

USALI Perspectives

Hong Kong's Rights Reckoning: What We Can Expect from the UN Human Rights Committee

By [Carole J. Petersen](#)
Published June 9, 2022

The [UN Human Rights Committee](#) is the treaty monitoring body for the [International Covenant on Civil and Political Rights](#) (ICCPR). Although it is sometimes confused with the UN Human Rights Council, which is made up of states, the Human Rights Committee is a very different body. It consists of independent experts who serve in their individual capacities and do not represent any government. The review process is impartial and quasi-judicial in nature. It culminates in a set of concluding observations, which are essentially a report card on a government's compliance with the

ICCPR. The committee also regularly issues [general comments](#) on particular articles in the ICCPR, which are considered highly authoritative interpretations of treaty obligations.

In [July 2022](#), the Human Rights Committee will complete its first formal review of Hong Kong since the [National Security Law](#) (NSL) came into force in 2020. Although China has not ratified the ICCPR, Beijing promised that the ICCPR would remain in force in Hong Kong after 1997. It also agreed that the UN Human Rights Committee could continue to review Hong Kong as a

distinct jurisdiction. The upcoming review – during which Hong Kong government officials will respond to committee comments and questions, with proceedings live-streamed to the public – will be an important test of whether the local government still views the ICCPR as a meaningful constraint on its actions. It also will be a test of the efficacy of the UN human rights treaty-monitoring system.

The 2022 review will obviously be more controversial than past reviews of Hong Kong. The list of issues that the Human Rights Committee sent to the Hong Kong government in 2020 contained numerous questions regarding the NSL. In its replies, submitted in March 2021, the Hong Kong government essentially relied on Article 4 of the NSL, which states that Hong Kong residents continue to enjoy ICCPR-protected rights. The interactive dialogue in July 2022 provides an opportunity for the committee to dig deeper and explore what Article 4 means in practice.

Given that the Hong Kong government has no power to amend the NSL, the committee may wish to focus on the local government's enforcement actions. Although the local government frequently credits the NSL with restoring peace to Hong Kong's streets after the sometimes violent protests of 2019, the vast majority of charges filed under the NSL do not allege violent

actions or even incitement to violence. Rather, most of the people who are being prosecuted under the NSL fall within one of two broad categories: pro-democracy politicians and activists, or journalists and members of the media who have been critical of the Hong Kong and central governments.

The Human Rights Committee is in a good position to assess this use of the NSL, as it has substantial experience with governments that rely upon national security as a justification for restricting critical speech. For example, in *Tae-Hoon Park v. Republic of Korea* a student was prosecuted for his membership in an overseas student organization that was highly critical of the South Korean government. The Human Rights Committee determined that the government had breached the ICCPR by prosecuting the student, in part because it could not demonstrate the precise threat to national security posed by the student's activities. Similarly, in *Mukong v. Cameroon* the committee determined that the government violated the ICCPR when it prosecuted a journalist who criticized Cameroon's one-party system. The committee rejected the government's argument that national security and national unity could justify its attempts to stifle advocacy for multi-party democracy.

The Human Rights Committee may also ask the Hong Kong government to explain why it has not reformed local ordinances that are inconsistent with the ICCPR. The 2013 concluding observations on Hong Kong and the committee's [General Comment 37](#) demonstrate the conflicts between Hong Kong's Public Order Ordinance and Article 21 of the ICCPR, which protects the right of peaceful assembly. Instead of reforming the Public Order Ordinance, the government has actually stepped up enforcement and made it virtually impossible for activists to obtain the required "notice of no objection" from the police to hold a public assembly.

The local government has also resumed enforcing the colonial-era law of sedition, which was criticized by the Human Rights Committee in past reviews and lay dormant for decades due to its conflicts with the ICCPR. In the recent case of *HKSAR v. Tam Tak Chi*, a former radio host (known as "Fast Beat") was convicted of uttering seditious words and related charges under sections 9-10 of the Crimes Ordinance (Cap 200). Tam challenged the constitutionality of the prosecution, arguing, among other things, that "seditious intent" is defined so vaguely that it violates the ICCPR and Hong Kong's Basic Law. However, the District Court rejected this defense and did not apply the traditional four-step

proportionality analysis. The judgment [has been criticized](#) and hopefully it will be appealed. In the meantime, the Human Rights Committee could seek assurances from the Hong Kong government – as it has in the past – that it will reform the law of sedition to comply with the ICCPR.

The committee will also likely express concerns regarding the prolonged periods of pretrial detention for people arrested for security-related offenses. Article 9 of the ICCPR clearly states that it "shall not be the general rule that persons awaiting trial shall be detained in custody." Historically this was not a problem in Hong Kong, but Article 42 of the NSL has created a particularly stringent standard for bail in security-related offenses, essentially requiring defendants to show that they will not endanger national security while awaiting trial. The NSL does not obligate local prosecutors to oppose bail applications, particularly when the charged offense is non-violent, but they are routinely doing so. This is particularly troubling because so many defendants have now been in pretrial custody for more than one year. This is the situation of the majority of the 47 persons – including many lawyers and former legislators – who were charged in early 2021 with "conspiracy to commit subversion" for their roles in an unofficial political primary election. As of June 2022, [only 13 of these](#)

defendants were out on bail. If the government wants to give meaning to its claim that the ICCPR is still in force in Hong Kong, it must end this pattern of prolonged pretrial detention.

This is just a small sample of the many concerns that have been raised regarding civil liberties in Hong Kong. Indeed, given the number of issues raised in reports from [civil society organizations](#), the Human Rights Committee will have to allocate its time carefully as the interactive dialogue with government officials is normally limited to two half-day sessions. The world will be watching to see how the committee phrases its questions and how Hong Kong officials respond.

It would not be wise for the Hong Kong delegation to pretend that nothing has changed in the territory or that it is only targeting radical activists who advocate terrorism (as [Carrie Lam implied](#) in her recent speech at a government-sponsored conference). Rather, the Hong Kong delegation should acknowledge that the number and nature of prosecutions has created a great deal of unease. Why else would the Catholic

church feel obligated to [cancel its annual service for the victims of June 4th](#)? Why else would Hong Kong's Foreign Correspondents' Club, with its [long tradition of supporting press freedom](#), have decided that it must [suspend its annual Human Rights Press Award in April 2022](#)?

The fact that Beijing included Article 4 in the NSL indicates that it wants to be able to credibly claim that it kept its promise that the ICCPR would remain in force in Hong Kong. But Article 4 means nothing if those wielding power do not take it seriously. If the Hong Kong government hopes to salvage its international reputation, then it should view the July 2022 review as an opportunity to develop a more restrained approach to enforcement. It should acknowledge that it may have been overly zealous in its interpretation of what is truly necessary to protect national security and promise to carefully consider the advice of the Human Rights Committee. If it fails to do so, then the government should not be surprised if the committee's concluding observations are far more critical than those of previous reviews.



Carole J. Petersen is professor of law at the William S. Richardson School of Law, University of Hawaii at Manoa. She taught law in Hong Kong from 1989-2006.

Suggested Citation:

Carole J. Petersen, “Hong’s Rights Reckoning: What We Can Expect from the UN Human Rights Committee,” in *USALI Perspectives*, 2, No. 25, June 9, 2022, <https://usali.org/usali-perspectives-blog/hong-kongs-rights-reckoning>.

The views expressed in *USALI Perspectives* are those of the authors, and do not represent those of *USALI* or *NYU*.

This work is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

