

**Submission from the Hong Kong Labour Rights Monitor to the United Nations
Human Rights Council 45th Universal Periodic Working Group Session Review on
People's Republic of China**

Introduction

- 1 The Hong Kong Labour Rights Monitor (HKLRM) is a United Kingdom-based non-government organization established in April 2022 by independent trade unionists, labour rights activists and researchers. The HKLRM aims to speak up for the workers in the Hong Kong Special Administrative Region, China (HKSAR) and amplify their voices around the world.
- 2 The HKLRM makes the following observations to the United Nations Human Rights Council on issues that have a direct bearing on workers' rights and welfare in HKSAR concerning the following areas: rights to freedom of association, expression, peaceful assembly, work, just and favourable conditions of work and collective bargaining.

Rights on Freedom of Association

- 3 **Since the promulgation of the National Security Law (NSL) in 2020, dozens of trade unions (TU) were forced to dissolve because of political pressure and repression.** In August 2021, Hong Kong Professional Teachers' Union, the biggest sectoral union in Hong Kong with over 90,000 members, announced its disbandment, citing "enormous pressure" (Annex 1)¹. Subsequently in October 2021, another independent trade union confederation, Hong Kong Confederation of Trade Unions (HKCTU), passed resolution to disband also citing political pressure. HKCTU comprised 90 affiliated unions, representing 150,000 members from different sectors (Annex 2)². Meanwhile, more than 170 trade unions cancelled their registration through dissolution or at their own request in 2021³ and 2022⁴, compared with only seven over the period between 2018 and 2020. Some labour organizations not registered under the Trade Union Ordinance (TUO)

¹ <https://hongkongfp.com/2021/08/10/breaking-hong-kongs-largest-teachers-union-to-disband-following-pressure-from-govt-and-chinese-state-media/>

² <https://www.scmp.com/news/hong-kong/politics/article/3151047/national-security-law-hong-kongs-biggest-opposition-trade>

³ <https://www.labour.gov.hk/tc/public/pdf/rtu/ASR2021.pdf>

⁴ <https://www.labour.gov.hk/common/public/rtu/PSTUHK2022.pdf>

also decided to disband or withdraw their operations in the city, for example the Asia Monitor Resource Centre⁵.

- 4 **Authorities are increasingly weaponizing the NSL and TUO to de-register TUs, frozen their assets and curtail union activities.** The TUO prohibits the use of union funds for any political purpose without clearly defining the parameters of political purpose⁶ and grants the Registrar of Trade Unions (RTU) extensive powers to cancel the registration of TUs. Between 2021 to 2023, two legitimately registered TUs, General Union of Hong Kong Speech Therapists (GUHKST) and Hong Kong White Collar (Administration and Clerical) Connect Union, were de-registered by the authorities due to reasons as listed above (Annex 3).
- 5 The Hospital Authority Employees Alliance (HAEA) received RTU's enquiry letters on 3 September 2021, which demanded the union to submit information on eight events it held, including the 5-day strike in relation to COVID-19 outbreak, former chair Winnie Yu's participation in the democracy camp's primaries, the screening and street stalls concerning the 1989 Tiananmen Democratic Movement and commentaries about the efficacy of Sinovac vaccine⁷.
- 6 The Hong Kong Journalists Association (HKJA) also confirmed 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 screening, book launches, social media posts during the 201 Anti-Extradition Law Amendment Bill Movement and the annual report on press freedom⁸.
- 7 Four former office-bearers of the HKCTU were questioned by the police's national security department. They had allegedly failed to respond to a series of questions regarding the HKCTU's operations, past activities, financial sources and links to groups outside 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. Three of them were charged and found guilty under Article 16(2) of the Societies Ordinance for failing to cooperate with the police's request for

⁵ <https://www.rfa.org/english/news/china/target-09172021134457.html>

⁶ https://www.elegislation.gov.hk/hk/cap332!en?INDEX_CS=N&xpid=ID_1438403018800_004 (Cap. 332 Part V, Article 34)

⁷ hongkongfp.com/2021/09/17/hong-kong-hospital-authority-union-denies-govt-allegation-it-broke-

⁸ hongkongfp.com/2022/01/21/unions-registry-demands-answers-from-hong-kong-journalists-assoc-over-film-screenings-book-events-social-media-posts

information and were fined HK\$8,000 each⁹.

- 8 Article 9 of the NSL requires the Government to strengthen the supervision and regulation over matters concerning national security relating to trade unions. The Legislative Council (LegCo) approved on 8 July 2022 the creation of a new directorate post in the Labour Department to lead the additional work¹⁰. The Government also amended on 16 September 2022 the application form for registration of trade union, attaching a declaration in which the applicant must confirm that the union “will not perform or engage in any acts or activities that may endanger national security or otherwise be contrary to the interests of national security”¹¹. The applicant must also declare that all the purposes and objects of the trade union are lawful and will not contravene the TUO, its subsidiary legislation and other relevant laws of Hong Kong.
- 9 General Secretary of International Domestic Workers Federation, former Chief Executive of HKCTU, Elizabeth Tang Yin-ngor, was arrested on 9 March 2022, on suspicion of colluding with “foreign forces to endanger national security” according to media reports¹². Tang was granted a HK\$200,000 cash bail and ordered to hand over her passport as bail conditions after two days of detention.
- 10 **Recommendations:**
 - 10.1 To repeal the NSL and, in the meantime, refrain from applying the law;
 - 10.2 To revoke the restrictions imposed on the use of union fund for political purpose under the TUO and, in the meantime, refrain from applying the law;
 - 10.3 To ensure that TUs, CSOs and their members can carry out their legitimate functions and exercise their rights as guaranteed by international human

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<https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E5%B7%B2%E8%A7%A3%E6%95%A3%E8%81%B7%E5%B7%A5%E7%9B%9F%E8%A2%AB%E6%8C%87%E7%84%A1%E6%8C%89%E4%BE%8B%E4%BA%A4%E8%B3%87%E6%96%99-%E4%B8%89%E4%BA%BA%E8%AA%8D%E7%BD%AA%E5%90%84%E7%BD%B0%E6%AC%BE8%E5%8D%83%E5%85%83-%E9%84%A7%E5%BB%BA%E8%8F%AF%EF%BC%9A%E8%89%AF%E5%BF%83%E9%A9%85%E4%BD%BF%E3%80%81%E4%BA%BA%E4%B8%8D%E8%83%BD%E5%A4%A0%E6%8D%B2%E6%9B%B2%E5%A6%82%E8%9B%86%E8%9F%B2> (in Chinese)

¹⁰ www.legco.gov.hk/en/legco-business/committees/financial-proposals-results.html?2022&20220708

¹¹ www.gld.gov.hk/egazette/pdf/20222637/egn202226375158.pdf

¹² <https://www.voanews.com/a/hong-kong-police-arrest-union-leader-following-visit-to-imprisoned-husband/6997576.html>

- right instruments in a climate free of fear and threats of any kind;
- 10.4 To ensure that all TUs and CSOs can provide services to workers, organize activities and events for workers without hindrance;
- 10.5 Guarantee in law and practice the right of associations to seek, receive and utilize funding from national, foreign and international sources without prior authorization or undue interference;
- 10.6 Release all individuals who have been detained and imprisoned for the peaceful exercise of their right to freedom of association and drop all criminal charges against them.

Right to Freedom of Expression

- 11 A number of trade unionists were arrested and imprisoned because of expressing political opinions, ideas and information that are different from the government's. Carol Ng, former chair of the HKCTU, was arrested on 6 January 2021 on suspicion of conspiracy to subversion over her participation in an unofficial primary election organized by the pro-democracy camp in July 2020, and has been detained since 28 February 2021. The Court declined her appeal for bail on 20 December 2021, citing her international influence as a result of her trade union work¹³.
- 12 Winnie Yu, former chair of HAEA, was arrested on 6 January 2021 on suspicion of conspiracy to subversion over her participation in the unofficial primary election. The High Court allowed her appeal for bail on 28 July 2021, citing there was no evidence that she "ever had an international connection"¹⁴. She was arrested again on suspicion of violating bail conditions on 7 March 2022 and her bail was revoked next day by a magistrate and has been detained ever since, seemingly because of posts she made to social media criticizing the government's handling of the Omicron outbreak¹⁵.

¹³

<https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20220428/s00001/1651138201561/%E5%90%B3%E6%95%8F%E5%85%92%E5%88%9D%E9%81%B8%E6%A1%88%E8%A2%AB%E6%8B%92%E4%BF%9D%E9%87%8B-%E5%AE%98%E5%88%A4%E8%BE%AD%E7%A8%B1%E8%A8%80%E8%AB%96%E6%8C%91%E8%B5%B7%E5%B0%8D%E6%94%BF%E5%BA%9C%E6%80%A8%E6%81%A8-%E5%85%B7%E5%9C%8B%E9%9A%9B%E5%BD%B1%E9%9F%BF%E5%8A%9B%E6%98%93%E8%81%AF%E5%90%88%E4%BB%96%E4%BA%BA%E5%8F%8D%E6%94%BF%E5%BA%9C> (In Chinese)

¹⁴ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3148756/national-security-law-hong-kong-judge-rules-subversion>

¹⁵ <https://www.rfa.org/english/news/china/hongkong-unionist-03102022105118.html>

13 Five leaders of the GUHKST were charged in July and August 2021 respectively on suspicion of publishing and circulating seditious materials¹⁶. 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. They were convicted by the District Court on 2 September 2022 and were sentenced to 19 months each in prison. They were released after serving their jail terms on 10 October 2022¹⁷.

14 **Recommendations:**

14.1 To revoke the sedition provisions under the Crimes Ordinance and, in the meantime, refrain from applying these laws;

14.2 To ensure that all individuals, including TU leaders and members, can exercise their civil and political rights to vote, to be elected and express opinions, ideas and information as guaranteed by international human right instruments in a climate free of fear and threats of any kind;

14.3 Release all individuals who have been detained and imprisoned for the peaceful exercise of their right to freedom of expression and drop all criminal charges against them.

Right to Freedom to Peaceful Assembly

15 **TU leader was arrested and imprisoned due to his participation in peaceful assemblies, while public processions and rallies are severely restricted.** Lee Cheuk-yan, former General Secretary of HKCTU, was first arrested and charged on 28 February 2020, and subsequently sentenced to a total of 20 months' imprisonment for organizing four unauthorized assemblies in 2019 and 2020¹⁸. He was later arrested (while in prison) on 9 September 2021 and charged with inciting subversion of state power under the NSL for his involvement in the Hong Kong Alliance in Support of Patriotic Democratic Movements of China, the pro-democracy group that organized Hong Kong’s annual June Fourth vigil. He has been remanded in custody since he finished serving his jail terms on 30 September

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

¹⁷ hongkongfp.com/2022/09/10/breaking-5-hong-kong-speech-therapists-jailed-for-19-months-each-for-sedition-over-childrens-books

¹⁸ <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>

2022. The High Court declined his application for bail on 2 December, citing the risk he could continue to commit acts endangering national security¹⁹.

16 The Government enacted the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) in March 2020, banning all gatherings of more than four people in public areas, both indoor and outdoor. Since 2020, the Police has not granted permission to sanctioning Labour Day Rally organized by TUs.

17 On 1 July, 2021, the Hong Kong police abruptly street booths organized by HKCTU, calling on the authorities to free all political prisoners. The police commander on the ground alleged the booth involved content that "incited hatred and contempt against the government".

18 In November 2021, hundreds of workers from the food delivery platform Foodpanda went on strike against wage cuts. The police dispersed dozens of supporters on alleged violation of illegal assembly and social gathering regulations²⁰.

19 On 26 April 2023, one of the organizers of the 2023 Labour Day Rally, former Chair of the HKCTU, Joe Wong Nai-yuen, went missing and incommunicado for four hours. He was allegedly being taken away by authorities and decided to withdraw the public procession application after his release, which had yet to receive police approval. Wong was reportedly under tremendous pressure and unable to disclose further details, citing Article 63 of the NSL, which prohibits the disclosure of information involved in national security cases²¹.

20 Recommendations:

20.1 Revoke all restrictions placed on the exercise of the right to peaceful assembly and provisions regarding unauthorized assemblies' offences under the Public Order Ordinance, in the meantime, refrain from applying these laws;

20.2 Guarantee workers' right to strike is fully respected and observed in

¹⁹ hongkongfp.com/2022/12/06/ex-hong-kong-tiananmen-vigil-leader-denied-bail-as-court-cites-strong-evidence-in-national-security-case

²⁰ <https://hongkongfp.com/2021/11/16/hong-kong-police-warn-striking-foodpanda-workers-to-disperse-or-face-possible-force/>

²¹ <https://www.scmp.com/news/hong-kong/politics/article/3218407/former-leader-defunct-confederation-trade-unions-hong-kong-withdraws-labour-day-rally-application>

accordance with international human and labour rights standards;

- 20.3 Release all individuals who have been detained and imprisoned for the peaceful exercise of their right to freedom of peaceful assembly and drop all criminal charges against them.**

Right to work

21 Working conditions and rights of Migrant Domestic Workers (MDW) remain precarious and vulnerable. Under the Employment Ordinance (EO), employment agencies are prohibited from charging MDW more than 10% of their first month's salary. Research conducted in 2020 finds that MDWs were charged up to more than 50 times higher than the stipulated fees²². The same study also reports cases where employment agencies confiscated MDWs' passports and other personal documents, and MDWs could retain their documents only when their debts were fully settled. As a result, many MDWs are forced to work under debt-bondage contracts, contributing to a modern form of slavery and human trafficking.

22 The "two-week rule", whereby MDWs have to leave Hong Kong 14 days after their employment contracts are terminated and the "live-in policy", whereby MDWs are required to live in the employing household, put MDWs at high risk of abuse and exploitation²³.

23 Recommendation:

23.1 Repeal the "two-week rule" and the "live-in policy";

23.2 Monitor and investigate illegal overcharging of agency fees by employment agencies; carry out swift actions to enforce the law and prosecute employment agencies that fail to comply with the relevant regulations under the EO.

Right to just and favourable conditions of work

24 There are no statutory provisions in the HKSAR regulating working time. As a result, the city has the longest working hours in the world; in the third quarter of 2022, more than 1 million (or almost 29% of) employed persons had to work more

²² apwld.org/wp-content/uploads/2022/01/IMWU-INDONESIA-final.pdf

²³ www.cmab.gov.hk/doc/en/documents/policy_responsibilities/ICESCR_Concluding_Observation

than 50 hours a week²⁴. More than 550,000 (or nearly 20%) of private sector employees had to work overtime without pay or compensation. In addition, there are no laws governing rest breaks; some workers have to work continuously for more than 10 hours without a break²⁵.

- 25 **A statutory minimum wage (SMW) was introduced in May 2011 but has so far failed to lift low-paid workers out of poverty.** Partly attributable to the extremely low level of the SMW rate fixed, the in-work poverty rate climbed to 8.8% in 2020, an increase by 0.8 percentage point compared to that in 2018. The adjustment of the SMW has also failed to keep pace with rising prices and the territory's economic growth. Despite the SMW rate was adjusted to HK\$40 on 1 May 2023, after a four year froze since 2019²⁶, the SMW rate after the adjustment (6.7%) offers no improvement in purchasing power than it did in May 2019 as inflation rate between May 2019 and November 2022 was also 6.7% (Annex 4).
- 26 **Employment protections for workers under non-standard forms of work arrangement remain acutely inadequate.** Under the EO, "continuous contract employees" are entitled to such benefits as rest days, paid holidays and annual leave, maternity leave and pay, sickness allowance, and severance payments (Annex 5)²⁷. As the statutory provisions now stand, it is open to employers to adopt odd patterns of working hours to evade their statutory responsibilities (Annex 6).
- 27 Access to employment rights depends to a large extent on whether an individual is employed as an employee. The traditional binary categorization of "subordinate and dependent employee" vs "autonomous and independent self-employed" gives rise to problems when the status of individuals is so unclear that they cannot be easily classified as being employees or self-employed. This problem becomes more acute as the existing classifications fail to reflect recent growth of certain flexible or non-standard forms of employment, in particular casual work, zero-hours contracts, fixed term and task work, agency work, platform work, freelancing and "dependent self-employment". These non-standard forms of work arrangement are commonly found in the construction and transportation sectors as well as food delivery platforms. They are among the principal groups whose

²⁴ www.censtatd.gov.hk/en/data/stat_report/product/B1050001/att/B10500012022QQ03B0100.pdf

²⁵ www.scmp.com/news/hong-kong/health-environment/article/3097733/workers-hong-kongs-busiest-port-sleep-converted

²⁶ www.info.gov.hk/gia/general/202301/10/P2023011000204.htm

²⁷ <https://www.legco.gov.hk/yr12-13/english/panels/mp/papers/mp0731cb2-1654-1-e.pdf>

employment status is currently in doubt, and are in need of some forms of protection, those relating to OSH in particular.

28 Recommendations:

- 28.1 Legislate for regulating working time, overtime pay and rest breaks in line with core international labour standards;**
- 28.2 Implement all effective measures, including amending the Minimum Wage Ordinance, to ensure that the SMW rate is fixed taking into full account of the needs of workers and their families;**
- 28.3 Adjust the SMW rate at least once a year to take account of changes in the cost of living and other economic conditions;**
- 28.4 Amend the existing EO and the Employee Compensation Ordinance with a view to extending their application, with adaptations where necessary, to all workers under non-standard forms of work arrangement, including casual workers, zero-hours contract workers, fixed term and task workers, agency workers, platform workers, freelancer and “dependent self-employed”.**

Right to Collective Bargaining

29 Despite repeated calls by the ILO since 1998, the HKSAR Government has persistently refused to adopt legislative provisions laying down objective procedures for determining the representative status of trade unions for collective bargaining purposes. The HKSAR Government’s refusal to provide legal frameworks for collective bargaining have resulted in the marginal representation of TUs in the HKSAR with less than 1% of workers covered by collective agreements. Without statutory provisions for collective bargaining, employers can arbitrarily and unilaterally revoke TUs negotiation and representation status with no legal retribution (Annex 7).

30 Recommendations:

- 30.1 Legislate for objective procedures for determining the representative status of trade unions for the purposes of collective bargaining, to encourage and promote the full development and utilization of apparatus and mechanism for voluntary negotiation between employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements laying down statutory procedures for collective bargaining.**