

VI. Developments in Hong Kong and Macau

Findings

- During the Commission’s reporting year, a number of deeply troubling developments in Hong Kong undermined the “one country, two systems” governance framework, which led the U.S. Secretary of State to find that Hong Kong has not maintained a high degree of autonomy for the first time since the handover in July 1997.
- On June 30, 2020, the National People’s Congress Standing Committee (NPCSC) passed the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law), bypassing Hong Kong’s Legislative Council. To the extent that this law criminalizes secession, subversion, terrorist activities, and collusion with foreign states, this piece of legislation violates Hong Kong’s Basic Law, which specifies that Hong Kong shall pass laws concerning national security. Additionally, the National Security Law raises human rights and rule of law concerns because it violates principles such as the presumption of innocence and because it contains vaguely defined criminal offenses that can be used to unduly restrict fundamental freedoms.
- The Liaison Office of the Central People’s Government in the Hong Kong Special Administrative Region (PRC Liaison Office) declared in April 2020 that neither it nor the Hong Kong and Macao Affairs Office, both being State Council agencies, were subject to Article 22 of the Basic Law—a provision designed to protect Hong Kong’s high degree of autonomy. The Hong Kong government had long interpreted the provision to cover the PRC Liaison Office, but it reversed itself overnight in an apparent attempt to conform its position to that of the central government. The PRC Liaison Office’s interpretation, to the extent that it is treated as binding, contravenes the Basic Law provision vesting the power of interpretation in the NPCSC.
- In March 2020, the Chinese government expelled journalists of three major U.S. news organizations and permanently prohibited them from reporting in China, further extending the ban to cover Hong Kong. This decision disregarded Hong Kong’s authority to exercise immigration control, thereby undermining Hong Kong’s high degree of autonomy. At the same time, the Hong Kong government denied entry to individuals who had been critical of the Chinese government, particularly of its human rights practices.
- Prompted by an extradition bill that could expose people in Hong Kong to arbitrary detention by Chinese authorities, Hong Kong residents held over 900 protests beginning in March 2019. While protesters who resorted to vandalism and violence remained in the minority, Hong Kong police employed crowd-control measures in ways that effectively denied the majority their right to participate in peaceful assemblies and processions. Police used excessive force and misused crowd-control projectiles and chemical irritants, but the government refused to form an independent investigative body and chose instead to

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let the police investigate themselves. Police on occasion refused to issue permits for assemblies or revoked such permits shortly after the scheduled start time, allowing them to make arrests under the charge of “unauthorized assembly.”

- Many protesters detained by police were denied the right to legal counsel, and some were abused while they were in custody. Several protesters who spent time in prison revealed that prison officials repeatedly abused them and other protesters; one inmate attempted suicide to escape torture.

- The Hong Kong government exhibited a pattern of selective enforcement when it emphatically prosecuted protesters and democracy advocates but did not match the same level of commitment when addressing misconduct by police and people hostile to protesters. For example, during the July 21, 2019, incident in which a mob attacked people at a subway station in Yuen Long, police arrived at the scene 45 minutes later despite numerous emergency calls and made no arrests. In contrast, police arrested many prominent democracy advocates for unauthorized assembly although they had not engaged in any violent acts.

- In Macau, police broke up a rally intended to show support for protesters in Hong Kong, and border officials denied entry to journalists entering Macau ahead of a visit by Chinese Communist Party General Secretary and President Xi Jinping.

Recommendations

Members of the U.S. Congress and Administration officials are encouraged to:

- Continue to advocate for Hong Kong pro-democracy advocates who have been charged, detained, or imprisoned for political reasons. Call on the Hong Kong government to drop all charges against **Joshua Wong Chi-fung, Agnes Chow Ting, Andy Chan Ho-tin, Althea Suen, Rick Hui, Cheng Chung-tai, Jeremy Tam Man-ho, Jimmy Lai, Lee Cheuk-yan, Yeung Sum, Martin Lee Chu-ming, Albert Ho Chun-yan, Margaret Ng Ngoi-yee, Sin Chung-kai, Leung Kwok-hung, Au Nok-hin, Cyd Ho Sau-lan, Figo Chan Ho-wun, Raphael Wong Ho-ming, Avery Ng Man-yuen, and Richard Tsoi Yiu-cheong.**

- Urge Hong Kong government officials to establish a genuinely independent entity to investigate allegations of police brutality and other misconduct and abide by the recommendations of such entity.

- Urge the Chinese and Hong Kong governments to restart the electoral reform process and work toward implementing Chief Executive and Legislative Council elections by universal suffrage, in accordance with Articles 45 and 68 of the Basic Law and Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

- Call on the Chinese and Macau governments to set a timeline for implementing elections in Macau for Chief Executive and the Legislative Assembly by universal suffrage, as required under Article 25 of the ICCPR.

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- Pass legislation to provide refugee status or parole for Hong Kong pro-democracy advocates based on the most appropriate provisions included in the Hong Kong Safe Harbor Act (H.R. 7415/S. 4110) and the Hong Kong People's Freedom and Choice Act (H.R. 8428/S. 4229).

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Hong Kong's Autonomy: Legal Framework and China's Position

The Hong Kong Special Administrative Region (SAR) was established on July 1, 1997, when the United Kingdom restored Hong Kong to China pursuant to the 1984 Sino-British Joint Declaration (Joint Declaration).¹ At the same time, the Basic Law of the Hong Kong Special Administrative Region (Basic Law) became effective.² Under the Basic Law, Hong Kong may “exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power” except in foreign affairs and defense.³ According to “the principle of ‘one country, two systems,’ the socialist system and policies shall not be practised in [Hong Kong].”⁴ Beginning in 2014, Chinese authorities—while continuing to restate the “one country, two systems” principle—have asserted a full right of governance (*quanmian guan zhi quan*) over Hong Kong and have unilaterally declared the Joint Declaration to have been void since the handover.⁵

Official Actions Affecting Hong Kong's Autonomy

National People's Congress Standing Committee Passed National Security Law, Bypassing Hong Kong's Legislature

On June 30, 2020, the National People's Congress Standing Committee (NPCSC) unanimously passed the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law), effective on the same day.⁶ To be incorporated in Annex III of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong's Basic Law),⁷ the new law is designed to “safeguard national security” and criminalizes “secession,” “subversion,” “terrorist activities,” and “collusion with a foreign country or with external elements to endanger national security.”⁸ The law requires Hong Kong's Chief Executive to handpick judges in national security cases,⁹ confers jurisdiction to the central government under some circumstances,¹⁰ and orders the Hong Kong government to “strengthen propaganda, guidance, supervision, and administration” over “schools, social groups, media, and the internet.”¹¹

Given the nature of the conduct being prohibited, the National Security Law violates Hong Kong's Basic Law. Article 18 of the Basic Law provides that laws includable in Annex III are “confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.”¹² Article 23 in turn specifies that “[Hong Kong] shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government . . .”¹³ Furthermore, the NPCSC reserved to itself exclusive jurisdiction to interpret the National Security Law,¹⁴ which is inconsistent with Articles 19 and 158 of the Basic Law granting Hong Kong courts the authority to adjudicate cases and interpret the Basic Law within the limits of Hong Kong's autonomy.¹⁵

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National People's Congress Standing Committee Passed National Security Law, Bypassing Hong Kong's Legislature—Continued

After passage of the law, political groups including Demosistō, Hong Kong National Front, and Studentlocalism, announced their decisions to disband.¹⁶ In discussing the new law, Joshua Wong of Demosistō, who has testified at a hearing held by the U.S. Congressional-Executive Commission on China, expressed concern over lengthy prison terms and the possibility of extradition to mainland China.¹⁷

The National Security Law was enacted one day before July 1, the anniversary of the handover of Hong Kong when, each year, large numbers of Hong Kong residents join marches demanding political reform and universal suffrage.¹⁸ This year, however, Hong Kong police denied applications filed by social groups to hold marches, citing the possibility of violence and public health concerns relating to the coronavirus disease 2019 (COVID-19) pandemic.¹⁹ Despite the denials, Hong Kong residents joined marches on July 1, 2020, but the number of participants dropped significantly compared to prior years.²⁰ Among the approximately 370 people arrested that day, 10 were charged under the National Security Law.²¹

Drafted behind closed doors, the National Security Law employs vague terms and may be used to unduly restrict fundamental freedoms, according to some analyses.²² Specific provisions raising human rights and rule of law concerns include the following:

- The law establishes the Hong Kong SAR National Security Protection Commission, which is supervised by the central government and is not subject to checks by any Hong Kong government agency or judicial review.²³
- The law specifies that the PRC Office for Safeguarding National Security is supervised by the central government, and it further deprives the Hong Kong government of jurisdiction over them.²⁴ These provisions place the PRC Office for Safeguarding National Security outside the scope of Article 22 of the Basic Law, which requires central government officials to abide by the laws of Hong Kong.²⁵
- Article 42 of the National Security Law—which prohibits bail unless the judge is satisfied that the defendant will not continue to commit offending acts—presumes the defendant's guilt and is inconsistent with the presumption of innocence principle.²⁶
- The definition of “subversion” includes a catch-all category of “any unlawful means” used to subvert the state's power by “seriously interfering in, disrupting, or undermining” the performance of duties by the central government or the Hong Kong SAR government.²⁷ The central government has a long track record of punishing individuals for advocating human rights and democracy under “subversion” charges.²⁸
- The definition of “terrorist activities” includes a broad description of “other dangerous activities which seriously jeopardise public health, safety or security,” which can be extended to prohibit public gatherings.²⁹

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National People's Congress Standing Committee Passed National Security Law, Bypassing Hong Kong's Legislature—Continued

- The offense of “collusion with a foreign country or with external elements to endanger national security” can adversely impact non-governmental organizations that directly or indirectly receive funding from foreign sources.³⁰ Before the National Security Law was enacted, the central government arrested at least two individuals on allegations of funding protests in Hong Kong in November 2019.³¹
- The law is applicable to people who are not Hong Kong residents, as well as to any conduct having an impact in Hong Kong even if it took place outside of Hong Kong.³² Amnesty International expressed concerns over the expansive application of the provision: “This means anyone on Earth, regardless of nationality or location, can technically be deemed to have violated this law and face arrest and prosecution if they are in a Chinese jurisdiction, even for transit.”³³
- Cases in which the central government exercises jurisdiction are subject to the PRC Criminal Procedure Law,³⁴ which provides for a form of detention known as “residential surveillance at a designated location” (RSDL) applicable to crimes involving “endangering state security” and “terrorism.”³⁵ The UN Committee against Torture observed that this form of detention “may amount to incommunicado detention in secret places, putting detainees at a high risk of torture or ill-treatment,”³⁶ and multiple individuals have suffered abuse while being detained under RSDL.³⁷

CENTRAL GOVERNMENT OFFICES ASSERTED SUPERVISORY AUTHORITY OVER HONG KONG AFFAIRS

The Hong Kong government declared that a Chinese government office was not bound by a provision in the Basic Law that prohibited it from interfering in Hong Kong affairs, essentially reversing its longstanding position on this issue. In a statement issued on April 19, 2020, the Hong Kong government reversed its longstanding position that the Liaison Office of the Central People's Government in Hong Kong (PRC Liaison Office) was bound by Article 22 of the Basic Law, which prohibits all departments of the central government from interfering in Hong Kong affairs.³⁸ The statement was issued shortly after a PRC Liaison Office spokesperson said that neither the PRC Liaison Office nor the Hong Kong and Macao Affairs Office were subject to Article 22; the spokesperson declared that the two offices had supervisory authority because they were specifically tasked with handling Hong Kong affairs.³⁹ However, official documents describing the duties of the two offices do not indicate that they had supervisory authority.⁴⁰ Twenty-two Legislative Council members criticized the Hong Kong government for having given in to the PRC Liaison Office's distorted interpretation of the Basic Law.⁴¹ The Hong Kong Bar Association likewise explained that nothing in the Basic Law supports the interpretation that the two offices had supervisory authority to interfere in Hong Kong affairs.⁴²

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JOURNALISTS BANNED FROM REPORTING IN HONG KONG

The Chinese government's journalist ban that extended to Hong Kong and Macau directly infringed on Hong Kong's autonomy. In March 2020, the Chinese government ordered journalists from three U.S. news organizations working in China to surrender their press cards within 10 days and permanently banned them from reporting in China, including Hong Kong and Macau.⁴³ The announcement said the measure was retaliation of equal force against the United States' restrictions on Chinese journalists.⁴⁴ Earlier in March, the U.S. Government limited the number of Chinese staff working for five state- or Chinese Communist Party-run media organizations in the United States.⁴⁵

Following the order, the Hong Kong Journalists Association issued a statement noting that "[i]mmigration control falls within the scope of [Hong Kong's] autonomy" and that restricting "normal reporting activities of foreign media . . . will raise doubts about whether Hong Kong is still a free and open society."⁴⁶ The Foreign Correspondents' Club (FCC) of Hong Kong likewise issued an open letter and a statement asking whether Hong Kong's immigration department was acting under the central government's guidance when issuing journalist visas, and saying that "China is overtly [attempting] to influence overseas news coverage . . ."⁴⁷ The Office of the Commissioner of the Ministry of Foreign Affairs in Hong Kong dismissed the FCC's statements as "irresponsible talk" and asked it to "study the Basic Law."⁴⁸ [For more information on press freedom in China, see Section II—Freedom of Expression.]

POLITICAL PRESSURE ON THE JUDICIARY

In November 2019, Chinese officials publicly criticized a Hong Kong SAR High Court decision, prompting concerns over loss of judicial independence. At issue in the court decision was an October 2019 regulation made by the Hong Kong government "to ban the use of facial covering in public meetings and processions" on "public danger grounds" in light of recent protests.⁴⁹ A group of Legislative Council (LegCo) members sought judicial review of the ban's constitutionality and its authorizing legislation, the Emergency Regulations Ordinance (ERO).⁵⁰ In November 2019, the High Court found that the relevant part of the ERO was incompatible with the Basic Law because it had the effect of conferring on the Hong Kong government legislative power, a function that the Basic Law reserves for the Legislative Council.⁵¹

One day after the judgment was issued, both the Commission for Legislative Affairs of the National People's Congress Standing Committee (NPCSC) and the Hong Kong and Macao Affairs Office criticized the court judgment, with the former saying that the NPCSC had exclusive jurisdiction over questions of constitutionality of Hong Kong ordinances,⁵² and the latter calling it "a blatant challenge of the NPCSC's authority and the Chief Executive's lawful power to govern."⁵³ Later in April 2020, when the Court of Appeal reversed the High Court's judgment and affirmed the Chief Executive's rulemaking authority,⁵⁴ the Hong Kong and Macao Affairs Office expressed support and did not contest the court's jurisdiction.⁵⁵

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The Hong Kong Bar Association disagreed with the conclusion made by the NPCSC Commission for Legislative Affairs, explaining that Article 160 of the Basic Law provides that laws found to be unconstitutional “shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.”⁵⁶ It further pointed out that Hong Kong courts are granted independent judicial power and final adjudication power under Articles 19 and 85 of the Basic Law.⁵⁷ Legal expert Martin Lee, who participated in the drafting of the Basic Law,⁵⁸ interpreted the Chinese government’s reaction as an express intention to remove judicial independence from Hong Kong, and former LegCo member Albert Ho pointed out that in a previous court case, the Chinese government did not contest Hong Kong courts’ jurisdiction when the outcome was consistent with its interests, calling into question whether Hong Kong continues to have judicial independence.⁵⁹

In April 2020, Chief Justice of the Court of Final Appeal Geoffrey Ma issued a statement saying that he “[had] not at any stage encountered or experienced any form of interference by mainland authorities with judicial independence in Hong Kong, including the appointment of judges.”⁶⁰ Previously, Reuters reported that while Chinese judges and officials did not meddle in individual cases in Hong Kong, they “constantly [sought] to push Beijing’s ‘patriotic’ agenda by stressing the importance of the judiciary in defending China’s sovereignty and national security.”⁶¹

CRITICS OF CHINESE AUTHORITIES DENIED ENTRY TO HONG KONG

Hong Kong authorities denied at least three individuals entry to Hong Kong, apparently based on their critical speech about the Chinese government and Party. They were photographer and academic **Dan Garrett**, who testified at a hearing held by the Commission concerning diminishing autonomy and decreasing freedoms in Hong Kong;⁶² journalist **Michael Yon**, who openly supported the protesters and had criticized the Chinese Communist Party;⁶³ and executive director of Human Rights Watch **Kenneth Roth**, who planned to launch a report containing critical comments about China’s human rights practices.⁶⁴ Human Rights Watch was one of five non-governmental organizations subjected to unspecified sanctions announced by the PRC Ministry of Foreign Affairs in December 2019 as retaliation against the passage of the Hong Kong Human Rights and Democracy Act of 2019 by the U.S. Congress.⁶⁵ One scholar observed that the exclusion of critics indicated that the Hong Kong government was more inclined to follow central authorities’ instructions than to preserve its autonomy.⁶⁶

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Arbitrary Detention by Chinese Authorities

Two recent examples of arbitrary detention deepened concern about Chinese authorities' ability to seize individuals on Hong Kong soil and their propensity to punish activities carried out in Hong Kong.

Simon Cheng: On August 8, 2019, Chinese officials took Simon Cheng Man-kit into custody in Hong Kong and detained him in mainland China for 15 days.⁶⁷ A UK consulate employee, Cheng was returning to Hong Kong from a business trip to mainland China using the Guangzhou-Shenzhen-Hong Kong Express Rail Link.⁶⁸ He was stopped at the West Kowloon high-speed rail link station,⁶⁹ which is physically located in Hong Kong but has a designated section within which mainland law enforcement can operate under a relatively new "co-location" arrangement.⁷⁰

Chinese officials transported Cheng to Shenzhen municipality, Guangdong province, and detained him at various detention facilities.⁷¹ They reportedly tortured Cheng and interrogated him about the UK's role in the Hong Kong protests,⁷² releasing him on August 24 after he recorded a "confession" admitting to soliciting prostitution.⁷³

Gui Minhai: On February 24, 2020, the Ningbo Municipal Intermediate People's Court in Zhejiang province sentenced Swedish citizen Gui Minhai to 10 years in prison for "illegally providing intelligence abroad."⁷⁴ At a press conference, a spokesperson for the PRC Ministry of Foreign Affairs did not describe or outline the nature of the intelligence that Gui allegedly leaked.⁷⁵ Gui, whose detention began when he was abducted from a vacation home in Thailand in October 2015, was one of five individuals who owned a bookstore in Hong Kong and had "published books critical of the Chinese leadership."⁷⁶ Amnesty International observed that Gui's case had a "chilling effect on the climate for freedom of expression and publishing in Hong Kong . . ."⁷⁷

Ongoing Protests

Prompted by the introduction of an extradition bill⁷⁸ that could compromise the rule of law in Hong Kong and subject people to arbitrary detention by Chinese authorities,⁷⁹ a series of large-scale protests took place in Hong Kong beginning in late March 2019.⁸⁰ According to one count, there were at least 973 protests between June 2019 and February 2020.⁸¹ The largely leaderless movement initially asked for the extradition bill's withdrawal, but as the movement grew in size and as clashes with police escalated around June,⁸² protesters broadened their demands to cover other issues including universal suffrage and investigation into police misconduct.⁸³ The Hong Kong government eventually withdrew the bill in October 2019,⁸⁴ but protesters continued to call for democracy and freedom.⁸⁵ The frequency and intensity of the protests eased in December 2019 and January 2020, following a successful District Council election by the pan-democracy camp in November 2019, which has been sympathetic to the protests.⁸⁶ Beginning in February 2020, as smaller scale protests continued to demand political reform,⁸⁷ some protests were directed against the government's public health policies during the COVID-19 outbreak.⁸⁸ Larger scale protests involving thousands of people resumed in May 2020, as Hong Kong residents reacted to the National People's

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Congress's resolution to impose national security laws on Hong Kong.⁸⁹

While most protesters adhered to the “peaceful, rational and non-violent” principle,⁹⁰ some of them resorted to vandalism and violence.⁹¹ The police's handling of the protests and the government's response to complaints of police misconduct have given rise to a number of human rights and rule of law issues; they will be discussed in more detail below.

Police Misconduct

TORTURE AND USE OF EXCESSIVE FORCE

Actions of the Hong Kong Police Force this past year repeatedly violated international standards on the use of force. While Hong Kong police cited protesters' violent confrontations as justification for using force,⁹² some officers reportedly “attempted to incite violent reactions from the crowd.”⁹³ Observers have described the police's use of force as excessive,⁹⁴ with Amnesty International documenting some cases involving custodial abuses that amounted to torture.⁹⁵ The UN Office of the High Commissioner for Human Rights likewise observed that the police's actions may not conform to international standards.⁹⁶ International standards provide that police should use force only when necessary and to the extent required to achieve a legitimate objective.⁹⁷ Below are some examples of excessive use of force by police:⁹⁸

- On August 31, 2019, police raided the Prince Edward Subway Station in a manner that some legal professionals described as indiscriminate and unnecessary.⁹⁹ The subway corporation, a public company with minority private investors,¹⁰⁰ refused to release the full closed-circuit video footage covering the incident,¹⁰¹ highlighting the fact that the Hong Kong legal system did not recognize an enforceable right to access information, a possible violation of Article 19 of the International Covenant on Civil and Political Rights (ICCPR).¹⁰²
- On September 21, 2019, video footage showed a man lying on the ground being kicked by one of the over 20 police officers surrounding him.¹⁰³ The victim, charged with assaulting a police officer, was later identified as a member of the “Protect the Children” volunteer group that aimed to deescalate clashes between police and protesters.¹⁰⁴
- The first injury by a live round occurred one day after amended police guidelines took effect removing the advisement that officers would be held accountable for their actions.¹⁰⁵ On October 1, 2019, a police officer shot an 18-year-old at close range without prior warning.¹⁰⁶ The teenager was holding a pool kickboard as a shield and a white pipe when he and other protesters were clashing with the police.¹⁰⁷ A video clip showed that when officers were gathering around the fallen teenager, one officer handed a longer and darker pipe to another officer, who took it and held it with the pool kickboard, leading to speculation of evidence planting.¹⁰⁸
- On November 11, 2019, a police officer who was dispersing a crowd at an intersection shot and critically injured an un-

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armed man without giving any warning.¹⁰⁹ Between June and November, police fired a total of 19 live rounds.¹¹⁰

- Throughout the protests, police beat unarmed protesters, journalists, and residents, which included direct hits to the head with batons, a violation of police guidelines.¹¹¹

- Multiple reports of torture emerged this past year. Amnesty International reported that police in one case forced open a detainee's eye and shined a laser pen into it; in another case, police beat up a detainee in a police station "severely enough that the person was hospitalized for several days."¹¹²

- In an interview released in May 2020, several protesters who were previously imprisoned recounted their experience of being abused by prison officials, which included being beaten, slapped, and ordered to assume stress positions.¹¹³ One of them told of an event in which a protester attempted suicide to escape torture and was slapped by a prison official after he was stopped.¹¹⁴

- The Commission also observed instances of police misconduct in settings unrelated to the protests. In June 2019, three officers tied an elderly man to a stretcher in a hospital room and subjected him to over 20 minutes of abuse that caused a broken finger, bruises, and pain in his groin.¹¹⁵

- In September 2019, four police officers reportedly gang-raped a teenage girl and caused her to become pregnant.¹¹⁶ According to her lawyers, police sought to seize her private medical records and released supposed details of the investigation, along with adverse comments on the evidence, intended to discredit her.¹¹⁷

MISUSE OF CROWD-CONTROL PROJECTILES

During the protests, police misused crowd-control projectiles and chemical irritants in ways that caused unnecessary injuries and environmental and health hazards. Between June and December 2019, police fired approximately 16,000 tear gas canisters, 10,000 rubber bullets, 2,000 bean bag rounds, and 1,850 sponge grenades.¹¹⁸ These crowd-control projectiles can kill or cause serious injury if used incorrectly.¹¹⁹ A UN guideline requires that officials be held accountable for their decision to use force and provides that crowd-control weapons be used only as a last resort while taking care to distinguish violent individuals from other assembly participants.¹²⁰ Examples of misuse of crowd-control projectiles include the following:

- On August 11, 2019, a bean bag-looking projectile hit a paramedic in the face, rupturing her eye and shattering her eye socket.¹²¹ The police disputed the origin of the projectile and obtained the woman's medical records over her objections due to privacy concerns.¹²² There was no indication that the woman was engaging in violent acts.

- On September 8, 2019, an officer threw a tear gas canister at a journalist wearing a press vest, hitting the journalist's helmet.¹²³ Video footage documenting the incident did not show the journalist or anyone in the vicinity engaging in violent acts.¹²⁴ In a similar incident on October 20, 2019, an officer threw a tear gas canister at a group of journalists and imme-

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diately left the scene in a police vehicle.¹²⁵ The canister exploded a few feet above the journalists, who did not show any sign of aggression.¹²⁶ An engineer explained that the explosion from a tear gas canister can reach a temperature high enough to damage concrete.¹²⁷

- On September 29, 2019, police fired a rubber bullet at an Indonesian journalist wearing a press helmet, permanently blinding her.¹²⁸ The video footage documenting the incident did not show the journalist or people around her engaging in violent acts.¹²⁹

Besides the possibility of causing physical harm, the misuse or mishandling of chemical irritants can lead to public health hazards. Despite public concerns about potential long-term health issues, Hong Kong police repeatedly declined to disclose the chemical composition of the tear gas that they used.¹³⁰ In January 2020, two UN special rapporteurs wrote an open letter stating that they “have reasons to believe that tear gas, pepper spray and other chemical agents have been used indiscriminately, unnecessarily and disproportionately,” also citing reports indicating that the use of chemical agents in densely populated urban areas had “significantly affected the health and wellbeing of the population and especially vulnerable groups, including children, infants, the elderly in care homes and hospitalized persons.”¹³¹

MISTREATMENT OF MEDICAL PROFESSIONALS

Between November 11 and November 29, 2019, protesters’ calls for a general strike developed into the occupation of multiple university campuses.¹³² During the confrontations, Hong Kong police fired thousands of tear gas canisters, rubber bullets, bean bag rounds, and sponge grenades, while protesters responded with Molotov cocktails, bricks, and in some cases bows and arrows.¹³³

Protesters began to occupy the Polytechnic University on November 13.¹³⁴ Police warned that anyone who remained on the campus would be charged with rioting (a crime carrying a maximum sentence of 10 years in prison)¹³⁵ unless they left the campus through a designated exit.¹³⁶ Police also arrested those who complied with the order to leave.¹³⁷

Among those arrested were doctors, nurses, and paramedics wearing high-visibility outfits.¹³⁸ Police held them for over 24 hours, citing a need to verify their professional credentials, but all doctors were confirmed to have been carrying their medical council registration details and identity cards.¹³⁹ A professor said that the Hong Kong police’s detention of medical professionals constituted a violation of people’s right to receive immediate medical attention.¹⁴⁰ A doctor likewise noted that the police’s actions fell “far below accepted international norms for the handling of volunteer emergency medical providers.”¹⁴¹

In February 2020, four UN special rapporteurs issued a letter expressing concern over this and other instances of mistreatment of healthcare workers, including impersonating first-aiders in order to arrest injured protesters, using special codes at public hospitals to track individuals, and transporting personnel and equipment in ambulances, exploiting the goodwill of protesters who allowed these vehicles to pass through the crowds.¹⁴²

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HOSTILITY TOWARD JOURNALISTS

Hong Kong police displayed sustained and targeted efforts to undermine the press throughout the protests. To disrupt news reporting, police shined high-powered strobe flashlights at photo- and videographers, pushed journalists away during arrest, detained them,¹⁴³ and used other tactics of intimidation such as the following:

- In October 2019, after a driver of Now News fell to the ground after being hit by a projectile, a group of police officers, having been told the driver's occupation, brought him to the police station for two hours, during which they beat him on the head and limbs using batons, fracturing his jaw and causing other injuries.¹⁴⁴
- During two December 2019 clashes with protesters, police dispersed reporters at the scene, pepper spraying, beating, and arresting some of them.¹⁴⁵ The Hong Kong Journalists Association condemned the police's assaults on members of the press and demanded disciplinary action by the Hong Kong government.¹⁴⁶
- In two incidents in December 2019 and January 2020, police demanded and took the identification cards of Stand News reporters who were broadcasting live with their cellphones.¹⁴⁷ The officers then displayed the identification cards in front of the camera in an apparent attempt to prevent them from broadcasting.¹⁴⁸

Disqualification of Candidate in Election

While Hong Kong residents were able to participate in a citywide election despite ongoing civil unrest, authorities disqualified one candidate for possible political reasons in violation of the principle of equal participation in political and public affairs.¹⁴⁹ In October 2019, the Electoral Affairs Commission demanded that five candidates in the District Council election clarify their political stance.¹⁵⁰ The commission ultimately disqualified one of them, Joshua Wong, on the grounds that he had not genuinely abandoned advocacy for Hong Kong's independence despite his statements to the contrary.¹⁵¹ Wong argued that the disqualification was politically motivated and sought judicial review of the decision, asserting that authorities had violated his freedom of speech and the right to stand for election.¹⁵²

The District Council election,¹⁵³ widely viewed as a referendum on the ongoing protests, concluded in November 2019, with candidates supportive of the protests winning 87 percent of the 452 total contested seats.¹⁵⁴

Violation of Procedural Rights of Detainees

Reports emerged that police had violated protesters' due process rights. Between June 9, 2019, and February 29, 2020, Hong Kong police arrested 7,613 persons, of which 52 were convicted, 512 were unconditionally released, and, as of April 2020, 5,860 continued to be under investigation.¹⁵⁵ Lawyers reported that police had obstructed detainees from seeking legal counsel.¹⁵⁶ A detainee said

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that police held him in a parking lot without booking him and later transferred him to another police station, preventing his lawyer from locating him.¹⁵⁷ According to another account, police required a detainee to take a photograph with protest gear on as a condition for a lawyer meeting, although some of the gear did not belong to the detainee.¹⁵⁸ Many detainees reportedly provided statements or agreed to have their homes searched without having first talked to a lawyer.¹⁵⁹

Lack of Effective Investigation Into Police Misconduct

The existing institution that receives complaints of police misconduct reportedly is inadequate, but the government rejected reform proposals. Complaints about Hong Kong police are internally handled by the Complaints and Internal Investigations Branch (C&IIB), subject to review by the Independent Police Complaints Council (IPCC), whose members are appointed by the Hong Kong Chief Executive.¹⁶⁰ In August 2019, the IPCC formed the five-member International Expert Panel (IEP) to assess and make recommendations on allegations of police misconduct during the protests.¹⁶¹ In December, however, the IEP decided to “stand aside from its role,” after it sought unsuccessfully to broaden the scope of the IPCC’s power in order to “establish a coherent and representative body of evidence.”¹⁶² Some observers more specifically cited the IPCC’s biased composition and its lack of power to summon witnesses and carry out investigations.¹⁶³ Hong Kong residents’ ability to hold police accountable is further frustrated by police officers’ refusal to display identifying numbers or present warrant cards upon request,¹⁶⁴ in violation of Police General Orders.¹⁶⁵

Different sectors of Hong Kong society called for the establishment of a Commission of Inquiry (COI),¹⁶⁶ a statutory body empowered to compel testimony and documents in the course of its investigation.¹⁶⁷ Chief Executive Carrie Lam, however, rejected the idea, saying she did not feel the need to “subject [Hong Kong police] to another sort of investigation” given the existing mechanisms.¹⁶⁸

The IPCC, after reviewing the police’s handling of the protests, released a report in May 2020 recommending improvements to police guidelines for the use of force and tear gas, but it found no serious wrongdoing by police.¹⁶⁹ However, the Washington Post noted that such findings were inconsistent with significant evidence to the contrary, and the Wall Street Journal observed that the report did not “include substantial statements from witnesses or participants.”¹⁷⁰

Selective Enforcement

The Hong Kong government prosecuted protesters and democracy advocates with diligence but did not match the same level of commitment when addressing misconduct by police and people hostile to protesters.¹⁷¹

- According to a New York-based writer, as of November 2019, “[t]he only office facing consequences thus far is one who . . . repeatedly drove a motorcycle into a small crowd of protesters,” although a volunteer group had documented hundreds of alleged cases of police using excessive force, improperly using

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weapons, and engaging in other kinds of misconduct in connection with the protests.¹⁷²

- On July 21, 2019, a mob armed with wooden poles, rattan sticks, and metal pipes attacked people at the Yuen Long MTR subway station.¹⁷³ Some reports described the attack as indiscriminate, but others said it was targeted at people in black outfits, a color chosen by protesters to show unity and determination.¹⁷⁴ The attack resulted in 45 people needing hospital treatment.¹⁷⁵ Police officers did not arrive on scene until around 45 minutes after the attack, despite numerous emergency calls, and did not make any arrests, which prompted accusations of police apathy and collusion with the attackers.¹⁷⁶ In reviewing the incident, the IPCC in May 2020 described the attack as one that “actually started off as a gang fight” and faulted the police for not having better managed public perception.¹⁷⁷

- Hong Kong police targeted prominent participants or supporters of the pro-democracy protests.¹⁷⁸ Within a 24-hour period in August 2019, police arrested a number of democracy advocates, including **Joshua Wong Chi-fung, Agnes Chow Ting, Andy Chan Ho-tin, Althea Suen, Rick Hui, Cheng Chung-tai, Au Nok-hin, and Jeremy Tam Man-ho** in connection with their participation in the ongoing protests.¹⁷⁹ Au and Tam said their arrests were politically motivated and were intended to deter protesters.¹⁸⁰ Chinese official news outlets covering the arrests of Wong, Chan, and Chow described them as “Hong Kong independence” organization leaders,¹⁸¹ a characterization that Wong and his group denied.¹⁸²

- In February 2020, police arrested newspaper founder **Jimmy Lai**, and democracy advocates **Lee Cheuk-yan** and **Yeung Sum** for participating in an unauthorized assembly in August 2019, additionally charging Lai with “criminal intimidation” based on a 2017 verbal altercation in which Lai used foul language.¹⁸³

- In April 2020, police arrested 15 democracy advocates for organizing and participating in “unauthorized assembly” in August and October 2019: **Jimmy Lai, Lee Cheuk-yan, Yeung Sum, Martin Lee Chu-ming, Albert Ho Chun-yan, Margaret Ng Ngoi-yee, Sin Chung-kai, Leung Kwok-hung, Au Nok-hin, Cyd Ho Sau-lan, Figo Chan Ho-wun, Raphael Wong Ho-ming, Avery Ng Man-yuen, Richard Tsoi Yiu-cheong, and Leung Yiu-chung.**¹⁸⁴ United Kingdom-based rights monitor group Hong Kong Watch called the arrests politically motivated and observed that arbitrarily declaring protests as unlawful would constitute a breach of human rights.¹⁸⁵

- Police arrested District Councillor and pro-democracy politician **Cheng Lai-king** on suspicion of “sedition” in March 2020 after she forwarded a social media post calling for retribution that contained the name and identification number of an officer said to have shot and blinded an Indonesian journalist in one eye.¹⁸⁶ The United Nations previously expressed concerns over the broadly defined offense of sedition, and Cheng’s col-

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leagues called the arrest a retaliation against those who monitor police misconduct.¹⁸⁷

- In May 2020, a police officer posted an Apple Daily journalist's photograph on social media despite a court injunction enjoining the disclosure of personal information including photographs of the newspaper's employees.¹⁸⁸ As of June 2020, the Commission had not observed any reports that the police had taken any action against the police officer involved. The journalist was part of a team responsible for exposing the officer's possible unlawful use of her apartment.¹⁸⁹ Days earlier in April, police arrested two Next Magazine reporters for loitering when they were covering the story near the property.¹⁹⁰ **Jimmy Lai** is the majority owner of the company that publishes Next Magazine and Apple Daily.¹⁹¹

Labor Abuse

During the COVID-19 outbreak, Correctional Services Industries (CSI) of the Hong Kong SAR government reportedly used coercive and discriminatory means to facilitate increased face mask production. Beginning in February 2020, the CSI began an around-the-clock face mask production operation, extending the regular five-hour work shift by three hours and adding two shifts, including an overnight shift.¹⁹² Officials ignored expressed health concerns raised by inmates working overnight shifts and tended to give undesirable assignments to older inmates, those who did not speak Cantonese or Mandarin, and those from countries with a weaker diplomatic presence in Hong Kong.¹⁹³ Officials threatened inmates who declined their request with assignment to more physically demanding duties or with solitary confinement.¹⁹⁴

Macau

Macau's Basic Law guarantees a "high degree of autonomy" and protects internationally recognized rights and freedoms,¹⁹⁵ including the right "to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage . . ." The Commission did not observe progress toward universal suffrage during the 2020 reporting year. The sole candidate, Ho Iat-seng, was elected Macau's Chief Executive (CE) on August 25, 2019, having received 392 out of 400 possible votes from CE Election Committee members, many of whom were considered to be supporters of the central government.¹⁹⁶ Two weeks before he was elected, Ho met with a group of democracy advocates, saying that "universal suffrage [would] not be ruled out in his tenure" but "perhaps political reform would be proposed or initiated by the younger generations."¹⁹⁷ The meeting took place shortly after the group launched an informal poll, in response to which 94 percent of 5,698 Macau residents surveyed said the CE should be elected by universal suffrage.¹⁹⁸ The poll was cut short after the group's members endured insults, physical attacks, and threats from unknown individuals, and their website experienced unspecified abnormalities.¹⁹⁹ Other incidents of concern include the following:

- In August 2019, police broke up a rally intended to show support for the ongoing protests in Hong Kong, searching doz-

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ens of people and detaining seven.²⁰⁰ Citing security concerns, police previously had denied permission for the gathering, a move that the South China Morning Post characterized as rare.²⁰¹

- In December 2019, ahead of Chinese President and Communist Party General Secretary Xi Jinping’s visit to Macau, Radio Free Asia reported that many journalists had been harassed by unknown people believed to be from mainland China.²⁰² Some journalists were asked by their superiors to leave Macau.²⁰³ Some were warned that their families’ safety would be jeopardized if they were “reckless” in their reporting.²⁰⁴

- Also ahead of Xi’s December visit, border officials separately denied entry to at least two business representatives, five journalists, and six activists, citing “internal security” as grounds for denial.²⁰⁵ The Macau Portuguese and English Press Association called on the Macau government to respect press freedom.²⁰⁶

- In May 2020, the Municipal Affairs Bureau revoked authorization for a photo exhibition commemorating the violent suppression of the 1989 Tiananmen protests, departing from its past practice of authorizing the exhibition every year.²⁰⁷

- The South China Morning Post published an investigative report this past year documenting commercial establishments providing sex services.²⁰⁸ Some of the employees came from economically impoverished areas of China under the belief that they would find jobs other than sex work.²⁰⁹ Macau authorities reportedly investigated only a few sex trafficking cases in 2017.²¹⁰ [For more information on human trafficking in China, see Section II—Human Trafficking.]

Notes to Section VI—Developments in Hong Kong and Macau

¹Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, adopted December 19, 1984, items 1–3.

²Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, passed April 4, 1990, effective July 1, 1997.

³*Ibid.*, arts. 2, 12, 13, 18.

⁴*Ibid.*, preamble, art. 5.

⁵House of Commons, “Oral Answers to Questions,” United Kingdom Parliament, vol. 589, part 72, col. 164, December 2, 2014; State Council Information Office, “‘Yi Guo Liang Zhi’ zai Xianggang Tebie Xingzhengqu de shijian” [The Practice of the “One Country, Two Systems” Policy in the Hong Kong Special Administrative Region], June 2014; Cao Siqi and Yang Sheng, “Central Govt Stresses Full Governance over Hong Kong,” *Global Times*, November 2, 2019; Ministry of Foreign Affairs, “2017 nian 6 yue 30 ri Waijiaobu fayanren Lu Kang zhuchi lixing jizhehui” [Ministry of Foreign Affairs Lu Kang holds regular press conference, June 30, 2017], June 30, 2017.

⁶“Quanguo Renda Changweihui tongguo Xianggang Tebie Xingzhengqu Weihu Guojia Anquan Fa bing jue ding lieru Xianggang Jiben Fa Fujian San” [National People's Congress Standing Committee passes Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region and decides to incorporate it in Annex III of Hong Kong's Basic Law], *Xinhua*, June 30, 2020; “Shisan jie Quanguo Renda Changweihui di ershi ci huiyi biao jue tongguo Xianggang Tebie Xingzhengqu Weihu Guojia Anquan Fa Xi Jinping qianshu zhuxi ling yuyi gongbu” [Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region voted on and passed at the 20th meeting of the 13th NPC Standing Committee; Xi Jinping signs presidential order for publication], *Xinhua*, June 30, 2020; “Promulgation of National Law 2020,” L.N. 136 of 2020, *Gazette*, June 30, 2020.

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⁸*Zhonghua Renmin Gongheguo Xianggang Tebie Xingzhengqu Weihu Guojia Anquan Fa* [Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region], passed and effective June 30, 2020, arts. 20–30. The prohibition on “separatism” in articles 20 and 21 has been translated elsewhere as “secession.”

⁹*Zhonghua Renmin Gongheguo Xianggang Tebie Xingzhengqu Weihu Guojia Anquan Fa* [Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region], passed and effective June 30, 2020, art. 44.

¹⁰*Ibid.*, arts. 55–56.

¹¹*Ibid.*, art. 9.

¹²Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, passed April 4, 1990, effective July 1, 1997, art. 18.

¹³*Ibid.*, art. 23.

¹⁴*Zhonghua Renmin Gongheguo Xianggang Tebie Xingzhengqu Weihu Guojia Anquan Fa* [Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region], passed and effective June 30, 2020, art. 65.

¹⁵Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, passed April 4, 1990, effective July 1, 1997, arts. 19, 158.

¹⁶Kelly Ho and Tom Grundy, “Leaders of Hong Kong Pro-Democracy Group Demosisto Step Down as Security Law Passes,” *Hong Kong Free Press*, June 30, 2020; Demosisto (@demosisto). “This morning we received and accepted the departure of @joshuawongcf, @nathanlawkc, @jeffreychngo and @chowtingagnes . . .” Twitter, June 30, 2020, 3:11 a.m.

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²⁴*Ibid.*, arts. 50, 60.

²⁵Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, passed April 4, 1990, effective July 1, 1997, art. 22; Sebastian Veg, “The ‘Restructuring’ of Hong Kong and the Rise of Neostatism,” *Tocqueville21*, June 27, 2020.

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enant on Civil and Political Rights, adopted by UN General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force March 23, 1976, art. 14.

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