

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

# ATROCITY CRIMES RISK ASSESSMENT SERIES

HONG KONG

VOLUME 18 - NOVEMBER 2021



### **Acknowledgments**

This report was prepared by Asia Pacific Centre for the Responsibility to Protect, Researcher, Dominique Fraser. The background research was undertaken by APR2P Centre intern Yan Long Ng who was supported by the Centre's staff: Professor Alex Bellamy and Ms Arna Chancellor.

The Asia Pacific Risk Assessment series is produced as part of the activities of the Asia Pacific Centre for the Responsibility to Protect (AP R2P). Photo acknowledgment: Etham Liam

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# INTRODUCTION

Using the [UN Framework of Analysis for Atrocity Crimes](#), this report analyses the risk of atrocity crimes (genocide, war crimes, crimes against humanity and ethnic cleansing) in the Hong Kong Special Administrative Region (Hong Kong). As the Framework contends, atrocity crimes do not occur spontaneously; they are large-scale and planned events based on history and trigger incidents. The Framework forces the country analyst to take into account eight common risk factors for atrocity crimes, ranging from background conditions to motivations and capabilities of perpetrators, and trigger events. The Framework further identifies specific risk factors for genocide, war crimes and crimes against humanity. Not every risk factor has to be present to determine a significant risk of atrocity crimes.

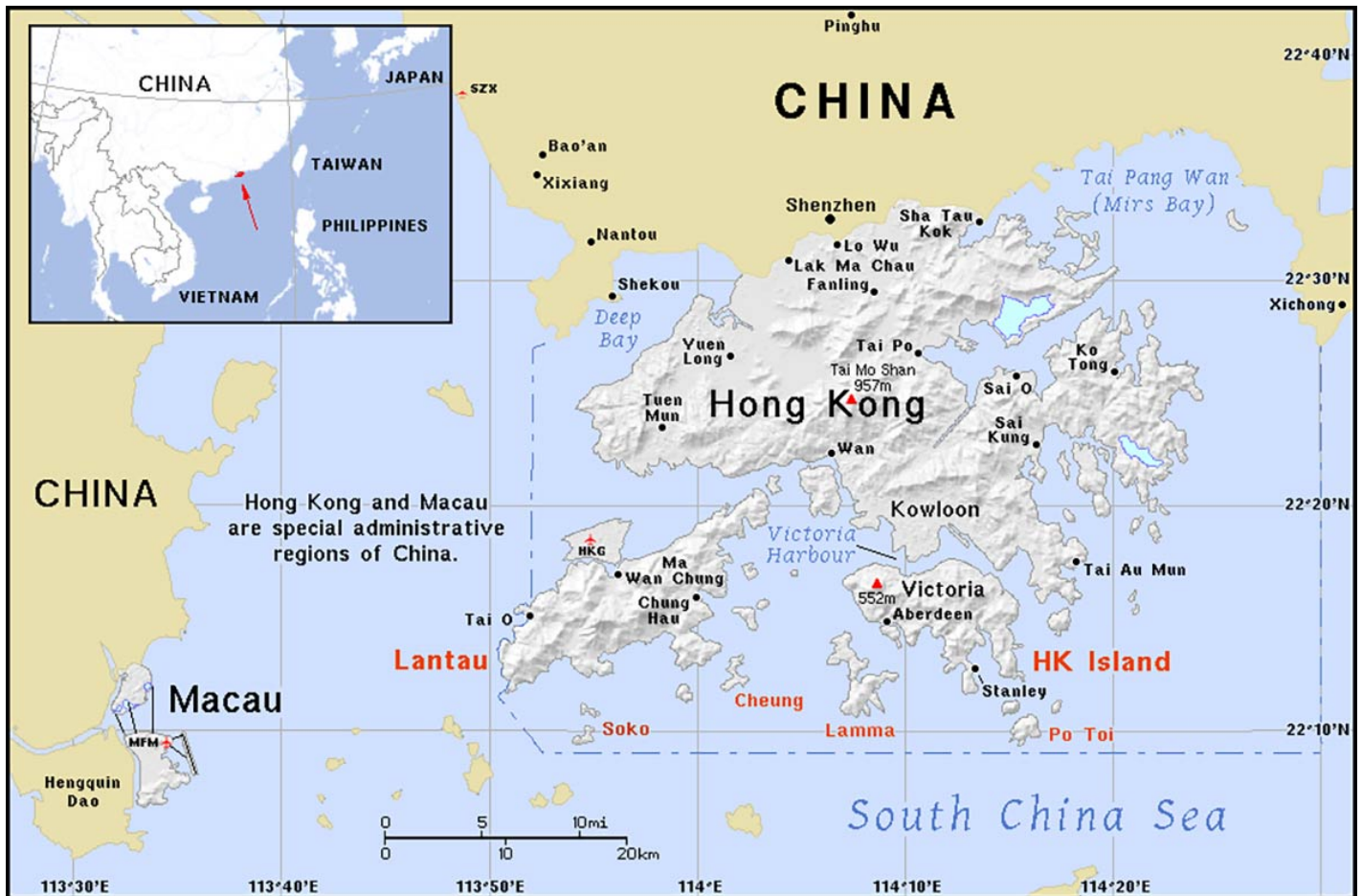
Hong Kong is a semi-autonomous region located in the South of the People's Republic of China. After being under British Rule for 150 years, Hong Kong has operated under a 'one country, two systems' framework since 1997. Hong Kong enjoys a high degree of autonomy with separate laws and policies to mainland China, which controls defence and foreign affairs. The 1984 Sino-British Joint Declaration provides that Hong Kong will be fully integrated with China in 2047. However, since the handover in 1997, there have been increasing concerns by Hong Kong residents and the international community over the Chinese Central Government's encroachment of Hong Kong's autonomy.

This report finds that **the current risk of atrocity crimes occurring in Hong Kong is moderate**, owing largely to instability due to severe political repression following the introduction of the National Security Law in 2020 and electoral reforms in 2021 (Indicator 1.6). The National Security Law in particular is used to erode freedoms of the press and civil society (Indicator 6.2), violates human rights (Indicator 2.1) and puts at risk the rule of law (Indicators 3.1 and 3.3). These repressive measures had been introduced by the Chinese Central Government after large-scale protests in 2014 and 2019 (Indicator 1.10). The 2019 protests in particular were characterised by violent crowd control measures, leading to accusations of violations of human rights by the Hong Kong Police Force, which have remained unaddressed (Indicator 3.6).

These measures threaten the 'one country, two systems' framework. As checks and balances, which had long been a feature of the Hong Kong political system, are being eroded, the role of China becomes ever more important in analysing atrocity risks. That is why some Indicators in this report make specific reference to the history and developments in mainland China, particularly China's current atrocities being committed in Xinjiang and Tibet (Indicator 2.2), as the commission of past atrocities is one of the best indicators of future atrocity crimes.

The report concludes with a number of recommendations for the governments of Hong Kong and China, which must prevent and repeal severe political repression enacted through the National Security Law, fulfil the population's desire for full democracy, and resolve tensions with the police force and potential ethnic tensions.

# MAP HONG KONG



Map acknowledgment: Nations online.org

## LIST OF ABBREVIATIONS

CCP	Chinese Communist Party
CPGNSO	Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region
LegCo	Legislative Council of Hong Kong
HKD	Hong Kong Dollar
HKPF	Hong Kong Police Force
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPCC	Independent Police Complaints Council
NSL	National Security Law
PRC	People's Republic of China
RTHK	Radio Television Hong Kong
R2P	Responsibility to Protect
UN	United Nations



## THE FRAMEWORK OF ANALYSIS

The Framework of Analysis for Atrocity Crimes allows analysts, practitioners and diplomats to be aware of the risk factors that are commonly present prior to the onset of atrocity crimes and to assess the likelihood of atrocity crimes in any given setting. The Framework is comprised of 14 Risk Factors. Each Risk Factor has an accompanying set of Indicators. Risk Factors are conditions that increase susceptibility to the commission of, or potential for, atrocity crimes. Indicators are “manifestations of each Risk Factor”. The Framework should be employed “to guide the collection and assessment of information” regarding the potential for atrocity crimes. The Risk Factors are separated into two different groups. The Common Risk Factors do not specify crimes committed, but identify the overall potential for atrocity crime commission. The Specific Risk Factors are further disaggregated into the risks associated with genocide, crimes against humanity and war crimes. The more Risk Factors and Indicators that are present, the greater degree of risk that atrocity crimes may be committed. However, not all Risk Factors must be present to represent a significant risk. The Risk Factors and Indicators are not ranked because the relative importance of each is dependent upon context. Risk Factors and Indicators should be considered in relation to a country’s politics, history, and culture.

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
<b>Genocide</b>		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
<b>Crimes Against Humanity</b>		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
<b>War Crimes</b>		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations

Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These Indicators and further information on the full UN Framework of Analysis for Atrocity Crimes <sup>1</sup>can be found by visiting the UN website at [www.un.org](http://www.un.org).

# COMMON RISK FACTORS

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

**Risk factor 1: “Situations that place a State under stress and generate an environment conducive to atrocity crimes.”** While atrocity crimes occur predominantly during times of armed conflict, they can also occur during times of peace. This can be attributed to factors such as an economic crisis, a crisis in security, or political and social instability, making a state more likely to commit atrocity crimes.

Hong Kong is experiencing instability, predominantly caused by political repression (Indicator 1.6) and mass protest against the state (Indicator 1.10), which are partly fuelled by horizontal inequalities (Indicator 1.9) and tensions based on ethnic identities (Indicator 1.11).

### **Political tension caused by autocratic regimes or severe political repression (Indicator 1.6)**

Hong Kong is a Special Administrative Region of the People’s Republic of China (PRC) with limited autonomy, spelled out in its Basic Law (see below). Since the handover from British colonial rule to China in 1997, when it came under the ‘one country, two systems’ framework, Hong Kong has enjoyed many socio-political and economic freedoms compared to mainland China. However, political repression in the form of tightly controlled elections has long been a feature of Hong Kong’s political system and further tightened since 2020. The introduction of the National Security Law (NSL) in June 2020 and the “patriots” electoral reform in March 2021 are further evidence of the increasing political repression in Hong Kong.

#### *National Security Law*

On 30 June 2020, the Chinese Communist Party (CCP) bypassed the Hong Kong Legislative Council (LegCo) and imposed a new NSL without prior consultations with Hong Kong legislators.<sup>1</sup> The CCP justified this move as a method of safeguarding security, arguing that the large-scale protests, which had been occurring in recent years in Hong Kong (see **Indicator 1.10**), were a threat to both Hong Kong and China’s national security.<sup>2</sup>

The law allows the CCP to effectively criminalize dissent in Hong Kong.<sup>3</sup> The four crimes of “separatism,” “subversion,” “terrorism” or “collusion with foreign forces” all carry a maximum life sentence and suspects who are arrested for “endangering national security” are not given the right to free trial (see **Indicator 3.1**).<sup>4</sup> These terms are defined in extremely broad and vague terms, leaving room to crack down on dissent. For example, the definition of terrorism may include acts such as those carried out by protesters during demonstrations in recent years.<sup>5</sup>

The law also erodes the ‘one country, two systems’ framework. It opened the door for the PRC to establish a new national security agency, the Office for Safeguarding National Security of the Central People’s Government in the Hong Kong Special Administrative Region (CPGNSO), which is not subject to Hong Kong jurisdiction (see **Indicator 7.3**).<sup>6</sup>

#### *Electoral reform*

The Hong Kong Basic Law is a *de facto* mini constitution, which protects freedom of the press, speech and assembly, and enshrines Hong Kong’s capitalist system.<sup>7</sup> The Basic Law also states as its aims that the election of the Chief Executive<sup>8</sup> and all members of LegCo<sup>9</sup> are to be held by universal suffrage. The desire to elect representatives by popular vote has been one of the key catalysts for almost every protest movement in Hong Kong. The Chief Executive however continues to be chosen by the Chief Executive Election Committee, which counts 1,200 members from professional industries such as business, law and finance and is routinely criticised for being a mostly pro-Beijing body chosen by just 6% of eligible voters.<sup>10</sup> Half of LegCo members have been chosen through popular vote in electoral districts and half through professional interest groups derived

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OTHER FORMS OF INSTABILITY

from a person's occupation. Many business-related functional constituencies favour the interests of China as both economies are relatively interdependent.<sup>11</sup>

On 30 March 2021, LegCo, dominated by pro-Beijing legislators, approved the "patriots" electoral reform law, implementing the most wide-sweeping electoral reforms since 1997. It increases the number of LegCo seats from 70 to 90 and reduces the number of directly elected seats from 35 to 20. Another 40 of its seats will be chosen by the Election Committee, which until then had only chosen the Chief Executive, now increased to 1,500 members. The remaining 30 seats will continue to be chosen by special interest groups, traditionally loyal to Beijing. Any potential member of LegCo, the Election Committee or Chief Executive candidate will also need to be approved by the newly created Committee for Safeguarding National Security (see **Indicator 7.3**), after being vetted by the National Security Department of the Hong Kong Police Force (HKPF).<sup>12</sup> Human Rights Watch has criticised these electoral reforms for "effectively gutt[ing] the city's competitive elections and replac[ing] them with sham races in which only those loyal to Beijing can run for the LegCo".<sup>13</sup>

### **Economic instability caused by acute poverty, mass unemployment or deep horizontal inequalities (Indicator 1.9)**

Hong Kong has a free market-driven economy and enjoys low taxation and financial freedom,<sup>14</sup> which has allowed Hong Kong's economy to thrive and attract significant foreign investment.<sup>15</sup> Despite these successes, Hong Kong suffers from a large wealth gap. As of 2018, 20% of the population in Hong Kong live below the poverty line. This is significantly worse for minorities.<sup>16</sup> By comparison, the average poverty rate in the OECD is 12%.<sup>17</sup>

The largest issue affecting low-income families is a lack of affordable housing.<sup>18</sup> Hong Kong currently hosts the most expensive property market in the world, with an average property price of \$9,663,177 HKD (1.24 million USD).<sup>19</sup> Over the past ten years, Hong Kong's property prices have risen by 243% while income has not significantly increased.<sup>20</sup> Socioeconomic inequalities play a large role in tensions between residents and the government and were one of the underlying reasons for the 2019 protests (see **Indicator 1.10**).<sup>21</sup>

### **Social instability caused by resistance to or mass protests against State authority or policies (Indicator 1.10)**

Protests have been a common method of signifying resistance against China and the government of Hong Kong. There have been annual rallies on 1 July since 1997, the day of the handover of Hong Kong.<sup>22</sup> In the past, these rallies were generally peaceful with little police presence. In more recent years, police have increased their presence and used aggressive crowd control methods. Most protests in Hong Kong echo similar themes, particularly with regards to democracy, universal suffrage, political repression (see **Indicator 1.6**) and China's increasing interference on Hong Kong's autonomy.<sup>23</sup>

In 2014, a pro-democracy campaign drew nearly one million Hong Kongers to the street.<sup>24</sup> The Occupy Central Movement, also called the Umbrella Movement, was a student led civil disobedience movement, which lasted two and a half months.<sup>25</sup> It protested electoral reforms proposed by Beijing and called for universal suffrage and freedom of expression.<sup>26</sup> The police used violent crowd control tactics such as the use of tear gas and rubber bullets, which perpetuated tensions between residents and the government.<sup>27</sup> After 79 days, the occupied areas were cleared by police with little resistance. Protestors accused the government of misusing institutions such as the judiciary and law enforcement to advance political agendas.<sup>28</sup> As there were no concessions nor compromises made between the government and protestors, many Hong Kongers grew disenfranchised from the government, particularly due to police brutality in confronting the peaceful protestors.<sup>29</sup>

In June 2019, large-scale protests broke out over the government's proposed Extradition Bill. The law would have allowed extradition of some criminal suspects to mainland China and Taiwan. Hong Kong residents feared that the Extradition Bill would erode political freedoms and the extradition of pro-democracy figures.<sup>30</sup>

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OTHER FORMS OF INSTABILITY

While the protests were initially peaceful, they were met with disproportionate police violence such as the use of tear gas, rubber bullets, live rounds aimed at protestors and the use of water cannons.<sup>31</sup> This encouraged more protestors to take to the streets, with protests reaching an estimated two million participants on its biggest day.<sup>32</sup> The Chief Executive suspended the Bill in September, but the protests had ballooned into a movement demanding full democracy and an inquiry into police brutality.<sup>33</sup> The protests came to a stop in January 2020 over fears of COVID-19.<sup>34</sup>

### **Social instability caused by tensions based on identity issues (Indicator 1.11)**

Hong Kong residents increasingly identify as “Hong Kongers” rather than ethnic Chinese, a trend that is particularly pronounced for younger generations since the early 2010s. By 2018, 96.4% of young people (under 29 years) identified as being Hong Kongers, compared to 68.4% in 1997.<sup>35</sup>

Hong Kong residents accuse the Hong Kong government of making special concessions for mainland Chinese individuals. For example, an immigration scheme has allowed 150 mainland Chinese residents to obtain residency in Hong Kong daily, which has now contributed to 10% of the Hong Kong population.<sup>36</sup> This was perceived as threatening to many Hong Kong residents as they believe that the mainland Chinese will take spots in public schools, hospitals and employment.<sup>37</sup>

Aware of the changing identity, the Hong Kong government tried to amend the Hong Kong school curriculum in 2011 to foster Chinese national identity. Many residents saw this as Chinese propaganda and widespread opposition to the changes saw them suspended.<sup>38</sup> In 2021, school curricula have been rewritten to remove topics such as civil disobedience and the 1989 Tiananmen Massacre and school students have to publicly express loyalty to the Chinese government and Communist Party.<sup>39</sup>

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN

**Risk factor 2: “Past or current serious violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct, and including those amounting to atrocity crimes, that have not been prevented, punished or adequately addressed and, as a result, create a risk of further violations.”** Violations of international human rights and humanitarian law may lead to the commission of atrocity crimes, especially if there is a failure to acknowledge and address these violations through accountability mechanisms.

One of the clearest indicators of future atrocities are past atrocities. Of particular importance here are atrocities currently being committed by mainland China in Xinjiang and Tibet (Indicator 2.2). At the same time, Hong Kongers’ international human rights being increasingly violated by the introduction of the NSL and the accompanying crackdown by police (Indicator 2.1) and decreasing trust in Hong Kong and mainland Chinese state institutions (Indicator 2.8).

**Past or present serious restrictions to or violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct and if targeting protected groups, populations or individuals (Indicator 2.1)**

The Basic Law affords residents of Hong Kong certain human rights, including “freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration”.<sup>40</sup> With the introduction of the NSL, many of these freedoms are under threat. Long-standing basic civil and political rights are being systematically erased, in particular freedom of expression, peaceful assembly and association.<sup>41</sup> Of particular concern are the violation of human rights within a context in which Hong Kong residents see themselves as a different ethnic group to the mainland Chinese.



## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

### Freedom of expression

Pro-democracy activities are at risk of being intimidated for voicing what are perceived as anti-Chinese sentiments by pro-Beijing politicians, along with the state-owned news media *Ta Kung Pao* and *Wen Wei Po*, making them fearful to exercise their rights.<sup>42</sup>

The government has repeatedly said that it would introduce laws to combat “fake news” and “misinformation”, which would allow authorities to demand retractions or corrections from news organisations, raising fears that the already stifled media freedom would suffer further blows (see **Indicator 6.2**).<sup>43</sup>

This is occurring within a context in which teachers and academics already face surveillance, self- and outside censorship. Students at schools and universities are encouraged to inform authorities if their teachers express pro-democracy views.<sup>44</sup>

Civil servants, government contract workers and even school children are pressed to pledge allegiance to the PRC government and the CCP.<sup>45</sup> Dozens of books, written by pro-democracy leaders or critical of the CCP, have been removed from public libraries and access to some websites has been blocked.<sup>46</sup>

### Peaceful Assembly and Association

Hong Kong’s Public Order Ordinance requires people to apply in advance to hold a demonstration. This has been criticised by the UN Human Rights Committee as being contrary to the right to peaceful assembly.<sup>47</sup> Over 10,000 people have been arrested over the 2019 protests, including 2,500 who have been prosecuted, some of whom face jail time.<sup>48</sup>

Since the introduction of the NSL, police have used their powers to crack down even more on peaceful protestors, arresting peaceful protestors and even people who simply possessed flags, stickers or other material with political messages, for endangering “national security”.<sup>49</sup> Within a week of the NSL entering being enacted, at least seven politically active groups, including independence student groups and student activists, disbanded over fears of being targeted.<sup>50</sup>

In 2021, the Hong Kong government effectively banned the Victoria Park vigil, which had been the only place on Chinese territory where the 1989 Tiananmen Massacre was publicly commemorated every year.<sup>51</sup> Such decisions indicate a trend to further curtail the population’s right to peaceful assembly and association.

### **Past acts of genocide, crimes against humanity, war crimes or their incitement (Indicator 2.2)**

Past instances of atrocities are one of the most reliable indicators of risk. While Hong Kong has not experienced grave atrocity crimes, Chinese authorities are currently perpetrating atrocity crimes in at least two of its regions: in Xinjiang and Tibet.

In the Xinjiang Uyghur Autonomous Region in China’s west, nearly a million ethnic Uighurs and other Muslim minorities are detained in ‘re-education camps’. In the camps, the population faces torture, sexual violence, forced sterilisations and abortions and forced labour. Chinese authorities are attempting to destroy the cultural and religious heritage of the Uighur people under the guise of fighting terrorism, extremism and separatism. The crimes likely amount to crimes against humanity and genocide.<sup>52</sup>

Tibet, which has long been oppressed by Chinese authorities, including through gulags for political prisoners and dissenters, is seeing the reintroduction of labour camps. Under the guise of ‘poverty alleviation’, rural Ti-

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN

menial work in factories. The intended outcomes are forced assimilation of Tibetans and the appropriation of Tibetan land for its natural resources.<sup>53</sup>

### **Widespread mistrust in State institutions or among different groups as a result of impunity (Indicator 2.8)**

Hong Kong residents have grown increasingly distrustful of the Hong Kong government, the HKPF and other state institutions.<sup>54</sup>

Public opinion polls about the HKPF show that the public approval ratings have fallen dramatically since 2019. From the handover in 1997 to 2010, the HKPF acquired positive public approval of approximately 70%.<sup>55</sup> However, their approval rating had dropped to 29% in 2014 during the Occupy Central Movement. The HKPF's approval rating further fell to 22% in 2019 largely due to the HKPF's disproportionate use of force (see **Indicator 2.1**) and ongoing impunity (see **Indicator 2.3**).

Annual public opinion surveys of Hong Kong residents on the approval rating of governments show steadily declining trust, particularly since 2019. The most recent poll (September 2021) shows that only 34% of respondents trust the Hong Kong Government and slightly more at 38% trust the PRC Government. Nearly half of respondents, however, expressed confidence in the future of Hong Kong (46%) and the 'one country, two systems' structure (45%).<sup>56</sup>

## RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

**Risk factor 3: “Circumstances that negatively affect the capacity of a State to prevent or halt atrocity crimes.” Several factors impact on a state’s ability to protect populations from atrocity crimes, including political, judicial, military and resource factors.**

The introduction of the NSL threatens the rule of law in Hong Kong with many procedural protections historically afforded to Hong Kongers being systematically disbanded (Indicator 3.1) and an independent and impartial judiciary being deliberately attacked (Indicator 3.3). There also appears to be an effort to shield police from accountability for brutality committed against peaceful protestors with weak internal accountability mechanisms (Indicator 3.6). These actions represent an exercise of state power rather than a state weakness.

### **National legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties (Indicator 3.1)**

The rights of Hong Kong residents are spelled out in Chapter III of the Basic Law, granting equality before the law, freedom of speech, association and assembly and freedom of communication and movement. It also includes the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>57</sup>

The NSL's definitions, including of “separatism,” “subversion,” “terrorism” and “collusion with foreign forces”, are very broad and vague, leading to the law being applied in unpredictable and arbitrary ways for political purposes. This violates the principle of legality enshrined in Article 15 of the ICCPR, a cornerstone of the rule of law.<sup>58</sup>

The NSL is also putting at risk many important procedural protections normally available to residents.<sup>59</sup> For example, the NSL provides for a special track of political cases, which are to be handled by special police officers and trialled by handpicked prosecutors and judges.<sup>60</sup> This, Human Rights Watch has warned, is turning “the police and judiciary into tools of Chinese state control rather than independent and impartial enforcers of the rule of law”.<sup>61</sup>

The NSL also denies bail to national security suspects unless the judge is convinced that they will no longer commit national security offenses. This effectively reverses the presumption of bail, running counter to inter-

### RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

national human rights law and standards and to the normal practice in criminal prosecutions in Hong Kong.<sup>62</sup> Finally, the NSL allows suspects to be deprived of the right to a public trial and a trial by jury, if so decided by the secretary for justice.<sup>63</sup>

#### **Lack of Independent or Impartial Judiciary (Indicator 3.3)**

The Hong Kong Basic Law provides for an independent and impartial judiciary, however, this is coming under threat following the introduction of the NSL. Many fear the NSL will be used to erode Hong Kong's judicial independence. The law effectively imposes mainland China's criminal system onto Hong Kong's common law system.<sup>64</sup>

Pro-Beijing newspapers *Ta Kung Pao* and *Wen Wei Po* have named and attacked 'yellow' judges, criticising them for judiciary decisions the editors did not agree with and for handing down sentences considered too lenient by Beijing. These media outlets have called for judges to be punished.<sup>65</sup> Members of the judiciary have expressed fear for the future of Hong Kong's court system and at least two judges have left, citing the NSL as the reason for their departure.<sup>66</sup>

#### **Absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims (Indicator 3.6)**

There appears to be a culture of impunity within the Hong Kong government and inaction to violations of international human rights law, in particular with regards to police brutality against protestors.

The UN Human Rights Committee has expressed concerns about the lack of an impartial and effective mechanism to investigate police misconduct in Hong Kong for decades.<sup>67</sup> This has become particularly salient since the violent 2019 protests. The government never commissioned "an independent, impartial, effective and prompt investigation" into Hong Kong police's use of force during the protests, as called for by the UN Commissioner for Human Rights.<sup>68</sup>

The existing mechanism, the Independent Police Complaints Council (IPCC), found no major wrongdoing on the part of the police.<sup>69</sup> The IPCC is a government organisation that monitors police actions and reviews complaints against the HKPF.<sup>70</sup> Experts state that the IPCC has limitations with regards to their structural limitations and lack of independence since all members of the IPCC are appointed by the Chief Executive.<sup>71</sup> Further, the IPCC itself lacks power as it is only permitted to give police officers advice rather than mandates. Thus, the inquiry was unable to subpoena evidence nor to question HKPF officers.<sup>72</sup>

In November 2020, the High Court ruled that the government had violated the city's Bill of Rights by not providing an independent mechanism for complaints about police.<sup>73</sup>

Independent investigations found that the police's indiscriminate use of force, such as using tear gas and pepper spray in confined spaces, escalated the 2019 protests.<sup>74</sup> The police guidelines were often ignored by police, who misused chemical agents and used excessive force against protesters not resisting.<sup>75</sup>

Not a single police officer has been suspended, charged or prosecuted.<sup>76</sup> Some high-ranking officers implicated in abuses have even been awarded with highest honours for their "service to the community".<sup>77</sup>

## RISK FACTOR 4: MOTIVES AND INCENTIVES

**Risk factor 4: “Reasons, aims or drivers that justify the use of violence against protected groups, populations or individuals, including by actors outside of State borders.”**

The Chinese government sees recent developments in Hong Kong as threatening to its ‘One China’ policy and therefore has political motives to impose its will by silencing dissent within Hong Kong.

### **Political motives, particularly those aimed at the attainment or consolidation of power (Indicator 4.1)**

Since the handover in 1997, the PRC government has attempted to retain power by eroding the ‘one country, two systems’ framework. Traditionally, Hong Kong residents have been content with the framework and only a small minority of Hong Kongers favoured independence. In more recent years, Hong Kong residents, and particular younger generations, have begun to increasingly consider themselves ‘Hong Kongers’ rather than ethnic Chinese (see **Indicator 1.11**) and student protesters have formed more radical, anti-Beijing political parties, including Youngspiration, Hong Kong Indigenous and Demosisto.<sup>78</sup>

The mass protests in 2014 and 2019, which were attended by up to a million protestors, alerted Beijing to the need to prevent incidents that could escalate to mass protests. The Chinese government has since attempted to portray the protests within the prism of ‘terrorism’, signalling to the international community that Hong Kong’s issues had turned into a national security issue.<sup>79</sup>

Chinese president Xi Jinping has openly warned Hong Kong residents against ‘separatism’, saying any attempt to break the ‘one China’ policy would result in “bodies smashed and bones ground to powder”.<sup>80</sup>

## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

**Risk factor 5: “Conditions that indicate the ability of relevant actors to commit atrocity crimes.”**

The governments of Hong Kong and China possess the capacity to commit atrocity crimes. Ability does not necessarily translate to willingness.

### **Availability of personnel and of arms and ammunition (Indicator 5.1)**

The HKPF, which counts over 30,000 officers, is well-funded and well-equipped. Since 1958, it has invested in a specially trained paramilitary unit, the Police Tactical Unit, and all officers are trained to be geared-up and riot-ready within 11 minutes.<sup>81</sup> Despite this battle-ready police force, trust-building exercises following riots in the 1950s and 1960s meant that the police force came to be seen as a “trusted and friendly guardian”.<sup>82</sup> This has changed in recent years, and in particular since the 2019 protests, when the government deployed the police in paramilitary formation, routinely using tear gas, water cannon, rubber bullets, and pepper spray against demonstrators.<sup>83</sup> Police officers have no individual constabulary power, having to obey orders even ones they consider unjustified.<sup>84</sup>

At the end of the 2019 financial year, the Hong Kong government has significantly increased its budget for the police force as a response to the Hong Kong protests for the upcoming financial year.<sup>85</sup> It grew from HK \$20.6 billion to HK \$25.8 billion, an increase of 25% compared to last year’s budget.<sup>86</sup> While the increase in police budget can be attributed to needing more police presence, a large portion of the increased police budget is directed towards acquiring arms and crowd control gear.<sup>87</sup>

Direct intervention in Hong Kong’s affairs by Chinese forces is allowed under the Basic Law if Hong Kong declares a state of emergency.<sup>88</sup> China is the second-largest arms producer in the world.<sup>89</sup> Its People’s Liberation Army, which counts around 975,000 personnel,<sup>90</sup> has in recent decades been on a mission to grow and modernise.<sup>91</sup> While China’s military spending totals less than a third of that of the United States, it is the largest in

## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

the Asia Pacific region.<sup>92</sup> President Xi has announced that the army will be modernised by 2035 and “world-class” by 2050. The weaponry available to the Chinese army is vast, including not only conventional weapons, but also nuclear-armed ballistic missiles, among others.<sup>93</sup>

### **Capacity to transport and deploy personnel and to transport and distribute arms and ammunition (Indicator 5.2)**

As mentioned in Indicator 5.1, the HKPF is able to very rapidly gear up and be riot ready. Gaining any potential additional crowd control measures, particularly from China, is also possible for the police force. In 2019, Hong Kong imported crowd control equipment to contain the protest in Hong Kong. While companies in both the United Kingdom and United States suspended their sales of teargas and rubber bullets,<sup>94</sup> Chinese companies and the government supplied crowd control equipment to the Hong Kong government, particularly teargas.<sup>95</sup>

## RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

### **Risk factor 6: “Absence of elements that, if present, could contribute to preventing or to lessening the impact of serious acts of violence against protected groups, populations or individuals.”**

Since the introduction of the NSL, additional restrictions have been placed on the media and civil society, threatening press freedom and national (Indicator 6.2) and international (Indicator 6.4) civil society organisations. A strong and diverse civil society and a free and pluralistic media are key to an atrocity-resilient society.

### **Lack of a strong, organized and representative national civil society and of a free, diverse and independent national media (Indicator 6.2)**

Hong Kong’s autonomous civil society<sup>96</sup> and press freedom<sup>97</sup> have been powerful forces in Hong Kong. The NSL, however, has increased restraints on civil society and the media.

Members of pro-democracy civil society organisations are routinely arrested and their events cancelled under the veil of COVID-19 restrictions.<sup>98</sup> Most prominent democracy leaders have been arrested or have fled overseas.<sup>99</sup> Civil society organisations, including professional organisations and unions, have disbanded. The Hong Kong Alliance in Support of Patriotic Democratic Movements of China, which had organised the annual vigils for the Tiananmen Square Incident on 4 June, was accused of “colluding with foreign governments” and the Hong Kong government froze HK\$2.2 million (US\$282,050) of its assets; the alliance subsequently disbanded.<sup>100</sup> Other organisations that are still active refuse to meet with foreign diplomats, fearful of being accused of “foreign collusion”.<sup>101</sup>

Hong Kong has traditionally enjoyed a high degree of press freedom, but this has come under threat with the introduction of the NSL. Shortly after the law was passed in June 2020, authorities raided the newsroom of *Apple Daily*, a pro-democracy newspaper, arresting its owner, two sons and four executives of the newspaper’s parent company Next Media group.<sup>102</sup> Under pressure, the *Apple Daily* closed down in June 2021.<sup>103</sup> The Media Freedom Coalition, a coalition composed of 21 states including Australia, issued a statement expressing its concerns over the closing of *Apple Daily*, which is occurring against “a backdrop of increased media censorship in Hong Kong”.<sup>104</sup> Dozens of journalists have been arrested and others have fled the country, as media outlets have begun to self-censor.<sup>105</sup>

Radio Television Hong Kong (RTHK) has been targeted by the Hong Kong government, in what Human Rights Watch has said is “an apparent attempt to transform the independent public broadcaster into a pro-Beijing propaganda outlet”.<sup>106</sup> The government replaced the head of RTHK with a career bureaucrat without prior media experience, instructing him to vet all episodes of three current affairs programs before they could air.<sup>107</sup> Other programs, such as the program ‘Headliner’, which had been running since 1989, were suspended in 2020, after the Communications Authority ruled that a satirical episode had “insulted the police”.<sup>108</sup>



## RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

### **Lack of or limited presence of the United Nations, INGOs or other international or regional actors in the country and with access to populations (Indicator 6.4)**

The Hong Kong government has refused to cooperate with human rights NGOs and other members of the international community. For example, it has denied Kenneth Roth, the director of Human Rights Watch, entry to Hong Kong.<sup>109</sup> The Chinese Ministry of Foreign Affairs had also threatened to place sanctions upon Human Rights Watch and other NGOs that support the pro-democracy efforts in Hong Kong.<sup>110</sup>

Since the introduction of the NSL, some international NGOs, such as the German think tank Global Innovation Hub, have moved their headquarters and staff members have been encouraged to leave Hong Kong due to growing security concerns owing to increased crackdown on civil society organisations.<sup>111</sup>

### **Lack of an early warning mechanism relevant to the prevention of atrocity crimes (Indicator 6.11)**

Its special status as an ‘Semi-Autonomous Region’ prevents the Hong Kong government from implementing an atrocity prevention early warning mechanism as the PRC government is responsible for Hong Kong’s defence and foreign policies.<sup>112</sup> According to the UN, China has been weak in dealing with “supporting the early warning and capacity building efforts”<sup>113</sup> and is also weak in supporting “preventative actions in atrocity crimes”.<sup>114</sup>

## RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

### **Risk factor 7: “Events or measures, whether gradual or sudden, which provide an environment conducive to the commission of atrocity crimes, or which suggest a trajectory towards their perpetration.”**

The Hong Kong government has increasingly shown a willingness to impose extraordinary security measures in response to peaceful protests (Indicator 7.1) and to curtail the online communications space (Indicator 7.6). The governments of Hong Kong and China have also established additional security offices aimed at clamping down on dissent (Indicator 7.3).

### **Imposition of emergency laws or extraordinary security measures that erode fundamental rights (Indicator 7.1)**

In 2019, Hong Kong used extraordinary security measures on multiple occasions that eroded fundamental human rights. On 4 October 2019, the Chief Executive used these emergency powers and implemented the ‘Cap. 241K Prohibition on Face Covering Regulation’.<sup>115</sup> It prohibits ‘obscure facial identifications in public assemblies’,<sup>116</sup> including face masks and face paint.<sup>117</sup> Offenders of these emergency regulations can be fined up to \$25,000 HKD and serve a maximum of 1-year jail time.<sup>118</sup> The move was in response to the 2019-2020 Hong Kong protests to ‘de-escalate the situation’.<sup>119</sup> Many protestors covered their face with masks in fear of being identified by the HKPF.<sup>120</sup> With a mask ban in place, protestors are no longer able to wear masks to conceal their identity in fear of being prosecuted or terminated from employment,<sup>121</sup> violating freedom of expression and assembly.<sup>122</sup>

### **Strengthening of the security apparatus, its reorganization or mobilization against protected groups, populations or individuals (Indicator 7.3)**

The NSL paved the way for China to open a new national security office in Hong Kong, the CPGNSO. Neither the office nor its staff fall under Hong Kong’s jurisdiction, which means any actions are not reviewable by local courts or subject to local laws.<sup>123</sup> Similar offices in mainland China systematically monitor, harass, intimidate and detain human rights defenders and dissidents and its officers have routinely violated the rights of individuals facing national security charges, including committing torture and ill-treatment, without consequences.<sup>124</sup>

## RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

The Hong Kong government has set up the Committee for Safeguarding National Security, which includes an advisor from the CCP. The Committee can hand-pick prosecution and law enforcement personnel in national security cases and the Chief Executive can nominate judges for national security cases. Decisions made by the Committee are not subject to review by the courts. The HKPF has also established a new national security division that can conduct covert surveillance without judicial approval or oversight.<sup>125</sup>

### **Imposition of strict control on the use of communication channels, or banning access to them (Indicator 7.6)**

The Hong Kong government passed a controversial ‘doxing bill’ through amendments to the Personal Data (Privacy) Ordinance (PDPO) in September 2021. The bill is aimed at combating the public release of information, which identifies an individual or organisation, which the government says led to threats against police officers during the 2019 protests.<sup>126</sup> However, the bill has been criticised for being too broad, leaving internet users and the providers vulnerable to arbitrary accusations and unfair prosecution, and for potentially limiting freedom of expression. The amendment allows Hong Kong to order platforms such as Google, Facebook and Twitter to remove content and block local access to the platform if the company fails to comply.<sup>127</sup>

The Asia Internet Coalition has warned that the process “has the consequence of encouraging online platforms to ... over-block content, which will likely result in grave impact on due process and risks for freedom of expression and communication”. It also stated that blocking access to entire websites would be a disproportionate response.<sup>128</sup>

## SPECIFIC RISK FACTORS: GENOCIDE

### RISK FACTOR RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

**Risk factor 9: “Past or present conduct that reveals serious prejudice against protected groups and that creates stress in the relationship among groups or with the State, generating an environment conducive to atrocity crimes.”**

There is an evolving sense of national identity among Hong Kongers, particularly the younger generation, which has been overrepresented among protestors, who increasingly view themselves as a distinct ethnic group (Indicator 9.5), which has the potential to lead to identity-based tensions, particularly if it continues to be met by assimilation attempts rather than peaceful management (Indicator 9.6).

**Past or present serious tensions or conflicts involving other types of groups (political, social, cultural, geographical, etc.) that could develop along national, ethnical, racial or religious lines (Indicator 9.5)**

The widespread and often violent protests in 2014 and 2019 are testament to the fact that many residents of Hong Kong are protective of their political system, which has afforded them many political freedoms that are lacking in mainland China, including press freedom and freedom of expression, association and peaceful assembly. As discussed in **Indicator 1.11**, there is an evolving sense of ethnic identity within Hong Kong, as especially young people come to see themselves as ethnic Hong Kongers rather than Chinese.<sup>129</sup>

**Lack of national mechanisms or initiatives to deal with identity-based tensions or conflict (Indicator 9.6)**

China’s reaction to the growing sense of a Hong Kong ethnic identity has been an attempt to foster a sense of Chinese ethnic identity.<sup>130</sup> School curricula have been amended to foster a Chinese identity among Hong Kong school students. Such attempts have been rejected by Hong Kong residents in the past.<sup>131</sup>

Residents of Hong Kong are at moderate risk of atrocity crimes in the short term. However, severe political

## SPECIFIC RISK FACTORS: GENOCIDE

### RISK FACTOR RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

repression, the erosion of democracy, and unresolved tensions with state institutions and ethnic identity present risk factors of potential atrocity crimes in the medium- to long term if they remain unaddressed or deteriorate.

To prevent further political repression, which represents the biggest risk of atrocity crimes in Hong Kong, it is vital for the governments of Hong Kong and China to repeal certain aspects of the NSL. In particular, the terms “separatism”, “subversion”, “terrorism” and “collusion with foreign forces” within the NSL must be clarified; all security offices and procedures must be brought under local jurisdiction and judicial processes must remain free from interference.

To fulfil the population’s desire for a full democracy, which had led to the mass protests of 2014 and 2019, universal suffrage must be established as foreseen under the Basic Law and electoral reforms which are contrary to this goal. In particular, the “patriots” reforms should be repealed; clamp downs on the media and civil society must end; peaceful protestors who have been arrested under the NSL must be released and basic human rights related to free speech and freedom of assembly and association must be reinstated.

Tensions with state institutions stemming from police brutality and potential tensions based on ethnicity must be addressed through local and independent mechanisms, including an independent investigation into police brutality during the 2019 protests and local mechanisms to deal with identity-based tension or conflict.

## CONCLUSION AND RECOMMENDATIONS

Below is a list of recommendations of the governments of Hong Kong and China, civil society and the international community, aimed at reducing the likelihood of atrocity crimes in Hong Kong.

RECOMMENDATIONS FOR THE GOVERNMENTS OF HONG KONG AND CHINA	
1	Repeal the aspects of the National Security Law (NSL) that suppress the rights to freedom of expression, peaceful assembly and association. In particular, clarify the terms “separatism”, “subversion”, “terrorism” and “collusion with foreign forces”.
2	Bring the Office for Safeguarding National Security and its staff under local jurisdiction.
3	Ensure a free and fair judicial process and independent judiciary.
4	Move towards universal suffrage as established under Articles 45 (Chief Executive) and 68 (LegCo) of the Hong Kong Basic Law.
5	Immediately end the crackdown and intimidation of civil society and the media.
6	Release activists arrested under the NSL who were carrying out peaceful protests.
7	Ensure any legislation, including the NSL, are in accordance with human rights law guaranteed by the Basic Law.
8	Establish an independent investigation into the cases of police brutality during the 2019 protests.
9	Establish local mechanisms to deal with potential identity-based tension or conflict.

RECOMMENDATIONS FOR CIVIL SOCIETY ORGANISATIONS	
1	Contribute to the development of an early warning system for atrocity crimes.
2	Continue to issue coordinated statements highlighting the erasure of human rights in Hong Kong.

RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY	
1	The UN Human Rights Council should hold a special session on the human rights situation in Hong Kong and establish a monitoring and reporting mechanism for violations and abuses of human rights.
2	Impose targeted sanctions on Chinese and Hong Kong government officials responsible for human rights violations.

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