



CENTER FOR ASIAN LAW  
GEORGETOWN LAW

沒有民主人權  
哪有國家安全

社會民主連線 工黨

FEBRUARY 2021

# HONG KONG'S NATIONAL SECURITY LAW:

*A Human Rights and  
Rule of Law Analysis*

by Lydia Wong and Thomas E. Kellogg

# THE NATIONAL SECURITY LAW

*constitutes one of the greatest threats to human rights and the rule of law in Hong Kong since the 1997 handover.*



CENTER FOR ASIAN LAW  
GEORGETOWN LAW

This report was researched and written by Lydia Wong (alias, Lydia.Wong.hk2020@protonmail.com), research fellow, Georgetown Center for Asian Law; and Thomas E. Kellogg (tk795@georgetown.edu), executive director, Georgetown Center for Asian Law, and adjunct professor of law, Georgetown University Law Center. (Ms. Wong, a scholar from the PRC, decided to use an alias due to political security concerns.) The authors would like to thank three anonymous reviewers for their comments on the draft report. We also thank Prof. James V. Feinerman for both his substantive inputs on the report, and for his longstanding leadership and guidance of the Center for Asian Law. We would also like to thank the Hong Kongers we interviewed for this report, for sharing their insights on the situation in Hong Kong. All photographs by CLOUD, a Hong Kong-based photographer. Thanks to Kelsey Harrison for administrative and publishing support.

# Contents

<b>EXECUTIVE SUMMARY</b>	<b>i</b>
The National Security Law: Undermining the Basic Law, Threatening Human Rights	iii
Implementation of the NSL	iv
<b>I INTRODUCTION</b>	<b>1</b>
<b>II THE HONG KONG NATIONAL SECURITY LAW: A HUMAN RIGHTS AND RULE OF LAW ANALYSIS</b>	<b>6</b>
The NSL: Infringing LegCo Authority	9
New NSL Structures: A Threat to Hong Kong's Autonomy	12
The NSL and the Courts: Judicial Independence at Risk	15
The NSL's Criminal Provisions: Targeting Beijing's Political Opponents?	18
NSL Human Rights Provisions: Judicial Shield or Fig Leaf?	25
<b>III IMPLEMENTATION OF THE NSL</b>	<b>27</b>
NSL Cases Overview – Free Expression, International Contacts, and Mainstream Politics	28
Case Studies	32
<i>The Tong Ying-kit Case: Legitimate Threat to National Security?</i>	32
<i>The August 10 Arrests: Jimmy Lai, Agnes Chow, and Eight Others</i>	34
<i>The Tam Tak-chi Case: Speech Crimes and Hong Kong Law</i>	39
<i>The Tony Chung Case: Criminalizing Political Asylum Claims?</i>	42
<i>The Hong Kong 12 Case: Hong Kong Citizens, Mainland Justice</i>	45
<i>The January 6th Arrests: The End of Hong Kong's Political Opposition?</i>	47
Creating a Climate of Fear	50
Bureaucratic Mobilization	54
Case Study: <i>Education Policy and Practice in the NSL Era</i>	57
<b>IV CONCLUSION</b>	<b>58</b>
<b>APPENDICES</b>	<b>61</b>
Appendix A. List of Acronyms	61
Appendix B. Timeline of NSL Implementation	62
Appendix C. Individuals Arrested for Alleged NSL Crimes or by the NSD	66



## EXECUTIVE SUMMARY

The National Security Law (NSL) constitutes one of the greatest threats to human rights and the rule of law in Hong Kong since the 1997 handover. This report analyzes the key elements of the NSL, and attempts to gauge the new law's impact on human rights and the rule of law in Hong Kong.

The report also analyzes the first six months of implementation of the new law, seeking to understand how the law is being used, who is being targeted, and which behaviors are being criminalized. The report is based on interviews with Hong Kong actors from various backgrounds, and also a wide-ranging review of the public record, including press reports, court documents, and other publicly-available sources.

### Our key findings include:

- The Hong Kong Special Administrative Region (SAR) government and the central government have made vigorous use of the NSL over the past seven months, with over 100 arrests by the newly-created national security department in the Hong Kong police force, mostly for NSL crimes.
- The threat posed to Hong Kong's autonomy by the passage of the NSL by the central government is significant. At the same time, the creation of hybrid Mainland-Hong Kong national security bodies also directly threatens the Basic Law's One Country, Two Systems framework and the oft-cited mantra of Hong Kong people ruling Hong Kong.
- According to publicly-available information on the cases that have emerged thus far, the vast majority of initial NSL arrests would not be considered national security cases in other liberal constitutional jurisdictions. This raises questions about whether Hong Kong is beginning to diverge from its historically liberal, rule of law legal and political culture.
- The cases that have emerged thus far raise serious concerns that the NSL is being used to punish the exercise of basic political rights by the government's peaceful political opponents and its critics. Prosecution of individuals for exercising their rights to free expression, association, or assembly would violate Hong Kong and Beijing's commitments under international human rights law.
- The impact of the NSL has been felt well beyond the more than 100 individuals who have been arrested by the Department for Safeguarding National Security (NSD). According to our interviews, self-censorship – among journalists, academics, lawyers, activists, and members of the general public – has

emerged as a serious problem, one that could blunt Hong Kong's longstanding tradition of freewheeling and robust public debate.

- Many that we spoke to also feared that the NSL would have an impact on the day-to-day work of Hong Kong's government bureaucracy, and that NSL values and norms could shape policy formation in potentially damaging ways for years to come.

If current trends continue, Hong Kong could become a fundamentally different place, one that enjoys fewer freedoms and rights, with social, political, and legal institutions that are less vibrant, less independent, and less effective than they once were. As our analysis makes clear, the future of the One Country, Two systems model, and of Hong Kong's autonomy, are in jeopardy.

This report proceeds in two parts. In Part One, we offer a human rights and rule of law analysis of the NSL itself. We pay special attention to the ways in which the NSL infringes on the autonomy of Hong Kong's core political and legal institutions, and also the ways in which the newly-created criminal provisions could be used to punish the peaceful exercise of core political rights, in potential violation of both the Basic Law and the obligation of the Hong Kong government to adhere to the International Covenant on Civil and Political Rights (ICCPR).

In Part Two, we focus on the implementation of the law thus far. Since its implementation on June 30, 2020, the law has been used in three key ways: to limit certain forms of political speech, with a particular focus on pro-independence speech and key slogans from the 2019 protests movement; to limit foreign contacts, and in particular to break ties between Hong Kong activists and the U.S. and European governments; and to target opposition politicians and activists, many of whom are longtime pillars of Hong Kong's political scene.

Also in Part Two, we analyze some of the most high-profile arrests that have been carried out under the NSL to date, including the August 10, 2020 arrests of Jimmy Lai and Agnes Chow; the September 2020 arrest of prominent pro-democracy activist Tam Tak-chi, and his subsequent indictment for sedition under the Crimes Ordinance; and the January 2021 arrests of 53 pro-democratic politicians and activists for taking part in a primary election in July 2020. In all of these cases, we raise serious concerns about the potential for those arrested and charged to potentially be punished merely for the exercise of their core political rights, including the rights to expression, association, and assembly as protected by Hong Kong's Basic Law.



## The National Security Law: Undermining the Basic Law, Threatening Human Rights

Both the content of the NSL and the manner of its direct application to Hong Kong by the National People's Congress Standing Committee (NPCSC) overturn longstanding and fundamental understandings of the Basic Law, including those provisions that delimit Beijing's authority in Hong Kong. In the months since the implementation of the NSL, Beijing has largely refused to offer a detailed legal rationale for its radical shift in approach to key Basic Law provisions.

Crucially, the NSL marks a fundamental departure for the central government, from indirect influence to direct exercise of day-to-day authority in a broad swath of internal Hong Kong affairs, in ways that seriously degrade Hong Kong's autonomy under the Basic Law. From Beijing's perspective, the 2019 protests were a turning point: Beijing clearly viewed the SAR government as failing to rise to the challenge of dealing with the protests on its own, and also – rightly or wrongly – saw the protests as a direct challenge to its own authority.

Our analysis of the NSL makes clear that key elements are impossible to square with Hong Kong's autonomy under the Basic Law, and with China's human rights obligations under international law. We focus on five key elements of the law: the NSL itself, the passage of which would seem to infringe on the authority of the Legislative Council (LegCo) the new structures created by the NSL, and their implications for Hong Kong's autonomy; the core criminal provisions – secession, subversion, terrorist activities, and collusion with external elements – and the ways that they may be used to punish peaceful political expression; the very real threats to judicial independence posed by the NSL; and, finally, the potential positive impact that the NSL's human rights and rule of law provisions might have on implementation.

First and foremost, the NSL itself – and the process of its drafting and application to Hong Kong – stands out as a key violation of Hong Kong's autonomy. In particular, in passing the NSL and applying it directly to Hong Kong, the NPCSC directly usurped the powers of Hong Kong's LegCo, which has the authority to pass and amend laws for the Hong Kong SAR.

The Basic Law is quite clear on LegCo's role as the legislative body for the SAR: under Article 17, legislative authority for Hong Kong rests with the SAR itself, and not with Beijing. Article 66 further clarifies that Hong Kong's Legislative Council is the key legislative body of the SAR. Given this structural framework, Beijing's decision to directly apply the National Security Law to Hong Kong is itself a direct affront to Hong Kong's Legislative Council. By passing what is, in essence, a local law, applied only to Hong Kong, the NPCSC substituted its view of the right balance between domestic security and protection of political liberties for that of Hong Kong's elected representatives.

The NSL's core criminal provisions – on secession, subversion, terrorism, and collusion with foreign entities – are also deeply problematic. All four criminal provisions make use of vague and overbroad language, which could be used to punish peaceful acts of expression, association, and assembly.

Such language violates the international human rights covenants to which both Hong Kong and China are a party, and which are also embedded in Hong Kong Law. Article 39(1) of the Basic Law states that both the ICCPR and the International Covenant on Economic Social and Cultural Rights (ICESCR) “remain in force” in Hong Kong, and that those covenants should be implemented through the laws of the SAR.

Over the past seven months since the NSL went into effect, clear signs have emerged that the law is being used to target protesters, activists, journalists, lawyers, and others, merely for exercising their basic rights.

## Implementation of the NSL

When the NSL went into effect on June 30, 2020, some observers hoped that it would serve more as a latent threat, and not as an active tool. Many hoped that both the Hong Kong government and Beijing might see the passage of the law itself as a sufficient deterrent, a clear signal to those in the pro-democratic movement that they were serious about ending the (from their point of view) chaos and instability of the 2019 protests.

Those hopes for restraint on the part of the authorities have been dashed. The law has been pressed into immediate and wide-ranging use, and its impact has been felt in virtually all sectors of Hong Kong society. The law's aggressive implementation has deeply impacted both the legal system and political life.

The government's use of the NSL started on its first full day as binding law. On July 1, 2020, 10 individuals were arrested under the NSL; all had been taking part in protests marking the 23rd anniversary of Hong Kong's reversion to Chinese sovereignty. As of this writing, 86 individuals have been arrested for crimes under the NSL, including 14 individuals who have been arrested for a combination of NSL and non-NSL crimes. An additional 19 individuals have been arrested by the NSD for other non-NSL crimes, for a total of 105 cases.

The NSL remains in active use: Hong Kong police have made at least one arrest per month under the NSL since July, including a record 53 arrests in January. Given that the SAR is politically stable, and faces no known significant national security threats, the government's use of the NSL over the past seven months seems excessively



robust, and also disproportionate. By contrast, the government has gone decades without a single prosecution under the sedition provision of the Crimes Ordinance, and other national security-related criminal provisions have seen similarly low levels of use.

A closer look at the arrests that have taken place thus far reveals some interesting aspects of the government's use of the NSL since its implementation. Over the past seven months, the NSL has been used repeatedly as a tool to threaten and suppress political expression, in particular pro-independence speech or other forms of expression. A full 22 of the initial 105 NSL arrests, and four of the first five cases charged under the NSL, have to do with so-called seditious or pro-secessionist speech, or possession of such materials. Of those, 12 are "pure" speech cases, such as chanting and displaying pro-independence slogans, and do not involve other alleged crimes. The other 10 involve a combination of alleged speech crimes and other acts.

The NSL has also been used to break ties between the Hong Kong pro-democracy movement and its supporters in the international community. Thirteen of the initial 105 cases involve contacts with foreign or overseas forces, and six involve allegations of the specific NSL crime of collusion with foreign forces. Those arrested for collusion include some of the highest-profile individuals yet arrested under the NSL, including both Jimmy Lai and Agnes Chow. The Lai and Chow cases are illustrative of the expanded scope of criminality under the NSL: now that some forms of contact with foreign actors have been criminalized, the authorities are now able to go after more high-profile individuals who, prior to July 1, were less vulnerable to criminal prosecution.

The third prong of NSL arrests includes the 53 pro-democratic legislators and activists who were arrested on January 6, 2021. Those arrests have hamstrung Hong Kong's peaceful political opposition, and could mark the end of formal opposition politics in Hong Kong for years to come. The arrest of 53 opposition politicians and activists suggests that the NSL is being used to fundamentally reshape Hong Kong's formal politics, with very real implications for who is allowed to run for office, how political parties can organize themselves, and whether and how opposition political parties are able to challenge government policy.<sup>1</sup>

The dozens of NSL arrests since July 1 have gotten perhaps the most media attention, and have unsurprisingly defined the NSL in the eyes of many. And yet, in some ways, the most pronounced effects of the law have been indirect. According to Hong Kongers we interviewed, the law has created a climate of fear, one that has permeated virtually all aspects of society, and that has influenced the willingness of a number of different players to take actions that might run afoul of the law.

---

<sup>1</sup> Prominent pro-democracy activists Joshua Wong and Tam Tak-chi were also among those being investigated for their role in the primary election. Since they were already in custody on January 6, they were not counted among the 53 arrestees.



This fear has led activists, politicians, lawyers, and others to take steps to protect themselves from legal risk, in ways that have limited their own basic rights. In particular, the core basic political rights of free expression, free assembly, and free association have all been heavily restricted, merely by virtue of the fact that individuals are afraid to fully exercise these rights in ways that were commonplace before July 1.

Free expression in Hong Kong has taken perhaps the biggest hit. Perhaps the single most significant impact of the law has been the level of self-censorship it has generated, both at the individual and the organizational levels. The NSL's core provisions are vague, which makes it impossible to discern what can be said and what can't be.

Finally, the NSL also legally mandates bureaucratic reforms that aim to transform Hong Kong government agencies, in line with Beijing's policy aims. These provisions aim to increase Beijing's influence inside the Hong Kong government bureaucracy, allowing Beijing more direct oversight and control over the day-to-day administration of Hong Kong affairs, and over the formulation of key government policies. Many worry that Beijing's increased policy role could have significant implications for basic rights.

Even in the seven months since the implementation of the NSL, the SAR government has taken a number of steps to implement key provisions of the law across the bureaucracy. Hong Kong's bureaucratic system is known for both its professionalism and its political neutrality. The changes that have been implemented thus far are geared toward altering the fundamental character of the bureaucracy, encouraging civil servants to at times view their work through a more political lens.

As this brief summary makes clear, the NSL has had a wide-ranging impact on human rights and the rule of law in Hong Kong, and on Hong Kong's autonomy under the One Country, Two Systems framework. Some have suggested that the events of 2020 and early 2021 are part of a larger effort to, in effect, remake Hong Kong in China's image, to import key elements of China's legal and political order into the Hong Kong context.

We believe that the goal might be somewhat different: instead, we fear that the central government will reshape Hong Kong's liberal political order in a way that preserves many of the *forms* of liberal constitutional democracy, but weakens many of the core substantive components. If current trends continue, we may see the emergence of an altered political and legal system in Hong Kong, one that holds regular elections and permits the continued existence of opposition political parties, independent media, activist NGOs, and independent courts, but in a weaker and more circumscribed form, very different from their prior, pre-2020 incarnations.

Such an outcome, if it does indeed come to pass, would represent an unfortunate end to the very real promise of the Basic Law, and of the promises made to the people of Hong Kong.



## I

**INTRODUCTION**

On January 6, 2021, Hong Kongers awoke to news of a wave of arrests of pan-democratic politicians and activists, many of whom are among the leading lights in the city's pro-democracy movement. More than 1,000 police officers took part in the operation, which targeted a full 70 different locations across the city. Later that day, police announced that they had arrested 53 individuals, all for taking part in a July 2020 primary election, meant to choose candidates for the then-pending Legislative Council (LegCo) elections.

Among those arrested were 16 former legislators, including prominent top pan-democratic politicians who had been active in Hong Kong politics for decades. Twenty sitting district councillors – local-level elected officials – were also detained. Leading youth activist Joshua Wong was also among those who faced charges over the primary election. He was already in jail on January 6, serving a thirteen-and-a-half month sentence for unlawful assembly.

Hong Kong-based lawyer and activist John Clancey, 79, was also arrested, making him the first American citizen and first foreign national to be arrested under the NSL. Clancey, a former priest who works for the law firm Ho Wai Tse and Partners, has been active in pro-democratic circles in Hong Kong for many years, and helped to organize the July 2020 primary.<sup>2</sup>

The arrestees were accused of violating Article 22 of Hong Kong's new National Security Law (NSL), which covers subversion. The new law, which went into effect on June 30, 2020, represents perhaps the most significant challenge to human rights and the rule of law in Hong Kong since the 1997 handover. Passed by the Standing Committee of the National People's Congress (NPCSC) without input from the people of Hong Kong, the NSL also represents a direct threat to Hong Kong's autonomy and the One Country, Two Systems framework that is meant to protect Hong Kong's liberal system from encroachment by Beijing.

By January, Hong Kongers had likely become accustomed to reports of NSL arrests. In the six months after the NSL went into effect, 40 individuals had been arrested by the newly-created Department for

---

2 Su Xinqi, "US-born lawyer John Clancey keeps faith after Hong Kong security law arrest," AFP, January 13, 2021.

Safeguarding National Security (NSD), 32 for alleged NSL crimes, but also in some cases for other, apparently related, offenses. The additional 53 arrests and other arrests later in January brought the total to over 100. Those arrested included some of Hong Kong's most well-known pro-democratic voices, including media mogul Jimmy Lai and youth activist Agnes Chow. Prominent activist Joshua Wong is also being investigated for potential violation of the NSL, and may be criminally charged in the coming weeks.

This report analyzes the key elements of the NSL, and attempts to gauge the new law's impact on human rights and the rule of law in Hong Kong. The report also analyzes the first seven months of implementation of the new law, seeking to understand how the law is being used, who is being targeted, and which behaviors are being criminalized.

**Our key findings include:**

- The SAR government and the central government have made vigorous use of the NSL over the past seven months, with over 100 arrests by the newly-created national security department in the Hong Kong police force, mostly for NSL crimes.
- The threat posed to Hong Kong's autonomy by the passage of the NSL by the central government is significant. At the same time, the creation of hybrid Mainland-Hong Kong national security bodies also directly threatens the Basic Law's One Country, Two Systems framework and the oft-cited mantra of Hong Kong people ruling Hong Kong.
- According to publicly-available information on the cases that have emerged thus far, the vast majority of initial NSL arrests would not be considered national security cases in other liberal constitutional jurisdictions.<sup>3</sup> This raises questions about whether Hong Kong is beginning to diverge from its historically liberal, rule of law legal and political culture.
- The cases that have emerged thus far raise serious concerns that the NSL is being used to punish the exercise of basic political rights by the government's peaceful political opponents and its critics. Prosecution of individuals for exercising their rights to free expression, association, or assembly would violate Hong Kong and Beijing's commitments under international human rights law.

---

<sup>3</sup> This is not to say that some of those arrested couldn't be charged with other, non-national security related crimes given the same set of facts in other jurisdictions. This point is discussed in more detail in Part Two.



- The impact of the NSL has been felt well beyond the more than 100 individuals who have been arrested by the NSD. According to our interviews, self-censorship – among journalists, academics, lawyers, activists, and members of the general public – has emerged as a serious problem, one that could blunt Hong Kong's longstanding tradition of freewheeling and robust public debate.
- Many that we spoke to also feared that the NSL would have an impact on the day-to-day work of Hong Kong's government bureaucracy, and that NSL values and norms could shape policy formation in potentially damaging ways for years to come.

If current trends continue, Hong Kong could become a fundamentally different place, one that enjoys fewer freedoms and rights, with social, political, and legal institutions that are less vibrant, less independent, and less effective than they once were. As our analysis makes clear, the future of the One Country, Two systems model, and of Hong Kong's autonomy, are in jeopardy.

We believe that the end of the One Country, Two Systems framework would be a regrettable outcome, both for the people of Hong Kong, and for the Communist Party and the people of China. For the people of Hong Kong, the long-feared end of Hong Kong's significant functional autonomy would have far-reaching consequences for virtually all aspects of day-to-day life in Hong Kong. Almost all aspects of civic and political life in Hong Kong – including media reporting, academic freedom, political representation and participation, and faith and trust in the government and the courts – would be deeply impacted.

Seven months after the implementation of the NSL, many in Hong Kong feel that a fundamental societal shift is already underway. “Every single part of what makes Hong Kong Hong Kong is being challenged,” one longtime activist told us.<sup>4</sup>

At the same time, the aggressive implementation of the NSL might prove to have many downsides for the Communist Party leadership in Beijing as well. As many observers have noted, Hong Kong's role as a financial gateway to China itself is less significant than it once was. Still, Hong Kong's stature as a global financial hub continues to offer many benefits to the economy of the People's Republic of China (PRC), some of which have been put at risk with the passage of the NSL.<sup>5</sup>

---

4 Author interview 1.

5 For more on this important point, see *Why Hong Kong matters: Understanding the importance of the city to China and the world*, Hong Kong Watch report, February 26, 2020.

Hong Kong's status as an open society brings additional, perhaps less tangible benefits to China, and indirectly to the Chinese Communist Party (CCP) itself. Hong Kong has long been a place where China's present challenges and future trajectory could be more openly debated, and where Chinese scholars, journalists, activists, and others could find much-needed temporary refuge and respite from the political pressures of the Mainland. The passage of the NSL also puts the SAR's vital function as a place to think, talk, and write about China more freely in deep doubt.

To be sure, the Communist Party leadership seems to view Hong Kong's evolution away from open society values as a positive development, one that is in line with the Party's current vision of governance for China as a whole.<sup>6</sup> But such a view would misunderstand the significant challenges – social, political, and economic – that China faces. In the years to come, the Communist Party leadership will need new ideas to grapple with a series of looming challenges, and Hong Kong-based voices can and should be a part of that vital conversation.

Unlikely though it may seem at this moment, it is not too late for Beijing to decelerate its implementation of the NSL. As we document in this report, significant damage has already been done over the past seven months, but we believe that a change of course would have an immediate positive impact. Hong Kong's flourishing media, its schools and universities, its civil society organizations, and its vibrant political scene, all deeply harmed by the NSL, could start to revive. Those already charged with crimes under the NSL would have greater confidence in obtaining a fair trial, and those who have yet to be charged would feel more confident that their cases would be handled in a fair, open, and just manner.

This report proceeds in two parts. In Part One, we offer a human rights and rule of law analysis of the NSL itself. We pay special attention to the ways in which the NSL infringes on the autonomy of Hong Kong's core political and legal institutions, and also the ways in which the newly-created criminal provisions could be used to punish the peaceful exercise of core political rights, in potential violation of both the Basic Law and the obligations of the Hong Kong government to adhere to the International Covenant on Civil and Political Rights (ICCPR).

In Part Two, we focus on the implementation of the law thus far. Since its implementation on June 30, 2020, the law has been used in three key ways: to limit certain forms of political speech, with a particular focus on pro-independence speech and key slogans from the 2019 protests movement; to limit foreign contacts, and

---

6 For an excellent assessment of the changes to governance and politics that have taken place in China in recent years, see Elizabeth C. Economy, *The Third Revolution: Xi Jinping and the New Chinese State*, Oxford University Press, 2018.



in particular to break ties between Hong Kong activists and the U.S. and European governments; and to target opposition politicians and activists, many of whom are longtime pillars of Hong Kong's political scene.

Also in Part Two, we analyze some of the most high-profile arrests that have been carried out under the NSL to date, including the August 10, 2020 arrests of Jimmy Lai and Agnes Chow; the September 2020 arrest of prominent pro-democracy activist Tam Tak-chi, and his subsequent indictment for sedition under the Crimes Ordinance; and the January 2021 arrests of 53 pro-democratic politicians and activists. In all of these cases, we raise serious concerns about the potential for those arrested and charged to potentially be punished merely for the exercise of their core political rights, including the rights to expression, association, and assembly as protected by Hong Kong's Basic Law.

This report is based on roughly twenty interviews with politicians, activists, lawyers, journalists and others, both inside and outside Hong Kong. Given the political sensitivity of the NSL, we have declined to identify any of the interviewees by name. We have also made extensive use of the documentary record, including Chinese and English press reports, court documents and verdicts, and also the rich secondary literature on human rights and rule of law in Hong Kong. The research period covered in this report runs from June 30, 2020 to February 1, 2021.



## THE HONG KONG NATIONAL SECURITY LAW: A HUMAN RIGHTS AND RULE OF LAW ANALYSIS

The NSL constitutes one of the greatest threats to human rights and the rule of law in Hong Kong since the 1997 handover. A full and comprehensive analysis of the NSL is beyond the scope of this report. Instead, this section offers an analysis of the key elements of the national security law, both from an international human rights perspective, and also in relation to Hong Kong's promised autonomy under Hong Kong's mini-constitution, the Basic Law.

Both the content of the NSL and the manner of its direct application to Hong Kong by the NPCSC overturn longstanding and fundamental understandings of the Basic Law, including those provisions that delimit Beijing's authority in Hong Kong.<sup>7</sup> In the months since the implementation of the NSL, Beijing has largely refused to offer a detailed legal rationale for its radical shift in approach to key Basic Law provisions, which

<sup>7</sup> Before the passage of the NSL, for example, most experts viewed Beijing's legislative authority vis a vis Hong Kong as quite narrow, largely limited to national laws relating to foreign affairs and national defense. Basic Law, Article 18(3). One leading textbook on Hong Kong's Basic Law, published in 2016, states that the key Basic Law provisions, including Article 18, "place strict limits on what types of national Chinese laws can be applied (to Hong Kong)." That same textbook notes that "(t)here is also a strict prohibition on any branch of the Chinese government... interfering 'in the affairs which the Hong Kong Special Administrative Region administers on its own.'" Danny Gittings, *Introduction to the Hong Kong Basic Law*, 2nd edition, p. 41.



in turn has left senior Hong Kong SAR government officials struggling to justify actions by Beijing that they themselves likely would have considered off the table prior to the 2019 protests.

The threat to Hong Kong's autonomy posed by the NSL is both serious and unprecedented. To be sure, the autonomy regime created by the Basic Law is by no means perfect: Beijing has been able to, for example, more or less handpick Hong Kong's Chief Executive, which gives the Communist Party leadership a significant – if somewhat indirect – say in day-to-day governance under Hong Kong's executive-led political system. Still, under the Basic Law, Hong Kong is meant to “exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this law.”<sup>8</sup>

It would be wrong to romanticize the Basic Law: it is an imperfect document, one that in some ways preserved existing deformities in Hong Kong's political system rather than forcing much-needed reforms. But for close to a quarter-century, its core provisions – and Beijing's willingness to abide by them, most of the time – had kept the central government at bay.<sup>9</sup> Direct central government interference in matters under local autonomy was limited, though Beijing's behind-the-scenes influence over the executive and legislative branches of government was evident. The NSL threatens to do deep damage to the autonomy system set up by the Basic Law, and to Hong Kong's robust open society, in ways that may be difficult for future administrations, in both Beijing and in Hong Kong, to reverse.

Though many observers worried that Beijing simply would not keep its promise to honor Hong Kong's autonomy, the Communist Party largely allowed the system to work as designed in the years after 1997. At least until the Umbrella Movement protests of 2014, Beijing contented itself with exerting indirect influence, largely through successive Chief Executives, all of whom were more accountable to Beijing than they were to the people of Hong Kong.<sup>10</sup> Beijing also blocked key democratic reforms, including progress on direct election of Hong Kong's Chief Executive and full direct election of the LegCo. This foot-dragging ensured that its own influence over the system as a whole remained intact, undiluted by the grant of universal suffrage to the people of Hong Kong themselves.<sup>11</sup>

---

8 Hong Kong Basic Law, Art. 2.

9 The exceptions to Beijing's more indirect approach include its use of its power, under Article 158 of the Basic Law, to interpret key provisions of the mini-Constitution in ways that dovetailed with its own self-interest. See, e.g., Thomas E. Kellogg, “‘Excessive Deference’ or Strategic Retreat? Basic Law Article 158 and Constitutional Development in Hong Kong,” *Hong Kong Journal*, January 2008.

10 Michael C. Davis and Thomas E. Kellogg, *The Promise of Democratization in Hong Kong: Discontent and Rule of Law Challenges*, National Democratic Institute and Georgetown Center for Asian Law report, April 23, 2020.

11 This paragraph should not be taken to suggest that Beijing's record on Hong Kong was anything near perfect in the years before 2014. See, e.g., Thomas E. Kellogg, *A Question of Patriotism: Human Rights and Democratization in Hong Kong*, Human Rights Watch briefing paper, September 9, 2004. Still, the fact remains that the introduction of the NSL marks a fundamental shift, calling into question the bottom-line survivability of Hong Kong's constitutional system for the first time since the 1997 handover.



Beijing was willing to allow the system to operate without interfering directly in part because it viewed the executive-led system as sufficiently protective of its interests.<sup>12</sup> Operating through pro-Beijing politicians and business interests in Hong Kong, it maintains the ability to more or less handpick the Chief Executive. Its preferred candidates also maintain a significant structural advantage in LegCo elections. The Chief Executive's extensive authority under Hong Kong's so-called executive-led system allows Beijing significant indirect influence over key policy and legislative matters,<sup>13</sup> and had – at least up until the 2014 protests – given it a degree of confidence that most of its core interests in Hong Kong could be protected by the existing system.

The NSL marks a fundamental shift in approach, from indirect influence to direct exercise of day-to-day authority in a broad swath of internal Hong Kong affairs, in ways that seriously degrade Hong Kong's autonomy under the Basic Law.<sup>14</sup> From Beijing's perspective, the events of 2019 were a turning point: Beijing clearly viewed the SAR government as failing to rise to the challenge of dealing with the protests on its own, and also – rightly or wrongly – saw the protests as a direct challenge to its own authority.

Regardless of the reasoning behind Beijing's move to implement the NSL, the fact remains that its key elements are impossible to square with Hong Kong's autonomy under the Basic Law, and with China's human rights obligations under international law. The below sections delineate key problems with the NSL from a human rights and rule of law perspective, and make clear that the NSL falls short of both Beijing's promises to Hong Kong, and of its obligations to respect the basic rights and freedoms of Hong Kong citizens.

In our analysis, we focus on five key three elements of the law: the NSL itself, the passage of which would seem to infringe on the authority of the LegCo; the new structures created by the NSL, and their implications for Hong Kong's autonomy; the very real threats to judicial independence posed by the NSL; the core criminal provisions – secession, subversion, terrorist activities, and collusion with external elements – and the ways that they may be used to punish peaceful political expression; and, finally, the potential positive impact that the NSL's human rights and rule of law provisions might have on implementation.<sup>15</sup>

---

12 As one top scholar of Hong Kong's Basic Law put it, the One Country, Two Systems doctrine, as articulated in the Basic Law, is “the product of considerable pragmatism” with “its primary purpose the conservative one of perpetrating a substantive system, rather than promoting institutional autonomy which might threaten that system.” Yash Ghai, *Hong Kong's New Constitutional Order* (2nd Edition), p. 55; in PY Lo, *The Judicial Construction of Hong Kong's Basic Law*, p. 22.

13 Under Hong Kong's executive-led system, the Chief Executive holds much greater powers than the head of an executive branch in a more typical political system constructed on the basis of the separation of powers principle would. The Chief Executive must approve the introduction of almost all bills in the Legislative Council, for example, and can appoint and remove cabinet officials without legislative approval. Gittings, *Introduction to the Hong Kong Basic Law*, pp. 96-7.

14 As one leading scholar of the Basic Law put it: “this latest effort (i.e., the introduction of the National Security Law) to take direct control of Hong Kong fundamentally changes the constitutional order from a program where Hong Kong's people rule Hong Kong to one where Beijing directly rules Hong Kong.” Michael C. Davis, *Making Hong Kong China*, p. 8.

15 Due to space constraints, our overview does not address other key elements of the NSL in depth, including concerns about its broad extraterritorial provisions, and provisions that seem to weaken key due process protections under existing Hong Kong criminal law.



We approach each of these sections differently, given the differing challenges they pose for human rights and rule of law in Hong Kong. Our discussion of the NSL itself and the new structures created by the law looks at how these new entities will operate in practice, and how their activities might interfere with the autonomy of Hong Kong's government, its LegCo, and the courts.

For the criminal provisions, we rely heavily on international human rights law as our frame for analysis, focusing on the ways in which the new NSL criminal provisions might be used to punish individuals for exercising their basic rights. An international human rights analysis of the NSL criminal provisions is especially vital given that Hong Kong is a party to the ICCPR, and that its core provisions have been applied to Hong Kong through both the Bill of Rights Ordinance and the Basic Law.<sup>16</sup>

Our section on judicial independence focuses again on the Basic Law, and the ways in which core NSL provisions – including Articles 55 and 56, which allow for transfer of certain NSL cases to Mainland Chinese courts – might potentially undercut Hong Kong's judiciary, and weaken its ability to apply Basic Law human rights protections to high-profile NSL cases.

We conclude with a brief analysis of the more positive elements of the law, including its references to international human rights law, and to the Basic Law itself. Given that the NSL is likely here to stay, and will play a role in determining Hong Kong's political and legal future, efforts to put these provisions to use will be crucial. These provisions, if allowed to operate, could blunt the negative impact of the law, and allow the Hong Kong courts to continue to protect the people of Hong Kong from potentially sweeping restrictions on their basic rights under the NSL.

### **The NSL: Infringing LegCo Authority**

There are many problems with the content of the NSL, but it is the NSL itself – and the process of its drafting and application to Hong Kong – that stands out as a key violation of Hong Kong's autonomy. In particular, in passing the NSL and applying it directly to Hong Kong, the NPCSC directly usurped the powers of Hong Kong's LegCo, which holds the authority to pass and amend laws for the Hong Kong SAR. As this section argues, the NPCSC's decision to take matters into its own hands, and legislate a national security law on behalf of Hong Kong, can't be reconciled with the Basic Law's structure, or

---

<sup>16</sup> Basic Law Article 39 makes clear that both the ICCPR and the ICESCR remain in force in Hong Kong.

with its repeated promises of genuine autonomy for Hong Kong.

The Basic Law is quite clear on LegCo's role as the legislative body for the SAR: under Article 17, legislative authority for Hong Kong rests with the SAR itself, and not with Beijing. Article 66 further clarifies that Hong Kong's LegCo is the key legislative body of the SAR. Given this structural framework, Beijing's decision to directly apply the NSL to Hong Kong is itself a direct affront to Hong Kong's LegCo. By passing what is, in essence, a local law, applied only to Hong Kong, the NPCSC has usurped the legislative authority of LegCo, substituting its view of the right balance between domestic security and protection of political liberties for that of Hong Kong's elected representatives.

Beijing does have some limited legislative authority vis a vis Hong Kong. Under Article 18 of the Basic Law, the Central Government is allowed to apply certain national laws to Hong Kong, and the Hong Kong government has stated that the NSL is being applied to the SAR through that mechanism.<sup>17</sup> Laws so applied are listed in Annex III of the Basic Law.<sup>18</sup> That said, Article 18 does not create a blank check for Beijing: national laws that are applied to Hong Kong must be “confined to those relating to defense and foreign affairs as well as other matters outside the limits of the autonomy of the Region.”<sup>19</sup> Laws related to the ceremonial affairs of the state, for example – such as the National Flag Law and the National Emblem Law – have been applied to Hong Kong using this mechanism. These laws clearly lie outside the limits of Hong Kong's autonomy, and can be properly applied to Hong Kong without infringing on the SAR's legislative authority.<sup>20</sup>

Would the NSL fit within the ambit of defense and foreign affairs, such that Article 18 is the proper vehicle for applying that law to Hong Kong? Some have argued that, as the term itself suggests, national security law is squarely within the domain of the national-level government, which means that Beijing was right to apply the NSL to Hong Kong through the Article 18 mechanism.

But a closer look at the substance of the NSL makes clear that the law is heavily focused on the preservation of *domestic* security: its core criminal provisions are aimed at maintaining public order, and on regulating – or,

---

17 Instrument of Promulgation, Government Gazette, LN 136 of 2020. See also HK Bar Association Statement, paragraph 4, July 1, 2020.

18 According to Article 18(2) of the Basic Law, “(n)ational laws shall not be applied in Hong Kong Special Administrative Region except for those listed in Annex III to this law. The Laws listed therein shall be applied locally by way of promulgation or legislation by the Region.”

19 Basic Law, Article 18(3).

20 The Court of Final Appeal has indirectly signaled its approval of such laws being extended to Hong Kong through Annex III in *HKSAR v. Ng Kung Siu and Another* (1999) HKCFA 10. In that case, the CFA upheld Hong Kong's flag burning statute as consistent with the Basic Law's free expression provisions; at the same time, it made note of the Article 18(3) restriction, tacitly signaling its approval of Beijing's proper use of its limited authority under Article 18.



as the below section argues, restricting – political participation and activism by local groups and individuals.<sup>21</sup> In essence, in applying the NSL to Hong Kong, the central government has taken its much broader conception of national security – one that is common to Leninist authoritarian political systems like the PRC – and has applied it directly to Hong Kong's liberal legal order.<sup>22</sup> Doing so is a clear violation of its Article 18 authority, and sets up an immediate clash between the two systems that could reverberate for years to come.

Divergent understandings of national security have always been a point of latent tension between Hong Kong and Beijing. There is perhaps no area of law in which the gap between the two systems is more vast. Article 23 of the Basic Law represents an effort to bridge this gap: explicit reference is made to the need for national security laws such as sedition or subversion, but the Hong Kong SAR is empowered to pass such laws “on its own.”<sup>23</sup> The grant of authority to the SAR government under Article 23 to enact national security also bolsters the argument that Beijing does not possess this same authority under Article 18.<sup>24</sup>

Beijing's decision to enact the NSL can therefore be seen both as a violation of Article 23,<sup>25</sup> and perhaps also as a tacit recognition that Hong Kong would never enact a law that so fully embraces the broad, authoritarian conception of national security that Beijing now feels is needed to deal with the political crisis in the SAR.<sup>26</sup>

There is one last reason why the NSL cannot be applied directly to Hong Kong through the Article 18 mechanism. Given that the NSL applies only to Hong Kong – and thus is not truly national in its scope or coverage – the law creates an additional concern: under Article 18(2) of the Basic Law, the NPCSC is allowed only to add national laws to Annex III.<sup>27</sup> In general, it cannot draft and implement local laws that

---

21 Indeed, as Basic Law Article 14(2) makes clear, the regulation of public order is quite clearly the province of the Hong Kong SAR, and is outside of Beijing's remit. That said, the NSL provisions on secession are more clearly within the ambit of national security, and yet Basic Law Article 23 makes clear that laws on secession should be implemented by the SAR acting on its own.

22 Chan and de Londras, “Introduction: China's National Security in Hong Kong,” Chan and Londras, eds., *China's National Security: Endangering Hong Kong's Rule of Law?*, Bloomsbury, 2020, pp. 4-5.

23 The text of Article 23 is clear and unambiguous on this point, stating directly that the SAR “shall enact laws *on its own* to prohibit any act of treason, secession, sedition, or subversion against the Central People's Government.” Emphasis added.

24 Cora Chan, “Can Hong Kong remain a liberal enclave within China? An Analysis of the Hong Kong National Security Law,” *Public Law* (forthcoming), Summer 2021, pp. 4-5.

25 The Hong Kong Bar Association came to a similar conclusion, noting that “the NPCSC has no power to add the HK National Security Law under Annex III of the Basic Law via the mechanism provided under Article 18 of the Basic Law.” Statement of the Hong Kong Bar Association on proposal of National People's Congress to enact National Security Law in Hong Kong, May 25, 2020.

26 For an in-depth analysis of the security motivations driving Beijing's decision to enact national security legislation, see Fu Hualing, “China's Imperatives for National Security Legislation,” Chan and Londras, eds., *China's National Security: Endangering Hong Kong's Rule of Law?*, Bloomsbury, 2020, pp. 41-60.

27 Article 18(2) reads: “National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this law.” As one scholar of Hong Kong law put it, this provision “reflects the concern that the Central Government should not make specific laws for Hong Kong. Any national laws that are to be applied to Hong Kong should be those that apply generally to the country.” Johannes Chan, “Does the Decision of the National People's Congress on Enacting a National Security Law for Hong Kong contravene the Basic Law?,” *Verfassungsblog*, June 1, 2020.

apply only to Hong Kong using this mechanism. Of the 13 laws that have been applied to Hong Kong through Annex III, 12 have been laws that are truly national in their scope, many of them relating to ceremonial matters such as the national flag or other national symbols.<sup>28</sup> The lone exception – the Law on the Garrisoning of the Hong Kong SAR – clearly relates to national defense, and is thus within the ambit of Beijing's authority under Article 18.

### **New NSL Structures: A Threat to Hong Kong's Autonomy**

Among the most concerning elements of the NSL are the new structures that it creates, specifically the Committee for Safeguarding National Security (CSNS) and the Office for Safeguarding National Security (OSNS).<sup>29</sup> Both have broad mandates, and their creation raises serious concerns about Beijing's commitment to Hong Kong's autonomy under the Basic Law. In general, under the Basic Law, Beijing is meant to keep its hands off Hong Kong's governmental structures, and to neither try to influence their day-to-day administrative work, nor to create new structures that would take power away from the existing political system. With the passage of the NSL, Beijing has done both of these things: the OSNS and the CSNS are both powerful new structures whose creation does significant damage to Hong Kong's autonomy under the Basic Law.

The protean definition of national security is a key element of the threat to Hong Kong's autonomy created by these new NSL structures. If the work of the CSNS and OSNS were limited to such matters as foreign intelligence operations or foreign military threats that targeted Hong Kong in some way, then their creation – and their implicit threat to Hong Kong's autonomy – would be much less problematic.<sup>30</sup> But as the first seven months of implementation of the NSL have made clear, the NSL – along with the work of the CSNS and OSNS – has targeted local political activists, including peaceful political opposition figures like Jimmy Lai and Agnes Chow, whose activities have no apparent connection to genuine national security concerns, at least as they are more narrowly defined in open and democratic societies.

---

28 Even prior to the extension of the NSL to Hong Kong, the use of the Annex III mechanism has at times proved controversial. In November 2017, Beijing moved to apply the then-newly-amended National Anthem Law to Hong Kong, which extends criminal penalties to those who disrespect the national anthem; some observers feared that the new law – which would later be implemented in Hong Kong through local legislation – would be used to punish political speech. See Ting-Fai Yu, "Contextualizing the National Anthem Law in Mainland China and Hong Kong," *China Perspectives*, September 2018, pp. 79-82.

29 Article 17 of the NSL also mandates the creation of a National Security Department within the Hong Kong Police Force. Though potentially problematic, the mere existence of such an entity – assuming it is staffed only by Hong Kongers – is less threatening to Hong Kong's autonomy under the Basic Law. That said, the power of Mainland-controlled entities such as the Office for Safeguarding National Security to approve key appointments to the department is more concerning. NSL, Article 16(2).

30 Indeed, Article 14(1) of the Basic Law explicitly states that the CPG is responsible for the defense of the SAR, which could well include core national security concerns, as more narrowly and properly defined.



The CSNS is created under Article 12 of the law, and ostensibly operates as a hybrid entity, including both senior Hong Kong government officials and a National Security Advisor appointed by the Central People's Government. Article 12 also makes clear that the Committee is accountable only to the central government in Beijing, and not to the people of Hong Kong.

Hybrid institutions like the CSNS, which include both Hong Kong SAR and central government officials, are, in theory at least, less of a direct affront to Hong Kong's autonomy than fully Mainland-controlled entities like the OSNS. That said, for years now, concerns have grown that senior Hong Kong officials are unwilling or perhaps even unable to stand up for the rights and interests of the people of Hong Kong in closed-door meetings with Mainland officials.<sup>31</sup> This dynamic, if extended to the CSNS, could mean that the National Security Advisor, representing the preferences of the central government, leads the Committee, and that his views are decisive, over and above any objections or concerns that senior SAR government officials might raise. In that context, Hong Kong's autonomy would be more or less equally compromised by the CSNS as by the OSNS, even despite the presence of SAR officials on the Committee itself.

The Committee has a broad and somewhat vague mandate. Under Article 14 of the law, the Committee has both an analytical and coordinating role, and is also responsible for "advancing the development of the legal system and enforcement mechanisms... for safeguarding national security."

Troublingly, the work of the Committee is largely beyond the reach of the Hong Kong legal system: its decisions are not subject to judicial review, and information relating to its work is not subject to public disclosure.<sup>32</sup> It's not clear why the Committee should be given such a special status, effectively above Hong Kong laws, or why its work should be fully shrouded in secrecy.

Article 48 of the NSL allows for the creation of the OSNS. Unlike the Committee, which is a hybrid structure, the Office is a purely Mainland entity, fully staffed by officials dispatched to Hong Kong by the central government.

The mandate of the OSNS, laid out in Article 49, is broad: it includes a policy advisory role, an oversight role, and an intelligence collection and analysis role. At the same time, the Office is also empowered to directly

---

31 In September 2019, for example, Reuters reported that Beijing had refused to allow Carrie Lam to resign, perhaps viewing her resignation as a potential concession to the protest movement. Greg Torode, James Pomfret, and Anne Marie Roantree, "Special Report: Hong Kong leader says she would 'quit' if she could, fears her ability to resolve crisis now 'very limited,'" *Reuters*, September 3, 2019. For some, this turn of events suggested that Lam could not even win Beijing's approval for her own departure, an all-too-telling indication of her extremely low level of influence in leadership circles in Beijing.

32 NSL, Article 14(3).

“handle cases concerning... national security in accordance with the law.” This final provision suggests that the Office could participate directly in such day-to-day activities as questioning witnesses, gathering information on suspects through electronic surveillance and other means, and so on.

If new entities like the CSNS and OSNS were meant merely to advise on the Hong Kong SAR government’s day-to-day work, that advisory role would still be problematic, but it would infringe less on the Hong Kong government’s authority. But it is possible that the two new entities could take on a direct role in the implementation of the NSL, and that the National Security Advisor could exercise direct authority over cases being investigated and tried under the law.<sup>33</sup> Such a development would further infringe on Hong Kong’s autonomy.

The Office also plays a special role in the “management” of “organs for foreign countries and international organizations” in Hong Kong, as well as foreign NGOs and news agencies. This deeply troubling provisions suggests that Beijing now sees international organizations – including international human rights NGOs, academic institutions, media outlets, and other private entities that have long used Hong Kong as a base of operations – not as a part of global civil society, but rather as potential threats to national security, whose activities need to be watched more closely than they had been prior to the enactment of the NSL.<sup>34</sup>

Finally, Article 55 of the NSL allows the Office to simply take over a case, freeing it altogether of the obligation to work with and through Hong Kong institutions, if it believes that such cases are sufficiently “complex” or “serious” to warrant doing so, or if it believes that a “major and imminent threat to national security has occurred.”<sup>35</sup> (As discussed below, Articles 55 and 56 also allow for the designation of Mainland courts to handle such cases using Mainland criminal procedure and other laws.)

To be fair, Article 50 does provide that the OSNS must “perform its mandate in strict compliance with the law,” and that the staff of the Office will “abide by the laws of the HKSAR.” And yet, Article 60 makes clear that staff of the office “shall not be subject to the jurisdiction of the Hong Kong Special Administrative Region.” As with the Committee, the Office would also seem to be effectively above law of Hong Kong, making any promise that it will abide by Hong Kong law unenforceable.

---

33 One example: a young protester, Adam Ma, was arrested in late September; after being released, Ma stated that he was detained and questioned by national security officials for 47 hours, allegedly for inciting others to engage in acts of separatism. “Second Generation Captain America Detained by Police for 35 Hours and Released on Bail,” *The Stand News*, October 1, 2020. Ma’s claims have yet to be verified by other sources.

34 Article 54 presents an interesting parallel to China’s 2016 Foreign NGO Law, which similarly views international NGOs operating in China through a national security lens, and subjects these organizations to extensive and intrusive registration and reporting requirements. For more on the Foreign NGO Law, and its initial implementation, see Thomas E. Kellogg, “The Foreign NGO Law and the Closing of China,” in Weitseng Chen and Hualing Fu, eds., *Authoritarian Legality in Asia: Formation, Development, and Transition*, Cambridge University Press, 2020.

35 To be fair, some minimal procedural requirements do have to be fulfilled in order for the OSNS to take over a case, specifically approval by the Central People’s Government of such a request, originating either from the SAR government, or from the OSNS itself. NSL Article 55.



These two structures, with their overlapping mandates and unclear division of labor, illustrate another key element of the NSL: Beijing's desire to create multiple layers of oversight and control. The law's provisions give Beijing a number of different avenues to respond to any specific perceived national security threat: it can work through its own OSNS, or through the Committee, with the National Security Advisor overseeing the Committee's work. It can work with the Hong Kong prosecutor to try national security cases in Hong Kong courts, or it can – as discussed in more detail below – move to have key cases tried in Mainland courts.

These multiple layers of control speak to Beijing's desire for a high degree of decisional and administrative authority, and its lack of trust in the Hong Kong SAR government. From Beijing's perspective, it left matters in the SAR government's hands in 2019, and the situation continued to deteriorate. These new structures allow Beijing to ensure that its views on how to handle both existing and newly-emerging threats are promptly and rigorously implemented.

From a Basic Law perspective, the creation of these new structures is extremely problematic. If – as seems to be the case – both the CSNS and the OSNS are involved in day-to-day policing and policy functions, then they would seem to be directly usurping Hong Kong SAR government functions, either in whole (as with cases taken over by the OSNS under Article 55) or in significant part. Such a move by Mainland entities to directly insert themselves into Hong Kong affairs would seem to violate several core provisions of the Basic Law, including Article 12, which states that the SAR will “enjoy a high degree of autonomy,” and Article 16, which grants executive authority to the SAR government, and ensures that it will administer Hong Kong “on its own.”

Finally, Article 22(1) of the Basic Law prohibits Mainland authorities from interfering in the affairs of the Hong Kong SAR. The creation of a new set of entities – including a new Central People's Government entity based in Hong Kong – that will have wide-ranging authority would seem to be just the sort of development that Article 22 is meant to prevent.

### **The NSL and the Courts: Judicial Independence at Risk**

The NSL also carries with it quite grave threats to judicial independence in Hong Kong. The NSL undermines judicial independence in at least three ways: first, by placing certain elements of the NSL apparatus beyond the scope of judicial review. Article 14 of the NSL, for example, states quite clearly that “(d)ecisions made



by the Committee [for Safeguarding National Security] shall not be amenable to judicial review.” In effect, Article 14 places the NSL apparatus above the law, and potentially makes it invulnerable to both legal and public scrutiny.<sup>36</sup> Such a provision raises deep concerns about Beijing’s commitment to the common law, and to the integrity of Hong Kong’s political system as a whole: common law legal systems view judicial review of executive action as a fundamental legal principle, without which executive authority is essentially unbound.

Second, the law’s vague and overbroad criminal provisions could be used to target peaceful political expression. The use of these provisions against peaceful political activists has created a difficult dilemma for the Hong Kong judiciary: either abandon the judiciary’s role as the key enforcer of the basic rights provisions in Hong Kong’s Basic Law, or face a possible high-profile clash with Beijing, one that could carry significant negative consequences for the rule of law in Hong Kong. As some of the initial speech-focused NSL cases make their way through the courts, many legal observers worry that just such a clash is only months away.

The judiciary’s role in protecting basic rights is made all the more difficult by Articles 62 and 65 of the NSL, which limit the role of the judiciary in interpreting the NSL, and also place the NSL in a superior position to other Hong Kong laws, including laws like the Bill of Rights Ordinance. Under Article 65, the NPCSC is vested with the power of interpretation of the NSL, which – if the NPCSC’s use of its Basic Law Article 158 authority is any guide – it could use to entrench a conservative reading of the NSL’s core provisions, and to deflect any efforts by the Hong Kong courts to judicially minimize the damage done to human rights and the rule of law in Hong Kong.

Article 62 states that the NSL “shall prevail” over provisions of local laws of the Hong Kong in cases of direct conflict. This would likely mean that local laws like the Bill of Rights Ordinance would be subordinate to it, and that they could not be used to blunt the impact of, for example, the NSL’s vague and overbroad criminal provisions. That said, the NSL makes explicit reference to both the Basic Law and to the ICCPR, and confirms that the basic human rights enshrined in those documents remain intact.<sup>37</sup> As a law passed by the National People’s Congress, the Basic Law itself is not covered by Article 62;<sup>38</sup> indeed, one could argue that it possesses a somewhat higher status than the NSL, which was passed by the NPCSC.

Finally, the law openly contemplates the removal of key cases from Hong Kong to Mainland courts, a further

---

<sup>36</sup> Article 14 also states that “(i)information relating to the work of the Committee shall not be subject to disclosure.”

<sup>37</sup> NSL, Article 4.

<sup>38</sup> Though the Basic Law is indeed a law passed by the NPC, it possesses other dimensions, including an international dimension given its grounding in the joint declaration, and a constitutional dimension, given its role as the fundamental law for Hong Kong. See Gittings, *Introduction to the Hong Kong Basic Law*, “Chapter 3: What Is the Hong Kong Basic Law?,” pp. 37-50.



threat to judicial independence. Under Articles 55 and 56 of the NSL, Beijing has seemingly open-ended authority to remove cases from Hong Kong to Mainland courts, if it determines that a case is sufficiently “complex” or “serious” to merit such removal.<sup>39</sup> In the eyes of some, Article 55 carries with it an implicit threat: deliver verdicts that are satisfactory to Beijing, or the Communist Party will simply use Article 55 to take matters into its own hands.<sup>40</sup> In a very real sense, the implicit threat to the authority of the Hong Kong courts implied by Article 55 undermines the judicial independence promised by Article 85 of the Basic Law, and the jurisdiction of the courts “over all the cases in the Region” established by Article 19(2) of the Basic Law.<sup>41</sup>

Even more importantly, perhaps, Article 55 casts doubt on the right of individuals accused of a crime in Hong Kong to a fair trial, guaranteed by Article 87 of the Basic Law. Simply put, Mainland courts are not independent of the ruling Communist Party,<sup>42</sup> and generally fail to live up to basic minimum standards for a fair trial in cases that could be deemed political, as virtually any NSL case removed to the Mainland under Article 55 would be. The impact of a decision by Beijing to remove a criminal case from Hong Kong to Beijing would be significant and immediate: even a single use of Article 55 to remove a case to the Mainland would undermine the authority of Hong Kong’s judiciary, and create deep uncertainty and even anxiety among the people of Hong Kong.

It is perhaps not surprising that Beijing has created a mechanism for trying NSL suspects in Mainland courts. Senior Communist Party officials have made no secret of their frustration with the Hong Kong judiciary’s unwillingness to subject members of the pro-democracy movement in Hong Kong to harsh criminal penalties.<sup>43</sup> Pro-Beijing politicians – including sitting members of the LegCo – have done the same.<sup>44</sup> Article 55 gives Beijing a tool to ensure that key cases brought under the NSL are handled fully in accordance with the central government’s wishes.

---

39 HK NSL, Art. 55(1) and (2).

40 Given its broad scope, and its lack of human rights protections, one prominent Hong Kong-based lawyer referred to Article 55 as “probably the most objectionable article in the NS Law.” Paul Harris and Chow Hang Tung, *National Security Law and Basic Law: an Article by Article Comparison*, unpublished manuscript on file with author, p. 51.

41 In a 2011 Interpretation, the NPCSC made clear that the Hong Kong courts do not have jurisdiction over acts of state relating to defense and foreign affairs. For more on Beijing’s power to interpret the Basic Law under Article 158(3), which includes an analysis of the 2011 interpretation, see Cora Chan, “The Legal Limits on Beijing’s Powers to Interpret Hong Kong’s Basic Law,” HKU Legal Scholarship Blog, November 3, 2016.

42 For an excellent analysis of the right to a fair trial in China, see Elisa Nesossi, “The right to a fair trial,” in Biddulph and Rosenzweig, eds., *Handbook on Human Rights in China*, Edward Elgar, 2019, pp. 493-515. Nesossi notes that “(t)he politics of the Chinese Communist Party (CCP), rather than considerations of due process and the protection of the rights of the accused... determines how the justice system functions.” Id., p. 495.

43 See, e.g., Yang Sheng, “HK judiciary must allay concerns about impartiality,” *China Daily*, September 18, 2020. In that piece, the (likely pseudonymous) Yang Sheng accused some judges of favoring pro-democratic defendants, and referred to some judges as “yellow judges,” a reference to the color adopted by the pro-democratic movement.

44 Chris Lau, “Hong Kong’s judiciary under fire over alleged leniency in protest cases: will a sentencing council redress claims of bias and lead to tougher penalties?,” *South China Morning Post*, September 25, 2020.

At the same time, Article 55 serves as an effective deterrent: in the past, activists, rights lawyers, and others could depend with reasonable certainty on the rights protections found in the Basic Law, precisely because the Hong Kong courts have shown themselves willing to protect those rights, even in politically sensitive cases. Going forward, pro-democratic activists and lawyers will face the risk that their peaceful political activities, which should be protected under Hong Kong law, could land them in Mainland courts.

### **The NSL's Criminal Provisions: Targeting Beijing's Political Opponents?**

As noted above, the NSL has four core criminal provisions: it covers secession, subversion, terrorism, and collusion with foreign entities, as well as incitement to engage in these actions, or other forms of support for them.<sup>45</sup> All four of these terms have a troubled history: both in Mainland China and in other jurisdiction, criminal provisions using these same terms have been used to punish individuals exercising their basic rights, including the rights to assembly, association, and free expression.<sup>46</sup> Over the past seven months since the NSL went into effect, clear signs have emerged that the law is indeed being used to target protesters, activists, journalists, lawyers, and others, merely for exercising their basic rights.

At the core of all four criminal provisions is the problem of vague and overbroad language, which could be used to punish peaceful acts of expression, association, and assembly. A core element of both international human rights law, and of the rule of law more generally, is the principle of legal certainty,<sup>47</sup> which holds that criminal laws must be sufficiently narrowly defined, so that citizens are aware which behaviors constitute a criminal offense. Overly-broad laws can be arbitrarily applied to political opponents of a given government, and thus invite political targeting and other forms of abuse.<sup>48</sup>

ICCPR jurisprudence has also repeatedly referenced the importance of the principles of legality, proportionality, and necessity in the drafting of national security laws. Such concerns are present in the NSL's criminal provisions: existing Hong Kong law already criminalizes such matters as intelligence gathering on behalf of foreign powers, and also acts of terrorism against the state. In that context, it is questionable whether additional provisions are truly necessary, particularly in the absence of any new or immediate national

---

45 Unlike the other three core crimes, the NSL crime of collusion with foreign forces does not include an incitement provision.

46 In 2016, for example, Chinese activist Zhang Haitao was sentenced to 19 years in prison, for inciting subversion of state power and for providing intelligence overseas. The charges stemmed from his peaceful rights activism, including articles that he wrote and posted online that were critical of the Chinese government. Chinese Human Rights Defenders, "Freedom of Association Under Assault in China: Arbitrary Detentions and Disappearances," *China Human Rights Briefing*, January 8-21, 2016.

47 ICCPR, Article 15(1).

48 OL CHN 17/2020, 1 September 2020.



security threat to Hong Kong's government. Given the stiff penalties that may be meted out under the NSL's criminal provisions – which in many cases include up to 10 years in prison, and in certain circumstances can be punished by life imprisonment – the question of proportionality is also quite clear.

In interviews, legal experts expressed the concern that the NSL attempts to target the peaceful exercise of civil and political rights. In other words, the broad language of the core criminal provisions of the NSL is likely over-broad *by design*, and meant to send a message to peaceful pro-democratic protesters that Beijing now has the tools it needs to deal with protesters both more sternly, and, if needed, directly. After July 1, 2020, protesters and activists will no longer be able to as easily hide behind the rights protections found in the Basic Law, or rely on the independence and professionalism of the Hong Kong courts.

Such vague and overbroad language violates the international human rights covenants to which both Hong Kong and China are a party, and which are also embedded in Hong Kong Law. Article 39(1) of the Basic Law states that both the ICCPR and the ICESCR “remain in force” in Hong Kong, and that those covenants should be implemented through the laws of the SAR.



AN UNAUTHORIZED ANTI-NSL PROTEST ON OCTOBER 1, 2020. THE SIGN READS, “Give me back my home, give me back my rights.”

At the national level, China's obligation to adhere to international human rights law in Hong Kong is clear. China has signed but not ratified the ICCPR, which means that it is under an obligation not to take any action that contravenes the object and purpose of the Covenant. Beijing has also signed and ratified several other key international human rights instruments.<sup>49</sup> At the same time, China is bound by the Joint Declaration to respect international human rights norms in Hong Kong, including the ICCPR as applied in Hong Kong.<sup>50</sup> As a binding international treaty that remains in effect, the Joint Declaration creates a legal obligation on Beijing that persists to this day.<sup>51</sup>

Beijing reaffirmed its Joint Declaration international human rights obligations in the Basic Law itself. Article 39 of the Basic Law states that the ICCPR, the ICESCR, and key international labor rights conventions "shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region." In addition, the Basic Law itself protects key rights that are threatened by the NSL, including the rights to expression, association, assembly, and press freedom.<sup>52</sup>

Each of the criminal provisions raise both overlapping and distinct concerns related to human rights and the rule of law.

Article 20, the provision on secession, prohibits (*inter alia*) "separating" the Hong Kong SAR from the People's Republic; "altering by unlawful means the legal status" of Hong Kong; and "surrendering" the SAR to a foreign country. Use of force or the threat of force is not a required element of the crime. Article 21 of the NSL covers efforts to incite or to aid and abet secessionist acts, including the provision of financial support.

To be sure, states can, consistent with their obligations under international human rights law, prohibit acts of secession, provided that such provisions are narrowly tailored to primarily cover violent acts that are meant to overthrow the state, or to end its sovereignty or control over a particular piece of territory, or clear an unequivocal incitement to such acts of violence.<sup>53</sup> That said, peaceful advocacy of political independence is generally protected by international law. International jurisprudence and comparative

---

49 For a brief history of China's post-1979 engagement with international human rights law, see Yu-Jie Chen, "China's Challenge to the International Human Rights Regime," *NYU J. Int'l L. and Politics*, 2019, pp. 1183-91.

50 As section XI of Annex 1 of the Joint Declaration makes clear, international treaties to which Hong Kong is a party remain in effect, even if China itself is not a party to that same treaty. The U.K. acceded to the ICCPR on Hong Kong's behalf in 1976, which means that the Covenant remains in effect in Hong Kong.

51 Louisa Brooke-Holland, *Hong Kong: the Joint Declaration*, House of Commons Research Briefing, July 5, 2019.

52 Basic Law Article 27.

53 For a brief overview of international legal standards on free expression and incitement, see Navanethem Pillay, "Freedom of Speech and Incitement to Criminal Activity: a Delicate Balance," *14 New Eng. J. Int'l & Comp. L.* 203.



law best practice generally shuns the notion that individuals can be punished merely for their writing and speaking on this topic.<sup>54</sup>

With its vague and overbroad language, Article 20 seems to do exactly that. Terms like “surrendering” and “altering by unlawful means” are both broad and lack a concrete legal basis, especially in common law jurisdictions similar to Hong Kong. Beijing has a particular sensitivity to pro-independence rhetoric, one that emerged even before the 2019 protests and the passage of the Basic Law. In 2018, for example, the Hong Kong SAR government banned the pro-independence Hong Kong National Party (HKNP), marking the first time in Hong Kong’s post-1997 history that any political party had been banned.<sup>55</sup> It has also prohibited prominent activists like Joshua Wong from running for office on the basis of their statements supporting self-determination for Hong Kong.<sup>56</sup>

Articles 20 and 21 seem to even more clearly signal Beijing’s determination to stamp out any element of peaceful pro-independence activity or even speech in Hong Kong, in clear violation of international law. Given the extreme political sensitivity surrounding pro-independence rhetoric, it remains to be seen whether Hong Kong judges will be able to extend Basic Law free expression protections to activists who are criminally charged under the NSL for pro-independence speech, including such seemingly minor acts as possessing pro-independence literature and shouting pro-independence slogans.

Article 22 of the NSL covers subversion, which includes “overthrowing or undermining” the People’s Republic; “seriously interfering in, disrupting, or undermining the performance of duties and functions” of the PRC or the Hong Kong government; or “attacking or damaging the premises and facilities” of the Hong Kong government. Article 23 covers incitement and aiding and abetting individuals engaged in subversive acts, including the provision of financial support.

As with secession, force or the threat of force is not an element of the crime.

---

54 For an excellent summary of international law related to pro-independence advocacy, see Carole J. Petersen, “Prohibiting the Hong Kong National Party: Has Hong Kong Violated the International Covenant on Civil and Political Rights?”, 48 *Hong Kong L. J.* 789, 796-802 (2018). That overview makes clear that, in some cases, incitement to violence can in fact be subject to prosecution in accordance with international law, but that mere peaceful advocacy for independence and self-determination cannot be considered a legitimate threat to national security, and thus should not be subject to criminal sanction.

55 Austin Ramzy, “Hong Kong Bans Pro-Independence Party,” *New York Times*, September 24, 2018. HKNP’s founder, Andy Chan, had been barred from running for election two years before, on the basis of his refusal to answer questions regarding his views on Hong Kong independence.

56 Wong was barred from the 2019 District Council elections on the basis of his prior support for self-determination for Hong Kong, which election officials equated with support for independence. See Alice Woodhouse and Nicolle Liu, “Hong Kong activist barred from standing in local elections,” *Financial Times*, October 29, 2019. In 2020, Wong, along with 11 other prominent pro-democratic politicians, was barred from running in the then-pending Legislative Council elections, on the basis of his opposition to the National Security Law. David Pierson, “Pro-democracy candidates barred from Hong Kong elections, activists arrested under national security law,” *Los Angeles Times*, July 30, 2020. The LegCo elections were later postponed to September 2021.

The subversion provision is deeply troubling: subversion is generally seen by legal experts as a “political” criminal provision, used to punish a government’s political enemies, and generally not used to tackle genuine threats to the existing political order.<sup>57</sup> As a group of U.N. experts put it in a letter to President Xi Jinping about the NSL, “(s)ubversion is almost uniformly directed towards the regulation of activity viewed as political under domestic law.”<sup>58</sup> For this reason, few if any common law legal regimes include a subversion provision in their criminal codes, a fact that the Hong Kong government itself acknowledged in 2003, when it first tried – and failed – to incorporate a subversion provision into Hong Kong law.<sup>59</sup>

The same problem with broad and imprecise language that dogs Article 20 on secession can also be found in Article 22: peaceful political protests that block access to government buildings, for example, could easily be swept up in the provision that prohibits interfering in or disrupting government duties and functions of the Hong Kong government, especially given the absence of a strict violence or threat of violence requirement. Acts of vandalism against government buildings or other state property – which certainly could be subject to legal sanction using other, narrower, criminal provisions – might also be deemed subversion under the NSL.

As a result, Article 22 likely would not meet the test for necessity and proportionality under international law. Simply put, there is no need to create a new criminal provision to deal with threats to the government that can be better handled by other, lesser criminal provisions and penalties. Experts in Hong Kong expressed concern that this provision was meant to target peaceful protesters who took part in protests that turned violent,<sup>60</sup> a common enough occurrence in Hong Kong in 2019, but not a phenomenon that fundamentally threatened the SAR government in any way.

Article 24 covers terrorist activities, and targets the use or threat of violent acts as part of an effort to “coerce” the central government or the Hong Kong government. Listed actions include “serious violence against a person or persons” and “explosion, arson, or dissemination of poisonous or radioactive substances.” Article 25 covers individuals who organize terrorist organizations, and Article 26 covers those who aid and abet such activities. Finally, Article 27 covers advocacy of and incitement to terrorism.

---

57 Perhaps the most famous subversion case in 21st century Chinese history is the 2009 prosecution of activist and writer – and eventual Nobel Peace Laureate – Liu Xiaobo. Liu was convicted of inciting subversion in 2009, over his participation in the drafting and circulation of the pro-democracy manifesto Charter 08, which called for extensive reforms to China’s political system to better protect human rights. For an excellent analysis of Charter 08 in the context of political reform debates in China, see Potter and Woodman, “Boundaries of Tolerance: Charter 08 and Debates Over Political Reform,” in Beja, Fu, and Pils, eds., *Liu Xiaobo, Charter 08, and the Challenges of Political Reform in China*, HKU Press, 2012, pp. 97-118.

58 CHN 17/2020, p. 8. The experts also point out that subversion as a crime is generally “deployed to punish individuals for what they think (or what they are thought to think) rather than on the basis of action or activities which pose a defined criminal threat.”

59 Thomas E. Kellogg, “Legislating Rights: Basic Law Article 23, National Security, and Human Rights in Hong Kong,” 17:2 *Colum. J. Asian L.*, 331-2.

60 Author interviews.



Many of the key elements of Article 24 track with efforts by the international community to develop legal language for counter-terrorism laws that are consistent with international human rights norms.<sup>61</sup> In particular, the U.N. Security Council has concluded that efforts to criminalize terrorism should include reference to death or serious bodily harm, and should also include a requirement of actual intent to terrorize a population.<sup>62</sup> These elements can ensure that counter-terrorism crimes cannot be mis-applied to cover activists or others who criticize the government, or even who attempt to influence or change government policy using peaceful tools such as public protest.

More troublingly, however, Article 24 also includes references to damage to physical property, including “sabotage of means of transport,” or “sabotage of electronic control systems for... public services such as water, electric power, (or) gas.” Such provisions can be used to punish protestors who engage in destruction of public property, either accidentally or intentionally, and can also be used to publicly smear a protest movement as engaged in terrorism, one of the most politically-charged terms in the contemporary political lexicon.<sup>63</sup>

Article 29 of the NSL collusion with a foreign country or entity, including efforts to provide “state secrets or intelligence concerning national security.” Article 30 creates a harsher penalty for those who engage in secession or subversion under NSL articles 20 and 22, if that activity includes contact with a foreign country or organization.

Both articles contain elements that are both potentially quite reasonable and acceptable from a human rights perspective. After all, most jurisdictions have laws that outlaw collusion with foreign powers in ways that are detrimental to national security. Such laws generally cover matters such as intelligence gathering, or efforts to impede or degrade a state’s national defense.

If Articles 29 and 30 were limited to such matters, they would be much less concerning. But Article 29 in particular uses broad language that could be used to criminalize peaceful – and exceedingly common – civil society activity, such as contacts between human rights groups in Hong Kong and international non-governmental organizations in the United States, Europe, and elsewhere. Article 29(1), for example, refers to efforts to collaborate with a foreign organization to “seriously disrupt... the formulation and implementation

---

61 CHN 17/2020, p. 5.

62 U.N. Security Council resolution 1566 (2004).

63 U.N. Human Rights Committee, General Comment 35 on the Right to Liberty and Security of Person, CCPR/C/GC.35.



of laws or policies by the Government of the Hong Kong Special Administrative Region.”<sup>64</sup> Such a provision could all too easily be used to cover lobbying efforts to change Hong Kong laws carried out jointly by Hong Kong and international groups, or merely to efforts by Western foundations to fund such efforts by Hong Kong activist organizations.

Articles 29 and 30 fail to meet the standard of narrow tailoring required by Article 15(1) of the ICCPR, and similar concerns could be raised about proportionality and necessity.<sup>65</sup> At the same time, these provisions put at risk the right of free association of the people of Hong Kong, as protected by ICCPR Article 22, and by Basic Law Article 27. For decades, starting well before the 1997 handover, Hong Kong has served as a key point of contact between the international community and groups and individuals in Hong Kong working both on Hong Kong and Mainland China. This wide-ranging set of contacts – which includes everything from academic exchange to collaboration on human rights to journalism and media endeavors – is put at risk with the passage of the NSL.

As important as the international human rights analysis of Articles 29 and 30 may be, it is equally important to see them in the context of the global trend of closing civil society space, even in democratic and partially democratic countries. For nearly two decades, a number of countries have moved to make life more difficult for local activist groups, particularly those focused on human rights, by weakening or severing their ties with their international partners.<sup>66</sup> Some governments have used new laws to cut NGOs off from key sources of foreign funding.<sup>67</sup>

China itself is no stranger to this game: in 2014, it passed a highly restrictive Foreign NGO Law, which put onerous registration and reporting requirements on all foreign NGOs operating in the country, and also enacted stiff legal penalties for both local and international groups that engaged in funding relationships or other forms of support outside the ambit of the law.<sup>68</sup> That law has largely been successful in bringing down

---

64 It is true that this provision makes reference to such acts that are “likely to cause serious consequences,” which could be helpful in the context of judicial limitation of Articles 29 and 30 by Hong Kong judges. That said, Chinese courts would likely be less willing to make meaningful use of this language, in the context of cases that are referred to them under Article 55 of the NSL.

65 Necessity is a particular concern, given that Hong Kong already has on its books laws that prohibit espionage and intelligence gathering on behalf of foreign powers, including the colonial-era Official Secrets Ordinance. Carole J. Petersen, *Balancing National Security and the Rule of Law: Article 23 of the Hong Kong Basic Law*, Hong Kong Watch report, November 2018, pp. 8-10.

66 Thomas Carothers and Saskia Brechenmacher, *Closing Space: Democracy and Human Rights Support Under Fire*, Carnegie Endowment for International Peace, 2014, pp. 7-15. The authors note that “(g)overnments are erecting legal and logistical barriers to externally sponsored democracy and rights programs they deem too politically intrusive, publicly vilifying aid groups as well as their local partners, and harassing or expelling such international groups altogether.” *Ibid.*, p. 1.

67 Carothers and Brechenmacher also note that “(o)f particular concern to many national and international democracy and rights activists is the viral-like spread of new laws restricting foreign funding for domestic nongovernmental organizations (NGOs).” *Ibid.*

68 Thomas E. Kellogg, “The Foreign NGO Law and the Closing of China,” in Weitseng Chen and Hualing Fu, eds., *Authoritarian Legality in Asia: Formation, Development, and Transition*, Cambridge University Press, 2020.



the number of rights-focused funders operating inside China, and in cutting off key sources of support for grassroots activists.

Articles 29 and 30 of the NSL bring some of these same tools to bear to the Hong Kong context. Since the NSL went into effect on June 30, 2020, several local groups have paused or ended their collaboration with international groups, and have held off on sending individuals on training and lobbying visits to the U.S. and Europe. It remains to be seen whether the impact of the law can be sustained over time. Still, with the passage of the NSL, Hong Kong joins the long and growing list of jurisdictions that have seen their ties to the international community significantly weakened by legal restrictions that potentially criminalize those contacts.

### **NSL Human Rights Provisions: Judicial Shield or Fig Leaf?**

As the above analysis makes clear, the NSL poses a serious threat to human rights and rule of law in Hong Kong: its new structures undermine Hong Kong's political and legal institutions, which are meant to protect the rights of the people of Hong Kong. And its criminal provisions are constructed in ways that make it possible for the authorities to punish basic protected political activity, including public protest, political speech, and association with like-minded individuals and organizations, both in Hong Kong and overseas.

What, then, to make of Articles 4 and 5 of the NSL? Article 4 of the NSL clearly states that "(h)uman rights shall be respected and protected in safeguarding national security in the Hong Kong Special Administrative Region," and directly ties both Basic Law human rights provisions and the key international human rights covenants to the implementation of the NSL. Article 5 complements Article 4, reiterating basic rule of law norms that apply to all aspects of the NSL, including the right to the presumption of innocence, the right to basic due process rights at trial, and the right not to be tried twice for the same crime.

If rigorously applied to NSL cases by the Hong Kong courts – and, one hopes, by the national security bodies set up by the NSL – these provisions could significantly limit the negative impact of the NSL on Hong Kong's legal and political institutions. Such provisions could, for example, be used to ensure that only genuine national security crimes are prosecuted under the NSL, and that efforts to punish so-called speech crimes are turned away by the courts.

Only time will tell how and whether these provisions are used, and whether they can become a successful tool for protecting basic rights in Hong Kong. Still, these provisions raise a key question: if, as this briefing paper has argued, the goal of the NSL is in fact to increase Beijing's hold over Hong Kong, why include provisions that might cut against that effort?

It's certainly possible that these provisions are mere window dressing, meant to signal a commitment to human rights under the NSL that doesn't actually exist. These provisions could also prove at least somewhat politically useful, providing pro-Beijing lawmakers in Hong Kong with a at least a partial rhetorical shield against the law's most vocal critics. And they might also be meant to assuage the fears of Beijing's rank-and-file supporters in Hong Kong, signaling to them a commitment to Hong Kong's rule of law and rights framework that may be more rhetorical than substantive.

These provisions may also provide Beijing with a degree of flexibility, if and when needed.<sup>69</sup> If the NSL performs its role largely by serving as a symbol of Beijing's determination to crack down on perceived threats to its authority, which in turn leads to wide-ranging self-censorship or even exit from Hong Kong, then criminal convictions become less crucial to its effectiveness. Articles 4 and 5 can then be used by the Hong Kong courts to protect basic rights, in ways that Beijing can embrace, or at least accept. If circumstances change, or if a specific case emerges that is more crucial to Beijing's interests, then the Party leadership can use Article 55 to exert direct control, regardless of the strictures of Articles 4 and 5.

Given Beijing's black-box drafting process, it's impossible to know what purpose Articles 4 and 5 are meant to serve, or what political motivations – if any – led Beijing to include those provisions in the final version of the NSL. Nonetheless, their inclusion in the NSL text is welcome, even if it remains to be seen whether and how these provisions could actually be used to reorient the core provisions of the NSL in a direction that is more consistent with the Basic Law and the ICCPR.

---

69 Flexibility has been a key element of Beijing's approach to governance, both during the Reform era, and even before. See, e.g., Sebastian Heilmann, *Red Swan: How Unorthodox Policy Making Facilitated China's Rise* (Hong Kong, China: The Chinese University Press, 2018). Heilmann makes a persuasive case that the CCP's flexible approach to policy-making played a key role in launching its historic, decades-long economic boom.



## IMPLEMENTATION OF THE NSL

When the NSL went into effect on June 30, 2020, some observers hoped that it would serve more as a latent threat, and not as an active tool. Many hoped that both the Hong Kong government and Beijing might see the passage of the law itself as a sufficient deterrent, a clear signal to those in the pro-democratic movement that they were serious about ending the (from their point of view) chaos and instability of the 2019 protests.

Those hopes for restraint on the part of the authorities have, thus far, been dashed. Far from being a sort of sword of Damocles, hanging over the heads of the people of Hong Kong, instead the law has been pressed into immediate and wide-ranging use, and its impact has been felt in virtually all sectors of Hong Kong society. This section will describe and analyze the government's use of the NSL over the past seven months, documenting the ways in which it has deeply impacted both the legal system and political life.

The NSL is but one element of a sustained and wide-ranging effort by both Beijing and the SAR government to bring Hong Kong under greater political control, with significant implications for the future of the former British colony. This effort is unprecedented since the 1997 handover, and has targeted virtually every element of civic and political life in Hong Kong, including the legislature, the courts, the government's own bureaucracy, independent media, NGOs, social movements, independent activists, academia, and key professional groups, including teachers, lawyers, and others.

“Every single part of what makes Hong Kong Hong Kong is being challenged,” one longtime activist told us.<sup>70</sup>

Much of this effort – including the July decision to postpone LegCo elections for a full year<sup>71</sup> and the November disqualification of four pro-democratic legislators from the LegCo,<sup>72</sup> to give but two of many

---

<sup>70</sup> Author interview 1.

<sup>71</sup> Helen Davidson, “Concern as Hong Kong postpones elections for a year, citing Covid-19,” *The Guardian*, July 31, 2020. Though the government cited public health concerns in announcing the postponement, the decision was widely seen as politically-motivated.

<sup>72</sup> Austin Ramzy, Tiffany May, and Elaine Yu, “China Targets Hong Kong’s Lawmakers as It Squelches Dissent,” *New York Times*, November 11, 2020. Following the disqualifications, virtually all of the remaining pro-democratic legislators resigned their seats, leaving the LegCo virtually without any political opposition for the first time since 1997.

examples – is beyond the scope of this report. But it's important to note that the actions described in this section are taking place against a broader backdrop of political retrenchment and assertion of greater control by Beijing over Hong Kong.

### **NSL Cases Overview – Free Expression, International Contacts, and Mainstream Politics**

The NSL has influenced Hong Kong in a number of different ways: it has mandated officials across the SAR government to incorporate NSL directives into their policymaking, for example. And it has extensively chilled political speech and political activity by many in the pro-democratic camp, weakening political dialogue and debate at a time when it is urgently needed.

Still, much of the attention given to the NSL has focused on its core criminal provisions, and the ways in which the government can use those provisions to punish peaceful political activity that should be protected under the Basic Law. This section attempts to analyze the NSL's use as a criminal law over the first seven months of its existence, with a focus on its use to investigate, arrest, and prosecute individuals for both NSL crimes and non-NSL crimes.

The government has made regular use of the NSL, starting from its first full day as binding law. On July 1, 11 individuals were arrested under the NSL; all had been taking part in protests marking the 23rd anniversary of Hong Kong's reversion to Chinese sovereignty. As of this writing, 86 individuals have been arrested for crimes under the NSL, including 14 individuals who have been arrested for a combination of NSL and non-NSL crimes.<sup>73</sup> An additional 19 individuals have been arrested by the NSD for other non-NSL crimes, for a total of 105 cases.

The NSL remains in active use: Hong Kong police have made at least one arrest per month under the NSL since July, including a record 53 arrests in January. Given that the SAR is politically stable, and faces no known significant national security threats, the government's use of the NSL over the past seven months seems excessively robust, and also disproportionate. By contrast, the government has gone decades without a

---

<sup>73</sup> In one case, that of an unnamed female who was arrested at a public demonstration on September 6, 2020, in connection with her alleged use of pro-independence slogans, we were unable to unearth any information about this individual's alleged offense. Nonetheless we have classified it as an NSL crime, given the likelihood that it relates to alleged advocacy of secession under Article 21 of the NSL.



single prosecution under the sedition provision of the Crimes Ordinance, and other national security-related criminal provisions have seen similarly low levels of use.<sup>74</sup>

A closer look at the arrests that have taken place thus far reveals some interesting aspects of the government's use of the NSL since its implementation. Over the past seven months, the NSL has been used repeatedly as a tool to threaten and suppress political expression, in particular pro-independence speech or other forms of expression. A full 22 of the initial 105 NSL arrests, and four of the first five cases charged under the NSL, have to do with so-called seditious or pro-secessionist speech, or possession of such materials. Of those, 12 are "pure" speech cases, such as chanting and displaying pro-independence slogans, and do not involve other alleged crimes. The other 10 involve a combination of alleged speech crimes and other acts. It seems clear that a major initial goal for both Hong Kong and Beijing is to stamp out – or at least severely limit, both through direct and indirect means – the use of pro-independence slogans at rallies and elsewhere, and the circulation of pro-independence statements online and in other media.

A second core element of the use of the NSL thus far is a push to break ties between the Hong Kong pro-democracy movement and its supporters in the international community. Thirteen of the initial 105 cases involve contacts with foreign or overseas forces, and six involve allegations of the specific NSL crime of collusion with foreign forces. As discussed in more detail below, those arrested for collusion include some of the highest-profile individuals yet arrested under the NSL, including both Jimmy Lai and Agnes Chow. The Lai and Chow cases are illustrative of the expanded scope of criminality under the NSL: now that certain contacts with foreign actors has been criminalized, the authorities are now able to go after more high-profile individuals who, prior to July 1, were less vulnerable to criminal prosecution.

The third prong of NSL arrests includes the 53 pro-democratic legislators and activists who were arrested on January 6, 2021. Those arrests have hamstrung Hong Kong's peaceful political opposition, and could mark the end of formal opposition politics in Hong Kong for years to come. The arrest of 53 opposition politicians and activists suggests that the NSL is being used to fundamentally reshape Hong Kong's formal politics, with very real implications for who is allowed to run for office, how political parties can organize themselves, and whether and how opposition political parties are able to challenge government policy.

There are four cases that more closely adhere to internationally-accepted standards for national security prosecutions. Of the 105 NSL cases that have emerged thus far, four involve alleged plans for the commission

---

<sup>74</sup> As discussed in more detail below, pro-democracy activist Tam Tak-chi was charged with sedition under Hong Kong's Crimes Ordinance in September 2020, making him the first person to be charged under that provision since the 1997 handover.

of politically-motivated violence.<sup>75</sup> Though details on some of these cases remain scarce, it is possible that these four individuals could be legitimately charged with a crime. Whether it makes sense to charge these individuals with national security-related offenses, or rather with other crimes under Hong Kong's Crimes Ordinance, is a separate question, one that the Hong Kong government should closely consider as it moves forward with prosecuting these cases.<sup>76</sup>



*Prominent pro-democracy advocate Agnes Chow after her release on bail on August 11, 2020.*

**CHOW WAS AMONG THOSE ARRESTED FOR ALLEGED NSL CRIMES ON AUGUST 10.**

And yet, despite its at times high-profile approach to NSL arrests, the government has been slow to bring formal charges against those arrested under the NSL. Of the 105 individuals arrested by NSL authorities thus far, only five – Tong Ying-kit, Tony Chung, Adam Ma, Lui Sai-yu, and Jimmy Lai – have been charged with NSL crimes. A sixth, Tam Tak-chi, was initially investigated for sedition under the NSL, but – for reasons that remain unclear – was charged with sedition under the Crimes Ordinance. Royston Chow,

<sup>75</sup> Those four are Lai Chun-pong; Lui Sai-yu; Lui Sai-yu's mother, whose name has been withheld from the press; and Ng Wing-tak.

<sup>76</sup> We did not include the Tong Ying-kit case in this category. Tong, who has been charged with inciting secession, terrorism, and dangerous driving, allegedly drove his motorcycle into a group of police officers while carrying a pro-independence banner on July 1, 2020. According to publicly-available news reports, Tong seemed to be trying to evade arrest, rather than deliberately targeting police officers; also, no evidence has emerged to suggest that Tong engaged in significant prior planning, or had a larger specific political goal that was tied to his alleged criminal acts, which would mean that his case would differ from the others in this category as regards violent intent.



Wong Wai-keung, and Lai Chun-pong were also arrested by NSL authorities, but they have been charged with a non-NSL crime, specifically conspiracy to defraud for Chow and Wong, and conspiracy with intent to injure for Lai. Disturbingly, seven of the nine men have been denied bail.<sup>77</sup>

It's not clear why the government has been slow to move forward with charges against NSL arrestees. The government may have been initially reluctant to bring forward some of the cases that center on the use of pro-independence slogans at public rallies or the possession of pro-independence materials, given that such activities should be protected by the free speech protections found in Hong Kong's Basic Law. It's also possible that the government is using the NSL as an implied threat: those who have been arrested, but not yet charged, under the NSL might more closely watch what they do, and what they say, given that criminal prosecution could be revived at any time.

Even if an individual isn't formally charged after being arrested under the NSL, she or he still has to deal with some significant burdens, oftentimes for several months after the initial arrest. According to journalists in Hong Kong who have closely followed NSL cases, bail for those arrested under the NSL can be as much as HK\$200,000 (roughly US\$25,800) or more, and in some high-profile cases bail has been denied.<sup>78</sup> For those who have been granted bail, their travel documents have also been confiscated, meaning that they cannot leave Hong Kong until their NSL arrest is resolved.<sup>79</sup> Individuals out on bail also face the mental and emotional strain of knowing that they could be re-arrested, and also criminally prosecuted, at any time.

Finally, the government has not hesitated to arrest individuals for both NSL crimes and for other crimes not covered by the NSL: of the 86 individuals arrested under the NSL thus far, 14 have been linked by the police to both NSL and non-NSL crimes. The NSD has also arrested 19 individuals for non-NSL crimes. This is troubling because it may indicate that the newly-created – and highly-empowered – NSL apparatus is being used to investigate both NSL crimes and other crimes, in seeming violation of its already quite broad statutory mandate.

---

77 Royston Chow and Wong Wai-keung have been released on bail.

78 Author interviews.

79 As this report was being finalized, the Hong Kong police announced the unconditional release of three youth activists who had been arrested for allegedly inciting secession under Article 21 of the NSL. The move came a full six months after their initial detention. The three are believed to be the first who have been unconditionally released by police after an NSL arrest. "Hong Kong security law: Arrested teen pro-independence activists first to be released unconditionally," *Hong Kong Free Press*, January 18, 2021.



# CASE STUDIES

## The Tong Ying-kit Case: Legitimate Threat to National Security?

The first NSL case emerged less than 24 hours after the law went into effect. During a protest on July 1, Tong Ying-kit, 23, allegedly drove his motorcycle into a group of police officers, injuring three. At the time of the incident, Tong was allegedly carrying a pro-democracy banner with the popular protest slogan, “Liberate Hong Kong, Revolution of Our Times.” Tong was immediately arrested, and was later charged with terrorist actions and inciting secession under the NSL, as well as with dangerous driving under the Crimes Ordinance.

Tong was denied bail, a decision which he immediately appealed. In a pair of decisions issued in late August, the court turned down Tong’s bail appeal, and also rejected a separate habeas corpus application filed on his behalf.

Tong appeared in court to plead not guilty to the charges against him on November 16.<sup>80</sup> His trial will begin in early 2021.

At first glance, the denial of Tong’s bail application in August might seem to be yet another worrying signal for human rights and rule of law in Hong Kong. And yet, there were some positive elements in those initial decisions in Tong’s case.<sup>81</sup> In denying Tong’s bail application, the High Court made clear that bail was in fact permitted in some NSL cases: given that the NSL itself refers directly to core human rights instruments and norms, it must also protect the presumption of innocence, which in turn means that bail must be permitted when and where possible.

Just as important, the High Court also made direct reference to the basic rights provisions in both the Basic Law and the Bill of Rights Ordinance, including Article 28 of the Basic Law, which protects Hong Kong citizens against arbitrary arrest and detention. This reliance on the Basic Law is key: it means that the NSL is not divorced from Hong Kong’s overall legal framework, and that the Basic Law’s core human rights provisions do in fact apply to the NSL. As the judges in the case put it, “the court is under a duty

80 John Cheng and Kari Soo Lindberg, “First Man Charged Under Hong Kong Security Law Pleads Not Guilty.” *Bloomberg News*, November 16, 2020.

81 This section draws upon Thomas E. Kellogg, “The Tong Ying-kit bail decision: A hopeful signal for Hong Kong’s human rights and rule of law?,” *Hong Kong Free Press*, September 19, 2020.



to protect the fundamental rights accorded by the Basic Law and the Hong Kong Bill of Rights.”

Such direct language would have been taken as a truism before the NSL was applied to Hong Kong by the NPCSC. After July 1, however, the court’s almost rote restatement of its core constitutional function takes on a very different character. In the context of the NSL’s various direct and indirect threats to Hong Kong’s autonomy and the rule of law, the dual rulings send a subtle but undeniable signal to the Hong Kong government and to Beijing: the judiciary has not given up on its duty to protect the human rights of the people of Hong Kong.

The case against Tong raises a number of other legal concerns: the inciting secession charge, for example, would raise concerns about the punishment of political speech, which is generally frowned upon by international human rights law.

Perhaps most importantly, Tong’s case raises the question of whether the NSL might lead the police to treat garden-variety criminal cases as more serious national security cases, even when the circumstances suggest that the individual’s actions could adequately be handled by existing criminal law. Charging Tong with terrorism under the NSL suggests not only that he was engaged in an act of political violence, but also that his actions were guided by a significant degree of planning and premeditation.

In general, in other liberal jurisdictions, terrorism charges are meant to cover larger-scale acts of political violence that are, for the most part, premeditated. The terrorism provision of the NSL – with its references to large-scale sabotage of public facilities, or the use of explosive or other harmful substances – similarly points to large-scale events that often cause significant damage. According to press reports, Tong acted alone, and did not have an articulated and specific plan to coerce the government to take any specific action. The effect of his alleged actions was limited, and was not part of a larger, coordinated act of political violence.

Given these elements of the case, it’s unclear whether a terrorism charge – generally considered to be one of the most serious criminal charges that a government can lay against an individual – makes sense. The decision to charge Tong with terrorist actions raises the concern that the NSL’s application to Hong Kong is nudging the SAR government to apply a national security framework in ways that may not fit, and may do harm to rule of law in Hong Kong.

## The August 10 Arrests: Jimmy Lai, Agnes Chow, and Eight Others

Just after dawn on August 10, police arrived at the home of media mogul and prominent pro-democracy advocate Jimmy Lai and arrested him. At roughly the same time, police arrested his two sons at their residences. Lai was arrested under the NSL for alleged collusion with foreign forces, which is covered by Article 29 of the NSL. He was released on bail the next day, as were his two sons.

That same afternoon, leading pro-democracy activist Agnes Chow was arrested at her home. She was held for over 30 hours, before being released on bail at 11 p.m. the next day. After her release, Chow suggested that her detention was politically-motivated, and that the authorities had failed to clearly inform her of the reasons for her arrest. “It is political persecution and political suppression,” Chow said. “I still don’t understand why I was arrested.”<sup>82</sup>

August 10 would turn out to be a very busy day for Hong Kong’s national security authorities: in total, 10 individuals were arrested by the Hong Kong police national security unit on that day. Six individuals were arrested under the NSL: Jimmy Lai; his younger son Ian Lai Yiu-yan; Royston Chow Tak-kuen, Next Media chief operating officer and chief financial officer; Agnes Chow; Wilson Li, a freelance journalist and former member of the now-defunct student activist group Scholarism; and Andy Li, a pro-democracy activist.

Four other Next Media executives were also arrested on August 10, including Timothy Lai Kin-yang, Jimmy Lai’s elder son; Next Media CEO Cheung Kim-hung; Next Media chief administrative officer Wong Wai-keung; and Next Animation Director Kith Ng Tat-kong. The four were arrested for allegedly engaging in conspiracy to defraud under Hong Kong’s Crimes Ordinance. The four – along with Jimmy Lai himself and Royston Chow, who were also accused by the police of conspiracy to defraud, along with the NSL allegations – were detained over the sub-letting of part of Next Media’s offices to a consulting company, which the government alleged violated the terms of the media company’s land lease.<sup>83</sup>

The fraud charges against Lai, his sons, and his colleagues struck legal experts we interviewed as unusual, and likely politically-motivated. Lawyers we spoke with suggested that any violations of Next Digital’s lease agreement could be handled administratively, and that the criminal charges seemed heavy-handed, at best.<sup>84</sup>

<sup>82</sup> Clifford Lo, Christy Leung, and Chris Lau, “National security law: Hong Kong media mogul Jimmy Lai freed on bail as activist Agnes Chow calls her arrest ‘political persecution and suppression,’” *South China Morning Post*, August 11, 2020.

<sup>83</sup> Claire Jim, “Hong Kong media tycoon Jimmy Lai denied bail after fraud charge,” *Reuters*, December 3, 2020.

<sup>84</sup> Author interview 6.



Just hours after taking Lai into custody, more than 200 police officers raided the offices Lai's company, Next Digital, which is the parent company of the pro-democracy tabloid *Apple Daily*. The office raid was live-streamed by *Apple Daily* journalists, many of whom were taken aback by the presence of dozens of police officers in their newsroom. Twenty-five boxes of documents were taken by the police as evidence during the raid.

Lai and Chow's arrests signaled to many that Beijing would use the NSL to overtly target its political opponents. Their arrests came just six weeks after the law came into effect, and the two remain among the highest-profile individuals arrested under the law. Arresting both Lai and Chow on the same day also feeds Beijing's longstanding political narrative of the protest movement: that Hong Kong elites like Lai are colluding with foreign powers, and using young radicals like Chow to undermine political stability in Hong Kong.<sup>85</sup> Lai's arrest in particular seemed to confirm the fears of activists in Hong Kong that the NSL would be used

---

<sup>85</sup> Author interviews. See also, De Lin et al., "香港警方大规模亮剑'乱港头目'黎智英被捕 [Hong Kong Police Have Arrested Jimmy Lai, the Leader of Massive Chaos Disrupting Hong Kong]," *The Global Times*, August 11, 2020.

as a political weapon. One activist told us that Lai's arrest was "not very surprising. If you read official sources, they have been targeting him for a very long time."<sup>86</sup> In August 2019, for example, Mainland media outlets launched a series of attacks on Lai, calling him one of a "gang of four" who – along with pro-democracy leaders Martin Lee, Anson Chan, and Albert Ho – was responsible for colluding with foreign forces to incite the large-scale protests then rocking Hong Kong.<sup>87</sup>

Others agreed that Jimmy Lai was at the very top of Beijing's enemies list. "Jimmy is the lead target," one Hong Kong-based lawyer told us. "He runs the one media group in Hong Kong that is uncensored, that is critical of Beijing. The aim is to topple Jimmy."<sup>88</sup> In other words, according to this analysis, Lai was arrested not because of specific actions that could constitute a crime under the NSL, but rather because the new law finally gave Beijing the tool it needed to go after him.<sup>89</sup>

At the same time, the arrest of Lai and the raid on *Apple Daily's* offices was also seen as a broader attack on press freedom in Hong Kong, seen by many as sending a signal to journalists about the perils of critical reporting in the wake of the implementation of the NSL. One activist told us, "he has been the target all the time. He runs the only paper that is not under control... They really want to get *Apple Daily*."<sup>90</sup> The raid was condemned by key press freedom watchdogs in Hong Kong, including both the Foreign Correspondents Club and the Hong Kong Journalists Association.

In the weeks following Lai's arrest, Hong Kong police said precious little about their investigation, making an in-depth legal analysis of the case difficult. Legal experts we interviewed expressed concern that Lai's arrest seemed to be – at least in part – a fishing expedition, an effort to use the broad provisions of the NSL to look into Lai's business activities in the hopes of finding criminal wrongdoing.<sup>91</sup> "They [the Hong Kong authorities] are probably working hard behind the scenes, hoping they will find something that will stick," one Hong Kong-based lawyer told us during the investigation phase of Lai's case.<sup>92</sup>

---

86 Author interview 3.

87 Sue-Lin Wong, "Hong Kong's 'Gang of Four' hits back at Beijing," *Financial Times*, August 22, 2019.

88 Author interview 6.

89 Author interview 6. Another Hong Kong-based interviewee told us, "there used to be no excuse to arrest Lai and Chow because international advocacy was legal. But after the NSL, these activities can be suppressed... the NSL allows [the authorities] to get the leaders." Author interview 11.

90 Author interview 2.

91 Author interview 10. The authorities have apparently launched an extensive investigation into Lai's business affairs, looking at documents and other items from a range of companies. "總裁判官蘇惠德上周五批出手令 涵蓋 19 間公司商業紀錄、會計人事文件及數碼檔案 [The Warrant Issued on Friday by Chief Justice So Wai-Der Covers the Business Records, Accounting Personnel Documents and Digital Files of 19 Companies]," *Stand News*, August 10, 2020.

92 Author interview 6.



That said, statements by Hong Kong authorities, as well as reports in pro-Beijing media outlets, suggest that both Lai and Agnes Chow were investigated for peaceful political activities, seemingly all undertaken before the NSL went into effect.

Speaking at a press conference convened in the evening of August 10, NSD Senior Superintendent Li Kwai-wah stated that two men and one woman – presumably referring to Chow, Wilson Li, and Andy Li – allegedly participated in an organization that advocates for the sanctioning of Hong Kong officials by foreign governments.<sup>93</sup> Li also stated that three others – almost certainly Lai and his two *Apple Daily* colleagues – were suspected of financially supporting the organization through overseas bank accounts. Li claimed, without presenting any evidence, that this group was still active after July 1.

On August 12, the pro-Beijing *Wen Wei Po* revealed that the organization that Li referred to is *Wo Yao Lam Chau* (also known by its English name, Stand With Hong Kong, or SWHK),<sup>94</sup> a loosely-affiliated group formed in 2019 to conduct peaceful overseas campaigns to lobby for sanctions against Hong Kong officials.<sup>95</sup> Multiple pro-Beijing media outlets also reported that the NSD had issued an arrest warrant for Finn Lau, the leader of SWHK who coined the term *lam chau*.<sup>96</sup> Lau, who had been based overseas during the 2019 protests, fled Hong Kong for the UK in early 2020.<sup>97</sup>

For reasons that remain unclear, the police investigation seemed to focus quite heavily on actions that took place before the NSL went into effect, despite the NSL's explicit prohibition on retroactive prosecution. Both the official statements of Hong Kong Police Force officials, as well statements by prosecutors, discussed below, suggest that national security investigators have looked quite closely at the actions of both Jimmy Lai and Agnes Chow before June 30, 2020.<sup>98</sup>

On the day of Lai and Chow's August 10 arrests, for example, police investigators visited the office of the

---

93 “拘5男1女涉違《港區國安法》 李桂華指與「宣傳制裁香港」組織有關 [Detaining 5 Men and 1 Woman under the HKNSL, Li Kwai-Wah Referred to the 'Propaganda and Sanctions against Hong Kong' Organization],” *Stand News*, August 10, 2020.

94 *Wo Yao Lanchao* loosely translates to “I Want Mutual Destruction.” The group was a leading force behind efforts to rally support in the international community for sanctions against Hong Kong officials, and also paid for advertisements in media outlets around the world calling on the June 2019 G20 Summit to press Chinese leaders on the Hong Kong protests.

95 “周庭涉網上運作「攞炒」團隊 黎智英疑為背後金主 [Agnes Chow Is Suspected of Operating the 'Mutual Destruction' Team, Jimmy Lai May Be the Patron Behind],” *Wenweipo*, August 12, 2020.

96 See, e.g., “黎智英案再多2男被通緝 [Two more men are wanted in the Jimmy Lai Case],” *hk.on.cc*, August 11, 2020.

97 Rachel Wong, “Wanted Hong Kong activist Finn Lau – behind the faceless 'Laam Caau' persona – says he will seize any 'chance of survival and give back,’” *Hong Kong Free Press*, October 25, 2020.

98 For her part, Agnes Chow publicly announced her resignation from the political party she helped found, *Demosisto*, on June 30, 2020, suggesting that she was stepping back from political activity just as the NSL was going into effect. Kelly Ho and Tom Grundy, “Leaders of Hong Kong pro-democracy group *Demosisto* step down as security law passes,” *Hong Kong Free Press*, June 30, 2020.

Nikkei, Japan's leading business newspaper, asking about an advertisement allegedly placed by SWHK in 2019, as part of its broader global advocacy effort.<sup>99</sup> Chow, a fluent Japanese speaker, is thought to be a key point of contact with Japanese media outlets, and many in Hong Kong believe that the visit to Nikkei's Hong Kong office was tied to the police investigation of Chow herself, in seeming violation of the NSL anti-retroactivity provision.<sup>100</sup>

Nearly four months after his initial arrest, Lai was arrested again on December 2, and formally charged with fraud. On December 11, Lai was charged with "collusion with a foreign country or external elements to endanger national security" under Article 29 of the NSL, which could lead to maximum sentence of life.

At a court hearing on December 12, prosecutors outlined the charges against Lai, and argued that the seriousness of the charges against him meant that he should be denied bail. And yet, many of the specific actions that the prosecution pointed to seemed largely to consist of peaceful political speech and advocacy, such as his July 2019 meeting with U.S. Secretary of State Mike Pompeo, and Lai's online calls for the release of the so-called Hong Kong 12 who were then being held in pre-trial detention on the Chinese mainland. The prosecution also cited Lai's participation in pro-democracy international campaigns before June 30, 2020, including his financial support for the SWHK advertisement in Nikkei (possibly facilitated by Chow); his published commentaries criticizing the central government's policies in Hong Kong; and efforts to launch an English-language version of his pro-democracy newspaper *Apple Daily*.<sup>101</sup>

Lai was denied bail after the December 12 hearing. On December 23, however, High Court Judge Alex Lee granted Lai bail on appeal, citing the bail decision in the Tong Ying-kit case as support for his decision. Lai's bail terms included a number of restrictions, including blanket prohibitions on media interviews and social media postings. Lai was also forbidden from leaving his home, and ordered to report to police three times a week.<sup>102</sup>

Just days later, however, the Court of Final Appeal (CFA) revoked Lai's bail, sending him back to pre-trial detention on December 31st. In the run-up to the CFA hearing, prominent Mainland state-run media outlets ran pieces heavily critical of the High Court's bail decision, at times suggesting that Lai should be

---

99 Xinqi Su, "Hong Kong Police Sift the Past to Pursue New Security Law Crimes," *Agence-France Presse*, August 27, 2020.

100 Author interviews 10, 11, and 18.

101 "控黎智英勾結外國危害國安 罪證竟是 Twitter 追蹤蔡英文, 斥習近平獨裁, 赴美見蓬佩奧 [The Indictment of Lai Zhiying for Colluding with Foreign Countries to Harm National Security Turned out to Be Following Tsai Ing-Wen on Twitter, Denouncing Xi Jinping's Dictatorship, and Visiting Pompeo in the US]," *Stand News*, December 13, 2020.

102 The stringent bail conditions – which also included a US\$1.3 million bail bond – were seen by many experts as highly unusual. Vivian Wang and Tiffany May, "No Tweets, No Interviews: Jimmy Lai's Unusual Bail Conditions," *New York Times*, December 23, 2020.



sent to the Mainland for trial under Article 55 of the NSL.<sup>103</sup> While no evidence has emerged to suggest that central government propaganda efforts had any impact on the CFA's bail decision, nonetheless the reversal pointed to the highly-charged political atmosphere that surrounds key NSL cases, including the case against Lai.

It now seems clear that the NSL allegations against Jimmy Lai, Agnes Chow, and the others arrested on August 10 do indeed center on their peaceful political advocacy efforts. In this context, the government should proceed with caution. Generally speaking, policy advocacy – even including the advocacy of sanctions against officials in one's own government – should be considered peaceful political activity, protected both by international human rights instruments like the ICCPR, and also the core human rights provisions of the Basic Law. The text of the NSL aside, it is hard to imagine how such activity could constitute a legitimate security threat that could, under international standards, be rightly subjected to criminal sanction.

### The Tam Tak-chi Case: Speech Crimes and Hong Kong Law

If the arrests of Jimmy Lai and Agnes Chow were about quelling foreign contacts, then the Tam Tak-chi case is about ending the use of pro-independence rhetoric in Hong Kong. Tam, 48, a longtime pro-democratic activist and politician associated with the progressive group People Power, was arrested at his home on September 6, 2020 by NSD police officials. According to senior superintendent Li Kwai-wah, police officers had initially planned to arrest Tam for NSL crimes, but then concluded that a sedition charge under Hong Kong's Crimes Ordinance made more sense.<sup>104</sup>

In arguing successfully against bail for Tam a few days after his arrest, prosecutors claimed that Tam had made seditious comments on multiple occasions between March 15 and July 19, and that he did so with the requisite intent to “bring hatred or contempt or excite disaffection” against the government, as required by the anti-sedition law.<sup>105</sup> In particular, prosecutors claimed that Tam used such slogans as

---

103 Di Su, “批准黎智英保释，对香港法治伤害太深 [Granting Bail to Lai Chi-Ying Is Too Damaging to the Rule of Law in Hong Kong],” *People's Daily*, December 26, 2020.

104 The shift away from NSL crimes raises concerns, not least because NSL investigations conducted by the NSD are exempted from key due process requirements, including the need to seek judicial authorization to engage in certain forms of electronic surveillance and other searches of criminal suspects. NSL Article 43.

105 In full, the relevant provision of the anti-sedition law requires that an individual intends to “bring into hatred or contempt or to excite disaffection against the government of the Hong Kong Special Administrative Region, to raise discontent or disaffection amongst inhabitants of Hong Kong, or to counsel disobedience to law or to any lawful order.”



“disband the police force,” “liberate Hong Kong, revolution of our times,” and “five demands, not one less,” in ways that were seditious and thus criminally actionable.<sup>106</sup>

A few weeks after his initial arrest, prosecutors filed additional sedition charges against him, claiming that he had made similarly seditious statements at a protest against the then-pending NSL at a public protest on May 24.<sup>107</sup> Tam had also been charged with three counts of disrupting public order in relation to his participation in that protest, which had not been legally approved by the Hong Kong authorities.

On December 3rd, a NSL-designated judge was assigned to hear Tam’s case, despite the fact that Tam was not charged under the NSL. The decision stemmed from a request by the prosecutor, who argued that Tam’s statements were in fact related to Hong Kong’s national security. That same day, Judge Stanley Chan also announced that Tam would stand trial in May 2021, which means that he will be imprisoned for at least eight months even before his trial begins.<sup>108</sup>

The move to prosecute Tam raises serious concerns about the government’s commitment to basic human rights. One lawyer we spoke to called it “the very worst case thus far,” citing the conflict between his basic human rights and the serious criminal allegations against him. In a media interview, former Hong Kong University Law School Dean Johannes Chan referred to the sedition provision as “antiquated,” and urged the government not to blithely “try their luck” by continuing with the case against Tam.<sup>109</sup>

The case against Tam is a classic “speech case,” in which the government is seeking to punish Tam for his words, separate from any allegedly criminal action. In general, international human rights law – including the ICCPR, which is directly incorporated into Hong Kong’s Basic Law – takes a very dim view of such crimes, and has generally allowed for the criminal prosecution of speech under very narrow circumstances, such as direct incitement to violence.

The decision to charge Tam with sedition under the Crimes Ordinance – rather than with subversion or incitement to secession under the NSL – is a perplexing one. From the government’s perspective, there are some definite downsides to choosing the Crimes Ordinance over the NSL: there is no doubt that the

---

106 Kelly Ho, “Hong Kong activist Tam Tak-chi asks court to drop sedition charges as they ‘breach’ Basic Law, democrat says,” *Hong Kong Free Press*, October 21, 2020.

107 Jasmine Siu, “Hong Kong opposition activist handed fresh sedition charge over anti-national security law protest,” *South China Morning Post*, September 14, 2020.

108 Kelly Ho, “National security judge assigned to Hong Kong pro-democracy activist Tam Tak-chi’s sedition case,” *Hong Kong Free Press*, December 3, 2020.

109 “Activist Tam Tak-chi charged with sedition for shouting anti-police slogans, bail denied,” *Apple Daily*, September 8, 2020.



Crimes Ordinance is subject to core Basic Law human rights provisions, and must be read in light of those protections. There is a higher likelihood, therefore, that the sedition provision of the Crimes Ordinance – with its broad, antiquated language, and its history of use in other former British colonies as a tool to suppress political speech<sup>110</sup> – might fail to pass constitutional muster, and could be strictly curtailed by the courts, absent any external pressure.

Given these risks, why not prosecute Tam under the NSL, which would make it more difficult for the judiciary to draw on Basic Law rights protections in deciding Tam's case? It's possible that, just months after the NSL was passed, the government was hesitant to use it to prosecute political speech. After all, such an effort might prove unsuccessful, which might blunt the deterrent effect of the NSL as a whole.<sup>111</sup>

The government may therefore have decided to err on the side of caution when it chose in early September to arrest Tam under the Crimes Ordinance. Officials handling his case may have concluded that it's better to use the NSL – at least initially – primarily to prosecute less sympathetic defendants, including those who have allegedly committed acts of violence or other clearly cognizable criminal acts. Those defendants could more easily be put on trial, if not for an NSL crime, then for other crimes under Hong Kong law, and the effort to prosecute them will draw less attention and support from the international community.

Other Hong Kong legal experts believe that the use of the sedition provision in Tam's case represents not caution, but rather an increased assertiveness on the part of the police and the prosecutor's office.<sup>112</sup> Under this reading, the government has been somewhat emboldened by the NSL, and is now willing to use legal tools – including the sedition provision of the Crimes Ordinance – that have sat on the shelf for decades.

In the absence of any additional statements from the prosecutor's office clarifying its thinking, it's impossible to know for sure what factors drove the government's decision-making in Tam's case. Nonetheless, the government's move to make use of the sedition provision for the first time in decades is deeply troubling: it suggests that the Hong Kong government is in fact willing to prosecute individuals for peaceful political speech, in spite of the Basic Law's free speech protections. If Tam is convicted, then his case will serve as a troubling precedent to other activists about the dangers of criticizing the government, especially when using some of the key phrases of the 2019 protest movement.

---

110 India, for example, retains a similarly-worded sedition provision in its criminal code, and has at times used it to punish peaceful political expression. See *Stifling Dissent: The Criminalization of Peaceful Expression in India*, Human Rights Watch, May 24, 2016.

111 Author interview 10. The interviewee, a Hong Kong lawyer, told us, "the NSL is like a nuclear weapon; if you reach for it too quickly, it will lose its deterrent power."

112 Author interviews.

## The Tony Chung Case: Criminalizing Political Asylum Claims?

The case against Tony Chung represents a number of different troubling elements of the government's use of the NSL since July 1. As with Tam Tak-chi, some of the charges against Chung seem to amount to an effort to criminalize peaceful political advocacy. At the same time, unlike Tam Tak-chi, Chung has been charged with both NSL crimes and Crimes Ordinance crimes, specifically conspiracy to publish seditious materials and money laundering. The use of both the NSL and the sedition charge suggests that the government is seeking to punish Chung for his peaceful political advocacy both before and after July 1. Finally, the handling of his case by the police and the prosecutor's office suggests that the NSD may be looking to use NSL arrests as a sort of soft deterrent, in which arrestees trade away their Basic Law rights in exchange for an indefinite deferral of prosecution, which would represent a very troubling misuse of police power.

Chung, 19, is a co-founder of the pro-independence group Studentlocalism. Chung and other members announced their decision to disband the group's Hong Kong chapter on June 30, 2020, with the passage of the NSL. At the same time, the group claimed that its overseas branches would remain active. On July 17, 2020, for example, a U.S.-based Studentlocalism group was launched, and announced the commencement of its efforts to "obtain the United States' support for our dream of an independent Hong Kong nation state."<sup>113</sup>

Likely in response to the founding of the U.S.-based chapter, the NSD arrested Chung and three other former members of the group on July 29, alleging that they had made pro-independence statements online that amounted to incitement to secession under the NSL. (Chung denied that he had violated the NSL.) Chung and his colleagues were released on bail within 48 hours; as a condition of his release, Chung was told by the police to delete some Studentlocalism Facebook posts.<sup>114</sup>

In the months following their initial arrests, neither Chung nor his colleagues were charged with any crime, which suggests that the NSD may have sought to use the arrests to send a signal to the former members of the group, as well as other activists: steer clear of pro-independence advocacy and cut ties with colleagues in the U.S. and elsewhere, or risk criminal prosecution.

Chung's case took a dramatic turn on October 27, 2020. On that day, Chung planned to enter the U.S. Consulate in Hong Kong, reportedly to seek political asylum. Before he could do so, however, Chung was

113 學生動源美國分部成立宣言 [the Statement to Announce the Establishment of the US Branch of Studentlocalism], "Studentlocalism Facebook Page, July 17, 2020.

114 "鍾翰林被捕 准保釋須交出旅遊證件 [The Arrest of Tony Chung: Release on Bail with Travel Documents on Hold]," *Stand News*, July 31, 2020.



arrested by NSD officers at a café across the street.<sup>115</sup> Later that same day, two of Chung's colleagues, Yanni Ho and William Chan, were also arrested. As noted above, Chung was charged with both secession under the NSL, and also with conspiring to publish seditious articles between November 2018 and June 2020. Chung was also charged with money-laundering in relation to online fundraising undertaken by Studentlocalism.<sup>116</sup>

Chung was denied bail after his re-arrest, but his colleagues Yanni Ho and William Chan were released soon after their detention. As of this writing, Chung remains in detention. On November 9, former district council staffer Tim Luk, 34, was arrested in connection with the support he had given to Chung prior to his second arrest.<sup>117</sup> Luk was arrested by NSD officers for allegedly supporting fugitives, a non-NSL crime. He was later released on bail, and has not yet been charged with any crime.<sup>118</sup>

Some observers expressed concern that Chung's second arrest was a form of retaliation for his efforts to seek asylum. After his initial arrest, Chung kept a low profile, more or less completely refraining from political activity. As far as is publicly known, nothing had changed in his case at the time of his re-arrest except for his move to seek political asylum. (Chung's decision to seek political asylum may itself suggest the level of pressure that activists like him, who have been arrested under the NSL, but not charged, are under.) Also, the timing and location of his second arrest suggested that the police wanted to ensure both that his bid to establish contact with the Consulate would be unsuccessful, and also that his arrest would signal to others that such efforts would be punished.

At the same time, Chung's initial arrest is itself deeply problematic. As with other individuals whose cases have been described in this section, if Chung was arrested solely for his pro-independence writings, either before or after the NSL went into effect, then the government would be seeking to punish him for peaceful political expression, in violation of free expression standards under international law. The decision to file Crimes Ordinance sedition charges against him also suggests that the government has decided to get more aggressive in its use of such criminal provisions, which have lain dormant for decades.

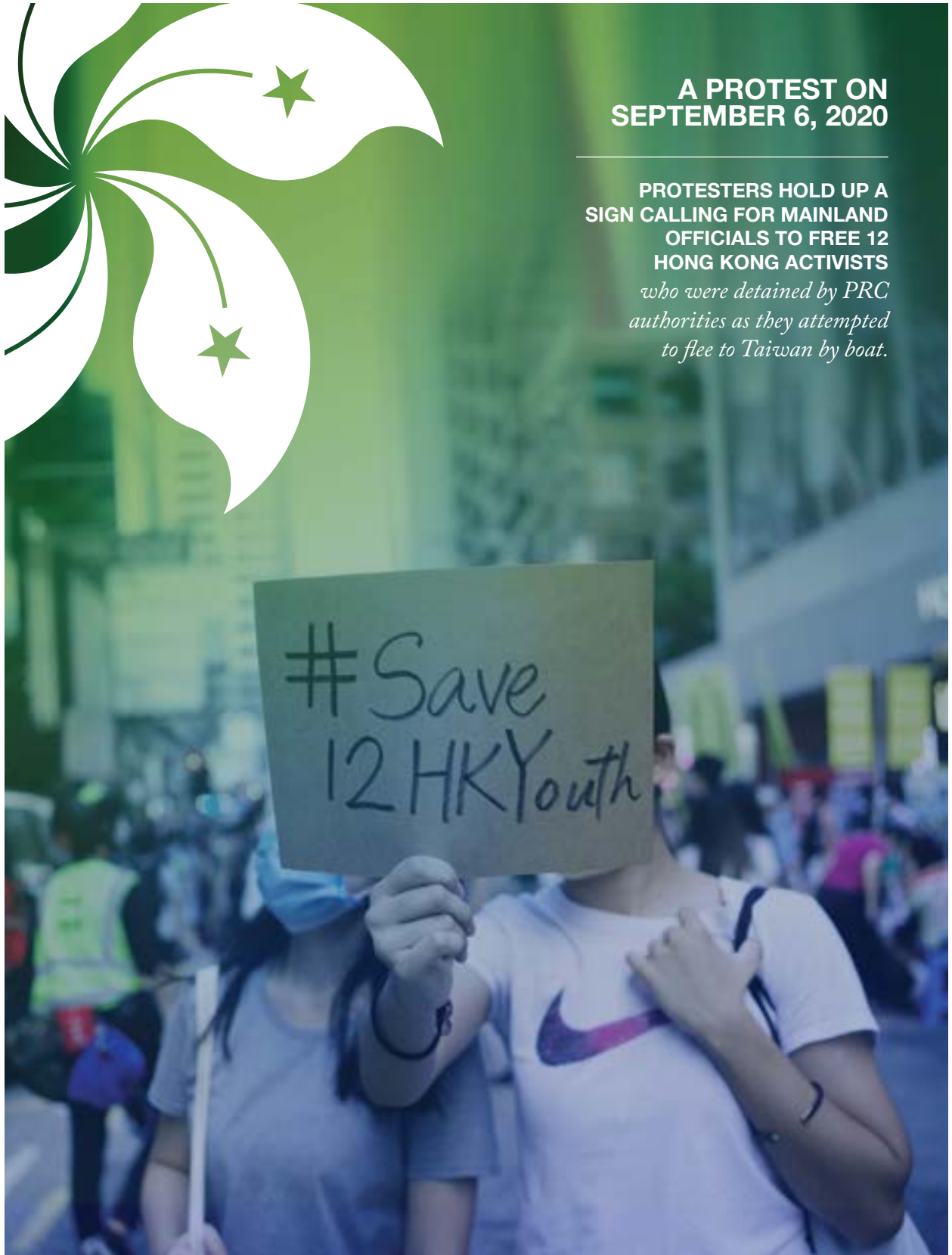
---

115 “學生動源前召集人鍾翰林 疑往美領館尋庇護前 被警國安處帶走 [Former Leader of Studentlocalism Tony Chung Appeared to Be Arrested by the NSD before Seeking Asylum at the US Consulate ],” *Stand News*, accessed November 2, 2020.

116 Brian Wong, “Teenager arrested outside US consulate in Hong Kong denied bail after being charged under National Security Law,” *South China Morning Post*, October 29, 2020.

117 Christy Leung, “Hong Kong national security police arrest councillor’s ex-aide for ‘assisting’ leader of now-defunct pro-independence group with US asylum bid,” *South China Morning Post*, November 9, 2020.

118 Luk provided Chung with temporary accommodation before Chung made his asylum bid. It is not known whether Luk knew of Chung's asylum plans. “區議員前助理陸海天 涉向鍾翰林提供住所避警追捕 [District Councillor's Former Assistant Lu Haitian Offered the Residence to Zhong Hanlin to Avoid Being Chased by Police],” *Sing Tao Daily*, November 9, 2020.



## A PROTEST ON SEPTEMBER 6, 2020

**PROTESTERS HOLD UP A  
SIGN CALLING FOR MAINLAND  
OFFICIALS TO FREE 12  
HONG KONG ACTIVISTS**

*who were detained by PRC  
authorities as they attempted  
to flee to Taiwan by boat.*



## THE HONG KONG 12 CASE: HONG KONG CITIZENS, MAINLAND JUSTICE

On August 23, 2020, Mainland Chinese coast guard officials announced that they had intercepted a small boat with 12 Hong Kong citizens, and that the 12 had been detained on suspicion of illegal border crossing.<sup>119</sup> Pro-Beijing media outlets later reported that the boat was headed to Taiwan. Two of the 12 were accused of organizing illegal border crossing, a much more serious offense, akin to human trafficking. Those detained include 11 men and one woman, and range in age from 16 to 33.

But for the identity of the 12 individuals, the case would likely have attracted little notice. Many of the individuals involved in the abortive flight attempt had been either accused of or

charged with violent crimes during the 2019 anti-extradition bill protests. One of the 12, Andy Li, a former member of the pro-democracy group Demosisto, had been arrested under the NSL just a few weeks before.<sup>120</sup> Many in the group had their travel documents confiscated as a condition of release on bail, which meant that the risky boat trip was likely their only means of fleeing Hong Kong.<sup>121</sup>

On September 30, after over a month in criminal detention, the 12 were formally arrested by the Shenzhen police. On November 27, the Yantian District police announced that they had completed their investigation into the case, and that they had transferred the relevant case files to the local procuratorate in advance of trial.<sup>122</sup>

On December 16, the Yantian procuratorate announced that two of the 12 would be charged with organizing an unlawful border crossing, and eight would be charged with unlawful border crossing. The remaining two individuals, both under 18, were put into a special process for minors that is non-public, one that usually results in a conditional no-charge decision.<sup>123</sup> On December 30, the court sentenced the eight charged with unlawful border crossing to seven

119 Lily Kuo and Helen Davidson, "Twelve arrested at sea while trying to flee to Taiwan from Hong Kong," *The Guardian*, August 27, 2020.

120 "再以國安法拘兩人 據報為前學民成員李宗澤、「香港故事」李宇軒 [Two More People Were Arrested under the National Security Law, Former Members of Demosisto, Li Zongze, and 'Hong Kong Story' Andy Lee]," *Stand News*, August 10, 2020.

121 Ryan Ho Kilpatrick, "Hong Kong refugees captured at sea spent months plotting daring dash to freedom," *Washington Post*, August 31, 2020. An unknown number of arrestees who had taken part in the 2019 protests have been ferried from Hong Kong to Taiwan, starting as early as November 2019.

122 Kelly Ho, "Twelve Hong Kong fugitives to face prosecution in China after three months in detention," *Hong Kong Free Press*, November 27, 2020.

123 "深圳檢方對'12港人偷渡案'相關人提起公訴嫌疑 [Shenzhen Prosecutors Have Charged Suspects in Connection with the Smuggling Case Involving 12 People from Hong Kong]," *The Paper*, December 16, 2020.

months in jail, and the two others to two and three years' imprisonment, respectively.<sup>124</sup>

To be sure, the 12 Hong Kong citizens are accused of crimes that are apolitical in nature. And yet, despite the relatively straightforward nature of the charges against them, the 12 have been subjected to repeated violations of their due process rights, including their basic right to an attorney of their own choosing.<sup>125</sup> The 12 were denied their right to regular communication with their family members in Hong Kong, and with others involved in advocating on their behalf. Chinese state media outlets claimed that family members and journalists were allowed to attend the trial, but none of the defendants' families knew who these attendees were.<sup>126</sup> Despite state media claims to the contrary, the trial seemed to be completely closed to the public, including non-state media outlets.

Given both the isolated nature of their detention, and the absence of other prophylactic protections, the 12 faced an increased risk of torture or ill-treatment,<sup>127</sup> and may have been pressured to cooperate with the police in the investigation of their case.

For the immediate future, the case of the Hong Kong 12 will, first and foremost, illustrate the ways in which PRC criminal law and criminal procedure fail to protect basic rights, and can put individuals at risk of torture and other forms of abuse. At the same time, however, their case suggests the level of fear that has permeated Hong Kong since the implementation of the NSL. Individuals like Andy Li may well fear that their right to a fair trial will be compromised, and that they could be prosecuted for their peaceful political activism, rather than any genuine violation of the law.

**SEPTEMBER 12, 2020**

**THE FAMILIES OF THE HONG KONG 12 HOLD A PRESS CONFERENCE**  
*to call for the immediate release of the 12 detainees.*



<sup>124</sup> Hong Kong Boat Activists: China Jails Group for up to Three Years,” *BBC News*, December 30, 2020.

<sup>125</sup> Chunyi Chen, “Some Fundamentals Regarding China’s ‘Government-Designated Lawyers,’” *ChinaChange*, September 25, 2020. Shenzhen police claimed that all 12 were given access to legal counsel, apparently chosen for them by Mainland authorities.

<sup>126</sup> “深圳检方对‘12港人偷渡案’相关嫌疑人提起公诉 [Shenzhen Prosecutors Have Charged Suspects in Connection with the Smuggling Case Involving 12 People from Hong Kong],” *The Paper*, December 16, 2020.

<sup>127</sup> As of this writing, no concrete evidence of torture or ill-treatment of the Hong Kong 12 has emerged. Still, the Chinese government’s prior track record of its handling of politically-sensitive cases – or even apolitical criminal cases – is rife with credible allegations of abuse. See, e.g., Human Rights Watch, *Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China*, May 13, 2015.



## The January 6th Arrests: The End of Hong Kong's Political Opposition?

On January 6, 2021, the NSD executed a wave of arrests of 53 pro-democratic politicians and activists. Roughly 1,000 Hong Kong police officers took part in the large-scale operation, which included searches of more than 70 locations across Hong Kong, and the freezing of more than US\$200,000 in funds. A local law firm and a prominent polling organization were among the sites that were raided by police, which also served court orders on four media outlets, demanding documents and information related to the case.<sup>128</sup>

At a press conference later that day, NSD senior superintendent Li Kwai-wah announced that the arrestees were arrested for subversion under Article 22 of the NSL, and linked their arrests to a primary election held by the pan-democratic camp in July 2020, meant to decide on candidates for the September 2020 LegCo election. (That election was later postponed by the government to September 2021, citing COVID concerns.) According to Superintendent Li, 47 of the arrestees were detained over their participation in the primary, and six individuals were alleged organizers of the event.

Secretary for Security John Lee told reporters that the arrestees had planned to cause “serious damage” to society, and that the Hong Kong government would not tolerate subversive acts. “The operation today targets the active elements who are suspected to be involved in the crime of overthrowing or interfering seriously to destroy the Hong Kong government’s legal execution of duties,” Lee said.<sup>129</sup>

Among those arrested were 16 former Legislative Councillors, including prominent pan-democratic politicians like James To, Alvin Yeung, and Wu Chi-wai. Twenty district councillors were also arrested, including Jimmy Sham, the former convenor of the prominent pro-democracy group Civil Human Rights Front, and Lester Shum, a leader of the 2014 Occupy Central protests.

For reasons that remain unclear, police also arrested several less well-known political figures, some of whom are known more for their advocacy on other issues unrelated to the 2019 protests. Social worker Jeffrey Andrews, for example, is a prominent member of Hong Kong’s ethnic Indian community whose work is primarily focused on ethnic minority rights in Hong Kong. And Lee Chi-yung is known as a disability rights advocate whose work grew out of his own experience as a parent of a daughter with a disability.<sup>130</sup>

---

128 Natalie Wong et al., “Hong Kong national security law: 53 former opposition lawmakers, activists arrested; authorities accuse them of plot to ‘overthrow’ government,” *South China Morning Post*, January 6, 2021.

129 Yanni Chow and Yoyo Chow, “Hong Kong arrests 53 for plot to ‘overthrow’ government in latest crackdown on dissent,” *Reuters*, January 5, 2021. Lee’s comments tracked closely with the language of Article 22 of the NSL on subversion.

130 Vivian Wang, Austin Ramzy, and Tiffany May, “With Mass Arrests, Beijing exerts an Increasingly Heavy Hand in Hong Kong,” *New York Times*, January 6, 2021.



Both men lost their primary races, and yet were among those arrested on January 6.

Hong Kong-based lawyer and activist John Clancey, 79, was also arrested, making him the first American citizen and first foreign national to be arrested under the NSL. Clancey, a former priest who works for the law firm Ho Wai Tse and Partners, has been active in pro-democratic circles in Hong Kong for many years, and helped to organize the July 2020 primary.<sup>131</sup>

Fifty-two of the 53 arrestees were released on bail within 48 hours. The one exception is Wu Chi-wai, who remained in detention after police claimed that he had violated the terms of his bail for a prior, non-NSL arrest.<sup>132</sup> As of this writing, no charges have been filed against the arrestees.

The primary elections that led to the arrests were conceived with the aim of winning what would have been a first-ever majority for the pan-democratic camp in Hong Kong's LegCo. Seeking to build on its historic and sweeping victories in the November 2019 District Council elections, the pan-democrats wanted to ensure that their candidates would not compete against each other, as has happened in the past. Primary elections were seen as a means to fairly decide which candidates should represent the democratic camp in key electoral contests.

Although the primary elections were conducted smoothly and peacefully, and saw more than 600,000 Hong Kong citizens taking part, nonetheless the Hong Kong government warned that the elections could run afoul of the then-new NSL. Chief Executive Carrie Lam suggested that the primary election might be subversive, specifically warning those taking part that their actions might violate the NSL.<sup>133</sup> Other senior Hong Kong officials offered similar strongly-worded statements. The central government's Hong Kong Liaison Office accused prominent activist and leading primary organizer Benny Tai of leading a "color revolution" in Hong Kong.

Underlying the push for a legislative majority was a plan that would allow the pan-democratic camp to use certain constitutional powers to trigger the resignation of the Chief Executive. Under Article 52 of the Basic Law, if the LegCo blocks the government's proposed budget twice, the Chief Executive must resign. Core primary organizer Benny Tai suggested that Beijing would respond to such a constitutional crisis by

---

<sup>131</sup> Su Xinqi, "US-born lawyer John Clancey keeps faith after Hong Kong security law arrest," *AFP*, January 13, 2021.

<sup>132</sup> "Ex-Hong Kong Democratic Party chair Wu Chi-wai suspected to have violated bail after allegedly keeping BN(O) passport," *Hong Kong Free Press*, January 7, 2021.

<sup>133</sup> Tony Cheung, Natalie Wong, and Lilian Cheng, "Hong Kong's traditional opposition parties lose out to localist challengers in fierce weekend primary for coming Legislative Council election," *South China Morning Post*, July 13, 2020.



declaring a state of emergency, which would in turn lead to international sanctions against China. That series of events, which Tai referred to as “real laam chau,” or real mutual destruction, might, Tai seemed to suggest, force Beijing to finally negotiate with the democratic movement.<sup>134</sup>

It was Tai’s plan for political gridlock, constitutional crisis, and external pressure that led the authorities to declare the primary election subversive. Among the 53 arrestees, Tai was singled out by authorities as the leading organizer.<sup>135</sup> If convicted, Tai could face a sentence of up to 10 in prison, or even life imprisonment. Other participants could face three to ten years in prison, or less than three years, depending on their level of involvement.

From a legal perspective, the January 6 arrests marked a major expansion of the government’s use of the NSL to crack down on its political opponents. Before January 6, the NSL had been used primarily to target political speech by protesters, and to punish foreign contacts. The decision to arrest a number of mainstream opposition politicians under the NSL meant that there were no discernable limits on who could be targeted.

The decision to classify a primary election as alleged subversion also marked the first time that the NSL was used to target mainstream peaceful political activity, as opposed to political speech. In most liberal democratic jurisdictions, it would not be possible to criminalize the holding of a primary election, as such actions are considered a key element of the right of free association, both under international law and under most state constitutions. At the same time, voting in a primary election is also a component of the right to vote and to participate in public affairs, which is also protected by key international instruments to which Hong Kong is a party, including the ICCPR.

Interestingly, senior government officials went out of their way to signal that the more than 600,000 Hong Kongers who voted in the primary election would not be subject to arrest or criminal prosecution.<sup>136</sup> The mere fact that the government had to issue this clarification spoke to the potential breadth and ambiguity of the law as it was applied on January 6th. After all, it was not immediately clear why running a primary election would be considered subversive, while voting in that same election wouldn’t be. The expansive use of the NSL to criminalize participation in a primary election also raised questions about whether other forms of basic support to pro-democracy candidates, such as political contributions, or grassroots canvassing, might also run afoul of the NSL in future.

---

134 Benny Tai, “真攞炒十步 這是香港宿命 [10 steps of the real mutual destruction. This is the fate of Hong Kong.],” *Apple Daily* 蘋果日報, April 28, 2020

135 “尹兆堅：警展示「攞炒十部曲」剪報問「知唔知邊個講」播初選相關短片要求認人 [Wan Siu-Kin: Police Showed ‘10 Steps of the Destruction’ Newspaper Clipping and Asked ‘Do You Know Who Wrote It’],” *Stand News*, January 8, 2021.

136 Natalie Wong et al., “Hong Kong national security law: 53 former opposition lawmakers, activists arrested; authorities accuse them of plot to ‘overthrow’ government,” *South China Morning Post*, January 6, 2021.

The political implications of the January 6th arrests are hard to overstate. Many observers saw the arrests as further evidence of Beijing's shirking tolerance for even more mainstream peaceful political opposition.<sup>137</sup> The impact of the January 6th arrests will likely reverberate for months or even years to come, potentially sidelining several dozen key pro-democratic politicians indefinitely. Though none of the arrestees have, as of this writing, yet to be charged, nonetheless it is possible that some or all of the 53 could be blocked from participating in the September LegCo elections, either because they are in jail, or because they might be barred by the government from running for office over their connection to alleged subversive activity.<sup>138</sup>

The arrests also sent a signal that the central government's efforts to fundamentally reshape Hong Kong politics have not yet ended. Many experts we spoke to for this report fear that the government could also take steps to reformulate the rules for district council elections, which could lead to the disqualification of many pro-democratic district councillors.<sup>139</sup> That step would eliminate, for the time being, at least, the last vestige of pro-democratic representation inside Hong Kong's formal political system.

### Creating a Climate of Fear

In some ways, the most pronounced effects of the law have been indirect. According to the individuals we interviewed, the law has created a climate of fear, one that has permeated virtually all aspects of society, and that has influenced the willingness of a number of different players to take actions that might run afoul of the law. "It is pretty suffocating in Hong Kong right now," one activist told us.<sup>140</sup>

This fear has led activists, politicians, lawyers, and others to take steps to protect themselves from legal risk, in ways that have limited their own basic rights. In particular, the core basic political rights of free expression, free assembly, and free association have all been heavily restricted, merely by virtue of the fact that individuals are afraid to fully exercise these rights in ways that were commonplace before July 1.

Free expression in Hong Kong has taken perhaps the biggest hit. Perhaps the single most significant impact

---

137 As one leading U.S.-based expert put it, "the idea of 'political opposition,' a common phenomenon in democratic systems, is seen by Beijing as inherently illegitimate." Theodora Yu, "Total submission: with mass arrests, China neutralizes Hong Kong democracy movement," *Washington Post*, January 6, 2021.

138 Under Article 35 of the NSL, individuals convicted of an NSL crime are barred from holding public office in Hong Kong.

139 Tony Cheung et al., "In pursuit of a 'loyal opposition': Beijing's drastic shakeup of Hong Kong's electoral process has one clear goal – control," *South China Morning Post*, December 23, 2020.

140 Author interview 1.



of the law has been the level of self-censorship it has generated, both at the individual and the organizational levels. The NSL's core provisions are vague, which makes it impossible to discern what can be said and what can't be. Especially at this early stage, it's not clear where the red lines are. Interviewees told us that the impact of the NSL on public discourse was significant. "People are being cautious," one activist told us. "People are not acting as if the law is not there."<sup>141</sup>

For journalists, the NSL has made it that much more difficult to report the news. Some sources simply don't want to talk, especially on the record. "People are gun-shy, people are worried, people are confused," one longtime Hong Kong journalist told us.<sup>142</sup>

Self-censorship is also playing out at the organizational level: newspapers, media outlets, publishers, and others worry that they may be held accountable if they publish something that violates the NSL. One local news outlet told a regular overseas contributor that it could not publish a piece in which he discussed potential sanctions by Western governments against Hong Kong and Chinese government officials. Editors feared that such a piece would run afoul of the NSL and put the publication itself in legal jeopardy.<sup>143</sup>

In another case, a longtime Hong Kong-based journalist was unable to publish a book on Hong Kong politics because local designers, printers, and booksellers refused to be involved, citing NSL legality concerns.<sup>144</sup> Local author Kent Ewing had begun working on a book on Hong Kong politics before the NSL came into effect, but was dropped by his publisher after running into a "brick wall" of NSL-imposed difficulties. Ewing is, sadly, not alone: he is but one of many authors who have seen their works abandoned by publishers, or who were forced to make changes in order to avoid potential legal liability under the NSL.<sup>145</sup>

Freedom of assembly has also been deeply damaged. It is now unclear whether public protests in favor of democratic reform are themselves a violation of the NSL, effectively depriving the pro-democratic movement of its most effective weapon. Many would-be protesters have been deterred from taking to the streets, for fear of facing heavy legal penalties. Prior to July 1, many protesters believed that Hong Kong's legal system, with its robust rights protections, would shield them from unduly harsh punishment. That confidence in the system is now understandably gone.

---

141 Author interview 1.

142 Author interview 5.

143 Author interview 8.

144 Kent Ewing, "My ill-fated book deal reveals Hong Kong self-censorship under the security law," *Hong Kong Free Press*, December 15, 2020.

145 Sarah Wu and Joyce Zhou, "Editing history: Hong Kong publishers self-censor under new security law," *Reuters*, July 13, 2020.

For many, this point was driven home by the heavy-handed police response to the July 1, 2020 protests. Police arrested a number of protesters on that day, including ten for alleged NSL violations. Some were arrested merely because the police found “liberate Hong Kong” stickers among their belongings. Protesters took note: what was once a relatively low-risk activity – participating in peaceful protests, including those that had not been authorized by the authorities – now carried the very real risk of stiff penalties.<sup>146</sup>

Even those who are arrested but not charged with NSL crimes face stiff penalties, including high bail fees, the loss of travel documents, and, given that charges can be brought at any time, ongoing legal jeopardy.<sup>147</sup> According to those we spoke with, the increased risks generated by the NSL have led many protesters to walk away from the movement, at least for now.<sup>148</sup> Those people could quickly return to a revitalized movement, but for now, the NSL has successfully deterred many from taking part in peaceful political activism.

Finally, freedom of association has been heavily curtailed. In the hours before and immediately after the NSL went into effect, a number of groups publicly announced that they were disbanding, so as to avoid legal sanction merely for continuing to exist. The pro-democracy group Demostisto, for example, announced its dissolution on its Facebook page on June 30, just hours after prominent members Joshua Wong, Agnes Chow, Nathan Law, and Jeffrey Ngo themselves resigned.<sup>149</sup> That same day, pro-independence groups Studentlocalism and Hong Kong National Front announced that they would end their Hong Kong operations, and instead continue their activities overseas.<sup>150</sup>

Some groups have stopped short of disbanding, but have instead exercised greater caution in their activities. A number of groups that were willing to weigh in on political controversies throughout 2019, for example, have chosen to stay silent after July 2020.<sup>151</sup> Other groups have continued to comment on public affairs, but have moderated their tone. “Some of the comments have become very careful, very gentle,” one Hong Kong activist told us. “Overt criticism disappears.”<sup>152</sup>

---

146 Author interview 12.

147 Author interview 12.

148 Author interviews 12 and 14.

149 Kelly Ho and Tom Grundy, “Joshua Wong’s pro-democracy group Demostisto disbands hours after Hong Kong security law passed,” *Hong Kong Free Press*, June 30, 2020.

150 Nicolle Liu and Yuan Yang, “Hong Kong pro-democracy groups disband after security law passed,” *Financial Times*, June 29, 2020.

151 Author interview 2.

152 Author interview 2.

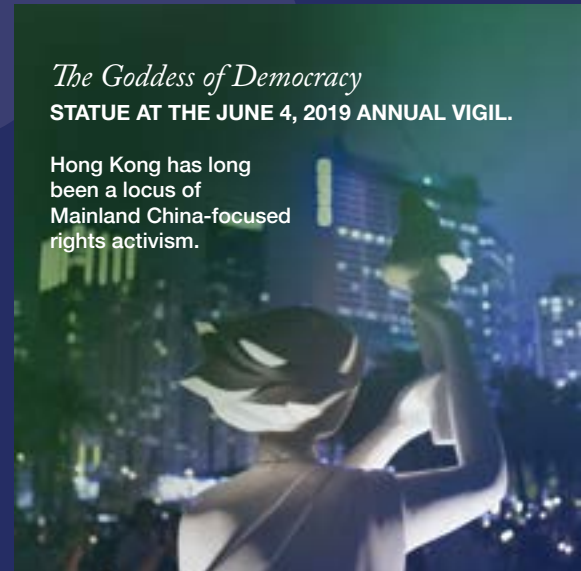


One somewhat overlooked aspect of the NSL is its impact on Hong Kong-based NGOs focused on human rights inside Mainland China.

For decades, Hong Kong has been a key outpost for international human rights groups, and for a small but growing number of local groups focused on human rights in China. These groups faced a number of difficult questions once the NSL went into effect: is it still safe to operate in Hong Kong? What steps can be taken to mitigate risk? Given the relaxed due process provisions in the NSL, how can groups know when they are being targeted?

Different groups have responded to the NSL in different ways. Some international groups have removed their staff from Hong Kong, not wanting to put them at risk of either criminal prosecution under the NSL, or even removal to the Mainland under Article 55 of the law.<sup>153</sup> Others have adopted a wait-and-see attitude, deciding to remain in Hong Kong but keeping a close eye on the implementation of the NSL and its implications for their work.

Local groups face an even greater challenge: their staff face much greater risks than the expatriate staff of international human rights NGOs.



*The Goddess of Democracy*  
STATUE AT THE JUNE 4, 2019 ANNUAL VIGIL.

Hong Kong has long been a locus of Mainland China-focused rights activism.

In one case, a local human rights NGO focused on China saw virtually all of its staff members resign soon after the NSL went into effect.<sup>154</sup> The organization was able to reconstitute itself, but the resignations speak to the pressure that many NGO activists are under.

According to one activist we spoke with, a core concern for Hong Kong-based groups working on China is the stepped-up surveillance that is permitted under the NSL, and the more active involvement of Mainland agents in day-to-day policing decisions.<sup>155</sup> This activist pointed out that enhanced surveillance – perhaps now detached from judicial review and approval under Article 43 of the NSL – could put his Mainland partners and contacts at risk, jeopardizing their safety and security.

<sup>153</sup> Author interview 7.

<sup>154</sup> Author interview 17.

<sup>155</sup> Author interview 4.

Contacts between Hong Kong groups and individuals and their international counterparts have also been significantly curtailed. It's clear that such ties – especially lobbying efforts relating to the 2019 protests, and funding relationships – are a key part of what the NSL is meant to tackle. In the immediate aftermath of the passage of the NSL, however, many groups decided to err on the side of caution, and put a stop to all contact with international partners, regardless of content or degree of sensitivity. All sorts of ties – including active projects, funding relationships, and even informal advisory conversations – were put on hold. “People are now much more careful about talking to the international press, to the diplomatic corps, or to international NGOs,” one longtime Hong Kong activist told us.<sup>156</sup>

A number of local groups are also heavily dependent on foreign funding, which may now be considered illegal under the NSL. One labor rights activist told us that he is worried that the foreign funding support that his organization receives may lead to NSL criminal charges.<sup>157</sup> Others have decided to end their funding relationships with Western donors, at least for now, as they wait to see how the NSL is implemented, and whether and how it is used to restrict civil society activity not related to Hong Kong politics.

These contacts and funding relationships collectively form an important bridge between Hong Kong and the international community. Keeping such ties alive, even in the face of the NSL, will be a key challenge, both for local activists, and for international groups. Even though such contacts will remain somewhat risky for the foreseeable future, the activists, lawyers, and experts we spoke to uniformly urged their colleagues in the international community to find ways to maintain and even strengthen ties with their counterparts in Hong Kong.<sup>158</sup>

## Bureaucratic Mobilization

The NSL does not just provide the Hong Kong government with new criminal law tools, which could be used to punish its political opponents. It also legally mandates bureaucratic reforms that aim to transform Hong Kong government agencies, in line with Beijing's policy aims. These provisions aim to increase Beijing's influence inside the Hong Kong government bureaucracy, allowing Beijing more direct oversight and control over the day-to-day administration of Hong Kong affairs, and over the formulation of key government policies.

---

<sup>156</sup> Author interview 2.

<sup>157</sup> Author interview 13.

<sup>158</sup> Author interviews 14 and 16.



Though the core provisions of the NSL relate to specific crimes, nonetheless the NSL mandates a much broader, all-of-government approach to implementation of the law. Under Article 9 of the NSL, the SAR government “shall take necessary measures to strengthen public communication, guidance, supervision, and regulation over matters concerning national security, including those relating to schools, universities, social organizations, the media, and the internet.” Article 10 further emphasizes the need to focus on education and public outreach, as key means to “raise the awareness of Hong Kong residents of national security.”<sup>159</sup>

As the list of key areas of focus indicates, the NSL calls on various government bureaus to be actively involved in the implementation of the law, in ways that could have significant implications for basic rights.

It is not clear whether the new governmental infrastructure set up under the NSL will engage directly with key Hong Kong government bureaus on the implementation of Articles 9 and 10. At the very least, there is no textual barrier in the NSL for the newly-created entities to do just that. In other words, in the years to come, Mainland officials could communicate directly with Hong Kong government bureaucrats on key issues related to education policy, media regulation, and internet governance, among other policy areas, in the name of protecting national security.<sup>160</sup> It would be hard to square such developments with the promise of autonomy for Hong Kong under the Basic Law.

Even in the seven months since the implementation of the NSL, the SAR government has taken a number of steps to implement key provisions of the law across the bureaucracy. Historically, Hong Kong's bureaucratic system has been known for both its professionalism and its political neutrality. The changes that have been implemented thus far are geared toward altering the fundamental character of the bureaucracy, encouraging them to at times view their work through a more political lens.

A key element in this bureaucratic shift is the expanded use of loyalty oaths. On July 15, 2020, Hong Kong's Civil Service Bureau announced that all employees who joined the government after the enactment of the NSL would need to take an oath of allegiance to the Hong Kong SAR, and that current employees would renew their oath of office if and when they are promoted to new positions, or transferred to work in key government departments.<sup>161</sup> The bureau cited Article 6 of the NSL, which highlights the “common responsibility” of the people of China and Hong Kong to safeguard national security, as the legal basis for this move.

---

<sup>159</sup> Hong Kong National Security Law, Article 10.

<sup>160</sup> Article 11 requires the Chief Executive to report to the Central People's Government on implementation of the NSL, another mechanism through which Beijing could influence policy formulation and implementation in a range of areas.

<sup>161</sup> Patrick Nip, “Letter to Colleagues,” July 15, 2020.



Loyalty oaths are not inherently problematic: many countries administer them, especially for more senior officials. In the case of Hong Kong, many public servants worry that the new oath requirement could be used to enforce restrictions on personal political behavior, or even to restrict criticism of key government policies. In an interview, one civil servant posed a series of questions that many inside the government have been asking: what are the criteria for loyalty to the Chief Executive? Who is going to determine whether individual officials have violated their oath, the Civil Service Bureau or the national security apparatus? Will oath violations be considered administratively, or will they potentially be subject to criminal sanctions?<sup>162</sup>

In Hong Kong's currently hyper-politicized environment, concerns about the NSL's potential politicization of the bureaucracy are even more pronounced. "Almost any policy disputes will become a political issue nowadays in Hong Kong," the civil servant told us. "If you notice a problem (with a policy), should you voice it to your supervisor? If you voice it, and it is politically sensitive, will you be considered disloyal to the Chief Executive?"<sup>163</sup> Officials we spoke with for this report believed that many would respond to the NSL with increased self-censorship, which, they feared, could have a negative impact on internal government policy discussions.

In the view of the civil servants we spoke with, the NSL alters the duty of allegiance that Hong Kong civil servants must undertake, creating an additional layer of accountability to Beijing. "The Secretary for Civil Service has made clear that Hong Kong public servants are not only officials of the Hong Kong government, but also of the Chinese government," this official told us. "You need to consider the mainland's opinions when implementing policies. In practice, the HKSAR is no longer an independent administration."<sup>164</sup>

A second official we spoke with highlighted a number of cases, many of which have been reported in the media, in which some civil servants had been punished for taking part in the 2019 protests, or for expressing critical views of government policies in private forums outside the workplace.<sup>165</sup> This official worried that the government's efforts to strengthen political oversight and control over the bureaucracy would undermine the government's much-vaunted reputation for professionalism, and, over time, would weaken public trust in the government as a whole.

---

162 Author interview 15. The government has yet to formally and finally clarify how it will deal with those who refuse to take the oath, or who are seen as violating it. Civil Service Secretary Nip the Secretary for Civil Service said that violations of the oath "is either violating the regulations or violating the laws" and will be dealt with accordingly. "聶德權：將以《公務人員（管理）命令》要求不簽擁護聲明公務員離職 [Patrick Nip: Will Use the Public Service (Administration) Order to Request the Departure of Civil Servants Who Do Not Sign the Proclamation]," *Stand News*, December 12, 2020.

163 Author interview 15.

164 Author interview 15.

165 Author interview 15; Jessie Lau, "Hong Kong's Civil Servants Under Siege," *The Diplomat*, December 7, 2020.



## Case Study: Education Policy and Practice in the NSL Era

Perhaps unsurprisingly, the government has focused on the education sector as a key policy area that must be addressed in light of the NSL. At a conference on July 11, 2020, Chief Executive Carrie Lam blamed Hong Kong's recent political and social unrest on the education system, and noted that Articles 9 and 10 of the NSL focus on the need to reform Hong Kong's schools in particular. At that same conference, Secretary for Education Kevin Yeung suggested that the NSL should be at the core of constitutional education in Hong Kong.<sup>166</sup>

Senior officials whose remit lies beyond the education sector have also highlighted the need for vigorous application of the NSL to Hong Kong's teachers and schools. In an interview in late July, for example, Secretary for Security John Lee declared that, as a member of the newly-formed CSNS, he would push for policies that press schools to remove alleged anti-government "bad apples" from Hong Kong's classrooms.<sup>167</sup>

Educators now worry that they could be punished for expressing critical views of the government outside the workplace, or for launching discussions of sensitive political topics with their students.<sup>168</sup> In September 2020, for example, one teacher who used a documentary featuring pro-independence advocate Andy Chan Ho-tin as the basis for a quiz on Hong Kong independence and freedom of speech in the SAR lost his job, and had his educator's license permanently revoked.<sup>169</sup> The case dated back to 2019, before the enactment of the NSL, raising concerns that the NSL was being applied even to cases that emerged before July 1.<sup>170</sup>

That case and others like it illustrate the Education Bureau's newly-aggressive approach to handling complaints against teachers of a political nature. One teacher that we spoke with noted that, prior to 2019, the government tended to dismiss anonymous complaints out of hand, and would take months to investigate a single non-anonymous complaint.<sup>171</sup> In contrast, in the wake of the anti-Extradition Bill protests, the Education Bureau has processed more than 200 "political" cases in less than a year.<sup>172</sup>

---

166 "林鄭月娥：教育被政治化或令年輕一代出問題 [Carrie Lam: Politicization of Education Could Cause Problems for Younger Generation]," *Stand News*, July 11, 2020.

167 Kang-chung Ng, "Hong Kong Schools to Get New Teaching Guidelines on Security Law," *South China Morning Post*, July 31, 2020.

168 Author interview 16.

169 Prior to 2019, the vast majority of cases that ended with a revocation of a teacher's license involved allegations of sexual misconduct, and were unrelated to a teacher's selection of teaching materials or his or her political views. "十年近百老師「釘牌」主要涉性罪行 [Over the Past Ten Years, Nearly 100 Teachers Had Their Licenses Revoked, Mainly Related to Sexual Crimes]," *Stand News*, October 6, 2020.

170 "Life ban for Hong Kong teacher raises concerns over freedom of discussion," SCMP Editorial, *South China Morning Post*, October 7, 2020.

171 Author interview 16.

172 "反送中以來首度有教師被釘牌 教局指控教材散播港獨信息 [A Teacher Has Been Revoked License by the Education Bureau Due to Accusation of Disseminating Information about Hong Kong Independence]," *Stand News*, October 5, 2020.

One educational professional we spoke with worried that the growing number of politically-motivated discipline cases would lead to self-censorship, and inhibit the development of healthy teacher-student communication. Teachers “will stop discussing many current events online or in class because no one knows whether one student will tell his or her parents about it, and whether the parents will issue complaints against you,” he said. “Our teachers will become very careful, will self-censor. This situation will hamper educational development.”<sup>173</sup>

At the same time that the Education Bureau is investigating individual teachers, it is also moving forward with wide-ranging curricular reforms that reflect the content of the NSL, presumably in a positive light. Even as the Education Bureau continues to draft new teaching materials in line with the NSL mandate, it has instructed schools at all levels to begin teaching about the virtues of the new law. One school announced plans to launch a new course on the NSL in time for the Spring 2021 semester,<sup>174</sup> and others have urged their students to abide by the new law, or risk suspension or even expulsion if they fail to do so.

## VI CONCLUSION

As this report has documented, the aggressive implementation of the NSL over the past seven months has had far-reaching consequences for human rights and rule of law in Hong Kong, and also for Hong Kong's status as a mostly free and open society.

When the NSL was first passed, the reaction among many in Hong Kong was one of shock and dismay: the core content of the law, including its overbroad criminal provisions and its new and powerful central government-led national security bodies, struck many as excessive, and difficult to reconcile with Hong Kong's existing legal and political systems. One Hong Kong-based lawyer described the initial reaction to the law as one of “stunned shock.”<sup>175</sup>

---

173 Author interview 16.

174 Kelly Ho, “Fears of ‘brainwashing’ as Hong Kong Elite School St Paul’s to Give Classes on National Security Law,” *Hong Kong Free Press*, September 14, 2020.

175 Author interview 6.



“It’s much worse than anyone expected,” this lawyer told us.

Still, many in Hong Kong hoped that the passage of the law would be viewed by the SAR government and Beijing as a sufficiently robust move: Hong Kong’s activist community would be put on notice that public demonstrations that had not been approved by the government could be punished by the NSL, and politicians and activists would similarly know that their future actions would also have to conform to new NSL-imposed norms, whatever those might be.

The aggressive implementation of the law thus far has made clear that the central government seeks to do more than just warn Hong Kong’s pro-democracy movement against a repeat of the 2019 protest movement. Instead, we believe that the aggressive implementation of the law – along with other moves taken by Beijing over the past several months – constitute nothing less than an effort to reshape Hong Kong’s liberal political order, in ways that suit Beijing’s interests and preferences, with potentially significant consequences for openness and the protection of basic liberties in Hong Kong.

Some have suggested that the events of 2020 and early 2021 are part of a larger effort to, in effect, remake Hong Kong in China’s image, to import key elements of China’s legal and political order into the Hong Kong context.<sup>176</sup> But we believe that the goal may be somewhat different: instead, we fear that the central government will reshape Hong Kong’s liberal political order in a way that preserves many of the forms of that order, but weakens many of the core substantive components. If current trends continue, we may see the emergence of an altered political and legal system in Hong Kong, one that holds regular elections and permits the continued existence of opposition political parties, independent media, activist NGOs, and independent courts, but in a weaker and more circumscribed form, very different from their prior, pre-2020 incarnations.

If this is indeed Beijing’s vision for the future of Hong Kong, is it the right choice, from Beijing’s perspective? What costs might the central government incur as it fundamentally reshapes Hong Kong’s politics and its core legal and political institutions?

First and foremost, Beijing has paid a significant reputational cost for its more hardline approach to Hong Kong. Since the passage of the NSL, a number of foreign governments have condemned both the Hong Kong government and Beijing for the ongoing crackdown on politicians and rights activists in

---

<sup>176</sup> Emily Feng, “Beijing Attempts to Remake Hong Kong In Its Image As National Security Law Takes Hold,” *NPR*, August 11, 2020.

Hong Kong. For its part, the incoming Biden administration has expressed concern about the January 6, 2021 arrests of 53 politicians and activists. In the immediate aftermath of the arrests, Secretary of State nominee Anthony Blinken tweeted that the incoming Biden administration “will stand with the people of Hong Kong and against Beijing’s crackdown on democracy.”<sup>177</sup>

Perhaps unsurprisingly, the events of the past seven months have also alienated many Hong Kong citizens, further deepening the SAR government’s political legitimacy crisis,<sup>178</sup> and also damaging the central government’s political standing in Hong Kong. The Communist Party may have concluded that it is better to be feared than loved, but it is likely that the growing alienation and mistrust among many in Hong Kong will deepen Hong Kong’s ongoing political crisis, and will make day-to-day governance more difficult, not less.

Many in Hong Kong are voting with their feet, expressing their discontent with the NSL and the new hardline policy simply by leaving Hong Kong. In the weeks following the law’s passage, migration consultants and lawyers saw a dramatic increase in inquiries from Hong Kong citizens, many of them interested in new schemes launched by the U.K. government and other countries in response to the NSL.<sup>179</sup> Experts believe that hundreds of thousands of Hong Kongers could emigrate in the coming years;<sup>180</sup> thousands – including both prominent activists and average citizens alike – have already done so.

It is not too late for Beijing and the SAR government to change course, and to decelerate its implementation of the NSL. A fresh look at the costs and benefits of Beijing’s current hardline policy, though unlikely, might well encourage the Party leadership to embrace just such a shift: Beijing is paying a high price for its current hardline policy, and the benefits – in terms of local stability and control – may well prove more ephemeral than they seem today.

“Repression generates resistance,” one longtime rights advocate noted in response to the January 2021 NSL arrests.<sup>181</sup> If the events of the past seven months are any guide, this is a fundamental lesson that Beijing has yet to learn.

---

177 Editorial Board, “Hong Kong Crackdown is an Early Test for Biden,” *New York Times*, January 24, 2021.

178 John Burns, “Governing without legitimacy: How Beijing can begin to rebuild trust in the Hong Kong authorities,” *Hong Kong Free Press*, December 15, 2019.

179 Chris Lau, “Exodus from Hong Kong? Those who fear national security law mull best offers from welcoming countries,” *South China Morning Post*, July 12, 2020.

180 Michael Bristow, “The Hong Kong migrants fleeing to start new lives in the UK,” *BBC News*, January 18, 2021.

181 “National Security Law: Hong Kong rounds up 53 pro-democracy activists,” *BBC.com*, January 6, 2021.












## VII APPENDICES





### APPENDIX A. LIST OF ACRONYMS

<b>CCP</b>	Chinese Communist Party
<b>CFA</b>	Court of Final Appeal
<b>CSNS</b>	Committee for Safeguarding National Security
<b>HKNP</b>	Hong Kong National Party
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic Social and Cultural Rights
<b>LegCo</b>	Legislative Council
<b>NGO</b>	Nongovernmental Organization
<b>NPCSC</b>	National People's Congress Standing Committee
<b>NSD</b>	Department for Safeguarding National Security
<b>NSL</b>	National Security Law
<b>OSNS</b>	Office for Safeguarding National Security
<b>PRC</b>	People's Republic of China
<b>SAR</b>	Special Administrative Region
<b>SWHK</b>	Stand With Hong Kong'
<b>UN</b>	United Nations

## APPENDIX B. NSL IMPLEMENTATION TIMELINE

	<b>MAY 21, 2020</b>	The NPC and state-run media made their first mention of the plan to pass a NSL for Hong Kong.
	<b>MAY 28, 2020</b>	The NPC formally authorized its Standing Committee to undertake the drafting of the NSL.
	<b>JUNE 30, 2020</b>	The NPC Standing Committee passed the NSL, which was enacted with immediate effect. The full text of the NSL was published only after its enactment.
	<b>JULY 1, 2020</b>	For the first time, Hong Kong police displayed a purple banner to warn protesters that they may be violating the NSL. The police arrested ten people for alleged national security offenses.
	<b>JULY 2, 2020</b>	The Hong Kong SAR government issued a statement stating that the slogan “Liberate Hong Kong; Revolution of our times” could constitute both secession and subversion under the NSL.
	<b>JULY 3, 2020</b>	The CSNS and the NSD were formed. Luo Huining, the director of the Liaison Office of the Central People’s Government, was appointed as the National Security Advisor of the CSNS. The Chief Executive appointed the first six national security judges. Tong Ying-kit, the first defendant to be charged with a NSL crime, had his first day in court.
	<b>JULY 4, 2020</b>	The Education Bureau published a notice that schools need to instruct students to understand and comply with the NSL. The Leisure and Cultural Services Department removed public library books that might contradict the NSL.
	<b>JULY 6, 2020</b>	The CSNS published detailed implementation rules for Article 43, which authorized a wide range of police measures to investigate NSL cases.
	<b>JULY 11, 2020</b>	The pro-democracy camp held primary elections. The police and administrative officers claimed that voting station operations violated the NSL and other regulations.



	<p><b>JULY 16, 2020</b></p>	<p>The Hong Kong government refused to renew the visa for a veteran New York Times journalist. Visa requests from journalists working for other media organizations have also been rejected since then.</p>
	<p><b>JULY 21, 2020</b></p>	<p>The police arrested a district councilor, Chow Wai-hung, for allegedly inciting secession because he chanted a forbidden slogan at a mall. Chow was later released on bail.</p>
	<p><b>JULY 29, 2020</b></p>	<p>The NSD arrested four former members of Studentlocalism for alleged secession. All four were released on bail over the next 48 hours.</p>
	<p><b>JULY 30, 2020</b></p>	<p>The government disqualified 12 pro-democratic candidates from the legislature election scheduled in September and later canceled the election citing COVID-19 concerns.</p>
	<p><b>JULY 31, 2020</b></p>	<p>According to multiple media reports, the police issued wanted warrants for six Hong Kong activists based overseas, including one US citizen.</p>
	<p><b>AUGUST 10, 2020</b></p>	<p>The NSD arrested 10 people, including Apple Daily founder Jimmy Lai and prominent activist Agnes Chow, for alleged collusion with foreign actors. All 10 were released on bail within 48 hours.</p>
	<p><b>AUGUST 23, 2020</b></p>	<p>The Chinese Coast Guard intercepted and detained 12 people for alleged unlawful border crossing. Pro-Beijing media claimed that the 12 people were fleeing to Taiwan. One of them was Andy Li, who had been arrested along with Agnes Chow and Jimmy Lai on August 10 for alleged collusion. The other 11 people had all been arrested or were wanted for alleged violent crimes during the 2019 protests.</p>
	<p><b>AUGUST 25, 2020</b></p>	<p>The High Court denied bail to Tong Ying-kit.</p>
	<p><b>SEPTEMBER 5, 2020</b></p>	<p>The NSD arrested Lai Chun-pong, the owner of a digital store, in relation to a 2019 case in which Lai and others allegedly conspired to harm police officers.</p>
	<p><b>SEPTEMBER 6, 2020</b></p>	<p>Pro-democracy politician Tam Tak-chi was arrested by the NSD, but then charged with sedition under Hong Kong's Crimes Ordinance. Tam was later denied bail by the court. Police also arrested a woman during a demonstration, claiming that she violated the NSL by broadcasting pro-independence slogans.</p>
	<p><b>SEPTEMBER 8, 2020</b></p>	<p>A student was suspended from school for using a profile photo bearing one of the forbidden slogans in a zoom class.</p>
	<p><b>SEPTEMBER 22, 2020</b></p>	<p>The police arrested Adam Ma for alleged violation of the NSL after he chanted forbidden slogans at a mall. Police revised their definition of a media organization in their internal guidelines to only recognize representatives from registered outlets registered.</p>



- 

**SEPTEMBER 24, 2020** The NSD arrested an undergraduate student, Lui Sai-yu, with his mother and confiscated weapons during a search of their home. Lui was charged with unlicensed possession of firearms and inciting secession, in reference to language that he used in social media posts. Lui was later charged under the NSL.
- 

**SEPTEMBER 30, 2020** The Chinese People's Procuratorate in Yantian, Shenzhen, approved the arrests of the 12 Hong Kong refugees who were intercepted and detained by the Chinese Coast Guard.
- 

**OCTOBER 4, 2020** The NSD arrested Steve Ng Wing-tak, the founder of an online media outlet, for allegedly conspiring to commit harm against police officers. He was later released on bail.
- 

**OCTOBER 5, 2020** The Education Bureau revoked an elementary school teacher's license for using media materials on Hong Kong independence for class discussions.
- 

**OCTOBER 12, 2020** Hong Kong police arrested nine people who allegedly assisted the Hong Kong 12 in attempting to flee to Taiwan.
- 

**OCTOBER 12, 2020** The Civil Service Bureau announced that, to comply with the NSL, key officials who joined the government after June 30th, 2020 need to take an oath of allegiance to the Basic Law and the Hong Kong SAR of the PRC.
- 

**OCTOBER 27, 2020** Tony Chung, the founder of StudentLocalism, was arrested for a second time by the NSD after trying to seek asylum from the US consulate in Hong Kong. The police also arrested two of Chung's former colleagues, who were released on bail the next day.
- 

**OCTOBER 29, 2020** Tony Chung was denied bail and officially charged with four offenses, including secession under the NSL.
- 

**NOVEMBER 9, 2020** Tony Chung's friend, Tim Luk, was arrested by the NSD. Media claimed that his arrest was tied allegedly assisting Chung in seeking political asylum and providing him temporary accommodation.
- 

**NOVEMBER 11, 2020** The NPC Standing Committee disqualified four pro-democracy legislators from the LegCo, claiming that their interactions with foreign governments cast doubt on their loyalty. In response, virtually all of the remaining pan-democratic legislators resigned in protest over the NPC's intervention.
- 

**NOVEMBER 21, 2020** The police arrested a radio show host, his wife, and his assistant for allegedly funding secession because he initiated a crowdfunding project to support Hong Kong exiles in Taiwan. All three were released on bail the next day.
- 

**NOVEMBER 24, 2020** The police arrested and charged Adam Ma for inciting secession. The court denied bail on his case.



- NOVEMBER 27, 2020** The Shenzhen Police finished investigating the Hong Kong 12 and submitted the case to the local procuratorate.
- DECEMBER 2, 2020** Jimmy Lai was arrested again and charged with fraud. The court denied bail the next day.
- DECEMBER 3, 2020** The Tam Tak-chi case was taken over by an NSL-designed judge based on the prosecutor's claim that the case concerned national security, although Tam was charged with sedition, a Crimes Ordinance offense.
- DECEMBER 7, 2020** The NSD arrested eight people who participated in a pro-democracy demonstration at the Chinese University of Hong Kong for unlawful assembly. Three of the eight protesters were also arrested for inciting secession, an NSL offense. All eight people were released on bail the next day.
- DECEMBER 11, 2020** The prosecutor added an NSL charge of collusion with foreign actors to the Jimmy Lai case. In this case, Lai was formally charged with an NSL offense.
- DECEMBER 16, 2020** The Shenzhen Procuratorate formally charged eight Hong Kong refugees with unlawful border-crossing and two with organizing the unlawful border crossing. With certain requirements, the procuratorate declined to charge two minor refugees.
- DECEMBER 23, 2020** An NSL-designed judge at the High Court granted Jimmy Lai bail under restrictive conditions, including barring him from giving media interviews or posting on social media. Chinese state-owned media outlets voiced strong criticism of the bail decision.
- DECEMBER 28, 2020** The Shenzhen court heard the case of the Hong Kong 12. Neither family members nor the lawyers designated by the families were allowed to participate in the hearing.
- DECEMBER 30, 2020** The Shenzhen court sentenced the eight refugees charged with unlawful border crossing to seven months in prison. The two individuals accused of organizing an unlawful border crossing were sentenced to two and three years.
- DECEMBER 31, 2020** The CFA revoked Jimmy Lai's bail and asked the High Court to re-hear the case, citing technical concerns related to the High Court's bail decision.
- JANUARY 6, 2021** Led by the NSD, police arrested 53 pro-democracy politicians and activists for alleged subversion, in connection with participation in a primary election in July 2020.
- JANUARY 7, 2021** The NSD arrested Joshua Wong and Tam Tak-chi, already in custody for other cases, for alleged subversion in relation to their participation in a primary election in July 2020.

## APPENDIX C. INDIVIDUALS ARRESTED FOR ALLEGED NSL CRIMES OR BY THE NSD<sup>1</sup>

#	Identity	Date of Arrest	Alleged Offense <sup>2</sup>	Alleged Action/Background Information	Current Status
1	Tong Ying-kit	July 1st, 2020	Inciting secession; terrorist action; <i>dangerous driving</i>	Rode a motorcycle into a group of police officers with a flag bearing a forbidden slogan; arrested at scene of demonstration	Charged; denied bail
2	Male, 38 years old	July 1st, 2020	Secession	A flag bearing "Hong Kong Independence" was found among his belongings; arrested at scene of demonstration	Released on bail
3	Female, 36 years old	July 1st, 2020	Inciting or abetting secession or subversion	Printed materials relating to Hong Kong independence were found among her belongings; arrested at scene of demonstration	Released on bail
4	Female, 36 years old	July 1st, 2020	Inciting or abetting secession or subversion	Printed materials relating to Hong Kong independence were found among her belongings; arrested at scene of demonstration	Released on bail
5	Female, 67 years old, surname Chow	July 1st, 2020	Inciting secession	Displayed the British national flag, the U.S. national flag, and a pro-Hong Kong independence banner; arrested at scene of demonstration	Released on bail
6	Female, 15 years old	July 1st, 2020	Inciting or abetting secession or subversion	Waved a pro-independence banner; arrested at scene of demonstration	Released on bail
7	Male, 24 years old	July 1st, 2020	Inciting or abetting secession or subversion	Wore a T-shirt bearing a forbidden slogan; arrested at scene of demonstration	Released on bail
8	Male, 19 years old	July 1st, 2020	Inciting or abetting secession or subversion	Sticker on his cellphone bore a forbidden slogan; pro-democracy flyers were found in his pocket; arrested at scene of demonstration	Released on bail
9	Male, 26 years old	July 1st, 2020	Inciting or abetting secession or subversion	A pro-independence banner was found among his belongings; arrested at scene of demonstration	Released on bail
10	Male, 23 years old	July 1st, 2020	Secession	Flyers bearing a forbidden slogan were found among his belongings; arrested at scene of demonstration	Released on bail
11	Chow Wai-hung	July 21st, 2020	Inciting or abetting secession	Displayed a banner bearing a forbidden slogan; arrested at scene of demonstration	Released without bail conditions
12	Tony Chung	July 29th, 2020	Secession; <i>money laundering; conspiracy to publish seditious materials</i>	Former member of Studentlocalism, a pro-independence organization; arrested at home by the NSD then released on bail; arrested again when he tried to seek asylum at the U.S. consulate in Hong Kong in late October, 2020	charged; denied bail
13	Ho Yanni Loren	July 29th, 2020	Secession and inciting secession	Former member of Studentlocalism, a pro-independence organization; arrested at home by the NSD and then released on bail; re-arrested in late October 2020, due to developments in Chung's case	Case pending with bail conditions lifted
14	Ho Nok Hang	July 29th, 2020	Secession and inciting secession	Former member of Studentlocalism, a pro-independence organization; arrested at home by the NSD	Case pending with bail conditions lifted
15	Wei-Yin Chan	July 29th, 2020	Secession and inciting secession	Former member of Studentlocalism, a pro-independence organization; arrested at home by the NSD and then released on bail; re-arrested in late October 2020, due to developments in Chung's case	Case pending with bail conditions lifted

1 This list summarizes the information of individuals who were arrested under NSL criminal provisions or by the NSD between July 1, 2020, and January 24, 2021. The information is based on cross-comparison between public materials and contributions from multiple Hong Kong residents. Public sources include: "國安法實施僅一個月 最少 16 人被捕、6 人被通緝[At Least 16 People Have Been Arrested and Six Are Wanted in Just One Month since the Security Law Came into Effect]," *Stand News*, August 2, 2020; "警方拘黎智英、兩名兒子及壹傳媒高層等 7 人 指違國安法、欺詐等罪名 200 警搜查蘋果日報大樓 [Police detained seven people, including Jimmy Lai, two sons and Next Media executives, on charges of violating national security laws, fraud]," *CitizenNews*, August 10, 2020; U.S. Consulate General Hong Kong & Macau. "Bearing Witness," January 12, 2021; on.cc. "涉助 12 港人蛇偷渡越境 國安警拘黃國桐等 11 人 [The National Security Police detained 11 people, including Daniel Wong, for attempting to help the 12 Hong Kong people crossing border]," January 14, 2021.

2 Some of the data related to alleged offenses is based on self-reporting by arrestees themselves. It is possible that some of those arrested were not given accurate information about the reasons for their arrest, and therefore their self-reporting about the alleged offenses that led to their arrest may also be inaccurate. Charges listed in italics refer to non-NSL offenses.



#	Identity	Date of Arrest	Alleged Offense	Alleged Action/Background Information	Current Status
16	Jimmy Lai	Aug 10th, 2020	Collusion with foreign forces; <i>sedition; conspiracy to defraud</i>	Allegedly provided financial support to an overseas advocacy group; allegedly made use of government-subsidized land in violation of lease terms; arrested at home by the NSD	Charged with fraud and collusion with foreign forces; denied bail
17	Royston Chow	Aug 10th, 2020	Collusion with foreign forces; <i>conspiracy to defraud</i>	Allegedly provided financial support to an overseas advocacy group; allegedly made use of government-subsidized land in violation of lease terms; arrested at home by the NSD	Charged with fraud; released on bail
18	Ian Lai	Aug 10th, 2020	Collusion with foreign forces	Allegedly provided financial support to an overseas advocacy group; arrested at home by the NSD	Released on bail
19	Cheung Kim Hung	Aug 10th, 2020	<i>Conspiracy to defraud</i>	Senior employee at Jimmy Lai's company, Next Media Group; allegedly made use of government-subsidized land in violation of lease terms; arrested from home/company by the NSD	Released on bail
20	Wong Wai-keung	Aug 10th, 2020	<i>Conspiracy to defraud</i>	Senior employee at Jimmy Lai's company, Next Media Group; allegedly made use of government-subsidized land in violation of lease terms; arrested from home/company by the NSD	Charged with fraud; released on bail
21	Tat Kong Ng	Aug 10th, 2020	<i>Conspiracy to defraud</i>	Senior employee at Jimmy Lai's company, Next Media Group; allegedly made use of government-subsidized land in violation of lease terms; arrested from home/company by the NSD	Released on bail
22	Timothy Lai	Aug 10th, 2020	<i>Conspiracy to defraud</i>	Son of Lai; allegedly made use of government-subsidized land in violation of lease terms; arrested from home/company by the NSD	Released on bail
23	Agnes Chow	August 10th, 2020	Collusion with foreign forces	Allegedly assisted an overseas advocacy group; arrested at home by the NSD	Released on bail; currently in prison due to prior criminal conviction
24	Andy Li	Aug 10th, 2020	Collusion with foreign forces; <i>money laundering</i>	Allegedly assisted an overseas advocacy group; arrested at home by the NSD	Arrested by Chinese authorities when fleeing Hong Kong; sentenced to seven months by a Chinese court in December
25	Wilson Li	Aug 10th, 2020	Collusion with foreign forces; <i>money laundering</i>	Allegedly assisted an overseas advocacy group; arrested at home by the NSD	Released on bail
26	Lai Chun-pong	Sep 5th, 2020	<i>Conspiracy with intent to injure</i>	Allegedly conspired with others to harm police officers in December 2019; arrested from company by the NSD	Charged; denied bail
27	Tam Tak-chi	Sept 6th, 2020	<i>Sedition</i> ; participating in subversion	Shouted protest slogans at street booths; arrested at his home by the NSD; also arrested for participating in a primary election in July 2020	Charged; denied bail;
28	Female	Sept 6th, 2020	Unspecified NSL offense	Shouted pro-independence slogans using a loudhailer; arrested at scene of demonstration	Released on bail
29	Adam Ma	Sept 22nd, 2020	Abetting secession	Chanted forbidden slogans; arrested at scene of demonstration	Charged; denied bail
30	Lui Sai-yu	Sept 25th, 2020	Inciting or abetting secession; <i>possession of firearms without license; import of strategic commodities without license; possession of offensive weapons</i>	Firearms were found at his residence; published protest-related materials; arrested at home by the NSD	Charged; denied bail

#	Identity	Date of Arrest	Alleged Offense	Alleged Action/Background Information	Current Status
31	Female 49 years old, mother of Lui Sai-yu	Sept 25th, 2020	<i>Possession of firearms without license; import of strategic commodities without license; possession of offensive weapons</i>	Lived with Lui in a residence in which firearms were found; arrested at home by the NSD	Released on bail
32	Ng Wing-tak	Oct 1st, 2020	<i>Conspiracy with intent to injure</i>	Allegedly conspired with others to harm police officers in December 2019; arrested at company by the NSD	Released on bail
33	Unknow	Oct 10th, 2020	Unspecified NSL offense	One of nine people who were arrested because of alleged assistance given to 12 people attempting to flee Hong Kong	Released on bail
34	Tim Luk	Nov 9th, 2020	<i>Assisting criminal</i>	Provided accommodation for Tony Chung to avoid arrest; former member of the Studentlocalism; arrested at home by the NSD	Released on bail
35	Wan Yiu-sing	Nov 21st, 2020	Financing secession with money or other property; <i>money laundering</i>	Initiated crowdfunding program to support Hong Kong refugees in Taiwan; arrested by the NSD	Released on bail
36	Wan Yiu-sing's wife	Nov 21st, 2020	Financing secession with money or other property; <i>money laundering</i>	Participated in Wan's crowdfunding program; arrested by the NSD	Released on bail
37	Wan Yiu-sing's assistant	Nov 21st, 2020	Financing secession with money or other property; <i>money laundering</i>	Participated in Wan's crowdfunding program; arrested by the NSD	Released on bail
38	Male, between 16 and 18 years old	Dec 7th, 2020	Inciting secession; <i>unlawful assembly</i>	Chanted pro-independence slogans or waved flags bearing such slogans in a protest at the Chinese University of Hong Kong on Nov. 19; arrested by the NSD	Released on bail
39	Male, between 16 and 18 years old	Dec 7th, 2020	Inciting secession; <i>unlawful assembly</i>	Chanted pro-independence slogans or waved flags bearing such slogans in a protest at the Chinese University of Hong Kong on Nov. 19; arrested by the NSD	Released on bail
40	Male, between 16 and 18 years old	Dec 7th, 2020	Inciting secession; <i>unlawful assembly</i>	Chanted pro-independence slogans or waved flags bearing such slogans in a protest at the Chinese University of Hong Kong on Nov. 19; arrested by the NSD	Released on bail
41	Benny Tai Yiu-ting	Jan 6th, 2021	Organizing Subversion	Initiated and organized a primary election in July 2020; arrested by the NSD	Released on bail
42	Au Nok-hin	Jan 6th, 2021	Organizing Subversion	Helped organize a primary election in July 2020; arrested by the NSD	Released on bail
43	Andrew Chiu Ka-yin	Jan 6th, 2021	Organizing Subversion	Senior member at Power for Democracy, the organization which helped organize a primary election in July 2020; arrested by the NSD	Released on bail
44	Ben Chung Kam-lun	Jan 6th, 2021	Organizing Subversion	Senior member at Power for Democracy, the organization which helped organize a primary election in July 2020; arrested by the NSD	Released on bail
45	John Clancey	Jan 6th, 2021	Organizing Subversion	Senior member at Power for Democracy, the organization which helped organize a primary election in July 2020; arrested by the NSD	Released on bail
46	Ng Ching-hang	Jan 6th, 2021	Organizing Subversion	Advocated for voting according to the results of a primary election	Released on bail
47	Ventus Lau Wing-hong	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
48	Gwyneth Ho Kwai-lam	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
49	Alvin Yeung Ngok-kiu	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
50	Lam Cheuk-ting	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
51	Owen Chow Ka-shin	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail



#	Identity	Date of Arrest	Alleged Offense	Alleged Action/Background Information	Current Status
52	Gary Fan Kwok-wai	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
53	Leung Kwok-hung	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
54	Raymond Chan Chi-chuen	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
55	Hendrick Lui Chi-hang	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
56	Ricky Or Yiu-lam	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
57	Lee Chi-yung	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
58	Mike Lam King-nam	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
59	Ng Kin-wai	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
60	Eddie Chu Hoi-dick	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
61	Sam Cheung Ho-sum	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
62	Prince Wong Ji-yuet	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
63	Roy Tam Hoi-pong	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
64	Kwok Ka-ki	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
65	Carol Ng Man-ye	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
66	Andrew Wan Siu-kin	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
67	Wu Chi-wai	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
68	Jeremy Tam Man-ho	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
69	Sze Tak-loy	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
70	Kinda Li Ka-tat	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
71	Frankie Fung Tat-chun	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
72	Jimmy Sham Tsz-kit	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
73	Helena Wong Pik-wan	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
74	Kalvin Ho Kai-ming	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
75	Jeffrey Andrews	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
76	Lau Chak-fung	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
77	Claudia Mo Man-ching	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
78	Lawrence Lau Wai-chung	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
79	Tiffany Yuen Ka-wai	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
80	Fergus Leung Fong-wai	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail

#	Identity	Date of Arrest	Alleged Offense	Alleged Action/Background Information	Current Status
81	Cheng Tat-hung	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
82	Andy Chui Chi-ki	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
83	Michael Pang Cheuk-kei	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
84	Clarisse Yeung Suet-ying	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
85	Lester Shum Ngo-fai	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
86	James To Kun-su	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
87	Henry Wong Pak-yu	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
88	Roy Kwong Chun-yu	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
89	Lee Yue-shun	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
90	Joseph Lee Kok-long	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
91	Winnie Yu Wai-ming	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
92	Lau Hoi-man	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
93	Ricky Yuen Wai-kit	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	Released on bail
94	Joshua Wong	Jan 6th, 2021	Subversion	Candidate who participated in a primary election in July 2020; arrested by the NSD	In prison due to prior criminal conviction
95	Daniel Wong Kwok-tung	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Release on bail
96	Kyrylo	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
97	Rono Fok	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
98	Ng Jing-zeon <sup>3</sup>	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
99	Yeung Tin-ji	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
100	Cheung Zing-jan	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
101	Chow Jing	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
102	Tsang Coek-jin	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
103	Kong Sam-ming	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
104	Cheung Din-joeng	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail
105	Kwan Wai-si	Jan 14th, 2021	<i>Funding or assisting criminals</i>	Allegedly assisted the illegal border-crossing by the Hong Kong 12; arrested by the NSD	Released on bail

<sup>3</sup> Since Cases #98 to #105 have no official translations of their names, this report translates their names using the Hong Kong Supplementary Character Set provided by the Chinese University of Hong Kong. Please see [ona.cc](http://ona.cc). “涉助12港人蛇偷渡越境 國安警拘黃國桐等11人[The National Security Police detained 11 people, including Daniel Wong, for attempting to help the 12 Hong Kong people crossing border],” January 14, 2021, for the original Chinese names.

# THE NATIONAL SECURITY LAW

*constitutes one of the  
greatest threats to  
human rights and the  
rule of law in Hong  
Kong since the 1997  
handover.*



CENTER FOR ASIAN LAW

GEORGETOWN LAW

