Right to Freedom of Assembly during Peaceful Protests in Crisis Situations: Convergence of Multiple Crises in Hong Kong

Civil Society submission to Mr. Clément Nyaletsossi VOULE United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association

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HRIC was founded in March 1989 by overseas Chinese students and scientists with a mission to support rights defenders and advance the institutional protection of international human right rights in the People’s Republic of China.
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I. Introduction

(Note: all emphases in quoted passages have been added.)

1. Human Rights in China (HRIC) welcomes the opportunity to provide input into the next thematic report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association specifically addressing the protection of human rights in the context of peaceful protests during crisis situations.¹ In mainland China, the serious and ongoing rights repression has been extensively documented, including systematic human rights violations and use of forced labor in Xinjiang,² the intensifying assault on cultural and religious freedoms in Tibet,³ and the crackdown on human rights defenders and lawyers.⁴ These ongoing rights crises have generated wide international concern and responses, including from UN Special Procedures.⁵ The COVID-19 pandemic also highlighted how disinformation, information control, and censorship pose deadly threats to human rights,⁶ especially during its emergence in the People’s Republic of China (PRC).⁷

2. HRIC’s submission highlights the multiple crisis situations in the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China (PRC), namely: the COVID-19 pandemic health crisis, and the ongoing political and social crisis escalated by recent legal developments and drastic electoral overhauls. Through a human rights lens, this submission will focus on how these crises separately and in convergence have contributed to the severe ongoing rights restrictions in Hong Kong, including on the right to freedom of peaceful assembly. The multiple crises have been exacerbated by rights-restricting legislation and other measures such as prospective restraints on potential and future peaceful assemblies, which raise additional concerns regarding the overbroad use of legal and regulatory measures to undermine

⁴ Human Rights in China, “Input for report on disinformation: To the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” February 15, 2021. This submission has not been made public. MS on file.
⁷ Human Rights in China, “Input for report on disinformation: To the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” February 15, 2021. This submission focuses on the human rights challenges posed when misinformation is created and disseminated by the state itself or by state supported actors. This submission has not been made public. MS on file.
the right to freedom of peaceful assembly. In addition, the authorities aggressively deploy official narratives to legitimize their crises framing and handling and as discursive tactics of control to limit criticism and permissible civil society actions. The overall impact of these developments is the undermining of a safe and enabling environment for civil society, including an increase in gender-based violence.

3. As examples of creative resistance and civil society practices that need to be recognized and protected, HRIC also highlights how peaceful protests in Hong Kong have expanded to include multiple forms of creative gatherings and resistance, including small group actions, online gatherings, and creative collective public actions. The evolution of assemblies and peaceful protests in the face of increasingly draconian restrictions highlights the ongoing resistance of ordinary citizens and their persistence in exercising their rights despite the significant erosion of fundamental freedoms, including the right to freedom of peaceful assembly.

4. Finally, HRIC offers suggestions for positive steps and measures that can be pursued by diverse stakeholders to contribute to ensuring the respect, protection, and fulfilment of the right to freedom of peaceful assembly and to continue and deepen effective support for civil society in Hong Kong.

II. Convergence of Multiple Crises & Impact on Right to Freedom of Peaceful Assembly

5. This section will describe the health, political, and social crises situations in Hong Kong and how each crisis has contributed to and aggravated the overall rights situation, in particular the right to freedom of peaceful assembly. As the above crises converge, official narratives (and the censorship of any competing narrative) are also deployed to legitimize the authorities’ framing and handling of the crises and justify rights-restricting measures. As discursive tactics of control, these official narratives also limit criticism and permissible civil society actions. As the right to freedom of peaceful assembly is a key enabling right that supports the full enjoyment of civil, political, economic, social, and cultural rights, restrictions on it will impact other fundamental freedoms, such as the rights to freedom of opinion and expression and of political participation, contributing to further closure of already limited civic space.

A. Health Crisis: Targeted Rights Restrictions during the COVID-19 Pandemic

6. The COVID-19 pandemic has brought about the most significant global public health challenges since the last century. However, international human rights standards and normative guidance set out permissible restrictions on rights in the name of public health, security, or order. Per the

8 “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan: Disinformation and freedom of opinion and expression,” op. cit.
Joint Declaration on the Right to Freedom of Assembly and Democratic Governance of 2020, any crisis situations, including public health emergencies, must not be used as a pretext for rights infringements and the imposition of undue restrictions on public freedoms, which include blanket bans of assemblies. These general principles are underscored by specific guidance in the context of COVID-19. UN Secretary-General António Guterres stated that international law permits “certain restrictions on freedom of movement, including for . . . health emergencies” but that restrictions on free movement should be strictly necessary for that purpose, proportionate and non-discriminatory.

(i) COVID-19 Invoked as Justification for Rights Restrictions

7. While the right to freedom of assembly and other rights are expressly protected under domestic and international law, COVID-19 has been invoked by the HKSAR authorities as justification for its handling of political and social crises and rights restrictions. Article 17 of the Hong Kong Bill of Rights Ordinance, modeled on Article 21 of the International Covenant on Civil and Political Rights (ICCPR), expressly recognizes the right to freedom of peaceful assembly. Article 27 of the Basic Law also expressly provides for the right to freedom of assembly, and even mentions that there is a right to “strike.” Despite these protections in international law and domestic legislation, COVID-19 has been repeatedly invoked as justification for limiting citizens’ rights to freedom of peaceful assembly even when peaceful protests took place in compliance with existing public health regulations. Indicative examples are the anniversaries in 2020 and 2021 of the June Fourth military crackdown on the 1989 Democracy Movement in the PRC (also known as the Tiananmen Massacre), which witnessed the HKSAR authorities’

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10 To elaborate, even during crises States have positive obligations to provide an enabling environment by taking steps to ensure peaceful assemblies can occur freely and that assemblies are protected from attacks including from counterdemonstrators. Ibid.

11 UN Secretary-General António Guterres, “COVID-19 and Human Rights: We are all in this together,” April 2020.


13 Article 21 of the ICCPR reads: “the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” International Covenant on Civil and Political Rights (1976), https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.


15 Article 27 of the Basic Law reads: “Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.” Ibid.

repersistent restrictions on all peaceful assemblies, as well as draconian actions against organizers and participants\(^\text{17}\) (described further below).

8. As the UN independent experts’ joint communication of May 4, 2020\(^\text{18}\) (on the arrest of 15 pro-democracy activists in connection with their participation in peaceful protests between August and October 2019\(^\text{19}\)) noted: “rather than seeking meaningful dialogue with protesters, these arrests seem to suggest the further stifling of protest and dissent at a time where assemblies are already severely restricted on the grounds of COVID-19 measures.” Indeed, the growing list of arrests, convictions, and related incidents continue to raise serious concerns regarding the use of COVID-19 to politicize and further suppress protest and assembly of all forms.

9. On June 4, 2021, more than 200 police sealed off Victoria Park—the site of the annual candlelight vigil where the people of Hong Kong commemorate June Fourth victims—in the afternoon to prevent any June Fourth related gatherings inside.\(^\text{20}\) The force also deployed 7,000 police officers across the city\(^\text{21}\) with more than 3,000 anti-riot police on standby to stop any possible June Fourth commemoration gatherings near Victoria Park. The Police Tactical Unit conducted stop-and-search checks in the vicinity.\(^\text{22}\) By the end of that day, at least six people, aged 20-75, were arrested for June Fourth-related commemoration activities.\(^\text{23}\) Even solo


“Police arrests Student Politicism convenor Wong Yat Chin over setting up street booth in Mong Kok (【六四 32 周年】旺角開街站 數學思政召集人王逸戰被捕 警指公共地方行為不檢),” Stand News (立場新聞), June 4, 2021, https://www.thestandnews.com/politics/%E5%85%AD%E5%9B%9B-%E5%9B%9B-%E6%97%BA%E8%A7%92%E9%96%8B%E8%A1%97%E7%AB%99-%E8%B3%A2%E5%AD%B8%E6%80%9D%E6%94%B1%E5%8F%AC%E9%9B%86%E4%BA%BA%E7%8E
peaceful protestors are not allowed despite having breached no social distancing measures. Alexandra Wong (also known as Grandma Wong), a 65-year-old democracy activist, was arrested for a solo Tiananmen protest on May 31, 2021. Police arrested Wong for “knowingly participating in an unauthorized assembly and attempting to incite others to join an unauthorized assembly,” though she was only by herself holding a sign and a yellow umbrella.

(ii) Administrative Measures and Laws Invoked to Restrict Rights

10. Despite international standards on permissible restrictions on exercise of rights, including during a health crisis, the HKSAR authorities routinely deny applications for letters of no objections, without which, all assemblies, even when entirely peaceful, can be rendered illegal. The Public Order Ordinance mandates that an assembly can only be conducted if the Commissioner of Police does not prohibit or object to the notice given at least seven days ahead, or it will be treated as an unauthorized assembly. The amended law in 1997 further empowers the government to prohibit a public meeting or procession on the grounds of “national security” and “the protection of the rights and freedoms of others,” in addition to the already existing grounds for prohibition under the law of “public safety” and “public order.”

11. In 2021, the Leisure and Cultural Services Department suspended the processing of applications by the organizer of the annual vigil, the Hong Kong Alliance in Support of Patriotic Democratic Movements in China, to lease Victoria Park for the event. The police also refused to issue the Letter of No Objection to the Alliance to host the vigil. This is despite the fact that COVID-19 in Hong Kong was under control then and other large-scale events were allowed to be held. The Security Bureau warned in a statement on May 29, 2021: “the relevant meetings and procession are unauthorized assemblies. No one should take part in it, or advertise or publicize it . . . no matter [if] violence is involved or not.”

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24 The Ordinance governs all public assemblies in the territory and mandates that any public assembly which exceeds 50 persons shall give a notice to the Commissioner of Police not less than seven days prior to the intended event. Participants and organizers of an unauthorized assembly could be liable to a fine and imprisonment of up to five years, and up to ten years if found to be rioting. Public Order Ordinance (Cap. 245) (1967), https://www.elegislation.gov.hk/hk/cap245.


26 Laws on The Right to Peaceful Assembly (China), last updated May 2021, https://www.rightofassembly.info/country/china.


29 Tom Grundy, “Up to 5 years prison for attending Tiananmen Massacre vigil, Hong Kong gov’t warns – 1 year jail
12. However, freedom of peaceful assembly is not a privilege but a fundamental freedom, and the requirement of pre-authorization in Hong Kong presents hurdles as well as a questionable basis for the criminalization of the exercise of peaceful assembly. As General Comment No. 37 on the right of peaceful assembly provides: failure to meet domestic legal requirements does not place the participant outside of the scope of Article 21 of the ICCPR and the fact that notification had not been given cannot render an assembly criminal or unlawful.

13. Other rights-restricting laws include the most recent Prevention and Control of Disease (Prohibition on Group Gathering) Regulation pertaining to social distancing measures put in place due to COVID-19 that limits gathering restrictions to four people in public; and the colonial-era Emergency Regulations Ordinance, granting the HKSAR Chief Executive the power to “make any regulations whatsoever” on “occasions of emergency or public danger,” such as banning protesters from covering their faces in full or partially during protests.

B. Political and Social Crisis: Exponential Erosion of Fundamental Freedoms

14. General Comment No. 37 points out that peaceful assemblies often have expressive functions, and since political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection. This should therefore be the norm rather than the exception. Moreover, isolated acts of violence by some participants should not be attributed to other participants, and the presumption is in favor of considering assemblies to be peaceful. Since 2019, the ongoing serious political and social crises in Hong Kong have contributed to the exponential erosion of fundamental rights, including the right to freedom of peaceful assembly.

(i) Mass Protests and Demands for Democratic Reforms Met with Draconian Security Legislation, Electoral Overhaul, and Crackdowns

32 Anyone who wears mask at lawful rallies and marches, unlawful or unauthorised assemblies, or at riots could be sentenced to a year in jail and a fine of HK$25,000. Emergency Regulations Ordinance (Cap. 241) (1999), https://www.elegislation.gov.hk/hk/cap241.
34 U.N. Human Rights Committee General Comment No. 37 (CCPR/C/GC/R.37), op. cit.
35 Ibid.
36 Ibid. Para. 19.
15. The failure of the HKSAR authorities to respond to the concerns and demands of millions of peaceful demonstrators during the 2019 Anti-Extradition Law Amendment Bill (Anti-ELAB) movement and the escalation of indiscriminate use of force by the Hong Kong Police Force fueled further social unrest and eruptions of violence. Official figures show that by April 2021, more than 10,200 people have been arrested in connection with Anti-ELAB protests, with 2,521 charged with a range of offenses including rioting and unlawful assembly, and 600 people convicted. Many more trials are still ongoing, and most of them are related to charges of rioting or unauthorized assemblies.  

16. The promulgation of *The Law on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law, or “NSL”),* which came into effect on June 30, 2020, was Beijing’s response to its perception of an existential threat posed by the Hong Kong mass protests. The NSL’s goals include: the safeguarding of national security; preventing, suppressing, and imposing punishment for the offenses of secession, subversion; organization and perpetration of terrorist activities; and collusion with a foreign country or with external elements to endanger national security in relation to Hong Kong. In addition, administration officials are now pushing for the enactment of security legislation as required by Article 23 of the *Basic Law.*

17. Despite the overall draconian and vague provisions of the NSL, Article 4 of the NSL incorporates the ICCPR and ICESCR, ensuring rights are normatively protected. HRIC has highlighted the strategic necessity of insisting these rights provisions are not just dismissed as legislative fig-leaves. Instead, these rights must be invoked in defense of individual cases and to insist on the central Chinese and HKSAR governments’ compliance with international standards.

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37 The Anti-ELAB movement refers to the months of protests in Hong Kong in response to a highly controversial proposed law amendment that would allow extraditions to the mainland, which may potentially expose Hong Kong to the mainland’s markedly different justice system and lead to erosion of judicial independence. “Hong Kong-China extradition plans explained,” *BBC News,* December 13, 2019, [https://www.bbc.com/news/world-asia-china-47810723](https://www.bbc.com/news/world-asia-china-47810723).


40 Selina Cheng, “Hong Kong must also pass its own security legislation to ‘plug loopholes,’ says security chief,” *Hong Kong Free Press,* June 22, 2021, [https://hongkongfp.com/2021/06/22/hong-kong-must-also-pass-its-own-security-legislation-to-plug-loopholes-says-security-chief](https://hongkongfp.com/2021/06/22/hong-kong-must-also-pass-its-own-security-legislation-to-plug-loopholes-says-security-chief). Article 27 of Chapter III of the *Basic Law* stipulates that: “The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.”
and their obligations.\textsuperscript{41} This is especially important amidst the escalating society-wide crackdown and the alarming underminking of a safe and enabling civil society environment affecting all sectors of civil society including the media, education, legal, and political sectors.

18. Attacks on independent media, academic freedom, and civic actions: in the wake of arrests, asset freezes, and increasing pressure, \textit{Apple Daily}, the popular pro-democracy Chinese-language newspaper, was forced to close abruptly on June 23, 2021.\textsuperscript{42} Censorship of books, newspapers, and movies has steadily increased, and education content in schools as well as teachers are under increasing political scrutiny and requirements.\textsuperscript{43} Additional developments have drastically chilled and restricted the safe exercise of fundamental rights, including:

\begin{itemize}
  \item **Extreme administrative measures**: the student group “Local Youth Will” organized a charity event for the 2nd anniversary of Anti-ELAB movement in an art space, but the Food and Environmental Hygiene Department immediately launched a probe accusing them of breaching the \textit{Places of Public Entertainment Ordinance} in organizing an unlicensed event.\textsuperscript{44}
  \item **Targeting of student groups**: the Hong Kong Federation of Students, which set up a street booth to urge continuation of resistance, was warned by the police not to incite the public.\textsuperscript{45}
\end{itemize}


\textsuperscript{44} “Student group is accused of organizing unlicensed 2nd anniversary Anti-ELAB movement event (學生團體辦「反送中」兩周年活動被指無娛樂牌照 食環登門蒐證),” \textit{Ming Pao (明報)}, June 10, 2021, https://news.mingpao.com/ins/%e6%b8%af%e8%81%9e/article/20210610/s00001/1623330915815/%e5%ad%b8%e7%94%9f%e5%9c%98%e9%ab%94%e8%be%a6%e3%80%8c%e5%8f%8d%e9%80%81%e4%b8%ad%e3%80%8d%e5%85%a9%e5%91%a8%e5%b9%b4%e6%b4%bb%e5%8b%95%e8%a2%ab%e6%8c%87%7%84%a1%e5%a8%9b%e6%82%7%89%7%85%a7-%e9%a3%9f%e7%92%b0%e7%99%bb%e9%96%80%e8%92%90%e8%ad%89.

\textsuperscript{45} “Hong Kong Federation of Students sets up street booth to urge continuation of resistance; police warn of inciting the public (【6.12兩週年】學聯擺街站籲勿忘抗爭 警指言論涉煽惑群眾),” \textit{inmedia.hk (獨立媒體)}, June 12, 2021, https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B%E3%80%90%E5%85%A9%E9%80%B1%E5%B9%B4%E3%80%91%E5%AD%98%E8%81%AF%E6%93%BA%E8%A1%97%E7%AB%99%E7%B1%2B%E5%8B%BF%E5%98%8A%E7%88%8D-%E8%AD%AE%E6%8C%87%87%E8%80%8E%8A%9C%E6%8D%8C%E7%85%BD%E6%83%91%E7%BE%A4%E7%9C%BE.
student group, were arrested and detained on suspicion of promoting and inciting others to participate in unauthorized Anti-ELAB anniversary gatherings simply because they posted messages on various online platforms to invite other people to go to gatherings.46

19. Undermining public political participation: in an effort to quash and side-line any opposition voices, the authorities have targeted political expression and participation, intensifying a widespread chilling of the political environment marked by rapid crackdown on pro-democracy politicians. Specific measures adopted by the HKSAR and central Chinese government authorities include: prosecution for subversion of those involved in the unofficial primaries organized in July 2020;47 the promulgation of drastic electoral overhauls in March 2021 by the National People’s Congress48 aimed at ensuring a system in which only “patriots” govern Hong Kong;49 and introduction of new oath-taking requirements emphasizing loyalty of all candidates as well as sitting representatives. More than 200 district councilors resigned in a one week in July 202150 amidst additional concerns about the future of district councils.

20. Prospective restraints: due to all the restrictions on the right to freedom of peaceful assembly, prospective restraints have been put in place for events and assemblies that authorities deem sensitive or dangerous. Ahead of July 1, 2021, the anniversary of the transfer of Hong Kong’s sovereignty in 1997—also the date of an annual pro-democracy march—police sealed off Victoria Park and put up flags warning people that they could be prosecuted if they entered or remained in the enclosed area. Police had claimed there were online calls encouraging people to take part in an unauthorized protest although this cannot be verified.51 When netizens called for gatherings at Causeway Bay on June 12, 2021—to mark the 2nd anniversary of the beginning of the anti-ELAB movement—the police force deployed more than 2,000 officers in different major districts to stand by to prohibit any possible gatherings.52

48 The Decision of the National People’s Congress on Improving the Electoral System of the Hong Kong Special Administrative Region, 11 March 2021 was passed to ensure a system in which “patriots” govern Hong Kong and address foreign interference in Hong Kong’s internal affairs.
50 The mass resignations were triggered by new oath-taking rules requiring district council members to pledge allegiance to the city’s Basic Law and special administrative region and on the heels of government leaks suggesting they could be forced to return an entire year of salary and other funding. See Jeffie Lam, “Explainer | Hong Kong’s district councils: with opposition members resigning in droves as oath looms, what happens next to these local bodies?,” South China Morning Post, July 16, 2021, https://www.scmp.com/news/hong-kong/politics/article/3141388/why-are-hong-kongs-district-councillors-resigning-droves?utm_source=rss_feed.
(ii) Gender-Based Violence Against Women Activists

21. In his 2020 report “Celebrating women in activism and civil society: the enjoyment of the rights to freedom of peaceful assembly and of association by women and girls,” the Special Rapporteur acknowledged how women of all ages and backgrounds have been leading and inspiring social movements, peaceful protests, and civil society initiatives that seek to transform the world’s social, political, and economic structures. In relation to crisis situations, the Special Rapporteur remarked how “even in the most challenging times, when women exercise their rights to peacefully assemble and associate, it benefits the whole society.”

22. In Hong Kong, the unprecedented numbers of women and girls participating in the Anti-ELAB movement protests shattered existing gender norms and empowered a new generation of women activists. At the same time, their activism also exposed them to various forms of gender-specific attack campaigns online and offline. During the protests, women were subjected to verbal abuse targeting their physical appearances, rape threats, and smearing by doctored photos circulated online, many by suspected pro-establishment trolls. Outspoken female pro-democracy figures were targets of sexual harassment and cyber bullying, such as Emilia Wong, a prominent feminist who was subjected to regular harassment online by counterdemonstrators such as pro-establishment supporters. These gender-specific attacks undermined the women activists’ ability to safely exercise their fundamental rights, including the right to freedom of peaceful assembly.

(iii) Discursive Tactic of Control: Enforcement of Official Crisis Narratives

23. These political and social crises converge and impact each other, exacerbated by the ways in which the authorities have failed to respond to them within a rights-based framework. Instead of meaningfully addressing the root causes of the political and social protests, the authorities adopted a discursive tactic that instead contributed to exacerbating the health, political, and

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54 Ibid.
57 Ibid.
social crises described above. Through the deployment of officially sanctioned narratives, the authorities framed the crises as security threats within an overarching comprehensive securitized framework. The “political crisis” narrative advanced by the HKSAR and central Chinese governments claims that “radical protestors” and “external forces,” and “violent,” “color-revolution”-like protests in 2019 pose existential threats to the regime and constitute a national security crisis. This narrative framing was and is aggressively advanced through official media outlets, and at times echoed by foreign media and policymakers. This narrative was also invoked to legitimize the legislative and enforcement responses by the authorities and was a key rationale for the promulgation of the NSL.

24. The promotion of the official narrative is also a discursive tactic of control to censor competing narratives, control information flow, and criminalize any expression and citizen actions that are not in conformity with the officially sanctioned version of facts. Even satire or metaphors run the risk of being targeted as subversive. A recent example is the arrests of individuals responsible for the children’s books that used sheep and wolves to tell the story of the 2019 Anti-ELAB movement, and activists’ subsequent attempt to flee Hong Kong, and their eventual arrests.

25. This official control of only one acceptable narrative is also related to the challenges posed by misinformation, disinformation, and propaganda. When the central Chinese and HKSAR authorities systematically and simultaneously suppress other sources while promoting their own false or misleading narratives, they are undermining the capacity of civil society to exercise their rights, including the right to seek and receive information under Article 19 (2) of the ICCPR. And restrictions on the rights to receive and disseminate information adversely impact on the right to effectively organize and participate in peaceful gatherings. The misinformation campaigns, in tandem with the promotion of the official national security narrative, also undermine the capacity of the international community to fully understand the situation and to engage in constructive concerted international action.

26. The overall impact of these converging crises, the inadequate or disproportionate responses of the authorities to these crises, and the aggressive imposition of official narratives is the

62 Human Rights in China, “Input for report on disinformation: To the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” February 15, 2021. This submission has not been made public. MS on file.
63 “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan: Disinformation and freedom of opinion and expression,” op. cit. Paras. 47 and 49.
intensification of the closure of civic space and the undermining of a safe and enabling environment for civil society, as evidenced by the crackdown on organizers and participants in public gatherings. Particularly for members of civil society, human rights defenders, and all those who express critical or different views, this is having a significant chilling effect on civil society and the exercise of rights protected by local and international laws.64

27. Cracking down on assembly organizers: Civil Human Rights Front, Hong Kong’s largest platform of over 50 NGOs and pan-democratic political parties as well as the organizer of many remarkable and peaceful mass protest since 2002, faced a mass exodus of different civil society groups after being investigated under the National Security Law.65 Convenor Figo Chan Ho-wun is also serving 18 months in prison, after having been sentenced on May 28, 2021 for organizing an unauthorized assembly during the 2019 National Day protests.66 On June 4, 2021, Chow Hang-tung, barrister and vice-chairwoman of Hong Kong Alliance in Support of Patriotic Democratic Movements in China, and a 20-year-old man were arrested in the early morning under the Public Order Ordinance on suspicion of publicizing unlawful assemblies through their social media accounts. Chow’s arrest by the police was based on a social media post shared on her private account that said she would go to Victoria Park in the evening of June 4 in a personal capacity.67 Chow has been denied bail and remains in custody.68

28. Harsh prison sentences for vigil organizers to serve as warnings to the public: 26 high-profile pro-democracy figures were prosecuted for organizing, participating in, or inciting others to join an unauthorized assembly—the candlelight vigil in Victoria Park that was banned—on June 4, 2020.69 On May 6, 2021, a month before the 32nd anniversary of June Fourth, four of the 26—Joshua Wong Chi-fung, Lester Shum Ngo-fai, Tiffany Yuen Ka-wai and Janelle Leung Hoi-


ching—were sentenced to prison time after they pleaded guilty. These sentences were alarming warnings to discourage the public to attend any such assemblies or gatherings, even though no violence was involved at all.

III. Creative Resistance and Practices by Civil Society

29. Despite the steep challenges to the meaningful exercise of rights posed by the severely restricted environment in Hong Kong, civil society in Hong Kong are exhibiting creative resistance and developing diverse practices in asserting their rights. Peaceful protests and actions in Hong Kong have evolved beyond massive in-person assemblies into online assemblies and other forms of creative resistance such as less overt group gatherings linked by common gestures or actions such as carrying a white flower or lighting a candle in public places.

30. General Comment No. 37 emphasizes that multiple forms of peaceful assembly are protected: “Article 21 of the Covenant [ICCPR] protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under Article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.”

A. Online Gatherings and Assemblies

31. In this digital age, online platforms bear witness to the quick evolution of protest tactics and the empowering role that technology can play in sustaining protest movements and avoiding disaggregation. Digitally enabled movement practices were central to the 2019 Anti-ELAB movement. Protesters used social media to mobilize and embrace participation across all sectors of society and utilized apps such as LIHKG, a multi-category forum website launched in 2016. LIHKG is also well known as one of the Anti-ELAB movement’s central platforms as it is a user-friendly virtual community space to discuss strategies and organize activities.

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Kong, online assemblies have become a form of participatory democracy, enabling a future of digitally-aided protest actions in addition to in-person gatherings.

32. As COVID-19 continues to impact upon every aspect of the way people live, work, or communicate, it also expanded and normalized remote connections and collaborations for diverse stakeholders and among all sectors of society. There is also no longer a strict dichotomy between physical and online assemblies. Assemblies these days are often hybrids: online protests often accelerate and enable physical assemblies, which may often also happen online before and after. In the context of severe rights restrictions like that in Hong Kong, the creative use of both online and offline space to organize and conduct group gatherings and activities holds promise for the sustainable exercise of the right to freedom of peaceful assembly.

B. Creative Collective Public Actions

33. The creative forms of resistance and peaceful collective actions in Hong Kong underscore this fact: no matter how the rights to freedom of peaceful assembly and association are being suppressed, ordinary citizens and members of civil society are continuing to organize themselves and find quieter and less overt ways to gather.

34. Simple actions and gestures: Creative resistance can be conveyed through simple actions. For example, hundreds of people wearing black lined up to leave flowers at the site outside Pacific Place where “raincoat man” Marco Leung Ling-kit fell to his death from a scaffolding during the 2019 protests. Another expression of defiance is the display of blank white pages which symbolizes the inability of Hong Kong people to speak out and also “white terror” against protesters. On June 4, 2021, as the candlelight vigil in Victoria and other “unauthorized” gatherings were banned, many Hong Kongers found simple ways to signal their remembrance of June Fourth victims publicly, without “gathering”: all over the city, pedestrians could be seen walking holding lit candles or cell phones with flashlight shining. The twinkling of individual points of light sent a powerful message of resistance and solidarity.

35. Thoughtful creativity will continue to drive protest movements and peaceful assemblies forward as Hong Kong people continue to seek more innovative ways to organize themselves and express themselves in individual or group gatherings. These collective practices linking ordinary

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citizens and civil society together need to be protected as important practices against the erosion of fundamental freedoms, especially in relation to the right to freedom of peaceful assembly in crisis situations.

**IV. Suggestions for Positive Steps and Specific Measures**

36. As this submission has highlighted, the challenges to ensuring respect, protection, and fulfilment of the right to freedom of peaceful assembly are steep and have been intensified following the convergence of multiple crises: the health pandemic, and social and political crises. In this extremely restrictive environment, citizens and civil society groups in Hong Kong continue to exercise their rights in creative ways. We outline suggestions for positive steps and measures that can be pursued by diverse stakeholders to continue and deepen effective support for the people of Hong Kong as well as promote greater accountability.

37. Independent expert fact-finding mission to Hong Kong: Despite the predictable responses and accusations of domestic interference by the Chinese government,79 we urge the Special Rapporteur and international experts to continue to press for a fact-finding mission to China—a step widely supported by civil society groups and governments around the world. In light of expanded official control of the media and the overall chilling of the environment in Hong Kong, it is critical to insist on an on-the-ground mission (under standard UN terms of reference) to maintain international attention, collect information, assess the challenges, and advance constructive recommendations to the central Chinese and HKSAR governments to ensure their compliance with international standards.

38. Focused civil society consultations: the Special Rapporteur should build on previous in-region civil society exchanges and support further in-region and remote consultations with key stakeholders. Special attention to access by and security of civil society participants and representation from diverse civil society sectors would be key to ensuring safe and productive consultation exercises.

39. More strategic attention should be devoted to identifying and leveraging key international opportunities for governments, companies, and civil society to collectively promote greater accountability by the Chinese government. We identify some examples and suggested issues below:

- The 2022 Winter Olympics: international concerns are growing, as reflected in media reports, government hearings, and civil society actions pressing for moving or postponing

the Olympics in light of the documented mass human rights violations on the mainland and in Hong Kong. The private sector and companies doing business or hoping for access to the China market need to be constructively engaged to ensure that their actions are in line with the UN Guiding Principles on Business and Human Rights\(^80\) and other relevant international obligations. In addition, focused attention by the Special Rapporteur in conjunction with other mechanisms, such as the Working Group on the issue of human rights and transnational corporations and other business enterprises, and UN Special Procedures, should be broadened and deepened to address issues raised.

- **Official UPR mid-term progress assessment** (or equivalent) for China and civil society assessments: states can build on the outcome of China’s last UPR in 2018 to press for implementation of recommendations relevant to advancing protections for the safe and meaningful exercise of fundamental rights, including the right to freedom of peaceful assembly. Civil society can also play a role in bringing attention to the progress or lack of progress.

- **Treaty body reviews**: the various treaty bodies have continued to highlight serious concerns about the deterioration of human rights and the lack of meaningful progress in the implementation by the HKSAR and central Chinese governments of treaty obligations, including the ICCPR and General Comment No. 37 guidance. In tandem with the treaty bodies process, the mandate focus on the right to freedom of peaceful assembly, which is critical to civil society participation and input, must be reflected in these reviews.

40. We take this opportunity to express our appreciation for and alignment with the individual and joint statements of concern and other communications by UN experts regarding Hong Kong developments, in particular regarding the promulgation\(^81\) and implementation of the National Security Law.\(^82\) These communications presented rigorous expert analyses necessary to ensure that domestic national security legislation complies with international standards. They have also sent an invaluable message of international support for civil society. We urge the continuation of these important public messages and statements and concrete follow-up with the authorities.


\(^82\) Seven UN experts’ communication to China urging review and reconsideration of National Security Law to comply with international law, September 1, 2020, at: https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487.