

# *Elections Without Choice*

State-Controlled Elections  
in Hong Kong

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ANFREL Assessment Report



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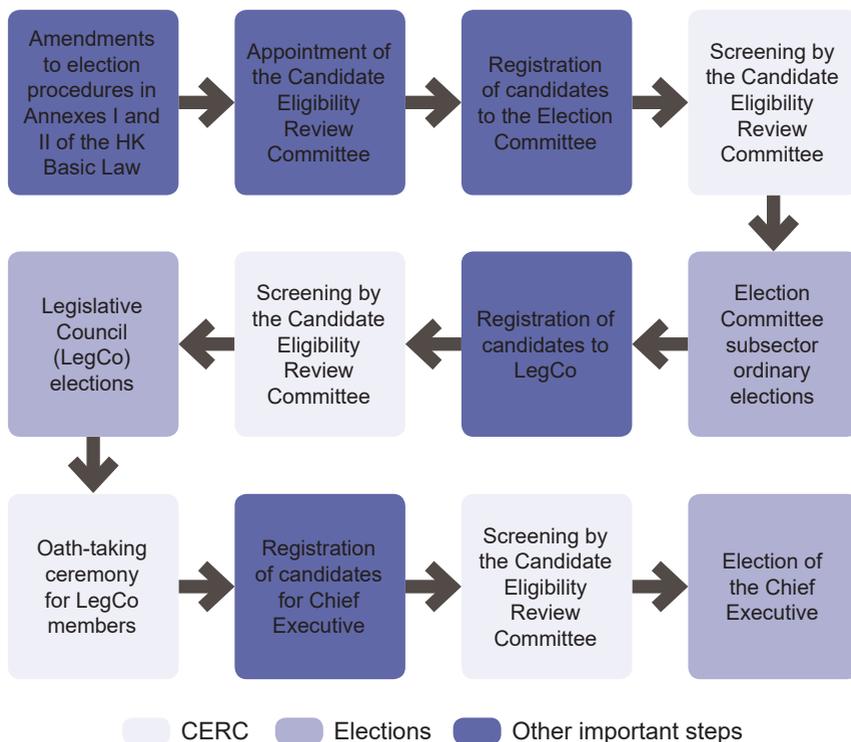
## Glossary

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CDC	Constitutional Drafting Committee
BL	Basic Law
BoR	Hong Kong Bill of Rights
CE	Chief Executive
CERC	Candidate Eligibility Review Committee
CCP	Chinese Communist Party
CPG	Central People's Government
EAC	Electoral Affairs Commission
EC	Election Committee
ExCo	Executive Council
HKSAR	Hong Kong Special Administrative Region
HKSARG	Government of the HKSAR
ICCPR	International Covenant on Civil and Political Rights
LegCo	Legislative Council
NPC	National People's Congress
NPCSC	Standing Committee of the National People's Congress
PRC	People's Republic of China
CPPCC	Chinese People's Political Consultative Conference
UDHR	Universal Declaration of Human Rights

NSL	Hong Kong National Security Law
Pro-democracy	Generally referring to the political alignment of Hong Kong which supports democracy and embraces liberal values. The camp diverges in multiple parties and groups according to different social stances, economic stances and paths of resistance, including moderate democrats, progressive democrats, localists, self-determination groups and independence groups. The “opposition” in the Legislative Council.
Pro-Beijing	Also known as Pro-establishment. Referring to the political alignment of Hong Kong which supports the Chinese Communist Party and Beijing government’s policies towards Hong Kong. Labeled as “patriots” after the enactment of the National Security Law.

# Timeline of Hong Kong’s current election system



11 March 2021 Decision of the National People’s Congress on “improving” the electoral system of the Hong Kong Special Administrative Region

30 March 2021 National People’s Congress Standing Committee approved the amendments and announced the revised legal framework would come into force on 31 March

29 May 2021	Passage of the corresponding local legislation: “Improving Electoral System (Consolidated Amendments) Ordinance 2021” (Bill passed on 27 May by LegCo, signed by the CE on 29 May) <sup>1</sup>
6 July 2021	Appointment of the Candidate Eligibility Review Committee or CERC <sup>2</sup>
6 to 12 August 2021	Registration of EC candidates <sup>3</sup>
14 July to 26 August 2021	CERC screening of potential EC candidates <sup>4</sup>
26 August 2021	CERC announced vetting decision and disqualified a pro-democratic lawmaker and his registration as ex-officio member of EC <sup>5</sup>
<b>19 September 2021</b>	<b>Election Committee subsector elections</b>
22 October 2021	Appointment of seven ex-officio EC members <sup>6</sup> and introduction of the Election Committee (22 October 2021 to 21 October 2026)

1 <https://www.legco.gov.hk/yr20-21/english/press/pr20210527-1.html>

2 <https://www.info.gov.hk/gia/general/202107/06/P2021070600318.htm> and [http://www.xinhuanet.com/english/2021-07/06/c\\_1310045985.htm](http://www.xinhuanet.com/english/2021-07/06/c_1310045985.htm)

3 <https://www.elections.gov.hk/ecss2021/eng/nominat.html>

4 <https://www.cso.gov.hk/eng/blog/blog20210717.htm>

5 [https://www.news.gov.hk/eng/2021/08/20210826/20210826\\_165312\\_191.html](https://www.news.gov.hk/eng/2021/08/20210826/20210826_165312_191.html)

6 <https://www.info.gov.hk/gia/general/202110/22/P2021102200239.htm>

30 October to 12 November 2021      Candidate registration period for LegCo

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**19 December 2021**      **LegCo elections**

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20 December 2021      Election Result announcement

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1 January 2022      Commencement of the seventh LegCo

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3 January 2021      Oath-taking of new LegCo members

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3 to 16 April 2022      Candidate registration period for CE election

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**8 May 2022**      **Election of the Chief Executive of Hong Kong**

# Chapter 1: Introduction

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Since the handover of sovereignty back to the People's Republic of China in 1997, democratic development in Hong Kong has always been a critical concern. The Sino-British Joint Declaration of 1984 and Hong Kong's Basic Law entrench the city's "capitalist system and way of life" and provide it with "a high degree of autonomy," including executive, legislative, and independent judiciary powers for 50 years.

The "one country, two systems" principle has indeed allowed Hong Kong to enjoy a certain degree of freedom and democracy over the years compared to mainland China. Hong Kong citizens are allowed to directly elect local district councilors and part of the legislation council members. While the territory has never enjoyed real electoral democracy, it has seen additional democratic deterioration in the two decades since the handover.

Following the enactment of the repressive National Security Law in June 2020, China's National People's Congress decided in March 2021 to amend Annexes I and II of Hong Kong's Basic Law, which would largely overhaul the electoral system in the city. The move, which occurred in the aftermath of major anti-government protests and the pro-democracy camp's landslide victory in the 2019 local district council elections, aims to further erode the pro-democracy camp's influence.

Among the controversial electoral system changes are the introduction of a candidate vetting committee, the expansion in size and power of the election committee, and the reduction of popularly elected seats in the Legislative Council. The law provides effective mechanism to systematically exclude pro-democracy candidates from participating in elections and holding elected positions in the city.

In case the electoral changes were not enough to ensure Beijing and Hong Kong authorities' intended electoral outcome, pro-democracy activists

and politicians were taken out of the game through various prosecutions even before the elections, most notably under the National Security Law. The restrictive climate in Hong Kong has also led to the closure of the Apple Daily and Stand News, two of the city's most influential independent news outlets.

The message that Beijing and Hong Kong send is clear: anyone with democratic aspirations should stay away from the political process or face being forcefully excluded from it. The results of the LegCo elections in December 2021 - a near-total sweep of all 90 seats in the LegCo by pro-establishment candidates - have shown that the regime's strategy is working thus far.

This report seeks to detail how the drastic changes in Hong Kong's electoral system and shrinking civic space systematically cause a regression of electoral democracy in the city. ANFREL hopes that this will lead to further action to push back against China's authoritarian agenda and to continue defending democracy in Hong Kong. The effort to defend fundamental freedoms against adversity must carry on, and we stand in solidarity with the people of Hong Kong as they keep the flame of democracy alive.

## Chapter 2: **The Candidate Eligibility Review Committee, Beijing’s gatekeeper to Hong Kong’s elections**

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The Candidate Eligibility Review Committee (CERC), a newly introduced body for the purpose of assessing and validating the eligibility of election candidates, is one of the most destructive aspects of the new electoral system that has been foisted upon Hong Kong. Its seven members, all appointed by the Chief Executive, form an opaque, undemocratic body that has absolute power to pre-screen all candidates and disqualify those believed to be insufficiently patriotic.

In order to vet the candidates’ eligibility, the CERC receives opinions from the Committee for Safeguarding National Security, which would decide if a candidate meets the requirements of “upholding the Basic Law” and “swearing allegiance to HKSAR”<sup>7</sup>. Such an ambiguous and subjective requirement is a tool to disqualify those believed to be adversaries of Beijing.

Disqualifying candidates on vague grounds is not something new in Hong Kong. Previously, returning officers disqualified six candidates in the 2016 LegCo elections, three in the 2018 LegCo by-elections and 12 the 2020 LegCo elections (before postponing to 2021) over their political stance. However, they were able to file a judicial review against the returning officer’s decision in the court. The most noteworthy instance is that of Agnes Chow and Ventus Lau, who were both disqualified in the 2018 LegCo by-elections and successfully appealed their disqualification in court. The court ruled that the two seats be vacated since the winners were unduly elected as a result of the returning officers’ unlawful decisions.

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7 Hong Kong Basic Law Annexes I and II

However, latest electoral changes in Hong Kong shield the CERC from any legal challenge against its decision. Those who are disqualified by the CERC would be denied due process and the right to appeal in court. It is clear that the CERC is established to act as a veto point for the government, which can stop any members of the pro-democracy camp from running in the elections.

The CERC disqualified two candidates in the 2021 Election Committee elections on the basis that one of them did not comply with the requirement of “upholding the Basic Law” and “bearing allegiance to Hong Kong”, and the other did not register as a voter<sup>8</sup>. The CERC also disqualified a candidate from running in the 2021 LegCo elections due to his status as a public officer<sup>9</sup>. While the number of candidates being disqualified may seem little, the existence of CERC has already effectively demoralized the pro-democracy camp and deterred a large number of people from running for office before the nomination.

As the Inter-Parliamentary Council’s Declaration on Criteria for Free and Fair Elections stated, everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. Such a candidate vetting mechanism in Hong Kong is in violation of the democratic norm and would only serve to further weaken democracy in the city. Voters are effectively able to vote only for candidates favorable to the establishment as any others would have been filtered out by the CERC.

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8 [https://www.news.gov.hk/eng/2021/08/20210826/20210826\\_165312\\_191.html](https://www.news.gov.hk/eng/2021/08/20210826/20210826_165312_191.html)

9 [https://www.news.gov.hk/eng/2021/11/20211119/20211119\\_111607\\_345.html](https://www.news.gov.hk/eng/2021/11/20211119/20211119_111607_345.html)

## Chapter 3: Election Committee, a travesty of Hong Kong's democracy

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- **Why an Election Committee?**

In Hong Kong, the Election Committee is an electoral college responsible for nominating and electing the Chief Executive. According to Annex I of the Basic Law, “the Chief Executive shall be elected [...] by an Election Committee which is broadly representative, suited to the actual situation of the HKSAR, and represents the overall interests of society”. While the creation of an electoral college in the late 20<sup>th</sup> century may seem anachronistic, such a method has been followed since the British handover of the territory in 1997. Until 2021, electing the Chief Executive was the sole function for the Committee, which was another “filter” placed by Beijing to prevent undesirable outcomes that could arise from a popular vote.

Initially at 400, the number of members of the Election Committee was increased to 800 in 1998 and then to 1,200 in 2010. However, it still represented an extremely small group compared to Hong Kong's population of several million. Besides, members were not elected by all registered voters, but only those from functional constituencies, for which only a few people who met the qualifications could register.

The Election Committee is made up of several “sectors”, each of which consists of numerous subsectors that represent different professions, business sectors or social groups. The Committee favored business interests over the public's, with at least a quarter of the seats allocated to the business sector. Therefore, with such a narrow electoral basis, it is not surprising that the Election Committee was criticized as a small coterie which was not in the least democratic. It is also stated clearly in Article 45 of the Basic Law that the ultimate aim was for the Chief Executive to eventually be elected by universal suffrage, meaning that the Election Committee was only ever supposed to be a transitory body.

Since the handover, the central government of the People’s Republic of China has repeatedly failed to fulfill its promise of introducing a “gradual and orderly<sup>10</sup>” reform process, resulting in a succession of public rallies in favor of universal suffrage, the most significant one being the Umbrella Movement in 2014. Not only did the Election Committee keep functioning until now, but its powers have been strengthened and its composition was changed in such ways that its legitimacy has only declined from poor to non-existent.

- **New changes in the Election Committee**

The new electoral changes introduced in March 2021 have given more power to the Election Committee. It would no longer be restricted to nominating and electing the Chief Executive, but will also be given the power to nominate and elect the Legislative Council (LegCo) members. Indeed, LegCo candidates must now offer at least two nominations from each of the Election Committee’s five sectors, according to a revised nomination threshold. Since members of the Election Committee are largely pro-Beijing appointees, these new rules, especially having to gain nominations from the fifth sector, further increase the difficulty for pro-democrat candidates to participate unless they are approved by Beijing as “patriots”. In other words, the filter has been made more restrictive.

Moreover, an Election Committee Constituency, which was abolished in 2004, has been re-established in the LegCo. The small Election Committee will now elect 40 out of 90 LegCo seats, or 44%. This effectively guarantees a veto power to the pro-Beijing camp in the LegCo.

In addition, the size of the Election Committee was enlarged from 1,200 to 1,500 members, as a new sector and some subsectors were added. This does not mean however that it has become more representative of the wider electorate since there are several significant differences in the new

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10 Article 45 of the Basic Law

electoral system leading to a massive reduction in the number of popularly-elected seats in the Committee.

The previous fourth sector, which included National People's Congress (NPC), Legislative Council, Chinese People's Political Consultative Conference (CPPCC), Heung Yee Kuk<sup>11</sup>, Hong Kong and Kowloon District Councils and New Territories District Councils subsectors, has now been divided into the fourth and fifth sectors.

The Legislative Council and Heung Yee Kuk subsectors remain in the fourth sector, while the NPC and CPPCC subsectors have been moved to the newly created fifth sector and combined with a new "Hong Kong members of relevant national organizations<sup>12</sup>" subsector. The bottom line is that the number of seats earmarked for Beijing-aligned government bodies has been doubled.

At the same time, the changes will reduce the influence of the district councilors in the Election Committee. In 2019, the pro-democratic camp won a landslide victory of 388 seats (86%) in the District Council elections, before oath-taking controversies ensued and resulted in most pro-democrats being expelled or resigning<sup>13</sup>. Under the previous electoral system, and if the integrity of the popularly elected District Council had not been attacked, the pro-democratic camp would most likely have secured all 117 seats filled by district councilors in the fourth sector.

Incidentally, these seats were entirely removed and replaced instead by representatives from the Area Committees, District Fight Crime Committees, and District Fire Safety Committees. Members of these local advisory committees under the Home Affairs Department, who are all appointed by the government, are either pro-Beijing local influencers or losing candidates in the 2019 District Council elections<sup>14</sup>. In addition, a

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11 The rural council of Hong Kong's New Territories, a pro-establishment body.

12 Article 2 of Basic Law Annex I

13 See Chapter 4.

14 <https://bit.ly/3iScuc3>

new subsector of representatives from associations of Hong Kong residents in the mainland was added to the fourth sector. By removing the main seat reserved for pro-democrats and replacing it with guaranteed seats for pro-establishment figures, the latest electoral changes have double-secured an outcome favorable to Beijing, even if pro-democrats were to regain a majority in the District Councils in the future.

- **Individual voters marginalized**

The new system also reduces the participation of individual voters and favors the interests of large corporations and organizations. Even if the previous Election Committee was a flawed college, there were 13 of 35 subsectors comprised of individual voters and 10 that were made up of both individual and corporate voters. Unfortunately, only four subsectors (293 seats, or 19.5%) are now left to be elected by individual voters, with the remaining 36 subsectors being elected by corporate voters, filled by appointment, or filled by ex-officio members.

Furthermore, these four subsectors that are left to be elected by individual voters are from the Heung Yee Kuk, Area Committees, District Fight Crime Committees, and District Fire Safety Committees and Hong Kong members of relevant national organizations. As members of these organizations are either appointed or assigned by the government, it can be assured that the only remaining members of the Election Committee elected by individual voters are likely to be pro-Beijing.

Ten traditional professional industries' subsectors in the second sector, for instance medicine, education, legal and accountancy, were elected by individual voters in the previous Election Committee elections, except for the information technology subsector having both corporate and individual voters. They are now all elected by corporate voters following the electoral changes. In many ways, Hong Kong today is functionally a corporatocracy where selected interest groups effectively govern the territory instead of the wider electorate.

The electoral overhaul also merged some subsectors that have traditionally been strongholds for pro-democrats. For instance, the higher education and education subsectors are now merged into a single education subsector, and the medical and health services subsectors are merged into a unique medical and health services subsector, where the number of seats for each respective subsector was halved.

**Table: Comparison of the number of registered voters for the Election Committee's second sector in 2016 and 2021**

Subsector	Number of registered voters	
	2016	2021
Accountancy	26,001	39
Architectural, Surveying, Planning and Landscape	7,370	55
Chinese Medicine	6,143	51
Education*	88,140	1,750
Engineering	9,405	60
Legal	6,769	30
Medical and Health Services*	48,576	82
Technology and Innovation***	12,109	54
Social Welfare**	14,130	144
Sports, Performing Arts, Culture and Publication**	(2,909)	223
<b>Total</b>	<b>204,513</b>	<b>2,488</b>

\* combined subsectors    \*\* moved from the third sector in 2021    \*\*\* renamed

Source: Constitutional and Mainland Affairs Bureau<sup>15</sup>

15 <https://www.cmab.gov.hk/improvement/en/ceo-ele-committee/index.html>

These changes have led to a drastic decrease in the number of registered voters for the second sector, from over 200,000 individual voters to less than 2,500 corporate voters. For instance, voters for the newly merged education subsector declined by 98% from 88,140 individual voters to 1,750 corporate voters, and the merged medical and health services subsector saw a decline of more than 99.8%, from 48,576 individual voters to only 82 corporate voters. Seven of the ten subsectors now have less than 100 voters to elect 14 or 15 members each, further narrowing the magnitude of the already small-circle elections.

In the past, elections for the second sector were known to be competitive. Pan-democrat candidates tended to occupy more seats in these subsectors since they traditionally had more support from professionals. For instance, in the 2016 elections, the “Democrats 300+” won 238 of the 300 seats in the second sector, while the pro-Beijing camp won only 57 seats<sup>16</sup>. Now that the sector has been changed to predominantly corporate voters, it would easily be dominated by the pro-Beijing camp through appointing bodies favoring them.

**Table: Comparison of the number and nature of registered voters for the Election Committee in 2016 and 2021**

	2016 EC elections	2021 EC elections
Registered voters	246,440	7,971
Individuals	230,073	2,551
Bodies	16,367	5,420

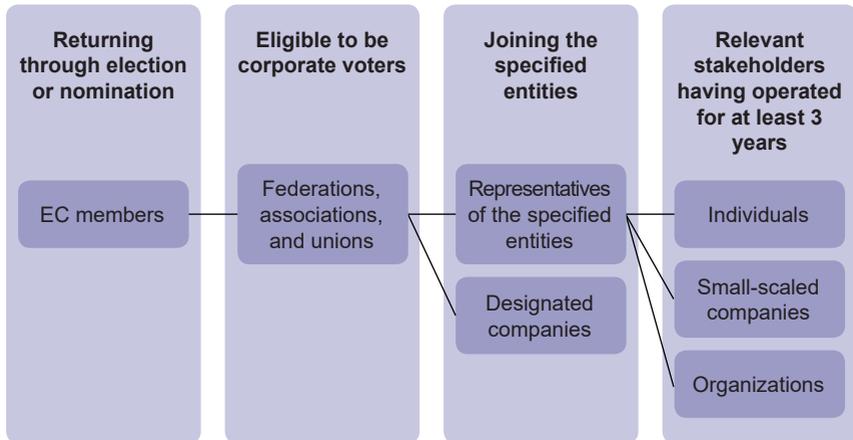
There are two general criteria for registering as a corporate voter, despite some variance between different subsectors: being a member of the designated industrial organizations and meeting a “3-year operation” re-

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16 [https://orientaldaily.on.cc/cnt/news/20161213/00176\\_021.html](https://orientaldaily.on.cc/cnt/news/20161213/00176_021.html)

quirement<sup>17</sup>. Therefore, the system of corporate voters is also criticized for preventing smaller companies and organizations from registering as eligible voters and disregarding the interests of minorities and individuals in the relevant industries.

### How corporations participate in the EC Elections<sup>18</sup>.



- **Highest proportion of uncontested seats since 1997**

Not only did the latest changes to the election system make it less reliant on public participation and reduced the number of registered voters, but it has also led to the highest recorded number of uncontested seats in the Election Committee ever<sup>19</sup>.

Uncontested seats are when there is only one candidate vying for a seat and he is elected unopposed without voting having to take place. In 2016, elections took place for 734 seats (61% of the total), contested by 1,345

17 Improving Electoral System (Consolidated Amendments) Bill 2021, Supplementary note on voter registration: <https://www.legco.gov.hk/yr20-21/english/bc/bc105/papers/bc105cb4-921-1-e.pdf>

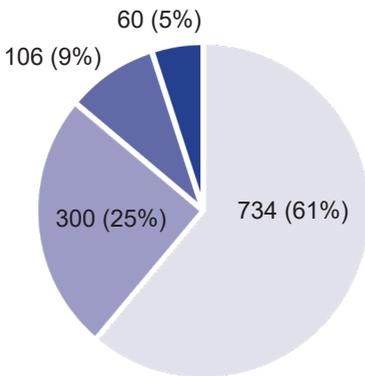
18 <https://www.cmab.gov.hk/improvement/filemanager/content/pdf/en/norminator/annex-E.pdf>

19 <https://www.scmp.com/news/hong-kong/politics/article/3144856/hong-kong-politics-record-number-uncontested-seats-election>

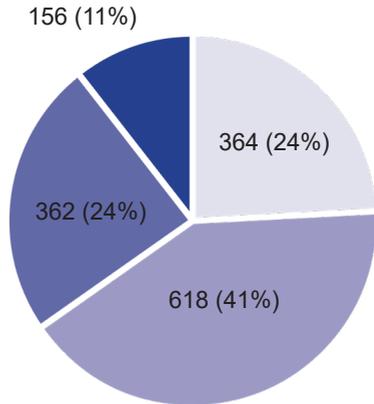
candidates. Twelve sub-sectors and one sub-subsector (300 seats) went uncontested<sup>20</sup>.

However, the dynamic profoundly changed in the 2021 Election Committee subsector elections, with only 364 of 1,500 seats (24%) requiring an election then, and 412 candidates vying for these seats. As the charts below illustrate, more than 75% of all seats in the Election Committee were either appointed, filled by current office holders (ex-officio), or elected unopposed. The system is now so tightly locked that the vast majority of elected seats did not have more than one candidate.

**Returning Methods for  
2016 Election Committee  
Members (1,200 Members)**



**Returning Methods for  
2021 Election Committee  
Members (1,500 Members)**



20 <https://www.info.gov.hk/gia/general/201612/12/P2016120900771.htm>

It clearly appears that the Election Committee is a structure whose composition and functions are straying further away from democratic principles instead of paving the way for universal suffrage as the Basic Law dictates.

With the new electoral system, the number of citizens who are eligible to vote for or be elected to the Election Committee has been limited. In addition to vetting by the Candidate Eligibility Review Committee (CERC), the Election Committee is a core component of Beijing's intention to secure predictable outcomes in a purportedly democratic system. According to the Secretary for Constitutional and Mainland Affairs Erick Tsang Kwok-wai, it is unnecessary to pursue intense competition in elections but national sovereignty and long-term stability of Hong Kong are prioritized<sup>21</sup>.

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21 <https://bit.ly/3uJQIGi>

## Chapter 4: **The Legislative Council: a patriot-only, opposition-free body**

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- **Changes to the Legislative Council**

Before 2021, half of the total seats were returned through popular vote while the other half belonged to the functional constituencies, which were voted among professional or special interest groups. According to article 68 of the Basic Law, Hong Kong people are promised to have all LegCo members to be elected by universal suffrage through a ‘gradual and orderly’ progress.

After numerous significant public rallies and protests took place over the year, for instance the 1 July marches in 2003 and the Umbrella Movement in 2014, Hong Kong people could barely gain small progress in electoral reform. However, with a 20-year delay of the democratizing progress, in addition to the high-profiled CCP intervention over Hong Kong self-autonomous rule, the political climate got worse and the Beijing government has seemed not to keep its words over the time. The government is determined to gain complete control over the legislature in a more oppressive way following the 2019 massive democratic movement. The so-called improvement of the electoral system has even led to a fall back of democratization.

One significant change in the LegCo electoral procedure is the introduction of a new nomination threshold. All candidates of the election must be nominated by at least two members from each of the five sectors of the Election Committee upon the original nomination requirements, after being screened and vetted by the CERC. The newly formed Election Committee has no pro-democracy members (only one non pro-Beijing member was elected to the Election Commit-

tee)<sup>22</sup>, leaving no room for any pro-democracy candidates to meet this new nomination threshold.

The number of members of the LegCo has increased from 70 to 90, but the most significant change is that the number of seats that would be returned by popular vote has fallen from 35 to 20. Originally, 35 MPs were elected by popular vote from five geographical regions, accounting for half of the LegCo. However, it has now been reduced to 20 seats, accounting for barely 22% of the LegCo. In addition, the number of geographical constituencies and their border lines have been altered. There are currently ten constituencies, according to a reapportionment that favors pro-Beijing candidates in the more rural border and in the Eastern Hong Kong Island districts<sup>23</sup>.

Regrettably, the remaining 70 seats are not up for grabs in a popular vote. Instead, a new 40-seat Election Committee constituency has been re-established after it was repealed in 2004. In this new constituency, the Election Committee's 1,500 members have sole authority to nominate and vote for 40 LegCo members, representing 44% of the LegCo. The members of the Election Committee are thus considerably over-represented and endowed with an undemocratic degree of authority, despite the fact that only a small percentage of them were chosen by the people. Given that they can vote for their representative from their geographical constituency as well as any functional constituencies to which they belong, a member of the Election Committee could choose up to 42 candidates in a single LegCo election<sup>24</sup>. While ordinary persons can only vote once in their geographical constituencies, it is undeniably a violation of the principle of one person one vote in an election.

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22 <https://www.independent.co.uk/asia/china/hong-kong-election-results-beijing-b1923346.html>

23 <https://www.reuters.com/world/asia-pacific/hong-kong-announces-more-electoral-system-changes-favouring-pro-beijing-camp-2021-04-13/>

24 If an Election Committee member is also a voter in a functional constituency, they could vote for up to 40 LegCo members in the Election Committee constituency, one candidate in the functional constituency and one candidate in the geographical constituency.

The previous existence of the functional constituencies was already criticized as a “coterie election”, the new electoral reform further tightens this small circle. Five seats of District Council (II), which were known as “super seats of District Councils”, were removed to further restrain the public’s representation in the LegCo. In addition to removing district councilors from being eligible voters of the Election Committee, there has been no public power for any district councilors within the institution, who are directly elected by the people, as a response to the pro-democrats’ landslide victory in the 2019 district council elections.

Besides, only nine functional constituencies, which are traditional professional constituencies, remain to be voted for by individual voters<sup>25</sup>. The other 19 constituencies will be voted by corporate voters, who could only register as an eligible voter for a specific constituency if they have been operating for not less than three years after acquiring relevant qualifications under this reform. Such changes are intended to secure the seats for corporate interests and minimize individual voters’ impact on the selection of functional constituency representatives, preventing pan-democrats’ supporters from having any impact in these small group elections.

Certain legislative procedures have also changed as a result of the changes in the LegCo’s composition. A simple majority of the Election Committee constituency, as well as a simple majority of the geographical constituencies and functional constituencies, are now required for the passage of a private member’s bill. Submitting private member’s bills is the only avenue for legislators to highlight issues of vital public interest that are not on the government’s agenda in LegCo. Further constraining such an avenue is an unfortunate development in Hong Kong’s democracy.

Every change in the LegCo has resulted in a complete domination by the pro-Beijing camp and reducing the people’s power in the legislature. The promise of universal suffrage for LegCo elections, as expressed in Article

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25 <https://bit.ly/3LxHjiv>

68 of the Basic Law, is becoming increasingly distant from Hong Kong citizens.

- **The first “patriots-only” election**

The first LegCo elections after the electoral system revamp were held on 19 December 2021. There were no pro-democratic figures who could represent the camp to run for this election after a series of prosecutions against pro-democratic politicians and activists, in addition to the enactment of the National Security Law, and voters’ incentive to participate was also decreased.

Despite the government’s efforts to increase voter turnout through free public transportation on Election Day and the establishment of polling stations at the Hong Kong-Shenzhen border, the political climate resulted in a record low turnout of 30.2%<sup>26</sup>. It was a significant drop from the 2016 LegCo election and the 2019 District Council election, in which the turnout was 58.28% and 71.23% respectively.

There was also the greatest percentage of illegitimate votes (2.04 percent) since 1997<sup>27</sup>. Five exiled pan-democrats were wanted by the anti-corruption commission for inciting others to cast blank votes. The police had arrested 10 people and prosecuted two for the same offense<sup>28</sup>. Many pro-democracy supporters chose to cast invalid votes or ignore the election to express their dissatisfaction towards these series of suppression.

Unlike the previous elections with diversity of political affiliation of candidates, this election had almost no candidates from the pro-democratic camp since all pro-democratic leaders are either arrested, exiled or quit-

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26 <https://www.info.gov.hk/gia/general/202112/20/P2021122000116.htm>

27 <https://www.scmp.com/news/hong-kong/politics/article/3160336/hong-kong-elections-all-eyes-final-turnout-first-big-test>

28 <https://www.bloomberg.com/news/articles/2021-12-18/hong-kong-issues-more-arrest-warrants-for-inciting-blank-votes>

ting politics. Four independent candidates from pro-democratic backgrounds who passed the district councilor's oath-taking process, Mandy Tam, Lung Fei Fong, Daryl Choi and Cheuk Yu Lau, had managed to secure nominations. Besides, three other former pro-democrats also ran for the elections, including Frederick Fung, Sing Chi Wong and Chi Yuen Tik. However, they have received much criticism from the pro-democratic camp for participating in this election, only Tik, who claimed himself as middle-of-the-road, won in the social welfare constituency.

Particularly, apart from traditional pro-establishment camp, such as Democratic Alliance for the Betterment and Progress (DAB) and Federation of Trade Unions (FTU), there were new pro-Beijing affiliations appearing in this election. 23 of all candidates were Hong Kong deputies to NPC and members of CPPCC, the other 14 had a strong Mainland China background or were senior executives of some state-owned enterprises<sup>29</sup>. Besides, a group of 'Hong Kong drifters' (young and educated Chinese who live in Hong Kong) had also arisen. It is notable that Beijing does not only want to eliminate pro-democratic voices from the legislature, but also directly enforce new mainland power over the rule of Hong Kong.

The results of the first patriot-only LegCo election were not surprising, with 89 out of 90 seats dominated by the pro-Beijing camp. The opposition was effectively shut down.

- **Oath-taking before the National Emblem**

The oath-taking ceremony was held on 3 January 2022. Although the oath remains the same, there were some notable changes symbolizing the control of the CCP and the dissolution of separation of power in Hong Kong. Instead of being overseen by the Secretary General of LegCo like the past, this ceremony was first-ever officiated by the Chief Executive<sup>30</sup>.

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29 <https://bit.ly/35oHKfo>

30 <https://www.info.gov.hk/gia/general/202201/03/P2022010300518.htm>

Besides, the city's bauhinia emblem displayed in the chamber was replaced by the national emblem before the ceremony, which was then confirmed to have remained over the city's emblem<sup>31</sup>. For the first time, the national anthem was sung in the ceremony and the legislators had to swear in front of the national and regional flags.

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31 <https://www.wenweipo.com/a/202201/03/AP61d27c66e4b0b6fdd2c2351b.html>

## Chapter 5: The Chief Executive: Beijing’s yes-man

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The Chief Executive sits atop the government of the Hong Kong Special Administrative Region (HKSAR). Supported by a cabinet named the Executive Council, he or she exerts a wide range of powers granted by the Hong Kong Basic Law. The Basic Law also says that the Chief Executive should eventually be elected by universal suffrage and “in accordance with democratic procedures.”<sup>32</sup> However, as the halfway mark for the “one country, two systems” arrangement approaches<sup>33</sup>, the position has never been further away from being a democratically elected one, and faces a legitimacy crisis among the territory’s population.

- **A waning legitimacy**

Despite the purported aspiration to universal suffrage contained in the Basic Law, the general public is not involved whatsoever in the selection of the Chief Executive. Instead, it is the Election Committee that nominates the candidates and elects one by an absolute majority before the winner is formally appointed by the central government in Beijing.

The legitimacy of the Chief Executive therefore only goes so far as that of the Election Committee, which is far from a “broadly representative” body as the language in the Basic Law would have it. Indeed, the election reform bill introduced by the National People’s Congress in March 2021 drastically reduced the number of voters involved in the process: only 7,971 electors were able to vote in the Election Committee subsector elections on 19 September 2021, a 97% decrease from five years earli-

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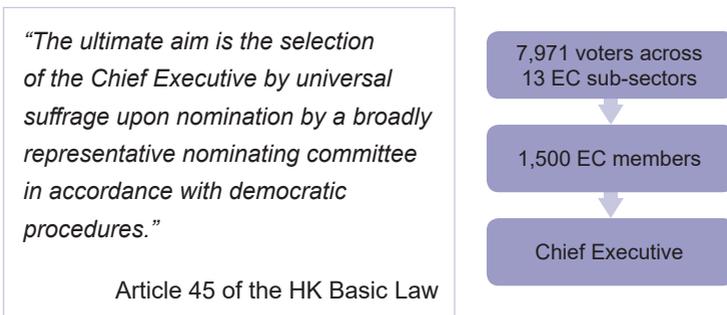
32 Article 45 of the Hong Kong Basic Law

33 The “one country, two systems” framework is set to expire in Hong Kong on 1 July 2047 unless extended.

er.<sup>34</sup> Moreover, 75% of the seats (1,136) were filled ex-officio, appointed or elected without contest, making the Election Committee an exclusive group of insiders with no representation of the pro-democrat camp.

By contrast, the vast majority of Hong Kong's 4,472,863 registered voters are not consulted about their choice for Chief Executive. There is no accountability of the office holder before his or her constituents, and district councilors, many of whom were pro-democrats after the 2019 elections, are no longer members of the Election Committee. Instead, the fifth Election Committee sector is now composed entirely of members approved by Beijing. This change, together with the introduction of a new rule mandating that candidates for the position of Chief Executive must receive 15 nominations from each sector<sup>35</sup>, effectively bars all pro-democrat candidates from being able to run for the position.

### **A mismatch between words and deeds: the election of the Chief Executive as of 2021**



The unfulfilled promise of universal suffrage from Beijing was also at the core of the “Umbrella movement”. On 31 August 2014, the Standing Committee of the National People’s Congress introduced a proposal for

34 <https://www.voterregistration.gov.hk/eng/statistic20214.html> and <https://www.voterregistration.gov.hk/eng/statistic20164.html>

35 Clause 384 of the Improving Electoral System (Consolidated Amendments) Bill 2021

all voters to elect the Chief Executive, but only from a limited number of candidates pre-approved by the pro-Beijing Election Committee<sup>36</sup>. The protests that ensued were the largest anywhere in China since 1989, eventually forcing the proposal to be abandoned. Only eight years later and despite another record popular mobilization in 2019, the central government has succeeded in putting the government of Hong Kong under lock in a fashion reminiscent of the earlier failed attempt.

- **Conflicts of interest abound**

Another noteworthy aspect of the electoral system for Chief Executive is that the incumbent has numerous responsibilities that can place him or her in a position to exert influence over the candidacy review process. Most democracies have taken steps to prevent potential conflict of interest in elections. However, the latest electoral reforms in Hong Kong overtly concentrated into the hands of Chief Executive Carrie Lam Cheng Yuet-ngor powers that are usually carried out by election management bodies or third parties.

For instance, the newly introduced Candidate Eligibility Review Committee (CERC), tasked with screening candidates to the positions of Chief Executive and members of the Legislative Council and Election Committee, is entirely appointed by the Chief Executive. Even if the CERC was a genuine institution instead of a gatekeeper for Beijing, this would leave it vulnerable to abuse of power by a Chief Executive who would want to keep his or her opposition at bay.

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36 <https://www.nytimes.com/2014/09/03/opinion/hong-kongs-democracy-dilemma.html>



## An electoral system vulnerable to quid pro quos

In addition, the Chief Executive also chairs Hong Kong's Committee for Safeguarding National Security, which also helps to vet candidates by issuing recommendations to the CERC under the new National Security Law. Despite Mrs. Lam's weak reassurances<sup>37</sup>, this gives her leverage over the selection process to dismiss any undesirable candidates, if not to straightforwardly select her replacement or facilitate her reelection.

Such blatant conflicts of interest should be proscribed in a genuine democracy. The People's Republic of China, however, has no qualms about establishing complicated and redundant screening procedures so that Hong Kong's electoral system can only produce predictable outcomes desirable to Beijing. Instead of a level playing field open to candidates of all backgrounds, Hong Kong now sees an endless feedback loop of pro-Beijing institutions letting only the most "patriotic" candidates run for office at the expense of all others.

<sup>37</sup> <https://www.scmp.com/news/hong-kong/politics/article/3127683/hong-kong-leader-carrie-lam-dismisses-conflict-interest>

- **Autonomy in question**

While the Hong Kong SAR purportedly enjoys “a high degree of autonomy<sup>38</sup>” and “shall, on its own, conduct the administrative affairs of the Region<sup>39</sup>”, since the handover in 1997 it has been increasingly ruled remotely from Beijing.

The Liaison Office of the Central People’s Government in Hong Kong dictates a lot of the decisions taken by Hong Kong’s own government. This was made explicit in April 2020, when the Liaison Office asserted its and the Hong Kong and Macau Affairs Office of the State Council’s power to “supervise major issues concerning relations between the central government and the Hong Kong SAR, the correct implementation of the Basic Law, the normal operation of the political system, and the overall interests of society on behalf of the central government, as well as express its concern and attitude.”<sup>40</sup> It was a major policy change, as the central government effectively and unilaterally granted itself the power to intervene in all Hong Kong matters.

The move was contrary to the spirit of Article 22 of the Basic Law, stating that no department of the central government could interfere in Hong Kong’s affairs. Purposefully, it also took place just a few months after the landslide victory of pan-democrats in the November 2019 district council elections, a clear indicator that the people of Hong Kong were intent on fighting for their freedoms.

In practice, local authorities in Hong Kong and most notably the Chief Executive are mere enforcers of policies drafted in Beijing without them being consulted, even more so since the 2019 mass protests created a rift between the administration and its constituents. For instance, Carrie Lam was unaware of the details of the National Security Law before it was

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38 Articles 2 and 12 of the Basic Law

39 Article 16

40 [http://www.xinhuanet.com/english/2020-04/17/c\\_138986076.htm](http://www.xinhuanet.com/english/2020-04/17/c_138986076.htm)

passed<sup>41</sup>, and she regularly receives “to-do lists” from the Liaison Office<sup>42</sup> or high-ranking officials visiting from Beijing<sup>43</sup>. For all intents and purposes, Hong Kong is now in a top-down relationship with Beijing, with little to none of the autonomy granted during the handover remaining today.

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41 <https://time.com/5857735/hong-kong-draft-security-law-text/>

42 <https://www.scmp.com/news/hong-kong/politics/article/3151986/hong-kong-leader-carrie-lam-gets-do-list-beijings-top>

43 <https://www.scmp.com/news/hong-kong/politics/article/3149279/chinese-vice-premier-han-zheng-tells-hong-kong-leader>

## Chapter 6: **Shrinking democratic space: a catalyst for state-controlled elections**

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Shrinking democratic space and a seemingly predetermined outcome have been the most noteworthy aspects of the run-up to the December 2021 Legislative Council (LegCo) Elections. Since the passage of the Hong Kong National Security Law in June 2020, the people of Hong Kong have been faced with intensifying authoritarianism that is entirely incompatible with the conditions needed to hold a democratic election. Pro-democracy activists, protesters and members of the media have been arrested, harassed or intimidated into silence. The pre-election climate lacks the fairness and openness necessary of a democratic election as a result of such significant violations of the people of Hong Kong's democratic rights.

In the spring of 2019, the people of Hong Kong began a protest movement unprecedented in size for the city. Protesters had a number of demands, but the most pressing was to oppose a planned extradition law that would have allowed Hongkongers to be tried in the mainland for crimes committed in Hong Kong or overseas. Many locals at the time reportedly felt that such a law would be a violation of the one country, two systems principle enshrined in the Basic Law of Hong Kong.

In the months following the introduction of the proposed bill, millions of Hongkongers joined street marches. The demands of the protesters grew and transformed based on the authorities' heavy-handed response to the protests. Eventually, the movement coalesced around additional demands that included protecting their rights of assembly, protest, and speech, accountability for police misconduct, and, critically in the election context, the need for universal suffrage in the LegCo and Chief Executive elections. After months of protests, a breakthrough appeared when, on 23 October 2019, the LegCo agreed to fully withdraw the extradition bill.

At that moment, the protesters appeared to have achieved a significant victory. While not all of their demands had been met, it was reasonable to hope at that time that Hong Kong was on a more democratic trajectory where local people could hold their government accountable and have their voices heard. Unfortunately, such hope would prove to be premature.

A short eight months after the extradition bill was withdrawn, and almost certainly intended as a response to the protests, the Standing Committee of the National People's Congress (NPCSC) in Beijing passed the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region<sup>44</sup> (NSL) on 30 June 2020. The NSL passed and entered into force on the same day, with authorities allowing no substantive scrutiny or providing even a modicum of transparency beforehand. The proposed text was not only not available to the public, virtually no one had a chance to review the full text before it was passed, including Hong Kong's own Chief Executive.<sup>45</sup>

Ultimately, the draconian NSL went much further to violate the promises of “one country, two systems” than the 2019 extradition bill ever did. Among its many troubling provisions, the law criminalizes acts deemed to be 1) secession, 2) subversion, 3) terrorist activities and 4) with a foreign country or external elements to endanger national security, with each carrying a sentence of up to life in prison.<sup>46</sup> Most unfortunately, the overly broad and ambiguous way these “offences” are defined in the law has allowed security forces to implement a sweeping crackdown on the ruling government's political opposition, independent civil society, the media, and citizens who criticize the government. Additionally, the law

44 <https://www.gld.gov.hk/egazette/pdf/20202448e/egn2020244872.pdf>

45 <https://std.stheadline.com/politics/article/1299686/%E6%94%BF%E6%B2%BB-%E6%99%82%E5%B1%80%E8%A7%A3%E7%A2%BC-%E5%A4%A7%E6%A3%8B%E7%9B%A4-%E6%B8%AF%E5%BA%9C%E5%B0%8D-%E5%9C%8B%E5%AE%89%E6%B3%95-%E8%8D%89%E6%A1%88-%E6%B1%82%E4%B8%8D%E5%BE%97>

46 Same note as above. Hong Kong National Security Law; Available at: <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.xinhuanet.com%2Fenglish%2Fdownload%2FEnglish%2520translation%2520of%2520the%2520Law%2520of%2520the%2520People%27s%2520Republic%2520of%2520China%2520on%2520Safeguarding%2520National%2520Security%2520in%2520the%2520Hong%2520Kong%2520Special%2520Administrative%2520Region.doc>

also creates offices for mainland security forces to operate more directly in Hong Kong and in more opaque, unaccountable ways. Further, the law weakened Hong Kong's court system, undermined judicial oversight, and gave police more unchecked power in the city.

As mentioned above, and as feared at the time of its passing, the NSL has had a profoundly negative impact on the most democratic aspects of the city and has created a pre-election environment wholly unsuited to holding free and fair elections. It has been used repeatedly as a weapon to silence activists and protesters and as a means with which to shut down independent media outlets. While such moves are clear violations of the right of Hongkongers to freedom of opinion and expression, they also have an obviously adverse impact on the quality and fairness of the elections. In an election context, this repression eliminates the democratic space necessary for both objective, independent reporting and open political discussion and debate, each a prerequisite for a democratic election.

In perhaps the most noteworthy example of media repression, the pro-democracy newspaper Apple Daily announced on 23 June 2021 that it was shutting down, one result within the broad campaign by the government to suppress free and independent media. The announcement came just days after police conducted a raid on Apple Daily's offices, arresting journalists, and freezing its bank accounts. Prior to its closing, the paper was one of the most widely read pro-democracy media sources in Hong Kong.

While the closure of Apple Daily is the most well-known, it is far from the only example of the tightening of government control of the media, civil society, and opposition in general. As stated by a group of UN Special Rapporteurs on Human Rights, "terrorism and sedition charges are being improperly used to stifle the exercise of fundamental rights, which are protected under international law, including freedom of expression and opinion, freedom of peaceful assembly and the right to participate

in public affairs.”<sup>47</sup> On a single day in February 2021 alone, forty-seven pro-democracy activists were arrested under the NSL on charges of conspiracy to commit subversion.<sup>48</sup> Their alleged “transgressions” included holding unofficial election primaries<sup>49</sup> to determine which representatives would be the best candidates in the coming LegCo elections.

Unfortunately, the NSL’s impact also extends beyond those who have been directly affected such as Apple Daily. Draconian harassment and prosecutions such as these have a profound chilling effect on society at large. When governments harass and persecute anyone with an independent or dissenting message, it has an inevitable chilling effect on the remaining media environment, civil society and citizens in general.

Tellingly, a survey of journalists conducted by the Foreign Correspondents’ Club of Hong Kong revealed a widespread apprehension regarding freedom of the press and the future of independent journalism in Hong Kong.<sup>50</sup> 83.8 percent of those surveyed indicated the working environment has changed for the worse since the introduction of the NSL, with over 56 percent of respondents responding that they had had to self-censor to some degree, and 86 percent revealing that their sources were less willing or able to speak freely since the introduction of the NSL.

The NSL has had a similar, if not greater, impact on civil society. The NSL has been used to silence, intimidate, and harass many CSOs into closing their operations. The members of its largest pro-democracy labor coalition, The Confederation of Trade Unions (CTU), voted to close down due to concerns about the safety of its leaders.<sup>51</sup> The vote came after weeks of pro-Beijing media accused the CTU of being a “foreign agent”,

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47 “Hong Kong: Arrests under security law are serious concern, UN experts call for review”; Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27648&LangID=E>

48 <https://apnews.com/article/beijing-hong-kong-elections-arrests-conspiracy-f9c6352e24a3c7e0154c44a76f1fd0ba>

49 The primaries were held by civil society members on 11 and 12 July 2020 to select pro-democracy candidates for the subsequently postponed 2020 LegCo elections in order to maximize the chance of winning for the pro-democrats.

50 The Foreign Correspondents’ Club, Hong Kong, Membership Survey on Press Freedom <https://bit.ly/3JSSv8R>

51 <https://www.france24.com/en/live-news/20211003-hong-kong-s-largest-pro-democracy-labour-union-votes-to-disband>

a charge likely to allow little to no due process and carrying a heavy sentence were the leaders to be charged under the NSL.

As Chow Hang Tung, the vice-chairwoman of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China stated, while being arrested for not revealing membership and funding information for her group going back to 1989, “this is absurd and an abuse of power.” She continued, “they are trying to intimidate the people who participate in social movements.” It’s a pattern that has been repeated elsewhere, with a wide variety of CSOs and social movements. According to one media tally, over fifty CSOs have disbanded since the imposition of the NSL.<sup>52</sup>

From journalists to book shops to everyday citizens, many people have had to quietly or anonymously lament Hong Kong’s shrinking democratic space since more open and direct criticism is now forbidden. As the space for an independent media and a free civil society disappears, the people of Hong Kong will be kept from hearing, and being part of, a healthy political debate. With such a crackdown in place, the electoral playing field will be even further tilted in favor of establishment forces. Without independent and opposition voices, from Apple Daily and other outlets like it, and from civil society and democratic activists alike, Hong Kong’s pre-election environment has become significantly less free and considerably more unfavorable to holding a free and fair election.

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52 Id.





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