

HONG KONG'S NATIONAL SECURITY LAW

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THREE FUNDAMENTAL legal documents define today's Hong Kong. The first is the Sino-British Joint Declaration of 1984. The second is the Basic Law (1990), Hong Kong's post-1997 constitution. And, as of July 2020, there is the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region 中華人民共和國香港特別行政區維護國家安全法 (National Security Law).

The National Security Law creates four new criminal offences: secession, subversion, terrorism, and colluding with foreign forces. Each of these offences is broadly defined and carries a sentence of up to life imprisonment.

In addition, the law covers anyone inciting, aiding or abetting commission of the above offences.

Just like the first two documents, the National Security Law was drafted not by Hong Kong's own legislature but by an external body, the National People's Congress Standing Committee (NPCSC) of the People's Republic of China (PRC), and imposed on Hong Kong. The drafting was conducted in secret. The full text was only revealed to the Hong Kong people — including, by all accounts, Chief Executive Carrie Lam herself and other members of her government—at the moment it came into force, at eleven o'clock at night, one hour before the twenty-third anniversary of Hong Kong's handover from Britain to China.

The law wrought a dramatic overnight change in Hong Kong. In the hours leading up to that moment, activists in the territory's pro-democracy protest movement raced to delete incriminating social media posts or to delete their accounts entirely. Protesters purged the contents of their chat groups and shut them down. Pro-democracy political parties (including the leading youth party Demosistō) and activist non-governmental organisations (NGOs) (such as the political research group Network DIPLO) announced that they would dissolve. 'Yellow economic circle' (pro-democracy) cafés and restaurants raced to tear down their Lennon Walls — the protest artwork and colourful Post-It notes bearing pro-democracy and anti-government messages ripped away, leaving stark bare walls.

If some thought this was an overreaction, believing that — as the government had promised — the law would target only a 'very small minority' of extremists and fundamental freedoms would be maintained, the worst fears of others were quickly confirmed the next day. At a protest on the morning of 1 July, Hong Kong police unfurled a new warning banner:

You are displaying flags or banners/chanting slogans/or conducting yourselves with an intent such as secession or subversion, which may constitute offences under the HKSAR National Security Law. You may be arrested and prosecuted.

The first arrests under the new law quickly followed — of a man found to be in possession of a flag bearing the slogan 'Hong Kong independence' and of two young women handing out stickers with various protest slogans. That same day, a young man flying a flag from the back of his motorcycle bearing the popular 2019 protest slogan 'Liberate Hong Kong, Revolution of Our Times' 光復香港，時代革命, who appeared to have inadvertently crashed into a line of police officers blocking the road, was arrested and later charged with terrorism.

In the weeks and months that followed, the Hong Kong government cited the law as the basis for a variety of measures that made seismic changes to Hong Kong. Public libraries pulled 'suspect' books from their shelves; the protest slogan 'Liberate Hong Kong, Revolution of Our Times!' was banned; and primary elections



‘Disregard and threats would never keep us silent’ (left); ‘Liberate Hong Kong, Revolution of Our Times!’ (right)
Source: Studio Incendo, Flickr

held by the pan-democrat camp were alleged to be illegal and amounted to subversion. Further arrests were made under the new law, including of teenagers accused of promoting secession on their Facebook pages. A number of Hong Kong dissidents, including former legislator and Demosistō founder Nathan Law 羅冠聰 and former Democratic Party legislator Ted Hui Chi-fung 許智峯, went into exile overseas. The mainland Coast Guard apprehended a dozen young Hong Kongers attempting to flee to Taiwan by boat and they disappeared into mainland custody. They were ultimately tried in a mainland court and given jail sentences of up to three years for illegal border crossing.

Close examination of the law’s definitions makes it clear that it specifically targets dissent. It turns ordinary criminal acts (criminal damage, arson, assault) into terrorism if committed during a protest; civil disobedience (blocking roads or government buildings) into criminal subversion; political expression (including chanting slogans such as ‘Free Hong Kong!’ or publishing material that promotes self-determination) into acts inciting secession; and expressions of support for protesters (donating funds and equipment or transporting protesters to and from protests) into aiding and abetting terrorism.



An advert on a Hong Kong public light bus reads 'National Security Law: Preserve One Country, Two Systems, Restore Stability'

Source: Ginyyf 233, Wikimedia

The law also has extraterritorial effect: it applies to any breach of its provisions by anyone, anywhere in the world. This has prompted concern among overseas activists and scholars critical of the Chinese Communist Party (CCP) worldwide that, not only is it no longer safe for them to set foot in Hong Kong, but also authorities may use the law to issue international warrants for their arrest. Hong Kong citizens overseas may worry that they risk a fate similar to that of the Causeway Bay Books booksellers, at least one of whom was kidnapped in 2015 and forcibly repatriated to mainland China to face trial. This motivated

many Western nations, including Australia, to suspend their extradition agreements with Hong Kong.

But much more than just creating four new criminal offences, the National Security Law implements structural institutional change in Hong Kong that is both deep and fundamental. The law established a new Hong Kong government agency, the Committee for Safeguarding National Security 維護國家安全委員會, which comprises the chief executive, key ministers and representatives from the uniformed services (police, immigration, and customs and excise). This will be the single most powerful agency in the Hong Kong government,

with power to formulate policy and intervene in the work of all other arms of government, the education system and broader society.

The law empowers Beijing to appoint a national security advisor to the committee, marking the first time that a Beijing-appointed commissar is inserted directly into the ranks of a Hong Kong government agency. Luo Huining 駱惠寧, the director of Hong Kong's Central Government Liaison Office 中央人民政府駐香港特別行政區聯絡辦公室, which makes him Beijing's top representative in Hong Kong, was appointed the inaugural national security advisor, effectively making him the 'party secretary' for Hong Kong. The National Security Law thus effectively replicates in Hong Kong the same party-government structure that exists throughout the rest of China, integrating Hong Kong into the mainland's Party-State.

The law makes deep interventions into other branches of the Hong Kong government, including creating a new special prosecutor's office for national security offences in the Department of Justice and a department for national security in the Hong Kong Police Force. The National Security Law effectively sets up a parallel judiciary, requiring

national security cases to be heard only by judges drawn from a panel hand-picked by the chief executive, an arrangement that punches a hole in Hong Kong's long tradition of judicial independence and the separation of powers, which are fundamental to the common law system — a legacy of the British colonial era.

Most alarmingly, the law empowers mainland government departments with responsibility for national security to establish a presence in Hong Kong through the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region 中央人民政府駐香港特別行政區維護國家安全公署. This opens the door for PRC Ministry of State Security agents — China's secret police — to operate legally in Hong Kong, creating a parallel (and non-accountable) system alongside Hong Kong's police and courts for investigating and punishing national security-related offences.

Hong Kong's much-vaunted rule of law, which has always been an important part of its appeal to international business and finance, is seriously undermined by the National Security Law. The law even removes

the power of final adjudication from Hong Kong courts: certain serious national security cases will be tried on the mainland. Ironically, the protest movement the law is designed to crush began last year with opposition to an extradition law. The power to interpret the law is also taken out of the hands of Hong Kong courts and vested in the NPCSC; it cannot be challenged on constitutional or human rights grounds. Finally, the National Security Law is all-powerful: in the case of discrepancies between it and any Hong Kong law (the Bill of Rights Ordinance, for example), it overrules Hong Kong law.

Chris Patten, the last British governor of Hong Kong, famously described Hong Kong's political system as one of 'liberty without democracy'. Hong Kong existed in a state of disequilibrium, enjoying a high level of rights and freedoms but suffering a low level of representative democracy. Hong Kong's various protest movements have sought to right this imbalance by increasing the level of democracy. They have

always faced competing attempts by the government to address that disequilibrium by reducing their rights and freedoms. The National Security Law, it would seem, is the ultimate attempt to do just that.

There has long existed a particular idea of Hong Kong as a bastion of freedom in Asia or, in the common Chinese expression, a place to *bi Qin* 避秦 ('flee the Qin'), meaning to be safe from tyranny. Hong Kong had been a space where people could publish freely, make whatever artwork and screen whatever movies they desired, criticise governments near and far, and organise and fundraise for any cause. In Hong Kong, Chinese voices could speak freely and global voices could freely address Chinese audiences beyond the constraints present elsewhere in China. With the National Security Law, that unique space now seems lost. The loss will be felt not just by the Hong Kong people, but also by China and the world.

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