



Hong Kong Watch submission to Joint Standing Committee on Treaties regarding ‘Matters relating to two treaties with Hong Kong’

Background: The National Security Law

Hong Kong Watch have campaigned against the National Security Law since it was first announced by the Chinese Communist Party National People’s Congress on 22nd May 2020.

The international legal community including the Hong Kong Bar Association, the Bar Human Rights Committee of England and Wales, and the President of the UK Supreme Court offered clear advice that the unilateral imposition of national security legislation by Beijing is a direct breach of China’s obligations under the Sino-British Joint Declaration and undermines the autonomy of Hong Kong under the ‘One Country, Two Systems’ model.

The scope of the National Security Law, which covers vague and subjective terms such as ‘succession’, ‘subversion’, and ‘collusion with foreign forces’, and its draconian sentencing guidelines, with each crime risking a sentence of ten years to life in prison, is a direct breach of Hong Kong’s commitments under the International Covenant on Civil and Political Rights (ICCPR) and undermines the city’s rule of law.

Since coming into force, the National Security Law has already been used to suppress freedom of expression and assembly both on the streets of Hong Kong and online. Individuals in Hong Kong have been arrested for the simple act of posting a statement online or holding a blank piece of paper in a shopping mall. This demonstrates the arbitrary and repressive nature of this new law and its clear intent to silence dissent.

Dozens of pro-democracy activists in Hong Kong have been arrested under the National Security Law, including the owner of the largest pro-democracy newspaper Jimmy Lai, journalists at the Apple Daily newspaper, and the pro-democracy activist and former Demosisto Party spokesperson Agnes Chow.

Record numbers of Hong Kongers continue to be arrested outside of the National Security Law for “unlawful assemblies” under Public Order Ordinances which have long been criticised by the United Nations Human Rights Council as a clear breach of human rights. Since June 2019, over 10,000 Hong Kongers have been arrested.¹

Aside from targeting street protests and online activism, the law has been used as a tool to disqualify pro-democracy candidates, to target local pro-democracy news outlets, and undermine academic freedom through the introduction of national security education and new guidelines to censor expression and encourage teachers and students to monitor each other.²

The law has had a chilling effect on freedom of expression both in Hong Kong and abroad with individuals remaining uncertain as to how broadly the law will be applied and whether any criticism of the Hong Kong Government or the Chinese Communist Party will now be deemed a breach of the National Security Law.

¹ <https://www.hongkongwatch.org/protest-prosecution>

² <https://www.hongkongwatch.org/all-posts/2020/8/12/briefing-developments-in-hong-kong-under-the-national-security-law>



Western Governments have updated travel advice to Hong Kong warning citizens to reconsider travelling to the territory and highlighting the risk of ‘arbitrary detention’ under the National Security Law.³

The Case for Suspension of Extradition Treaties and Law Enforcement Cooperation with Hong Kong

Alongside the Inter-Parliamentary Alliance on China, Hong Kong Watch has been at the forefront of campaigning for countries to suspend their extradition treaties and law enforcement cooperation with Hong Kong.⁴

This campaign has been motivated by concerns that the Hong Kong authorities could use pre-existing agreements to request the assistance of local law enforcement in extraditing individuals to stand trial under the National Security Law in Hong Kong and potentially mainland China.

We believe the National Security Law’s claim to worldwide criminal jurisdiction over overseas activism, its punitive sentencing, and its creation of special bodies and hand-picked judges to prosecute this new array of draconian, vague and broadly-defined crimes, throws into question the independence of Hong Kong’s judiciary, and the state of the rule of law.

Since the National Security Law came into force on 30th June, our concerns over the application of the law has been divided into three specific areas covering:

- The law’s claims to overseas criminal jurisdiction;
- the law’s retrospective nature;
- and the continued risk that Hong Kongers can be extradited under the National Security Law to stand trial in mainland China.

Claim to Overseas Criminal Jurisdiction

The National Security Law’s claims to overseas criminal jurisdiction is of particular concern as it allows the law to be applied to Hong Kongers and foreign nationals residing outside of the territory. One Senior UK judge described this particular claim as “terrifying” and suggested it would be a factor in muffling criticism of the law from prominent members of the legal community wishing to travel to the city. This argument was reinforced by the recent resignation of the Australian Judge James Spigelman from the Hong Kong Court of Final Appeal, which was reported to have been related to the ‘contents of the national security laws.’⁵

This puts Hong Kongers and foreign nationals living in countries with extradition treaties and law enforcement cooperation agreements with the Hong Kong Government at particular risk of being extradited and prosecuted under the draconian law.

The Hong Kong Government has already demonstrated its willingness to use the law’s claims to overseas criminal jurisdiction releasing a ‘wanted list’ of six Hong Kongers abroad who are considered to have violated the new law, including exiled Hong Kong activists Nathan Law, Ray Wong, Wayne Chan, Lau Hong, Samuel Chu, and the former UK consulate worker Simon Cheng who

³ <https://www.theguardian.com/uk-news/2020/sep/15/us-and-uk-update-travel-advice-to-china-and-hong-kong>

⁴ <https://www.hongkongwatch.org/extradition>

⁵ <https://www.theguardian.com/world/2020/sep/18/australian-judge-steps-down-from-hong-kong-court-over-new-national-security-law>

was tortured by the Chinese authorities in 2019. In the cases of Simon Cheng, Ray Wong, and Samuel Chu, all three hold foreign nationalities.⁶

Retrospective Nature

In the last few months Hong Kong Watch has documented substantial evidence of the law being used retrospectively to apply to actions, comments, and social media posts made prior to the law coming into force.

Take just a few examples of recent individuals accused of breaching the law:

In the case of Jimmy Lai, he was arrested under the National Security Law and accused of ‘colluding with foreign forces’ in the form of the US Government. Authorities cited him meeting US politicians last year to advocate for support for the Hong Kong pro-democracy movement as evidence of collusion.⁷

In the case of Agnes Chow, she was arrested under the National Security Law and accused of ‘colluding with foreign forces’. However, Chow’s political party Demosisto had disbanded, she had deleted her twitter account, and stopped political campaigning before the law came into force.⁸

In the case of Ray Wong, who claimed asylum in Germany in 2018, the alleged evidence that he advocated ‘secession’ in a foreign newspaper interview and broke the new law predates it coming into force on 30 June 2020.⁹

Onward Extradition and Trial in Mainland China

The Hong Kong Government has repeatedly denied that the law would be used as a backdoor to allow the extradition of Hong Kongers to the mainland to stand trial for violating the National Security Law.

Despite these denials, Chinese officials from Beijing have made it clear that the supremacy of the National Security Law over all other laws in the territory means that in ‘special circumstances’ and ‘specific cases’ the Chinese state reserves the right to extradite Hong Kongers to stand trial in the mainland.¹⁰

On 25th August, Chinese authorities arrested twelve Hong Kong pro-democracy activists after intercepting a boat in the South China Sea heading to Taiwan. The activists in question were fleeing Hong Kong and heading to Taiwan to claim political asylum following being charged under the National Security Law. Rather than returning the individuals to stand trial in Hong Kong, the Chinese authorities have detained the activists in the mainland city of Shenzhen for over two weeks and have refused to allow them access to legal representation organised by their families.¹¹

⁶ <https://www.bbc.com/news/world-asia-china-53616583>

⁷ <https://edition.cnn.com/2020/08/14/media/jimmy-lai-interview-hnk-intl/index.html>

⁸ <https://www.theguardian.com/world/2020/aug/12/agnes-chow-the-hong-kong-activist-who-gave-up-uk-citizenship-to-fight-for-democracy>

⁹ https://twitter.com/Ray_WongHKL/status/1289240839445569536?s=20

¹⁰ <https://www.theguardian.com/world/2020/jun/18/grave-cause-for-concern-hongkongers-could-be-extradited-to-china-under-new-security-law>

¹¹ <https://www.hongkongwatch.org/all-posts/2020/9/14/hong-kong-watch-statement-the-12-hong-kong-pro-democracy-activists-currently-detained-in-mainland-china-deserve-legal-representation-and-should-be-returned-to-hong-kong-for-trial>



The case of the twelve detained activists has reignited concerns that the Hong Kong Government has abdicated all authority and responsibility regarding the National Security Law, allowing the law to be used as a backdoor to extraditing Hong Kongers to stand trial in the mainland where they face being held indefinitely.

Summary

The continuation of Australia's extradition treaty and law enforcement cooperation with Hong Kong at a time when Hong Kongers face arbitrary arrest and the largest crackdown on their rights since the territory returned to Chinese Communist Party control, would undermine Australia's commitment to human rights, the rule of law, and the maintenance of an international rules-based system.

Since the law has come into force it has been applied retrospectively, on foreign nationals living overseas, and has allowed for Hong Kongers to be detained in mainland China. Its claims to supremacy over Hong Kong's Basic Law and an independent judiciary have greatly reduced the integrity of the rule of law in Hong Kong and the ability for those arrested under the National Security Law to receive due process and a fair trial.

Hong Kong Watch welcomes the steps the Australian Government has taken to suspend its extradition treaty and law enforcement cooperation with Hong Kong, to limit the export of defence equipment and sensitive technology, and to allow Hong Kongers studying in Australia to work and live as a pathway to citizenship after they graduate.

We urge the Joint Standing Committee on Treaties to support the suspension of Australia's extradition treaty with Hong Kong and law enforcement cooperation on the clear grounds of the deteriorating human rights situation, the erosion of the rule of law, and the suppression of pro-democracy voices under the National Security Law.