

**Joint Submission from Self-exile Former DCs Hong Kong and Hong Kong Watch to the
Universal Periodic Review of the People's Republic of China**

**Fourth Cycle
July 2023**



This submission is made by Self-exile Former DCs Hong Kong (SEFDCHK) and Hong Kong Watch (HKW) to the United Nations (UN) Universal Periodic Review (UPR) of the People's Republic of China (PRC) in the Fourth Cycle. SEFDCHK is the main submitting organisation.

This submission can be published on the OHCHR website for UPR for public information purposes.

SEFDCHK is formed by a group of former Hong Kong District Councillors who resigned in 2021 and are now settled in the UK. There is currently no website for the organization. Its members have provided submissions to the UN Human Rights Committee in July 2022, and to the UN CEDAW Committee in March 2023 respectively.

HKW is a UK-based registered charity which researches and monitors threats to Hong Kong's basic freedoms, the rule of law and autonomy as promised under the 'one country, two systems' principle which is enshrined in the Basic Law and the Sino-British Joint Declaration.

This submission focuses on political rights; rights of emigration; conditions of detention; and the implementation of the National Security Law in the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR).

For enquiries, please contact Shu Y. J. Chan (sefdchk@gmail.com) from Self-exile Former DCs Hong Kong, or Benedict Rogers (ben@hongkongwatch.org) or Anouk Wear (anouk@hongkongwatch.org) from Hong Kong Watch.

Hong Kong Watch, Office 7, 35-37 Ludgate Hill, London, EC4M 7JN, United Kingdom

Timeline to implement full universal suffrage

1. The HKSAR was established in 1997 under the principle of ‘One country, Two Systems’, and the Basic Law was enacted to govern the implementation of ‘One Country, Two Systems’.
2. Although China has not yet ratified the ICCPR, the Basic Law guarantees that the provisions of the ICCPR adopted by the previous Hong Kong colonial government shall remain in force (Article 39, Basic Law).
3. Article 68 of the Basic Law states that ‘The ultimate aim is the election of all the members of the Legislative Council by universal suffrage’ in Hong Kong.
4. This submission aims to highlight recent legal changes and policies implemented in the HKSAR which not only violate the ICCPR (as well as the Basic Law), but also depart further from enhancing equal rights for Hong Kong citizens in political participation with universal suffrage in compliance with the ICCPR.

Law reforms which undermine equal rights to political participation

5. Article 25 of the ICCPR states that ‘Every citizen shall have the right and the opportunity, without any unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.’
6. In its third report to the Human Rights Council Working Group on Universal Periodic Review (The Third UPR) (A/HRC/WG.6/31/CHN/1), the HKSAR reported that it had been striving to achieve the goal of having the Chief Executive and all members of the Legislative Council elected by universal suffrage, but that a proposal for election of the Chief Executive by universal suffrage did not receive the two-thirds majority of the Hong Kong Legislative Council required for passage in 2015 (paragraph 92). However, the proposed scheme for the 2015 election of the Chief Executive required the potential candidate to obtain the nomination of not less than 50% of the 1,200 unelected members of the Election Committee, meaning that the Chief Executive was actually elected by the Election Committee before being put forward to Hong Kong citizens for a vote. This version of ‘universal suffrage’ does not conform with the ICCPR.
7. One of the recommendations made by members of the Human Rights Council after The Third UPR was that China (and Hong Kong, China) should ensure the right of Hong Kong people to take part in government without discrimination of any kind. (Thematic List of Recommendations, column 28.345)
8. However, in the 2021 Electoral System Reform, the HKSAR had not introduced full universal suffrage for the Legislative Council election. On the contrary, the system is now far less democratic, and there are other more unreasonable restrictions which prohibit fair and equal access to participation in the election.
9. Less democratic: Although the total number of seats was increased from 70 to 90, the number of democratically elected seats (by Geographic Election) was reduced from 35 (50% of total seats) to 20 (22.2% of total seats). The rest of the 70 seats were returned by Functional Constituencies Election and Election Committees Election which have less than 300,000 voters in total. The geographic constituencies consist of 3.5 million voters.
10. More restrictions: Potential candidates are required to pass two high political barriers before participating in the election. First, they had to be nominated by all five sectors of the Election Committee; and second, they had to be screened by the Candidate Eligibility Review Committee that was mainly composed of government officials.
11. The 2021 Electoral System was firstly passed by the National Peoples’ Congress (NPC) of China, followed by the legislation process of the Legislative Council in Hong Kong, China. (At that time, all the Legislative Councillors of the democratic camp had resigned or had been

disqualified, so the legislation process met with no opposition.)

12. In the past, potential candidates were only required to be nominated by the eligible voters of the related constituencies to run for election. The 2021 Electoral System came with the slogan ‘Patriots ruling Hong Kong’, the purpose of which was to screen out the democrats and ensure that only pro-establishment camp candidates could run for the seats.
13. In its Concluding Observations on the 4th Periodic ICCPR report of Hong Kong, China in 2022, the Human Rights Committee stated that: ‘Hong Kong, China should take concrete steps, with a clear timeline, to introduce universal suffrage. In the meantime, it should reform the electoral system in line with article 25 of the Covenant and the Committee’s general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service.’ (CCPR/C/CHN-HKG/CO/4; 27 July 2022)
- 14. This submission fully agrees with the recommendations of the Human Rights Committee, and calls on the UN Member States to urge Hong Kong, China to follow up on these recommendations, to uphold Article 25 of the ICCPR, and to draft a clear plan with a timeline to introduce universal suffrage.**

Rights of emigration of Hong Kong residents undermined

15. At the end of 2020, the British Government introduced the British National (Overseas) (BN(O)) 5-years Visa scheme (BNO 5+1) for Hong Kong residents that hold the BN(O) passports. As the BNO 5+1 Scheme provides the opportunity to apply for permanent residence in the UK in the 6th year, China claims the scheme violates the original purpose of the BN(O) passport. In response, the HKSAR announced the non-recognition of the BN(O) passport as a valid travel document and proof of identity. With effect from 31st January 2021, BN(O) passports cannot be used for immigration clearance and will not be recognised as any form of proof of identity in Hong Kong. (Annex 1)
16. On 14.04.2023, a Wall Street Journal editorial article revealed that the BNO 5-years Visa holders had been rejected by the Mandatory Provident Fund (MPF) Agents to claim early withdrawal of their pensions, and said that the HKSAR was retaliating against anyone who left with a BN(O) passport by confiscating their property.
17. On 17.04.2023, the Mandatory Provident Fund Scheme Authority (MPFA) released a statement confirming that MPF scheme members ‘cannot rely on BN(O) passport or its associated visa as evidence in support of an application for early withdrawal of MPF on grounds of permanent departure from Hong Kong’, since ‘Hong Kong Special Administrative Region Government announced in January 2021 that British National (Overseas) (BN(O)) passport is not a valid travel document nor a valid form of proof of identity in Hong Kong’. (Annex 2)
18. After the legislation of the Hong Kong National Security Law (NSL), various emigration plans were introduced by foreign countries to help Hong Kong residents to leave, the BNO 5+1 scheme being only one of them.
19. Furthermore, to leave permanently or not is purely the free choice of Hong Kong residents.
Rejecting the application of early withdrawal of MPF for those who have chosen to leave Hong Kong permanently and to settle in the UK is not in compliance with the ICCPR (Article 1, Article 12).
20. **Article 31 of the Basic Law also states that Hong Kong residents shall have freedom of movement and freedom of emigration to other countries and regions.**
21. **Hong Kong, China should abolish the non-recognition policy, recognise the BN(O) passport as a valid travel document and proof of identity, and allow the BN(O) passport holders to apply for early withdrawal of MPF on grounds of permanent departure from Hong Kong, otherwise they can only withdraw their pension when they are 65 years old.**

Conditions of detention becoming worse

22. It is stated in the ICCPR that ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’. (Article 10)
Extremely poor conditions could be considered to be a form of torture.

23. The following are the **list of the problems** of the conditions of Hong Kong prisons:

- a. **Overcrowded and unhygienic environment:** This problem is especially serious for the Lai Chee Kok Reception Centre. It was planned to accommodate 1,484 people. However, there were on average 1541-1550 people detained each day last year. The average daily number of remands (including males and females) hit a decade high of 2,666 in 2022. (Annex 3) The hygienic conditions are poor. As reported by previous prisoners, cockroaches are frequently seen in prison cells of Lai Chee Kok Reception Centre.
- b. Inadequate ventilation and insulation facilities: Detained persons suffer **extreme heat in summer and severe cold in winter**. As former prisoners have revealed, they are all wet from head to toe and day to night because of sweating in the summer. Blankets are old and hard and lack warmth in the winter.
- c. **Poor food quality:** Previous prisoners revealed that sometimes meat and fish smell rotten. They are provided with one menu with four categories of food (Chinese, Western, South Asian, Vegetarian), and these menus are repeated every week. As a result, many detained persons suffer drastic weight loss.
- d. Tedious rules and **disproportionately harsh punishment:** There are hundreds of rules and regulations inside the prison and the officers act both as the interpreter of the rules and executor. It is prohibited, for example, for prisoners to exchange food among themselves; possessing books and postcards over the prescribed limit is a breach of the rules. In one reported case, a prisoner was placed in solitary confinement for 10 days merely because she greeted a friend (who was also under detention), because she breached the rule of no personal contact among prisoners. Furthermore, the maximum penalty for breach of the rules is solitary confinement for 28 days.
- e. **Limited education opportunity:** As of July 2023, more than 8,000 people have already been detained in prisons, detention centres, and other kinds of correctional institutions. However, the quota for education and training opportunities is very limited. In Stanley Prison, for example, there were around 1,400 prisoners in 2019/2020, but there were only 9 training courses, altogether 180 places (quota less than 13%). The types of training are very limited. There was even less opportunity for prisoners to be admitted to general education such as secondary or tertiary education. Many young prisoners have to stop pursuing formal education. There are also very stringent rules restricting use of computers inside the prisons, hindering the students from accessing online education materials.

- f. **Lack of social support:** Relatives or friends can pay only 2 visits a month to prisoners convicted and serving sentences, while overseas relatives are provided with 1 telephone call each month. Many relatives and friends of prisoners wish to visit, but due to the limited number of visits allowed, they refrain from making requests.

24. In the Third UPR Cycle, Hong Kong, China stressed that it is committed to ‘providing a safe, reliable, humane, suitable and healthy custody environment for prisoners, and to assisting them in their rehabilitation and reintegration into society’. (Paragraph 104) To this end, **Hong Kong, China should follow the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules, NMR) and make the following improvements:**

- a. In addition to rebuilding and extending overcrowded detention facilities, Hong Kong, China should **reduce the number of detainees in the overcrowded facilities**. Hong Kong, China should also maintain the detention facilities in highly hygienic conditions where **there should not be cockroaches in the prisoner cells**. (NMR, Rule 13; Rule 17)
- b. Hong Kong, China should improve ventilation and insulation of the detention facilities, to **ensure an acceptable temperature in prison cells and prevent damp (e.g., below 30 degrees Celsius and below 80% of humidity) in summertime**. (NMR Rule 17) Furthermore, relatives should be allowed to bring more clothes (such as warm underwear and hats) to prisoners in winter.
- c. Hong Kong, China should **allow prisoners to choose among the 4 types of menus** and vary their diet; and the quality of the food should be improved. This can help prisoners maintain a healthy physical condition. (NMR Rule 5; Rule 22)
- d. Although the Correctional Services Department of Hong Kong, China had set up the Complaints Appeal Board to provide appeal channels for complainants who feel aggrieved (The Third UPR, paragraph 104), most prisoners would not complain out of fear of retaliation. Therefore Hong Kong, China should **provide more information to the Human Rights Council. E.g., a full report on the use of solitary confinement as punishment in detention facilities**. This should include the reason for the punishment, the process for approval of punishment, and a monitoring mechanism. (In its Concluding Observations on the 4th Periodic ICCPR report of Hong Kong, China in 2022, the Human Rights Committee ‘regrets the absence of updated and detailed information on deaths in detention and on the complaints, ...about torture, ill treatment and abuse of authority in correctional institutions’.) Hong Kong, China should also **prohibit solitary confinement of longer than 15 days**. (NMR Rule 43; Rule 44)
- e. Hong Kong, China should **increase the education and training opportunities** to

meet the demands of the prisoners. (NMR Rule 4)

- f. Hong Kong, China should **increase the number of visits for every month** to enable the prisoner to have greater social support as well as maintaining better psychological and emotional health. What is more, since the overseas relatives (for example, the wife or husband) are usually using mobile phones to communicate with prisoners, the HKSAR should **arrange for video phones** to facilitate more direct communications. (NMR Rule 58)

Hong Kong National Security Law (NSL) and infringement of human rights

25. During The Third UPR on China, the situation in Hong Kong received little attention. **It was the imposition of the NSL on Hong Kong by Beijing in 2020 that led to a drastic deterioration in the human rights situation in Hong Kong, China**, especially in the aspects of Freedom of Expression (e.g., the crackdown and forced closure of Apple Daily and the arrest of Jimmy Lai and 7 senior employees), Freedom of Association (Forced disbandment of HK Confederation of Trade Union and many other civil organisations), Freedom of Assembly (Arrest of pro-democracy activists who participated in peaceful protests on 18.04.2020 and 2020 peaceful June Forth Vigil) and Judicial Independence (the Standing Committee of the NPC ruled that Hong Kong’s Chief Executive, and not the courts, is empowered to decide whether overseas lawyers may work on NSL cases). In its Concluding Observations on the 4th Periodic ICCPR report of Hong Kong, China in 2022, the Human Rights Committee was concerned about the fact that China, not being a party to the ICCPR, can take up national security cases ‘for investigation, prosecution, trial and execution of penalties, as provided for in articles 55, 56 and 57, which may lead to the *de facto* breach of obligations of Hong Kong, China under the Covenant’.
26. **The Human Rights Committee** ‘welcomes the assurance of the (Hong Kong, China) Delegation that the development of future legislation under article 23 of the Basic Law would involve public consultations.’ **It further suggested that ‘Hong Kong, China should take concrete steps to repeal the current National Security Law and, in the meantime, refrain from applying the Law.’**
27. The imposition of the NSL by China (the central government) on the HKSAR might also violate the principle of ‘One Country, Two Systems’, and the ‘High Degree of Self-Administration’ for Hong Kong which were promised by the Basic Law.
28. In view of the fact that the UN Human Rights Office, Human Rights Committee and Special Rapporteur had repeatedly showed concerns on different aspects of the NSL, (Annex 4, 5, 6, 7) this submission urges the Human Rights Council to pay serious attention to the continuously deteriorating human rights situation in Hong Kong, China after the implementation of the NSL.
29. **China, together with the HKSAR should respect the Concluding Observations of the Human Rights Committee by refraining from applying the NSL- at least until China has ratified the ICCPR.**

(2,684 words)