

Jubilee Campaign



Office of the High Commissioner of Human Rights Request for information on freedom of opinion and expression

“In operative paragraph 12 of the resolution, the Human Rights Council requests OHCHR to prepare a report on good practices for establishing national normative frameworks that foster access to information held by public entities. The report shall be submitted at the forty-seventh session of the Human Rights Council, in June 2021. Resolution 44/12 also requests OHCHR, in the preparation of the report, to seek the views of States, non-governmental organizations, national human rights institutions and other relevant stakeholders. Accordingly, OHCHR would be grateful to receive from your institution or organization any information deemed relevant for the preparation of this report.”

Hong Kong’s National Security Law: A Threat to Freedom of Expression and Opinion

I. Introduction

The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, colloquially referred to as the Hong Kong National Security Law, was implemented in June 2020 by China’s Standing Committee of the National People’s Congress (NPC) rather than traditionally passing through the Hong Kong Legislative Council. This legislation was enacted a month after China had called upon Hong Kong to work on developing its own national security law.¹ Having bypassed Hong Kong’s formal legislative dialogue and decision process, China violated the “one country, two systems” structure and inflamed fear among Hong Kong citizens of “regime security of the Chinese Communist Party.”² Among the provisions of the National Security Law are the following:

Article 20: “A person who organises, plans, commits or participates in any of the following acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification shall be guilty of an offence: (1) separating the [HKSAR] or any other part of the People’s Republic of China from the People’s Republic of China; (2) altering by unlawful means the legal status of the [HKSAR] or any other part of the People’s Republic of China; or (3) surrendering the [HKSAR] or any other part of the People’s Republic of China to a foreign country.”

¹ Reuters, “China law requires Hong Kong to enact national security rules as soon as possible”, 21 May 2020.

² Larry C. B. Lai & Debby S. W. Chan, “National Security Laws in General Are Not a Problem. Hong Kong’s Is.”, *The Diplomat*, 5 June 2020.

Article 22: “Any person who organises, plans, commits or participates in any of the following acts by force or threat of force or other unlawful means with a view to subverting the State power shall be guilty of an offence:

- (1) overthrowing or undermining the basic system of the People’s Republic of China established by the Constitution of the People’s Republic of China;
- (2) overthrowing the body of central power of the People’s Republic of China or the body of power of the [HKSAR];
- (3) seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People’s Republic of China or the body power of the [HKSAR]; or
- (4) attacking or damaging the premises and facilities used by the body of power of the [HKSAR] to perform its duties and functions, rendering it incapable of performing its normal duties and functions.”³

Initially after the enactment of the new NSL, on July 3, 2020, the government of the HKSAR established the Committee for Safeguarding National Security of the HKSAR, added a new branch – the Department for Safeguarding National Security – to the Hong Kong Police Force, and added a new national security division to the Department of Justice, choosing six judges. Meanwhile, the government of mainland China established in Hong Kong an Office for Safeguarding National Security and chose advisors, heads, and deputy heads for the new office. The Office officially started its operations on July 8, and its headquarters are located near Victoria Park, a starting location for many democratic demonstrations and protests.

II. Problematic Rationale and Implementation

China raised the issue of composing national security legislation for Hong Kong in late May 2020, highlighting the ‘necessity’ for such legislation following the anti-extradition protests that broke out in June 2019. At the May meeting of the NPCSC, Vice Chairman Wang Chen referred to the protestors as “anti-China” forces who, by advocating for Hong Kong independence and self-determination, were looking to “bring chaos to Hong Kong” when in reality they were simply exercising their basic freedoms.⁴ Moreover, when the United States passed its Hong Kong Human Rights and Democracy Act in November 2019, China’s Foreign Ministry criticized the U.S. for allegedly “openly back[ing] violent criminals who rampantly smashed facilities, set fire, assaulted innocent civilians, trampled on the rule of law, and jeopardized social order.”⁵ Violence during the 2019 Hong Kong anti-extradition protests took place on both sides; however, much of the violence can be attributed to Hong Kong police, who fired gas canisters, water cannons, tear gas, and even live bullets into the crowd of protesters.⁶

It is important to note the implications that the People’s Republic of China’s 2015 National Security Law has on the Chinese government’s complete overtaking of the drafting and enforcement of Hong Kong’s 2020 National Security Law. The Chinese mainland’s 2015 legislation expresses that, while the main purpose is allegedly to protect the nation’s sovereignty, another main goal would be to “safeguard the

³ Susan V. Lawrence & Michael F. Martin, “China’s National Security Law for Hong Kong: Issues for Congress”, *Congressional Research Service*, 3 August 2020.

⁴ *ibid.*

⁵ *ibid.*

⁶ BBC News, “[Hong Kong protest march descends into violence](#)”, 6 October 2019.

Maya Wang, “[Still no Accountability for Hong Kong’s Police Force](#)”, *Human Rights Watch*, 19 November 2020.

regime of people's democratic dictatorship and the socialist system with Chinese characteristics."⁷ Subsequently, Chinese authorities used the 2015 National Security Law to detain notable Chinese human rights lawyers and activists – de facto dissidents of the CCP – in what is called the '709 Crackdown'. This incident, in which 106 individuals were arrested for their advocacy on human rights, occurred on July 9th, 2015, just 8 days after the National Security Law was implemented.⁸ Layer Wang Yu who advocated for the persecuted Falun Gong spiritual group; Li Heping who represented victims of coerced evictions; peaceful protesters Xu Zhiyong and Ding Jiayi; human rights lawyer Wang Quanzhang; among tens of other renowned activists were rounded up and charged under the legislation.⁹

It is no coincidence that the 2020 Hong Kong National Security Law has ushered in a new sense of dread for Hong Kong independence activists and ordinary civilians engaged in political protest and demonstration:

“In the three and a half weeks since the enactment of the law at the end of June, a sense of fear and uncertainty has taken hold in Hong Kong, where anything seen to provoke hatred against the Chinese government [CCP] is now punishable with up to life in prison. Some people have redacted their social media posts and erased messaging app histories. Journalists have scrubbed their names from digital archives. Books are being purged from libraries. Shops have dismantled walls of Post-it Notes bearing pro-democracy messages, while activists have resorted to codes to express protest chants suddenly outlawed.”¹⁰

The fears of Hong Kong activists are both legitimate and telling. For the first time ever, government authorities, likely under the direction of the Hong Kong National Security Law, denied the applications for the 2020 Victoria Park Tiananmen Square Massacre anniversary vigil. Until this year, the annual vigil would host peaceful demonstrations in which Hong Kong citizens gather to call for justice for those who were killed in the Massacre, to call for independence and democracy, and for the end of China's overarching influence in the region.¹¹

“The Human Rights Council...strongly condemns the threats, reprisals and violence against and the targeting, criminalization, intimidation, arbitrary detention, torture, disappearance and killing of any individual, including journalists and other media workers, and human rights defenders, for their advocacy of human rights....”¹²

“The Human Rights Council...stress[es] the need to ensure that measures for the protection of national security, public order and public health are in full compliance with international human rights obligations, including the principles of lawfulness, legitimacy, necessity and proportionality, and stress[es] also the need to protect human rights....”¹³

⁷ Larry C. B. Lai & Debby S. W. Chan, “National Security Laws in General Are Not a Problem. Hong Kong's Is.”, *The Diplomat*, 5 June 2020.

National Security Law of the People's Republic of China, *China Law Translate*, 1 July 2015.

⁸ Jennifer Duggan, “China targets lawyers in new human rights crackdown”, *The Guardian*, 13 July 2015.

⁹ United States Secretary of State Michael Pompeo, “Five Years of Injustice Following China's 709 Crackdown”, *U.S. Department of State*, 8 July 2020.

¹⁰ Laignee Barron, “It's So Much Worse Than Anyone Expected.' Why Hong Kong's National Security Law Is Having Such a Chilling Effect.”, *Time*, 23 July 2020.

¹¹ Larry C. B. Lai & Debby S. W. Chan, “National Security Laws in General Are Not a Problem. Hong Kong's Is.”, *The Diplomat*, 5 June 2020.

¹² United Nations Human Rights Council Forty-fourth session, *Resolution adopted by the Human Rights Council on 16 July 2020, A/HRC/RES/44/12*, 24 July 2020.

¹³ *Ibid.*

Just a few hours after the Hong Kong National Security Act was formally implemented on 1 July 2020, hundreds of peaceful demonstrators gathered to protest the legislation in an “unauthorized” assembly.¹⁴ The Hong Kong Police Force arrested 370 individuals, 10 of which were accused of violating the new law. These ten individuals were all either wearing clothing or donning flags or publications with the phrases “independence” or “revolution”, and all were charged with “inciting secession” but were later released on bail.¹⁵ Some police officers at the demonstration held up a purple flag which warned protesters, in both Chinese and English: “This is a police warning. You are displaying flags or banners / chanting slogans / or conducting yourselves with an intent such as secession or subversion, which may constitute offences under the ‘HKSAR National Security Law.’ You may be arrested and prosecuted.”¹⁶ On July 6, Hong Kong police detained eight peaceful protesters who were participating in a silent and immobile protest holding blank pieces of paper at APM Mall. While police alleged that “crowds gathered and shouted in a shopping mall...breaching public peace”, video footage of the incident shows participants peacefully and quietly protesting prior to police interference.¹⁷

Since the initial arrests and crackdown, myriad other pro-democracy and pro-Hong Kong independence activists have been detained under the National Security Law:

- July 29, 2020: Four students aged 16 to 21 years old – Chai Wai-yin, Tony Chung Hon-lam, Ho Nok-hang, and Yanni Ho – were arrested and charged with inciting secession. The four individuals were members of Studentlocalism, a student organization for Hong Kong independence.
- July 31, 2020: “China Central Television (CCTV) announced that the HKPF had formally issued warrants for six political activists suspected of inciting secession and colluding with foreign or external forces. The six activists – Wayne Chan Ka-Kui, Simon Cheng Man-kit, Samuel Chu Muk-man, Lau Hong (also known as Honcques Laus), Nathan Law Kwun-chung, and Ray Wong Toi-yeung – face possible arrest if they return to Hong Kong, as well as possible extradition.”¹⁸
- August 2020: Well-known Hong Kong democracy activist Agnes Chow was arrested in August 2020 under the National Security Law on charges of “colluding with foreign forces.” Chow is one of the co-founders of former democracy group Demosisto, which officially disbanded following the implementation of the legislation due to fears that the group and its members would be targeted.¹⁹
- December 31, 2020: Hong Kong pro-democracy activist and media tycoon Jimmy Lai was released from prison on bail on December 31st, three weeks after he was detained for allegedly violating the conditions of his office’s lease.²⁰ On the same day as his release, Lai was re-arrested under the National Security Law on charges of “colluding with foreign forces”. Lai is the founder of *Apple*

¹⁴ Laignee Barron, “It’s So Much Worse Than Anyone Expected.’ Why Hong Kong’s National Security Law Is Having Such a Chilling Effect.”, *Time*, 23 July 2020.

¹⁵ *ibid.*

Susan V. Lawrence & Michael F. Martin, “China’s National Security Law for Hong Kong: Issues for Congress”, *Congressional Research Service*, 3 August 2020.

¹⁶ *ibid.*

¹⁷ Tom Grundy, “Security Law: Hong Kong police arrest 8 at ‘blank placard’ silent protest”, *Hong Kong Free Press*, 6 July 2020.

¹⁸ Susan V. Lawrence & Michael F. Martin, “China’s National Security Law for Hong Kong: Issues for Congress”, *Congressional Research Service*, 3 August 2020.

¹⁹ Reuters, “Factbox: Who is Agnes Chow, the Hong Kong activist jailed over 2019 protest?”, 2 December 2020.

²⁰ Mark Katkov, “Hong Kong Democracy Activist Jimmy Lai Released On Bail”, *NPR News*, 23 December 2020.

Daily, a pro-democracy Hong Kong news outlet that has repeatedly been under fire by the Hong Kong police.²¹

- January 6, 2021: Hong Kong police detained 53 former lawyers and current democracy advocates on charges of subversion of state power by “participating in unofficial election primaries for the territory’s legislature last year.” Among the renowned arrested individuals were former legislators Lam Cheuk-ting, Wu Chi-wai, Helena Wong, and James To; American human rights lawyer and treasurer of Power for Democracy John Clancey; and prominent member of the 2014 Hong Kong Occupy Central protests and law professor Benny Tai.²²
- January 8, 2021: Famous Hong Kong pro-democracy activist, prominent leader of the 2014 Umbrella Movement, and former Nobel Peace Prize nominee, Joshua Wong, was arrested and charged with “subversion of state power.” Wong was arrested on this charge while he was already in prison serving a 13.5-month-sentence for participating in the 2019 Hong Kong protests.²³
- January 14, 2021: The Hong Kong Police Force arrested 11 individuals “on suspicion of assisting offenders who are believed to be the 12 Hong Kong activists detained at sea by mainland Chinese authorities while attempting to flee the city last year.” The identities of the arrested individuals have not yet been released.²⁴

The status of individuals arrested under the Hong Kong National Security Law also remains a point of major concern; the new legislation permits that detained suspects – Hong Kong civilians or even foreign nationals – be transported to mainland China and be tried within the notoriously corrupt Chinese justice system. This is a system that routinely exhibits “miscarriage[s] of justice” and a conviction rate of no less than 99.9%.²⁵ Rule of law is overlooked and instead the government leverages arbitrary and prolonged detention, clandestine and unfair trials, and superfluous charges and punishments against individuals deemed as threats to the regime’s authority. The United States Department of State revealed in 2019 that, in China, judicial power is exercised neither independently nor impartially, and that judges are often influenced to make judgements in line with the CCP’s stance on “politically sensitive cases.”²⁶

For individuals that are detained in Chinese prisons, especially those whose cases are ‘politically sensitive’, physical torture is another horrible reality. In 2017, Chinese human rights lawyer Xie Yang revealed that during his time in Chinese prison, he was shackled to a chair, beaten for hours on end, and told by interrogators “we’ll torture you to death just like an ant.”²⁷ Human rights lawyer Wang Quanzhang was imprisoned for four-and-a-half years²⁸, tortured with electricity; lawyer Li Heping was “emaciated” and “unrecognizable” to his family upon release²⁹; and even Swedish human rights activist, Peter Dahlin, was blindfolded, deprived of sleep, strapped to a tiger chair, and interrogated in Chinese prison for his advocacy

²¹ Vivian Wang, “Jimmy Lai, Hong Kong Pro-Democracy Mogul, Is Ordered Back to Jail”, *New York Times*, 31 December 2020.

²² Zen Soo, “Hong Kong arrests 53 activists under national security law”, *Associated Press*, 6 January 2021.

²³ Jessie Yeung, “Hong Kong pro-democracy activist Joshua Wong arrested under national security law”, *CNN World*, 8 January 2021.

²⁴ Zen Soo, “Lawyer, others arrested by Hong Kong national security unit”, *Associated Press*, 14 January 2021.

²⁵ Cary Huang, “No sign of change in China’s deeply flawed criminal justice system”, *South China Morning Post*, 14 December 2016.

²⁶ United States Department of State, *2019 Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet)*, 11 March 2020.

²⁷ Tom Phillips, “‘Your only right is to obey’: lawyer describes torture in China’s secret jails”, *The Guardian*, 23 January 2017.

²⁸ Marina Riera, “Chinese Human Rights Lawyer Released After 4 Years”, *Human Rights Watch*, 5 June 2020.

²⁹ Tom Phillips, “‘Emaciated, unrecognisable’: China releases human rights lawyer from custody”, *The Guardian*, 10 May 2017.

and work with other human rights lawyers.³⁰ It is a major humanitarian concern that Hong Kong human rights activists, protesters, and demonstrators that are detained under the new national security law may be extradited to mainland China and may face similar violations of due process and human rights.

III. Conclusion

As of 2020, the United Nations Human Rights Council itself, under Spokesperson for the UN High Commissioner for Human Rights, Rupert Colville, released a statement in which they raise the following:

“We are alarmed that arrests are already being made under the law with immediate effect, when there is not full information and understanding on the scope of the offences.... On a preliminary analysis, we are concerned that the definition of some of the offences contained in the law are vague and overly broad. This may lead to discriminatory or arbitrary interpretation and enforcement of the law, which could undermine human rights protection.... As the High Commissioner noted in the press release issued on 19 June, such laws should never be used to criminalize conduct and expression that is protected under international human rights law.”³¹

With regards to the widespread recognition of the detrimental implications of the Hong Kong National Security Act on peaceful exercise of civil and political rights – including freedom of expression in public contexts such as those under police scrutiny in Hong Kong – we recommend that the Special Rapporteur raise the above issues in its report to the UN Human Rights Council for its upcoming session.

³⁰ Tom Phillips, “A human rights activist, a secret prison and a tale from Xi Jinping’s new China”, *The Guardian*, 2 January 2017.

³¹ Press briefing note on China / Hong Kong SAR, Rupert Colville, Spokesperson for the UN High Commissioner for Human Rights, Office of the High Commissioner for Human Rights, 3 July 2020.