

# HONG KONG RULE OF LAW REPORT 2023



HONG KONG RULE OF LAW MONITOR  
香港法治監察

Cover photo

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# LIST OF ABBREVIATIONS

|                        |                                                                                                             |
|------------------------|-------------------------------------------------------------------------------------------------------------|
| Article 23 Legislation | <i>Safeguarding National Security Ordinance</i> pursuant to Article 23 of the <i>Basic Law</i>              |
| Anti-Mask Law          | <i>Prohibition on Face Covering Regulation</i> (Cap. 241K)                                                  |
| Basic Law              | <i>Basic Law of the Hong Kong Special Administrative Region</i>                                             |
| BBC                    | British Broadcasting Corporation                                                                            |
| CA                     | Court of Appeal                                                                                             |
| CAPO                   | Complaints Against Police Office                                                                            |
| CCP                    | Chinese Communist Party                                                                                     |
| CE                     | Chief Executive                                                                                             |
| CFA                    | Court of Final Appeal                                                                                       |
| CFI                    | Court of First Instance                                                                                     |
| CJ                     | Chief Justice                                                                                               |
| CLO                    | Chinese Liaison Office                                                                                      |
| CPO                    | <i>Criminal Procedure Ordinance</i> (Cap. 221)                                                              |
| CPG                    | Central People's Government                                                                                 |
| CSD                    | Department of Correctional Services                                                                         |
| CUHK                   | Chinese University of Hong Kong                                                                             |
| DoJ                    | Department of Justice                                                                                       |
| DPP                    | Director of Public Prosecutions                                                                             |
| EAC                    | Electoral Affairs Commission                                                                                |
| ECtHR                  | European Court of Human Rights                                                                              |
| Emergency Law          | <i>Emergency Regulations Ordinance</i> (Cap. 241)                                                           |
| Extradition Bill       | <i>Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019</i> |
| EU                     | European Union                                                                                              |
| ExCo                   | Executive Council                                                                                           |
| FCC                    | Foreign Correspondents' Club, Hong Kong                                                                     |
| FOO                    | <i>Fugitive Offenders Ordinance</i> (Cap. 503)                                                              |
| Handover               | Transfer of sovereignty of Hong Kong from Britain to China in 1997                                          |
| HKBA                   | Hong Kong Bar Association                                                                                   |
| HKBoRO                 | <i>Hong Kong Bill of Rights Ordinance</i> (Cap. 383)                                                        |
| HKBU                   | Hong Kong Baptist University                                                                                |
| HKFLU                  | The Federation of Hong Kong and Kowloon Labour Unions                                                       |
| HKID card              | Hong Kong identity card                                                                                     |
| HKJA                   | Hong Kong Journalists Association                                                                           |
| HKLS                   | Law Society of Hong Kong                                                                                    |
| HKNP                   | Hong Kong National Party                                                                                    |

|                   |                                                                                                                                        |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| HKMAO             | Hong Kong and Macau Affairs Office of the State Council                                                                                |
| HKPF              | Hong Kong Police Force                                                                                                                 |
| HKRLM             | Hong Kong Rule of Law Monitor                                                                                                          |
| HKSAR             | Hong Kong Special Administrative Region                                                                                                |
| HKU               | University of Hong Kong                                                                                                                |
| ICAC              | Independent Commission Against Corruption                                                                                              |
| ICCPR             | International Covenant on Civil and Political Rights                                                                                   |
| ILO               | International Labour Organization                                                                                                      |
| IPCC              | Independent Police Complaints Council                                                                                                  |
| IPCC Report       | A report prepared by the IPCC to look into the HKPF's handling of the anti-extradition protests scheduled to be released in early 2020 |
| ITUC              | International Trade Union Confederation                                                                                                |
| JPOA              | Junior Police Officers' Association                                                                                                    |
| LCPPPO            | <i>Legislative Council (Powers and Privileges) Ordinance</i> (Cap. 382)                                                                |
| LegCo             | Legislative Council                                                                                                                    |
| LGBT              | Lesbian, Gay, Bisexual and Transgender                                                                                                 |
| LONO              | Letters of No Objection                                                                                                                |
| MTR               | Mass Transit Railway                                                                                                                   |
| MTRC              | MTR Corporation Limited                                                                                                                |
| NPCSC             | National People's Congress Standing Committee                                                                                          |
| NPJs              | Non-Permanent Judges                                                                                                                   |
| NSC               | Committee for Safeguarding National Security in the HKSAR                                                                              |
| NSD               | National Security Department                                                                                                           |
| NSL               | The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region             |
| PAOs              | politically appointed officers                                                                                                         |
| PFO               | <i>Public Force Ordinance</i> (Cap. 232)                                                                                               |
| PGO               | Police General Orders                                                                                                                  |
| PJs               | Permanent Judges                                                                                                                       |
| PLG               | Progressive Lawyers Group                                                                                                              |
| POBO              | <i>Prevention of Bribery Ordinance</i> (Cap. 201)                                                                                      |
| POO               | <i>Public Order Ordinance</i> (Cap. 245)                                                                                               |
| PORI              | Hong Kong Public Opinion Research Institute                                                                                            |
| PolyU             | Hong Kong Polytechnic University                                                                                                       |
| PRC               | People's Republic of China                                                                                                             |
| Privacy Ordinance | <i>Personal Data (Privacy) Ordinance</i> (Cap. 486)                                                                                    |
| RoP               | Rules of Procedure of the Legislative Council                                                                                          |
| RTHK              | Radio Television Hong Kong                                                                                                             |

|              |                                                             |
|--------------|-------------------------------------------------------------|
| Sedition Law | Sections 9 and 10 of the <i>Crimes Ordinance</i> (Cap. 200) |
| SCMP         | South China Morning Post                                    |
| SNSO         | Safeguarding National Security Ordinance                    |
| SJ           | Secretary for Justice                                       |
| TVB          | Television Broadcasts Limited                               |
| WSJ          | Wall Street Journal                                         |
| UK           | United Kingdom of Great Britain and Northern Ireland        |
| UN           | United Nations                                              |
| UNHRC        | United Nations Human Rights Council                         |
| US           | United States of America                                    |

# **ABOUT HONG KONG RULE OF LAW MONITOR**

Hong Kong Rule of Law Monitor comprises qualified lawyers, law students, legal academics and friendly peers in exile from Hong Kong. We vow to watch the human rights situation and rule of law in Hong Kong to hold China and Hong Kong SAR government accountable to the international treaties and the promises to Hongkongers.

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# EXECUTIVE SUMMARY

This report covers developments in Hong Kong from January 1, 2023, to March 30, 2024, a period in which the impact of the National Security Law became increasingly evident whilst by the end of March 2024, a local legislation, namely Safeguarding National Security Ordinance (“Article 23 legislation” / “SNSO”) was enacted pursuant to Article 23 of the Basic Law. What had happened during this period also underscore a concerning trajectory for the rule of law and human rights in Hong Kong, with significant implications for civil liberties both within the territory and internationally.

## **Local enactment of Article 23 legislation**

The enactment of SNSO introduced additional local national security measures aiming at addressing treason, sedition and subversion; it criminalizes peaceful civil society activism, thereby undermining the freedoms of association and assembly. This local law acts like the final nail in the coffin and contributes to a further and more comprehensive crackdown of the rule of law in Hong Kong: its broad and vague definitions have further eroded civil liberties, leading to increased self-censorship and a chilling effect on free expression.

## **Combined impacts of the NSL and SNSO**

The National Security Law, which was imposed upon Hong Kong in 2020, has granted authorities expansive powers to suppress dissent, leading to the arrest and prosecution of numerous pro-democracy politicians, activists and journalists. After its extensive use in 2021 and 2022, the NSL’s imprint on the Hong Kong judicial system has not desisted in 2023; charges pressed for offences under the NSL continued through 2023 to boast a 100% conviction rate. 2023 saw NSL developments, both procedural and substantive, coupled with the enactment of the Article 23 legislation in March 2024, which have further entrenched Hong Kong as a regime that has increasingly abandoned any pretence of compliance with its common law tradition in the protection of fundamental human rights. The interplay of the NSL and the SNSO have significantly and extensively undermined and eroded the rule of law in Hong Kong, with the combined effects becoming more apparent in 2024 and onwards.

## **Extra-legal measures imposed locally**

Further, in 2023 and early 2024, we saw that the Hong Kong Government, not content with using solely the legal tool under the guise of national security to suppress dissent, crack down on civil society and restrict freedoms, has adopted a series of extra-legal measures to tighten its control of the civil society and freedoms like freedom of speech, freedom of press, academic freedom, freedom of assembly etc in Hong Kong. For example, some local independent bookstores faced closures and scrutiny, with owners citing political pressure or a less free environment. Among them is Mount Zero, one of the most popular independent bookstores in Hong Kong which has often hosted talks by politically outspoken authors, closed at the end of March 2024, after facing a series of warnings from government departments about minor administrative violations.

## **Transnational repression carried out internationally**

Worse still, the Hong Kong Government extended its reach beyond its borders to target dissidents overseas. In July and December 2023, Hong Kong police respectively issued arrest warrants of eight and five overseas activists, accusing them of violating the national security law while in exile. Such use of the Hong Kong national security laws extraterritorially aims to intimidate, silence and harass dissidents. These bounties not only threaten the liberty and safety of the activists targeted; they have far-reaching impacts on other activists and even ordinary Hong Kong people who have left the city. Such acts of transnational repression aim to silence dissent everywhere and compound the already existing climate of fear. Other examples of transnational repression include harassment of overseas Hong Kong community events and protests, local political sentiment weaponised to intimidate the Hong Kong diaspora community, digital doxing and trolling targeting Hong Kong activists etc.

## **Were Human Rights Protected by the Rule of Law?**

Throughout 2023, human rights in Hong Kong faced ongoing threats, with the rule of law providing little to no protection, especially in the cases involving “national security”. We noticed that the legal landscape in Hong Kong has shifted rapidly, departing from common law norms. For example, jury trials in the High Court are no longer guaranteed despite being explicitly stipulated under the Basic Law, and an acquittal may not necessarily secure a defendant’s freedom. The refusal to recognize the Privy Council’s decision on sedition laws marks a further break from common law traditions (by the time this report is published, the Court of Final Appeal of Hong Kong in Tam Tak-chi case has confirmed such a departure). Beyond the courts, measures extend to society at large, with authorities imposing restrictions on the behaviour of released prisoners and even targeting the families of those sought abroad.

## **How Was the Rule of Law Implemented?**

Evaluating the rule of law requires looking at the judiciary's independence, the state of the legal profession, and law enforcement practices. The legal profession—traditionally at the forefront of defending the rule of law—faced substantial challenges, both locally and internationally. Judges and prosecutors involved in national security cases faced international scrutiny and the threat of sanctions, while pro-democracy lawyers experienced increasing pressure of being prosecuted under the NSL. The mechanisms embedded in the National Security Law have undermined the role of courts and lawyers in upholding human rights.

Hong Kong's economic difficulties reflect this erosion of the rule of law, countering the official narrative of moving “from chaos to order, from order to prosperity.” The previous year's report highlighted selective law enforcement. This year, the focus shifts to the treatment of political prisoners. This shift does not imply any improvement in selective enforcement; rather, it underscores the urgency of addressing the harsh conditions faced by some of those imprisoned.

## **Was the Rule of Law Properly Monitored?**

Monitoring the rule of law requires a free press, an active academic community, and civil society. Yet, the persecution of journalists and the marginalization of pro-democracy media suggest a deep-seated resistance to oversight. Self-censorship has become widespread, with many media outlets aligning with the establishment to survive.

Academic freedom is also under threat, as national security laws curb the ability to express independent opinions or provide policy critique. Governmental changes to tertiary education management appear aimed at tightening control. Patriotic education initiatives now start as early as kindergarten, while curricula like critical thinking programs are being phased out, steering students away from independent thought.

The past year saw the continued dismantling of civil society, with no signs of recovery in 2023. Instead, the Hong Kong government strengthened its control over civic groups by imposing stricter funding regulations and restructuring district council elections to prevent a repeat of the 2019 pro-democracy electoral success.

## **Conclusion**

Under the dual regulation of the national and local national security laws, extra-legal measures within the territory and transnational repression across the borders, the rule of law in Hong Kong reached its lowest point in 2023. The prospects for

improvement appear bleak unless substantive steps are taken by the administration to restore judicial independence and protect civil liberties.

31 March 2025

Hong Kong Rule of Law Monitor

# LIST OF RECOMMENDATIONS

| No.                                                                         | Addressed to                 | Recommendation                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PART I: WERE HUMAN RIGHTS PROTECTED BY THE RULE OF LAW IN HONG KONG?</b> |                              |                                                                                                                                                                                                                                                     |
| <b>1(A) NATIONAL SECURITY LAW &amp; ITS EXTRATERRITORIAL REACH</b>          |                              |                                                                                                                                                                                                                                                     |
| 1.                                                                          | The Hong Kong SAR Government | repeal the National Security Law (“NSL”);                                                                                                                                                                                                           |
| 2.                                                                          |                              | release all detainees under the NSL immediately;                                                                                                                                                                                                    |
| 3.                                                                          |                              | reverse all convictions under the NSL immediately;                                                                                                                                                                                                  |
| 4.                                                                          |                              | issue formal apologies and pay adequate compensation to the victims of the NSL for the gross violations of their human rights committed by the Hong Kong Government and its agents;                                                                 |
| 5.                                                                          |                              | cease the practice of no-jury trials immediately;                                                                                                                                                                                                   |
| 6.                                                                          |                              | maintain an open list of the panel of Chief Executive-appointed judges and allow the public to access such a list; and                                                                                                                              |
| 7.                                                                          |                              | publicly renounce the arrest warrants against overseas activists, withdraw all offers of bounties, and issue formal apologies and adequate compensation to subjects of these warrants for gross inconvenience and violations of their human rights. |
| 8.                                                                          | The international community  | not to prejudice an immigration or professional application solely on basis of an individual having been investigated, arrested or convicted under NSL or relevant offences such as sedition;                                                       |

| No.                                                               | Addressed to                 | Recommendation                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.                                                                |                              | consider fear from persecution under the NSL as strong evidence to support an application for political asylum;                                                                                                                                                     |
| 10.                                                               |                              | actively challenge attempts by the Hong Kong Government to whitewash its human right violations;                                                                                                                                                                    |
| 11.                                                               |                              | provide sufficient resources and trainings for the immigration department to thoroughly understand the implications and effects of NSL to assess the fear from persecution for political asylum application;                                                        |
| 12.                                                               |                              | boycott events organised by the Hong Kong Government;                                                                                                                                                                                                               |
| 13.                                                               |                              | call for appropriate actions to be taken under the existing law in your country;                                                                                                                                                                                    |
| 14.                                                               |                              | call for the enactment of law to tackle human rights violations if there is none in the jurisdiction;                                                                                                                                                               |
| 15.                                                               |                              | resist attempts by the Hong Kong Government to exercise “extraterritorial jurisdiction” against Hong Kong permanent residents or nationals in your country as a violation of human rights and unacceptable foreign interference in the affairs of your country; and |
| 16.                                                               |                              | submit reports to international human rights monitoring organisations to ensure that the global community remains informed and engaged.                                                                                                                             |
| 1(B) ARTICLE 23 AND SEDITION LAW AND THEIR EXTRATERRITORIAL REACH |                              |                                                                                                                                                                                                                                                                     |
| 17.                                                               | The Hong Kong SAR Government | repeal the Sedition Law and the Article 23 legislation, namely the Safeguarding National Security Ordinance (“SNSO”);                                                                                                                                               |

| No. | Addressed to                | Recommendation                                                                                                                                                                                                                                          |
|-----|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 18. |                             | release all the detainees, retract prosecution and quash the convictions of all persons under the Sedition Law and the SNSO;                                                                                                                            |
| 19. |                             | refrain from arresting and/or laying charges against any person under the Sedition Law and the SNSO; and                                                                                                                                                |
| 20. |                             | apologise and compensate the victims of the enforcement of Sedition Law and the SNSO for the gross violations of their fundamental rights and freedoms protected under the Basic Law and the international treaties.                                    |
| 21. | The international community | not to prejudice an immigration or professional application solely on the basis of an individual having been investigated, arrested or convicted under the Article 23 legislation or the Sedition Law;                                                  |
| 22. |                             | consider fear from persecution under the Article 23 legislation or the Sedition Law as strong evidence to support an application for political asylum;                                                                                                  |
| 23. |                             | continue to monitor, record, and condemn the continual violations of human rights resulting from the implementation of Article 23 legislation and the Sedition Law in Hong Kong;                                                                        |
| 24. |                             | provide sufficient resources and trainings for the immigration department to thoroughly understand the implications and effects of the Article 23 legislation or the Sedition Law to assess the fear from persecution for political asylum application; |
| 25. |                             | actively challenge and refute attempts by the Hong Kong Government to whitewash or downplay its human rights violations;                                                                                                                                |

| No.                                                         | Addressed to                 | Recommendation                                                                                                                                                              |
|-------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 26.                                                         |                              | call for appropriate actions to be taken under the existing law in your country to reflect the disapproval of such human rights violations by the Hong Kong Government; and |
| 27.                                                         |                              | call for the enactment of law to tackle human rights violations if there is none in the jurisdiction.                                                                       |
| 1(C) EXTRA-LEGAL MEASURES                                   |                              |                                                                                                                                                                             |
| 28.                                                         | All                          | cease transnational repression against overseas Hong Kongers in support of democracy or human rights and obey the local law;                                                |
| 29.                                                         | The Hong Kong SAR Government | cease harassing political dissidents, journalists, and their family members and associates;                                                                                 |
| 30.                                                         | International governments    | investigate individuals who further transnational repression, consider revocation of visas or diplomatic privilege, prosecution if needed, and blacklist for future entry;  |
| 31.                                                         |                              | offer protection and support to dissidents at risk of harm; and                                                                                                             |
| 32.                                                         |                              | expose and report organisations and individuals who assist in the monitoring and harassing dissidents or their associates to local law enforcement.                         |
| PART II: WAS THE RULE OF LAW IMPLEMENTED WELL IN HONG KONG? |                              |                                                                                                                                                                             |
| 2(A) INDEPENDENCE OF LAWYERS AND JUDGES                     |                              |                                                                                                                                                                             |
| 33.                                                         | The international community  | international bar associations and legal societies to form solidarity networks with Hong Kong’s legal professionals (including those based overseas);                       |

| No.                    | Addressed to                 | Recommendation                                                                                                                                                                                                |
|------------------------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 34.                    |                              | develop emergency relocation or immigration programs for legal professionals in Hong Kong who face imminent threats;                                                                                          |
| 35.                    |                              | facilitate the conversion and recognition of Hong Kong lawyers’ qualification in overseas jurisdictions, particularly for those lawyers facing persecution from the Hong Kong and Chinese governments.        |
| 36.                    |                              | provide support to Hong Kong diaspora groups, overseas Hong Kong civil society groups, and human rights organisations that are working to defend the rule of law and judicial independence;                   |
| 37.                    |                              | adopt measures to ensure secure and confidential communication for legal professionals, activists, and journalists, whether in Hong Kong or overseas;                                                         |
| 38.                    |                              | strengthen networks among overseas Hong Kongers to coordinate efforts in advocating for judicial independence. These networks can organise protests, petitions, and lobbying efforts in their host countries; |
| 39.                    |                              | support the establishment or enhancement of independent monitoring bodies that can track and report on judicial independence in Hong Kong; and                                                                |
| 40.                    |                              | submit regular reports to international bodies like the United Nations, detailing the status of judicial independence in Hong Kong.                                                                           |
| 2(B) PRISONERS’ RIGHTS |                              |                                                                                                                                                                                                               |
| 41.                    | The Hong Kong SAR Government | repeal those provisions of the NSL which impose a presumption against bail (and, pending such repeal, refrain from applying the presumption);                                                                 |

| No.                       | Addressed to                 | Recommendation                                                                                                                                                                                                            |
|---------------------------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 42.                       |                              | desist from using prolonged solitary confinement against prisoners (i.e. comply with Rule 43(1) of the Mandela Rules);                                                                                                    |
| 43.                       |                              | adhere to the principle of using solitary confinement “only in exceptional cases as a last resort, for as short a time as possible and subject to independent review” (i.e. comply with Rule 45(1) of the Mandela Rules); |
| 44.                       |                              | desist from inflicting corporal punishment and other degrading treatment on prisoners (i.e. comply with Rule 43 of the Mandela Rules); and                                                                                |
| 45.                       |                              | refrain from treating certain prisoners in a discriminatory manner on account of their political beliefs, e.g. because of their support for the pro-democracy movement (i.e. comply with Rule 2 of the Mandela Rules).    |
| 2(C) BUSINESS ENVIRONMENT |                              |                                                                                                                                                                                                                           |
| 46.                       | The Hong Kong SAR Government | cease its oppression and targeting of pro-democracy businesses in Hong Kong immediately, including through the use of the NSL, Sedition Law, and the SNSO;                                                                |
| 47.                       |                              | cease the arbitrary application of business regulations for political purposes; and                                                                                                                                       |
| 48.                       |                              | rectify its unjustified and unreasonable policies implemented in the business environment.                                                                                                                                |
| 49.                       | The international community  | put greater pressure on the Hong Kong Government to cease its oppression and targeting of pro-democracy businesses;                                                                                                       |
| 50.                       |                              | strongly support the pro-democracy businesses (Yellow Economic Circle) formed by Hong Kongers abroad;                                                                                                                     |

| No. | Addressed to     | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 51. |                  | boycott businesses with human rights violation records; and                                                                                                                                                                                                                                                                                                                                                                  |
| 52. |                  | aid in the establishment of chambers of commerce or business networking groups to promote the pro-democracy businesses (Yellow Economic Circle) abroad.                                                                                                                                                                                                                                                                      |
| 53. | Business leaders | continue to send a clear and united message to the PRC and Hong Kong Governments that their undermining of Hong Kong's rule of law (including their use of the NSL, Sedition Law and SNSO, and their censorship of the press and publishing sector) is gravely detrimental to Hong Kong's attractiveness as a business and investment destination, and thus to Hong Kong's very future as an international financial centre; |
| 54. |                  | reduce further loss and damages by withdrawing investments in Hong Kong;                                                                                                                                                                                                                                                                                                                                                     |
| 55. |                  | embed democracy and human rights values in its corporate governance policy and include them as one of the indicators under its ESG report;                                                                                                                                                                                                                                                                                   |
| 56. |                  | review all government contracts for vague terms that may trigger discretionary enforcement. Clearer definitions, dispute resolution clauses, and termination rights should be carefully crafted in all public sector agreements;                                                                                                                                                                                             |
| 57. |                  | review business continuity plans and incorporate political and regulatory risk into enterprise risk management frameworks;                                                                                                                                                                                                                                                                                                   |

| No.                                                     | Addressed to                 | Recommendation                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 58.                                                     |                              | review corporate restructure and staffing strategy to contain geopolitical risk in Hong Kong by relocating sensitive business units, functions and staff to jurisdictions with stronger legal protections and provide training on the National Security Law, sedition laws, and other relevant public order offences; |
| 59.                                                     |                              | include legal defence support and whistleblower protections in employment policies and retain independent legal counsel with expertise in administrative, constitutional, and international trade law;                                                                                                                |
| 60.                                                     |                              | establish crisis response protocols to manage reputational fallout from politically sensitive enforcement and prepare for reputational risks associated with subcontractors, vendors, partnerships or activities seen as politically aligned; and                                                                     |
| 61.                                                     |                              | join industry bodies or multilateral business councils to build credibility and collective resilience.                                                                                                                                                                                                                |
| PART III: WAS RULE OF LAW WELL MONITORED IN1 HONG KONG? |                              |                                                                                                                                                                                                                                                                                                                       |
| 3(A) MEDIA FREEDOM                                      |                              |                                                                                                                                                                                                                                                                                                                       |
| 62.                                                     | The Hong Kong SAR Government | not to interfere with the editorial independence of all media outlets;                                                                                                                                                                                                                                                |
| 63.                                                     |                              | quash convictions and discontinue all cases against journalists and individuals charged for exercising their right to freedom of expression, and provide them with adequate compensation; and                                                                                                                         |
| 64.                                                     |                              | investigate and prosecute in appropriate cases involving intimidation and attacks on journalists and publish relevant data for transparency and accountability purposes.                                                                                                                                              |

| No.                   | Addressed to                | Recommendation                                                                                                                                                                                 |
|-----------------------|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 65.                   | The international community | provide financial support to independent news media and journalistic work; and                                                                                                                 |
| 66.                   |                             | continue monitoring and denouncing the repression of journalists in Hong Kong.                                                                                                                 |
| 3(B) ACADEMIC FREEDOM |                             |                                                                                                                                                                                                |
| 67.                   | Overseas Hongkongers        | raise international awareness of the erosion of academic freedom in Hong Kong through media and public forums;                                                                                 |
| 68.                   |                             | provide platforms, funding, scholarship, and support for exiled scholars and students to continue their work and research abroad; and                                                          |
| 69.                   |                             | get organised, monitor and advocate for academic freedom in Hong Kong;                                                                                                                         |
| 70.                   | International organisations | continuously monitor the academic environment and report violations to international bodies such as the Human Rights Council in the United Nations;                                            |
| 71.                   |                             | encourage and support financially studies, researches, or academic projects of Hong Kong;                                                                                                      |
| 72.                   |                             | fund initiatives that support academic freedom, such as scholarships for students or research grants for academics working in restrictive environments; and                                    |
| 73.                   |                             | build coalitions with international allies to promote academic freedom globally and push for international legal mechanisms that protect educational institutions from political interference. |
| 74.                   | Foreign governments         | offer refuge, visas, or academic scholarships to Hong Kong teachers, scholars and students facing persecution;                                                                                 |

| No.                                  | Addressed to              | Recommendation                                                                                                                                                                                                               |
|--------------------------------------|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 75.                                  |                           | create and maintain national archive of banned publications in Hong Kong for public access and encourage nomination thereof; and                                                                                             |
| 76.                                  |                           | facilitate teachers to re-qualify in overseas jurisdictions and take no consideration in any arrests, charges convictions in relation to 2019 pro-democracy movement, NSL, Sedition Laws, SNSO.                              |
| 3(C) CIVIL SOCIETY AND PARTICIPATION |                           |                                                                                                                                                                                                                              |
| 77.                                  | Hong Kong SAR Government: | restore the proportion of directly elected seats in district councils to pre-2023 levels and remove restrictive rules that exclude pro-democracy candidates;                                                                 |
| 78.                                  |                           | reverse the funding cuts for NGOs and remove criteria that assess NGO funding applications based on their support for government policies;                                                                                   |
| 79.                                  |                           | respect, protect and fulfil the rights of legal and media professionals, as it is obligated to do so under the ICCPR;                                                                                                        |
| 80.                                  |                           | repeal laws and policies, particularly those under the NSL, Sedition Law and SNSO, that restrict the formation and operation of trade unions, and ensure the protection of union leaders and members.                        |
| 81.                                  | International Community   | Critically and continuously monitor the destination of funding intended for pro-democracy causes.                                                                                                                            |
| 82.                                  | Overseas Hongkongers      | Take reference from the civil society structure after the Umbrella Movement in 2014 and form overseas advocacy groups of professionals from different industries to monitor human rights and promote democracy in Hong Kong. |

**PART I:**  
**WERE HUMAN RIGHTS PROTECTED BY**  
**THE RULE OF LAW IN HONG KONG?**

# (A) THE NATIONAL SECURITY LAW AND ITS EXTRATERRITORIAL REACH

## INTRODUCTION

Marking three and half years since the National Security Law (“**NSL**”) came into force, 2023 saw twenty-five NSL convictions, of which five were found guilty after trial following a non-guilty plea. Six minors were sentenced to detention at training centres, thirteen received custodial sentences ranging from three months to four years, and six between five and nine years.

By this point, the Hong Kong government has entrenched what appears to be a snug patchwork of tools in its arsenal:

1. The **sledgehammer**: the NSL, enacted by Beijing, under which Articles 20 (secession), 22 (subversion), 24 (terrorist activities) and 29 (collusion with foreign forces) represent the criminal offences one could commit thereunder. The NSL prescribes graduated, three-level sentencing for all four offences.<sup>1</sup>
2. The **baton**: the offence of sedition, enacted by the colonial British Hong Kong government, under s 10 of the Crimes Ordinance (Cap. 200).
3. The **Swiss Army knife**: non-NSL and non-sedition crimes for which the Hong Kong Police Force National Security Department (“**HKPF NSD**”) has authority to make arrests. In 2023, such crimes included: perverting the course of justice, conspiracy to defraud, conspiracy to commit forgery, inciting riot, and (only one case) conspiracy to cause an explosion likely to endanger life or property.<sup>2</sup>

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<sup>1</sup> Crimes related to secession (Article 20) and subversion (Article 22) are categorised into three levels of sentencing: “principal offender or a person who commits an offence of a grave nature” face imprisonment ranging from over 10 years to life; “active participants” receive sentences between 3 and 10 years; and “other participants” are sentenced to less than 3 years. For inciting, assisting in, abetting or providing pecuniary or other financial assistance or property, if the circumstances are deemed “serious,” the sentence ranges from 5 to 10 years; if “minor,” the sentence is less than 5 years. For terrorist activities, causing “serious injury or death, or significant damage to public or private property” results in imprisonment from over 10 years to life; for “other circumstances,” the sentence ranges from 3 to 10 years. For collusion with foreign forces, a conviction results in 3 to 10 years of imprisonment; if the crime is considered “serious,” the sentence ranges from over 10 years to life.

<sup>2</sup> Wong, Lydia, Eric Yan-ho Lai, Charlotte Yeung, and Thomas Kellogg. “Tracking the Impact of Hong Kong’s National Security Law.” ChinaFile, 14 April 2024. <<https://www.chinafile.com/tracking-impact-of-hong-kongs-national-security-law>> [accessed 30 May 2024]

An analysis of the data<sup>3</sup> around charges pressed under each of these legal regimes reveals two clear shifts in the government’s strategy.

Firstly, after extensive use of the NSL in 2021 and 2022,<sup>4</sup> the Hong Kong government has started to gravitate away from it, opting instead to lean into the manoeuvrability and malleability offered by sedition, at least for low-level offences by “ordinary” (i.e. non-high-profile) individuals relating to freedom of speech and expression. These include public displays (e.g. flying banners, wearing T-shirts, exhibiting stickers) of protest slogans and anthems, support for pro-democracy figures or commemorating the Tiananmen massacre, and social media posts involving similar conduct. A comprehensive analysis of the use of sedition will follow in the next section of this report and will not be further discussed within this section. By contrast, as will be detailed in the rest of this section, in 2023 the NSL has largely been reserved for conduct involving pecuniary support for high-impact pro-democracy individuals or operations, or threats of violence.

Secondly, in 2023 the government had deployed the NSL to pursue more high-value, high-impact and high-profile targets (and those relating to or providing pecuniary support to such targets). These include former members of Demosistō, individuals linked to the 612 Humanitarian Relief Fund, those raising funds for Nathan Law via the “Punish Mee” app, and even paid subscribers to the Patreon accounts of Nathan Law and Ted Hui.

That being said, the NSL’s imprint on the Hong Kong judicial system has not desisted - far from it. From the perspective of prosecution outcomes, charges pressed for offences under the NSL continued through 2023 to boast a 100% conviction rate.<sup>5</sup> From a legal perspective, 2023 saw NSL developments, both procedural and substantive, which have further entrenched Hong Kong as a regime that has increasingly abandoned any pretence of compliance with its human rights obligations.

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<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

## SUMMARY OF EVENTS

### Procedural developments

*Four of five NSL cases determined by “designated judges” in lieu of jury*

Trial by jury used to be guaranteed by Article 86 of the Basic Law, which is tritely worded and contains no exceptions,<sup>6</sup> though it is not phrased as a right but rather as a principle. Pre-NSL, s. 41(2) of the *Criminal Procedure Ordinance* (“**CPO**”) stipulated that a trial before a judge and a jury was the only mode of trial available for criminal cases in the Court of First Instance.

Article 46 of the NSL gave the Secretary for Justice the power to issue a certificate (“**No-Jury Certificate**”) directing that criminal proceedings in the Court of First Instance (“**CFI**”) shall be tried without a jury on several non-exhaustive grounds.<sup>7</sup> Following the issuance of a No-Jury Certificate, a panel of three judges will take the place of the jury in their task of determining questions of fact. In 2021, in *Tong Ying Kit v Secretary for Justice*,<sup>8</sup> the judge opined that “[Article 46 of the NSL] creates a new mode of trial in the CFI for dealing with [extant criminal proceedings concerning offences endangering national security in the CFI]”,<sup>9</sup> with the Secretary for Justice’s certificate-issuing powers being a prosecutorial decision that enjoys immunity from interference, such as judicial review, under Article 63 of the Basic Law.<sup>10</sup>

This abstract power has translated into very real consequences: in 2023, the Court of First Instance handled five NSL cases. In four of these five cases, the Secretary for Justice exercised his power to issue a No-Jury Certificate, with the remaining case having been dealt with by a singular judge due to the defendants (members of Returning Valiant) having pleaded guilty.

*Acquittals are no longer final*

Previously, the prosecution could not appeal against decisions by the Court of First Instance to acquit a defendant. There was no exception for NSL cases.

Despite the fact that there have been no acquittals under the NSL until 30 May 2024, the Legislative Council (“**LegCo**”) passed the *Criminal Procedure (Amendment) Bill 2023*

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<sup>6</sup> “The principle of trial by jury previously practised in Hong Kong shall be maintained”.

<sup>7</sup> Including but not limited to: the protection of state secrets, involvement of foreign factors in the case, and the protection of personal safety of jurors and their family members.

<sup>8</sup> [2021] HKCFI 1397.

<sup>9</sup> *ibid*, at [22].

<sup>10</sup> *ibid*, at [33].

on 12 July 2023,<sup>11</sup> which amended the *Criminal Procedure Ordinance* (Cap. 221) by not only allowing the prosecution to appeal against High Court acquittals for offences under the NSL, but also authorising the High Court to order acquitted defendants facing appeal to be remanded or granted bail. As for the new appeal mechanism, Secretary for Justice Paul Lam emphasised that it does not affect cases tried by jury; as discussed above, no NSL cases have been tried by jury in 2023 or otherwise. As for bail decisions, these will be based on the heightened bail threshold stipulated by the NSL, discussed at length in the Hong Kong Rule of Law Monitor's 2022 Report.<sup>12</sup> There is no safeguard against the potential for a long wait in custody until the appeal is heard, such that the defendant could serve much if not all of a sentence not in fact handed down against them.

## Substantive developments

### *Arrest warrants against overseas activists and bounties*

On 3 July 2023, the HKPF NSD's Chief Superintendent Steve Li announced arrest warrants for eight prominent overseas Hong Kong activists.<sup>13</sup> Hong Kong Chief Executive Officer John Lee proclaimed that they would be "pursued for life".<sup>14</sup> Accompanying this was a further announcement that the Hong Kong government was offering bounties up to HK\$1 million regarding each individual for information leading to their arrest and prosecution.

Later, on 14 December 2023, the NSD announced further arrest warrants for five more overseas-based activists, namely Simon Cheng Man-kit, Frances Hui Wing-ting, Joey Siu, Johnny Fok Ka-chi and Tony Choi Ming-da, again with accompanying bounties up to HK\$1 million for each individual.

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<sup>11</sup> United Kingdom. Foreign, Commonwealth & Development Office. "Six-monthly Report on Hong Kong: 1 July to 31 December 2023." Last modified 19 April 2024.

<<https://www.gov.uk/government/publications/six-monthly-report-on-hong-kong-july-to-december-2023/six-monthly-report-on-hong-kong-1-july-to-31-december-2023>> [accessed 30 May 2024].

<sup>12</sup> Hong Kong Rule of Law Monitor. "Rule of Law Report 2022." October 2023. <<https://hkrlm.org/wp-content/uploads/2023/10/ROL-Report-2022.pdf>> [accessed 30 May 2024].

<sup>13</sup> Namely Ted Hui Chi-fung, Dennis Kwok Wing-hang, Nathan Law Kwun-chung, Anna Kwok Fung-yee, Kevin Yam, Elmer Yuan Gong-yi, Christopher Mung Siu-tat and Finn Lau Cho-dik. Hong Kong Police Force. "Wanted Persons and Reward Notices of National Security Cases." Last modified April 12, 2024. <[https://www.police.gov.hk/ppp\\_en/06\\_appeals\\_public/nsc/index.html](https://www.police.gov.hk/ppp_en/06_appeals_public/nsc/index.html)> accessed 30 May 2024.

<sup>14</sup> Hong Kong Government. "Fugitives Will Be Pursued for Life: CE." News.gov.hk, 5 December 2023. <[https://cloud1-www.news.gov.hk/eng/2023/12/20231205/20231205\\_102030\\_210.html](https://cloud1-www.news.gov.hk/eng/2023/12/20231205/20231205_102030_210.html)> [accessed 30 May 2024].

These amounts are more than double of rewards offered for those wanted for murder, rape and arson, which range from HK\$100,000 to HK\$400,000.<sup>15</sup> Of the 13 persecuted activists, all currently hold only Hong Kong nationality/permanent residency apart from Kevin Yam and Joey Siu, who are Australian<sup>16</sup> and US citizens respectively.<sup>17</sup> Annexes disseminated by the HKPF regarding the 13 activists relate to conduct both within Hong Kong before they fled and outside of Hong Kong thereafter,<sup>18 19</sup> allegedly amounting to all four offences under the NSL.<sup>20</sup>

### *Conclusion of the trial of the Hong Kong 47*

On 4 December 2023, the NSL trial of the Hong Kong 47 concluded. Having commenced on 6 February 2023, this was the longest NSL trial to date and was conducted without a jury under the NSL's No-Jury Certificate provisions.

The 47 defendants were charged with "conspiracy to commit subversion" under the NSL for organising and participating in unofficial primaries for the LegCo election, which was subsequently postponed. The primaries, held in July 2020, aimed to select candidates who could help the pro-democracy camp win a majority in the LegCo. The prosecution argued that the democrats intended to use this majority to veto government budgets indiscriminately, forcing the Chief Executive's resignation and causing a government shutdown.

Their verdicts were delivered on 30 May 2024. Of the 16 who pleaded not guilty, two were found not guilty. This is a landmark first: there had previously never been NSL cases returning not-guilty verdicts. Within minutes, the prosecutor made an application to appeal one of the not-guilty verdicts as permitted under the *Criminal Procedure (Amendment) Bill 2023* (detailed in the "Acquittals are no longer final" section

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<sup>15</sup> Hong Kong Police Force. "Wanted Persons with Reward Notices." Last modified 15 May 2024. <[https://www.police.gov.hk/ppp\\_en/06\\_appeals\\_public/wanted/index.html](https://www.police.gov.hk/ppp_en/06_appeals_public/wanted/index.html)> [accessed 30 May 2024].

<sup>16</sup> The Guardian. "Australia-Based Lawyer Kevin Yam Vows 'Not to Shut Up' after Hong Kong Arrest Warrant." 4 July 2023. <<https://www.theguardian.com/australia-news/2023/jul/04/australia-based-lawyer-kevin-yam-vows-not-to-shut-up-after-hong-kong-arrest-warrant>> [accessed 30 May 2024].

<sup>17</sup> Hong Kong Free Press. "US, UK Condemn Hong Kong's National Security Arrest Warrants; Security Chief Hits Back at 'Double Standards'." 15 December 2023. <<https://hongkongfp.com/2023/12/15/us-uk-condemn-hong-kongs-national-security-arrest-warrants-security-chief-hits-back-at-double-standards/>> [accessed 30 May 2024].

<sup>18</sup> Hong Kong Police Force. "2023-07-03 Persons wanted for alleged contravention of the Hong Kong National Security Law." Last modified 3 July 2023. <[https://www.police.gov.hk/ppp\\_en/03\\_police\\_message/pr/press-release-detail.html?refno=P202307030002](https://www.police.gov.hk/ppp_en/03_police_message/pr/press-release-detail.html?refno=P202307030002)> [accessed 30 May 2024].

<sup>19</sup> Hong Kong Police Force. "2023-12-14 Persons wanted and arrested for alleged contravention of the Hong Kong National Security Law." Last modified 14 December 2023. <[https://twcdc.police.gov.hk/ppp\\_en/03\\_police\\_message/pr/press-release-detail.html?refno=P20231214000](https://twcdc.police.gov.hk/ppp_en/03_police_message/pr/press-release-detail.html?refno=P20231214000)> [accessed 30 May 2024].

<sup>20</sup> *ibid.*

above), which may lead to the acquitted defendant being remanded in custody while awaiting appeal.

#### *Arrests of former Demosistō members for fundraising through the “Punish Mee” app*

Between 5 and 27 July 2023, seven former Demosistō members were arrested for “colluding with foreign forces”. They were accused of collecting funds from operating “Punish Mee” to support prominent activists in exile. Punish Mee was an app which furthered the “yellow economy” by providing a directory of restaurants, shops, and service providers that were sympathetic to the pro-democracy movement, allowing users to locate and patronise these establishments. After these arrests, the app suddenly disappeared from both the Apple App Store and Google Play Store and was no longer accessible, alongside its social media profiles.

#### *Arrests of individuals connected with the 612 Humanitarian Relief Fund*

On 10 August 2023, 10 individuals, including Bobo Yip Po-lam, were arrested for “colluding with foreign forces” through their connection with 612 Humanitarian Relief Fund (“**612 Fund**”), which received donations to advocate for sanctions against Hong Kong and assist organisations supporting activists in exile. The 612 Fund has been defunct since 31 October 2021.<sup>21</sup>

#### *Arrest of Patreon subscribers*

On 13 December 2023, four individuals were arrested for “providing pecuniary assistance for the commission of secession by other persons” by being paid subscribers of Nathan Law's and Ted Hui's Patreon accounts with contributions ranging from HK\$10,000 to HK\$120,000.<sup>22</sup> At the time, Nathan Law appeared to reside in the United Kingdom and Ted Hui in Australia.

#### *Returning Valiant*

Returning Valiant was a pro-independence group formed mainly by students, which called for continuation of protests to “liberate the city” from Chinese rule. Seven members had planned to devise homemade explosives using TATP, and place them in various public and government buildings, but their plans were foiled before any

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<sup>21</sup> Hong Kong Free Press. “Humanitarian Fund Helping Arrested Hong Kong Protesters Will Halt Operations by October 31.” 18 August 2021. <<https://hongkongfp.com/2021/08/18/humanitarian-fund-helping-arrested-hong-kong-protesters-will-halt-operations-by-october-31/>> [accessed 30 May 2024].

<sup>22</sup> Hong Kong Police Force. “Police Issue Arrest Warrants for Eight Overseas Hong Kong Activists.” 14 December 2023. <[https://twdc.police.gov.hk/ppp\\_en/03\\_police\\_message/pr/press-release-detail.html?refno=P202312140002](https://twdc.police.gov.hk/ppp_en/03_police_message/pr/press-release-detail.html?refno=P202312140002)> [accessed 30 May 2024].

devices were made.<sup>23</sup> They all pleaded guilty. On 28 December 2023,<sup>24</sup> they were sentenced to up to six years under the NSL for terrorist activities and conspiracy to commit terrorism under the NSL.

These cases are of interest for two reasons. Firstly, they are the first in which minors have been convicted. Secondly, five of the seven defendants were aged 15 through 18 at the time of offence. The minority of these defendants carried decisive weight in the judge's decision to lessen their sentences to detention at training centres despite having ruled that the crimes were "serious".

### *Commencement of Jimmy Lai's trial*

On 18 December 2023, the landmark trial of Jimmy Lai began. The founder of the now-defunct Apple Daily newspaper faces charges of "colluding with foreign forces" under the NSL, primarily on the basis of accusations of him calling on foreign governments to impose sanctions on the Hong Kong and Chinese governments through meeting with senior officials from the Trump administration, making public comments and publishing articles in Apple Daily. After Timothy Owen KC was barred from representing Lai (discussed in the HKRLM 2022 Report)<sup>25</sup>, Lai is represented by Robert Pang Yiu-hung SC and New Zealand lawyer Marc Corlett, who is qualified to practice in Hong Kong.

## LEGAL ANALYSIS

### **Trial by no-jury?**

The *de facto* replacement of jury by anonymous, Chief Executive-appointed panels of three judges in NSL cases represent a wilful misconstruction by the Hong Kong government of its human rights obligations through selective linguistic mirroring in tandem with convenient lapses in logic. Whilst Article 14 of the *International Covenant on Civil and Political Rights* ("ICCPR") does not explicitly mandate jury trials as a necessary component of a fair trial, it does set out particular elements of the right to a fair trial. In particular, Article 14(1) in part reads: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone

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<sup>23</sup> BBC News. "Three Hong Kong Activists Jailed up to Six Years for 'Terrorism' Bomb Plot." 12 March 2024. <<https://www.bbc.co.uk/news/world-asia-china-67832315>> [accessed 30 May 2024].

<sup>24</sup> UK Government. "Six-Monthly Report on Hong Kong: 1 July to 31 December 2023." GOV.UK, 19 April 2024. <<https://www.gov.uk/government/publications/six-monthly-report-on-hong-kong-july-to-december-2023/six-monthly-report-on-hong-kong-1-july-to-31-december-2023>> [accessed 30 May 2024].

<sup>25</sup> Hong Kong Rule of Law Monitor. "Rule of Law Report 2022." October 2023. <<https://hkrlm.org/wp-content/uploads/2023/10/ROL-Report-2022.pdf>> [accessed 30 May 2024].

shall be entitled to a fair and public hearing by a *competent, independent and impartial tribunal* established by law” (emphasis added).

These developments fall foul of the requirement for the tribunal to be “competent, independent and impartial”. Under Article 44 of the NSL, the three judges who take the place of the jury are selected from a list of “designated judges”. Crucially, this list is not public, comprises judges appointed by the Chief Executive (who may consult the Hong Kong National Security Council beforehand), and judges have only one-year terms.

As to the anonymity of judges, the United Nations Human Rights Council (“**UNHRC**”), which monitors implementation of the ICCPR, has stated this to be incompatible with fair trial requirements under Article 14,<sup>26</sup> due to the impossibility of holding judges accountable for improper conduct or decisions, of holding them to proper ethical standards, and of defendants or the public conducting background checks on judges and challenging impartiality or conflicts of interest. While the use of anonymous judges can be legitimate in extremely limited cases (e.g. terrorism and organised crime due to potential acts of revenge), any such use must be strictly necessary and proportionate to a legitimate aim, such as protecting the judges' lives. Even then, the UN Special Rapporteur on Human Rights and Counter-Terrorism has stated that the use of anonymous judges should be an exceptional measure of last resort, limited to cases of clear and present danger, and subject to rigorous monitoring to ensure the defendant's right to a fair trial.<sup>27</sup> Against this high threshold, the Hong Kong government's attempts at justification can only be described as woefully inadequate: the Department of Justice's press release dated 12 May 2023<sup>28</sup> contains the bare assertion that “the very aim of the three-judge panel arrangement is to ensure a fair trial”, followed by two deflections: “their judgments are publicly accessible online; anyone who reads it rationally will see the judges' independent legal

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<sup>26</sup> United Nations. "Human Rights Committee Continues Discussion on Draft General Comment on Covenant Article Concerning Right to Fair Trial." UN Press, May 28, 2024.

<<https://press.un.org/en/2006/hrct679.doc.htm>> [accessed 30 May 2024].

<sup>27</sup> United Nations Office on Drugs and Crime, Counter-Terrorism Committee Executive Directorate, Office of Legal Affairs, United Nations Interregional Crime and Justice Research Institute, International Maritime Organization, International Criminal Police Organization, and 1267/1988 Monitoring Team. "Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism." April 29, 2024.

<<https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/fairtrial.pdf>> accessed 30 May 2024.

<sup>28</sup> From Department of Justice, Hong Kong. "Speech by Secretary for Justice at the Opening Ceremony of the 2023 Legal Week." May 12, 2023.

<[https://www.doj.gov.hk/tc/community\\_engagement/press/20230512\\_pr1.html](https://www.doj.gov.hk/tc/community_engagement/press/20230512_pr1.html)> accessed 30 May 2024:

「目的正是要確保公平審訊，秉行司法公義。」

reasoning<sup>29</sup>; and “defendants have the right to appeal”.<sup>30</sup> This hallmark “what-aboutism” fails to distract from the initial concern: the fact that in the vast majority of cases, faceless judges are a human rights violation. The aim of clearing the path for judges to further unpopular political objectives of the prevailing regime is not a legitimate aim envisaged by the ICCPR.

As to the fact that it is the executive that appoints the judges on the list, in a genuinely democratic society this is typically not problematic: as the governing party changes every one or two terms, this leads to the development of a diverse panel of judges with differing political leanings over time. By stark contrast, the “designated judges” arrangement under the NSL is clearly designed with the opposite goal in mind: every single Chief Executive since the handover has been more pro-Beijing than the last, a trend that is set to continue. Since such appointments are made after consultation with the Committee for Safeguarding National Security, it is self-evident that candidates are appointed principally based on their willingness to produce pro-Beijing verdicts. This is exacerbated by their short one-year terms - judges are typically given security of tenure for far longer, often up to the mandatory retirement age, for good reason: short judicial tenures lead to judges being susceptible to pressures that influence their decision-making, as they will understandably be concerned about renewal of their appointments. Against this patchwork of factors, the chances of designated NSL judges being impartial to the standard required by the ICCPR appear vanishingly unlikely.

### **Direct transnational repression**

The apparent mandate behind the July and December arrest warrants of now-overseas activists is Part 6 of the NSL. Article 36 affirms jurisdiction over offences committed on Hong Kong soil, rightly with no distinction between those with Hong Kong nationality or permanent residency and those without. Article 37 asserts jurisdiction over “offences” committed by Hong Kong permanent residents outside of Hong Kong. Article 38 proclaims jurisdiction over “offences” committed by nationals of all states in the world, anywhere in the world. Article 38 is legally

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<sup>29</sup> Ibid: 「當三名指定法官在沒有陪審團的情況下審理國安案件，他們會就其裁決頒下詳列理由的判決書，並於司法機構網站發布，供公眾審閱。案情和法庭就量刑所作的考慮均清楚列明在書面判詞中，在香港公開和透明的司法制度下，所有人都能看到判詞內容。任何人只要公平客觀地仔細閱讀判詞，均可見法官獨立進行審判，嚴格按照法律和證據作出判決，相反的說法全無基礎。」

<sup>30</sup> Ibid: 「此外，適用於有陪審團參與的審訊的程序保障措施，同樣適用於這類審訊，確保被告人獲得公平審訊，而被告人一旦被定罪及判刑，亦可循相同的上訴程序提出上訴。」

incoherent and does not warrant further discussion, but Articles 36 and 37 will be discussed in turn.

At international law, there are recognised principles governing the exercise of jurisdiction by states, (arguably) relevant ones being territoriality, nationality, universality,<sup>31</sup> effects (also known as objective territoriality)<sup>32</sup> and the protective principle. From a purely jurisdictional perspective, Article 36 is valid under the principle of territoriality. This would cover any acts done by each activist prior to their departure from Hong Kong.

However, the July and December arrest warrants were also based on allegations that these individuals encouraged sanctions against Hong Kong and violated the NSL while residing in various countries such as the UK, US, and Australia *after* fleeing Hong Kong. This would necessarily invoke Article 37, which is problematic for three reasons.

First, it is an improper extension of the nationality principle, which allows states to exercise jurisdiction over its nationals. The reference to “permanent residents” asserts jurisdiction over a larger class of individuals than permitted under the principle, as permanent residency does not confer the same legal status or obligations as citizenship.

Second, the nationality principle is typically used to prosecute genuinely serious offences such as terrorism, war crimes, human trafficking and money laundering.<sup>33</sup> Recalling that the Hong Kong government is now invoking the nationality principle to instead threaten prosecution against individuals merely advancing opinions it disagrees with (e.g. calling on foreign governments to impose sanctions), this suggests that the Hong Kong government deems such conduct to possess a degree of severity comparable to genuinely serious crimes. Such equivalence is clearly untenable and constitutes a frivolous invocation of the nationality principle.

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<sup>31</sup> Asserts that certain crimes are so heinous and universally condemned that any state may exercise jurisdiction over the perpetrators, regardless of where the crime was committed or the nationality of the offenders or victims. Typically applied to crimes such as piracy, genocide, war crimes, and crimes against humanity.

<sup>32</sup> Allows a state to exercise jurisdiction over acts committed outside its territory if those acts have substantial effects within the state's territory. This principle is often used in cases involving cross-border crimes, such as cybercrime, environmental pollution and terrorism.

<sup>33</sup> Fisher, Catherine C. "Recent Development--U.S. Legislation to Prosecute Terrorists: Antiterrorism or Legalized Kidnapping?" *Vanderbilt Journal of Transnational Law* 18, no. 4 (1985): 915-933. <<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=2219&context=vjtl>> [accessed 30 May 2024].

Third, even aside from the fact that countries such as the US,<sup>34</sup> UK,<sup>35</sup> Australia<sup>36</sup> and Canada<sup>37</sup> have suspended their extradition agreements in response to the imposition of the NSL, Article 37 would not have withstood the scrutiny of the principle of dual criminality in any case, which limits the possibility of politically-motivated prosecutions by requiring the allegedly criminal acts to be an offence in both the territory where it was expressed and that of the state seeking to prosecute. Offering bounties to encourage money-motivated vigilantism is a puny attempt by the Hong Kong and Chinese governments to circumvent the many safeguards built into international law.

### Indirect transnational repression

Arrests of Law and Hui's Patreon supporters represent an alarming rise in the lengths the HKPF is ready to go to in order to exercise the NSL's "extraterritorial reach", and raise grave concerns about how the HKPF identified these subscribers and gathered sufficiently compelling evidence to press charges. Two plausible theories prevail.

The first is Patreon colluding with the HKPF and leaking subscribers' details. This scenario seems highly unlikely: Patreon is a US-based company headquartered in San Francisco, with both co-founders being US-bred and educated,<sup>38 39</sup> and free of any publicly available evidence to suggest any corporate or personal ties to the Chinese or Hong Kong governments. Against this backdrop, there is little reason to doubt the credibility of Patreon's written response to Nathan Law confirming that they did not share that data with the HKPF or related bodies.<sup>40</sup>

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<sup>34</sup> Associated Press. "US Suspends Extradition and Tax Agreements with Hong Kong." 19 August 2020. <<https://apnews.com/article/virus-outbreak-asia-pacific-1db7c8fd0d17352f34b26d3d51931206>> [accessed 30 May 2024].

<sup>35</sup> On 20 July 2020: United Kingdom. Foreign, Commonwealth & Development Office. "Statement on Hong Kong National Security Law Arrest Warrants." Last modified 17 May 2024. <<https://www.gov.uk/government/news/statement-on-hong-kong-national-security-law-arrest-warrants>> [accessed 30 May 2024].

<sup>36</sup> On 9 July 2020: Australia. Department of Foreign Affairs and Trade. "Extradition Treaty with Hong Kong." Last modified November 7, 2023. <<https://www.foreignminister.gov.au/minister/marise-payne/media-release/extradition-treaty-hong-kong>> [accessed on 30 May 2024].

<sup>37</sup> 3 July 2020: Canada. Global Affairs Canada. "Canada Takes Action Following Passage of National Security Legislation for Hong Kong." Last modified July 3, 2020. <<https://www.canada.ca/en/global-affairs/news/2020/07/canada-takes-action-following-passage-of-national-security-legislation-for-hong-kong.html>> [accessed 30 May 2024].

<sup>38</sup> Jack Conte (co-founder and CEO) was born and raised in Marin County, California: Forbes. "Jack Conte." <<https://www.forbes.com/profile/jack-conte/?sh=1b5e5b7b4b0e>> accessed 30 May 2024.

<sup>39</sup> Sam Yam (co-founder and CTO): grew up in Pittsburgh, Pennsylvania: Startup Grind Local, 'Fireside Chat with Sam Yam (Co-Founder and CTO of Patreon),' YouTube, 8 September 2020, interview, 1:14 to 1:15, <<https://www.youtube.com/watch?v=p016ICt3xko>>.

<sup>40</sup> Law, Nathan. 「在香港政府的拘捕行動後，我馬上向 Patreon 查詢，亦獲得他們書面回覆：就我的個案而言，他們沒有提供任何資訊予香港政府或任何政府機構。由此可以推斷，政府是在處理其他個案時，取得了這些訂閱戶的資訊。希望各位盡量保護好個人資料，以免令政府連繫到現實

The remaining theory is that the HKPF accessed financial transaction records through local financial institutions; since the arrested individuals were paying subscribers, their transactions would have been recorded by their banks. Given the HKPF's powers under Article 43 NSL, it appears plausible for the HKPF to have compelled local banks to provide information on transactions related to Patreon subscriptions. Additionally, this information could well have been corroborated through the HKPF employing other local surveillance and data collection methods (such as compelling internet service providers to provide otherwise inaccessible data) to track the online activities of individuals suspected of supporting pro-democracy activists. The very fact that these individuals were arrested suggests they were physically in Hong Kong at the time of arrest, in turn suggesting the plausibility of the HKPF being able to gather data regarding local residents.

As such, in cases where directly arresting the high-value/high-profile target is not legally viable due to them physically being out of the jurisdiction, the HKPF is faced with the reality that many high-value targets have resolved never to return to Hong Kong soil and will remain physically resident in rights-respecting democracies that are highly unlikely to cooperate in extraditing these individuals or otherwise aid the HKPF in their arrest. This reality makes a mockery of the self-proclaimed "extraterritoriality" of the NSL and represents an unacceptable embarrassment for the Hong Kong government, prompting it to respond in two ways: attempt to make an example of those providing financial support to high-profile targets, in the hope of discouraging current and potential support and ultimately cutting off crowdfunding as a source of livelihood; and directly threaten whomever they have the *de facto* jurisdictional reach to threaten - that is, Hong Kong residents who express support, however insignificant, for these targets, or even the targets' family members.<sup>41</sup>

### **Pre-trial detention of Jimmy Lai**

Lai's prolonged pre-trial detention since December 2020 at the maximum-security Stanley Prison violates the presumption of innocence required by Article 14(2) of the ICCPR, as it amounts to *de facto* incarceration without due process or conviction.

A commonly rehearsed counterpoint is that the US and other Western democracies also practise pre-trial detention. Proponents of this argument fail to recognise that

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身份。」 Facebook, May 30, 2024.

<<https://www.facebook.com/NathanLawKC/posts/pfbid022s4bwvVzmL2kbkKh1Rx8N6HEau5gr6Ky8rL5vou2uqde2hk3acUvK72ojnKHgkMol>> [accessed 30 May 2024].

<sup>41</sup> Hong Kong Free Press. "Breaking: Activist Nathan Law's Family Taken Away by Hong Kong National Security Police – Reports." July 11, 2023. <<https://hongkongfp.com/2023/07/11/breaking-activist-nathan-laws-family-taken-away-by-hong-kong-national-security-police-reports/>> [accessed 30 May 2024]; on 11 July 2023, after the HKPF issued a wanted list of 8 overseas activists (including Nathan Law), Law's parents and brother, who were resident in Hong Kong, were taken by police for questioning. They were released on the same day.

pre-trial detention in Western democracies is primarily reserved for individuals believed to have committed either *physical* acts which will endanger civilian life or property (e.g. terrorism), or *speech-related* acts which incites hatred or violence against identifiable groups of people (e.g. racially- or religiously-motivated hate speech). In other words, pre-trial detention in Western democracies is primarily a tool to protect the people against potential mass harm. The qualification of the accused's human rights on the basis of protection of the rights of many more clearly constitutes an explicitly recognised exception under Article 4 of the ICCPR. Antithetically, Lai's pre-trial detention was a tool to protect the prevailing regime against his only 'weapon': words on paper which happened to be hard to swallow for them. The qualification of human rights on the basis of protection of the pride of the state does not fall under any recognised norms within international human rights law.

## CONCLUSION

*"What surely is most needed in order to make men clear-sighted in confronting the official abuse of power, is that they should preserve the sense that the certification of something as legally valid is not conclusive of the question of obedience, and that, however great the aura of majesty or authority which the official system may have, its demands must in the end be submitted to a moral scrutiny."*<sup>42</sup> - H.L.A. Hart

The NSL's application in 2023 amply confirms the Chinese government's view of Hong Kong's long-standing common law traditions and human rights obligations not as the intricate, finely-tuned synergistic system it used to be, but as barriers to their political agenda which must be coarsely dismantled at all costs. Yet, despite tremendous efforts from the Hong Kong and Chinese governments, no amount of mental gymnastics or make-believe can distract an intelligent populace from a self-evident truth: validly passing laws illegal under international law does not make them legal. While in absolute numbers the NSL has seen less use in 2023 than in previous years, the NSL has become the tool-of-choice against high-value targets, directly and indirectly, transnationally and locally. Wilful misconstructions by the Hong Kong and Chinese governments of national security as a narrow and restrictively defined recognised qualification to human rights under international human rights law have been imaginative at best and intentionally heinous at worst. It is only upon the demise of rule by law that the rule of law will prevail once more.

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<sup>42</sup> Hart, H.L.A. (2012) *The Concept of Law*. 3rd edn. Edited by J. Raz and P.A. Bulloch. Oxford: Oxford University Press, p. 213.

## RECOMMENDATIONS

Accordingly, the Hong Kong Rule of Law Monitor:-

- 1) Demands that the Hong Kong Government:
  - a) repeal the NSL;
  - b) release all detainees under the NSL immediately;
  - c) reverse all convictions under the NSL immediately;
  - d) Issue formal apologies and pay adequate compensation to the victims of the NSL for the gross violations of their human rights committed by the Hong Kong Government and its agents;
  - e) cease the practice of no-jury trials immediately;
  - f) maintain an open list of the panel of Chief Executive-appointed judges and allow the public to access such a list; and
  - g) publicly renounce the arrest warrants against overseas activists, withdraw all offers of bounties, and issue formal apologies and adequate compensation to subjects of these warrants for gross inconvenience and violations of their human rights.
- 2) Recommends that the international community:
  - a) not to prejudice an immigration or professional application solely on basis of an individual having been investigated, arrested or convicted under NSL or relevant offences such as sedition;
  - b) consider fear from persecution under the NSL as strong evidence to support an application for political asylum;
  - c) actively challenge attempts by the Hong Kong Government to whitewash its human right violations;
  - d) provide sufficient resources and trainings for the immigration department to thoroughly understand the implications and effects of NSL to assess the fear from persecution for political asylum application;
  - e) boycott events organised by the Hong Kong Government;
  - f) call for appropriate actions to be taken under the existing law in your country;
  - g) call for the enactment of law to tackle human rights violations if there is none in the jurisdiction;
  - h) resist attempts by the Hong Kong Government to exercise “extraterritorial jurisdiction” against Hong Kong permanent residents or nationals in your country as a violation of human rights and unacceptable foreign interference in the affairs of your country; and
  - i) submit reports to international human rights monitoring organisations to ensure that the global community remains informed and engaged.



## (B) ARTICLE 23 AND THE SEDITION LAW AND THEIR EXTRATERRITORIAL REACH

### INTRODUCTION

In our Rule of Law Report 2022, we mentioned that the colonial-era offence of “sedition” has been revived and utilised by the Hong Kong Government to censor and punish opposing views in the press or among the public.<sup>43</sup> The *Stand News* trial commenced in October 2022 and continued up to 2024. The first sedition conviction case (*HKSAR v Tam Tak Chi*) in 2022 went on to appeal in 2023. Further, more people were arrested, prosecuted, and convicted in 2023 for making alleged seditious comments, publications, or expression. A song, which has been labelled by the Hong Kong Government as “seditious”, was officially banned in law by the Court in 2023.

Despite the revival and wide application of the draconian seditious law (“**Sedition Law**”) since 2022, and the enactment of the National Security Law imposed upon Hong Kong on 30 June 2020, the Hong Kong Government still insists that there is an urgent need “to plug the national security loopholes”. Accordingly, on 23 March 2024, a local legislation, namely *Safeguarding National Security Ordinance* (“**Article 23 legislation**”) was enacted pursuant to Article 23 of the Basic Law.<sup>44</sup>

Since its enactment, Article 23 legislation has been widely criticised by the international societies for further undermining the rights and freedoms of people in Hong Kong as well as Hong Kong’s commitment to uphold the rule of law and implementation of international obligations including the *International Covenant on Civil and Political Rights* (“**ICCPR**”).

In this chapter, we will continue to examine both the old and the new cases under the Sedition Law in 2023 as well as the new Article 23 legislation and its impact on the rule of law and human rights protection in Hong Kong.

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<sup>43</sup> See Rule of Law Report 2022, Chapter 1(a)

<sup>44</sup> Article 23 of the Basic Law provides that Hong Kong “shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities” in HK, and to prohibit HK political organisations or bodies “from establishing ties with foreign political organisations or bodies”.

## SUMMARY OF EVENTS

### Appeal hearing of *Tam Tak Chi* case

Tam was the first person who was charged with the offence of ‘uttering seditious words’ since 1997. He was convicted and sentenced to a total of three years and four months’ imprisonment in 2022. He then appealed against both convictions and sentences in 2023. On 7 March 2024, his appeal was dismissed by the Court of Appeal (“CA”).<sup>45</sup> In particular, the CA held that (i) intention to incite violence is not a necessary ingredient of the statutory offence of sedition; (ii) the sedition charges under ss. 9 and 10 of the Crimes Ordinance are constitutional; and (iii) the slogan “光復香港·時代革命” translated as “Liberate Hong Kong, Revolution of Our Times” (the “Slogan”) is seditious. The finding on (i) is pending appeal to the Court of Final Appeal (“CFA”), the hearing of which will be held on 10 January 2025 whilst the finding on (ii) was dismissed by the CFA in August 2024.

### Trial hearing of *Stand News* case

In December 2021, editors of *Stand News* were arrested for ‘conspiracy to publish seditious materials’, namely 17 articles. The trial commenced in October 2022 and continued in 2023, lasted for 56 days. Due to the prosecution’s serious delay in disclosure of more than 550 articles and also failure to keep and disclose copious number of other articles reviewed by HKPF, the Defence applied to permanently stay the proceedings for unfair trial but was rejected by the Court.<sup>46</sup> After a case to answer was ruled by the Court, Chung Pui-kuen (the 2<sup>nd</sup> Defendant), the former editor-in-chief chose to testify. Chung said in order to embody freedom of speech, *Stand News* published almost every commentary submitted by its columnists from across the political spectrum.<sup>47</sup> Yet Chung also emphasised that the outlet would not publish commentaries that were groundless or meaningless and he did not see how any of the 17 articles in question were based on fake news or unfounded information.<sup>48</sup> After having spent 26 days in box, Chung finished his testimony. Verdict of the case was then adjourned pending the Court of Appeal’s ruling in *Tam Tak Chi* case on a relevant question, namely whether intention to incite violence is a necessary ingredient of the

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<sup>45</sup> *HKSAR v Tam Tak Chi*, CACC 62/2022, 7 Mar 2024 (CA)

<sup>46</sup> Lea Mok, “Hong Kong court rejects bid by former Stand News editors to terminate trial”, Hong Kong Free Press, 22 December 2022 <<https://hongkongfp.com/2022/12/22/hong-kong-court-rejects-bid-by-former-stand-news-editors-to-terminate-trial/>>

<sup>47</sup> Lea Mok, “Defunct Hong Kong outlet Stand News are committed to protecting freedom of speech, ex-editor tell court”, Hong Kong Free Press, 11 January 2023 <<https://hongkongfp.com/2023/01/11/defunct-hong-kong-outlet-stand-news-was-committed-to-protecting-freedom-of-speech-ex-editor-tells-court/>>

<sup>48</sup> Lea Mok, “Stand News sedition trial: Testimony of ex-chief editor ends after 36 days as closing arguments set for June”, Hong Kong Free Press, 4 April 2023 <<https://hongkongfp.com/2023/04/04/stand-news-sedition-trial-testimony-of-ex-chief-editor-ends-after-36-days-as-closing-arguments-set-for-june/>>

sedition offence.<sup>49</sup> On 29 August 2024, the Court found all three defendants guilty of the charge.<sup>50</sup>

### **Injunction relating to the “*Glory to Hong Kong*” song**

On 5 June 2023, the Department of Justice applied to court seeking to ban the “broadcasting, performing, printing, publishing, selling, offering for sale, distributing, disseminating, displaying or producing in any way” the 2019 protest song *Glory to Hong Kong* with illegal intent like seditious intent.<sup>51</sup> On 28 July 2023, the Court rejected the application worrying that the ban would bring ‘chilling effects’: “*perfectly innocent people*” *might refrain from engaging in lawful acts involving the song “for fear of trespassing the injunction which has severe consequences”*, said the judge.<sup>52</sup> In particular, the judge found that an injunction would not be of much use and would conflict with existing law resulting in potential double jeopardy. On 23 August 2023, the Court granted the Government leave to appeal against the said decision. The appeal was then heard by the Court of Appeal in late 2023 and early 2024. On 8 May 2024, the Court of Appeal allowed the appeal and granted the interim injunction accordingly.<sup>53</sup>

### **Trial hearing of *Jimmy Lai* and *Apple Daily*’s senior executives case**

Jimmy Lai, who was first arrested under the national security law in August 2020 and formally charged in December 2020 and has been detained since then, had his national security and sedition trial began on 18 December 2023.<sup>54</sup> Three judges – handpicked by the Chief Executive (“CE”) to hear national security cases – were presiding over Lai’s trial in the place of a jury, which was a departure from the city’s common law traditions. His co-accused, six senior executives pleaded guilty in November 2022, will be sentenced after the conclusion of Lai’s trial. Lai’s trial was meant to begin in December 2022 but was delayed due to the debate over whether Lai should be allowed to hire a UK King’s Counsel, Timothy Wynn Owen KC. Despite the CFA had refused the Department of Justice’s application for leave to appeal and approved

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<sup>49</sup> Hans Tse, “Verdict in sedition case against Hong Kong outlet Stand News further postponed pending higher court ruling”, Hong Kong Free Press, 15 November 2023, <<https://hongkongfp.com/2023/11/15/verdict-in-sedition-case-against-hong-kong-outlet-stand-news-further-postponed-pending-higher-court-ruling/>>

<sup>50</sup> *HKSAR v Best Pencil (Hong Kong) Limited & Ors*, DCCC 265/2022, 29 August 2024 (DCt)

<sup>51</sup> Tom Grundy, “Gov’t seeks to ban protest song ‘Glory to Hong Kong’, including from internet”, Hong Kong Free Press, 6 June 2023, <<https://hongkongfp.com/2023/06/06/govt-seeks-to-ban-protest-song-glory-to-hong-kong-including-from-internet/>>

<sup>52</sup> *SJ v Persons conducting themselves in any of the acts prohibited under paragraph 1(a), (b), (c) or (d) of the Indorsement of Claim*, HCA 855/2023, 31 Oct 2023 (CFI)

<sup>53</sup> *SJ v Persons conducting themselves in any of the acts prohibited under paragraph 1(a), (b), (c) or (d) of the Indorsement of Claim*, CACV 274/2023, 8 May 2024 (CA)

<sup>54</sup> Hillary Leung, “National security trial against Hong Kong media tycoon Jimmy Lai begins amid heavy police presence”, Hong Kong Free Press, 18 December 2023, <<https://hongkongfp.com/2023/12/18/national-security-trial-against-hong-kong-media-tycoon-jimmy-lai-begins-amid-heavy-police-presence/>>

Lai to hire Owen,<sup>55</sup> the National People's Congress Standing Committee ("NPCSC"), upon the Hong Kong Government's invitation, intervened and issued an interpretation of the NSL granting the Chief Executive the power to decide whether overseas lawyers working on cases involving NSL would pose a threat to national security.<sup>56</sup> As a result, the Committee for Safeguarding National Security in the HKSAR ("NSC") decided that Owen should not be allowed to represent Lai due to national security risks. In July 2024, the Court of Appeal also rejected Lai's application to challenge the said decision of NSC;<sup>57</sup> Lai's trial continued in 2024 and after the Court ruled that Lai has a case to answer on all charges, he decided to testify in November 2024.<sup>58</sup>

### **'Ordinary' Hongkongers jailed for making alleged 'seditious' opinions**

Since the revival of the Sedition Law, more than half of those charged are 'ordinary' Hongkongers, from service industry workers to delivery staff; they are neither activists nor politicians. Most of them pleaded guilty to the sedition charge after having spent months in pre-trial detention. The alleged 'seditious' acts have mostly involved criticizing authorities like the government, police and courts through social media platforms, posters, stickers or even clothes:<sup>59</sup> a single mother jailed for four months after having shared dozens of pro-democracy social media posts authored by others; a 68-year-old homemaker jailed for three months after having criticised the magistrate in court;<sup>60</sup> a police officer jailed for 10 months for having commented online about the death of another police officer;<sup>61</sup> an online media outlet founder and others jailed for up to 10 months for selling copies of a seditious book at a Lunar New Year fair;<sup>62</sup> a pro-democracy singer jailed for 2 years and 2 months for making seditious online

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<sup>55</sup> *SJ v Timothy Wynn Owen KC & Bar Council of the Hong Kong Bar Association*, FAMV 591/2022, 25 November 2022 (CFA)

<sup>56</sup> Candice Chau, "Explainer: Beijing's first interpretation of Hong Kong's national security law", Hong Kong Free Press, 8 January 2023, <<https://hongkongfp.com/2023/01/08/explainer-beijings-first-interpretation-of-hong-kongs-national-security-law/>>

<sup>57</sup> Kelly Ho, "Hong Kong court rejects media tycoon Jimmy Lai's bid to challenge foreign lawyer ban at top court", Hong Kong Free Press, 5 July 2024, <<https://hongkongfp.com/2024/07/05/hong-kong-court-rejects-media-tycoon-jimmy-lais-bid-to-challenge-foreign-lawyer-ban-at-top-court/>>

<sup>58</sup> James Lee, "Hong Kong pro-democracy media mogul Jimmy Lai to testify when national security trial resumes in November", Hong Kong Free Press, 25 July 2024, <<https://hongkongfp.com/2024/07/25/hong-kong-pro-democracy-media-mogul-jimmy-lai-to-testify-when-national-security-trial-resumes-in-november/>>

<sup>59</sup> AFP, "How the sedition clampdown hit 'ordinary' Hongkongers", Hong Kong Free Press, 29 July 2023, <<https://hongkongfp.com/2023/07/29/how-the-sedition-clampdown-hit-ordinary-hongkongers/>>

<sup>60</sup> Candice Chau, "68-year-old Hong Kong woman to serve 3 month jail term over 'seditious' words after giving up appeal", Hong Kong Free Press, 31 January 2023, <<https://hongkongfp.com/2023/01/31/68-year-old-hong-kong-women-to-serve-3-month-jail-term-over-seditious-words-after-giving-up-appeal/>>

<sup>61</sup> Candice Chau, "10 months jail for ex-Hong Kong cop over 'seditious' online posts about death of marine officer", Hong Kong Free Press, 21 March 2023, <<https://hongkongfp.com/2023/03/21/10-months-jail-for-ex-hong-kong-cop-over-seditious-online-posts-about-death-of-marine-officer/>>

<sup>62</sup> Kelly Ho, "Hong Kong's 'Pastor Keung' and 2 others jailed for up to 10 months over 'seditious' book", Hong Kong Free Press, 21 March 2023, <<https://hongkongfp.com/2023/03/21/hong-kongs-pastor-keung-and-2-others-jailed-for-up-to-10-months-over-seditious-book/>>

comments about the death of a marine police officer and a national security magistrate and money-laundering;<sup>63</sup> a man jailed for 4 months over importing 18 children's picture books about sheep and wolves, publications said to have intended to incite hatred against the Hong Kong and the Chinese governments among young readers;<sup>64</sup> a Hong Kong student jailed for 2 months for publishing seditious Facebook and Instagram posts whilst in Japan and in Hong Kong;<sup>65</sup> a male clerk jailed for 4 months for his online forum posts calling for the downfall of the Chinese Communist Party including its leader Xi Jinping;<sup>66</sup> a man jailed for 3 months for wearing a T-shirt with the 2019 protest slogan.<sup>67</sup>

## Enactment of Article 23 legislation

On 19 March 2024, the Hong Kong government passed the Article 23 legislation, after a rushed public consultation and legislative review process. The new law covers five types of crimes: treason, insurrection and incitement to mutiny, theft of state secrets and espionage, sabotage, and external interference. While there is some overlap with the NSL, Article 23 legislation has also created new offences, increased penalties for existing offences and given the government even more sweeping powers of enforcement like the police: with a magistrate's approval, HKPF can detain someone for up to 16 days without filing any charges. The law was then passed unanimously by the Legislative Council after years-long overhauls of the legal and electoral systems and crackdown on the pro-democracy movement have ensured that LegCo is largely free of opposition. International rights groups and governments overseas have expressed concerns that the Article 23 legislation may further erode freedoms in Hong Kong.<sup>68</sup>

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<sup>63</sup> Hillary Leung, "Hong Kong pro-democracy singer jailed for 2 years and 2 months over sedition and money-laundering charges", Hong Kong Free Press, 1 September 2023, <<https://hongkongfp.com/2023/09/01/hong-kong-pro-democracy-singer-jailed-for-2-years-and-2-months-over-sedition-and-money-laundering-charges/>>

<sup>64</sup> Kelly Ho, "Hong Kong man jailed for 4 months over importing 'seditious' children's books", Hong Kong Free Press, 6 October 2023, <<https://hongkongfp.com/2023/10/06/hong-kong-man-jailed-for-4-months-over-importing-seditious-childrens-books/>>

<sup>65</sup> Hillary Leung, "Hong Kong student who made 'seditious' online posts in Japan jailed for 2 months", Hong Kong Free Press, 3 November 2023, <<https://hongkongfp.com/2023/11/03/hong-kong-student-who-made-seditious-online-posts-in-japan-jailed-for-2-months/>>

<sup>66</sup> Hans Tse, "Hong Kong clerk jailed for 4 months after calling for downfall of China's Communist Party on online forum", Hong Kong Free Press, 24 November 2023, <<https://hongkongfp.com/2023/11/24/hong-kong-clerk-jailed-for-4-months-after-calling-for-downfall-of-chinas-communist-party-on-online-forum/>>

<sup>67</sup> Hans Tse, "Man jailed for 3 months over wearing 'seditious' shirt with protest slogan at Hong Kong airport", Hong Kong Free Press, 10 January 2024, <<https://hongkongfp.com/2024/01/10/man-jailed-for-3-months-over-wearing-seditious-shirt-with-protest-slogan-at-hong-kong-airport/>>

<sup>68</sup> Mercedes Hutton, "Hong Kong passes new security law, raising max. penalty for treason, insurrection to life in prison", Hong Kong Free Press, 19 March 2024, <<https://hongkongfp.com/2024/03/19/breaking-hong-kong-passes-new-security-law-raising-max-penalty-for-treason-insurrection-to-life-in-prison/>>

## LEGAL ANALYSIS

In our Rule of Law Report 2022,<sup>69</sup> we highlighted how the revival and active use of the colonial-era Sedition Law further eroded the already very vulnerable human rights and freedoms in Hong Kong since the enactment of the NSL in 2020. In 2023, we saw the continual utilisation of this oppressive legal tool and the violation of fundamental rights and freedoms as a result: ordinary people were jailed for merely expressing views which might not be agreeable to the authority, or making dissenting opinions unwelcomed by the government; their acts were short of any violence or disorder, or suggestion, encouragement, or incitement thereof. Most of them were detained for weeks prior to their plea or trial; for those who were granted bail, they were subject to severe bail conditions like granting the police access to their personal social media account. Such “disproportionate restrictions to the freedom of expression chills speech, especially online” whilst freedom of expression is a critical component of maintaining a robust civil society, said the UN Special Rapporteurs and the UN Human Rights Committee.<sup>70</sup>

Then in early 2024, we saw the Article 23 legislation was expedited through the “opposition-free” legislative process following a brief period of public consultation and passed in just 11 days after it was tabled.

- The new law introduces 39 overbroad national security crimes covering treason, sedition theft of state secrets and external interference.
- It also grants authorities sweeping powers like holding trials behind closed doors, detaining suspects without charge for up to 16 days, and restricting access to lawyers.<sup>71</sup>
- The definitions of “national security” and “state secrets” are adopted wholesale from the mainland China. These definitions are too wide and vague, making elements such as the “intent to endanger national security” fluid, ambiguous, and sweeping.<sup>72</sup>

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<sup>69</sup> Hong Kong Rule of Law Monitor, “Rule of Law Report 2022”, 23 October 2023, <<https://hkrlm.org/2023/10/23/rol-report-2022/>>

<sup>70</sup> “Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on minority issues”, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 23 April 2020, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25196>>

<sup>71</sup> BBC, “Article 23: What is Hong Kong’s tough new security law?”, 25 March 2024, <<https://www.bbc.co.uk/news/world-asia-china-68508694>>

<sup>72</sup> Hong Kong Rule of Law Monitor, “Hong Kong’s Article 23 Proposal: A Response from Overseas Hong Kong Lawyers”, 28 February 2024, <<https://hkrlm.org/2024/02/28/a23-response/>>

- The new law also expands the scope of the sedition law and increases the maximum penalty from two years' imprisonment to ten years' imprisonment if there is 'external force' involved.
- Organisations and companies can be banned from operating in Hong Kong, should they be found "working for foreign forces".<sup>73</sup>
- The new law has further expanded its 'extra-territorial reach': the new offence of treason is also applicable to overseas Hong Kong residents; extremely broad definition of 'external force' under the new offences of 'external interference' and 'espionage'.
- It expressly provides that an intention to incite violence is not a necessary ingredient of the sedition offence under the new law, contrary to the common law principle that speech that does not incite violence or disorder should not be punished under the law.<sup>74</sup> The new law is in sharp contrast to the then opinion of the Government back in 2002-2003, who conceded that "[the] mere expressions of views, or mere reports or commentaries on views or acts, will not be criminalized, unless such expressions, reports or commentaries incite others to achieve a specified purpose through levying war, force, threat of force, or serious unlawful means, or incites violence or public disorder which seriously endangers the stability of the state or the HKSAR."<sup>75</sup>

The new law is ambiguous and arbitrary in nature, posing real risks to human rights defenders and journalists and having chilling effect on legitimate speech and conduct.<sup>76</sup> The UN High Commissioner for Human Rights expressed grave concerns that the expansive definition of 'external force' may discourage lawful and legitimate engagement with human rights organisations and UN bodies, contrary to the right to communicate and cooperate with international human rights bodies.<sup>77</sup> Beijing's diplomats, on the other hand, defended that the new law was "legitimate, lawful and beyond reproach".<sup>78</sup>

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<sup>73</sup> See note 71 above.

<sup>74</sup> Amnesty International, "What is Hong Kong's Article 23 law? 10 things you need to know", 22 March 2024, <<https://www.amnesty.org/en/latest/news/2024/03/what-is-hong-kongs-article-23-law-10-things-you-need-to-know/>>

<sup>75</sup> Security Bureau, HKSAR, "Proposals to implement Article 23 of the Basic Law: Consultation Document", September 2002, <http://www.info.gov.hk/archive/consult/2002/bl23-e.pdf>

<sup>76</sup> International Service for Human Rights, "UN voices unanimously condemn Hong Kong's new national security law", 28 March 2024, <<https://ishr.ch/latest-updates/un-voices-unanimously-condemn-hong-kongs-new-national-security-law/>>

<sup>77</sup> Office of the High Commissioner for Human Rights, "Rushed adoption of national security bill a regressive step for human rights in Hong Kong – UN Human Rights Chief", 19 March 2024, <<https://www.ohchr.org/en/press-releases/2024/03/rushed-adoption-national-security-bill-regressive-step-human-rights-hong>>

<sup>78</sup> The Guardian, "Article 23: China hits back at criticism of Hong Kong's hardline new security law", 21 March 2024, <<https://www.theguardian.com/world/2024/mar/21/article-23-national-security-law-china-criticism-of-hong-kong-controversial>>

*“There is no greater tyranny than that which is perpetrated under the shield of law and in the name of justice”*, said Montesquieu, the famous French judge and political philosopher.

In *NAACP v Button*, Brennan J of the US Supreme Court emphasised that since freedom of speech needs “breathing space” to survive, government may regulate in this area only with “narrow specificity”.<sup>79</sup> In *Thornhill v Alabama*, the US Supreme Court also held that a law may on its face be so overbroad that it is unconstitutional because it is liable to catch what is legitimate freedom of speech.<sup>80</sup>

The American jurisprudence has found its echo in the decisions of the House of Lords in *Simms*, where Lord Steyn said that without the right to freedom of expression, *“an effective rule of law is not possible”*: *“freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a break on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country ...”*<sup>81</sup>

## CONCLUSION

The principles of rule of law are further trampled and crushed by the continual arrest, prosecution, and imprisonment of ordinary people for sedition in 2023 after the Sedition Law’s revival a year ago since its last use in 1960’s and the enactment of the draconian Article 23 legislation in early 2024 which has made the sedition law tougher and harsher, and has further expanded the scope of activities falling under the national security law in Hong Kong. Compared to last year, the general human rights situation and the rule of law in Hong Kong is getting much worse than ever; the new law gives authorities yet another tool to crack down on dissidents and erode the ‘not-much-left’ freedoms after the NSL was imposed in 2020.

## RECOMMENDATIONS

Accordingly, the Hong Kong Rule of Law Monitor:-

1. Demands the Hong Kong Government:
  - a. repeal the Sedition Law and the Article 23 legislation, namely the *Safeguarding National Security Ordinance* (“SNSO”);

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<sup>79</sup> (1963) 371 US 415 at p 433

<sup>80</sup> (1940) 310 US 88

<sup>81</sup> [2000] 2 AC 115 at pp. 125-126, referred to in *AG of Trinidad and Tobago v Vijay Maharaj for Satnarayan Maharaj & Anor.*, [2023] UKP 36 at paras. 60-62

- b. release all the detainees, retract prosecution and quash the convictions of all persons under the Sedition Law and the SNSO;
  - c. refrain from arresting and/or laying charges against any person under the Sedition Law and the SNSO; and
  - d. apologise and compensate to the victims of the enforcement of Sedition Law and the SNSO for the gross violations of their fundamental rights and freedoms protected under the Basic Law and the international treaties.
2. Recommends that the international community:
- a. not to prejudice an immigration or professional application solely on the basis of an individual having been investigated, arrested or convicted under the Article 23 legislation or the Sedition Law; and
  - b. consider fear from persecution under the Article 23 legislation or the Sedition Law as strong evidence to support an application for political asylum;
  - c. continue to monitor, record, and condemn the continual violations of human rights resulting from the implementation of Article 23 legislation and the Sedition Law in Hong Kong;
  - d. provide sufficient resources and trainings for the immigration department to thoroughly understand the implications and effects of the Article 23 legislation or the Sedition Law to assess the fear from persecution for political asylum application;
  - e. actively challenge and refute attempts by the Hong Kong Government to whitewash or downplay its human rights violations;
  - f. call for appropriate actions to be taken under the existing law in your country to reflect the disapproval of such human rights violations by the Hong Kong Government; and
  - g. call for the enactment of law to tackle human rights violations if there is none in the jurisdiction.

## **(C) EXTRA-LEGAL MEASURES**

### **INTRODUCTION**

In Lord Bingham's lecture on the rule of law in 2006, he formulated the core of the principle of the rule of law thus: "that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts."<sup>82</sup> Similarly, Sir John Laws said in a 2017 article that at the minimum, the rule of law requires that "state power should be exercised in accordance with promulgated, non-retrospective law made according to established procedures."<sup>83</sup>

When the government resorts to means that are not authorized by law, that is the exact antithesis of the rule of law. Worryingly, we observed the Hong Kong government doing so with increasing frequency in 2023. This has been facilitated by the climate of fear and distrust in the post-NSL (and post-SNSO) era. The government has found that it can achieve its goals of preventing citizens from exercising their rights by making vague threats or gestures of intimidation, without having to point to specific laws that they could be in violation of, and most citizens are afraid, or unable to hold the government accountable.

### **SUMMARY OF EVENTS**

#### **Unlawful conditions imposed on Agnes Chow and Tony Chung**

Both Agnes, Chow Ting and Tony, Chung Hon-lam are former student leaders and activists who were arrested and imprisoned at different times. Upon their release, both were pressured by the National Security Department into complying with varying conditions not mandated by law. Both have since left Hong Kong and remain in exile.

In August 2020, not long after she had been released from serving a term of imprisonment for participating in a peaceful protest, Chow was arrested under the NSL for "colluding with foreign forces." She was never formally charged under the NSL, but had to surrender her passport and report to a police station regularly. In July 2023, the Hong Kong police offered to return her passport on the condition that Chow would travel with them to Shenzhen for a propaganda tour. She recounts that

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<sup>82</sup> Lord Bingham at the Sir David Williams lecture at Cambridge University in 2006:

<<https://www.cpl.law.cam.ac.uk/sir-david-williams-lectures2006-rule-law/rule-law-text-transcript>>

<sup>83</sup> Laws, S. J. (2017). The Rule of Law: The Presumption of Liberty and Justice. *Judicial Review*, 22(4), 365–373.

<<https://doi.org/10.1080/10854681.2017.1407068>>

she was terrified, but felt she had no choice. During the trip, she was accompanied by five national security officers, who took her to political exhibitions about China's achievements and to the headquarters of Tencent, and made her write a letter of gratitude for the trip.<sup>84</sup> Subsequently, Chow left for Canada to pursue further studies. In December 2023, she announced that she would not return to Hong Kong.<sup>85</sup> The Hong Kong government and police criticized Chow for failing to report for bail, but did not deny her account of the trip to China.

Tony Chung was convicted of a national security offence and finished serving his term in June 2023. Upon his release, a one-year supervision order was imposed as he was a young offender under the age of 25. Ostensibly under the order, he was prevented from working at a restaurant, pressured to inform on other activists, and, like Chow, was requested to go to China.

Chung recounted being forced to meet with national security police every two to four weeks after his release.<sup>86</sup> During these meetings, he would be asked about who he met and what they discussed.<sup>87</sup> He further claimed that the police offered him informant fees and urged him to “supply information about others as proof of [his] reformation and willingness to cooperate”.<sup>88</sup> He recounted that he felt like he was in “an even bigger and more dangerous prison” than the one he had left.<sup>89</sup> In December 2023, Chung flew to the UK to seek political asylum.<sup>90</sup>

### **Harassment of family members of overseas activists**

Shortly after the national security police announced bounties on eight overseas activists in July 2023, the police took to harassing the activists' family members in Hong Kong. In a week, the police had raided former lawmaker Nathan, Law Kwun-

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<sup>84</sup> Helen Davidson,

“Former Hong Kong activist Agnes Chow flees territory for Canada”, the Guardian, 4 December 2023  
<<https://www.theguardian.com/world/2023/dec/04/agnes-chow-flees-hong-kong-for-canada-pro-democracy-protests-activist>>

<sup>85</sup> “Hong Kong democracy activist Agnes Chow jumps bail, will stay in Canada”, Hong Kong Free Press, 3 February 2024 <<https://hongkongfp.com/2023/12/04/hong-kong-democracy-activist-agnes-chow-jumps-bail-will-stay-in-canada/>>

<sup>86</sup> Tony Chung, Facebook, 28 December 2023

<[https://www.facebook.com/story.php?story\\_fbid=pfbid02N3NcU9nt85ajh3EqnevvBkDdDxK7FzBmsUsKGscUB8k5mefaV52bhUXfWtQLLMqkl&id=100066362626523&mibextid=UyTHkb&paipv=0&eav=AfatUuHYcATQ4l3K1gEMSjbdU2JhqtKuyfLCxnu0-Uj5wttrExQ\\_7f1GxM6lqgPxB0&\\_rdr](https://www.facebook.com/story.php?story_fbid=pfbid02N3NcU9nt85ajh3EqnevvBkDdDxK7FzBmsUsKGscUB8k5mefaV52bhUXfWtQLLMqkl&id=100066362626523&mibextid=UyTHkb&paipv=0&eav=AfatUuHYcATQ4l3K1gEMSjbdU2JhqtKuyfLCxnu0-Uj5wttrExQ_7f1GxM6lqgPxB0&_rdr)>

<sup>87</sup> *ibid.*

<sup>88</sup> Hillary Leung, “Tony Chung: Hong Kong orders activist back to prison after breaching supervision order and fleeing to UK for asylum”, Hong Kong Free Press, 29 December 2023  
<<https://hongkongfp.com/2023/12/29/tony-chung-hong-kong-orders-activist-back-to-prison-after-breaching-supervision-order-and-fleeing-to-uk-for-asylum/>>

<sup>89</sup> “Tony Chung: Student activist flees Hong Kong to seek asylum in UK”, BBC Chinese, 30 December 2023  
<<https://www.bbc.co.uk/news/world-asia-china-67831501>>

<sup>90</sup> See note 9 above.

chung's family home, and taken his parents and his brother away for questioning.<sup>91</sup> They were questioned about whether they provided financial support for Law and if they were his "agents" in Hong Kong.<sup>92</sup> They were not arrested. Since then, the police also brought in Anna, Kwok Fung-yee's parents,<sup>93</sup> Dennis, Kwok Wing-hang's brother,<sup>94</sup> Christopher, Mung Siu-tat's brother, brother-in-law and nephew,<sup>95</sup> and multiple family members of Elmer, Yuan Gong-yi<sup>96</sup> for questioning.

The family members of overseas activist Glacier, Kwong Chung-ching, were also harassed and questioned, despite the fact that Kwong had never been arrested or charged while she was in Hong Kong, and no warrant has been issued for her arrest.<sup>97</sup>

None of the family members of these activists have been arrested or charged with any criminal offence.

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<sup>91</sup> Frances Mao, "Nathan Law: Police raid family home of exiled Hong Kong activists", BBC News, 11 July 2023 <<https://www.bbc.co.uk/news/world-asia-china-66161692>; <https://std.stheadline.com/realtime/article/1938281/%E5%8D%B3%E6%99%82-%E6%B8%AF%E8%81%9E-%E5%9C%8B%E5%AE%89%E8%99%95%E9%80%9A%E7%B7%9D%E4%BA%BA%E5%BA%EF%B8%B1%E6%B6%88%E6%81%AF-%E5%9C%8B%E5%AE%89%E8%99%95%E6%B8%85%E6%99%A8%E6%9D%B1%E6%B6%8C%E9%80%B8%E6%9D%B1%E9%82%A8%E6%90%9C%E5%B1%8B-%E5%B8%B6%E8%B5%B0%E7%BE%85%E5%86%A0%E8%81%B0%E7%88%B6%E6%AF%8D%E5%8F%8A%E5%85%84%E9%95%B7%E5%95%8F%E8%A9%B1>>

<sup>92</sup> "國安處通緝 8 人 | 據悉羅冠聰家人被帶走調查 了解有否經濟援助 錄口供後獲准離開", i-Cable, 11 July 2023 <<https://www.i-cable.com/%E9%A6%96%E9%A0%81%E6%96%B0%E8%81%9E/143450/%E5%9C%8B%E5%AE%89%E8%99%95%E9%80%9A%E7%B7%9D%E4%BA%BA-%E6%9D%8E%E5%AE%B6%E8%B6%85-%E6%87%89%E8%A6%96%E4%BD%9C%E9%81%8E%E8%A1%97%E8%80%81%E9%BC%A0%E9%81%BF%E4%B9%8B%E5%89%87%E5%90%89/>>

<sup>93</sup> Hillary Leung, "Parents of wanted overseas Hong Kong activist Anna Kwok questioned by national security police - reports", Hong Kong Free Press, 8 August 2023 <<https://hongkongfp.com/2023/08/08/breaking-parents-of-wanted-overseas-hong-kong-activist-anna-kwok-questioned-by-national-security-police-reports/>>

<sup>94</sup> *ibid.*

<sup>95</sup> Irene Chan, "National security police 'take away' family members of wanted Hong Kong activists for questioning", Hong Kong Free Press, 20 July 2023 <<https://hongkongfp.com/2023/07/20/national-security-police-take-away-family-members-of-wanted-hong-kong-activists-for-questioning/>>

<sup>96</sup> Irene Chan, "Son and daughter of wanted self-exiled activist Elmer Yuen questioned by Hong Kong police - reports", Hong Kong Free Press, 24 July 2023 <<https://hongkongfp.com/2023/07/24/breaking-daughter-of-wanted-self-exiled-activist-elmer-yuen-taken-away-by-hong-kong-police-for-questioning/>>

<sup>97</sup> William Yang, "被警告返港即遭逮捕 邱颂晴：北京复制新疆模式打压港人", DW, 24 November 2022 <<https://www.dw.com/zh/%E8%A2%AB%E8%AD%A6%E5%91%8A%E8%BF%94%E6%B8%AF%E5%8D%B3%E9%81%AD%E9%80%AE%E6%8D%95-%E9%84%BA%E9%A0%8C%E6%99%B4%E5%8C%97%E4%BA%AC%E8%A4%87%E8%A3%BD%E6%96%B0%E7%96%86%E6%A8%A1%E5%BC%8F%E6%89%93%E5%A3%93%E6%B8%AF%E4%BA%BA/a-63867655#>>

## Police “advice”

Once arrestees are taken into detention, they virtually disappear from public view as photos cannot be taken in prison or in court. In addition, there are often reporting restrictions on pre-trial court proceedings.<sup>98</sup> Journalists have often tried to cover political prisoners by snapping pictures of them when they board or disembark correctional services vehicles.

On the first day of the trial of *Apple Daily* founder Jimmy, Lai Chee-ying, some photojournalists scaled a slope beside the Lai Chi Kok Reception Centre where Lai was held, hoping to take photos of Lai as he boarded the van to attend court. It has been a common journalistic practice, but on this occasion, police officers climbed up the slope and “advised” the photojournalists to leave.<sup>99</sup> The journalists had not done anything unlawful, and the police’s request clearly lacked legal basis.

## Other events of concern

There have been numerous other events that suggest the presence of extra-legal action, but it was nearly impossible to verify the identities of the relevant actors due to the law enforcement’s dismissive attitude. In March 2023, journalists covering the *Stand News* trial were stalked by men outside the press waiting room.<sup>100</sup> Furthermore, a reporter for *Hong Kong Free Press* was followed from her home to her workplace for over an hour by two men wearing earpieces. Despite her getting on and off different trains, the two men persisted in tailing the reporter during morning rush hour.<sup>101</sup>

The Hong Kong Journalist Association (“**HKJA**”) condemned the harassment and urged the police to clarify whether a law enforcement agent was involved in the above

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<sup>98</sup> Holmes Chan and Su Xinqi, “Hong Kong activists fade from view as national security case drags”, AFP, 7 April 2022 <<https://hongkongfp.com/2022/04/07/hong-kong-activists-fade-from-view-as-national-security-case-drags/>>

<sup>99</sup> Yahoo News, “黎智英案 | 攝記收押所旁斜坡影囚車 遇警員勸離“, 18 December 2023 <<https://hk.news.yahoo.com/%E9%BB%8E%E6%99%BA%E8%8B%B1%E6%A1%88-%E6%94%9D%E5%BD%B1%E8%A8%98%E8%80%85-%E8%8D%94%E6%9E%9D%E8%A7%92%E6%94%B6%E6%8A%BC%E6%89%80-%E8%AD%A6%E5%93%A1-%E6%96%9C%E5%9D%A1-073459484.html?guccounter=1>>

<sup>100</sup> Hong Kong Journalists Association, “多名記者遭不明男子跟蹤或監控 記協強烈譴責針對傳媒行為”, 27 March 2023 <<https://www.hkja.org.hk/zh/%e8%81%b2%e6%98%8e/%e5%a4%9a%e5%90%8d%e8%a8%98%e8%80%85%e9%81%ad%e4%b8%8d%e6%98%8e%e7%94%b7%e5%ad%90%e8%b7%9f%e8%b9%a4%e6%88%96%e7%9b%a3%e6%8e%a7%e3%80%80%e8%a8%98%e5%8d%94%e5%bc%b7%e7%83%88%e8%ad%b4%e8%b2%ac%e9%87%9d/>>

<sup>101</sup> Tom Grundy, “Press freedom groups condemn harassment of Hong Kong journalists after HKFP reporter tailed”, Hong Kong Free Press, 26 March 2023 <<https://hongkongfp.com/2023/03/24/press-freedom-groups-condemn-harassment-of-hong-kong-journalists-after-hkfp-reporter-tailed/>>

incidents.<sup>102</sup> However, instead of instituting investigations, the police and the government criticized the HKJA for speculating.<sup>103 104</sup>

Other events could either be associated with self-censorship or with extra-legal action. In March 2023, a screening of British horror movie “Winnie the Pooh: Blood and Honey” was cancelled after the cinemas in Hong Kong collectively declined to show it.<sup>105</sup> One of the organizers of the screening cited “technical reasons” for the cancellation, whereas the Chinese government censored the film due to the popularity of memes comparing the cartoon character to President Xi Jinping.<sup>106</sup>

In fact, similar “technical problems” have been a convenient excuse to stifle events that risk incurring the displeasure of Beijing. In February 2023, the opposition Democratic Party was forced to cancel its annual spring dinner after the venue claimed that there was a gas meter failure.<sup>107</sup> Cantopop singer and opposition supporter Anthony Wong Yiu-ming also had to call off his concert in May 2023 after the venue cancelled his booking without providing any reason.<sup>108</sup> Under the prevailing cloud of secrecy, it is hard to tell if these actors took such decisions of their own volition or by state actors’ “persuasion.”

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<sup>102</sup> Hong Kong Journalists Association, “多名記者遭不明男子跟蹤或監控 記協強烈譴責針對傳媒行為”, 27 March 2023

<<https://www.hkja.org.hk/zh/%e8%81%b2%e6%98%8e/%e5%a4%9a%e5%90%8d%e8%a8%98%e8%80%85%e9%81%ad%e4%b8%8d%e6%98%8e%e7%94%b7%e5%ad%90%e8%b7%9f%e8%b9%a4%e6%88%96%e7%9b%a3%e6%8e%a7%e3%80%80%e8%a8%98%e5%8d%94%e5%bc%b7%e7%83%88%e8%ad%b4%e8%b2%ac%e9%87%9d/>>

<sup>103</sup> Candice Chau, “Hong Kong press group receives more reports of reporters being tailed, as police slam ‘unverified speculation’”, Hong Kong Free Press, 28 March 2023

<<https://hongkongfp.com/2023/03/28/hong-kong-press-group-receives-more-reports-of-reporters-being-tailed-as-police-slam-unverified-speculation/>>

<sup>104</sup> Inmediiahk.net,

“被問警方會否調查法庭記者被跟蹤 李家超：不會花時間答”, 4 April 2023

<<https://www.inmediiahk.net/node/%E6%94%BF%E7%B6%93/%E8%A2%AB%E5%95%8F%E8%AD%A6%E6%96%B9%E6%9C%83%E5%90%A6%E8%AA%BF%E6%9F%A5%E6%B3%95%E5%BA%AD%E8%A8%98%E8%80%85%E8%A2%AB%E8%B7%9F%E8%B9%A4%E6%9D%8E%E5%AE%B6%E8%B6%85%EF%BC%9A%E4%B8%8D%E6%9C%83%E8%8A%B1%E6%99%82%E9%96%93%E7%AD%94>>

<sup>105</sup> Jessie Pang and Farah Master, “‘Winnie the Pooh’ horror film cancelled in Hong Kong”, Reuters, 22 March 2023 <<https://www.reuters.com/lifestyle/screening-winnie-pooh-horror-film-cancelled-hong-kong-2023-03-21/>>

<sup>106</sup> Benjamin Haas, “China bans Winnie the Pooh film after comparisons to President Xi”, the Guardian, 7 August 2018 <<https://www.theguardian.com/world/2018/aug/07/china-bans-winnie-the-pooh-film-to-stop-comparisons-to-president-xi>>

<sup>107</sup> Jeffie Lam, “Hong Kong’s Democratic Party forced to cancel spring dinner at last minute again after venue says gas meter malfunctioned”, South China Morning Post, 21 February 2023

<<https://www.scmp.com/news/hong-kong/politics/article/3211032/hong-kongs-democratic-party-forced-cancel-spring-dinner-last-minute-again-after-venue-says-gas-meter>>

<sup>108</sup> Jess Ma and Emily Hung, “Hong Kong Cantopop singer and opposition supporter Anthony Wong says venue booking for August concert cancelled without reason”, South China Morning Post, 27 May 2023

<<https://www.scmp.com/news/hong-kong/politics/article/3222041/hong-kong-cantopop-singer-and-opposition-supporter-anthony-wong-says-venue-booking-august-concert>>

Apart from harassing the families of overseas dissidents, other forms of transnational repression could also be considered extra-legal enforcement. For example, there are credible reports that Hong Kongers who attended protests abroad and subsequently returned to Hong Kong have been called in by the Hong Kong police for questioning.<sup>109</sup>

## LEGAL ANALYSIS

In his 2010 book *the Rule of Law*, Lord Bingham set out a “thicker” understanding of the rule of law. His eight principles of the rule of law include:-

*“Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion”;*

and

*“Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.”*

In the common law tradition, the government is fundamentally in a different position from individuals. Individuals can presume they can do anything, as long as it is not prohibited by law (this is known as the “residual principle”), whereas the government *cannot* do anything unless it is expressly authorized by law. Sir John Laws put it pithily: “For the individual citizen, everything which is not forbidden is allowed; but for public bodies, and notably government, everything which is not allowed is forbidden.”

Agnes Chow’s and Tony Chung’s experiences were the most egregious examples of government committing acts which were not allowed. In the case of Chow, the NSL Implementation Rules govern the return of a passport. An applicant may have to deposit money or promise to appear at a given time and place for their passport to be returned, but the Rules do not authorize the police to impose any other conditions.

Meanwhile, Chung was ostensibly under “supervision” under the *Criminal Procedure Ordinance* (Cap. 221) section 109AA as he was released before age 25. Although on its face the section is couched in broad terms, statutory provisions are presumed not to confer unfettered discretion, and must be interpreted in the light of the policy and

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<sup>109</sup> Safeguard Defenders, “Involuntary Returns - Report Exposes Long-arm Policing Overseas”, 18 January 2022 <<https://safeguarddefenders.com/en/blog/involuntary-returns-report-exposes-long-arm-policing-overseas>>

objects of the statute.<sup>110</sup> Like other supervision schemes, the provisions were intended to facilitate the rehabilitation of released prisoners and their reintegration into the community.<sup>111</sup> The national security police, however, used the “supervision” to achieve their own purposes: they made Chung financially vulnerable by preventing him from working at a full-time job, before offering financial incentives for him to inform on other activists, and later pressured him to go to China with them.

Simply put, there was no legal basis whatsoever for the national security police to coerce Chow and Chung into arranged trips to China, where they were subjected to propaganda, and also made to “cooperate” in creating new pieces of propaganda by posing for pictures and signing letters to disavow their previous actions.

Furthermore, Chow’s experience shows how politics take priority above the law in Hong Kong today: “As long as a criminal suspect could demonstrate patriotism before the police – by praising the regime, cutting ties with enemies of the state, or whatever the authorities define – the authorities could be satisfied and offer a deal of personal liberty.”<sup>112</sup>

Similarly, it is at least questionable whether the national security police’s questioning of overseas activists’ families formed part of a legitimate investigation, or a campaign of harassment and intimidation. The latter would be an exercise of power in bad faith, as well as exceeding the limits of the police’s authority. Whether the activists committed any crime by engaging in peaceful advocacy is one issue. How that points to their family members being involved is another. One cannot help but query the basis for any suspicion that the family members knew about the dissidents’ overseas activities, and what useful evidence the police hoped to elicit by questioning them. Rather, family intimidation is one of the known tactics of several authoritarian states which engage in transnational repression.<sup>113</sup>

And yet, it is no wonder that the National Security Department and other officials involved in the national security regime feel that they are above the law. Given vast powers conferred to them by the NSL (and now the SNSO), general secrecy surrounding their actions, and the lack of any independent oversight body, it is foreseeable that a culture of impunity would grow among these ranks.

Finally, the extra-legal actions carried out by the Hong Kong government or its agents often involve human rights violations. This includes the right to freedom of speech,

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<sup>110</sup> *Padfield v Minister of Agriculture and Fisheries* [1968] AC 997

<sup>111</sup> Correctional Services Department, “Introduction to Supervision Services” <[https://www.csd.gov.hk/english/reh/reh\\_overview/reh\\_overview\\_supervision/reh\\_ru\\_supn.html](https://www.csd.gov.hk/english/reh/reh_overview/reh_overview_supervision/reh_ru_supn.html)>

<sup>112</sup> Eric Lai, “What Agnes Chow’s Case Tells Us About the Rule of Law in Hong Kong”, *The Diplomat*, 8 December 2023 <<https://thediplomat.com/2023/12/what-agnes-chows-case-tells-us-about-the-rule-of-law-in-hong-kong/>>

<sup>113</sup> Freedom House, Transnational Repression <<https://freedomhouse.org/report/transnational-repression>>

right to liberty and right to be free from arbitrary detention. These rights are all protected by the International Covenant on Civil and Political Rights<sup>114</sup>. The government's actions were extra-legal not only in the sense of exceeding their delegated authority, but also in that the acts violated international human rights standards.

## CONCLUSION

Over time, we are observing how the Hong Kong authorities are shifting from ostensibly acting “according to law” (no matter how unjust such “law” is), to abandoning even that and resorting to extra-legal actions to intimidate and harass to achieve their political objectives. Such acts mark a society that is departing farther away from the rule of law. These kinds of acts further contribute to the chilling effect in society, and exacerbate a vicious cycle in which it is impossible to hold the government accountable for the abuse of power.

## RECOMMENDATIONS

The Hong Kong Rule of Law Monitor:

1. Recommends that everyone:
  - a. cease transnational repression against overseas Hong Kongers in support of democracy or human rights and obey the local law.
2. Recommends that the Hong Kong Government:
  - a. cease harassing political dissidents, journalists, and their family members and associates.
3. Recommends that international governments:
  - a. investigate individuals who further transnational repression, consider revocation of visas or diplomatic privilege, prosecution if needed, and blacklist for further entry;
  - b. offer protection and support to dissidents at risk of harm; and
  - c. expose and report organisations and individuals who assist in the monitoring and harassing dissidents or their associates to local law enforcement.

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<sup>114</sup> Article 9 provides for the right to liberty and security of person and freedom from arbitrary arrest and detention; Article 19 provides for the right to freedom of expression

**PART II:**  
**WAS THE RULE OF LAW**  
**IMPLEMENTED WELL IN HONG KONG?**

## (A) INDEPENDENCE OF LAWYERS AND JUDGES

### BACKGROUND

Judicial independence is fundamental to the rule of law, serving as a critical safeguard that protects citizens' rights against unlawful acts by the state. By ensuring that judges and legal professionals can make decisions free from external pressures—whether from the government, political bodies, or other influences—judicial independence upholds fair trials, impartial justice, and accountability. In a democratic society, this impartiality is crucial for maintaining public confidence in the legal system and protecting individual freedoms.

However, in 2023, Hong Kong's judicial independence faced unprecedented challenges. The sudden imposition of the National Security Law (“**NSL**”) by the Chinese Communist Party (“**CCP**”) disrupted the traditional balance of the common law system, raising serious concerns about the judiciary's ability to defend citizens' rights against state overreach. Despite calls from the United Nations Human Rights Committee urging the HKSAR to stop applying the NSL due to its impact on human rights, the law continues to be enforced, undermining the principles of judicial independence and the protections afforded by the International Covenant on Civil and Political Rights (“**ICCPR**”), which remains applicable to Hong Kong under the Basic Law.

The case of *HKSAR v Lui Sai Yu*, which marked the first substantive appeal under the NSL, exemplifies the growing tension between the enforcement of the NSL and the protection of judicial independence. The Court of Final Appeal (“**CFA**”), in its handling of this pivotal case, had the opportunity to balance national security concerns with human rights protections but instead chose to strictly adhere to the NSL’s mandatory sentencing framework. This decision has not only undermined the judiciary’s ability to act as a check on state power but has also set a damaging precedent for future cases. By forgoing judicial discretion in such a landmark appeal, the CFA has reinforced concerns about the diminishing space for judicial independence and the protection of fundamental rights in Hong Kong.

In addition to the judiciary, the role of lawyers has come under increasing pressure. In 2023, the initial criticism of non-permanent foreign judges assisting an authoritarian regime in suppressing the civil rights of Hongkongers seemed to subside temporarily. However, calls for sanctions against judges, prosecutors, and officials have intensified. Pro-democracy lawyers now face the risk of prosecution for exercising free speech, even outside Hong Kong. Domestically, more lawyers have been persecuted, while the interpretation of the NSL by the National People’s

These cases are emblematic of a broader erosion of judicial independence in Hong Kong, and the following analysis will demonstrate how key decisions have weakened the legal system's ability to safeguard citizens' rights and maintain its autonomy from political influence.

As the following cases demonstrate, the enactment and enforcement of the NSL have produced a series of rulings that underscore the erosion of judicial independence.

HKSAR v *Lui Sai Yu* [2023] HKCFA 26

The key issue before the CFA was the interpretation of sentencing provisions under the NSL. The court was asked to consider whether the minimum sentence of five years for “serious” offences under Article 21 could be reduced based on mitigating factors, such as a guilty plea. The CFA ruled that the mandatory minimum sentence of five years for serious offences could not be lowered, even in cases of mitigating circumstances, unless specific conditions under Article 33 of the NSL — such as voluntary surrender or assisting the authorities — were met.

<sup>115</sup> HKSAR v. Liu Sai Yu, [2023] HKCFA 26, Court of Final Appeal, 22 August 2023  
<[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=154516&QS=%24%28lu%2C sai%2C yu%29&TP=IU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=154516&QS=%24%28lu%2C sai%2C yu%29&TP=IU)> [accessed 29 September 2024].

In November 2022, the Appeal Committee of the CFA<sup>116</sup> dismissed the Secretary for Justice's application for leave to appeal in the case concerning the admission of Mr. Timothy Owen KC, a foreign lawyer, to represent Jimmy Lai in his trial on charges related to seditious publications and collusion with foreign elements to endanger national security.

The Chief Judge of the High Court, exercising judicial discretion, admitted Mr. Owen KC, citing public interest. The Secretary for Justice appealed, but the Court of Appeal upheld the lower court's discretion and dismissed the appeal.

In reaction, China's top lawmaking body, the NPCSC, promptly granted Hong Kong Chief Executive John Lee the power to bar foreign lawyers from participating in national security trials in December 2022. This decision removes the authority from the city's courts and requires Hong Kong courts to obtain a certificate from the Chief Executive before considering the admission of foreign lawyers in such cases. Failure to do so may lead to intervention by Hong Kong's national security committee, whose decisions are immune from legal challenge.<sup>117</sup>

In May 2023, Hong Kong's legislature unanimously passed the *Legal Practitioners (Amendment) Bill 2023*, allowing the Chief Executive to decide whether overseas lawyers can participate in national security cases. The legislation follows the NPCSC interpretation, which stipulated that courts must seek certification from the Chief Executive when foreign lawyers are involved in national security cases.<sup>118</sup>

Despite the NPCSC interpretation said above, Jimmy Lai filed judicial challenges<sup>119</sup> regarding the representation of his defence by British barrister Timothy Owen KC in his national security trial, arguing that the interpretation should not apply retrospectively to him. The court however dismissed his applications and made a cost order against Jimmy Lai on indemnity basis.<sup>120</sup> Jimmy Lai later appealed. His appeal

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<sup>116</sup> *Secretary for Justice v Timothy Wynn Owen KC*, [2022] HKCFA 23, 28 November 2022  
<[https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2022/FAMV000591Y\\_2022\\_files/FAMV000591Y\\_2022ES.htm](https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2022/FAMV000591Y_2022_files/FAMV000591Y_2022ES.htm)> [accessed 29 September 2024]

<sup>117</sup> Hong Kong Free Press. "Beijing gives Hong Kong leader power to bar foreign lawyers after loss at top court, 30 December 2022  
<<https://hongkongfp.com/2022/12/30/beijing-gives-hong-kong-leader-power-to-bar-foreign-lawyers-after-loss-at-top-court/>>

<sup>118</sup> Hong Kong Free Press. "Hong Kong lawmakers unanimously vote to let city leader restrict overseas lawyers from national security cases", 10 May 2023  
<<https://hongkongfp.com/2023/05/10/hong-kong-lawmakers-unanimously-vote-to-let-city-leader-restrict-overseas-lawyers-from-national-security-cases/>>

<sup>119</sup> *Lai Chee-ying vs Secretary for Justice* [2023] HKCFI 1382, Court of First Instance, 19 May 2023  
<[https://legalref.judiciary.hk/doc/judg/html/vetted/other/en/2023/HCMP000253\\_2023\\_files/HCMP000253\\_2023ES.htm](https://legalref.judiciary.hk/doc/judg/html/vetted/other/en/2023/HCMP000253_2023_files/HCMP000253_2023ES.htm)>

<sup>120</sup> *Lai Chee-ying vs Secretary for Justice* [2023] HKCFI 1991, Court of First instance, 3 August 2023  
<[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=154170](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=154170)>

was rejected and an indemnity cost order was again made against him by the Court of Appeal.<sup>121</sup>

## Judges Independence

### *Sanctions on Judges*

In November 2023, a group of US lawmakers introduced the *Hong Kong Sanctions Act*, targeting 49 Hong Kong judges, prosecutors, and officials for alleged human rights violations related to the enforcement of the NSL. The Hong Kong government condemned the move as “despicable” and “intimidation.” The bill, if passed, would require the US President to decide within six months whether to impose sanctions on these individuals. The Law Society of Hong Kong and the Hong Kong Bar Association criticised the sanctions as interference with judicial independence.

In March 2024, the Hong Kong Department of Justice revealed that a former senior prosecutor had resigned just before being named in US sanctions targeting officials accused of undermining Hong Kong’s autonomy and judicial independence. The sanctions are part of the broader international criticism of Hong Kong’s legal system, particularly following the implementation of the NSL. The incident highlights ongoing tensions over the rule of law and judicial independence in Hong Kong.<sup>122</sup>

### *Appointment and Resignation of Foreign Judges*

In January 2023, an Australian judge newly appointed to Hong Kong’s Court of Final Appeal argued that foreign judges should continue their roles despite increasing political pressure. The judge emphasised that foreign participation is crucial for maintaining judicial independence and the rule of law in Hong Kong, suggesting that vacating these positions could undermine the legal system’s integrity. This stance reflects ongoing concerns about preserving judicial autonomy amidst the broader political challenges facing Hong Kong.<sup>123</sup>

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<sup>121</sup> *Lai Chee-ying vs Secretary for Justice* [2024] HKCA 611, Court of Appeal, 5 July 2024 <[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=161113](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=161113)>

<sup>122</sup> Hong Kong Free Press. “Ex-prosecutor resigned before being named as US sanctions target, Hong Kong justice department says”, 4 March 2024 <<https://hongkongfp.com/2024/03/04/ex-prosecutor-resigned-before-being-named-as-us-sanctions-target-hong-kong-justice-department-says/>> [accessed 1 September 2024].

<sup>123</sup> The Guardian. “Australian justice appointed to Hong Kong court argues foreign judges shouldn’t vacate the field”, 17 January 2023 <<https://www.theguardian.com/world/2023/jan/17/australian-justice-appointed-to-hong-kong-court-argues-foreign-judges-shouldnt-vacate-the-field>> [accessed 1 September 2024].

## Lawyer Independence

### *Persecuting Pro-democracy and Human Rights Lawyers in Hong Kong*

In April 2023, a United Nations Human Rights expert urged China to review and reconsider the Hong Kong National Security Law, expressing concerns over its impact on human rights in the region. The expert highlighted that the law, enacted in 2020, has been used to suppress freedoms of expression, assembly, and association, and has led to the prosecution of many pro-democracy activists and journalists. The UN expert called on China to align the law with international human rights obligations, emphasizing the need to protect fundamental freedoms and ensure that the legal framework in Hong Kong does not undermine these rights. The call for review reflects growing international concern about the erosion of civil liberties in Hong Kong under the national security law.<sup>124</sup>

Several legal professionals in Hong Kong have been targeted under the national security law and related charges. Here are a few notable cases:

- Tonyee, Chow Hang-tung: A barrister and vice-chairwoman of the now-disbanded Hong Kong Alliance in Support of Patriotic Democratic Movements of China, Chow was arrested and charged under the NSL for incitement and other charges related to her activism, particularly around the Tiananmen Square vigil.
- Benny, Tai Yiu-ting: A legal scholar and one of the co-founders of the 2014 Occupy Central movement (also known as the Umbrella Movement), Benny Tai has been charged with subversion under the NSL. He was also previously sentenced to prison for his role in the 2014 protests.
- John Clancey: An American lawyer who was involved in human rights work and was part of a law firm known for defending pro-democracy activists. Clancey was arrested in January 2021 during a crackdown on pro-democracy figures but was later released on bail. His arrest was significant as he was the first foreign national detained under the NSL.
- Albert, Ho Chun-yan: A veteran pro-democracy activist and former legislator, Albert Ho was also arrested under the NSL. He has been involved in numerous legal cases defending human rights in Hong Kong.
- Margaret, Ng Ngoi-ye: A barrister and former legislator, Margaret Ng has been a vocal advocate for democracy and the rule of law in Hong Kong. She was convicted alongside others for her role in unauthorised assemblies,

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<sup>124</sup> Hong Kong Free Press. "United Nations rights expert urges China to review, reconsider Hong Kong National Security Law", 25 April 2023 <<https://hongkongfp.com/2023/04/25/united-nations-rights-expert-urges-china-to-review-reconsider-hong-kong-national-security-law/>> [accessed 1 September 2024].

although her sentencing under the national security law has been seen as a broader part of the crackdown on dissent.

- Alvin, Yeung Ngok-kiu: A barrister and a former Hong Kong legislator who is known for his pro-democracy stance and leadership of the Civic Party. He was involved in advocating for democratic reforms and opposing Beijing's increasing influence in Hong Kong. Yeung was detained under the NSL, facing charges related to subversion and incitement.

These individuals represent just a portion of the legal professionals who have been targeted under Hong Kong's national security law. The law has significantly impacted the legal community, contributing to an atmosphere of fear and self-censorship, which threatens the independence of the legal profession and the broader rule of law in Hong Kong.

In March 2023, the European Union (“EU”) criticised the conviction of Chow Hang-tung, a prominent Hong Kong activist and barrister, who was sentenced for her role in organising and participating in unauthorised assemblies commemorating the Tiananmen Square massacre. The candlelight vigil has been an annual memorial for three decades, until it was banned in 2020 and 2021 by “pandemic restrictions.” The EU expressed concerns over the shrinking space for civil liberties and freedom of expression in Hong Kong under the national security law.

In this specific instance, while the EU led the criticism, it is common for other Western governments to align with such statements, reflecting a broader international concern about the human rights situation in Hong Kong.

In response, both the Hong Kong government and Beijing strongly condemned the EU's remarks, defending the legal proceedings as a matter of upholding the rule of law. They argued that the conviction was lawful and necessary for maintaining public order and national security. The incident highlighted the deepening rift between Western governments and China over the handling of dissent and the perceived erosion of judicial independence in Hong Kong.<sup>125</sup>

#### *Continual attacks on overseas pro-democracy Hong Kong lawyers*

In November 2023, the Hong Kong government filed a bankruptcy petition against Ted Hui, a former pro-democracy lawmaker who is currently in self-exile. The bankruptcy action stems from Hui's failure to pay legal costs related to a lawsuit initiated by the Hong Kong police. This move has raised concerns about the use of

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<sup>125</sup> Hong Kong Free Press. "EU criticism of Chow Hang-tung conviction sparks condemnation from Hong Kong and Beijing", 14 March 2023 <<https://hongkongfp.com/2023/03/14/eu-criticism-of-chow-hang-tung-conviction-sparks-condemnation-from-hong-kong-and-beijing/>> [accessed 1 September 2024].

bankruptcy laws as a tool to exert pressure on political dissidents and activists. The case underscores ongoing issues around the rule of law in Hong Kong, particularly the potential for legal mechanisms to be used in ways that may undermine political freedoms and judicial independence.<sup>126</sup>

In December 2023, Hong Kong's national security police issued arrest warrants and HK\$1 million bounties for five overseas activists, including prominent legal professional Kevin Yam. The move has sparked outrage within the legal community, both in Hong Kong and internationally, as it highlights the growing use of NSL to target and silence critics of the Hong Kong government.<sup>127</sup>

Kevin Yam, known for his outspoken advocacy for judicial independence and democratic principles, is among those facing severe repercussions for his activism. Legal professionals have expressed deep concern over these developments, arguing that the actions against Yam and others represent a severe threat to the rule of law in Hong Kong. The use of arrest warrants and bounties against overseas activists is seen as an unprecedented escalation in the crackdown on dissent, extending the reach of Hong Kong's national security apparatus beyond its borders.

In March 2024, the Hong Kong government pushed to enact legislation under Article 23 of the Basic Law, which targets individuals and organisations deemed a threat to national security. Shortly after the close of the submission period, the Hong Kong government named nine organisations and three individuals who have submitted their opinion as anti-China. Among all, the Hong Kong Rule of Law Monitor was named.<sup>128</sup>

### *The Silence of the Legal Professional Bodies*

From Jan 2023 to March 2024, the HKBA issued three statements in total and the HKLS issued nine statements. Among all, three of them were on US proposed sanction on judges, the other one was on fraudulent emails attack on the judiciary.

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<sup>126</sup> Hong Kong Free Press. "Hong Kong files bankruptcy petition against self-exiled former lawmaker Ted Hui", 24 November 2023 <<https://tinyurl.com/2mvkm79v>> [accessed 1 September 2024].

<sup>127</sup> "Hong Kong national security police issue arrest warrants, HK\$1 million bounties for 5 overseas activists", \*Hong Kong Free Press\* (Hong Kong), 14 December 2023 <<https://hongkongfp.com/2023/12/14/hong-kong-national-security-police-issue-arrest-warrants-hk1-million-bounties-for-5-overseas-activists/>> [accessed 1 September 2024].

<sup>128</sup> HK01. "23 條立法 | 點名 9 反華組織 3 潛逃人士交反對意見 政府：須考慮背景", 4 September 2023 <<https://www.hk01.com/%E6%94%BF%E6%83%85/997667/23%E6%A2%9D%E7%AB%8B%E6%B3%95-%E9%BB%9E%E5%90%8D9%E5%8F%8D%E8%8F%AF%E7%B5%84%E7%B9%943%E6%BD%9B%E9%80%83%E4%BA%BA%E5%A3%AB%E4%BA%A4%E5%8F%8D%E5%B0%8D%E6%84%8F%E8%A6%8B-%E6%94%BF%E5%BA%9C-%E9%A0%88%E8%80%83%E6%85%AE%E8%83%8C%E6%99%AF>> [accessed 1 September 2024].

No statements on human rights or freedom were issued by either legal professional body.<sup>129</sup>

## LEGAL ANALYSIS

### Judicial Independence

The CFA's handling of *HKSAR v Lui Sai Yu* starkly demonstrates the erosion of judicial independence. By failing to safeguard judicial discretion in sentencing and making no meaningful attempt to do so, the court has effectively ceded vital space for judicial autonomy. This decision sets a damaging precedent: it signals to lower courts that judicial independence need not be respected in NSL cases and closes off any manoeuvring room for future appeals to protect judicial discretion under the NSL. As the first substantial appeal under this law, it has far-reaching implications, effectively ruling out any future efforts by the CFA to defend judicial independence in NSL-related cases.

The omission of a substantive discussion on the ICCPR in *Lui Sai Yu* is particularly significant, as it would have provided the necessary reasoning to support the need for judicial discretion in sentencing. By neglecting this critical aspect, the CFA has played a leading role in legitimising the NSL's crushing effects on fundamental human rights. This disregard is especially striking given the repeated calls from the UN Human Rights Committee to repeal or amend the NSL. It would be naive to suggest that the CFA was taking any role in defending human rights — the very purpose of judicial independence within a legal system. Instead, the court's actions not only highlight its inability to protect human rights but also serve to reinforce the NSL as an arbitrary legal weapon of the regime, adding a veneer of judicial endorsement to its authoritarian application.

### Jimmy, Lai Chee-ying

The series of events surrounding Jimmy Lai's legal battles and the involvement of foreign lawyer Timothy Owen KC illustrate a troubling erosion of judicial independence in Hong Kong.

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<sup>129</sup> Hong Kong Bar Association. "Hong Kong Bar Association press releases and coverage"2023 <<https://www.hkba.org/events-publication/press-releases-coverage/2023>> [accessed 1 September 2024]; and Hong Kong Law Society. "Hong Kong Law Society press statements", 2023 <<https://www.hklawsoc.org.hk/en/Our-Voice/Press-Statements?t=2023>> [accessed 1 September 2024].

The CFA upheld the decision of the High Court to admit Timothy Owen KC to represent Jimmy Lai demonstrated a functioning judiciary that was still able to make independent decisions regarding legal representation, even in political NSL cases. However, the subsequent intervention by NPCSC drastically altered the balance. The NPCSC granted the Chief Executive, not the courts, the power to decide whether foreign lawyers could participate in NSL cases. This move removed a significant element of judicial discretion and handed over decision-making authority to the executive branch, undermining the courts' independence.

The courts were reduced to a procedural role, merely requesting certification from the Chief Executive, who now had unilateral control over decisions that were once the domain of judicial authority. This alteration not only undercut the courts' ability to rule on key aspects of legal representation but also subjected judicial processes to political influence, as the CE's decisions are closely aligned with the interests of Beijing.

One of the most egregious aspects of Jimmy Lai's case is the imposition of indemnity cost orders, which penalised him financially for his attempt to assert his legal rights. Lai's legal challenges raised issues of significant public interest, particularly concerning judicial independence and the right to fair legal representation. By awarding indemnity costs against him, the court not only discouraged such challenges but also punished him for seeking legal defence. This financial burden effectively adds insult to injury — Beijing's National Security Law had already deprived Lai of his liberty, and now the courts imposed further financial penalties, reflecting a lack of sympathy for his defence efforts.

Indemnity cost orders typically signify that a claim is considered "frivolous" or without merit, and their use in Lai's case sends a clear signal that challenges to the NSL will not be tolerated. By financially penalising him for raising serious issues of public concern, the court set a precedent that discourages others from pursuing similar defences. This measure goes beyond merely dismissing his claims — it serves as a punitive warning to anyone attempting to contest the NSL.

The courts, rather than using Lai's case as an opportunity to reclaim some autonomy and assert their role as impartial arbiters of justice, chose to echo the executive's stance. The imposition of indemnity costs on Lai sends a chilling message to other defendants: challenging the government's authority will come at a steep financial price. In this context, the courts appear less as protectors of rights and more as complicit actors in a system designed to suppress dissent. This aligns with Beijing's broader strategy of limiting resources for pro-democracy figures to defend themselves, further weakening their ability to mount effective defences.

By financially punishing Jimmy Lai, the judiciary has, in effect, contributed to a broader effort to weaken his ability to defend himself. The indemnity cost orders undermine not only his legal defences but also the principle of equal access to justice. In cases of significant public interest, particularly those involving fundamental rights, courts often exercise leniency in cost rulings to avoid discouraging such challenges. In Lai's case, the opposite occurred — the courts reinforced the government's punitive measures, financially crippling him while denying him the legal resources necessary to challenge an already oppressive legal framework.

### **Judges' and lawyers' independence**

Moreover, the number of prosecution and detention of legal professionals is increasing. This highlighted the risks faced by Hong Kong lawyers who are politically active or vocal. These arrests and prosecution of lawyers proved how legal professionals can be targeted for their political beliefs which further erode the independence of the legal profession. The self-censorship among lawyers is detrimental to the rights of fair representation of the client.

The independence of judges is under significant strain. The calling for sanctioning judges and prosecutors reflected the image of Hong Kong judges in the international community. They are no longer perceived as impartial arbiters but the enforcers of the will of the executive branch or CCP.

Lastly, the public confidence in the judiciary depends not only on the judicial quality but also the independence of the judiciary and the legal profession. A perceived politicized judiciary or judges together with an increasing number of lawyers being targeted, charged and detained will lead to widespread scepticism about the fairness and impartiality of the legal process in Hong Kong. The erosion of public confidence in the judiciary must not be overlooked by any sensible authority.

### **CONCLUSION**

In summary, the independence of lawyers, judges, and the judiciary in Hong Kong is under significant threat, leading to a decline in judicial quality, a weakening of the rule of law, and a loss of public confidence. These developments have far-reaching implications not only for Hong Kong's legal system but also for its social and political stability. Without urgent intervention, Hong Kong risks losing its status as a global financial hub, as businesses and investors may seek jurisdictions with stronger legal protections. If these trends continue, the future of Hong Kong's legal independence and its reputation as a bastion of the rule of law will be in jeopardy.

## RECOMMENDATIONS

To uphold the independence of lawyers and judges in Hong Kong, overseas countries, overseas Hongkongers, groups, and international NGOs can take the following actions:

1. international bar associations and legal societies to form solidarity networks with Hong Kong's legal professionals (including those based overseas);
2. develop emergency relocation or asylum programmes for legal professionals in Hong Kong who face imminent threats;
3. facilitate the conversion and recognition of Hong Kong lawyers' qualification in overseas jurisdictions, particularly for those lawyers facing persecution from the Hong Kong and Chinese governments;
4. provide support to Hong Kong diaspora groups, overseas Hong Kong civil society groups, and human rights organisations that are working to defend the rule of law and judicial independence;
5. adopt measures to ensure secure and confidential communication for legal professionals, activists, and journalists, whether in Hong Kong or overseas;
6. strengthen networks among overseas Hongkongers to coordinate efforts in advocating for judicial independence. These networks can organise protests, petitions, and lobbying efforts in their host countries;
7. support the establishment or enhancement of independent monitoring bodies that can track and report on judicial independence in Hong Kong; and
8. submit regular reports to international bodies like the United Nations, detailing the status of judicial independence in Hong Kong.

## **(B) PRISONERS' RIGHTS**

### **INTRODUCTION**

More than 10,000 people have been arrested and at least 2,800 prosecuted in a citywide crackdown during and after the citywide pro-democracy protests in 2019. At least 230 have been arrested under national security related laws, including the national security law, the sedition laws, etc. Arrestees and defendants in these cases are far less likely to be granted bail, resulting in a record-high number of political prisoners in Hong Kong.<sup>130</sup>

In light of the rising concerns of the rights of the political prisoners, this chapter intends to examine the state of the rights of prisoners in Hong Kong, highlighting issues of arbitrary detention, harsh bail conditions, juvenile abuse, physical mistreatment, solitary confinement, overcrowded custodial environment, lack of accountability, and de-radicalization programs.

### **SUMMARY OF EVENTS**

#### **Arbitrary pre-trial detention and restrictions without prosecution**

Numerous human rights organisations have highlighted the deeply problematic bail provisions of the National Security Law, which impose a presumption against granting bail and has led to intense pressure on defendants to plead guilty (see HKRLM's 2022 Report).<sup>131</sup> In 2023, we saw many instances of arbitrary detention, with individuals held for extended periods – sometimes up to four years – before trial.

Due to a 2021 ruling by the Hong Kong Court of Final Appeal, this presumption against bail has been extended beyond the NSL itself to other offences involving national security (such as sedition).<sup>132</sup> For those cases with offences that are designated by the Hong Kong authorities as offences relating to “national security”, it has become common for defendants to be denied bail and held in detention for months or even years as they await trial. One recent report has calculated that approximately 70% of individuals charged with national security-related offences

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<sup>130</sup> Radio Free Asia, “Hong Kong detention centre overflowing as thousands serve time for protests” (6 September 2023) <https://www.rfa.org/english/news/china/hk-prisons-overflowing-09062023102749.html>

<sup>131</sup> Hong Kong Rule of Law Monitor, ‘Rule of Law Report 2022’, October 2023. <https://hkrlm.org/wp-content/uploads/2023/10/ROL-Report-2022.pdf> accessed 30 May 2024

<sup>132</sup> HKSAR v Ng Hau Yi Sidney [2021] HKCFA 42

have been denied bail – a stunning figure.<sup>133</sup> In a July 2022 report, the UN Human Rights Committee expressed grave concern about this presumption against bail (as contained in Article 42 of the NSL) and recommended that the Hong Kong authorities should refrain from making use of the presumption (pending the repeal of the NSL as a whole).<sup>134</sup>

Regrettably, in 2023, the Hong Kong authorities showed no signs of heeding the international calls to stop making use of NSL Article 42. Instead, the regime continued its practice of detaining pre-trial defendants for unreasonably long periods, especially in political cases. In May 2023, the UN Working Group on Arbitrary Detention issued an opinion on the case of human rights lawyer Chow Hang-tung (currently detained by Hong Kong authorities on multiple charges, including incitement of subversion). In its opinion, the Working Group unequivocally concluded that Chow's two years in pre-trial detention lacked legal basis, constituted arbitrary detention under international law, and were in violation of the ICCPR.<sup>135</sup>

In October 2023, a report from the Georgetown Centre for Asian Law found that prolonged pretrial detention was a worsening problem in Hong Kong, particularly for those arrested in politically related cases. The report highlighted the “alarming number of remand prisoners” and the “arbitrary nature of some bail rulings” (especially in cases against pro-democracy activists)<sup>136</sup>. This included dozens of defendants in the “**NSL 47**” case, who had been held in pre-trial detention for nearly two years before their trial finally began (in February 2023); for over three years before the court's guilty verdict (in May 2024); and for nearly four years before their eventual sentencing (in November 2024)<sup>137</sup>

Worse still, under the *Safeguarding National Security Ordinance* (“**Article 23 legislation**”) which was enacted on 23 March 2024, suspects accused of endangering national security may be subject to a series of new restrictions,<sup>138</sup> including extending their pre-charge detention time, limiting their access to lawyers, issuing a movement restriction order for those on bail.<sup>139</sup> The move is seen as an extension of the powers

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<sup>133</sup> ChinaFile, “Tracking the Impact of Hong Kong's National Security Law”, 17 September 2024 <<https://www.chinafile.com/tracking-impact-of-hong-kongs-national-security-law>>

<sup>134</sup> UN Human Rights Committee, ‘Concluding observations on the fourth periodic report of Hong Kong, China’ (27 July 2022), CCPR/C/CHN-HKG/CO/4, at paragraphs 35-36

<sup>135</sup> UN Working Group on Arbitrary Detention, ‘Opinion No. 30/2023 concerning Ms. Hang Tung Chow’ (1 May 2023), A/HRC/WGAD/2023/30, at paras 69-73

<sup>136</sup> Georgetown Center for Asian Law, ‘Hong Kong 2019 Protest Movement: A Data Analysis of Arrests and Prosecutions’ (October 2023), at pp. 63-69

<sup>137</sup> Al-Jazeera, ‘After joint 108 years on remand, Hong Kong 47 face security trial verdict’ (30 May 2024), <<https://www.aljazeera.com/news/2024/5/29/after-joint-108-years-on-remand-hong-kong-47-face-security-trial-verdict>>, accessed 1 October 2024

<sup>138</sup> See Part 7, Safeguarding National Security Ordinance, Cap.A305

<sup>139</sup> Hong Kong Free Press, “Limits may be placed on suspects discharged by police under new security law, Hong Kong official says” (12 March 2024) <https://hongkongfp.com/2024/03/12/limits-may-be-placed-on-suspects-discharged-by-police-under-new-security-law-hong-kong-official-says/>

granted under the existing National Security Law, aimed at ensuring individuals are still monitored despite not facing charges.

## **Violation of the basic rights of detainees and prisoners**

### *De-radicalization programme*

In June 2023, the Washington Post reported that prison authorities in Hong Kong's juvenile detention facilities were using de-radicalization programmes to create a feeling of "hopelessness" among young prisoners who had participated in political protests. It was reported that the programs target mainly inmates with perceived anti-government views, particularly those convicted for the 2019 anti-extradition protests. These programs include psychological counselling and national education course aimed at altering inmates' ideological perspectives. One 20-year-old detainee said that prison officers struck them with wooden sticks if they could not recall a list of 19 prison regulations, and that he had witnessed guards using their elbows to strike prisoners at a sensitive part of their back, as well as kneeling inmates on their thighs.<sup>140</sup>

### *Banning of access to certain books*

In Oct 2023, Owen Chow, one of the defendants and detainees in the "NSL 47" case launched a legal challenge against the decision of the Correctional Services Department ("CSD") banning his access to a book containing Sandro Botticelli's famous painting 'The Birth of Venus' on the ground of "obscenity" due to the painting's depiction of nudity. Chow argued that the decision violates his right to access literature and artistic freedom.<sup>141</sup>

### *Degrading treatment*

In December 2023, it was reported that a CSD officer of Pik Uk Correctional Institution and other inmates, stabbed an 18-year-old male inmate in the anus with a wooden stick, resulting in severe and permanent injury.<sup>142</sup> Two CSD officers and four inmates were arrested in connection with the assault. Pik Uk Correctional Institution is an institution reserved for young offenders under 21 years old. After the news broke,

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<sup>140</sup> Washington Post, 'Hong Kong prisons work to compel loyalty to China among young activists' (8 June 2023), <https://www.washingtonpost.com/world/interactive/2023/deradicalization-hong-kong-democracy-activists/> accessed 1 October 2024

<sup>141</sup> Hong Kong Free Press, 'Hong Kong activist Owen Chow challenges prison ban on book containing Botticelli's Venus painting' (6 December 2023) <https://hongkongfp.com/2023/12/06/hong-kong-activist-owen-chow-challenges-prison-ban-on-book-containing-botticellis-venus-painting/> accessed 13 October 2024

<sup>142</sup> Mingpao News, 懲教員涉伙 4 囚友 棍捅還押犯肛門 醫生稱留永久傷害 另有一同袍被捕停職, 20 January 2024

<<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20240120/s00002/1705689903553>>

various political activists who had served their sentence there came forward with accounts of abuse they had witnessed against young offenders. These accounts included those of Wong Yat-chin, the former convenor of a pro-democracy group Student Politicism, who stated that a 15-year-old inmate had been raped and hospitalized in 2023.<sup>143</sup> Back in 2018, the internationally renowned activist Joshua Wong had reported being subjected to humiliating treatment upon arrival at Tung Tau Correctional Institution. Wong stated that he was forced to undress and crouch naked on the ground for questioning, an experience that underscores the degrading treatment faced by inmates.<sup>144</sup>

### *Solitary confinement*

In December 2023, Hong Kong activist Chow Hang-tung, a prominent human rights lawyer, was reportedly placed in solitary confinement after receiving an excessive number of letters from supporters.<sup>145</sup> Chow, known for her activism and leadership in organizing Tiananmen Square vigils, has been detained for over two years under the National Security Law. She has been placed in solitary confinement on multiple occasions under various pretences.<sup>146</sup> Her confinement is seen by critics as part of ongoing efforts to isolate her and restrict her communication with the outside world.

### *Treatment of Jimmy Lai*

The 77-year-old pro-democracy media tycoon Jimmy, Lai Chee-ying has also been detained in solitary confinement since December 2020, according to his legal team and family, who have expressed major concerns about Lai's deteriorating health under such conditions. For nearly 4 years, he has been routinely imprisoned for 23 hours a day, with limited human contact and little access to daylight.<sup>147</sup> Ahead of his trial in December 2023, Hong Kong courts imposed enhanced security measures, including sniffer dogs, to handle alleged risks of his hearings in court.<sup>148</sup>

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<sup>143</sup> Kelly Ho, "Police confirm arrest over alleged sexual assault in prison, days after authorities slammed 'baseless' claims", Hong Kong Free Press, 26 January 2024 <<https://hongkongfp.com/2024/01/26/police-confirm-arrest-over-alleged-sexual-assault-in-prison-days-after-authorities-slammed-baseless-claims/>>

<sup>144</sup> South China Morning Post, "Occupy leader Joshua Wong seeks HK\$16,000 in damages for being forced to 'squat naked' in Hong Kong jail", 9 July 2018 <<https://www.scmp.com/news/hong-kong/hong-kong-law-and-crime/article/2154409/occupy-leader-joshua-wong-seeks-hk16000>>

<sup>145</sup> Hong Kong Free Press, 'Detained Hong Kong activist Chow Hang-tung allegedly in solitary confinement again after receiving too many letters' (18 December 2023) <<https://hongkongfp.com/2023/12/18/detained-hong-kong-activist-chow-hang-tung-allegedly-in-solitary-confinement-again-after-receiving-too-many-letters/>> accessed 13 October 2024.

<sup>146</sup> Hong Kong Free Press (31 October 2023) <<https://hongkongfp.com/2023/10/31/rights-ngo-expresses-concern-as-hong-kong-activist-chow-hang-tung-allegedly-put-in-solitary-confinement-6-times-since-june/>>  
<sup>147</sup> <https://www.doughtystreet.co.uk/news/jimmy-lai-international-legal-team-files-urgent-appeal-un-special-rapporteur-torture>

<sup>148</sup> Hong Kong Free Press, 'Hong Kong court to enhance security, deploy sniffer dogs for media mogul Jimmy Lai's national security trial' (15 December 2023) <https://hongkongfp.com/2023/12/15/hong-kong->

## General prison conditions

It was reported that the Lai Chi Kok Reception Centre, one of the biggest remand centres in Hong Kong, is overflowing after a years-long crackdown on political opposition and dissidents. The Centre, where defendants are taken to await trials, is currently running at around 104% capacity as the number of people remanded in jails pending trial is at its highest in more than a decade.<sup>149</sup>

## LEGAL ANALYSIS

Article 10.1 of the ICCPR mandates the humane treatment of individuals deprived of their liberty. Article 10.3 emphasizes the goal of reformation and social rehabilitation in the penitentiary system.

The *Mandela Rules*, which were adopted unanimously by the UN General Assembly in December 2015 (and thus represent internationally acknowledged legal standards for the treatment of prisoners) further elaborate on the content of the government's legal duties towards prisoners. These standards include: the principle that a prisoner should not receive discriminatory treatment on account of his political beliefs (Rule 2); a prohibition against the use of corporal punishment and degrading treatment generally (Rule 43); a prohibition against indefinite or prolonged solitary confinement (Rules 43-44); limiting the use of solitary confinement to "exceptional cases" and "as a last resort" (Rule 45); and a prohibition on the use of force against prisoners except in self-defence or in cases of attempted escape or physical resistance to an order (Rule 82).

Domestically, Hong Kong's own *Bill of Rights Ordinance* also provides that prisoners have the right to be treated with humanity and with respect for their inherent dignity.<sup>150</sup>

However, numerous reports indicate that physical abuse and torture are prevalent in Hong Kong's correctional institutions. Inmates like Joshua Wong have reported being held in solitary confinement with lights on at all times, further exacerbating their suffering. It has also been reported that during summer, inmates generally suffer from extreme heat.<sup>151</sup>

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court-to-enhance-security-deploy-sniffer-dogs-for-media-mogul-jimmy-lais-national-security-trial/ accessed 13 October 2024.

<sup>149</sup> Radio Free Asia, "Hong Kong detention centre overflowing as thousands serve time for protests" (6 September 2023) <https://www.rfa.org/english/news/china/hk-prisons-overflowing-09062023102749.html>

<sup>150</sup> BORO s 8 Article 6

<sup>151</sup> Radio Free Asia, "Hong Kong's prison inmates suffer in 'unbearable' summer heatwave", 26 July 2023 <<https://www.rfa.org/english/news/china/hongkong-prisons-07262023132405.html>>

Events during the reporting period (January to December 2023) as detailed above give rise to serious concerns that the Hong Kong authorities are in consistent breach of those international norms and domestic laws in their treatment of detainees and prisoners. As detailed above, those events include: the misuse of solitary confinement; abusive treatment of detainees (and particularly young prisoners); “de-radicalization” programs for prisoners with perceived anti-government views; discriminatory application of prison rules against pro-democracy activists; and arbitrary pre-trial detention for national security cases.

### **Arbitrary pre-trial detention and restrictions without prosecution**

Hong Kong authorities’ abusive use of pre-trial detention – especially for national security and other political cases – is seriously detrimental to the rule of law and the integrity of the judicial process.

The further restrictions under the Article 23 legislation substantially expand the reach of law enforcement, enabling authorities to impose restrictions on individuals without formally charging them, raising concerns about arbitrary detention and long-term surveillance. Besides, such measures undermine the principle of presumption of innocence, allowing the state to impose punitive measures without judicial oversight. This undermines fundamental legal protections and weakens the rule of law. Lastly, the mere possibility of being subject to restrictions, even without being formally charged, creates a chilling effect on political expression and activism, as individuals fear being indefinitely monitored or controlled.

### **Violation of the basic rights of detainees and prisoners**

#### *De-radicalization programme*

The de-radicalization program is in blatant violation of international legal standards for prisons, which prohibit the use of corporal punishment and degrading treatment generally (see e.g. Rule 43(1) of the Mandela Rules).

#### *Banning of access to certain books*

Owen Chow’s case raises significant concerns regarding censorship and prisoners’ rights in Hong Kong. By restricting access to a book based on its artistic content, the authorities could be seen as using disproportionate and arbitrary measures under the guise of security or morality.

### *Degrading treatment*

Prisoners have the right to be treated humanely, which includes being free from torture and cruel, inhumane, or degrading treatment. This right is a fundamental human right that applies to all prisoners, regardless of their circumstances. According to the *UN Standard Minimum Rules for the Treatment of Prisoners*, prisoners must be treated with respect and dignity. The UN Human Rights Committee has also stated that prisoners must be treated with dignity and humanity, regardless of the state's resources. Where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterized as 'degrading' treatment.<sup>152</sup>

### *Solitary confinement*

The abusive use of solitary confinement by Hong Kong authorities has been noted in recent years by international observers. For instance, the US State Department, in its 2022 report on the human rights situation in Hong Kong, had reported credible concerns about detainees being kept in solitary confinement for extended periods of time and in some cases being subjected to 24-hour lighting, excessively hot and cold temperatures, and the use of other degrading conditions as punishment for requesting improved conditions.<sup>153</sup>

The use of solitary confinement as a punitive measure, especially against political detainees, is especially troubling and raises significant concerns about human rights violations. Solitary confinement can be considered a form of psychological and physical punishment, which is why international human rights standards contain strict provisions for how and when solitary confinement should be used.

The use of prolonged or indefinite solitary confinement is specifically prohibited by Rule 42(1) of the *Mandela Rules*. For this purpose, "prolonged" is defined as solitary confinement for a period of more than 15 consecutive days (Rule 44). Further, any solitary confinement should only be used in "exceptional cases as a last resort, for as short a time as possible and subject to independent review" (Rule 45).

However, these norms have been continually flouted by the Hong Kong authorities, who appear to have been using solitary confinement as a routine measure and for prolonged periods of time, especially against detainees who are part of the pro-democracy movement (e.g. Jimmy Lai and Chow Hang-tung). This arbitrary use of

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<sup>152</sup> ECHR, "Guide on the case-law of the European Convention on Human Rights" (31 August 2024) at para.7

<sup>153</sup> <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/china/hong-kong/>

solitary confinement against political prisoners reinforces fears that the legal system in Hong Kong is being used for retaliation rather than for legitimate purposes.

### *Treatment of Jimmy Lai*

The enhanced security measures in Jimmy Lai's trial, including the deployment of sniffer dogs, raise concerns about the proportionality of the response to the alleged threat. From a legal perspective, such measures can affect prisoners' rights by creating an environment of excessive control and surveillance, which may deter public access and transparency in the judicial process. In terms of the rule of law, the implementation of these security protocols could be perceived as a display of power that is meant to intimidate rather than maintain order, potentially undermining judicial independence. If security measures are used disproportionately, especially in cases involving political figures like Lai, they are likely to erode public confidence in the fairness of the legal process. Moreover, such measures could lead to the perception that the judicial system is no longer impartial but is instead being influenced by political considerations, thereby weakening the credibility of Hong Kong's legal institutions.

### **General prison conditions**

Overcrowded prisons can severely affect prisoners' rights by leading to inhumane conditions, increasing the likelihood of violence, and hindering access to rehabilitation programs. The lack of space and resources compromises basic living standards, leading to heightened tensions among inmates, delayed access to healthcare, and violations of privacy. Moreover, overcrowding can strain the ability of prison staff to maintain order, leading to poor supervision and increased risks of self-harm or suicide among vulnerable inmates.

Hence, when prisons are overcrowded, it undermines the rule of law by compromising the ability of the state to ensure that inmates are treated in accordance with international human rights standards. The capacity to rehabilitate prisoners effectively is diminished, giving rise to a cycle of re-offending. This is the reason why international legal standards prescribe minimum standards of accommodation that must be met (see, e.g. Rule 13 of the *UN Standard Minimum Rules for the Treatment of Prisoners* (the 'Mandela Rules') dated 17 December 2015).

### **Systemic lack of accountability**

Lastly, the charges against Owen Chow and his lawyer illustrate how difficult it is for inmates to speak up about prison abuses. There are limited ways for prisoners to make complaints: making a complaint in person to a Justice of the Peace upon their visit,

to the Complaints Investigation Unit (“**CIU**”) of the Correctional Services Department, or to the Ombudsman. However, as all prisoner interactions are monitored by the CSD, detainees inevitably feel pressured not to report abuse due to fear of retaliation. In addition, both the CIU and its supervisory body, the Complaints Committee, are internal units of the CSD. The CIU has a dismal record of addressing complaints: between 2013 and 2017, out of 576 cases investigated, it only found 8 to be substantiated. The Pik Uk attack involving a CSD officer is a harrowing example of the egregious abuses as a result of such culture of impunity.

Since at least 2016, the UN Committee Against Torture has recommended that Justices of the Peace in Hong Kong be empowered to monitor and visit all places of detention, or that an independent body be established to carry out effective unannounced visits at all places of detention.<sup>154</sup> This is in line with Rules 83-85 of the Mandela Rules, which provide that there should be both internal and external systems for the inspection of prisons. Unfortunately, no reforms have taken place up to the present.

## **CONCLUSION**

The state of prisoners’ rights in Hong Kong is increasingly troubling, with numerous reports of abuse, lack of accountability, and punitive measures that violate international standards. Urgent reforms are needed to align Hong Kong's correctional practices with global human rights norms and ensure the humane treatment of all inmates.

## **RECOMMENDATIONS**

Accordingly, the Hong Kong Rule of Law Monitor:-

- 1) Demands that the Hong Kong Government:
  - a) repeal those provisions of the NSL which impose a presumption against bail (and, pending such repeal, refrain from applying the presumption);
  - b) desist from using prolonged solitary confinement against prisoners (i.e. comply with Rule 43(1) of the *Mandela Rules*);
  - c) adhere to the principle of using solitary confinement “only in exceptional cases as a last resort, for as short a time as possible and

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<sup>154</sup> UN Committee Against Torture, “Concluding observations on the fifth periodic report of China with respect to Hong Kong, China”, CAT/C/CHN-HKG/CO/5 (3 February 2016)

subject to independent review” (i.e. comply with Rule 45(1) of the *Mandela Rules*);

- d) desist from inflicting corporal punishment and other degrading treatment on prisoners (i.e. comply with Rule 43 of the *Mandela Rules*); and
- e) refrain from treating certain prisoners in a discriminatory manner on account of their political beliefs, e.g. because of their support for the pro-democracy movement (i.e. comply with Rule 2 of the *Mandela Rules*).

## **(C) BUSINESS ENVIRONMENT**

### **INTRODUCTION**

Hong Kong has been one of the “Four Asian Tigers” since the 1960s, following the take-off of its economy. For many years thereafter, the British colony functioned as the most important intermediary trading centre for the mainland's imports and exports. It was the premier agent for China's economic interactions with the outside world, when the Communist regime was subjected to sanctions. Dubbed “the Pearl of the Orient”, Hong Kong was successful because this city reflected the local culture's mix of Chinese roots and influences from its time under British management.

Besides, the law of Hong Kong has its foundation in the English common law system, inherited from its time as a former Crown colony and dependent territory. Hong Kong law provided for an independent judiciary operating on a common law basis. Courts could, and did, find against the government. Undoubtedly, Hong Kong's success as an international financial centre relies on the rule of law and the independence of its respected institutions. That is why Hong Kong has attracted many investments from overseas and has been maintained as a business and financial hub for decades.

Sadly, it all came to an end when the Chinese authorities imposed the National Security Law on Hong Kong on 30 June 2020.

As highlighted by the UK Government in the “Guidance on Overseas business risk: Hong Kong,”<sup>155</sup> under the NSL, businesses risk to have their electronic devices searched, confiscated, or placed under covert surveillance. National security clauses are also included in all land sale and short-term lease tender documents. The NSL grants the police increased – and indeed, unchecked powers to search premises, freeze assets and to access information in cases related to national security. It also allows for trials without jury and behind closed doors, and permits the mainland criminal code to be applied in certain circumstances, including removing a suspect to face trial in the mainland.

The NSL has affected the extent to which the people of Hong Kong are able to exercise their fundamental rights and freedoms. Uncertainties about how the provisions in the law might continue to be used, interpreted and expanded are having a wider chilling effect on the exercise of freedoms and encouraging self-censorship.

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<sup>155</sup> UK Government, “Guidance on Overseas business risk: Hong Kong”, 22 March 2024, <<https://www.gov.uk/government/publications/overseas-business-risk-hong-kong/overseas-business-risk-hong-kong>> [accessed 30 June 2024]

In 2023, after a series of oppressive actions against the “yellow economic circle (a network of liberal- and democracy-leaning businesses established during the 2019 protests),” the government's measures have had a serious and widespread impact on businesses operating in Hong Kong. This phenomenon can be illustrated and revealed by the internal economic figures provided by the HKSAR Government and the ratings given by international institutions.

This section will provide a thorough examination of how Hong Kong's business environment has rapidly worsened due to the stifling political climate.

## SUMMARY OF EVENTS

### Hong Kong government adds “national security” terms to land sales

The Development Bureau confirmed on 12 February 2023 that the Hong Kong government's Lands Department has added national security terms to all land sale and short-term lease tender documents.<sup>156</sup> The clause stipulates that prospective buyers can be disqualified if they or their parent firms engage in activities that “endanger national security” or affect “public order”. Investors have expressed worries that such practice might be extended to other sectors, including whether asset management companies shorting Hong Kong stocks or criticising government policy could be construed as threats to national interests.<sup>157</sup>

Since the implementation of the NSL, the Hong Kong government has sought to vary the contractual relationships with its service providers and its employees by imposing additional requirements.<sup>158</sup> The move by the Lands Department evidently aligns with the governing philosophy of the current Hong Kong regime the amorphous concept of “national security” trumps everything, including the open economy and economic freedom of Hong Kong, and fundamental rights.

We believe that the business sector (and especially the international business community) should be cautious of any engagement with the Hong Kong government due to the vague definition, arbitrary interpretation and unlimited expansion of the

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<sup>156</sup> Jessie Pang and Donny Kwok; Editing by Christian Schmollinger and Josie Kao, “Hong Kong adds security law clauses to land sales, property stocks drop”, Reuters, 13 February 2023, <<https://www.reuters.com/world/asia-pacific/hong-kong-adds-security-law-clauses-to-land-sales-property-stocks-drop-2023-02-13/>> [accessed 01 July 2024]

<sup>157</sup> Kathleen Magramo, “National security warning now a part of Hong Kong land sales”, CNN, 15 February 2023, <<https://edition.cnn.com/2023/02/15/business/hong-kong-property-national-security-law-intl-hnk/index.html>> [accessed 01 July 2024]

<sup>158</sup> Twinnie Siu and Jessie Pang; Editing by Alex Richardson, “Hong Kong civil servants given four weeks to pledge loyalty to the government”, Reuters, 15 January 2021, <<https://www.reuters.com/article/us-hongkong-security/hong-kong-civil-servants-given-four-weeks-to-pledge-loyalty-to-the-government-idUSKBN29K1HY/>> [accessed 01 July 2024]

NSL. Any activities considered by the Hong Kong government as a threat to the national security of the PRC may be seen as a breach of those terms and conditions under the government contract, and thereby result in contractual liability or loss.

### **Shows and fairs axed under shadow of self-censorship**

In March 2023, a screening of the British horror movie “Winnie the Pooh: Blood and Honey” was cancelled after cinemas in Hong Kong collectively declined to show it, according to its distributor.<sup>159</sup> One of the organisers of the screening cited “technical” reasons for the cancellation. The director of the movie commented that “The cinemas agreed to show it, then all independently [came] to the same decision overnight. It won’t be a coincidence. The film has shown in over 4,000 cinema screens worldwide. [Those] in Hong Kong are the only ones with such issues”.

Chinese censor<sup>160</sup> have consistently targeted “Winnie the Pooh” due to the popularity of memes that compare the bumbling bear to President Xi Jinping. The comparisons began in 2013 when Xi met US President Barack Obama and netizens seized on their likeness to Pooh and Tigger.<sup>161</sup>

The film had received a certificate of approval from Hong Kong’s film censorship office, making the last-minute cancellation even more peculiar.<sup>162</sup>

Similar “technical problems” have, however, been a convenient excuse to stifle events across different sectors of Hong Kong society which risk incurring the displeasure of Beijing. An independent “Hongkongers’ Book Fair” was called off after the landlord accused the organisers of breaching the tenancy agreement’s ban on sub-letting.<sup>163</sup> The opposition Democratic Party was forced to cancel its annual spring dinner after the venue claimed that there was a gas metre failure.<sup>164</sup> Cantopop singer and

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<sup>159</sup> Jessie Pang and Farah Master, “Winnie the Pooh’ horror film cancelled in Hong Kong”, Reuters, 22 March 2023, <<https://www.reuters.com/lifestyle/screening-winnie-pooh-horror-film-cancelled-hong-kong-2023-03-21/>> [accessed 04 July 2024].

<sup>160</sup> Benjamin Haas, “China bans Winnie the Pooh film after comparisons to President Xi”, The Guardian, 07 August 2018, <<https://www.theguardian.com/world/2018/aug/07/china-bans-winnie-the-pooh-film-to-stop-comparisons-to-president-xi>> accessed 04 July 2024

<sup>161</sup> “Screenings of Winnie the Pooh horror film cancelled in Hong Kong”, The Guardian, 21 March 2023, <<https://www.theguardian.com/world/2023/mar/21/winnie-the-pooh-blood-and-honey-horror-film-cancelled-hong-kong>> [accessed 04 July 2024].

<sup>162</sup> Tom Grundy, “Winnie the Pooh horror film pulled in Hong Kong, but gov’t says it’s approved for screenings”, Hong Kong Free Press, 21 March 2023, <<https://hongkongfp.com/2023/03/21/winnie-the-pooh-horror-film-pulled-in-hong-kong-but-govt-says-its-approved-for-screenings/>> [accessed 04 July 2024].

<sup>163</sup> Sue Ng, “First ‘Hongkongers’ Book Fair’ cancelled, moved online one day before launch, accused of breaching tenancy agreement”, South China Morning Post, 14 July 2022, <<https://www.scmp.com/yp/discover/news/hong-kong/article/3185240/first-ever-hongkongers-book-fair-cancelled-one-day>> [accessed 07 July 2024].

<sup>164</sup> Jeffie Lam, “Hong Kong’s Democratic Party forced to cancel spring dinner at last minute again after venue says gas meter malfunctioned”, South China Morning Post, 21 February 2023, <<https://www.scmp.com/news/hong-kong/politics/article/3211032/hong-kongs-democratic-party-forced-cancel-spring-dinner-last-minute-again-after-venue-says-gas-meter>> [accessed 07 July 2024].

opposition supporter Anthony Wong Yiu-ming had to abandon his concert after the venue cancelled his booking without reason.<sup>165</sup>

An obvious trend of self-censorship can be seen by connecting the dots of all these events. Under the NSL, the constantly shifting red line has been instilled in people's minds, and often restricts citizens' speech and actions even in the absence of formal prohibitions.

### **Two arrested for shooting water-guns during Songkran festival celebrations**

In April 2023, two men were arrested for shooting water guns at police officers during the Songkran water festival.<sup>166</sup> The festival took place on 9 April 2023 in Kowloon City, an area of Hong Kong nicknamed "Little Thailand" for its large number of ethnic Thai residents. In Thai traditions, it is customary to celebrate the Thai New Year with a water splashing festival to wash away bad luck.

On 10 April 2023, a YouTube channel called "Bravedogdog" posted several videos showing revellers at the Songkran festival firing water guns at police officers and journalists from TVB News (a local channel which is widely considered pro-government).

On 12 April 2023, state-backed paper *Ta Kung Pao* published a column by pro-Beijing columnist Chris Wat mentioning the YouTube channel.<sup>167</sup> She said the men had "maliciously targeted" police and TVB reporters. She believed that they "pretended to splash water but were actually stirring up trouble" and that if there were no ramifications for their actions, it may lead to a resurgence of the 2019 protests.

Later on the same day, two men were arrested by police for causing disorder in a public place. A police spokesperson said they "intended and had attempted to breach public peace" and then posted a video with "seditious wording". The police would not rule out that the incident was planned in advance and further arrests were possible. Secretary for Security Chris P.K. Tang said precautions must be taken to stop people from using culture and media to "make derogatory remarks against the nation with

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<sup>165</sup> Jess Ma and Emily Hung, "Hong Kong Cantopop singer and opposition supporter Anthony Wong says venue booking for August concert cancelled without reason", *South China Morning Post*, 27 March 2023, <<https://www.scmp.com/news/hong-kong/politics/article/3222041/hong-kong-cantopop-singer-and-opposition-supporter-anthony-wong-says-venue-booking-august-concert>> [accessed 07 July 2024].

<sup>166</sup> Joel Guinto, "Songkran: Hong Kong arrests two for shooting water guns at police", *BBC*, 13 April 2023, <<https://www.bbc.co.uk/news/world-65259942>> [accessed 08 July 2024].

<sup>167</sup> Peter Lee, "Hong Kong police arrest 2 men accused of soaking officers during Songkran water celebration", *Hong Kong Free Press*, 13 April 2023, <<https://hongkongfp.com/2023/04/13/hong-kong-police-arrest-2-men-accused-of-soaking-officers-during-songkran-water-celebration/>> [accessed 08 July 2024].

misleading allegations and incite people’s dissatisfaction towards the government or the country”.<sup>168</sup>

As noted by a retired police superintendent, this incident was not the first time that police had water thrown at them during Songkran, but the authorities now appear to be taking a significantly harder line.<sup>169</sup> What had been acceptable and allowed in the past, such as spraying water at the police during the water-splashing festival, may now become a matter of “national security” and deemed illegal.

### **Ban on seafood imports from Japan**

On 24 August 2023, following the Fukushima Daiichi wastewater release, the HKSAR government placed a ban on seafood imports from 10 prefectures of Japan. Hong Kong Chief Executive John Lee said the release was “irresponsible” and posed “impossible risks to food safety and the irreparable pollution and destruction of the marine environment”.<sup>170</sup>

Early in July, the International Atomic Energy Agency granted Tokyo approval to release treated water stored at the disabled Fukushima Daiichi nuclear power station into the sea. However, Beijing and Hong Kong have expressed “strong opposition” to the wastewater discharge.<sup>171</sup>

Hong Kong said the ban would cover imported aquatic products from the Japanese regions of Tokyo, Fukushima, Chiba, Tochigi, Ibaraki, Gunma, Miyagi, Niigata, Nagano and Saitama. But exports from 13 other regions of Japan would still be allowed, it added.

According to HK01<sup>172</sup>, Martin Chan – a member of the board of directors of the Hong Kong Federation of Restaurants & Related Trades – said that Japanese

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<sup>168</sup> Ibid.

<sup>169</sup> Lee Yuk Yue, “Hong Kong police arrest two men for shooting water at police during festival”, Radio Free Asia, 14 April 2023, <<https://www.rfa.org/english/news/china/arrest-04142023151000.html>> [accessed 08 July 2024].

<sup>170</sup> Twinnie Siu, Joyce Zhou and Farah Master; Editing by Robert Birsell and Clarence Fernandez, “Hong Kong to ban some Japanese seafood from Aug 24”, Reuters, 22 August 2023, <<https://www.reuters.com/world/asia-pacific/hong-kong-ban-some-japanese-seafood-aug-24-2023-08-22/>> [accessed on 21 July 2024].

<sup>171</sup> Irene Chan, “Hong Kong to ban Japanese seafood imports from 10 regions this Thurs over nuclear wastewater release”, Hong Kong Free Press, 23 August 2023, <<https://hongkongfp.com/2023/08/23/hong-kong-to-ban-japanese-seafood-imports-from-10-regions-this-thurs-over-nuclear-wastewater-release/>> [accessed on 21 July 2024].

<sup>172</sup> 歐陽德浩, “日本核污水 | 業界憂食客失信心 禁進口令持續恐三成日式餐廳倒閉”, 香港 01, 13 July 2023 (Updated on 12 September 2023), <<https://www.hk01.com/%E7%A4%BE%E6%9C%83%E6%96%B0%E8%81%9E/918828/%E6%97%A5%E6%9C%AC%E6%A0%B8%E6%B1%A1%E6%B0%B4-%E6%A5%AD%E7%95%8C%E6%86%82%E9%A3%9F%E5%AE%A2%E5%A4%B1%E4%BF%A1%E5%BF%83-%E7%A6%81%E9%80%B2%E5%8F%A3%E4%BB%A4%E6%8C%81%E7%BA%8C%E6%81%90%E4>>

restaurants will see an estimated 50 per cent drop in revenue after the ban is imposed, and 20 to 30 per cent of restaurants will close down if the prohibition lasts for two to three months.

Interestingly, five health inspectors of the Centre for Food Safety were charged with abusing their power to steal unused food samples after testing on 20 June 2024.<sup>173</sup> They purchased a variety of food samples, including high-end items such as canned abalone, white truffle sauce, crab bisque, Japanese rice, and various types of pasta, worth over HK\$88,000 for conducting two tests on radiation levels. Over 80 unused food samples were seized by officers at the defendants' homes. In short, people reasonably believe that the ban is a political decision rather than a public health measure.

## **Financial assessment and grading of Hong Kong**

### *Financial Times' analysis*

In December 2023, *Financial Times* clearly stated that over the past three years Hong Kong have been battered — by the stringent zero-Covid policy adopted by Chinese president Xi Jinping's government, by a sweeping national security law imposed in the wake of pro-democracy protests, and then by a slowdown in China's post-Covid economy that has dragged down consumption and investment in Hong Kong.<sup>174</sup>

The increasing extent of Beijing's political interference in a city that is supposed to enjoy a degree of political autonomy is also raising concerns among the multinational corporations that view it as a gateway to China.

They question how long the hallmarks of Hong Kong's system — low taxes, a transparent legal system, independent judiciary and dollar-pegged currency — can endure. Some companies, wary of Beijing's growing control and emphasis on security over economic growth, are already relocating to other financial centres such as Singapore. More than 140,000 people out of a population of 7.5 million left the territory from 2020 to 2022.

Hong Kong is now “firmly under Beijing's thumb”, says Eswar Prasad, the Tolani Senior Professor of Trade Policy at Cornell University, warning that “[Beijing's]

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%B8%89%E6%88%90%E6%97%A5%E5%BC%8F%E9%A4%90%E5%BB%B3%E5%80%92%E9%96%89> [accessed 21 July 2024].

<sup>173</sup> “5 health inspectors charged for stealing \$88k food samples by abusing power”, *The Standard*, 19 June 2024, <[https://www.thestandard.com.hk/breaking-news/section/4/217605/5-health-inspectors-charged-for-stealing-\\$88k-food-samples-by-abusing-power](https://www.thestandard.com.hk/breaking-news/section/4/217605/5-health-inspectors-charged-for-stealing-$88k-food-samples-by-abusing-power)> [accessed 21 July 2024].

<sup>174</sup> *Financial Times*. “How China's slowdown is deepening Hong Kong's ‘existential crisis’”, 17 December 2023, <<https://www.ft.com/content/e4d8640e-91a6-4b70-aac3-6ab9a879d1dc>> [accessed 22 July 2024].

imposition of its limited version of the rule of law that features judicial subservience to the government could erode investors' trust.”

#### *The New York Times' article*

Meanwhile, the *New York Times* also wrote an article on this investing crisis.<sup>175</sup> On the one hand, investors worried about China's economy shunned Hong Kong's stock market. On the other hand, after citywide protests in 2019, Beijing imposed the NSL, which has silenced political debate and stifled civic activity in Hong Kong.

More than 100,000 residents have left Hong Kong over the last few years, in part because of the national security law and tough pandemic restrictions. Many young Hong Kong professionals who are still there have expressed a desire to leave, making it a challenge to recruit the talent that has helped the city function as a financial hub. *New York Times* found that “many international companies have stopped hiring for new positions in Hong Kong. With less money coming into the exchange and fewer transactions, dozens of brokerages have also closed.”

#### *Moody's Report*

On 06 December 2023, Moody's Investors Service (“Moody's”) changed the outlook to negative from stable on the Government of HKSAR, China's credit ratings while affirming its Aa3 long-term issuer and senior unsecured ratings and its (P)Aa3 senior unsecured medium term note (MTN) programme ratings.<sup>176</sup>

The announcement follows Moody's outlook change on China's A1 rating to negative from stable. The change in Hong Kong's rating outlook reflects Moody's assessment of tight political, institutional, economic and financial linkages between Hong Kong and the mainland which keep the rating gap no wider than one notch. The negative outlook on China's rating therefore implies a negative outlook on Hong Kong's rating.

Moody's added that the principal driver of the negative outlook on Hong Kong's rating is the tight linkage between the credit profiles of the HKSAR and China. That linkage manifests itself in the political and institutional arena, given the close relationship inherent in the “One Country, Two Systems” policy; in the economy, given the very strong trade links between the two; and in the financial system, given

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<sup>175</sup> The New York Times. “Hong Kong Stocks Plunge to Losses for 4th Straight Year”, 29 December 2023, <<https://www.nytimes.com/2023/12/29/business/hong-kong-stocks-hang-seng.html>> [accessed 22 July 2024].

<sup>176</sup> “Moody's affirms Hong Kong SAR's Aa3 rating, changes outlook to negative from stable”, Moody's Investors Service, 06 December 2023, <<https://ratings.moody's.com/ratings-news/412212>> [accessed 22 July 2024].

Hong Kong's banking system's involvement in the mainland and role as a conduit for finance flows into the regional and global financial systems.

Developments in institutional and political linkages are a key element of the risks to Hong Kong's credit profile. Following signs of reduced autonomy of Hong Kong's political and judiciary institutions, notably with the imposition of a NSL in 2020 and changes to Hong Kong's electoral system, Moody's expects further erosion of the HKSAR's autonomy of political, institutional and economic decisions to continue incrementally. This ongoing process is currently reflected in Moody's assessment of the quality of Hong Kong's executive and legislative institutions.

### **Internal economic statistics**

It is well-known that the HKSAR government consistently reject the “unfounded and biased content” from foreign media and institutions concerning Hong Kong's economic downturn. However, a review of the economic figures provided by Hong Kong authorities speaks for itself.

#### *Hang Seng Index*

The *Wall Street Journal* reported that Hong Kong's benchmark stock index has declined for four consecutive years, dealing another blow to the city's ambitions to regain its former stature.<sup>177</sup> The Hang Seng Index fell 14% in 2023 to close at 17047.39. Hong Kong's stock market, which includes shares of many Chinese companies, has become less popular with foreign investors and has been stuck in a rut due to geopolitical and other reasons.

#### *IPO*

At the same time, Hong Kong stock exchange's IPO ranking sank to 8th in 2023. Hong Kong's IPO proceeds declined for the third year in a row, falling 33 percent from US\$8.5 billion in 2022 to US\$5.7 billion in 2023.<sup>178</sup>

“The Hong Kong market is already at [a] very low point [compared to] the good old days in 2020 or before that. So the general sentiment has not yet recovered. We cannot

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<sup>177</sup> Dave Sebastian, “Hong Kong's Hang Seng Index Drops for Fourth Straight Year”, *The Wall Street Journal*, 29 December 2023, <<https://www.wsj.com/livecoverage/stock-market-today-dow-jones-12-29-2023/card/hong-kong-s-hang-seng-index-drops-for-fourth-straight-year-zP8TvZpENr8QLEqdh6YA>> [accessed 22 July 2024].

<sup>178</sup> Enoch Yiu, “Hong Kong IPO market revival on the cards amid favourable interest-rate outlook, China policy easing”, *South China Morning Post*, 30 December 2023, <<https://www.scmp.com/business/markets/article/3246630/hong-kong-ipo-market-revival-cards-amid-favourable-interest-rate-outlook-china-policy-easing>> [accessed 22 July 2024].

expect the IPO market to rebound quickly or be comparable with the good old days,” said Ringo Choi, Asia-Pacific IPO leader at EY.<sup>179</sup>

### *Negative Equity on Residential Mortgage Loans*

The Hong Kong Monetary Authority announced on 31 January 2024 the results of its survey on residential mortgage loans (“**RMLs**”) in negative equity at end-December 2023. The estimated number of RMLs in negative equity increased to 25,163 cases at end-December 2023 from 11,123 cases at end-September 2023. It is a strong sign of continued weakness in the city’s property market.<sup>180</sup>

In fact, Hong Kong’s private home prices have dropped for ten consecutive months before edging up in March 2024, after the financial city lifted curbs to boost the ailing property market. Hong Kong’s declining home prices dragged more mortgage borrowers into negative equity, putting them under greater financial strain as property prices show little prospect of rising amid a lethargic housing market and high interest rates.

The city’s broader structural challenges suggest that Hong Kong’s economy will continue to struggle. It also implies that the government may suffer from a structural deficit in the medium term.<sup>181</sup>

With falling property prices and low transaction volumes, the government is set to run a large deficit this year. As the population ages, healthcare and social welfare expenditures will continue to rise.

## **LEGAL ANALYSIS**

The cumulative effect of the above developments reveals a material degradation of the rule of law, both in its procedural form (judicial independence, administrative legality) and in substance (equality before the law, legal certainty, protection of property and expression).

The incorporation of the NSL clauses in the government contracts expands vague and discretionary “national security” standards into all facets of regulatory and

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<sup>179</sup> Sheila Chiang, “Hong Kong’s IPO market is still in a slump despite an expected rebound”, CNBC, 05 November 2023, <<https://www.cnbc.com/2023/11/06/hong-kong-ipo-market-is-still-in-a-slump-despite-an-expected-rebound.html>> [accessed 22 July 2024].

<sup>180</sup> Hong Kong Monetary Authority. “Residential mortgage loans in negative equity: End of December 2023”, 31 January 2024, <<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/01/20240131-6/>> [accessed 22 July 2024].

<sup>181</sup> Vera Yuen, “Hong Kong’s economy struggles to get back on its feet”, East Asia Forum, 03 January 2024, <<https://eastasiaforum.org/2024/01/03/hong-kongs-economy-struggles-to-get-back-on-its-feet/>> [accessed 22 July 2024].

commercial activity with the administration. These clauses are very broad and ambiguous which should be subject to the legal scrutiny of their legality and constitutionality (including the right to property under Articles 6 and 105 of the Basic Law, as well as the freedom of expression and association under Article 27 and ICCPR as incorporated via Article 39).

In addition, the rise of soft authoritarianism via non-legal levers through cloaked in contractual pretexts (e.g., “technical problems” or “gas meter faults”) provided the cumulative evidence of politically motivated interference.

Above all, there is no objective or judicially reviewable standard to those clauses at this moment which is inconsistent with the principle of legal certainty. Contractors of the administration now face a novel category of public law risk, with no effective recourse in light of increasing judicial deference in national security matters.

The Songkran festival event raised a concern of the risk of arbitrary criminalisation of purportedly apolitical conducts of which previously viewed as lawful and culturally acceptable. It sent a stark warning to the businesses which involved in public events, street festivals, and cultural marketing might face heightened compliance burdens and reputational risks for facilitating ordinary community engagement activities.

The discretionary trade restrictions not only raised doubt of the compliance of World Trade Organization’s *Agreement on the Application of Sanitary and Phytosanitary Measures* (“**SPS Agreement**”) but also whether Hong Kong is still a reliable and stable re-export hub. Japan raised its objection on the ground that such move is lack of scientific justification, arbitrarily selective, and politically motivated (potentially violate articles 2.2, 2.3, 3.1 and 5 of the *SPS Agreement*<sup>182</sup>). The regulatory unpredictability undermines Hong Kong’s reputation as a rules-based trade and investment hub.

The Hang Seng Index, Moody’s rating and IPO proceeds are empirical evidence of the decline of the financial fundamentals which underscore that the legal instability and governance opacity are now priced into Hong Kong’s economy.

## CONCLUSION

In conclusion, the events examined above reflect a profound and continuing decline in the rule of law in Hong Kong. A legal system once widely respected for its

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<sup>182</sup> World Trade Organization, *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement), [https://www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm) [accessed 23 March 2025].

independence, predictability, and commitment to fundamental rights now appears increasingly unable to protect businesses—whether local or international—from arbitrary or excessive state intervention. The contours of governance have shifted: decisions once grounded in law and institutional integrity are now frequently shaped by political priorities, with “national security” invoked as a broad and largely unchallengeable justification.

Where legal certainty gives way to executive discretion, and where rules yield to ideology, the commercial consequences are significant. Hong Kong’s longstanding reputation as a trusted and rules-based international financial centre—built over decades—is no longer assured. For many, the cost of doing business in the city now includes navigating an environment marked by regulatory opacity, institutional unpredictability, and political risk that cannot easily be quantified or mitigated.

## **RECOMMENDATIONS**

Accordingly, the Hong Kong Rule of Law Monitor:

- 1) Demands that the Hong Kong government:
  - a) cease its oppression and targeting of pro-democracy businesses in Hong Kong immediately, including through the use of the NSL, Seditious Offences Ordinance and the SSO;
  - b) cease the arbitrary application of business regulations for political purposes; and
  - c) rectify its unjustified and unreasonable policies implemented in business environment.
- 2) Recommends that the international community:
  - a) put greater pressure on the Hong Kong government to cease its oppression and targeting of pro-democracy businesses;
  - b) strongly support the pro-democracy businesses (Yellow Economic Circle) formed by Hongkongers abroad;
  - c) boycott businesses with human rights violation records; and
  - d) aid in the establishment of chambers of commerce or business networking groups to promote the pro-democracy businesses (Yellow Economic Circle) abroad.
- 3) Recommends that business leaders:
  - a) continue to send a clear and united message to the PRC and Hong Kong Governments that their undermining of Hong Kong’s rule of law (including their use of the NSL; Seditious Offences Ordinance and SSO; and their censorship of the press and publishing sector) is gravely detrimental to

- Hong Kong's attractiveness as a business and investment destination, and thus to Hong Kong's very future as an international financial centre;
- b) reduce further loss and damages by withdrawing investments in Hong Kong;
  - c) embed democracy and human rights values in its corporate governance policy and include them as one of the indicators under its ESG report;
  - d) review all government contracts for vague terms that may trigger discretionary enforcement. Clearer definitions, dispute resolution clauses, and termination rights should be carefully crafted in all public sector agreements;
  - e) review business continuity plans and incorporate political and regulatory risk into enterprise risk management frameworks;
  - f) review corporate restructure and staffing strategy to contain geopolitical risk in Hong Kong by relocating sensitive business units, functions and staff to jurisdictions with stronger legal protections and provide training on the National Security Law, sedition laws, and other relevant public order offences;
  - g) include legal defence support and whistleblower protections in employment policies and retain independent legal counsel with expertise in administrative, constitutional, and international trade law;
  - h) establish crisis response protocols to manage reputational fallout from politically sensitive enforcement and prepare for reputational risks associated with subcontractors, vendors, partnerships or activities seen as politically aligned; and
  - i) join industry bodies or multilateral business councils to build credibility and collective resilience.

**PART III:**  
**WAS THE RULE OF LAW**  
**WELL MONITORED IN HONG KONG?**

## (A) MEDIA FREEDOM

### INTRODUCTION

When *Ming Pao* celebrated its 64<sup>th</sup> anniversary in 2023, an editorial choice was made to avoid the numerals. In today's Hong Kong, seditious intent can be inferred on the flimsiest of associations - and "64" could bring to mind the June Fourth Tiananmen Massacre. Instead, congratulatory text read "marching towards 65 years".<sup>183</sup>

In the third year of Hong Kong's era of securitization, the authorities continued to politicize the media. The Hong Kong government doubled down on their new discourse: to report on an event is to take a stance, and the idea of an impartial, professional press does not exist. This was borne out in continued persecution of journalists, and utilization of the media as a propaganda tool. In addition, new legislation under Article 23 enacted in March 2024 introduces fresh threats to media workers.

Hong Kong's press freedom has tumbled in a short period of time. Just two decades ago, it was ranked 18 in the world in the World Press Freedom Index. But in 2023, Hong Kong was ranked 140 out of 180 countries.<sup>184</sup> A mass exodus of Hong Kong journalists began in 2020.<sup>185</sup> As of May 2024, 10 journalists and media workers are behind bars.

Both surveys published in 2023 by the Hong Kong Journalist Association ("**HKJA**") and the Foreign Correspondents' Club, Hong Kong ("**FCC**") showed the decline in press freedom. The HKJA's survey, conducted together with the Hong Kong Public Opinion Research Institute ("**PORI**"), indicated that the facets of press freedom of most concern were self-censorship, and fears about criticizing the Hong Kong or central governments.<sup>186</sup> Of least concern were fears about criticizing large corporations, and the press' watchdog function.<sup>187</sup>

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<sup>183</sup> Pak Yiu and Aiko Munakata, "Under China scrutiny Hong Kong media slips into self-censorship", Nikkei Asia, 4 February 2024 <<https://asia.nikkei.com/Spotlight/Hong-Kong-security-law/Under-China-scrutiny-Hong-Kong-media-slips-into-self-censorship2>>

<sup>184</sup> Reporters without Borders, "Press freedom is not fully protected in Hong Kong: RSF debunks China's claims in 10 points", 22 April 2024 <<https://rsf.org/en/press-freedom-not-fully-protected-hong-kong-rsf-debunks-china-s-claims-10-points>>

<sup>185</sup> International Federation of Journalists and Association of Overseas Hong Kong Media Professionals, "Journalists in Exile: A Survey of Media Workers in the Hong Kong Diaspora", April 2023 <<https://www.ifj.org/media-centre/reports/detail/journalists-in-exile-a-survey-of-media-workers-in-the-hong-kong-diaspora/category/publications>>

<sup>186</sup> HKJA and PORI, 2022 Press Freedom Index Survey, 24 May 2023. In Chinese language only: <<https://drive.google.com/file/d/1qIpl5Ujzd0HnO0EjAXyb9nZ3Cy1itbLc/view>>

<sup>187</sup> The survey question was "監察功效".

Meanwhile, *Nikkei Asia* issued an analysis of over 26,000 editorial pieces of major Hong Kong Chinese language newspapers published between 2014 and 2022. The analysis showed how vocabulary and tone use gradually shifted in parallel with China's stance towards Hong Kong, including decreased use of terms such as "Hong Kong people", "democracy", and "political reform", and reference to June Fourth.<sup>188</sup>

## SUMMARY OF EVENTS

### Criminal prosecution of journalists

Prominent independent media outlets *Apple Daily* and *Stand News* were both targeted by the national security police, long after they shut down in 2021. Both trials took place partially in 2023, but the verdicts have not yet been issued as at the time of writing.

*Stand News* and two of its editors were charged with "conspiracy to publish seditious publications". The trial ran for 56 days from December 2022 until closing submissions in June 2023. Lack of due process was a common feature throughout the trial.<sup>189</sup> On multiple occasions, judge Kwok Wai-kin allowed the prosecution to ambush the defence by adducing new evidence and documents in the middle of the trial.<sup>190</sup> The prosecution continued to do so even after they had closed their case. Prosecutor Laura Ng's cross-examination of former chief editor Chung was riddled with abuse. She often demanded him to speculate on the intention of interviewees' remarks in journalistic reports, and the intention of authors of commentaries.<sup>191</sup> Ng also asked Chung to answer hypothetical questions of dubious relevance, which was a departure from normal rules of cross-examination. The verdict is expected to be

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<sup>188</sup> Pak Yiu and Aiko Munakata, "Under China scrutiny Hong Kong media slips into self-censorship", *Nikkei Asia*, 4 February 2024 <<https://asia.nikkei.com/Spotlight/Hong-Kong-security-law/Under-China-scrutiny-Hong-Kong-media-slips-into-self-censorship2>>

<sup>189</sup> Hong Kong Rule of Law Monitor, "Stand News 'sedition' trial continues, with lack of due process", 27 March 2023 <<https://hkrlm.org/2023/03/27/stand-news-sedition-trial-continues-with-lack-of-due-process/>>

<sup>190</sup> See, for example, Peter Lee, "Stand News trial: Prosecution to cite previously unsubmitted articles to question top editor's intention", *Hong Kong Free Press*, 23 February 2023 <<https://hongkongfp.com/2023/02/23/stand-news-trial-prosecution-to-cite-previously-unsubmitted-articles-to-question-top-editors-intention/>>; and Lea Mok, "Sedition trial against Hong Kong outlet Stand News to continue until end of March", *Hong Kong Free Press*, 24 February 2023 <<https://hongkongfp.com/2023/02/24/sedition-trial-against-hong-kong-outlet-stand-news-to-continue-until-end-of-march/>>

<sup>191</sup> Lea Mok, "Stand News sedition trial: Prosecution asks if supporters of Hong Kong localist camp more prone to misinformation", *Hong Kong Free Press*, 21 February 2023 <<https://hongkongfp.com/2023/02/21/stand-news-sedition-trial-prosecution-asks-if-supporters-of-hong-kong-localist-camp-more-prone-to-misinformation/>>

handed down in August 2024. (Editor's note: *Stand News*' former chief editor Chung Pui-kuen and former acting chief editor Patrick Lam were found guilty.)

As for *Apple Daily*, the trial of founder Jimmy Lai for sedition and charges of foreign collusion commenced in December 2023 and was still ongoing as of May 2024. Six other executives and editors had already pleaded guilty to conspiracy to collude with foreign forces in November 2022.<sup>192</sup> These national security charges have been internationally condemned as a blatant crackdown on the freedom of the press and of expression.<sup>193</sup> In response, the Hong Kong government insinuated that such statements were attempts to interfere with judicial proceedings and could bear penal consequences.<sup>194</sup>

Apart from these cases which received international attention, other journalists also faced criminal prosecutions. Ronson Chan, chairperson of the Hong Kong Journalists Association, was convicted and sentenced to imprisonment for obstructing a police officer. Chan was en route to report on a home owners' meeting when the incident occurred.<sup>195</sup> A Swiss photojournalist was prosecuted for covering the 2019 protests, and the courts would not allow him to recover his costs although he had been acquitted twice.<sup>196</sup> Two freelance journalists who entered the Legislative Council chamber on 1 July 2019 were charged with rioting, and ultimately convicted for unlawful entry into the legislature in February 2024.<sup>197</sup>

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<sup>192</sup> Jessie Pang, "Six former staff of Hong Kong newspaper plead guilty to conspiracy to collude", Reuters, 21 November 2022 <<https://www.reuters.com/world/asia-pacific/six-former-staff-hong-kong-newspaper-plead-guilty-conspiracy-commit-collusion-2022-11-22/>>; "Apple Daily executives plead guilty to 'collusion with foreign forces' under the NSL", Hong Kong Rule of Law Monitor, 13 July 2023 <<https://hkrlm.org/2023/07/13/apple-daily-executives-plead-guilty-to-collusion-with-foreign-forces-under-the-nsl/>>

<sup>193</sup> See, for example: Reporters without Borders, "More than 100 media leaders from around the world join RSF in calling for the release of Hong Kong press freedom emblem Jimmy Lai", 16 May 2023 <<https://rsf.org/en/more-100-media-leaders-around-world-join-rsf-calling-release-hong-kong-press-freedom-emblem-jimmy>>; Media Freedom Coalition Statement on the Second Anniversary of the Closure of Stand News and Media Freedom in Hong Kong, 29 December 2023 <<https://www.state.gov/media-freedom-coalition-statement-on-the-second-anniversary-of-the-closure-of-stand-news-and-media-freedom-in-hong-kong/>>

<sup>194</sup> "HKSAR Government strongly opposes interference with judicial proceedings in the HKSAR under pretext of press freedom", 16 May 2023 <<https://www.info.gov.hk/gia/general/202305/16/P2023051600662.htm>>

<sup>195</sup> Hillary Leung, "Head of Hong Kong journalist group Ronson Chan sentenced to 5 days' jail over obstructing police officer while reporting", Hong Kong Free Press, 25 September 2023 <<https://hongkongfp.com/2023/09/25/breaking-head-of-hong-kong-journalist-group-ronson-chan-found-guilty-of-obstructing-a-police-officer-while-reporting/>>

<sup>196</sup> Reporters without Borders, "Hong Kong: The four-year judicial ordeal of Swiss photojournalist who covered a 2019 demonstration", 23 August 2023 <<https://rsf.org/en/hong-kong-four-year-judicial-ordeal-swiss-photojournalist-who-covered-2019-demonstration>>

<sup>197</sup> Kanis Leung, "A Hong Kong court convicts 4 people of rioting over the storming of the legislature in 2019 protests", The Associated Press, 31 January 2024 <<https://apnews.com/article/hong-kong-activists-protest-riot-guilty-2a04ebf086c4dc9d6834f48ee33d9e4>>

## Enactment of domestic national security law

In March 2024, the Hong Kong government enacted the *Safeguarding National Security Ordinance* (“**SNSO**”) under Article 23 of the Basic Law. It created new, broadly-defined offences such as espionage, external interference, and theft of state secrets. It also expanded enforcement powers, such as empowering the police to stop arrestees from accessing certain lawyers.

Prior to the enactment, interest and advocacy groups including the HKJA and HKRLM<sup>198</sup> had prepared submissions in response to the government’s consultation. These submissions raised concerns such as that the broad-brush definitions would create a chilling effect as the press would be unable to discern the boundaries of the law and hence deterred from reporting, and that foreign media services would be classified as “external forces” under the new law.<sup>199</sup> Unfortunately, these concerns have not been allayed in the SNSO.

Following the enactment, Radio Free Asia closed its Hong Kong office, citing concerns about the safety of staff.<sup>200</sup>

## Retribution, threats, and other obstacles

The Hong Kong government branded various media organizations such as *Radio Free Asia* as “foreign forces”,<sup>201</sup> and condemned others such as the *BBC*<sup>202</sup> and *The Guardian*<sup>203</sup> (among others) for “smearing” Hong Kong’s laws with false accusations.

Entities other than the national security police also took action which threatened press freedom. Three foreign freelance journalists who had covered the 2019 protests were denied entry to Hong Kong by the Immigration Department.<sup>204</sup> Journalists covering

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<sup>198</sup> Hong Kong Rule of Law Monitor, “Hong Kong’s Article 23 Proposal: A Response from Overseas Hong Kong Lawyers”, 28 February 2024 <<https://hkrlm.org/2024/02/28/a23-response/>>

<sup>199</sup> HKJA, “HKJA to lodge Submission to the Security Bureau on Basic Law Article 23 Legislation”, 24 February 2024 <<https://www.hkja.org.hk/en/press-release/the-hong-kong-journalists-association-to-lodge-submission-to-the-security-bureau-on-basic-law-article-23-legislation/>>

<sup>200</sup> Radio Free Asia, “RFA President: Hong Kong bureau to restructure in light of Article 23”, 29 March 2024 <<https://www.rfa.org/about/releases/rfa-president-hong-kong-bureau-to-restructure-in-light-of-article-23>>

<sup>201</sup> Radio Free Asia, “RFA President: Hong Kong bureau to restructure in light of Article 23”, 29 March 2024 <<https://www.rfa.org/about/releases/rfa-president-hong-kong-bureau-to-restructure-in-light-of-article-23>>

<sup>202</sup> “HKSAR Government condemns BBC for smearing HKSAR’s laws on safeguarding national security with false accusations”, 15 March 2024 <<https://www.info.gov.hk/gia/general/202403/16/P2024031600616.htm>>

<sup>203</sup> Letter from the Department of Justice to the Guardian, 7 February 2024 <<https://www.brandhk.gov.hk/docs/default-source/clarifications-library/2024/doj's-letter-to-the-guardian-feb-7.pdf>>

<sup>204</sup> Reporters without Borders, “Three journalists who covered the 2019 protests barred from entering Hong Kong over the last months”, 1 September 2023 <<https://rsf.org/en/three-journalists-who-covered-2019-protests-barred-entering-hong-kong-over-last-months>>

court cases were stalked by unidentified persons.<sup>205</sup> The Independent Police Complaints Council (“IPCC”) dismissed the complaint of a journalist hit by a projectile during the 2019 protests, despite the incident being captured on camera.<sup>206</sup> The bank used by independent platform Citizens’ Radio froze their account, forcing them to close down after 18 years of broadcasting.<sup>207</sup>

In December 2023, it was reported that Minnie Chan, journalist with the *South China Morning Post* (“SCMP”), disappeared while reporting in Beijing.<sup>208</sup> The SCMP would only say that Chan had taken personal leave. As at the time of writing, no further information has been made public about Chan’s whereabouts.

### Media co-opted as a propaganda tool

In February 2023, the government mandated that TV and radio operators have to broadcast content about national education and identity and the NSL for half an hour each week.<sup>209</sup> The directions also included increasing programming for young people, and reducing English language content. The Communications Authority recommended that these mandates carve out an exemption from impartiality rules, which used to require that broadcasters include opposing viewpoints.<sup>210</sup>

Commentators warned that the move could lead to further self-censorship and restrict public debate, including reducing the ability of the media to hold the government to account.<sup>211</sup>

### Legislative changes impacting investigative journalism

In 2021, journalist Choy Yuk-ling, also known as Bao, was convicted of making a false declaration while conducting a search of the Transport Department’s vehicle

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<sup>205</sup> Hong Kong Rule of Law Monitor, “Journalists complain of being stalked while reporting on court cases”, 4 August 2023 <<https://hkrlm.org/2023/08/04/journalists-complain-of-being-stalked-while-reporting-on-court-cases/>>

<sup>206</sup> Hong Kong Rule of Law Monitor, “Police watchdog dismisses complaint by reporter hit by police projectile during protests”, 5 July 2023 <<https://hkrlm.org/2023/07/05/police-watchdog-dismisses-complaint-by-reporter-hit-by-police-projectile-during-protests/>>

<sup>207</sup> Candice Chau, “Hong Kong pro-democracy pirate radio to stop broadcasting after founder says station bank account ‘locked’”, Hong Kong Free Press, 26 June 2023 <<https://hongkongfp.com/2023/06/26/hong-kong-pro-democracy-pirate-radio-to-stop-broadcasting-after-founder-says-station-bank-account-locked/>>

<sup>208</sup> Helen Davidson, “Fears raised after Hong Kong journalist fails to return from China trip”, 1 December 2023 <<https://www.theguardian.com/world/2023/dec/01/minnie-chan-south-china-morning-post-journalist-missing-xiangshan-forum>>

<sup>209</sup> Maroosha Muzaffar, “Hong Kong forces broadcasters to air 30 minutes of patriotic programming per week”, The Independent, 15 February 2023 <<https://www.independent.co.uk/asia/china/hong-kong-patriotic-programming-national-security-law-b2282632.html>>

<sup>210</sup> Pak Yiu and Peggy Ye, “Hong Kong weighs ending impartiality rules for TV, radio”, Nikkei Asia, 18 July 2023 <<https://asia.nikkei.com/Spotlight/Hong-Kong-security-law/Hong-Kong-weighs-ending-impartiality-rules-for-TV-radio>>

<sup>211</sup> *Ibid*

registry. Choy had conducted the relevant searches for an investigative report about the gang attack that took place on 21 July 2019 in Yuen Long. In June 2023, Choy was vindicated by the Court of Final Appeal, which found that her search of the registry for the information of a vehicle involved in the attack fell within the meaning of the declaration of purpose that she had made. The judgment was heralded as a win for press freedom, as the Court of Final Appeal expressly recognized the importance of this fundamental right.<sup>212</sup>

However, in January 2024, the Transport Department instituted a new procedure for conducting searches of the vehicle registry. Journalists are now required to apply to the Commissioner for Transport, who will decide whether disclosure is in the public interest.<sup>213</sup> In response, the HKJA expressed concern that the new procedure exceeded the authority of the Commissioner for Transport and would hinder journalism.<sup>214</sup>

## LEGAL ANALYSIS

The freedom of the press has been recognized by the courts as both intrinsically important and valued for its own sake, and also instrumentally important.<sup>215</sup> The media acts as “the eyes and ears of the general public”:<sup>216</sup> “the majority [of citizens] cannot participate in the public life of their society in these ways if they are not alerted to and informed about matters which call or may call for consideration and action. It is very largely through the media, including of course the press, that they will be so alerted and informed.”<sup>217</sup>

At the same time, news sources are crucial to news production, both at an individual and collective level. Given this close relationship between civil society and a free press,

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<sup>212</sup> Candice Chau and Hillary Leung, “Top Hong Kong court clears journalist convicted over 2019 Yuen Long attack documentary”, Hong Kong Free Press, 5 June 2023

<<https://hongkongfp.com/2023/06/05/breaking-hong-kong-journalist-bao-choy-wins-top-court-appeal-over-use-of-vehicle-records-for-protest-documentary/>>

<sup>213</sup> Irene Chan, “Hong Kong press group criticises new curbs on media access to vehicle registry, govt says accusation ‘false’”, Hong Kong Free Press, 25 January 2024 <<https://hongkongfp.com/2024/01/25/hong-kong-press-group-criticises-new-curbs-on-media-access-to-vehicle-registry-govt-says-accusation-false/>>

<sup>214</sup> Statement by the HKJA in Chinese language only, 5 January 2024

<<https://www.hkja.org.hk/zh/%E8%81%B2%E6%98%8E/%E8%A8%98%E5%8D%94%E4%B8%8D%E6%BB%BF%E9%81%8B%E8%BC%B8%E7%BD%B2%E6%9F%A5%E8%BB%8A%E7%89%8C%E6%96%B0%E5%AE%89%E6%8E%92%E3%80%80%E8%AA%8D%E7%82%BA%E7%84%A1%E8%A6%96%E7%B5%82%E9%99%A2%E7%A2%BA%E8%AA%8D/>>

<sup>215</sup> *R v Secretary of State for the Home Department Ex p. Simms* [2000] 2 AC 115

<sup>216</sup> *Attorney-General v Guardian Newspapers Ltd (No. 2)* [1990] 1 AC 109, para. 183

<sup>217</sup> *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277

the weakening of one can reinforce the decline of the other in a vicious cycle of democratic backsliding.<sup>218</sup>

As in previous years, the Hong Kong government has not merely failed in its duty to facilitate journalistic activity - it has been the single largest threat to journalists. Hong Kong journalists face arbitrary legal risks under national security and criminal laws. The government's stance that the press is a political actor compresses the space for the existence of an impartial press, and contributes to the risks to journalists who report on events or viewpoints that depart from the official viewpoint.

As observed in our 2022 report, Hong Kong journalists are forced to choose between doing their jobs professionally, and preserving their own safety.<sup>219</sup> 65% of respondents to the FCC 2023 survey said they had practised self-censorship in the 18 months. Of those, 27% said they had self-censored "considerably". This shows further deterioration from in 2021, when 56% of respondents said they had practised self-censorship.<sup>220</sup> Per the HKJA report, the greatest concern to journalists is making criticism of the Hong Kong and central governments.

Media self-censorship is to be understood against the backdrop of society-wide self-censorship. In the NSL era, there is increased difficulty in finding news sources. This is partially due to a lack of individuals willing to take on the glare of the spotlight, but also because some news organizations have blacklisted certain pro-democracy activists or commentators, as well as the increasingly common fears that interviewing overseas sources could constitute the "collusion with foreign power" offence in the NSL.<sup>221</sup>

The SNSO introduced in March 2024 is likely to further exacerbate self-censorship both in society at large and in media organizations. Per the HKJA, it will have "profound and far-reaching implications on the press".<sup>222</sup> New or revamped offences that pose a threat to press freedom include sedition, disclosure of state secrets or espionage, and external interference. Key concerns include that elements of the criminal offences are fluid, ambiguous, and sweeping, such as the "intent to endanger national security". The threshold to conviction is low, and often does not require any actual serious harm or significant risk of harm to national security. The law fails to

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<sup>218</sup> Lee, F. L. F., Tang, G. K. Y., & Chan, C. K. (2023). Media Self-Censorship in a Self-Censoring Society: Transformation of Journalist-Source Relationships in Hong Kong. *Journalism Studies*, 24(12), 1539–1556.

<sup>219</sup> Hong Kong Rule of Law Monitor, Hong Kong Rule of Law Report 2022 at page 89

<sup>220</sup> FCC, "Statement on Results of FCC's Press Freedom Survey", 5 July 2023

<<https://www.fcchk.org/statement-on-results-of-fccs-press-freedom-survey/>>

<sup>221</sup> Lee, F. L. F., Tang, G. K. Y., & Chan, C. K. (2023). Media Self-Censorship in a Self-Censoring Society: Transformation of Journalist-Source Relationships in Hong Kong. *Journalism Studies*, 24(12), 1539–1556.

<sup>222</sup> HKJA, "HKJA to lodge Submission to the Security Bureau on Basic Law Article 23 Legislation", 24 February 2024 <<https://www.hkja.org.hk/en/press-release/the-hong-kong-journalists-association-to-lodge-submission-to-the-security-bureau-on-basic-law-article-23-legislation/>>

provide adequately for public interest defences, such as whistleblowing and genuine news reporting.<sup>223</sup>

As noted by the HKJA, journalists could be left unable to identify the boundaries of the law, and unwittingly breach it - or err on the side of caution, hence fail to report on what may otherwise be newsworthy.<sup>224</sup> Per the European Court of Human Rights, the hindering of access to information which is of public interest “may discourage those working in the media, or related fields, from pursuing such matters.” The press would no longer be able to play their vital role as public watchdogs, and their ability to provide accurate and reliable information would be adversely affected.<sup>225</sup>

Since its revival in 2020, the colonial sedition offence has been universally condemned for failing to comply with international human rights law, and for its use to crack down on peaceful speech, including journalists employed by *Stand News* and *Apple Daily* as noted above.<sup>226</sup> With the SNSO, the Hong Kong government not only fails to correct any of these fatal flaws; it doubles down by updating definitions in the offence, and increasing the maximum from 2 years’ imprisonment to 7 years.<sup>227</sup>

Notably, the SNSO codified an argument about the requirement of “seditious intent” made by the prosecution in the *Stand News* case which had not yet been accepted by the courts. In that trial, the defence argued that the editors had no seditious intention: they were only performing their work professionally by publishing newsworthy events and opinion columns. The prosecution however argued that it was not necessary that the editors subjectively had any seditious intent - the *words* they used had seditious intent will suffice. This makes no linguistic or logical sense as words cannot have intent, only people can. Yet this has been codified in the SNSO, which refers to acts, words, and publications that have a seditious intention.<sup>228</sup>

To some degree, this pre-empts the court’s judgment in the *Stand News* case. But more importantly, it is highly concerning that the letter of the law is departing from common sense. This diminishes the legitimacy of the law, making it increasingly

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<sup>223</sup> Hong Kong Rule of Law Monitor, “Hong Kong’s Article 23 Proposal: A Response from Overseas Hong Kong Lawyers”, 28 February 2024 <<https://hkrlm.org/2024/02/28/a23-response/>>

<sup>224</sup> *Ibid*

<sup>225</sup> See *Guseva v Bulgaria* (6987/07) [2015] ECHR 171 at [53]; *Shapovalov v Ukraine* (45835/05) [2012] ECHR 1665 at [68] and *Dammann v Switzerland* (977551/01) at [37]; *Big Brother Watch and others v United Kingdom* (58170/13) [2018] ECHR 722.

<sup>226</sup> See, for example, Letter from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms and five other Special Rapporteurs, 23 April 2020, OL CHN 7/2020; Concluding Observations from the UN Human Rights Committee in their first, second, third, and fourth reviews of Hong Kong. In particular, see Human Rights Committee, Concluding observations on the fourth periodic report of Hong Kong, China, 27 July 2022, CCPR/C/CHN-HKG/CO/4

<sup>227</sup> 10 years if it involves collusion with an external force. See SNSO s 23

<sup>228</sup> SNSO s 23

difficult for citizens and journalists to regulate their behaviour in accordance with the law.

## **CONCLUSION**

In 2023 and the first quarter of 2024, the Hong Kong government continued to be the single largest threat to press freedom in Hong Kong. The weakening of press freedom contributed to the decline of civil society and other associated fundamental rights, such as the freedom of assembly and the freedom of speech.

Among Hong Kong journalists' top concerns were making criticism of the Hong Kong and central governments. As a result, the role of the press in holding the government to account has been impacted.

## **RECOMMENDATIONS**

The Hong Kong Rule of Law Monitor:-

1. recommends that the Hong Kong government:
  - a. not to interfere with the editorial independence of all media outlets;
  - b. quash convictions and discontinue all cases against journalists and individuals charged for exercising their right to freedom of expression, and provide them with adequate compensation; and
  - c. investigate and prosecute in appropriate cases involving intimidation and attacks on journalists and publish relevant data for transparency and accountability purposes.
2. appeals to the international community to:
  - a. provide financial support to independent news media and journalistic work; and
  - b. continue monitoring and denouncing the repression of journalists in Hong Kong.

## (B) ACADEMIC FREEDOM

### INTRODUCTION

In the year of 2023 to the first quarter of 2024, there is a noticeable decrease in the number of students. Several kindergartens announced closure citing decline in enrolment<sup>229</sup>. A record high number of students deserted their home city due to emigration to other countries with family.<sup>230</sup>

In the year 2023, Hong Kong experienced severe turbulence in the sphere of academic freedom at all levels, from tertiary to kindergarten, from structural to personnel, from private individual scholars and students to the attitude of the public.

### SUMMARY OF EVENTS

#### NSL and Patriotic Education

*Liberal Studies phased out amid pro-Beijing accusations for influencing students' values*

In April, 2023, teachers in Hong Kong raised their concerns regarding the phasing out of Liberal Studies. The subject has been a key part of the secondary school curriculum since 2009. The subject aimed to develop critical thinking and facilitate open discussion on social, political, and global issues. However, the subject was made the scapegoat for the active for the active participation of students in the 2019 pro-democracy protests. The Hong Kong authoritarian regime has since reformed the curriculum, shifting its focus to national security and mainland China-related content.<sup>231</sup>

Teachers expressed fears that the changes will curtail critical thinking, restrict open classroom discussion, and impose a more politically driven curriculum. This shift

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<sup>229</sup> Hong Kong Free Press, 'Hong Kong kindergarten announces closure, citing decline in enrolments amid low birth rate and emigration wave' \*Hong Kong Free Press\* (20 November 2023) <<https://hongkongfp.com/2023/11/20/hong-kong-kindergarten-announces-closure-citing-decline-in-enrolments-amid-low-birth-rate-and-emigration-wave/>> [accessed 22 September 2024].

<sup>230</sup> Hong Kong Free Press, 'Over 27,000 Hong Kong students left city's schools last year amid emigration wave' \*Hong Kong Free Press\* (12 July 2023) <<https://hongkongfp.com/2023/07/12/over-27000-hong-kong-students-left-citys-schools-last-year-amid-emigration-wave/>> [accessed 22 September 2024].

<sup>231</sup> Hong Kong Free Press, 'As bell tolls for Hong Kong's Liberal Studies, teachers fear for critical thinking and open discussion', \*Hong Kong Free Press\* (Hong Kong, 30 April 2023) <<https://hongkongfp.com/2023/04/30/as-bell-tolls-for-hong-kongs-liberal-studies-teachers-fear-for-critical-thinking-and-open-discussion/>> [accessed 7 September 2024].

represents a broader trend of tightening control over education in Hong Kong, raising concerns about academic freedom and independent thinking in the city's schools.

*Flag-guard team at university to nurture students' sense of 'national belonging'*

In September 2023, the Chinese University of Hong Kong (“**CUHK**”) established a flag-guard team as part of its initiative to foster a sense of national identity and belonging among students. The team will raise the Chinese national flag and conduct flag-raising ceremonies on campus. This move is in line with broader efforts across Hong Kong's education sector to boost national education, following recent political shifts and the implementation of the National Security Law (“**NSL**”). The initiative has sparked discussions about its impact on academic freedom and institutional autonomy.<sup>232</sup>

*Government auditor finds CUHK's national security safeguards inadequate*

In November 2023, a government audit found that the CUHK lacked sufficient national security safeguards, particularly in its contracts and policies. The audit called for better implementation of national security measures, aligning the university's operations with the requirements of the Beijing-imposed NSL.<sup>233</sup>

*Hong Kong pupils to start national security education as young as age of 8*

In November 2023, the Hong Kong government announced that pupils as young as 8 or 9 of age will begin learning about the city's NSL as part of their education. The new curriculum, introduced by the Education Bureau, includes elements of national security education in subjects like humanities and social studies.<sup>234</sup>

*Taiwan election study tour cancelled by HKU*

In January 2024, the University of Hong Kong (“**HKU**”) has decided not to organize its usual Taiwan election study tour for students in 2024. In previous years, this tour allowed students to observe Taiwan's democratic process, meet political figures, and

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<sup>232</sup> Hong Kong Free Press, 'Chinese University of Hong Kong sets up flag-guard team to nurture students' "national belonging"', \*Hong Kong Free Press\* (5 September 2023)

<<https://hongkongfp.com/2023/09/05/chinese-university-of-hong-kong-sets-up-flag-guard-team-to-nurture-students-national-belonging/>> [accessed 22 September 2024].

<sup>233</sup> Hong Kong Free Press, 'Government auditor finds Chinese University of Hong Kong lacking in national security safeguards', \*Hong Kong Free Press\* (Hong Kong, 30 November 2023)

<<https://hongkongfp.com/2023/11/30/government-auditor-finds-chinese-university-of-hong-kong-lacking-in-national-security-safeguards/>> [accessed 7 September 2024].

<sup>234</sup> Hong Kong Free Press, 'Hong Kong pupils to start learning about city's National Security Law from age of 8 or 9', \*Hong Kong Free Press\* (Hong Kong, 23 November 2023)

<<https://hongkongfp.com/2023/11/23/hong-kong-pupils-to-start-learning-about-citys-national-security-law-from-age-of-8-or-9/>> [accessed 7 September 2024].

gain insights into electoral practices. The cancellation of the tour raises concerns about the shrinking space for academic and political engagement – Hong Kong students' exposure to democratic systems abroad, in particular – especially amidst tightening political control over Hong Kong.<sup>235</sup>

## **Governance & Structural Reform and Politics at Universities**

*1,500 signed petition opposing planned changes to CUHK council, with organiser citing threat to academic freedom*

In July 2023, around 1,500 people signed a petition opposing the proposed changes to the structure and formation of the CUHK Council, the managerial body of the university. The changes would reduce the proportion of seats held by staff and alumni, raising concerns that it could diminish the institution's academic freedom and autonomy. Organizers of the petition argue, by increasing the ratio of non-staff members, the reforms could exert greater political influence over university governance and threaten the independence of academic institutions in Hong Kong.<sup>236</sup>

*Hong Kong legislature passes controversial bill to restructure CUHK council*

In November, 2023, the Hong Kong legislature passed a controversial bill that restructured the CUHK Council. The new law reduces the size of the council from 55 to 34 members and increases the proportion of external members. Critics argue that the changes undermine academic freedom by weakening the influence of internal university members, including staff and alumni, allowing the government to tighten its grip on university governance.<sup>237</sup>

Proponents of the bill argue that the restructuring is necessary to improve governance and efficiency at CUHK. However, the move has been widely criticized by university stakeholders and pro-democracy advocates, who see it as part of the broader efforts to tighten political control over Hong Kong's academic institutions. The legislation is seen as another blow to Hong Kong's tradition of academic autonomy and freedom in the post-2020 political environment.

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<sup>235</sup> Hong Kong Free Press, 'Exclusive: No Taiwan election study tour this year for University of Hong Kong students', \*Hong Kong Free Press\* (Hong Kong, 12 January 2024) <<https://hongkongfp.com/2024/01/12/exclusive-no-taiwan-election-study-tour-this-year-for-university-of-hong-kong-students/>> [accessed 7 September 2024].

<sup>236</sup> Hong Kong Free Press, '1,500 sign petition opposing planned changes to CUHK council, with organiser citing threat to academic freedom' \*Hong Kong Free Press\* (29 July 2023) <<https://hongkongfp.com/2023/07/29/1500-sign-petition-opposing-planned-changes-to-cuhk-council-with-organiser-citing-threat-to-academic-freedom/>> [accessed 22 September 2024].

<sup>237</sup> Hong Kong Free Press, 'Hong Kong legislature passes controversial bill to restructure CUHK council', \*Hong Kong Free Press\* (Hong Kong, 2 November 2023) <<https://hongkongfp.com/2023/11/02/hong-kong-legislature-passes-controversial-bill-to-restructure-cuhk-council/>> [accessed 7 September 2024].

### *Hong Kong Baptist University proposes change in governing body that would enable greater external influence*

In December 2023, Hong Kong Baptist University (“**HKBU**”) proposed a significant change to its governing body. The restructuring plan involves reducing the number of internal members (such as faculty and students) and increasing the number of external members, which would grant more influence to individuals outside of the university. Critics argue that the change could undermine academic autonomy and strengthen government or external control over university affairs, similar to the concerns raised about other universities in Hong Kong.<sup>238</sup>

The move is all but familiar across different academic institutions in the city, which many see as efforts to tighten political control and diminish the role of internal university stakeholders in decision-making processes. These changes could have long-term impacts on academic freedom, transparency, and institutional independence in Hong Kong.

### *Embattled head of CUHK Rocky Tuan resigns*

In January 2024, Rocky Tuan, the embattled vice-chancellor and president of the CUHK, resigned. His resignation came just one week into his renewed three-year term. Tuan had faced increasing pressure due to controversies, including conflicts related to governance reforms at CUHK and political challenges stemming from the 2019 protests. His tenure had been marked by criticism over his handling of student protests and concerns about the university’s academic freedom.<sup>239</sup>

This unusual resignation highlights the growing tension between university leadership and the political climate of Hong Kong, fuelling concerns about diminishing institutional autonomy.

## **Crackdown on Pro-democracy Scholars and Students**

### *HKBU professor leaves Hong Kong after allegedly being reported for 2019 protest article*

In January 2023, a professor from HKBU left the city after learning that his university had allegedly contacted the police over an article he had written about the 2019 pro-

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<sup>238</sup> Hong Kong Free Press, 'Hong Kong Baptist University proposes change in governing body that would increase external influence', \*Hong Kong Free Press\* (Hong Kong, 19 December 2023) <<https://hongkongfp.com/2023/12/19/hong-kong-baptist-university-proposes-change-in-governing-body-that-would-increase-external-influence/>> [accessed 7 September 2024].

<sup>239</sup> Hong Kong Free Press, 'Breaking: Embattled head of Chinese University of Hong Kong Rocky Tuan resigns', \*Hong Kong Free Press\* (Hong Kong, 9 January 2024) <<https://hongkongfp.com/2024/01/09/breaking-embattled-head-of-chinese-university-of-hong-kong-rocky-tuan-resigns/>> [accessed 7 September 2024].

democracy protests. The professor's decision to leave highlights the increasing pressure on academics in Hong Kong, particularly those involved in political discourse or critiques of the government. This incident points to a growing concern over academic freedom in the city, where scholars face potential legal repercussions for their research or opinions on sensitive topics.<sup>240</sup>

*CUHK fires Tiananmen crackdown scholar after Hong Kong government rejects visa extension*

In October 2023, CUHK dismissed a scholar specializing in the 1989 Tiananmen Square crackdown after the scholar's visa extension was rejected. The individual had been researching and teaching about the Tiananmen protests, a politically sensitive topic in Hong Kong, especially under the Beijing-imposed National Security Law.<sup>241</sup>

This decision raises concerns over academic freedom, as scholars working on politically sensitive issues face increasing difficulties, particularly those critical of the Chinese government. The rejection of the visa and the subsequent dismissal echo with the Hong Kong government's grand scheme to control academic discourse and limit discussions that challenge official narratives, particularly those related to Tiananmen.

*Students taken aside at CUHK graduation ceremony after being warned against 'disruptive' behaviour*

In November 2023, at the CUHK graduation ceremony, several students were taken aside by university personnel after displaying "disruptive behaviours." This occurred after the university issued warnings against any actions that could disturb the ceremony. The incidents reportedly involved expressions of political dissent, a sensitive issue in Hong Kong following the implementation of the NSL. The university emphasized maintaining the ceremony's decorum and preventing disruptions, sparking concerns over free expression in academic settings.

*HKBU allegedly threatens to take revenge on student leaders*

In June 2023, it was reported that HKBU allegedly threatened to retaliate against student leaders, according to a leaked recording. The recording suggests university officials warned student union leaders that their actions could lead to "revenge" or

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<sup>240</sup> Hong Kong Free Press, 'Baptist University professor leaves Hong Kong after police allegedly contacted over 2019 protest article', \*Hong Kong Free Press\* (Hong Kong, 7 January 2023) <<https://hongkongfp.com/2023/01/07/baptist-university-professor-leaves-hong-kong-after-police-allegedly-contacted-over-2019-protest-article/>> [accessed 7 September 2024].

<sup>241</sup> Hong Kong Free Press, 'Chinese University fires Tiananmen crackdown scholar after Hong Kong govt rejects visa extension', \*Hong Kong Free Press\* (Hong Kong, 30 October 2023) <<https://hongkongfp.com/2023/10/30/chinese-university-fires-tiananmen-crackdown-scholar-after-hong-kong-govt-rejects-visa-extension/>> [accessed 7 September 2024].

consequences from the university management. This came amid rising tensions between students and the university over political activities and expressions, following the imposition of the NSL. The incident revealed that the autonomy of student bodies in Hong Kong universities is at risk.<sup>242</sup>

## **Others Events Impacting Academic Freedom**

### *Public libraries are purging books deemed 'politically sensitive'*

In May 2023, Hong Kong's public libraries were reported to be purging certain books from their collections, particularly those seen as politically sensitive or critical of the government. This move is largely influenced by the Beijing-imposed NSL, which has led to tighter control over media, education, and public discourse in Hong Kong. Many of the books removed touch on topics such as democracy, protests, and criticisms of the Chinese government.<sup>243</sup>

This act of purging books is an indicator of censorship and the shrinking space for open discussion and critical thinking in Hong Kong. It limits access to diverse viewpoints and diminishes freedom of expression, particularly in public institutions like libraries, which traditionally serve as a safe space for knowledge-sharing and intellectual freedom.

### *Public submitted 50 reports about suspected 'objectionable content' at public libraries*

As of October 2023, the HKSAR government confirmed receiving 50 reports concerning suspected objectionable content in public libraries. The reports focus on materials believed to violate the city's National Security Law, with citizens being encouraged to flag content for investigation. The reports were submitted under a new initiative allowing the public to report inappropriate materials, which has raised concerns about censorship and further restrictions on freedom of expression. The government is reportedly reviewing flagged content, stirring public fears about growing political control over public resources.<sup>244</sup>

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<sup>242</sup> Hong Kong Free Press, 'Students taken aside at CUHK graduation ceremony after uni warns against "disruptive behaviour"' \*Hong Kong Free Press\* (9 November 2023) <<https://hongkongfp.com/2023/11/09/students-taken-aside-at-cuhk-graduation-ceremony-after-uni-warns-against-disruptive-behaviour/>> [accessed 22 September 2024].

<sup>243</sup> Hong Kong Free Press, 'Not recommended reading: The books Hong Kong is purging from public libraries', \*Hong Kong Free Press\* (Hong Kong, 26 May 2023) <<https://hongkongfp.com/2023/05/26/not-recommended-reading-the-books-hong-kong-is-purging-from-public-libraries/>> [accessed 7 September 2024].

<sup>244</sup> Hong Kong Free Press, 'Exclusive: Hongkongers submit 50 reports about suspected "objectionable content" at public libraries' \*Hong Kong Free Press\* (19 October 2023) <<https://hongkongfp.com/2023/10/19/exclusive-hongkongers-submit-50-reports-about-suspected-objectionable-content-at-public-libraries/>> [accessed 22 September 2024].

## LEGAL ANALYSIS

The Hong Kong Rule of Law Monitor repeatedly emphasizes the fundamental role that academic freedom plays in upholding the rule of law. Article 137 of the Basic Law states that “educational institutions shall enjoy autonomy and academic freedom”. Furthermore, the *UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel* (1997), particularly Articles 17–21, sets the international standards of university autonomy.<sup>245</sup>

Academic freedom provides a critical platform for scholars, legal professionals, and students to study, critique, and propose reforms to existing laws in response to societal needs. It serves as a necessary check on government power. Moreover, universities act as incubators for future lawyers, judges, and policymakers. The erosion of academic freedom risks undermining the development of legal professionals with the intellectual independence and courage to challenge authority, defend judicial independence, and advocate for human rights.

### Recent Erosion of Academic Freedom in Hong Kong

In 2023, Hong Kong witnessed a comprehensive and systematic assault on academic freedom across various fronts. In our previous report, we highlighted the dissolution of all university student unions, a critical platform for free expression and debate. This year, additional concerns arose with the reform of university governance structures. Notably, there has been a significant increase in the proportion of government-appointed members on university councils. These reforms have shifted the balance of power, with government-appointed members now holding enough influence to shape key decisions within the universities.

In conjunction with these governance changes, a new national security audit was introduced – the first of its kind for local universities. This audit assesses the universities’ compliance with the National Security Law, marking a troubling precedent that further tightens government control over academic institutions and repurpose to serve political rather than educational or legal ends.

As a result of these changes, university management has adopted an increasingly authoritarian approach towards the staff and students. A heightened emphasis on national security education has been mandated, with universities imposing strict policies, such as flag-guarding duties and issuing warnings about students’ conduct at graduation ceremonies. In some cases, outspoken scholars have had their

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<sup>245</sup> UNESCO, Recommendation concerning the Status of Higher-Education Teaching Personnel (adopted 11 November 1997, 29th Session of the General Conference)  
<<https://unesdoc.unesco.org/ark:/48223/pf0000113234>> accessed [accessed 23 march 2025].

employment contracts terminated, signalling a clear shift towards self-censorship and fear among academic staff.

### **Expansion of NSL Influence to Lower Education Levels**

The impact of the NSL is not confined to universities. The urge to comply expanded to secondary schools, and even kindergartens, where liberal studies curriculum that champions critical thinking has been overhauled and national security elements have been incorporated. This top-down reform is creating an educational environment where critical thinking and independent analysis are stifled from a young age.

The shift in curriculum from liberal studies to national security-focused content goes against General Comment No. 13 (E/C.12/1999/10)<sup>246</sup> which states that education must be directed to the development of human personality and must be accessible, acceptable, and adaptable, and potentially violates Article 13 under the International Covenant on Economic, Social and Cultural Rights (right to education) and Article 19 of ICCPR (freedom of expression), which require that education promote critical reasoning and respect for human rights.

### **Further Restrictions on Intellectual Freedom in Public Spaces**

Beyond educational institutions, the government's crackdown on intellectual freedom has extended to public libraries, where an increasing number of books have been banned in 2023. The public has also been encouraged to report books containing "seditious" content, mirroring tactics historically employed by the Chinese Communist Party in the Cultural Revolution. This form of citizen surveillance undermines the very fabric of intellectual freedom in Hong Kong, eroding trust within the community and discouraging open discourse. This prohibition runs afoul of Article 27 of the Basic Law and Article 19 of the ICCPR.

## **CONCLUSION**

To conclude, the academic freedom in Hong Kong reflected fairly in the academic freedom index. Over the past five years, Hong Kong's academic freedom has sharply declined, especially after the implementation of the NSL in 2020. In the Academic Freedom Index, Hong Kong's score dropped from 0.44 in 2019 to 0.24 in 2023, a significant reduction that indicates a steady erosion of academic autonomy and

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<sup>246</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 13: The Right to Education (Art 13 of the Covenant), E/C.12/1999/10 (8 December 1999) <<https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999>> accessed [25 March 2025].

freedom.<sup>247</sup> This score puts Hong Kong far below global averages, which hover around 0.61, and places it in a similar position to countries like Russia and Vietnam, while still above mainland China, which scores near the bottom of the index.

This downward trend has had profound implications for Hong Kong's status as a global academic hub. It undermines the intellectual freedom needed to challenge policies, propose legal reforms, and cultivate the critical thinking skills necessary for a healthy rule of law.

## RECOMMENDATIONS

The Hong Kong Rule of Law Monitor:-

- 1) appeals to Hongkongers overseas to:
  - a) raise international awareness of the erosion of academic freedom in Hong Kong through media and public forums;
  - b) provide platforms, funding, scholarship, and support for exiled scholars and students to continue their work and research abroad; and
  - c) get organised, monitor and advocate for academic freedom in Hong Kong.
- 2) recommends that international organizations:
  - a) continuously monitor the academic environment and report violations to international bodies such as the Human Rights Council in the United Nations;
  - b) encourage and support financially studies, researches, or academic projects of Hong Kong;
  - c) fund initiatives that support academic freedom, such as scholarships for students or research grants for academics working in restrictive environments; and
  - d) build coalitions with international allies to promote academic freedom globally and push for international legal mechanisms that protect educational institutions from political interference.
- 3) recommends that foreign governments:
  - a) offer refuge, visas, or academic scholarships to Hong Kong teachers, scholars and students facing persecution;
  - b) create and maintain national archive of banned publications in Hong Kong for public access and encourage nomination thereof; and

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<sup>247</sup> Kinzelbach, K., V-Dem Institute, Scholars at Risk Network, & Global Public Policy Institute. Academic Freedom Index. 2022. Available at: <https://academic-freedom-index.net/> (12 Oct. 2024).

- c) facilitate teachers to re-qualify in overseas jurisdictions and take no consideration in any arrests, charges, convictions in relation to 2019 pro-democracy movement, NSL, Sedition Laws, SNSO.

## (C) CIVIL SOCIETY & PARTICIPATION

### INTRODUCTION

Civil society in Hong Kong had historically been a vibrant and dynamic force, encompassing a wide range of professional, political, and commercial bodies, including media titles, political parties, and traditional non-profit groups. However, the year of 2023 marked a significant turning point as the environment for civil society became increasingly repressive. This chapter highlights the challenges faced by civil society amid heightened government control and the broader implications for democratic participation and freedoms in Hong Kong.

### SUMMARY OF EVENTS

#### Political Party and Non-Profit Groups

##### *Dissolution of the Civic Party*

On 27 March 2024, pro-democracy Civic Party announced that its dissolution on 27 March 2024<sup>248</sup>. The Party was once the second largest pro-democracy political party in Hong Kong led by professionals from different disciplines. Several key members of the political party, including the former party leader Alvin Yeung, and ex-members Kwok Ka-ki, Jeremy Tam, and Lee Yue-shun, are among the 47 democrats accused of conspiring to commit subversion.

##### *Funding Cuts and Government Criteria*

The Hong Kong government announced significant funding cuts for 59 major NGOs starting from 2025, citing two consecutive years of budget deficits exceeding HK\$100 billion.<sup>249</sup> Funding for each affected group will face a 2% cut for 2025-26, to be followed by a further 3% reduction for 2026-27. Additionally, the Social Welfare Department introduced new criteria for assessing NGO funding applications, including whether the applicants had hosted activities supporting government policies.

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<sup>248</sup> Hong Kong Free Press, 'Hong Kong's Pro-democracy Civic Party Officially Folds after 18 Years' (28 March 2024) <<https://hongkongfp.com/2024/03/28/hong-kongs-pro-democracy-civic-party-officially-folds-after-18-years/>>, accessed 28 March 2025.

<sup>249</sup> Hong Kong Free Press, 'Hong Kong Gov't to Cut Funding for 59 Major NGOs after 2 Years of Billion-dollar Budget Deficits' (8 March 2024) <<https://hongkongfp.com/2024/03/08/hong-kong-govt-to-cut-funding-for-59-major-ngos-after-2-years-of-billion-dollar-budget-deficits/>>, accessed 28 March 2025.

This raised concerns about potential restrictions on NGOs' autonomy and their ability to operate independently.

### *Overseas Hong Kong Civil Society and Allegations of Links to the Chinese Communist Party*

In 2023, allegations emerged against the leadership of Wai Yin Society, a charity receiving UK government funding to support Hong Kong arrivals<sup>250</sup>. An open letter from 28 Hong Kong community groups accused the charity's chair of having "unusually close relationships" with the Chinese Communist Party ("CCP"). The concerns centred around the chair attending a CCP centenary event and the vice-chair's involvement with the Confucius Institute, which has faced criticism over its ties to the Chinese state.

### **Professional Bodies - Suppression of Legal and Media Professionals**

Hong Kong's justice secretary, Paul Lam SC, reported two high-profile pro-democracy lawyers, Dennis Kwok and Kevin Yam, to their professional bodies, accusing them of bringing the profession into disrepute<sup>251</sup>. This action is part of ongoing efforts by Hong Kong authorities to suppress dissent following the imposition of the NSL in 2020. The complaints will test the independence of the Hong Kong Bar Association and the Law Society of Hong Kong.

In September 2023, the head of Hong Kong's leading journalists' group was sentenced to five days in jail for obstructing police officers, underscoring the increasing pressure on professional bodies and their leaders in Hong Kong<sup>252</sup>.

### **Trade Unions**

#### *(i) Government Crackdown and Dissolution*

Between 2021 and 2023, over 200 trade unions were forced to dissolve due to the government's crackdown under the NSL, a stark increase compared to the mere 11 unions that dissolved between 2018 and 2020. By the end of 2023, at least 13 trade

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<sup>250</sup> Amy Walker, 'UK Hong Kong Scheme Funding Charity with Links to Chinese Communist Party' *The Guardian* (5 July 2023) <<https://www.theguardian.com/world/2023/jul/05/uk-hong-kong-scheme-funding-charity-links-chinese-communist-party>>, accessed 29 March 2025.

<sup>251</sup> Hong Kong Free Press, 'Hong Kong Justice Minister Files Complaints to Legal Bodies against 2 Wanted Democrats' (11 July 2023) <<https://hongkongfp.com/2023/07/11/hong-kong-justice-minister-files-complaints-to-legal-bodies-against-2-wanted-democrats/>>, accessed 29 March 2025.

<sup>252</sup> Reuters, 'Head of Hong Kong Journalists Group Sentenced to Jail for Obstructing Police' (25 September 2023) <<https://www.reuters.com/world/china/head-hong-kong-journalists-group-sentenced-jail-obstructing-police-2023-09-25/#:~:text=Ronson%20Chan%2C%20chairman%20of%20the,over%20his%20personal%20identity%20card.>>> accessed 29 March 2025.

union leaders had been arrested<sup>253</sup>. Among them, three were still incarcerated, six had been released after completing their sentences, three were out on bail, and one had charges withdrawn.

### *Decline in Union Membership*

The number of trade union members fell by 7.6%, from 934,000 to 863,000, between 2019 and 2023<sup>254</sup>. The average number of members per union also decreased significantly, from 1,019 to 597. However, there was a notable increase in the number of "mini unions" (unions with 50 or fewer members), which surged from 287 to 813 during the same period.

### *International Advocacy and Solidarity*

Organisations like UNISON and the International Trade Union Confederation ("ITUC") have shown solidarity with Hong Kong's independent trade unions<sup>255</sup>. They have condemned the prosecution of trade unionists and activists and have organised events to support the remaining independent unions.

## **Political Participation**

2023 saw the near-complete dismantling of Hong Kong's democratic processes and bodies through legal overhauls, mass arrests of opposition figures, and highly restrictive rules for elections that excluded pro-democracy candidates.

In July 2023, Hong Kong passed a law to eliminate most directly elected seats on district councils, the last major political bodies chosen by the public. This move was seen as shutting down further democratic challenges in the city after the 2019 protests.

In December 2023, Hong Kong held its first district council elections under the new "patriots only" rules imposed by Beijing<sup>256</sup>. The number of directly elected seats was drastically reduced from around 90% to only about 20%, with the rest appointed by the government and pro-Beijing bodies. No opposition candidates were able to obtain

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<sup>253</sup> Hong Kong Labour Rights Monitor, 'Report—Government's Ongoing Persecution Causes Heavy Blow to Hong Kong's Labour Rights in 2023' (19 March 2024) <<https://hklabourrights.org/research/reportgovernments-ongoing-persecution-causes-heavy-blow-to-hong-kongs-labour-rights-in-2023/>>, accessed 29 March 2025.

<sup>254</sup> Ibid.

<sup>255</sup> Hong Kong Labour Rights Monitor, 'Solidarity Reception to Stand with Hong Kong Independent Labour Movement' (1 March 2024) <<https://hklabourrights.org/global-solidarity/solidarity-reception-to-stand-with-hong-kong-independent-labour-movement/>>, accessed 29 March 2025.

<sup>256</sup> Associated Press, 'Hong Kong Holds First Council Elections under New Rules That Shut Out Pro-Democracy Candidates' (10 December 2023) <<https://apnews.com/article/hong-kong-district-council-elections-turnout-1c05f4769fa06a532079617622ed851d>>, accessed 29 March 2025.

the required nominations to run in the elections, resulting in a record low voter turnout of just 27.54%.

## LEGAL ANALYSIS

### Suppression of Non-Profit Groups

#### *Freedom of Association and Assembly*

The dissolution of the Civic Party, one of the leading pro-democracy professional parties, raises grave concerns under Article 22 of the ICCPR, which guarantees the right to freedom of association. The dissolution constituted a form of authority-induced dissolution and a further limitation of the political space for pro-democracy political groups.

The funding cuts announced for 59 major NGOs together with the introduction of new politically contingent criteria, e.g. alignment with Hong Kong government policies, for assessing NGO funding applications shows the intention of the Hong Kong government to exert ideological conformity. This further undermines the independence and pluralism of civil society. These actions contravene Article 22 of the ICCPR, which stipulates that any restrictions on the right to freedom of association must be necessary in a democratic society and proportionate to the aim pursued. The UN Special Rapporteur on Freedom of Association emphasized that funding should not be used as a tool to suppress dissenting voices<sup>257</sup>.

#### *Allegations of Links to the Chinese Communist Party*

The allegations against the Wai Yin Society's leadership highlight concerns about undue influence and lack of transparency in civil society organisations, and the insidious nature of the CCP's "long arm" under otherwise legitimate guises within overseas Hong Kong civil society. This exposes CCP's transnational tactics to suppress overseas dissents.

### Suppression of Professional Bodies - Independence of Lawyers and Journalists

The reporting of pro-democracy lawyers Dennis Kwok and Kevin Yam to their professional bodies by the justice secretary, and the sentencing of the head of Hong

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<sup>257</sup> UN Human Rights Council, 'Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai: Addendum – Best Practices That Promote and Protect the Rights to Freedom of Peaceful Assembly and of Association' (21 May 2012) UN Doc A/HRC/20/27/Add.2 <[https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27-Add2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27-Add2_en.pdf)>, accessed 29 March 2025.

Kong's leading journalists' group, exemplify the broader crackdown on dissent. These actions violate Article 19 of the ICCPR, which protects the right to freedom of expression, and Article 14, which guarantees the right to a fair trial and the independence of the judiciary. The UN Human Rights Committee, in General Comment No.37, para 49, has affirmed that restrictions "*should not be used to prohibit insults to the honour and reputation of officials or State organs.*"<sup>258</sup>

The independence of legal and media professionals is crucial for the functioning of a democratic society. The UN Basic Principles on the Role of Lawyers<sup>259</sup> and the UN Plan of Action on the Safety of Journalists and the Issue of Impunity<sup>260</sup> provide additional safeguards for these professionals, which appear to have been disregarded in Hong Kong.

### **Suppression of Trade Unions - Freedom of Association and Labour Rights**

The dissolution of over 200 trade unions and the arrests of union leaders under the NSL represent severe violations of Article 22 of the ICCPR and the International Labour Organization ("ILO") Conventions No. 87 (Freedom of Association and Protection of the Right to Organise) and No. 98 (Right to Organise and Collective Bargaining). These conventions have repeatedly affirmed the rights of workers to form and join trade unions and to engage in collective bargaining without interference. The decline in union membership and the rise of "mini unions" indicate a strategy of fragmentation and co-optation of the labour movement to weaken the collective voice of workers.

### **Dismantling of Democratic Processes - Right to Participate in Public Affairs**

The radical overhaul of district council and the restrictive rules for district council elections, which drastically reduced the number of directly elected seats and excluded pro-democracy candidates, is a systematic dismantling of participatory democracy in Hong Kong. This constitutes a contravention of Article 25 of the ICCPR which guarantees the right of every citizen to participate in public affairs, directly or through freely chosen representatives, and to have access to public service on general terms of equality. In para 21 of the General Comment No. 25, the UN Human Rights

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<sup>258</sup> UN Human Rights Committee, General Comment No 37: The Right of Peaceful Assembly (Article 21), UN Doc CCPR/C/GC/37 (17 September 2020)

<<https://documents.un.org/doc/undoc/gen/g20/232/15/pdf/g2023215.pdf?>>, accessed 29 March 2025.

<sup>259</sup> UN General Assembly, Basic Principles on the Role of Lawyers (adopted 7 September 1990, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana)

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>>, accessed 29 March 2025.

<sup>260</sup> United Nations, UN Plan of Action on the Safety of Journalists and the Issue of Impunity (2012)

<<https://www.ohchr.org/en/safety-of-journalists/un-plan-action-safety-journalists-and-issue-impunity>>, accessed 29 March 2025.

Committee has affirmed such right, “The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”<sup>261</sup>

## CONCLUSION

The state of civil society and participation in Hong Kong in 2023 reflects a broader trend of increasing government control and repression. Non-profit groups, professional bodies, trade unions, and political entities have all faced significant challenges, from funding cuts and operational restrictions to arrests and disbandment. The dismantling of democratic processes and the suppression of dissent has further eroded the space for civil society to operate independently and advocate for democratic values. These developments underscore the urgent need for international attention and support to protect the remaining civil society space in Hong Kong and uphold the principles of freedom and democracy.

## RECOMMENDATIONS

Accordingly, the Hong Kong Rule of Law Monitor:-

- 1) demands that the Hong Kong government:
  - a) restore the proportion of directly elected seats in district councils to pre-2023 levels and remove restrictive rules that exclude pro-democracy candidates;
  - b) reverse the funding cuts for NGOs and remove criteria that assess NGO funding applications based on their support for government policies;
  - c) respect, protect and fulfil the rights of legal and media professionals, as it is obligated to do so under the ICCPR; and
  - d) repeal laws and policies, particularly those under the NSL, Sedition Law and SNSO, that restrict the formation and operation of trade unions, and ensure the protection of union leaders and members.
- 2) recommends that the international community:
  - a) critically and continuously monitor the destination of funding intended for pro-democracy causes.

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<sup>261</sup> UN Human Rights Committee, General Comment No 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25), UN Doc CCPR/C/21/Rev.1/Add.7 (12 July 1996) <<https://www.refworld.org/legal/general/hrc/1996/en/28176>>, accessed 29 March 2025.

- 3) recommends that overseas Hongkongers:
  - a) take reference from the civil society structure after the Umbrella Movement in 2014 and form overseas advocacy groups of professionals from different industries to monitor human rights and promote democracy in Hong Kong.

# APPENDIX

## STATEMENT IN SUPPORT OF HONG KONG LAWYERS DENNIS KWOK AND KEVIN YAM

1. The Hong Kong Rule of Law Monitor stands with Dennis Kwok and Kevin Yam, both Hong Kong lawyers named as fugitives<sup>262</sup> by the Hong Kong national security police on 3 July 2023. We condemn the campaign of harassment that the Hong Kong government, the Hong Kong Law Society (“**HKLS**”) and the Hong Kong Bar Association (“**HKBA**”) have brought against them and their families.
2. Both Kwok and Yam have been steadfast advocates for the rule of law in Hong Kong, in vast contrast to the HKLS (now led by Chan Chak Ming), HKBA (now led by Victor Dawes), the Secretary for Justice, and the current representative for the legal sector in the Legislative Council.
3. Dennis Kwok was the elected representative for the legal sector in the Legislative Council. He was elected to this position with 56% of the vote in 2012<sup>263</sup>, and re-elected with 69% of the vote<sup>264</sup> in 2016. The government disqualified<sup>265</sup> him from running in 2020 due to his political stance. He was the awardee of the 5<sup>th</sup> Commonwealth Law Conference Rule of Law Award 2021<sup>266</sup>, and recipient of the New York State Bar Association International Section’s Award for Distinction in International Law and Affairs<sup>267</sup>.
4. Kevin Yam was one of the founding convenors of the Progressive Lawyers Group, and former member of the HKLS constitutional affairs and human rights committee. In 2014, he campaigned on a non-confidence vote against then-HKLS president Ambrose Lam, who had made comments praising the Chinese Communist Party and supporting Beijing’s White Paper which mandated that judges should be regarded as part of the government’s administrators. Following changes to election rules, in 2021 Lam became the

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262 <https://hongkongfp.com/2023/07/03/breaking-hong-kong-national-security-police-issue-hk1-million-bounty-each-for-8-self-exiled-activists/>

263 <https://www.info.gov.hk/gia/general/201209/10/P201209100352.htm>

264 <https://www.info.gov.hk/gia/general/201609/05/P2016090500907.htm>

265 <https://www.aljazeera.com/news/2020/11/11/hong-kong-disqualifies-four-opposition-legislators>

266 <https://www.commonwealthlawyers.com/cia/5th-commonwealth-law-conference-rule-of-law-award-2021-winner-announced/>

267 <https://nysba.org/former-hong-kong-legislator-to-receive-award-for-distinction-in-international-law/>

representative<sup>268</sup> for the legal sector in the Legislative Council with less than half of the votes that Dennis Kwok garnered in the previous election.

5. The police allegations<sup>269</sup> made against Kwok and Yam are all based on their peaceful advocacy for Hong Kong. Such speech is protected by law, including the International Covenant on Civil and Political Rights, and Hong Kong's own Basic Law and Bill of Rights. By criminalizing Kwok's and Yam's peaceful speech, the Hong Kong authorities are in breach of their own legal obligations to protect fundamental rights in Hong Kong.
6. In the wake of the police announcement, the unelected Secretary for Justice Paul Lam lodged complaints<sup>270</sup> at the HKBA against Kwok, and at the HKLS against Yam. Both the HKBA<sup>271</sup> and HKLS<sup>272</sup> have instituted investigations, and removed<sup>273</sup> them from their list of members.
7. On 20 July 2023, Kwok's family members were detained<sup>274</sup> by the national security police for questioning, as were the family members of other exiled activists. We find this an overt act of intimidation completely unrelated to investigations of any purported crime.
8. Any institutional protection of fundamental rights in Hong Kong offered by the legal system has been dismantled at the hands of the government, and yet the HKLS and HKBA are bending over backwards to keep up pretences. We call upon legal professional bodies around the world to voice their support for Kwok and Yam and the beleaguered Hong Kong lawyers that they represent, as the International Bar Association's Human Rights Institute<sup>275</sup>, the American Bar Association<sup>276</sup>, the Law Council of Australia<sup>277</sup>, the New York City Bar

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268 [https://www.elections.gov.hk/legco2021/chi/rs\\_fc\\_b.html](https://www.elections.gov.hk/legco2021/chi/rs_fc_b.html)

269 [https://www.police.gov.hk/ppp\\_en/06\\_appeals\\_public/nsc/index.html](https://www.police.gov.hk/ppp_en/06_appeals_public/nsc/index.html)

270 <https://www.info.gov.hk/gia/general/202307/10/P2023071000793.htm>

271 <https://www.scmp.com/news/hong-kong/politics/article/3226767/hong-kongs-bar-association-and-law-society-acknowledge-complaints-against-members-police-wanted-list>

272 <https://hongkongfp.com/2023/07/06/hong-kong-lawyers-group-to-investigate-allegations-against-member-among-8-activists-wanted-by-national-security-police/>

273 <https://hongkongfp.com/2023/07/11/hong-kong-justice-minister-files-complaints-to-legal-bodies-against-2-wanted-democrats/>

274 <https://hongkongfp.com/2023/07/20/national-security-police-take-away-family-members-of-wanted-hong-kong-activists-for-questioning/>

275 <https://www.ibanet.org/Hong-Kong-IBAHRI-expresses-concern-over-arrest-warrants-for-overseas-pro-democracy-figures>

276 <https://www.americanbar.org/news/abanews/aba-news-archives/2023/07/statement-of-aba-president-re-hong-kong-lawyers/>

277 <https://www.lawcouncil.au/media/media-releases/law-council-concern-regarding-arrest-warrants-issued-for-hong-kong-pro-democracy-activists>

Association<sup>278</sup>, the Commonwealth Lawyers Association<sup>279</sup>, and LAWASIA<sup>280</sup> have done.

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278 <https://www.nycbar.org/press-releases/eighth-anniversary-of-the-chinese-governments-709-crackdown-on-lawyers-and-human-rights-advocates/>

279 <https://www.commonwealthlawyers.com/statement/statement-concerning-hong-kong/>

280 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://lawasia.asn.au/sites/default/files/2023-08/Statement%20-%20Hong%20Kong%20-%20July%202023.pdf