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# Hong Kong Under the National Security Law

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## Hong Kong Under the National Security Law

Hong Kong is a special administrative region (SAR) of the People's Republic of China (PRC, or China). In signing a United Nations-registered treaty with the United Kingdom in 1984 and passing a law in 1990 codifying many of the treaty's provisions in domestic law, the PRC committed to protect Hong Kong residents' civil rights and liberties and uphold Hong Kong's autonomy in all but defense and foreign affairs through 2047. In 2020, the PRC imposed a national security law (NSL) on Hong Kong that many observers assess is at odds with those commitments. Congressional interest in affairs in Hong Kong has heightened since the imposition of the NSL, as demonstrated in its passage of Hong Kong-related legislation.

The NSL made structural changes to the relationship between the government of the Hong Kong Special Administrative Region (HKSAR) and China's Central Government in Beijing that some analysts assess may be entrenching the central government's direct control over the HKSAR under the pretext of addressing "national security" concerns. The Communist Party of China's (CPC's) established an office in Hong Kong to "safeguard national security," pursuant to the NSL, and created an office within the party to coordinate Hong Kong policy.

At the same time that it has entrenched the PRC's influence over the HKSAR government, since 2020, China's NPC has adopted a series of measures that may have long-term impacts on Hong Kong's democratic institutions. They include the NPC's first official interpretation of the NSL. Some view the interpretation as reaffirming the HKSAR executive's discretionary power over national security matters, thereby diminishing the local judiciary's relative power on national security issues. Amendments to the Basic Law adopted by the NPC, meanwhile, have shifted greater electoral power to a committee established by the HKSAR government that now has power to vet and elect the HKSAR's Chief Executive as well as vet candidates for Hong Kong's legislature, the Legislative Council.

Analysts assess that the PRC Central Government and the HKSAR authorities' systematic implementation of the NSL has stifled the city's lively civic culture and eroded Hong Kong residents' civil rights and liberties in the process. Analysts suggest that this erosion is evident in the targeting of activists and protesters for criminal charges, the closure of several prominent dissenting media outlets, and official obstruction of public assemblies.

In response to developments in Hong Kong, the U.S. government has sought to sanction officials who have contributed to the erosion of Hong Kong's democracy, as well as to express support for and offer safe haven to Hong Kong residents. Since 2019, congressional interest in democracy and civil liberties in Hong Kong has heightened, as has Congress's attention to the PRC's commitments under the Joint Declaration and the preservation of Hong Kong's autonomy.

To date, Members of the 118<sup>th</sup> Congress have introduced 56 pieces of legislation (i.e., 36 bills, 10 resolutions, and 10 amendments) with Hong Kong-related provisions. Seven of the bills have been reported out of committee. They include a Senate-passed version of a National Defense Authorization Act (NDAA) for FY2024 (S. 2226). In addition, hearings, Member letters and statements have addressed issues including, for example, the fate of political prisoners and the impact of foreign judges' withdrawal from Hong Kong's Court of Final Appeal. Congress may consider whether the level and scope of existing reporting requirements on the Administration are sufficient to meet congressional needs. Congress may also consider whether to approve, reject, or seek to modify the administration's approach to addressing the erosion of Hong Kong's autonomy, democracy, and rule of law, including whether or not to modify U.S. policy following changes in Hong Kong under the NSL.

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## Introduction

The Hong Kong Special Administrative Region (HKSAR, or Hong Kong) is a Special Administrative Region (SAR) of the People's Republic of China (PRC, or China). Britain ruled Hong Kong Island starting in 1842, extending its rule to other parts of what is now the HKSAR in 1860, and leasing Hong Kong's "New Territories" in 1898. The United Kingdom transferred sovereignty over all of Hong Kong to the PRC in 1997. Due to its long history as a British colony, Hong Kong developed a cultural and social identity distinct from that of mainland China, as well as distinct political and legal systems. While under British rule, Hong Kong became one of the world's largest international trade and financial centers and served as a nexus for exchanges of all kinds between China and the rest of the world. The United States treated Hong Kong as a separate entity from China under U.S. law.

**Figure 1. Map of the Hong Kong Special Administrative Region (HKSAR)**



**Source:** Created by CRS using data from U.S. Department of State, the Database of Global Administrative Areas, and ESRI.

Congress legislated U.S. policy toward Hong Kong in the United States-Hong Kong Policy Act of 1992 (USHKPA, P.L. 102-383). The USHKPA commits the United States to treating the HKSAR as a separate entity from the rest of China in political, economic, trade, and other areas so long as the HKSAR remains “sufficiently autonomous” to warrant special treatment. Consistent with the USHKPA, the State Department issues an annual Hong Kong Policy Act Report assessing developments in the HKSAR. Since 2019, congressional interest in Hong Kong has focused on the state of the city’s democracy and civil liberties as well as the PRC’s adherence to its commitments under the Joint Declaration (see “**Background and Key Documents,**” below). Recent legislation includes:

- the Hong Kong Human Rights and Democracy Act (HKHRDA, P.L. 116-76), which, among other things, requires the Department of State to certify in an annual report to Congress whether Hong Kong is sufficiently autonomous from China to justify its unique treatment under U.S. law;
- the Hong Kong Autonomy Act of 2020 (HKAA, P.L. 116-149), which aims to hold accountable foreign individuals and entities that materially contribute to the erosion of Hong Kong’s autonomy (See “**United States,**” below.); and
- P.L. 116-77, subsequently extended by Sec. 1252 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for FY2021 (P.L. 116-283) and Section 5589 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (P.L. 117-263), which prohibited the export of tear gas, rubber bullets, handcuffs, and other riot-control equipment and munitions to the Hong Kong Police Force.

Congress also appropriated \$4 million “for democracy and Internet freedom programs for Hong Kong, including legal and other support for democracy activists” in the Consolidated Appropriations Act, 2022 (P.L. 117-103) and \$5 million in the Consolidated Appropriations Act, 2023 (P.L. 117-328).

## Background and Key Documents

The United Kingdom transferred sovereignty over Hong Kong to China on July 1, 1997, under the provisions of the 1984 China-United Kingdom Joint Declaration on the Question of Hong Kong (“Joint Declaration”), an international treaty registered with the United Nations. Under the terms of the Joint Declaration, the PRC pledged that Hong Kong would continue to “enjoy a high degree of autonomy, except in foreign and defence affairs,” and “be vested with executive, legislative and independent judicial power, including that of final adjudication.”<sup>1</sup>

In accordance with the Joint Declaration, China’s legislature, the National People’s Congress (NPC), in 1990 codified these commitments in a Basic Law of the HKSAR (“Basic Law”), in which the PRC pledged that its commitments would “remain unchanged for 50 years” under an arrangement the PRC called “one country, two systems.”<sup>2</sup> Under “one country, two systems,” the PRC government allows special administrative regions (i.e., Hong Kong and Macao) to retain local control over some issues while remaining “inalienable parts” of the People’s Republic of

<sup>1</sup> “Joint Declaration on the Question of Hong Kong,” United Nations Treaty Collection, vol. 1399, no. 23391-23396, 1985, pp. 33-87, <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d4d6e>.

<sup>2</sup> Government of the HKSAR, “Basic Law,” at <https://www.basiclaw.gov.hk/en/basiclaw/index.html>.

China. The PRC originally developed the concept to provide a roadmap to unification with Taiwan.<sup>3</sup>

Although China's Central Government began chipping away at Hong Kong's civil rights, liberties, and democratic institutions after Xi Jinping became General Secretary of the Communist Party of China (CPC) in 2012, it accelerated the process in 2020, starting with the NPC's imposition of a national security law (NSL) on Hong Kong on June 30, 2020. The law's full name is the *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*.<sup>4</sup>

Between the 1997 handover and the 2020 enactment of the NSL, Hong Kong differed from mainland China, in several key ways:

- Under the Basic Law, the PRC committed to allowing the HKSAR to “enjoy executive, legislative and independent judicial power, including that of final adjudication.” The Basic Law also specifies that “[n]o department of the Central People’s Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the [HKSAR] administers on its own.”<sup>5</sup>
- The PRC committed to ensuring HKSAR permanent residents’ “right to vote and the right to stand for election,” thereby enshrining democratic principles in the Basic Law. The Basic Law further states that “[t]he ultimate aim is the selection of the [HKSAR’s] Chief Executive,” as well as all members of the Legislative Council, “by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.”<sup>6</sup>
- Hong Kong operated, as it does now, under a legal system based on British common law, which differs from mainland China’s civil law system. Some sources (including PRC and HKSAR officials) have argued that Hong Kong’s having an established common law system was a factor contributing to the HKSAR’s development as a global financial and logistics hub.<sup>7</sup> Such sources suggest Hong Kong’s common law system may also have shaped Hong Kong’s social and cultural development and contributed to the city’s vibrant media and civil society.
- Even as China’s Central Government implemented restrictions on information that could be posted or accessed online in mainland China in the 2010s, Hong Kong was largely spared from similarly broad restrictions. Residents—and visitors, including from the mainland—were able to exercise freedoms including

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<sup>3</sup> PRC State Council Information Office, “The Taiwan Question and China’s Reunification in the New Era,” August 2022, at [english.scio.gov.cn/whitepapers/2022-08/10/content\\_78365819.htm](https://english.scio.gov.cn/whitepapers/2022-08/10/content_78365819.htm).

<sup>4</sup> “The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region,” Government of the HKSAR Gazette, G.N. (E.) 72 of 2020, July 6, 2020, at [https://www.elegislation.gov.hk/fwddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf).

<sup>5</sup> Government of the HKSAR, “Basic Law,” at <https://www.basiclaw.gov.hk/en/basiclaw/index.html>.

<sup>6</sup> *Ibid.*

<sup>7</sup> Martin Kwan, “A Curious Question From Hong Kong: What Is The Relationship Between Capitalism And Common Law?,” Fletcher Forum of World Affairs, October 28, 2022, at <https://www.fletcherforum.org/home/2022/10/28/a-curious-question-from-hong-kong-what-is-the-relationship-between-capitalism-and-common-law>, and Teresa Cheng, “Legal System Upheld by Judiciary, Law Fraternity,” *China Daily (Hong Kong)*, March 23, 2022, at <https://www.chinadailyhk.com/article/264759#Legal-system-upheld-by-judiciary-law-fraternity>.

assembly and the press, and appeared to enjoy largely unfettered access to information.<sup>8</sup>

The 2020 NSL focuses on the HKSAR government’s responsibility to “safeguard national security” in Hong Kong—already stipulated in Article 23 of the Basic Law (see “**Additional National Security Legislation**,” below)—and confers upon it broad powers to prosecute a range of activities on vaguely-worded national security grounds. The HKSAR government has used that authority to crack down on many previously commonplace activities. The NSL also made Hong Kong’s most senior official, the Chief Executive, directly accountable to the Central Government for “affairs relating to safeguarding national security” and orders the HKSAR government to establish a select Committee for Safeguarding National Security (CSNS) with a Central Government-appointed national security adviser. Particularly under Chief Executive John Lee, who assumed power in July 2022, the HKSAR government has vigorously implemented the law. Ongoing changes to Hong Kong’s electoral system and power shifts among the three branches of government in Hong Kong under Lee’s leadership have eroded the credibility of the “one country, two systems” framework and raised concerns from Hong Kong residents and foreign observers over the prospects for Hong Kong’s ability to retain areas of autonomy from mainland China until 2047, as promised in the Joint Declaration.

## Hong Kong’s Autonomy

The NSL made structural changes to the HKSAR government’s relationship with China’s Central Government that some analysts assess is entrenching the Central Government’s direct control over the HKSAR under the pretext of addressing national security concerns.<sup>9</sup> The CPC has established an office in Hong Kong to “safeguard national security,” pursuant to the NSL, and created an office within the party to coordinate Hong Kong policy. In addition, many Hong Kong experts and human rights activists have identified the selection of John Lee as Chief Executive as a challenge to Hong Kong’s autonomy, given his background in the security services and strong, vocal support for the Central Government.

### Entrenching Central Government Control over the HKSAR

Analysts who assess the law is entrenching the central authorities’ influence within the HKSAR government cite certain articles in the NSL.<sup>10</sup> The HKSAR’s Committee for Safeguarding National Security (CSNS) was established under the NSL to be “responsible for affairs relating to and assume primary responsibility for safeguarding national security in [Hong Kong].”<sup>11</sup> The

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<sup>8</sup> See, for example: Angeli Datt, “The Impact of the National Security Law on Media and Internet Freedom in Hong Kong,” Freedom House, October 19, 2021, at <https://freedomhouse.org/article/impact-national-security-law-media-and-internet-freedom-hong-kong>; and Human Rights Watch, “Dismantling a Free Society,” June 25, 2021.

<sup>9</sup> Although the law does not explicitly define “national security,” it does cite “preventing, suppressing and imposing punishment for the offences of secession, subversion, organisation and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security in relation to the Hong Kong Special Administrative Region” as one of its purposes. Source: The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region,” Government of the HKSAR Gazette, G.N. (E.) 72 of 2020, July 6, 2020, at [https://www.elegislation.gov.hk/fwddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf).

<sup>10</sup> Dominic Meagher, “Has Hong Kong’s National Security Law Created Secret Police with Chinese Characteristics?” *Australia Strategic Policy Institute*, July 14, 2020, at <https://www.aspistrategist.org.au/has-hong-kongs-national-security-law-created-secret-police-with-chinese-characteristics>.

<sup>11</sup> “The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region,” Government of the HKSAR Gazette, G.N. (E.) 72 of 2020, July 6, 2020, at [https://www.elegislation.gov.hk/fwddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf).

CSNS is chaired by the Chief Executive but operates “under the supervision of and accountable to the [Central Government].” Article 13 of the NSL requires that the CSNS include a secretariat headed by a secretary general appointed by the PRC Central Government. Similarly, Article 15 of the law requires that the CSNS include a national security advisor designated by the Central Government. The NSL also established an Office for Safeguarding National Security (OSNS) of the Central People’s Government in the HKSAR, whose staff “shall be jointly dispatched by relevant national security authorities under the [Central Government].”<sup>12</sup>

In addition to formalizing the influence of the Central Government through such bodies, the NSL also included procedural provisions that some have interpreted as encroaching on Hong Kong’s ability to govern on issues under its jurisdiction. Article 55, for example, allows the OSNS, upon approval of the Central Government, to exercise jurisdiction over national security cases it deems “complex” and in situations where it deems the local government “unable to effectively enforce” the NSL or a “major and imminent threat to national security has occurred.” In those cases, the OSNS “shall initiate investigation into the case, the [Central Government’s] Supreme People’s Procuratorate shall designate a prosecuting body to prosecute it, and the [Central Government’s] Supreme People’s Court shall designate a court to adjudicate it.”<sup>13</sup>

### **New Communist Party Central Committee Office for Hong Kong**

On March 16, 2023, the Central Committee of the CPC and the PRC State Council released an institutional reform plan to restructure numerous state bodies.<sup>14</sup> The plan includes a measure to create a Hong Kong and Macao Work Office “as a working body of the CPC Central Committee,” thereby increasing the Party’s direct control over Hong Kong affairs.<sup>15</sup> Per the plan, the office

will be responsible for the investigation, research, co-ordination and supervision of upholding the principle of ‘one country, two systems,’ exercising the Central Authorities’ overall jurisdiction over the HKSAR, governing Hong Kong and Macao in accordance with the law, safeguarding national security, protecting people’s livelihood and well-being, and supporting the integration of Hong Kong and Macao into the national development.<sup>16</sup>

The Office—which answers to the CPC leadership, and not that of the PRC government—reportedly is overseen by Ding Xuexiang, a member of the Party’s top decision-making body (i.e., the seven-man Politburo Standing Committee) in his capacity as the chair of the CPC’s Central Leading Group on Hong Kong and Macao Affairs.<sup>17</sup> The regular work of the office is directed by the current director of the PRC’s Hong Kong and Macao Affairs Office, Xia Baolong.

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> According to the constitution of the PRC, the State Council, also known as the “Central People’s Government,” is the “the executive body of the supreme organ of state power; it is the supreme organ of State administration.” Source: The State Council of the PRC, “Constitution of the People’s Republic of China,” November 20, 2019, at [https://english.www.gov.cn/archive/lawsregulations/201911/20/content\\_WS5ed8856ec6d0b3f0e9499913.html](https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html).

<sup>15</sup> At the time the plan was published, Hong Kong affairs were handled by an office of the State Council (i.e., the Hong Kong and Macao Affairs Office), which is headed by the PRC’s premier. According to the plan, the new office would formally retain its State Council title, alongside the newly-created title of CPC Hong Kong and Macao Work Office. Source: The State Council of the PRC, “China releases plan on reforming Party and state institutions,” March 16, 2023, at [https://english.www.gov.cn/policies/latestreleases/202303/16/content\\_WS6413be82c6d0f528699db58e.html](https://english.www.gov.cn/policies/latestreleases/202303/16/content_WS6413be82c6d0f528699db58e.html).

<sup>16</sup> The Government of the HKSAR, “HKSAR resolutely supports formation of Hong Kong and Macao work office of CPC Central Committee by Central Authorities,” press release, March 16, 2023, at <https://www.info.gov.hk/gia/general/202303/16/P2023031600789.htm>.

<sup>17</sup> William Zheng, “Mainland China Executive Vice-Premier Made Beijing’s Top Official for Hong Kong and Macau (continued...)”



Some analysts have interpreted the measure as a way for the Party to “centralize” its leadership over Hong Kong, in order to keep Hong Kong from “becoming a weak link in national security.”<sup>18</sup> Chief Executive Lee has voiced his “resolute support” for the plan and “thanked the Central Authorities for their deepest care for the people of Hong Kong, and for the great importance they attach to implementing ‘one country, two systems.’”<sup>19</sup>

### Chief Executive John Lee

On May 8, 2022, the Hong Kong Election Committee, which is widely viewed among Hong Kong residents and foreign observers as beholden to Beijing (see “**Changes to Hong Kong’s Electoral System**,” below) selected John Lee (Lee Ka-chiu) as the new chief executive of the HKSAR. All but 45 of the Committee’s 1,461 members, or 96.9%, supported Lee. Lee ran unopposed. Some Hong Kong residents and foreign observers saw Lee’s unopposed candidacy as emblematic of a deterioration of Hong Kong’s democracy and of the Central Government’s increasingly direct influence in Hong Kong.<sup>20</sup> Chief Executive Lee’s tenure has intensified concerns among some Hong Kong residents that the HKSAR’s top official may be actively assisting the Central Government in eroding the city’s autonomy.<sup>21</sup> Since Lee was sworn in, his government has focused on dual priorities of enforcing the NSL and supporting Hong Kong’s economic recovery. Six months into Lee’s tenure, PRC leader Xi Jinping commended the HKSAR government for having “resolutely safeguarded national security, stepped up efforts to revitalize the economy, actively responded to the concerns of the people, and earnestly studied, communicated, and implemented the spirit of the 20th National Congress of the [CPC].” Xi also asserted that, under Lee, Hong Kong “has demonstrated a new atmosphere under the principle of ‘patriots administering Hong Kong,’ and is advancing with solid steps on the right track of ‘one country, two systems.’”<sup>22</sup>

In June 2023, several Members of Congress expressed concern about a statement by Deputy Secretary of State Wendy Sherman suggesting that the Department of State intended to invite Chief Executive Lee to attend the Asia-Pacific Economic Cooperation (APEC) grouping’s 2023

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Affairs,” *South China Morning Post*, March 21, 2023, at <https://www.scmp.com/news/china/politics/article/3214351/mainland-china-executive-vice-premier-made-beijings-top-official-hong-kong-and-macau-affairs>.

<sup>18</sup> Jeffie Lam and Willa Wu, “How to understand the ‘elevation’ of Beijing’s top office for Hong Kong affairs? Is the city more ‘special’ now? Analysts unpack the meaning behind the move,” *South China Morning Post*, March 19, 2023, at <https://www.scmp.com/news/hong-kong/politics/article/3214076/how-understand-elevation-beijings-top-office-hong-kong-affairs-city-more-special-now-analysts-unpack>.

<sup>19</sup> The Government of the HKSAR, “HKSAR Resolutely Supports Formation of Hong Kong and Macao Work Office of CPC Central Committee by Central Authorities,” Press Releases, March 16, 2023, at <https://www.info.gov.hk/gia/general/202303/16/P2023031600789.htm>.

<sup>20</sup> See, for example: Candice Chau, “‘Democracy with Hong Kong characteristics’: Reactions Pour in after John Lee Selected as City’s Next Leader,” *Hong Kong Free Press*, May 8, 2022, at <https://hongkongfp.com/2022/05/08/democracy-with-hong-kong-characteristics-reactions-pour-in-after-john-lee-selected-as-citys-next-leader/>; and U.S. Department of State, “G7 Foreign Ministers’ Statement on the Hong Kong Chief Executive Selection,” May 9, 2022, at <https://www.state.gov/g7-foreign-ministers-statement-on-the-hong-kong-chief-executive-selection>.

<sup>21</sup> See, for example: Pak Yiu, “Hong Kong Fears Run Deep as John Lee Aims to Take Charge,” *Nikkei Asia*, April 12, 2022, at <https://asia.nikkei.com/Spotlight/Asia-Insight/Hong-Kong-fears-run-deep-as-John-Lee-aims-to-take-charge>. For more on Chief Executive Lee’s background, see: CRS Insight IN11930, *The 2022 Hong Kong Chief Executive Election*.

<sup>22</sup> Xinhua, “President Xi meets with HKSAR chief executive,” *China Daily (Hong Kong)*, December 23, 2022, at <https://www.chinadailyhk.com/article/307024>.

Leaders' Meeting in San Francisco in November 2023.<sup>23</sup> In July 2023, unnamed U.S. officials reportedly told the *Washington Post* that Lee would not be invited to APEC.<sup>24</sup> In October 2023, the HKSAR announced that Lee would not be attending APEC, despite having received an invitation, due to scheduling issues, and that Financial Secretary Paul Chan (Chan Mo-po) would attend on his behalf.<sup>25</sup>

The U.S. Department of the Treasury added Lee and 10 other individuals to the Specially Designated Nationals and Blocked Persons (SDN) list pursuant to then-President Donald Trump's Executive Order on Hong Kong Normalization (E.O. 13936) in August 2020.<sup>26</sup> (See "**Selected U.S. and Other Government Responses to Developments in Hong Kong**," below.) At the time, Lee was Hong Kong's Secretary for Security.<sup>27</sup> U.S. persons are generally prohibited from dealing with individuals and entities on the SDN list. SDN designees' property and interests in property within the jurisdiction of the United States are blocked. Sanctioned persons under E.O. 13939 are also suspended from entering the United States unless the Secretary of State grants a waiver. In October 2020, the U.S. Department of State identified Lee as "materially contributing [...] to the failure of the Government of China to meet its obligations under the Joint Declaration or Basic Law," elaborating, "under his oversight, the Hong Kong Police have set up a dedicated unit to enforce the [NSL], which has arrested protestors and activists."<sup>28</sup>

## Democratic Institutions

Since 2020, China's NPC has adopted a series of measures that may have long-term impacts on Hong Kong's democratic institutions.<sup>29</sup> They include the NPC's first official interpretation of the NSL. Some view the interpretation as reaffirming the HKSAR executive's discretionary power over national security matters, thereby diminishing the local judiciary's relative power on national security issues.<sup>30</sup> Amendments to the Basic Law adopted by the NPC, meanwhile, have shifted

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<sup>23</sup> Marco Rubio, Jeff Merkley, Chris Smith, and Jim McGovern, "Rubio, Merkley, Smith, McGovern: 'Chief Executive Lee is not allowed to visit the U.S.'," Press Releases, June 7, 2023, at <https://www.rubio.senate.gov/public/index.cfm/2023/6/rubio-merkley-smith-mcgovern-chief-executive-lee-is-not-allowed-to-visit-the-u-s>. The Chief Executive of Hong Kong attends APEC Leader's Meeting per institutional custom.

<sup>24</sup> Ellen Nakashima and Shibani Mahtani, "Biden, Testing Xi, Will Bar Hong Kong's Leader from Economic Summit," *Washington Post*, July 27, 2023, at <https://www.washingtonpost.com/national-security/2023/07/27/hong-kong-john-lee-apec/>.

<sup>25</sup> Zen Soo, "Hong Kong Leader John Lee Will Miss an APEC Meeting in San Francisco due to 'Scheduling Issues,'" Associated Press, October 31, 2023, at <https://apnews.com/article/hong-kong-apec-invite-john-lee-sanctions-d28ea6f5d8775e72de36ed0384a6bd15>.

<sup>26</sup> U.S. Department of the Treasury, "Treasury Sanctions Individuals for Undermining Hong Kong's Autonomy," August 7, 2020, at <https://home.treasury.gov/news/press-releases/sm1088> and Federal Register, "The President's Executive Order on Hong Kong Normalization," July 17, 2020, at <https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization>.

<sup>27</sup> Chief Executive, Hong Kong Special Administrative Region, "Biography," access August 16, 2023, at <https://www.ceo.gov.hk/en/biography.html>.

<sup>28</sup> U.S. Department of State Bureau of East Asian and Pacific Affairs, "Identification of Foreign Persons Involved in the Erosion of the Obligations of China Under the Joint Declaration or the Basic Law," October 14, 2020, at <https://2017-2021.state.gov/identification-of-foreign-persons-involved-in-the-erosion-of-the-obligations-of-china-under-the-joint-declaration-or-the-basic-law/index.html>.

<sup>29</sup> Rhoda Kwan, "Explainer: Understanding Hong Kong's debate around the separation of powers and an executive-led system," *Hong Kong Free Press*, September 26, 2020, at <https://hongkongfp.com/2020/09/26/explainer-understanding-hong-kongs-debate-around-the-separation-of-powers-and-an-executive-led-system>.

<sup>30</sup> Jeffie Lam, "Explainer | National security law: how a ruling from Beijing on use of overseas lawyers in sensitive court cases could affect Hong Kong's legal system," *South China Morning Post*, December 31, 2022, at (continued...)

greater electoral power to a selection committee established by the HKSAR government that now has power to vet and elect the HKSAR's Chief Executive as well as candidates for Hong Kong's legislature, the Legislative Council (LegCo).

## NPC Interpretation of the NSL and Judicial Authority

On November 28, 2022, Chief Executive Lee requested that the National People's Congress Standing Committee (NPCSC) clarify whether overseas lawyers are permitted to work on legal cases related to national security.<sup>31</sup> Lee submitted the request after the Hong Kong Judiciary made multiple attempts to stop a foreign lawyer from representing *Apple Daily's* Jimmy Lai in his national security trial (see “**Media Freedom and Research Environment**,” below).<sup>32</sup>

Foreign lawyers are allowed to practice law within the HKSAR under Article 94 of the Basic Law, which stipulates that “the Government of the Hong Kong Special Administrative Region may make provisions for local lawyers and lawyers from outside Hong Kong to work and practise in the Region.”<sup>33</sup> Foreign judges serve on Hong Kong's Court of Final Appeal. Over 1,400 foreign lawyers are registered with the professional association for solicitors in the HKSAR, the Law Society of Hong Kong.<sup>34</sup>

On December 30, 2022, the NPCSC—which has power of interpretation of the NSL under Article 65 of the NSL—issued an interpretation, determining that the question of foreign lawyers is at the discretion of the Chief Executive, rather than Hong Kong's independent judiciary.<sup>35</sup> The NPCSC also determined that, under Article 14 of the NSL, the HKSAR's Committee for Safeguarding National Security (CSNS) “has the power to make evaluation and decision on whether an issue concerning national security is involved,” and the decision “should be respected and implemented by the executive authorities, legislature, judiciary, etc., and any organisations of the [HKSAR].”<sup>36</sup> In May 2023, LegCo amended the HKSAR's Legal Practitioner Ordinance to require the Chief Executive's approval before a foreign lawyer can represent a client in national security cases.<sup>37</sup> Some legal scholars have criticized the decision, arguing that the amended ordinance “call[s] into

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<https://www.scmp.com/news/hong-kong/politics/article/3205197/national-security-law-how-ruling-beijing-use-overseas-lawyers-sensitive-court-cases-could-affect>.

<sup>31</sup> Gang Wen, “SAR asks NPCSC to interpret national security law,” *China Daily (Hong Kong)*, November 29, 2022, at <https://www.chinadailyhk.com/article/302528>.

<sup>32</sup> See: Kari Soo Lindberg, “Top HK Court Upholds Jimmy Lai's Right to UK Lawyer,” *Bloomberg*, November 28, 2022, at <https://www.bloomberg.com/news/articles/2022-11-28/top-hong-kong-court-upholds-jimmy-lai-s-right-to-uk-lawyer>.

<sup>33</sup> Government of the HKSAR, “Basic Law,” at <https://www.basiclaw.gov.hk/en/basiclaw/index.html>.

<sup>34</sup> Hong Kong Law Society, “About the Law Society,” accessed on August 8, 2023, at <https://www.hklawsoc.org.hk/en/Serve-the-Public/The-Law-List/Foreign-Lawyers>.

<sup>35</sup> Article 47 of the NSL requires HKSAR courts to seek a certificate from the chief executive in determining “whether an act involves national security or whether the relevant evidence involves State secrets.” The Government of the HKSAR, “Statement of the Chief Executive on the interpretation of the Law on Safeguarding National Security in Hong Kong by the Standing Committee of the National People's Congress,” Press Releases, December 30, 2022, at <https://www.info.gov.hk/gia/general/202212/30/P2022123000725.htm>.

<sup>36</sup> Changhao Wei and Taige Hu, “Explainer: NPCSC's Interpretation of Hong Kong National Security Law over Jimmy Lai's Foreign Defense Counsel,” *NPC Observer*, December 30, 2022, at <https://npcobserver.com/2022/12/30/explainer-npcscs-interpretation-of-hong-kong-national-security-law-over-jimmy-lais-foreign-defense-counsel>.

<sup>37</sup> Legislative Council of the HKSAR, “Legal Practitioners (Amendment) Bill 2023,” at [https://www.elegislation.gov.hk/egazettedownload?EGAZETTE\\_PDF\\_ID=31484](https://www.elegislation.gov.hk/egazettedownload?EGAZETTE_PDF_ID=31484).

question the Hong Kong government's commitment to its obligations under international human rights law" and "arguably violate key provisions" of the Basic Law.<sup>38</sup>

The Basic Law does not explicitly provide for separation of powers in the HKSAR. Nonetheless, the NPC's interpretation has drawn the attention of civil society groups and legal experts for its potential effect on the balance of power among the Hong Kong's Executive Council, LegCo, and the Judiciary. Some legal experts have argued that the interpretation "'certainly' extended the power of the Chief Executive from certifying evidence to decisions on legal questions."<sup>39</sup> In that sense, the interpretation could be seen as further enhancing executive power in what some Hong Kong administrations, including that of Chief Executive Carrie Lam (Lam Cheng Yuet-ngor), have referred to as Hong Kong's "executive-led" system.<sup>40</sup> Other analysts have characterized the interpretation as "restrained" for not having directly banned foreign lawyers' participation in national security cases and for having returned the matter to the local government.<sup>41</sup>

On April 19, 2023, Margaret Satterthwaite, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, argued in a letter submitted to the PRC government that the NSL "may interfere with the legal profession and the right to a fair trial," adding that the NSL "together with recent decisions taken in the HKSAR would affect the independence of the judiciary, the ability of lawyers to exercise their profession independently, and the due process guarantees of the right to a fair trial."<sup>42</sup>

Even as they have imposed new PRC-drafted civil laws on Hong Kong's Judiciary, PRC and HKSAR officials have voiced their support for Hong Kong's continued use of the common law system. In July 2022, Xi highlighted the central government's support for Hong Kong's common law system, noting it as one of the city's unique advantages; he also claimed the Central Government's belief that "Hong Kong will make significant contributions [to]comprehensively building a modern socialist country and realizing the great rejuvenation of the Chinese nation."<sup>43</sup> In December 2022, HKSAR Secretary for Justice Paul Lam (Lam Ting-kwok) cited the 20th National Congress of the CPC as "a major confidence booster to [...] the fact that Hong Kong's common law system will long continue..."<sup>44</sup>

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<sup>38</sup> Kevin Yam and Thomas E. Kellog, "In Hong Kong, Another Blow to the Rule of Law," *Lawfare*, May 23, 2023, at <https://www.lawfaremedia.org/article/in-hong-kong-another-blow-to-the-rule-of-law>.

<sup>39</sup> Jeffie Lam, "Explainer |National security law: how a ruling from Beijing on use of overseas lawyers in sensitive court cases could affect Hong Kong's legal system," *South China Morning Post*, December 31, 2022, at <https://www.scmp.com/news/hong-kong/politics/article/3205197/national-security-law-how-ruling-beijing-use-overseas-lawyers-sensitive-court-cases-could-affect>.

<sup>40</sup> See: Rhoda Kwan, "Explainer: Understanding Hong Kong's debate around the separation of powers and an executive-led system," *Hong Kong Free Press*, September 26, 2020, at <https://hongkongfp.com/2020/09/26/explainer-understanding-hong-kongs-debate-around-the-separation-of-powers-and-an-executive-led-system>.

<sup>41</sup> Changhao Wei and Taige Hu, "Explainer: NPCSC's Interpretation of Hong Kong National Security Law over Jimmy Lai's Foreign Defense Counsel," *NPC Observer*, December 30, 2022, at <https://npcobserver.com/2022/12/30/explainer-npcscs-interpretation-of-hong-kong-national-security-law-over-jimmy-lais-foreign-defense-counsel>.

<sup>42</sup> Margaret Satterthwaite, "Mandate of the Special Rapporteur on the independence of judges and lawyers," United Nations Office of the High Commissioner for Human Rights, April 19, 2023, at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27992>.

<sup>43</sup> Central People's Government of the PRC, "在庆祝香港回归祖国二十五周年大会暨香港特别行政区第六届政府就职典礼上的讲话" ("Speech at the Celebration of the 25th Anniversary of Hong Kong's Return to the Motherland and the Inaugural Ceremony of the Sixth Government of the Hong Kong Special Administrative Region"), July 1, 2022, at [https://www.gov.cn/gongbao/content/2022/content\\_5701569.htm](https://www.gov.cn/gongbao/content/2022/content_5701569.htm).

<sup>44</sup> Paul Lam, "Common Law is HK's Asset," *News.gov.hk*, December 3, 2022, at [https://www.news.gov.hk/eng/2022/12/20221203/20221203\\_175307\\_636.html](https://www.news.gov.hk/eng/2022/12/20221203/20221203_175307_636.html).

## Changes to Hong Kong's Electoral System

Hong Kong's governance system was not broadly democratic under British rule. For most of the period starting with LegCo's establishment in 1843, LegCo members were either ex-officio members by virtue of holding government office or appointed by Hong Kong's governor, who was in turn appointed by the British monarch. The Hong Kong government began introducing democratic reforms in 1984, the same year the UK and PRC signed the Joint Declaration, leading to the first indirect election of some LegCo members in 1985, and the first direct election of some LegCo members in 1991.<sup>45</sup> Following a period under a provisional legislature after Hong Kong's handover from the UK to the PRC, the first LegCo under PRC sovereignty was composed of members selected through a mix of universal suffrage, limited suffrage, and appointment.<sup>46</sup>

On March 11, 2021, the NPC adopted a decision to amend certain provisions of the Basic Law related to Hong Kong's electoral system, significantly reducing the role of direct elections in the selection of the HKSAR's leaders. Based on the premise that Hong Kong's electoral system "should be conducive to safeguarding China's national sovereignty, security, and development interests and help maintain the long-term prosperity and stability of Hong Kong," the decision ordered the HKSAR to significantly expand the size and influence of an existing Hong Kong Election Committee (HKEC) over the electoral process.<sup>47</sup> It also established a Candidate Eligibility Review Committee to vet candidates for LegCo seats, effectively restricting the pool of candidates eligible for office, according to some analysts.<sup>48</sup> PRC government officials and state-affiliated media framed the decision as ensuring that "patriots" govern Hong Kong.<sup>49</sup>

The decision concentrated greater electoral power in the HKEC—an ostensibly "broadly representative" body whose members are nominally put forward by one of five sectors. The reform also expanded the HKEC from 1,200 to 1,500 members, and altered its composition to remove district council representatives and add "patriotic organizations" and other groups, including LegCo members and HKSAR representatives to the NPC.<sup>50</sup> Prior to the 2021 changes, the HKEC was responsible for selecting the Chief Executive and 10 members of the LegCo. It is now responsible for selecting 40 of an expanded LegCo's 90 members, while the number of seats in the legislature subject to direct election has dropped from 35 to 20. So-called "functional constituencies" elect the remainder of LegCo seats; the electoral reforms have adjusted these constituencies in an apparent effort to favor pro-Beijing candidates.<sup>51</sup> The HKEC is also responsible for nominating candidates for the Chief Executive and LegCo members, after the Candidate Eligibility Review Committee has confirmed them to be "patriots."

<sup>45</sup> Legislative Council of the HKSAR, "Historical Development of the Legislature," 2023, at <https://www.legco.gov.hk/en/education/understand/timeline.html>.

<sup>46</sup> For more on the history of the LegCo, see: CRS In Focus IF10500, *Hong Kong's Legislative Council (Legco)*.

<sup>47</sup> The National People's Congress of the PRC, "China adopts decision to improve Hong Kong electoral system," March 11, 2021, at <http://www.npc.gov.cn/englishnpc/c23934/202103/8343acdf80ba4a8c898441ff89770398.shtml>.

<sup>48</sup> James Griffiths, "Beijing passes new 'patriot' election law for Hong Kong that restricts opposition," CNN, March 30, 2021, at <https://www.cnn.com/2021/03/30/asia/china-hong-kong-elections-intl-hnk/index.html>.

<sup>49</sup> Central People's Government of the PRC, "'爱国者治港', 香港才有美好未来" ("Only With Patriots Governing Hong Kong Does Hong Kong Have a Better Future"), March 13, 2021, at [http://www.gov.cn/xinwen/2021-03/13/content\\_5592728.htm](http://www.gov.cn/xinwen/2021-03/13/content_5592728.htm).

<sup>50</sup> Constitutional and Mainland Affairs Bureau of the Government of the HKSAR, "Method for the Constitution of the Election Committee," at <https://www.cmab.gov.hk/improvement/en/ceo-ele-committee/index.html>.

<sup>51</sup> The National Bureau of Asian Research, "Hong Kong After the Legislative Council Election," interview with Michael C. Davis, February 25, 2022, at <https://www.nbr.org/publication/hong-kong-after-the-legislative-council-election>.

Some have criticized the changes as contrary to the spirit of the Basic Law.<sup>52</sup> Article 45 of the Basic Law states that “[t]he ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.”<sup>53</sup> Lo Kin-hei, chairman of Hong Kong’s opposition Democratic Party, referred to the changes as “the biggest regression of the system since the handover” of Hong Kong to PRC rule.<sup>54</sup> An alliance of parties traditionally aligned with the PRC central government (“pro-establishment” parties), including the Democratic Alliance for the Betterment and Progress of Hong Kong, the New People’s Party, and the Liberal Party, welcomed the changes as a way of “bringing order” and “facilitating long-term prosperity.”<sup>55</sup>

Since 2016, Hong Kong’s electoral landscape has become more challenging for the city’s opposition parties and their members, which have had to contend with multiple waves of disqualifications, ousters,<sup>56</sup> arrests, and prosecutions.<sup>57</sup> Some elected representatives have resigned from office in protest.<sup>58</sup> Central and local authorities’ efforts to ensure only “patriots” run for office, coupled with calls to boycott elections altogether, resulted in what many observers categorized as an electoral “sweep” for pro-establishment candidates in the December 2021 LegCo elections.<sup>59</sup> Some opposition members have chosen to abstain from the political process following the changes. Three self-identified “pro-democracy” candidates participated in the election.<sup>60</sup> In May 2023, the Civic Party, one of Hong Kong’s largest pro-democracy parties, disbanded. In 2020, the HKSAR government either disqualified multiple Civic Party affiliated-figures from running for election or removed them from office. The government also charged four Civic Party members under the NSL for participating in an unofficial primary for the

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<sup>52</sup> Zen Soo, “Hong Kong Changes Electoral Law, Reduces Direct Public Vote,” *The Diplomat*, May 27, 2021, at <https://thediplomat.com/2021/05/hong-kong-changes-electoral-law-reduces-direct-public-vote>.

<sup>53</sup> Government of the HKSAR, “Basic Law,” at <https://www.basiclaw.gov.hk/en/basiclaw/index.html>.

<sup>54</sup> Chun Han Wong and Natasha Khan, “China All but Ends Hong Kong Democracy With ‘Patriots Only’ Rule,” *The Wall Street Journal*, March 11, 2021, at <https://www.wsj.com/articles/china-all-but-ends-hong-kong-democracy-with-patriots-only-rule-11615462663>.

<sup>55</sup> Carine Chow, “Alliance launched to support changes,” *The Standard*, March 12, 2021, at <https://www.thestandard.com.hk/section-news/section/11/228327/Alliance-launched-to-support-changes>.

<sup>56</sup> See, for example: The Government of the HKSAR, “HKSAR Government Announces Disqualification of Legislators Concerned in Accordance with NPCSC’s Decision on Qualification of HKSAR Legislators,” Press Release, November 11, 2020, at <https://www.info.gov.hk/gia/general/202011/11/P2020111100779.htm>; and Rhoda Kwan, “16 More Democratically Elected District Councillors Face Disqualification Over Hong Kong Gov’t Loyalty Oaths,” *Hong Kong Free Press*, August 17, 2023, at <https://hongkongfp.com/2021/10/05/16-more-democratically-elected-district-councillors-face-disqualification-over-hong-kong-govt-loyalty-oaths>.

<sup>57</sup> See, for example: Austin Ramzy, “8 Pro-Democracy Politicians Arrested in Hong Kong Over Heated Meeting,” *The New York Times*, November 1, 2020, at <https://www.nytimes.com/2020/11/01/world/asia/hong-kong-prodemocracy-lawmakers-arrested-legco.html> Human Rights Watch; and “Hong Kong: 47 Lawmakers, Activists Face Unfair Trial,” August 22, 2022, at <https://www.hrw.org/news/2022/08/22/hong-kong-47-lawmakers-activists-face-unfair-trial>.

<sup>58</sup> Emily Feng and Scott Neuman, “Hong Kong’s Pro-Democracy Lawmakers Quit Legislature over Ouster of Colleagues,” *NPR*, November 11, 2020, at <https://www.npr.org/2020/11/11/933780136/hong-kongs-pro-democracy-lawmakers-quit-legislature-over-ouster-of-colleagues>.

<sup>59</sup> Edmond Ng and Sara Cheng, “Pro-Beijing ‘Patriots’ sweep Hong Kong Election with Record Low Turnout,” Reuters, December 20, 2021, at <https://www.reuters.com/world/china/hong-kong-patriots-only-election-draws-record-low-turnout-2021-12-19>.

<sup>60</sup> Natalie Wong, “Hong Kong Elections: Only 3 Legislative Council Candidates Identify as ‘Pro Democracy’, Demand Universal Suffrage in Official Poll Statements,” *South China Morning Post*, November 27, 2021, at <https://www.scmp.com/news/hong-kong/politics/article/3157625/hong-kong-elections-only-3-legislative-council-candidates>.

subsequently postponed 2020 LegCo election (see “**Prosecution of Activists and Protesters,**” below).<sup>61</sup>

On July 6, 2023, LegCo passed an amendment to the city’s District Councils Ordinance reforming the SAR’s district council elections.<sup>62</sup> The plan—proposed by the HKSAR government and based on the premise that district councils “must revert to their positioning as district advisory bodies which are not organs of political power in accordance with Article 97 of the Basic Law”—reduced the number of directly elected seats to 88 (~20%) from 452 (~94%).<sup>63</sup> It also introduced a constituency of 179 members appointed by the HKSAR government, equivalent to 38% out of a total 470 district council seats, as well as a candidate eligibility review mechanism. The last district council elections, held in November 2019, were widely interpreted as a victory for Hong Kong’s pro-democracy camp, which won control of district councils in all 18 of Hong Kong’s districts.<sup>64</sup> Nonetheless, as of May 2, 2023, 146 of 479 councilors were serving after a wave of disqualifications and resignations mainly associated with the requirement that councilors swear allegiance to the Basic Law and the “HKSAR of the PRC.”<sup>65</sup>

### Additional National Security Legislation

In June 2023, Chief Executive Lee stated that the HKSAR government would pass national security legislation “at the latest” by 2024.<sup>66</sup> Some analysts assess that additional national security legislation—this time proposed by the local government—could be “very probably stricter” than the NSL imposed by the central government.<sup>67</sup>

Article 23 of the Basic Law requires the HKSAR government to “enact laws on its own” criminalizing seven activities: (1) treason; (2) secession; (3) sedition; (4) subversion against the Central People’s Government; and (5) the theft of state secrets; at the same time that it (6) prohibits foreign political organizations or bodies from conducting political activities in the HKSAR and (7) prohibits political organizations or bodies of the HKSAR from establishing ties with foreign political organizations or bodies.<sup>68</sup> In comparison, the current, NPC-imposed

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<sup>61</sup> Candice Chau, “Explainer: A History of Hong Kong’s Pro-Democracy Civic Party,” *Hong Kong Free Press*, May 29, 2023, at <https://hongkongfp.com/2023/05/28/explainer-a-history-of-hong-kongs-pro-democracy-civic-party>.

<sup>62</sup> Hong Kong Legislative Council, “District Councils (Amendment) Ordinance 2023,” July 10, 2023, at <https://www.legco.gov.hk/yr2023/english/ord/2023ord019-e.pdf>.

<sup>63</sup> Home Affairs Department of the HKSAR, “Legislative Council Brief: Improving Governance at the District Level,” May 2, 2023, at [https://www.had.gov.hk/file\\_manager/public\\_services/district\\_administration/dar2023/legco\\_brief\\_en.pdf](https://www.had.gov.hk/file_manager/public_services/district_administration/dar2023/legco_brief_en.pdf).

<sup>64</sup> Keith Bradsher, Austin Ramzy and Tiffany May, “Hong Kong Election Results Give Democracy Backers Big Win,” *The New York Times*, November 24, 2019, at <https://www.nytimes.com/2019/11/24/world/asia/hong-kong-election-results.html> and Amy Gunia, “Hong Kong’s Democracy Parties Scored Big in Local Elections. Here’s What That Means for Their Movement,” *Time*, November 25, 2019, at <https://time.com/5736896/hong-kong-district-council-elections>.

<sup>65</sup> The Government of the HKSAR, “Government announces proposals on improving governance at district level,” Press Releases, May 2, 2023, at <https://www.info.gov.hk/gia/general/202305/02/P2023050200414.htm>.

<sup>66</sup> “李家超上任周年接受中通社、香港新聞網專訪問答全文” (“Full Text of John Lee’s Interview with Hong Kong China News Agency and Hong Kong News Network on the Anniversary of Inauguration”), 香港新聞網 (“Hong Kong News Network”), June 22, 2023, at <http://www.hkcna.hk/docDetail.jsp?id=100392763&channel=100>.

<sup>67</sup> Sophie Reiß, “Three Years of National Security Law in Hong Kong: Farewell ‘special status’?,” Mercator Institute for China Studies (MERICS), June 30, 2023, at <https://merics.org/en/comment/three-years-national-security-law-hong-kong-farewell-special-status>.

<sup>68</sup> Government of the HKSAR, “Basic Law,” at <https://www.basiclaw.gov.hk/en/basiclaw/index.html>.

national security law criminalizes four activities (i.e., “secession,” “subversion,” “terrorism,” and “collusion” with foreign entities “to endanger national security”).

In July 2003, Hong Kong residents turned out in large-scale public protests to oppose efforts by then-Chief Executive Tung Chee-hwa’s administration to pass national security legislation and fulfill Article 23. Multiple HKSAR officials and lawmakers resigned in protest before the bill was withdrawn in September 2003.<sup>69</sup> The issue of passing Article 23 legislation was dormant until former Chief Executive Lam announced a public consultation on the matter in December 2021, following the NPC’s imposition of the NSL. Since Chief Executive Lee assumed office, his administration has continued these efforts by reportedly setting-up a joint task force between the HKSAR Department of Justice and its Security Bureau to explore the issue.<sup>70</sup> Regarding Article 23, Chief Executive Lee has stated,

Completing the legislation of Article 23 is not simply finishing a task. We need a suitable and effective law to safeguard national security. If we only want to get the job done and ignore certain risks, we will fail our constitutional duty, Hong Kong and our country.<sup>71</sup>

In July 2023, Secretary of Security Chris Tang (Tang Ping-keung) told media that, in the process of formulating Article 23 legislation, the administration was considering ways to address “soft resistance” and “internet gaps.” He also stated they were considering adding espionage-related crimes to the legislation.<sup>72</sup>

## Civil Rights and Liberties

The PRC central government and the HKSAR authorities’ systematic implementation of the NSL since 2020 has stifled the city’s lively civic culture and eroded Hong Kong residents’ civil rights and liberties in the process, according to some analysts.<sup>73</sup> These analysts point to the targeting of activists and protesters for criminal charges, the closure of several prominent dissenting media outlets, and official obstruction of public assemblies.

In signing the Joint Declaration and passing the Basic Law, the PRC committed to protect Hong Kong residents’ civil rights and liberties and uphold Hong Kong’s autonomy in all but defense and foreign affairs. Under Annex I of the Joint Declaration, China agreed that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong would remain in force.<sup>74</sup> Article 27 of the Basic Law of Hong Kong, adopted by the NPC in 1990, stipulates,

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<sup>69</sup> Hillary Leung, “Explainer: What is Article 23? Hong Kong’s Homegrown Security Law Finds Itself Back in the Spotlight,” *Hong Kong Free Press*, July 29, 2023, at <https://hongkongfp.com/2023/07/29/explainer-two-decades-on-hong-kongs-homegrown-security-law-article-23-is-back-in-the-spotlight>.

<sup>70</sup> “林定國：23條研究有進展 惟未可交代” (“Paul Lam: Article 23 Analysis Has Progressed, But Nothing to Report”), Radio Television Hong Kong (RTHK), June 23, 2023, at <https://news.rthk.hk/rthk/ch/component/k2/1705935-20230623.htm>.

<sup>71</sup> “Steady, Measured Steps in Enacting Article 23 Needed,” *The Standard*, June 29, 2023, at <https://www.thestandard.com.hk/section-news/section/11/253745/Steady,-measured-steps-in-enacting-Article-23-needed>.

<sup>72</sup> 柴靖 (Chai Jing), “鄧炳強：二十三條立法注重有效務實” (“Tang Ping-keung: Article 23 legislation focuses on effectiveness and pragmatism”), 文匯報 (“Wen Wei Po”), July 17, 2023, at <https://dw-media.tkww.hk/epaper/www/20230717/a03-0717.pdf>.

<sup>73</sup> See, for example: Human Rights Watch, “Dismantling a Free Society,” June 25, 2021.

<sup>74</sup> “Joint Declaration on the Question of Hong Kong,” United Nations Treaty Collection, vol. 1399, no. 23391-23396, 1985, pp. 33-87, <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d4d6e>.



Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.<sup>75</sup>

Article 4 of the NSL provides for “protection” of these rights:

The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region enjoy under the Basic Law of the [HKSAR] and the provisions of the [ICCPR] and the [ICESCR] as applied to Hong Kong, shall be protected in accordance with the law.<sup>76</sup>

## Prosecution of Activists and Protesters

On March 26, 2019, the HKSAR government introduced a bill that would have—for the first time—created a formal extradition mechanism between Hong Kong and mainland China for certain crimes.<sup>77</sup> Even before the bill’s introduction, diverse sectors of Hong Kong’s civil society opposed the bill and organized public demonstrations.<sup>78</sup> Demonstrators’ demands initially focused on the withdrawal of the extradition bill. The Hong Kong Police Force’s use of force against protesters then prompted additional grievances. The protesters’ list of “Five Demands” included the resignation of then-Chief Executive Lam and the implementation of universal suffrage for the LegCo and the Chief Executive. Demonstrations continued following the withdrawal of the bill on October 23, 2019. On May 28, 2020, the NPC adopted a decision authorizing its Standing Committee to write national security laws that would apply only to the HKSAR.<sup>79</sup> NPC Vice Chairman Wang Chen cited growing risks to China’s national security following the outbreak of the protests as one of the factors behind the decision to implement the NSL.<sup>80</sup>

The NSL gives broad powers to the HKSAR government in cases it deems relevant to national security. Some have referred to the result as Hong Kong having “two parallel legal systems”: one for ordinary crimes and another, more restrictive one for national security crimes, which some

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<sup>75</sup> The full text of the Basic Law, as amended, and the various decisions and interpretations issued by the PRC government, is available online at <https://www.basiclaw.gov.hk/en/basiclawtext/index.html>.

<sup>76</sup> The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region,” Government of the HKSAR Gazette, G.N. (E.) 72 of 2020, July 6, 2020, at [https://www.elegislation.gov.hk/fwddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf).

<sup>77</sup> The Government of the HKSAR, “Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 to be submitted to LegCo,” Press Releases, March 26, 2019, at <https://www.info.gov.hk/gia/general/201903/26/P2019032600708.htm>.

<sup>78</sup> Hong Kong also experienced numerous protests throughout the years in response to local authorities’ attempts to implement Article 23 of the Basic Law, which requires that the HKSAR “enact laws on its own to prohibit any act of treason, secession, sedition or theft of state secrets. See: Jeffie Lam, “Explainer |National security: what is Article 23 in Hong Kong and why is the issue back in the spotlight?,” *South China Morning Post*, June 28, 2021, at <https://www.scmp.com/news/hong-kong/politics/article/3138956/national-security-what-article-23-hong-kong-and-why-issue>.

<sup>79</sup> The National People’s Congress of the PRC, “Decision of the National People’s Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security,” May 28, 2020, at <https://www.legco.gov.hk/yr19-20/english/panels/se/papers/ajlscase20200707-ln135-e.pdf>.

<sup>80</sup> “（两会受权发布）王晨作关于《全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定（草案）》的说明” (“(Authorized for Release) Wang Chen Gives Explanation on ‘Draft’ Decision of NPC on Establishment of Sound Legal System, Implementation Mechanism for Safeguarding of National Security in Hong Kong Special Administrative Region”), *Xinhua*, May 22, 2020, [http://www.xinhuanet.com/politics/2020-05/22/c\\_1126019468.htm](http://www.xinhuanet.com/politics/2020-05/22/c_1126019468.htm). For more on the 2019 protests, see: CRS In Focus IF11295, *Hong Kong’s Protests of 2019*.

argue are vaguely defined.<sup>81</sup> Prior to the NSL, bail was routinely granted. Under the NSL, however, the conditions for being granted bail and pre-trial release are unclear and inconsistently applied; some scholars cite pre-trial detention as “a major area of abuse by the HKSAR government since the NSL went into effect.”<sup>82</sup> In addition to giving judges greater discretion over bail conditions, the NSL gives the Secretary for Justice discretion over whether try a case without a jury; allows for trials to be closed to the media and public in certain cases; and allows the central government to exercise jurisdiction over certain cases (see **“Entrenching Central Government Control over the HKSAR,”** below).<sup>83</sup>

Four years after the 2019 Anti-Extradition Bill protests, HKSAR authorities continue to detain and prosecute people in connection with those demonstrations. Although authoritative data for 2023 is not available, as of October 2022 the Hong Kong Police Force (HKPF) had arrested 10,279 people in connection with the protests according to Hong Kong Secretary for Security Tang. Among those arrested, 2,044 had “completed legal proceedings,” and 1,631 had “to bear legal consequences, including sentencing upon conviction, community service order, probation order and bind over orders made by courts.”<sup>84</sup>

The HKSAR government also is engaged in legal proceedings against a group of 47 pro-democracy figures (the “Hong Kong 47”) who, in July 2020, organized an unofficial primary for the subsequently postponed 2020 LegCo election. Following their arrest in January 2021, the Hong Kong 47 (who include activist Joshua Wong and former University of Hong Kong professor Benny Tai) were charged with “conspiracy to commit subversion.”<sup>85</sup> Sixteen of the Hong Kong 47 denied the charge and are standing trial; if convicted they face up to life imprisonment.<sup>86</sup>

Some international human rights groups and civil society groups have argued that the arrests and prosecutions are politically motivated. Regarding the trial of the Hong Kong 47, advocacy group Amnesty International stated that “[w]ith this mass trial, the Hong Kong government is attempting to shut off all meaningful political participation in Hong Kong,” adding that “[t]he

<sup>81</sup> Tim Hamlett, “There must be a clear boundary between Hong Kong’s two parallel legal systems,” *Hong Kong Free Press*, February 19, 2021, at <https://hongkongfp.com/2021/02/19/there-must-be-a-clear-boundary-between-hong-kongs-two-parallel-legal-systems>.

<sup>82</sup> Suzanne Sataline, “Assumed as criminals’: Hong Kong defendants find bail elusive,” *Al Jazeera*, January 27, 2022, at <https://www.aljazeera.com/news/2022/1/27/hong-kong-bail>.

<sup>83</sup> The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region,” Government of the HKSAR Gazette, G.N. (E.) 72 of 2020, July 6, 2020, at [https://www.elegislation.gov.hk/fwddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf).

<sup>84</sup> Hong Kong Legislative Council, “Official Record of Proceedings,” October 26, 2022 <https://www.legco.gov.hk/yr2022/english/counmtg/hansard/cm20221026-translate-e.pdf>.

<sup>85</sup> The Government of the HKSAR, “Police charge forty-seven persons for conspiracy to commit subversion,” Press Releases, February 28, 2021, at <https://www.info.gov.hk/gia/general/202102/28/P2021022800429.htm>. The NSL defines “subversion” as “organizing, planning, committing, or participating” in a set of activities “by force or threat of force or other unlawful means with a view to subverting the State power [...]” Covered activities include: “seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People’s Republic of China or the body of power of the Hong Kong Special Administrative Region” and “attacking or damaging the premises and facilities used by the body of power of the Hong Kong Special Administrative Region to perform its duties and functions, rendering it incapable of performing its normal duties and functions.” Source: The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region,” Government of the HKSAR Gazette, G.N. (E.) 72 of 2020, July 6, 2020, at [https://www.elegislation.gov.hk/fwddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf).

<sup>86</sup> Kelly Ho, “UN Human Rights Experts ‘Troubled’ over Hong Kong’s 47 Democrats Trial under National Security Law,” *Hong Kong Free Press*, October 10, 2023, at <https://hongkongfp.com/2023/10/10/un-human-rights-experts-troubled-over-hong-kongs-47-democrats-trial-under-national-security-law>.

charges against the 47 are based entirely upon claimed hypothetical threats to national security.”<sup>87</sup> In response to criticism of the trial from some Members of Congress and other U.S. policymakers, the spokesperson for the Commissioner’s Office of the PRC’s Ministry of Foreign Affairs in the HKSAR stated that, by organizing unofficial primaries with the goal of winning a majority of the legislature, the accused “sought to paralyze the SAR Government and pressure the Central and the SAR governments,” and “not only jeopardized the democratic electoral system stipulated in the Basic Law of the HKSAR, but is also suspected of committing the crime of subversion under the [NSL].”<sup>88</sup>

The ongoing crackdown has had a chilling effect on the city’s legal professionals, according to some media reports.<sup>89</sup> According to one such report, some lawyers taking on human rights cases in Hong Kong were subject to intimidation tactics including anonymous threats and questioning by national security police.<sup>90</sup> These patterns of behavior—and fears that lawyers themselves may face prosecution under the NSL—led several lawyers to discontinue public interest litigation or leave the city. The effect of these departures on defendants is unclear. The HKSAR government denies reports of harassment, stating, “There is no truth in the alleged harassment or intimidation of ‘human rights’ lawyers.”<sup>91</sup>

On July 3, 2023, the National Security Department of the HKPF announced that the courts had approved arrest warrants for eight persons for alleged contraventions of the NSL. According to the HKPF, the eight persons (including former lawmaker Dennis Kwok and noted activist Nathan Law (Law Kwun-chung)) have “fled overseas and are alleged to have continued to commit offences under the [NSL] that seriously endanger national security, including ‘incitement to secession,’ ‘subversion,’ ‘incitement to subversion,’ and ‘collusion with a foreign country or with external elements to endanger national security.’”<sup>92</sup> The HKPF has offered a reward of HK\$1 million for each wanted person to any member of the public who provides information “on the wanted persons and the related crimes,” in what some media have described as a first.<sup>93</sup>

At a press conference on July 4, 2023, Chief Executive Lee urged the eight to turn themselves in, stating that “the only way out is to surrender [...]” and that this would be a “mitigating factor that the court considers in sentencing them, otherwise [...] they will continue to live in fear.”<sup>94</sup> Family

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<sup>87</sup> Amnesty International, “Hong Kong: Case against 47 pro-democracy figures must be dropped as politically motivated trial begins,” February 6, 2023, at <https://www.amnesty.org/en/latest/news/2023/02/hong-kong-case-against-47-pro-democracy-figures-must-be-dropped-as-politically-motivated-trial-begins>.

<sup>88</sup> Office of the Commissioner of the Ministry of Foreign Affairs of the PRC in the HKSAR, “外交部驻港公署正告美西方政客：立即停止干预香港司法的政治操弄” (“The Commissioner’s Office of the Ministry of Foreign Affairs in Hong Kong Warns American and Western politicians: Immediately stop political manipulation of interfering in Hong Kong’s judiciary”), February 7, 2023, at [http://hk.ocmfa.gov.cn/chn/gsb/202302/t20230207\\_11021339.htm](http://hk.ocmfa.gov.cn/chn/gsb/202302/t20230207_11021339.htm).

<sup>89</sup> See, for example: Chan Ho-him, “Hong Kong’s Corporate Lawyers Test Boundaries as Beijing’s Influence Grows,” *Financial Times*, August 12, 2023, at <https://www.ft.com/content/45b304bd-9b12-4fd4-8def-0b9813f08f46>.

<sup>90</sup> James Pomfret, Greg Torode, and David Lague, “Lawyers exit Hong Kong as they face campaign of intimidation,” Reuters, December 29, 2022, at <https://www.reuters.com/investigates/special-report/china-lawyers-crackdown-exodus>.

<sup>91</sup> Ibid.

<sup>92</sup> Hong Kong Police Force, “Persons Wanted for Alleged Contravention of the Hong Kong National Security Law,” Press Release, July 3, 2023, at [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).

<sup>93</sup> Kari Soo Lindberg, “Hong Kong Vows to Hunt Activists for Life After Bounty Offer,” *Bloomberg*, July 3, 2023, at <https://www.bloomberg.com/news/articles/2023-07-03/hk-police-offer-hk-1m-reward-for-8-wanted-democracy-activists>.

<sup>94</sup> Information Services Department of the Government of the HKSAR, “Chief Executive Meets the Media,” July 4, 2023, at [https://webcast.info.gov.hk/revamp/eng/video/0000001990\\_mp4.html](https://webcast.info.gov.hk/revamp/eng/video/0000001990_mp4.html).

members' of the eight reportedly have been questioned by the HKPF.<sup>95</sup> The State Department condemned the warrants, noting that “[t]he extraterritorial application of the Beijing-imposed [NSL] is a dangerous precedent that threatens the human rights and fundamental freedoms of people all over the world.”<sup>96</sup> It also condemned Hong Kong authorities' targeting of activists' family members.<sup>97</sup> The International Criminal Police Organization (Interpol) told *Hong Kong Free Press* that “no requests for a Red Notice or Wanted Persons Diffusion for the eight activists had been received.”<sup>98</sup>

The HKSAR government has “strongly condem[n]ed” the introduction of two bills (H.R. 6153 and S. 3177), introduced in the U.S. Congress in November 2023, which would require the President to determine whether certain HKSAR judicial officials meet the criteria for the imposition of sanctions pursuant to the Global Magnitsky Human Rights Accountability Act (22 U.S.C. 10102(b)); E.O. 13818; the Hong Kong Autonomy Act of 2020 (HKAA, P.L. 116-149); the Hong Kong Human Rights and Democracy Act (HKHRDA, P.L. 116-76); as well as E.O. 13936.<sup>99</sup> The bill includes a list of 49 HKSAR judiciary officials, including Secretary of Justice Lam and the Secretary General of the CSNS, Sonny Au Chi-kwong. Following the introduction of the bill, a petitioner described by the *Hong Kong Free Press* as a “pro-Beijing lawyer” petitioned Hong Kong's High Court to “allow ‘all people’ to be able to arrest” the five Members of Congress that have sponsored and cosponsored the two bills.<sup>100</sup>

## Media Freedom and Research Environment

The HKSAR government's active enforcement of the NSL has prompted several local media organizations to close or cease operations in Hong Kong. Some outlets, including some outlets critical of the Central Government such as *Apple Daily* and *Stand News*, have been investigated by the HKSAR government. Some of their former executives and senior staff are facing prosecution. Other outlets, including *Citizen News*<sup>101</sup> and *FactWire*,<sup>102</sup> closed down citing security concerns and the shifting media landscape. According to Paris-based advocacy group Reporters without Borders, at least seven independent news outlets have closed in Hong Kong since 2021.<sup>103</sup>

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<sup>95</sup> Jessie Pang and Tyrone Siu, “Hong Kong Police Widen Questioning of Relatives Of Wanted Activists,” Reuters, July 20, 2023, at <https://www.reuters.com/world/asia-pacific/hong-kong-police-widen-questioning-relatives-wanted-activists-2023-07-20>.

<sup>96</sup> Matthew Miller, “Hong Kong's Extra-Territorial Application of the National Security Law,” U.S. Department of State, July 3, 2023, at <https://www.state.gov/hong-kongs-extra-territorial-application-of-the-national-security-law>.

<sup>97</sup> Matthew Miller, “Hong Kong Authorities' Ongoing Harassment Campaign,” U.S. Department of State, August 25, 2023, at <https://www.state.gov/hong-kong-authorities-ongoing-harassment-campaign>.

<sup>98</sup> James Lee, “Western Countries Decry Hong Kong's Nat. Sec. Arrest Warrants, as Leader John Lee Defends Law's Extraterritorial Reach,” *Hong Kong Free Press*, July 4, 2023, at <https://hongkongfp.com/2023/07/04/western-countries-decry-hong-kongs-nat-sec-arrest-warrants-as-leader-john-lee-defends-laws-extraterritorial-reach>.

<sup>99</sup> “Govt Slams US Legislation Targeting Officials, Judges,” Radio Television Hong Kong (RTHK), November 3, 2023, at <https://news.rthk.hk/rthk/en/component/k2/1726277-20231103.htm>.

<sup>100</sup> James Lee, “Pro-Beijing Lawyer Petitions High Court to Allow Arrests of US Lawmakers behind Hong Kong Sanctions Act,” *Hong Kong Free Press*, November 13, 2023, at <https://hongkongfp.com/2023/11/13/pro-beijing-lawyer-petitions-high-court-to-allow-arrests-of-us-lawmakers-behind-hong-kong-sanctions-act>.

<sup>101</sup> Citizen News Team, “眾新聞告別 感謝讀者” (“Citizen News Bids Farewell—Thank You, Readers”), *Citizen News*, January 3, 2022, via the Internet Archive at <https://web.archive.org/web/20230208061223/https://www.hkcnews.com>.

<sup>102</sup> FactWire News Agency, “Termination of Operation,” *FactWire*, June 10, 2022, at <https://www.factwire.org/en/termination-of-operation>.

<sup>103</sup> Reporters without Borders, “Hong Kong,” at <https://rsf.org/en/country/hong-kong>.

In August 2020, Hong Kong’s national security police raided the offices of the tabloid *Apple Daily* and arrested five of its senior executives, including founder and prominent critic of the PRC government Jimmy Lai (Lai Chee-ying), whom the HKSAR government subsequently accused of “collusion with external elements to endanger national security” under the NSL.<sup>104</sup> The HKSAR’s national security police conducted a second raid on *Apple Daily* in June 17, 2021 and arrested an additional six executives, including Chief Executive Officer Cheung Kim-hung and Chief Operations Office Royston Chow for “collusion with external forces.” HKSAR authorities also froze HK\$18 million (~U.S.\$2.3 million) of *Apple Daily*’s assets, prompting parent company Next Digital to shut down the outlet on June 23, 2021.<sup>105</sup> Since 2020, the HKSAR government has prosecuted and convicted Lai on multiple charges, including fraud charges characterized by the U.S. State Department as “spurious.”<sup>106</sup> The government postponed Lai’s trial on charges of collusion with foreign forces until September 2023 after the HKSAR government requested the NPC’s decision regarding foreign lawyers’ right to practice law in the HKSAR.<sup>107</sup> (See “**NPC Interpretation of the NSL**,” above.) The trial has been subsequently postponed until December 2023.<sup>108</sup>

On December 29, 2021, Hong Kong’s national security police raided the offices of *Stand News* for suspected breaches of the NSL and separately arrested six senior staff members and one former senior staff member for conspiracy to publish seditious publications.<sup>109</sup> That same day, HKSAR authorities seized HK\$61 million (~U.S.\$7.82 million) in assets from the publication, which subsequently announced it was halting operations and dismissed its employees.<sup>110</sup> In response to the arrests, then-Chief Secretary for Administration John Lee, now Hong Kong’s Chief Executive, stated, “Anybody who attempts to make use of media work as a tool to pursue their political purpose or other interests (and) contravenes the law, particularly offences that endanger national security, they are the evil elements that damage press freedom.”<sup>111</sup> HKSAR authorities have invoked Hong Kong’s 1938 Anti-Sedition Law (under Hong Kong’s Crimes Ordinance) in their case against *Stand News*.<sup>112</sup>

<sup>104</sup> Reuters Staff, “Hong Kong media tycoon Jimmy Lai charged under national security law,” Reuters, December 11, 2020, at <https://www.reuters.com/article/uk-hongkong-security/hong-kong-media-tycoon-jimmy-lai-charged-under-national-security-law-idUSKBN28L0DH>.

<sup>105</sup> Olivia Enos, “The Closure of Apple Daily: Another Nail in The Coffin for Freedom in Hong Kong,” *Forbes*, July 1, 2021, at <https://www.forbes.com/sites/oliviaenos/2021/07/01/the-closure-of-apple-daily-another-nail-in-the-coffin-for-freedom-in-hong-kong/?sh=701b27ae61ba>.

<sup>106</sup> Ned Price, “Jimmy Lai’s Fraud Case Verdict,” U.S. Department of State, October 26, 2022, at <https://www.state.gov/jimmy-lais-fraud-case-verdict>.

<sup>107</sup> Erin Hale, “Jimmy Lai’s security law trial postponed to September 2023,” *Al Jazeera*, December 13, 2022, at <https://www.aljazeera.com/news/2022/12/13/jimmy-lais-security-law-trial-postponed-to-september-2023>.

<sup>108</sup> “Jimmy Lai’s Son Fears Hong Kong Media Mogul May Die in Detention while Awaiting Trial,” Associated Press, September 2023, at <https://apnews.com/article/jimmy-lai-son-sebastien-hong-kong-trial-059d4e6dfd3d95f4e9c559c62654230e>.

<sup>109</sup> News.gov.hk, “Police actions legitimate: CE,” December 30, 2021, at [https://www.news.gov.hk/eng/2021/12/20211230/20211230\\_124649\\_820.html](https://www.news.gov.hk/eng/2021/12/20211230/20211230_124649_820.html).

<sup>110</sup> Edmond Ng and James Pomfret, “Hong Kong pro-democracy Stand News closes after police raids condemned by U.N., Germany,” Reuters, December 29, 2021, at <https://www.reuters.com/business/media-telecom/hong-kong-police-arrest-6-current-or-former-staff-online-media-outlet-2021-12-28>.

<sup>111</sup> The Government of the HKSAR, “Transcript of remarks by CS at media session (with photos/video),” Press Releases, December 29, 2021, at <https://www.info.gov.hk/gia/general/202112/29/P2021122900719.htm>.

<sup>112</sup> For more on the Anti-Sedition Law, see Chris Lau, “Explainer |What is Hong Kong’s Colonial-Era Sedition Law, and How Does It Fit into Landscape of National Security Legislation?” *South China Morning Post*, September 9, 2020, at [https://www.scmp.com/news/hong-kong/politics/article/3100740/what-hong-kongs-colonial-era-sedition-law-and-\(continued...\)](https://www.scmp.com/news/hong-kong/politics/article/3100740/what-hong-kongs-colonial-era-sedition-law-and-(continued...))

State scrutiny also has impacted groups adjacent to news media. In April 2022, the board of the Hong Kong Foreign Correspondents' Club (HKFCC) suspended its annual Human Rights Press Awards, recognizing that “journalists in Hong Kong have been operating under new ‘red lines’” and the HKFCC did “not wish unintentionally to violate the law.”<sup>113</sup> In December 2022, advocacy group Human Rights Watch and the Walter Cronkite School of Journalism and Mass Communication at Arizona State University announced that they had taken over administration of the Human Rights Press Awards.<sup>114</sup>

Some observers argue that the city’s changing political climate and authorities’ increasingly direct suppression of civil society may harm Hong Kong’s position as a node that connects China and the rest of the world.<sup>115</sup> Although the heads of five universities in Hong Kong have expressed their commitment to “upholding the principles of academic freedom and institutional autonomy,” some academics have expressed concern that the NSL may lead some researchers to self-censor and negatively impact international academic collaboration.<sup>116</sup> University of Hong Kong’s removal of a sculpture commemorating the victims of the 1989 Tiananmen Square Protests from public view<sup>117</sup>—and the HKSAR government’s attempt to block access to protest anthem “Glory to Hong Kong” on online streaming platforms<sup>118</sup>—were met by some social activists and Hong Kong residents with elevated concerns over the state of free expression in Hong Kong. More recently, in October 2023, a Chinese University of Hong Kong professor that conducted research on the 1989 Tiananmen Square Protests was fired from their position after the HKSAR immigration authorities denied her a visa.<sup>119</sup> The HKSAR Immigration Department has not commented on the case.

## Restrictions on Public Assembly

Since early 2020, HKSAR authorities have adopted more restrictive policies on public demonstrations. Former Chief Executive Lam issued the initial restrictions—limiting public gatherings to fewer than four people—on March 27, 2020, ostensibly as a public health measure intended to address the Coronavirus Disease 2019 (COVID-19) pandemic.<sup>120</sup> Although the nature

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how-does-it; and Thomas Kellogg, “Crimes Ordinance Sedition versus Hong Kong’s National Security Law: different legal tools, same outcome?,” *The China Collection*, January 6, 2022, at <https://thechinacollection.org/crimes-ordinance-sedition-versus-hong-kongs-national-security-law-different-legal-tools-outcome>.

<sup>113</sup> Keith Richburg, “Important notice from the President,” *The Foreign Correspondents’ Club*, Hong Kong, April 25, 2022, at <https://www.fcchk.org/press-freedom/hrpa>.

<sup>114</sup> Human Rights Watch, “Human Rights Press Award in Asia Relaunches for 2023,” December 9, 2022, at <https://www.hrw.org/news/2022/12/09/human-rights-press-awards-asia-relaunches-2023>.

<sup>115</sup> See: Alexandra Stevenson, “After Pandemic Barriers, Can Hong Kong Recover as a Global Metropolis?,” *The New York Times*, September 28, 2022, at <https://www.nytimes.com/2022/09/28/business/hong-kong-covid-international-city.html> and, “As China tightens grip, Hong Kong’s luster as ‘world city’ dims,” *Al Jazeera*, June 30, 2022, at <https://www.aljazeera.com/economy/2022/6/30/as-china-tightens-grip-hong-kongs-luster-as-world-city-dims>.

<sup>116</sup> Dennis Normile, “Hong Kong universities rattled by new security law,” *Science*, July 1, 2020, <https://www.science.org/content/article/hong-kong-universities-rattled-new-security-law>.

<sup>117</sup> “Pillar of Shame: Hong Kong’s Tiananmen Square Statue Removed,” December 23, 2021, *BBC News*, at <https://www.bbc.com/news/world-asia-china-59764029>.

<sup>118</sup> “Hong Kong Makes New Bid to Ban Protest Song after Legal Setback,” Reuters, August 7, 2023, at <https://www.reuters.com/world/asia-pacific/hong-kong-makes-new-bid-ban-protest-song-after-legal-setback-2023-08-07>.

<sup>119</sup> “Hong Kong Denies Visa to Prominent Tiananmen Square Scholar,” *Al Jazeera*, October 28, 2023, at <https://www.aljazeera.com/news/2023/10/28/hong-kong-denies-visa-to-prominent-tiananmen-square-scholar>.

<sup>120</sup> Reuters Staff, “Hong Kong bans public gatherings of more than four people,” Reuters, March 27, 2020, at <https://www.reuters.com/article/us-china-health-hongkong/hong-kong-bans-public-gatherings-of-more-than-four-people-idUSKBN21E1MW>.

of the restrictions shifted as the pandemic evolved, authorities' more restrictive approach to public assemblies has endured.

One of the most prominent examples of this stricter attitude is the government's obstruction of the annual vigil to commemorate the 1989 Tiananmen Square Protests in Beijing. The now-dissolved Hong Kong Alliance in Support of Patriotic Democratic Movements of China (Hong Kong Alliance) held the vigil annually on June 4<sup>th</sup> from 1990 to 2019. In 2020, the HKPF issued an objection letter to the 30<sup>th</sup> annual vigil, reportedly labeling the event a "major threat to public health."<sup>121</sup> It has issued similar letters in response to subsequent vigils. Numerous Hong Kong residents nonetheless took part in the 2020 vigil.<sup>122</sup> On June 3, 2022, HKSAR authorities announced they were closing Victoria Park—the traditional site of the Tiananmen vigil—citing "Police's observation that some people are using different channels to incite the participation of unauthorised assemblies" and these assemblies' potential to affect "public safety and public order, and the chance of a virus spread due to such gatherings."<sup>123</sup> In June 2023, the government arrested one person and took away 23 for "further investigation on suspicion of breaching the peace" on the eve of Tiananmen commemorations.<sup>124</sup> Other sources reported that, prior to the detentions, Chief Executive Lee had refused to say whether public commemorations of the protests were legal under the NSL.<sup>125</sup>

The HKSAR has prosecuted residents connected to the vigils. Three Hong Kong pro-democracy figures, including *Apple News*' Jimmy Lai, were convicted in December 2021 in connection to the 2020 vigil.<sup>126</sup> In March 2023, three leaders of the Hong Kong Alliance were convicted on national security grounds for failing to disclose information related to alleged links to foreign groups.<sup>127</sup>

Although HKSAR authorities announced they were removing most COVID-19 restrictions in December 2022 and resumed issuing no-objection letters (NOLs) for public meetings and processions in 2023, civil society groups have expressed concern regarding authorities' increased scrutiny of public assemblies. In order for protesters to take part in a demonstration opposing a waste processing project in March 2023, Hong Kong authorities required them to wear numbered lanyards and forbade them from wearing masks. Media described the protest, which was attended

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<sup>121</sup> "Police reject June 4 vigil on public health grounds," *The Standard*, June 1, 2020, at <https://www.thestandard.com.hk/breaking-news/section/4/148301/Police-reject-June-4-vigil-on-public-health-grounds>. According to Hong Kong's Public Order Ordinance (Cap. 245), organizers in Hong Kong must notify the Commissioner of Police in writing of their intent to hold a public meeting or procession, whereby they will receive a no-objection letter (NOL) allowing them to proceed. Source: "Cap. 245 Public Order Ordinance," Hong Kong e-Legislation, at <https://www.elegislation.gov.hk/hk/cap245>.

<sup>122</sup> James Griffiths, "Thousands of Hong Kongers defy police ban to remember Tiananmen Square massacre," CNN, June 5, 2020, at <https://www.cnn.com/2020/06/04/asia/hong-kong-tiananmen-square-vigil-intl-hnk/index.html>.

<sup>123</sup> The Government of the HKSAR, "Temporary closure of part of Victoria Park," Press Releases, June 3, 2022, at <https://www.info.gov.hk/gia/general/202206/03/P2022060300280.htm>.

<sup>124</sup> Lea Mok, "1 arrested, 23 taken away for investigation by Hong Kong police over Tiananmen crackdown commemorations," *Hong Kong Free Press*, June 5, 2023, at <https://hongkongfp.com/2023/06/05/1-arrested-23-taken-away-for-investigation-by-hong-kong-police-over-tiananmen-crackdown-commemorations>.

<sup>125</sup> Erin Hale, "Hong Kong refuses to clarify law as uncertainty dims business hub," *Al Jazeera*, June 9, 2023, at <https://www.aljazeera.com/economy/2023/6/9/hong-kong-touted-rule-of-law-now-it-wont-say-what-the-law-is>.

<sup>126</sup> "Hong Kong tycoon given 13 months jail for Tiananmen vigil," *Associated Press*, December 13, 2021, at <https://apnews.com/article/hong-kong-democracy-jimmy-lai-3a76d4dbcec50d5112ed1db07821fcf5>.

<sup>127</sup> Kanis Leung, "Hong Kong activists behind Tiananmen vigil jailed for months," *Associated Press*, March 11, 2023, at <https://apnews.com/article/1989-crackdown-tiananmen-activist-hong-kong-court-6d8b471d28fb6a8bb45c01b93adc0730>.

by approximately 50 people, as the first authorized protest in years.<sup>128</sup> In April 2023, the Federation of Hong Kong and Kowloon Labour Unions cancelled a planned march for workers' rights as they had not received a NOL from the police. The group announced its decision after the director of the PRC's Hong Kong and Macao Affairs Office, reportedly stated, "There are many channels and ways to express interests and demands, they are diverse and a protest is not the only way to express interests and demands."<sup>129</sup> Arguing that "a lot of public events" in 2019 were "hijacked to violate national security, public safety, and public order," Chief Executive Lee reportedly stated in April 2023 that "[w]hen the Commissioner of Police makes the decision, he will also have to consider Hong Kong's situation as a whole."<sup>130</sup>

### COVID-19 in Hong Kong

Although Hong Kong's COVID-19 caseload was relatively low during the early years of the pandemic, in early 2022, COVID-19's Omicron variant led to a surge in cases that substantially affected life in the city. In March 2022, HKSAR authorities reported that hospitals had reached capacity and began constructing temporary care and quarantine facilities. Some contend the HKSAR government's alignment with the central government's "zero COVID" strategy and reliance on PRC-manufactured vaccines exacerbated the Omicron wave.<sup>131</sup> Hong Kong's real GDP contracted by 6.1% in 2020 and 3.5% in 2022. Several experts attribute the contraction to the Hong Kong economy's strong orientation to international trade and services, which were strained by restrictions on travel and other activities.<sup>132</sup>

The HKSAR's measures to address the pandemic appear to have had a deleterious effect on civil life in the city, and may have contributed to the "unrest" in the city since 2020. They may also have served as a pretext for some of the HKSAR's policies impacting civil liberties and democratic institutions. For example, the HKSAR government cited "the severe COVID-19 epidemic situation" as the reason for a July 31, 2020 decision to postpone the scheduled September 2020 LegCo General Election by a year.<sup>133</sup> The election took place in December 2021.

<sup>128</sup> Jessie Pang, "Hong Kong police keep tight tabs on first authorised protest in years," Reuters, March 27, 2023, at <https://www.reuters.com/world/asia-pacific/hong-kong-police-keep-tight-tabs-first-authorised-protest-years-2023-03-26>.

<sup>129</sup> Kelly Ho, "Top Chinese official did not mean Hongkongers could not join demos, pro-Beijing heavyweight says," *Hong Kong Free Press*, April 17, 2023, at <https://hongkongfp.com/2023/04/17/top-chinese-official-did-not-mean-to-prevent-hongkongers-from-joining-demos-pro-beijing-heavyweight-says>.

<sup>130</sup> Candice Chau, "Rallies must not harm national security or public safety, Hong Kong's John Lee says," *Hong Kong Free Press*, April 4, 2023, at <https://hongkongfp.com/2023/04/04/rallies-cannot-harm-national-security-or-public-safety-hong-kongs-john-lee-says>.

<sup>131</sup> Donald Low, "Lessons for Hong Kong in its futile pursuit of China's zero-Covid strategy," *South China Morning Post*, December 15, 2022, at <https://www.scmp.com/week-asia/opinion/article/3203311/lessons-hong-kong-its-futile-pursuit-chinas-zero-covid-strategy>.

<sup>132</sup> See: Edith Lin and Laura Westbrook, "Coronavirus: Hong Kong's Travel Curbs May Be Keeping Business Travellers and Tourists Away, Finance Chief Admits," *South China Morning Post*, September 19, 2022, at <https://www.scmp.com/news/hong-kong/health-environment/article/3192981/coronavirus-hong-kong-risks-losing-more-global>, and "Hong Kong GDP Shrinks for 4th Straight Quarter, But Poised For Recovery," Reuters, February 1, 2023, at <https://www.reuters.com/world/asia-pacific/hong-kongs-economy-shrinks-4th-quarter-recovery-seen-2023-02-01>.

<sup>133</sup> The Government of the HKSAR, "LegCo General Election postponed for a year," Press Releases, July 31, 2020, at <https://www.info.gov.hk/gia/general/202007/31/P2020073100898.htm>.



## Selected U.S. and Other Government Responses to Developments in Hong Kong

### United States

The U.S. government has sought to hold accountable officials who have contributed to the erosion of Hong Kong's democracy. It has also sought to offer safe haven to Hong Kong residents and called on PRC and HKSAR authorities to respect Hong Kong residents' rights and liberties. Since 2019, congressional interest in the state of democracy and civil liberties in Hong Kong has increased, as has Congress's attention to the PRC's commitments under the Joint Declaration and the preservation of Hong Kong's autonomy. Since 2019, Congress has passed:

- the Hong Kong Autonomy Act of 2020 (HKAA, P.L. 116-149), which authorized sanctions on foreign individuals and entities that materially contribute to the erosion of Hong Kong's autonomy and sanctions on "foreign financial institutions that conduct significant transactions" with persons designated for sanctions under the act;
- the Hong Kong Human Rights and Democracy Act (HKHRDA, P.L. 116-76) which, among other things, requires the Department of State to certify in an annual report to Congress whether Hong Kong is sufficiently autonomous from China to justify its unique treatment under U.S. law; and
- P.L. 116-77, which prohibited the export of tear gas, rubber bullets, handcuffs, and other riot-control equipment and munitions to the Hong Kong Police Force and the Hong Kong Auxiliary Police Force for one year after enactment; as amended and extended by Sec. 1252 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for FY2021 (P.L. 116-283) and Sec. 5589 of the NDAA for FY2023 (P.L. 117-263) through December 21, 2024;
- Sec. 1260F of the NDAA for FY2020 (P.L. 116-92), a "Sense of Congress on Policy Toward Hong Kong," which stated that Congress "stands unequivocally with the people of Hong Kong as they defend their rights and freedoms and preserve their autonomy against the People's Republic of China" and called upon China to honor its commitments under the Joint Declaration and Basic Law.

In response to the passage of the NSL, on July 14, 2020, then-President Donald Trump issued E.O. 13936, which determined that the HKSAR "is no longer sufficiently autonomous to justify differential treatment in relation to the [PRC]" and set out U.S. policy to "suspend or eliminate different and preferential treatment for Hong Kong."<sup>134</sup> The E.O. suspended Hong Kong's differential treatment under statutes including Section 103 of the Immigration Act of 1990 and the Arms Export Control Act. It also authorized visa restrictions and economic sanctions for any foreign person deemed involved in developing, adopting or implementing the NSL or responsible or complicit in undermining democracy in Hong Kong. As of February 2023, the United States had included 42 persons (including Chief Executive Lee) in the SDN list pursuant E.O. 13936.

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<sup>134</sup> Executive Order 13936, "The President's Executive Order on Hong Kong Normalization," 85 *Federal Register* 43413, July 17, 2020.

Thirty-nine people in the SDN list also are labeled as “secondary sanctions risk” pursuant to the HKAA.<sup>135</sup>

On August 5, 2021, the Biden Administration announced a decision to provide Deferred Enforced Departure (DED) for certain Hong Kong residents in the United States.<sup>136</sup> The decision deferred for 18 months the removal of any Hong Kong resident present in the United States, as of the date of the decision, with some exceptions. On January 26, 2023, the White House extended DED for Hong Kong residents for an additional 24 months, to January 2025.<sup>137</sup>

Since 2021, the Department of State has certified in its annual *Hong Kong Policy Act Report* that Hong Kong is not sufficiently autonomous from mainland China to justify its unique treatment under U.S. law. It has also stated that “the central government of the [PRC] took new actions directly threatening U.S. interests in Hong Kong and that are inconsistent with the Basic Law [of Hong Kong] and the PRC’s obligation pursuant to the [Joint Declaration] to allow Hong Kong to enjoy a high degree of autonomy.”<sup>138</sup> Coinciding with the release of the 2023 *Hong Kong Policy Act Report* on March 31, 2023, Secretary of State Antony Blinken issued a press statement asserting that over the prior year, PRC and Hong Kong authorities had “further criminalized dissent, undermining the human rights and fundamental freedoms of people in Hong Kong and dismantling the city’s promised autonomy.”<sup>139</sup>

## Allies and Partners

A number of U.S. allies and partners have criticized developments in Hong Kong. Among the most prominent of these has been the United Kingdom, Hong Kong’s former metropole. The UK Foreign, Commonwealth and Development Office in its May 2023 six-monthly report on Hong Kong asserted that “China remains in an ongoing state of non-compliance with the Sino-British Joint Declaration” and “Hong Kong’s freedoms have been curtailed, critical voices silenced and the space for free press and assembly reduced.”<sup>140</sup> The governments of Japan<sup>141</sup> and France<sup>142</sup> have issued similar statements.

The Foreign Ministers of the Group of Seven (G7) nations have issued several statements registering their concern with the situation in Hong Kong. On December 20, 2021, the G7

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<sup>135</sup> According to the Office of Foreign Assets Control (OFAC), “Any [foreign financial institution (FFI)] that knowingly conducts a significant transaction with a foreign person named in the [HKAA] Section 5(a) Report or an update to that report is potentially subject to mandatory secondary sanctions under the HKAA.” Source: Office of Foreign Asset Control, “Frequently Asked Questions - Newly Added,” <https://ofac.treasury.gov/faqs/added>. For a detailed list of applicable sanctions, see Section 7(b) of the Hong Kong Autonomy Act of 2020 (HKAA, P.L. 116-76).

<sup>136</sup> The White House, “Memorandum on the Deferred Enforced Departure for Certain Hong Kong Residents,” August 5, 2021.

<sup>137</sup> The White House, “Memorandum on Extending and Expanding Eligibility for Deferred Enforced Departure for Certain Hong Kong Residents,” January 26, 2023.

<sup>138</sup> U.S. Department of State, “2023 Hong Kong Policy Act Report,” March 31, 2023, at <https://www.state.gov/2023-hong-kong-policy-act-report>.

<sup>139</sup> Antony Blinken, Hong Kong’s Declining Rule of Law, U.S. Department of State, March 31, 2023, at <https://www.state.gov/hong-kongs-declining-rule-of-law>.

<sup>140</sup> U.K. Foreign, Commonwealth & Development Office, “Guidance: Six-Monthly Report on Hong Kong: 1 July to 31 December 2022,” May 25, 2023, at <https://www.gov.uk/government/publications/six-monthly-report-on-hong-kong-july-to-december-2022/six-monthly-report-on-hong-kong-1-july-to-31-december-2022>.

<sup>141</sup> Ministry of Foreign Affairs of Japan, “Statement on the Situation Surrounding Hong Kong (Statement by Press Secretary YOSHIDA Tomoyuki),” December 21, 2021, at [https://www.mofa.go.jp/press/release/press1e\\_000240.html](https://www.mofa.go.jp/press/release/press1e_000240.html).

<sup>142</sup> French Embassy in London, “Hong Kong: Paris repeats call for Chinese authorities to comply with their commitments,” July 1, 2022, at <https://uk.ambafrance.org/Hong-Kong-Paris-repeats-call-for-Chinese-authorities-to-comply-with-their>.

Foreign Ministers issued a statement expressing their countries’ “grave concern over the erosion of democratic elements of the [HKSAR’s] electoral system” and “[calling] on China to act in accordance with the [Joint Declaration] and its other legal obligations and respect fundamental rights and freedoms in Hong Kong, as provided for in the Basic Law.”<sup>143</sup> Similarly, on May 9, 2022, the G7 Foreign Ministers characterized the selection process of Chief Executive Lee as “part of a continued assault on political pluralism and fundamental freedoms.”<sup>144</sup>

Several U.S. allies and partners also have launched programs for those Hong Kong residents seeking to leave the city. On January 31, 2021, the United Kingdom launched a program under which Hong Kong residents who hold British National Overseas (BN(O)) status and their dependents—an estimated 2.9 million of Hong Kong’s population of eight million—are authorized to live and work or study in the United Kingdom for five years.<sup>145</sup> At the conclusion of the five-year period, those eligible for the scheme are authorized to apply for “settled status”—permanent residence—and, 12 months later, to apply for full British citizenship. Data released by the United Kingdom indicated that 105,200 people had arrived in the UK on the scheme as of February 2023.<sup>146</sup> The UK has framed the program as a “response to the passing of a new national security law for Hong Kong, which the UK considers violates agreements made between the UK and China at the time of the Hong Kong handover.”<sup>147</sup> Australia<sup>148</sup> and Canada<sup>149</sup> have launched similar immigration measures for Hong Kong and/or BN(O) passport holders. A March 2023 report in the *Financial Times* suggests that the PRC central government may be pressuring Hong Kong residents with political aspirations to renounce foreign passports and travel documents.<sup>150</sup> Per the report, at least one delegate to the NPC intending to seek another term was denied a seat because they held a BN(O) passport.

## Issues for Congress

To date, Members of the 118<sup>th</sup> Congress have introduced 56 pieces of legislation (i.e., 36 bills, 10 resolutions, and 10 amendments) with Hong Kong-related provisions. Seven of the bills have been reported out of committee. They include a Senate-passed version of an NDAA for FY2024 (S. 2226). In addition, hearings, Member letters, and statements have addressed issues including,

<sup>143</sup> U.S. Department of State, “G7 Foreign Ministers’ Statement on Hong Kong Legislative Council Elections,” December 20, 2021, at <https://www.state.gov/g7-foreign-ministers-statement-on-hong-kong-legislative-council-elections>.

<sup>144</sup> U.S. Department of State, “G7 Foreign Ministers’ Statement on the Hong Kong Chief Executive Selection,” May 9, 2022, at <https://www.state.gov/g7-foreign-ministers-statement-on-the-hong-kong-chief-executive-selection>.

<sup>145</sup> According to the UK’s Home Office, “Someone who was a British overseas territories citizen by connection with Hong Kong was able to register as a British national (overseas) before 1 July 1997,” the date that the UK transferred sovereignty over Hong Kong to China. U.K. Home Office, “Media Factsheet: Hong Kong BN(O)s,” May 29, 2020, <https://homeofficemedia.blog.gov.uk/2020/05/29/media-factsheet-hong-kong-bnos>.

<sup>146</sup> U.K. Home Office, “How Many People Come to the UK Each Year (Including Visitors)?,” February 23, 2023, at <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/how-many-people-come-to-the-uk-each-year-including-visitors>.

<sup>147</sup> Melanie Gower and Esme Kirk-Wade, “Hong Kong British National (Overseas) visa,” U.K. Parliament, May 6, 2021, at <https://commonslibrary.parliament.uk/research-briefings/cbp-8939>.

<sup>148</sup> Australia Consulate-General in Hong Kong, “Australia: Migration pathways for Hong Kong SAR and BNO passport holders,” July 19, 2022, at [https://hongkong.consulate.gov.au/hkng/VISMG\\_MigrationPathwaysHK.html](https://hongkong.consulate.gov.au/hkng/VISMG_MigrationPathwaysHK.html).

<sup>149</sup> Government of Canada, “Canada announces immigration measures supporting Hong Kong residents and Canadians in Hong Kong,” News Release, November 12, 2020, at <https://www.canada.ca/en/immigration-refugees-citizenship/news/2020/11/canada-announces-immigration-measures-supporting-hong-kong-residents-and-canadians-in-hong-kong.html>.

<sup>150</sup> Chan Ho-him and Primrose Riordan, “Hong Kong political elite pressed to give up western passports,” *Financial Times*, March 5, 2023, at <https://www.ft.com/content/be0ac1d9-4cd4-4d0e-ad9e-04e5a19b5a88>.

for example, the fate of political prisoners in Hong Kong<sup>151</sup> and the impact of foreign judges' withdrawal from Hong Kong's Court of Final Appeal.<sup>152</sup> Congress may consider whether the level and scope of existing reporting requirements on the Administration is sufficient to meet congressional needs. Select issues of congressional interest are discussed below.

## Hong Kong's Autonomy

Congress may consider whether or not to do more to address Hong Kong's reduced autonomy:

- **Hong Kong Policy Act.** Congress may consider whether to repeal or amend the USHKPA to adjust U.S. policy toward the HKSAR, in light of the erosion of the city's autonomy since 2020, or to leave the current text of the law in place.
- **Hong Kong Economic and Trade Offices.** Congress may consider whether or not to adjust its treatment of HKSAR's official overseas representative offices, the Hong Kong Economic and Trade Offices (HKETOs). The Hong Kong Economic and Trade Office (HKETO) Certification Act (S. 490 and H.R. 1103) would require the president to remove the extension of certain privileges, exemptions, and immunities to the HKETOs, so long as Hong Kong "no longer enjoys a high degree of autonomy from the PRC." It also would amend U.S. policy, as laid out in the USHKPA, toward the HKSAR. (For more on HKETOs, see CRS In Focus IF12313, *Hong Kong Economic and Trade Offices*.)

## Democracy and Rule of Law in Hong Kong

Congress may consider whether or not to take new action to address the erosion of democracy and rule of law in Hong Kong:

- **Appropriations.** Congress may assess whether funding for (and the design of) current programs aimed at supporting civil society in Hong Kong and its growing diaspora adequately meet Congress's objectives. The 117<sup>th</sup> Congress appropriated \$4 million "for democracy and Internet freedom programs for Hong Kong, including legal and other support for democracy activists" in the Consolidated Appropriations Act, 2022 (P.L. 117-103) and \$5 million in the Consolidated Appropriations Act, 2023 (P.L. 117-328). Congress also may consider whether current programs effectively mitigate the risks Hong Kong civil society actors face when engaging with foreign government-funded programs that PRC and HKSAR authorities could construe as "collusion" under the NSL.
- **Export Restrictions.** Congress may consider monitoring and assessing the administration's implementation of Sec. 5589 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (P.L. 117-263), which extended the prohibition of munition items to the HKPF under P.L. 116-77 through December 31, 2024. In the current Congress, Sec. 1370 of S. 2226 would extend those restrictions (already extended by Sec. 5589 of the NDAA for FY2023 (P.L. 117-263)) until the President certifies that (1) the Secretary of State has certified that Hong Kong warrants treatment under United States law in the same manner

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<sup>151</sup> U.S. Congress, Congressional-Executive Commission on China, *One City, Two Legal Systems: Political Prisoners and the Erosion of the Rule of Law in Hong Kong*, 118<sup>th</sup> Cong., May 11, 2023.

<sup>152</sup> See, for example: "Rep. Bera Statement on British Judges Withdrawing from Hong Kong's Highest Court," U.S. Representative Ami Bera, Press Release, March 21, 2022, at <https://bera.house.gov/news/documentsingle.aspx?DocumentID=399966>.

as United States laws were applied to Hong Kong before July 1, 1997; (2) the Hong Kong police have not engaged in “gross violations of human rights” during the 1-year period ending on the date of such certification; and (3) there has been an “independent examination of human rights concerns related to the crowd control tactics” of the Hong Kong police and the HKSAR government has “adequately addressed those concerns.”

## **U.S. Policy Toward Hong Kong**

Congress may also consider whether or not developments including, for example, designation of Hong Kong officials for U.S. sanctions and Hong Kong residents’ relocation to the United States, should trigger Congress’s reexamination of certain aspects of U.S. policy toward Hong Kong:

- **Sanctions.** Congress may consider whether to conduct oversight of the Biden Administration’s use of sanctions authorities under E.O. 13936, the HKAA, and the HKHRDA. Congress may consider assessing the effectiveness of sanctions, collateral effects from sanctions, and whether the U.S. government’s current toolkit to apply pressure on Hong Kong and PRC authorities requires modification or expansion. Over the course of this process, Congress may consider assessing whether or not U.S. sanctions’ have affected official exchanges between the United States and Hong Kong, and, if so, how, and how the United States should interact, if at all, with sanctioned top officials such as Chief Executive Lee.
- **Deferred Enforcement Departure.** Congress may consider whether or not to support Hong Kong residents seeking to relocate outside the city, including by supporting or replacing the current deferred enforcement regime for Hong Kong residents in the United States. Legislative options could include amending the Immigration and Nationality Act, or legislating refugee status as was proposed in the 117<sup>th</sup> Congress in the Hong Kong Safe Harbor Act (H.R. 461 and S. 295).
- **HKETO Compliance.** In light of media reports scrutinizing the HKSAR government’s efforts to influence U.S. policy toward Hong Kong, Congress may consider whether to assess the Department of Justice’s oversight and capacity to monitor the compliance HKETOs with statutes regarding the activities of foreign government entities, including, for example, the Foreign Agents Registration Act (FARA).

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