles of Judicial Conduct.

⁷⁹ Principle 10 of the Basic Principles on the Independence of the Judiciary; UN Human Rights Committee, General Comment 32, July 2007, UN Doc. CCPR/C/GC/32, para. 19.

⁸⁰ “Andy Li’s lawyer not hired by family, says sister”, *RTHK*, 31 March 2021, news.rthk.hk/rthk/en/component/k2/1583680-20210331.htm

⁸¹ “Andy Li did not apply for legal aid or duty lawyer. Representing lawyer Lawrence Law suspended twice for misconduct” (李宇軒無申法律援助及當值律師服務 代表律師羅達雄兩次行為失當停牌), *HK01*, 8 June 2021, bit.ly/3iU3jJn

⁸² Hong Kong Legislative Council Panel on Administration of Justice and Legal Service, *Proposed Enhancement Measures to the Legal Aid System in Hong Kong LC Paper No. CB(4)1677/20-21(01)*, October 2021, legco.gov.hk/yr20-21/english/panels/ajls/papers/ajls20211026cb4-1677-1-e.pdf

⁸³ Amnesty International, Fair Trial Manual (Index: POL 30/002/2014), amnesty.org/en/documents/pol30/002/2014/en, p. 43.

⁸⁴ Amnesty International, Fair Trial Manual (Index: POL 30/002/2014), amnesty.org/en/documents/pol30/002/2014/en, p. 44.

Amnesty International also received information about lawyers fearing retaliation and further restrictions from the government for defending individuals facing national security charges.

8.4 RETROACTIVITY

Although both Beijing and top Hong Kong officials have declared on various occasions that the NSL would not be applied retroactively,⁸⁵ police has reportedly investigated incidents preceding enactment of the law after invoking the law to arrest activists.⁸⁶ Police also gathered evidence, including social media posts, from as early as July 2019 to press national security charges against a political activist.⁸⁷

It is highly problematic to cite behaviours that took place prior to the enactment of the NSL as evidence that these activists violated the NSL. The principle of non-retroactivity would be infringed if the NSL is actually applied to offences committed before its provisions came into force. International human rights law stipulates that no criminal law should be retroactively applied in any circumstances.⁸⁸ Changes in rules of procedure and evidence under certain circumstances can also lead to retroactive application.⁸⁹ The principle of legality requires, first, that the prosecution prove each element of the crime to the required legal standard. Secondly, the accused need to have had certainty, foreseeability of criminalization and the enjoyment of legal benefits as existing at the time (meaning that at the time of commission, they needed to know that their acts or omissions would lead to potential criminal liability). The third requirement underpinning the principle of legality is that criminal courts do not punish acts that are not punishable under the law(s) cited in the charges. These strict rules provide safeguards against arbitrary prosecution, conviction and punishment. It is therefore contradictory to use acts that were not criminalized at the time of commission as evidence for alleged wrongdoing after enactment of the law.

8.5 EXTENSION OF THE APPLICABILITY OF NATIONAL SECURITY LAW PROVISIONS

The NSL allows for designated judges, stringent bail threshold and extensive investigatory powers in cases involving national security charges.⁹⁰ When handling bail applications in NSL cases, the Court of Final Appeal interpreted that these provisions, which weaken fair trial guarantees, should be applicable even in non-NSL cases.

On 14 April 2021, the Court of Final Appeal ruled that the stringent bail threshold of the NSL applies to prosecutions under other local laws that are related to national security.⁹¹

In a ruling on an application for bail in a sedition case, the Court of the Final Appeal held that the stringent bail threshold applicable in cases involving national security charges is also applicable to all cases related to national security, including those involving non-NSL charges.⁹² The court further ruled that article 43 and 44 of the NSL, which grants national security police extensive investigative powers and allows for designated judges to handle NSL cases, should also be applied in non-NSL cases.⁹³

⁸⁵ Including at the UN Human Rights Council, see HKSAR Government Press Releases, *Video message by CE at United Nations Human Rights Council meeting (with photos/video)*, 30 June 2020, info.gov.hk/gia/general/202006/30/P2020063000655.htm

⁸⁶ “National security law for Hong Kong ‘not retroactive’, but can it be compatible with mainland Chinese legislation?”, *South China Morning Post*, 15 June 2020, scmp.com/news/hong-kong/politics/article/3089166/national-security-law-hong-kong-not-retroactive-can-it-be; “Law won’t be retroactive, Carrie Lam tells the UN”, *RTHK*, 30 June 2020, [ews.rthk.hk/rthk/en/component/k2/1534945-20200630.htm](https://www.rthk.hk/rthk/en/component/k2/1534945-20200630.htm); Hong Kong Free Press, “Hong Kong police visit local newsroom, sift through past – despite security law being non-retroactive”, 28 August 2020, hongkongfp.com/2020/08/28/hong-kong-police-visit-local-newsroom-sift-through-past-despite-security-law-being-non-retroactive/; AFP, “Outcry over Hong Kong media mogul Jimmy Lai’s arrest”, 11 August 2020, news.yahoo.com/hong-kong-media-mogul-jimmy-023018691.html

⁸⁷ “Hong Kong media mogul charged over actions, speech predating security law”, *Radio Free Asia*, 14 December 2020, rfa.org/english/news/china/charged-12142020131823.html

⁸⁸ ICCPR, Articles 4 and 15(1).

⁸⁹ UN Human Rights Committee, Views: *Nicholas v. Australia*, adopted on 19 March 2004, UN Doc. CCPR/C/80/D/1080/2002, para 7.7

⁹⁰ Article 42, 43 and 44 of the NSL, [www.elegislation.gov.hk/fwd/doc/hk/a406/eng_translation_\(a406\)_en.pdf](http://www.elegislation.gov.hk/fwd/doc/hk/a406/eng_translation_(a406)_en.pdf)

⁹¹ “Court of Final Appeal ruled seditious publications related to national security, detailed bail application” (終院裁定發布煽動刊物涉國安罪拒保釋), *Singtao*, 15 December 2021, [rbgy.ntbo5c](https://www.rbgy.ntbo5c)

⁹² *HKSAR v Ng Hau Yi Sidney* (HKCFA 42), Hong Kong Court of Final Appeal (2021), legalref.judiciary.hk/doc/judg/word/vetted/other/en/2021/FAMC000032_2021.doc, paras 28, 29.

⁹³ *HKSAR v Ng Hau Yi Sidney* (HKCFA 42), Hong Kong Court of Final Appeal (2021), legalref.judiciary.hk/doc/judg/word/vetted/other/en/2021/FAMC000032_2021.doc, paras 27, 31.

8.6 RECOMMENDATIONS

- Respect the presumption of bail, and ensure that the onus is on the authorities to establish there is a convincing reason to deny bail
- Ensure that safeguards that are enshrined in Hong Kong law, including the right to fair trial and freedom of expression, are strictly adhered to as a counterweight to the sweeping powers introduced by the national security law
- Fully comply with obligations under the International Covenant on Civil and Political Rights, including by revising laws and changing policies and practices to ensure fair trial standards

9. DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS (ARTICLES 2,17,26)

9.1 OVERVIEW

Hong Kong's present anti-discrimination ordinances do not cover sexual orientation, gender identity or sex characteristics. In January 2016, a study by the Equal Opportunities Commission, a statutory body tasked with implementation of the existing anti-discrimination ordinances, found that lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Hong Kong experience extensive discrimination in many aspects of their public lives, such as in employment, education and the provision of services.⁹⁴

⁹⁴ Equal Opportunities Commission, *Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status*, January 2016, eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf.

In several issue-specific rulings, the Court of Final Appeal and lower courts have held the blanket denial of partnership rights for same-sex couples to be discriminatory despite same-sex marriages or civil partnerships not yet being recognized in Hong Kong. Their judgements have included that it is discriminatory for the government to deny all same-sex couples access to spousal dependent visas, employment benefits and joint tax assessment and public housing.⁹⁵ In March 2021, a gay widower filed a judicial review against the government after he was not recognized as the next-of-kin of his late husband, preventing him from identifying his spouse's body or making funeral arrangements. He later withdrew the legal challenge as the government clarified that there was no distinction between same-sex and heterosexual spouses in policies related to such matters.⁹⁶

In May 2021, the Court of First Instance ruled that same-sex partners can apply for equal parental rights over their child when one of them is the biological parent.⁹⁷ While this ruling recognizes parental rights in some situations, many other forms of parenting, where they may not be biological connection to the child, are left out of the purview if equal parental rights.

However, the High Court has held that same-sex couples in Hong Kong have no constitutional right to marry under the territory's Basic Law or other domestic human rights protections and that, therefore, the government also was not under an obligation to provide any alternative form of legal recognition that would essentially endow equivalent rights.⁹⁸

Despite setting up an inter-departmental working group on gender recognition in 2014 and carrying out a consultation in 2017, the Hong Kong government made no progress towards drafting a gender-recognition law.⁹⁹ The Court also upheld a government policy requiring transgender people to undergo surgery before having their gender legally recognized,¹⁰⁰ which violates their right to highest attainable standard of health and their right to privacy.

9.2 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF HONG KONG TO:

- Take the necessary steps to identify, eliminate and prevent discrimination against LGBTI individuals across all spheres
- Adopt comprehensive anti-discrimination legislation relating to sexual orientation, gender identity, gender expression and sex characteristics, including a mandate to investigate allegations of discrimination against LGBTI people
- Allow individuals to change their legal name and gender, including the gender markers on official documents issued by the state, through a quick, accessible, and transparent procedure and in accordance with the individual's sense of gender identity, self-determination, and without the requirement of medical intervention as a precondition

⁹⁵ Amnesty International, *Hong Kong moves closer to achieving LGBTI equality with landmark judgment* (Press Release, 4 July 2018), [amnesty.org/en/latest/news/2018/07/hong-kong-moves-closer-to-lgbti-equality-landmark-judgment/](https://www.amnesty.org/en/latest/news/2018/07/hong-kong-moves-closer-to-lgbti-equality-landmark-judgment/); Amnesty International, *Hong Kong: Court ruling a huge step forward for same-sex equality* (Press release, 6 June 2019), [amnesty.org/en/latest/news/2019/06/hong-kong-same-sex-equality-ruling-victory/](https://www.amnesty.org/en/latest/news/2019/06/hong-kong-same-sex-equality-ruling-victory/); Amnesty International, *Hong Kong: Court victory for same-sex couple denied housing is a triumph for LGBTI rights* (Press Release, 4 March 2020), [amnesty.org/en/latest/news/2020/03/hong-kong-court-victory-for-same-sex-couple-denied-housing-triumph-lgbti-rights/](https://www.amnesty.org/en/latest/news/2020/03/hong-kong-court-victory-for-same-sex-couple-denied-housing-triumph-lgbti-rights/)

⁹⁶ "Gay widower drops legal challenge after Hong Kong gov't affirms equality in after-death arrangements", *Hong Kong Free Press*, 7 October 2021, [hongkongfp.com/2021/10/07/gay-widower-drops-legal-challenge-after-hong-kong-govt-affirms-equality-in-after-death-arrangements/](https://www.hongkongfp.com/2021/10/07/gay-widower-drops-legal-challenge-after-hong-kong-govt-affirms-equality-in-after-death-arrangements/)

⁹⁷ "A huge relief: Hong Kong's LGBT+ community hails court ruling granting parental rights for same-sex partners", *Hong Kong Free Press*, 11 June 2021, [hongkongfp.com/2021/06/11/hong-kongs-lgbt-community-hails-step-forward-as-court-grants-parental-rights-for-same-sex-partners/](https://www.hongkongfp.com/2021/06/11/hong-kongs-lgbt-community-hails-step-forward-as-court-grants-parental-rights-for-same-sex-partners/)

⁹⁸ Amnesty International, *Hong Kong: A serious setback for equal marriage* (Press Release, 18 October 2019), [amnesty.org/en/latest/news/2019/10/hong-kong-a-serious-setback-for-equal-marriage/](https://www.amnesty.org/en/latest/news/2019/10/hong-kong-a-serious-setback-for-equal-marriage/)

⁹⁹ Amnesty International Hong Kong, *Submission to Inter-departmental Working Group on Gender Recognition for the Consultation Paper (Part 1) on Gender Recognition*, 2017, [web.archive.org/web/20200309041707/https://www.amnesty.org.hk/wp-content/uploads/2017/12/Gender-Reg-Submission_AlHK_Eng_28nov2017.pdf](https://www.amnesty.org.hk/wp-content/uploads/2017/12/Gender-Reg-Submission_AlHK_Eng_28nov2017.pdf)

¹⁰⁰ Hong Kong transgender men lose court case on ID cards, *France 24*, 26 January 2022, [france24.com/en/live-news/20220126-hong-kong-transgender-men-lose-court-case-on-id-cards/](https://www.france24.com/en/live-news/20220126-hong-kong-transgender-men-lose-court-case-on-id-cards/); Amnesty International, *Hong Kong: Court ruling a setback in fight for equality for transgender people* (Press release, 1 February 2019), [amnesty.org/en/latest/news/2019/02/hong-kong-setback-for-equality-for-transgender-people/](https://www.amnesty.org/en/latest/news/2019/02/hong-kong-setback-for-equality-for-transgender-people/)

10. ASYLUM SEEKERS AND REFUGEES (ARTICLES 2,7,14)

10.1 OVERVIEW

The principle of non-refoulement has been recognized in Hong Kong law and court rulings, and the government is required to assess non-refoulement protection claims prior to removal of those who make “torture-protection” claims, which are so called since they are essentially based on Article 7 of the Covenant and Article 3 of the Convention against Torture.¹⁰¹

Currently, Hong Kong adopts a Unified Screening Mechanism in which the Immigration Department and the Torture Claims Appeal Board assess claims filed by people seeking non-refoulement protection against expulsion, return or extradition from Hong Kong to another country.¹⁰² From 2014 to end of April 2020, among the 17,618 non-refoulement claims determined by the Immigration Department, only 179 (1%) were held to be substantiated.¹⁰³

The UN Refugee Agency (UNHCR) has stated that the detention of asylum-seekers is “inherently undesirable”.¹⁰⁴ Amnesty International believes that detention solely for immigration purposes is only allowed in the most exceptional of circumstances and that a presumption against such detention exists. The organization opposes migration-related detention where resorted to solely on the grounds of sovereignty and the power to control a state's borders, and the deterrent power of detention against irregular entry or stay. Amnesty International also opposes migration-related detention for the sole purpose of determining the elements on which an individual's claim to asylum is based. Hong Kong continues to detain non-refoulement claimants, however. As of the end of November 2018, 381 individuals (including 60 non-refoulement claimants pending final determination of their claims) were detained.¹⁰⁵ Since 11 January 2019, the Immigration Department stopped keeping statistics on the individual periods of detention and is currently failing to provide comprehensive information related to immigration detentions.¹⁰⁶

In June 2020, at least 28 immigration detainees at Castle Peak Bay Immigration Centre (CIC) went on a hunger strike to protest longstanding problems of indefinite periods of detention and very poor conditions at CIC. These issues were compounded due to the COVID-19 pandemic. According to information collected by Amnesty International and other civil society organizations, new arrivals at CIC had not been subject to 14-day quarantine before admission, contrary to regulations. Also, many detainees reported that they were not provided with face masks and that social distancing measures were not implemented. According to the CIC Detainees' Rights Concern Group, the authorities only started to provide masks to all detainees every day after one of them tested positive for COVID-19. In a reply dated 14 January 2021, the Immigration Department confirmed that all detainees are currently provided with masks and have their temperature taken every day.¹⁰⁷ Many detainees held at CIC said they were not notified of the likely duration of their detention. Some individuals

¹⁰¹ Hong Kong is not a party to United Nations Convention Relating to the Status of Refugees.

¹⁰² Hong Kong Immigration Department, *Making a Claim for Non-refoulement Protection in Hong Kong*, immd.gov.hk/eng/useful_information/non-refoulement-making-claim.html

¹⁰³ HKSAR Government Press Releases, *LCQ9: Non-refoulement claims*, 20, May 2020, info.gov.hk/gia/general/202005/20/P2020052000659.htm

¹⁰⁴ UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), para. 5.

¹⁰⁵ Legislative Council, *Legislative Council Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims- Follow-up matters to the meeting of 27 November 2018* (LC Paper No. CB(2)592/18-19(01)), 11 January 2019, legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420181127cb2-592-1-e.pdf, p.3.

¹⁰⁶ Legislative Council, ‘Annex A’, *Legislative Council Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims- Follow-up matters to the meeting of 27 November 2018* (LC Paper No. CB(2)592/18-19(01)), 11 January 2019, legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420181127cb2-592-1-e.pdf, p.4.; Census and Statistics Department, *2017 Hong Kong Annual Digest of Statistics*, 2018, statistics.gov.hk/pub/B10100032017AN17B0100.pdf, p.43.

¹⁰⁷ Reply to Amnesty International Swiss Section from Hong Kong Immigration Department regarding “Detention Conditions at the Castle Peak Bay Immigration Centre”, 14 January 2021.

were detained indefinitely because they were waiting for their travel documents, while others were being held pending the result of their application for non-refoulement to protect them against deportation.

In response to the increasing number of torture-protection claimants in recent years, some lawmakers suggested new immigration detention options for asylum and torture claimants. Some, including former Chief Executive Leung Chun-ying, have even proposed withdrawal from the Convention against Torture as a “solution” to the increase of torture protection claimants, under the assumption that Hong Kong would then be relieved of its obligation under the Convention to determine non-refoulement claims, despite non-refoulement being a rule of customary international law.¹⁰⁸

There are also concerns over the government policy of denying asylum-seekers the right to work. The government only provides a housing allowance of HK\$1,500 per adult paid directly to the apartment owner, food allowance of HK\$1,200, HK\$300 for utilities and petty cash for transportation to appointments per month, subjecting the asylum seekers to destitute living conditions in Hong Kong (HK\$100 = US\$12.90). The length of time taken to process claims results in asylum seekers living in extremely poor conditions for prolonged periods without any means to improve their quality of life, which could amount to cruel treatment.

10.2 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF HONG KONG TO:

- Uphold its obligations to protect individuals from torture and other ill-treatment, including by respecting the principle of non-refoulement
- Evaluate the effectiveness and adequacy of information on seeking asylum provided by the Hong Kong government, including proactive consultations with non-governmental organizations
- Immediately provide detained asylum seekers access to adequate health care
- Take urgent steps to address overcrowding and poor sanitation and hygiene conditions within detention facilities
- Cease the use of indefinite detention without charge or trial for individuals

11. MIGRANT DOMESTIC WORKERS (ARTICLES 2,7,8,26)

11.1 OVERVIEW

Research by Amnesty International shows that many migrant domestic workers are heavily indebted due to illegal and excessive agency fees.¹⁰⁹ Of over 350,000 migrant domestic workers in Hong Kong, thousands –

¹⁰⁸ Amnesty International Hong Kong, *Open letter to the Chief Executive – on Hong Kong’s legal obligation to protect asylum seekers*, 14 April 2016, hrw.org/news/2017/06/28/letter-hrw-hk-chief-executive-carrie-lam

¹⁰⁹ Amnesty International, *Exploited for profit, failed by governments: Indonesian Migrant Domestic Workers Trafficked to Hong Kong* (Index: ASA 17/029/2013), amnesty.org/en/documents/asa17/029/2013/en, p.62; Amnesty International, *Abusive labour migration policies: submission to the UN Committee on Migrant Workers’ Day of General Discussion on Workplace Exploitation and Workplace Protection*, 7 April 2014 (Index: IOR 42/002/2014), ohchr.org/sites/default/files/Documents/HRBodies/CMW/Discussions/2014/AI_DGD2014.pdf

nearly all women – have been trafficked for exploitation and forced labour.¹¹⁰ During the review period, the government did little to remedy the situation. Migrant domestic workers continue to face abuse and discrimination in Hong Kong.¹¹¹

The “Two-Week Rule”, which stipulates that migrant domestic workers must find new employment or leave Hong Kong within two weeks after an employment contract ends, along with the requirement that migrant domestic workers must live with their employers, increases the risk of them suffering human and labour rights abuses. In September 2020, the Court of Appeal responded to a legal challenge by upholding the compulsory rule.¹¹²

Employers often subject them to physical or verbal abuse; restrict their freedom of movement; prohibit them from practicing their faith; pay them less than the statutory Minimum Allowable Wage; deny them adequate rest periods; and arbitrarily terminate their contracts, often in collusion with employment agencies. The Hong Kong authorities fail to properly monitor employment agencies and punish those who violate the law.

As a marginalized group, migrant domestic workers were disproportionately affected by the COVID-19 pandemic, while the government has persistently failed to address such disparities in a timely and adequate manner. There were reports of employers firing migrant domestic workers after they tested positive for Covid-19, leaving them homeless.¹¹³

11.2 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF HONG KONG TO:

- Take concrete and immediate actions to repeal or amend laws and regulations that foster abuse and exploitation of migrant domestic workers, including the “Two-Week Rule” and legislation that forces migrant workers to live with their employers and excludes them from the Minimum Wage Ordinance
- Establish a body where relevant government agencies, workers and employers agree on recruitment and placement agency fees and work towards the international standard of no fee to the employee
- Adopt a comprehensive law on prevention, prosecution, and protection to combat human trafficking and forced labour
- Pursue with the Central Government in Beijing the extension of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, ratified by the People’s Republic of China in 2010) to the Hong Kong Special Administrative Region, and subsequently incorporate its provisions into Hong Kong law and implement it in policy and practice
- Law enforcement officials must give special consideration to the situation of people who are particularly at risk of being seriously affected by or even unable to comply with lockdown regulations, including migrant domestic workers. Law enforcement officials should, to the extent possible, exercise restraint in the enforcement of lockdown regulations with these groups of persons and, instead, seek to provide assistance to those in need (or to facilitate assistance by other competent authorities)

¹¹⁰ International Women’s Initiative, *Modern Slavery in Hong Kong: The Inhumane Living Conditions of Migrant Domestic Workers*, 5 September 2019, theiwi.org/gpr-reports/2019/9/modern-slavery-hongkong-domestic-workers

¹¹¹ International Women’s Initiative, *Modern Slavery in Hong Kong: The Inhumane Living Conditions of Migrant Domestic Workers*, 5 September 2019, theiwi.org/gpr-reports/2019/9/modern-slavery-hongkong-domestic-workers

¹¹² “Anger as Hong Kong court keeps ‘discriminatory’ live-in rule for migrant maids”, *Reuters*, 22 September 2020, reuters.com/article/hongkong-migrants-rights-idINKCN26D1BO

¹¹³ “Covid-19: Show ‘kindness’ to domestic workers, Hong Kong labour chief says amid reports of firing, homelessness”, *Hong Kong Free Press*, 7 March 2022, hongkongfp.com/2022/03/07/covid-19-employers-should-show-kindness-to-domestic-workers-labour-chief-says-amid-reports-of-firing-homelessness/; “Seen as heroes at home, Filipino workers feel ‘abandoned’ amid Hong Kong’s COVID surge”, *npr*, 17 March 2022, [npr.org/sections/goatsandsoda/2022/03/17/1086988103/seen-as-heroes-at-home-filipino-workers-feel-abandoned-amid-hong-kongs-covid-sur](https://www.npr.org/sections/goatsandsoda/2022/03/17/1086988103/seen-as-heroes-at-home-filipino-workers-feel-abandoned-amid-hong-kongs-covid-sur)

12. SEX WORKERS (ARTICLES 2,9,14)

12.1 OVERVIEW

The legal framework in Hong Kong fails to protect the rights of sex workers and pushes sex workers into ways of working that can compromise their safety, such as working covertly or on their own, in order to work within the narrow confines of the law. For example, laws that prohibit the operation of a “vice establishment” of two or more people force sex workers to work in isolation, which in turn puts them at greater risk of robbery, rape or other harms. In some cases, sex workers have been physically assaulted by clients and even killed.¹¹⁴

Sex workers receive little protection from the police and are sometimes deliberately targeted by them. In 2016, Amnesty International reported that police in Hong Kong were engaging in questionable tactics to arrest sex workers, including accepting sexual services as an investigatory technique, entrapment, and obtaining confessions through coercion or deception.¹¹⁵ Undercover police officers are legally allowed to receive certain sexual services from sex workers in the course of their work to secure evidence. These policing tactics create antagonistic relationships between law enforcement officials and sex workers, making it more difficult for sex workers to report crimes committed against them.

Many sex workers in Hong Kong are migrants or from mainland China and must obtain permits to work in Hong Kong. As immigration laws prohibit migrants and people from mainland China from engaging in sex work, they do so in breach of their conditions of stay and risk being arrested. The risk of arrest may render them fearful of engaging with any local authorities or NGOs. They may also be less likely to report crimes committed against them, for fear of being arrested themselves.

The stigmatized and criminalized nature of sex work routinely forces sex workers to operate at the margins of society in clandestine and dangerous environments with little recourse to safety or state protection. As a result, sex workers face an increased risk of violence and abuse, and such crimes against them often go unreported, under-investigated and/or unpunished.

The Covid-19 pandemic makes sex workers even more vulnerable to violence. Sex workers' rights groups reported that owing to the pandemic, police officials are less likely to visit crime scenes when responding to calls for assistance.¹¹⁶ Covid-19, and its attendant restrictions, also exposed sex workers to total loss of income. At the same time, stigma and discrimination against sex workers made it difficult for them to access any emergency social protection measures. As a result of discriminatory support payment policies, income of sex workers decreased significantly without any financial compensation.

12.2 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF HONG KONG TO:

- Ensure that laws related to sex work target the exploitation and abuse that sex workers face, rather than criminalizing aspects of sex work. The Legislative Council should repeal specific criminal laws that are used to prosecute and punish sex workers or criminalize related aspects of sex work

¹¹⁴ Amnesty International, *Harmfully isolated: Criminalizing sex work in Hong Kong* (Index: ASA 17/4032/2016), [amnesty.org/en/documents/asa17/4032/2016/en](https://www.amnesty.org/en/documents/asa17/4032/2016/en), p.45.

¹¹⁵ Amnesty International, *Harmfully isolated: Criminalizing sex work in Hong Kong* (Index: ASA 17/4032/2016), [amnesty.org/en/documents/asa17/4032/2016/en](https://www.amnesty.org/en/documents/asa17/4032/2016/en)

¹¹⁶ Global Network of Sex Work Projects, *COVID-19 Impact Survey – Asia and the Pacific*, 12 October 2020, nswp.org/sites/default/files/covid-19_impact_report_-_asia_and_the_pacific_-_nswp_-_2020.pdf

- Ensure that the Hong Kong Police Force expressly prohibits coercive police conduct, rape, other sexual abuse, and extortion, as well as receiving sexual favours or any other inappropriate benefit from sex workers, including as a part of undercover operations, in all circumstances. Any allegations of such conduct must be independently investigated by the authorities

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info@amnesty.org



+44 (0)20 7413 5500

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