

# HONG KONG WATCH SUBMISSION TO PUBLIC CONSULTATION ON ARTICLE 23

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## INTRODUCTION

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Below is a submission from Hong Kong Watch in response to the legislative proposals for Article 23 legislation. We will continue to monitor the outcome of the public consultation period, as well as any further proposals related to Article 23 legislation, as it poses a severe threat to basic civil liberties and the rule of law in the Hong Kong Special Administrative Region (HKSAR) and beyond.

Although Hong Kong Watch has been repeatedly condemned and harassed by the HKSAR government via the use of the 2020 Hong Kong National Security Law (HKNSL)(香港國家安全法), we are still eager to constructively engage in policy and legislative conversation with the authorities in order to uphold “one country, two systems”, which has been severely undermined by the implementation of the NSL in the past three and a half years. Hong Kong Watch, as a UK-based charity, aims to promote universal human rights values, as enshrined in the Universal Declaration of Human Rights, with reasoned and evidence-based advocacy and research. We hope this submission will help government officials and the public of the HKSAR to have greater understanding of whether and how a right-respectful legislation can be made following international human rights principles and comparative best practice.

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## CHAPTER 1: CONSTITUTIONAL DUTY TO SAFEGUARD NATIONAL SECURITY

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### Analysis

The consultation document<sup>1</sup> takes its definition of national security from the concept of ‘總體國家安全觀 holistic national security’ outlined in 2014 by the leader of the People’s Republic of China (PRC) Xi Jinping (習近平) at the first general meeting of the National Security Commission, as ‘no longer limited to traditional security fields such as homeland security, sovereignty security and military security, but also covers other nontraditional security fields.’ The document justifies the adoption of this definition on the grounds that Hong Kong, which the PRC states is an inalienable part of the PRC, should use the same conception of national security as that adopted in Article 2 of the National Security Law of the PRC (中華人民共和國國家安全法).

As such the HKSAR proposes adopting the same definition of ‘national security’ as that used in the National Security Law of the PRC, which states:

*‘National security refers to the status in which the State’s political regime, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social*

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<sup>1</sup> [https://www.sb.gov.hk/eng/bl23/doc/Consultation%20Paper\\_EN.pdf](https://www.sb.gov.hk/eng/bl23/doc/Consultation%20Paper_EN.pdf)

*development, and other major interests of the State are relatively free from danger and internal or external threats, and the capability to maintain a sustained status of security.*<sup>2</sup>

The HKSAR goes on to state that the ‘specific measures to be taken to safeguard national security will depend on the actual situation in the HKSAR.’ This vague wording implicitly threatens individuals who may be charged according to this definition of national security, given the expansive ambit of ‘holistic’ national security and the lack of specific mechanisms by which to measure what response is appropriate and sufficient for each alleged crime.

Chapter 1 of the consultation document makes clear that the concept of ‘national security’ underpinning any new legislation will be in line with the HKNSL imposed in 2020 following the ‘5.28 Decision’ promulgated by the National People’s Congress of the PRC. The assertion is that any legislation introduced under Article 23 of the Basic Law (BL23) would add to and be convergent, compatible and complementary with the HKNSL to address ‘deficiencies in the work on safeguarding national security’ and remaining ‘threats posed by external forces and local terrorism’ raises major concerns about the scope and application of any new legislation, given the lack of clarity around the legal and proportional scope and application of the HKNSL, and the severe threat posed by the HKNSL to the rule of law and human rights and freedoms in Hong Kong.

With regard to the former, the justification of BL23 legislation via reference to ‘threats posed by external forces and local terrorism’ deserves greater scrutiny. This is *prima facie* a reference to what the HKSAR authorities refer to as the alleged ‘Hong Kong version of “colour revolution”’, more commonly known as the Hong Kong protests against the Fugitive Offenders Bill in 2019. However, the HKSAR’s notion of ‘local terrorism’ as adumbrated in the HKNSL do not meet international standards on counter-terrorism legislation, as outlined in the Suppression Conventions, the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism.

These models for best practice stipulate that the designation of ‘terrorist activities’ should be restricted to acts which (a) involve death or serious bodily injury, including against civilians, or the taking of hostages, and (b) are committed for the purpose of provoking a state of terror or compelling a government to take a specific course of action. The HKNSL, conversely, incorporates a catch-all reference to ‘dangerous activities which seriously jeopardise public health, safety, or security.’<sup>3</sup>

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<sup>2</sup> [https://www.elegislation.gov.hk/fvddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fvddoc/hk/a406/eng_translation_(a406)_en.pdf)

<sup>3</sup> <https://www.gld.gov.hk/egazette/pdf/20202448e/egn2020244872.pdf>

According to expert legal bodies,<sup>4</sup> the overly broad language within the HKNSL endangers civil rights guaranteed by the HKSAR Basic Law and the Hong Kong Bill of Rights Ordinance (HKBORO) (香港人權法案條例) which enshrines the language of the ICCPR into HKSAR law. In resolution 7/36, the Human Rights Council stressed ‘the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression.’<sup>5</sup> Already, troubling evidence exists that the HKSAR is designed to accomplish just that.

The right to freedom of opinion and expression has been heavily curtailed by the provisions of Article 43 of the HKNSL, which gives police the ability to demand the removal of any online or offline content deemed in violation of the HKNSL, and grants extensive powers for interception of communications and search of premises.<sup>6</sup> The government has also introduced its own official press card system, whereby press cards issued by media outlets are no longer recognised by the government. Only government-registered outlets and ‘internationally known’ foreign media are recognised while accreditation from press associations such as the Hong Kong Journalists Association (HKJA) are no longer accepted. This severely curtails the ability of Hong Kongers to critically evaluate and report on the actions of the government, especially as the HKSAR has also denied visas to journalists at ‘internationally known’ outlets such as the *The Economist*<sup>7</sup> and *The Financial Times*<sup>8</sup>. Only government-approved local media thus have the ability to reliably operate in the HKSAR without fear of losing their credentials or their right to work in Hong Kong.

The deterioration of the press is exemplified by the case of Mr. Jimmy Lai, a 76-year old British citizen who founded the now-defunct newspaper *Apple Daily* (蘋果日報), the largest pro-democracy newspaper in Hong Kong. Under the HKNSL, Mr Lai has been accused of two counts of conspiracy to collude with external forces and one count of collusion with external forces. Alleged evidence against Mr Lai has included meetings with foreign politicians, requesting media comments from foreign politicians, writing for foreign news outlets, reporting on incidents of police brutality, and amplifying the voices of young persons during the 2019 protests.

The right to freedom of peaceful assembly and of association has also been curtailed. Since the protest movements in the HKSAR began, more than 10,000 individuals have been arrested in protest-related cases, and over 2,300 charged. Many of them have been detained and are facing prosecution under the HKNSL and illegal-assembly laws. The Hong Kong Police Force (HKPF) have also arrested and imprisoned over 285 individuals, including

<sup>4</sup><https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487#:~:text=This%20decision%20was%20the%20subject,elements%20to%20endanger%20national%20security,>

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27082#:~:text=The%20law%20regulates%20four%20distinct,elements%20to%20endanger%20national%20security,>

<sup>5</sup> [https://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_36.pdf](https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_36.pdf)

<sup>6</sup> [http://internet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FHKG%2F51331&Lang=en](http://internet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FHKG%2F51331&Lang=en)

<sup>7</sup> <https://www.theguardian.com/world/2021/nov/13/hong-kong-denies-visa-to-economist-journalist-in-latest-media-blow>

<sup>8</sup> <https://jp.reuters.com/article/us-hongkong-politics-visa/hong-kong-press-freedom-in-question-as-ft-journalist-denied-visa-idUSKCN1MF0XH/>

journalists, under the HKNSL for peacefully exercising basic civil liberties. As a result, more than 68 civil society organisations have been forced to close.

In addition to posing a threat to civil liberties, the HKNSL ‘has de facto abolished the independence of the judiciary of Hong Kong SAR’,<sup>9</sup> according to the United Nations (UN) Committee on Economic, Social, and Cultural Rights (CESCR). Under Article 44 of the HKNSL the Chief Executive of the HKSAR reserves the right to designate judges to handle cases concerning offences endangering national security. Article 44 further stipulates that if a judge makes statements or behaves in a manner ‘endangering national security’, they will be removed from the designation list.

In a further erosion of the independence of the judiciary and the basic autonomy of Hong Kong, Chapter 5 of the HKNSL (Articles 48-61 inclusive) covers the establishment of the Office for Safeguarding National Security (OSNS) (維護國家安全公署), an office of the Central People’s Government of the PRC based and operating in, but not subject to the jurisdiction of, Hong Kong. When the OSNS has been granted jurisdiction to handle a case, on the grounds that it is too ‘complex’ or ‘serious’ to be handled by HKSAR courts, procedure is governed by mainland law, including the Criminal Procedure Law (刑事訴訟法) of the PRC. This raises the possibility of the suspension of basic rights in national security cases, such as the right to remain silent, as well as raising the possibility of incommunicado detention and placing significant restrictions on the right to counsel.

In this context, there are significant doubts as to the HKSAR’s ability to apply national security legislation while upholding the constitutional order established by the Constitution and the Basic Law, with regard to the principles of autonomy in administering HKSAR affairs and of safeguarding human rights as guaranteed by the Basic Law and HKBORO and obligated as a signatory to the ICCPR, as well as under Articles 4 and 5 of the HKNSL which state that these commitments will be upheld and human rights protected.

### Recommendations

The wording of BL23 emphasises that the HKSAR ‘shall enact laws on its own’ (應自行立法) on treason, secession, and other listed offences, in distinction to matters of defence and foreign affairs, on which ‘national laws’ (全國性法律) may apply to the HKSAR under BL18(3). The introduction of the HKNSL to handle the BL23 crimes of secession and subversion, as well as the arrogation of the right under HKNSL Chapter V to apply PRC law within the HKSAR in national security cases, has already violated the principles of basic autonomy stipulated in BL18(3), BL23 and BL159(4) *inter alia*.

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<sup>9</sup> [tinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?Lang=en&symbolno=F%2FC.12%2FCHN%2FCO%2F3](http://tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?Lang=en&symbolno=F%2FC.12%2FCHN%2FCO%2F3)

The HKNSL has violated the Basic Law and Hong Kong's international obligations as a signatory of the ICCPR, and its application has led to illegal and arbitrary arrests amid other human rights abuses. It has been robustly condemned by the international community (see Appendix I). It should be immediately repealed by the National People's Congress Standing Committee (NPCSC) (全国人大常委会) and autonomy over domestic security should be properly restored to Hong Kong.

No BL23 legislation should be introduced or consulted upon until this basic prerequisite for constitutionality, *i.e.* the repeal of the HKNSL and the restoration of Hong Kong's autonomy over domestic security, has been met.

To the extent that the HKSAR has a constitutional obligation to introduce BL23 legislation, it follows that the HKSAR has a constitutional obligation to uphold the Basic Law *in toto*. This includes upholding the sole responsibility of the HKSAR to maintain public order in the region under BL14(2); the right to stand for election under BL26; the right to freedom of expression, of the press and of publication; freedom of association, of assembly, of procession and of demonstration under BL27; freedom from torture under BL28(2); freedom from arbitrary search under BL29; and freedom and privacy of communication under BL30.

Any restriction on these basic rights on national security grounds should be legal, legitimate, and proportional, and ensure that legislation is consistent with the protection of international human rights laws and standards as outlined in the ICCPR, General Comment 34 of the UN Human Rights Committee, the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR, the Johannesburg Principles, and others.

BL23 legislation, as well as any other legislation introduced under the justification of safeguarding national security and preventing 'local terrorism', should clearly define what behaviour and conduct would constitute an offence under the law, as well as the scope and justification for punishments related to offences under the law. Any definition of 'local terrorism' should adhere to international legal obligations and standards on counter-terrorism legislation.

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## CHAPTER 2: ADDRESSING NATIONAL SECURITY RISKS AND IMPROVING THE REGIME FOR SAFEGUARDING NATIONAL SECURITY

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### Introduction

Chapter two outlines the necessity for Article 23 legislation following the ‘illegal’ Occupy Central movement of 2014, the Mong Kok ‘riot’ of 2016, the establishment of the Hong Kong National Party in 2016, and Hong Kong’s version of the ‘colour revolution’ with ‘black-clad violence’ in 2019. The chapter also outlines the research methodology of the preparation of this consultation document via international comparison with various common law jurisdictions, principally those of the UK (mentioned over 50 times), Australia (30 times), Canada (21 times) and US (18 times).

### Background

The 2019 protests included the unprecedented use of force by the HKPF. In most protests, hundreds were hospitalised as a result of police use of batons, firearms, pepper spray and tear gas. Rubber bullets and bean bag bullets were routinely used against protestors. This led to a number of people being badly injured in incidents which could have been fatal. According to Amnesty International, over 85 percent of the cases they investigated involved the arrested person being hospitalised after their beating.<sup>10</sup> Between 9 June and 4 August 2019, 1,000 rounds of tear gas were used. Then on 5 August following protests during a general strike, 800 canisters of tear gas were used. Police fired tear gas in heavily built-up residential areas, without giving residents proper notice, and the fumes entered people’s homes. The HKSAR did not conduct independent investigations into the allegations of police brutality committed by the HKPF and there has not yet been any accountability.<sup>11</sup>

### Analysis

The HKSAR evinces a desire for BL23 legislation to be considered as a legitimate expression of the ‘inherent right of every sovereign state’ to pass laws on national security, and cites examples of national security legislation in the UK, US, Canada, Australia, New Zealand and Singapore, as well as the US’ covert surveillance through the Prism programme, to legitimise their proposals.

Although the right of a state to defend itself is a fundamental principle of international law, the existing body of international law and associated commentary on national security and human rights makes it clear that national security legislation must refrain from disproportionate, illegitimate, or broad restrictions on civil liberties. For example, with

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<sup>10</sup><https://www.amnesty.org/en/latest/press-release/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>

<sup>11</sup><https://static1.squarespace.com/static/58ecfa82e3df284d3a13dd41/t/64b680d17b3bc85140d67de4/1689682129868/UPR+Submission%281%29.pdf>

reference to restrictions on the freedom of expression, the UN Human Rights Council expects a government to ‘demonstrate in specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.’<sup>12</sup>

It is scarcely credible that the actions of the HKSAR to date, with regard to the arrest and prosecution of journalists, including *ex-Apple Daily* founder and owner Jimmy Lai, the arrest and prosecution of lawmakers and peaceful pro-democracy activists, and the wide-ranging arrests of protestors under the HKNSL, would meet the minimum standards of necessity and proportionality, or be able to demonstrate the existence of a precise threat in immediate connection with the individuals arrested. The lack of transparency and accountability mechanisms in this process exacerbates the risks of human rights violations.

Furthermore, the context in which criminal cases are adjudicated under the HKNSL underlines the severe deficiencies in Hong Kong’s national security legislation, particularly in comparison to national security legislation in the aforementioned common law jurisdictions.

In nearly all common law jurisdictions the right to jury trial has the status of a constitutional right: see the sixth amendment of the US Constitution, s24(e) of the New Zealand Bill of Rights Act 1990, s11(f) of the Canadian Charter of Rights and Freedoms 1982, and s80 of the Commonwealth of Australia Constitution Act 1900. The UK is something of an outlier in not having an enshrined right to trial by jury, although defendants can elect or are obliged to undergo jury trial for most non-minor offences (those which carry a prison sentence of longer than six months). The Human Rights Act 1998 further protects the right to a fair trial, and the right to a lawyer of one’s choosing (Article 6(3)(c)).

However, under HKNSL46, and despite the provisions of BL86 that ‘The principle of trial by jury previously practised in Hong Kong shall be maintained’, criminal proceedings relating to national security may be tried without a jury, with a panel of three judges presiding. The practical implications of this rule are demonstrated by the ongoing criminal proceedings against *Apple Daily* founder and owner Jimmy Lai, who was denied his choice of lawyer<sup>13</sup> and is being tried without a jury.

The impartiality and independence of the court is also seriously in doubt, as concerns raised by the UN demonstrate.<sup>14</sup> Under HKNSL44 judges on national security cases are selected by the Chief Executive, and can be removed for any behaviour or statement deemed to be ‘endangering national security’; under HKNSL47 as interpreted by the NPCSC and promulgated on 30 December 2022, overseas lawyers are not allowed to serve as a defence

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<sup>12</sup> [General Comment No.34: Article 19: Freedoms of opinion and expression | Refworld](#)

<sup>13</sup> <https://www.theguardian.com/world/2022/dec/13/trial-of-hong-kong-tycoon-jimmy-lai-delayed-after-british-lawyer-denied-visa-extension>

<sup>14</sup> <https://static1.squarespace.com/static/58ecfa82e3df284d3a13dd41/t/64b680d17b3bc85140d67de4/1689682129868/UPR+Submission%281%29.pdf>



counsel or legal representative on national security cases without the permission of the Chief Executive.<sup>15</sup>

Judicial independence is further undermined by the interpretation of the NPCSC on HKNSL14. This states that the HKSAR Committee for Safeguarding National Security (港區國安委), a body headed by the Chief Executive, has the authority to make judgments and decisions on the question whether national security is involved in a particular case. These decisions are not subject to judicial review and no institution, executive, legislative, judicial, or otherwise, has the power to go against a decision by the Committee.<sup>16</sup>

As previously stated, the ‘holistic national security’ concept employed by the National Security Law of the PRC and proposed for BL23 legislation allows for a wider application of ‘national security’ status to cases, with attendant restrictions on legal representation and right to trial by jury. The HKSAR argues that it is common practice for common law jurisdictions to adopt a ‘broad interpretation in applying the concept of national security’, noting that ‘many common law jurisdictions have not defined ‘national security’ in their national security laws’, and citing the UK National Security Act (NSA) of 2023 as an example. The comparison, however, is spurious. It is clearly different to refrain from offering a specific definition of national security in law, and to offer an expansive definition such as that of ‘holistic national security’, with its 20 sub-categories such as ‘cultural security’ and ‘overseas interests security’. The latter does not maintain flexibility with an eye to emerging and unforeseen security threats so much as it seeks to establish the broadest possible scope for application of national security legislation.

Furthermore, the consultation document for BL23 legislation makes little reference to the extensive safeguards within UK national security legislation to ensure compliance with international standards on national security legislation. This includes, *inter alia*, a narrower scope of offences, a narrower definition of official secrets, a periodic review of the need for continued detention with a written record of reasons, a requirement of a damaging disclosure under section 5(3) of the Official Secrets Act 1989, and a requirement that obtainment or disclosure of protected information meet the foreign power condition set out under section 31 of the NSA 2023.

By way of comparison on the latter requirement, the draft BL23 legislation merely stipulates that disclosure must be ‘likely to endanger national security’. This replicates the wording of ‘endangering national security’ (危害國家安全) referenced 25 times in the HKNSL. Such vague wording has already been criticised by legal experts at the UN for potentially contravening the ‘principle of legal certainty’ under ICCPR article 15(1), which requires that criminal laws are sufficiently precise in their definition of which types of behaviour and conduct constitute an offence.

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<sup>15</sup> <https://www.chinalawtranslate.com/en/18902-2/>

<sup>16</sup> <https://www.chinalawtranslate.com/en/18902-2/>

It is self-evident, therefore, that the HKNSL and draft BL23 legislation lack the crucial safeguards and limited scope of national security legislation in other common law jurisdictions; furthermore, the comparison is fundamentally invalid given the vaguely worded provisions of the draft BL23 legislation and the lack of judicial independence in the HKSAR under the HKNSL. In no other common law jurisdiction is the final judgement on the eligibility of a criminal proceeding for basic civil rights, such as the right to jury, dependent upon the incontestable decision of an unelected body answerable to the central government of an authoritarian regime.

### Recommendations

If the HKSAR introduces legislation to protect the HKPF and other national security personnel, or introduces a new Safeguarding National Security Ordinance to address current and future risks in Hong Kong, the government should disinclude contents of the HKNSL which should be repealed, prevent the enactment of Article 23, and introduce legislation to protect protestors who exercise their freedoms guaranteed under international law.

Proposed BL23 legislation must have clearer language around how it will comply with international human rights law, including how it will be tested for and only applied in proportional and legitimate ways.

Proposed BL23 legislation also needs to enclose safeguarding and accountability mechanisms where the HKSAR can be held accountable if the BL23 is applied disproportionately or illegitimately. These mechanisms may be within or an addition to the current legal framework and institutions in the HKSAR.

Proposed BL23 legislation needs to be more transparent and have accountability mechanisms that are built-in or incorporated into the main body of the HKSAR's legal framework, so that there is a clear path for remedy if there is overly broad application of the law.

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## CHAPTER 3: TREASON AND RELATED ACTS

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### Introduction

Chapter three recommends improving the definitions and scope of offences related to treason, including the offence of treason, offence of misprision of treason under common law, treasonable offences, and the offence of unlawful drilling. The scope of the proposed definition includes Chinese citizens who have committed alleged treason within and outside of Hong Kong.

### Background

The offence of treason (叛逆罪) is derived from colonial-era English law, itself an amalgam of laws dating back to the early Middle Ages aimed at the preservation of the person of the sovereign. The Treason Act 1351 is by far the oldest law still in force in the UK. Common law jurisdictions, due to their origins in colonial-era law, have adopted similar laws criminalising the endangerment of the UK sovereign, but these laws are archaic and have been repealed in multiple countries.

The crimes listed under Section 3 of the Crimes Ordinance in the HKSAR are a relic of colonial law, criminalising a litany of offences against the body of Her Majesty the late Queen. These statutes should be repealed or updated, not reinforced.

### Analysis

The draft wording of the ‘improved’ crime of treason imports archaic concepts under English common law and colonial-era HKSAR law originally designed to criminalise offences against an individual – the person of the sovereign – and repurposes them into a crime against the state. This is reflected in the change in the Chinese translation of ‘treason’ from ‘叛逆’ to ‘叛國’.

The HKSAR argues that under common law, the offence of ‘levying war’ (發動戰爭) is not restricted to the common understanding of ‘war’ but encompasses violence or rioting instigated ‘for some general public purpose’ (某一般公共目的). HKSAR legislators have already made clear that this will apply to protestors such as those who demonstrated against the Extradition Bill in 2019.<sup>17</sup>

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<sup>17</sup><https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20240214/s00002/1707847586132/%E5%8F%9B%E5%9C%8B%E7%BD%AA%E8%A1%8C-%E3%80%8C%E7%99%BC%E5%8B%95%E6%88%B0%E7%88%AD%E3%80%8D%E6%B6%B5%E3%80%8C%E7%82%BA%E5%85%AC%E5%85%B1%E7%9B%AE%E7%9A%84%E6%9A%B4%E4%BA%82%E3%80%8D-%E6%B9%AF%E5%AE%B6%E9%A9%8A-%E6%AD%A6%E5%8A%9B%E8%A1%9D%E7%AA%81%E6%90%8D%E5%9C%8B%E5%AE%B6%E8%81%B2%E8%AD%BD%E6%96%99%E8%A7%B8%E7%8A%AF>

While it is true that legal scholars in the English common law tradition have taken an expansive view of ‘levying war’ to encompass any organised resistance to government authority, this merely reflects the concept’s long history and its roots in archaic legal principles. Many of these applications, such as to prosecute individuals in 19th century America for aiding fugitive slaves,<sup>18</sup> are clearly illegitimate under contemporary legal norms and merely underline that the concept of ‘levying war’ is vague and ill-suited to contemporary lawmaking.

This is reflected in the limited usage of the relevant laws in the post-1945 period in the UK and US. The last prosecution in the UK under the Treason Law 1351 was in 1945, and in the US the last upheld federal sentence for treason under 18 U.S. Code § 2381 was in 1949. Both cases dealt with propagandists for the Third Reich during the Second World War. It is safe to say no comparable military situation pertains today for Hong Kong.

The use of these archaic, indeed medieval legal terms, is compounded by the hopelessly vague wording of the BL23 legislation public consultation document. There is a total lack of any definition as to what behaviour or conduct would constitute ‘levying war’, while the referent of ‘China’ (中國) is also lacking in clarity. The original wording of Section 3 of the Crimes Ordinance was mostly limited to offences directly against the physical person of the UK monarch. It is entirely less clear what ‘China’ constitutes. Under the Basic Law the PRC owns all land in Hong Kong: does any incident of vandalism thus constitute ‘levying war against China’, provided it is in connection with ‘some general public purpose’?

The draft BL23 legislation’s usage of English colonial-era laws extends far beyond what previous attempts to introduce BL23 legislation could countenance. The proposed 2003 National Security (Legislative Provisions) ordinance, aborted after large-scale public resistance, planned to abolish the offence of ‘misprision of treason’.<sup>19</sup> The draft BL23 legislation instead codifies this statute:

*‘If a person knows that another person has committed, is committing or is about to commit the offence of “treason”, the person must disclose the commission of offence to a police officer as soon as reasonably practicable, unless the commission of offence has been in the public domain, otherwise the person commits an offence.’*

This offence – last used in the UK during the Cato Street Conspiracy of 1820<sup>20</sup> – would, if introduced, create an uncertain obligation on individuals to interpret the vague wording of ‘treason’ provided in the draft BL23 legislation and apply it to anything they see or hear, whether in person or online. As written the potential scope of the law is vague and expansive, belying the promise of the HKSAR to ‘precisely target acts endangering national security’.

<sup>18</sup> <https://www.lawfaremedia.org/article/treason-insurrection-and-disqualification-fugitive-slave-act-1850-jan-6-2021>

<sup>19</sup> <https://www.legco.gov.hk/yr02-03/english/bills/c007-e.pdf>

<sup>20</sup> <https://hansard.parliament.uk/lords/1974-12-03/debates/869d8639-b7a4-4406-acc2-97fa831c95d3/MisprisionOfTreason>

Given the expansive scope of the definition of ‘treason’, it is concerning that the HKSAR proposes to apply this offence to HKSAR residents who have committed the offence of treason overseas. This extraterritorial application not only directly threatens activists who have been forced to leave Hong Kong, such as the 13 exiled Hong Kongers who have had arrest warrants with bounties of HK\$1 million placed on their heads by the HKPF, but, via the offence of misprision of treason, anybody who is in communication, directly or indirectly, with these individuals and other activists.

### Recommendations

The HKSAR should abolish the clauses of the Crimes Ordinance relating to the offence of treason, recognising that statutes relating to treason are not suitable for a contemporary law code, and the crime of treason should not be incorporated into new national security legislation.

The offences of ‘levying war’ and ‘misprision of treason’ should similarly be abolished, not incorporated into new national security legislation.

All present or future national security legislation should be compliant with international standards on clarity in legal drafting. Legal concepts must be clearly explained and conduct or behaviour which would constitute an offence must be clearly outlined, in line with the ‘principle of legal certainty’ under ICCPR article 15(1). Catch-all clauses dependent upon subjective interpretation, such as ‘for some general public purpose’, should be removed.

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## CHAPTER 4: INSURRECTION, INCITEMENT TO MUTINY AND DISAFFECTION, AND ACTS WITH SEDITIOUS INTENTION

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### Introduction

Chapter four includes proposals to ‘improve’ the offences of ‘incitement to mutiny’, ‘incitement to disaffection’, and offences related to seditious intention, as well as to introduce an offence of insurrection to address acts of civil disturbance.

Given past experiences of alleged disruption in Hong Kong, the HKSAR proposes that offences related to seditious intention should include:

*‘the intention to bring a Chinese citizen, Hong Kong permanent resident or a person in the HKSAR into hatred or contempt against, or to induce his disaffection against, the following system or institution - the fundamental system of the State established by the Constitution; a State institution under the Constitution; or a CPG office in Hong Kong; the intention to bring a Chinese citizen, Hong Kong permanent resident or a person in the HKSAR into hatred or contempt against, or to induce his disaffection against, the constitutional order, executive, legislative or judicial authority of the HKSAR; the intention to incite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter established in accordance with the law in the HKSAR; the intention to induce hatred or enmity amongst residents of the HKSAR or amongst residents of different regions of China; the intention to incite any other person to do a violent act in the HKSAR; the intention to incite any other person to do an act that does not comply with the law of the HKSAR or that does not obey an order issued under the law of the HKSAR.’*

The government also stipulates that an act, word or publication is to be defined as seditious if it involves:

*‘the intention to give an opinion on the abovementioned system or constitutional order; with a view to improving the system or constitutional order; the intention to point out an issue on a matter in respect of the abovementioned institution or authority with a view to giving an opinion on the improvement of the matter; the intention to persuade any person to attempt to procure the alteration, by lawful means, of any matter established in accordance with the law in the HKSAR; the intention to point out that hatred or enmity amongst residents of the HKSAR or amongst residents of different regions of China is produced or that there is a tendency for such hatred or enmity to be produced, with a view to removing the hatred or enmity.’*

The government recommends raising the penalties for offences related to seditious intentions, as well as the offence of ‘possession of a seditious publication’. The government ensures that improvements to offences related to seditious intention ‘will not affect legitimate expression

of opinions (such as making reasonable and genuine criticism of government policies based on objective facts, or pointing out issues, offering views for improvement, etc.).’

### Background

The HKSAR has already targeted alleged acts of sedition which constitute the freedoms of expression, speech and the press. In December 2021, seven people were arrested by the HKPF over suspected conspiracy to publish seditious materials in *Stand News*, which was a seven-year-old pro-democracy media outlet in Hong Kong. *Stand News* ceased operations, deleted its website, and was raided by over 200 National Security Police officers.<sup>21</sup>

In September 2022, five speech therapists were found guilty and convicted of allegedly publishing seditious material under Hong Kong’s sedition law over a series of children’s books depicting a sheep village under attack from wolves.<sup>22</sup> The series may allude to the 2019 protests in the HKSAR as well as the detention of 12 Hong Kongers who tried to flee from the HKSAR to Taiwan.<sup>23</sup> There is no basis on which these instances qualify as sedition in the few common law jurisdictions where sedition is still recognised as a criminal offence.

The chapter concludes with the HKSAR recommending the introduction of the offence of insurrection, citing foreign legislation that criminalises insurrection, to target acts of ‘joining or being a part of an armed force that is in an armed conflict with the armed forces of the People’s Republic of China; with intent to prejudice the situation of the armed forces of the People’s Republic of China in an armed conflict, assisting an armed force that is in an armed conflict with the armed forces of the People’s Republic of China; with intent to endanger the sovereignty, unity or territorial integrity of the People’s Republic of China or the public safety of the HKSAR as a whole (or being reckless as to whether the above would be endangered), doing a violent act in the HKSAR.’

The government has already labelled acts of legitimate protest as insurrection for not aligning with the government’s views and supporting their policies. Under the proposed definition, particularly ‘with intent to endanger the sovereignty, unity or territorial integrity of the People’s Republic of China or the public safety of the HKSAR as a whole (or being reckless as to whether the above would be endangered),’ Hong Kongers would be in danger should they wish to peacefully protest or express views differing from the government. This has already taken place in the HKSAR in the aftermath of the 2019 protests, as hundreds of individuals who took part in the protests were subsequently arrested or jailed.

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<sup>21</sup><https://static1.squarespace.com/static/58ecfa82e3df284d3a13dd41/t/64b680d17b3bc85140d67de4/1689682129868/UPR+Submission%281%29.pdf>

<sup>22</sup><https://www.hongkongwatch.org/all-posts/2022/9/7/conviction-of-the-five-speech-therapists-demonstrates-how-far-freedom-of-expression-has-declined-in-hong-kong>

<sup>23</sup><https://apnews.com/article/hong-kong-sedition-sheep-wolves-childrens-books-2b4cfa1f>

## Analysis

Like the law on treason, the crime of sedition (煽動叛亂) is a colonial-era law with roots in the United Kingdom's archaic and now-defunct Sedition Act 1661. Many common law jurisdictions have repealed their sedition laws, including Kenya (1997), Ghana (2001), New Zealand (2007), the United Kingdom (2009), Jamaica (2013), Maldives (2018), Sierra Leone (2020), and Singapore (2021). This is due to the well-founded concern that sedition laws criminalise the legitimate criticism of political institutions and government policy.<sup>24</sup> Indeed, the HKSAR itself stated in 1997, via the Bills Committee, that ‘The offence of sedition is archaic, has notorious colonial connotations and is contrary to the development of democracy.’<sup>25</sup>

In common law jurisdictions where sedition remains an offence, it is restricted to direct incitement to disorder and violence: see, for example, *Boucher vs. R* (1954) in Canada, which argued that ‘nothing short of direct incitement to disorder and violence is a seditious libel’.<sup>26</sup>

The draft BL23 wording of ‘the intention to bring [an individual]... into hatred or contempt against... the constitutional order’ is comparatively vague and subjective, with no example given of what kind of conduct or behaviour might constitute ‘hatred or contempt’ against the institutions listed, and thus endangers the right to freedom of speech guaranteed under BL27 and Article 19 of the ICCPR.

The draft BL23 legislation includes a stipulation that an act, word or publication does not have seditious intention *by reason only* that it has one of a short list of acceptable intentions, such as a view to suggesting improvements to the constitutional order. By stipulating a relatively restrictive set of conditions which must be fulfilled in order not to commit the offence of sedition, the HKSAR is imposing further restrictions on the principle of freedom of speech guaranteed under BL27 and Article 19 of the ICCPR.

## Recommendations

The HKSAR should abolish the relevant statutes of the Crimes Ordinance related to sedition. It should not incorporate the crime of sedition into this or any future national security legislation, and it should not add to nor expand the existing definition of sedition.

The HKSAR should explore alternative existing legal mechanisms through which to ensure that direct incitement to violence and disorder is handled appropriately through the criminal justice system.

<sup>24</sup> <https://hri.law.columbia.edu/sites/default/files/publications/sedition-report-april-2022.pdf>

<sup>25</sup> <https://ccpl.law.hku.hk/content/uploads/2018/03/Pub/Conf%20&%20Seminar/Past%20and%20Future%20Offences%20of%20SEDITION%20revised.pdf>

<sup>26</sup> <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2725/index.do>



The HKSAR should not include a list of acceptable intentions behind the publishing or issuing of a statement, as this contravenes the right to freedom of expression guaranteed under the BL27 and Article 19 of the ICCPR.

The HKSAR should not introduce a new offence of insurrection, which is highly likely to be inappropriately applied.

All present or future national security legislation should be compliant with international standards on clarity in legal drafting. Legal concepts must be clearly explained and conduct or behaviour which would constitute an offence must be clearly outlined, in line with the ‘principle of legal certainty’ under ICCPR article 15(1). Catch-all clauses dependent upon subjective interpretation, such as ‘hatred and contempt’, should be removed.

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## CHAPTER 5: THEFT OF STATE SECRETS AND ESPIONAGE

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### Introduction

Chapter five discusses defining state secrets and consolidating existing offences related to state secrets involving public officers and government contractors, as well as to introduce new offences related to protecting state secrets. The HKSAR also outlines proposals to improve existing legislation on espionage, and to introduce new offences to further prohibit collusion with external forces, which it argues must be clearly defined to balance safeguarding national security and protecting the rights of individuals.

Citing legislation related to state secrets in the UK, US and Canada, as well as the Law of the People's Republic of China on Guarding State Secrets which covers the disclosure of information related to scientific technology and its development as well as economic and social development, the HKSAR proposes defining state secrets as:

*'secrets concerning major policy decisions on affairs of our country or Hong Kong; secrets concerning the construction of national defence or armed forces; secrets concerning diplomatic or foreign affair activities of our country, or secrets concerning external affairs of Hong Kong, or secrets that our country or Hong Kong is under an external obligation to preserve secrecy; secrets concerning the economic and social development of our country or the HKSAR; secrets concerning the technological development or scientific technology of our country or the HKSAR; secrets concerning activities for safeguarding national security or the security of the HKSAR, or for the investigation of offences; or secrets concerning the relationship between the Central Authorities and the HKSAR.'*

The government also recommends replacing the term 'public servant' with 'public officer' in the proposed Ordinance to cover all officers 'who are more likely to obtain or possess state secrets.'

### Analysis

Given the evolving and increasingly complex threats to national security posed by recent advancements in information and communication technology, legal frameworks surrounding the classification and handling of sensitive and secret information are increasingly technical and complex in nature. Introducing new legislation to update older laws, such as the Official Secrets Act 1911 and the Official Secrets Act 1920 underpinning UK and HKSAR counter-espionage legislation, is *prima facie* a legitimate lawmaking exercise.

However, the definition of 'state secrets' adopted by the HKSAR and incorporated into the draft BL23 legislation is nearly identical to that of the Law of the People's Republic of China on Guarding State Secrets (中华人民共和国保守国家秘密法). The concept of a state secret

(国家秘密) used within this law, as stated in the China Business Review, ‘remains amorphous and subject to interpretation in line with prevailing political winds.’<sup>27</sup> This is due in part to the preservation of a catch-all provision covering ‘other matters that are classified as state secrets by the national State Secrets Bureau’ (经国家保密行政管理部门确定的其他秘密事项), with no further clarification on what these might entail. The vague wording of the mainland law has enabled the persecution of journalists and high-ranking Party-state officials on spurious charges.<sup>28</sup> The law has also been used to persecute foreign nationals in cases such as that of Cheng Lei, an Australian journalist who faced a closed-door trial for arbitrary and alleged espionage charges.

The HKNSL has already furnished the HKSAR with a comparable level of arbitrary decision-making power over the classification of state secrets. In 2023, the UN Working Group on Arbitrary Detention noted concern over Articles 44, 46 and 47 of the HKNSL which provide the Chief Executive with excessive power, including ‘the power to issue a binding certificate to the courts as to whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case.’ This was also of particular concern to the UN Human Rights Committee in 2022, which recommended for the HKNSL to be repealed in order for the HKSAR to comply with its international legal obligations.<sup>29</sup>

In addition to defining state secrets, the HKSAR recommends consolidating and improving legislation on offences of ‘unlawful disclosure’ (非法披露受保護資料) and related offences, which includes the ‘unlawful possession of state secrets when leaving the HKSAR’. The government states that the unlawful disclosure of state secrets should target not only public officers and government contractors, but any person who unlawfully discloses state secrets. The government goes further by recommending that the offence of unlawful disclosure should include state secrets as well as any confidential information which prejudices the interests of the HKSAR. This further increases the scope for the government to arbitrarily apply charges for offences related to state secrets.

As aforementioned, the comparison between the draft BL23 legislation and the UK’s National Security Act (NSA) is weakened by the lack of comparable safeguards within the draft BL23 legislation to ensure compliance with international standards on national security legislation. With regards to state secrets, the NSA has a narrower definition of official secrets, a periodic review of the need for continued detention with a written record of reasons, a requirement of a damaging disclosure under section 5(3) of the Official Secrets Act 1989, and a requirement that obtainment or disclosure of protected information meet the foreign power condition set out under section 31 of the NSA 2023. By way of contrast, the draft BL23 legislation merely stipulates that disclosure must be ‘likely to endanger national security’,

<sup>27</sup> <https://www.chinabusinessreview.com/understanding-chinas-state-secrets-laws/>

<sup>28</sup> <https://www.amnesty.org/fr/wp-content/uploads/2021/06/asa170371996en.pdf>

<sup>29</sup> <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-30-AEV.pdf>

vague wording criticised for potentially contravening the ‘principle of legal certainty’ under ICCPR article 15(1).

Of further concern is the vague wording relating to the criminalisation of espionage, with particular regard to the use of the term ‘external forces’ (境外勢力). Citing the Counterespionage Law of the PRC and foreign intelligence organisations which ‘are accustomed to organising acts of subversion, infiltration and sabotage in other countries,’ as well as external forces which ‘instigated their agents in Hong Kong to disseminate false or misleading information’ during the 2019 protests, the HKSAR draws a largely unsupported and unevidenced connection between the 2019 Anti-Extradition Bill protests and foreign interference.

The government recommends introducing an offence ‘regarding collusion with ‘external forces’ (勾結外國或者境外勢力危害國家安全) to publish false or misleading statements of fact to the public with intent to endanger national security (or being reckless as to whether national security would be endangered).’ The government proposes replacing the current concept of ‘enemy’ (敵人) in espionage laws with ‘external forces’ (境外勢力) to cover ‘any government of a foreign country, authority of a region or place of an external territory, external political organisation, etc. (including a government, authority or political organisation of a country etc. with which it is not in a state of war), as well as its associated entities and individuals.’

The practical application of such a statute can be demonstrated by the trial of *Apple Daily* (蘋果日報) founder and owner Jimmy Lai. In January 2024, the prosecution in the case of Jimmy Lai named human rights activists with whom Mr Lai had been in contact over recent years as ‘co-conspirators’ or ‘collaborators’, which included criminalising three British citizens: Benedict Rogers, Luke de Pulford and Bill Browder. Their alleged criminal activities include exchanging WhatsApp messages in which Mr Lai asked for a comment from a foreign politician. The HKSAR has thus already demonstrated its willingness to prosecute entirely normal and typical journalistic activities under the xenophobic charge of ‘collaboration’ with individuals outside of Hong Kong. As such, this statute risks contravening both BL27 on freedom of the press and Article 19 of the ICCPR.

The draft legislation would also pose an increased risk to foreign organisations and associated entities, as well as individuals who have dedicated themselves to promoting democratic ideals and the rule of law in Hong Kong. These activities are conducted under the protection of BL41, which extends to all other persons in the HKSAR the same fundamental rights enjoyed by HKSAR residents under Chapter III of the Basic Law. The draft BL23 legislation proposes the following offence:

*‘With intent to endanger national security (or being reckless as to whether national security would be endangered), knowingly doing the following act in relation to an external intelligence organisation:*

*(a) becoming a member of the organisation;*

*(b) offering substantial support (including providing financial support or information and recruiting members for the organisation) to the organisation (or a person acting on behalf of the organisation) [...]*

The definition of ‘intelligence organisation’ (境外情報組織) is given as ‘an organisation established by an external force and engaging in intelligence work, or subversion or sabotage of other countries or places.’ Under the definition of ‘subversion’ (顛覆) outlined in the HKNSL, the number of entities potentially qualifying as ‘intelligence organisations’ expands far beyond any entity engaged in espionage as typically defined. Any organisation which advocates for democracy or increased civil liberties in the HKSAR could be interpreted as ‘undermining’ (破壞) the People’s Republic of China or the HKSAR.

The inherently political nature of the crime of ‘subversion’ has led to many common law jurisdictions repealing laws against subversion. As stated by UN legal experts in reference to the HKNSL, ‘(s)ubversion is almost uniformly directed towards the regulation of activity viewed as political under domestic law.’<sup>30</sup> Given the political context of the HKNSL and the draft BL23 legislation outlined in this consultation document, it is scarcely credible that the vague definitions of ‘subversion’ and ‘intelligence organisation’ would not be directed towards these ends.

### Recommendations

The HKSAR should introduce a narrower definition of ‘state secrets’ and an extensive system of safeguards to ensure that classification regimes are not abused by the state. There should be specific and clear safeguards in place to protect whistleblowers and investigative journalists, whose professional activities are protected under BL27 and the ICCPR.

The HKSAR should repeal all laws relating to the crime of ‘subversion’, as these are inherently politicised and highly susceptible to abuse.

All present or future national security legislation should be compliant with international standards on clarity in legal drafting. Legal concepts must be clearly explained and conduct or behaviour which would constitute an offence must be clearly outlined, in line with the ‘principle of legal certainty’ under ICCPR article 15(1). Catch-all clauses dependent upon subjective interpretation, such as ‘other matters that are classified’, should be removed.

<sup>30</sup><https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26658#:~:text=In%20OL%20CHN%2017%2F2020,ability%20of%20civil%20society%20organisations>

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## CHAPTER 6: SABOTAGE ENDANGERING NATIONAL SECURITY AND RELATED ACTIVITIES

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### Introduction

Chapter six outlines foreign laws on sabotage and related activities, and recommends the introduction of new offences for such activities.

The HKSAR proposes introducing the offence of ‘sabotage activities which endanger national security’ in response to ‘the extensive vandalism of and damage to transport facilities, MTR stations and other public facilities by rioters’ during the 2019 protests. The HKSAR may have forgotten that, at this time, the HKPF attacked Hong Kongers indiscriminately at the Prince Edward MTR Station, using batons to violently beat passengers.<sup>31</sup> Protestors arrested during this violent assault by government forces have received extremely disproportionate sentences under the charge of ‘rioting’.

The government also proposes introducing an offence of ‘doing an act in relation to a computer or electronic system without lawful authority and endangering national security’ to combat acts that allegedly endanger national security on a computer or electronic system without lawful authority. The question of what precisely would constitute ‘doing an act’ (作出某作為) is left unanswered.

The vague wording of this offence leaves open the possibility that Internet Service Providers (ISPs) and Online Service Providers (OSPs) will be left criminally liable for content shared or published via their platforms, under the interpretation that sharing material ‘endangering national security’ constitutes ‘doing an act’ under the new BL23 legislation.

This statute also threatens any organisation or individual that publishes digital material for practically any information-sharing purpose, but particularly with regards to human rights advocacy groups, pro-democracy activists, and investigative journalism. Under the expansive definition of ‘holistic national security’ (總體國家安全) proposed by the HKSAR, whistleblowing of practically any kind will be criminalised under the above law. Even if the material shared is not classified or covered under the heading of ‘state secrets’ in the previous chapter, it could still be considered ‘endangering national security’.

### Recommendations

The HKSAR should introduce a narrower definition of ‘state secrets’ and an extensive system of safeguards to ensure that classification regimes are not abused by the state. There should

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<sup>31</sup><https://www.hongkongwatch.org/all-posts/2021/8/31/epoch-time-2-years-on-from-hong-kongs-prince-edward-831-attack-from-police-violence-to-police-state-benedict-rogers>

be specific and clear safeguards in place to protect whistleblowers and investigative journalists, whose professional activities are protected under BL27 and the ICCPR.

All present or future national security legislation should be compliant with international standards on clarity in legal drafting. Legal concepts must be clearly explained and conduct or behaviour which would constitute an offence must be clearly outlined, in line with the ‘principle of legal certainty’ under ICCPR article 15(1). Catch-all clauses dependent upon subjective interpretation, such as ‘doing an act in relation to a computer’, should be removed.

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## CHAPTER 7: EXTERNAL INTERFERENCE AND ORGANISATIONS ENGAGING IN ACTIVITIES ENDANGERING NATIONAL SECURITY

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### Introduction

Chapter seven outlines the offence of ‘external interference’ in laws related to national security in foreign countries to provide a basis for how the HKSAR proposes to improve its existing Societies Ordinance to prevent ‘political bodies from having a connection with external political organisations’ to safeguard national security.

The HKSAR claims that external forces have allegedly promoted anti-China ideology to demonise the PRC and HKSAR, via ‘so-called “non-governmental bodies” which are actually established by external forces or have close ties with external forces’, as well as ‘local organisations and individuals (including ‘shadow organisations’ formed outside the HKSAR).’ Given that the HKSAR is a ‘cosmopolitan city and an international financial centre,’ the government states that ‘there may be legitimate need for these institutions, organisations and individuals (including political organisations) to express their rational views on the policies and measures of the HKSAR Government,’ but that ‘such political activities must be conducted by lawful and proper means and must not pose any national security risks.’

The government then details its recommendation to introduce an offence of external interference targeting:

*‘With intent to bring about an interference effect as follows, collaborating with an external force to engage in a conduct, and using improper means when engaging in the conduct – influencing the Central People’s Government or the executive authorities of the HKSAR in the formulation or execution of any policy or measure, or the making or execution of any other decision; interfering with election(s) of the HKSAR; influencing the Legislative Council in discharging functions; influencing a court in discharging functions; or prejudicing the relationship between the Central Authorities and HKSAR, or the relationship between China or the HKSAR and any foreign country.’*

The government also proposes recommendations to allegedly enhance the existing Societies Ordinance to allow the Secretary for Security to prohibit the operation of an organisation in the HKSAR if they reasonably believe the organisation endangers national security, or if a local political organisation has a connection with a foreign political organisation.



## Background

The Societies Ordinance (社團條例) was originally introduced in 1949<sup>32</sup> to combat the activities of organised crime groups known as triad societies (三合會) and the (triad-adjacent) operations of the mainland Communist (共產黨) and Nationalist or Kuomintang (國民黨) parties in Hong Kong.<sup>33</sup> The requirement of societies to register with the local authorities marked a draconian development of UK colonial surveillance and control in Hong Kong, with the aim of limiting the fallout of the civil war happening on the mainland.

The Societies Ordinance as originally enacted was not in line with international human rights laws and standards of the era, and was periodically updated during the UK's colonial governance of Hong Kong. The updated version of the Ordinance released in 1992, while still at odds with international human rights standards, was nevertheless the most liberal version of the law introduced up to that point. Among other changes, the registration system was replaced with a notification system.<sup>34</sup>

After the handover in 1997, the PRC government reinstated the requirement to register with the HKPF as well as the power of the government to refuse to register a political body 'that has a connection with a foreign political organisation'.<sup>35</sup>

## Analysis

The Societies Ordinance, like laws against sedition and treason in Part 3 of the Crimes Ordinance, is a controversial and draconian piece of colonial-era legislation; unlike the latter two laws, it was developed specifically for the HKSAR in the historical context of the post-civil war era. Under the current incarnation of the Societies Ordinance, which reinstates provisions abolished by the colonial-era UK administration in 1992, the Securities Officer has great latitude to prohibit the operation of an organisation on loosely-defined 'national security' grounds. The proposed legislation further expands these powers, which are already at odds with international standards on human rights.

While previously the Secretary for Security (保安局局長) reserved the authority to prohibit 'societies', the draft BL23 legislation would expand the regulatory mechanisms concerned to cover practically any manner of organised group: including companies, trade unions, school boards, management committees, sports recreation societies, Chinese temples, and community centres. Any of these might, under the draft BL23 legislation, be prohibited under the subjective assessment of the Secretary of Security that doing so is 'necessary for safeguarding national security' (維護國家安全所需要者).

<sup>32</sup> <https://publications.parliament.uk/pa/cm199798/cmselect/cmcaff/710/8042820.htm>

<sup>33</sup> <https://www.cambridge.org/core/journals/urban-history/article/hong-kong-triads-the-historical-and-political-evolution-of-urban-criminal-polity-18422020/A2813B5622896D4998EA1EA39AED9185>

<sup>34</sup> <https://publications.parliament.uk/pa/cm199798/cmselect/cmcaff/710/8042820.htm>

<sup>35</sup> <https://www.legco.gov.hk/vr02-03/english/bc/bc55/papers/bc55-113-e.pdf>

By way of reference to international example, the HKSAR cites the Terrorism Act 2000 of the UK, which provides the UK Secretary of State for the Home Department with the discretionary power to proscribe an organisation ‘if he or she believes that it is engaging in terrorism’. However, as previously mentioned, the UK government employs a more restrictive definition of terrorism in line with international laws and standards on counter-terrorism (see Chapter 1). The actions of the HKSAR government with regard to pro-democracy activists already demonstrate its intent to target activities which are not ‘terrorist’ under any definition currently in use in international law, and which should be protected under the Basic Law and the ICCPR.

Consequently, the HKSAR claims that such latitude is not in contravention with Hong Kong’s obligations as a signatory to the ICCPR, as, ‘according to the ICCPR, freedom of association is not absolute and may be subject to restrictions’. However, under ICCPR 22(2), any restrictions on freedom of association must be ‘necessary in a democratic society in the interests of national security’. According to a review of European case law at the European Court on Human Rights (ECHR), this condition of ‘strict necessity’ with regards to the maintenance of democratic accountability is defined in practice as requiring adequate and effective guarantees against abuse and the exercise of supervision (*see Klass and Others v. Germany*).<sup>36</sup> The HKSAR lists no safeguards or protections against abuse in the draft BL23 legislation, and provides no explanation of how the Secretary for Security will be held accountable for decisions on the prohibition of societies.

Furthermore, the ambit of activities and conduct criminalised by the draft BL23 legislation expands far beyond legitimate national security concerns recognised by the ECHR and other international courts, such as those of terrorism and espionage. Indeed, the HKSAR are explicit in their stated objective of criminalising activism associated with the 2019 Anti-Extradition Bill protests, and pursuing activists who have already fled the HKSAR following the passing of the HKNSL. The HKSAR states, ‘[t]he Hong Kong version of “colour revolution” has fully demonstrated that there are local organisations willingly acting as agents of foreign political or intelligence organisations to engage in acts and activities endangering national security. There are also law-breakers who have absconded overseas unscrupulously colluding with external forces to continue engaging in acts and activities endangering national security.’

The draft BL23 legislation thus introduces broad measures to criminalise ‘collaborating with a foreign force’ (配合境外勢力), which includes participating in an activity organised by the foreign force (potentially without one’s knowledge of the foreign force’s involvement), cooperating with (合作下) a foreign force, and receiving financial support of any kind. In order for a charge of collaboration to constitute an offence, an individual’s conduct must be with intent to ‘bring around an interference effect’ (帶來以下干預效果) and consist of ‘improper means’ (不當手段).

<sup>36</sup> <https://rm.coe.int/168067d214>

While a potential offence under this law would therefore have to fulfil a number of criteria, significant latitude in the wording of the draft BL23 legislation allows for wide application. To fulfil the ‘improper means’ provision, the conduct need only be determined as any offence under Hong Kong law (作出任何犯罪行為). Under the habitually loose interpretation of terms such as ‘sedition’ and ‘treason’ within the consultation document, this criterion could easily be applied to cases of pro-democracy activism or other activities protected under the Basic Law and ICCPR. Minor offences under HKSAR law have already been instrumentalized in the persecution of pro-democracy figures, such as the jailing of *Apple Daily* founder and owner Jimmy Lai over a supposed violation of a lease agreement in 2020.<sup>37</sup>

The definition of acts constituting an ‘interference effect’, meanwhile, mirrors that of the UK’s National Security Act (NSA) 2023, but with a significantly widened scope. In the NSA, interference in political decisions is limited to those ‘other than in the exercise of a public function’: i.e., explicitly excluding the policy decisionmaking of government officials. Conversely, the draft BL23 legislation would criminalise attempts to influence the Legislative Council in ‘discharging functions’ (履行職能). The Chinese term used (職能) makes clear that this would involve the exercise of the LegCo’s public functions. Similarly, where the NSA covers ‘prejudicing the safety or interests of the United Kingdom’, the draft BL23 legislation would count as an interference effect ‘prejudicing [損害] the relationship between the Central Authorities and HKSAR’.

Taken together, the ‘improper means’ and ‘interference effect’ provisions give the HKSAR wide latitude to prosecute any attempt to advocate for legislative changes or criticise the encroachment of the PRC on the HKSAR. The ultimate purpose of such legislation is to ensure that no overseas organisation can play a role in Hong Kong’s political or civic life.

The HKSAR also proposes equally stringent measures on what it calls ‘shadow organisations’ (影子組織), organisations founded by Hong Kongers which have had to move overseas due to political persecution. This would criminalise any kind of organisational or financial relationship with such groups, further violating the free association of individuals protected under the Basic Law and ICCPR.

### Recommendations

The Societies Ordinance should be reformed and where necessary, repealed, in order to bring it into compliance with international human rights laws and standards.

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<sup>37</sup> <https://apnews.com/article/jimmy-lai-media-hong-kong-257024870ee333d44a2fc29452062a4c>

The provision of the Societies Ordinance under which the Secretary for Security has the right to proscribe an organisation based on his or her individual judgement should be abolished, not expanded and incorporated into new national security legislation.

The requirements for fulfilling the ‘improper means’ and ‘interference effect’ criteria should be revised. Safeguards should be introduced to ensure that legitimate advocacy and journalistic activities are not penalised and external interference laws are not abused.

All present or future national security legislation should be compliant with international standards on clarity in legal drafting. Legal concepts must be clearly explained and conduct or behaviour which would constitute an offence must be clearly outlined, in line with the ‘principle of legal certainty’ under ICCPR article 15(1). Catch-all clauses dependent upon subjective interpretation, such as ‘prejudicing the relationship between the Central Authorities and HKSAR’, should be removed.

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## CHAPTER 8: EXTRA-TERRITORIAL APPLICATION OF THE PROPOSED ORDINANCE

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### Introduction

Chapter eight recommends stipulating extraterritorial effects (域外適用性) in respect to offences threatening national security. In line with the scope of the existing HKNSL, the HKSAR proposes referencing the ‘territorial principle’, ‘personality principle’ and ‘protective principle’ in stipulating the scope of application in the draft BL23 legislation. Citing foreign laws with extraterritorial effects, the government states that it will provide for extraterritorial effects which are proportionate and necessary to the offences proposed.

Extraterritorial application of domestic laws is not illegitimate *per se*. The issue is simply that the draft BL23 legislation included in this consultation document is in contravention of the autonomy of the HKSAR under BL18(3), BL23 and BL159(4) *inter alia*, as well as the right to stand for election under BL26; the right to freedom of expression, of the press and of publication; freedom of association, of assembly, of procession and of demonstration under BL27; freedom from torture under BL28(2); freedom from arbitrary search under BL29; and freedom and privacy of communication under BL30; it violates the HKBORO and ICCPR; it also serves to expand Hong Kong’s archaic colonial-era laws and the HKNSL, which has already received fierce condemnation from international organisations and experts in international human rights law (see Appendix). The legislation is illegitimate and unnecessary within Hong Kong, and consequently without it as well.

Furthermore, the use of the extraterritoriality clause in the HKNSL poses a direct threat to foreign activists and organisations who promote freedoms guaranteed under international law. The HKSAR has already demonstrated the use of this threat in practice. In July and December 2023, the HKSAR issued HK\$1 million bounties against 13 total exiled HKSAR pro-democracy activists who now live in the UK, US and Australia. These individuals alongside their family members and friends in HKSAR continue to be threatened due to the targeted individuals simply exercising their civil and political rights.<sup>38</sup>

### Recommendations

To prevent the violation of international laws which guarantee the freedoms of the press, assembly expression and speech, among other fundamental freedoms, the HKSAR should prevent the enactment of Article 23 legislation, repeal the HKNSL, and fully restore respect for the rule of law and human rights in Hong Kong.

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<sup>38</sup><https://www.hongkongwatch.org/all-posts/2023/12/14/hong-kong-watch-condemns-targeting-of-five-exiled-hong-kong-pro-democracy-activists>

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## CHAPTER 9: OTHER MATTERS RELATING TO IMPROVING THE LEGAL SYSTEM AND ENFORCEMENT MECHANISMS FOR SAFEGUARDING NATIONAL SECURITY

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### Introduction

Chapter nine proposes improvements for the procedural matters of and protecting personnel responsible for handling national security cases. The HKSAR states that the HKSAR 2019 protests challenged the existing circumstances for the detention of and bail arrangements for arrested individuals during investigation, as police struggled to gather evidence, especially if local and external organisations and fund flows were involved, and required more time to complete investigations given the large number of individuals arrested. The government also acknowledges the risks of releasing an individual charged with endangering national security on bail, including the potential disclosure of details about the case, tampering with evidence, interfering with witnesses, transferring property related to the offence out of Hong Kong, absconding, and committing further national security offences.

The government refers to the 13 total exiled HKSAR pro-democracy activists who have been issued bounties as examples of ‘absconders’ (潛逃海外) that ‘have allegedly continued to engage in certain acts and activities endangering national security after absconding overseas, including requesting foreign countries to impose ‘sanctions’ against officials and judges of the HKSAR, and inciting secession and subversion.’

The HKSAR proposes eliminating certain procedures in national security cases so that cases ‘can be scheduled for trial as soon as possible’ and ‘handled in a timely manner on the premise of maintaining fair trials.’ The government also proposes denying those convicted under national security offences their eligibility for a reduction in their sentences of up to a third of the total for good behaviour.

Trials in Hong Kong, including the aforementioned trial against *Stand News*, have already raised concerns related to the rule of law and right to fair trial due to the political direction of the reasoning.<sup>39</sup> If the government were to implement legislation that further interferes with national security cases, the HKSAR would almost certainly violate the principle of the right to a fair trial as detailed by the ICCPR.

### Recommendations

To prevent the PRC from breaking its promises under international law, the HKSAR should prevent the enactment of Article 23 legislation, repeal the HKNSL, and fully restore respect for the rule of law and human rights in Hong Kong. Foreign governments should also hold HKSAR and PRC officials accountable for the growing human rights violations in Hong

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<sup>39</sup><https://static1.squarespace.com/static/58ecfa82e3df284d3a13dd41/t/64b680d17b3bc85140d67de4/1689682129868/UPR+Submission%281%29.pdf>

Kong. This should start by imposing targeted sanctions on any officials responsible for introducing Article 23 legislation related to the legislative proposals detailed in the Article 23 consultation document.

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## CONCLUSIONS

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The HKSAR government is explicit within the consultation document about the justification for introducing the proposed recommendations and considerations for Article 23 legislation. The 2019 Anti-Extradition Bill protests, referred to variously throughout the document as the ‘Hong Kong version of “colour revolution”’ and the ‘black-clad violence’, are explicitly and extensively cited throughout as the justification for this new legislation.

In 2020, the PRC government responded to the protests with the imposition of the HKNSL, an authoritarian crackdown on the basic freedoms guaranteed to the HKSAR by the Sino-British Joint Declaration and protected by the Hong Kong Bill of Rights Ordinance and the Basic Law. With over 10,000 arrests, 2,300 prosecutions, and many of Hong Kong's basic freedoms already crushed by the HKNSL, one might be forgiven for asking why further legislation is necessary. To the extent that this consultation document seeks to answer that question, it seems that the answer is simply to ensure that all political dissent in the HKSAR is snuffed out via whatever legal mechanisms are at hand.

The resultant legislation, as proposed, is nothing so much as an attempt to smuggle contemporary Chinese socialist legal theory on national security into the common law tradition via British colonial law. Superficial comparisons to national security legislation in other common law jurisdictions do little to paper over this document’s idiosyncratic and highly politicised use of archaic crimes, such as treason and sedition, as well as its wide-ranging conception of national security adopted wholesale from Xi Jinping Thought (习近平思想). It bears little meaningful resemblance to law as written or practiced in other common law jurisdictions.

The proposed recommendations and considerations for Article 23 legislation include a number of procedural changes that will dramatically undermine due process and fair trial rights in Hong Kong. The consultation paper advocates for extending police detention without charge, preventing contact between arrestees and lawyers of their choice, and for denying those convicted under national security offences their eligibility to up to a third reduction in their sentences for good behaviour. It also advocates, without specifics, for ‘eliminating certain procedures’ to ‘speed up’ national security trials.

The introduction of Article 23 will bring further devastating consequences for human rights beyond those brought by the HKNSL when it was imposed by Beijing in 2020 to the people and organisations related to the HKSAR in the city and abroad. The potential impacts on the freedom of speech, expression and the press are particularly concerning, as well as the consideration to cancel the passports of individuals who abscond from Hong Kong. We will continue to monitor the outcome of the alleged public consultation period, as well as any



further proposals and ultimately the implementation of Article 23 legislation as it poses a severe threat to basic civil liberties and the rule of law in Hong Kong.

***In conclusion, Hong Kong Watch makes the following recommendations to the HKSAR and the Standing Committee of the National People's Congress:***

Following the 2022 UN Human Rights Committee's recommendations, the Standing Committee of the National People's Congress of the People's Republic of China should repeal the HKNSL with immediate effect, and the HKSAR should cease its prosecution of individuals charged with offences under the HKNSL.

The HKSAR should immediately withdraw the consultation document on proposed Article 23 legislation and delay indefinitely the introduction of any legislation under Article 23 of the Basic Law. No BL23 legislation should be introduced or consulted upon until this basic prerequisite for constitutionality, *i.e.* the repeal of the HKNSL and the restoration of Hong Kong's autonomy over domestic security, has been met.

Furthermore, no BL23 legislation should be put forward for public consultation until such a time as it can demonstrate that the introduction of such laws would be compliant with its international legal obligations under the following: the Sino-British Joint Declaration, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights.

To the extent that the HKSAR has a constitutional obligation to introduce BL23 legislation, it follows that the HKSAR has a constitutional obligation to uphold the Basic Law *in toto*. Therefore the HKSAR government should ensure it upholds the Basic Law in full: this includes upholding the sole responsibility of the HKSAR to maintain public order in the region under BL14(2); the right to stand for election under BL26; the right to freedom of expression, of the press and of publication; freedom of association, of assembly, of procession and of demonstration under BL27; freedom from torture under BL28(2); freedom from arbitrary search under BL29; and freedom and privacy of communication under BL30.

BL23 legislation, as well as any other legislation introduced under the justification of safeguarding national security and preventing 'local terrorism', should clearly define what behaviour and conduct would constitute an offence under the law, as well as the scope and justification for punishments related to offences under the law. Any definition of 'local terrorism' should adhere to international legal obligations and standards on counter-terrorism legislation.

Furthermore, the HKSAR should, in line with resolution 7/36 of the UN Human Rights Council, ensure that any present or future prosecutions of individuals under charges of terrorism or 'safeguarding national security' provide evidence of the specific and direct

threats to national security posed by the individual in question. The evidence should be made publicly available and fulfil international standards on the legitimate use of a ‘national security’ exception.

Any restriction on the basic rights of HKSAR citizens on national security grounds should be legal, legitimate, and proportional, and ensure that legislation is consistent with the protection of international human rights laws and standards as outlined in the ICCPR, General Comment 34 of the UN Human Rights Committee, the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR, the Johannesburg Principles, and others.

The HKSAR should ensure that the right of HKSAR courts to challenge any Article 23 legislation is upheld. The authority of HKSAR courts, under Article 39 of the Basic Law, to challenge the constitutionality of any Article 23 legislation as ordinary legislation passed by the HKSAR legislature, should not be infringed.

The HKSAR should provide details of extensive safeguards to be incorporated into any proposed Article 23 legislation, to ensure that this legislation will not negatively affect the rule of law in Hong Kong. This includes introducing an independent ombudsman and complaints and oversight mechanisms. These safeguards should be consistent with the Johannesburg Principles and the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR.

Following the UN Human Rights’ Committee’s recommendations, the HKSAR should repeal or reform colonial-era laws within the Societies Ordinance and Section 3 of the Crimes Ordinance and related to treason, sedition, and foreign interference, as archaic, poorly defined, and inapposite to contemporary lawmaking. In no case should any of these laws serve as the basis for an expansion of government authority under Article 23 of the Basic Law.

All bodies with oversight of the HKSAR should swiftly work to fully restore respect for the rule of law and human rights in the city of Hong Kong.

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## APPENDIX: INTERNATIONAL STATEMENTS AND RECOMMENDATIONS ON THE HKNSL

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In July 2022, the UN Human Rights Committee reviewed the HKSAR's implementation of the ICCPR and concluded that the HKNSL is in violation of the covenant. The Committee expressed deep concern regarding the 'overly broad interpretation' of the HKNSL, and recommended that the HKSAR repeal it and refrain from applying it in the meantime.<sup>40</sup>

In February 2023, the CESCR reviewed the PRC, including the HKSAR's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and concluded that the HKNSL violated the PRC and HKSAR's international legal obligations.<sup>41</sup>

The HKSAR is a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Under Article 15 of the ICESCR, which both the PRC and the HKSAR are a party to, the HKSAR has the legal obligation to recognise the right of everyone to take part in cultural life, and 'undertake to respect the freedom indispensable for [...] creative activity.'<sup>42</sup>

In May 2023, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) referenced how the use of public order and security concerns under the HKNSL infringes on women's rights.<sup>43</sup> The following month, the UN Human Rights Council's Working Group on Arbitrary Detention published its Opinion No. 30/2023 concerning Ms. Hang Tung Chow (Hong Kong, China).<sup>44</sup> This Opinion concluded that no trial should be carried out against Chow Hang-tung given the arbitrary deprivation of her liberty, and urged the PRC to revise the HKNSL to ensure it is in compliance with its international legal obligations.<sup>45</sup>

In January 2024, 18 UN Member States made Recommendations which call attention to human rights violations in the HKSAR during the Universal Periodic Review of China, including Hong Kong. The UK, US, Canada, Australia, New Zealand and Czechia called for the repeal of the HKNSL, and Luxembourg, Switzerland and Belgium called for the HKNSL to align with international human rights law.<sup>46</sup>

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40 <https://www.ohchr.org/en/press-releases/2022/07/un-human-rights-committee-issues-findings-hong-kong-macao-georgia-ireland>

41 [tinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?Lang=en&symbolno=E%2FC.12%2FCHN%2FCO%2F3](https://tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?Lang=en&symbolno=E%2FC.12%2FCHN%2FCO%2F3)

42 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

43 <https://www.hongkongwatch.org/all-posts/2023/5/31/hong-kong-watch-welcomes-concluding-observations-of-un-committee-on-womens-rights>

44 <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-30-AEV.pdf>

45 <https://www.hongkongwatch.org/all-posts/2023/6/26/hong-kong-watch-welcomes-the-un-working-group-on-arbitrary-detentions-opinion-concerning-ms-hang-tung-chow>

46 <https://www.hongkongwatch.org/all-posts/2024/1/23/hong-kong-watch-welcomes-recommendations-on-hong-kong-at-the-un-universal-periodic-review>

The British government has expressed repeated concern regarding the HKNSL, referring to the HKNSL as a breach of the Sino-British Joint Declaration.<sup>47</sup> The UK government also denounced the targeting of exiled Hong Kongers in the UK through arrest warrants with bounties, stating, ‘We will not tolerate any attempt by any foreign power to intimidate, harass or harm individuals or communities in the UK. This is a threat to our democracy and fundamental human rights. We call on Beijing to repeal the National Security Law and end its persecution of political activists.’<sup>48</sup> In December 2023, British Foreign Secretary David Cameron met with Sebastien Lai, son of Jimmy Lai, and called on the HKSAR to end the prosecution of and to release Mr Lai.<sup>49</sup>

The US Department of State raised concern in its *2022 Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet) – Hong Kong* following credible evidence of ‘arbitrary arrest and detention; political prisoners or detainees; cruel or degrading treatment or punishment by government agents; transnational repression against individuals outside of Hong Kong; serious problems regarding the independence of the judiciary; arbitrary interference with privacy; serious restrictions on freedom of expression and media, including unjustified arrests or prosecutions of journalists and censorship; substantial interference with the freedom of peaceful assembly and freedom of association, including overly restrictive laws on the organization, funding, or operation of nongovernmental organizations and civil society organizations; restrictions on freedom of movement and on the right to leave the territory; the inability of citizens to change their government peacefully through free and fair elections; serious and unreasonable restrictions on political participation; serious government restrictions on domestic and international human rights organizations; and significant restrictions on workers’ freedom of association, including coercive actions against independent trade unions and arrests of labor union activists.’<sup>50</sup>

The US denounced the arrest warrants and bounties the HKSAR issued against five Hong Kongers who now live in the US.<sup>51</sup> The US also called for the immediate release of Jimmy Lai and all others imprisoned for their rights, stating, ‘We urge Beijing and Hong Kong authorities to respect press freedom in Hong Kong. Actions that stifle press freedom and restrict the free flow of information – as well as Beijing and local authorities’ changes to Hong Kong’s electoral system that reduce direct voting and preclude independent and pro-democracy party candidates from participating – have undermined Hong Kong’s democratic institutions and harmed Hong Kong’s reputation as an international business and financial hub.’<sup>52</sup>

47 <https://www.gov.uk/government/publications/six-monthly-report-on-hong-kong-january-to-june-2023/six-monthly-report-on-hong-kong-1-january-to-30-june-2023#:~:text=Due%20to%20lasting%20changes%20to,Declaration%20throughout%20the%20reporting%20period.>

48 <https://www.gov.uk/government/news/hong-kong-national-security-law-arrest-warrants-foreign-secretarys-statement>

49 <https://www.gov.uk/government/news/foreign-secretary-statement-on-jimmy-lais-national-security-trial>

50 <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/china/>

51 <https://www.youtube.com/watch?v=JziZJvnfXak>

52 <https://www.state.gov/trial-of-jimmy-lai-under-the-hong-kong-national-security-law/>

At the start of the trial of Jimmy Lai, the Canadian House and Senate both unanimously adopted motions for the HKSAR authorities to release Jimmy Lai and cease prosecuting him and others charged under the HKNSL.<sup>53</sup> This month, the Canadian House of Commons held hearings on the trial of Jimmy Lai, hearing testimonies addressing the torture of prosecution witness Andy Li and the need to impose targeted sanctions on PRC and HKSAR officials responsible for human rights abuses in Hong Kong.<sup>54</sup>

Finally, the EU passed an urgent resolution in June 2023 urging the HKSAR to ‘immediately release and drop all charges against pro-democratic representatives and activists, including prominent businessman and politician Jimmy Lai.’<sup>55</sup> This followed urgent resolutions from the EU in 2022 and 2020, which called on Member States to prepare concrete responses to the HKNSL, implement lifeboat schemes for Hong Kongers to relocate to the EU, and to suspend extradition treaties with China.<sup>56</sup>

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53 <https://www.hongkongwatch.org/all-posts/2023/12/18/canadian-and-uk-parliaments-call-for-the-release-of-jimmy-lai>

54 <https://www.hongkongwatch.org/all-posts/2024/2/7/hong-kong-watch-canada-testifies-at-human-rights-subcommittee-on-the-detention-of-jimmy-lai>

55 <https://www.europarl.europa.eu/news/de/press-room/20230609IPR96215/human-rights-breaches-by-russia-in-sudan-and-in-hong-kong>

56 [https://www.europarl.europa.eu/doceo/document/B-9-2022-0358\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2022-0358_EN.html)