



# LEGAL AID AND THE CRISIS FOR DEMOCRACY AND HUMAN RIGHTS THE CASE OF HONG KONG

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# 1) LEGAL AID, HUMAN RIGHTS & DEMOCRACY

- Legal aid plays a pivotal role in ensuring equal public access to courts with legal representation, and generally safeguarding access to justice, which is one of the constituents that uphold judicial independence and the rule of law.
- Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR)
- Principles 1 to 4 of the UN Basic Principles on the Role of Lawyers
- Contemporary legal aid services, especially for those sponsored by the governments, shall operate in light of these international standards.

## 2) HONG KONG (HK)'S “ONE COUNTRY, TWO SYSTEMS” UNDER THE PEOPLE'S REPUBLIC OF CHINA (PRC)

- Hong Kong is currently a special administrative region under the sovereignty of the People's Republic of China (PRC).
- The Basic Law of Hong Kong, which is a mini-constitutional document of this city, guarantees that Hong Kong residents shall have the right to “choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts” (Article 35).
- It further asserts that the ICCPR continues to be applicable in Hong Kong (Article 39).
- The local Hong Kong Bill of Rights Ordinance, which was introduced before Hong Kong's sovereignty transfer, also follows the ICCPR standard to ensure everyone “shall be equal before the courts and tribunals” and legal assistance of own choice (Articles 10 and 11)

### 3) LEGAL AID SERVICE IN HK: PUBLIC & PRIVATE

- There are (were) three types of legal aid services in Hong Kong:
- Institutional legal aid services provided by the government
- Pro bono legal assistance activities provided by civil society actors
- Compensated legal assistance services supported by civil society networks



**Legal Aid Department**

The Government of the Hong Kong Special Administrative Region



**The Duty Lawyer Service 當值律師服務**

Hong Kong Special Administrative Region 香港特別行政區



# INSTITUTIONAL LEGAL AID SERVICES



## FREE LEGAL ADVICE SCHEME ON HKU CAMPUS

### 港大校園免費法律諮詢計劃

Faculty of Law, The University of Hong Kong 香港大學法律學院

The Faculty of Law of the University of Hong Kong runs a Free Legal Advice Scheme on campus under the umbrella of the Duty Lawyer Service. The objective of the Scheme is two-fold: (1) to offer preliminary legal advice to members of the University or the public having actual legal problems involving the laws of Hong Kong as to their legal position; and (2) through handling real cases, to allow our law students taking the Clinical Legal Education Course an opportunity to develop their lawyering skills and to promote pro bono culture.

Any person wishing to seek free legal advice from the Scheme must attend two sessions. The first session is an Interview Session to be conducted by our law students who will take down the background of the case and obtain relevant documents. Our law students will **NOT** give any legal advice at the Interview Session. Each Interview Session will normally be around 30 minutes. As we do not retain any original document, please bring along photocopy of the relevant documents (if any) to the Interview Session. The second session is an Advice Session to be scheduled normally within three or four weeks after the Interview Session. At the Advice Session, preliminary legal advice will be given by qualified lawyers, with the assistance of our law students. We however reserve our right not to provide service if we do not have any spare capacity or the case is not of sufficient educational value in our view, or for other good reasons. Each Advice Session will normally be around 30 minutes.

#### How to Apply

Case intake for the Scheme will commence on Tuesday, 12 September 2023 and end on Thursday, 26 October 2023. Interview Sessions will be conducted at our Clinical Legal Education Office at Room CPD-G07, G/F, Cheng Yu Tung Tower during the following time slots:

	September 2023	October 2023
Tuesdays (3:00 - 4:00 pm)	12, 19, 26	3, 10, 17, 24
Tuesdays (4:00 - 5:00 pm)	12, 19, 26	3, 10, 17, 24
Wednesdays (10:30 - 11:30 am)	13, 20, 27	4, 11, 18, 25
Wednesdays (3:00 - 4:00 pm)	13, 20, 27	4, 11, 18, 25
Thursdays (12:30 - 1:30 pm)	14, 21, 28	5, 12, 19, 26
Thursdays (5:15 - 6:15 pm)	14, 21, 28	5, 12, 19, 26

If you wish to obtain our service, please contact Ms Tsang for an appointment for the Interview Session: Clinical Legal Education Office, Room CPD-G07, G/F, Cheng Yu Tung Tower, The Centennial Campus, HKU (Tel: 3917 4322; Fax: 3917 6025; Email: [lawcl@hku.hk](mailto:lawcl@hku.hk); Website: <http://www.law.hku.hk/cle/>)

香港大學法律學院獲得當值律師服務計劃協助，於該計劃名下的港大校園提供一項免費法律諮詢計劃，旨在：(一) 為面對法律問題的大學教員、學生、或公眾人士對有關涉及香港法律的實際問題而提供初步的法律意見；(二) 透過處理真實案件，加強法律學生處理案件的經驗和技巧，及推廣義務專業服務的文化。欲尋求法律諮詢的人士，須出席兩次會面。第一次是與法律學生初步會面，學生將會記錄個案資料、情節，和索取有關文件，期間學生並**不**提供任何法律意見。每節約 30 分鐘。該計劃不會保管任何正本文件，請帶同有關文件如有的話到第一次的會面。第二次會面是與獲具執業資格律師的會面，一般可安排在初步會面後的三至四週內，律師會給予初步的法律意見，學生則從旁協助。由於資源所限，我



**申請辦法**  
本計劃由 2023 年 9 月 12 日 (星期二) 至 10 月 26 日 (星期四) 接受申請，初步會面將於下列時間進行。地點為都裕街教學樓地下 CPD-G07 室「臨床法律教育服務辦事處」：

	2023 年 9 月	2023 年 10 月
星期二 (下午 3:00 至 4:00)	12, 19 及 26 日	3, 10, 17 及 24 日
星期二 (下午 4:00 至 5:00)	12, 19 及 26 日	3, 10, 17 及 24 日
星期三 (上午 10:30 至 11:30)	13, 20 及 27 日	4, 11, 18 及 25 日
星期三 (下午 3:00 至 4:00)	13, 20 及 27 日	4, 11, 18 及 25 日
星期四 (下午 12:30 至 1:30)	14, 21 及 28 日	5, 12, 19 及 26 日
星期四 (下午 5:15 至 6:15)	14, 21 及 28 日	5, 12, 19 及 26 日

如欲使用本計劃，請聯絡本院曾小姐安排初步會面：  
香港大學百周年校園都裕街教學樓地下 CPD-G07 室「臨床法律教育服務辦事處」  
(電話: 3917 4322; 傳真: 3917 6025; 電郵: [lawcl@hku.hk](mailto:lawcl@hku.hk); 網頁: <http://www.law.hku.hk/cle/>)

## Bar Free Legal Services Scheme



### The Service - General Information

Types of Cases with which the BFLSS can help

Application and Assessment Procedures

When a case is accepted

(Last updated in July 2021)

Download file ↓

**Only applicants whose applications to the Legal Aid Department have formally been rejected are eligible to approach our Scheme.**

### ▼ The Service - General Information

1. The Bar Free Legal Service Scheme ("BFLSS") has been established to provide free legal advice and representation in cases where Legal Aid is not available or where the applicant is unable to afford legal assistance, and the case is thought to be one where assistance should be given.

# PRO BONO LEGAL ASSISTANCE BY CIVIL SOCIETY ACTORS



612

人道支援基金

612 Humanitarian Relief Fund



COMPENSATED BOTTOM-UP LEGAL  
ASSISTANCE







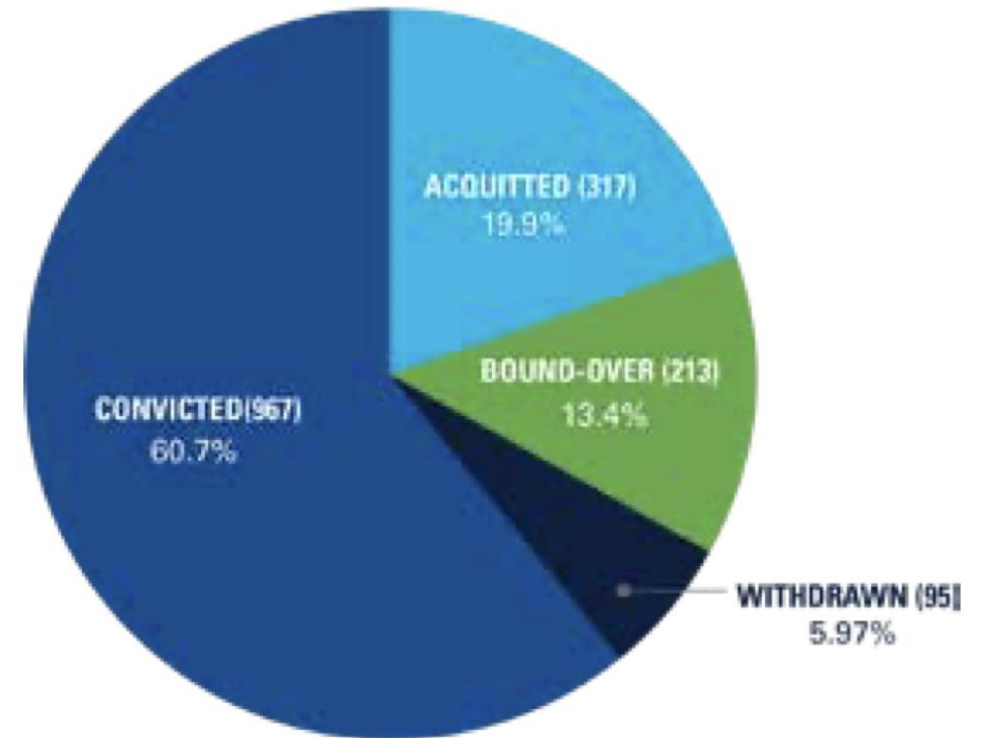
# THE HONG KONG 2019 PROTEST MOVEMENT: A DATA ANALYSIS OF ARRESTS AND PROSECUTIONS

JUN CHAN, ERIC YAN-HO LAI, AND THOMAS E. KELLOGG  
OCTOBER 2023



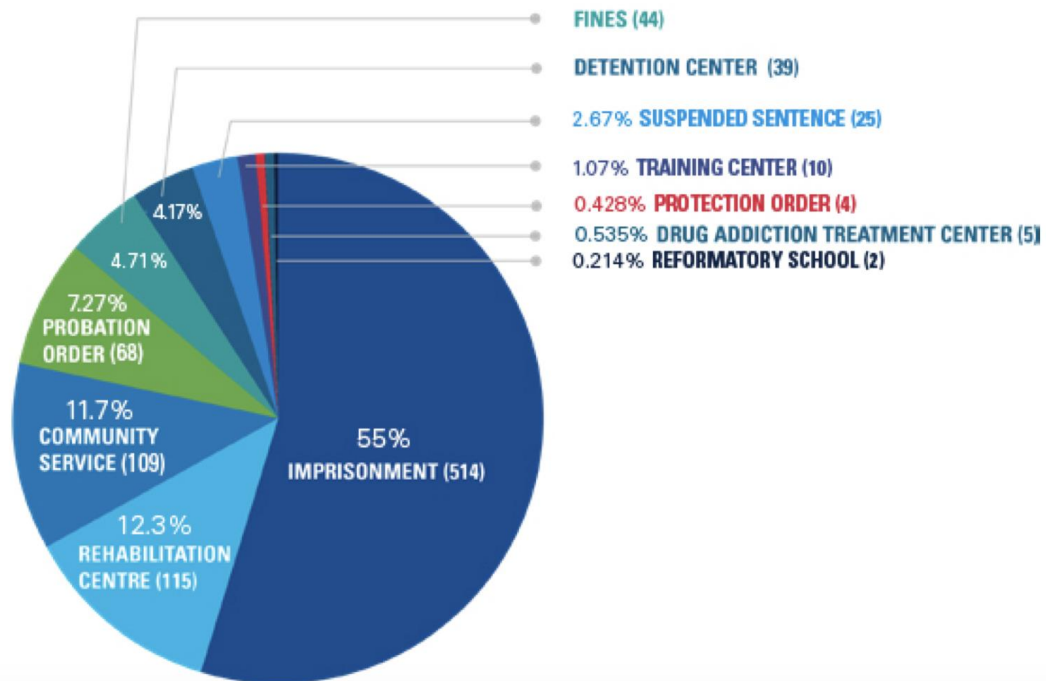
Charges from 2019 to 2021 ( N=1592)

## CONVICTION RATE Anti-Extradition Movement



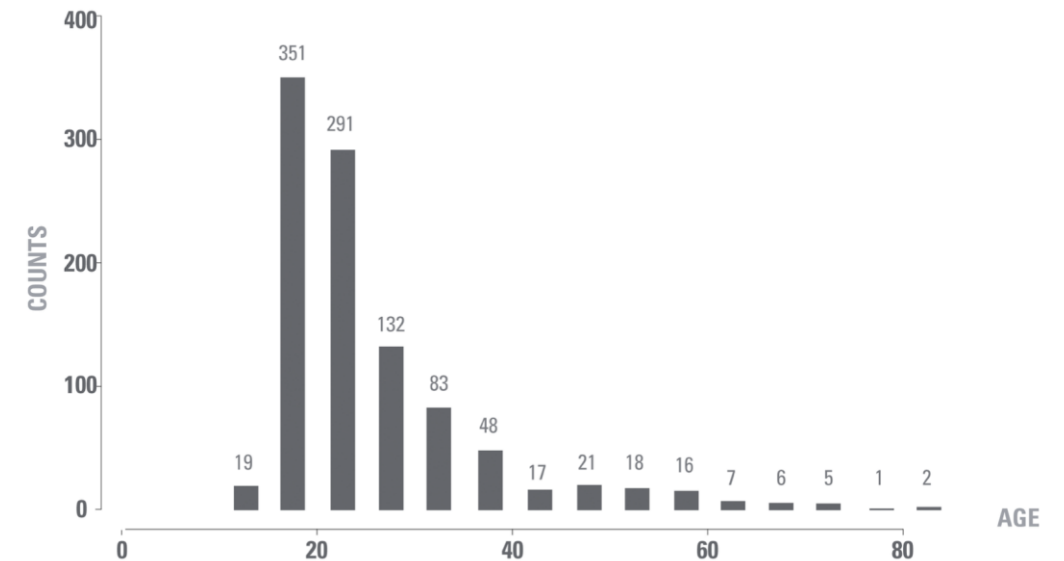
## Charges from

### SENTENCETYPES | Anti-Extradiction Movement



## 2019 to 2021 ( N=1592)

### 1. A CLOSER LOOK: JUVENILES



# ACCESS TO LAWYERS IN THE 2019 PROTESTS



國際 > 兩岸

## 反送中運動的暗夜使者 200位人權律師：「誰的身體狀況還可以，誰就撐下去」

香港特首林鄭月娥4日正式宣布將撤回《逃犯條例》修正案，但並未對成立獨立調查委員會、撤回暴動定性等其他訴求做出具體回應。警民對峙依舊持續，目前已有逾千人被捕，年紀最小的只有12歲。當街頭淪為戰場，平時坐在中環辦公室，身穿襯衫、西裝的200位「大狀」，成了暗夜使者。他們為何甘冒政治風險，替這群黑衣示威者辯護？《天下》越洋採訪4位香港義務律師團成員，他們又怎麼想？



6月、8月，香港法律界兩度發起反送中靜默遊行，要求政府成立獨立調查委員會，捍衛法治與自由。檯面下，這群律師也組成200人義務律師，在第一線營救被捕者。圖片來源：路透社





## 「612 HUMANITARIAN RELIEF FUND」

The 612 Humanitarian Relief Fund provides humanitarian support to all persons who are arrested (regardless of charges), injured or affected during Anti-ELAB protests. The types of support include medical costs, psychological /mental counselling costs, criminal /civil legal costs and emergency financial relief.







## HONG KONG NATIONAL SECURITY LAW ADDRESSES:

- **Secession**
- **Subversion**
- **Terrorist Activities**
- **Collusion with foreign or external forces to endanger national security**

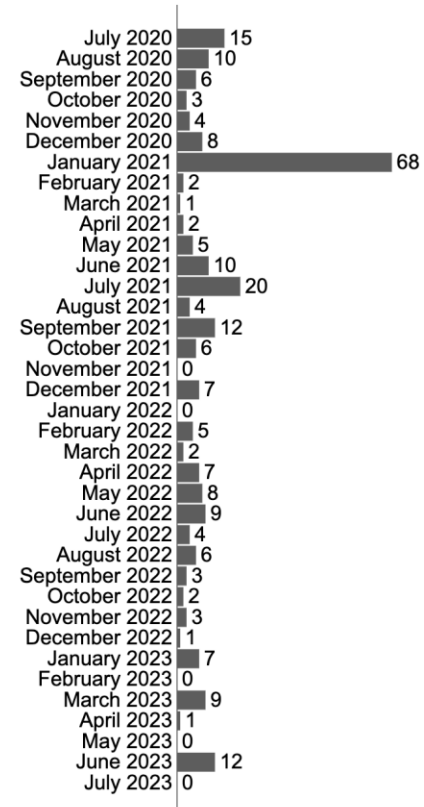


# THE STATE RESPONSE: RESTRICTION & REPRESSION SINCE 2020





### Number of Individuals Arrested by Month

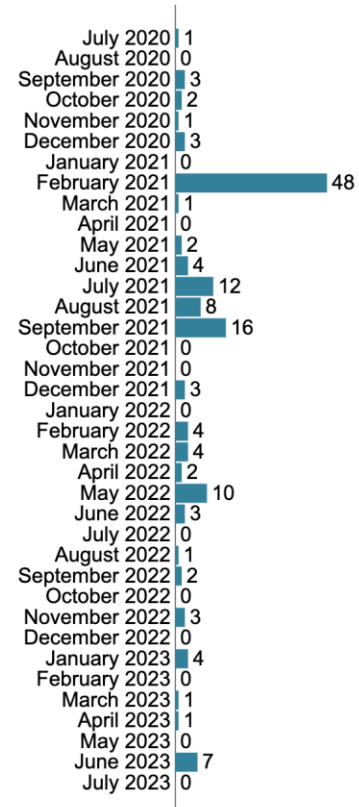


Total individuals arrested: 264

For people arrested multiple times, only the first arrest is counted here.

Individuals with unknown arrest dates are not included in the chart, but are included in the total.

### Number of Individuals Charged by Month



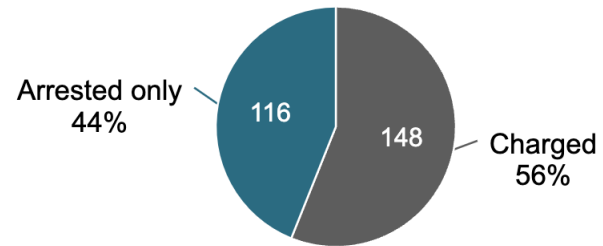
Total individuals charged: 148

For people charged multiple times, only the first charge is counted here.

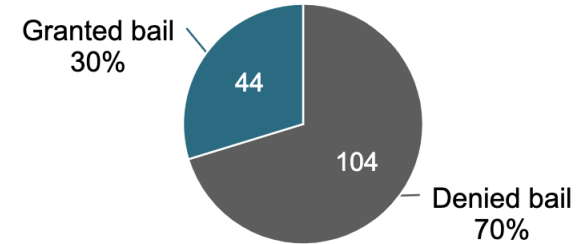
Individuals with unknown charge dates are not included in the chart, but are included in the total.

SOURCE: CHINAFILE (2023)

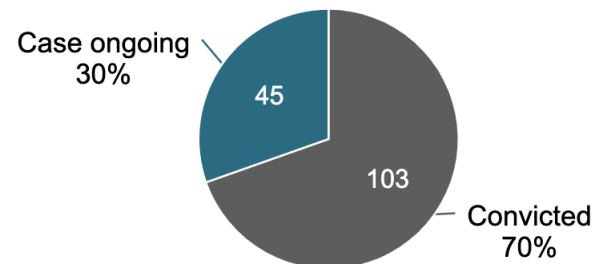
### Number of Individuals Charged, out of All Individuals Arrested



### Number of Individuals Denied Bail, out of All Individuals Charged



### Number of Individuals Convicted, out of All Individuals Charged



*No individuals included in the data have been acquitted.*

# 2021 INSTITUTIONAL LEGAL AID “REFORM”: PROCESSES AND CONSEQUENCES



**Legal Aid Department**

The Government of the Hong Kong Special Administrative Region

- Before, legal aid applicants always got the lawyers of their choice from the Legal Aid Department.
- Under the new system, however, the Legal Aid Department assigns lawyers to legal aid applicants in criminal cases unless under “exceptional circumstances”, meaning that legal aid recipients are no longer be able to choose their own legal representation.
- Furthermore, the new reform also reduces the number of legal aid civil cases that solicitors can take from 35 cases to 30 per year, and from 20 to 15 for barristers; judicial review cases will also be limited to five cases per year for each solicitor and three for each barrister, and those cases will also count towards their annual civil case limits.
- No public consultation was held for the proposed legal aid reform, while the government decided to implement it in the end of 2021.





# INTERNATIONAL RESPONSE

- The Hong Kong government recent legal aid reform “further restricted the rights legal aid and to counsel of choice, particularly in the case of persons charged under the National Security Law, by hindering those seeking legal aid from choosing their own criminal lawyers and limiting the number of judicial review cases that solicitors and barristers are allowed to take on annually” (2022)
- The new legal aid policy that defendants “may be forced to replace their legal representation with a new one assigned by the LAD”, and this could “create a fear, especially amongst those prosecuted under the NSL, that they will be assigned a lawyer with strong ties to the Hong Kong Government or the authorities in mainland China” (2023)





# CONCLUSION

- Hong Kong's legal aid development forms part of the city's democratic backsliding, or better say autocratization by PRC's ongoing efforts to encroach the legal system, the legal community and civil society under its national security agenda.
- The rising number of criminal cases related to anti-government protests and national security arrests imply that the courtroom has become a site of contest between the authoritarian state authorities and political activists.
- While the bottom-up legal assistance by civil society actors aimed to provide remedies to the limitations of existing institutional legal aid services, the responses of the authorities revealed their anxiety of promoting access to justice, fair trial and due process in politically sensitive criminal cases in Hong Kong.
- Rather than expanding the state-sponsored legal aid to cater the surge of demand for legal representation, the authorities chose to tighten access to lawyers of choice by laws and policies instead, appearing to act against their obligations to protecting basic legal rights prescribed in the local Basic Law as well as the ICCPR.



# PROSPECTS

- Although the case of contemporary Hong Kong demonstrates a gloomy picture of defending access to justice in a semi-authoritarian or authoritarian regime, its experience of bottom-up legal assistance indeed sheds light on the role of civil society and lawyers themselves in defending democracy, rule of law and basic legal rights of citizens, and reminds us of the merits and limitations of government-led legal aid systems today.
- Government's provision of legal aid is not an act of benevolence. It is a service to warrant equality before the law, as well as ensure the government's accountability to free and equal citizens who can have their lawyers to check and balance the government exercise of power via judicial reviews and criminal defense.
- This “check-and-balance” element is of paramount importance to strengthen democratic institutions, or slow down authoritarian encroachment, and eventually promote a culture of access to justice and of rule of law after all.