

## Prosecution of the Hong Kong 47: Rule of Law on Trial

HRIC Bulletin

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The cases of the 47 individuals accused of “conspiracy to commit subversion”—known as the Hong Kong 47, or NSL 47, in reference to the National Security Law under which they are charged—have languished in Hong Kong’s court system for more than a year, while most of the detainees have been denied bail. HRIC has created a dedicated webpage—[“The Hong Kong 47”](#)—to provide updated information on their cases to highlight their prosecution for efforts to expand meaningful participation in the Hong Kong legislature and urge the international community to monitor their cases.

### ***Hong Kong 47: What You Need to Know***

- On **July 11-12, 2020**, more than **600,000 Hong Kongers** participated in unofficial primary polling to choose their candidates for the Legislative Council (LegCo) election, which was then scheduled for September 2020. The primary was organized by pro-democracy activists as part of a “35+” plan to achieve a simple majority for the pro-democracy camp in the 70-seat legislature. (However, citing COVID-19 concerns, the authorities postponed the election for more than a year until December 2021, after changes to the system were put in place to allow *only* “patriotic” candidates to run.)
- The day after the primary, **Hong Kong Chief Executive Carrie Lam** [said](#): “[I]t may fall into the category of subverting the state power—one of the four types of offences under the national security law.” The *National Security Law* (NSL), which Lam alluded to, had been passed by mainland China’s legislature, the National People’s Congress, and imposed on Hong Kong barely two weeks earlier, on June 30, 2020.
- In the early hours of **January 6, 2021**, more than **1,000 police officers conducted large-scale arrests** of 53 individuals involved in the unofficial primary. Two more arrests were made on January 7.
- On **February 28, 2021**, **47 of those arrested were charged with “conspiracy to commit subversion” under the *National Security Law***. They included veteran lawmakers, representatives of local districts, young social activists, and academics—all were engaged in the peaceful exercise of two fundamental rights: the right to participate in public affairs and the right of peaceful assembly. The prosecutors justified the charge of “conspiracy to commit subversion” under the *National Security Law* by arguing that planning and organizing the unofficial primary and the goal of achieving a majority in the legislature with the “35+” plan constituted a plot to overthrow the Hong Kong SAR government.



Photo: Studio Incendo

- **As of April 22, 2022, 34—or 72%—of those charged remain in detention** pending trial, having been denied bail, or had their bail granted and later revoked. A magistrates’ court in Hong Kong is scheduled to decide in late April 2022 whether the cases of the 47 individuals will be moved to the High Court, where the maximum sentence they face is life imprisonment.

### ***What’s at Stake: Hong Kong’s Rule of Law on Trial***

Many governments have laws against “subversion of the state power”—i.e., overthrowing the government with violence. In accordance with international standards, the prosecution of national security crimes must comply with the principle of legality, necessity, and proportionality. However, the *National Security Law’s* vague, and yet comprehensive, provisions criminalizing the exercise of protected rights, as well as its draconian implementation, raise serious rule-of-law concerns under both international law and China’s international obligations.

The [International Covenant on Civil and Political Rights](#) (ICCPR), a key international human rights treaty—ratified by the UK colonial government in 1976 and in accordance with Hong Kong’s constitution, [Basic Law](#) (Article 39)—applies to Hong Kong. Moreover, the *National Security Law* itself, in Article 4, explicitly provides for the protection of rights under the ICCPR. (In addition, the UN Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism (SRCT) recently [concluded](#) that the ICCPR also applies to any NSL cases that are transferred to mainland China.)

The NSL states:

In safeguarding national security, the Hong Kong Special Administrative Region shall respect and guarantee human 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 Hong Kong Special Administrative Region and the provisions of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* as applied to Hong Kong, shall be protected in accordance with the law.

[National Security Law, Article 4](#)

The specific fundamental rights at stake in the cases of the Hong Kong 47 include: the right to participate, the right of peaceful assembly, and the right to trial within a reasonable time—rights that are protected under the ICCPR and by Article 4 of the NSL.

#### ***The right to participate***

Every citizen shall have the right and the opportunity . . . without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

**ICCPR, Article 25**

### ***The right of peaceful assembly***

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

ICCPR, Article 21

(For further discussion of the rights to participate and of peaceful assembly, see HRIC, "[Hong Kong Arrests of 55: Time to Test Article 4 of National Security Law](#)," January 8, 2021.)

### ***The right to a trial within a reasonable time***

3. Anyone arrested or detained on a criminal charge . . . shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody. . . .

ICCPR, Article 9 (3)

The denial of bail in the majority of the cases under the NSL reveals that the law—on its face and as applied—turns the presumption of bail under international standards, and in the common law applicable to Hong Kong, into a presumption *against* bail.

The court has not set a date for the trial of the 47. There is speculation that their trials will not even take place until 2023—at the earliest. The prolonged detention of 34 of the 47 individuals without a trial to determine the facts of their cases is in practice punishment and deprivation of liberty without a determination of guilt. This blatantly undermines the right to a trial within a reasonable time and the presumption of innocence.

In addition, in February to late March 2022, the Hong Kong authorities, citing a COVID-19 surge, suspended outside visits to prisons and detention facilities, furthering the detainees' isolation. A defendant at a March 4, 2022 hearing [said](#): "There is no way to connect with the outside world." In March 2022, it also came to light that 23 of the those detained have been kept in solitary confinement.

Notwithstanding the explicit guarantee of the fundamental rights protected under the ICCPR, the politicized application of the NSL and the lack of adequate due process safeguards are deepening the suppression of expression, dissent, and political opposition, and the undermining of the exercise of the rights to participate and of peaceful assembly.

### ***A Battle in Beijing's War of Authoritarian Control Over Hong Kong***

In less than two years since the enactment of the *National Security Law*, the Hong Kong authorities, following directives from the Beijing government, have repeatedly flouted their international obligations to protect fundamental rights guaranteed under international and domestic law. Against sustained criticism from international human rights authorities and condemnation from governments, they have used the *National Security Law* to restrict free speech, strangle independent media, crush dissent, curb academic freedom, and hound civil society organizations out of existence—essentially gutting a once free and vibrant civil society. They have also intimidated the Hong Kong Bar Association and the Law Society of Hong Kong into silence, and remade the electoral system to bar any opposition. In fact, in the upcoming "election" for Hong Kong's Chief Executive, only one candidate *can* run, a candidate backed by Beijing.

China is a key player in two of the world's major crises today. Its actions—the blatant support for Russia, which is emboldening Putin's brutal war of aggression against Ukraine, and the merciless zero-COVID policy at home, which is creating a humanitarian crisis in Shanghai—are having grave impacts on global security and public health.

In Beijing's war of authoritarian control over Hong Kong, the prosecution of the Hong Kong 47 can be seen as a critical battle, one that will be fought in court. The eradication of democracy and rights in any part of the world is a warning to the international community of the accompanying spread of authoritarian regimes beyond their borders.

The international community must closely monitor the prosecution of the Hong Kong 47. The process and outcome of their trials will be a critical moment for the Hong Kong judiciary: it is a high stakes stress test of the rule of law in Hong Kong. Can the judiciary—with judges handpicked by the Chief Executive specifically to adjudicate national security cases (NSL, Article 44)—demonstrate that it will maintain its independence as a key pillar of the rule of law?

## Related Resources

- Eric Yan-ho Lai and Thomas Kellogg, "[Arrest Data Show National Security Law Has Dealt a Hard Blow to Free Expression in Hong Kong](#)," *ChinaFile*, April 5, 2022.
- Lydia Wong and Thomas Kellogg, "[Individuals Arrested under the Hong Kong National Security Law or by the National Security Department](#)," *ChinaFile*, January 19, 2022.
- Lydia Wong, Thomas Kellogg, and Eric Yanho Lai, "[Hong Kong's National Security Law and The Right To A Fair Trial](#)," *Center for Asian Law: Georgetown Law*, June 28, 2021.
- "[2021 arrests of Hong Kong pro-democracy primaries participants](#)," Wikipedia.
- "[Profiles of Political Prisoners](#)," *Hong Kong Watch*.
- "[Too Soon to Concede the Future: The Implementation of The National Security Law for Hong Kong--An HRIC White Paper](#)," *Human Rights in China*, October 16, 2020.
  - ANNEX A: Updated HRIC annotated bilingual chart of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region with highlights of translation issues and suggested translation changes: [EN](#), [CHS](#), [CHT](#)
  - ANNEX B: Hong Kong's national security entities and background on key appointed personnel: [EN](#), [CHS](#), [CHT](#)
  - ANNEX C: Related Resources: [EN](#), [CHS](#), [CHT](#)
- "[Hong Kong: In The Name Of National Security: Human Rights Violations Related To The Implementation Of The Hong Kong National Security Law](#)," *Amnesty International*, June 2021. (Appendix includes a list of 118 individuals that were SOUGHT, ARRESTED OR PROSECUTED UNDER THE NSL, July 1, 2020 – June 29, 2021.)

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