

6

CRACKDOWN

THE NATIONAL SECURITY LAW

On June 30, 2020, Beijing introduced the national security law for ruling Hong Kong. During the first couple months after its promulgation, any claim that it would be narrowly applied, as stated by both Beijing and Hong Kong officials, was quickly dispensed with. All hope of central government restraint has gone out the window, as reports of Beijing's official involvement or support accompany a wide range of the law's enforcement efforts by the newly established special national security law unit in the police department. A textbook authoritarian crackdown of the type Asian people too often have seen in other parts of the region has now come to Hong Kong.

No time was lost in deploying the national security law. In July alone, the organizers of an opposition political primary—in which 610,000 voters participated—were accused of violating the national security law;¹ twelve opposition candidates for the then September 2020 Legislative Council election were disqualified from running, in some cases merely for not supporting the national security law;² ten protesters in the July 1 protest were arrested under the national security law (along with 360 other protesters for other public order offenses);³ one protester was charged with terrorism under the new law; four youngsters, ages sixteen to twenty-one, were arrested for allegedly supporting a new pro-independence organization;⁴ and there were reports of warrants against six Hong Kong supporters overseas. All of these cases were specifically connected to the national security law.

The crackdown did not stop there. Other actions beyond the national security law were used to silence or intimidate the opposition, including the firing of Professor Benny Tai by the governing university council at the University of Hong Kong, and Chief Executive Carrie Lam declaring that the September Legislative Council election would be delayed for a year.⁵ The latter decision was allegedly due

to the pandemic,⁶ though the opposition generally believes the election was put off due to the prospect of government supporters losing.

Then with August came new arrests: Jimmy Lai, the publisher of the *Apple Daily*, was arrested, along with his two sons and four executives of his company. They were accused of sedition, collusion, and fraud, as were several younger activists, including Agnes Chow, who had previously been barred from running for office. The initial allegations against all the defendants are vague but appear to involve nothing more than placing Hong Kong support ads and supporting a group abroad who were advocating to stand with Hong Kong—an entirely legal exercise of free speech abroad.⁷ Of course, Lai, who had met last year with US Vice President Mike Pence and Secretary of State Mike Pompeo, was already a target of Beijing's wrath.

The Hong Kong police did not stop at simply arresting Lai and his colleagues. They sent 200 officers into the *Apple Daily* newsroom and management offices, searched through reporter and management desks alike, and carted away over thirty crates of documents—all of this captured live on Facebook by *Apple Daily* reporters.⁸ The trove was no doubt a fishing expedition to justify more charges.

Hong Kong's people signaled their contempt for this brazen display of power the next morning, buying 550,000 copies of the *Apple Daily* newspaper, an eightfold increase in its normal circulation. Supporters were even buying piles of the paper to leave on the streets in little stacks for others to take away for free. A surge in investment in Next Digital, the holding company of the *Apple Daily*, led to an 1,100 percent increase in its stock value, though this was later targeted by a police investigation.⁹

After Jimmy Lai's arrest, the concern that judges would be put under mainland official pressure to convict in national security law cases was immediately confirmed. While Hong Kong officials identified Mr. Lai as a "suspect," the Chinese Foreign Ministry spokesman in Hong Kong identified him as an "anti-China troublemaker" who put "the long-term stability of Hong Kong in jeopardy."¹⁰

On August 23rd mainland authorities became directly involved, by arresting twelve young Hong Kong protesters at sea, as they tried to flee Hong Kong for Taiwan. Problems for mainland lawyers hired by the arrestees' families in getting access to the twelve under tight mainland security has highlighted the very different justice system they now face—a fact targeted for criticism by US Secretary of State Mike Pompeo.¹¹

These actions have spread fear and loathing well beyond the narrow application of the national security law officials had promised.

The national security law effectively amends the Basic Law. Both the Basic Law and the national security law are PRC national laws of otherwise equal status; but

under Articles 83 and 85 of the PRC Legislation Law, a national law that is more specific and has been more recently adopted, is superior to a more general, earlier, national law.¹² If this rule is applied, the national security law would presumably have a higher status than even the Hong Kong Basic Law,¹³ prevailing over the Basic Law in any clause where conflict exists. This status is reinforced by Article 62 of the national security law, which provides it with priority over all locally enacted laws—a characteristic it shares with the Basic Law.

My colleague at the University of Hong Kong, Professor Hualing Fu, has argued, as I understand it, that “basic laws” in China have a special status such that conflicting guarantees in the Basic Law should still survive the national security law.¹⁴ We should hope that this wise advice from such an eminent China law scholar will be taken up. But it is hard to see how this would be achieved, given the lack of power in the local courts to review the national security law for compliance with the Basic Law. At best, the local court might offer a human rights friendly interpretation of national security law requirements—as any lawyer representing a client will be bound to urge—subject to the high risk of being overruled by the NPCSC. With the pressure the courts are expected to face, this avenue does not seem promising.

In spite of these daunting challenges, any defense lawyer would be bound to argue that the national security law cannot override the Basic Law, as the Basic Law is the stipulated requirement of an international treaty, the Sino-British Joint Declaration. Furthermore, Basic Law Article 159 provides specific requirements as to the amendment of the Basic Law. The enactment of the national security law was not in compliance with those procedures. Basic Law Article 11 further provides that the systems applied in Hong Kong, including protection of human rights and legislative and executive processes shall be based on the Basic Law. Under Article 18, national laws are not to be applied in areas related to autonomy, as previously discussed. So there is an argument that when the courts are confronted with prosecutions or other administrative cases under the national security law that they should give priority to Basic Law requirements. Whether judges or prosecutorial officials will have the courage to push back against Basic Law violations in the face of conflicting national security law requirements is doubtful, given the limitations of NPCSC interpretive override and the other pressures put on the courts and law enforcement officials under the new law.

In other words, while the national security law is stand-alone national legislation, these various constraints will likely beef up its status to equality with, and sometimes, where conflict exists, superiority over, the Basic Law in providing the effective constitution of Hong Kong. Areas where conflicts might arise especially include the human rights and due process guarantees in the Basic Law, which are undermined by the procedural limitations of the new national security law.

It is important to understand in some detail both how this new model works and the risk it poses to Hong Kong's autonomy. To do this, we need to think about the ways that Hong Kong's autonomy, rule of law, and certain freedoms are directly impacted by the new legislation.

The national security law seeks to “prevent, stop and punish” any “act or activity” related to “secession,” “subversion,” “terrorist activities,” and “collusion with foreign and overseas forces.” While Article 4 of the law promises to uphold the human rights guarantees in the Basic Law, including the international human rights covenants, it provides no effective mechanism to achieve that purpose.

On the contrary, the law is profoundly distrustful of Hong Kong's institutions and puts Beijing officials on the ground locally to oversee or override nearly all local mechanisms of constraint. There is mainland oversight or direct supervision in one form or another over executive officials, the police, prosecutorial authorities, and the courts. Such direct mainland control undercuts both autonomy and the rule of law. It reflects a textbook case of how overreaching national security laws can undermine the very foundations of an open society. The conflicts with the original commitments in the Basic Law are numerous and profound, effectively transforming the Hong Kong SAR from a territory with a promised “high degree of autonomy” and a liberal constitutional order to an insular part of a police state. The following analysis breaks down prominent areas of concern.

The Path to Enactment Ignored Important Legal Restraints

The enactment of the national security law ignored the firewall provisions contained in Articles 18 and 22 of the Basic Law. These Basic Law firewall provisions aimed to better secure local autonomy by blocking, with limited exception, the application of mainland laws and the interference of mainland departments under the central government. Article 18 of the Basic Law provides that national laws do not apply in Hong Kong unless added to Annex III of the Basic Law. In this respect, Article 18 states, “Laws listed in Annex III . . . shall be confined to those relating to defense and foreign affairs as well as other matters outside the autonomy of the Region as specified by this law.” Many of Beijing's concerns addressed in the new law relate more to public order than to national security; but Article 14 of the Basic Law makes clear the “Hong Kong Special Administrative Region (SAR) shall be responsible for the maintenance of public order in the region.”

Digging deeper, the national security law directly undercuts the required local enactment of legislation relating to national security, as provided by Article 23 of the Basic Law.¹⁵ Official claims that national enactment was justified due to the local government's failure to act are not convincing. As discussed in chapter 3, the government attempted in 2003 to enact Article 23 legislation that did not conform to ICCPR requirements applicable under the Basic Law. While this effort was

blocked by public protests, nothing would have obstructed putting forth proper reform legislation under Article 23.

Instead, the new law was passed in a furtive arrangement by the NPCSC in a month-long drafting process, under the cover of total secrecy and without public consultation. This process even ignored the requirements in the PRC's Legislation Law for wide consultation with "all concerned parties."¹⁶ Strikingly, the NPCSC represents the very highest leadership in China, meaning this must have been at the direction of China's top leader, President Xi Jinping.¹⁷ The Chinese text went into immediate effect, despite being revealed for the first time and promulgated at 11:00 p.m. on June 30, 2020.¹⁸ Even Hong Kong's chief executive, Carrie Lam, claimed she saw it for the first time on the day of its release.¹⁹

The National Security Law Undermines Local Autonomy

In April 2020, the Hong Kong and Macau Affairs Office in Beijing and Beijing's Liaison Office in Hong Kong proclaimed themselves not bound by Basic Law Article 22,²⁰ which bars departments of the central government from interfering in Hong Kong's internal affairs. This should have served as a warning for what was to come. Inflicting great harm on the promised local autonomy, Beijing's new law now puts in place multiple bodies of direct control over Hong Kong governance. The sheer pervasiveness of the institutional arrangements under the new law defy any claim that it is only of marginal effect—as do the numerous arrests and the blocking of candidates that have already occurred.

At the local level, Article 12 of the national security law creates a Hong Kong Committee for Safeguarding National Security chaired by the chief executive and composed of several cabinet-level ministers, along with top local law enforcement officers. The committee is said to answer directly to the Central People's government and includes a mainland-appointed national security adviser.²¹ Beijing immediately appointed the head of the local Beijing Liaison Office, Luo Huining, as the first national security adviser, thereby inviting that office to intrude directly into Hong Kong's local affairs. Luo is the first mainland official to function formally inside a local Hong Kong government body.²²

This committee is to coordinate all aspects of national security operations under the local government, including the analysis of developments, oversight over enforcement mechanisms, and all major work relating to national security.²³ How this works may never become clear, as the committee's deliberations are to be held in secret and are not subject to judicial review.²⁴ Its budget is hived off and not bound by current legal restrictions.²⁵ The only apparent oversight over the committee itself is that which is directed by mainland officials. Given the subordinate position of this committee to the central government, it would presumably ignore the advice of its mainland national security adviser to its own peril.

Mainland officials are going to be close at hand. The national security law establishes a powerful Central Government Office for Safeguarding National Security, whose officials are assigned from the PRC's state and public security bureaus. As a sign of things to come, Beijing has appointed as the head of this office a powerful Guangdong official known for his hard-line stance, Zheng Yanxiong.²⁶

The Office for Safeguarding National Security completely overrides Hong Kong's promised autonomy, as its officials are to guide, oversee, and supervise local officials in national security matters.²⁷ Locating this office within Hong Kong and assigning it extensive oversight authority over local public order wipes out the firewall between Beijing and the SAR—a direct conflict with Article 22 of the Basic Law.²⁸

As with the local Committee for Safeguarding National Security, the Office for Safeguarding National Security completely escapes legal oversight, except presumably from officials in Beijing. While mainland security officials based in Hong Kong are ostensibly required to obey local laws, Article 60 of the national security law explicitly states that these officials exercise their duties outside of the purview of local jurisdiction. In other words, the only check to compel obedience with local laws is the oversight of their mainland superiors.

Without local oversight, they have the prerogative to refer “complex” and “serious” cases to mainland jurisdiction upon a request from the chief executive—a request that will surely be made if the mainland officials who are overseeing security operations so desire.²⁹ Once that determination is made, the entire case can be shifted to the mainland, where the Supreme People's Court will decide which mainland court will try the case.

On the mainland, the National Criminal Procedure Law and related procedural laws will apply.³⁰ This move erases the protections of the ICCPR that apply in Hong Kong, as the PRC has not ratified the treaty and has never complied with it.

On top of all this, both the police force and the Department of Justice are to maintain special branches related to national security enforcement, each of which is headed by an official approved by the above Central Government Office for Safeguarding National Security.³¹ The most threatening aspect of this special branch in the police department is its almost unchecked power in conducting investigations.

On July 6, at its first meeting, as a clear sign of Beijing's subversion of Hong Kong's autonomy, the local Committee on the Safeguarding of National Security issued regulations.³² Mirroring the national security law's release, these regulations were issued in Chinese, with the English translation being “for reference only”—even though both English and Chinese are official languages in Hong Kong.³³ The 116-page regulation document is lengthy, and must have been drafted in advance

(presumably with the aid of mainland public security officials) and handed to the committee.

Police and Mainland Officers' Investigations Lack Sufficient Oversight

The same provisions that detach both the Committee for Safeguarding National Security and the Office for Safeguarding National Security from local oversight also undermine the rule of law. As noted previously, Article 14 of the national security law commands that no institutions, organizations, or individuals in the region can interfere with the work of the committee and that its decisions are “not amenable to judicial review.” In effect, this means that neither the courts, nor other bodies like the Equal Opportunities Commission or the Legislative Council, can hold the committee accountable.

For the Central Government's office, the situation is even worse: Mainland officials who work there are beyond local jurisdiction entirely. That this lack of legal accountability might implicate human rights protections under the ICCPR or due process requirements is apparent.

A collective group of human rights special procedures rapporteurs under various related UN mandates have written a scathing letter to the Chinese government laying out in great detail, with appropriate references, the total failure of the national security law to comply with international human rights requirements.³⁴ This letter notes that not only does transfer to the mainland circumvent ICCPR requirements, but elaborates in detail how the definitions of the four crimes in the national security law fail for vagueness.

Presumably even the implementation rules enacted under the national security law are not subject to judicial review. These rules, as noted above, have already been issued to regulate police investigations. The lack of accountability evident in these rules profoundly offends the oversight of official behavior expected in an open society and promised by the original Basic Law.

The risk to human rights and due process expectations further downstream in the criminal justice process is apparent. Most of these national security investigations are to be conducted in secret, though a judge will be designated to issue search warrants. However, under the implementation rules noted above, if “for any reason it would not be reasonably practicable to obtain a warrant,” assigned police officers may proceed without a search warrant.³⁵ The opportunity for abuse is apparent.

Under the same rules, an officer or official conducting such an investigation can confiscate travel documents and freeze the assets of the person or entity under investigation. Property can be seized, communications intercepted, and

interrogations conducted, all without a warrant or judicial order.³⁶ Because the local police department has been encouraged to recruit personnel from the mainland, mainland methods of interrogative investigation risk being imported to Hong Kong.³⁷

With the first arrests under the new law, the problems with such secrecy have already become apparent, with several people being apprehended with no initial indication of what illegal activities they were alleged to have engaged in. The alleged crimes were reported but with insufficient factual predicate. How will others know which activities to avoid with respect to these vague crimes? Only after the defendants were released on police bail was it possible to decipher from their account of their interrogations that the allegations presumably related to a foreign campaign to stand with Hong Kong.

Such lawlessness may be fortified even more with regard to mainland officers under the Office for Safeguarding National Security, which is not subject to local jurisdiction. Mainland police are notoriously known for abusive practices, including the use of torture in obtaining confessions. Human Rights Watch (HRW) reports that former detainees describe physical and psychological torture, including “being hung by the wrists, being beaten with police batons or other objects, and prolonged sleep deprivation.”³⁸ Such abuse may be successful in obtaining possibly false confessions, especially when cases are transferred to the mainland, due to the lack of access to lawyers or doctors.

Investigation methods for offenses under Article 55, which applies to that office, will likely include coerced confessions, given the specification in Article 59 that when mainland officials take jurisdiction, any person with information pertaining to an offense is “obliged to testify truthfully.” This pressure for confession is enhanced by the provision in Article 33 that provides for lighter sentences for those who confess and turn in their comrades.

While confession is widely encouraged in criminal justice, an offense to human rights is a matter of how much coercion is applied. Without local jurisdiction, there will be no effective judicial oversight to evaluate such coercion. That the national security law takes priority over all local laws would further limit a court’s ability to maneuver in evaluating the appropriateness of law enforcement’s investigatory behaviour.³⁹

Judicial Independence and the Rule of Law Degraded

The courts, as has already been noted, will surely not have the power to find parts of the national security law unconstitutional or in violation of the Basic Law. This would be blocked by the superior status of the national security law. But the courts face other restrictions. On top of undermining autonomy and investigatory

oversight, the limitations on judicial review of security operations promise to undermine judicial independence.⁴⁰

Because the chief executive is required to choose a limited list of judges to try national security cases,⁴¹ there is concern about pressure on the courts. This apprehension appears real in light of the requirement that selected judges will be removed if they “make any statement or behave in any manner endangering national security.”⁴² Since Hong Kong judges are bound by ethical constraints to not engage in local politics and are quite careful to avoid bias in court, presumably offending statements or behavior would arise out of judgments or rulings in high profile cases that did not meet mainland official expectations. The inclusion of such a provision in the law clearly signals Beijing’s distrust of local judges.

The fact that the power to interpret the law is vested in the NPCSC constrains local courts considerably.⁴³ What leeway the local courts will have in interpreting the national security law is not stated, but clearly a local judge will not be able to review the validity of the national security law itself and will have no jurisdiction over mainland officials. With the prospect of dismissal from the national security judicial list hanging over the judges’ heads, it would appear their capacity to oversee enforcement abuses will be extremely limited.

It has become clear that the intimidation judges will face may stretch beyond national security cases, as recently laid out in a commentary by the prominent former head of operations at the ICAC and PRC adviser, Tony Kwok.⁴⁴ Mr. Kwok targeted several local judges by name, accusing them of too readily granting bail or dismissing charges in local public order cases, suggesting they had a “political bias in favor of the rioters.” He lauded mainland interrogation methods. He suggested, much like under the national security law, that only a select list of judges be allowed to handle rioting cases.

Tony Kwok has not been alone in leveling these accusations of judicial bias against judges, especially magistrates, in regard to bail decisions and sentencing. There have been a number of such criticisms, especially from the pro-Beijing camp, that magistrates have too readily dismissed charges against protesters, given bail to readily or sentenced too lightly.⁴⁵ The government’s recent tendency to appeal dismissals, sentences, or bail decisions, which it is perfectly entitled to do, has, nevertheless, also sent a critical message targeting the judiciary. That the new national security law creates a special list of judges entitled to hear such cases likewise conveys a lack of trust among mainland officials of the judiciary.

The clamor over this has raised public concern about judicial independence. That these pressures have gone overboard may explain the extraordinary recent memorandum from the Chief Justice of Hong Kong, Geoffrey Ma, defending judicial independence and objecting to the increasing political attacks on the

courts.⁴⁶ Given the stellar historical reputation of the judiciary, Hong Kong's people will surely expect and hope that local judges will be able to carry on independently without undue political pressure. But with the many constraints noted here, such an expectation is far from being assured.

Criminal Defense Rights Lost

Defendants under the national security law also face multiple procedural hurdles that offend basic rights under common law practice and human rights standards. The national security law presumes a denial of bail “unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security.”⁴⁷ A so-called police bail was granted for all defendants in the first cases involving Jimmy Lai and Agnes Chow and other associates, but bail is far from assured in the face of a seeming presumption against it. A denial of bail could easily see a defendant behind bars awaiting trial for months, or in a serious case for over a year, based on current trial scheduling.

The prosecution also has the discretion to deny a jury trial.⁴⁸ While trials can be conducted in open court, the law further allows for closed trials to protect state secrets, and to safeguard public order.⁴⁹ Secrecy requirements could further limit a judge's capacity to forcefully uphold the ICCPR.⁵⁰ One way to protect rights under such a law would be for the courts to exercise some liberty in interpreting statutory language. Still, it remains unclear if and how courts can do this, given the NPCSC's power to overturn any interpretation.

These procedural limitations might be tolerable if all that was at risk was a slap on the wrist, but these crimes are very serious, with punishments involving long years of incarceration. The punishment in most instances ranges from three years to life imprisonment. Given the breadth of activity covered by the four crimes, the risk of enduring excessive or unusual punishment is high.⁵¹ One can imagine young protesters spending years in prison for excessive zeal during a protest march.

Already, on the first day of the new law, a young protester was arrested for riding his motorcycle into a police cordon, causing injury to three officers, while displaying a flag bearing the words “Liberate Hong Kong Revolution of Our Times.”⁵² Twenty-three-year-old Tong Ying-kit was charged under the national security law with both secession and terrorism. If a terrorism conviction involves the more serious organizing of terrorist activity, he could face imprisonment for ten years to life.⁵³

Tong was the first person in Hong Kong to challenge the bail provision under a petition for a writ of habeas corpus (a common law order to be released from jail), arguing that Article 42 of the national security law was an unconstitutional, no-bail provision. The high court rejected the challenge, finding that the bail

provision in Article 42 does not preclude bail in violation of the rights and freedoms protected by the Basic Law, nor does it create a presumption against bail.⁵⁴ It would seem there is little hope for sustaining this aspect of the ruling in a sensitive case. Not only did the judge note that there could be “exceptional cases with a different outcome on the question of bail,” but also, in the above referenced statement, Chief Justice Geoffrey Ma likewise noted that article 42 of the national security law is an exception to the presumption in favor of bail in Hong Kong criminal cases. Accordingly, it would seem that the national security law, while not blocking bail entirely, creates a presumption against granting it, that will likely be applied in such “exceptional cases.”⁵⁵

Others might face hard time simply for participating in opposition politics. Mainland officials and Chief Executive Carrie Lam publicly accused professor-activist Benny Tai of violating the national security law by organizing a primary election.⁵⁶ With the new law, he might be sent away for years in prison for an act allowed and often officially supported in democracies around the world. Does campaigning for human rights or democracy warrant such treatment?

Added to all of these legal defense limitations is a concern over the full capacity of lawyers to secure communications. Lawyers have expressed fear that the new law gives police the power to conduct surveillance against lawyers doing defense work, putting attorney-client privilege at risk. Under the implementation rules for Article 43, the police in “exceptional circumstances” may get authorization from the chief executive to intercept communications and conduct surveillance at a lawyer’s office or residence when authorities have grounds to suspect the lawyer’s involvement in seditious activities.⁵⁷ Given the frequent arrest of lawyers on the mainland who defend their client’s human rights, this should not be taken lightly. These various procedural irregularities have caused several countries to suspend extradition agreements with Hong Kong.⁵⁸

Vague Crimes Cause High Risk to Free Speech Protections

Still, the substance of the four crimes themselves is the most damning blow to life in Hong Kong.⁵⁹ Across history, basic freedoms have been at their greatest peril under vague prohibitions respecting national security. Although the law promises to protect “the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration” in accordance with the international human rights conventions,⁶⁰ the vague statutory language, in combination with limited oversight, raises extreme doubts.⁶¹

This language draws no protective boundary between free expression and a criminal offense. All individuals are said to be responsible for national security,⁶² raising the specter that even an academic or journalist who reports critical facts from their research risks being prosecuted. Mainland academics critical of the

government are commonly charged with revealing state secrets, even though they likely would not possess such secrets.⁶³

Beijing and Hong Kong officials claim that the new law targets only a tiny minority of extreme offenders. “Subversion,” however, covers not only “acts by force or the threat of force,” but also “other unlawful means,”⁶⁴ which can include the unauthorized peaceful protests that frequently occur in Hong Kong. “Terrorism” includes violence against properties and the disruption of transport, as well as more serious activities.⁶⁵ “Collusion” involves disrupting government policies, undermining elections, calling for sanctions, provoking hatred, and “other hostile activities.”⁶⁶

The prohibition of collusion clearly arises out of Beijing’s fear of foreign criticism and especially targets human rights advocacy to foreign governments. Such advocacy has especially targeted the leading common law jurisdictions, the United Kingdom and the United States, and those governments have been among the most vocal critics of the national security law. As a consequence, they have likewise been the frequent targets of Beijing’s ire. The arrest of Jimmy Lai and others on August 10 is rumored to relate to their support of an international human rights campaign related to Hong Kong and presumably involving the lobbying of foreign governments.

Further, there are already reports of an arrest warrant being issued against Samuel Chu, an American citizen of Hong Kong origin who runs the Hong Kong Democracy Council (HKDC), an NGO based in Washington, DC, that lobbies Congress on behalf of Hong Kong.⁶⁷ The group has advocated for the United States to promote compliance with the Joint Declaration and the Basic Law. Such a warrant effectively criminalizes the act of an American citizen lobbying his own government.

Arrest warrants were reportedly issued against five other Hongkongers abroad, charging all of them with secession and collusion. Prominent among them is Nathan Law, a former elected member of the Legislative Council, whose alleged crimes might include testifying before the US House Committee on Foreign Relations on July 1, 2020, the first day of the new law. Exactly what he is being sought for has not been revealed.

The sad reality is that these dedicated young Hong Kong activists now face a life of permanent exile, as returning to Hong Kong after lobbying abroad for human rights risks them being prosecuted in Hong Kong or even picked up and transported across the border, in either case where life imprisonment is at risk. Behavior that is perfectly normal, even commendable, in an open society is being criminalized, with a level of punishment that would normally apply to serious violent crimes. Targeted individuals have cut off communications with their own families out of fear of putting them in danger.

As human rights defenders well know, when local legal protections are inadequate, petitioning international human rights bodies or foreign governments is the only avenue to draw attention to human rights violations. Before the national security law was passed, Washington and London saw a parade of petitioners—as did Germany, France, and the European Union headquarters in Brussels—in response to the 2019 crackdown on protesters in Hong Kong. The testimony that was given was consistently aboveboard and widely circulated.

In general, such foreign campaigns have merely called for China to fulfill its existing commitments to Hong Kong, as foreign governments are usually reluctant to support separatist activities in other countries. A more detailed discussion of international engagement and how support for Hong Kong is mobilized abroad is addressed in the following chapter.

Such vague and broad definitions of potential speech crimes clearly fail to match the free speech standards for national security laws provided under the ICCPR, as outlined in the Johannesburg Principles and addressed in the above noted Special Procedures Letter to the Chinese government respecting the national security law.⁶⁸ These crimes encompass not only concrete “acts,” but also loosely defined “activities” of “incitement,” “assistance,” and “abetment,” as well as the “provision” of financial and other forms of support.⁶⁹ Even inciting hatred toward authorities is a crime.⁷⁰

When completely under the control of mainland public security officials, these crimes conceivably have no limits. Will local human rights NGOs, such as the Hong Kong Human Rights Monitor, feel free to submit shadow reports before various international human rights bodies overseeing the human rights covenants and treaties? Worse yet, would testimony before a local legislative hearing or a foreign parliamentary body be a crime? Is writing this book a crime—bearing in mind the global reach of the national security law? It would seem the only certain way to avoid prosecution is to avoid commenting on public affairs. The only issue that remains is how aggressively the new law will be enforced.

A Growing Culture of Intimidation and Enforcement Prevails

Uncertainty especially has a chilling effect on free speech. Indeed, that is what is intended, as was evident in the first weeks after the national security law’s promulgation. A comprehensive investigative report by Mary Hui in *Quartz* likened this chilling effect to “Cultural Revolution 2.0.”⁷¹ Hui describes a culture of intimidation that arose even before the new law, born from the heavy-handed enforcement during the 2019 protests: civil servants had to hide their political views, teachers were rebuked and fired, and hospital workers were harassed for missing work as a result of citywide strikes.

The first full day of the newly promulgated law, July 1, 2020, was the twenty-third anniversary of Hong Kong's handover on July 1, 1997. The police wasted no time in deploying the new legislation. For the first time since the handover, the annual protest was banned, ostensibly due to social distancing, thereby rendering all protest that day as an "unauthorized assembly."

As protesters gathered, riot police immediately posted this warning: "If you are displaying flags or banners/chanting slogans or conducting yourself with an intent, such as secession or subversion, which may constitute offences under the HKSAR national security law, you may be arrested and prosecuted."⁷² The police arrested 370 protesters that day, ten of them under the new national security law, for holding or possessing the prohibited materials, mostly flags or signs calling for "independence" or to "liberate Hong Kong."⁷³

Statements and slogans used in the 2019 protest are now officially banned, including the popular slogan, "liberate Hong Kong, revolution of our times." In response to such heavy-handed prohibitions, Hong Kong protesters have gotten creative, holding blank posters or using patriotic slogans such as "Arise, ye who refuse to be slaves," which is taken from China's national anthem.⁷⁴ Pro-democracy "yellow businesses" were warned by the police to take down "Lennon walls" of sticky notes with political messages, though some have left blank ones up.⁷⁵ As noted, the very first protester to be prosecuted under the new law was charged with terrorism for riding his motorcycle into a cordon of police while displaying a pro-independence flag on which he had allegedly written the word "no."⁷⁶

Media, the Internet, Education, and the Corporate World

The new law poses a special risk to social media, NGOs, educational institutions, and media organizations. As an indication of the overreach of the internet surveillance provisions, Facebook has announced that it will no longer process routine Hong Kong government requests for user data. Still, questions remain as to what Facebook will do when faced with a broad order under the new law to do so.⁷⁷

Article 9 of the national security law goes further than data collection, providing that the Hong Kong SAR "shall take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security, including those relating to schools, universities, social organizations, the media, and the internet." The Office for Safeguarding National Security is called upon to provide assistance to "strengthen the management of services for" NGOs and the media agencies of foreign countries.⁷⁸ It appears Beijing may soon aim to extend the mainland's great internet firewall to encompass Hong Kong.

The dual-pronged supervision and management of NGOs and media organizations causes grave concern for the freedom to assemble, as well as for press and academic freedoms. This year, an annual survey by the Hong Kong Journalists Association demonstrated that Hong Kong press freedom has reached an all-time low.⁷⁹

As just one example of increasing pressure on the media, the Hong Kong police recently announced that they will no longer recognize local informal press credentials and will require registration with the government.⁸⁰ This announcement is of grave concern in a media environment where jobs are less secure and many freelance, social media and student reporters might be arrested at protest scenes. A June survey showed that 98 percent of members of the Hong Kong Journalists Association opposed the new national security law due to fears for their own safety.⁸¹

As a friend of many journalists, among them my former students, I have received inquiries about the risk they face. Certainly, many media organizations will be careful in their reportage.⁸²

Nervous about these various provisions on both data access and the oversight of foreign media, the *New York Times* in July moved portions of its operations out of Hong Kong. Combining these enforcement tools with the new law's rather vague crimes, there is grave concern about the broader consequences of the legislation: will media organizations leave, will academics refuse to come, and will corporations shift their headquarters?⁸³

The national security law has hit the education sector especially hard due to official concerns about training youth on the correct patriotic view. Under the new law, the government is required to “promote national security education in the schools and universities and through social organizations, the media, the internet and other means.”⁸⁴

The breadth of the law's planned application to educational institutions became immediately apparent when Hong Kong Education Minister Kevin Yeung, armed with the new law, proclaimed schools must stamp out political activity.⁸⁵ For universities, the fear will likely relate to the recruitment and return of scholars and a possible culture of self-censorship that would be damaging to the reputation of Hong Kong's world-class higher education institutions.⁸⁶

University heads were arguably pressured to throw their support behind the new national security law. At least that appeared to be the case when the presidents of five universities issued a joint statement expressing their support.⁸⁷ Does this about face from the university heads' earlier defense of students' right to protest signal a tightening of basic freedoms on campus?

Businesses have also felt this pressure. Will the more or less level playing field that has historically characterized Hong Kong be lost, as Beijing and Hong Kong officials put pressure on corporate leaders to support repressive government policies? This need not be left totally to speculation, as Cathay Pacific Airlines, HSBC, and Standard Chartered have all succumbed to such pressures. Cathay did this by firing staff who participated in the 2019 protests, while all three companies publicly proclaimed their support for the new national security law—as did Hong Kong’s richest man, Li Ka-shing.⁸⁸ It appears, just like on campus, that the tide has shifted from the earlier tolerance of employees joining protests to a new support of the national security law.

Of course, Hong Kong is famously an international city. It is not just local businesses that feel the pressure, and Hong Kong’s people do not just depend on local businesses for their livelihood. The likelihood of international businesses leaving Hong Kong is real. Eighty-three percent of the US members of the American Chamber of Commerce in Hong Kong indicated their concern about the new law.⁸⁹

Repressing Democratic Politics

Problems with the new law do not end with the reach of criminal law and political intimidation. The requirement in Article 6 of the national security law, which restates the Basic Law requirement that legislators swear loyalty to the Basic Law, clearly means more than it says. Of the twelve Legislative Council candidates barred from running in the then planned 2020 election, three from the more moderate Civic Party were reportedly blocked because of their expressed disapproval of the national security law.⁹⁰ This surely lends credence to my earlier claim that the national security law is effectively an amendment of the Basic Law. Swearing loyalty to the Basic Law now presumably means supporting the national security law. Since nobody outside the government and pro-establishment politicians supports the new law, such a requirement appears aimed at blocking nearly all leaders of the opposition camp.

As noted in chapter 2, the only power the opposition has under the Basic Law is the power to say no. Political reform would offer a way to change this sorry condition and create a healthy political environment.

As noted above, the official attack on the primary election that was conducted by the opposition camp was presumably because they openly declared their plan to gain a majority in the Legislative Council so they could have leverage over the government. They openly launched a campaign to win thirty-five seats in the new Legislative Council so they could block government action and force a resignation of the chief executive. Disqualifying numerous opposition candidates and delaying

the election appears to be the government's way to avoid such a challenge to the legitimacy of its grip on power.

Benny Tai factors again in the government's attack on the opposition. The chief executive, the Beijing Liaison Office, and the head of Beijing's Hong Kong and Macau Affairs Office all accused Tai, as the organizer of the primary election, of "manipulating the city's election system" in violation of the national security law.⁹¹ In conducting the poll, he was accused of acting as an agent for foreign forces and turning Hong Kong into a color revolution.

The accusation that even an informal nonbinding primary violates the national security law flies in the face of the claim that the law will be narrowly applied. Presumably, 610,000 voters participated in this violation. This attack clearly aims to lay the foundation for the massive disqualification of pan-democratic candidates. As previously noted, on July 28, Tai was fired from his tenured teaching position at the University of Hong Kong—this was related to his earlier conviction for leading the Occupy Central campaign.⁹²

As with much else under the national security law, we can see that it is to be weaponized to block political opposition through either intimidating criminal charges or electoral disqualifications. Either way, Hong Kong as an open society—with guarantees of the rule of law, democratic governance, and basic freedoms and rights—is now under severe and escalating duress. At the same time, with the growing culture of political influence and pressure, the level playing field for local and international business is equally under threat.

The national security law effectively institutes a new national security constitution for Hong Kong. Under the new national security constitution, "one country" has largely gobbled up "two systems." As the previous chapters highlight, these conditions are largely a creation of official overreach over many years in both Beijing and Hong Kong. The culture of protest in Hong Kong has been a creation of this specific chain of government policies over more than two decades and is rooted in a deeply held Hong Kong identity. The only hope is for a profound official change of course.

Chapter 6

¹ “Beijing’s Hong Kong Office Warns Pro-Democracy Poll Could Violate New Security Law,” *Reuters*, July 13, 2020, <https://www.reuters.com/article/us-hongkong-security/beijings-hong-kong-office-warns-pro-democracy-poll-could-violate-new-security-law-idUSKCN24F05Y>.

² “Hong Kong Elections: Mass Disqualification of Opposition Hopefuls Sparks Political Storm,” *South China Morning Post*, July 30, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3095327/hong-kong-elections-12-opposition-candidates-disqualified>.

³ “Protests Break Out in Hong Kong as First Arrests Made under New Security Law,” *CNN*, July 1, 2020, <https://www.cnn.com/2020/07/01/china/hong-kong-national-security-law-july-1-intl-hnk/index.html>.

⁴ “Hong Kong Police Arrest Four under New Security Law in Move Slammed by Rights Group,” *Reuters*, July 29, 2020, <https://www.reuters.com/article/us-hongkong-security/hong-kong-police-arrest-four-under-new-security-law-in-move-slammed-by-rights-group-idUSKCN24U3DQ>.

⁵ “Hong Kong University to Fire Law Professor Who Inspired Protests,” *New York Times*, July 28, 2020, <https://www.nytimes.com/2020/07/28/world/asia/benny-tai-hong-kong-university.html>.

⁶ “LegCo General Election Postponed for a Year, Press Release, Government of the Hong Kong SAR,” July 31, 2020, <https://www.info.gov.hk/gia/general/202007/31/P2020073100898.htm>.

⁷ “National Security Law: Hong Kong Media Mogul Jimmy Lai Freed on Bail as Activist Agnes Chow Calls Her Arrest ‘Political Persecution and Suppression,’” *South China Morning Post*, August 11, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3096851/apple-daily-founder-jimmy-lai-taken-his-yacht-club-hong>. “Agnes Chow questioned by police,” *Nikkei Asian Review*, September 2, 2020. <https://asia.nikkei.com/Spotlight/Hong-Kong-protests/Agnes-Chow-questioned-by-Hong-Kong-police>

⁸ “China’s Arrest of a Free-Speech Icon Backfires in Hong Kong,” *The New Yorker*, August 14, 2020, <https://www.newyorker.com/news/daily-comment/chinas-arrest-of-a-free-speech-icon-backfires-in-hong-kong>.

⁹ *Ibid.* The price would eventually go back down, causing loss to some investors. The police in September would target the promoters of these stock purchases for arrest and charges of stock manipulation. “Hong Kong securities regulator investigating Next Digital share surge and collecting client data, insider says after police arrest 15,” *South China Morning Post*, September 11, 2020. <https://scmp.com/news/hong-kong/law-and-crime/article/3101265/hong-kong-securities-regulator-investigating-next> The truth of such

allegations will likely await prosecution and trial, but many claim the spike in stock purchases were merely an expression of support for Mr. Lai.

¹⁰“Jimmy Lai Shows Why the West Lost Faith in Hong Kong Courts,” *Bloomberg*, August 11, 2020, <https://www.bloomberquint.com/global-economics/jimmy-lai-arrest-shows-why-world-lost-faith-in-hong-kong-courts>. The Foreign Ministry did not stop there, as it went on to signal its view of—and likely the risk for—the Hong Kong Foreign Correspondents’ Club, accusing it of trying to “whitewash” Lai and labeling it as an organization “siding with the forces sowing trouble in Hong Kong and China at large.”

¹¹“US-China row over detention of 12 Hongkongers in Shenzhen escalates, as families seek city government’s help to bring group back,” *South China Morning Post*, September 12, 2020. <https://scmp.com/news/hong-kong/politics/article/3101285/us-secretary-state-mike-pompeo-piles-pressure-carrie-lam> Carrie Lam simply indicated the matter would be dealt with according to mainland law.

¹²Legislation Law of the People’s Republic of China, Article 83 and 85, Passed March 15, 2000, Official English Translation, Ministry of Defense of the People’s Republic of China, http://eng.mod.gov.cn/publications/2017-03/02/content_4774201.htm.

¹³Johannes Chan, “Does the Decision of the National People’s Congress on Enacting a National Security Law for Hong Kong Contravene the Basic Law?” University of Hong Kong Research Blog, June 1, 2020, <https://researchblog.law.hku.hk/2020/06/johannes-chan-on-whether-npc-decision.html>.

¹⁴Hualing Fu, “On the Relationship Between Hong Kong’s Basic Law and the National Security Law,” Hong Kong Legal Scholarship Blog, August 12, 2020, <http://researchblog.law.hku.hk/2020/08/hualing-fu-on-relationship-between-hong.html>.

¹⁵Basic Law Article 23 stipulates 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 organizations or bodies from conducting political activities in the region.”

¹⁶PRC Legislation Law, *supra* note 11, Articles 5, 36, and 37. Jamie P. Horsley, “Chinese Law Requires Public Consultation in Lawmaking: What Does It Mean for the Hong Kong National Security Legislation,” *Order from Chaos* (Brookings), June 8, 2020, <https://www.brookings.edu/blog/order-from-chaos/2020/06/08/chinese-law-requires-public-consultation-in-lawmaking-what-does-it-mean-for-the-hong-kong-national-security-legislation/>.

¹⁷Frank Ching offers an historical account of Xi Jinping’s passion to bring Hong Kong and Taiwan under Beijing’s control. Frank Ching, “Hong Kong and Taiwan Confront Rising Chinese Pressure,” *Current History*, September 2020, pp. 234–240.

¹⁸National Security Law, L.N. 136 of 2020, B2347, June 30, 2020, <https://www.gld.gov.hk/egazette/pdf/20202444e/es220202444136.pdf>.

¹⁹“National Security Law: Beijing Appoints Tough-Talking Party Official Zheng Yanxiong to Lead Powerful New Agency in Hong Kong,” *South China Morning Post*, July 3, 2020, <https://scmp.com/news/hong-kong/politics/article/3091664/beijings-top-hong-kong-official-luo-huining-will-be-city>.

²⁰ Michael C. Davis, “Controversy over the Role of Beijing’s Offices in Hong Kong Shows Weight of ‘One Country’ Threatens the Scaffolding of ‘Two Systems,’” *South China Morning Post*, April 24, 2020, <https://www.scmp.com/comment/opinion/article/3081090/controversy-over-role-beijings-offices-hong-kong-shows-weight-one>.

²¹ National Security Law, articles 12 and 15.

²² “Beijing Envoy Luo Huining Named National Security Adviser,” *The Standard*, July 2, 2020, <https://www.thestandard.com.hk/breaking-news/section/4/150264/Beijing-envoy-Luo-Huining-named-national-security-adviser>.

²³ National Security Law, Article 14.

²⁴ *Ibid.*

²⁵ National Security Law, Article 19.

²⁶ “National Security Law: Beijing Appoints Tough-Talking Party Official Zheng Yanxiong to Lead Powerful New Agency in Hong Kong,” *South China Morning Post*, July 3, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3091664/beijings-top-hong-kong-official-luo-huining-will-be-city>.

²⁷ National Security Law, Articles 48 and 49.

²⁸ Article 22 bars departments of the central government from interfering in Hong Kong’s internal affairs.

²⁹ National Security Law, Articles 55 and 56.

³⁰ *Ibid.*, Article 57.

³¹ *Ibid.* Articles 16, 17, and 18.

³² Implementation Rules for Article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, L.N. 139 of 2020, B2397, <https://www.gld.gov.hk/egazette/pdf/20202449e/es220202449139.pdf>. Operating Principles and Guidelines for Application for Authorization to Conduct Interception and Covert Surveillance, Issued Pursuant to Section 20 of Schedule 6 of the Implementation Rules for Article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, G.N.(E.) 74 of 2020, <https://www.gld.gov.hk/egazette/pdf/20202450e/egn2020245074.pdf>. The ordinance, the regulation, and the operating principles have carefully given law enforcement nearly unconstrained authority to conduct searches and surveillance.

³³ Hong Kong Basic Law, Article 9.

³⁴ Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; 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, Reference OL. CHN 17/2020, September 1, 2020. (hereinafter “Special Procedures Letter”) <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

³⁵ Implementation Rules, *supra* note 32, schedule 1, section 3.

³⁶ National Security Law, Article 43 and related implementation rules, *supra* note 31.

³⁷ National Security Law, Article 16.

³⁸ Human Rights Watch notes further that some detainees described being “restrained for days in so-called ‘tiger chairs’ (used to immobilize suspects during interrogations), handcuffs, or leg irons.” Chinese official reports to international bodies have acknowledged that abuse in custody is a problem. See, “Tiger Chairs and Cell Bosses, Police Torture of Criminal Suspects in China,” *Human Rights Watch*, May 13, 2015, <https://www.hrw.org/report/2015/05/13/tiger-chairs-and-cell-bosses/police-torture-criminal-suspects-china>. For a comprehensive account of the many ways that the mainland system denies justice, especially in sensitive criminal cases, see Jerome A. Cohen, “The Vagaries of Crime and Punishment in China,” *The Diplomat*, September 15, 2020. <https://thediplomat.com/2020/09/the-vagaries-of-crime-and-punishment-in-china>.

³⁹ National Security Law, Article 62.

⁴⁰ The Hong Kong Bar Association has raised special concern. “The Law of the People’s Republic of China (“PRC”) on Safeguarding National Security in the Hong Kong Special Administrative Region (“HKSAR”): Statement of the Hong Kong Bar Association,” July 1, 2020, <https://www.hkba.org/sites/default/files/20200701%20HKBA%20statement%20on%20Safeguarding%20National%20Security%20in%20HKSAR.pdf>.

⁴¹ National Security Law, Article 44.

⁴² *Ibid.*

⁴³ National Security Law, Article 65.

⁴⁴ Tony Kwok, “Arrest of fleeing fugitives for Taiwan a turning point,” *China Daily, Hong Kong Edition*, September 3, 2020. <https://www.chinadailyhk.com/article/a/142029>. Tony Kwok is a Council Member of the Chinese Association of Hong Kong and Macau Studies, a prominent mainland think tank on Hong Kong and Macau affairs. It appears the government has found a further way to extend the reach of the national security law, taking the colonial era sedition crime out of mothballs and using it to reach behavior stretching back before the national security law’s enactment, in charging activist Tam Tak-chi with sedition—and denying him bail, as is the seeming presumption under the national security law. “Activist Tam Tak-chi denied bail by High Court,” *RTHK*, September 17, 2020. <https://news.rthk.hk/rthk/en/component/k2/1550111-20200917.htm>. Pro-Beijing politicians have likewise pushed for the removal of judges from protest-related cases, when they appear to not offer favorable ruling on government prosecutions. “Hong Kong magistrate transferred, as pro-Beijing lawmakers hit out over protest rulings – local media,” *Hong Kong Free Press*, September 8, 2020. <https://hongkongfp.com/2020/09/08/hong-kong-magistrate-transferred-as-pro-beijing-lawmakers-hit-out-over-protest-rulings-local-media/>. For an analysis of the pressure judges now face, see, “Hong Kong protests and national security law: are the courts becoming politicized and are judgements biased? *South China Morning Post*, September 14, 2020. <https://www.scmp.com/news/hong-kong/law-and-crime/article/3101505/hong-kong-protests-national-security-law-and-judiciary>.

⁴⁵ “Hong Kong’s chief justice warns against politicizing courts and says judges must be above bias,” *South China Morning Post*, September 23, 2020. <https://www.scmp.com/news/hong-kong/politics/article/3102738/hong-kongs-chief-justice-warns-against-politicising-courts>.

⁴⁶ “Statement by the Honourable Chief Justice Geoffrey Ma,” September 23, 2020. <https://www.info.gov.hk/gia/general/202009/23/P2020092300435.htm>.

⁴⁷ National Security Law, Article 42.

⁴⁸ National Security Law, Article 46.

⁴⁹ National Security Law, Article 41.

⁵⁰ In fact the conduct of trials and secrecy requirements were the targets of severe criticisms in the Special Procedures Letter, *supra* note 34.

⁵¹ National Security Law, Articles 20, 22, 24, and 29.

⁵² The case was, on an application for a writ of habeas corpus, denied. *Tong Ying Kit v. HKSAR*, Constitutional and Administrative Law List No. 1601 of 2020, in High Court, Court of First Instance, August 21, 2020, https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=130336&currpage=T. “Hong Kong National Security Law: First Person Charged under New Legislation is Motorcyclist Arrested during July 1 Protest,” *South China Morning Post*, July 3, 2020, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3091710/hong-kong-national-security-law-first-person-charged>.

⁵³ National Security Law, Articles 20, 24, and 25.

⁵⁴ In the above noted portion of the case, on August 21st the court rejected the *habeas corpus* challenge to the bail rule. *Tong Ying Kit*, *supra* note 50. On the subsequent bail decision issued separately on August 25th, while the court held there was no presumption against bail in this case, that it was effectively like any other bail decision, it did appear to suggest there might be “exceptional cases when a different outcome on the question of bail may be reached as a result of the application of Article 42. *HKSAR and Tong Ying Kit*, Miscellaneous Proceeding No. 463 of 2020. High Court of First Instance, August 25, 2020. https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=130396&currpage=T.

⁵⁵ *Ibid*.

⁵⁶ “Beijing Hong Kong Office Warns Pro-Democracy Poll Could Violate New National Security Law,” *Reuters*, July 13, 2020, <https://www.reuters.com/article/us-hongkong-security/beijings-hong-kong-office-warns-pro-democracy-poll-could-violate-new-security-law-idUSKCN24F05Y>.

⁵⁷ “Hong Kong Security Law: New Police Powers to Surveil Lawyers a ‘Major Threat,’ Barristers and Legal Scholars Say,” *Hong Kong Free Press*, July 9, 2020, <https://hongkongfp.com/2020/07/09/hong-kong-security-law-new-police-powers-to-surveil-lawyers-a-major-threat-barrister-and-legal-scholars-say/>.

⁵⁸ “Australia Suspends Hong Kong Extradition Treaty,” *BBC News*, July 9, 2020, <https://www.bbc.com/news/world-australia-53344013>.

⁵⁹ National Security Law, Articles 20, 22, 24, and 29.

⁶⁰ National Security Law, Article 4.

⁶¹ The Special Procedures Letter highlights multiple problems with vagueness under international human rights standards. Special Procedures Letter, *supra* note 34.

⁶² National Security Law, Article 6.

⁶³ Susan Finder, “How China Classifies State Secrets,” *The Diplomat*, December 23, 2014, <https://thediplomat.com/2014/12/how-china-classifies-state-secrets>.

⁶⁴ National Security Law, Article 22.

⁶⁵ National Security Law, Article 24.

⁶⁶ National Security Law, Article 29.

⁶⁷ “Hong Kong Security Law: Hong Kong Police Seek Activist Nathan Law and 5 Others for Inciting Secession and Collusion, Insider Says,” *South China Morning Post*, August 1, 2020, <https://scmp.com/news/hong-kong/law-and-crime/article/3095615/national-security-law-hong-kong-police-said-seek>.

⁶⁸ The Johannesburg Principles on National Security, Freedom of Expression, and Access to Information, Article 19, November 1996, <https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf>. Special Procedure Letter, *supra* note 33.

⁶⁹ National Security Law, Articles 21, 22, 23, 26, 27, and 30.

⁷⁰ National Security Law, Article 29.

⁷¹ Mary Hui, “A Cultural Revolution 2.0 Is Sweeping through Hong Kong’s Offices and Schools,” *Quartz*, July 22, 2020, <https://qz.com/1882496/cultural-revolution-2-0-political-repression-sweeps-hong-kong-workplaces/>.

⁷² “Hongkongers Waving Independence Flags or Chanting Slogans Risk Arrest under National Security Law—Report,” *Hong Kong Free Press*, July 1, 2020, <https://hongkongfp.com/2020/07/01/hongkongers-waving-independence-flags-or-chanting-slogans-risk-arrest-under-national-security-law-report/>.

⁷³ “Protests Break Out in Hong Kong as First Arrests Made under New Security Law,” *CNN*, July 1, 2020, <https://www.cnn.com/2020/07/01/china/hong-kong-national-security-law-july-1-intl-hnk/index.html>.

⁷⁴ “‘Hidden Language’: Hongkongers Get Creative against Security Law,” *The Guardian*, July 4, 2020, <https://www.theguardian.com/world/2020/jul/04/hidden-language-hong-kong-security-law-residents-wordplay>.

⁷⁵ “Hong Kong, Changed Overnight, Navigates Its New Reality,” *New York Times*, July 13, 2020, <https://www.nytimes.com/2020/07/05/world/asia/hong-kong-security-law.html>.

⁷⁶ “Hong Kong Man Charged with Terrorism in First Use of New China Security Law,” *Reuters*, July 2, 2020, <https://www.reuters.com/article/us-hongkong-protests/hong-kong-man-accused-of-terrorism-in-first-use-of-new-china-security-law-idUSKBN2440A6>.

⁷⁷ “Facebook Temporarily Stops Hong Kong Data Requests,” *New York Times*, July 6, 2020, <https://www.nytimes.com/2020/07/06/technology/facebook-temporarily-stops-hong-kong-data-requests.htm>; “Facebook, Twitter, Google Face Free-Speech Test in Hong

Kong,” *Wall Street Journal*, July 3, 2020, <https://www.wsj.com/articles/facebook-twitter-google-face-free-speech-test-in-hong-kong-11593790205>.

⁷⁸ National Security Law, Article 54.

⁷⁹ “Hong Kong Press Freedom Hits Record Low, among Fears of Uncertainty over National Security Law,” *South China Morning Post*, July 7, 2020, <https://scmp.com/news/hong-kong/article/3092208/hong-kongs-press-freedom-hits-record-low-amid-fears-uncertainty-over>.

⁸⁰ “The Hong Kong police now get to decide who’s a member of the press,” Quartz, September 22, 2020. <https://qz.com/1907160/hong-kong-police-screening-of-journalists-undercuts-press-freedom>.

⁸¹ “National Security Law: Hong Kong Journalist Association Survey Reveals 98 Per Cent Oppose Legislation Amid Fears over Personal Safety, Self-Censorship,” *South China Morning Post*, June 21, 2020, <https://scmp.com/news/hong-kong/politics/article/3089563/national-security-law-hong-kong-journalists-association>.

⁸² “Hong Kong’s Free Media Fears Being Silenced by China’s National Security Law,” *Reuters*, June 5, 2020, <https://www.reuters.com/article/us-hongkong-protests-media-insight/hong-kongs-free-media-fears-being-silenced-by-chinas-national-security-law-idUSKBN23C0J6>; “When Will They Come For Journalists?: Hong Kong Press Freedom under New National Security Law,” *Hong Kong Free Press*, July 4, 2020, <https://hongkongfp.com/2020/07/04/when-will-they-come-for-journalists-hong-kong-press-freedom-under-the-new-national-security-law/>.

⁸³ See Jean-Pierre Cabestan and Lawrence Daziano, “Hong Kong: The Second Handover,” *Fondation pour L’Innovation Politique*, July 2020, <http://www.fondapol.org/en/etudes-en/hong-kong-the-second-handover/>.

⁸⁴ National Security Law, Article 10.

⁸⁵ “Hong Kong Pupils Banned from Political Activity,” *BBC News*, July 8, 2020, <https://www.bbc.com/news/world-asia-china-53336191>.

⁸⁶ John Power, Jeffie Lam, and Elizabeth Cheung, “National Security Law: For Hong Kong Scholars a Fear of the Unknown,” *South China Morning Post*, August 8, 2020, <https://www.scmp.com/week-asia/politics/article/3096370/national-security-law-hong-kong-scholars-fear-unknown>

⁸⁷ “Council of Eight Universities in Hong Kong Back New Security Law,” *South China Morning Post*, June 1, 2020, <https://www.scmp.com/news/hong-kong/education/article/3086955/five-hong-kong-university-heads-cite-stability-supporting>.

⁸⁸ “What HSBC and Cathay Pacific’s Bow to Beijing on Hong Kong’s National Security Law Tells Investors about Management in Political Crisis.” *South China Morning Post*, June 9, 2020, <https://www.scmp.com/business/companies/article/3088056/what-hsbc-and-cathay-pacifics-bow-beijing-hong-kong-national>. “‘Big Brother’ in the Sky: Cathay Pacific Workers Feel China’s Pressure,” *New York Times*, September 11, 2019, <https://www.nytimes.com/2019/09/11/business/cathay-pacific-hong-kong-protests.html>

⁸⁹ Ibid.

⁹⁰ “Hong Kong Elections: Mass Disqualification of Opposition Hopefuls Sparks Political Storm,” *South China Morning Post*, July 30, 2020, <https://scmp.com/news/hong-kong/politics/article/3095327/hong-kong-elections-12-opposition-candidates-disqualified>.

⁹¹ “Hong Kong Elections: Beijing Accuses Occupy Leader Benny Tai of Breaking National Security Law through Primary Polls,” *South China Morning Post*, July 14, 2020, <https://scmp.com/news/hong-kong/politics/article/3093175/hong-kong-elections-beijing-issues-strongest-condemnation>. 610,000 Hongkongers had participated in this poll to identify favored opposition candidates.

⁹² “Benny Tai: Hong Kong University Fires Professor Who Led Protest,” *BBC News*, July 28, 2020, <https://www.bbc.com/news/world-asia-china-53567333>.