

# Hong Kong Human Rights report

From June 2019 to Sept 2020

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Wir für Hongkong

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## Introduction

Human rights protection in Hong Kong is enshrined in the Basic Law and its Bill of Rights Ordinance (Cap.383). By virtue of the Bill of Rights Ordinance and Article 39 of the Basic Law, the International Covenant on Civil and Political Rights is put into effect in the city. Any legislation that is inconsistent with the Basic Law can be set aside by the courts.

In the past, Hong Kong has been seen to be enjoying high levels of civil liberties. Historically, Hong Kong has been the safe haven for the dissident, the liberal-minded, and the nonconformist; we speak truth to an increasingly powerful China. And in the past year, we have been standing at the forefront against China's encroaching authoritarianism. The liberty of the city – from its role of an international financial hub to the vibrancy of its civil society – always pertains to the interest of the international community. Furthermore, the promises of “one country, two systems”, “high degree of autonomy” and universal suffrage enshrined in the Basic Law are, in turn, backed by the Sino-British Joint Declaration (Joint Declaration) which was ratified under international law.

However, since the handover in 1997, Hong Kong's liberty has only been deteriorating. In 2003 Hong Kong government's forceful attempt to pass a similar piece of legislation in the local legislature was met with uproar from civil society and was aborted. The undemocratic nature of the government proved to be its Achilles' heel in legislating such a controversial bill. Later, the citizens' right to universal suffrage was denied in 2014 as the 831 decision was made by the Standing Committee of the National People's Congress (NPCSC) breaking the promise made in the. Last year, the legitimacy of the local and the central governments faced yet another major challenge amid the 2019 anti-Extradition law movement. In the movement, we witnessed police brutality, the crumble of the city's system and the decline of human rights.

In 2020, Beijing hammered the final nail in the coffin for Hong Kong's autonomy and fundamental rights. The National People's Congress (NPC) introduced the national security law (NSL) which purports to “establish and improve the legal system and enforcement mechanisms” to “safeguard national security” in Hong Kong. It empowers the NPCSC to entirely bypass the local legislative process in Hong Kong and implant the infamous “national security law” in the city. On paper, this law aims at prohibiting any act of secession, subversion against the central government, terrorism, and foreign interference with Hong Kong affairs. It constitutes, however, a devastating blow to Hong Kong's already fragile autonomy and civil liberties. The law has become a tool of oppression.

In light of this, this report seeks to provide an overview of Hong Kong's human rights and related issues, and inform its readers about the threat both locals and foreigners are facing in such circumstances.

## Legal Provisions

### 1. Sino-British Joint Declaration

a. Annex I (Section XI) of the Joint Declaration provides that:

“The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.”

### 2. The Basic Law of HKSAR

a. Chapter III of the Basic Law granted the following rights and freedom to residents in Hong Kong:

- i. Equality before the law;
- ii. Permanent residents' right to vote and to stand for election in accordance with law;
- iii. Freedom of speech, of the press and of publication;
- iv. Freedom to form and join trade unions, and to strike;
- v. The right from arbitrary or unlawful arrest, detention and imprisonment;
- vi. The right from torture and unlawful deprivation of the life;
- vii. The right from arbitrary or unlawful search of, or intrusion into resident's home or other premises;
- viii. Freedom and privacy of communication;
- ix. Freedom of movement within Hong Kong, of emigration to other countries or regions, and freedom to enter or leave Hong Kong;
- x. Freedom of conscience;
- xi. Freedom of religious belief and to preach and to conduct and participate in religious activities in public;
- xii. Freedom of choice of occupation;
- xiii. Freedom to engage academic research, literary and artistic creation, and other cultural activities;

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- xiv. The right to confidential legal advice, access to the courts, choices of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies;
- xv. The right to institute legal proceedings in the courts against the acts of The executive authorities and their personnel;
- xvi. The right to social welfare in accordance with law;
- xvii. Freedom of marriage and the right to raise a family freely; and
- xviii. Other rights and freedoms safeguarded by the laws of Hong Kong SAR.

- b. Article 39 states that the provisions of ICCPR and ICESCR and international labour conventions are in force in Hong Kong to the extent that they shall not contravene the provisions of the rights protected by the Basic Law
- c. Article 41 stipulates that non-residents also enjoy these rights and freedoms in accordance to the article
- d. Article 87 provides that the rights the rights to criminal or civil proceedings, especially the right to fair trial by the courts without delay and the presumption of innocence until convicted by the courts
- e. Article 105 protects the rights of property and the right to compensation for lawful deprivation of property of individuals and legal persons

### 3. Hong Kong Bill of Rights Ordinance

- a. Chapter 383 of the Laws of Hong Kong, which transposed the International Covenant on Civil and Political Rights in order to incorporate it into local laws

### 4. Common Law

### 5. Judicial Review

- a. conducted according to the Constitutional and Administrative Law List (Practice Direction 26.1)
- b. It comprises two different aspects: firstly, judicial review of domestic legislation as to their compatibility with the Basic Law (“constitutional review”); secondly, judicial review of administrative decisions under administrative law (“administrative review”)

## Overview of Human Rights Situation from June 2019 to Sept 2020

### 1. Equality before the law

#### a. Department of Justice drops charge with regard to criminal cases

In February this year, a horrific animal death case occurred in a housing estate on Castle Peak Road Sham Tseng, in which 30 animals fell from a height and 18 of them died, causing uproar in the community. Nearly seven months after the police arrested two men involved in the case, the Department of Justice has decided not to prosecute the case.

In May, a 22-year-old woman living in a married police dormitory was charged with one count of drug trafficking after she picked up a package from France that arrived at a post office last year, the package contained nearly three kilograms of ketamine worth \$2 million HKD. But the Department of Justice applied for the charge to be dropped due to insufficient evidence. The judge believed that there was a high chance that the jury would convict the defendant if they were properly guided and disagreed with the Department's decision. But he considered that it was an independent decision of the Department and granted the application to withdraw the charges and dismissed the case.

#### b. Rule of Law and the Separation of powers

In response to the deletion of the “separation of powers” phrase from teaching materials after six publishers revised the content of Liberal Studies textbooks during a voluntary screening by the Education Bureau, Carrie Lam, Chief Executive, publicly said that there is no separation of power in Hong Kong.

“Many people misunderstand the role of the chief executive as merely the head of the government. This is incorrect,” she said “If we keep spreading erroneous statements, the real essence of the matter may be lost. In this case, it’s Hong Kong’s constitutional order.” Beijing grants administrative, legislative and judicial power to the Hong Kong Special Administrative Region; ultimately, the three institutions are accountable to Beijing through an executive-led system of governance. “I hope the three institutions can work together and I agree they should be subject to checks and balances.” added Lam.

### c. Resignation of Director of Public Prosecutions

In July, the Director of Public Prosecutions, Mr C Y Leung, who had worked in the Prosecutions Division of the Department of Justice for 25 years, suddenly resigned. In an internal email, he told colleagues that he and the Secretary for Justice, Teresa Cheng, did not share the same views on the operation of the Prosecutions Division.

Leung's departure is unusual, and it is extremely rare for dissatisfaction with his superiors to be openly expressed within government departments, especially when the Department of Justice is a sensitive department. The Department of Justice's decisions to prosecute or not to prosecute several controversial cases in recent years have aroused controversy, leading the public to question whether other factors, particularly political considerations, have influenced the decisions.

Earlier that year, a "group of prosecutors" from the Prosecutions Division of the Department of Justice wrote an anonymous open letter, criticizing Cheng for his lack of integrity, for her political considerations in handling cases involving major public events, for insisting on prosecutions without sufficient evidence and a reasonable chance of conviction, and for not acting in the public interest, and for treating the prosecution code of conduct like dirt.

### d. CCP slams HK judges using judiciary independence to challenge its authority

On 29th September 2020, CCP mouthpiece People's Daily Attacks local courts of the city for using judiciary independence to challenge its authority, days after the Liaison Office urged a "new struggle against 3 mountains" that targets the legal sector of the city. The piece criticised judges regarding Hong Kong Police Force as "dishonest witnesses", although courts have detailed the ruling regarding the inconsistency behind the police's evidence. The paper also criticized the local judges for misinterpreting the One Country Two Systems and failing to uphold their duty to protect Chinese national interests and national security.

### 2. Permanent residents' right to vote and to stand for election in accordance with law

#### a. Disqualification of candidates

It is provided in Chapter 3 of the Basic Law that permanent residents enjoy the right to vote and to stand for election in accordance with law. However, since 2016, the HKSAR government has been banning candidates from running in the election of the Legislative Council based on their political beliefs.

In 2019, Joshua Wong, the General Secretary of the now disbanded political party, Demosisto, was the only candidate to be banned from running in November, 2019's District Council Election over his political stance. The governments issued a press release to support Electoral Office's decision of banning Wong to run, based on the presumption that Wong cannot possibly comply with the requirements of local electoral laws, because of his advocacy of "self determination" violates the Basic Law and contradicts the declaration he made pledging allegiance to the HKSAR in the documents of his application to run.

In July 2020, 12 pro-democracy candidates were disqualified from the election that would originally take place in September, 2020. Four incumbent lawmakers – Alvin Yeung Ngok-kiu, Dennis Kwok and Kwok Ka-ki, along with that of accountancy sector lawmaker Kenneth Leung, activists Joshua Wong, Ventus Lau Wing-hong, Gwyneth Ho Kwai-lam and Alvin Cheng Kam-mun as well as district councillors Cheng Tat-hung, Lester Shum, Tiffany Yuen Ka-wai and Fergus Leung Fong-wai were disqualified based on similar reasons, ranging from seeking foreign intervention, principled opposition to the NSL, advocacy of change in Hong Kong's status, to attempt to force the Government to accept demands from citizens. Beijing's liaison office in Hong Kong issued a statement declaring that the returning officers' decisions were "well-reasoned and lawful".

The disqualification of candidates hinders both the right to be elected and the right to vote of the citizens in Hong Kong and hence violates the provisions in the Basic Law.

#### b. Cancellation of Election

Following the disqualification of the 12 candidates, Hong Kong Chief Executive Carrie Lam announced that the Legislative Council election due in September 2020 would be postponed for a year. She claimed the decision was made on the basis to prevent further spread of the COVID-19.

However, at the time Hong Kong had a low infection rate, on the 31st July, when Lam made the announcement, daily case numbers of the city had dropped below 100, and is lower than most European countries and North America. Singapore held its election on 10th July 2020, during which its daily infected number was four times higher than that of Hong Kong.

The act of postponing is considered to be Beijing's desperate attempt to buy time for the government to marginalize and silence pro-democracy activists in the city. It is also considered to be the response towards the 2020 Hong Kong Pro-Democracy Primaries, which aims to maximize the change for the pro-democrats to achieve a majority in the Legislative Council. Despite the SAR government's threats of the organisers' potential breaching of the newly imposed NSL, the turnout of the primary achieved more than 600,000, it is reasonable for Beijing to worry and thus cancel the election to prevent them from winning a majority in the Legislative Council.

### c. Appointment of Provisional LegCo

After cancelling the election of 2020, Beijing has decided to appoint the current Legislative Council elected in 2016 to serve for a year to make up for the cancellation. Beijing announced that the term of Hong Kong's current legislature will be "extended" for "no less than one year" and Carrie Lam expressed her "heartfelt gratitude" for that decision. Without a limit in place, the interim legislative body can be endlessly extended, without any further elections. It would be similar to what happened in Taiwan during its authoritarian decades, in the late 1940s to 1990s.

The mandate of the Legislative Council members originated from the 2016 Legislative Council election, and the deadline is only up to the end of the four-year term. The Legislative Council in the coming year will be a legislature without a popular mandate, and without the people's mandate, the choice of democratic legislators to stay in office is tantamount to accepting the "appointment" of the Chinese Communist Party, which should be boycotted by action. In the name of "extending" its term, Beijing offers to appoint those who were serving in the Council. However, according to a local survey, more than half of the interviewees oppose pro-democratic camp legislators accepting the offer.

The offer is seen as an act of creating an illusion that the system in Hong Kong is still working, "one country, two systems" is still operating smoothly in Hong Kong. Yet, this act in fact is a blatant violation of the citizens rights to

election guaranteed by the Basic Law.

3. Freedom of speech, of the press and of publication

a. Slogans banned under NSL

The HKSAR government banned the most resonate slogan of the movement on 2nd July 2020. In its press release, it claims that the slogan “Liberate Hong Kong, the revolution of our times” nowadays connotes “Hong Kong independence”, or separating the HKSAR from the People’s Republic of China, altering the legal status of the HKSAR, or subverting the State power, and hence violate the NSL.

b. Raiding Apple Daily Office under NSL

On 10th August, publisher Jimmy Lai, a vocal critic of Beijing, who owns the popular tabloid Apple Daily, became the target of the law. The paper’s newsroom was raided by 200 police. Lai was arrested for allegedly colluding with foreign forces. Sending police into a newsroom has long been a symbol of the crackdown on press freedom, correspondents.

Despite the fact that it is stated in the search warrant that news materials are not the target of the raid, police were caught searching through reporters’ personal belongings and news material. Freedom of speech and of the press, which have long been the city’s pillar, are under attack. China, through arresting Lai and the raid, has drawn a red line for the press, it is extending its regime of media regulation and repression to Hong Kong.

c. Searching Nikkei Financial News

On the same day that the police searched Apple Daily, a warrant was issued to the Hong Kong office of the Japanese newspaper Nikkei News for investigation of an advertisement published in the Nikkei News as part of the global newspaper campaign against sending China to the mainland last year.

d. Restricting VISA requirements

Hong Kong Immigration Department to vet VISA applications that are deemed sensitive, including that of foreign press. Applications of visa renewals of journalists from several media outlets, including but not limited to “The New York Times”, “CNN”, “Wall Street Journal” and “BCC” have been

delayed for months, which prevented journalists from working.

e. Press being targeted by Police

The Hong Kong Journalists Association (HKJA) has said it deplors the use of, and threat of, violence towards journalists covering the city's ongoing protests.

Numerous footages show that police officers using pepper spray, rubber bullets, batons against journalists who were trying to get a view of protestors being arrested.

An Indonesian journalist was shot in the face by a rubber bullet or beanbag round fired by police on a bridge near Wan Chai MTR station. Footage showed that Veby Mega Indah – associate editor of the Suara Hong Kong News – was wearing a high visibility jacket, a helmet with “press” markings, an eye shield, and was standing alongside other media staff when she was conducting a Facebook live stream. The publication is popular among the city's Indonesian domestic workers. BBC correspondent Stephen McDonnell's gas mask face visor was smashed by a projectile while he was observing clashes between protesters and police in Hong Kong.

f. Only allowing “trusted press” on scene

During the raid in Apple Daily's building, the police only allowed “trusted media outlets” into the scene to report what was taking place, reporters from Reuters, Agence France-Presse and The Associated Press, among others, reportedly were blocked from reporting.

g. RTHK's Headliner

Hong Kong's public broadcaster, Radio Television Hong Kong (RTHK), has been warned by the Communications Authority of Hong Kong (CA) that its television programme “Headliner”, which satirises current affairs, is insulting to the police and incites hatred towards the public. In February and March, Police Commissioner Tang Ping-keung wrote to RTHK twice to complain about Headline News, criticizing that RTHK should not convey false or misleading information that would cause the public to lose confidence in the Police Force. RTHK was forced to apologize for the incident and halt production of the show, which has sparked fears that freedom of the press and freedom of speech in Hong Kong will be further curtailed.

### h. RTHK The Pulse

In April, RTHK's The Pulse programme released an interview with Bruce Aylward of WHO. The producer, Yvonne Tong asked a question about whether the UN body would reconsider Taiwan's membership. Aylward appeared to pretend not to hear it. When asked a second time, Aylward ended the video call. Later Hong Kong's Commerce Minister Edward Yau accused RTHK of breaching the "One China" policy after the show was aired.

### i. Pro-democratic books were pull out from libraries

At least nine books by pro-democracy figures have been removed from public libraries in Hong Kong in July 2020. The books will be reviewed if they violate the NSL.

### j. Registration System of the Press

On 22nd September 2020, the Police Public Relations Branch (PPRB) issued a letter to the HKJA, the Hong Kong News Executives' Association (HKNEA), the Hong Kong Federation of Journalists (HKFJ) and the Hong Kong Press Photographers Association (HKPPA), stating that the Police would amend the definition of "media representative" under the Police General Orders (PGO). Under the revised definition, the Police will only recognise media organisations that have registered with the Government News Information Services (GNMIS) News Dissemination System, as well as "internationally recognised and renowned" non-local news agencies, newspapers, magazines, radio and television broadcasters. In other words, only journalists, photographers and TV workers holding identification documents issued by the above media organisations will be recognised by the Police as "media representatives". The Police claimed that the definition has been made clearer to enable frontline police officers to identify media representatives more effectively and efficiently.

Chapter 39 of the PGO currently states that a "media representative" only needs to hold an identity document issued by a newspaper, news agency, television or radio station; a membership card of the HKJA or the HKPPA. Under the Police's revised definition, freelance journalists, who hold memberships of the HKJA and the HKPPA, will no longer be recognised by the Police. The Police have also not stated whether foreign online media will be recognized under the new definition.

k. RTHK seeks to extend probation period of Nabela Qoser

RTHK is seeking to extend the probation period of Nabela Qoser, a journalist known for her confrontational approach to questioning officials amid a re-examination of public complaints filed against her last year.

Qoser originally completed her three-year probationary period in October, but has recently received news that her probationary period will be extended by 120 days and the management will re-open an investigation into the complaints against her, including her performance and behaviour at a press conference with the government between July and November last year. The management will not be re-appointed if she does not accept the extension, and she will have to leave RTHK.

At a press conference held after the 7.21 incident last year, Qoser asked Chief Executive Carrie Lam a question about whether she could “speak human language” and “whether she could sleep well at night”, it is considered to be a crackdown on freedom of the press in Hong Kong.

4. Freedom to form and join trade unions, and to strike

a. Union’s chairman and treasury

Ngan Mo-chau, Chairman of the new civil service staff union, has been notified that he will lose his acting rank and will be demoted from an Acting Labour Officer to a Grade 2 officer. Generally speaking, the promotion process of civil service departments adopts the acting system, which means that eligible staff members who are expected to be promoted have the opportunity to be appointed to the posts they will soon be promoted to, and after a certain period of time, they can be appointed to the posts they will be promoted to. It is understood that after a management meeting held in February this year, LD decided to remove eight persons from acting posts, including Ngan.

Lai Ka-yan, Treasury of the new civil service staff union, joined the government as an Executive Officer for eight years and was transferred to the Education Bureau about two years ago. According to the department’s internal mechanism, a meeting was held in January this year to consider whether she could take up the post of Executive Officer (Establishment) 1, but no result has been announced so far. In the past, she said, results were usually available in April, but last year it was too late for her to get the results in mid-May, but this year she has not heard anything until mid-June. Lai’s superior has

repeatedly asked if she wears black clothes and black masks, if she supports the “riot”, and if she has invited anyone to join the union in the office.

### 5. The right from arbitrary or unlawful arrest, detention and imprisonment

#### a. Unlawful arrest and detention

The Hong Kong police announced on the 8th September on Facebook that 10,016 people had been arrested in connection with the movement from June 9 last year to September 6 this year, with 2,210 of them prosecuted, a prosecution rate of 22%. The police said the three main charges were rioting (687 people), unlawful assembly (383 people) and possession of offensive weapons (327 people).

Of these, 550 had completed the judicial process, with 462 facing legal consequences, including being convicted, signing a Binding Over, and being granted a Care or Protection Order, accounting for 84% of those who completed the process, but only 4.6% of the total number of arrests.

### 6. The right from torture and unlawful deprivation of the life

#### a. Death of protestors

Chow Tsz-lok, 22, fell from the third floor to the second floor in a parking lot in eastern Tseung Kwan O district as police cleared crowds in the area.

#### b. Sexual Abuse

Some protesters have spoken out anonymously, including at a 30,000-strong #ProtestToo rally last year. On 9 November, Hong Kong police confirmed that a woman had filed a complaint on 22 October alleging that she had been raped by several officers in the Tsuen Wan Police Station. The 18-year-old woman, known only as Ms X, said she had an abortion after the incident and police, with her consent, took a DNA sample from the aborted foetus to help identify one of her assailants. Disturbingly, following Ms X’s report, the police took out a search warrant to obtain Ms X’s medical records from her private doctor’s clinic, without her consent, including those long pre-dating the allegations.

When Ms X found out what had happened, she challenged the search warrant in court and the magistrate cancelled the warrant after reassessing the case. Details of her case were leaked onto the internet in an apparent attempt to

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discredit her. Media reports also allege that Tse Chun-chung, the Chief Superintendent of the Public Relations Division of the Hong Kong Police, told select media that Ms X was “a little bit mental”, although Tse has denied these claims.

### c. Torture

Interviews of arrested persons and lawyers by Amnesty International show that police violence most commonly occurred before and during arrest. In several cases, detained protesters have also been severely beaten in custody and suffered other ill-treatment amounting to torture. In multiple instances, the abuse appears to have been meted out as “punishment” for talking back or appearing uncooperative.

A man detained at a police station following his arrest at a protest in the New Territories in August told Amnesty International that after he refused to answer a police intake question, several officers took him to another room. There, they beat him severely and threatened to break his hands if he tried to protect himself.

A young woman arrested at a protest in Sheung Wan in July was one of many protesters who described being clubbed from behind with a police baton as she was running away from a police charge; she was knocked to the ground and police officers continued to beat her after her hands were zip-tied.

Similarly, a man arrested at a protest in Tsim Sha Tsui in August described retreating and then running as police charged at the assembled protesters. He told Amnesty International that “raptors” caught up to him and hit him from behind with their batons on his neck and shoulder.

## 7. The right from arbitrary or unlawful search of, or intrusion into resident's home or other premises

### a. Unlocking phones without warrant

Many of the arrestees have accused the police of using coercion and even violence to force the arrestees to provide passwords to unlock their cell phones so that the police could examine the contents of the phone calls. However, it is stated in cases before that the police cannot by law compel an arrested person to provide the unlock code of his mobile phone.

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On 22 May 2020, in a mall in Yuen Long, passer-bys were asked to unlock their phones inside the blockade line, Officers were asked to unlock their phones inside the blockade line, and if they were found to have Telegram, a communication software, installed and to be tracking a channel regarding the protest, they would be issued a \$2,000 citation for gathering under the COVID restriction order, while phones that do not follow any protest related channels would be released.

### b. NSL

HKSAR government later issued Implementation Rules for Article 43 of the Law that grants police authorities enormous power without check and balance, it allows police to enter premise without a warrant, restrict movement, freeze, forfeit and confiscate assets, intercept communication without receiving consent from judges, request online platforms to handover data and remove information on the internet, and require foreign political organizations or foreign agencies to disclose their information to the police, including activities, personal data, assets, income balances, sources of income and expenditure.

## 8. Freedom and privacy of communication

### a. ICSO

The Surveillance Ordinance (ICSO) only governs the transmission of messages in the course of postal and telecommunications systems, once the transmission is done, the Surveillance Ordinance does not govern the sent messages, and it creates a loophole for the LEAs. The LEAs make data requests to service providers and platforms or even to decrypt devices directly to access the communications.

### b. NSL

According to schedule 4 of the implementation rules, if it is suspected that an electronic message published on an electronic platform, i.e. online forums, Telegram channels, social media etc, that is likely to constitute an offence endangering national security, the authorises may request the content to be removed with the approval of the Secretary for Security. If the publisher or those who service providers who host the message fail to cooperate immediately, the police may seize the relevant electronic device and take action to remove the information with a warrant. The police can also request relevant service providers to provide the identification record of decryption

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assistance. In 2005, the Hong Kong branch of Yahoo! Provided technical information, which led to messages and email accounts of a reporter, Shi Tao, in turn led to his 10-year imprisonment. It is worried that this will happen to Hong Kong, too.

By granting the authorities the power to request data, removal of information creates huge motives for platforms to comply with their request to circumvent legal prosecutions. Being able to control information online enables the government to control public discourse and public discussions in turn hinders the freedom of speech granted in the Basic Law.

The NSL prevails over any other local regulations when there is conflict between the two. According to Schedule 6 of the law, surveillance can be approved by the Chief Executive (which is not genuinely democratically elected ) without seeking the court's approval. And this arrangement overrides the little but still existing protections provided by ICSO mentioned above. The National Security Committee, which answers to the Beijing government, shall be responsible for supervising the implementation. Hong Kong citizens, the legislative body nor the court will be able to supervise the authorities conduct. Under this law, authorities now have immense power to conduct surveillance and control over the flow of information without being held accountable to bodies in Hong Kong. The provisions for the authorities to conduct surveillance goes into conflict with the requirements stated in ICSO and Article 30 of the Basic Law that protects private communications.

### c. Data request

According to the Transparency Report published by the University of Hong Kong in 2018, there is a lack of regulation on the access to personal data by law enforcements. LEAs can bypass the court and issue requests directly without a warrant. In 2019, the police have made a total of 5325 requests in names of "crime investigation", and the numbers it provides do not specify how many of them are made according to a warrant. In 2019, Google received 105 requests, Facebook 384, Apple more than 600, from the Hong Kong government, what amount of data is being given out was not specified. However, these companies hold enormous amounts of personal details—from the basic information we provide when we engage with the service to the data they deduced by observing its users.

### d. Breaking into phones

The activist, Joshua Wong, had received a list of evidence from the

prosecution before his trial including four records of “message exchanges” on his phone, including two WhatsApp and two Telegram conversations. His phone was seized by the police after his arrest but he never provided the police with a password or unlocked his phone, or received any warrant to access the contents of his phone.

It is found that a Russian company that develops password-cracking software for smart phones lists the Hong Kong Police Force as one of its customers on its website, indicating that it is highly possible that the police crack into devices they seize during arrests.

### e. PCPO

The Privacy Ordinance, enacted in 1996, provides limited protection against surveillance for the citizens. The law allows limited power for the Privacy Commissioner, who is only in possession of investigation power. The Commissioner can issue “Enforcement Notice” to parties that infringes the law, however the act of infringing the law does not result in criminal penalty, only refusing to comply with an enforcement notice will result in a criminal offense. The law does not require mandatory notification of data breaches nor regulate cross-border data transfer.

It is to note that section 33 of the Personal Data (Privacy) Ordinance stipulates that no data user shall transfer personal data to a place outside Hong Kong unless certain conditions are met. However, 18 years have passed since the law is enacted but it is still not yet in force. Under this circumstances, citizen’s data collected can be freely transferred to other countries, i.e. China, without the citizens' consent.

### f. DNA

In July 2020, the Hong Kong government put forward a Universal Community Testing Programme testing scheme which raised immense privacy concerns over mass collection of biometrics. The testing programme is backed by Chinese background laboratories which are linked to those who backed the “re-education camps” in East Turkestan. To address the concern of the health data collected by laboratories with Chinese background will be transferred to China to contribute to its mass surveillance system, the government repeatedly assured the public that “all personal data are handled in accordance with the relevant provisions of the PDPO[2]”, which indicates that it will be perfectly legal to transfer the data collected elsewhere. The data collected by the smart lampposts mentioned above, can also be sent to China legally.

### g. Smart Lampposts

During the movement, several smart-lampposts out of 500 that were (or going to be) implemented out of the city's Multi-functional Smart Lampposts pilot scheme, were torn down. They were found to each consist of a bluetooth beacon, Radio Frequency Identification (RFID) tag, QR-code tag for geolocation purposes, and network equipment to transmit data. The technology companies who helped with the lampposts are supposedly linked with a mainland company, Shanghai Sansi, which backed China's surveillance network. In the recent arrest of alleged subversion crimes under the new NSL, activists' DNA samples have been collected. These recent issues all spark concerns and controversy over government surveillance.

### h. Chengdu technology company involved in data theft from Hong Kong democracy activists

The U.S. Department of Justice announces the indictment of five Chinese hackers, revealing that members of the Hong Kong pro-democracy and independence movement were targeted for intelligence gathering. According to the indictment, personnel from Chengdu-based D.O.R. Network Technology hacked into a network communications service company to gain access to user information on one of the company's popular encrypted communications platforms.

In addition to stealing personal information or sending extortionate messages, the company also used the stolen personal information to build a large database called SonarX, an "information risk assessment system". The database was used to search for pro-democracy and independence activists in Hong Kong, the indictment said, and the resulting charts included a current Hong Kong legislator, a founding member of the Civic Party, a former member of the Hong Kong Legislative Council, a person associated with the Hong Kong independence movement, and a Hong Kong pro-democracy activist who was being sought under the NSL.

## 9. Freedom of movement within Hong Kong, of emigration to other countries or regions, and freedom to enter or leave Hong Kong

### a. Health Code and Voluntary Testing Programme

In July 2020, the Hong Kong government put forward a Universal Community Testing Programme testing scheme which raised immense privacy concerns over mass collection of biometrics. The government is pushing a health code

system based on the test programme to only allow those who have “voluntarily” tested to be exempted from COVID-19 measures, only those who have been tested and receive a health code would be allowed their freedom of movement.

The testing programme is backed by Chinese background laboratories which are linked to those who backed the “re-education camps” in East Turkestan. In the three diagnostic centres the government chose, Sunrise Diagnostic Centre, belongs to the same group, BGI, that the US has sanctioned due to their collection of Uyghurs DNA data without consent; China Inspection Co Ltd has never participated in clinical pathology tests. Since 2017, reports from multiple sources have found that China built a nationwide database of DNA samples. In the pretext of free health checks, blood samples of millions of Uyghurs and ethnic minorities were gathered without consent. The database enables Beijing to track ethnic minorities and dissidents and enhance its already sophisticated facial recognition system built for mass surveillance.

To address the concern of the health data collected by laboratories with Chinese background will be transferred to China to contribute to its mass surveillance system, the government repeatedly assured the public that “all personal data are handled in accordance with the relevant provisions of the PDPO”, which indicates that it will be perfectly legal to transfer the data collected elsewhere. Data protection regulation in Hong Kong actually allows our data to be transferred to China without the Hongkongers consent to be perfectly legal. Our law never limits the cross-border transfer of personal data, which makes mass surveillance and data collection without consent way easier than it should be.

### 10. Freedom of conscience

#### a. Revising curriculum of Liberal Studies

Six publishers revised content in eight sets of Liberal Studies textbooks following a voluntary screening conducted by the Education Bureau in August 2020. Some publishers said they removed explanations of the intentions behind civil disobedience acts “based on teaching needs.” Local media reported other amendments included deleting the phrase “separation of powers” and screening out a photo of a “Lennon Wall” covered with messages left by demonstrators during the city’s large-scale pro-democracy movement. Introduced in 2009, Liberal Studies is one of the four core subjects included in the city’s university entrance examination. It aims to cultivate students’ critical thinking skills and enhance their social awareness.

11. Freedom of religious belief and to preach and to conduct and participate in religious activities in public

- a. On 20th October 2019, a police water cannon vehicle deployed to disperse the protesters shot blue water in the direction of the Tsim Sha Tsui mosque, causing many people to fall. The police said they “mistakenly” shot at the mosque and have contacted the mosque’s chief imam and Muslim community leaders to explain the incident, without apologizing.

12. Freedom of choice of occupation

The Hong Kong government will study whether all civil servants should swear to uphold the city’s mini-constitution after it was revealed that complaints were filed against 43 employees for joining unlawful assemblies or violent activities in the Anti-Extradition Bill Movement.

Existing workers will also have to make such pledges as well, although this will be done in stages. Those who are involved in decision-making, or have sensitive duties, like administrative officers, information officers, legal officers and disciplined services staff, are recommended to give their undertaking first. Government staff who are to be recommended for promotion, or when their promotions are confirmed will also have to do the same. For directorate officers of higher ranking, they will have to take an oath rather than do it in writing.

Officials said the proposal is in line with a requirement under the newly enacted NSL.

13. Freedom to engage academic research, literary and artistic creation, and other cultural activities

- a. Prof. Benny Tai

Legal scholar Benny Tai, one of the founders of the “Occupy Central” in 2014, was sentenced to a 16-month imprisonment after he was found guilty of conspiracy to commit public nuisance and inciting others to cause a public nuisance in connection with the 79-day pro-democracy Occupy movement.

In 2019, The university of Hong Kong (HKU) formed a committee to review Tai’s employment. The HKU senate earlier decided that although Tai had committed misconduct, his actions did not amount to grounds for dismissal. The final decision rests on the university’s governing council, composed of six

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members who are appointed by the institution's chancellor – Hong Kong's chief executive, six public trustees appointed by the Council who are not employed by HKU, several teachers, one undergraduate and one postgraduate student. The university's governing council decided to sack Tai from his tenure as an associate professor of law after the meeting in July 2020.

### b. Shiu Ka-chun

Hong Kong Baptist University has told opposition lawmaker Shiu Ka-chun it would not renew his lecturing contract after he was jailed over pro-democracy protests in 2014.

### c. Dr. Cheng Chung-tai

Opposition lawmaker Cheng Chung-tai's Hong Kong Polytechnic University teaching contract has not been renewed in 2018 following his flag desecration conviction September 2017.

### d. Visiting professor's visa application prompts long list of unusual questions

The Hong Kong Immigration Department asked over 40 "unusual" questions when processing a work visa for an award-winning veteran journalist who was invited to join the HKU as a visiting professor. Questions included the graduation year of the applicant, course descriptions of the visiting scholar at HKU in the past five years. The applicant was also required to submit the original copy of their university transcript.

## 14. The right to confidential legal advice, access to the courts, choices of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies

### a. NSL

Lawyers generally meet their clients in courts, prisons, police stations, etc., and their conversations are protected by legal professional privilege. The NSL allows for covert surveillance under special circumstances, such as when there are reasonable grounds to believe that a lawyer is involved in a crime.

15. The right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel

a. Department of Justice intervene with private prosecution

Legislative Councillor Raymond Hui Chi-fung filed two private prosecutions against a police sergeant for firing live ammunition at protesters on 11th November last year in which an underaged protestor was badly injured, and against the driver of the taxi which rammed into the protesters, Cheng Kwok-chuen. However, the Department of Justice requested to intervene and moved to dismiss the charges, which was accepted by the court.

The Department of Justice said in the court that the police had conducted an investigation into the allegations, and had examined statements from members of the public and the police, video footages of vehicle records and analysis by the police, etc., and considered that the police sergeant involved in the shooting was using lawful and reasonable force for the prevention of crime or self-defense, and there was no evidence to support that the defendant fired the gun illegally or with reckless disregard for consequences; plus the fact that Raymond Hui did not summon the person who was shot and another person who was arrested at the scene, which may affect the defendant's chance of a fair trial.

Regarding the taxi driver involved in the collision case, the Department of Justice has pointed out that after reviewing the comprehensive police investigation results, including the statements of four citizens and the defendant, recordings of the defendant's conversations with the company and other taxi drivers at the time, and closed-circuit television footage of the Sham Shui Po Police Station, etc., there is no evidence that the defendant was in control of the taxi or driving dangerously at that time.

The Department of Justice pointed out that in both cases there was insufficient evidence to prove the charges and no reasonable prospect of conviction, or even a prima facie case, and therefore proposed that the charges be withdrawn.

The Secretary for Justice, Teresa Cheng, blogged that private prosecutions that are frivolous or politically motivated will not be tolerated. The Department of Justice has the power to intervene to stop private prosecutions if they are contrary to the public interest or if the mechanism is being abused. She claimed that private prosecution is an important part of the law system but it is not open to abuse, and thus the Secretary of Justice and the Department of

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Justice have the power to intervene in the interest of justice, to stop the proceedings to prevent unnecessary or unreasonable prosecutions.

16. The right to social welfare in accordance with law
17. Freedom of marriage and the right to raise a family freely
18. Other rights and freedoms safeguarded by the laws of Hong Kong SAR.

## 12 Asylum seekers

On 23rd August 2020, 12 Hong Kong people were arrested by the Guangdong Marine Police in the southeastern waters of Hong Kong. Through the Hong Kong Police Force, the family members of the detainees received a copy of “Notification of Imposition of Criminal Compulsory Measures Taken against Hong Kong and Macao Residents”, informing them that the 12 Hong Kong residents were being detained at the Yantian District Detention Centre in Shenzhen.

After receiving the notification, the family members engaged Chinese lawyers to meet the 12 Hong Kong residents at the Detention Centre through official channels. The Chinese authorities demand relatives to obtain Chinese notarial certificates before allowing meetings. So far, however, 6 lawyers appointed by the families have been denied access to the detainees, 2 of whom have already brought their Chinese notarial certificates. Till 15th September, there are in total four lawyers withdrew from the case due to pressure asserted from the authorities. The authorities even claimed that the detainees have “appointed” other lawyers, which in fact are “government-assigned lawyers”. This means that the authorities have blocked all information about the 12 Hong Kong people.

On the 21st day of the incident, the 12 Hong Kong people are held in incommunicado detention, one of whom is even underage. Their families have no news of them, and their own appointed lawyers are unable to see the detainees. The Hong Kong government has never provided any sort of concrete assistance.

On the 33rd day of the incident, the case of the 12 Hong Kong people is still not yet submitted to the Yantian People’s Procuratorate in Shenzhen, which violated the Mainland’s Criminal Procedure Law that cases have to be submitted in People’s Procuratorate within 30 days.

On the 39th day of the incident, 30th September 2020, the 12 Hong Kong people, who have been held in incommunicado detention, were formally arrested by the Yantian People’s Procuratorate on charges of “Organising Others Smuggling across the Border” and “Smuggling across the Border”.

## Conclusions

In short, the rights guaranteed in the Basic Law have been deteriorating quickly. The protections granted by the law and the Basic Law were either overridden by the NSL or was violated. Worse still, given the current circumstances, it is impossible to take actions within the system because the system itself is crumbling, too. It is also increasingly difficult to raise concerns or advocate for change outside of the system without being seen as involving in “subversion” or “secession” under the newly established NSL.

“One Country, Two System” ought not to be considered as functioning in Hong Kong with regard to human rights, Hong Kong’s human rights standards are quickly declining into another Chinese city. The differences between Hong Kong and China are no longer visible as it was before. This report provides a glimpse on how bad the situation of human rights are in Hong Kong. It is hoped that the foreign countries will keep a close watch on what is taking place in Hong Kong and actions will be taken against the Hong Kong and Chinese governments’ blatant violations of human rights.

## Abbreviations

CA	Communications Authority of Hong Kong
GNMIS	Government News Information Service
HKFJ	Hong Kong Federation of Journalists
HKJA	Hong Kong Journalist Association
HKPPA	Hong Kong Press Photographers Association
HKU	The University of Hong Kong
ICSO	The Surveillance Ordinance
LD	Labour Department
LEA	Law enforcement authorities
NPC	The National People's Congress
NPCSC	The Standing Committee of the National People's Congress
NSL	National Security Law
PGO	Police General Orders
RFID	Radio Frequency Identification
RTHK	Radio Television Hong Kong

## Author

**Glacier Kwong** is a Hong Kong and digital rights activist, currently pursuing her PhD in Law at the University of Hamburg in Germany. Her research focuses on digital rights, data protection, digital ethics and surveillance in Hong Kong and China. She completed her undergraduate at the University of Hong Kong and Master in University of Hamburg, during which she led the campaign and lobbying work against the copyright amendment bill which was considered as an infringement of freedom of speech online; and took part in international lobbying in the movement in 2019.

She also actively participated in the Umbrella Movement in 2014 and filmed a video that reaches more than 1 million people worldwide. Since then, she has been an active political activist in Hong Kong and has written in press and media, i.e. Washington Post, Time and Die Welt, commenting on the political and digital rights issues in Hong Kong.

**WIR FÜR HONGKONG** is a political collective formed by Hongkongers living in Germany. Our mission is to support the democratic movement in Hong Kong against totalitarianism of any possible form. To achieve this long-term purpose, WIR FÜR HONGKONG believes in intellectual exchanges and building solidarity worldwide. Provided the rapid shrinkage of freedom in Hong Kong, our primary focus is to emphasize a shared global struggle against the growing aggression of the Chinese Communist Party, most directly exemplified in the current regions of Tibet, Xinjiang, and Taiwan.

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