

HONG KONG TRADE UNION MOVEMENT UNDER THE NATIONAL SECURITY LAW

Two years into the authoritarian rule
June, 2022



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1. Introduction

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL),¹ that was unilaterally imposed by the Chinese Communist Party (CCP) on 30 June 2020 has been the prelude to Hong Kong's entry into authoritarian rule. Two years into its implementation, the NSL has completely changed the city's political and civil society landscape. A large number of political dissidents and civil society leaders have been arrested and prosecuted, many active civil society organisations have been dissolved, suspended or relocated, and several credible independent media outlets have also ceased operations. Trade unions and labour organisations, being an indispensable constituent of the civil society, are predictably one of the major targets of the regime's relentless political purges.

This report aims to examine the impacts of the NSL on Hong Kong's trade union and labour movements. It is divided into three parts. Section 2 will analyse how the authorities abuse the NSL as a legal weapon to suppress dissidents and the civil society. In addition to identifying the legal texts that contradict the principles of the rule of law and international human rights standards, it will also discuss how the court's rulings and the government's all-encompassing national security measures have successfully created a chilling effect, causing the entire civil society to quake. Section 3 of this report will document the repression of Hong Kong unions and their leaders by the authorities, including the prosecution of union leaders, the restriction of union activities by means of repressive colonial laws, and the pressurising of unions to disband themselves through repeated intimidation and harassment. Among them, the Hong Kong Confederation of Trade Unions (HKCTU) announced its dissolution in September 2021, immediately dealing a great blow to the city's independent trade unions. The final section will look at the prospects of Hong Kong's labour movement under the NSL. In the foreseeable future, trade unions will face

¹ The English text of the NSL can be found at [https://www.elegislation.gov.hk/doc/hk/a406/eng_translation_\(a406\)_en.pdf](https://www.elegislation.gov.hk/doc/hk/a406/eng_translation_(a406)_en.pdf) [retrieved 16 May 2022]

serious brain drain and shortage of funds. With red lines everywhere, organisers have to avoid risky activities. Amid the civil society's disintegration, the social movement unionism practised in the last few decades will be more than likely to come to an end. Under the Sword of Damocles, local activists have no choice but to cross the river by feeling the stones, prioritise the survival of trade unions and other civil society organisations and explore new civil resistance strategies amid a restrictive and oppressive environment.

2. NSL: CCP's Legal Weapon Against Hong Kong's Civil Society

The NSL is not only the CCP's answer to Hong Kong's massive pro-democracy movement of 2019, but also the inevitable consequence of Hongkonger's long-standing struggle to defend their rights and resist Beijing's authoritarian rule. Before analysing how the CCP uses the NSL to crack down on Hong Kong's civil society, it is worth looking back at the decades-long David and Goliath tug-of-war between Hong Kong and China, revolving around the defence of the city's human rights and freedoms.

2.1 Road to the NSL

The People's Republic of China resumed the exercise of sovereignty in Hong Kong on 1 July 1997 and established a Special Administrative Region (SAR) in accordance with the principle of "one country, two systems", promising that the city could enjoy a high degree of autonomy and its citizens could continue to enjoy various freedoms, such as freedom of expression and association. However, the firewall between "two systems" has always been fragile, and its success very much depends on the CCP's self-restraint, which is a big ask given the party and its apparatus' notorious reputation for abusing public power. With this knowledge in mind, Hong Kong people have remained vigilant, and have always been ready to stand up whenever their civil rights are threatened.

Restricting individuals' rights and freedoms under the pretext of national security is a familiar tactic of authoritarian states, and China is no exception. Under

Article 23 of the Basic Law, the city's mini-constitution, Hong Kong is obliged to legislate on its own to safeguard national security. Shortly after his re-appointment as the Chief Executive (CE) in July 2002, Tung Chee-hwa proposed to legislate for Article 23 and planned to force it through before the Legislative Council's (LegCo) summer recess in the following year. The bill put forward by Tung's administration posed serious risks to people's freedoms. Civil society organisations as well as leading legal and human rights experts repeatedly called for the withdrawal of the bill, however the authorities turned a deaf ear. Alarm bells rang and Hongkongers were ready to stand up. Over half a million people peacefully took to the streets on the sixth anniversary of the SAR to defend their fundamental rights. Shocked by the protest's massive turnout, the government hastily made a few concessions, but only later reluctantly shelved the bill after learning that it could not secure enough votes in the legislature to get it passed.² Since then, Article 23 legislation has become the government's taboo.

After the 2003 mass protest, Hong Kong people were more convinced that only a government returned by universal suffrage could protect their basic rights and freedoms. Democratic reform became the city's most important political agenda and the main demand of the customary 1 July Rally, which would be held every year on the Establishment Day of the Hong Kong Special Administrative Region (HKSAR). On the other hand, the CCP was afraid that allowing civil society to grow stronger would cause it to lose control over Hong Kong. They began to intervene more visibly and broadly in the city's internal affairs, including the interpretation (viz amendment) of the Basic Law in 2005 to pre-empt any attempt to reform Hong Kong's political institutions without Beijing's prior consent. The tension between the "two systems" has gradually intensified.

The conflict between Hong Kong and the mainland broke out when the National People's Congress Standing Committee (NPCSC) decided on 31 August 2014 that when Hong Kong implements universal suffrage for the CE, candidates must obtain

² For a brief overview of the Anti-Article 23 Demonstration, see https://en.wikipedia.org/wiki/Hong_Kong_Basic_Law_Article_23 [retrieved 16 May 2022]

the support of more than half of the members of the CCP-controlled Selection Committee before they can enter the race, effectively killing any hope of genuine democracy. Tens of thousands of Hongkongers responded to organiser's calls to occupy the main roads around the Government Headquarters in the afternoon of 28 September 2014 to demand the withdrawal of the NPCSC's decision, while the police sought to disperse the crowd by force and fired 87 tear gas canisters in the evening. The iron fist policing triggered more people to turn out, occupying the streets of Admiralty, Causeway Bay, and Mong Kok, and kickstarted the 79-day Occupy Movement (aka Umbrella Movement).³

Large-scale mobilizations had been dying down for several years after the Umbrella Movement, but the city's political tension had rapidly intensified. More and more Hong Kong people (especially the younger generation) believe that it is impossible to achieve genuine democracy under the birdcage set by the CCP, and Hongkongers must develop their own political and cultural identity that is distinct from the mainland to take control of their own destiny. On the other hand, Beijing accuses the "Hongkonger discourse" of advocating Hong Kong independence and alleges - without evidence - that the large-scale social movement is a colour revolution orchestrated by foreign governments behind the scenes. The CCP is determined to further tighten its grip on the city's affairs and is ready to heavily-handedly crack down on civil society, at any cost.

The conflict between Hong Kong and China finally exploded amid the government's attempt to amend the Fugitive Offenders Ordinance. Taking advantage of a murder case involving Hong Kong people in Taiwan, the Carrie Lam government proposed amending the law to allow the government to hand over suspects to the mainland. This move effectively dismantled the firewall that separated Hong Kong and China's legal systems. On 9 June 2019, one million people took to the streets peacefully, but before the parade was over that night, the government declared that it would resume the second reading of the bill on the 12th as scheduled. Angry

³ A comprehensive account of the Umbrella Movement of 2014 can be found at https://en.wikipedia.org/wiki/2014_Hong_Kong_protests [retrieved 16 May 2022]

citizens surrounding the LegCo Building on 12 June to prevent the government from forcibly passing the amendments but were suppressed heavy-handedly by the police. Not deterred by police brutality, Hongkongers have taken to the streets almost every week since then, including storming the LegCo building, blocking roads and railways, staging a general strike, and defending university campuses. At the same time, police suppression has continued to escalate. The police have also banned almost all public processions since August and have arrested more than 10,000 protesters.

After the new year, the momentum of the movement began to wane. Then came the outbreak of COVID-19, and the demonstrations that had lasted for more than half a year finally came to a halt.⁴ While Hong Kong people were busy fighting the virus, the CCP suddenly announced in May 2020 that it would unilaterally enact a national security law for Hong Kong. The NPCSC promulgated the NSL on 30 June without prior consultation, signalling that the CCP had given up on winning the hearts and minds of Hong Kong people, and would only use the language they were most familiar with in handling the city's affairs in the future: hard power. Hong Kong has formally entered an authoritarian era.

2.2 NSL on the book

The legal provisions of the NSL are as savage as the way in which it has been imposed on Hong Kong. The new law defines criminal offenses under four categories, namely, secession, subversion, terrorist activities and collusion with foreign forces, with a maximum penalty of life imprisonment. The legal definitions of the crimes are imprecise and overly broad, making them easy to abuse as a tool to suppress dissidents and civil society. The NSL's provisions on judicial procedures, including the designation of judges by the CE, raising the bail threshold, and allowing trials without jury also pose a severe threat to people's right to a fair trial. In addition, the insufficient (or lack of) independent oversight of the agencies established under the NSL, and the police's expanded enforcement powers conferred by the new law could

⁴ An overview of the epic 2019 Democratic Movement can be found at https://en.wikipedia.org/wiki/2019%E2%80%932020_Hong_Kong_protests [retrieved 16 May 2022]

greatly increase the chance of the authorities abusing their powers. A comprehensive analysis of the NSL is beyond the scope of this report. The following will pinpoint the most important aspects that have a direct bearing on civil society including the functioning of trade unions and labour organisations.

Incompatibilities with international human right standards

Shortly after the enactment of the NSL, seven United Nations human rights experts submitted a 14-page letter to the Chinese government, voicing their deep concerns of the threats that the new law may pose to Hong Kong's fundamental rights and freedoms.⁵ Criminal offences under the aforementioned categories are defined in vague and overly broad language, which is not even remotely compatible with international human rights standards and the general principles of rule of law. The principal of legal certainty, enshrined in article 15(1) of the International Covenant on Civil and Political Rights (ICCPR), requires that criminal laws must be sufficiently precise and narrow so it is clear what types of behaviour and conduct constitute a criminal offence. This principle also recognises that ill-defined or overly broad laws are open to arbitrary application and abuse. Some activists suggest that the overly broad language of the NSL's core criminal provisions is likely a deliberate design⁶ tailored to cover the actions of demonstrators during the 2019 Democracy Movement, and calculated to spread fear to civil society.

Article 20 of the NSL prohibits acts of secession. Certain phrases of the article, including "undermining national unification", "altering by unlawful means" and "surrendering ... to a foreign country" are broad and imprecise and do not indicate exactly what kind of conduct would constitute a criminal offense. UN experts also warn that the use of the term "participation" constitutes an inchoate offence, that is to criminalize activities that have not yet been committed, which violates article 15

⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487> [retrieved 16 May 2022]

⁶ Wong, Lydia & Kellogg, Thomas E. (2021) Hong Kong's National Security Law: A Human Rights and Rule of Law Analysis (<https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/02/GT-HK-Report-Accessible.pdf>) [retrieved 16 May 2022]

of the ICCPR. Moreover, use of force or the threat of force is not an element of the crime. This means that mere peaceful advocacy for independence and self-determination, which are legitimate activities expressly protected by international laws, could be redefined domestically as secession.⁷

Article 22 of the NSL, which criminalises subversive activities including seriously interfering in, disrupting, or undermining the government’s performance of duties and functions by unlawful means is even more disturbing. Apart from the lack of legal certainty, subversion is, as UN experts point out, generally understood as a “political crime” deployed to punish government critics and opponents, instead of tackling genuine threats to the existing political order. Trade unions calling on people peacefully to surround the legislature to prevent it from passing a bill that harms worker’s interests is very likely fall within its ambit (seriously disrupting by illegal means the government’s performance of duties and functions)⁸, especially given the absence of a strict violence or threat of violence requirement in the criminal provisions.

Article 24 penalises terrorist activities. It requires that the criminal act be committed with the intent to cause grave harm to the society with a view to coerce the government in order to pursue a political agenda. However, UN experts caution that activities included in article 24, such as sabotage of transport facilities, risk criminalising conduct that goes beyond the Security Council’s definition of terrorist activity if the damage is not committed with the intent to cause death or serious bodily harm.

Article 29 prohibits collusion with foreign forces to endanger national security. Again, the language of the article is overly broad and vague. For instance, a person, who “directly or indirectly receive funding or other kinds of support” from a foreign organisation commits an act of “seriously disrupting the formulation and

⁷ Wong, Lydia & Kellogg, Thomas E. (2021) *ibid.*

⁸ Obstructing a LegCo member is an offence under the Legislative Council (Powers and Privileges) Ordinance.

implementation of laws or policies by the government” may be penalised under this provision. In an era of global economic integration, it is indispensable that local trade unions have to communicate and cooperate with their counterparts at regional and international level, a freedom protected by ICCPR and International Labour Organisation (ILO) conventions. Yet, the legal risks brought about by Article 29 could probably deter local trade unions from international connection and support and thereby weaken their functions to safeguard worker’s interests.

Rights to fair trial at risk

Several provisions of the NSL also pose serious threats to people’s right to a fair trial. First, Article 44 stipulates that those cases concerning offences endangering national security can only be handled by judges designated by the CE. The term of office of the designated judges is one year only, subject to renewal. The same article expressively provides that a designated judge shall be removed from the designation list if he or she makes any statement or behaves in any manner endangering national security during the term of office (apparently decided by the CE), which “could serve as a form of summary discipline on the judge”.⁹

Second, Article 3 requires that the executive authorities, legislature, and judiciary must effectively prevent, suppress, and impose punishment for any act or activity endangering national security. Article 8 further provides that the judicial authorities must fully enforce the NSL. As law professor Johannes Chan explains, these provisions, which reflect “the Chinese approach that the judiciary should co-operate with other branches of government, could be seen to set the general tone for the interpretation of the NSL - to err on the strict side”¹⁰, especially read in conjunction with Article 44 (removal of judges from the designation list).

Third, Article 46 empowers the Secretary for Justice to issue a certificate directing that a criminal case before the High Court be tried without a jury on

⁹ Chan, Johannes (2022) “National Security Law 2020 in Hong Kong: One Year On” (<https://ssrn.com/abstract=3956272>) [retrieved 16 May 2022]

¹⁰ Note 10.

extremely broad grounds. A jury has been considered as “the bulwark of liberty”, and it is particularly significant in political trials, to which most NSL cases belong, when “the conviction has to rest on the conscience of the general public”.¹¹

Fourth, Article 42 provides that no bail shall be granted unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security. This sets the threshold for granting bail extremely high and is at odds with the common law principle of the presumption of innocence, a right explicitly protected by international human rights instruments. The presumption against bail could encourage police practice of arbitrary arrest and prosecution, and could create a chilling effect on civil society.

Fifth, Articles 43 (4), 43(7) and 59 require information from organizations and individuals, even if the information in question may be self-incriminating. Anyone failing to comply can be fined or imprisoned. This essentially removes a person’s right to silence for national security cases, which is an essential component of the presumption of innocence. The right to remain silent under questioning and not to be compelled to testify against oneself are generally recognized in international human rights law and standards and lie at the heart of the notion of a fair trial.

Sixth, Article 55 allows the transfer of certain NSL cases to the mainland for prosecution if (among others) the Hong Kong government cannot effectively enforce the law. This is particularly worrying not only because of the deficiencies in the mainland’s legal system, but also the implicit threat that the CCP will simply take matters into its own hands if the Hong Kong government (and the judiciary) fails to effectively enforce the NSL in the eyes of Beijing.¹²

Lack of effective independent oversight

The NSL also allows the enforcement agencies to exercise their powers without judicial or independent oversight. A Committee for Safeguarding National Security

¹¹ Note 10.

¹² Wong & Kellogg (2022) *ibid.*

and an Office for Safeguarding National Security were established, both of which are under the supervision of and accountable to Beijing. The Committee, chaired by the CE, is made up of the city's senior officials and security chiefs with a mainland "adviser", while the Office is comprised solely of officials jointly dispatched by various national security authorities from China. The delineation of both entities is not subject to public disclosure, and their decisions are not subject to judicial review.

The powers of the Office are extremely broad. In addition to an "advisory" and oversight role, the Office is also empowered to collect intelligence, handle cases concerning offences endangering national security (Article 49), establish mechanisms for collaboration with the city's relevant authorities to enhance operations coordination (Article 53) and strengthen the management of foreign organisations and news agencies (Article 54). Most troublingly, in exercising these extensive powers, the Office is above the law of Hong Kong (Article 60).

Article 43 grants the newly established Department for Safeguarding National Security of the Police Force (National Security Department) extensive law enforcement powers. The Implementation Rules promulgated by the Committee,¹³ which is not subject to legislative scrutiny and judicial oversight, allows the National Security Department to search places without a warrant, restrict people from leaving Hong Kong, freeze or confiscate property, remove electronic messages, require foreign agents to provide information, intercept communications and conduct covert surveillance, and order people to assist in investigation. Failure to comply with the Implementation Rules is a punishable offence, subject to a maximum penalty of six months to two years imprisonment.

The cumulative effect of the overly broad language of the NSL's core criminal provisions, the restrictions on the judiciary, and the expansion of law enforcement powers without inadequate independent oversight is obvious: the creation of a climate of fear throughout the whole of the society.

¹³ <https://www.info.gov.hk/gia/general/202007/06/P2020070600784.htm> [retrieved 16 May 2022]

2.3 NSL in practice

Shortly after the promulgation of the NSL, some commentators suggested that the law itself had sufficient deterrent power and predicted that it would serve more as a latent threat than an active tool.¹⁴ However, these optimistic hopes were soon shattered by the authorities' aggressive implementation and enforcement strategies. The police's hunt for dissidents has nearly wiped out the entire pro-democracy camp and the civil society network. Recent court rulings suggest that the courts are more willing to be a loyal servant of draconian laws than a guardian of human rights. The court's favourable rulings have encouraged law enforcement agencies to re-weaponize regressive colonial laws to target activists and protesters. The authorities have also adopted a sweeping strategy to strengthen the supervision of schools, social organisations, media, and the internet, extending the NSL's heavy hand to virtually every corner of society. Less than two years after its enactment, the NSL has done far more harm to human rights and civil liberties than most people had initially thought.

Mass arrest

Less than 24 hours after the NSL's promulgation, the police have wasted no time to show their new mace. On 1 July 2020, ten people were arrested under the NSL, including Tong Ying-kit, the first person convicted under the new law. Since then, the arrests have never stopped.¹⁵ The more high-profile ones include:

29 July
2020

Tony Chung of Studentlocalism, a pro-independence student organisation founded in 2016, was arrested on suspicion of secession and money laundering; at 20 years old, he is the youngest person sentenced under the NSL

12 August
2020

Jimmy Lai and four senior executives of Next Media, the holding company of the popular pro-democracy newspaper Apple Daily, were arrested on suspicion of collusion with foreign forces; six

¹⁴ For instance, see <https://news.sina.cn/gn/2020-07-01/detail-iirczymm0003755.d.html> [in Chinese] [retrieved 5 June 2022]

¹⁵ A comprehensive list of arrests under the NSL and other national security related laws up to the end of March 2022 can be found at <https://www.chinafile.com/tracking-impact-of-hong-kongs-national-security-law> [retrieved 16 May 2022]; arrests of trade unionists will be detailed in [Section 3](#).

	Apple Daily publishers, editors and columnists were later arrested in June and July 2021
6 January 2021	53 long-established opposition figures, pro-democracy campaigners, civil society organisation leaders, as well as academics and human rights lawyers were arrested on suspicion of subversion for their role in organising, assisting or participating in an unofficial primary election in July 2020
8 – 9 September 2021	Lee Cheuk-yan, Ho Chun-yan and Chow Hang-tung of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (Hong Kong Alliance) were arrested on suspicion of inciting or abetting subversion; Chow and four other core members of the Hong Kong Alliance were also arrested for failure to supply requested information
29 December 2021	Stand News former editors Chung Pui-ken and Patrick Lam as well as four former board members were arrested on suspicion of sedition
10 – 12 May 2022	Cardinal Joseph Zen, Margaret Ng, Hui Po-keung, Denise Ho and Cyd Ho, all trustees of the 612 Humanitarian Relief Fund, were arrested on suspicion of collusion with foreign forces.

According to official records, up to the end of March 2022, 175 people were arrested for committing acts that endanger national security (including both NSL and non-NSL offences). Of those arrested, 102 people (64%) were charged, and eight were convicted.¹⁶

Lengthy pre-trial detention

The Court of Final Appeal (CFA), in HKSAR v Lai Chee-ying, readily accepts that Article 42(2) of the NSL does create a presumption against bail, which is regarded as a specific exception to the protection of personal liberty and the presumption of innocence under Articles 4 and 5.¹⁷ The imposition of stringent threshold requirements for bail applications gives the defendants an almost impossible task to demonstrate to a judge that they will not commit acts endangering national security. For instance, a High Court judge explained her refusal to grant bail to Carol Ng, former chairperson of the HKCTU who was arrested for subversion over her participation in

¹⁶ <https://www.info.gov.hk/gia/general/202204/27/P2022042700446.htm> [retrieved 16 May 2022]

¹⁷ [2021] HKCFA 3.

the primary election, saying Ng “has an international influence as a result of her trade union work, therefore, it would be very easy for her to connect with her colleagues abroad to further the hostility against the authorities”.¹⁸

At the end of March 2022, of the 102 people charged with national security offences, 78 (or more than three quarters) of them were remanded in custody, and 44 had been put behind bars for over one year.¹⁹ It is anticipated that the earliest realistic trial date for the primary election case will be sometime in mid-2023. The 34 defendants who were denied bail will have been jailed for over 28 months before proper court hearings. This is a grave injustice, as the rights to freedom of expression and political participation in organising and taking part in primary elections should be enjoyed by all. It seems only in Hong Kong does trying to defeat the incumbent government in accordance with constitutional provisions amount to subversion. The effective elimination of bail and the lax prosecution threshold for national security cases have given the government a free hand to put anyone it chooses behind bars for months or even years.

Expansive interpretation of criminal provisions

The CFA’s ruling on bail thresholds suggests that human rights protections under Articles 4 and 5 of the NSL are nothing more than a lip service, and any explicit deviation from it will simply be treated as an exception. This can be evidenced in the verdicts of the Tong Ying-kit case.²⁰

Tong was arrested on the very first day of the NSL’s promulgation, after driving a motorcycle with a flag reading “Liberate Hong Kong, Revolution of Our Times” towards police checklines during a demonstration in Wan Chai. He was later charged with inciting others to commit secession and carrying out terrorist activities. He was

¹⁸ [2022] HKCFI 1061

¹⁹ Notes 15 & 14.

²⁰ For an analysis on the Tong Ying-kit case, see Chan (2022) *ibid.* and Kellogg, Thomas & Lai, Eric Yan-ho (2022) *The Tong Ying-kit NSL Verdict: An International and Comparative Law Analysis* (<https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/10/TongYingKitVerdictGCAL.pdf>) [retrieved 16 May 2022]

denied a jury trial and was convicted by a panel of three High Court judges and sentenced to nine years in jail.

The first charge is essentially a “verbal offence to commit another verbal offence”, given the offence could be committed without the use or the threat of use of force. The United Nations Human Rights Committee repeatedly stresses that states seeking to restrict speech on national security grounds must draw a direct causal link between the speech in question and the threat to national security and must adopt the least restrictive means to achieve their national security objectives. Regrettably, the court failed to engage in any robust human rights assessment. The court instead relied on the evidence of the prosecution’s expert on the meaning of “Liberate Hong Kong, Revolution of Our Times”, and held that the slogan was at least capable of carrying a secessionist meaning which was sufficient for the offence of an incitement to secession. Tong’s case also demonstrates the importance of jury trial in political cases. The interpretation of a political slogan is best judged by the general public, not the experts.

The court’s verdict on the terrorist charge is equally disappointing. The court adopted an expansive interpretation of the core elements of a terrorist offence by holding that carrying a flag with a “general call for the separation of Hong Kong from China without an elaborate plan being conveyed to the public” amounted to pursuing a “political agenda”. On the other hand, the court also deduced a disproportionate assumption on the social impacts of Tong’s action. The court took the view that a serious challenge to the police would “instil a sense of fear amongst the law-abiding members of the society”, that there would be a breakdown of law and order, and thereby “grave harm would certainly be caused to society”.

Tong dropped his appeal after the Legal Aid Department assigned a new solicitors’ firm, which is founded by a former member of the Shenzhen committee of China’s political advisory body, to represent him. The Department has recently undertaken an administrative revamp, including assigning lawyers to legal aid applicants rather than allowing them to pick who represents them.

Re-weaponization of colonial laws

The CFA, in another ruling, holds that sedition under the Crimes Ordinance is an offence endangering national security and is thus covered by Article 42(2) (presumption against bail), opening the door to further broadening the NSL's influence. The application of NSL to non-NSL cases is not confined to Article 42(2), as provisions on judicial procedure and police investigative powers are also on the list. As a result, the sweeping Implementing Regulations made under Article 43, which make it easier for police to use their extensive surveillance and search powers without judicial oversight, can now be used to investigate various non-NSL crimes.²¹

Encouraged by the court rulings, the police have reassured themselves to use sedition, an offence enacted by the colonial government that has not been invoked for decades, and the new investigative powers to target the media and dissidents. In December 2021, over 200 police officers raided the headquarters of Stand News, a popular online media outlet, and arrested former chief editors Chung Pui-kuen and Patrick Lam as well as four former board members. Chung and Lam were later charged with conspiracy to publish seditious materials and were denied bail. On the day of the arrests, Stand News announced its immediate closure. Its website quickly went offline and its various social media accounts were shuttered.²²

In February and March 2022, five people were arrested for sedition, in part over the comments they made on social media that were critical of the government's anti-COVID-19 measures. Among them, two shopkeepers of a Taiwanese-style takeaway tea shop were arrested on 24 February over social media posts urging people not to get COVID-19 vaccines and to flout the city's COVID-19 restrictions. They were charged with publishing seditious materials and were denied bail awaiting trial.

²¹ Kellogg, Thomas (2021) "How a ruling by Hong Kong's top court opens the door to a more intrusive security law" (<https://hongkongfp.com/2021/12/17/how-a-ruling-by-hong-kongs-top-court-opens-the-door-to-a-more-intrusive-security-law>) [retrieved 16 May 2022]

²² BBC (2021) Stand News: Independent outlet to close after senior staff arrested (<https://www.bbc.com/news/world-asia-59807734>) [retrieved 16 May 2022]

These arrests suggest that the government is adapting and expanding its censorship on free speech in accordance with its need of the so-called “social control”.²³

Since the NSL has come into effect, the court has also adopted much harsher sentencing for crimes under the Public Order Ordinance enacted in the colonial era. Lee Cheuk-yan, former General Secretary of the HKCTU, was sentenced to 14 months for organising and participating in two peaceful, albeit unauthorised, rallies in August 2019. Nine other prominent pro-democracy figures, including Jimmy Lai, Martin Lee, commonly known as father of Hong Kong democracy, and highly respected barrister Margaret Ng, were given a range of custodial sentences ranging between 6 and 18 months, with three given a suspended sentence of two years. Prior to the enactment of the NSL, organising or participating in an unauthorized assembly was a relatively low-level offence that generally only attracted fines.

Moreover, the prosecutions of the aforementioned individuals should not have taken place, because according to international human rights law the exercise of the right to peaceful assembly should not be subject to previous authorisation by the authorities.²⁴ The sentencing in this case is a significant deviation from the well-established jurisprudence that a peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably the deprivation of liberty.²⁵ The hardening of the judicial approach seems to suggest that the court does not hesitate to assume its duties imposed by the Articles 3 and 8 to effectively suppress and impose punishment for any act or activity endangering national security.

²³ Lai, Eric Yan-ho & Kellogg, Thomas (2022) “Arrest Data Show National Security Law Has Dealt a Hard Blow to Free Expression in Hong Kong” (<https://www.chinafile.com/reporting-opinion/features/arrest-data-show-national-security-law-has-dealt-hard-blow-free>) [retrieved 16 May 2022]

²⁴ Report to the Human Rights Council, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/20/27 (2012).

²⁵ Note 10.

All-encompassing strategy

Article 9 of the NSL requires the government to strengthen supervision and regulation over matters concerning national security, including those relating to schools, universities, social organisations, the media, and the internet, to which the government has duly obliged. It is beyond the scope of this report to give a comprehensive account of the government's all-encompassing measures to extend the NSL's reach to every fabric of the society. The following will focus on the areas that have significant impacts on worker's interests and civil society organisation's activities.

Civil servant oath-taking: Hong Kong's 180,000 civil servants were being forced to choose between their jobs and being able to speak and act freely outside the office. On 15 January 2021, the entire civil service was given one month to sign an oath of allegiance, committing to uphold the Basic Law and pledging not to undermine the government.²⁶ Failure to do so could result in dismissal. A total of 129 civil servants have refused to take oath and have left their posts. The requirement was extended to the government non-civil servant contract (NCSC) staff in May. 149 full-time NCSC staff and another 386 on part-time or fixed-term contracts have refused to take an oath, all of them have either resigned or had their contracts terminated. The government is considering extending the oath-taking requirement to all statutory bodies and subvented organisations.

Disciplining teachers: Due to the large turnout of young students during the 2019 Democracy Movement, the government has blamed teachers for spreading radicalism in the classrooms, making them a target of retribution. Six teachers have been de-registered, with another 185 disciplined with a reprimand or warning letter, written advice, or verbal reminder after the Education Bureau received complaints about their involvement in the movement.²⁷ Amid the Cultural Revolution-like

²⁶ <https://www.info.gov.hk/gia/general/202101/15/P2021011500405.htm> [retrieved 16 May 2022]

²⁷ https://www.legco.gov.hk/yr2022/chinese/fc/fc/w_q/edb-c.pdf [retrieved 16 May 2022]

snitching climate, teachers are facing heavy emotional and professional burdens when deciding whether and how they should avoid troubles while fulfilling their pedagogical responsibilities. On the other hand, prospective public-school teachers must pass a Basic Law test before officially taking the job starting from the 2022-23 school year. The Bureau explained that teachers should have a “correct understanding” of the Basic Law to help students develop “positive attitudes” towards “one country, two systems”.

Targeting social workers: Social work is another profession targeted by the government for their pro-democracy inclinations. The government recently amended the Social Workers Registration Ordinance, barring any person convicted of national security offences from “being or continuing to be registered social workers”.²⁸ The government is also considering extending the oath-taking requirement to members of the Social Workers Registration Board, which is empowered to set and review the qualification standards for the registration of social workers, as well as conduct inquiries in cases of disciplinary offence. The government is dissatisfied with the Board’s performance, citing that only light sentences were imposed on social workers despite their grave misconduct.

Regulating charitable organisations and crowdfunding: The Inland Revenue Department amended the tax guide for charitable organisations to include the national security requirement. The government warned that it would start stripping charities of their tax exemption status if they were deemed to have participated or used its resources to support or promote activities contrary to the interests of national security.²⁹ The revision of the tax codes is seen to be another move to target opposition-leaning social welfare or community groups. The authorities are also considering regulating crowdfunding campaigns in a bid to prevent money being used for activities that endanger national security. The 612 Humanitarian Relief Fund,

²⁸ https://www.legco.gov.hk/yr2022/english/brief/lwbcr45204186_20220518-e.pdf
[retrieved 16 May 2022]

²⁹ <https://news.rthk.hk/rthk/en/component/k2/1610338-20210913.htm> [retrieved 16 May 2022]

which aimed to provide legal, medical, psychological, and emergency financial assistance to people who are injured, arrested, attacked, or threatened with violence during the 2019 Democracy Movement, has raised more than HK\$236 million (US\$30 million) through crowdfunding.³⁰ The pro-CCP politicians have repeatedly accused the government of not acting fast enough to cut off the protester's funding sources.

Dismantling of liberal institutions

Like the destruction of a tornado, the NSL uprooted almost all influential civil society organisations and independent media outlets in an instant. Since the start of 2021, at least 68 organisations have publicly announced to fold as a result of the deteriorating political situations. This includes 12 labour unions³¹, 12 media outlets, 11 grassroots groups, 8 political groups, 7 professional groups, 7 human rights and humanitarian organisations, 5 student organisations and 4 religious groups.³² Among these discontinued institutions³³ include:

Apple Daily ceased operations in June 2021, after seven executives and writers were arrested and the company's assets were frozen

Civil Human Rights Front, the umbrella group that organised the annual 1 July Rally, decided to disband in August 2021 after its convenor Figo Chan was jailed

612 Humanitarian Relief Fund announced in August 2021 that it would cease operations, after the Alliance for True Democracy - the company which held the bank account to receive donations - decided to close down

Hong Kong Alliance voted to disband in September 2021, after five core members were arrested for refusal to provide information; their assets were eventually frozen

³⁰ <https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3174311/hong-kong-crowdfunding-platforms-be-regulated-so> [retrieved 16 May 2022]

³¹ A total of 62 trade unions cancelled their registration through dissolution or at their own request in 2021, 12 labour unions have made their announcement publicly. More details in [Section 3.3](#) and full list of trade unions disbanded in 2021 in [Table 2](#).

³² Kong, Tsung-gan (2022) CCP crushing Hong Kong civil society (<https://safeguarddefenders.com/en/blog/ccp-crushing-hong-kong-civil-society>) [retrieved 16 May 2022]

³³ <https://hongkongfp.com/2021/11/28/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled> [retrieved 16 May 2022]; the dissolution of labour organisations will be discussed in [Section 3](#).

Amnesty International Hong Kong announced in October 2021 that it would halt its operation in the city by the end of 2021 and move the regional office to Bangkok citing security concerns under the NSL

Stand News announced its closure on the day when two former editors were arrested

Citizen News, an independent news platform, halted operations three days after Stand News folded, citing the need to protect their staff amid the deteriorating media environment

The CCP has also relentlessly cracked down on political opposition. In the primary election case, nearly all the leaders of the democracy camp across the spectrum were arrested and charged with conspiracy to commit subversion. They are facing a maximum penalty of life imprisonment and most of them have been put behind bars since March 2021.

On the other hand, the government announced the disqualification of four pro-democracy legislators on 11 November 2020 in accordance with a decision made by the NPCSC on the same day.³⁴ This triggered a mass resignation of another 15 legislators from the democracy camp, resulting in a legislature virtually absent of any opposition. In a separate development, the LegCo passed a law in mid-2021, requiring all District Council (DC) members to take the oath. 228 DC members subsequently resigned, while another 53 were disqualified as the authorities ruled their oaths of allegiance “invalid”.³⁵ The landslide victory won by the pro-democratic camp in the 2019 DC Elections was disgracefully overturned by the government.

Beijing has also unilaterally revised the electoral arrangements of the CE and the LegCo, adding a political vetting mechanism for screening candidates. It is almost certain that the democracy camp will have no chance to be nominated for the CE and LegCo elections without the CCP’s blessing.

³⁴ <https://www.info.gov.hk/gia/general/202011/11/P2020111100779.htm> [retrieved 16 May 2022]

³⁵ https://en.wikipedia.org/wiki/6th_District_Council_of_Hong_Kong [retrieved 16 May 2022]

In less than two years, large-scale demonstrations can no longer be seen on the streets, the “trouble-making” individuals and organizations are all but eradicated, the LegCo are now fully filled by “patriots”, all civil servants are pledging allegiance to the government with total loyalty, and the court is becoming more than willing to “cooperate” with the prosecutor. So, has the CCP achieved its goal, and will it change its course soon?

As The Economist puts it, “China is not just shackling Hong Kong, it is set on remaking it”³⁶ in the shape of the China model. According to the CCP’s diagnosis of Hong Kong, only by eliminating the city’s relatively open and free institutional arrangements in the past and implementing complete centralisation of powers can Hong Kong’s development be in line with the regime’s governance interests. The CCP is not only targeting civil society organisations and their leaders that it sees as obstacles, but also dismantling the liberal institutions and values that Hongkongers cherish.

3. Sword of Damocles over Hong Kong’s Trade Unions

Hong Kong’s independent trade unions have played a key role in the city’s democratic movement. The HKCTU, a coalition of more than 90 independent unions representing 145,000 workers, has been critical of the government’s labour and social policies and has organised numerous social actions fighting for worker’s interests and the city’s democratisation since its establishment in 1990. It has been an influential member of the Civil Human Rights that helped organise the 2003 rally against Article 23 legislation and the 2019 protests against the extradition bill. The HKCTU also co-operated with 30 independent unions in the attempt to stage a general strike against the NSL in June 2020.

Independent trade unions and labour organisations, being an indispensable constituent of the civil society, are obviously one of the major targets of the regime’s relentless political purges. The HKCTU voted to disband in October 2021 amid

³⁶ <https://www.economist.com/briefing/2021/03/20/china-is-not-just-shackling-hong-kong-it-is-remaking-it> [retrieved 16 May 2022]

continuous political intimidation and attack. This section will document the repression of Hong Kong unions and their leaders by the authorities, including prosecution of union leaders, restriction of union activities by means of repressive colonial laws, and pressurising of unions to disband themselves through repeated intimidation and harassment. It will also assess the immediate impacts of the HKCTU's dissolution on the city's independent trade unions.

3.1 Arrest and Prosecution of Trade Union Leaders

Since the promulgation of the NSL, at least 11 trade union leaders have been arrested. Among them, one was sentenced to 20 months and two weeks in prison, seven were remanded in custody and three were released on police bail.

Lee Cheuk-yan

Lee Cheuk-yan is the former general secretary of the HKCTU and former chairperson of the Hong Kong Alliance. He is a vocal critic of the Hong Kong and Chinese governments for their infringement of people's political, civil, economic, social, and cultural rights. He served as a member of the colonial legislature from 1995 to 1997 and the HKSAR Legislative Council (LegCo) from 1998 to 2016.

Lee was first arrested and charged on 28 February 2020 for organising an unauthorised rally on 31 August 2019. He was later charged with organising unauthorised assembly in another three incidents: the rallies on 18 August and 1 October and the June 4th Candlelight Vigil on 4 June 2020. He was convicted of all the charges in three separate District Court trials in 2021 and was sentenced to a total of 20 months in jail.³⁷ He has received two more weeks behind bars for obstructing a police officer during a peaceful protest calling for the release of political prisoners outside the LegCo Building on New Year's Day in 2021.³⁸

³⁷ <https://www.thestandard.com.hk/breaking-news/section/4/184432/Eight-Hong-Kong-activists-jailed-for-up-to-a-year-and-two-months-over-June-4-vigil> [retrieved 16 May 2022]

³⁸ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3175861/jailed-former-hong-kong-lawmaker-gets-2-more-weeks> [retrieved 16 May 2022]

Lee was also charged with inciting subversion of state power under the NSL on 9 September 2021 for his role in the Hong Kong Alliance. The charge carries a maximum penalty of ten years' imprisonment. The earliest possible trial date for the subversion case is anticipated to be in 2023. This means that Lee will be remanded in custody after he finishes serving his current prison term in October 2022.

Carol Ng

Carol Ng is the former chairperson of the HKCTU and the British Airways Hong Kong Cabin Crew Union. In 2007, she sued the airline for a discriminatory retirement policy in a UK Employment Tribunal with the assistance of Unite the Union. After six years of litigation, British Airways finally yielded before the final appeal and extended the retirement age of Hong Kong aircrew to 65. On 5 August 2019, she helped organise a general strike, with an estimated 350,000 people taking part, demanding an investigation into police brutality during the 2019 Democracy Movement and genuine democracy.³⁹

Ng, representing the Labour Party in Hong Kong, stood in the unofficial primary election in July 2020. She ran on the platform of striving for better protection of labour rights and strengthening the role of workers in the fight for the city's democracy through union organising. She was arrested on 6 January 2021 on suspicion of conspiracy to commit subversion over her participation in the primaries and has been detained since 28 February. The High Court declined her appeal for bail on 20 December, citing her international influence because of her trade union work.

Winnie Yu

Winnie Yu is a registered nurse by profession and the former chairperson of the Hospital Authority Employee Alliance (HAEA). She volunteered as a paramedic at protest sites during the 2014 Umbrella Movement and 2019 Democracy Movement. She helped found the HAEA that represents more than 20,000 HA staffs and became the first chairperson of the union. Amid the COVID-19 outbreak in January 2020, the

³⁹ https://en.wikipedia.org/wiki/Carol_Ng [retrieved 16 May 2022]

HAEA staged a 5-day strike from 3 to 7 February, with an estimated 6,000 strong medical workers taking part, demanding adequate personal protective equipment for HA staff and border closures to stop the virus spreading to the city.⁴⁰

Yu won the democracy camp's primaries in the Health Services functional constituency. She was arrested on 6 January 2021 on suspicion of conspiracy to commit subversion and was denied bail after a four-day marathon trial starting on 1 March. The High Court allowed her appeal for bail on 28 July, citing that there was no evidence that she "ever had an international connection".⁴¹ She was arrested again on suspicion of violating bail conditions on 7 March 2022 and her bail was revoked the next day by a magistrate, seemingly because of posts she made on social media criticising the government's handling of the Omicron outbreak, which has left nearly 3,000 people dead (as of early March) and hospitals overwhelmed.⁴²

The Association of Hong Kong Nursing Staff (AHKNS) former chairperson Joseph Lee and the Hong Kong Allied Health Professionals and Nurses Association (AHPNA) committee member Cyrus Lau were also arrested for their participation in the primary election. They are currently released on police bail.

Five Leaders of the General Union of Hong Kong Speech Therapists (GUHKST)

The GUHKST was founded at the height of the 2019 Democracy Movement. The founders believe that union organising can provide an effective platform to unite workers and better prepare for collective action, including strikes, to defend people's rights. The GUHKST is one of the unions behind the unofficial polling held in June 2020, in the attempt to call for a general strike against the CCP's imposition of the NSL.

⁴⁰ [https://en.wikipedia.org/wiki/Winnie_Yu_\(nurse\)](https://en.wikipedia.org/wiki/Winnie_Yu_(nurse)) [retrieved 16 May 2022]

⁴¹ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3148756/national-security-law-hong-kong-judge-rules-subversion> [retrieved 16 May 2022]

⁴² <https://www.rfa.org/english/news/china/hongkong-unionist-03102022105118.html> [retrieved 16 May 2022]

Former chairperson of the GUHKST Lai Man-ling and former deputy Melody Yeung were arrested on 22 July 2021 on suspicion of publishing and circulating seditious materials between 4 June 2020 and 22 July 2021 and were denied bail by a magistrate the following day.⁴³ The publications in question were three children's picture books about sheep defending their village from invading wolves. The police accused the three books of intending to bring into hatred or contempt, or to excite disaffection against the government and the administration of justice.

Former secretary Sidney Ng, former treasurer Samuel Chan and former committee member Marco Fong were also arrested on 22 July 2021 and were charged with the same offence on 30 August.⁴⁴ The three were also denied bail. Sidney Ng appealed to the CFA on 9 December to challenge the applicability of the NSL bail threshold to seditious offences under the colonial-era Crimes Ordinance, but the court declined to grant leave.⁴⁵

Leo Tang

Leo Tang is the former vice-chairperson of the HKCTU. He has previously worked for the Hong Kong Federation of Asian Domestic Workers Unions. Tang was sentenced in September 2020 to four months in jail for possession of offensive weapons during a protest on Waterloo Road on 6 October 2019.⁴⁶

Tang was arrested on 6 April 2022 on suspicion of undertaking acts with seditious intention. He allegedly incited disorderly behaviour by members of the public at West Kowloon Magistrates' Court on 4 January.⁴⁷ This is another evidence

⁴³ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3142219/2-members-hong-kong-speech-therapists-union-charged> [retrieved 16 May 2022]

⁴⁴ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3146852/hong-kong-childrens-books-trio-charged-conspiracy> [retrieved 16 May 2022]

⁴⁵ [2021] HKCFA 42

⁴⁶ <https://www.thestandard.com.hk/breaking-news/section/4/154409/Union-worker-jailed-for-carrying-retractable-baton> [retrieved 16 May 2022]

⁴⁷ <https://www.thestandard.com.hk/breaking-news/section/4/188870/Former-vice-chair-of-disbanded-federation-arrested-for-sedition:-source> [retrieved 16 May 2022]

of police abusing overly broad sedition charges to silence peaceful expression. Tang is currently released on police bail.

3.2 Law Enforcement Actions Against Trade Unions

The Trade Union Ordinance (TUO) was used by the colonial government to curb the activities of the CCP-controlled trade unions during and after the 1967 Riots. Ironically, the CCP is now using the same law to suppress Hong Kong's independent trade unions.

GUHKST de-registered

The TUO prohibits the use of union funds for any political purpose. It also grants the Registrar of Trade Unions (RTU) extensive powers to cancel the registration of trade unions. The unions can only appeal the decision to the High Court. However, most trade unions cannot afford the legal fees incurred, rendering the appeal clause useless.

Shortly after the police arrested five leaders of the GUHKST over the publication of three children's picture books, the RTU issued a "notice of intention to cancel the registration" to the union on 13 August 2021, alleging that it is being used for purposes inconsistent with its objects or rules.⁴⁸ The GUHKST did not appeal the decision and was officially de-registered on 13 October. The police have also frozen around HK\$160,000 of the union's assets in accordance with the sweeping Implementation Rules made under Article 43 of the NSL.

The purpose of publishing the three children's books is to promote justice, which is one of the founding objectives of the GUHKST and a legitimate union activity recognised by ILO conventions. Disregarding its international treaty obligations, the government hastily de-registered the GUHKST in a bid to warn other unions that the knife is hanging over their heads.

⁴⁸ <https://www.thestandard.com.hk/breaking-news/section/4/179110/Govt-to-revoke-registration-of-speech-therapists'-union> [retrieved 16 May 2022]

Unions asked to provide information

Since 2020, the RTU has sent enquiry letters to at least five trade unions,⁴⁹ requesting information on their activities that are suspected of being inconsistent with the TUO, or their objectives or rules. The HAEA received RTU's enquiry letters on 3 September 2021, which demanded the union submit information on eight events it held. These events are the 5-day strike in relation to the COVID-19 outbreak, former chairperson Winnie Yu's participation in the democracy camp's primaries, the screening and street stalls concerning the 1989 Tiananmen Democratic Movement, commentaries about the efficacy of Sinovac, the call to boycott the "LeaveHomeSafe" app, the screening of The Trial of the Chicago 7 and the call for letters to political prisoners.⁵⁰ The HAEA replied to the authorities on 17 September, stressing that all the activities were in line with the TUO and the unions' objectives and rules. On 24 June 2022, HAEA held an Extraordinary General Meeting and passed a decision to dissolve the group citing 'pressure from all sides'. It officially folded on June 30.⁵¹

The Hong Kong White Collar (Administration and Clerical) Connect Union (HKWCCU) received a similar inquiry on 28 December 2021, asking them about a series of their activities, including street stalls and commentaries about COVID-19 and the NSL.⁵² The HKWCCU helped to organise an unofficial referendum in June 2020, calling for a general strike against the imposition of the NSL.

The Hong Kong Journalists Association (HKJA) also confirmed that they had received an enquiry from the RTU in January 2022. The authorities asked the HKJA to provide information on their activities, such as movie screenings, book launches, social media posts during the 2019 Democracy Movement and the annual report on

⁴⁹ <https://www.rfa.org/cantonese/news/htm/hk-unions-01242022092158.html> [in Chinese] [retrieved 7 June 2022]

⁵⁰ <https://hongkongfp.com/2021/09/17/hong-kong-hospital-authority-union-denies-govt-allegation-it-broke-law> [retrieved 16 May 2022]

⁵¹ <https://hongkongfp.com/2022/06/27/hong-kong-hospital-staff-union-votes-to-disband-citing-pressure-from-all-sides/> [retrieved 28 June 2022]

⁵² <https://hongkongfp.com/2022/01/11/hong-kong-authorities-grill-union-which-held-street-stalls-on-covid-19-and-national-security-law> [retrieved 16 May 2022]

press freedom. The HKJA was also required to explain how those activities were consistent with the TUO and the union's objectives or rules.⁵³ The HKJA replied to the RTU on 8 February.

Former HKCTU chairperson Joe Wong, former vice-chairperson Leo Tang and former treasurer Chung Chun-fai were taken to police stations on 31 March 2022 to be questioned, while former general secretary Lee Cheuk-yan, who is serving time over unauthorised assemblies, was also interviewed by officers.⁵⁴ The four have allegedly failed to respond to a series of questions issued by the National Security Department regarding the HKCTU's operations, past activities, financial sources and links to groups outside of Hong Kong. The police also raided more than 10 locations across the city, seizing documents and electronic devices from the HKCTU's offices and warehouses.

Politically motivated law enforcement

Over the past few decades, trade unions have regularly engaged in similar activities and commented on political and social events. The CCP-controlled trade unions have also organized similar events such as mourning the Nanjing Massacre, and the RTU has never questioned them. When quizzed about the boundary of union activities, the Commissioner for Labour Chris Sun did not hide the political motivation behind the government's law enforcement. Contrary to the government's reaction to union organising activities concerning the 1989 Tiananmen Democratic Movement, Sun said, "mourning the Nanjing Massacre is a patriotic activity and the government will treat the matter with common sense".⁵⁵ It is obvious that the government has re-weaponized the colonial laws to silence Hong Kong's independent labour organisations that are critical of the government and the CCP.

⁵³ <https://hongkongfp.com/2022/01/21/unions-registry-demands-answers-from-hong-kong-journalists-assoc-over-film-screenings-book-events-social-media-posts> [retrieved 16 May 2022]

⁵⁴ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3172499/former-confederation-trade-unions-leaders-brought> [retrieved 16 May 2022]

⁵⁵ <https://www.881903.com/news2/local/2423383/孫玉菡工會涉愛國情懷悼念可常理對待-悼六四如收投訴須跟進> [in Chinese] [retrieved 16 May 2022]

“THE ABSENCE OF CIVIL LIBERTIES REMOVES ALL MEANING FROM THE CONCEPT OF TRADE UNION RIGHTS.”

International Labour Organization

The ILO has repeatedly stressed that a system of democracy is fundamental for the free exercise of rights to organise and freedom of association, and that the absence of civil liberties removes all meaning from the concept of trade union rights.⁵⁶ Trade unions fighting for democracy and fundamental freedoms should be considered within the scope of their legitimate activities. The TUO provisions imposition of a general ban on the use of union funds for any political purpose, rendering unions unable to engage in political activities to promote the interests of their members are contrary to ILO conventions. The ILO Committee on Freedom of Association has in numerous occasions called on the government to amend the TUO,⁵⁷ however the government has turned a deaf ear.

Article 9 of the NSL requires the government to strengthen the supervision and regulation over matters concerning national security relating to trade unions. The Labour Department plans to create a new directorate post to lead the additional work. The government is also considering amending the TUO to bar those convicted of national security offences from being union officers for five years and to introduce any necessary provisions to strengthen the regulation of trade unions. Hong Kong's independent trade union will face a tougher and larger political purge.

⁵⁶ International Labour Office (2018) Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association paras. 68-69

⁵⁷ See ILO Committee on Freedom of Association Case 1942 (<https://ilo.org/dyn/normlex/en/f?p=1000:50001:::NO:::>) [retrieved 5 June 2022]

3.3 Dissolution of trade unions

The government's aggressive enforcement of the NSL, especially the arrest of trade union leaders in the primary election and GUHKST cases, has successfully created a chilling effect. Amid the fast-deteriorating political environment, many trade unions decided to disband or stop operations. 62 trade unions cancelled their registration through dissolution or at their own request in 2021 ([Table 2](#)), compared with only seven over the period between 2018 and 2020.⁵⁸ Some labour organisations not registered under the TUO also decided to disband or stop their operations in the city, for example the Asia Monitor Resource Centre. A number of those dissolved trade unions had actively participated in the 2019 Democracy Movement and the campaign against the imposition of the NSL. Among them are the Union for New Civil Servants (UNCS), Frontline Doctors' Union, Next Media Trade Union, Union of Hong Kong Occupational Therapists and Hong Kong Tourism Industry Innovation General Union. The HKJA also held an online meeting in April 2022 to discuss the union's future, including the possibility of disbandment, amid constant attacks by the CCP's propaganda machines.⁵⁹

UNCS disbanded

The UNCS was established shortly after tens of thousands civil servants attended a rally at Chater Garden on 2 August 2019, urging the government to listen to public demands. The UNCS has been critical of the police's use of excessive force and helped to organise an unofficial poll collecting civil servant's opinions on the NSL in June 2020. The government was angered by UNCS's activities and warned civil servants of possible disciplinary actions if they violated the Civil Service Code of Regulations (CSRs).

⁵⁸ <https://www.labour.gov.hk/common/public/pdf/rtu/PSTUHK2021.pdf> [retrieved 16 May 2022]

⁵⁹ <https://www.scmp.com/news/hong-kong/politics/article/3175305/hong-kongs-largest-journalist-group-holds-meeting-discuss> [retrieved 16 May 2022]



*Tens of thousands civil servants attended a rally at Chater Garden on 2 August 2019.
(Photo: Studio Incendo)*

The CSRs prohibit civil servants, whether on duty or on leave, from engaging in public debate on government policies, organizing or participating in public processions, distributing political publications, and signing public petitions. The government repeatedly stresses that the restrictions apply equally to officers and members of trade unions, a stance which is not compatible with the ILO's conventions on the principles of freedom of association.

The UNCS decided to disband a day after the government required all civil servants to take oath. Former chairperson Michael Ngan, who was demoted by the government in June 2020 without a reasonable ground, described the oath-taking requirement as an “arrow on the string” for his union and explained that “officers of the union might not be able to remain in the government, meaning they will also not be qualified to be union members and officers”.⁶⁰ He believed that disbanding the union is a reluctant but necessary action to protect members' information.

⁶⁰ <https://www.scmp.com/news/hong-kong/politics/article/3118044/civil-service-union-formed-during-hong-kong-protests> [retrieved 16 May 2022]

The Professional Teachers' Union (PTU) dissolved

The PTU, the city's largest independent trade union with a membership of 95,000 representing 90% of the profession, announced its disbandment on 10 August 2021. The PTU's decision came less than two weeks after the CCP's propaganda apparatus, the People's Daily and Xinhua simultaneously published two commentaries accusing the union of "encouraging anti-China activities that mess up Hong Kong" and blasting it as a "poisonous tumour" that must be "eradicated".⁶¹



*The Professional Teachers' Union announced its disbandment on 10 August 2021.
(Photo: Wikimedia)*

Hours after the CCP's publication of the commentaries, the Education Bureau announced it would cease working with the PTU, accusing the union of "dragging schools into politics" and being unprofessional. Following the government's decision, the PTU vowed to focus on the rights and interests of the education sector and cut ties with the HKCTU and Education International. The responses of the PTU however could not change its fate. It is reported that Beijing "middlemen" made it clear that the union's only choice was to "cease to exist". Knowing that the PTU's assets could be frozen by the government at any time as evidenced in the Apple Daily case, the

⁶¹ <https://hongkongfp.com/2021/08/10/breaking-hong-kongs-largest-teachers-union-to-disband-following-pressure-from-govt-and-chinese-state-media> [retrieved 16 May 2022]

union leadership decided it was better to speedily disband itself to protect their enormous financial reserves to pay for around 200 employees' wages and severance pay.⁶²

Many young students took part in the 2019 Democracy Movement, and the government made teachers the scapegoats, accusing them of spreading radicalism in the classroom. For the government to implement brainwashing national education in schools, it must first remove all the obstacles. To the government, the PTU, with its huge resources and mobilization capabilities, is certainly one of them. Without the union's backing, individual teachers will find it difficult if not impossible to resist the government's order and pressure.

3.4 Dissolution of the HKCTU and its immediate impacts

The HKCTU announced its decision to disband on 19 September 2021 and passed a resolution at an extraordinary general meeting on 3 October to end the 31-year-old umbrella group of independent trade unions.



The Hong Kong Confederation of Trade Unions (HKCTU) announced its decision to disband on 19 September 2021. (Photo:Prachata/Flickr)

⁶² <https://www.scmp.com/news/hong-kong/politics/article/3157386/national-security-law-why-have-hong-kongs-activist-groups> [retrieved 16 May 2022]

The script leading to the dissolution of the HKCTU was all too familiar. First, the CCP's propaganda arm, Wen Wei Po and Tai Kung Pao, blamed the HKCTU for receiving funding from foreign organisations, colluding with external forces and manipulating trade unions into participating in anti-China activities to disrupt Hong Kong. For instance, Wen Wei Po ran a full-page story on 12 August detailing the confederation's alleged violations of the NSL, including supporting the general strike on 5 August 2019 and screening documentaries about the 2019 Democratic Movement.

Next, in responding to those accusations, which were nothing more than a recycling of old news, local officials warned that they would not turn a blind eye to any acts jeopardising national security. On 18 September, Police Commissioner Raymond Siu said the authorities would "definitely follow up on illegal acts or national security violations by any groups" when asked whether the HKCTU was being investigated.⁶³

Finally, came the "middlemen" - claiming to have received a message from Beijing. These Beijing's proxies would deliver advice or directions too hard to ignore.⁶⁴ Explaining the HKCTU's decision to fold, former chairperson Joe Wong said his organisation's leadership had received threats to their personal safety without further elaboration. Prior to HKCTU's announcement to disband, former chief executive Mung Siu-tat resigned and fled the city because of "imminent political risks and safety concerns". Mung later revealed that he was interviewed by the "middlemen" three times within a month, and referral to the National Security Department was mentioned in their last meeting.

The disbandment of the city's four flagship civil society organisations – the PTU, Civil Human Rights Front, Hong Kong Alliance and HKCTU – in a short span of time inevitably sent shock waves throughout the society and caused demoralisation. The

⁶³ <https://www.scmp.com/news/hong-kong/politics/article/3149319/hong-kongs-largest-opposition-trade-union-confirms> [retrieved 16 May 2022]

⁶⁴ Note 54.

closure of the four organisations and the arrest of five GUHKST official has triggered a wave of dissolution of trade unions. Trade unions have felt threatened by the fast-worsening political environments and foresaw there was little room for them to play a role in the future. Some trade unions are even unable to initiate the dissolution process as no one is willing to take over as union officers.

With the dissolution of HKCTU, its affiliated unions were the first to bear the brunt, and they immediately lost all kinds of support provided by the confederation.⁶⁵ The first problem that arises is their office premises. Many affiliated unions cannot afford their own premises and need to borrow HKCTU's offices to hold meetings and handle union business. Joe Wong, who is also chairperson of the Cleaning Service Industry Workers Union, revealed that his organisation had to hold its executive committee meetings at his apartment after the HKCTU folded.⁶⁶ Officers of the Hong Kong Domestic Workers' General Union (HKDWGU) had to meet at restaurants,⁶⁷ but COVID-19 social distancing regulations made it difficult if not impossible. Citybus Limited Employees Union chairperson Hui Hon-kit noted that HKCTU's closure also resulted in them losing a place to gather where they could talk with other affiliated unions during spare time,⁶⁸ which is important for building solidarity.

Another problem facing those smaller affiliated unions is the lack of financial resources. The balance of the cleaner's union is only about HK\$30,000 (US\$3,850) which is obviously not enough for a year's operations. The union has about 100 members and the annual membership fee is HK\$100 (US\$13). Given the economic

⁶⁵ The following discussion is drawn from <https://www.hkcnews.com/article/47493/職工盟解散-碼頭工潮-新巴-47688/職工盟解散屬會頓成「無殼蝸牛」-工會：繼續堅持做得幾耐得幾耐>; https://ubeat.com.cuhk.edu.hk/156_hkctu; <http://spyon.jour.hkbu.edu.hk/2021/12/25/職工盟解散後屬會孤立無援-留守工會各安本業自力> [in Chinese] [retrieved 16 May 2022] and informal interviews with trade union organisers.

⁶⁶ <http://spyon.jour.hkbu.edu.hk/2021/12/25/職工盟解散後屬會孤立無援-留守工會各安本業自力> [in Chinese] [retrieved 16 May 2022]

⁶⁷ <https://www.hkcnews.com/article/47493/職工盟解散-碼頭工潮-新巴-47688/職工盟解散屬會頓成「無殼蝸牛」-工會：繼續堅持做得幾耐得幾耐> [in Chinese] [retrieved 16 May 2022]

⁶⁸ Note 66

hardships of grassroots cleaning workers, Joe Wong asks, “how much membership fee can the union collect from the members?”⁶⁹ Honorary secretary of the Community Care and Nursing Home Workers General Union Cheng Ching-fat points out that most affiliated unions had to rely on the resources of the confederation. His union used to pay the HKCTU a monthly secretarial fee of HK\$2,000 (US\$255) and they were able to use the Yau Ma Tei premises as the office and could receive administrative support.⁷⁰ The union decided at its extraordinary general meeting on 29 May 2022 to disband, citing “white terror” amid a new wave of attack against HKCTU and its former affiliates by the CCP-controlled media.⁷¹

Sectoral unions also lose an important channel to recruit members. Former chief executive of the HKDWGU Mui Shek-chi says, “in the past we recruited new members mainly through the courses provided by HKCTU’s training centres.”⁷² Without a workplace for organising, his union is wondering how it can recruit members after the training centres stop operating. HKCTU’s handling of worker’s complaints on behalf of affiliated unions is another way for unions to recruit members, but now it is also gone with the closure.

Apart from material support, the HKCTU also offered training for union officers. Citybus union chairperson Hui Hon-kit says, “our union officials have acquired organizational techniques and communications skills from the HKCTU’s union education, so that we can still operate after its disbandment.”⁷³ However, future union officer-bearers will no longer have this opportunity.

The HKCTU also supported affiliated unions in policy analysis and proposals. Hong Kong Social Workers’ General Union president Cheung Chi-wai says, “our union used to co-operate with the HKCTU in the advocacy of wider labour policy, such as

⁶⁹ Note 65

⁷⁰ https://ubeat.com.cuhk.edu.hk/156_hkctu [in Chinese] [retrieved 16 May 2022]

⁷¹ https://hk.on.cc/hk/bkn/cnt/news/20220606/bkn-20220606183515897-0606_00822_001.html [in Chinese] [retrieved 8 June 2022]

⁷² Note 66

⁷³ Note 66

minimum wage, work time regulation and collective bargaining. Now without HKCTU's inputs, we will be most likely to focus our work on members' welfare and interests only."⁷⁴

Despite all kinds of difficulties and challenges, many affiliated unions are still determined to keep going and continue the mission of the independent trade union movement.

4. Hong Kong Trade Union Facing Existential Threat

The ILO repeatedly stresses that a genuinely free and independent trade union movement can only develop where fundamental human rights are respected. The government's aggressive enforcement of the draconian NLS, re-weaponization of repressive colonial laws, and implementation of all-encompassing national security measures have successfully created a climate of fear throughout the whole of society. The fast shrinking civil society space has left Hong Kong's independent trade union movement facing an existential threat. Amid the rapidly changing political landscape, no one can accurately determine the future prospect of the city's labour movement. This section will briefly discuss the four challenges Hong Kong's independent trade unions are facing in the foreseeable future, namely the loss of experienced organisers, the lack of sustainable funding, the avoidance of risky activities amid the uncertain environment, and the end of the social movement unionism strategy practised in the last few decades.

**“A GENUINELY FREE AND INDEPENDENT
TRADE UNION MOVEMENT CAN ONLY
DEVELOP WHERE FUNDAMENTAL HUMAN
RIGHTS ARE RESPECTED.”**

International Labour Organization

⁷⁴

Note 65

4.1 Loss of experienced organisers

With increasing political and legal risks, the city's many civil society organisations are facing serious brain drain, and trade unions are no exception. After the HKCTU's disbandment in October 2021, nearly 20 union organisers were laid off. Less than half of them continue to work in labour organisations. Four have taken up jobs in other sectors, and at least five have fled Hong Kong. The rest chose to take a temporary break.⁷⁵

Those who opted to continue working in trade unions are experiencing intense psychological pressure. After a new wave of attacks against the HKCTU by the CCP's propaganda apparatus in April 2022, one of them resigned, saying "just want to stay away from the storm". For many people working in trade unions and other civil society organisations, the first thing to do every morning is to read the front-page stories of Wen Wei Po and Ta Kung Pao to see whether their organisations are on the CCP's hit list. These stories are just the CCP covering up its own mistakes and looking for a scapegoat, one union organiser says, "we would just laugh it off in the past, but now there could be real consequences."

Many union organisers suffer from mental health problems. HKCTU former chairperson Joe Wong revealed that he suffered from post-traumatic stress disorder after the confederation's dissolution. He said, "I suffered from recurrent, unwanted distressing memories of HKCTU's disbandment, as well as insomnia, anxiety, overeating and self-blame ... Knowing that there are still many people and organisations persisting, I tell myself I must pick myself up and not stay in the whirlpool of self-pity forever".⁷⁶ Some other trade union staff have also reportedly suffered from depression, anxiety, insomnia, emptiness, frustration, tiredness, and feelings of guilt because of increasing political pressure, or having friends or

⁷⁵ This subsection is drawn from <https://www.mpweekly.com/culture/職工盟-解散-公民社會-195919> [in Chinese] [retrieved 16 May 2022] and informal interviews with trade union organisers.

⁷⁶ <https://www.mpweekly.com/culture/職工盟-解散-公民社會-195919> [in Chinese] [retrieved 16 May 2022]

colleagues jailed for civil society activities or fleeing amid the city's worsening environments. This phenomenon is also common in other civil society organisations.

On the other hand, some trade unions report that they face great challenges in recruiting and retaining members, not only because they lose HKCTU's recruitment channels, but also because workers feel that the risk is too great or there is little they can do under the current environment. Some unions have also ceased operations because no one was willing to take over as office-bearers.

4.2 Lack of sustainable fundings

Apart from a handful of unions, the city's independent trade unions are small in scale and cannot solely rely on union dues to support their operations. In addition to HKCTU's support, trade unions used to rely on four funding sources, namely public fundraising, partnership projects with local non-government organisations (NGOs), application for government-funded programmes, and funding projects from foreign and international organisations. The NSL and government's sweeping measures have rendered all these sources inaccessible.

In the past, unions could solicit donations from participants in annual pro-democracy public processions such as the Tiananmen Commemoration Vigil and 1 July Rally without permits, and the police usually did not intervene. However, the government has strengthened its law enforcement after the promulgation of the NSL. Four members of the League of Social Democrats, a pro-democracy political party, were recently convicted of unauthorised fundraising under the Summary Offences Ordinance.⁷⁷ Apart from amending the tax code for charitable organisations to include the national security requirement, the government also tightened the regulation on public fundraising activities. The government enacted a new permit system in early 2022, under which only charitable organisations with a credible track record are eligible to conduct face-to-face solicitation. Without proper checks and

⁷⁷ <https://thewitnesshk.com/擺街站被指非法籌款-社民連陳寶瑩與3義工認罪罰款> [in Chinese] [retrieved 28 May 2022]

balances, these fundraising regulations could be weaponized to discipline civil society organisations.⁷⁸

Established local NGOs are another source of funding for trade unions. The HKCTU and its affiliates have co-operated with local NGOs in policy advocacy, such as the enactment of a statutory minimum wage and regulation on working time, for more than a decade. The partnership arrangement is mutually beneficial, as the trade unions can secure resources to carry out their activities and the funders can adopt a bottom-up campaigning strategy through unions' grassroots connections. Well-funded NGOs are also facing intense pressure arising from the revised tax codes for charities which means that this kind of collaboration will most likely be subdued because of the sensitivity of HKCTU's affiliates.

Trade unions can apply for grants or subsidies from a range of programmes offered by government and statutory bodies, such as the Occupational Health and Safety Council and Equal Opportunity Commission. The government however hints that it may vet recipients of public monies. The Secretary for the Civil Service Patrick Nip has revealed the government is looking into whether subvented organisations and people who apply for government funds have to pledge allegiance.⁷⁹ Whether this ridiculous suggestion will be implemented is still unknown, independent trade unions are however prepared that they will be excluded from access to public fundings on political grounds.

Funding from foreign or international organisations have become taboo for the city's civil society organisations. The reaction is not over-sensitive as the police can use receiving foreign fundings as a pretext to conduct covert surveillance on organisations and their members, and even raid their premises, seize documents and arrest and detain their leaders. In the case of Hong Kong Alliance's refusal to provide information the prosecution declined to disclose which foreign organisations or

⁷⁸ <https://madeinchinajournal.com/2022/03/08/strike-down-hard-resistance-and-regulate-soft-resistance-the-securitisation-of-civil-society-in-hong-kong> [retrieved 16 May 2022]

⁷⁹ <https://www.thestandard.com.hk/section-news/section/11/234408/Pledge-of-allegiance-on-the-cards-for-funding-recipients> [retrieved 16 May 2022]

countries the Alliance was allegedly working for, citing public interest immunity. This will certainly open the door for the police to put a blank label of foreign agent to anybody without having evidence to back the claim up.⁸⁰ A High Court judge refused to grant bail to Claudia Mo, a journalist-turned-politician who was arrested for taking part in the unofficial primaries, as she considered Mo's WhatsApp chats with foreign correspondents an indication of a potential threat to national security.⁸¹

4.3 Avoidance of risks

Hong Kong's trade unions operated in a relatively free and safe environment in the past few decades. The draconian NSL has however brought about a sea change in the city's political, legal, and social landscapes. As trade unions enter uncharted waters, they opt to err on the cautious side.

A number of trade unions which actively participated in the 2019 Democracy Movement and the campaign against the imposition of the NSL, have chosen to stay silent after July 2020. Other unions have continued to comment on labour issues but have moderated their tone to avoid the charge of sedition. On 1 July 2021, the police asked the HKCTU to put away a banner that read "livelihood is politics, grassroots want justice", accusing them of using an inciting slogan that amounted to "hatred towards the government"⁸². One will not wonder if the popular slogan "collusion between the government and business" disappears.

Union organisers have also tried every effort to hide from Big Brother's watchful eyes. For instance, organisers have to think twice before issuing a joint statement, which is regarded as the most moderate collective action. Other riskier activities such as organising, and empowerment work will most probably be avoided. Lau Siu-kai, vice-president of the Chinese Association of Hong Kong and Macau Studies, a semi-

⁸⁰ <https://www.france24.com/en/live-news/20220511-hong-kong-tiananmen-vigil-organisers-labelled-foreign-agents> [retrieved 16 May 2022]

⁸¹ [2021] HKCFI 1435

⁸² <https://hongkongfp.com/2021/07/01/hong-kong-police-thwart-handover-anniversary-demos-11-arrested-for-handing-out-seditious-publications-under-colonial-era-law> [retrieved 16 May 2022]

official think tank, suggests that Beijing is fine with smaller groups if they no longer engage in any acts that “oppose China and disrupt Hong Kong”.⁸³ The assurance is however meaningless as the CCP constantly moves the “red line” to suit its current political needs. No one can guarantee that an act which is allowed today will be acceptable in the future.

4.4 End of social movement unionism?

The Hong Kong brand of trade unionism has evolved from two factors: the weak union presence at workplaces and the gradual expansion of the socio-political space since the 1980s. In the aftermath of the student movements in the 1970s, many young people joined different NGOs as full-time organisers, striving for the government to improve the livelihoods of the grassroots. The work of labour organisations in those years can be divided into two categories: striving for the government to strengthen statutory labour protections and intervening in labour disputes over pay and working conditions, or arising out of wage arrears or industrial accidents, through various social actions organised by full-time staffs, such as press conferences, petitions and rallies. With the LegCo further open to elections since the 1990s, trade unions can even bring labour issues into the legislature through elected members (though the powers of the LegCo in making law and policy are rather limited). This strategy has become more sophisticated and refined over time, but the essence has remained largely unchanged until recently. The campaign for a statutory minimum wage and the 2013 dock worker’s strike can best illustrate how Hong Kong’s social movement unionism works.

In-work poverty became a concern after the 1997 Asian Financial Crisis. The HKCTU, through its general secretary Lee Cheuk-yan who was also a LegCo member, brought the issue to the legislature. The trade union’s cause was aided by favourable media coverage. A news story, documenting how a government out-sourced toilet cleaner earned as little as HK\$7 (less than US\$1) per hour, roused public sympathy and exerted great pressure to the government. Funded by an established NGO,

⁸³ Note 55.

HKCTU's affiliated unions formed a coalition with other civil society groups to organise a range of activities, including regular surveys on grassroots worker's pay and collective actions shaming the government and employers in the low-paid sectors. The government finally agreed to enact a statutory minimum wage in 2008.

About 500 dock workers staged a 40-day strike in 2013 demanding better pay and working conditions. The HKCTU provided three full-time staff throughout the strike to assist in dockers' organising. The confederation worked with other grassroots organisations to set up a strike fund through public fundraising that collected just under HK\$9 million (US\$1.1 million) to support striking workers' livelihoods. Other trade unions and civil society organisations also joined in solidarity actions to amplify striker's voices. Young students also helped publish attractive social media posts to convey worker's messages to a wider audience. The strike finally ended with the dock workers received 9.8% pay rise.

Through mobilising civil society organisations for solidarity action and public pressure, this strategy compensated for trade union's weak workplace presence. The success of this mode of social movement unionism however relies on a combination of factors: an institutional arrangement that guarantees the respect for the rights to organise and freedom of association, a free and independent mass media, a government responsive (or at least sensitive) to public opinion, a connection with LegCo members who are sympathetic to the trade union's cause, organising and co-ordinating capacity of trade unions, a vibrant civil society and the effective access to fundings and other resources. But now, all these are gone, and the social movement unionism practised in last few decades is more than likely to come to an end.

Even those trade unions with a strong workplace presence suffered serious setback. Taking advantage of the current socio-political climate, Cathay Pacific Airways unilaterally withdrew from the union recognition agreement and stopped negotiating with the Hong Kong Aircrew Officers' Association and the Cathay Pacific Airways Flight Attendants Union (FAU) over pay and conditions, calling it an

“outdated practice” no longer relevant to the modern world.⁸⁴ The airline also terminated the facilitating arrangements offered to unions, including provision of office space and collection of union dues. The management accused the FAU of working with outside groups to the detriment of the company, implicitly referring to the Civil Aviation Administration of China issuing a “major aviation safety risk warning” to the airline in August 2019 in retaliation for FAU and its members’ participation in the pro-democracy movement.

5. A Long, Hard Road Ahead

The appointment of former security chief John Lee, who oversaw the police’s brutal crackdown on the 2019 Democracy Movement, as the next CE suggests that the CCP’s tough policy on Hong Kong is set to continue. Top of the CE’s to-do-list next is the Article 23 legislation, that means the socio-political space in which civil society organisations operate will be further contracted. Yet, despite the suffocating political climate, worker’s resistance to exploitation has never been ceased. Dozens of Coca-Cola workers staged a strike in May 2021 against pay cuts,⁸⁵ and construction workers used trucks to block a construction site near Austin Station to protest against wage arrears in December.⁸⁶

In particular, two recent incidents of labour struggles have caught people’s attention. 300 riders of Foodpanda staged a 2-day strike starting 13 November 2021, which paralysed the delivery giant’s on-demand grocery service Pandamart.⁸⁷ The industrial action was organised through social media chat groups and the striking riders did not know each other before they met during the strike. Members of the

⁸⁴ <https://www.scmp.com/news/hong-kong/transport/article/3111621/cathay-pacific-snubs-union-over-pay-talks-and-says-it-will> [retrieved 16 May 2022]

⁸⁵ <https://www.thestandard.com.hk/breaking-news/section/4/173388/Coca-Cola-workers-strike-against-pay-cut> [retrieved 5 June 2022]

⁸⁶ https://hk.on.cc/hk/bkn/cnt/news/20211221/bkn-20211221071016020-1221_00822_001.html [in Chinese] [retrieved 5 June 2022]

⁸⁷ <https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3157373/foodpanda-drivers-strike-look-behind-scenes-2-day> [retrieved 3 May 2022]

“negotiating team” were recruited on the spot. Although the strike was not initiated by the union, it was supported by a concern group composed of members of the trade unions and labour organisations. An organiser of the Catering and Hotel Industries Employees General Union revealed that he had assisted the striking to deal with the media and consolidate their main demands. After a marathon 14-hour negotiating session on 18 November, the riders got the company’s concessions to improve their pay and working conditions.



*300 riders of Foodpanda staged a 2-day strike starting 13 November 2021 in Hong Kong
(Photo: StandNews)*

Another incident is artist-cum-activist Luke Ching’s “ethnographic research” on the Mass Transit Railway’s (MTR) outsourced cleaners. Ching signed up with one of MTR’s cleaning service providers and was assigned to work at Tai Wai Station, which is one of the city’s busiest public transport hubs. After a month of working “undercover”, he shared his experiences on social media and held a press conference with two cleaning worker’s unions, exposing the appalling working conditions of MTR’s outsourced cleaners. Ching’s “artwork” attracted a lot of media

coverage and exerted pressure on the MTR and its majority shareholder – the government – to improve outsourced worker’s remunerations.⁸⁸



*Luke Ching and the unions hand over the public letter to the representative from the MTRC
(Photo: <http://tyr.jour.hkbu.edu.hk/>)*

The significance of these two events is not that the Hong Kong labour movement has found a way to break through the predicament. In fact, it is far from it. But at least people can see that, without the support of trade unions, workers still have the will and capacity to organise themselves to fight for their rights and utilise the tactics in the 2019 Democracy Movement – mobile messaging and app chat groups – to mobilize quickly. Despite all the difficulties, there are still attempts to continue to speak up for workers in innovative ways. These actions are what the Hong Kong Federation of Trade Unions (HKFTU), a subordinate of the CCP whose role is more about carrying out Beijing’s mandate than defending worker’s interests, would not do. Preventing the HKFTU from becoming the sole representative of the city’s workers and retaining an independent voice of labour is of particular significance in the current socio-political environment.

⁸⁸ <http://tyr.jour.hkbu.edu.hk/2022/03/21/justice-for-silent-frontline-cleaners> [retrieved 3 May 2022]

As some analysts observe, the situation in Hong Kong is somewhat resemblant to the mainland labour movement of the recent past. Street protests or large-scale demonstrations by workers are not allowed and can be suppressed at any time. Workers can only voice out their economic and livelihoods demands within a limited socio-political space.⁸⁹ The city's trade union movement will need to readjust to a very different political and legal environment, and in the process, one can only cross the river by feeling the stones. For the foreseeable future, Hong Kong's activists will need to overcome fear, maintain hope, prioritise the survival of trade unions and other civil society organisations, and explore new ways of resistance in a challenging time. As the HKCTU put it before its disbandment, "with a breath, the lamp is lit; where there is light, there is hope".⁹⁰

⁸⁹ <https://madeinchinajournal.com/2022/03/08/a-new-chapter-for-hong-kongs-labour-movement> [retrieved 16 May 2022]

⁹⁰ A famous quote, originated from Wong Kar-wai's film "The Grandmaster", often cited by Hong Kong's activists.

Appendix

Table 1: Arrest and Prosecution of Trade Union Leaders

<i>Name</i>	<i>Trade Union</i>	<i>Date of first arrest</i>	<i>Charges</i>	<i>Status</i>
Lee Cheuk-yan (李卓人)	Former General secretary, HKCTU	28 Feb 2021	Unauthorized assemblies (18 & 31 Aug and 1 Oct 2019 and 4 Jun 2020)	Sentenced to a total of 20 months imprisonment
		(Summon)	Obstructing a police officer (1 Jan 2021)	Sentenced to three weeks imprisonment (one week concurrent)
		9 Sep 2021	Inciting subversion	Pending trial (High Court, not scheduled)
Carol Ng (吳敏兒)	Former Chairperson, HKCTU	6 Jan 2021	Conspiracy to commit subversion	Denied bail on 4 Mar 2021; pending trial (High Court, not scheduled)
Winnie Yu (余慧明)	Former Chairperson, HAEA	6 Jan 2021	Conspiracy to commit subversion	Denied bail on 4 Mar 2021, granted bail on 28 Jul 2021, bail revoked on 8 Mar 2022; pending trial (High Court, not scheduled)
Joseph Lee (李國麟)	Former Chairperson, AHKNS	6 Jan 2021	Not charged	Released on police bail
Cyrus Lau (劉凱文)	ExCo member, AHPNA	6 Jan 2021	Not charged	Released on police bail
Lai Man-ling (黎雯齡)	Former Chairperson, GUHKST	22 Jul 2021	Publishing and circulating seditious materials	Denied bail on 23 Jul 2021; pending trial (District Court, scheduled 5 Jul 2022)
Melody Yeung (楊逸意)	Former Deputy chairperson, GUHKST	22 Jul 2021		
Sidney Ng (伍巧怡)	Former Secretary, GUHKST	22 Jul 2021		
Samuel Chan (陳源森)	Former Treasurer, GUHKST	22 Jul 2021	Publishing and circulating seditious materials	Denied bail on 30 Aug 2021; pending trial (District Court, scheduled 5 Jul 2022)
Marco Fong (方梓皓)	Former ExCo member, GUHKST	22 Jul 2021		
Leo Tang (鄧健華)	Former Vice-chairperson, HKCTU	6 Apr 2022	Not charged	Released on police bail

Table 2: Trade unions disbanded in 2021

<i>Date of de-registration</i>	<i>Name (English)</i>	<i>Name (Chinese)</i>	<i>Reason to disband</i>	<i>Establish since</i>
03 March 2021	Building Materials Employees Union	建材業從業員工會	At request of union	2020
15 March 2021	Housing Department Estate Assistants Association	房屋署屋宇事務助理協會	At request of union	1976
15 March 2021	Government Court Reporters Association	政府法庭速記員協會	At request of union	1988
15 March 2021	Hong Kong Automation Equipment Employees Association	香港自動化設備職工協會	At request of union	2020
03 May 2021	Union for New Civil Servants	新公務員工會	By dissolution	2019
10 May 2021	Housing Department Chief Estate Assistants Association	房屋署總屋宇事務助理協會	At request of union	1981
13 May 2021	Practising Pharmacists Alliance	執業藥劑師同盟會	By dissolution	2020
18 May 2021	Hong Kong Psychotherapy and Counselling Practitioners Union	香港心理治療及輔導人員工會	At request of union	2020
25 May 2021	Housing Department Estate Assistant Grade General Union	房屋署屋宇事務助理職系總會	At request of union	1988
31 May 2021	Hong Kong Consumer Goods Industry Staff Union	香港消費品業職工會	At request of union	2020
09 June 2021	Hong Kong Social Workers Alliance	香港社工同盟	At request of union	2020
23 June 2021	Hong Kong Electronics Technology Professionals' Union	香港電子科技人員協會	By dissolution	2020
24 June 2021	Shatin Researchers Association	沙田區研究人員協會	By dissolution	2020
05 July 2021	Hong Kong Java Practitioners Association	香港 Java 程式語言從業員協會	At request of union	2017
05 July 2021	Hong Kong Information Technology & Communications Industry Employees Association	香港資訊科技及通訊業從業員協會	At request of union	2020
05 July 2021	Old District Redevelopment Workers Union	舊區重建職工總會	At request of union	2020
08 July 2021	Hong Kong High Performance Computing Practitioners Union	香港高性能計算從業員工會	At request of union	2020
09 July 2021	Hong Kong Professional Pharmaceutical Employees Association	香港專業藥劑從業員協會	At request of union	2017
12 July 2021	Hong Kong Customer Service Employees Union	香港客戶服務從業員工會	At request of union	2020

15 July 2021	Councillor Assistants Union	議員助理工會	At request of union	2020
22 July 2021	I.T. Hipster Association	I.T. 文青協會	At request of union	2020
26 July 2021	Accounting and Finance Employees Solidarity Union	會計及財務人員團結工會	By dissolution	2020
29 July 2021	Hong Kong Family Welfare Society Staff Union	香港家庭福利會職工會	At request of union	2013
03 August 2021	Union of Child Care Workers	幼兒服務工作者工會	At request of union	2020
16 August 2021	Frontline Doctors' Union	前線醫生聯盟	By dissolution	2020
16 August 2021	Financial Technology Professional Services Personnel Union	金融科技專業服務人員工會	By dissolution	2020
27 August 2021	Next Media Trade Union	壹傳媒工會	At request of union	2009
30 August 2021	Hong Kong Financial Workers' Union	香港金融從業員工會	At request of union	2018
30 August 2021	Hong Kong Councillor Assistants Frontline	香港議員助理前線	At request of union	2020
03 September 2021	Automobile Industry Clerical and Managerial Staff Union	汽車業文職及管理人員職工會	At request of union	2020
03 September 2021	Hong Kong Rehabilitation Therapy Staff Union	香港復康治療界職工會	At request of union	2020
08 September 2021	Hong Kong Teaching and Research Support Staff Union	香港輔助教研人員工會	By dissolution	2016
10 September 2021	Advance L. Union	捷達職工會	At request of union	2019
10 September 2021	Occupational Therapy Practitioner Alliance	職業治療師陣線	By dissolution	2020
20 September 2021	Hong Kong Financial Services Technology Employees Association	香港金融服務科技從業員協會	By dissolution	2020
20 September 2021	Toy Manufacturing Employees Union	玩具製造業僱員工會	At request of union	1993
20 September 2021	Aviation IT Workers Union	航空資訊科技職工會	At request of union	2020
20 September 2021	Hong Kong Streaming Media Technology Workers Union	香港串流媒體科技人員工會	At request of union	2020
24 September 2021	Hong Kong Optometrists Union	香港視光師工會	By dissolution	1993
24 September 2021	Hong Kong Writers Union	香港文字工作者工會	By dissolution	2020
05 October 2021	Economic Services Professionals Union	經濟服務專業人員工會	At request of union	2020
08 October 2021	Hong Kong Financial Industry Practitioners Union	香港金融業從業員工會	At request of union	2020
13 October 2021	The General Union of Hong Kong Speech Therapists	香港言語治療師總工會	Revoked by RTU	2019

25 October 2021	Hong Kong Professional Management Consulting Service Employees Association	香港專業管理顧問服務職工會	At request of union	2020
28 October 2021	The Union of Hong Kong Occupational Therapists	香港職業治療師工會	By dissolution	2020
03 November 2021	Cement Sand Mortar Workers' Alliance	泥水職工陣線	At request of union	2020
05 November 2021	Vocational Training Council Learning Resources Centre Staff Association	職業訓練局學習資源中心員工協會	By dissolution	2004
11 November 2021	Hong Kong Association of Employees in Architectural and Town Planning Sectors	香港建築及城市規劃從業員協會	At request of union	2018
11 November 2021	Finance and Information Technology Industry Staff Association	金融及資訊科技業人員協會	By dissolution	2020
16 November 2021	Government Non-Civil Service Staff General Union	政府非公務員職工總會	By dissolution	2020
16 November 2021	Hong Kong Company Secretarial Professionals Association	香港公司秘書專業人員協會	By dissolution	2020
23 November 2021	Construction Employees Alliance	建造業僱員同盟	At request of union	2020
24 November 2021	Hong Kong Society of Medical Imaging Technologists	香港醫療造影師公會	By dissolution	2020
29 November 2021	Association of Hong Kong Executive and Management Staff	香港行政及管理人員協會	At request of union	2020
06 December 2021	Hong Kong Real Estate Agents Rights and Benefit General Union	香港地產代理權益總工會	By dissolution	2020
06 December 2021	Innovative Education Teachers Association	創新教育教師協會	At request of union	2020
08 December 2021	Association of Hong Kong Clerical Employees	香港文書職務僱員協會	By dissolution	1996
08 December 2021	Ocean Park Employees' Union	海洋公園職工會	By dissolution	2006
15 December 2021	Maritime Transport Services Industry Trade Union	航海交通服務業職工會	By dissolution	2020
16 December 2021	Hong Kong Tourism Industry Innovation General Union	香港旅遊業革新總工會	By dissolution	2020
17 December 2021	Informatics Technology and Computer Professionals Union	資料暨電腦全人職工會	At request of union	2021
21 December 2021	Educational Psychologists Union	教育心理學家聯盟	At request of union	2020
30 December 2021	SE Global Functions HK Employees Association	施家全球職能香港員工協會	At request of union	2020

(Source: Registry of Trade Unions, Labour Department HKSAR)

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IS AN NGO RUN BY
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**WE SPEAK UP FOR
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**Hong Kong Trade Union Movement
under the National Security Law:
Two Years into Authoritarian Rule**

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Cover: Hong Kong labour unions holding a banner in Chinese that read
“Trade unions resist autocracy” at the 1 Jan 2020 protest in Hong Kong.

