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Commentary



The Erosion of Civil Liberties and Its Impact on Freedom of Association: a CFA Complaint against Hong Kong

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Introduction

On 1 July 1997, Hong Kong was returned to China with the assurance that the region would retain certain rights—including freedom of speech, the rule of law, and the freedoms of assembly and association—for fifty years. This arrangement, known as the One Country, Two Systems framework, led to the establishment of the Hong Kong Special Administrative Region (HKSAR).

In the lead-up to the transfer of sovereignty in 1997, it was envisaged that human rights would be constitutionalized and protected in the HKSAR through a series of legal instruments, including the 1984 Sino-British Joint Declaration, the 1990 Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law), and the 1991 Hong Kong Bill of Rights Ordinance.¹

1 W. Wang, “From liberal to conservative? The role of Hong Kong Court of final appeal in safeguarding fundamental rights under China’s One Country Two Systems policy,” *International Journal of Human Rights* 27, no. 8 (2023): 1293–94. See this article for more information on the legal status and effects of the different legal documents.

anti-extradition demonstrations, unprecedented crackdown on civil liberties with the adoption of the NSL in July 2020, and the prosecution or arrests of trade unionists Lee Cheuk Yan, Carol Ng, Winnie Yu, and Cyrus Lau.⁶

As of mid-2025, four years after the ITUC and ITF filed their complaint, the case remains open. This article analyzes the CFA's interim reports and recommendations in this case, and examines the link between civil liberties and the freedom of association.

Analysis

In response to the complaint of the ITUC and ITF, the government of HKSAR replied in 2021 that the allegations were “completely untrue and entirely political in nature.”⁷ It held that civil liberties, freedom of association, the right to organize, and labor rights and benefits in the HKSAR were improving and that trade union rights as well as the right to peaceful assembly are fully protected by the HKSAR law.

The government further argued that the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation—which restricted public assemblies—had been enacted solely to combat the COVID-19 pandemic and protect public health. It also contended that the NSL safeguards democratic governance and the rule of law in the HKSAR, delivering immediate stability.⁸ Citing the severity and violence of the 2019 unrest, the authorities emphasized that the guarantees in C87 are not absolute.

With respect to the arrests and prosecutions of individual trade unionists, the government asserted that these actions met the requirements of C87 and were carried out “in accordance with the law,” noting that the individuals had been convicted by Hong Kong courts. In its view, the offences in question were unrelated to legitimate trade union activities and instead involved breaches of criminal law.⁹

In 2021, the CFA initially concluded that, even though it is indeed not competent to consider purely political allegations—agreeing with the HKSAR government on this point—it reiterated that it may examine measures of a political nature when such measures affect the exercise of trade union rights. In the CFA's view, this was the case.¹⁰

6 CFA, Case No. 3406, Interim Report 2021, paras. 125–29.

7 CFA, Case No. 3406, Interim Report 2021, para. 133.

8 CFA, Case No. 3406, Interim Report 2021, paras. 133–55.

9 CFA, Case No. 3406, Interim Report 2021, paras. 139–40.

10 CFA, Case No. 3406, Interim Report 2021, para. 157.

Referring to paragraph 157 of its 2018 compilation of decisions, the CFA recalled that the arrest and sentencing of trade unionists to lengthy prison terms on grounds of disturbing public order may be used to repress trade union activities. It therefore urged the HKSAR government to take all appropriate measures to ensure that Lee Cheuk Yan was not imprisoned for participating in a peaceful demonstration in defense of workers' interests.¹¹

Regarding Carol Ng and Winnie Yu, the CFA requested that the government release them from prison pending trial. With respect to Cyrus Lau, who was still under investigation at the time the complaint was lodged in 2021, the CFA requested additional information.¹²

Finally, concerning the NSL, the CFA expressed its expectation that the law would not be applied to normal interactions and activities of trade unions and employers' organizations, including their relations with international organizations of workers and employers. The CFA also requested that the government engage with all relevant social partners concerning the practical application of the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation.¹³

Between 2021 and 2025, the situation further deteriorated. In its latest report, the CFA notes that, over the past four years since it first examined this complaint, it has reviewed numerous instances of reprisals under the NSL against trade unionists in the HKSAR for engaging in legitimate trade union activities, including advocating for civil liberties and fundamental human rights.¹⁴ Lee's original suspended jail sentence of eighteen months was extended to twenty months.¹⁵ He now faces additional charges and remains in prison, even after completing his sentence related to the 2019 public protests in October 2022.¹⁶ These developments occurred despite the CFA's firm recommendations in previous reports urging the HKSAR government to ensure that Lee was neither prosecuted nor imprisoned for the exercise of legitimate trade union activities.¹⁷

In November 2024, Carol Ng and Winnie Yu were sentenced to prison terms of four years and five months, and six years and nine months, respectively. Although the CFA requested detailed information regarding these sentences, the HKSAR government only stated that the activists were convicted based on what it described as irrefutable evidence, as outlined in publicly available

11 CFA, Case No. 3406, Interim Report 2021, para. 163.

12 CFA, Case No. 3406, Interim Report 2021, para. 173.

13 CFA, Case No. 3406, Interim Report 2021, para. 173.

14 CFA, Case No. 3406, Interim Report 2021, para. 150.

15 CFA, Case No. 3406, Interim Report 2023, para. 307.

16 CFA, Case No. 3406, Interim Report 2025, para. 115.

17 CFA, Case No. 3406, Interim Reports 2022–2024.

court decisions. In its most recent report, the CFA asked both the government and the complainants to clarify whether the court decisions were appealed and to indicate the expected release dates, given that both individuals had been detained pending trial.¹⁸

In its 2023 interim report, the CFA also requested confirmation from the HKSAR government regarding whether Lau was still under investigation. To date, it remains unclear whether a response has been provided.¹⁹ Meanwhile, other individual trade unionists continue to face harassment, arrest, and imprisonment.²⁰

Regarding the NSL, the HKSAR government maintained its original position that the NSL is necessary to restore stability in Hong Kong. It continued to emphasize that all individuals must observe the laws in force when exercising their rights, including the freedoms of association and peaceful assembly. The CFA has repeatedly requested further information from the government concerning any measures taken to consult with social partners on the implementation of the NSL, as well as efforts to monitor its impact on the exercise of freedom of association. However, these requests have remained unanswered.²¹ With deep regret, the CFA concludes in its last interim report that

since the first examination of this case in May 2021, following the adoption of the NSL, the situation of trade union rights and respect for civil liberties necessary for the independent trade union movement to develop, has not improved and that with the adoption of the new legislation—the NSO—the space for trade unions to conduct their legitimate activities has further shrunk.²²

Conclusion

First, the situation in the HKSAR reflects a broader global trend marked by shrinking civic space and a decline in respect for human rights.²³ At the same time, data continues to show persistent deficits in the implementation of the freedom of association and the right to collective bargaining at the national

18 CFA, Case No. 3406, Interim Report 2025, para. 152.

19 CFA, Case No. 3406, Interim Report 2023, para. 302.

20 CFA, Case No. 3406, Interim Report 2025, paras. 150–57.

21 CFA, Case No. 3406, Interim Report 2025, paras. 158–59.

22 CFA, Case No. 3406, Interim Report 2025, para. 159.

23 International Trade Union Confederation, “Global Rights Index 2025,” 12th ed., <https://www.ituc-csi.org/global-rights-index>.

level.²⁴ The case is a prime example of the interdependence between civil liberties and the rights to freedom of association and trade union activity.

As early as 1970, the International Labour Conference recognized this intrinsic connection in its resolution concerning trade union rights and their relationship to civil liberties. The resolution affirms that “the rights conferred upon workers’ and employers’ organizations must be based on respect for those civil liberties, which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights,” and that the absence of these civil liberties “removes all meaning from the concept of trade union rights.”²⁵ In line with this principle, the CFA has consistently emphasized that for trade unions and employers’ organizations to make a meaningful and credible contribution, they must be allowed to operate in an environment that guarantees both freedom and security.²⁶

Second, as demonstrated by this case, the CFA can exert political pressure through its reports and recommendations, providing a foundation for advocacy, dialogue, and, in some cases, policy change. Nonetheless, its capacity to enforce compliance remains limited. This limitation poses an ongoing challenge not only for the CFA, but also for the ILO as a whole, in an increasingly authoritarian global context. Although its reports can be tools for advocacy and diplomatic leverage, they often depend on the political will of national governments and the mobilization of civil society for any meaningful implementation. In environments where civil liberties are systematically undermined, such as in HKSAR, this reliance on voluntary compliance is especially challenging. Nonetheless, and despite its structural limitations, the CFA has proven to remain a crucial mechanism for promoting accountability and defending fundamental freedoms, even in difficult political environments.²⁷

24 International Labour Conference (112th Session) *Fundamental principles and rights at work at a critical crossroad—A recurrent discussion on the strategic objective of fundamental principles and rights at work, under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008, as amended in 2022, ILC.112/V (15 May 2024)*, 14.

25 International Labour Conference (54th session), *Resolution concerning Trade Union Rights and Their Relation to Civil Liberties (24 June 1970)*, 7–8.

26 CFA, Case No. 3406, *Interim Report 2021*, para. 157.

27 D. van Thiel, “Fundamental Labour Standards and the Shift from International to Transnational Labour Law” (dissertation, Leiden University, 2025).