

Not Just About the Law: Reflections on A Report on the National Security Regime in Hong Kong (2024)

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Abstract

This article evaluates an observation report titled “*The National Security Regime*” in Hong Kong: *A Three-year Observation of the Implementation of the Hong Kong National Security Law*, published by a group of anonymous researchers concerning Hong Kong. This article first provides an overview of the observation report and reviews its merits for studying the enforcement of Hong Kong’s national security laws and relevant policy measures. This article then explains how the broader contexts, namely the globalization of authoritarianism via security legislation campaign and Hong Kong’s unfinished decolonization, enable the establishment of the city’s national security regime. This article follows by analyzing whether and how government watchdogs, both within and outside the border of Hong Kong, can continue to perform their functions to check the government conduct. In its conclusion, this article expresses hope for more efforts in observing and documenting the ongoing dynamics of implementing Hong Kong’s national security regime in the future.

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Keywords

Hong Kong, China, authoritarianism, decolonization, international human rights, national security

Introduction

“Although I am a prisoner today, I have no complaints. I firmly believe that the people are greater than the country. Human rights are higher than political power. I hope the people of Hong Kong never lose hope or forget to fight for democracy and uphold justice!”

(Kwok-hung Leung, 2024)

A veteran social activist and former pro-democracy lawmaker in Hong Kong, Kwok-hung Leung, popularly known as “Longhair”, is convicted of conspiracy to subversion under the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (hereafter referred to as the Hong Kong National Security Law, HKNSL). Since the 1970s, Leung had been repeatedly convicted and sentenced to jail for weeks or months due to his acts of civil disobedience in Hong Kong, ranging from his participation in “unauthorized assembly” and “unlawful assembly” to parliamentary contempt as he protested in the legislative chamber. However, this time, Leung could be imprisoned for years, as subverting the government in Hong Kong could lead to life in jail.

What had Leung done that led to his conviction? In May 2024, Hong Kong’s Court of First Instance of the High Court ruled that, in light of Leung’s involvement in the preparation of a civil voting campaign, commonly known as the “pro-democracy primaries” in July 2020, alongside his public statements on the use of the veto power in the upcoming Legislative Council, Leung had an intent to subvert the state by “seriously interfering in, disrupting, or undermining the performance of duties and functions” of the Hong Kong government.

Leung is one of the 45 pro-democracy activists convicted by guilty plea or court ruling. Yet, they were not the only people in Hong Kong being criminalized and punished through the HKNSL. As of September 2024,

at least 297 local Hong Kong residents were arrested for national security crimes. More than half of them have been charged, yet only 1 % were acquitted by the court (ChinaFile, 2024). In addition, 13 exiled activists from Hong Kong are now wanted by the Hong Kong government with bounties. Some had their professional licenses suspended, and their assets were frozen in Hong Kong.

Despite the absence of full democracy, Hong Kong has long been appreciated as a city with high-quality rule of law, judicial independence, openness, and a free market for decades. That said, China's imposition of the HKNSL in 2020 and the enforcement of the law by the Hong Kong government have been repeatedly criticized by liberal democracies and international human rights bodies as severe violations of international law. The Chinese National People's Congress introduced the HKNSL in May 2020, five months after the halt of the unprecedented 2019 anti-authoritarian protests in Hong Kong. Due to its overbroad terms and definitions of criminal offences, alongside the newly-introduced criminal proceedings that undermine due process and fair trial rights, many scholars and observers argued that the HKNSL has drastically reshaped and damaged the rule of law and safeguards of fundamental rights in Hong Kong society (Cohen, 2022; Chopra and Pils, 2022; Chow et al., 2024). Furthermore, in March 2024, Hong Kong's legislature passed a new national security law, titled "Safeguarding National Security Ordinance" (SNSO), known as the "Article 23 legislation". The SNSO imposed more broadly defined offences such as "espionage", "theft of state secrets", "insurrection", and "foreign interferences endangering national security", and transplanted legal concepts from Chinese security laws such as "national security" and "foreign forces". Combined with the HKNSL, the city's national security legal instruments have become more influential in the public domain and private lives, especially civil society organizations and foreign businesses (Lai, 2024b). How can we make sense of the impacts of these national security laws in the territory and beyond?

A few months ago, a group of anonymous researchers published a 230-page observation report titled "*The National Security Regime*" in Hong Kong: *A Three-year Observation of the Implementation of the Hong Kong National Security Law* (「國安體制」在香港：《港區國安法》實施三年觀察記, hereafter the Observation Report). The Observation Report was widely reported and cited by media outlets in Taiwan and circulated in numerous

social media and web3 platforms, such as Matters. This article aims to provide an overview of the Observation Report for non-Chinese readers and to share my observations and reflections on the HKNSL through three lenses. First, it is essential to understand China's creation or transplantation of the national security regime to Hong Kong in broader contexts, namely the global resurgence of autocratization and democratic backsliding, as well as Hong Kong's unfinished project of decolonization. The second lens refers to the performance of local independent bodies, especially the courts. They have been playing a crucial role in the deterioration of rights and freedoms in Hong Kong since 2020. Furthermore, despite the repeated efforts of the Chinese and Hong Kong governments in justifying the enforcement of the HKNSL, international human rights bodies have been providing essential human rights jurisprudence and arguments to counter disinformation and misunderstandings of the Hong Kong government's international human rights obligations. These perspectives can supplement the genuine and generous efforts that the Observation Report contributes to the broader academic and policy debates on contemporary Hong Kong.

A Brief Summary of the Observation Report

The title of the Observation Report highlights paramount to understand that the HKNSL is not merely a legal statute but a political instrument enabling the establishment of a new national security regime in Hong Kong. The Observation Report conceptualizes the “national security regime” in Hong Kong as a system of governance derived from the HKNSL for the purpose of comprehensive social control (p.7).

The Observation Report aims to answer three questions: first, despite criminal arrests and prosecutions, how have Hong Kong's governing structure and society altered since the enactment of the HKNSL? Second, what are the mechanisms of such alternations? Third, what governing means have the authorities adopted with the HKNSL to re-engineer Hong Kong society? To address these questions, the Observation Report documented numerous news reports and government statements dated between July 2020 and August 2023 to articulate the changing environment of Hong Kong under the HKNSL and the law's impacts on different facets of Hong Kong society.

The Observation Report consists of 15 chapters. Chapter 1 provides a brief background of the formation of Hong Kong's national security regime,

including the establishment of the top, unrestrained National Security Committee. Chapters 2 to 4 introduce the logic and details of the operation of the national security regime in terms of reshuffling different branches of the government and enforcing the law extraterritorially. Chapter 5 explains how the national security regime has been grounded in Hong Kong society by legal instruments, executive or administrative measures, informal governmental tactics and state-sponsored (extra-governmental) intimidation. This fourfold analytical framework is employed to explain the impacts of the HKNSL on different aspects, namely (1) the right to protest, (2) free speech, (3) information access, (4) freedom of movement, (5) the media industry (6) the cultural, arts and publication industry, (7) the education system, (8) higher education and (9) civil society. These correspond to fundamental rights and freedoms, including free expression, free association and the right to peaceful assembly, and are extensively documented in Chapters 6 to 14. Finally, Chapter 15 summarizes twelve key observations of why, what, and how the national security regime has become the main driver of the authorities' re-engineering project in Hong Kong.

The Observation Report contributes to the academic and public debates on Hong Kong by providing an analytical framework. The classification of legal, administrative, informal governmental and extra-governmental measures helps readers realize that the HKNSL alone is not entirely sufficient to overhaul the social and political systems of Hong Kong. Instead, the re-engineering project is driven by comprehensive and combined measures that state and non-state actors implement. For example, in Chapter 10, which examines the media industry under the national security regime, the Observation Report lists different measures to restrict freedom of the press and information using the fourfold framework. Regarding legal measures, the HKNSL and sedition law under the Crimes Ordinance have been deployed to arrest and prosecute journalists and owners of media outlets. The Implementation Rules of the HKNSL also restrict journalists' freedom of movement and enable law enforcement to obtain journalistic materials.

Regarding administrative measures, several government agencies began reducing information available to journalists and the public, weakening journalistic oversight of public authorities. In terms of informal governmental measures, some government departments started disallowing journalists and media outlets from reporting official events. In contrast, government officials

relentlessly issue condemnation statements against media reports, editorials, and op-eds accusing them of disseminating disinformation or inciting hatred against public authorities. Lastly, considering extra-governmental measures, the Observation Report documents how pro-government forces protested and harassed individual and organized journalists by reporting them to the national security hotline and how media organizations toughened self-censorship in editing and publishing news reports and commentaries (2024: 106-125). Such a clear and robust framework is helpful for stakeholders to track and systematically continue their documentation of Hong Kong's national security governance.

The publication of the Observation Report also contributes to understanding Hong Kong's state of free speech and civic space. The Observation Report was launched through several Taiwanese and overseas media outlets in July 2024, three months after the passage of the SNSO. According to Mirror Media, which exclusively interviewed the authors of the Observation Report, the authors remained anonymous. However, they identified themselves as “former Hong Kong civil society workers”, mainly due to the potential risks of publication:

“We feel it is alright to author this report as of now. But who knows if the government decides to use an unimaginable offense to handle us in the future?” (我們做這份報告，現在覺得可以，會不會一段時間之後，政府會用一個我們現在沒辦法想像的罪名去處置你?) (Mirror Media, 2024)

The authors' decision should be appreciated and respected. Yet, it also reveals the inconvenient truth that, as long as the Hong Kong government continues to enforce criminal laws and regulations arbitrarily and broadly, a solid chilling effect will remain among residents in the territory and even beyond, given the extraterritorial application of the HKSNL and SNSO in the past 18 months. Unsurprisingly, the Observation Report has never been reported on or quoted by media outlets in Hong Kong. Although the Observation Report does not cover the period when the SNSO was introduced and enforced, it is ostensible that, as of now, fundamental political debates and political participation in Hong Kong, such as protests for universal suffrage and the publication of anti-authoritarian speeches, are either criminalized or censored. In the next section, I will provide the broader

contexts that enable Hong Kong's legal repression via national security laws.

The Broader Contexts

To understand the imposition and implementation of the HKNSL and the SNSO, one must answer a question: Why choose national security laws as the main driver of reengineering Hong Kong? The Observation Report provides that this choice of strategies and tactics is attributed to China's national security agenda. However, China's agenda should also be observed in broader contexts.

The enactment and enforcement of national security laws in Hong Kong are not exceptions to the global trend of "autocratization by securitization". I use this phrase to echo the scholarly observations of the government's use of national security laws and policies to consolidate political powers and, in many instances, autocratic rule within their territories and beyond. As Cody argued, although many jurisdictions enacted national security and counterterrorism laws in the 1980s and 1990s, 9/11 accelerated the global policymaking on national security. The post-9/11 atmosphere fostered the United Nations Security Council's passage of Resolution 1373, which required all UN member states to adopt new national counterterrorism measures. Consequently, the drafting of expansive legislation with vague statutory definitions of national security occurred in many countries, particularly in the US, which sparked the "war on terror" by targeting a wide range of activities as national security threats (Cody, 2021: 655-7). As documented by Human Rights Watch 2012, more than 142 countries had enacted or revised their counterterrorism laws (Human Rights Watch, 2012).

The global security legislation campaign affected both democratic and authoritarian regimes worldwide, as states became more willing to restrict the due process rights of individuals, expand domestic surveillance, and weaken judicial oversight of executive power in the name of national security. In recent years, democratic backsliding and the resurgence of authoritarianism have become a new norm worldwide, further enabling governments to introduce, abuse, or ignore laws for the benefit of the executive branch of government (Corrales, 2015: 38; Scheppele, 2018 & 2019; Ginsburg, 2020). Both autocratic and democratic regimes became more skillful in weaponizing laws and courts to suppress anti-government expressions, restrict internet freedom, and criminalize media outlets, civil groups and activists by labelling

them as promoting “extremism” and “terrorism” (Shevtsova, 2015; Wehrey, 2015; Chacko, 2018; Glasius, 2018; Wilding, 2020).

The United Nations documents these tactics in detail. In June 2023, the UN Special Rapporteur on “the promotion and protection of human rights and fundamental freedoms while countering terrorism” launched a report titled “Global Study on the Impact of Counterterrorism on Civil Society and Civic Space”. The report illustrated the global phenomenon of civil society actors and human rights defenders being abused by national counter-terrorism measures, including national security and counter-terrorism laws (UN Human Rights Special Procedures, 2023). The study unveiled that national security laws habitually concentrate on enhancing executive power and protecting executive authorities from democratic or judicial oversight. When executive governments rely exclusively on their powers to enact and enforce national security or counter-terrorism measures, judicial oversight of such powers is also significantly impaired or restricted. Even if there is no formal reduction or constitutional amendment of judicial power, in many cases, judiciaries “tend to be highly deferential to the exercise of counterterrorism and security powers, and judges may fear retribution if they overrule security prerogatives exercised by the state” (Ibid: 42-43).

Hong Kong has long played a role in weakening judicial oversight and is now a newcomer to the global illiberal national security legislation campaign. Since the handover in 1997, the local court has been pressured to comply with executive orders even before the HKNSL came into effect. The Chinese authorities have used their power to interpret the Basic Law since 1999, undermining the court’s decision-making powers in constitutional disputes. State-sponsored media outlets occasionally criticized the local court decisions and even specific judges for their rulings that were unfavorable to the government (Chan, 2018; Davis, 2024; Lai, 2023). After the imposition of the NSL, the local court also suffered from criticisms from the pro-government forces on controversial rulings, when the court ruled in favor of granting bail to Jimmy Lai in 2020 and admitting British counsel Timothy Owen KC to represent Jimmy Lai for a national security trial. The latter ruling by the Court of Final Appeal eventually caused China’s National People’s Congress Standing Committee to interpret the NSL to overrule the court decision upon the Hong Kong government’s request (Chan, 2023).

In May 2024, the Court of Appeal ruled in favour of the government

by reversing the lower court's rejection of a civil injunction that would, in effect, heavily restrict the dissemination of a famous Hong Kong protest song "*Glory to Hong Kong*". The Court of Appeal's ruling heavily relied on the principle of judicial deference to argue that the judiciary should unreservedly defer to national security matters handled by the executive government as the judicial branch is not equipped to assess national security risks (Lai, 2024c). This instance affirms the study of global counterterrorism laws mentioned above. The principle of judicial deference could be robustly applied in rights-respecting jurisdictions where democratic accountability and judicial independence are observed. However, in hybrid and authoritarian regimes like Hong Kong and China, the emphasis on judicial deference to executive government on national security matters could be a tactic to legitimise human rights violations and legal repression driven by the state. The ongoing state-induced pressure on the Hong Kong judiciary, amid the global trend of autocratization by securitization, should be considered when analyzing judicial performance today.

Another reason the Chinese authorities chose to introduce national security laws to realize their political project in Hong Kong is related to Hong Kong's specific context, that is Hong Kong has an unfinished project of decolonization. Unlike most former colonies that underwent decolonization via national self-determination and independence, Hong Kong has never been provided with an opportunity for self-determination or independence. During the post-war period, Hong Kong was not considered an independent polity and was removed from the United Nations List of Non-Self-Governing Territories in 1972. In the 1980s, during negotiations between Britain and China, it was determined that Hong Kong would be handed over to China in 1997, as China would establish a Special Administrative Region in the city following the Sino-British Joint Declaration of 1984. To stabilize Hong Kong society and maintain the confidence of both local capitalists and foreign investors, China agreed to support Hong Kong's existing institutions, including the common law system, capitalist economy, and public administrative structure. China also decided it would not impose single-party rule, a centralized economy, or a socialist legal system (United Nations, 1994). These arrangements were inserted into the Basic Law of Hong Kong as a mini-constitutional document for this semi-autonomous city. As Lau termed it, Hong Kong's political transition from British colonial rule to China was a "decolonization without independence" (Lau, 1987). Hong Kong was only

transferred from one sovereign power to another. Lui and Fong characterized this arrangement as “deep freezing” Hong Kong since most pre-existing systems remained intact under the “One Country, Two Systems” formula and the Basic Law, the mini-constitutional document for Hong Kong (Lui and Fong, 2014).

Optimists might see “deep frozen” Hong Kong as preserving the city’s keys to success and maintaining its way of life. However, such unfinished decolonization, which should not be narrowly defined as emancipation from British colonial rule, ironically freezes non-democratic institutions and upholds draconian laws that suppress the fundamental rights of local citizens, enabling the new sovereign power to intervene in the local legal system. Criminal laws enacted during colonial times, such as the Emergency Regulations Ordinance, the Public Order Ordinance, and sedition laws under the Crimes Ordinance, were reactivated and frequently enforced by the new Hong Kong administration to crack down on pro-democracy protests in the so-called “post-colonial” era (Lai, 2024a). Without full democratization, the Hong Kong government and the semi-democratic legislature could quickly amend and pass new laws to enhance its executive power even before the HKNSL was imposed in 2020. Even if Hong Kong were allowed to introduce universal suffrage following the promise in the Basic Law, its political future would inevitably be subject to the new sovereign power, i.e., China. Despite the autonomy that ‘One Country, Two Systems’ ostensibly provides, the overall position is that Hong Kong’s sovereignty was returned to China. Hong Kong does not have the ultimate authority to decide its political reform (Kuan, 1991: 774). Even though the Basic Law ensures that the local judiciary enjoys the power of final adjudication, the National People’s Congress Standing Committee has the ultimate power to interpret the Basic Law, which could overturn local courts’ ruling. Hong Kong’s autonomy is conditionally and unavoidably subject to the Chinese sovereign state.

For a long time, Hong Kong enjoyed a high reputation for judicial independence, as the court, at its best, performed to adhere to the common law principles and protections of fundamental rights and freedoms (Wacks, 1989: 127). In contrast, China, as a one-party state, interprets and advocates the rule of law as “governing the nation in accordance with the law” (依法治國). At the same time, “the socialist rule of law” and “party leadership” are emphasized as complementary to each other to achieve “governing the nation

in accordance with the law” (Trevaskes, 2019: 251). In practice, instead of an independent judiciary, the mainland’s juridical institutions are supervised by the CCP’s Central Political and Legal Affairs Commission (Li, 2019: 19). This means that the law and courts are subject to the CCP, rather than the party being subject to checks and balances of the courts. The power differentials favor China to exercise greater control over Hong Kong if the ruling party considers it essential to warrant regime security. Hence, introducing new national security laws, and broadly the new national security regime, should not be characterized as the beginning of Hong Kong’s decolonization, as suggested by some Chinese officials in recent years (Radio Free Asia, 2022). Instead, it is a process of safeguarding regime security by further centralizing the state power based on the pre-existing colonial systems alongside the absence of democratically accountable institutions.

In summary, the global trend of security legislation and authoritarianism, combined with Hong Kong’s specific context of unfinished decolonization, provide a complex background that incentivized China to impose a national security regime in Hong Kong at the expense of the quality of performance of independent bodies in the territory. The next section examines this.

The Role of Independent Bodies

Under the new national security regime, statutory independent bodies, which are assumed to be internal government watchdogs, make it more challenging to hold the executive government accountable than before. Even though Hong Kong has not achieved democratization, several statutory bodies, along with the legislature and the courts, used to independently oversee government conduct, adhering to the principle of limiting government in liberal democracies. The introduction of the HKNSL, alongside the passage of the SNSO, directly and indirectly, weakens the oversight power of these bodies. The local judiciary used to exercise the power of judicial review against all government bodies without exception. However, under the HKNSL and the reshuffled electoral system in 2021, the decisions of the National Security Committee (NSC) and the “Candidate Eligibility Review Committee”, which is backed by the national security police, are not subject to judicial review. In 2022, the National People’s Congress Standing Committee interpreted the HKNSL to affirm that the NSC could impose judgment on matters determined by the local court, effectively enabling

the NSC to override court decisions (Yam and Kellogg, 2023). This was illustrated when the Court of Final Appeal admitted Timothy Owen KC to be Jimmy Lai's defense counsel; the Hong Kong government disapproved the decision by instructing the Immigration Department to put Owen's working visa on hold and later on asked the Legislative Council to amend the Legal Practitioners Ordinance that imposes more restrictions on overseas lawyers taking up cases related to national security (Chau, 2023).

Besides the judicial immunity of national security institutions in Hong Kong, legislative scrutiny regarding budgeting has also been weakened. Under Article 19 of the HKNSL, the Financial Secretary of the HKSAR shall appropriate a special fund for the budget of the Committee for Safeguarding National Security (CSNS) upon approval of the CE; the budget, including the establishment of relevant posts, is not subject to any restrictions of local laws. Although Article 19 states that the Financial Secretary is required to submit an annual report on the control and management of the fund for such purposes to the HKSAR's Legislative Council (LegCo), details and information about the budget are not disclosed, following Article 13 of the NSL. In short, even if the Chinese authorities did not overhaul Hong Kong's electoral system, the legislature, including the pro-democracy camp, would never be able to scrutinize the national security budget.

Regarding law enforcement under the HKNSL, the national security police are given extensive powers to investigate national security crimes without judicial warrants, such as searching places for evidence, following the Implementation Rules of Article 43 of the HKNSL. Under the same Implementation Rules, the Secretary for Security is also given powers to remove electronic messages "endangering national security" as part of online censorship, determine an individual or entity as a "foreign agent", and freeze assets of suspects, whether individuals or corporate entities, without a court order (Wong, Kellogg and Lai, 2021). The powers of interception and covert surveillance under the HKNSL Implementation Rules are not fully subject to judicial approval or a three-judge panel as required under the pre-existing Surveillance Ordinance in Hong Kong. Nor is the Commissioner on the Interception of Communications and Surveillance involved in any oversight under the HKNSL.

Under the new SNSO, government agencies are further subject to the orders of the Chief Executive to safeguard national security. According

to Sections 111 and 114 of the SNSO, the Chief Executive may issue administrative instructions to any government department, agency, or public servant to give directions about implementing national security laws and relevant policies. In response, any government department, agency, or public servant must comply with administrative instructions from the Chief Executive. All public servants must exercise all powers and discretion to fulfill the obligation under this section. Logically, statutory government watchdogs, such as the Independent Commission Against Corruption, Equal Opportunities Commission, Ombudsman and the Audit Commission, cannot have immunity from national security orders. If so, it is questionable whether government agencies following the orders of the Chief Executive are subject to scrutiny by these institutional watchdogs and whether these watchdogs can perform their oversight independently and impartially. During the SNSO consultation period, the Equal Opportunities Commission (EOC), which should be considered a quasi-national human rights institution, unreservedly expressed its appreciation of the government's enactment of SNSO legislation and supported the SNSO's broad definition of seditious intention, even though sedition offenses have long been disapproved by international human rights experts and the UN Human Rights Committee (Equal Opportunity Commission, 2024). It is worth noting that the EOC should only be regarded as a quasi-national human rights institution because its formation does not comply with the Paris Principles, which require all NHRIs to be statutorily independent body from government appointments and control. Furthermore, just after the passage of SNSO, the Ombudsman rejected complaints from local groups in which authorities refused to disclose the list of censored or removed books from public libraries on national security grounds. The Ombudsman agreed with relevant government agencies that disclosing the list of removed books could "damage the safeguarding of national security" (Yahoo News, 2024).

Regarding the operation of the Audit Commission, it has begun reviewing the performance of different government departments and public services to determine whether they include national security clauses in their procurement processes (Chan, 2024). Ironically, instead of conducting human rights due diligence, the Audit Commission enforces "national security" compliance, thereby expanding the national security regime without proper institutional checks and balances. It is crucial to observe whether and how these independent bodies would remain resilient in their oversight duties or

become part of the national security apparatus that ultimately supports state surveillance and repression.

When internal oversight bodies fail to carry out their duties diligently, greater attention should be given to the performance of external watchdogs. The following section reflects on the role of United Nations human rights bodies, which adhere to international human rights law to monitor and proactively engage with national governments on their human rights obligations.

Response from International Human Rights Bodies

Article 4 of the HKNSL and Section 2(b) of the SNSO provide assurance that human rights shall be respected, protected, and lawfully enjoyed by residents in accordance with the Basic Law, 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. Under Article 39 of the Basic Law, the ICCPR and ICESCR, as applied to Hong Kong before the handover, shall remain in force. These provisions were frequently cited by government officials and the court when ruling national security cases. Nevertheless, evidence from the Observation Report demonstrates that the Hong Kong government and the court are not fully protecting the ICCPR and ICESCR rights following international standards.

Similar judgements can also be found in the concluding observations of United Nations (UN) human rights experts, including the treaty bodies and the special procedures, since China's introduction of the HKNSL in 2020. International Service for Human Rights (ISHR) has released an ongoing database titled "Repository of United Nations recommendations on human rights in Hong Kong". The database archives original documents and summarizes critical observations and recommendations of UN human rights bodies in light of Hong Kong's international human rights obligations (ISHR, 2024). This database complements the Observation Report and is helpful for researchers, journalists, and human rights defenders who want to examine the enforcement of the national security regime from a rights-based perspective.

In light of the applicability of the ICCPR and ICESCR in Hong Kong, the local government, following other state parties, submits periodic reports to UN expert-based treaty bodies either independently or alongside China's reports. In 2022, the UN Human Rights Committee (HRCttee), which

oversees the implementation of the ICCPR by state parties, reviewed the Hong Kong government's fourth periodic report, held public hearings on the human rights situation in the city, and released a concluding observation. The concluding statement boldly called for the repeal and cessation of the HKNSL and the sedition provision under the Crimes Ordinance, expressing the HRCtee's "grave concerns" about the HKNSL's lack of clarity regarding the definition and scope of "national security", its undermining of judicial independence and fair trial rights, its provision of extensive investigative powers to the police and its extraterritorial application. A year later, the UN Committee on Economic, Social and Cultural Rights (CESCR) launched another review of Hong Kong's implementation of the ICESCR. In its concluding observation, the CESCR urged the Chinese and Hong Kong governments to review the HKNSL and immediately provide all due process guarantees to human rights defenders, civil society actors, journalists, and lawyers. It also recommended the abolition of national security hotline, which enables law enforcement to impose collective surveillance in Hong Kong (ISHR, 2024).

The UN special procedures of the Human Rights Council, consisting of independent human rights experts with mandates to report and advise on human rights from thematic or country-specific angles, have been actively engaged in commenting on the enactment and enforcement of national security laws in Hong Kong since 2020. Between the drafting period of the HKNSL and the passage of the SNSO, UN Special Rapporteurs and Working Groups issued a total of 11 letters (formally called communications) to the Chinese authorities, addressing their concerns about human rights compliance in enforcing national security laws and new legislative proposals, as well as concerns regarding the wellbeing of individual human rights defenders such as Hang-tung Chow and Jimmy Lai. For example, on 19 April 2023, the Special Rapporteur of Independence of Judges and Lawyers issued a letter of concern over the HKNSL, the city's legal aid reform that allegedly restricts fair trials, and the aforementioned amendments to the Legal Practitioners Ordinance. On 22 March 2024, six Special Rapporteurs made a joint communication commenting on the SNSO, which was adopted by the local legislature on 19 March 2024. Additionally, on 1 May 2023, the Working Group on Arbitrary Detention (WGAD) released an opinion determining the detention of Hang-tung Chow was arbitrary by UN standards. The WGAD called for Chow's immediate and unconditional release and urged the

government to compensate for her deprivation of liberty (ISHR, 2024).

As highlighted in the Observation Report, the Hong Kong government repeatedly adopted the so-called “wolf warrior” diplomacy to rebuke and criticize UN human rights experts and the opinions mentioned above (2024: 51). That said, these expert-backed human rights discourses and recommendations are invaluable, as they establish benchmarks for civil society actors and UN member states to continue addressing their concerns in regional and global platforms where the Chinese and Hong Kong governments preside. These materials also preserve the memory and history of human rights developments in Hong Kong under Chinese sovereignty. Additionally, those UN documents facilitate public education on international human rights, as both local and overseas media outlets eagerly report them to the public. During the 2023 Universal Periodic Review, UN member states such as New Zealand, United Kingdom, Canada, Switzerland, and Belgium adopted the recommendations of the HRCtee and CESCR, calling on China to comply with the ICCPR and repeal the HKNSL (United Nations Human Rights Council, 2024). Another instance occurred when Jimmy Lai’s trial commenced in December 2023. When asked why the Swiss consulate in Hong Kong sent staff to observe Lai’s trial on charges of colluding with foreign forces and publishing seditious publications, the Foreign Ministry of Switzerland responded by citing the UN HRCtee’s concluding observations on the HKNSL, particularly its impacts on free speech in Hong Kong (Ming Pao, 2023).

Citing the opinions of UN treaty bodies and special procedures in human rights debates and advocacy serves as both a “sword” and a “shield”. On the one hand, these opinions progressively justify and amplify the need to abolish or reform legislation and policies that fail to respect international human rights obligations. On the other hand, they defend these arguments by referencing independent human rights experts, who operate free from the influence of UN member states. As both the Chinese and Hong Kong governments appear eager to regain prestige and appreciation on multilateral platforms to mitigate their economic downturn, their lack of commitment to realizing international human rights protections in domestic governance could further damage their global reputation.

Conclusion

As of this writing, Hong Kong's High Court has not yet sentenced Kwok-hung Leung and the other convicted activists in the trial for conspiracy to commit subversion.² Regardless, they are expected to face lengthy prison terms, despite most having been remanded for over three years without sentencing. Two prominent national security cases, involving the defunct Apple Daily and the Hong Kong Alliance in Support of Patriotic Democratic Movements of China, are still awaiting trials and court rulings. The geopolitical situation between liberal democracies and China remains uncertain. Both the Chinese and Hong Kong governments continue to operate the national security regime to suppress dissent and engage in warrior-wolf diplomacy against foreign media and international human rights bodies (Hutton, 2024; Tse, 2024). In response, more British and Canadian non-permanent judges of Hong Kong's Court of Final Appeal have decided to resign from their positions. One of the resigned British judges, Jonathan Sumption, issued several statements explaining his decision, citing his concerns that Hong Kong's rule of law is "profoundly compromised" and that the city is "slowly becoming a totalitarian state" (Sumption, 2024). Meanwhile, the enforcement of Magnitsky sanctions against Hong Kong's judges and prosecutors, deemed responsible for human rights violations in the territory, as well as the removal of Hong Kong Economic and Trade Offices from U.S. soil, remain policy options for the US administration (Hong Kong Democracy Council, 2024).

It is paramount for scholars, researchers, journalists, lawyers, and policymakers to remain vigilant and continue documenting the ongoing dynamics of law, politics, and society in post-HKNSL Hong Kong. The Observation Report illustrates the complexities of operating a comprehensive repressive regime to "safeguard national security" and demonstrates solidarity with Hong Kong through evidence-based storytelling. This effort benefits stakeholders concerning Hong Kong's future and contributes to scholarly and policy studies on the globalization of authoritarianism and

2 On 19 November 2024, Hong Kong's court sentenced 45 pro-democracy activists, including Kwok-hung Leung, to jail up to 10 years. Leung was imposed a jail sentence of 6 years and 9 months. See Davidson, Helen. 2024. "HK47: dozens of pro-democracy activists jailed in Hong Kong's largest national security trial" *The Guardian* 19 November 2024. in <https://www.theguardian.com/world/2024/nov/19/hong-kong-47-hk47-sentencing-national-security-trial> . Latest update 19 November 2024.

national security legislation.

The successful publication of the Observation Report should be treated as a symbol of resilience and hope, as it strikes a balance between courageously expressing genuine viewpoints and prudently sheltering personal identity to sustain the long game. I sincerely hope that the Observation Report will inspire more researchers and practitioners, enriching academic and public debates creatively and rigorously.

References

- Yahoo 新聞 (Yahoo News)。2024。〈香港禁書 | 康文署拒公開圖書館購書單 申訴專員裁定不違規「披露會令本港保安受損」〉。《Yahoo 新聞》2024/04/01。 <https://reurl.cc/vvbeql>。2024/04/01。
- 寫作團隊。2024。《「國安體制」在香港：《港區國安法》實施三年觀察記 2020 — 2023》。 <https://www.dropbox.com/scl/fi/ovozraevykbfofdu7ewz/.pdf?rlkey=x7ffdq0y95ycbs0wku33re8a0&e=2&dl=0>。2024/07/01。
- 鏡周刊 (Mirror Media)。2024。〈「白色恐怖像年獸」：香港《國安法》4 年！他們分析 4000 條新聞 不放棄微小抵抗〉。《鏡周刊》2024/07/01。 <https://www.mirrormedia.mg/story/20240630pol001>。2024/07/01。
- 自由亞洲電台 (Radio Free Asia)。2022。〈中共官員首提「去殖化」 評論：欲消除港人對港英政府懷念〉。2022/12/05。 <https://www.rfa.org/cantonese/news/htm/hk-colony-12052022080900.html>。2022/12/05。
- 明報新聞網 (Ming Pao)。2023。〈歐盟譴責黎智英案削弱對香港法治信心 中國駐歐盟使團批缺乏對法律起碼尊重 (15:43)〉。 <https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20231220/s00001/1703057409098>。2023/12/20。
- Chacko Priya. 2018. “The Right Turn in India: Authoritarianism, Populism and Neoliberalisation.” *Journal of Contemporary Asia* 48,4: 541-565.
- Chan, Irene. 2024. “Hong Kong Audit Watchdog Slams Post Office, Dental Service for Failing to Safeguard National Security.” *Hong Kong Free Press* 25 April 2024. in <https://hongkongfp.com/2024/04/25/hong-kong-audit-watchdog-slams-post-office-dental-service-for-failing-to-safeguard-national-security/>. Latest update 25 April 2024.
- Chan, Johannes. 2018. “A Storm of Unprecedented Ferocity: The Shrinking Space of the Right to Political Participation, Peaceful Demonstration, and Judicial Independence in Hong Kong.” *International Journal of Constitutional Law* 16, 2: 373-388.
- Chan, Johannes. 2023. “Hong Kong’s National Security Law Turns Three” *USALI Perspectives* 3, 25. in <https://usali.org/usali-perspectives-blog/hong-kongs-national-security-law-turns-three>. Latest update 21 June 2023.

- Chau, Candice. 2023. "Hong Kong Court Rejects Media Tycoon Jimmy Lai's Bid to Challenge Nat. Security Committee Decision." *Hong Kong Free Press* 19 May 2023. in <https://hongkongfp.com/2023/05/19/breaking-hong-kong-court-rejects-media-tycoon-jimmy-lais-bid-to-challenge-nat-security-committee-decision/>. Latest update 19 May 2023.
- ChinaFile. 2024. "Tracking the Impact of Hong Kong's National Security Law." in <https://www.chinafile.com/tracking-impact-of-hong-kongs-national-security-law>. Latest update 17 September 2024.
- Chopra, Surabhi and Eva Pils. 2022. "The Hong Kong National Security Law and the Struggle over Rule of Law and Democracy in Hong Kong." *Federal Law Review* 50, 3: 292-313.
- Chow, Olivia, Yan-ho Lai and Thomas E. Kellogg. 2024. *Anatomy of a Crackdown: The Hong Kong National Security Law and Restrictions on Civil Society*. Washington DC: Center for Asian Law, Georgetown University Law Center.
- Cody, Stephen. 2021. "Dark Law: Legalistic Autocrats, Judicial Deference, and the Global Transformation of National Security." *University of Pennsylvania Journal of Law and Public Affairs* 6, 4: 643-686.
- Cohen, Jerome A. 2022. "Hong Kong's Transformed Criminal Justice System: Instrument of Fear." *Academia Sinica Law Journal* 2022 (Special): 1-20.
- Corrales, Javier. 2015. "The Authoritarian Resurgence: Autocratic Legalism in Venezuela." *Journal of Democracy* 26, 2: 37-51.
- Davis, Michael C. 2024. *Freedom Undone: The Assault on Liberal Values and Institutions in Hong Kong*. AAS Shorts. Columbia University Press.
- Equal Opportunity Commission of the HKSAR. 2024. "Press Releases: EOC Welcomes the Government's Enactment of Legislation in Accordance with Article 23 of the Basic Law" in <https://www.eoc.org.hk/en/PressRelease/Detail/18583>. Latest update 9 February 2024.
- Ginsburg, Tom and Aziz Z. Huq. 2020. *How to Save a Constitutional Democracy*. The University of Chicago Press.
- Glasius, Marlies. 2018. "What Authoritarianism is. and is Not: a Practice Perspective." *International Affairs* 94, 3: 515-533.
- Hong Kong Democracy Council. 2024. "The H.K.E.T.O. Certification Act Passes the House" in <https://www.hkdc.us/press-release/the-h.k.e.t.o.-certification-act-passes-the-house>. Latest update 10 September 2024.
- Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11" in <https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11>. Latest update 29 June 2012.
- Hutton, Mercedes. 2024. "The first 6 Months of Hong Kong's New Security Law: 3 Jailed over a Seditious T-shirt, Bus Graffiti, Social Media Posts." *Hong Kong Free Press* 22 September 2024. in <https://hongkongfp.com/2024/09/22/the-first-6-months-of-hong-kongs-new>

- security-law-3-jailed-over-a-seditious-t-shirt-bus-graffiti-social-media-posts/. Latest update 22 September 2024.
- International Service for Human Rights. 2024. “Repository of United Nations recommendations on human rights in Hong Kong” in <https://ishr.ch/defenders-toolbox/resources/repository-of-united-nations-recommendations-on-human-rights-in-hong-kong/> . Latest update 15 August 2024.
- Kuan, Hsin-Chi. 1991. “Power Dependence and Democratic Transition: The Case of Hong Kong.” *The China Quarterly* 128: 774-793.
- Lai, Yan-ho. 2023. “Securitisation or Autocratisation? Hong Kong’s Rule of Law under the Shadow of China’s Authoritarian Governance.” *Journal of Asian and African Studies* 58, 1: 8-25.
- Lai, Yan-ho. 2024a. *Resistance Through the Cracks: Law in Context Resistance through the Cracks: Understanding Hong Kong’s Rule by Law and Resistance in the Courtroom in Comparative Perspective* [在夾縫中抵抗：從依法治國與司法抗爭的比較經驗看香港]. Taipei: SpringHill Publishing.
- Lai, Yan-ho. 2024b. “Implications of Article 23 Legislation on the Future of Hong Kong.” *China Brief* 24, 5: 8-13.
- Lai, Yan-ho. 2024c. “‘Glory to Hong Kong’ Ban Sets a Chilling Precedent.” *The HongKonger* 5 June 2024. in <https://hongkonger.world/2024/06/05/glory-to-hong-kong-ban-sets-a-chilling-precedent/> . Latest update 5 June 2024.
- Lau, Siu-kai. 1987. *Decolonization Without Independence: The Unfinished Political Reforms of The Hong Kong Government*. Hong Kong: Institute of Social Studies of the Chinese University of Hong Kong.
- Leung, Kwok-Hung. 2024. “Fight for Democracy, Brave Difficulties: Statement of Leung Kwok Hung of 35+ Primary Election Case.” in <https://www.facebook.com/share/p/7VPKKEGV9R6wvarb/?mibextid=WC7FNe> . Latest update 15 July 2024.
- Li, Ling. 2019. “Political-legal Order and the Curious Double Character of China’s Courts.” *Asian Journal of Law and Society* 6, 1: 19-39.
- Lui, Tai-lok and Brian C.H. Fong. 2014. “Editorial.” *China Perspective Special Feature* 2014, 1: 3-4.
- Scheppele, Kim L. 2018. “Autocratic legalism.” *University of Chicago Law Review* 85, 2: 545-584.
- Scheppele, Kim L. 2019. “The Opportunism of Populists and the Defense of Constitutional Liberalism.” *German Law Journal* 20: 314-331.
- Shevtsova, Lilia. 2015. “The Authoritarian Resurgence: Forward to the Past in Russia”. *Journal of Democracy* 26, 2: 22-36.

- Sumption, Jonathan. 2024. "The Rule of Law in Hong Kong is in Grave Danger." *Financial Times* 10 June 2024. in <https://www.ft.com/content/60c825be-b70a-4152-895f-f6127974570a> . Latest update 10 June 2024.
- Trevaskes, Susan. 2019. "Socialist law." Eds by Sorace, Christian, Ivan Franceschini and Nicholas Loubere N. *Afterlives of Chinese Communism: Political Concepts from Mao to Xi* 251-255. Canberra, ACT, Australia: ANU Press; Verso Books.
- Tse, Hans. 2024. "Hong Kong Gov't Rejected Claims Detention of Activist Chow Hang-tung is 'Arbitrary,' UN Report Says." *Hong Kong Free Press* 12 September 2024. in <https://hongkongfp.com/2024/09/12/hong-kong-govt-rejected-claims-detention-of-activist-chow-hang-tung-is-arbitrary-un-report-says/>. Latest update 12 September 2024.
- United Nations. 1994. "No. 23392. China and United Kingdom of Great Britain and Northern Ireland: Joint Declaration on the question of Hong Kong (with annexes). Signed at Beijing on 19th December 1984." *Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations 1399*. New York: United Nations.
- United Nations Human Rights Council. 2024. "Report of the Working Group on the Universal Periodic Review: China." in <https://documents.un.org/doc/undoc/gen/g24/034/58/pdf/g2403458.pdf>. Latest update 11 March 2024.
- United Nations Human Rights Special Procedures. 2023. "Global Study on the Impact of Counter-terrorism on Civil Society & Civic Space." in https://defendcivicspace.com/wp-content/uploads/2024/01/SRCT_GlobalStudy-1.pdf. Latest Update 2023.
- Wacks, Raymond. 1989. *The Future of the Law in Hong Kong*. New York: Oxford University Press.
- Wehrey, Frederic. 2015. "The Authoritarian Resurgence: Saudi Arabia's Anxious Autocrats." *Journal of Democracy* 26, 2: 71-85.
- Wilding, Susan. 2020. "Counter-terrorism Laws Provide a Smokescreen for Civil Society Restrictions." *Open Global Rights* 15 January 2020. in <https://www.openglobalrights.org/counter-terrorism-laws-provide-a-smokescreen-for-civil-society-restrictions/>. Latest update 15 January 2020.
- Wong, Lydia, Thomas E. Kellogg and Eric Yan-ho Lai. 2021. *Hong Kong's National Security Law and the Right to Fair Trial: A GCAL Briefing Paper*. Washington DC: Center for Asian Law, Georgetown University Law Center.
- Yam, Kevin, and Thomas E. Kellogg. 2023. "In Hong Kong, Another Blow to the Rule of Law." *Lawfare* 23 May 2023. in <https://www.lawfaremedia.org/article/in-hong-kong-another-blow-to-the-rule-of-law>. Latest update 23 May 2023.

不僅是法律而已：反思《「國安體制在香港」——《港區國安法》實施三年觀察記》

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摘要

本文旨在評價由一群匿名的香港公民社會工作者共同發布的《「國安體制在香港」——《港區國安法》實施三年觀察記》。本文先簡述整份觀察報告，並評估其對於研究香港國安法的執行狀況及相關政策措施的價值。其後，本文闡明當局通過和實施港區國安法的脈絡，即威權主義的全球化和香港尚未完成的「去殖民化」，何以促進建立香港國安體制。本文繼而分析香港境內外監察政府的機關，是否及如何繼續履行其監督政府施政的角色。最後，本文作者呼籲未來各界應多加努力，持續觀察與紀錄香港國家安全體制的執行動態。

關鍵字

香港、中國、威權主義、去殖民化、國際人權、國家安全
