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A Drained Democracy: the Clash between National
Security and Freedom of Expression in Hong Kong

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ABSTRACT

This thesis explores the intersection of national security and freedom of expression in Hong Kong, focusing on the implications of the 2024 *Safeguarding National Security Ordinance* amidst the region's evolving political and legal landscape. Chapter I sets the stage by contextualising Hong Kong's transition from a British colony to a Chinese Special Administrative Region, highlighting the historical milestones and the challenges faced under the “*One Country, Two Systems*” principle. This chapter also delves into the constitutional and political framework underpinning rights protection in Hong Kong, examining pivotal events such as the 2003 push for national security legislation, the 2014 Umbrella Movement, and the 2019-2020 protests.

Chapter II scrutinises the legal framework safeguarding freedom of expression in Hong Kong, drawing on domestic laws, international human rights standards, and the broader societal significance of this right. The analysis contrasts these protections with restrictions introduced after the 2014 Umbrella Movement and further exacerbated by the 2020 *National Security Law*, emphasising the law's impact on interrelated freedoms like peaceful assembly and association.

Chapter III comprehensively evaluates the 2024 *Safeguarding National Security Ordinance*, detailing its legislative context, key provisions, and alignment—or lack thereof—with international human rights obligations. This chapter incorporates reactions from local and global stakeholders, including human rights organisations, to assess the law's ramifications on fundamental freedoms and democratic practices.

Chapter IV situates the Hong Kong case within the global landscape, identifying parallels between the erosion of freedom of expression in Hong Kong and similar trends worldwide. It examines the broader implications of restricting expression for democratic governance and offers comparative insights from other regions.

The thesis concludes by reflecting on the tension between national security imperatives and human rights, underscoring the urgent need to reconcile these priorities to uphold democratic values in Hong Kong and beyond. Through its in-depth analysis, this work contributes to the discourse on the global impact of restrictive national security measures on civil liberties.

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LIST OF ACRONYMS

CAT	Committee Against Torture
CCP	Chinese Communist Party
CE	Chief Executive
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
HKJA	Hong Kong Journalists Association
HKSAR	Hong Kong Special Administrative Region
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
LegCo	Legislative Council of the Hong Kong Special Administrative Region
LSD	League of Social Democrats
MENA	Middle East and North Africa
NGO	Nongovernmental organization
NPC	National People's Congress
NPCSC	Standing Committee of the National People's Congress
NSL	National Security Law
PRC	People's Republic of China
SAR	Special Administrative Region
SNSO	Safeguarding National Security Ordinance
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convention against Torture
UN	United Nations

INTRODUCTION

Hong Kong was historically regarded as a stronghold of democratic principles in Asia, a distinctive status preserved even after the 1997 transfer of sovereignty to China under the “One Country, Two Systems” framework. Nevertheless, it has emerged as a symbol of the global struggle between national security and individual liberties in recent years. Notably, implementing the *Law of the People’s Republic of China on Safeguarding National Security in Hong Kong*¹ in 2020 represented a pivotal moment in the region’s history, inciting considerable debate and apprehension regarding its implications for human rights. Furthermore, this development signalled the commencement of a significant and ongoing diminishment of democratic values.

The research aims to explore the extent to which the enactment of national security legislation impinges upon freedom of expression and compromises the operation of democratic institutions in Hong Kong, particularly in relation to its potential repercussions for global democracy.

This thesis comprises four main chapters that deliver a comprehensive analysis. The initial chapter establishes the historical and legal context pertinent to Hong Kong. It is imperative to present a comprehensive overview of Hong Kong’s intricate history, highlighting its transition from a British colony to a Chinese special administrative region. Furthermore, the chapter scrutinises significant milestones, including the 1997 handover, and discusses the “One Country, Two Systems” principle.

Subsequently, the national legal framework analysis is essential for comprehending this country’s distinctive relationship with the People’s Republic of China. In accordance with the principle of “One Country, Two Systems”, Hong Kong has a political system separate from that of mainland China and is governed by the *Basic Law* of Hong Kong, which serves as its constitutional document. The legal examination subsequently concentrates on the fundamental rights granted to Hong Kong citizens.

The chapter concludes by examining significant political milestones illustrating Beijing’s gradual encroachment on Hong Kong’s governance. These milestones encompass the initial attempts to legislate a national security law in 2003, the Umbrella Movement in

¹ This legislation will also be referred to as *National Security Law* (NSL).

2014, and the protests of 2019-2020, culminating in the enactment of the *National Security Law*. Understanding these events is essential for comprehending Hong Kong's contemporary socio-political landscape and its ramifications for freedom of expression and democratic principles.

The second chapter explores the legal safeguards and constraints on freedom of expression in Hong Kong. It offers an overview of this fundamental right, encompassing its definition, significance in democratic societies, and the related rights of opinion, peaceful assembly, and association.

Consequently, the legal framework that protects freedom of expression is analysed, encompassing domestic safeguards established under the *Basic Law* and their correspondence with international human rights standards. This section further addresses the acceptable limitations on these rights, particularly emphasising the contentious restrictions imposed due to national security considerations.

This chapter emphasises the implications of pivotal events, such as the Umbrella Movement and the 2020 *National Security Law*, for the freedom of expression of Hong Kong citizens. It elucidates the legal contradictions and escalating tension between the region's legal obligations and the prevailing political realities.

Last year also marked the first anniversary of the Handover following the enactment of local national security legislation, commonly referred to as Article 23. On the 23rd of March 2024, the *Safeguarding National Security Ordinance* (SNSO) was enacted in Hong Kong, which established new offences and imposed harsher penalties, along with more stringent restrictions on detainees and tighter regulations regarding early release from prison. The third chapter presents a thorough critical analysis of the SNSO, which serves as the principal focus of this research. It examines the provisions of the ordinance, its legislative intent, and its alignment—or lack thereof—with international human rights standards. Furthermore, this chapter explores the implications of the ordinance on Hong Kong's civil society, media landscape, and judiciary, thereby exposing its significant consequences for the democratic governance of the region.

In conclusion, the fourth chapter contextualises Hong Kong's challenges from a global perspective. By comparing analogous instances of democratic regression and constraints on freedom of expression, it elucidates broader trends and lessons extending beyond

Hong Kong's confines. The chapter contends that the adversities encountered by Hong Kong are indicative of a worldwide phenomenon in which national security is progressively used as a rationale for undermining fundamental liberties.

Collectively, these chapters aim to elucidate the intricate dimensions of Hong Kong's democratic decline by examining the dynamic interplay between security and freedom from both a regional and global perspective, thus clarifying its broader implications for the international community. As governments globally contend with analogous challenges, the findings highlight the imperative to achieve a delicate balance that protects national security while preserving the democratic values that constitute the foundation of free societies.

CHAPTER I. HISTORICAL, LEGAL AND POLITICAL CONTEXT OF HONG KONG

1.1. Evolution from British Colony to Chinese Special Administrative Region

The British government in London did not choose Hong Kong as a colonial settlement; instead, it was occupied with objectives aligned with diplomatic, commercial and military considerations. Fundamentally, Hong Kong emerged as an unintended consequence of the British Empire's pursuit of economic interests in East Asia, where the emphasis was placed on trade and economic advantages rather than territorial expansion.²

1.1.1. Key historical events leading to Hong Kong's current status

The British Empire engaged in a conflict with China from 1839 to 1843 with the aim of securing economic gains from trade and addressing what it perceived as an unsatisfactory framework for the conduct of relations.

The establishment of the Crown Colony of Hong Kong was a direct result of the First Anglo-Chinese War (1839–1842), widely referred to as the “Opium War”. While superficially focused on the illicit opium trade, the conflict was equally concerned with trading rights and diplomatic representation. For much of the mid-nineteenth century, China represented the fourth most significant source of imports for Britain, maintaining a favourable balance of direct bilateral trade. To address the trade imbalance skewed in China's favour, where the British could offer little beyond silver for Chinese silk and tea, they resorted to importing opium cultivated and processed in British India. The issue facing the Chinese authorities was acute. Given that taxes were payable in silver, the diversion of silver resources to finance opium purchases threatened to initiate a detrimental cycle characterised by diminished economic stability, reduced governmental revenue, and potential social unrest. In March 1839, Chinese authorities launched an anti-opium campaign in Guangdong province, wherein they detained approximately 350 foreign nationals, including British subjects, in Canton and confiscated their opium supplies, an action that precipitated conflict between the British and Chinese.

The First Opium War was formally concluded with the signing of the *Treaty of Nanking* in 1842. This treaty permanently ceded the island of Hong Kong to Britain, conferred

² Steve Yui-Sang Tsang. *A Modern History of Hong Kong*. Bloomsbury Academic, 2003, pp 20-22.

upon the British the right of extraterritoriality, and ensured through the most-favoured-nation clause that Britain would receive identical concessions to those offered to any other nation in the future.³

In China, this treaty is viewed as the initial instance of the numerous “unequal treaties”⁴ imposed on a beleaguered China after military defeats by Western powers during the nineteenth century. Despite being finalised, the treaty was insufficient in meeting British expectations, as the economic and diplomatic relations between the two empires did not achieve their primary objectives. The management of bilateral relations persisted as a challenge, as the British were not given the right to establish a diplomatic presence in the Chinese capital. Furthermore, the opium trade, which had served as the immediate catalyst for the war, continued to be illegal under Chinese law, although its enforcement was deliberately lax.

After previous conflicts, a war occurred between 1856 and 1860, stabilising and sustaining trade and diplomatic relations between the two empires. The principal cause of the hostilities was the *Treaty of Nanking*, which failed to meet all British expectations while, from the Chinese perspective, it conceded excessively. During the 1850s, Sino-British relations were further strained by the “Canton question”: the English version of the treaty granted the British the right to enter the city of Canton, whereas the Chinese version restricted them to its port. Additionally, the treaty neglected to allow the British diplomatic residence in the capital, Beijing, and British officials lacked direct access to Chinese officials in Canton.⁵

The Second Opium War commenced following the seizure of the Chinese vessel *Arrow* by the British, who accused Chinese officials of conducting illegal actions against it. This incident provided a pretext for a military intervention. Initially, British forces launched an offensive against the city of Canton, securing a significant strategic position in southern China, and were joined by the French, who sought retaliation for the execution of one of their missionaries, leading to coordinated military campaigns targeting Chinese cities. Following initial triumphs, the Allied forces advanced north towards Beijing,

³ Carroll, John M. *A Concise History of Hong Kong*. Rowman & Littlefield, 2007, pp 28-31.

⁴ These treaties undermined China’s sovereignty and contributed to internal instability, fueling nationalist movements that ultimately sought to end foreign influence in the region.

⁵ Steve Yui-Sang Tsang. *A Modern History of Hong Kong*. Bloomsbury Academic, 2003, p 29.

encountering minimal resistance. In 1858, the *Treaty of Tientsin* was enacted to establish peace and expand trade; however, a delay in China's ratification led to renewed military actions. In retaliation for sustained Chinese resistance and the murder of British envoys, British and French forces captured Beijing. The war ended in 1860 when China was compelled to sign the *Convention of Peking*, which augmented Western privileges by legalising the opium trade, permitting access to additional Chinese ports for external commerce, and facilitating the presence of foreign diplomats in Beijing. Analogously to the initial acquisition of Hong Kong, this conflict resulted in British territorial expansion by annexing a small section of the Kowloon peninsula on the harbour's north shore for 99 years (with expiration in 1997).

Hong Kong's colonial status significantly contributed to its involvement in the 1911 revolution, which culminated in the overthrow of the Qing Dynasty⁶ and the subsequent establishment of the Republic of China. Sun Yat-sen, known throughout the Chinese world as the "father of the nation", acquired a portion of his education in Hong Kong. Despite governmental efforts to suppress subversion, Hong Kong functioned as a base for recruiting and training Chinese revolutionaries, facilitating both the initial revolutionary insurrection in Canton in 1895 and the ensuing uprising.

While Hong Kong contributed to British military efforts, the First World War remained a conflict centred in Europe, exerting only a limited impact on the daily life of this East Asian colonial territory. Nevertheless, the region faced the consequences of war due to the escalating hostilities between Japan and China, which increasingly implicated Hong Kong. In July 1937, Japan initiated a comprehensive invasion of China, and almost immediately, Hong Kong gained newfound importance for the mainland. The colony became a refuge for individuals fleeing the Japanese incursion and functioned as a vital supplier of arms for the Chinese military resistance. The Hong Kong government's policy on the conflict in China was shaped and constrained by the imperatives of the British defence strategy. Although the colonial administration was cautious not to antagonise the

⁶ The Qing dynasty (1644–1912) was the last imperial dynasty of China, established by the Manchu people. It expanded China's territory significantly, overseeing a period of economic growth and cultural richness. The dynasty ultimately fell in 1912, ending over 2,000 years of imperial rule and paving the way for the establishment of the Republic of China.

Japanese government, it simultaneously declared Hong Kong's neutrality and undertook preparations to protect the colony from a potential Japanese incursion.

In December 1941, Japanese bombers launched an attack on Hong Kong. Within seventeen days, Japanese forces captured the island, maintaining control over the entire colony for nearly four years. They rapidly transformed Hong Kong from a British colony to a Japanese one by dismantling statues of British royalty and renaming streets and locations. As the war shifted against Japan's favor, the British eventually succeeded in regaining control over Hong Kong in August 1945.⁷

The socio-economic and political transformations of the 1950s, 1960s, and 1970s played a pivotal role in forming a distinct Hong Kong identity. Scholars primarily contend that this identity emerged only after the 1949 Communist Revolution. The reactions in both Britain and Hong Kong to the establishment of the People's Republic of China (PRC) in October 1949 were marked by an interplay of apprehension and reassurance. The nascent PRC administration did not seem to threaten British commercial interests in China, nor did Chinese Communist authorities show any inclination to reclaim Hong Kong. The Communist post-civil war policy regarding Hong Kong was marked by a pragmatic approach, perceiving Hong Kong as a domestic Chinese matter to be addressed amicably through diplomatic means. The recognition in the early 1980s of Hong Kong's eventual return to Chinese sovereignty in 1997 was the most significant factor influencing this development of Hong Kong's identity.⁸

The precise moment at which the government of the PRC decided to regain control over Hong Kong is unknown; however, there were several foreboding indicators. In 1982, the Chinese National People's Congress established provisions related to Special Administrative Regions (SAR), after which senior officials from the People's Republic of China expressed the possibility of reunifying Hong Kong, Macau, and Taiwan as SARs with mainland China. For China, the recovery of Hong Kong represented an opportunity to conclude the unequal treaties and to restore national dignity and prestige.

⁷ Carroll, John M. *A Concise History of Hong Kong*. Rowman & Littlefield, 2007, pp 152-158.

⁸ Ivi, pp 174-176.

The negotiations between Chinese and British authorities regarding the future of Hong Kong spanned two years. Confronted with considerable challenges, the initial phase of deliberations, conducted from October 1982 to June 1983, focused on China's insistence on British recognition of their sovereignty over Hong Kong, with further advancements hinging upon British acquiescence to this condition. The dialogues then proceeded into a second phase, facing a significant impediment stemming from Britain's desire to retain its administrative authority in Hong Kong beyond 1997, even under Chinese sovereignty. As it became increasingly apparent that China was steadfastly determined to reacquire Hong Kong, the British pivoted their efforts towards ensuring regional stability during its transition to Chinese sovereignty.

The *Sino-British Joint Declaration*, formally finalised in Beijing by the British Prime Minister Thatcher and the Chinese Premier Zhao Ziyang, was implemented, initiating the transitional period subsequent to its ratification in May 1985. According to the Declaration, both parties agreed that sovereignty over the entirety of Hong Kong would be transferred from the United Kingdom to the People's Republic of China on 1 July 1997. It delineated that, during the transitional period, the United Kingdom would be charged with the administration of Hong Kong with the objective of sustaining and safeguarding its economic prosperity and social stability, an undertaking to which the People's Republic of China would provide its collaboration.

The *Sino-British Joint Declaration* outlined the key conditions of the agreement concerning Hong Kong's future political status. Hong Kong was designated to become a SAR with a considerable level of autonomy, with the exceptions of defence and foreign affairs. Hong Kong's social and economic structures were to remain unchanged, as would most of its existing legal provisions. The authority over trade policies and agreements was to be retained by the Hong Kong government, allowing it to remain a free port without the requirement to remit taxes to China. The rights and freedoms of speech, assembly, and religion were to be protected. The presence of the Chinese People's Liberation Army troops in Hong Kong was not to interfere with the SAR's internal affairs. This "one country, two systems" arrangement was intended to persist for fifty years following 1997.

Responses from the local population to the *Joint Declaration* were mixed, with many individuals in Hong Kong expressing dissatisfaction and resentment regarding the

manner in which the negotiations were conducted, given their lack of participation or input in the process.⁹

Following the ratification of the *Joint Declaration*, the Chinese authorities promptly drafted the *Basic Law*, which would function as the constitution of Hong Kong. While the *Basic Law* sought to enshrine the assurances provided by China in the *Joint Declaration*, it also afforded an opportunity to align any political changes in Hong Kong prior to 1997 with China's post-handover vision. This alignment was possible because, despite the *Joint Declaration* stipulating that the "current" institutions of Hong Kong would remain unchanged for fifty years, it did not provide any elucidation of the term "current". Notably, the Chinese government firmly opposed any proposals for universal suffrage.

On the 4th of April 1990, the National People's Congress formally enacted the *Basic Law*, subsequently promulgated by the PRC. It was broadly recognised among the Hong Kong populace that while the *Basic Law* was an attempt by the PRC government to convey its sincerity regarding the "one country, two systems" model, it simultaneously served as a mechanism for asserting governmental control over Hong Kong's post-1997.

The tensions that characterised the Sino-British negotiations, along with the drafting of the *Basic Law*, intensified following the Tiananmen Square massacre in June 1989. Much like the global audience that witnessed the televised images of the crackdown, the people of Hong Kong experienced a heightened sense of shock and apprehension, fearing an analogous occurrence after the handover. In one of the largest demonstrations in Hong Kong's history, nearly one million individuals took to the streets to express solidarity with the fallen demonstrators and to denounce the leadership of the People's Republic of China. The incidents at Tiananmen Square significantly transformed local perceptions regarding the impending 1997 transition and the Chinese government. Additionally, these events contributed to fortifying the existing Hong Kong identity by reminding many individuals that, despite their ethnic Chinese heritage, they did not associate themselves with the Communist government of China.¹⁰

⁹ Ivi, pp 229-231.

¹⁰ Ivi, p 251.

At midnight on the 1st of July 1997, the British flag was officially lowered in Hong Kong. During the ceremony, the SAR flag was notably smaller and hoisted at a deliberately slower pace than the PRC flag, clearly indicating to the people of Hong Kong that the SAR was established with “a high degree of autonomy” allowed by the PRC.

1.1.2. The 1997 handover and its implications

In 1997, Hong Kong, the final notable imperial possession of the British Empire, was established as the first Special Administrative Region of the PRC. This event signified the completion of a historical cycle within the framework of contemporary Chinese history: Hong Kong, having been ceded by the declining Chinese Empire in 1842, was peacefully reintegrated into a revitalised and influential China 155 years later. The transfer of British Hong Kong back to the successor state of the Chinese Empire occurred not due to its breakdown or the will of its inhabitants but rather due to the shifting power dynamics between Britain and China, mirroring the conditions under which it initially came under British jurisdiction. For the PRC, this handover epitomised the conclusion of a century characterised by subjugation to Western imperialism, and it illustrated a victory for the pragmatic strategies of Deng Xiaoping¹¹ in cultivating “socialism with Chinese characteristics”.¹²

The central question concerning Hong Kong’s transition to Chinese sovereignty pertains to how this former British colony will endure under the “one country, two systems” arrangement. Hong Kong’s distinctive status—decolonisation without independence—renders it particularly challenging to administer. Both PRC and Hong Kong Special Administrative Region (HKSAR) leaders comprehend that the mishandling of Hong Kong’s reintegration with the mainland may yield detrimental local and international consequences. Such mismanagement could prompt significant emigration from the HKSAR, adversely affecting international investment. Hong Kong is essential to the PRC’s economic development and political stability. Having underscored Hong Kong’s

¹¹ Deng Xiaoping (1904–1997) was a Chinese revolutionary and statesman who led China through significant economic reforms from the late 1970s until the 1990s. As the de facto leader of the People’s Republic of China, he initiated policies (like “socialism with Chinese characteristics”) that transitioned China from a command economy to a market-oriented one, marking the beginning of China’s rise as a global economic power.

¹² Steve Yui-Sang Tsang. *A Modern History of Hong Kong*. Bloomsbury Academic, 2003, pp 268-269.

reclamation as a pivotal national milestone, Beijing is acutely aware of the potential international embarrassment and the detriment to the Chinese Communist Party (CCP) that an unsuccessful Hong Kong reintegration would entail.

Numerous Hong Kong residents perceive that the PRC government intervenes too frequently in the HKSAR's political affairs. Yet, the majority seem resigned to the Chinese government's ultimate authority over Hong Kong's constitutional reform.¹³

The history of Hong Kong did not culminate in the colonial era, nor did it originate from it. The HKSAR government has strategically prioritised history as a significant theme to facilitate Hong Kong's reintegration with China. This approach involves utilising historical narratives and heritage preservation as tools to cultivate a sense of local identity and belonging in Hong Kong while integrating within the expansive narrative of Chinese nationalism.¹⁴

1.2. Overview of the “One Country, Two Systems” Principle

The idea of “one country, two systems” originated in 1979, when China offered to allow Taiwan to keep its economic and social systems, government, and even military in return for acknowledging that it was part of the PRC. Taiwan rejected that proposal, but the plan's architect, Deng Xiaoping, next used the idea to resolve an emergent crisis over Hong Kong, which was scheduled to revert to mainland rule in 1997.¹⁵

In recovering Hong Kong, the Chinese Communist Party encountered a dilemma: on the one hand, it would like to resume sovereignty over Hong Kong unconditionally; on the other hand, it was eager to maintain the status quo to preserve the prosperity and stability of the “Pearl of the Orient”¹⁶. It was hoped that the “one country, two systems” could provide a resolution to this issue.¹⁷

¹³ Carroll, John M. *A Concise History of Hong Kong*. Rowman & Littlefield, 2007, p 282.

¹⁴ Ivi, pp 299-301.

¹⁵ Overholt, William. *Hong Kong: The Rise and Fall of “One Country, Two Systems.”* Ash Center for Democratic Governance and Innovation, Dec. 2019, p.1

¹⁶ *Pearl of the Orient* is a term commonly used to describe several Asian cities, most notably Hong Kong and Manila, due to their historical roles as vibrant trading hubs and their cultural and economic significance. Hong Kong earned the nickname for its strategic location, bustling economy and cosmopolitan appeal.

¹⁷ Wong, Yiu-Chung. *“One Country, Two Systems” in Crisis Hong Kong's Transformation since the Handover*. Lanham, Md. Lexington Books, 2004, p 16.

1.2.1. Definition and intended function

In the early 1980s, China's state leader Deng Xiaoping put forward the scientific concept known as "one country, two systems" in an effort to realise the peaceful reunification of China, and this ingenious design was first applied to solve the question of Hong Kong. According to Deng Xiaoping, "one country, two systems" means only one China; under this premise, the mainland adheres to the socialist system. At the same time, Hong Kong, Macau, and Taiwan may retain their capitalist systems in the foreseeable future.¹⁸

As a result of extensive examinations and research, the Chinese government developed a twelve-point policy¹⁹ concerning Hong Kong, known as the "12 Principles", at the beginning of 1982. The key elements of these principles included:

- Hong Kong will return to China on the 1st of July 1997;
- After returning to China, Hong Kong will become a special administrative region with a high degree of autonomy and will be under the direct administration of the central authority;
- The current lifestyle, social, economic and welfare systems in Hong Kong will remain unchanged;
- The existing laws, decrees, and regulations in Hong Kong will be retained as a whole.

Historical facts show that the "one country, two systems" idea was a unilateral proposition by the Chinese Government and not a result of negotiations between China and Britain.²⁰

On the 4th of December 1982, a new Constitution of the People's Republic of China was approved at the Fifth Session of the Fifth National People's Congress (NPC). Article 31 provides, "*The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law*

¹⁸ The State Council of the People's Republic of China. "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region." *The State Council of the People's Republic of China*, June 2014.

In June of 2014, the State Council Information Office of the People's Republic of China issued this White Paper based on the report of the 18th Communist Party of China National Congress.

¹⁹ Prior in 1981, Ye Jianying, a member of the National Committee of the National People's Congress, announced a 9-point policy for the peaceful reunification of mainland China and Taiwan. It can be said that "one country, two systems" derives from these 9 points.

²⁰ Siu-Kai, Lau. *The Practice of "One Country, Two System" Policy in Hong Kong*. The Commercial Press (H.K.) Ltd, 2017, pp 30-31.

enacted by the National People's Congress in the light of the specific conditions." Reflecting the "one country, two systems" concept, this Article provides the constitutional foundation for establishing SARs in specific regions that adopt different social systems and policies from those of the mainland, as the Chinese government works towards the peaceful reunification of its country.²¹

"One country, two systems" for Hong Kong was enshrined in the 1984 *Sino-British Joint Declaration*, which was signed after two years of tumultuous negotiations.²² Although the principle was not explicitly mentioned in the Declaration, the "12 Principles" within were, in fact, the concrete manifestation of the concept.²³

On the 4th of April 1990, during the Third Session of the Seventh NPC, the *Basic Law* of the HKSAR of the People's Republic of China was passed, and the HKSAR was established. The *Basic Law* was created in alignment with the Constitution of the PRC. It outlines the systems and policies to be implemented in the HKSAR and represents the legalisation and institutionalisation of the "one country, two systems" policy²⁴. Article 5 states: "*The socialist system and policies shall not be practised in the HKSAR, and the previous capitalist system and way of life shall remain unchanged for 50 years*". In retrospect, "one country, two systems" appears to have been a concept designed for negotiations with the British government in the early 1980s. This principle appeased the people of China, Britain, and Hong Kong. For China, it meant regaining sovereignty over Hong Kong. For Britain, it ensured that China would promise to maintain the capitalist system, preserving the British legacy. For Hong Kong citizens, it guaranteed that their way of life and various social and political freedoms would remain intact.²⁵

Let's now examine the concept in detail, which consists of two components and forms the integrated notion of "one country, two systems". The "one country" indicates that

²¹ The State Council of the People's Republic of China. "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region." *The State Council of the People's Republic of China*, June 2014, p 1.

²² Wong, Yiu-Chung. "*One Country, Two Systems*" in *Crisis Hong Kong's Transformation since the Handover*. Lanham, Md. Lexington Books, 2004, p 10.

²³ Ivi, p 17.

²⁴ The State Council of the People's Republic of China. "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region." *The State Council of the People's Republic of China*, June 2014, p 2.

²⁵ Wong, Yiu-Chung. "*One Country, Two Systems*" in *Crisis Hong Kong's Transformation since the Handover*. Lanham, Md. Lexington Books, 2004, p 31.

within the PRC, HKSAR is an inseparable part and a local administrative region directly under China's Central People's Government. As a unitary state, the Chinese government holds comprehensive jurisdiction over all local administrative regions, including the HKSAR. The region's high degree of autonomy is not an inherent power but one granted solely by the central leadership. The primary objective in upholding the "one country" principle is to maintain China's sovereignty, security, and development interests. The "two systems" imply that, within the "one country," the central part of the country practices socialism, while Hong Kong and some other regions practice capitalism. The "one country" is the foundation and basis of the "two systems," the latter is subordinate to and derives from the former; therefore, the two components are unequal. For Hong Kong to retain its capitalist system and enjoy a high degree of autonomy with "Hong Kong people governing Hong Kong" according to the *Basic Law*, it must fully respect the socialist system practised on the mainland in accordance with the "one country" principle, particularly the political system and other systems and principles in practice.²⁶

1.2.2. *Current status and challenges*

Since the signing of the *Sino-British Joint Declaration* in 1984, the rule of law has been a cornerstone of legal and political discourse in Hong Kong. Despite the assurance of "one country, two systems", the transition in political sovereignty has generated significant anxiety among residents and drawn international interest²⁷, partly due to China's vague articulation of this concept. Initially, the *Joint Declaration* did not define Hong Kong's political system, sparking substantial debates and controversies²⁸.

The reality is that Hong Kong's political, legal, social, and economic institutions appear to be less resilient than anticipated under the strain of reunification with mainland China. This consideration posits that these institutions have systematically deteriorated each year since the handover. Additionally, the pro-democracy movement has been marginalised, civil society has been intimidated, the integrity of the judiciary has been questioned, and freedoms have been curtailed with an increasing number of restricted areas for journalists

²⁶ The State Council of the People's Republic of China. "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region." *The State Council of the People's Republic of China*, June 2014, p 6.

²⁷ Wong, Yiu-Chung. "One Country, Two Systems" in *Crisis Hong Kong's Transformation since the Handover*. Lanham, Md. Lexington Books, 2004, p 11.

²⁸ Ivi, p 62.

and political entities. In general, the people of Hong Kong have come to recognise that the *Basic Law*, which incorporates the “one country, two systems” principle, has ultimately ensured the HKSAR’s subordination to the Central People’s Government. Undoubtedly, Beijing will always maintain supremacy in its interactions with Hong Kong.²⁹

There have been further indications that the “one country” principle has progressively overshadowed the “two systems” framework. This was particularly evident in 2003 due to apprehensions regarding the implementation of the anti-subversion law mandated by Article 23³⁰ of the *Basic Law*. In the subsequent months, Beijing’s confidence in “Hong Kong people governing Hong Kong” was diminished as concerns about Hong Kong potentially evolving into “a base of subversion” against China emerged.³¹ The topic of Article 23, particularly its legal and political implications, will be discussed in greater detail in the subsequent sections of this thesis.

Since the establishment of the HKSAR, one of the significant apprehensions triggered by Article 23 was the possibility of criminalising mere expression or simple statements of opinion, and even before the release of the consultation paper on its implementation, the chilling effect of the article had already been perceived by groups holding dissenting views against Beijing authorities. The legislative initiative surrounding Article 23 has become a critical assessment of whether the principle of “one country, two systems”, as stipulated in the *Basic Law*, can be executed in a manner that achieves an appropriate balance between its two components, given the inherent tension that has persistently existed.³²

Consequently, despite granting the HKSAR significant autonomy and nearly independent powers in economic and financial matters, the *Basic Law* has also delineated the

²⁹ Ivi, p 55.

³⁰ Article 23 of the Basic Law states: “*The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies*”.

³¹ Wong, Yiu-Chung. “*One Country, Two Systems*” in *Crisis Hong Kong’s Transformation since the Handover*. Lanham, Md. Lexington Books, 2004, p 42.

³² Ivi, p 70.

parameters for “one country, two systems”, emphasising the perceived and actual challenges that Hong Kong poses to the mainland.³³

1.3. Constitutional framework and rights protection in Hong Kong

The constitutional relationship between Hong Kong and the People’s Republic of China is unique and adds complexity to their interactions. Before delving into the specifics of Hong Kong’s framework, it is crucial first to understand the foundational constitutional structure that defines the relationship between the PRC and the HKSAR.

1.3.1. Constitutional relations between the PRC and Hong Kong

According to Article 31 of the Chinese Constitution, Hong Kong is established as one of China’s two³⁴ Special Administrative Regions. As an integral component of China, Hong Kong’s relationship with the Chinese Central Government does not fit into the typical classification of a federal constitution.

The enactment of the *Basic Law* legitimated the establishment of the Hong Kong Special Administrative Region, a national statute of the People’s Republic of China adopted in 1990 by the NPC. The *Basic Law* delineates the jurisdictional boundaries between the Chinese Central Government and Hong Kong’s regional Government, preserving a delicate balance between Hong Kong’s governance and the Chinese Government’s overarching authority. Given that the *Basic Law* is a national statute of China, its amendment lies within the sole competence of the NPC.³⁵

As an integral part of the People’s Republic of China, Hong Kong is also subject to the provisions of the Chinese Constitution, which harmonise with the arrangements outlined in the *Basic Law*.

The Central Government has the authority to pass or extend its national laws in Hong Kong, and such laws take priority over the *Basic Law*. Article 18 restricts the Central Government’s powers, specifying that only national laws listed in Annex III of the *Basic*

³³ Ivi, p 42.

³⁴ The other SAR is Macao, located on the southern coast near Hong Kong; it was a former Portuguese colony which was returned to Chinese sovereignty in 1999.

³⁵ Recognized by Article 158 of the Basic Law , this competence has been delegated to the Hong Kong Special Administrative Region for provisions within the Region’s autonomous limits.

Law apply in Hong Kong. However, the Standing Committee of the National People's Congress (NPCSC) can modify this list after consulting its Committee for the Basic Law and the Government of the HKSAR. Nonetheless, in emergencies where Hong Kong cannot contain threats to national unity or security, the Central Government can extend the application of "relevant national laws" to the Region.³⁶

In practice, Hong Kong exercises autonomy over its internal affairs. At the same time, the Central Government retains oversight of its defence, foreign affairs, and matters related to their bilateral relationship or within its sole jurisdiction.

1.3.2. *Overview of the Basic Law*

In order to establish a constitutional and legal framework that closely mirrors Hong Kong's previous governmental and legal systems, the Chinese Government enacted the *Basic Law* of the HKSAR³⁷. On the 10th of April 1985, during the Third Session of the Sixth NPC, it was resolved to establish the Drafting Committee for the Basic Law of the HKSAR, composed of members from both Hong Kong and the Mainland. This committee commenced its work in July of the same year and concluded its task in February 1990, resulting in the formulation of the *Basic Law* of Hong Kong.³⁸ This law, based on the principle of "one country, two systems", was formally promulgated by the NPC on the 4th of April 1990, together with the designs for the flag and emblem of the HKSAR³⁹. It came into effect on the 1st of July 1997 and serves as the Constitution of Hong Kong.

In its entirety, the *Basic Law* is composed of nine chapters encompassing 160 articles:

- Chapter I sets out the basic policies of the Chinese Government regarding Hong Kong;
- Chapter II deals with the relationship between the Central Authorities of the People's Republic of China and HKSAR;
- Chapter III deals with Fundamental Rights and Duties;
- Chapter IV deals with Hong Kong's governmental structure;

³⁶ Cooray, Anton. *Constitutional Law in Hong Kong*. 5th ed., Kluwer Law International B.V., 2022, p 35.

³⁷ *Ibidem*.

³⁸ The State Council of the People's Republic of China. "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region." *The State Council of the People's Republic of China*, June 2014, p 2.

³⁹ Cooray, Anton. *Constitutional Law in Hong Kong*. 5th ed., Kluwer Law International B.V., 2022, p 35.

- Chapter V deals with the economy;
- Chapter VI deals with education, science, culture, sports, religion, labour and social services;
- Chapter VII deals with external affairs;
- Chapter VIII deals with the interpretation and amendment of the Basic Law and contains provisions on the relationship between central and regional authorities;
- Chapter IX deals with supplementary provisions.

The provisions of the *Basic Law* are supplemented by three annexes and several decisions that specify key governance procedures and legal frameworks.⁴⁰

The principal written source of Hong Kong's constitutional law is the *Basic Law*, which supersedes any ordinance, subsidiary legislation, and unwritten law of Hong Kong. Additional statutes that complement the Basic Law are the *Hong Kong Bill of Rights*⁴¹ and the *Legislative Council Ordinance*⁴², constituting sources of constitutional law⁴³. As the supreme law, the *Basic Law* cannot be contravened by any law in Hong Kong, and the judiciary possesses the authority to assess the constitutionality of any legislative or administrative action that conflicts with it. It must be noted that international treaties and other international legal principles are essential in Hong Kong's legal system⁴⁴.

Two provisions of the *Basic Law* underscore the unique status of Hong Kong: Article 2 stipulates that the National People's Congress confers upon the Hong Kong Special Administrative Region the authority to exercise a high degree of autonomy, including executive, legislative, and judicial powers, whereas Article 12 asserts that the HKSAR is to function as a local administrative region of the People's Republic of China, maintaining substantial autonomy while being directly accountable to the Central People's Government.⁴⁵

⁴⁰ Ivi, pp 54-56.

⁴¹ The *Hong Kong Bill of Rights Ordinance* (1991) is a legal framework that transposes provisions of the International Covenant on Civil and Political Rights (ICCPR) into Hong Kong law, protecting fundamental rights such as freedom of speech, assembly, and privacy.

⁴² The *Legislative Council Ordinance* (1997) governs the election and functioning of the Legislative Council (LegCo), outlining the structure, electoral processes, and qualifications for members.

⁴³ Ivi, p 57.

⁴⁴ Ivi, p 109.

⁴⁵ Ivi, pp 218-219.

1.3.3. Fundamental rights protected in the HKSAR

The transition of Hong Kong from a colony to a special administrative region of the People's Republic of China established a framework for constitutionally protecting fundamental rights and freedoms.

In 1948, the General Assembly of the United Nations adopted the *Universal Declaration of Human Rights* (UDHR), articulating the general principles of human rights “as a common standard of achievement for all peoples and all nations”. The Declaration, however, merely set forth general principles of international law without imposing any obligation to realise those principles in practice. Consequently, in 1966, the United Nations adopted two human rights treaties: the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). These Covenants delineated basic human rights and fundamental freedoms, obligating all States parties to implement these rights appropriately. The Covenants came into force in 1976, the same year the Government of the United Kingdom ratified them with certain reservations and declarations, thereby extending them to its dependent territories, including Hong Kong.

In 1984, through the *Sino-British Declaration*, the United Kingdom and Chinese Governments agreed that the provisions of the Covenants as applied to Hong Kong would remain in force in the territory post-1997. Initially implemented in Hong Kong through a combination of common law, legislation, and administrative measures, the two Covenants gradually received community support for their unification into a single piece of legislation, culminating in the 1991 enactment of the *Hong Kong Bill of Rights Ordinance*⁴⁶ by the British administration. This Ordinance incorporated the ICCPR provisions directly into Hong Kong law, while the ICESCR provisions, being less enforceable in courts, remained an aspirational influence without legislative integration.⁴⁷

The General Principles concerning the protection of fundamental rights and freedoms are further detailed in the substantive chapters of the *Basic Law*. The most pertinent chapter

⁴⁶ It must be noted, however, that that NPCSC deleted sections 2(3), 3 and 4 of the Bill of Rights, with the intention to remove its effectiveness as an aid to interpretation of legislation.

⁴⁷ Constitutional and Mainland Affairs Bureau of the HKSAR Government. *An Introduction to Hong Kong Bill of Rights Ordinance*. 2022, pp 1-2.

is Chapter III, titled “Fundamental Rights and Duties of Residents”, encompassing Articles 24 to 42; this chapter facilitates the protection of not only civil and political rights but also social and economic rights.⁴⁸ Specifically, Article 39 serves as a crucial provision by effectively incorporating the two Covenants into the HKSAR, and it states the following:

The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

Within the scope of this thesis, the analysis predominantly emphasises the essential rights of freedom of opinion and expression, alongside the right to peaceful assembly and association, which are crucial for comprehending the dynamics of human rights in the analysed case studies. These rights are, respectively, safeguarded in the *Bill of Rights Ordinance* under articles 16 to 18 and further enshrined in article 27 of the *Basic Law*. It is important to emphasise that these are not absolute rights and may be subject to limitations prescribed by law and are necessary to protect national security, public safety, order, health, morals or the fundamental rights and freedoms of others. The aspect of national security within this provision has posed significant challenges on several occasions and will be further explored in subsequent chapters.

1.4. Significant Milestones shaping Hong Kong’s political landscape

Hong Kong is a city of protest. For many years, residents have been conditioned to perceive protest as an instrumental mechanism for effecting political change. They view it as an embodiment of their identity, defined by rights and freedoms not accessible to the rest of the Chinese population, such as freedoms of speech, expression, and assembly.

⁴⁸ Cooray, Anton. *Constitutional Law in Hong Kong*. 5th ed., Kluwer Law International B.V., 2022, p 266.

The degree of tolerance and the authorities' response to public protests are critical indicators of the strength of the "one country, two systems" principle. They simultaneously reflect Beijing's stance towards Hong Kong and its associated freedoms.⁴⁹ Consequently, the most pivotal turning points in Hong Kong's political landscape have coincided with significant protests occurring at three distinct moments in its recent history.

1.4.1. 2003: The First Push for National Security Legislation

From November 2002 through mid-2003, Hong Kong was at the centre of a global health crisis as Severe Acute Respiratory Syndrome⁵⁰ claimed the lives of 299 individuals, instigating widespread panic that severely impacted the local economy.

The administration under Tung Chee-Hwa⁵¹ was inadequately prepared to address the challenges presented during this tumultuous period.⁵² This defective post-handover political system failed to manage or alleviate the popular discontent directed towards the existing administration. Nevertheless, the element that precipitated the ultimate turmoil was the proposed implementation of stringent new anti-subversion laws in Hong Kong as mandated by Article 23 of the *Basic Law*.

Six years after the handover, this legislation had yet to be enacted. In 2003, Tung's Secretary for Security, Regina Ip⁵³, sought to enforce the legislation through severe measures that would substantially restrict freedoms in Hong Kong.⁵⁴ Furthermore, the

⁴⁹ Dapiran, Antony. *City of Protest : A Recent History of Dissent in Hong Kong*. Penguin Books, 2017, pp 4-5.

⁵⁰ Severe Acute Respiratory Syndrome (SARS) is a viral respiratory illness that emerged in 2002 in southern China and rapidly spread globally. Characterized by symptoms such as fever, cough, and shortness of breath, SARS had a significant impact on public health systems, particularly in Asia, before being contained through international cooperation and public health measures.

⁵¹ Tung Chee-Hwa was the first Chief Executive of Hong Kong after the 1997 handover to China. Serving from 1997 to 2005, he focused on economic development but faced challenges which contributed to his resignation.

⁵² Ivi, p 25.

⁵³ Regina Ip is a senior Hong Kong politician and former Secretary for Security (1998–2003). She is widely known for her role in promoting national security legislation under Article 23 of the Basic Law . Following her resignation, she re-entered politics and has since become an influential member of the Legislative Council.

⁵⁴ Ivi, p 31.

Tung administration opted against introducing a “white bill”⁵⁵ for public consultation, a decision that proved to be disastrous.

As public dissatisfaction in Hong Kong intensified to a critical point, and in the absence of formalised channels for citizens to express their views or elect Tung’s government out of office, over half a million Hongkongers mobilised on the streets on July 1st, the public holiday commemorating the handover, to protest the Article 23 legislation and advocate for democracy. This specific legislation instigated the demonstration, as it was perceived as an assault on the core values of Hong Kong, eliciting a powerful and visceral response from the population, who were not merely opposing an unpopular legislative measure or a proposed limitation on freedoms but a threat to their very identity, with the right to protest constituting a fundamental aspect of that identity. The protest was effective, leading to Ip’s resignation and the withdrawal of the legislation.⁵⁶

Since the handover, large-scale protests have been conducted annually on July 1st, evolving into an occasion to express dissatisfaction with the government and to voice demands for increased democracy, civil liberties and other political causes. Evidently, the 2003 protests appear to signify the occasion at which Hongkongers recognised that public protest is conceivably the only effective means of political expression after the handover.⁵⁷

1.4.2. 2014: The Umbrella Movement and the Call for Democracy

The political system of Hong Kong is flawed, as the individuals in power lack a popular mandate, whereas those with a popular mandate hold no power. Therefore, democracy and accountability have consistently remained predominant themes on the political agenda following the handover to Chinese governance. The Umbrella Movement of 2014, alongside other recent demonstrations, has sought to mitigate the political imbalance by advocating for enhanced representative democracy.

Although the legislative selection process in Hong Kong has undergone specific reforms over the years, the same cannot be said for the authoritative head of Hong Kong’s

⁵⁵ This term refers to a draft of proposed legislation that is published for public consultation before being formally introduced to a legislative body. It allows for feedback and revisions, facilitating public participation in the legislative process.

⁵⁶ Ivi, p 32.

⁵⁷ Ivi, p 33.

government. Prior to 1997, the Governor of Hong Kong was appointed by London, while after Hong Kong's reversion to China, the Chief Executive (CE)⁵⁸ has been selected by a small entity, the Election Committee⁵⁹. In accordance with the *Basic Law*, the ultimate objective is to establish a fully elected Legislative Council (LegCo)⁶⁰ and a CE elected by universal suffrage, with a provision allowing for alteration of the method of formation or selection after the third term, should the central government in Beijing find it necessary. Despite ongoing campaigns in the 2000s to advance the ultimate aim of achieving comprehensive direct elections for both the LegCo and the CE, the central government has consistently deemed the modification of the selection methods unnecessary. In December 2007, the NPCSC dismissed the possibility of direct elections for 2012 yet unexpectedly proposed potential direct elections for the Chief Executive in 2017 and for the Legislative Council commencing in 2020, thereby directing the community's attention towards the CE election set for 2017.⁶¹

In late 2012, Professor Benny Tai⁶², along with two colleagues, initiated the Occupy Central Movement. This movement emerged from concerns that the selection framework for Chief Executive nominees would likely be conservative and subject to political screening. The proponents of Occupy Central advocated for the establishment of a selection model lacking unreasonable constraints by 2017.

Intended as a campaign of civil disobedience situated in the financial district of Hong Kong, adjacent to government offices, the movement was spearheaded by Tai and others who endorsed peaceful activism during the National Day holiday on October 1st. The Occupy Central group anticipated that participants would conduct a sit-in, face symbolic

⁵⁸ The Chief Executive is the highest office of the HKSAR, who is responsible for the administration of the government. The role involves implementing laws, overseeing public policy, and representing Hong Kong internationally.

⁵⁹ The Election Committee is comprised largely of representatives of different functional groups, essentially the functional constituencies for LegCo elections, with a relatively small number of constituents and a strong bias in favour of the business and pro-China factions.

⁶⁰ The Legislative Council is the law-making body of the HKSAR. It plays a key role in enacting laws, approving budgets, and monitoring the government. LegCo members are elected through a combination of geographical and functional constituencies.

⁶¹ Chan, Johannes. "Hong Kong's Umbrella Movement." *The Round Table*, vol. 103, no. 6, Nov. 2014, pp 572-573.

⁶² Benny Tai Yiu-ting is a professor of law at the University of Hong Kong, who has been a prominent figure in Hong Kong's pro-democracy activism, leading to his arrest and imprisonment for his role in civil disobedience campaigns.

arrests at the conclusion of their peaceful demonstration, and thereby enhance public awareness regarding the democratic cause.

In June 2014, the central government released a white paper entitled “The Practice of the “One Country, Two Systems” Policy in the Hong Kong Special Administrative Region”, in which it was shown that the current level of autonomy is the extent that the central government was willing to permit. The White Paper elicited widespread criticism and concern in Hong Kong, prompting the largest July 1st protest since 2004. Consequently, in early summer 2014, as anticipation grew regarding Beijing’s decision on the reforms for the chief executive election, Hong Kong was immersed in an atmosphere of mistrust and dissatisfaction with the mainland.⁶³

In late August, the NPCSC resolved that the structure, number of members, and procedure for forming the nomination committee for the year 2017 would mirror those of the Election Committee in 2012. This process was evidently devised to guarantee the candidacy of individuals sanctioned by Beijing, rendering this decision more conservative than the community anticipated.

In the aftermath of the decision, dissatisfaction proliferated within Hong Kong, prompting students to boycott classes and stage demonstrations outside the government headquarters in late September. Concurrently, the Occupy Central group announced their determination to proceed with their protest during the October holiday and align with the student demonstrators.

As the Occupy movement commenced, the police’s efforts to contain the initial group of demonstrators and deter additional participants inadvertently increased the number of individuals participating, with the protestors rapidly extending to occupy significant streets. The police’s indiscriminate use of tear gas against the demonstrators further galvanised public support for the students, and their deployment of umbrellas to shield against pepper spray bestowed the movement with its popular name. Consequently, the

⁶³ Dapiran, Antony. *City of Protest : A Recent History of Dissent in Hong Kong*. Penguin Books, 2017, pp 48-49.

protest extended, encompassing shopping districts and some referred to the movement as “Occupy Hong Kong”.⁶⁴

The protesters’ most significant public achievement occurred nearly a month into the protests, on the 21st of October when the government consented to a televised debate with student leaders. Although subsequent discussions between the government and activists did not ensue following the debate, resulting in minimal progress and ending the protests in December, Tai’s objective of a “social awakening” was realised.

Even though the anticipated universal suffrage remains unattained, the voices of the Umbrella Movement protesters have been distinctly acknowledged by both the Beijing authorities, who have denounced the movement, and the public, who has occasionally designated the movement as the Umbrella Revolution.⁶⁵

1.4.3. 2019-2020: Protests Leading to the Controversial National Security Law

In 2019, Hong Kong was the epicentre of considerable social unrest, characterised by persistent protests that prevailed over the city for months. After the unsuccessful Umbrella Revolution of 2014, the population’s concern about the prospective diminution of their “high degree of autonomy” amplified, particularly as the government of the People’s Republic of China appeared to be progressively and conspicuously intruding into Hong Kong’s governance.

This recent wave of protests originated from a murder incident. In 2018, a couple from Hong Kong travelled to Taiwan, where only one individual returned and confessed a month later to murdering his companion. Despite this confession, Hong Kong authorities were unable to charge him with murder due to the incident’s occurrence in Taiwan, compounded by the lack of extradition agreements between Hong Kong and Taiwan (attributable to China’s non-recognition of Taiwan’s sovereignty). Consequently, in 2019, the government of the HKSAR proposed an amendment to the *Extradition Bill* to create a framework for case-by-case extradition of fugitives, as authorised by the chief executive, to jurisdictions lacking formal extradition treaties with the territory, including

⁶⁴ Chan, Johannes. “Hong Kong’s Umbrella Movement.” *The Round Table*, vol. 103, no. 6, Nov. 2014, pp 576-577.

⁶⁵ Dapiran, Antony. *City of Protest : A Recent History of Dissent in Hong Kong*. Penguin Books, 2017, p 59.

Taiwan. The incorporation of China within the amendment raised significant concerns among the population; given the dissimilar legal systems between Hong Kong and mainland China, apprehensions arose that individuals might be extradited for a specific offence and subsequently prosecuted for acts not recognised as criminal in Hong Kong.⁶⁶ Numerous clear indications emerged from various segments of society expressing significant apprehensions about the Bill. Despite possessing an inherent majority in the Legislative Council to facilitate the Bill's passage, the Government disregarded pronounced political indicators signifying considerable concern from a broad spectrum of society, thereby rendering the issue politically contentious. The Hong Kong Government, led by Chief Executive Carrie Lam⁶⁷, was incapacitated by indecision and failed to understand the altered expectations of the Hong Kong populace appropriately, and was astounded by the recognition of the widespread discontent among the citizens.⁶⁸

In March 2019, the initial demonstrations opposing the *Extradition Bill* occurred in front of the LegCo as representatives from the legal sector, human rights organisations, and opposition parties articulated their concerns regarding the proposed legislation. As the date for the second bill reading approached, the number of protest participants increased. In subsequent days, individuals occupied the Legislative Council area and obstructed the streets to voice their dissatisfaction. The police employed substantial force against the protesters, resulting in at least 81 individuals sustaining injuries.⁶⁹ This situation led to Lam announcing that the extradition bill was suspended rather than withdrawn. The following day, an estimated 2 million individuals took to the streets (exceeding a quarter of the city's population at that time), not merely in opposition to the bill but also in response to the repression of the protests, asserting that the excessive use of force evidenced a lack of guaranteed political freedom. The indiscriminate application of force

⁶⁶ Budar Quesada, Jimena. *The Anatomy of Successful and Failed Protests: Lessons from the 2019 Hong Kong and Chile Protests*. 2022, p 35.

⁶⁷ Carrie Lam served as the Chief Executive of Hong Kong from 2017 to 2022, the first woman to hold the position. Her tenure was marked by significant political challenges, her handling of the protests and her support for Beijing's imposition of the National Security Law in 2020 drew both domestic and international criticism, contributing to heightened tensions over civil liberties in Hong Kong.

⁶⁸ Purbrick, Martin. "A Report of the 2019 Hong Kong Protests." *Asian Affairs*, vol. 50, no. 4, Aug. 2019, pp 465-467.

⁶⁹ Amnesty International released a report outlining 14 incidents of excessive force by the Hong Kong Police and concluded that "the use of force by police in the largely peaceful protest that took place on 12 June violated international human rights law and standards".

against the entire protest assemblage, rather than targeting only the few hundred violent demonstrators responsible for instigating violence, alarmed many individuals in Hong Kong.

By August, the actions became more obstructionist, culminating in a mass sit-in by protesters at Hong Kong's international airport on the 9th of August, which persisted for five days. As events intensified, Carrie Lam formally withdrew the extradition bill on the 4th of September. Despite the formal withdrawal of the *Extradition Bill*, this measure proved insufficient, leading to extensive protests and violent confrontations between protesters and police across various districts of Hong Kong on October 1st, during the 70th anniversary of the founding of the People's Republic of China.⁷⁰ In an attempt to suppress the ongoing protests, Carrie Lam implemented a *Prohibition on Face Covering Regulation*.⁷¹ The enactment of this law was succeeded by continuous demonstrations across Hong Kong, obstructing major thoroughfares and vandalising shops perceived to be supportive of Beijing.

In November, the District Council election, perceived by many as a referendum on the government and protests, garnered an unprecedented voter turnout and culminated in an overwhelming triumph for the pro-democracy camp. This marked the most significant electoral setback for the pro-Beijing camp in Hong Kong's history. The remarkable electoral success of the pro-democracy camp and an expedited response by law enforcement contributed to a reduction in the intensity and frequency of the protests between December 2019 and January 2020. Public demonstrations ceased at the end of January 2020, coinciding with the first report of a COVID-19 case in the city, forcing individuals to a lockdown while the police quickly arrested anyone known to be involved.⁷²

Tensions escalated in May 2020 following Beijing's decision to introduce a national security bill regarding Hong Kong. Subsequently, in June 2020, the Hong Kong

⁷⁰ Budar Quesada, Jimena. *The Anatomy of Successful and Failed Protests: Lessons from the 2019 Hong Kong and Chile Protests*. 2022, pp 38-39.

⁷¹ It was enacted under the Emergency Regulations Ordinance. It bans the use of face coverings during public assemblies and protests, aimed at deterring masked participation in protests. In 2020, Hong Kong's courts ruled parts of the law unconstitutional, but the regulation remains a point of contention in the ongoing debate over civil liberties in the region.

⁷² Ivi, p 43.

government's announcement that peace and stability had been reinstated through the enactment of the national security law contributed to a political environment that, alongside measures against civil society, incited a significant emigration wave from the city.

CHAPTER II. LEGAL FRAMEWORK OF FREEDOM OF EXPRESSION IN HONG KONG

2.1 Definition and Importance of Freedom of Expression

Freedom of expression is regarded as one of the most fundamental of all freedoms. Although it is challenging to prioritise one freedom over others, freedom of expression is indisputably a basic foundation of liberty and an essential principle that is indispensable for the existence of democracy.

2.1.1 Explanation of what constitutes freedom of expression

The right to freedom of expression serves as a crucial litmus test, extending beyond its inherent boundaries to evaluate the extent to which other human rights are enjoyed. It is acknowledged as a fundamental human right, as delineated in Article 19 of the UDHR:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Throughout history, there has been persistent tension between two opposing forces: individuals seeking the freedom to express their ideas and opinions through oral and written means and authorities endeavouring to regulate such expression to preserve their power and control over society. Until the 20th century, most states and institutions practised censorship. Autocratic regimes and quasi-state entities, such as the Catholic Church, often resorted to exiling, excommunicating, imprisoning, torturing, or even executing those who criticised them. For ruling entities and religious organisations, sustaining absolute authority was imperative, necessitating the regulation of what the populace could read and contemplate.

The principle of freedom of expression ensures the universal right to publicly articulate views and opinions, including the critique of governmental injustices, wrongdoings, and incompetency, without the threat of governmental interference or retaliation. This principle encompasses the right to disseminate information, express opinions, and advocate for change, including governmental reform. Freedom of expression transcends individual rights, constituting a collective right for people to express shared opinions and

safeguarding the interests represented by various organisations. Political theorists often classify freedom of expression as a “negative freedom”⁷³ or right, indicating that it is not within the state’s purview to revoke it. Although the state is responsible for safeguarding, neither infringing upon nor abridging it, this right extends to non-state entities as well. Freedom of expression is viewed as an indispensable component of democratic culture and, thereby, a right warranting general respect and protection.

2.1.2 Its role in society and democracy

Prior to the establishment of democratic systems of governance in the modern world during the late 18th century, advocates of popular government had consistently presented democratic arguments in favour of freedom of expression.

The term democracy fundamentally signifies “rule by the people”, derived from the Greek term *demos* (the people) and *kratein* (to rule). Contemporary democratic systems manifest in various forms, each shaped by its specific cultural and historical context. Notwithstanding these differences, a common thread among contemporary democracies is a pragmatic, albeit not always formal, adherence to popular sovereignty, a condition wherein the populace exerts ultimate authority over their government. Another fundamental principle inherent in every contemporary democracy is the formal political equality of every citizen. Freedom of expression is an indispensable element of both these core democratic tenets. The right of individuals to freely articulate their views on collective decisions falling under the realm of public sovereignty is a crucial requirement for modern democracy, explicitly concerning issues of public interest.⁷⁴

The principal mechanism through which freedom of expression exercises control over government in a democracy is public opinion. In a representative democracy, public opinion not only determines who is elected to govern but also influences the decisions made by these representatives between electoral cycles. The right of citizens to articulate their views on matters of public concern is, therefore, indispensable to the formation of

⁷³ They are counterposed by positive freedoms, or positive rights, which enable individuals to actively pursue their goals, often requiring support or resources from others, particularly the state. Examples include the right to education, healthcare, and a decent standard of living.

⁷⁴ Stone, Adrienne, and Frederick Schauer. *Oxford Handbook of Freedom of Speech*. Oxford Univ Press, 2021, pp 83-84.

public opinion through which the population exercises control over the government. This is attributable to the fact that government propaganda and statements issued by officials also shape public opinion. In the absence of the ability for citizens to freely express their perspectives on public matters, public opinion will predominantly mirror the views of government officials and consequently function as an ineffective tool of popular government oversight.

A central democratic role facilitated by freedom of expression is the enhancement of political legitimacy. This concept encompasses both descriptive and normative dimensions. In an explanatory context, it pertains to the populace's perception that the political authority asserting governance over them possesses the justifiable right to do so. Moreover, it involves their conviction that they must adhere to the laws established by this authority. In a normative framework, political legitimacy generally denotes the conditions under which the state can rightfully demand compliance from its citizens and, consequently, enforce its legal mandates on those who resist adherence.⁷⁵

Facilitating freedom of expression, opinion, and information empowers the population to hold governing bodies accountable by upholding the principles of transparency and fostering an expansive, open, and vigorous public discourse.

The liberty of the press and access to information contributes to the broader developmental aim of empowering individuals. Empowerment constitutes a multifaceted social and political process that facilitates individuals in asserting control over their own lives. This goal is attainable solely through access to precise, equitable, and impartial information encompassing a diversity of opinions alongside the capability for active communication both vertically and horizontally, thereby enabling participation in the active life of the community. In this context, the media functions as a watchdog, civil society engages with authorities and policymakers, and information is disseminated within and between communities.

⁷⁵ Ivi, p 92.

A pivotal reference in this context is the United Nations Human Rights Committee (HRC) *General Comment No.34*⁷⁶, adopted in 2011, which highlights the intrinsic value of free speech as both an individual and collective benefit that is “indispensable for the full development of the person and essential for any society”. The Committee has further articulated the right to freedom of expression as a cornerstone of any free and democratic society, stressing that citizens must be able to criticise or openly and publicly evaluate their governments without fear of interference or punishment. This is primarily because popular sovereignty cannot be realised without free expression, and limitations on free expression compromise the formal political equality among citizens.⁷⁷ Moreover, as both direct and indirect limitations on speech can result in significantly detrimental effects on political participation and civic space, freedom of speech is frequently perceived as an enabling right, facilitating the exercise of other rights. Without freedom of expression, the freedoms of association and peaceful assembly are inevitably constrained, as are other fundamental democratic principles such as minority rights, accountability and transparency, economic freedom, the rule of law, and academic freedom.

2.1.3 Interrelated Rights: Freedom of Opinion, Peaceful Assembly, and Association

Freedom of expression comprises a wide range of interdependent rights essential to democratic societies and safeguarding human dignity. Notably, the rights to freedom of opinion, peaceful assembly, and association are paramount. Although distinct, these rights are fundamentally interconnected, allowing individuals to articulate beliefs, engage in public discourse, and collectively promote social, political, and cultural transformation.

The liberties of opinion and expression are essential for the comprehensive development of an individual. They are indispensable for all communities and constitute the foundation

⁷⁶ General Comments, issued by UN human rights treaty bodies, provide authoritative interpretations of treaty provisions to clarify states’ obligations. They cover a range of human rights issues, from the comprehensive interpretation of substantive provisions to general guidance on the information that should be submitted in State party reports relating to specific articles of the treaties. These comments guide governments in implementing human rights standards effectively, supporting the protection and promotion of rights for all individuals under international law.

⁷⁷ Stone, Adrienne, and Frederick Schauer. *Oxford Handbook of Freedom of Speech*. Oxford Univ Press, 2021, p.104.

of any free and democratic society. These freedoms are interrelated, with freedom of expression acting as the mechanism for disseminating and developing opinions.⁷⁸

Freedom of expression encompasses the liberty to hold opinions, as well as to receive and disseminate information and ideas without obstruction by governmental authorities and irrespective of borders. Considering the expressive character of numerous assemblies and their function in safeguarding opinion, freedom of peaceful assembly and freedom of expression are frequently, in practice, intimately linked. Consequently, specific restrictions or prohibitions on assemblies may inherently impact the right of individuals or groups to articulate their opinions on a particular issue.⁷⁹

The interdependent relationship between the freedom of peaceful assembly and the freedom of association is notable. The freedom to assemble is indispensable for the routine operations of various associations, such as trade unions, and an environment that supports associations further enables the practice of peaceful assembly. Moreover, initial mobilisations or gatherings of individuals sharing common interests may gradually transform into associations. Consequently, the associational significance of an assembly can be equally as crucial as its communicative or expressive function.⁸⁰ The interplay between the freedom of assembly and other civil and political rights holds particular importance concerning protest activities, which, as shown later in the chapter, are crucial in Hong Kong. Notably, assemblies do not universally constitute acts of protest, and entities or individuals may engage in protest without convening a physical assembly. Although the “right to protest” is not explicitly acknowledged within regional or international human rights treaties, the right to peaceful protest is customarily safeguarded under international human rights law through a confluence of the interrelated rights previously discussed.⁸¹

⁷⁸ UN Human Rights Committee. *General Comment No.34: Article 19 on Freedoms of Opinion and Expression*. 29 July 2011, CCPR/C/GC/34, paragraph 2.

⁷⁹ Council of Europe, European Commission for Democracy through Law (Venice Commission) and OSCE/ODIHR, Strasbourg / Warsaw, 15 July 2020, *Guidelines on Freedom of Peaceful Assembly (3rd Edition)*, CDL-AD(2019)017rev, paragraph 4.

⁸⁰ Ivi, paragraphs 5-6.

⁸¹ Ivi, paragraphs 9-10.

2.2 Legal safeguards for Freedom of Expression

The Hong Kong Special Administrative Region has obligations to respect, protect and fulfil human rights both through domestic legislation, including the *Basic Law*, and through the extension of international law that is binding on Hong Kong, which includes

- the International Covenant on Civil and Political Rights (ICCPR)
- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- the Convention on the Rights of the Child (CRC)
- the Convention on the Rights of Persons with Disabilities (CRPD)

These international instruments encompass provisions that protect freedom of expression, the rights to peaceful assembly, and freedom of association, rendering them applicable in the context of Hong Kong.

2.2.1 Protections under the *Basic Law*

The *Basic Law* mandates that the HKSAR shall uphold a spectrum of rights and freedoms in accordance with its legal framework. Pursuant to the *Basic Law*, the provisions of the ICCPR, which were extended to Hong Kong in 1976, are to remain operative, thereby ensuring that residents of Hong Kong are entitled to rights and freedoms without limitations unless such limitations are legislatively defined and do not violate the stipulations of the ICCPR. Consequently, inhabitants of Hong Kong should experience a level of legal human rights protection that is unparalleled for individuals residing across the border in mainland China.⁸²

The liberties considered within this chapter are safeguarded by Article 27 of the *Basic Law*, as well as by pertinent articles within the *Bill of Rights*: freedom of expression is

⁸² Amnesty International. “Beijing’s ‘Red Line’ in Hong Kong: Restrictions on Rights to Peaceful Assembly and Freedom of Expression and Association.” *Amnesty International*, 24 Sept. 2019, p 5.

protected by Article 16, the right to peaceful assembly is ensured by Article 17, and freedom of association is upheld by Article 18. All of these are considered fundamental rights; however, the *Bill of Rights*, and by extension, the ICCPR, mandates that any restrictions imposed upon them must be justified, provided that they are prescribed by law and are essential for the respect of the rights or reputations of others, or for safeguarding national security, public order, public health, or morals.

The assurances of autonomy and human rights protection have been increasingly undermined by a sequence of policies and actions enacted by the Beijing government in cooperation with the Hong Kong authorities. By establishing a stringent stance on Hong Kong which tackles any efforts to jeopardise China's sovereignty or security, challenge the authority of the Chinese government, or utilise Hong Kong for infiltration and sabotage against the mainland, the broad definition of national security, customarily used to suppress activism and speech in mainland China, has been progressively implemented in Hong Kong over recent years. The substantial participation of individuals in protests over the years signifies not only their resolve to safeguard human rights and the rule of law in Hong Kong but also their apprehension and growing discontent regarding the manner in which authorities in Hong Kong and mainland China have addressed these demands. Predominantly, their concerns pertain to the progressively unjustified limitations imposed on the rights to peaceful assembly and free expression.⁸³

As previously indicated, implementing national security laws is the primary strategy for exerting control over Hong Kong's population. This allows the People's Republic of China to circumvent constraints on civil liberties, which will be explored in more detail in the following chapter.

2.2.2 *International human rights standards applicable to Hong Kong*

The entitlement to freedom of expression is codified in Article 19 of the UDHR and Article 19 of the ICCPR, the latter applying to the jurisdiction of Hong Kong. This entitlement is further affirmed in Article 39 of the *Basic Law*, stipulating that the

⁸³ Ivi, pp 5-6.

enactments of the ICCPR, the ICESCR, and international labour conventions, as they pertain to Hong Kong, shall continue to be in effect.

The United Nations HRC conducts an in-depth analysis in its *General Comment No.34* concerning Article 19 of the UDHR, presenting a comprehensive exposition of its provisions. The first paragraph of this article mandates safeguarding the right to hold opinions without interference, a right that the Covenant categorically allows no exception or restriction. Freedom of opinion encompasses the right to alter one's opinion at any time and for any reason at one's discretion. No individual shall be subjected to any impairment of rights under the Covenant based on their actual, perceived, or assumed opinions. Every form of opinion is protected, including those of a political, scientific, historical, moral, or religious nature.⁸⁴ The second paragraph mandates that States parties must ensure the right to freedom of expression, which encompasses the right to seek, receive, and disseminate information and ideas of all varieties, irrespective of borders. This right includes articulating and receiving communications encompassing every form of idea and opinion that can be conveyed to others, covering political discourse, commentary on personal and public affairs, canvassing, discussions on human rights, journalism, cultural and artistic expression, education, and religious discourse.⁸⁵

This examination conducted by the HRC emphasises the significant interconnection between freedom of expression and freedom of the press, which will prove to be crucial in the context of Hong Kong. An independent, uncensored, and unobstructed press, along with other media, is indispensable in any society to guarantee freedom of opinion, expression, and the full enjoyment of other rights enshrined in the Covenant, forming one of the foundational pillars of a democratic society.⁸⁶

Enshrined within Article 20 of the UDHR and Articles 21 and 22 of the ICCPR are the rights to peaceful assembly and freedom of association, respectively. While these rights are distinct, it is imperative to acknowledge their profound interrelationship and mutual dependence. Moreover, political parties possess the right to freedom of association as enshrined in Article 22 of the ICCPR, among other legal provisions. Analogous to the

⁸⁴ UN Human Rights Committee. *General Comment No.34: Article 19 on Freedoms of Opinion and Expression*. 29 July 2011, CCPR/C/GC/34, paragraph 9.

⁸⁵ *Ivi*, paragraph 11.

⁸⁶ *Ivi*, paragraph 13.

right to freedom of expression, political parties additionally retain the liberty to advocate for ideologies that may be unpopular with the government or the broader public without apprehension of reprisal.

As outlined in international law, the right to freedom of expression encompasses a wide range of expressions. The HRC has underscored the significance of expressions pertaining to political discourse, commentary on individual and public affairs, and the discussion of human rights. This elevated status afforded to political speech has consequently led to robust safeguards for political dissent, encompassing criticism of current political figures and advocacy for election boycotts.⁸⁷

2.2.3 Restrictions and limitations to freedom of expression and related rights

The exercise of the rights enshrined in Article 19(2) of the Covenant is not absolute and is accompanied by specific duties and responsibilities. Consequently, paragraph 3 of the same article delineates two restrictive domains where limitations on these rights are permissible. These may pertain to respecting the rights or reputations of others or safeguarding national security, public order, public health, or morals.

Such restrictions must be “provided by law”. They may only be enforced for the reasons mentioned above, notwithstanding the existence of other grounds that could justify limitations to other rights protected under the Covenant. Restrictions must be employed solely for their intended purposes and must be directly aligned with the particular need they address. Additionally, the legal foundation for such restrictions must be accessible to the public and necessary for a legitimate aim, with the state’s responsibility to demonstrate the restriction’s necessity and proportionality. This principle of proportionality extends not only to the legislative formulation of such restrictions but also to their implementation by administrative and judicial authorities. Ultimately, these restrictions must align with all other human rights acknowledged in international law, must not compromise the essence of the affected right, and must not be enforced in a discriminatory or arbitrary manner.⁸⁸

⁸⁷ Stone, Adrienne, and Frederick Schauer. *Oxford Handbook of Freedom of Speech*. Oxford Univ Press, 2021, p.196.

⁸⁸ UN Human Rights Committee. *General Comment No.34: Article 19 on Freedoms of Opinion and Expression*. 29 July 2011, CCPR/C/GC/34, paragraphs 21-22.

The primary legitimate ground for limitation delineated in paragraph 3 pertains to respecting the rights or reputations of others. The term “rights” encompasses human rights as recognised within the Covenant and, more broadly, in international human rights law. In contrast, “others” refers to individuals either singly or as part of a community. The HRC cites the example concerning the right to vote; it may be justifiable to limit freedom of expression to safeguard the right to vote under Article 25, though such limitations must be carefully framed. It might be permissible to shield voters from forms of expression that amount to intimidation or coercion; however, such limitations must not impinge upon political discourse.⁸⁹

The most challenging instances pertain to the second legitimate basis, which encompasses national security laws. The HRC has emphasised that States parties must exercise “extreme care” to ensure that treason laws and analogous provisions related to national security, whether referred to as official secrets, sedition laws, or otherwise, align with the obligations of the ICCPR. The Committee has opted not to provide definitions for the aforementioned terms and instead offers illustrative examples, recognising the extensive range of possible interpretations among States Parties. For instance, it would be incompatible with employing such laws to suppress or withhold from the public information of genuine public interest that does not compromise national security or to persecute journalists, researchers, environmental activists, human rights defenders, or others for having disseminated such information.⁹⁰ Punishing a media outlet, publisher, or journalist solely for criticising the government or the political and social system promoted by the government can never be justified as a necessary restriction of freedom of expression.⁹¹

An essential resource in this domain is the set of *Johannesburg Principles on National Security, Freedom of Expression, and Access to Information*⁹². These Principles assert that any restriction claimed to be justified on the basis of national security is not

⁸⁹ Ivi, paragraph 28.

⁹⁰ Ivi, paragraph 30.

⁹¹ Ivi, paragraph 42.

⁹²The *Johannesburg Principles on National Security, Freedom of Expression, and Access to Information* are a set of guidelines established to balance the need for national security with the fundamental human right to freedom of expression. Adopted in October 1995 by a group of international law experts, human rights advocates, and academics in Johannesburg, South Africa, the principles serve as a framework for governments and institutions worldwide.

considered legitimate unless its authentic objective and demonstrable impact are to safeguard the nation's existence or its territorial integrity against the employment or threat of force or its capacity to respond to such use or threat of force, whether originating from an external source, such as a military threat, or an internal source, such as incitement to the violent overthrow of the government. Furthermore, these *Principles* highlight that such restrictions are not deemed legitimate if their authentic purpose or demonstrable impact is to safeguard interests extraneous to national security, such as preventing governmental embarrassment or exposure of misconduct, concealing information regarding the operation of public institutions, entrenching a particular ideology, or suppressing industrial dissent.⁹³

Restrictions on the right to peaceful assembly and freedom of association must adhere to the aforementioned criteria, specifically that they are enshrined in law, pursue a legitimate aim, and are necessary and proportionate to that aim. Constraints on participation in peaceful assemblies ought to be predicated on a differentiated or individualised evaluation of the conduct of the participants and the specific assembly, as indiscriminate restrictions are presumptively disproportionate. Moreover, Article 21 of the ICCPR stipulates that any restrictions must be “necessary in a democratic society”. Consequently, restrictions must be indispensable and proportional within the framework of a society that is grounded in democracy, the rule of law, political pluralism, and human rights rather than merely reasonable or convenient. Such restrictions should represent appropriate responses to an urgent social necessity in accordance with one of the permissible grounds enumerated in Article 21. They must also define the least intrusive measures available to fulfil the relevant protective purpose.⁹⁴ A core aspect of actualising this right is the stipulation that any restrictions, in principle, should be content-neutral and thereby not pertain to the message conveyed by the assembly. Broad prohibitions on permissible times and locations are proscribed as they inhibit a case-by-case assessment by authorities, who may request notification to facilitate orderly assemblies but cannot impose a requirement for prior approval.

⁹³ Article 19, et al. *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*. Nov. 1996, Principle No. 2

⁹⁴ UN Human Rights Committee. *General comment no. 37 on the right of peaceful assembly (article 21)*. 17 September 2020, CCPR/C/GC/37, paragraph 40.

Article 21's second sentence delineates the justifiable bases for limiting the right to peaceful assembly, namely concerns relating to national security, public safety, public order, safeguarding public health or morals, and protecting others' rights and freedoms. In reference to the first criterion mentioned above, if national security degradation results from human rights suppression, this cannot serve as a rationale for imposing additional restrictions, including limitations on the right to peaceful assembly.⁹⁵

The Human Rights Council emphasises the critical role of journalists, human rights defenders, election monitors, and others engaged in the observation or reporting of assemblies as essential to the comprehensive realisation of the right to peaceful assembly. These individuals are entitled to protection under the Covenant and must not be inhibited or excessively restricted in performing their duties, particularly concerning the oversight of law enforcement activities. They should be free from reprisals or harassment, and their equipment should remain intact. The declaration of an assembly as unlawful or its subsequent dispersal does not extinguish the right to monitor. Promoting the involvement of independent national human rights institutions and non-governmental organisations in monitoring assemblies is considered a beneficial practice.⁹⁶

The principles governing freedom of expression should be adhered to when addressing any expressive components of assemblies. Restrictions imposed on peaceful assemblies should not, either openly or covertly, be employed to suppress the expression of political dissent against a government, challenges to authority, which includes advocating for democratic transitions of government, alterations to the constitution or the political framework, or the pursuit of self-determination. These restrictions should not serve to forbid affronts to the dignity and reputation of officials or state institutions.⁹⁷ The dissolution of any association represents the most stringent limitation on freedom of association and should be permissible solely when less severe measures prove inadequate. In particular, the dissolution of political parties carries significant implications for discourse on public policy within a state and should, therefore, be executed with the

⁹⁵ Ivi, paragraphs 41-42.

⁹⁶ Ivi, paragraph 30.

⁹⁷ Ivi, paragraph 49.

highest level of restraint. Such actions must be confined to actual and imminent threats, and all laws delineating permissible restrictions must be construed narrowly.

2.3 Historical and Social influences

The HKSAR government has gradually adopted the national security paradigm propagated by Xi Jinping⁹⁸ and the central government, which is increasingly being implemented in the city. The authorities in Hong Kong have curtailed the rights to freedom of peaceful assembly, association, and expression under the guise of “national sovereignty and security”. Furthermore, the laws and regulations of Hong Kong have been misapplied as instruments to target individuals and groups who are perceived to have transgressed the ambiguous “red line” delineated by mainland authorities.⁹⁹

2.3.1 *Effects of the Umbrella Movement*

The Umbrella Movement, encompassing Occupy Central, profoundly affected the rights of freedom of expression and peaceful assembly in Hong Kong during the demonstrations and their aftermath, representing a significant examination of the newly articulated “one country, two systems” framework in 2014. Although the central government classified both Occupy Central and the Umbrella Movement as unlawful, and notwithstanding instances where police employed excessive force and failed to safeguard demonstrators from counter-protesters aggression, the Hong Kong government exhibited restraint and permitted the peaceful demonstrations to persist for over eleven weeks before ultimately dispersing the participants. However, following the conclusion of the Umbrella Movement, the subsequent arrests, prosecutions, and incarcerations of key figures involved in the protests indicate that the Hong Kong government has adopted a more stringent approach and that the human rights enshrined in international law and the *Basic Law*, in particular the rights to freedom of expression, association, and peaceful assembly are under threat.¹⁰⁰

⁹⁸ Xi Jinping is the PRC’s paramount leader, serving as General Secretary of the Communist Party, President, and Chairman of the Central Military Commission. In office since 2012, he has centralized power, led anti-corruption campaigns, and promoted nationalism and “socialism with Chinese characteristics”. A 2018 constitutional change removed presidential term limits, enabling him to remain in power indefinitely.

⁹⁹ Amnesty International . “Beijing’s ‘Red Line’ in Hong Kong: Restrictions on Rights to Peaceful Assembly and Freedom of Expression and Association.” *Amnesty International*, 24 Sept. 2019, p.8.

¹⁰⁰ Ivi, p.11.

Although Hong Kong has traditionally enjoyed greater freedom of expression than mainland China, the movement demonstrated the vulnerability of this freedom. Numerous protest leaders and participants were apprehended and charged with various public order offences, including “unlawful assembly” and “incitement to cause public nuisance”, indicating a growing trend of utilising legal measures to curtail dissent.

Throughout this period, Hong Kong experienced an escalation in both censorship and self-censorship across media, academia, and public discourse. Journalists and media organisations encountered augmented pressure, especially those associated with pro-democracy perspectives. Certain editors and reporters were dismissed or compelled to moderate their criticisms of the government, while others were singled out due to their coverage of the protests.¹⁰¹

During the protests, Amnesty International¹⁰² reported the unwarranted and excessive use of force by Hong Kong law enforcement, which included deploying tear gas and pepper spray against non-violent demonstrators, alongside observed police inaction in instances where counter-protesters and other individuals assaulted demonstrators, suggesting a shift towards more assertive strategies in protest management.¹⁰³ The progressive militarisation of police strategies has dissuaded numerous individuals from engaging in peaceful assemblies due to concerns of potential arrest or physical injury. The implementation of legal and physical measures against protests has exerted a deterrent effect on the right to peaceful assembly. The increasing risks linked with involvement in public demonstrations, such as potential imprisonment, surveillance, and police violence, have resulted in a heightened reluctance among individuals to partake in public dissent.

Although the Umbrella Movement initially exemplified Hong Kong’s dynamic culture of peaceful assembly, it consequently prompted more stringent government reactions to the ensuing demonstrations. Subsequent to the cessation of the protests, the government

¹⁰¹ Freedom House. *Freedom in the World 2015 – the Annual Survey of Political Rights & Civil Liberties*. Edited by Arch Puddington et al., Rowman & Littlefield, Nov. 2015, p.779.

¹⁰² Amnesty International is a global human rights organization founded in 1961, dedicated to protecting individuals from human rights abuses. It campaigns against issues such as torture, wrongful imprisonment, the death penalty, and restrictions on freedom of expression. Through research, advocacy, and public pressure, Amnesty mobilizes supporters worldwide to hold governments and other actors accountable for human rights violations and to promote justice, freedom, and equality.

¹⁰³ Amnesty International. “Beijing’s ‘Red Line’ in Hong Kong: Restrictions on Rights to Peaceful Assembly and Freedom of Expression and Association.” *Amnesty International*, 24 Sept. 2019, p.12.

commenced limiting the capacity to coordinate large-scale demonstrations by invoking public order legislation, which mandates police authorisation for protests. Numerous applications for peaceful demonstrations were declined under the pretext of “security concerns.”

Following the conclusion of the Umbrella Movement and the implementation of ensuing legal constraints, a pervasive climate of apprehension has been established among numerous residents of Hong Kong. Individuals are more cautious about articulating dissenting opinions, especially in public forums or social media platforms. Online domains, which previously served as crucial venues for the organisation and discourse of pro-democracy perspectives, are now subject to extensive surveillance, and individuals have faced legal charges due to their online postings or actions.

The Umbrella Movement profoundly impacted the freedom of expression and peaceful assembly within Hong Kong. Initially, it mobilised a broad population segment to participate in public demonstrations and engage in political dialogue. However, the ensuing government crackdown significantly restricted these liberties. The implementation of the *National Security Law* further compounded these issues, leading to a marked decline in civil rights in Hong Kong and heightened apprehension among individuals seeking to express dissent or engage in nonviolent protests. Nevertheless, the movement’s ethos continues to influence discussions on free speech and assembly rights both domestically and internationally.

2.3.2 Implications of the 2020 National Security Law

In late June 2020, China’s Standing Committee of the National People’s Congress (NPC) unexpectedly enacted a new *National Security Law* pertaining to Hong Kong, implementing it immediately and without prior public consultation. The legislation, characterised by its wide-ranging and ambiguous provisions, significantly impacted freedom of expression and the right to peaceful assembly within the city, thereby facilitating a substantial suppression of political dissent. The NSL, by outlawing a broad spectrum of activities classified under the offences of separatism, subversion, terrorism, and collaboration with foreign entities, prescribing penalties that extend to life imprisonment, has swiftly shifted Hong Kong towards an authoritarian regime, carrying profound consequences for the future civil liberties of its populace.

Although Article 4 of the NSL¹⁰⁴ purportedly protects human rights, in effect, the law has established ambiguously defined political boundaries that encroach upon these rights. This tactic is characteristic of the authoritarian Chinese Communist Party (CCP) in mainland China. Such ambiguous legal provisions engender uncertainty and fear among the populace, with detention and imprisonment occurring upon the transgression of these boundaries. Beijing's direct imposition of the law has effectively terminated Hong Kong's autonomy and has violated human rights as enshrined in Hong Kong's *Basic Law* and international human rights laws applicable in Hong Kong. While the crackdown primarily targets the residents of Hong Kong, the NSL has global implications due to its extraterritorial jurisdiction.

The enforcement of the NSL in Hong Kong has illustrated the CCP's intent to undermine human rights, the rule of law, and its domestic and international legal commitments to suppress expressions or activities deemed challenging to its governance in the territory. This approach has been profoundly experienced by those exercising their rights to political participation, freedom of expression, assembly, association, and the press.

The right to freedom of expression, both in digital and physical realms, has been consistently challenged, with individuals in Hong Kong facing arrest and legal action for engaging in political discourse. Although Hong Kong has historically upheld a culture of free personal expression and private discourse, there have been allegations that both local and mainland security agencies have monitored the communications of pro-democracy activists for several years. This surveillance has been legitimised through the NSL, which authorises warrantless surveillance and wiretapping. Additionally, this legislation permits mainland authorities to establish security agencies within the territory under their jurisdiction, and individuals accused of violating the NSL may face detention and trial on the mainland. The enactment of the NSL reportedly led many users of social media platforms to engage in self-censorship, close their accounts, or remove content that might

¹⁰⁴ Article 4 of the NSL states that “*Human rights shall be respected and protected in safeguarding national security in the Hong Kong Special Administrative Region. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region enjoy under the Basic Law of the Hong Kong Special Administrative Region and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law*”.

contravene the law.¹⁰⁵ Furthermore, the Legislative Council in June 2020 passed a contentious law¹⁰⁶ criminalising disrespect for China’s national anthem, imposing penalties of up to three years in incarceration.

The entitlement to freedom of assembly has been significantly restricted in the wake of the 2019 pro-democracy demonstrations. Requests for permits to conduct assemblies have been consistently rejected under the guise of public health measures purportedly due to COVID-19, yet these restrictions have been broadened to encompass political objections. While the *Basic Law* enshrines freedom of assembly, the *Public Order Ordinance*¹⁰⁷ mandates that organisers provide police with seven days’ advance notification of protests and secure official approval. Under the stipulations of the Ordinance, individuals intending to organise a demonstration must secure a “Notice of No Objection” from the police prior to proceeding with the assembly. The police are vested with the authority to forbid public gatherings or to impose stipulations or conditions on public gatherings if they “reasonably consider it necessary in the interest of national security or public safety, public order, or for the protection of the rights and freedom of others”. An assembly or procession that is not sanctioned by the police is deemed unauthorised, subjecting organisers and participants to potential fines and imprisonment. According to the Ordinance, notifications to the police regarding the intention to hold a public event must include details about the organisers, the date, time, duration, location, and route, the topic of the event and the projected number of participants. Essentially, the provisions of the *Public Order Ordinance* institute a framework wherein police permission, as opposed to mere notification, is requisite to conduct a protest. This contradicts international legal frameworks and standards, which

¹⁰⁵ Freedom House. *Freedom in the World 2020 – the Annual Survey of Political Rights & Civil Liberties*. Edited by Sarah Respucci et al., Rowman & Littlefield, 2021, p 1429.

¹⁰⁶ Under this law, any acts deemed as insulting or misusing the anthem, such as mocking its lyrics or melody, could lead to severe consequences, including fines and prison sentences of up to three years. The legislation was part of broader efforts to enforce patriotism and strengthen national identity in Hong Kong, and it sparked significant debate and opposition, with critics arguing that it undermines freedom of expression and is part of a larger push to erode democratic values in the city.

¹⁰⁷ The *Public Order Ordinance* was enacted in 1967 during a period of social unrest in colonial Hong Kong to maintain control amid pro-communist riots against British rule. The ordinance requires event organizers to give prior notice to the police and allows the authorities to prohibit or restrict gatherings for reasons related to public safety, order, or national security. Following the 1997 handover, the ordinance remained in force and has been used to regulate protests, leading to criticism from human rights advocates who argue that it restricts freedoms of assembly and expression.

maintain that state authorities cannot mandate prior approval. However, they may request notification to facilitate orderly assemblies.¹⁰⁸ In addition, following the enactment of the NSL, the customary Tiananmen vigil and the July 1st protest have been prohibited.

Historically, Hong Kong has supported a dynamic sector of nongovernmental organisations (NGO), including numerous groups focused on human rights in mainland China. Nonetheless, the introduction of the NSL has profoundly transformed the environment for civil society, restricting the freedom of association and compelling several independent trade unions to dissolve due to intimidation. Authorities in Hong Kong and mainland China have occasionally directly targeted political parties, unions, and NGOs within Hong Kong, employing measures such as banning political parties and prosecuting and obstructing these associations' operations and fundraising activities.¹⁰⁹ Civil society organisations that orchestrated protests, frequently utilising online platforms, such as the Civil Human Rights Front¹¹⁰, have disbanded under the threat of prosecution for actions perceived as endangering national security.

In 2020, multiple incidents illustrate the readiness of Hong Kong authorities to impose criminal sanctions upon journalists. This includes categorising newspaper articles as threats to national security to suppress critical reportage concerning police misconduct or governmental policies. Authorities utilised a spectrum of criminal penalties, ranging from *National Security Law* infractions to colonial-era sedition offences and pre-existing criminal statutes, to penalise activities protected under human rights, such as independent journalism.

The introduction of the 2020 *National Security Law* has profoundly adversely affected freedoms of expression and peaceful assembly in Hong Kong. It has criminalised dissent, dismantled civil society, suppressed independent media, and established an environment characterised by fear and repression. Previously regarded as a stronghold of free speech

¹⁰⁸ Amnesty International. "Beijing's 'Red Line' in Hong Kong: Restrictions on Rights to Peaceful Assembly and Freedom of Expression and Association." *Amnesty International*, 24 Sept. 2019, pp 26-27.

¹⁰⁹ Ivi, p 16.

¹¹⁰ The Civil Human Rights Front (CHRF) was a pro-democracy coalition in Hong Kong, established in 2002, composed of various civil society groups and political parties. It became well known for organizing large-scale peaceful protests, including annual July 1 marches and significant demonstrations during the 2019 anti-extradition movement. The CHRF advocated for human rights, democracy, and civil liberties but faced increasing pressure from authorities amid Beijing's crackdown on dissent.

and assembly in Asia, Hong Kong's civil liberties have been significantly restricted. The legislation has reshaped the city's political landscape and precipitated widespread self-censorship.

The chilling effect of the *National Security Law* persists across all sectors of Hong Kong society, including academia, journalism, activism, and daily life, with minimal prospects for restoring these freedoms in the near future. The recent enactment of an even more rigorous national security law has exacerbated these issues, further dismantling fundamental civil liberties and narrowing the few remaining avenues for free expression and peaceful resistance. This newly instituted legislation intensifies the atmosphere of fear and uncertainty and consolidates state control. It will be examined in greater detail in the subsequent chapter, exploring its broader ramifications on Hong Kong's political and social environment.

CHAPTER III. ANALYSIS OF THE 2024 SAFEGUARDING NATIONAL SECURITY ORDINANCE

3.1. Background and context of the new legislation

The Hong Kong Special Administrative Region has a constitutional obligation to protect national security. According to Article 23¹¹¹ of the *Basic Law*, the HKSAR is mandated to independently legislate measures to prohibit seven distinct categories of acts and activities that threaten national security. Since the handover, each administration has been mandated to legislate a security law, yet they have all encountered considerable challenges in implementing it. However, a significant change took place in 2024.

On the 23rd of March 2024, the *Safeguarding National Security Ordinance* (SNSO) was enacted in Hong Kong, less than two months after the government published the initial consultation document for the legislation. Following the precedents set by the *National Security Law* implemented in 2020, this Ordinance is poised to impose even more stringent measures in Hong Kong. These measures threaten to curtail the city's civil liberties further and diminish the remains of its independent institutions. Consequently, the process of institutional convergence between Hong Kong and mainland China will persist in undermining the Special Administrative Region's inherent strength.

3.1.1. Political and social context: transformations in Hong Kong under the 2020 National Security Law

The first significant step toward establishing a security framework for Hong Kong was introducing a security law in 2020, marking a pivotal shift in the region's legal landscape. The enactment of the *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*¹¹² by the Standing Committee of the National People's Congress occurred on the 30th of June 2020, and it was simultaneously promulgated for implementation by the HKSAR Government. Comprising a total of 66 provisions organised into six chapters, this law specifically identifies four categories of national security offences, including secession, subversion,

¹¹¹ See note 29.

¹¹² The full text of the legislation is available at <https://www.isd.gov.hk/nationalsecurity/eng/law.html>

organising and committing terrorist activities, and collusion with a foreign country or external elements in a manner that jeopardises national security. Although local authorities assured that the security law would impact only a small minority, few areas in the city's social and political realms have remained unaffected.

Following the implementation of the national security law, the HKSAR Government declared its decision to defer the 2020 Legislative Council General Election¹¹³ by one year to September 2021. This decision was justified by the critical COVID-19 pandemic situation, with the objectives of safeguarding public safety and health and ensuring that the elections are conducted transparently and equitably.

Prior to the rescheduled elections, in March 2021, the Standing Committee of the National People's Congress in Beijing amended the annexes of the *Basic Law* with the objective of modifying Hong Kong's electoral system to guarantee governance exclusively by individuals deemed as "patriots".¹¹⁴ Under the provisions of the *Basic Law*, residents already faced restrictions in effecting governmental changes via free and equitable periodic elections due to the absence of universal suffrage for the selection of the Chief Executive and the lack of equal voting rights for LegCo elections. The modifications imposed by the People's Republic of China on the electoral system further curtailed this capacity, as all candidates for the positions of Chief Executive and Legislative Council members were obligated to undergo a complex application procedure by the police National Security Department to validate their "patriotic" credentials. This process ensured that only candidates vetted and sanctioned by Beijing could occupy any office at varying levels.

Initially, the Legislative Council consisted of 70 seats, with half elected directly by the populace through geographical constituencies and the other half elected by specific interest groups identified as functional constituencies. With the implementation of the "reforms" mandated by the PRC, this equilibrium underwent a radical transformation: the total number of seats was expanded to 90, of which merely 20 were directly elected. In

¹¹³ Hong Kong general elections refer to the process of electing members of the LegCo and other representative bodies. These elections are held every four years employing a mixed system, with seats allocated through geographical constituencies, functional constituencies, and an Election Committee.

¹¹⁴ Li, Jeff. "Hong Kong: China Limits Parliament to 'Patriots.'" BBC News, 30 Mar. 2021, www.bbc.com/news/world-asia-china-56560829

contrast, 30 seats were allocated to representatives of “functional constituencies” representing various economic and social sectors, and the remaining 40 seats were appointed by the Election Committee¹¹⁵. This electoral system substantially curtailed democratic representation, effectively marginalising the pro-democracy faction in Hong Kong from the electoral process.¹¹⁶ In the Legislative Council election of December 2021, candidates aligned with pro-Beijing sentiments secured 89 out of 90 seats, leaving only one non-establishment moderate to secure a seat in the social welfare functional constituency. Approximately 1.3 million individuals participated in the election, culminating in a historically low voter turnout of 30.2 per cent, compared to the average turnout rate of 51 per cent observed in the six Legislative Council elections conducted since the handover. Additionally, approximately 2 per cent of the ballots cast were either blank or otherwise deemed invalid, constituting a record high.

The reform also included changes to the Chief Executive selection process, expanding and further empowering the Election Committee. The Committee’s composition was modified to become predominantly filled with government appointees and organisations affiliated with mainland China. Ultimately, there was only a single candidate for the city’s leader, with former security minister and chief secretary John Lee¹¹⁷ receiving the endorsement of 1,416 members of the Election Committee in May 2022.

The reformed electoral system significantly constrained democratic representation, effectively excluding the pro-democracy faction in Hong Kong from participating in the electoral process. This situation is exemplified by a case known as “Hong Kong 47”, which pertains to a group of pro-democracy activists and politicians who organised an unofficial primary election in July 2020 for the forthcoming Legislative Council elections mentioned earlier. The HKSAR government promptly declared the primary election

¹¹⁵ The Election Committee in Hong Kong is a powerful body tasked primarily with selecting the Chief Executive, the 2021 reforms expanded the Election Committee’s size from 1,200 to 1,500 members and gave it greater authority, including nominating all LegCo candidates. Historically, it has been dominated by pro-Beijing representatives, with its membership drawn from various sectors, including business, professional groups, and political organizations.

¹¹⁶ Ho, Kelly. “Beijing Unanimously Approves Hong Kong Election Overhaul, Reducing Democratic Representation.” Hong Kong Free Press HKFP, 30 Mar. 2021, <https://hongkongfp.com/2021/03/30/breaking-beijing-unanimously-approves-hong-kong-election-overhaul-reducing-democratic-representation/>

¹¹⁷ John Lee Ka-chiu is the current Chief Executive of Hong Kong, assuming office in July 2022. A former police officer, Lee rose through the ranks to become Secretary for Security in 2017, playing a key role in implementing the controversial 2019 extradition bill and enforcing the National Security Law in 2020.

unlawful and accused the organisers of attempting to “subvert state power”, an offence under the newly enacted security law. Prior to the extensive arrests that effectively eradicated active opposition figures, pro-democracy legislators collectively resigned from the Legislative Council in November 2020.¹¹⁸ This mass resignation occurred after the expulsion of four members deemed “unpatriotic”, in alignment with the National People’s Congress Standing Committee’s ruling. The ruling stipulated that legislators advocating for independence, opposing China’s sovereignty over Hong Kong, soliciting assistance from foreign entities, or posing threats to national security would forfeit their eligibility to serve in LegCo.

In early 2021, 47 prominent democrats were apprehended and charged under the NSL with “conspiracy to commit subversion”, allegedly intending to utilise legislative powers to veto bills indiscriminately and compel the Chief Executive’s resignation, resulting in a governmental shutdown.¹¹⁹ The trial, which experienced several adjournments and commenced only in February 2023, was conducted with the defendants appearing before three specially appointed judges and without a jury. This arrangement was necessitated by the provisions of the NSL, which stipulate that cases involving state secrets, the safety of jurors, or “foreign forces” be adjudicated by dedicated national security judges, notwithstanding Hong Kong’s long-standing tradition of jury trials under its common law legal system. Throughout the 118-day trial, 16 defendants entered pleas of not guilty, while 31 admitted guilt. Subsequently, two individuals were acquitted in May 2024, and six months thereafter, 45 individuals were sentenced to prison terms of up to ten years.¹²⁰ Critics contended that the proceedings represented a political prosecution indicative of a broader suppression of dissent following the implementation of the NSL.

The implementation of the *National Security Law* not only reconfigured the political landscape of Hong Kong but also significantly altered its social structure. This

¹¹⁸ Regan, Helen, et al. “Hong Kong Pro-Democracy Lawmakers Resign En Masse after Beijing Moves to Quash Dissent.” *CNN*, 11 Nov. 2020, www.cnn.com/2020/11/11/asia/hong-kong-lawmakers-unseated-china-intl-hnk/index.html

¹¹⁹ Chau, Candice. “47 Democrats Charged with “Conspiracy to Commit Subversion” over Legislative Primaries.” *Hong Kong Free Press HKFP*, 28 Feb. 2021, <http://hongkongfp.com/2021/02/28/47-democrats-charged-with-conspiracy-to-commit-subversion-over-legislative-primaries/>

¹²⁰ Ho, Kelly. “Benny Tai, Joshua Wong among 45 Hong Kong Pro-Democracy Activists Jailed up to 10 Years in Landmark National Security Case.” *Hong Kong Free Press HKFP*, 19 Nov. 2024, <http://hongkongfp.com/2024/11/19/breaking-hong-kong-pro-democracy-activist-benny-tai-jailed-10-years-over-subversion-in-landmark-national-security-case/>

transformation has affected civil society organisations, led to the dismantlement of trade unions, and modified the media landscape, all of which had collectively served as fundamental elements of the city’s identity and autonomy. From July 2020 to June 2022, a total of 203 individuals were apprehended by the Hong Kong Police Force National Security Department or under the NSL. This also precipitated the direct and indirect cessation or dissolution of over 58 independent organisations, some ensuing the detention or intimidation of senior officers.¹²¹ These entities include some of the most significant decades-old organisations at the heart of the city’s civil society, such as the Alliance in Support of Patriotic Democratic Movements of China¹²², four of whose founding members faced charges of “inciting subversion of State power” under articles 22 and 23 of the NSL. In October 2021, the then Chief Executive, Carrie Lam, mandated the dissolution of the Hong Kong Alliance, positing that “the operation of the Alliance which seeks to end the Chinese Communist Party’s leadership amounts to seeking to overthrow” the political framework of the People’s Republic of China and to subvert state power.¹²³

Moreover, the media environment in Hong Kong has undergone an irreversible transformation following the implementation of the national security law. The well-established publication *Apple Daily*¹²⁴ terminated its operations in June 2021, followed by a second police raid on its newsroom and freezing its assets. The founder of the newspaper, Jimmy Lai, has been in detention since December 2020, charged with two counts of conspiracy to engage in foreign collusion under the NSL, along with one count of sedition. Consequently, other independent media outlets such as Stand News and

¹²¹ US Congressional-Executive Commission on China. “*Hong Kong’s Civil Society: From an Open City to a City of Fear.*” Oct. 2022, p 8.

¹²² The *Hong Kong Alliance in Support of Patriotic Democratic Movements of China* was a grassroots advocacy group established in 1989 in Hong Kong to campaign for the release of Chinese political prisoners, democratic reforms in China, and accountability for the extrajudicial killings and other violations by the Chinese authorities during the lethal crackdown on pro-democracy protests in June 1989.

¹²³ Front Line Defenders. ““*Inciting Subversion*” Trial Unlikely to Commence before November 2024.” Front Line Defenders, 21 Feb. 2024, <https://www.frontlinedefenders.org/en/case/Inciting%20subversion-trial-unlikely-to-commence-before-November-2024>

¹²⁴ *Apple Daily* was a pro-democracy newspaper in Hong Kong, founded in 1995 by media tycoon Jimmy Lai. Known for its outspoken criticism of the Chinese and Hong Kong governments, it became a prominent voice for press freedom and democratic values during the 2019 protests.

Citizens News have encountered similar outcomes, eliminating independent journalism within the city.¹²⁵

The implementation of the *National Security Law* crackdown has significantly impacted Hong Kong's previously vibrant civil society. The authorities have not only subdued the city's democratic movement but have also diminished its extensive civic life. The disappearance encompasses not only public demonstrations and an active, democratically elected political opposition but also includes newspapers, broadcasts, and books, among other elements. The erosion of self-regulatory autonomy within various professional councils and boardrooms has further exacerbated the deterioration of civil society. The application of the NSL alongside the colonial-era sedition law¹²⁶ by governing bodies has been utilised as a mechanism to criminalise dissent and reform the juridical framework, consequently leading to the transformation of Hong Kong into a "city of fear", progressively lacking the capacity to oppose additional national security measures.¹²⁷

3.1.2. Motivations behind the introduction of a local security law and its legislative process

Since the introduction of the NSL in 2020, there has been a significant contraction of civil and political liberties in Hong Kong, effectively muting public opposition and establishing the conditions that elucidate the implementation of the SNSO. These modifications include the appointment of judges specifically chosen for national security cases who bypass traditional common law and civil rights protections, along with new stipulations that restrict access to legal counsel, revive arbitrary detentions based on the colonial-era sedition law targeting activists, and enforce other statutes aimed at criminalising public demonstrations. Additionally, the recent NSL regulations exert pressure on Hong Kong authorities to undertake pro-Beijing measures, such as permitting Chinese agents to operate within Hong Kong on national security matters and imposing

¹²⁵ US Congressional-Executive Commission on China. "*Hong Kong's Civil Society: From an Open City to a City of Fear.*" Oct. 2022, p 22.

¹²⁶ Hong Kong's sedition law, codified under the Crimes Ordinance during British rule in 1938, criminalizes actions, speech, or publications inciting hatred, contempt, or disaffection against the government, promoting rebellion, or encouraging resistance to lawful authority. The law fell into disuse after the 1997 handover but was revived in 2020 alongside the National Security Law.

¹²⁷ Ivi, p 48.

the risk that national security cases might be transferred to China for prosecution should Hong Kong authorities inadequately manage them.

Although the Chief Executive claims that the fundamental motivations for the SNSO's implementation are to uphold Article 23 in the *Basic Law*, enhance the protection of national security, and address deficiencies in the NSL and related statutes, these motivations warrant scrutiny. Firstly, it remains uncertain whether the SNSO will substantively advance the protection of national security. The NSL has already demonstrated a disproportionate application of severe measures against non-genuine threats to national security, and the SNSO proposes even harsher measures. Regarding the supposed gap-filling objective, the SNSO's intentions appear redundant as existing case law and judicial practice already address these areas. At the same time, many provisions and definitions are directly adopted from China's NSL, which authorities have used to suppress independent expression and activists' activities.¹²⁸

Several experts have determined that the primary motivation for enacting a local security law is to serve as a political indication of Hong Kong's submission to Beijing's projection of a comprehensive security state and the political oversight of civil society, as has been established throughout mainland China. The SNSO reflects the Chinese Communist Party's profound apprehension regarding ideological opposition undermining its legitimacy, particularly in light of its considerable unpopularity in Hong Kong and its imperative to regulate ideas beyond any tangible threat. From the perspective of Hong Kong's LegCo, the SNSO signifies its adherence to the central government's stance on national security.

On the 30th of January 2024, the Hong Kong government initiated a consultation process regarding the enactment of the *Safeguarding National Security Ordinance* following the requirements outlined in Article 23 of the *Basic Law*. During a press conference dedicated to announcing the proposed legislation and consultation process, Chief Executive John Lee articulated that the consultation period would extend until the 24th of February 2024. The government released a comprehensive 110-page consultation document for public review, asserting that the draft legislation would undergo scrutiny by Hong Kong

¹²⁸ Mosley, C. Cade. "A Legal Analysis of Hong Kong's New Safeguarding National Security Ordinance and What It Means for Lawyers." 26 Apr. 2024, p 4.

residents and the international community and would align with international standards, including those of the *International Covenant on Civil and Political Rights*.¹²⁹ Following the one-month consultation phase regarding the SNSO legislation, the Hong Kong government reported that 99 per cent of submissions expressed support. Conversely, only 1 per cent of responses, which were critical in nature, originated from foreign groups characterised as anti-China. The government representatives indicated that these groups' "so-called human rights concerns" were deemed to lack reference value.

On the 8th of March, the draft Bill was submitted to the Legislative Council, prompting the immediate establishment of a bills committee tasked with its examination. Meetings were convened over the weekend, marking a first since the handover, to expedite the legislative process. Following seven consecutive days of deliberations, the bill's committee completed the vetting of the bill. On the 15th of March, in response to a request from Secretary for Security Chris Tang, the Legislative Council lifted all notice period restrictions to facilitate the swift passage of the bill. The bill and its amendments received unanimous approval only four days later. On the 23rd of March, the bill, officially designated as the *Safeguarding National Security Ordinance*, was published in the Government Gazette, taking immediate effect.¹³⁰

The swift conclusion of the legislative process, executed in merely two weeks, highlights the evolving political dynamics in Hong Kong. It indicates a reduction in the region's autonomy and exemplifies Beijing's progressively centralised influence. Additionally, it prompts significant inquiries concerning the equilibrium between national security and the maintenance of fundamental freedoms, which will be thoroughly examined in the subsequent analysis of the law's adherence to international human rights standards.

3.2. Compliance with international human rights standards

Human rights organisations and legal experts have expressed profound concerns regarding numerous aspects of the *Safeguarding National Security Ordinance*, asserting that they present significant threats to fundamental freedoms and may contravene international human rights standards. These critiques concentrate on the broad and

¹²⁹ Secretary of State for Foreign, Commonwealth and Development Affairs. *The Six-Monthly Report on Hong Kong – 1 January to 30 June 2024*. 12 Sept. 2024, p 12

¹³⁰ Ivi, pp 15-16.

ambiguous definitions of offences, the severe penalties imposed, and the extensive authorities attributed to law enforcement, which they caution could undermine protections enshrined in instruments such as the *International Covenant on Civil and Political Rights*. The ensuing sections will thoroughly examine these contentious provisions and their potential repercussions for human rights in Hong Kong.

3.2.1. Overview and comparison with the 2020 National Security Law

The *Safeguarding National Security Ordinance* advances and refines Hong Kong's existing national security framework, extending the *National Security Law*, colonial-era sedition laws, and associated statutes. By introducing supplementary crimes, legal mechanisms, and amendments, the SNSO formalises principles developed by judges in NSL cases, establishing a more comprehensive legal structure.

According to statements from the HKSAR Security Bureau¹³¹, this Ordinance addresses three legislative objectives. Initially, it endeavours to faithfully implement the “one country, two systems” policy, thereby upholding Hong Kong's autonomy while aligning it with the imperatives of national sovereignty. Subsequently, it concentrates on establishing and fortifying the necessary legal and enforcement mechanisms to safeguard national security. Ultimately, it aims to prevent, suppress, and penalise actions that jeopardise national security while protecting Hong Kong residents' lawful rights and interests, ensuring the security of property and investments, and maintaining the stability and prosperity of the region.

Structured into nine sections, the SNSO lists 39 offences across five primary categories and enacts stricter penalties than preceding legislation. The section on treason undergoes significant amendments, expanding the parameters to encompass actions such as utilising or threatening force to compromise national sovereignty, unity, or territorial integrity. Related violations, including the omission to report treason (misprision of treason) and a broadened definition of unlawful drilling aimed at external interference, are similarly addressed.

The Ordinance codifies the offence of insurrection and augments the legal framework concerning incitement, covering mutiny, disaffection, and seditious activities. Thus, it

¹³¹ See generally the *Pamphlet on Safeguarding National Security Ordinance* available at https://www.sb.gov.hk/eng/bl23/doc/Pamphlet_23%20Legislation_EN.pdf

refines and extends prior statutes to address threats to national stability with greater specificity under the *Crimes Ordinance*. Concerning espionage, the SNSO fortifies measures for safeguarding state secrets and countering activities that undermine national security via foreign collusion. Drawing from legal precedents in jurisdictions like the United Kingdom and Australia, the novel accusation of sabotage addresses deeds intended to unsettle national security.

Another pivotal aspect is the focus on external interference, which empowers authorities to curtail organisations and activities that pose risks to national security by proscribing the operations of entities associated with security threats, regardless of whether they are domiciled in Hong Kong or operate from abroad yet maintain connections to the region. In addition to addressing these transgressions, the SNSO augments enforcement by conferring expansive investigative authorities, instituting frameworks for the administration of national security cases, reinforcing procedural protections for practical legal proceedings, and instituting measures for the management of absconders. Thus, the SNSO enhances the infrastructure pertinent to the oversight of national security affairs.

The SNSO and NSL constitute two distinct legal frameworks, with the former intended to modify the latter, thereby serving as an additional mechanism to infringe upon the rights and freedoms of Hong Kong residents more comprehensively and profoundly. Upon the disclosure of the draft bill's particulars in early March 2024, it became immediately evident that the SNSO was structured to extend significantly beyond the provisions of the NSL. The Ordinance commences by prioritising national security, rendering the possibility of contesting the law through judicial review or on human rights grounds exceptionally challenging. The SNSO is formulated to address the loopholes inherent in the NSL. Notably, these new legislative measures are mandated to address what the Hong Kong authorities perceive as “soft resistance”, an ambiguously defined notion of “clandestine opposition” to the government. Furthermore, there is a clear intention manifested to address foreign or external influences in a manner that the NSL has not accomplished.¹³²

¹³² Goodman, Sam. “*Analysis of The Business and Legal Risks Associated with The HKSAR Safeguarding National Security Ordinance (Article 23)*” June 2024, p 9.

3.2.2. Examination of Hong Kong's obligations under international law

As articulated in the preceding chapters, Hong Kong has inherited obligations under international law from its former British colonial ruler and the People's Republic of China following the transfer of sovereignty.

The Hong Kong *Basic Law*, which functions as the constitutional framework for the HKSAR, stipulates that the provisions of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*—both ratified by the United Kingdom and extended to Hong Kong in 1976—shall remain in effect and be implemented through local legislation. Additionally, the *Basic Law* mandates that the rights and freedoms enjoyed by Hong Kong residents and others within its jurisdiction shall not be curtailed unless such limitations are prescribed by law, and any restrictions must not contravene the provisions of the ICCPR. Moreover, Hong Kong is obliged to adhere to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of the Child*, various other international human rights treaties, and customary international law.

The interplay between national security and fundamental rights, including freedom of expression, assembly, and association, constitutes a crucial examination focus within the domain of international human rights law. Although these rights are indispensable to democratic societies, they are not inviolable and may be subject to restrictions, mainly when considered in the context of national security. In line with internationally acknowledged human rights standards, as exemplified by the previously mentioned *Johannesburg Principles*, the notion of “national security” should not be invoked to justify limitations on rights and freedoms unless it is authentically and evidently intended to safeguard the existence or territorial integrity of a state against specific threats involving the use of force. Furthermore, governments cannot legitimately use this national security framework to shield themselves from embarrassment, the revelation of wrongdoing, or to cement a particular ideology. Consequently, expressions may only be penalised on the grounds of national security if authorities can demonstrate a distinct and imminent threat of violence. Notably, advocating for a change in government or policy, provided it is conducted peacefully, alongside criticism or even insult directed at state

institutions or their symbols, or the exposure of human rights violations, should not incur penalties. A further essential reference in this discourse is the *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*¹³³, which stipulate that a state cannot employ national security as a rationale to limit rights merely to address isolated or local threats to law and order. Additionally, a state is prohibited from citing national security as a pretext for implementing measures to suppress dissent concerning human rights violations or enacting repressive practices against its populace. Nor should this be utilised as a pretence to deny individuals the right to express divergent political opinions and to exercise their other human rights as safeguarded by international legal standards.

Examining the intricate equilibrium between national security legislation and human rights protection reveals a recurring legal interpretation and implementation tension. The UN Human Rights Committee, tasked with monitoring the implementation of the ICCPR, which, as noted, is binding on Hong Kong, has consistently rejected attempts to justify extensive restrictions under the vague pretext of “national security”. Provisions pertaining to national security, including statutes on “treason” or “sedition”, must adhere strictly to the overarching principles that govern freedom of expression.¹³⁴ Such laws cannot be exploited to constrict civic spaces, including the digital domain, nor to suppress debate and academic freedom. Penalising individuals for publishing or distributing materials that merely express dissenting perspectives against governmental policies constitutes censorship. The Committee has further stressed that when national security deteriorates due to the repression of human rights, this degradation cannot legitimise the imposition of additional restrictions, particularly those on the rights to freedom of expression and peaceful assembly.¹³⁵

¹³³ The *Siracusa Principles*, adopted in 1984, provide guidelines for interpreting the limitation and derogation clauses in the ICCPR. They emphasize that any restrictions on rights must be necessary, proportionate, and consistent with the Covenant’s objectives, ensuring that states cannot arbitrarily curtail fundamental freedoms even during emergencies.

¹³⁴ UN Human Rights Committee. *General Comment No.34: Article 19 on Freedoms of Opinion and Expression*. 29 July 2011, CCPR/C/GC/34, paragraph 30.

¹³⁵ UN Human Rights Committee. *General comment no. 37 on the right of peaceful assembly (article 21)*. 17 September 2020, CCPR/C/GC/37, paragraph 42.

The legal framework in Hong Kong has experienced profound changes in recent years, prompting significant concerns regarding the alignment of national security measures with the protection of fundamental rights. The *Safeguarding National Security Ordinance* articulates in its introductory provisions that “Human rights are to be respected and protected” as a legislative tenet, explicitly reaffirming that rights and freedoms—including freedom of speech, press, publication, association, assembly, procession, and demonstration—enshrined within the *Basic Law*, as well as the ICCPR and ICESCR as applicable to the HKSAR, ought to be upheld in accordance with the law.¹³⁶ Consequently, the Ordinance must not encroach upon the rights and freedoms entrenched in the *Basic Law* or international human rights protocols binding on Hong Kong. According to Articles 11 and 18 of the *Basic Law*, any laws in conflict with its provisions are considered unconstitutional, and Hong Kong courts must ensure legislation comportment with it. Furthermore, the “principle of legal certainty”¹³⁷ enshrined in Article 15(1) of the ICCPR mandates that criminal laws possess sufficient precision, enabling individuals to discern what conduct constitutes criminal offences and the repercussions of such actions. This principle, also endorsed by Hong Kong’s judiciary, was reaffirmed in a 2005 ruling by the Court of Final Appeal¹³⁸, which underscored that laws must be “formulated with sufficient precision to enable the citizen to regulate his conduct”. This principle serves as a safeguard against ambiguous or comprehensive laws that could be applied arbitrarily or misused, potentially resulting in unwarranted deprivations of liberty. International standards, as dictated by the ICCPR and Hong Kong common law, necessitate that any restrictions on rights fulfil the criteria of necessity and proportionality. Nevertheless, national security jurisprudence following the NSL has frequently overlooked these standards, with courts endorsing criminalisation in national

¹³⁶ *Safeguarding National Security Ordinance*, No. A305 (2024), part 1 section 2 (b)

¹³⁷ The principle of legal certainty is a fundamental concept in legal systems worldwide, particularly in jurisdictions that adhere to the rule of law. It ensures that laws are clear, precise, and predictable, allowing individuals and entities to understand their rights and obligations and plan their actions accordingly.

¹³⁸ The case *Yeung May Wan v. HKSAR* (2005) was a pivotal ruling by the Hong Kong Court of Final Appeal that dealt with the principle of legal certainty and its application in the context of public order and peaceful assembly. The court held that laws must be formulated with sufficient clarity to enable individuals to foresee, to a reasonable degree, the consequences of their actions. This ruling reinforced the requirement for precision in legal drafting and the consistent application of laws to uphold fairness and public confidence in the legal system.

security contexts absent credible findings substantiating that the restrictions are essential or proportionate to prevent imminent harm or protect a vital interest.

3.2.3. *Analysis of the SNSO's relevant sections and human rights breaches*

An examination of the *Safeguarding National Security Ordinance* uncovers several provisions that threaten to conflict with established human rights law. This prompts concerns about potential infringements on fundamental freedoms and the deterioration of protections assured under the *Basic Law* and international human rights instruments applicable to Hong Kong. The subsequent section will outline the principal findings of this examination, emphasising the particular areas where the provisions of the Ordinance seem to contravene human rights law.

a) National Security

The primary issue concerns the SNSO's objective of harmonising Hong Kong's "national security" definition with that of the People's Republic of China. This alignment arises from Article 2 of the NSL, which mandates a homogeneous set of national security standards throughout the nation, including the HKSAR.

At the outset of the Ordinance, the primacy of national security is extensively reaffirmed. Article 2(a) asserts that "The highest principle of the policy of 'one country, two systems' is to safeguard national sovereignty, security, and development interests". To enforce this principle, Article 8(1) stipulates that the SNSO takes precedence over any conflicting laws and that such laws must be interpreted in the most protective manner of national security. This signifies a considerable deviation from the common law tradition in Hong Kong, where individual rights typically prevail in cases of conflict, and laws should always be interpreted in the manner most protective of defendants. Further privileging the PRC's law and policy on national security, Article 99 also specifies that the NPC-promulgated NSL has precedence over the SNSO in the event of a conflict.

The definition of "national security" in Article 4 closely parallels the language employed in Article 2 of the 2015 *National Security Law of the People's Republic of China*.¹³⁹ This

¹³⁹ Article 2 of the National Security Law of the People's Republic of China states that "*National security means the status in which the state's political regime, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major interests of the state are*

convergence effectively dissolves the distinction between the national security governance approaches of Hong Kong and China, thereby harmonising Hong Kong's policies with those of mainland China within a unified framework. Notably, China's national security law encompasses nearly all societal domains, including the environment, defence, finance, information technology, culture, ideology, education, and religion. Upon enacting the PRC's national security law, the UN High Commissioner for Human Rights conveyed apprehension regarding its "extraordinarily broad scope coupled with the vagueness of its terminology and definitions".

The genesis of this broad and indeterminate definition can be traced to President Xi Jinping's "comprehensive national security concept", which was introduced in April 2014.¹⁴⁰ This concept was officially incorporated into the Constitution of the Communist Party of China in October 2017. It had been previously applied to Hong Kong following a decision by the National People's Congress in May 2020, which provided the foundation for the NSL. The ambiguity inherent in the definition is particularly alarming, as it permits the targeting of almost any facet of human activity without necessitating proof of an actual national security threat. Activities can be considered detrimental if perceived to impact the ability to uphold national security, disproportionately affecting freedom of expression and civil society engagements.

This conceptualisation of the SNSO contrasts with the Siracusa Principles, which assert that national security should only justify human rights restrictions when such measures are essential to safeguarding the nation's existence, territorial integrity, or political independence against the use or threat of force. The Principles explicitly reject vague or arbitrary restrictions, stressing the requirement for explicitly defined and narrowly tailored parameters.

b) Treason etc.

relatively free from danger and internal or external threats, and the capability to maintain a sustained status of security".

¹⁴⁰ President Xi Jinping's "holistic view of national security with Chinese characteristics", introduced in 2014, redefined China's approach to national security by broadening its scope beyond traditional military concerns. It encompasses political, economic, cultural, societal, technological, and environmental security, emphasizing the need for a holistic and integrated strategy. The concept prioritizes maintaining Communist Party leadership, safeguarding sovereignty, and ensuring domestic stability.

Prior to the implementation of the SNSO, the offenses of “treason” and “treasonable offences” were categorised as colonial-era crimes under the *Crimes Ordinance*¹⁴¹, with life imprisonment as the prescribed punishment. Treason was characterised by actions such as attempting or intending to “kill, wound, or cause bodily harm to Her Majesty” or “levying war” to overthrow “Her Majesty” or compel her to “alter her measures of council.” Likewise, “treasonable offences” were defined as the intention to execute certain treasonous acts, evidenced by overt conduct or the publication of writings.

The SNSO introduces a revised conceptualisation of treason, for which life imprisonment remains the penalty. Article 10 of the Ordinance delineates acts such as affiliating with an external armed force at war with China; aiding an enemy at war with China, with the intent to compromise China’s standing in the conflict; waging war against China; inciting a foreign nation to invade China by force; and jeopardising the sovereignty, unity, or territorial integrity of China through the use of force or threats. The purview of treason is broadened to encompass Chinese citizens residing within Hong Kong and Hong Kong permanent and non-permanent residents who are Chinese citizens and engage in treasonous acts outside the HKSAR.

Article 11 of the Ordinance recharacterises “treasonable offences” under the designation “publicly manifest an intention to commit treason”. This offence pertains to Chinese citizens who openly express intentions to contravene Article 10, notwithstanding whether the act is executed, and imposes a penalty of up to 14 years of imprisonment. This broad provision criminalises expressions of intent that may not culminate in action, eliciting substantial concerns regarding its indeterminacy and potential for arbitrary application. The definitions of treason and treasonable offences within the Ordinance are perilously expansive and lack the requisite legal precision to avert excessive reach. If not rectified, they pose the risk of penalising speech or expressions that may not, in actuality, culminate in treasonous conduct.

¹⁴¹ The Crimes Ordinance, first enacted in Hong Kong during British colonial rule in 1971, is a comprehensive statute addressing a broad spectrum of criminal offenses, including treason, sedition, theft, fraud, and unlawful assembly. It also includes provisions related to sexual offenses, forgery, and crimes against public order.

Further exacerbating these challenges, the common law offence of “misprision of treason” has been abolished and supplanted by Article 12 of the Ordinance, which requires the “disclosure of commission by others of the offence of treason”. According to this provision, residents of Hong Kong must inform national security authorities of any awareness of plans to commit treason “as soon as reasonably practicable”, unless such awareness is already publicly established. Non-compliance with this mandate may result in up to 14 years of imprisonment. Given the ambiguous definitions of treason, this additional offence further broadens the potential for abuse. It may marginalise activists abroad and enhance self-surveillance and reporting within the Hong Kong community, both domestically and internationally. Such measures are consistent with the broader climate of fear and uncertainty engendered by the Ordinance. Predictably, the most significant amendments to the bill, enacted by the “patriots-only” Legislative Council, entail more stringent penalties for so-called “absconders” sought by the government. This initiative appears directed at overseas Hong Kongers, who constitute the primary public opposition to the Ordinance. Ultimately, the SNSO consolidates a culture of fear, self-censorship, and mistrust, augmenting the chilling effects previously introduced by the *National Security Law*.¹⁴²

c) Insurrection

According to the *Public Order Ordinance*, “rioting”¹⁴³ is subject to a maximum penalty of ten years imprisonment, whereas the *Crimes Ordinance* penalises criminal damage to property¹⁴⁴ with a prospective life sentence. Notwithstanding these provisions, the newly enacted Ordinance establishes a distinct offence termed “insurrection”, which is also punishable by life imprisonment. As delineated in Article 15, insurrection encompasses actions such as participating in or affiliating with an armed force engaged in military conflict with the armed forces of the People’s Republic of China, providing assistance to such an armed force with the intent to prejudice the People’s Republic of China during an armed conflict; or perpetrating a violent act within the HKSAR with the aim of

¹⁴² Goodman, Sam. “*Analysis of The Business and Legal Risks Associated with The HKSAR Safeguarding National Security Ordinance (Article 23)*.” June 2024, p 15.

¹⁴³ Article 19(1) of the Public Order Ordinance states that “*When any person taking part in an assembly which is an unlawful assembly by virtue of section 18(1) commits a breach of the peace, the assembly is a riot and the persons assembled are riotously assembled.*”

¹⁴⁴ This offence is covered by articles 59 to 62 of the Crimes Ordinance.

jeopardising the sovereignty, unity, or territorial integrity of the People’s Republic of China, or compromising the public safety of the HKSAR in its entirety—or acting with recklessness as to the endangerment of these considerations.

The Consultation Document of the SNSO posits that the introduction of this new offence is a reaction to the protests of 2019, described as “large-scale violence during the ‘black-clad violence’ of 2019”. It contends that the current offence of “rioting” is insufficient to appropriately represent the gravity of such acts in terms of both criminality and penalties.¹⁴⁵ During the protests of 2019, the Hong Kong police increasingly imposed restrictions on public assemblies, often employing a heavy-handed method. Although the majority of protesters remained peaceful, instances of violence did occur, mainly resulting from the police’s application of unnecessary, reckless, and excessive force, coupled with a continual lack of accountability for such actions. Subsequently, the police have adopted a zero-tolerance policy towards disruptions during assemblies.

From June 2019 to January 2021, Amnesty International recorded a pattern of reckless and non-discriminatory crowd-control measures employed by the Hong Kong Police Force.¹⁴⁶ The UN Human Rights Committee similarly criticised the government’s actions, observing that entire assemblies were labelled as violent based on isolated incidents of violence by a few participants. This broad characterisation led to the indiscriminate treatment of protesters as “rioters”. The Committee underscored the necessity for Hong Kong to uphold the right to peaceful assembly, recommending that the government “take all measures necessary to respect and ensure the right of peaceful assembly”.¹⁴⁷ Additionally, the Committee elucidated under Article 21 of the ICCPR that “isolated acts of violence by some participants should not be attributed to others, to the organisers, or to the assembly as a whole”.¹⁴⁸

¹⁴⁵ Security Bureau of the HKSAR Government. *Safeguarding National Security: Basic Law Article 23 Legislation—Public Consultation Document*. Jan. 2024, paragraph 4.2

¹⁴⁶ Amnesty International. “*Hong Kong: Arbitrary Arrests, Brutal Beatings and Torture in Police Detention Revealed*.” Amnesty International, 19 Sept. 2019, <https://www.amnesty.org/en/latest/press-release/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>

¹⁴⁷ UN Human Rights Committee. *Concluding Observations on the Fourth Periodic Report of Hong Kong, China*. 11 Nov. 2022, UN Doc. CCPR/C/CHNHKG/CO/4, paragraphs 45-46.

¹⁴⁸ UN Human Rights Committee. *General comment no. 37 on the right of peaceful assembly (article 21)*. 17 September 2020, CCPR/C/GC/37, paragraph 17

The enactment of the ambiguously defined offence of “insurrection” raises significant concerns, notably as current legislation already encompasses violent behaviour and riotous acts. This newly introduced statute seems intended to address activities safeguarded by the ICCPR, thereby posing a threat whereby individuals participating in assemblies might face insurrection charges due to isolated violent incidents perpetrated by others. This disconcerting progression further diminishes the already tenuous condition of civil liberties in Hong Kong and compromises the essential right to peaceful assembly.

d) Acts with Seditious Intention, etc.

Sedition is a criminal offence involving the expression of words against the state. It has historically been utilised as a mechanism to suppress dissent and incarcerate dissidents and others for peacefully exercising their rights to freedom of expression and association. Originating in 17th-century England, the offence of sedition was employed to silence dissent in the former British colonies, reflecting the then-prevailing belief that rulers were superior beings exercising a divine mandate and were beyond reproach by the common populace.

Prior to the enactment of the SNSO, sedition was regulated under the *Crimes Ordinance*, which proscribed speech, publications, and acts that could “bring into hatred or contempt or excite disaffection against” or “promote feelings of ill-will and enmity” towards “Her Majesty” or the government of Hong Kong. The *Crimes Ordinance* included a safeguard stipulating that acts, speech, or publications were not considered seditious if they met criteria such as intending to demonstrate that the government had been “misled or mistaken” or identifying “errors or defects” in governance with the objective of rectifying them.

The revised offence of acts with “seditious intention” under Article 23(2) of the Ordinance removes colonial language referencing the British monarch. Still, it retains the essence of felonies by criminalising actions intended to incite hatred, contempt, or disaffection against the PRC or HKSAR. The scope has been broadened to encompass the incitement of hatred or enmity among different classes of residents in Hong Kong or between residents of other regions of China. This expansion appears designed to curtail criticism from Hong Kong residents towards government policies favouring mainland China.

Article 24 elaborates on “offences in connection with seditious intention”, encompassing acts or expressions with seditious intent, the knowing distribution of seditious publications, and the importation of such materials. Although determining whether the penalties are minimum or maximum remains ambiguous, offenders are subjected to a sentence of seven years, which escalates to ten years if collusion with an external entity is established, representing a significant increase from the two-year maximum penalty stipulated under the *Crimes Ordinance*. Furthermore, penalties for the “possession of seditious publications” have been elevated to three years of imprisonment. The possession of images or videos of the 2019 protests, books, or historical archives chronicling Hong Kong’s democracy movement may be classified as seditious under the newly defined offence of “engaging in acts endangering national security related to computers or electronic systems” as specified in Article 50, leading to widespread self-censorship.¹⁴⁹ Article 25 notably lowers the threshold for prosecution by mandating that proving an intent to incite public disorder or violence is unnecessary within proceedings related to acts with seditious intention. This considerably expands the potential for misuse and arbitrary enforcement of sedition laws.

On a global scale, sedition laws have been contested and repealed in numerous countries due to their indeterminate and extensive scope. These laws have frequently been misapplied to suppress dissent, resulting in politically driven prosecutions against activists, human rights advocates, journalists, authors, academics, and students. International human rights bodies have consistently highlighted their concerns about the incongruence of these laws with the rights to freedom of expression, peaceful assembly, and association. The United Nations Human Rights Committee has accentuated the necessity for sedition laws to conform with Article 19 of the ICCPR, thereby ensuring that these laws are not employed to suppress or withhold information of public interest that does not compromise national security or to prosecute individuals such as journalists and human rights defenders for distributing such information.¹⁵⁰

¹⁴⁹ Ortmann, Stephan. “*Hong Kong’s Legal Uncertainty Fosters Climate of Self-Censorship*.” East Asia Forum, 6 May 2024, <https://eastasiaforum.org/2024/05/06/hong-kongs-legal-uncertainty-fosters-climate-of-self-censorship/>

¹⁵⁰ UN Human Rights Committee. *General Comment No.34: Article 19 on Freedoms of Opinion and Expression*. 29 July 2011, CCPR/C/GC/34, paragraph 30

Since 2020, the Hong Kong government has reintroduced the application of sedition laws to prosecute individuals exercising their right to freedom of expression. Prior to these recent instances, no prosecutions had occurred under these laws since 1967, which signifies the first invocation of sedition since the ICCPR was implemented in Hong Kong.¹⁵¹ Despite the 2022 recommendation from the UN Human Rights Committee, which advocated for the repeal of sedition provisions under the *Crimes Ordinance* and advised against the suppression of dissenting opinions, the Hong Kong government has solidified sedition within its legislative framework.¹⁵² This starkly contrasts the actions taken in other jurisdictions where colonial-era sedition statutes have been repealed to conform to contemporary human rights standards.

The ramifications of these newly enforced offences are readily apparent. Following the introduction of national security legislation, Hong Kong authorities have consistently charged columnists, bloggers, and media entities with sedition, resulting in immediate and extended incarceration before trial under stringent bail conditions.¹⁵³ Judicial protections for freedom of speech have been predominantly overlooked. Moreover, the extraterritorial implementation of these offences under Article 28 extends their influence on a global scale, markedly intensifying the suppression of dissent and freedom of speech. Collectively, the broadened sedition offences constitute a severe threat to the freedom of expression and the press in Hong Kong. By criminalising dissent and imposing stringent penalties, these legal provisions undermine democratic principles and curtail the voices of those advocating for human rights and justice.

e) Offences in connection with State Secrets

¹⁵¹ The sedition provisions under Hong Kong’s Crimes Ordinance had been dormant for over 50 years until March 2020, when pro-democracy district councillor Cheng Lai-king was arrested. She was accused of acting with seditious intent after sharing a social media post containing personal information about a police officer and the officer’s family.

See AFP. “Hong Kong Pro-Democracy District Councillor Cheng Lai-King Arrested for “Sedition.”” *Hong Kong Free Press HKFP*, 26 Mar. 2020, <http://hongkongfp.com/2020/03/26/hong-kong-pro-democracy-district-councillor-arrested-accused-sharing-cops-personal-data/>

¹⁵² UN Human Rights Committee. *Concluding Observations on the Fourth Periodic Report of Hong Kong, China*. 11 Nov. 2022, UN Doc. CCPR/C/CHNHKG/CO/4, paragraph 16.

¹⁵³ Chau, Candice. “Explainer: Hong Kong’s Sedition Law – a Colonial Relic Revived after Half a Century.” *Hong Kong Free Press HKFP*, 30 July 2022, <http://hongkongfp.com/2022/07/30/explainer-hong-kongs-sedition-law-a-colonial-relic-revived-after-half-a-century/>

A particularly insidious and consequential aspect of the SNSO is adopting a new definition of “state secrets”, which closely aligns with Article 13 of the *PRC Law on the Guarding of State Secrets*¹⁵⁴. This similarity is cause for concern, as the Committee Against Torture (CAT)¹⁵⁵ has, since 2008, criticised the PRC law on state secrets, citing issues such as public security officials denying lawyers access to suspects and withholding notification to their relatives under the guise of protecting state secrets.¹⁵⁶ Furthermore, it has consistently urged China to review its legislation to ensure compliance with the Convention Against Torture, stressing that the determination of what constitutes a state secret should be subject to appeal before an independent tribunal. Many human rights organisations have also expressed concern over the large number of individuals detained in mainland China for allegedly revealing state secrets—often involving information already in the public domain or disclosed in the public interest.¹⁵⁷ The incorporation of such concepts into Hong Kong’s legal framework is especially concerning, as the PRC’s state security and state secrets legislation routinely undermines human rights protections, including freedom of expression.

Article 29 of the SNSO expands the definition of “state secrets” to encompass domains such as economic development, scientific research, the external affairs of Hong Kong, and the relationship between the HKSAR and the PRC. The imprecisely defined terminology renders nearly any societal information susceptible to classification as a state secret. While the provision stipulates that information is designated as a “state secret” only if its unauthorised disclosure is “likely to endanger national security”, the absence of legal clarity and predictability in defining “national security” diminishes this protective measure. In conjunction with this broadened definition, the SNSO enlarges the cadre of

¹⁵⁴ The *Guarding State Secrets Law of the People’s Republic of China*, first enacted in 1989 and amended in 2010, regulates the classification, protection, and management of state secrets in China. The law imposes strict controls on information dissemination, including penalties for unauthorized disclosure.

¹⁵⁵ The Committee Against Torture is a United Nations treaty body composed of independent experts tasked with monitoring the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). The Committee reviews periodic reports submitted by state parties, assesses their compliance, and issues recommendations to strengthen protections against torture. It also considers individual complaints and conducts inquiries into systematic torture in member states.

¹⁵⁶ CAT, *Concluding observations on the fourth periodic report of China*, 12 December 2008, UN Doc. CAT/C/CHN/CO/4

¹⁵⁷ Al Jazeera. “China Hands Death Sentence to State Secrets Leaker.” *Al Jazeera*, 6 Nov. 2024, <https://www.aljazeera.com/news/2024/11/6/china-hands-death-sentence-to-state-secrets-leaker>

officials protected by state secrets by incorporating, among others, the Electoral Commission, which further compromises the integrity and impartiality of Hong Kong's electoral processes.

The various offences on "state secrets" are encompassed within articles 32 to 37 of the Ordinance, with prescribed penalties ranging from a minimum of 3 years to a maximum of 10 in case of "unlawful disclosure of state secrets". Under Article 115, the Chief Executive is additionally endowed with the authority to certify whether an act or matter pertains to national security or involves state secrets, with the judiciary obligated to uphold such certification as delineated by Article 47 of the NSL.¹⁵⁸

The United Nations Human Rights Committee has observed that excessive secrecy amounts to a breach of Article 19 of the ICCPR. Likewise, the Global Principles on National Security and the Right to Information, known as the Tshwane Principles, emphasise the necessity for public authorities to provide specific and substantive reasons when national security is cited as a justification for restricting information.¹⁵⁹

The SNSO's imprecise and broad definition of state secrets and its predominant emphasis on national security is predicted to chill Hong Kong society. Journalists, academics, researchers, and other information seekers may be discouraged from engaging in legitimate inquiries. Furthermore, whistle-blowers who aim to disclose corruption or human rights abuses by government agencies might be reluctant to communicate with the media, notwithstanding the public interest served by such disclosures.

f) Offences in connection with Espionage

The SNSO substantially expands the concept of "espionage," which was previously regulated by the *Official Secrets Ordinance*¹⁶⁰. Article 43(3) establishes a novel offence

¹⁵⁸ Article 47 states that "*The courts of the Hong Kong Special Administrative Region shall obtain a certificate from the Chief Executive to certify whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The certificate shall be binding on the courts.*"

¹⁵⁹ The Global Principles on National Security and the Right to Information (Tshwane Principles), provide guidelines for balancing national security with the public's right to access information. These principles, developed by legal experts and civil society organizations, assert that governments should only restrict access to information when it is necessary to protect legitimate national security interests and such restrictions are proportionate. They emphasize transparency, accountability, and the protection of whistleblowers, while opposing overbroad or vague secrecy laws. See Principle 4(c).

¹⁶⁰ The *Official Secrets Ordinance*, enacted in 1997, criminalizes the unauthorized disclosure or possession of information affecting national security, defense, or public safety in Hong Kong. Based on the UK's Official Secrets Acts, it applies to officials and the public, with severe penalties for breaches.

of “collusion with external forces to publish false or misleading statements of fact to the public with the intent to endanger national security.” This offence is subject to a penalty ranging from 10 to 20 years of imprisonment. Article 6(1) characterises “external force” broadly, including any government, agency, or individual from a foreign country; the authority of a region beyond Hong Kong; a foreign political party; organisations from external locations pursuing political objectives; and international organisations.

In conjunction with stringent stipulations concerning the “unlawful disclosure of state secrets” (Article 37), which criminalises the dissemination of information presumed to contain state secrets, irrespective of its truthfulness, these measures present considerable challenges to the operations of journalists, researchers, academics, foreign banks, businesses, and think tanks.

Similarly, Article 47 introduces an additional criminal offence of “participating in or supporting external intelligence organisations, or accepting advantages offered by them”. This particular violation is punishable by imprisonment ranging from 10 to 14 years. An “external intelligence organisation” is defined in vague terms as an entity established by an external power that engages in intelligence gathering, subversion, or sabotage activities. The ambiguity surrounding key terms, such as the definition of an “advantage”, and the absence of a precise elucidation for “intelligence” heighten these concerns. The Supreme People’s Court of China has broadly interpreted “intelligence” to encompass “matters concerning national security and national interests that have not been publicised or should not be publicised according to law”.¹⁶¹

Compounding these issues and consistent with practices in Mainland China, the Chief Executive has the authority to issue certifications determining whether an organisation constitutes an external intelligence agency. These certifications are binding on judicial bodies, endowing the Chief Executive with significant, unchecked power to designate entities as such. This leaves affected external organisations without legal recourse to contest such designations.

¹⁶¹ Article 111 of the PRC Criminal Law states that “*Whoever steals, spies into, buys or unlawfully supplies State secrets or intelligence for an organ, organization or individual outside the territory of China shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights*”.

The expansive interpretation of “external forces” poses a risk of conflating legitimate collaboration and information exchange between Hong Kong residents or associations and intergovernmental organisations, foreign NGOs, academics, or other external entities with acts of “espionage” or offences associated with “external intelligence organisations”. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has asserted that both domestic and foreign NGOs should have the capacity to cooperate openly, including through funding and resource sharing, without necessitating prior authorisation.¹⁶²

Furthermore, there is substantial overlap and ambiguity among the proposed espionage offence of “collusion with external forces”, the NSL crime of “collusion with a foreign country or with external elements to endanger national security”¹⁶³, and the proposed offence of “external interference” (to be elaborated upon in the subsequent section). Ultimately, the introduction of these new offences raises significant concerns that their primary objective is to suppress the freedoms of expression and association, particularly when such liberties are exercised to advocate for ideas not aligned with governmental perspectives peacefully.

g) External Interference Endangering National Security and
Organizations Engaging in Activities Endangering National Security

The SNSO establishes a new criminal offence of “external interference” under Articles 52 and subsequent provisions, thereby considerably broadening the scope of the existing NSL offence of “collusion with foreign forces”. This new offence also intersects with the pre-existing *Societies Ordinance*¹⁶⁴, which authorises the Secretary for Security¹⁶⁵ to prohibit the operations of societies with foreign political affiliations if deemed “necessary in the interests of national security, public safety, public order, or the protection of the rights and freedoms of others”. In 2022, the UN Human Rights Committee articulated

¹⁶² Special Rapporteur on the rights to freedom of peaceful assembly and of association, “*Statement to the 20th session of the Human Rights Council Agenda item 3*”, 20 June 2012

¹⁶³ Article 29 and 30 of the *NSL*

¹⁶⁴ The *Societies Ordinance* is a Hong Kong law regulating the registration and operation of societies. Enacted in 1911, during British colonial rule, it requires groups to register with authorities and allows the government to ban or dissolve societies deemed a threat to national security, public safety, or public order. See Article 8 on “Prohibition of operation of societies”.

¹⁶⁵ The Secretary for Security is a principal official in the Hong Kong government responsible for overseeing public safety, law enforcement, immigration, and correctional services. The position manages key departments such as the police, fire services, customs, and the Immigration Department.

concern regarding the “excessive powers” vested in the police under the Societies Ordinance, which enable them to refuse or revoke society registrations without judicial review. The Committee urged Hong Kong to “review the *Societies Ordinance* and other relevant legislation” to ensure alignment with Article 22 of the ICCPR.¹⁶⁶

Rather than addressing these concerns directly, Article 52 of the SNSO specifically targets actions aimed at creating an “interference effect” in collaboration with an external entity through “improper means”. These actions are subject to penalties of up to 14 years of imprisonment. Article 53(1) elaborates on the “interference effect”, encompassing any influence exerted on the Central People’s Government, Hong Kong’s executive authorities, legislative councillors, election outcomes, judicial procedures, or relations between the HKSAR, the PRC, and foreign countries. Article 54 expansively defines “collaborating with an external force” to encompass “engaging in conduct in cooperation with an external force”. At the same time, Article 55 ambiguously characterises “using improper means” as making material misrepresentations, threatening financial loss, or inflicting undue mental pressure.

The potential for overreach within the law is further demonstrated by Article 56, which authorises the courts to assume that a suspect acted on behalf of an external organisation if there was communication and an awareness of potential benefit. Furthermore, Article 57 authorises the extraterritorial application, implying that almost any documented interaction between a Hongkonger residing abroad and a vocal foreign critic of Hong Kong or Chinese authorities could result in charges under this offence, consequently enabling the imposition of absconder sanctions.

The SNSO extends beyond the existing *Societies Ordinance* by bestowing new powers to criminalise participation, fundraising, the encouragement of membership, or the provision of premises for “prohibited organisations”. Article 60 confers upon the Secretary for Security the authority to proscribe any local organisation if they “reasonably believe” this action is necessary to protect national security. Article 62 further empowers the government to inhibit residents from engaging with “prohibited external organisations endangering national security”. Violations of this provision are met with fines and

¹⁶⁶ UN Human Rights Committee. *Concluding Observations on the Fourth Periodic Report of Hong Kong, China*. 11 Nov. 2022, UN Doc. CCPR/C/CHNHKG/CO/4, paragraphs 49-50.

imprisonment ranging from 10 to 14 years. These measures considerably weaken the freedom of association and constrain the operations of NGOs and civil society groups, particularly by hindering their capacity to secure funding from non-governmental sources.

The provisions of this Ordinance extend beyond the stipulations outlined in Article 23 of the *Basic Law* and contradict the recommendations of the UN Human Rights Committee. The expanded scope permits authorities to scrutinise opinion pieces disseminated through international media and academic reports published by foreign institutions. The language is ambiguous, indicating that activities undertaken by foreign organisations “must not pose any national security risks.” This ambiguity hinders individuals and organisations from accurately forecasting which behaviours may contravene the legal framework.

In the prevailing context, where authorities have cited involvement with UN human rights mechanisms as indicative of foreign collusion, there is an escalating apprehension that affiliations with activists, legal practitioners specialising in rights, foreign human rights organisations, or exiled Hong Kong activists could invoke indictments under “external interference.”¹⁶⁷ Moreover, it is plausible that this offence could be extended to encompass recommendations advanced by UN bodies and other neutral international organisations, thereby exacerbating concerns of legal retribution for participating in legitimate advocacy and human rights endeavours.

h) Extra-territorial effect of the Ordinance

Similar to the *National Security Law*, it is noted that a majority, if not all, of the offences newly introduced by the SNSO possess extraterritorial applicability. This extensive jurisdictional scope affects not only Hong Kong and Chinese nationals residing abroad but also encompasses foreign nationals, NGOs, media entities, and enterprises operating beyond the territorial boundaries of Hong Kong.¹⁶⁸ Specific references to the

¹⁶⁷ Ho, Kelly. “Organiser of Hong Kong’s Mass Pro-Democracy Demos Faces Police Probe, as Force Demands Financial Records.” *Hong Kong Free Press HKFP*, 27 Apr. 2021, <http://hongkongfp.com/2021/04/27/organiser-of-hong-kongs-mass-pro-democracy-demos-faces-police-probe-as-force-demands-financial-records/>

¹⁶⁸ Ho, Kelly. “US “Smears” on Extraterritorial Effect of City’s Domestic Security Law “Untenable,” Hong Kong Gov’t Says.” *Hong Kong Free Press HKFP*, 1 Mar. 2024, <http://hongkongfp.com/2024/03/01/us-smears-on-extraterritorial-effect-of-citys-domestic-security-law-untenable-hong-kong-govt-says/>

extraterritorial implications include offences such as treason (Article 14), insurrection (Article 16), sedition (Article 28), unlawful disclosure of state secrets (Article 35), espionage (Article 48), sabotage threatening national security (Article 51), and external interference (Article 57). Although numerous extraterritorial provisions predominantly target residents of Hong Kong or citizens of the People's Republic of China, certain offences, including the unlawful disclosure of state secrets (Article 35), are applicable universally, irrespective of nationality or residency.

Article 89 of the Ordinance grants the Secretary for Security the authority to enforce specified measures against individuals identified as “absconders” within a prescribed timeframe and according to a delineated procedure. The term “absconder” is expansively defined as any resident of Hong Kong who has been accused of an offence threatening national security and is currently residing outside of Hong Kong. Notably, the underlying offence does not need to originate from the SNSO; any charge related to national security is deemed sufficient. For example, human rights lawyers who departed Hong Kong following the enactment of national security laws are susceptible to these measures for activities conducted before or after their departure. Analysts have noted that such mechanisms form a component of a broader strategy by the Hong Kong government to target and impose sanctions on organisations and activists residing in exile.

The Ordinance endows the Hong Kong government with extensive powers to suppress dissent among overseas activists. These powers include the revocation of HKSAR passports with no possibility of appeal (Article 96), the annulment of professional qualifications (Article 93), and the cessation of social benefits (Article 133).¹⁶⁹ Such provisions markedly elevate the personal and professional costs associated with dissent, indicating a potential intensification of transnational repression by both the HKSAR and PRC authorities. Initially, prominent activists within overseas Hong Kong communities are anticipated to be the primary targets, with subsequent measures potentially impacting other Hong Kongers who critique Hong Kong or PRC policies in free and open societies.

¹⁶⁹ Al Jazeera. “Hong Kong Cancels Passports of Six Pro-Democracy Activists in Exile in UK.” *Al Jazeera*, 12 June 2024, <https://www.aljazeera.com/news/2024/6/12/hong-kong-cancels-passports-of-six-pro-democracy-activists-in-exile-in-uk>

The ambiguity inherent in numerous provisions of the Ordinance intensifies these risks. Residents and non-residents who peacefully exercise their rights to freedom of expression, association, or assembly in foreign nations may incur criminal liability upon subsequent travel to Hong Kong. This legal indeterminacy highlights the Ordinance’s chilling effect, as it expands the jurisdictional scope of Hong Kong authorities beyond their territorial limits, posing considerable ramifications for fundamental freedoms.

i) Arbitrary powers granted to the Executive

Analogous to China’s authoritative stance on national security, the Chief Executive assumes a crucial role within the SNSO. This responsibility commences with determining whether a matter concerns national security, as exemplified under Article 115, which endows the executive with substantial discretionary authority to regulate civil society ostensibly for national security purposes. Furthermore, the Chief Executive is vested with the authority to guide and enhance various elements of the SNSO and the broader national security apparatus.

Article 110, introduced as an amendment during the bills committee stage, grants authority to the Chief Executive in Council to enact subsidiary legislation according to the Ordinance. Infringements of such legislation may incur imprisonment for up to seven years. This authority is substantiated by the requirement to respond to the “complex and rapidly evolving” threats to Hong Kong’s national security. The foreword of the Consultation Document emphasises that the SNSO constitutes merely a progression in the continuous development of national security legislation in Hong Kong.¹⁷⁰ The government’s declared intention to perpetually update these laws to accommodate emerging risks and trends engenders unpredictability, compromising businesses’ and organisations’ ability to engage in long-term planning.

Article 112, incorporated as an amendment, confers upon the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region (National Security Committee)¹⁷¹ the authority to issue directives to individuals or entities entrusted with

¹⁷⁰ Security Bureau of the HKSAR Government. *Safeguarding National Security: Basic Law Article 23 Legislation—Public Consultation Document*. Jan. 2024, paragraph 1.13

¹⁷¹ The Committee for Safeguarding National Security of the Hong Kong Special Administrative Region was established under Article 12 of the NSL, in June 2020. The law mandated the creation of the committee

responsibilities stipulated by Hong Kong’s legal framework. According to the interpretation rendered by the National People’s Congress Standing Committee concerning Article 14 of the NSL in December 2022, all branches of government are obligated to “respect and carry out” the determinations of the National Security Committee.¹⁷² These determinations possess binding authority and are enforceable within the legal jurisdiction of Hong Kong. As a result, Article 112 effectively insulates the Ordinance from judicial review, with decisions of the National Security Committee being exempt from such examination under Article 14 of the NSL.

The Ordinance expands governmental discretionary powers, thereby exacerbating the diminution of civil and political rights of the citizens of Hong Kong. It facilitates the implementation of accelerated trial schedules for cases involving national security, thereby constraining the period available for appeals; limits the access of national security suspects to legal representation of their choosing; allows for the prolonged detention of suspects without requisite court orders; sustains the appointment of national security judges, effectively abolishing the right to jury trials; and institutes more rigorous conditions for parole and bail concerning political prisoners.

In the medium to long term, Hong Kong’s judiciary’s autonomy is anticipated to deteriorate further as national security issues penetrate additional legal domains. The Hong Kong Court of Final Appeal¹⁷³, which formerly served as a check against executive overreach, is projected to lose its capacity to scrutinise executive actions on the broadly construed concept of national security. This evolution represents a significant alteration

to oversee and coordinate national security efforts in Hong Kong. Comprising the Chief Executive as chair, key local officials, and a National Security Adviser appointed by Beijing, the committee operates with broad powers. Its decisions are not subject to judicial review, granting it significant authority over security-related matters.

¹⁷² Wei, Changhao, and Taige Hu. “Explainer: NPCSC’s Interpretation of Hong Kong National Security Law over Jimmy Lai’s Foreign Defense Counsel.” *NPC Observer*, 30 Dec. 2022, <https://npcobserver.com/2022/12/explainer-npcscs-interpretation-of-hong-kong-national-security-law-over-jimmy-lais-foreign-defense-counsel/>

¹⁷³ The Hong Kong Court of Final Appeal is the highest judicial authority in the Hong Kong Special Administrative Region, established in 1997 after the handover. It has jurisdiction over all civil and criminal cases, serving as the final arbiter on matters of Hong Kong law. The CFA is composed of local judges and non-permanent judges from other common law jurisdictions, reflecting Hong Kong’s legal tradition under the “one country, two systems” framework. However, its authority has faced challenges, particularly with the enactment of the National Security Law in 2020, which grants Beijing the power to interpret its provisions, limiting the CFA’s role in cases involving national security.

in power distribution, further consolidating authority within the executive branch and diminishing judicial oversight.

3.3. Reactions, criticisms and impacts

The promulgation of the *Safeguarding National Security Ordinance* in Hong Kong has generated extensive responses, inciting discussions regarding its ramifications for the city's governance, freedoms, and international reputation. This section examines the diverse reactions from local, regional, and global entities and the critiques directed at the legislation for its alleged overreach and imprecision. Moreover, it investigates the concrete effects of the SNSO on Hong Kong's political atmosphere, civil liberties, and socio-economic structures, offering a thorough analysis of its extensive consequences.

3.3.1. Local and international responses

The enactment of the SNSO elicited markedly polarised reactions throughout Hong Kong, ranging from enthusiastic endorsements to vehement criticisms.

City officials resolutely defended the indigenous security legislation, asserting it would not compromise the city's rule of law or press freedom. On the 19th of March, Chief Executive John Lee addressed the LegCo, describing the enactment of the SNSO as a "historical moment" and affirming that it met the expectations of the central government and the nation.¹⁷⁴ Similarly, the Pro-Beijing New People's Party lauded the legislation as "a brand-new beginning for the HKSAR".

In contrast, pro-democracy factions and civil society organisations articulated profound concerns regarding the law's potential repercussions on freedoms. The League of Social Democrats (LSD), one of Hong Kong's few residual pro-democracy parties, criticised the legislation, contending that it posed significant threats to civil liberties. Yu Wai-pan, the LSD's vice-chairperson, emphasised the chilling effect of the law, noting that media executives had been incarcerated and civil society groups dissolved under its provisions. He also expressed alarm over the government's decision to retain the offence of misprision of treason, which could jeopardise the relatives of activists in exile. Furthermore, the LSD criticised the proposed definitions of state secrets, derived from

¹⁷⁴ HKSAR Government. "Address by CE to LegCo on Passage of Safeguarding National Security Bill." *Www.info.gov.hk*, 19 Mar. 2024, <https://www.info.gov.hk/gia/general/202403/19/P2024031900717.htm>

China's framework, as excessively broad, warning they could suppress free speech. The group urged the government to incorporate a public interest defence within the legislation.¹⁷⁵

Concerns about press freedom were echoed by the Hong Kong Journalists Association (HKJA), the city's largest press organisation. The HKJA cautioned that the new law might have profound implications for journalists and advocated for precise definitions of offences such as external interference and the theft of state secrets. The association contended that comprehensive definitions of "state secrets" could potentially criminalise standard journalistic practices, such as obtaining information from government officials regarding personnel changes or policy announcements. Furthermore, the ambiguity associated with the term "foreign forces" raised concerns, with the HKJA querying whether participation in events organised by foreign business chambers or entities linked to foreign organisations might be interpreted as "collaboration with external forces". In its official submission, the HKJA underscored the critical role of journalism in serving the public interest and holding governmental bodies accountable while emphasising that journalistic activities do not threaten national security. A survey conducted by the association indicated that 90 per cent of the 105 journalists who participated perceived the legislation as a significant threat to press freedom.¹⁷⁶

On an international scale, rights NGOs, Western states, and the United Nations have extensively criticised Hong Kong's national security law due to its ambiguities, excessive scope, and "regressive" nature. Major concerns focus on the law's accelerated legislative procedure and its perceived similarities to national security legislation in other common law jurisdictions, where human rights protections are more comprehensive.

The UN High Commissioner for Human Rights, Volker Türk, has vehemently condemned the expeditious enactment of the SNSO under Article 23 of Hong Kong's Basic Law, notwithstanding continuous and serious human rights concerns articulated by his office

¹⁷⁵ Tse, Hans. "Hong Kong Pro-Democracy Group League of Social Democrats Says Domestic Security Law Could Undermine Freedoms." *Hong Kong Free Press HKFP*, 27 Feb. 2024, <http://hongkongfp.com/2024/02/27/hong-kong-pro-democracy-group-league-of-social-democrats-says-domestic-security-law-could-undermine-freedoms/>

¹⁷⁶ Leung, Hillary. "Article 23: New Domestic Security Law May Affect Regular News Reporting, Says Hong Kong Press Group." *Hong Kong Free Press HKFP*, 26 Feb. 2024, <http://hongkongfp.com/2024/02/26/article-23-new-domestic-security-law-may-affect-regular-news-reporting-says-hong-kong-press-group/>

and other UN mechanisms. Türk elucidated that the law’s comprehensively defined provisions risk penalising legitimate activities safeguarded under international human rights law, including freedom of expression, peaceful assembly, and the right to access and disseminate information. The “external interference” provisions are particularly disconcerting, as they ambiguously delineate “external forces” and could dissuade interaction with human rights organisations and UN entities.¹⁷⁷ Türk stressed that the legislation is inconsistent with China’s international human rights commitments, especially those pertaining to the ICCPR, which applies to Hong Kong. He reiterated his demand for the immediate and unconditional release of all individuals who have been arbitrarily arrested or detained under these statutes.¹⁷⁸

The European Union has articulated its denunciation of the SNSO, with the European Parliament adopting numerous resolutions that censure its ramifications for the freedoms in Hong Kong. In April 2024, the Parliament articulated that Article 23 constitutes an infringement upon fundamental liberties, advocating for the imposition of sanctions on Hong Kong Chief Executive John Lee and recommending the suspension of extradition arrangements with China.¹⁷⁹ In November 2024, another resolution called for the immediate release of all pro-democracy politicians, activists, and journalists detained under national security pretexts. Members of the European Parliament contended that the SNSO constitutes a significant breach of international law, fundamental freedoms, and the principles of the rule of law within Hong Kong, advocating for its repeal and the imposition of sanctions upon those officials accountable for human rights violations.¹⁸⁰

The international scrutiny encompasses the Universal Periodic Review (UPR), a mechanism in which all 193 UN member states are subject to an evaluation of their human rights records every four to five years. During the UPR for China in January 2024, a total of 19 nations presented recommendations explicitly targeting human rights conditions in

¹⁷⁷ Office of the High Commissioner for Human Rights. “Rushed Adoption of National Security Bill a Regressive Step for Human Rights in Hong Kong.” *OHCHR*, 19 Mar. 2024, <https://www.ohchr.org/en/press-releases/2024/03/rushed-adoption-national-security-bill-regressive-step-human-rights-hong>

¹⁷⁸ Office of the High Commissioner for Human Rights. “Hong Kong SAR: Türk Deplores Use of National Security Laws.” *OHCHR*, 31 May 2024, <https://www.ohchr.org/en/press-releases/2024/05/hong-kong-sar-turk-deplores-use-national-security-laws>

¹⁷⁹ European Parliament resolution of 25 April 2024 on the new security law in Hong Kong and the cases of Andy Li and Joseph John (2024/2700(RSP))

¹⁸⁰ European Parliament resolution of 28 November 2024 on Hong Kong, notably the cases of Jimmy Lai and the 45 activists recently convicted under the national security law (2024/2950(RSP))

Hong Kong. For example, Switzerland advocated for Hong Kong to harmonise its national security law with the ICCPR. At the same time, Canada, Czechia, New Zealand, the United Kingdom, the United States, and Australia proposed revoking the law.¹⁸¹ These evaluations reflect an expanding global consensus that the SNSO impairs civil liberties and suppresses dissent, eroding the city’s democratic institutions.

3.3.2. *Statements from human rights organisations*

In February 2024, 86 civil society organisations, including Hong Kong Watch, Freedom House, Human Rights Watch, and The 29 Principles, formally condemned the Hong Kong government’s proposed legislative measures to implement domestic security laws under Article 23 of the *Basic Law*.¹⁸² These groups cautioned that such measures could lead to “further devastating consequences” for human rights conditions within the city, exacerbating the already challenging circumstances arising from the *National Security Law*, which was enforced in 2020.

The organisations expressed grave concerns about the proposed law’s ambiguous and overly expansive provisions, which might criminalise peaceful exercises of fundamental rights, including freedoms of association, assembly, expression, and the press. For instance, the offence of “seditious intention” targets individuals who “induce disaffection against” the Chinese government or “incite any other person to do an act that does not comply with the law of the HKSAR”. Such definitions could easily subsume legitimate critiques of governmental actions.

They also brought attention to alarming procedural changes undermining the principles of due process and the right to a fair trial. The Ordinance permits extended police detention without charges, restricts detainees’ access to legal counsel of their choosing, and disallows those convicted under national security offences the eligibility for reduced sentences based on good behaviour. Furthermore, it ambiguously proposes “eliminating certain procedures” to “expedite” national security trials, raising significant

¹⁸¹ Lee, James. “Hong Kong’s No.2 Official Defends City’s Human Rights Record at UN Review, as NGOs Urge Repeal of Security Law.” *Hong Kong Free Press HKFP*, 24 Jan. 2024, <http://hongkongfp.com/2024/01/24/hong-kongs-no-2-official-defends-citys-human-rights-record-at-un-review-as-ngos-urge-repeal-of-security-law/>

¹⁸² Hong Kong Watch. “Over 85 Organisations Sign Joint Statement on the Hong Kong Government’s Consultation for Article 23 Legislation.” *Hong Kong Watch*, 19 Feb. 2024, <https://www.hongkongwatch.org/all-posts/2024/2/19/over-80-organisations-sign-joint-statement-on-the-hong-kong-governments-consultation-for-article-23-legislation>

apprehensions concerning the erosion of judicial protections. These measures, the groups asserted, further compromise human rights safeguards already dismantled by the *National Security Law*. Rights enshrined in Hong Kong’s de facto constitution, the *Basic Law*, are facing systemic erosion, thus endangering the legal autonomy and freedoms of the city. Within their statement, the civil society groups implored foreign governments to oppose the legislation publicly, impose sanctions on responsible officials, and support the Hong Kong populace and activists in exile. They also appealed to international enterprises to reassess the risks associated with operating in Hong Kong and to voice opposition to the erosion of human rights protections. The groups noted the global lack of accountability and highlighted that only the United States had sanctioned officials accountable for enforcing the *National Security Law*. They stressed the urgent requirement for additional international intervention.

The organisations additionally underscored the importance of protecting the Hong Kong diaspora from Beijing’s transnational repression. They called for proactive strategies to hold perpetrators of intimidation accountable and safeguard Hong Kongers’ rights in exile. In response, the Hong Kong government dismissed the collective condemnation as “deliberate smears”.¹⁸³

After the closure of the consultation period for the proposed legislation, the Center for Asian Law at Georgetown University disseminated a comprehensive 31-page report positing that the Hong Kong government employed the legislation to suppress political adversaries, encompassing pro-democracy politicians, journalists, and activists.¹⁸⁴

The report contended that introducing new security laws was unwarranted, emphasising that Hong Kong encountered “no known national security threats.” Researchers argued that the government was confronting a “crisis of confidence” precipitated by Beijing’s *National Security Law*. They cautioned that the proposed Article 23 legislation would exacerbate this predicament.

¹⁸³ HKSAR Government. “HKSAR Government Strongly Condemns Deliberate Smearing and Divisive Act by Anti-China Organisation “Hong Kong Watch” on Basic Law Article 23 Legislation.” *Info.gov.hk*, 14 Mar. 2024, <https://www.info.gov.hk/gia/general/202403/14/P2024031400022.htm>

¹⁸⁴ Georgetown Center for Asian Law (GCAL), *Submission on Hong Kong Government Public Consultation Document Safeguarding National Security: Basic Law Article 23 Legislation*, February 27, 2024, <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2024/02/GCAL-HK-Article-23-Consultation-Submission.pdf>

The report reproached the endeavour to expand the scope of sedition offences, describing it as “against the global trend” towards abolishing such laws. Researchers underscored instances of repealing sedition laws in the UK and various Commonwealth countries, contrasting these reforms with the intensified restrictions in Hong Kong. The report articulated that “the expansion of sedition suggests that the government intends to continue policing and punishing free expression in Hong Kong”. Additionally, concerns were articulated regarding the prospective introduction of a state secrets law, which researchers feared might replicate mainland China’s *Safeguarding State Secrets Law*. They argued that such legislation could institutionalise “non-transparency”, thereby stifling open discourse and accountability.

The scholars cautioned that “what was once a dialogue between government and the governed—mediated by a free press, academic research, and expert commentary—risks becoming a stilted and partially suppressed conversation”.

The Hong Kong Rule of Law Monitor, an external organisation comprised of Hong Kong legal practitioners, has published a distinct 37-page document censuring the legislation.¹⁸⁵ The document characterises the legislation as “draconian” and does not align with the city’s fundamental human rights commitments. It accentuates vague and extensive provisions, which allow for discretionary interpretation. The organisation further critiques the lack of safeguards for activities in the public interest, whistleblowing, and journalistic reporting. Without these protections, the media’s role as a public watchdog could be significantly compromised. Critiquing the government’s rationale for the proposed measures, the organisation remarked, “The government cites laws in other common law jurisdictions while ignoring universal condemnation of the National Security Law and the colonial-era sedition offence”. They contend that the government has selectively employed “the lowest or most general criteria” to substantiate broad and restrictive offences. The document posits that such a stringent approach risks further degrading trust and diminishing Hong Kong’s reputation as a city governed by the rule of law. “By disregarding global trends and legitimate criticism, the government is curtailing opportunities for enhanced governance”, it cautioned.

¹⁸⁵ Hong Kong Rule of Law Monitor, and Johannes Chan Man-mun. “Hong Kong’s Article 23 Proposal: A Response from Overseas Hong Kong Lawyers.” *Hong Kong Rule of Law Monitor 香港法治監察*, 27 Feb. 2024, <https://hkrlm.org/2024/02/28/a23-response/>

3.3.3. *Impact of the SNSO on fundamental freedoms*

Notwithstanding the protections outlined in the *Basic Law* and government assurances, the implementation of the *Safeguarding National Security Ordinance* signified a significant intensification in the encroachments on the fundamental freedoms of Hong Kong's citizens by both the PRC and HKSAR governments. Several instances exemplify these breaches.

Firstly, individuals encountered heightened legal impediments to voicing criticism of the government without the threat of reprisal. HKSAR authorities arrested and prosecuted numerous individuals for speech critical of either the HKSAR or central government, frequently invoking colonial-era sedition laws. These actions involved allegations of “inciting hatred against the government” or “promoting enmity between different classes”. Moreover, prosecutions under the SNSO concentrated on individuals whose speech was regarded as subversive or secessionist. For example, the courts adjudicated that the popular protest slogan “Liberate Hong Kong, Revolution of Our Times” implicitly endorsed independence or alterations to the SAR's constitutional status, resulting in numerous convictions.¹⁸⁶

The requirements for electoral candidacy and holding public office further restricted free speech within the political sphere. Elected officials were compelled to swear allegiance to the PRC and SAR and to comply with ambiguous “patriotic” standards. Candidates whose oaths were adjudged “invalid” faced disqualification without explanation or recourse. Likewise, civil servants were obligated to pledge allegiance, with noncompliance leading to job termination or potential criminal charges, even for actions or statements made off-duty.¹⁸⁷

Restrictions were extended into academic and cultural domains. National security education became an obligatory component of the SAR government-sanctioned curriculum at all educational levels, necessitating that public schools suppress political

¹⁸⁶ UCA News. ““Liberate Hong Kong, Revolution of Our Times”, Benedict Rogers.” *Hong Kong Watch*, 25 Sept. 2024, <https://www.hongkongwatch.org/all-posts/2024/9/25/liberate-hong-kong-revolution-of-our-times-benedict-rogers>

¹⁸⁷ Chan, Irene. “Safeguarding National Security Is Most Important Value for Hong Kong's Civil Servants, Official Says.” *Hong Kong Free Press HKFP*, 25 June 2024, <http://hongkongfp.com/2024/06/25/safeguarding-national-security-is-most-important-value-for-hong-kongs-civil-servants-official-says/>

expression and report on their adherence to these requirements.¹⁸⁸ Activists have criticised these measures, arguing that they suppress free expression within educational environments. Academics encountered harassment from media outlets controlled by Beijing due to their research activities and perceived political positions, with recruitment and hiring decisions seemingly becoming more susceptible to political influences.

A 105-page report authored by Human Rights Watch and the Hong Kong Democracy Council, published on September 25, documented a “severe decline” in academic freedom, freedom of expression, and the rights to peaceful assembly at Hong Kong’s eight publicly funded universities after the implementation of the NSL.¹⁸⁹ The report discussed the dissolution of student unions, the disappearance of campus “democracy walls,” and prevalent self-censorship among academics and students. Numerous scholars reported feelings of insecurity and refrained from teaching subjects deemed sensitive. Press freedom experienced considerable setbacks as well.

Surveys performed by the Foreign Correspondents’ Club and the Hong Kong Journalists’ Association indicated that most journalists perceived a pronounced deterioration in press freedom attributable to the NSL and related governmental actions.¹⁹⁰ Reporters Without Borders positioned Hong Kong at 135th out of 180 in its 2024 press freedom index, referencing the closures of newsrooms, arrests of journalists, and political pressures exerted on independent media outlets.¹⁹¹ Self-censorship among journalists became increasingly pervasive, with apprehensions about legal consequences constraining critical reporting and investigative journalism.

The SAR government has compromised the freedoms of assembly and association, particularly for pro-democracy factions. Authorities frequently rejected applications for

¹⁸⁸ Graceffo, Antonio. “National Security Education in China and Hong Kong.” *Geopolitical Monitor*, 29 May 2024, <https://www.geopoliticalmonitor.com/national-security-education-in-china-and-hong-kong/>

¹⁸⁹ Wang, Maya. ““We Can’t Write the Truth Anymore.”” *Human Rights Watch*, 24 Sept. 2024, <https://www.hrw.org/report/2024/09/24/we-cant-write-truth-anymore/academic-freedom-hong-kong-under-national-security-0>

¹⁹⁰ Hong Kong Free Press. “Hong Kong Press Freedom in Further Decline, according to Press Group Survey of Journalists in City.” *Hong Kong Free Press HKFP*, 20 Aug. 2024, <http://hongkongfp.com/2024/08/20/hong-kong-press-freedom-in-further-decline-according-to-press-group-survey-of-journalists-in-city/>

¹⁹¹ Leung, Hillary. “Hong Kong Ranks Low on Global Press Freedom Index as Watchdog Cites “Unprecedented” Setbacks.” *Hong Kong Free Press HKFP*, 3 May 2024, <http://hongkongfp.com/2024/05/03/just-in-hong-kong-ranks-low-on-global-press-freedom-index-as-watchdog-cites-unprecedented-setbacks/>. The RSF’s analysis of the situation in Hong Kong is available at <https://rsf.org/en/country/hong-kong>

peaceful demonstrations, citing concerns for public safety or health, and detained individuals commemorating events such as the Tiananmen Square massacre.¹⁹² Non-governmental organisations, labour unions, and professional associations underwent investigations and faced closures if deemed to pose a threat to national security.

The HKSAR government has prioritised national security over fundamental freedoms in the past year. While preserving state security is a legitimate aim, governments must strike a balance by adhering to internationally accepted standards, such as the Johannesburg Principles, and protecting fundamental rights as delineated in international human rights law. Absent such safeguards, the freedoms of Hong Kong’s citizens risk continual erosion under the pressure of unchecked executive power.

¹⁹² Human Rights Watch. “China: Closing off Memory of Tiananmen Massacre” Human Rights Watch, 2 June 2024, <https://www.hrw.org/news/2024/06/02/china-closing-memory-tiananmen-massacre>

CHAPTER IV. RESTRICTING VOICES, WEAKENING DEMOCRACIES: A GLOBAL PERSPECTIVE

4.1 The interplay between Freedom of Expression and Democracy

Designated by some as an electoral “super-cycle” year, 2024 established a historic benchmark for democracy by achieving the highest voter participation in human history. Nevertheless, this milestone is not an apparent triumph, as the integrity of electoral processes in numerous countries significantly deteriorated compared to the preceding cycle. Globally, election credibility declined in over twenty per cent of countries relative to 2018, highlighting the ongoing erosion of democratic norms.

Democratic challenges were evident across the globe, impacting both authoritarian regimes and established democracies. Governments increasingly curtailed dissent and limited citizens’ rights to elect their leaders, indicative of a broader period of profound uncertainty. This era is characterised by a confluence of crises—climate change, geopolitical volatility, technological disruptions, and societal polarisation—all posing threats to the stability upon which democratic systems have traditionally relied on.¹⁹³

4.1.1 The state and trajectory of global democracies

The global decline in democratic governance, persisting for approximately a decade, has reached levels not observed since 1985. As of late 2023, the international landscape was nearly evenly divided between 78 democratic nations and 83 autocratic regimes, with the number of closed autocracies surpassing that of liberal democracies¹⁹⁴—a situation last witnessed in 1995. For 15 years, a more significant proportion of the world’s population has resided in nations experiencing autocratization rather than democratisation. Numerous autocratizing states, among them regional powers, possess substantial

¹⁹³ International IDEA. *The Global State of Democracy 2024: Strengthening the Legitimacy of Elections in a Time of Radical Uncertainty*. International Institute for Democracy and Electoral Assistance, Sept. 2024, p. 1

¹⁹⁴ For this overview four types of regimes have been considered. *Closed Autocracy* in which there are not multiparty elections for the executive and there is absence of fundamental democratic components such as freedom of expression, freedom of association, and free and fair elections. *Electoral Autocracy* in which multiparty elections for the executive exist but there are insufficient levels of fundamental requisites such as the ones precedingly cited. *Electoral Democracy* in which multiparty elections for the executive are free and fair and there are satisfactory degrees of suffrage, freedom of expression, freedom of association. *Liberal Democracy* in which the requirements of an electoral democracy are met and furthermore judicial and legislative constraints on the executive along with the protection of civil liberties and equality before the law.

economic and military influence, thereby intensifying the threats to global democratic systems.¹⁹⁵

Democracy predominantly prevails in Western Europe and North America, as well as in some regions of East Asia, the Pacific, and South America. In contrast, autocratic regimes are predominantly situated in Central America, East Asia, South and Central Asia, the Middle East and North Africa (MENA), and Sub-Saharan Africa. Changes have been observed across all regions, characterised by significant disparities in the proportion of the populace enjoying freedoms and rights in democratic environments instead of experiencing oppression under autocratic systems.

Western Europe and North America persist as the most democratic regions globally, with the majority of inhabitants residing in liberal democracies and the remainder in electoral democracies, notwithstanding a gradual, albeit consistent, decline since approximately 2010.

In Eastern Europe, the degree of democracy experienced by the average individual has steadily diminished to levels last witnessed in 1990, before the dissolution of the Soviet Union. Belarus and Russia exemplify the post-Soviet entrenchment of autocracy, a trend that Hungary, Serbia, Croatia, and Romania have also driven. The period between 2010 and 2018 saw a downturn in democratic practices; however, stability has been maintained subsequently, partly attributable to recent advancements in less populated nations such as Kosovo, Montenegro, and North Macedonia. In this area, larger and more populous countries tend to be significantly more autocratic compared to their smaller counterparts.¹⁹⁶

The MENA region continues to be the most despotic globally, with 98 per cent of its populace residing within autocratic regimes. A significant portion of the population resides in closed autocracies such as Iran, Libya, and Saudi Arabia, while 53 per cent inhabit electoral autocracies, including Türkiye and Iraq.¹⁹⁷

In Sub-Saharan Africa, the state of democracy now parallels the conditions seen around the year 2000. This region ranks as the third most autocratic worldwide, with most of its

¹⁹⁵ Nord, Marina, et al. *Democracy Report 2024: Democracy Winning and Losing at the Ballot*. University of Gothenburg: V-Dem Institute, Mar. 2024, pp 9-11.

¹⁹⁶ Ivi, p 10.

¹⁹⁷ Ivi, p 14.

inhabitants residing in electoral and closed autocracies, including the Democratic Republic of Congo, Ethiopia, Somalia, and Zimbabwe. The Seychelles stands out as the sole liberal democracy in this region.¹⁹⁸ The past five years have witnessed a deterioration in regional conditions, partly due to coups d'état in Gabon and Niger in 2023 and military takeovers in five other countries since 2020—namely, Burkina Faso, Guinea, Mali, Sudan, and Chad.¹⁹⁹

The degree of democratic governance is experiencing a marked decline in South and Central Asia, rendering it the second most autocratic region globally. The extent of liberal democracy available to the average individual in this region has receded to levels not observed since 1975—nearly half a century ago. In recent decades, smaller nations have demonstrated gradual improvement, whereas larger countries, exemplified by India, have shown a steady decline in democratic standards.²⁰⁰ Over 90 per cent of the populace resides in electoral autocracies, including India, Bangladesh, Pakistan, and Kazakhstan. Closed autocracies, such as Afghanistan, Turkmenistan, and Uzbekistan, comprise 4 per cent of the regional population. A mere 3 per cent inhabit electoral democracies, as seen in nations like Armenia and Georgia, while Bhutan remains the sole liberal democracy.²⁰¹ In East Asia and the Pacific, 78 per cent of the population lives under autocratic regimes, facing partial or complete deprivation of democratic rights and freedoms. This category encompasses closed autocracies such as China and Vietnam, alongside electoral autocracies like Singapore and the Philippines. Only 9 per cent of the population in this region resides in liberal democracies, exemplified by Japan and Australia.²⁰²

In stark contrast to other global regions, the level of democracy experienced by individuals in Latin America and the Caribbean has increased over the past year. This development is primarily attributed to recent advancements in Brazil, the most populous nation in the region, with a population of 216 million. Moreover, smaller countries such as Bolivia and Honduras also play a role in this shift in trajectory. The area is distinguished globally by the democratisation occurring in a large nation, while several smaller countries are trending towards autocratization. Furthermore, it is noteworthy that

¹⁹⁸ Ibidem

¹⁹⁹ Ivi, p 11.

²⁰⁰ Ibidem

²⁰¹ Ivi, p 14.

²⁰² Ibidem

the larger countries in Latin America have consistently demonstrated higher levels of democracy than their smaller counterparts for a significant period.²⁰³

Notwithstanding the trends mentioned above, the 2024 super-cycle witnessed the mobilisation of nearly three billion voters by candidates and political parties advocating for transformational policy agendas. While certain elections engendered constructive debates that possess the potential to fortify democratic processes, others incited unrest and resulted in diminished voter turnout attributable to election-related violence—a concerning trend for the future of democracy. Nevertheless, numerous elections successfully accomplished their fundamental objective: enabling individuals to influence decision-making processes and ensuring accountability among leaders, reinforcing their role as the cornerstone of democracy.²⁰⁴

4.1.2 How freedom of expression supports democratic governance

Freedom of expression constitutes one of the most intricate fundamental rights enshrined in contemporary constitutions. As a foundational element of a free and open society, it represents a basic human necessity. Legally, freedom of expression and other rights—such as freedom of conscience, religion, thought, belief, opinion, peaceful assembly, and association—have been pivotal to liberal constitutionalism. Since the conclusion of the Second World War, it has served as a vital pillar of constitutional democracies.²⁰⁵

The relationship between freedom of expression and democracy is mutually reinforcing. Through the exercise of this right, individuals can define their identities, convey their opinions, access information, participate in voting, shape governmental structures, hold leaders accountable, and exert influence over their environments. A society where these processes flourish epitomises democracy, which, in turn, fosters the political, social, and economic conditions requisite for the effective exercise of this right.²⁰⁶

²⁰³ Ivi, p 10.

²⁰⁴ International IDEA. *The Global State of Democracy 2024: Strengthening the Legitimacy of Elections in a Time of Radical Uncertainty*. International Institute for Democracy and Electoral Assistance, Sept. 2024, p 9.

²⁰⁵ Masferrer, Aniceto. “The Decline of Freedom of Expression and Social Vulnerability in Western Democracy.” *International Journal for the Semiotics of Law*, vol. 36, Mar. 2023, p 2.

²⁰⁶ Restrepo, Ricardo. “Democratic Freedom of Expression.” *Open Journal of Philosophy*, vol. 03, no. 03, Aug. 2013, p 380.

The inherent application of the right to freedom of expression necessitates equality and responsibility. While individuals are entitled to express their views, this right must be counterbalanced by a consideration for the rights of others. The expression that serves as a mechanism of domination or encroaching upon the rights of others exceeds the boundaries of this liberty. Democratic systems are adept at resolving such conflicts by adhering to the principle of affected rights, ensuring that those influenced by decisions are incorporated into the decision-making process. This principle is particularly evident in the voting process, illustrating that participation should correspond to the rights involved.²⁰⁷

Freedom of speech serves as a cornerstone of democracy both at the individual and systemic levels, underpinning the governance of communities, states, and nations. It facilitates open dialogue, encourages debate, and enables the media to scrutinise leaders and policies. Public questioning and discourse lead to the emergence of visionary, honest, and capable leadership while aiding in the adjudication of competing interests. Furthermore, freedom of expression functions as a “safety valve”, permitting grievances to surface and be addressed constructively, diminishing the risk of violence or unrest. It also safeguards the rights of minorities by preventing majorities from suppressing dissenting voices.

In periods of democratic regression, freedom of expression assumes increased importance. It empowers the press and citizens to unearth corruption, contest injustices, and uphold democratic principles. Strong protections for free speech enable individuals to challenge authoritarian inclinations, preserve electoral integrity, and oppose constraints on other democratic rights.²⁰⁸

Nevertheless, the relationship between democracy and free speech is fraught with tension. Democratic societies persistently engage in discourse regarding the circumstances under which free speech should be subordinated to other principles, such as national security, public order, and morality. These discussions are particularly urgent in modern contexts,

²⁰⁷ Ivi, p 385.

²⁰⁸ Nossel, Suzanne. “The Fate of American Democracy Depends on Free Speech.” *Daedalus*, vol. 153, no.3, American Academy of Arts and Sciences, Aug. 2024, pp 122-123.

where open discourse presents substantial risks along with its advantages.²⁰⁹ Fundamental prerequisites for free expression—critical reflection, independent thought, respectful dialogue, and an openness to listen—frequently remain unfulfilled. Without these elements, freedom of expression cannot facilitate the personal growth, mutual understanding, and societal advancement it purports to offer.

The use of double standards to assess the scope and boundaries of freedom of expression and information signifies unequivocally a fractured and maladaptive democracy. It makes all individuals vulnerable, both those who adhere to the majority viewpoint and those who dare to dissent. This individual vulnerability mirrors the fragile state of democracy. Ensuring the robustness of democracy inherently involves empowering individuals and vice versa. Thus, protecting and promoting freedom of expression constitutes an indispensable condition.

In a genuine democracy, citizens' exercise of freedom of expression ought to be the principal component in developing societal norms, and the legal framework should facilitate each individual's participation in this ongoing process.²¹⁰ What is imperative, particularly in a democratic context, is the determination of how and by whom the values and principles governing that society are shaped. Therefore, citizens must engage in independent thought, articulate their ideas publicly in an environment of freedom, irrespective of their opinions, and contribute, to the extent of their abilities, to the evolution of public ethics within their society. Moreover, in a democracy, public ethics ought to be a dynamic construct, perpetually evolving, even as certain elements may become entrenched or legally codified. Consequently, legislation must permit the articulation of dissenting or minority perspectives, even when these perspectives contest prevailing ethical standards.²¹¹

Although not the most crucial right, given that the right to life underpins all other rights, freedom of expression constitutes the cornerstone of a democratic society. A democracy cannot thrive without providing a platform for diverse, minority, and dissenting opinions. Dissent is pivotal in fostering deliberation, ultimately leading to a broader and more

²⁰⁹ *Ibidem*

²¹⁰ Masferrer, Aniceto. "The Decline of Freedom of Expression and Social Vulnerability in Western Democracy." *International Journal for the Semiotics of Law*, vol. 36, Mar. 2023, pp 5-6.

²¹¹ *Ivi*, p 9.

nuanced comprehension of multifaceted realities. The rejection of dissent compromises the deliberative character of democracy, risking its transformation into a superficial entity. Through the acceptance of disagreement, societies have the potential to evolve, enrich their viewpoints, and preserve the core principles of democratic existence.²¹²

4.2 The worldwide decline of Freedom of Expression

Notwithstanding isolated advancements, the global scenario for freedom of expression in 2024 remains profoundly disconcerting. This regression poses a significant threat to democracy's foundation, highlighting the imperative need for more robust safeguards and a heightened political resolve to sustain these essential freedoms.

4.2.1 Patterns of global regression

Freedom of expression constitutes the most critically affected pillar of democracy, frequently and intensively targeted by “aspiring autocrats”. In 2024, more than half the global population encountered a crisis concerning freedom of expression. This crisis encompasses media freedom, open political discourse, and academic and cultural expression, thereby impacting fundamental democratic values across the globe.²¹³

Since 2000, a decline in freedom of expression has been observed in 46 countries, resulting in less than one-quarter of the global population residing in open environments. Over the past year, 451 million individuals across 10 countries experienced setbacks, with the most significant declines occurring in Burkina Faso, Mongolia, and Senegal. Conversely, only 335 million individuals in five countries observed improvements, with Brazil at the forefront of these gains. The prevailing trends elucidate that regressions in freedom of expression consistently surpass advancements, whether assessed over the past year, five years, or a decade.²¹⁴

The crisis manifests in distinct ways across different regions. The situation remains the most severe globally in the Middle East and North Africa, where more than 90 per cent of the populace lives under stringent restrictions and no nation offers adequate safeguards. Over the past year, 10 million individuals in this region have encountered further

²¹² Ivi, p 12.

²¹³ Nord, Marina, et al. *Democracy Report 2024: Democracy Winning and Losing at the Ballot*. University of Gothenburg: V-Dem Institute, Mar. 2024, pp 15-16.

²¹⁴ The data has been taken from *Article's 19* “The Global Expression Report 2024” available at <https://www.globalexpressionreport.org/>

setbacks, with Israel exhibiting the most pronounced deterioration. In contrast, Syria was the only country that showed a marginal improvement.

Sub-Saharan Africa's condition continues to deteriorate, with regressions significantly outweighing progress. Since Ghana in 2018, the region has not witnessed any country achieve an adequate environment for expression. Over the past year, 216 million individuals across four countries have experienced setbacks, with Burkina Faso enduring the most profound decline regionally and globally. No nation in the region registered any improvement.

Concurrently, the Asia-Pacific region also presents a concerning outlook. Over the past decade, more than two-fifths of the countries have experienced deterioration, affecting nearly 4 billion individuals. By 2023, 76 per cent of the region's populace was residing in countries facing a freedom of expression crisis. Within the past year alone, 55 million individuals in two countries observed declining freedoms, with India and Mongolia suffering the most significant setbacks. Notably, Hong Kong recorded the most substantial regression over the past decade. Nevertheless, improvements were reported for 95 million individuals across three countries, with Thailand and Fiji leading in gains. The discrepancy has become increasingly pronounced in Europe and Central Asia. While nearly half the population lives in open environments, one-third live in countries experiencing a crisis in freedom of expression. Over the past year, 151 million individuals in two countries have faced setbacks, with Kyrgyzstan experiencing the most substantial deterioration. Regrettably, no nation in the region has demonstrated improvement.

In contrast to all other regions, the American outlook remains more optimistic, principally propelled by Brazil's advancements. Currently, more than two-thirds of the regional population resides in countries with robust safeguards for expression. Nevertheless, setbacks affected 20 million individuals, with Chile experiencing the most pronounced decline. Despite these challenges, 45 per cent of the population in Latin America and the Caribbean lives in countries where expression levels are deemed satisfactory, although the region remains profoundly divided.

These broader patterns of freedom of expression are mirrored by a concurrent decline in press freedom, a fundamental component of democratic governance. Globally, press freedom is increasingly jeopardised by governments and political authorities that fail to ensure independent and reliable journalism. Organisations such as Reporters Without

Borders²¹⁵ have underscored a growing decline in respect for media autonomy, characterised by heightened state interference and political pressure.

The international community's inability to safeguard journalists was particularly pronounced in 2024, with minimal enforcement of UN Security Council *Resolution 2222*²¹⁶. This was starkly illustrated by the war in Gaza, marked by unprecedented violations, with over 100 Palestinian journalists killed since October 2023, including at least 22 while performing their duties.²¹⁷

The 2024 elections, the largest globally, were frequently accompanied by violence against journalists, as evidenced in Nigeria and the Democratic Republic of Congo. In Latin America, self-identified adversaries of press freedom, such as the newly elected president of Argentina, Javier Milei, aggravated the crisis by symbolically closing the country's largest news agency, representing a concerning development for media independence.²¹⁸ Governments globally have increasingly controlled social media platforms and the internet by obstructing accounts, limiting access, and censoring content. China is a significant violator, incarcerating more journalists than any other nation and implementing stringent censorship and surveillance measures to quell dissenting voices.²¹⁹

²¹⁵ Reporters Without Borders (RSF) is an international non-governmental organization founded in 1985, dedicated to defending press freedom and supporting journalists worldwide. Headquartered in Paris, RSF monitors violations of media rights, provides assistance to journalists in danger, and advocates for legal and policy reforms to ensure the free flow of information. The organization publishes the annual World Press Freedom Index, playing a crucial role in raising awareness about threats to journalists and promoting accountability for attacks on media professionals.

²¹⁶ UN Security Council Resolution 2222, adopted on the 27th of May 2015, emphasizes the protection of journalists, media professionals, and associated personnel in conflict zones. It reaffirms their status as civilians under international humanitarian law and condemns all forms of violence against them. The resolution calls on parties to armed conflicts to uphold their legal obligations, ensure accountability for violations, and safeguard media freedom. It highlights the critical role of a free, independent, and pluralistic media in promoting peace, security, and transparency.

²¹⁷ Chalabi, Mona. "More than 100 Journalists Were Killed This Year – over Half of Them in Palestine." *The Guardian*, 23 Dec. 2024, www.theguardian.com/news/datablog/2024/dec/23/palestine-journalists-killed

²¹⁸ RSF. "Argentina: Javier Milei's First Year as President Marked by a Sharp Decline in Press Freedom." Reporters without Borders, 10 Dec. 2024, <https://rsf.org/en/argentina-javier-milei-s-first-year-president-marked-sharp-decline-press-freedom>

²¹⁹ Hawkins, Amy. "Number of Writers Jailed in China Exceeds 100 for First Time, Says Report." *The Guardian*, 1 May 2024, www.theguardian.com/world/2024/may/01/writers-jailed-china-pen-america

The regional dynamics of press freedom are indicative of these global patterns.²²⁰ The Middle East and North Africa persist in exhibiting the most severe conditions, succeeded by the Asia-Pacific region, where authoritarian regimes stifle journalism. In Africa, almost half of the countries are experiencing alarming situations.

The European Union continues to serve as a paradigm of relative stability, bolstered by implementing the *European Media Freedom Act*²²¹. In contrast, Eastern Europe has experienced a deterioration in conditions attributable to disinformation and censorship, frequently rationalised under the guise of national security.

Despite incremental progress, the Americas persist in confronting substantial challenges. The proportion of nations that exhibited satisfactory conditions declined from 36 per cent in 2023 to 21 per cent in 2024. Violence, corruption, and organised crime persist as substantial impediments, particularly in South America, where most countries now encounter problematic conditions.

4.2.2 Case studies of democratic backsliding and suppressed expression

Examining global trends in the decline of freedom of expression reveals the intricate relationship between free speech and democracy as abstract and concrete, universal and particular. Importantly, it highlights the intrinsic link whereby democracy cannot exist without freedom of expression, and conversely, freedom of expression cannot exist without democracy. The following section scrutinises each case study, illustrating the dynamic between democratic deterioration and the curtailment of free expression, wherein leaders frequently manipulate legal frameworks and emergency powers to repress dissent.

a) Africa: Uganda

Uganda has been subjected to extensive criticism regarding its democratic deficits under President Yoweri Museveni, who has held power since 1986. His administration has been

²²⁰ The data has been taken from *Reporters Without Borders's* “2024 World Press Freedom Index – Journalism under Political Pressure” available at <https://rsf.org/en/2024-world-press-freedom-index-journalism-under-political-pressure>

²²¹ The European Media Freedom Act (EMFA), enacted as Regulation (EU) 2024/1083, entered into force on the 7th of May 2024. It establishes rules to protect media independence and pluralism across the EU, including safeguards for editorial autonomy, protections for journalistic sources, transparency in media ownership, and measures to regulate state-controlled media. The EMFA aims to ensure a free and independent media environment, reinforcing democratic principles and the free flow of information within the EU.

condemned for consolidating authority through constitutional amendments, notably eliminating presidential age limits in 2017. Over the years, the government has used legal frameworks, propaganda, and coercion to suppress dissent, with an increasing emphasis on digital repression in 2024.

Although the Ugandan Constitution ostensibly guarantees freedoms of expression, speech, media, and access to state information, these rights are systematically undermined. Individuals are theoretically free to express their views; however, there is a pervasive perception that endorsing the opposition may jeopardise prospects for education, employment, and access to government services. In practice, the government has employed legislation, surveillance, and intimidation to restrict dissent.

For instance, in October 2022, the government enacted the *Computer Misuse (Amendment) Act*, legislation that criminalised broadly defined offences such as “offensive communication” and “hate speech.” Critics, including civil society organisations, emphasise its potential to curtail freedom of expression and target political adversaries.²²² In December 2022, the Uganda Law Society submitted a petition to the Constitutional Court contesting the law’s constitutionality, asserting that it infringes upon freedom of speech and expression and that its promulgation did not adhere to due procedural processes. In January 2023, the Constitutional Court declared specific repressive law provisions unconstitutional, indicating a progressive shift towards safeguarding freedom of expression.²²³ Nevertheless, ambiguous provisions concerning the “misuse of social media” remain enforceable. The government also regularly enacts internet shutdowns during protests and elections, restricting access to information and hindering collective mobilisation.²²⁴ Facebook has been inaccessible since 2021; however, citizens circumvent this restriction by using virtual private networks.

²²² Amnesty International. “Uganda: Scrap Draconian Law Aimed at Suppressing Freedom of Expression Online.” *Amnesty International*, 14 Oct. 2022, www.amnesty.org/en/latest/news/2022/10/uganda-scrap-draconian-law/

²²³ The Republic of Uganda. *Constitutional Petition No.5 of 2016*. 10 Jan. 2023, <https://eagle.co.ug/wp-content/uploads/2023/01/JUDGMENT-ANDREW-KARAMAGI-v-AG.pdf>

²²⁴ Xynou, Maria, et al. “Uganda: Data on Internet Blocks and Nationwide Internet Outage amid 2021 General Election.” *Open Observatory of Network Interference*, 22 Jan. 2021, <https://ooni.org/post/2021-uganda-general-election-blocks-and-outage/>

The media sector in Uganda includes numerous outlets that are ostensibly independent; however, journalists regularly encounter considerable risks, such as harassment, arrest, and physical assault, mainly while reporting critically on the government or the inner circle of President Museveni.²²⁵ During election years, there is an intensification of repression, with authorities conducting raids, shutting down radio stations, revoking media accreditation, and prosecuting journalists on charges of disseminating misinformation. These conditions have cultivated an environment of self-censorship. In March 2023, President Museveni mandated that all government advertising be channelled through state-controlled media organisations. This directive was rescinded in August due to opposition from other media entities.

The erosion of academic freedom is also evident, with reports of governmental surveillance of university lectures and requirements for academic staff to obtain permission to conduct public meetings. Dismissals, detentions, and limitations on research on politically sensitive subjects are perceived as measures to suppress critical discourse within academia. Student campus protests frequently elicit severe government responses, further constraining academic autonomy.²²⁶

The civil society sector in Uganda remains active; however, entities engaging with politically sensitive topics, notably human rights, function under stringent conditions. The government has perpetuated limitations on non-governmental organisations, rendering their operations susceptible to legal constraints, onerous registration requirements, and intimidation. Since 2019, NGOs have been obliged to report their staffing, finances, and activities to the National Bureau of NGOs, with specific licenses being revoked under the guise of national security. In February 2023, the government rescinded the mandate of the Office of the United Nations High Commissioner for Human Rights in Uganda, effectuating the complete closure of its offices by August.²²⁷

²²⁵AFP. “‘Tortured’ Ugandan Author Rukirabashaija Arrives in Germany.” *Al Jazeera*, 23 Feb. 2022, www.aljazeera.com/news/2022/2/23/tortured-ugandan-author-rukirabashaija-arrives-in-germany

²²⁶The Independent. “Human Rights and Academic Freedom under Threat in Uganda, Report Finds.” *The Independent Uganda*, 20 July 2024, www.independent.co.ug/human-rights-and-academic-freedom-under-threat-in-uganda-report-finds/

²²⁷Biryabarema, Elias. “Uganda Says It Will Not Renew Term of U.N. Human Rights Office.” *Reuters*, 9 Feb. 2023, www.reuters.com/world/africa/uganda-says-it-will-not-renew-mandate-un-human-rights-office-2023-02-08/

These alarming actions underscore a sweeping governmental strategy to fortify authority by systematically stifling dissent, silencing critical voices, and severely restricting channels for free expression and active civil society engagement, despite sporadic judicial interventions, like the partial invalidation of the *Computer Misuse Act*, a clear and disturbing trend persists, signalling a relentless and profound erosion of democratic freedoms within the nation.

b) Americas: Venezuela

Since 1999, the democratic infrastructure of Venezuela has progressively declined, with conditions markedly deteriorating in recent years. Under the administration of President Nicolás Maduro, who has sustained his position of authority since 2013 through manipulated electoral processes, repression, and a compromised judiciary, the government has escalated enforcement actions against opposition factions and weakened state institutions. Civil liberties are considerably constrained, and political dissent is suppressed through judicial persecution, arbitrary detentions, and extrajudicial measures.

In Venezuela, the restriction of freedom of expression is significantly reinforced by widespread government surveillance, pro-government disinformation initiatives, and pervasive media censorship. Venezuelan citizens encounter legal reprisals and harassment for articulating views on politically sensitive issues, while the state exerts control over online discourse through influence strategies and government service platforms. The prevailing economic and political crises intensify these challenges, rendering internet access prohibitively expensive for many and curtailing the accessibility of independent information. Social media users are subject to harassment, legal reprisals, and punitive actions for content perceived unfavourably by the regime. In 2024, the authorities considered legislative proposals to regulate social media, including a *Law against Fascism, Neofascism and Similar Expressions*, which the National Assembly rapidly approved in an initial legislative session. This bill sought to criminalise specific categories of “prohibited messages” to suppress dissent, with analysts cautioning that its vague definitions could lend themselves to arbitrary enforcement.²²⁸ By March 2024, the

²²⁸ ProBox. “The Law against Fascism That Perpetuates Authoritarianism in Venezuela.” *Global Voices*, 30 Apr. 2024, <https://globalvoices.org/2024/04/30/the-law-against-fascism-that-perpetuates-authoritarianism-in-venezuela/>

authorities had obstructed access to at least 51 news websites and 14 platforms critical of the regime.

Functioning within a highly restrictive regulatory and legal framework, the media landscape in Venezuela, which once thrived with dynamic newspaper, television, and radio sectors, has been compelled to shut down or significantly reduce its operations. In 2023, at least six radio stations were forced to cease operations, and over 60 digital media platforms were arbitrarily obstructed throughout the year. The Maduro administration sustains a state-controlled media infrastructure that advances its political and ideological agenda.²²⁹ Independent journalists face the risk of governmental pressure, arbitrary detention, and physical threats. Independent organisations, such as Espacio Público and the Press and Society Institute, have recorded hundreds of infringements on freedom of expression, encompassing censorship and constraints on access to information.

In light of escalating harassment, threats, and legal as well as administrative sanctions over recent years, human rights defenders, activists, independent journalists, and the general populace continue to face threats of arrest and extra-legal intimidation, including enforced disappearances, often under contrived allegations of incitement to hatred or terrorism. In August 2024, the Venezuelan National Assembly enacted legislation referred to as the “anti-NGO law”, marking a sustained effort to suppress human rights and civil society organisations within the country.²³⁰ The law imposes stringent regulations, mandating organisations to provide lists of their members and staff, disclose their assets, and submit donor information and financial transactions. Noncompliance may result in organisational closure or even criminal prosecution.

The principle of academic freedom has been significantly diminished as universities have experienced financial constraints, reduced institutional autonomy, and governmental influence over leadership positions. Consequently, the prevailing political environment

²²⁹ Puyosa, Iria, et al. “How Venezuela Became a Model for Digital Authoritarianism.” *Atlantic Council*, 22 July 2024, www.atlanticcouncil.org/in-depth-research-reports/how-venezuela-became-a-model-for-digital-authoritarianism/

²³⁰ Amnesty International. “Venezuela Passes ‘Anti-NGO Law’ That Punishes Efforts to Assist Victims and Defend Human Rights.” *Amnesty International*, 19 Aug. 2024, www.amnesty.org/en/latest/news/2024/08/venezuela-aprobacion-ley-anti-ong-castiga-asistencia-victimas-defensa-derechos-humanos/

has compelled many scholars to emigrate, thereby exacerbating the vulnerabilities of Venezuela's higher education system.

Notwithstanding constitutional assurances of the right to freedom of assembly, protests in Venezuela are frequently confronted with excessive force. Security forces and pro-government armed groups often resort to violence to suppress demonstrations, particularly those centred on economic and social rights.

The presidential election conducted in July 2024 further highlighted the degradation of democratic standards in Venezuela. Although opposition candidate Edmundo González Urrutia reportedly achieved a landslide victory, Maduro declared victory amidst widespread allegations of electoral fraud and irregularities. After the election, the regime initiated a severe crackdown on dissent, leading to thousands of arbitrary arrests, over 20 fatalities, and an intensified persecution of political opponents. United Nations experts have expressed significant concern regarding human rights violations both during and following the election, including arbitrary detentions, extrajudicial killings, enforced disappearances, and the suppression of peaceful assembly and expression.²³¹ These violations underscore the Maduro administration's resolve to maintain power at any cost, further isolating Venezuela from democratic principles.

c) Asia-Pacific: Myanmar

In February 2021, Myanmar's military leadership assumed government control, concluding a power-sharing phase between civilian and military leaders under the 2008 Constitution, which an antecedent junta had formulated. After the coup, the military has exacerbated the country's human rights and humanitarian crisis. Confronted by extensive opposition from the public and pro-democracy armed groups, the junta has encountered difficulties in maintaining control, responding with severe repression. This response has encompassed arbitrary arrests, torture, extrajudicial killings, and indiscriminate attacks on civilians—actions that qualify as crimes against humanity and war crimes.²³²

²³¹ Caracas Chronicles. "Silence, Siege and Persecution: Maduro's Formula against the Press." *Caracas Chronicles*, 7 Sept. 2024, www.caracaschronicles.com/2024/09/07/silence-siege-and-persecution-venezuelas-media-after-the-elections/

²³² Schlein, Lisa. "UN Report Accuses Myanmar Military of War Crimes and Crimes against Humanity." *Voice of America*, 14 Aug. 2024, www.voanews.com/a/un-report-accuses-myanmar-military-of-war-crimes-and-crimes-against-humanity/7742841.html

The 2008 Constitution, drafted by the military, accorded limited rights such as freedom of expression, association, and cultural development. Still, these rights were conditional upon not contradicting laws intended to preserve security, public order, or morality. However, the military breached even these restricted guarantees when it orchestrated the coup, declared an indefinite state of emergency, and effectively nullified constitutional protections.²³³ In April 2021, elected legislators in exile proclaimed the abrogation of the 2008 constitution, supplanting it with an interim charter that does not ensure freedoms of expression or association, the right to internet access, or numerous other civil and political rights.

The coup further restricted private communication and personal expression, already limited by state surveillance and oppressive laws. The junta revised legal codes to eliminate protections against arbitrary surveillance and prohibited the use of tools such as VPNs, which are employed to bypass censorship. In May 2024, the activist organisation Justice for Myanmar disclosed the military's implementation of sophisticated web surveillance and censorship technology capable of intercepting and decrypting web traffic and blocking applications.²³⁴ The deployment of this technology resulted in a significant decline in access to independent media and other essential online resources.

The military's initiatives to control information commenced immediately following the coup with the acquisition of state-owned media, the suppression of independent outlets, and the establishment and ongoing training of specialised units in "electronic warfare" to conduct covert disinformation campaigns. Journalists were compelled to delete content, refrain from using terms such as "regime" and "junta", and stop critical reporting. Subsequently, the military began restricting access to independent sources of information by prohibiting independent media outlets and blocking all but a list of approved websites and social media platforms. The junta rescinded licenses, blocked websites, and amended

²³³ *Al Jazeera*. "Myanmar Military Extends State of Emergency by Six Months." *Al Jazeera*, 31 July 2024, www.aljazeera.com/news/2024/7/31/myanmar-military-government-extends-state-of-emergency-by-six-months

²³⁴ Justice for Myanmar. "The Myanmar Junta's Partners in Digital Surveillance and Censorship." *Justice for Myanmar*, 19 June 2024, www.justiceformyanmar.org/stories/the-myanmar-juntas-partners-in-digital-surveillance-and-censorship

laws to criminalise unlicensed broadcasting.²³⁵ These measures have compelled most independent media to either operate in exile or engage in self-censorship, while pro-military disinformation campaigns have dominated the digital information space.

Comprehensive restrictions on freedom of expression have been implemented without mechanisms for transparency or accountability. The prior administration occasionally stated imprecise objectives, while the military, when justifying, referred only generally to “fake news” and the necessity to safeguard national stability and public security.

The military has broadened and intensified criminal penalties for numerous offences that involve freedom of expression, resulting in the imprisonment of hundreds of individuals. In February 2021, the military mandated an amendment to the penal code to augment the already stringent punishments for treason and sedition and to introduce an ambiguous offence under a new provision criminalising the induction of fear, dissemination of allegedly false information, or obstruction of officials, with penalties of up to three years imprisonment, a fine, or both.²³⁶ In March 2023, the military amended the *2014 Counter-Terrorism Law* to categorise opposition groups as “terrorists” and to enhance the penalties for “exhortation, persuasion, [and] propaganda” associated with terrorist groups or “terrorism activities”.²³⁷ A *Cyber Security Law*, implemented in January 2025, mandates digital platforms to eliminate a broad scope of content lacking transparency or appeal mechanisms.²³⁸ Penalties under the legislation include blocking orders and criminal liability for company representatives, who may face up to three years imprisonment for violations.

Following the coup, there has been a marked increase in online self-censorship. Many journalists, commentators, and ordinary individuals initially criticised the coup and the military on various online platforms. Nevertheless, those residing under military

²³⁵ Coordinator. “Criminal Media Laws Return, Internet Threatened.” *Free Expression Myanmar*, 3 Nov. 2021, <https://freeexpressionmyanmar.org/criminal-media-laws-return-internet-threatened/>

²³⁶ Human Rights Watch. “Myanmar: Post-Coup Legal Changes Erode Human Rights.” Human Rights Watch, 2 Mar. 2021, www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights

²³⁷ RFA Burmese. “Amendment Grants Myanmar Junta Sweeping New Powers under Anti-Terrorism Law.” *Radio Free Asia*, 15 Mar. 2023, www.rfa.org/english/news/myanmar/amendment-03152023170207.html

²³⁸ Strangio, Sebastian. “Myanmar Military Junta Enacts Repressive New Cybersecurity Bill.” *The Diplomat*, 3 Jan. 2025, <https://thediplomat.com/2025/01/myanmar-military-junta-enacts-repressive-new-cybersecurity-bill/>

governance have increasingly resorted to self-censorship for personal safety. Some individuals have ceased their online publications entirely, while others refrain from disseminating content that might attract the scrutiny of the military and its online proxy entities. Thousands have been apprehended and prosecuted for offences related to freedom of expression under Myanmar's restrictive legal framework. Hundreds more have been compelled to go into hiding or seek exile to evade arrest. Authorities and judicial systems under military control have persisted in conducting arbitrary and disproportionate detentions, imposing severe sentences.²³⁹ The Assistance Association for Political Prisoners has documented that over 28,000 individuals have been detained for political offences since the commencement of the coup.

Furthermore, political and civic liberties have been significantly restricted on university campuses. Student unions, traditionally campaigners for human rights, have been marginalised and lack formal recognition.²⁴⁰ After the coup, the military forcefully entered academic institutions, arresting and suspending both students and faculty involved in protests. Unauthorised demonstrations are now subject to severe legal penalties, and even peaceful protests are being confronted with lethal violence. The military aggression has resulted in the deaths of hundreds of protesters and the arrest of thousands, effectively suppressing widespread dissent by the year 2023.

The military regime has intensified its suppression of nongovernmental organisations. Numerous NGOs have ceased operations due to the substantial risks encountered by their personnel, who are often subject to arrest or are compelled to flee. The *Organization Registration Law*, enacted in 2022, has augmented NGOs' registration and operational requirements and imposed severe penalties for non-compliance, thereby increasing NGOs' difficulty in participating even in developmental or humanitarian endeavours.²⁴¹ Organizations failing to abide by these regulations are subject to fines and criminal

²³⁹ RSF. "Three Years in Power, Three Years of Ruthless Repression: Myanmar Junta Steps up Terror against Journalists" Rsf.org, 1 Feb. 2024, <https://rsf.org/en/three-years-power-three-years-ruthless-repression-myanmar-junta-steps-terror-against-journalists>

²⁴⁰ Tuang Za Khai. "The Academic Brain Drain since Myanmar's Military Coup." The Diplomat, 27 Aug. 2024, <https://thediplomat.com/2024/08/the-academic-brain-drain-since-myanmars-military-coup/>

²⁴¹ DMG. "Junta Enacts Organization Registration Law, Further Restricting Civil Society and Pro-Democracy Movement." *Development Media Group*, 3 Nov. 2022, www.dmediag.com/news/5338-asu-ag-sac

penalties, which may include imprisonment for up to five years for their representatives. Humanitarian aid organisations, in particular, confront significant obstacles, as the military regime insists on demanding registration and permit processes that are nearly insurmountable.

Notwithstanding these adversities, some organisations and activists—primarily operating from abroad—persist in documenting human rights violations and advocating internationally. Nevertheless, the diminishing scope for civic engagement, coupled with the military’s control over information and public life, accentuates the gravity of Myanmar’s persistent crisis.

d) Europe and Central Asia: Belarus

Belarus is characterised as an authoritarian state where electoral processes are evidently manipulated, and civil liberties are significantly restricted. In 2020, Alyaksandr Lukashenka, maintaining stringent control over the military and security forces, forcibly suppressed a substantial pro-democracy protest movement that emerged following his re-election in a questionable presidential election. Since that period, security forces have consistently engaged in the assault and arbitrary detention of journalists, activists, and ordinary citizens who contest the regime.

Although the Belarusian constitution formally guarantees freedom of expression, access to information, and press freedom, these rights are routinely disregarded in practice. Belarus lacks an independent judiciary or parliament capable of safeguarding these freedoms. Instead, the judicial and legislative branches, overseen by the presidential administration, actively curtail independent media and dissenting perspectives.

Confronted with a polarised society, international isolation, and sanctions attributed to its domestic suppression and support for Russia’s invasion of Ukraine, the Lukashenka regime has escalated its dominance over the nation’s information landscape. Private citizens and political candidates encounter constrained opportunities to express their views or engage in political decision-making. Pervasive surveillance, including wiretapping by state security agencies, critically undermines the right to private discourse. The apprehension of state monitoring leads many to avoid discussing sensitive

topics on the phone or in Internet communications.²⁴² Authorities frequently resort to threatening, harassing, and detaining individuals who criticise Lukashenka, the post-election violence, or the conflict in Ukraine.

Before 2021, Belarus's most prominent media and news platforms were independent entities. However, this environment has undergone profound alterations due to governmental crackdowns compelling the majority of independent news outlets, think tanks, and NGOs representing various interests and communities to exit the country, reorganise in exile, and disseminate information online from neighbouring states. The government maintains stringent control over traditional media, supported by the 2008 *Media Law*²⁴³, which establishes a state monopoly on information concerning political, social, and economic issues. Through ownership of the sole internet service provider, the government possesses the capability to interrupt nationwide internet access, block specific websites, and limit access to social media platforms.

Government repression, characterised by unprecedented criminal prosecutions and physical violence, has fostered widespread self-censorship among editors and journalists. For instance, the Ministry of Justice and the Supreme Court forcibly dissolved the Belarusian Association of Journalists in 2021. In 2023, Belarus was ranked first in Europe and third globally concerning the imprisonment of journalists, as reported by the Committee to Protect Journalists.²⁴⁴

In 2024, the government continued campaigning against media workers, opposition figures, bloggers, cultural personalities, and ordinary citizens for their online activities. Any media organisation operating within Belarus must engage in self-censorship or anticipate closure. Belarusian media professionals who do not self-censor have either left the nation or been incarcerated. The last significant independent outlet still operational

²⁴² Belarus in Focus. "Security Forces Establish a System of Intense Surveillance over Belarusians." *Belarus in Focus Information Office*, 21 Apr. 2024, <https://belarusinfofocus.pro/belarus-russia-relations/quest-for-overcoming-the-sanction-obstacle-course/>

²⁴³ The *Media Law*, enacted in December 2008, introduced stringent controls over media operations in the country. The law requires all media outlets, including online publications, to register with the government and allows authorities to suspend or revoke their licenses without judicial oversight. It imposes restrictions on foreign media ownership and grants the government wide-ranging powers to monitor and censor content deemed to threaten national security, public order, or morality.

²⁴⁴ Getz, Arlene. "2023 Prison Census: Jailed Journalist Numbers near Record High; Israel Imprisonments Spike." *Committee to Protect Journalists*, 14 Jan. 2024, <https://cpj.org/reports/2024/01/2023-prison-census-jailed-journalist-numbers-near-record-high-israel-imprisonments-spike/>

within the country, Onliner.by, has discontinued its news and political reporting. UN investigators have underscored the “pervasive climate of fear” in Belarus, with 1,265 political prisoners documented as of December 2024.²⁴⁵

In Belarus, the authorities, which operate in a de facto capacity, persist in suppressing extremism by employing a broad definition that includes alternative perspectives and independent associations, initiated post-political crisis regulations emerging in 2020 that criminalise legitimate forms of free expression. The legislation addressing extremism introduces regulatory constraints on media operations, and since 2021, authorities have categorised media outlets as “extremist organisations” and “extremist formations”.²⁴⁶ By the concluding months of 2024, a total of 257 organisations, which encompass more than 40 independent media outlets, have been classified as extremist entities, with the Viasna Human Rights Center, one of the most longstanding human rights institutions in Belarus, being added to the list in August 2023.

Furthermore, the government sustains and progressively expands a surveillance list that includes over 4,700 individuals, such as journalists, bloggers, and other critical voices in online platforms, purportedly engaged in “extremist activities” and consequently prohibited from publishing, along with organisations and extremist materials. This context perpetuates conditions conducive to further assaults on civil society and its representatives. In practice, any form of expression could potentially be subsumed under the government’s interpretation of extremism.

Freedom of opinion and expression in educational institutions has also been significantly restricted. Students articulating dissenting opinions are subjected to insults, threats of expulsion, and repercussions for their parents, such as employment termination or suspension of parental rights. In January 2022, Lukashenka mandated teaching a state-sanctioned historical narrative in schools, with legislation enacted to criminalise deviations from this narrative. Revised textbooks and curricula were implemented, and by September 2023, educational institutions were directed to employ only officially

²⁴⁵ Viasna Human Rights Center. “Human Rights Situation in Belarus–December 2024.” *Viasna Human Rights Center*, 9 Jan. 2025, <https://spring96.org/en/news/117107>

²⁴⁶ Al Jazeera. “Belarus Blacklists 625 Opposition Figures as ‘Extremists.’” *Al Jazeera*, 28 Oct. 2022, www.aljazeera.com/news/2022/10/28/belarus-labels-625-members-of-opposition-as-extremists

approved instructional materials and to adjust foreign language instruction to further the promotion of patriotism.²⁴⁷

Similarly, the freedom of assembly is stringently controlled. Demonstrations necessitate governmental authorisation, which is frequently denied arbitrarily. The regime employs military equipment and armed riot police to quell protests, executing indiscriminate violence, effecting mass arrests, and torturing protesters with complete impunity for security officers.²⁴⁸

Belarus continues to exhibit characteristics of a profoundly authoritarian state, wherein civil liberties are systematically diminished, dissent is severely repressed, and independent media alongside civil society endure persistent persecution. The Lukashenka regime's extensive control over the judiciary, legislature, media, and educational sectors ensures an almost complete monopoly on information and restricts political engagement. This extensive oppression, further exacerbated by international isolation and sanctions, has established a "climate of fear" that permeates all dimensions of public and private life in Belarus.

e) Middle East and North Africa: Iran

Since its inception in 1979, the Islamic Republic of Iran has systematically suppressed dissent, with ultimate authority residing in Supreme Leader Ayatollah Ali Khamenei and the unelected institutions under his jurisdiction. These entities, encompassing the judiciary and security forces, function as principal mechanisms in curtailing civil liberties and silencing opposition.

The 1979 Constitution, the accompanying legal framework, and the Islamic Penal Code do not protect freedom of expression or press freedom and include broad, ambiguous restrictions that do not align with international human rights laws. Article 24 of the Constitution assures the right to freedom of expression. However, its wording permits extensive application of constraints on speech perceived to infringe upon "the basic tenets

²⁴⁷ EUvsDisinfo. "Belarus: The Indoctrination of Minors Is Rising in Scale and Taking on New Forms" *EUvsDisinfo*, 19 June 2024, <https://euvsdisinfo.eu/belarus-the-indoctrination-of-minors-is-rising-in-scale-and-taking-on-new-forms/>

²⁴⁸ *UN News*. "'Currently Unsafe to Return' to Belarus, Human Rights Council Hears" *News.un.org*, 20 Mar. 2024, <https://news.un.org/en/story/2024/03/1147761>

of Islam or public rights”, rendering it one of many constitutional provisions that may be utilised to limit speech. Although media freedom is technically safeguarded under Article 40 of the Constitution, it remains subject to limitations. Additionally, numerous laws severely restrict free speech and prescribe harsh penalties for individuals who knowingly defy the constraints or unintentionally provoke the displeasure of the authorities. The *2002 Press Law*, for instance, prohibits the dissemination of ideas deemed contrary to Islamic principles or detrimental to public rights, though these are not clearly defined. The government and judiciary frequently invoke this and other vaguely worded legislation to criminalise criticism of the regime, both offline and online.

Indistinctly defined restrictions on speech, stringent criminal penalties, and state surveillance of online communications constitute several factors that dissuade citizens from participating in open and unrestricted private discourse. Authorities impose restrictions on access to numerous websites, particularly those related to international news and information services, political opposition, and human rights organisations, as well as platforms addressing ethnic and religious minority groups in Iran and LGBTQ+ rights. Websites are also obstructed if they contravene state doctrines regarding Islam or governmental narratives on domestic or international politics.²⁴⁹ Despite these impediments, numerous Iranians persist in expressing dissent on social media, frequently at considerable personal risk.

In Iran, media freedom is restricted both online and offline. The government engages in extensive media manipulation and actively combats online dissent through a comprehensive digital propaganda system.²⁵⁰ The national broadcasting company is under the strict control of hardline factions and is influenced by the security apparatus. News content and analyses are subjected to rigorous censorship, and critics and opposition members are seldom if ever, afforded a platform on state-controlled television, which remains a primary information source for many Iranians.

Print media, including newspapers and magazines, are subject to censorship and directives from authorities concerning permissible topics and coverage methods.

²⁴⁹ Motamedi, Maziar. “Iran Unveils Plan for Tighter Internet Rules to Promote Local Platforms.” *Al Jazeera*, 24 Feb. 2024, www.aljazeera.com/news/2024/2/24/iran-unveils-plan-for-tighter-internet-rules-to-promote-local-platforms

²⁵⁰ BBC. “Iran Media Guide.” *BBC News*, 8 July 2024, www.bbc.com/news/world-middle-east-14542234

Numerous foreign-based websites, including news outlets and major social media platforms, are filtered. The Iranian regime has increasingly targeted foreign journalists, accusing them of espionage or activities deemed subversive, as a strategy to suppress independent reporting and exert influence over foreign governments. A recent example includes the detention of Italian journalist Cecilia Sala in Tehran in late 2024 on national security charges, an accusation frequently employed by Iranian authorities to stifle dissent.²⁵¹ Her arrest garnered significant international attention and prompted diplomatic interventions by the Italian government, ultimately facilitating her release in January 2025. This case exemplifies Tehran's "hostage diplomacy"²⁵² as an instrument within its broader geopolitical strategies and its aversion to media scrutiny.

The restrictions on academic freedom are likewise stringent. Institutions of higher learning are cautioned against evolving into centres for political engagement, with faculty members and students facing potential expulsion or detainment for dissenting opinions.²⁵³ In 2023, reports indicate that more than 110 scholars were dismissed, and numerous positions were subsequently filled by individuals aligned with the regime.

The constitution stipulates that public demonstrations may occur, provided they do not contravene the essential tenets of Islam. In practice, however, only demonstrations approved by the state are generally allowed, while other assemblies are forcibly dispersed by security forces, who employ detention and lethal force against participants. Iranian authorities have perpetuated an extensive crackdown following the anti-government "Woman, Life, Freedom" protests, which were ignited by the 2022 death of Jina Mahsa Amini at the hands of the morality police.²⁵⁴ After the onset of mass demonstrations in

²⁵¹ AP. "Iran Confirms Arresting Italian Journalist Cecilia Sala." *AP News*, 30 Dec. 2024, <https://apnews.com/article/iran-italy-journalist-detain-tehran-e18b0acc385a0bac4c00146afbcc6288>

²⁵² *Hostage diplomacy* in Iran refers to the practice of detaining foreign nationals or dual citizens on dubious charges, often using them as leverage in negotiations with other countries. This strategy originated after the 1979 Iranian Revolution, notably during the U.S. Embassy hostage crisis, and has since evolved into a tool to pressure foreign governments. Iran's judiciary and intelligence agencies frequently target individuals for espionage or national security offenses, with trials often lacking transparency and due process. High-profile cases highlight the use of these detentions to secure concessions such as sanctions relief or prisoner exchanges, drawing widespread international criticism.

²⁵³ *NCRI Women Committee*. "September 2024 Report: Expulsions of Students and Professors." *NCRI Women Committee*, 2 Oct. 2024, <https://wncri.org/2024/10/02/expulsions-of-students-and-professors/>

²⁵⁴ The "Woman, Life, Freedom" protests in Iran began in September 2022 following the death of Mahsa Amini, a 22-year-old Kurdish woman who died in police custody after being detained by the morality police

September 2022, authorities apprehended thousands of individuals, including celebrities, human rights defenders, and others who had demonstrated support for the movement via social media posts or by openly defying the hijab regulations, leading to Amini's arrest and death. Iranian authorities have detained approximately 100 journalists for their coverage of the "Woman, Life, Freedom" protests. Notably, journalists Elahe Mohammadi and Niloofar Hamed, who played a crucial role in uncovering the circumstances surrounding Amini's death, were initially sentenced to 12 and 13 years, respectively. Their sentences were subsequently reduced to 5 years on charges that are alleged to be fabricated.²⁵⁵

Nongovernmental organisations that endeavour to address human rights violations are frequently subject to state suppression.²⁵⁶ For instance, the Center for Human Rights Defenders continues to be prohibited, and numerous members have been incarcerated. Organisations focusing on non-political issues have similarly experienced governmental crackdowns in recent years. Innumerable individuals remain imprisoned for peacefully contesting the clerical establishment and expressing criticism of human rights violations.

The Islamic Republic of Iran's systematic repression of dissent, characterised by stringent limitations on freedom of expression and media, as well as forceful suppression of protests and autonomy in academia, highlights its overarching strategy of preserving control through fear and repression. Despite the threats of arrest, exile, or harsher consequences for opposing the regime, journalists, activists, and ordinary citizens persist in confronting the authorities' unwavering dominance over Iranian society, thus sustaining the pursuit of human rights and freedom.

for allegedly violating the country's mandatory hijab laws. These protests, led by women and youth, quickly expanded across Iran, calling for gender equality, human rights, and an end to authoritarian rule.

²⁵⁵ RSF. "RSF Calls on Iran's Judiciary to Dismiss the Prison Summons for Journalists Niloofar Hamed and Elahe Mohammadi — and Drop All Charges against Them." Rsf.org, 22 Oct. 2024, <https://rsf.org/en/rsf-calls-iran-s-judiciary-dismiss-prison-summons-journalists-niloofar-hamed-and-elahe-mohammadi>

²⁵⁶ Iran International Newsroom. "Iran's Government Continues Crackdown on Charity NGOs." *Iran International*, 30 Apr. 2024, www.iranintl.com/en/202404307452

CONCLUSION

The situation in Hong Kong exemplifies the complex and often contentious balance between national security and safeguarding freedom of expression. Over the past decade, the region has witnessed a gradual decline in its democratic framework, culminating in the enactment of legislation that prioritises state security over individual rights. This thesis has thoroughly analysed the historical, legal, and political dimensions of this transformation, particularly highlighting the substantial impact of the *National Security Law* and the *Safeguarding National Security Ordinance* in modifying Hong Kong's political and civic landscape.

The historical context of freedom of expression in Hong Kong is profoundly influenced by its colonial legacy and the *Basic Law*, which guarantees fundamental rights. Hong Kong lacked systematic legislation or mechanisms to safeguard human rights throughout most of the British colonial period. True democracy has never been fully realised in Hong Kong, as the British authorities did not implement democratic governance when opportunities arose. A fully elected legislature was not established until the final two years preceding the transition of sovereignty to China in 1997. Moreover, even during this period, two-thirds of the legislative seats were not subject to direct election but were allocated to representatives of specific interest groups. Ultimately, the decisive authority resided with the British governor and the Secretary of State in London.²⁵⁷

The constitutional framework of Hong Kong is articulated within the *Basic Law*, which was the result of negotiations between Britain and China during the 1980s. It is noteworthy that universal suffrage was merely designated as the “ultimate aim” without comprehensive provisions for its implementation. Furthermore, the National People's Congress of China was granted the authority to amend the *Basic Law* unilaterally, while its Standing Committee was vested with the power to provide binding interpretations. These provisions effectively conferred ultimate authority to China, reflecting a continuation of the previous arrangements under British rule.²⁵⁸

²⁵⁷ Sumption, Jonathan. “Britain Should Avoid Undermining the Hong Kong Judiciary.” *The Times*, 18 Mar. 2021

²⁵⁸ *Ibidem*

Instead, the most significant legacy the British left to Hong Kong was not democracy but the rule of law. They provided their former colony with an impressive legal system, establishing a permanent judiciary in Hong Kong, committed to judicial independence and the rule of law.²⁵⁹

Following the enforcement of the *Sino-British Joint Declaration* in 1985, the Hong Kong government enacted numerous laws designed to promote human rights. It instituted the necessary administrations and mechanisms to ensure the enforcement and oversight of these laws. Moreover, non-governmental organisations dedicated to human rights have progressively emerged within civil society, contributing significantly to safeguarding human rights.²⁶⁰

Notwithstanding, a more thorough analysis of Hong Kong's social and political landscape reveals a markedly more complex and increasingly troubling perspective concerning the status of rights and freedoms. This perspective is currently overshadowed by anxiety and apprehension. The liberal dimension, commitment to human rights, ambitions for democracy, and foundational systems and institutions—including the rule of law and an independent judiciary—are shrouded in an intensifying climate of uncertainty.²⁶¹

In the period following the Handover, Hong Kong's legal system can no longer be accurately described as entirely independent. While it has maintained several liberal characteristics, including safeguarding individual rights and an autonomous judiciary, Beijing's assertion of authority has increasingly eroded these elements, indicating the beginning of a more regulated and less liberal legal climate.

The culmination of Beijing's assertion of authority transpired in 2020 with the enactment of the *National Security Law*, symbolising decades of ideological tensions between the Chinese government and a substantial segment of the Hong Kong populace.²⁶² The implementation of this law constituted an unprecedented legal experiment within the

²⁵⁹ Ibidem

²⁶⁰ Shen, Taixia. "The Constitution of Hong Kong Human Rights Protection Mechanisms." *International Conference on Economics and Management, Education, Humanities and Social Sciences*, vol. 86, Jan. 2017, p 335.

²⁶¹ Yeung, Chris. "Human Rights in Hong Kong: One Country Looms as Two Systems Fade." *Contemporary Chinese Political Economy and Strategic Relations: An International Journal*, vol. 4, no. 2, Aug. 2018, p 432.

²⁶² Chan, Cora. "Can Hong Kong Remain a Liberal Enclave within China? Analysis of the Hong Kong National Security Law." *University of Hong Kong Faculty of Law Research Paper No. 2021/005*, Aug. 2020, p 2.

common law world, testing the resilience of the city’s legal system. The assertive enforcement of the *National Security Law* has significantly undermined civil society in Hong Kong. Prominent political activists and social movement organisations have been prosecuted under security-related statutes, leading to an immediate chilling effect. Confronted with considerable legal risks, nearly all oppositional organisations and pro-democratic labour unions have suspended their operations.²⁶³

Within just four years, Hong Kong’s civic and political landscape was entirely drained. This process reached its definitive culmination in March 2024, when the *Safeguarding National Security Ordinance*, Hong Kong’s national security law, was implemented, imposing increasingly stringent restrictions.

The national security legislations are instruments of Chinese law integrally inserted into Hong Kong’s common law system. Through these legislations, numerous Chinese legal concepts, theories, norms, and institutions have already permeated, and will continue to permeate, the common law of Hong Kong, either directly or implicitly. The rule of law in Hong Kong resembles a piece of glass with a crack; it may remain intact as long as these laws are confined within the national security framework, yet it risks shattering if the crack continues to widen.²⁶⁴

A comprehensive examination of the provisions of the *Safeguarding National Security Ordinance* further accentuates this concern. Numerous elements of the ordinance have been identified as directly contradicting international human rights laws and standards. Its vague and expansive definitions of key terms, coupled with the absence of robust procedural safeguards, have enabled the suppression of dissent and undermined fundamental freedoms. Implementing the ordinance has revealed a consistent pattern of legal and practical inconsistencies with the ICCPR and other human rights frameworks to which Hong Kong is bound.

Historically, the ICCPR could be aptly characterised as the “gold standard” for Hong Kong. This characterisation is attributed to its incorporation into the regional constitution and the serious consideration afforded to it by local judges and government officials. Should the judiciary and executive branches fail to enhance their compliance with the

²⁶³ Ivi, p 18.

²⁶⁴ Ivi, p 41.

ICCPR in matters pertaining to security, references to it in Article 2 of the SNSO or Article 42 of the NSL may ultimately be perceived as a mere cynical drafting tactic. Such a perception could serve as a convenient “talking point” for government officials during international engagements, yet it would lack any substantive impact. Furthermore, this outcome can potentially undermine the international reputations of both China and Hong Kong while eroding public confidence in the broader human rights endeavour.²⁶⁵ These tensions expose the ordinance’s function as a mechanism to legitimise restrictions on freedom of expression rather than as a genuine effort to address legitimate security concerns.

Notwithstanding the guarantees of freedom of speech and assembly enshrined in both the *Basic Law* and the SNSO, these principles are often observed only superficially. Any manifestation of dissent is harshly interpreted as incitement to revolution. Substantial prison sentences are enacted against individuals disseminating “disloyal” illustrated books for children, participating in pro-democracy anthems, or organising silent vigils in commemoration of the victims of Tiananmen Square.²⁶⁶

As the 1st of January 2025, 316 individuals have been arrested for “acts or activities suspected of endangering national security” since Beijing’s national security law was implemented. This figure includes arrests made under Article 23, officially the *Safeguarding National Security Ordinance*. Among those detained, 182 individuals and five companies have been charged, while 161 individuals and one company were convicted or are currently awaiting sentencing. Notably, 91 individuals and four companies have been charged under the national security law, resulting in 76 convictions. Furthermore, four individuals have faced charges under Article 23, three of whom have been convicted. The Security Bureau has declined to provide a comprehensive breakdown of these arrests, citing concerns that disclosing such information could involve “sensitive activities that pose a threat to national security”. This absence of transparency exacerbates an already dire situation, as it obstructs a complete understanding of the extent of the HKSAR Government’s suppression of dissent.

²⁶⁵ Petersen, Carole J. “Window Dressing or Meaningful Constraint? Assessing the Role of the International Covenant on Civil and Political Rights and the United Nations Human Rights Committee in Hong Kong’s Legal System.” *Hong Kong Law Journal*, vol. 52, no. 3, 2022, p 1055.

²⁶⁶ Sumption, Jonathan. “The Rule of Law in Hong Kong Is in Grave Danger.” *Financial Times*, 10 June 2024

Hong Kong, previously a vibrant and politically diverse society, is progressively transitioning towards a totalitarian regime. The rule of law is becoming increasingly compromised in any area the government firmly believes is a threat. This decline is reflected in the “growing malaise” among the judiciary, which operates under an exceedingly challenging political climate influenced by China.²⁶⁷

In the past decade, the democracy movement in Hong Kong has sought not merely to modify governmental policies but to transform societal structures fundamentally. It has aimed to enhance public awareness and educate citizens on opposing an autocratic and increasingly oppressive regime. The pro-democracy demonstrators have mounted the most prolonged and most formidable resistance against Chinese authoritarianism recorded to date. Their efforts have proven to be more sustained and systematic than those witnessed during the Tiananmen Square protests of 1989, displaying more remarkable ingenuity and adaptability than the Umbrella Movement of a few years prior. These demonstrations transcended social class divisions, mobilising millions of individuals. However, the movement ultimately encountered defeat due to the strategies employed by the Chinese authorities, which included mocking and undermining symbolic acts, discrediting charismatic leaders, utilising social media to disseminate false rumours and conspiracy theories, isolating and alienating individuals, severing connections among diverse social groups, eliminating influential exiles, and, above all, distorting the language surrounding human rights, freedom, and democracy. Under the pretext of national security laws, these essential concepts were misrepresented as evidence of treason and betrayal.²⁶⁸

The aftermath of the SNSO indicates that the broad and ambiguous provisions of Hong Kong’s national security laws have restricted freedom of expression and cultivated a climate of fear and self-censorship. This chilling effect transcends Hong Kong’s borders, serving as a cautionary tale for the international community regarding the potential repercussions of conflating dissent with subversion.

²⁶⁷ Ibidem

²⁶⁸ Applebaum, Anne. *Autocracy, Inc. – the Dictators Who Want to Run the World*. Random House, 2024, pp. 128-130.

The global significance of Hong Kong's experience cannot be overstated. In an era characterised by the rise of authoritarianism and democratic regression, governments, civil society, and international organisations must uphold the principles enshrined in human rights frameworks. The deterioration of freedoms in Hong Kong serves as a poignant reminder of the fragility of democracy and the vigilance necessary to safeguard it.

As evidenced by case studies on democratic backsliding, contemporary autocrats encounter significant challenges in imposing censorship. Instead, they prioritise appealing to the public by tapping into emotions of resentment, hatred, and the desire for superiority. Numerous autocratic leaders, notably those in China, have engaged in prolonged disputes over the language of human rights that international institutions have traditionally utilised. They have adeptly persuaded a substantial segment of the global populace that treaties and conventions on war and genocide, along with concepts such as “civil liberties” and “the rule of law”, are mere Western constructs that lack universal applicability.²⁶⁹

Autocratic leaders comprehend that the principles of transparency, accountability, justice, and democracy appeal to some of their citizens. These ideals challenge their authorities directly, facilitated by independent judges and juries who can hold them accountable, a free press capable of unveiling corruption, and a political system empowering citizens that may lead to regime change.

No democratic government should presume that arguments for democracy or the rule of law are self-evident. Authoritarian narratives, which depict dictatorship as stable and democracy as chaotic, are strategically crafted to diminish the innate appeal of these principles. Democratic media, civic organisations, and political leaders must proactively counter these narratives. They must make the case for domestic and international transparency, accountability, and liberty.

In order to preserve and promote democratic values, democracies must cultivate effective competition while staying true to their principles. This necessitates dismantling autocrats' monopoly on exploiting strong emotions and forging connections with audiences on issues that resonate profoundly with them. Most importantly, democracies must illustrate

²⁶⁹ Ivi, p 7

that the pursuit of truth culminates in tangible change. Journalists who expose corruption ought to collaborate with legal experts and advocates for sanctions to ensure that their investigative efforts result in accountability. Accurate and reliable information must catalyse positive transformation. The principle of truth must unequivocally lead to justice.²⁷⁰

Looking forward, the future of democracy appears uncertain. Although the present trajectory indicates a sustained increase in control, history has demonstrated that the resilience of civil society and the enduring appeal of democratic values can catalyse change. As Hong Kong navigates these tumultuous times, its struggle serves as both a cautionary tale and a call to action for those devoted to upholding the principles of freedom and justice in an increasingly polarised world.

²⁷⁰ Ivi, p 167

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