

1. Human Rights in China (HRIC) welcomes the opportunity to provide input into the next thematic report by the Special Rapporteur on the rights to freedom of assembly and of association (FoAA) to be presented at the 47th session of the Human Rights Council. HRIC's submission covers developments in the Hong Kong Special Administration Region (SAR) and addresses the focus of the thematic report—accountability and access to justice in the exercise of the rights to FoAA and the role of lawyers to facilitate the realization of these rights in that region. We also include suggestions aimed at addressing the obstacles to enjoyment of these rights by Hong Kong people.

I. Rights to freedom of peaceful assembly and of association

2. Recent developments in Hong Kong highlight a number of global trends identified in the Special Rapporteur's 2018 report on global trends in different regions (A/HRC/38/34)¹. These developments have contributed to self-censorship and the shrinking of civil society space², and seriously undermine the peaceful exercise of the rights to freedom of association and assembly. Key developments include:
 - use of the sweeping *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*³ (hereinafter referred to as “**National Security Law**”) to suppress the legitimate exercise of freedom of peaceful assembly and of association⁴ and to criminalize peaceful protests⁵;
 - misuse of the *National Security Law* in the criminal cases underway to justify the indiscriminate and excessive use of force by the authorities to counter or repress, peaceful protests during the 2019 protest movement in Hong Kong⁶; and
 - limitations on rights during electoral periods by criminalizing those involved in the primary polls in the lead up to the Legislative Council (hereinafter referred to as “**LegCo**”) elections which were later postponed by a year citing COVID-19 public health concerns.⁷
3. With respect to the Special Rapporteur's focus on the role of lawyers and their associations in his forthcoming report, HRIC notes that Hong Kong lawyers and their associations often find themselves the targets of crackdowns and arrests. The targeting of lawyers not only contributes to chilling political opposition voices and activism, but threatens a key pillar of the rule of law—an independent bar. Two instances where lawyers and their associations have found themselves being targeted while navigating the new legal terrain⁸ under the *National Security Law* include:
 - Prominent Hong Kong lawyers **Martin Lee QC** and **Dr Margaret Ng**⁹ were among the fifteen pro-democracy activists arrested on May 18, 2020 on charges of participating in 2019 anti-government demonstrations.¹⁰ Both of whom are internationally renowned legal practitioners who were awarded the International Bar

Association's Human Rights Award for lifelong defense of freedom, democracy, and the rule of law.¹¹

- **John Clancey**, an American lawyer who is a permanent resident of Hong Kong, was arrested during the January 6-7, 2021 mass arrests of 55 individuals suspected of involvement in the unofficial LegCo primaries that took place in July 2020—a move intended to decimate political opposition and extinguish political activism and participation¹².

Legal practitioners' contributions to right of FoAA

4. **Legal defense:** Lawyers in Hong Kong have offered pro bono legal representation to pro-democracy protestors¹³, a practice documented since the Umbrella Movement protests in 2014,¹⁴. Many lawyers have provided their legal assistance at police stations and magistrates courts to persons arrested¹⁵. These pro bono lawyers play a critical role and face risks such as having their licenses revoked¹⁶ or even being arrested for complicity in national security offences¹⁷.
5. **Supporting the rule of law:** The Hong Kong Bar Association has also taken the lead and openly issued several statements with regard to the drafting¹⁸ and promulgation of the *National Security Law* and the rule of law¹⁹, despite predictable risks of invoking the ire of the authorities²⁰. Most recently, Paul Harris, the new chairman of city's Bar Association, spoke out against the arrests of the 55 people calling it a 'fairly obvious' abuse of law,²¹ pledged to strengthen rule of law in Hong Kong, and urged the amendment of the *National Security Law*²².

Right to effective remedy

6. One key structural concern in Hong Kong is the disconnect between legal provisions that ensure a right to an effective remedy for abuses of protected rights and actual practice. Normatively, the protection of fundamental rights, including the right to freedom of assembly and association, is guaranteed by Article 4 of the *National Security Law*, as well as by the *Basic Law* of the Hong Kong SAR and the *International Covenant on Civil and Political Rights (ICCPR)* as applied to Hong Kong. However, implementation guidance regarding rights, including measures to ensure the right to a remedy, is lacking. While the authorities have aggressively used the *National Security Law* to criminalize rights that are protected under Article 4, the authorities have not adopted any specific measures to implement in practice the application of international human rights standards. HRIC has argued that it is timely and urgent to invoke and apply the rights protections provided by the *National Security Law* itself²³ and narrow the gap between law on the books and in practice.

Civil society good practices

7. The authorities must ensure a safe and enabling civil society environment to ensure the sustainability and effectiveness of these civil society practices. However, despite the daunting challenges and restrictions of the increasingly restricted space in Hong Kong,

civil society institutions and groups continue to organize public discussions. For example, immediately after the *National Security Law* came into force, the Law Faculty of the University of Hong Kong convened a series of online seminars that gathered prominent legal experts from different parts of world to examine various aspects of the Law and their impact on fundamental rights and freedoms, including academic freedom and freedom of the press. And through the lens of international law, the seminars examined the law's extraterritorial reach and the tensions between the Law and the existing international treaty obligation of the Central People's Government (CPG).²⁴

8. Non-governmental organizations have also organized public education events and private briefings aimed at diverse stakeholders, highlighting international human rights principles, standards, and norms.²⁵ The sustainability of these civil society efforts is important as they contribute to raising the understanding of international human rights standards and norms. Strengthening normative reference to international standards and obligations can also counter official claims that international stakeholders who speak out are "interfering" in domestic affairs²⁶.

II. Peaceful assembly

Specific measures and policies to be adopted

9. Restrictions on peaceful assemblies have been used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government. As the Special Rapporteur noted, the right of peaceful assembly would require the adoption of specific measures and policies in order to remove existing obstacles in access to justice and accountability for violations of the right to freedom of peaceful assembly. In [General Comment No. 37—Article 21: right of peaceful assembly](#), the Human Rights Committee has clarified that peaceful assemblies often have expressive functions, and since political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.²⁷
10. The Hong Kong authorities' targeting of political expression and accusation of "subversion" against those involved in the unofficial primaries present steep legal and political obstacles and run counter to these international norms and principles²⁸. The authorities must adopt and implement specific measures to ensure a "heightened-level of accommodation and protection" for activities such as the unofficial primary elections (which resulted in the mass arrests on January 6-7, 2021), and "expression of political opposition".

The need for training of Hong Kong Police Force on appropriate use of force

11. HRIC underscores the need for adequate protection of the Hong Kong people's right to freedom of assembly and association in the context of law enforcement, specifically the appropriate use of force. The excessive use of force by police against protesters in the 2019 protests have been widely reported, and UN experts have stated their concerns.²⁹ The use of any weapon can have fatal consequences, as reiterated in the UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement³⁰. Accordingly, there must be sufficient training for Hong Kong police as recommended by international experts in accordance with UN guidelines and other international human rights standards, and more transparency on the police manual guidance to officers. And as demanded by the Hong Kong people, an independent investigation into the allegations of use of excessive force against peaceful protesters though it is an appeal that has been rejected by the authorities³¹.

Assistance to be provided to legal practitioners

12. The international community, in particular the international and national bar associations, needs to monitor ongoing developments and support the Hong Kong bar in its efforts to provide legal representation and defend the rule of law—a core pillar for the effective exercise of the fundamental rights and freedoms. In addition, several measures could be taken to help legal practitioners to better support civil society or those exercising their right to freedom of peaceful assembly, including localized legal defense or practitioner resources that promote the effective use of international standards, the protection of the peaceful exercise of rights guaranteed by Article 4 of the *National Security Law*.

Existing barriers to legal practitioners' ability to protect exercise of right to FoAA

13. One barrier is the identification and subsequent targeting of lawyers representing clients who are activists active on diverse social and democracy reform issues. At the opening of Hong Kong's Legal Year, Philip Dykes, then-President of Hong Kong Bar Association, referenced the "Basic Principles on the Role of Lawyers": "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".³² In the context of Hong Kong judges being abused and vilified and a prosecutor being hounded³³, Dykes asserted that this principle needs to be understood and accepted.

III. Association

Measures and policies needed for removing existing obstacles

14. The efforts of the Hong Kong SAR authorities to impose restrictions on unions that have proliferated across sectors in Hong Kong, including civil servants and labor unions, pose great obstacles to the exercise of the right to freedom of association³⁴. Measures and policies are needed to protect the right of individuals to form unions, including in the civil service, health, and other public sectors.

¹ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,” July 26, 2018, <https://undocs.org/A/HRC/38/34>.

² Verna Yu, “Hong Kong activists shut down protest groups after China passes security law,” *The Guardian*, June 30, 2020, <https://www.theguardian.com/world/2020/jun/30/hong-kong-activists-shut-down-protest-groups-after-china-passes-security-law>.

³ *Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*, 2020, <https://www.elegislation.gov.hk/hk/A406>.

⁴ “UN rights office expresses alarm at Hong Kong arrests under new security law,” *UN News*, July 3, 2020, <https://news.un.org/en/story/2020/07/1067682>.

⁵ Chris Lau, “Arrest of Hong Kong opposition figures a ‘fairly obvious’ abuse of law, says new head of city’s Bar Association,” *South China Morning Post*, January 22, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3118911/arrest-hong-kong-opposition-figures-fairly-obvious-abuse>.

⁶ Jeffie Lam, “Hong Kong national security law and Covid-19: ‘This was our 2020’, activists say as they lament change in protest mood,” *South China Morning Post*, January 1, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3116037/hong-kong-national-security-law-and-covid-19-was-our-2020>.

⁷ Tony Cheung, Natalie Wong, and Kimmy Chung, “Hong Kong leader delays legislative elections, asks Beijing to resolve legal questions, citing coronavirus pandemic dangers,” *South China Morning Post*, July 31, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3095461/hong-kong-legislative-council-elections-be-postponed>.

⁸ Tommy Walker, “In Defending Democracy Activists, Hong Kong Lawyers Navigate New Legal Terrain,” *VOA News*, January 22, 2021, <https://www.voanews.com/east-asia-pacific/defending-democracy-activists-hong-kong-lawyers-navigate-new-legal-terrain>.

⁹ Michael Cross, “Hong Kong lawyers’ arrests shock global profession,” *The Law Society Gazette*, April 19, 2020, <https://www.lawgazette.co.uk/news/hong-kong-lawyers-arrests-shock-global-profession/5103934.article>.

¹⁰ Jessie Pang, and James Pomfret, “Hong Kong’s veteran pro-democracy activists defiant as they hear charges in court,” *Reuters*, May 18, 2020, <https://www.reuters.com/article/us-hongkong-protests-court-idUSKBN22U1BD>.

¹¹ *ibid.*

¹² “Hong Kong Arrests of 55: Time to Test Article 4 of National Security Law,” *Human Rights in China Law Bulletin*, January 8, 2021, <https://www.hrichina.org/en/press-work/hric-law-bulletin/hong-kong-arrests-55-time-test-article-4-national-security-law>.

¹³ Rachel Wong, “‘The strong and fearless’: Hong Kong’s pro bono protest lawyers run for Law Society election,” *Hong Kong Free Press*, April 30, 2020, <https://hongkongfp.com/2020/04/30/the-strong-and-fearless-hong-kongs-pro-bono-protest-lawyers-run-for-law-society-election/>.

¹⁴ Chester Yung, Isabella Steger, and Edward Ngai, “Hong Kong Lawyers to Offer Pro Bono Aid to Pro-Democracy Protesters,” *The Wall Street Journal*, August 28, 2014, <https://www.wsj.com/articles/hong-kong-lawyers-to-offer-pro-bono-aid-to-pro-democracy-protesters-1409224036>.

¹⁵ “Speech Given at the Opening of the Legal Year, 13 January 2020 by the Chairman of the Hong Kong Bar Association Phillip J. Dykes SC,” *Hong Kong Bar Association*, January 13, 2020,

<https://www.hkba.org/sites/default/files/20200113%20-%20Speech%20of%20Chairman%20at%20Opening%20of%20Legal%20Year%202020%20%28Eng%29.pdf>.

¹⁶ “Lawyer for Hong Kong activist has licence revoked by China,” *Channel News Asia*, January 16, 2021, <https://www.channelnewsasia.com/news/asia/lawyer-hong-kong-activist-licence-removed-13972062>.

¹⁷ “In Defending Democracy Activists, Hong Kong Lawyers Navigate New Legal Terrain,” op. cit.

¹⁸ “Statement of the Hong Kong Bar Association on the Drafting of the National Security Law,” Hong Kong Bar Association, June 12, 2020, <https://www.hkba.org/sites/default/files/20200612%20-%20HKBA%27s%20Statement%20on%20Drafting%20of%20the%20National%20Security%20Law%20English.pdf>.

¹⁹ Jeffie Lam, “Hong Kong Bar Association questions Beijing’s legal power to enact national security law, identifies ‘problematic’ features,” *South China Morning Post*, May 25, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3085991/hong-kong-bar-association-questions-beijings-legal-power>.

²⁰ Kang-chung, Ng, “National security law: Chinese state-run media blasts new Hong Kong Bar Association head for two days in a row over comments,” *South China Morning Post*, January 26, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3119353/chinese-state-run-media-outlets-blast-new-hong-kong-bar>.

²¹ “Arrest of Hong Kong opposition figures a ‘fairly obvious’ abuse of law, says new head of city’s Bar Association,” op. cit.

²² Kang-chung, Ng, “New head of top Hong Kong legal body wants government to amend national security law so countries will reinstate extradition agreements,” *South China Morning Post*, January 21, 2021, https://www.scmp.com/news/hong-kong/law-and-crime/article/3118740/new-head-top-hong-kong-legal-body-wants-government?utm_medium=email&utm_source=mailchimp&utm_campaign=enlz-.

²³ “Too Soon to Concede the Future: The Implementation of The National Security Law for Hong Kong--An HRIC White Paper,” Human Rights in China, October 16, 2020, https://www.hrichina.org/sites/default/files/hric_white_paper_on_nsl_annex_a_updated_hric_annotation_nsl.pdf; and “Hong Kong Arrests of 55: Time to Test Article 4 of National Security Law,” op. cit.

²⁴ Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong, last revised July 1, 2007, <https://www.cmab.gov.hk/en/issues/jd2.htm>.

²⁵ See e.g. HKDC online panel with China experts Victoria Hui, Jerome Cohen, Michael Davis, Andrew Nathan, and Sharon Hom of HRIC to discuss the newly enacted *National Security Law* for Hong Kong. June 30, 2020. HRIC has also collaborated with International NGOs to co-host and organize private closed briefings on the human rights concerns and opportunities for push-back on the rights impacts of the *National Security Law*.

²⁶ “Foreign Ministry Spokesperson Hua Chunying’s Regular Press Conference on January 8, 2021,” Ministry of Foreign Affairs of the People’s Republic of China, January 8, 2021, https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1845310.shtml; see also Kang-chung, Ng, “Hong Kong and Macau Affairs Office lashes out at foreign countries over condemnation of mass opposition arrests,” *South China Morning Post*, January 11, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3117311/hong-kong-and-macau-affairs-office-lashes-out-foreign>.

²⁷ Human Rights Committee, [General Comment No. 37—Article 21: right of peaceful assembly](#), July 27, 2020.

²⁸ South China Morning Post, “LIVE: HK police press briefing after mass arrests [Video],” *YouTube*, January 6, 2021, <https://www.youtube.com/watch?v=PIFxMG9gDXw>.

²⁹ Anderson C O Tsang, and Raymond K Y Tsang, “Health risks of exposure to CS gas (tear gas): an update for healthcare practitioners in Hong Kong,” *Hong Kong Medical Journal*, Vol 26 (2), 151-3, April 2020, <https://www.hkmj.org/abstracts/v26n2/151.htm>; UN Special Rapporteurs’ Communication to China on Hong Kong Police Violence, June 28, 2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24674>; and Press Briefing [Statement by the Office of the UN High Commissioner for Human Rights regarding Disproportionate Use of Force by Police in Hong Kong](#), August 6, 2019, [https://www.unog.ch/unog/website/news_media.nsf/\(httpBriefingsLatest_en\)/7E21003165D441AEC12584510049265D?OpenDocument](https://www.unog.ch/unog/website/news_media.nsf/(httpBriefingsLatest_en)/7E21003165D441AEC12584510049265D?OpenDocument).

³⁰ “Guidance on Less-Lethal Weapons in Law Enforcement,” Office of the UN High Commissioner for Human Rights, 2020, https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf.

³¹ Jessie Pang, and Sarah Wu, “Hong Kong leader rejects protesters' call for independent police probe,” *Reuters*, May 15, 2020, <https://www.reuters.com/article/us-hongkong-protests-police-idUSKBN22R0S8>.

³² “Speech Given at the Opening of the Legal Year, 13 January 2020 by the Chairman of the Hong Kong Bar Association Phillip J. Dykes SC,” op. cit. Referencing the “Basic Principles on the Role of Lawyers”, adopted during the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

³³ *ibid.*

³⁴ Stella Wong, “Hong Kong's new labor unions aim to reshape political landscape,” *Nikkei Asia*, May 1, 2020, <https://asia.nikkei.com/Politics/Hong-Kong-s-new-labor-unions-aim-to-reshape-political-landscape>.