

Hong Kong in 2020

National Security Law and Truncated Autonomy

ABSTRACT

Due to Beijing's deep concern about its national security being undermined in Hong Kong, where the anti-extradition protests from June to December 2019 not only challenged the legitimacy of both the central and Hong Kong governments but also constituted an attempt at initiating a "color revolution," a national security law was enacted in late June 2020. The new law aims at demonstrating its immediate deterrent effects on protestors and dissidents by empowering the Hong Kong authorities to pursue suspected offenders. The results were the escape, arrest, and imprisonment of some local political activists. The year 2020 marked the immediate impacts of the national security law on Hong Kong's political development, resulting in the territory's truncated autonomy and exerting controls over the society, education, and the judiciary.

KEYWORDS: national security, deterrence, truncated autonomy, political dissidents

PROMULGATION OF THE NATIONAL SECURITY LAW

On May 28, 2020 the National People's Council of the People's Republic of China (PRC) held a meeting to consider the enactment of a national security law for the Hong Kong Special Administrative Region (HKSAR), because the Chinese government believed that Hong Kong's anti-extradition movement of the latter half of 2019 was marked by the intervention of foreign forces into HKSAR affairs. From June 18 to 20, the council released an abstract of the draft national security law. On June 30, the council endorsed the

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promulgation of the law (which was incorporated into Appendix 3 of the Hong Kong Basic Law). It had immediate impacts in the political, social, educational, and judicial spheres.

The six chapters of the law cover the duties of the HKSAR government, offenses and penalties, and jurisdictions and legal procedures.¹ Article 1 mandates the “resolute, full and faithful implementation” of the policy of “one country, two systems” and safeguarding of the PRC’s national security. Article 3 states that the HKSAR government has the duty to safeguard national security. Article 4 stipulates that human rights shall be respected and protected in safeguarding national security in accordance with the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Article 6 points to the “common responsibility of all the people of China” and of Hong Kong to safeguard the PRC’s “sovereignty, unification and territorial integrity.” Article 11 says that the chief executive of the HKSAR is accountable to the PRC central government for the implementation of the national security law, while Article 12 establishes the Committee for Safeguarding National Security (CSNS) in the HKSAR. According to Article 15, a national security adviser designated by Beijing sits in the committee meetings. Article 16 says that the Hong Kong police shall set up a department to enforce the protection of national security. Similarly, the Department of Justice shall establish a division responsible for the prosecution of national security cases (Article 18).

Chapter 3 of the law bans secession, subversion, terrorism, and collusion with a foreign country or external elements to undermine national security. A person committing secession, subversion, or terrorism of a grave nature shall be sentenced to either life in prison or a fixed term of not less than 10 years (Articles 20, 22, 25). The same penalties apply to a person who colludes to a grave degree with a foreign country or external elements (Article 29). Article 29 defines collusion as the activities of a person who steals state secrets, or who requests and conspires with foreign entities to wage war on the PRC, to disrupt the formulation and implementation of the policies of the HKSAR, to rig or undermine local elections, to impose sanctions on Hong Kong, or to promote “hatred” among Hong Kong residents toward the central

1. Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (<https://www.gld.gov.hk/egazette/pdf/20202448e/egn2020244872.pdf>), accessed November 8, 2020.

government and the HKSAR administration. Article 30 adds that a person who receives funding and support from any foreign organization is forging external collusion.

Chapter 4 focuses on jurisdictional issues. Article 41 states that no prosecution shall be instituted in respect of an offense endangering national security without the written consent of the secretary for justice. National security cases within Hong Kong's jurisdictions shall be tried on indictment, and the trial shall be conducted in an open court. Article 44 stipulates that the chief executive shall designate a number of judges to handle cases concerning offenses endangering national security, and that their term of office is one year. Before making such designations, the chief executive may consult the CSNS and the chief justice. If such a judge makes any statement endangering national security, he or she shall not be designated, or shall be removed.

Chapter 5 focuses on the Office for Safeguarding National Security (OSNS) of the Central People's Government in the HKSAR. The OSNS staff shall be dispatched by the central government's national security authorities. While its staff abides by the laws of Hong Kong (Article 50), the office is funded by the central government (Article 51). Article 52 states that the OSNS coordinates with the Liaison Office, the Office of the Commissioner of the Ministry of Foreign Affairs, and the Hong Kong Garrison of the People's Liberation Army in the HKSAR. The OSNS strengthens the management of relations with the organs of international and foreign organizations, including news media and nongovernmental groups (Article 54). Article 55 says that the OSNS has jurisdiction over complex national security cases if the HKSAR government is unable to enforce the national security law, or if "a major and imminent threat to national security has occurred."

IMMEDIATE IMPACTS OF THE LAW

Four days after the law was promulgated, the HKSAR government set up the CSNS, whose chairperson is the chief executive and whose national security adviser is Luo Huining, director of the Liaison Office.² The Hong Kong police established the National Security Department, whose head is Assistant Commissioner Edwin Lau. The central government established the OSNS,

2. *Ta Kung Pao*, July 4, 2020, A1.

whose director is Zheng Yanxiong, a former mayor and party secretary of Shanwei (once called Swabue) in Guangdong Province, who took a hard-line approach to suppressing protesters in Wukan Village in 2011. The OSNS held its first coordination meeting with the CSNS on July 31, 2020.

Some foreign countries expressed grave concern about the new law. In a press statement released June 30, US Secretary of State Michael Pompeo said, “Beijing’s paranoia and fear of its own people’s aspirations have led it to eviscerate the very foundation of the territory’s success, turning ‘one country, two systems’ into ‘one country, one system.’”³ On August 7, the US government imposed sanctions on 11 officials dealing with HKSAR matters, including Director of the Hong Kong and Macau Affairs Office Xia Baolong, Liaison Office Director Luo Huining, Chief Executive Carrie Lam, Secretary for Justice Teresa Cheng, Secretary for Security John Lee, and Police Commissioner Chris Tang. The US rescinded Hong Kong’s special trading privileges and halted its extradition treaty with Hong Kong. Other countries, including Australia, Britain, Canada, Finland, France, Germany, Ireland, the Netherlands, and New Zealand, also suspended their extradition treaties with the HKSAR.

Hours after the law was passed, the pro-democracy organization Demosisto was disbanded. Its core leaders, Joshua Wong, Nathan Law, Jeffrey Ngo, and Agnes Chow, quickly resigned. Nathan Law later fled to the United Kingdom. Wayne Chan Ka-kui, a convenor of the Hong Kong Independence Union, allegedly jumped bail in mid-June and went to the Netherlands and later the United Kingdom.⁴ On July 30, Samuel Chu, the son of Reverend Chiu Yiu-ming, who was one of the three organizers of the 2014 Occupy Central Movement, was listed as wanted by the Hong Kong police for “inciting secession” and “colluding with foreign powers.”⁵ (He is now living in the United States.) Samuel Chu is an American citizen and an activist with the US-based Hong Kong Democracy Council. But Article 38 states that the law applies even to people who are not permanent residents of

3. “On Beijing’s Imposition of National Security Legislation on Hong Kong: Press Statement, Michael R. Pompeo, U.S. Secretary of State,” June 30, 2020 (<https://hk.usconsulate.gov/n-2020063001/>).

4. *Ta Kung Pao*, October 8, 2020, A1.

5. Kevin Douglas Grant, “China Clampdown: Hong Kong Issues Warrant for Samuel Chu, an American Citizen, Activist and the Pastor’s Son,” *Sight*, August 30, 2020 (<https://www.sightmagazine.com.au/features/16930-china-clampdown-hong-kong-issues-warrant-for-samuel-chu-an-american-citizen-activist-and-pastor-s-son>).

the HKSAR—an extraterritorial stipulation that raised tremendous concern among some Hong Kongers and foreigners. Other young people who escaped from Hong Kong included Lau Hong, who was reportedly in the UK; Simon Cheng, a former UK consulate official who is now in the UK; Sunny Cheung, who is reportedly in the UK; and Ray Wong, who was involved in the 2016 Mongkok riot and escaped to Germany in 2017.⁶ On December 3, Ted Hui of the Democratic Party announced from Denmark that he had gone into exile. He has since quit his party and moved to the UK.

While at least 200 young protesters fled Hong Kong for Taiwan from June 2019 to January 2020, on August 23, 2020, twelve who tried to flee on a speedboat were arrested by the mainland marine police, including Andy Li, an organizer of the Election Observation Mission, which had delegates from 12 countries to observe the November 2019 District Council elections. On December 30, the Shenzhen court sentenced 10 of them to prison: three years for organizer Tang Kai-yin, two years for another organizer, Quinn Moon, and seven months for eight other people. Two underaged suspects were returned to the Hong Kong police. The imprisonment of the 10 Hong Kongers in the mainland after their failure to escape to Taiwan was politically significant, as it represented cases of *song Zhong* (sending back to China), a phrase that had been used by many in protesting the extradition bill in the latter half of 2019.

Chief Executive Carrie Lam announced on July 31 that due to the outbreak of COVID-19, the Legislative Council (LegCo) elections originally scheduled for September 6 would be postponed for a year, to 2021. This controversial decision led to public speculation that the HKSAR government was under the instruction of the central authorities to postpone the elections for fear of another pro-democracy victory as in the 2019 District Council elections. During the July 31, 2020 press conference, Lam suddenly mentioned that some people wanted Hong Kong people who resided in the mainland to be able to vote in LegCo elections—implying that the HKSAR government would study the matter and propose cross-border voting by the mainland's Hong Kong residents in future LegCo elections.⁷ This announcement was made after 12 pro-democracy candidates preparing for the LegCo elections were disqualified. In mid-July, the pro-democracy candidates organized

6. *Ta Kung Pao*, October 8, 2020, A1.

7. Cable TV News, July 3, 2020.

primaries that witnessed 600,000 people voting for candidates for the LegCo—an action that pro-Beijing media criticized as violating the new national security law. While the primaries turned out to be useless because the LegCo elections were postponed, most pro-democracy candidates who won the primaries were localists.⁸ On August 11, after the chief executive and the top policymaking Executive Council invoked the Emergency Regulations to postpone the LegCo election, the Standing Committee passed a resolution to extend the sixth LegCo for a term of not less than one year. Two democrats, Eddie Chu and Raymond Chan Chi-chuen, then formally resigned from the council, arguing that democrats should not participate in a legislature without any mandate from the people of Hong Kong, because this would legitimize the actions of the Chinese Communist Party.

The national security law has had other ramifications. Some public libraries have taken a few localist books off the shelves, and pro-Beijing bookstores have also exercised self-censorship by removing politically sensitive books. Localist books are now available only in second-hand bookstores. In May 2020, two officials of the Hong Kong Examination and Assessment Authority resigned over the government's criticism of a public examination question that had asked students whether Japan's invasion of China did more good than harm.⁹ The government was criticized for using the criterion of political correctness to purge officials who were deemed politically liberal, and for appointing a pro-Beijing teacher and principal to the authority's examination committee. In July 2020, the HKSAR government announced that secondary schools would implement national security education in April 2021. Secondary school teachers who espoused pro-democracy views have also become the target of criticism by the pro-Beijing mass media and websites. They are labeled "yellow teachers," like the "yellow judges" who have given relatively lenient sentences to protesters.

Some pro-Beijing elites have pointed to the need for judicial reforms, for example to dispatch Hong Kong's court judges to the mainland for patriotic education, to establish a new sentencing committee to review the "lenient" sentences delivered by some judges, and to reform the composition of the

8. Localists are those local Hong Kongers who advocate maximal autonomy for Hong Kong, oppose any PRC intervention in Hong Kong affairs, and call for the territory's "self-determination," a term seen by PRC authorities as tantamount to territorial "independence" and political separatism.

9. "Two Examination Authority Staff Resigned amid DSE Question Controversy," *Hong Kong Standard*, May 16, 2020.

Judicial Officers Recommendation Commission. These suggestions were highly political, because some members of the judiciary have been seen as too “yellow.” Although the national security law does not bar any foreign judges from serving in the local courts, four local judges who had a track record of “conservative” rulings were selected to deal with cases concerning national security offenses.

From July 1 to October 18, the Hong Kong police arrested 28 persons for violating the national security law, and three of them were prosecuted.¹⁰ The Hong Kong America Center, which the pro-Beijing media had accused of being an arm for the US government and interfering with Hong Kong affairs by holding training sessions for anti-government activists, was closed down in August 2020.¹¹ On October 10, some pro-Taiwan activists, aware of the national security law, decided to cancel a flag-raising ceremony for the national day of the Republic of China (Taiwan). On November 5, the police’s National Security Department opened a hotline to allow citizens to report possible violations of the national security law. Clearly, the law had the intended consequence of inculcating the politics of fear in the psyche of some Hong Kongers, making them censor themselves politically and report suspected offenses anonymously.

The national security law was used by the Hong Kong authorities to target and punish some people whose activities are deemed politically subversive. On December 2, three young political activists—Joshua Wong, Agnes Chow, and Ivan Lam—were convicted by the magistrate court of organizing and inciting an assembly outside the police headquarters in Wanchai in June 2019. They were sentenced to 13.5, 10, and seven months in prison, respectively. Jimmy Lai, a financier of the prodemocracy movement and a founder of the *Apple Daily*, was charged in August 2020 with activities that violated the national security law, including fraud and “collusion” with foreign forces. On December 23, Lai was granted bail by the High Court, under conditions including a HK\$ 10 million (US\$ 1.3 million) deposit, surrendering his travel documents, reporting to the police three times per week, and a ban on media interviews and messages on social media. Pro-Beijing media and politicians criticized the granting of bail because of the “serious” nature of the case. The HKSAR government appealed to the Court of Final Appeal, which ruled on

10. *Ta Kung Pao*, October 18, 2020, A3.Å

11. *Ta Kung Pao*, August 31, 2020, A6.

December 31 that Lai must return to jail. These cases show that the HKSAR authorities have been empowered by the national security law to pursue even offenses committed before the enactment of the national security law in late June 2020.

TRUNCATED AUTONOMY

The enactment of the national security law has had the immediate impact of curbing the autonomy of the HKSAR. Four layers of jurisdiction over various issues are looming. The first layer is the exclusive jurisdiction of the central government over sensitive matters, like the money-laundering activities of mainlanders in the HKSAR, as one can recall from the “kidnap” of mainland businessman Xiao Jianhua from the Four Seasons Hotel in January 2017.¹²

Another sensitive issue beyond the jurisdiction of the HKSAR government is international espionage. The second layer of co-jurisdictions of Beijing and the HKSAR embraces the case of 12 Hong Kong people who were detained in the mainland for violating PRC criminal law and who will likely be sent back to Hong Kong for their alleged violations of the national security law. The third layer of co-jurisdictions is complex and embraces issues like education and freedom of speech and of expression (a slogan of the anti-extradition movement in 2019, “recovering Hong Kong during revolutionary times,” was criticized by pro-Beijing elites and media as violating the national security law) and judicial appointments (“yellow” judges are deemed to be inappropriate in dealing with national security offenses). This third layer of co-jurisdiction is contested, because the local Hong Kong judges are involved in adjudicating cases of national security offenses. Thus, the verdicts and remarks of judges who deal with national security will come under increasing scrutiny by the politically correct pro-Beijing elites and media. The final layer of jurisdiction over Hong Kong’s domestic affairs belongs to the HKSAR, including matters such as the criminal law, commercial crime, tort, and other issues that do not touch on the “high politics” of Beijing–HKSAR relations.

The autonomy of the HKSAR has been truncated by the impacts of the national security law. Beijing is adopting Chinese legalism a means to stave off protesters, to scare away political opponents, to stabilize Hong Kong

12. He was accused of laundering money in the HKSAR for rich people in the mainland, or their family members (*Next Magazine*, February 8, 2017; *Secret China*, June 11, 2018). It is impossible to say whether these charges are true.

immediately, and to warn the people of Hong Kong of the dangers of breaching national security. Due to the resilience of some Hong Kongers who are determined to defend their civil liberties, the third layer of contested co-jurisdictions between Beijing and Hong Kong, which involve a multiplicity of issues, from education to freedom of speech, and from judicial appointments to court verdicts, will continue to be a bone of contention between Beijing, the HKSAR authorities, and some of the people of Hong Kong.