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# Hong Kong: National Security Law and recent events



## Summary

- 1 Background, Joint Declaration and period up to 2019
- 2 National Security Law
- 3 Events since National Security Law passed

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# Summary

## National Security Law passed

On 30 June 2020, the People's Republic of China's parliament passed a new National Security Law for Hong Kong, bypassing the territory's own Legislative Council.

China has been alarmed by the mass protests in 2014 and 2019 in Hong Kong that brought hundreds of thousands of pro-democracy supporters out on the streets, and the success of pro-democracy politicians in the island's 2019 local elections.

## Hong Kong History and the Joint Declaration

Hong Kong was a British colony from 1842 until the UK transferred sovereignty over Hong Kong to the People's Republic of China (PRC) in 1997, after which it became a Special Administrative Region of China. In preparation of the handover, the UK and China agreed the [Joint Declaration on the Question of Hong Kong](#) (Joint Declaration) in 1984.

The Joint Declaration enshrined the concept of "one country, two systems" under which Hong Kong would enjoy a "high degree of autonomy", maintaining, for example its own legal system, judiciary and borders. This system is preserved in the [Basic Law](#), Hong Kong's constitutional document, that come into force after the 1997 handover of power.

The Joint Declaration does not contain any penalties for China if it breaches the agreement or any sort of dispute resolution process.

## China's powers to legislate for Hong Kong

Article 18 of Hong Kong's Basic Law says Chinese laws can't be applied in Hong Kong unless they are listed in a section called Annex III.

This provision states that the Hong Kong Government shall be consulted on any laws proposed by China, and that such laws shall be confined to those relating to three areas: (a) defence; (b) foreign affairs and (c) other matters outside the limits of the autonomy of Hong Kong as specified under the Basic Law.

Article 23 of the Basic Law also obliges the Hong Kong Government to pass national security legislation to prohibit acts such as treason, secession, sedition, subversion against the Central People's Government, and to prohibit the influence of foreign political organizations. However, no HKSAR Government so far has been able to pass such legislation due to internal opposition.

China argues that the Chinese central Government is responsible for upholding national security and making laws on national security. Hong Kong's inability to pass its own legislation has left it "defenceless" and the "grave" national security situation meant it had to step in.

Some legal scholars argue that the phrase in Article 23 that Hong Kong "shall enact laws on its own" on national security, prohibits China from passing its own laws in this area.

### The law's main provisions

The National Security Law The legislation criminalises any act of:

- secession;
- subversion;
- terrorism; and
- collusion with foreign or external forces.

The law established a new Beijing-led security office in Hong Kong, with its own law enforcement personnel - neither of which would come under the local authority's jurisdiction. Hong Kong's political leader, Chief Executive Carrie Lam, now has the power to appoint judges to hear national security cases. Beijing will also have power over how the law should be interpreted, rather than any Hong Kong judicial or policy body. If the law conflicts with any Hong Kong law, the Beijing law takes priority.

The National Security Law also states it applies to anyone regardless of where they live in the world or if they are a citizen and/or resident of Hong Kong.

### UK response

The UK Government have said that the National Security Law is a "clear and serious violation" of the Joint Declaration.

The UK has suspended its extradition treaty with Hong Kong, tightened its embargo on the sale of arms and crowd control equipment, and has opened a new visa route to people from Hong Kong who have British National (Overseas) – 'BN(O)' – status and their close family members.

Both the Labour Party and prominent politicians such as former Governor of Hong Kong, Chris Patten have called for "Magnitsky-style sanctions" to be placed on Chinese and Hong Kong officials responsible for "for the crackdown on the pro-democracy movement in Hong Kong".

### China's response to criticism

In May 2020, China's Embassy in the UK put out [a statement on Hong Kong's national security legislation](#) saying it is "purely China's internal affair, which no foreign country has the right to interfere in".

It described the 2019 protests as “increasingly rampant activities by the “Hong Kong independence” elements, and radical and separatist force”, and that there was “escalating violence and terrorist activities”.

The statement also said the “One Country, Two Systems” and the “high degree of autonomy” envisaged under the system had been “implemented faithfully” since Hong Kong’s handover.

### **Events since the law was passed: activists arrested and media crackdown**

Since the law was passed in June 2020 there have been mass arrests of leading activists who were involved in the 2014 and 2019 protest movements.

The National Security Law does not directly address the media or the press. However, the vague way it is written has reportedly led to many journalists self-censoring their output, and has not stopped the Hong Kong authorities from targeting the press. For example, pro-democracy newspaper the Apple Daily, shut itself down in June 2021 after being twice raided by the police and its owner and senior editors arrested.

In February 2021, a new national security education curriculum was introduced in Hong Kong’s schools, and in August the same year the largest teacher’s union was shut down after being accused by Chinese media of supporting the pro-democracy movement.

### **Electoral system changed**

In March 2021 China’s legislative body passed significant changes to Hong Kong’s electoral rules which will tighten its control over the city.

The number of directly elected seats in Hong Kong’s Legislative Council will be cut almost by half, and prospective Council Members will first be vetted by a “candidate qualification review committee” to ensure that only “patriotic” figures can run for positions of power.

### **Colonial era sedition laws used once again and plans for a new local Hong Kong National Security Law**

Laws on sedition originating from Hong Kong’s colonial past that have not been used in decades and are said by some to contravene the pledges in Hong Kong’s Basic Law to uphold political rights, are now being used again to prosecute authors and political activists.

It has been reported that Hong Kong’s Government now plans to pass its own National Security Law, to allow it prosecute offences listed in Article 23 of the Basic Law, that are not already covered by the Chinese-imposed legislation.

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# 1 Background, Joint Declaration and period up to 2019

## 1.1 Background and Joint Declaration

### Background

Hong Kong was a British colony from 1842 until 1997 when the UK transferred sovereignty over Hong Kong to the People's Republic of China (PRC). Hong Kong then became a Special Administrative Region of China.<sup>1</sup> In 1984, in preparation for the handover the UK and China agreed the [Joint Declaration on the Question of Hong Kong \(Joint Declaration\)](#).

The Joint Declaration enshrined the concept of “one country, two systems” under which Hong Kong would enjoy a “high degree of autonomy”, maintaining, for example its own legal system, judiciary and borders. This system is preserved in the [Basic Law](#), Hong Kong's constitutional document, that come into force after the 1997 handover of power.

### Joint Declaration

#### Main features

The Joint Declaration was signed in Beijing on 19 December 1984 and entered into force on 27 May 1985.

The main points of the Declaration are as follows:

- The Declaration establishes a Hong Kong Special Administrative Region (SAR) which will be “directly under the authority” of the Central People's Government of the People's Republic of China.
- The SAR “will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government”. The laws currently in force will remain basically unchanged, with the SAR vested with “executive, legislative and independent judicial power, including that of final adjudication”.

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<sup>1</sup> The build-up to the handover was covered extensively in Commons Library research papers at the time including: [Hong Kong: the final stages](#), RP96-104, 13 November 1996; [Hong Kong: the current issues](#), RP95-52, 26 April 1995; [Hong Kong and democracy](#), RP94-44, 10 March 1994. A more recent Lords Library paper provides a very short history: [Hong Kong Handover: 20 year anniversary 1 July 2017](#) (LLN-2017-0037)

- The current social and economic systems will remain unchanged for 50 years following the handover, as would its existing rights, freedoms and lifestyle. This explicitly includes rights and freedoms of the person, of speech, of the press, of assembly, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief.
- The Government will be composed of “local inhabitants” with the Chief Executive appointed by the Central People’s Government “on the basis of the results of elections or consultations to be held locally”.
- The SAR will retain the status of a free port and a separate customs territory. The Declaration protects private property and foreign investment and states the SAR will “retain the status of an international financial centre” with independent finances. The SAR may develop and conclude agreements with states, regions and relevant international organisations and issue travel documents for entry into and exit from Hong Kong.
- The Government of the SAR is responsible for maintaining public order.

The Declaration includes an annex which expands on the above points. The text of that annex and further information on the Joint Declaration is available in the Library Briefing ‘[Hong Kong: the Joint Declaration](#)’.

### Legal force of the Declaration

The agreement entered into force on 27 May 1985 and was registered at the [United Nations](#) by the Chinese and British Governments on 12 June 1985.

The Joint Declaration is a legally binding treaty, but it contains no enforcement or dispute resolution provisions. So, for example, the treaty does not lay out any penalties for breaching the treaty, establish a permanent joint body to oversee its operation, or an arbitration panel or a way to enforce decisions on either party.

This does not absolve either party of its duty under international law to uphold the provisions of the treaty.

The UK Government is clear that “the Joint Declaration is a legally binding treaty, registered with the United Nations, which continues to remain in force. It remains as valid today as it did when it was signed over thirty years ago”.<sup>2</sup>

The former Foreign Secretary, Jeremy Hunt, reaffirmed this in 2017 on the 22nd anniversary of the handover when he declared the UK’s commitment to the Declaration as “unwavering”.<sup>3</sup>

In 2019, the UK Government also said the UK “has an obligation and a right to

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<sup>2</sup> “[China and the rules-based international system](#)”, Foreign Affairs Committee, 4 April 2019 HC 612 2017-19, [written evidence CIR0018](#)

<sup>3</sup> “[Anniversary of the Hong Kong handover: Foreign Secretary statement](#)”, FCO, 30 June 2017

monitor its implementation closely, and we are strongly committed to doing so”.<sup>4</sup>

The Government agreed at the time of the 1997 handover that the Foreign Secretary would report to Parliament every six-months on the implementation of the Joint Declaration. In the last few years, the Government have frequently raised concerns in [these reports](#) that the Declaration was not being faithfully implemented by the PRC.

Chinese officials have challenged the status of the declaration, [calling it a](#) historical document without practical significance. China’s Embassy in the UK put out [a statement](#) in May 2020 saying “not a single word or paragraph in the Joint Declaration gives the UK any responsibility over Hong Kong after its handover”, and that the Declaration “should not be used as an excuse to interfere in Hong Kong affairs, which are China’s internal affairs”.<sup>5</sup>

## 1.2 Protests before 2020

### 2014 Umbrella protest movement

In September 2014 the [pro-democracy Umbrella protest movement broke out](#). Protestors claimed that China had reneged on an agreement to grant them open elections by 2017 and demanded “true universal suffrage”.

On 31 August 2014, China’s National People’s Congress (NPC) approved a version of universal suffrage for the election in 2017 of the next Chief Executive of the Hong Kong Special Administrative Region. Many felt that these proposals fell short of full democracy. The key point of contention was the provisions made for candidates to be approved by a nominating committee which critics said had an in-built “pro-Beijing” bias.<sup>6</sup>

The NPC’s decision triggered mass protests that lasted until December 2014, with parts of Hong Kong – including much of the central business district – being taken over by protestors, many of them young people. The occupations were coordinated by [several groups](#), among them Occupy Central, [Scholarism](#) and the Hong Kong Federation of Students.

Protestors [used umbrellas](#) to protect themselves from the sun and the tear gas used by the police, the umbrellas later became a symbol for the wider movement that supporters dubbed the “umbrella revolution”.

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<sup>4</sup> [PQ 267231](#), 28 June 2019

<sup>5</sup> PRC UK Embassy, ‘[Chinese Embassy Spokesperson’s Remarks regarding the Hong Kong-related Statement by Foreign Ministers of the UK, the US, Australia and Canada](#)’, 29 May 2020.

<sup>6</sup> For further details see Commons Library Paper SN07044, ‘[Hong Kong: pro-democracy protests and proposed FAC visit](#)’.

## 2019 protests

In March 2019, [thousands of protestors took the streets](#) again in opposition to a draft Bill to amend Hong Kong's extradition laws. Those opposed to the amendment feared it would enable the Chinese Government to target political opponents, by having them extradited to mainland China. The protests became larger, with protests at the end of April 2019 [said to be the largest in five years](#), the peak of the Umbrella protests.

In June 2019 protesters [tried to storm key government buildings](#) demanding the Bill be scrapped. The Bill was formally withdrawn in September 2019 but demonstrations in favour of greater democracy continued until the outbreak of Covid-19 in early 2020.

In November 2019, [local council elections](#) resulted in pro-Beijing parties and politicians being resoundingly defeated. However, these councils have little influence beyond local politics.

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## 2 National Security Law

### 2.1 Background

In May 2020, a draft National Security Law for Hong Kong was submitted at the annual National People's Congress (NPC) in Beijing. China's legislative body the Standing Committee of the National People's Congress (NPCSC), is largely a "rubber-stamp" body which approves proposals submitted by the Communist Party leadership.

On 30 June 2020, the NPCSC passed the legislation which sought to ban "secession, subversion, foreign interference and terrorism"<sup>7</sup>, bypassing the Hong Kong's own legislative council.

The legislative process "involved unusual speed and secrecy"<sup>8</sup>, with the Hong Kong Bar Association stating that nobody in the HKSAR had seen so much as a draft or accurate summary of the NSL before its entry into force<sup>9</sup>.

China's and Hong Kong's Governments have justified the passing of the 2020 National Security Law, in part because of the political instability arising from mass protests over the last several years.

#### China's powers to pass laws that apply to Hong Kong

Article 18 of Hong Kong's Basic Law, Hong Kong's constitutional document, says Chinese laws can't be applied in Hong Kong unless they are listed in a section called Annex III. Six laws were included from 1997 after the handover of power, which the [BBC described](#) as "mostly uncontroversial and around foreign policy"<sup>10</sup>. There are now a total of 12.

Immediately after China's legislative body, the NPCSC, passed the new National Security Law on 30 June 2020, Chinese President Xi Jinping signed a presidential order to promulgate it in mainland China and the NPCSC listed it in Annex III of the HKSAR Basic Law, so that it could be applied in Hong Kong.

Hong Kong's Legislative Council's [website](#) gives further details on the criteria set out by Article 18 for laws to be included in the Annex:

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<sup>7</sup> '[NPC: China moves to impose controversial Hong Kong security law](#)', BBC News, 22 May 2020.

<sup>8</sup> Congressional Research Service, '[China's National Security Law for Hong Kong: Issues for Congress](#)', 3 August 2020, Page 6.

<sup>9</sup> Ibid.

<sup>10</sup> '[Hong Kong security law: What is it and is it worrying?](#)', BBC News, 30 June 2020.

### What are the circumstances under which national laws shall be applied in Hong Kong?

- Article 18 lays out the procedures and conditions to be followed, when the Standing Committee of the National People's Congress ("NPC Standing Committee") exercises its power to add to or delete from the list of laws in Annex III.
- Under Article 18, before a decision to add to or delete from the list of laws in Annex III is to be made by the NPC Standing Committee, the Basic Law Committee as well as the Hong Kong Government shall be consulted. Article 18 also requires that the laws listed in Annex III shall be confined to those relating to the following three areas: (a) defence; (b) foreign affairs and (c) other matters outside the limits of the autonomy of Hong Kong as specified under the Basic Law.
- Article 18 also provides that in the event that the NPC Standing Committee decides to declare a state of war or, by reason of turmoil within Hong Kong which endangers national unity or security and is beyond the control of the Hong Kong Government, decides that Hong Kong is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in Hong Kong<sup>11</sup>.

### Hong Kong's Basic Law and national security (Article 23)

Article 23 of the [Basic Law](#) states that the Hong Kong Special Administrative Region (HKSAR) Government should enact its own laws in relation to national security:

The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

However, despite being tasked under Article 23 with enacting such laws, no HKSAR Government was able to do so due to internal opposition. A significant push by the HKSAR Government in 2003 to pass national security legislation, spearheaded by then Chief Executive Tung Chee-hwa, prompted an estimated

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<sup>11</sup> Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, '[Applying national laws in Hong Kong](#)', accessed 15 September 2021.

500,000-person protest in the city and the subsequent resignation of Tung's Secretary of Security.<sup>12</sup>

No subsequent Chief Executive has submitted legislation to the Hong Kong Legislative Council (Legco) to fulfil the requirements of Article 23 of the Basic Law.

Professor Johannes M.M. Chan, Chair of Public Law at the University of Hong Kong, argued that the failure of Hong Kong to pass its own national security laws, did not mean China's legislative body, the NPCSC, was free to impose its own law:

Some people argued that Article 23 only imposes an obligation on the HKSAR to enact national security law; it does not exclude the NPC or the NPCSC from making national security law for Hong Kong. Nor does the fact that the NPCSC making national security law for Hong Kong exempt Hong Kong from its responsibility to enact national security law under Article 23. This argument does not really address the question. The whole point of inserting the phrase "on its own" is to ensure that the Central Government will not impose its national security law on Hong Kong. This phrase would be absolutely meaningless and its protection would be illusory if it means that the Central Government could do exactly that. If the Central Government wants to do that, it has to first amend the Basic Law and pay the political price for doing so.<sup>13</sup>

Professor Chan further argues that the specificity of Article 23, means that the general route of Article 18 shouldn't have been used to enact the National Security Law:

[A] general principle of statutory interpretation is that a specific provision would prevail over a general provision. Article 18 is a general provision which allows the NPCSC to extend national laws to Hong Kong via Annex 3, whereas Article 23 is a specific provision dealing with national security. As a matter of interpretation, the scope of Article 18 would not include the specific matters set out in Article 23, which are left to Hong Kong to enact laws on its own.

Further, Article 18 only applies to national laws. Some people argue that the term "national laws" is used in contradistinction to "local laws", and simply means any laws enacted by the NPC or the NPCSC. This interpretation may be valid in the general circumstances, but it is clearly inappropriate in the context of Article 18.<sup>14</sup>

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<sup>12</sup> Congressional Research Service, '[China's National Security Law for Hong Kong: Issues for Congress](#)', 3 August 2020, Page 3.

<sup>13</sup> '[Five Reasons to Question the Legality of a National Security Law for Hong Kong](#)', Verfassungsblog, 1 June 2020.

<sup>14</sup> Ibid.

In a [statement](#) published in May 2020, the Chinese Embassy in the UK stated its view that the Chinese Central Government had the power to pass national security legislation for Hong Kong, regardless of what is set out in Article 23 of the Basic Law, and that the “grave situation” in the region required such action:

As is in all countries, it is the central government that is responsible for upholding national security. Making laws on national security falls within the legislative power of the nation. Neither the UK nor China is an exception. Through Article 23 of the Basic Law, the Central Government of China authorizes the Hong Kong SAR to enact laws on safeguarding national security. This authorization, however, does not change the nature that such legislative power belongs to the Central Government. Nor does it deprive the Central Government of its due responsibility and right to safeguard national security. Twenty-three years after Hong Kong's return, Article 23 of the Basic Law is yet to materialize and has been severely stigmatized and demonized, leaving the Hong Kong SAR "defenseless" in terms of national security. In view of the grave situation with regard to national security in the Hong Kong SAR and the SAR's inability to enact laws on safeguarding national security by itself, it is the right and responsibility of the NPC, as the highest organ of state power in China, to plug this loophole that compromises national security in Hong Kong through legislation in accordance with the Constitution and the Basic Law. This is completely reasonable and justified.<sup>15</sup>

## Hong Kong's Basic Law and international human rights treaties

Hong Kong is a party to [several United Nation's human rights treaties](#), including the [Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment](#), and the [International Covenant on Civil and Political Rights](#).

Hong Kong has also enshrined a commitment to uphold these treaties in its Basic Law. Article 39 states:

The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

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<sup>15</sup> Embassy of the People's Republic of China to the UK, '[Chinese Embassy Spokesperson's Remarks regarding the Hong Kong-related Statement by Foreign Ministers of the UK, the US, Australia and Canada](#)', 29 May 2020.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

A group of UN Special Rapporteurs, and working groups wrote a [joint letter](#) in September 2020, emphasising the international legal obligations Hong Kong has under Article 39. In particular, they mention Article 2 of the [International Covenant on Civil and Political Rights](#) (ICCPR)

We remind your Excellency's Government that under article 2 of the ICCPR, Hong Kong SAR is under a duty to ensure that individuals under its jurisdiction enjoy the rights in the Covenant and adopt laws as necessary to ensure that the domestic legal system is compatible with the Covenant. Moreover, the Covenant compels States to take active and specific administrative, judicial and legislative measures to ensure that all of the rights enshrined in the Covenant are protected and that effective remedies are provided if they are breached by States.<sup>16</sup>

## 2.2 Main features of the National Security Law

The legislation criminalises any act of:

- secession;
- subversion;
- terrorism; and
- collusion with foreign countries or “external elements”.<sup>17</sup>

The law established a new Beijing-led security office in Hong Kong, with its own law enforcement personnel - neither of which would come under the local authority's jurisdiction. Hong Kong's political leader, Chief Executive Carrie Lam, now has the power to appoint judges to hear national security cases. Beijing will also have power over how the law should be interpreted,

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<sup>16</sup> [Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on minority issues](#), 1 September 2020.

<sup>17</sup> An English-language text of the legislation can be found [here](#). Article 1 which sets out the general principles of the law states one of its purposes is “preventing, suppressing and imposing punishment for the offences of secession, subversion, organisation and preparation of terrorist activities, and collusion with a foreign country or with external elements to endanger national security”.

rather than any Hong Kong judicial or policy body. If the law conflicts with any Hong Kong law, the Beijing law takes priority.<sup>18</sup>

The law also has an extraordinarily wide application. Article 38 says “this Law shall apply to offences under this Law committed against the [HKSAR] from outside the Region by a person who is not a permanent resident of the Region”. The US Congressional Research analysis of the legislation says this applies the law to “alleged violations committed by anyone, anywhere in the world”.<sup>19</sup>

In October 2020, when protestors outside China’s Embassy in London burned China’s flag, the Embassy put out a statement in which it said such actions were a “violation of [...] the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” (Hong Kong’s National Security Law).

A group of 50 Special Rapporteurs and independent experts appointed by the United Nations’ Human Rights Council, [criticised the law](#), saying it would undermine the right to a fair trial, and open the door to a “sharp rise in arbitrary detention”, undermining the “one country, two systems” governance framework that was introduced at the end of British rule; enabling the Chinese Government to establish “agencies” in Hong Kong “when needed.”<sup>20</sup>

The experts added that the law would “violate China’s international legal obligations and impose severe restrictions on civil and political rights in the autonomous region”.<sup>21</sup>

The former Foreign Secretary, Dominic Raab, [said the law](#) was a “clear and serious violation of the UK-China Joint Declaration, and with it a violation of China’s freely assumed international obligations”.<sup>22</sup>

## 2.3

## Response by the UK & China Governments

### UK Government response to National Security Law

The UK Government [responded with](#) three main actions since the National Security Law was passed in Hong Kong.

Firstly, it [suspended](#) the UK’s extradition treaty with Hong Kong.

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<sup>18</sup> For a detailed analysis of the legislation see Table 1, Congressional Research Service, ‘[China’s National Security Law for Hong Kong: Issues for Congress](#)’, 3 August 2020

<sup>19</sup> Page 10, Table 1, Congressional Research Service, ‘[China’s National Security Law for Hong Kong: Issues for Congress](#)’, 3 August 2020

<sup>20</sup> UN News, ‘[Independent UN rights experts call for decisive measures to protect ‘fundamental freedoms’ in China](#)’, 26 June 2020.

<sup>21</sup> Ibid.

<sup>22</sup> FCDO, ‘[Hong Kong and China: Foreign Secretary’s statement in Parliament, 20 July 2020](#)’.

Secondly, it extended the [embargo on certain military items](#) already imposed on mainland China (in response to the 1989 Tiananmen Square repression), to Hong Kong. It had already in June 2019 restricted the sale of crowd control equipment to Hong Kong.

Thirdly, it announced it would open a new visa route to people from Hong Kong who have British National (Overseas) – ‘BN(O)’ – status and their close family members. The [Hong Kong British National \(Overseas\) visa](#) launched on 31 January 2021. At the end of May 2021, the Home Office announced that it [had received 34,000 applications](#) for the visas in the two months it had been in operation.

### Further action: calls for sanctions

In November 2020 the Government said [it would consider](#) imposing “[Magnitsky-style sanctions](#)” on Chinese officials in response to the announcement that 12 pro-democracy candidates were being barred from standing in legislative elections.

In April 2021, a cross-party group of over 100 MPs and peers [wrote to the Prime Minister](#), asking him to impose sanctions on Chinese officials “responsible for the crackdown on the pro-democracy movement in Hong Kong”. The cross-party group includes shadow foreign secretary Lisa Nandy and former governor of Hong Kong Lord Patten. The Chair of the Foreign Affairs Select Committee, Tom Tugendhat, and former Conservative Party leader, Sir Iain Duncan Smith, have [also asked](#) the Government to apply sanctions on individual Chinese officials.

## Chinese Government response to criticism of the law

In May 2020, China’s Embassy in the UK put out a [statement setting out its views on the legislation](#). It said that the legislation is “purely China's internal affair, which no foreign country has the right to interfere in”.

The Embassy also said the law was “timely and necessary”, and that in recent years national security in Hong Kong “has faced increasing risk”. It described the 2019 protests as “increasingly rampant activities by the Hong Kong independence elements, and radical and separatist force”, and that there were “escalating violence and terrorist activities”.

It accused activists of being “separatists”, and undertaking actions that

[T]hreaten national unity, undermined social order intentionally, confronted the police enforcement with violence, damaged public facilities and property, and paralyzed government administration and the operation of the Legislative Council.<sup>23</sup>

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<sup>23</sup> China’s Embassy to the UK, ‘[Chinese Embassy Spokesperson's Remarks regarding the Hong Kong-related Statement by Foreign Ministers of the UK, the US, Australia and Canada](#)’, 29 May 2020.

The statement said the "One Country, Two Systems" and the "high degree of autonomy" envisaged under the system had been "implemented faithfully" since Hong Kong's handover.

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## 3 Events since National Security Law passed

### 3.1 Actions against protestors and civil society

#### Arrests of activists

Since the passing of the National Security Law there have been mass arrests of pro-democracy activists and politicians.

On 6 January 2021, 55 of the most prominent individuals from the pro-democracy movement [were arrested](#). They were targeted for having run an unofficial “primary” election to pick opposition candidates ahead of postponed 2020 elections. They were accused of trying to “overthrow” the Government.

A spokesman for the UN’s Office of the High Commissioner for Human Rights, Liz Throssell, criticised the arrests saying that

These latest arrests indicate that – as had been feared – the offence of subversion under the National Security Law is indeed being used to detain individuals for exercising legitimate rights to participate in political and public life.<sup>24</sup>

China’s Foreign Ministry spokeswoman Hua Chunying defended the arrests saying they were needed to stop “external forces and individuals [colluding] to undermine China's stability and security”.<sup>25</sup>

On 1 March 2021, 47 of those arrested in January were [told to](#) report to police stations for detention ahead of court appearances, where they were charged with “subversion”.

It [was reported](#) on 3 March 2021, that in total a 100 people had now been arrested under the new law.

In July 2021, former waiter Tong Ying-kit, the first person to be charged and tried under the National Security Law was [sentenced to nine years in jail](#) after he was convicted of secession and terrorism for crashing his motorbike into

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<sup>24</sup> UN News, ‘[Hong Kong: UN human rights office urges immediate release of arrested activists](#)’, 7 January 2021.

<sup>25</sup> ‘[National security law: Hong Kong rounds up 53 pro-democracy activists](#)’, BBC News, 6 January 2021.

police officers while flying a protest flag. His sentence was passed by a three-judge panel appointed by Carrie Lam to hear national security cases.

### Tiananmen Square vigil targeted

On 8 September 2021, several members of a pro-democracy Hong Kong organisation, the Hong Kong Alliance, [were arrested](#) after their group was accused of working as a "foreign agent".

The Alliance is known for organising the city's famed annual vigil for victims of the 1989 Tiananmen Square crackdown.

A week later on 15 September 2021, nine activists who had taken part in the previous years (2020) Tiananmen Square vigil were sentenced to between six and 10 months in prison.

Hong Kong's Government had banned the 4 June 2020 vigil citing Covid-19 measures, though critics believe the decision was part of a push to silence the opposition.

Despite the ban, thousands of people turned up to light candles and sing songs in 2020. Smaller crowds did the same this year, when authorities banned the event, again citing pandemic restrictions on public gatherings.<sup>26</sup>

### Crackdown on the media

Hong Kong, described as "once a bastion of press freedom" by Reporters Without Borders (RSF), has fallen from 18th place in 2002 to 80th place in 2020 in the RSF World Press Freedom Index. Hong Kong was 73<sup>rd</sup> in 2019, indicating that erosion of press freedoms was already taking place before the imposition of the new law.

Since the legislation has passed the Hong Kong authorities have taken direct action against certain media outlets, and journalists have reportedly used self-censorship to protect themselves.<sup>27</sup>

The National Security Law does not directly address the media or the press. However, the vague way it is written has implications for the news media as it could be easy for them to be accused of breaching the law.<sup>28</sup> Hong Kong's chief of police, Chris Tang, warned in early 2021 that the police would investigate news outlets deemed to be endangering national security, citing the newspaper Apple Daily as an example.<sup>29</sup> Officials have not provided much clarity on what that means. In June 2021, Carrie Lam, Hong Kong's Chief Executive, suggested that it was up to journalists themselves to figure out how to avoid breaking the National Security Law. The law should not affect

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<sup>26</sup> ['Hong Kong: Activists jailed for joining banned Tiananmen vigil'](#), BBC News, 16 September 2021.

<sup>27</sup> ['How Press Freedom Is Being Eroded in Hong Kong'](#), New York Times, 23 June 2021,

<sup>28</sup> ['How Press Freedom Is Being Eroded in Hong Kong'](#), New York Times, 23 June 2021,

<sup>29</sup> Ibid.

“normal journalistic work,” she said, though she did not explain what she considered normal.<sup>30</sup>

### Apple Daily targeted

The pro-democracy tabloid newspaper Apple Daily has been at the centre of Hong Kong’s Government’s moves to curb press freedoms. Over 100 police officers [raided the newspaper’s offices](#) in August 2020. This was a few hours after the Apple Daily’s owner, billionaire businessman Jimmy Lai, was arrested in his home for allegedly “colluding” with foreign forces – a crime under the new National Security Law.<sup>31</sup> He was later released on bail. In December 2020 Mr Lai was [arrested and charged](#) with fraud and detained until a court hearing in April 2021. In February 2021, while in prison he was arrested for another offence of allegedly assisting a fugitive who tried to escape to Taiwan. In April 2021 he was [sentenced to 14 months in prison](#) after being found guilty of unauthorised assembly, relating to pro-democracy protests in 2019.

On 17 June 2021, the Apple Daily’s headquarters were raided once again, this time by 500 police officers. They arrested five executives, including the two top editors, on suspicion of “colluding with foreign forces”.<sup>32</sup>

Some observers say the media crackdown could extend beyond Apple, given “China’s unrelenting drive to wrest control over the city after protests in 2019”.<sup>33</sup>

Tom Grundy, editor in chief of independent online media outlet Hong Kong Free Press told Reuters “this is the first time a media organisation has been raided over the newspaper’s output, though police won’t clarify if it’s over articles, opinion pieces or editorials”. He added that “the rules are unclear by design, as the security law is intended to make the media self-censor”.<sup>34</sup>

A week after the raid and arrests, with the police also having frozen most of the assets of the company running the newspaper, the Apple Daily [announced on 23 June 2021 that it was closing down](#).

A few days later, Stand News, an online news portal - popular with pro-democracy supporters - said it would [shelve commentary pieces](#) over fears of a crackdown.

### International reaction

On 10 July, the 21 members of the “Media Freedom Coalition”, including the US, UK, Germany, France and Japan, issued a [joint statement](#) condemning the use of the National Security Law to shut down the paper and arrest owner

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<sup>30</sup> Ibid.

<sup>31</sup> ‘[Over 100 police officers raid office of Hong Kong pro-democracy newspaper Apple Daily](#)’, Hong Kong Free Press, 10 August 2020.

<sup>32</sup> ‘[Analysis: Inside Hong Kong’s Apple Daily. China’s besieged liberal media icon](#)’, Reuters, 17 June 2021.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

Jimmy Lai and staff, saying: “the use of the National Security Law to suppress journalism is a serious and negative step which undermines Hong Kong’s high degree of autonomy and the rights and freedoms of people in Hong Kong”. It called on Hong Kong and Chinese authorities to uphold press freedom “in line with China’s international legal obligations”.<sup>35</sup>

### Hong Kong’s Public broadcaster reformed

In August 2021, Carrie Lam announced that Hong Kong’s public broadcaster Radio Television Hong Kong (RTHK), will partner with China’s state broadcaster to “show programmes that praise the ruling Communist Party and promote patriotism”.<sup>36</sup> Ms Lam said:

As a public broadcaster, RTHK has the responsibility to fully fulfil its public purposes and mission as stipulated in its charter, including providing programmes that help residents to better understand their society and country and cultivate in them the national identity.<sup>37</sup>

The Times reported that RTHK had already been overhauled since the National Security Law was imposed with current affairs programmes pulled from the schedule and a career civil servant, Patrick Li, replacing a veteran journalist as the organisation’s head, leading to the resignation of some its journalists.<sup>38</sup>

In February 2021, RTHK’s new boss had ordered the organisation to halt evening broadcasts of BBC World News, hours after Beijing banned the channel from being broadcast in mainland China. RTHK’s journalists have also had to submit to the Government’s new loyalty oaths, which are required of all civil servants.<sup>39</sup>

## Other curbs on civil society and rule of law

### School curriculums changed

In February 2021, a new national security education curriculum was introduced in Hong Kong’s schools which the Financial Times reported will “force teachers to warn primary students as young as six years old against “subversion” and to throw out library books considered dangerous to the Chinese state”.<sup>40</sup>

The guidelines released by Hong Kong’s education bureau will also impact expat students at international schools. The department said that while they accepted these schools’ curricula was different, teachers would be expected

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<sup>35</sup> ‘U.S. and Allies Condemn Crackdown on Hong Kong’s Apple Daily’, Bloomberg, 10 July 2021

<sup>36</sup> ‘[Hong Kong TV signs up to parrot Chinese Communist Party line](#)’, The Times, 10 August 2021.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> ‘[Hong Kong revamp of public broadcaster renews press freedom fears](#)’, Financial Times, 19 February 2021.

<sup>40</sup> ‘[Hong Kong to impose ‘national security’ schools curriculum](#)’, Financial Times, 4 February 2021.

to ensure students “acquire a correct and objective understanding” of principles in line with the National Security Law.<sup>41</sup>

Article 10 of the National Security Law states that the Hong Kong Government must:

Promote national security education in schools and universities and through social organisations, the media, the internet and other means to raise the awareness of Hong Kong residents of national security and of the obligation to abide by the law.<sup>42</sup>

### Largest teaching union disbands

On 10 August 2021, Hong Kong's largest teachers' union said it would disband, days after it was criticised by Chinese state media and the city's Education Bureau severed ties, accusing the group of helping to infiltrate schools with politics.<sup>43</sup>

Fung Wai-wah, president of the Hong Kong Professional Teachers' Union, told a press conference the political and social situation in Hong Kong had become "drastic" and the union was unable to find a solution.

The union grabbed headlines at the end of July 2021 when China's state-run media outlets Xinhua news agency and the People's Daily condemned it as a "poisonous tumour" that must be eliminated.<sup>44</sup>

## 3.2

## Elections and electoral laws

### Legislative elections postponed

Elections to Hong Kong's Legislative Council were due to be held in September 2020 but were postponed due to the Covid-19 pandemic. Some pro-democracy campaigners [dismissed claims](#) from the island's authorities that the postponement was only due to public health concerns, and said pro-Beijing politicians were worried about their election prospects after the 2019 local election results. Hong Kong authorities had already announced in July 2020 that they had [disqualified 12 pro-democracy candidates](#) from standing in the elections.

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<sup>41</sup> Ibid.

<sup>42</sup> Hong Kong Government, '[The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region](#)', accessed 16 September 2021.

<sup>43</sup> '[Hong Kong teachers' union to disband due to 'drastic' political situation](#)', Reuters, 10 August 2021.

<sup>44</sup> Ibid.

## Hong Kong's election laws changed.

On 30 March 2021, China's legislative body [passed significant changes](#) to Hong Kong's electoral rules which could tighten its control over the city.

The number of directly elected seats in parliament will be cut almost by half, and prospective Council Members will first be vetted by a "candidate qualification review committee" to ensure that only "patriotic" figures can run for positions of power.

Chief Executive Carrie Lam, in response to criticisms that democracy was being eroded [said](#) there is not a "one-size-fits-all" way of doing democracy. Ms Lam said the vetting committee will not screen people out based on their political views, but rather weed out any "non-patriots". Adding that as long as the candidates can show allegiance to Hong Kong, uphold the Basic Law and pass national security checks, they will be permitted to run for election.<sup>45</sup>

The then Foreign Secretary, Dominic Raab, said the changes were the "latest step by Beijing to hollow out the space for democratic debate in Hong Kong, contrary to the promises made by China itself". Mr Raab said further that "this can only further undermine confidence and trust in China living up to its international responsibilities and legal obligations".<sup>46</sup>

### 1 In detail: Changes to the legislative election system in Hong Kong

Hong Kong's Legislative Council is currently made up of 70 seats, 35 of whom are directly elected through five geographical constituencies through a proportional representation system.

The other 35 are indirectly elected through "functional constituencies", 30 of which represent different [professional, social, and labour groups](#). The other five of these seats are open to district councillors elected in local elections, who are nominated by their fellow councillors, but then elected in a direct popular vote.

Under the changes passed in March 2021, the number of Legislative Council seats will be increased from 70 to 90. The number of directly elected geographical constituency seats is being reduced from 35 to 20, however.

The professions will continue to indirectly elect 30 members through the functional constituencies, with the five district councillor seats scrapped. The other 40 will be chosen by the Election Committee, which existed previously to solely choose the Chief Executive.

The Election Committee will be expanded by 300 members from 1,200 to 1,500. More than 500 seats designated for Chinese business, political and interest

<sup>45</sup> ['Hong Kong: China limits parliament to 'patriots''](#), BBC News, 30 March 2021.

<sup>46</sup> ['China passes Hong Kong election law despite US warning'](#), Financial Times, 11 March 2021.

groups were added. Representation from professional subsectors that traditionally had a bigger pro-democracy presence, including legal, education, social welfare, medical and health services, was diluted by the addition of ex-officio members which reduced the number of elected seats.<sup>47</sup> The 117 seats of the District Councils, heavily represented by pro-democracy parties, will be removed. An already pro-Beijing body will now move even more firmly in that direction and be even more powerful.

All candidates for Legislative Council, including those for the 20 remaining direct elected seats, will also need nominations from each of the five subsectors in the Election Committee, making it even less likely pro-democracy candidates will be elected.

All candidates for members of the Election Committee, the Legislative Council for the Chief Executive role, will have to be vetted by a separate screening/vetting committee, making it easy to bar anyone deemed as being critical of Beijing. The Committee for Safeguarding National Security, established by the National Security Law will help the new vetting committee to "understand the background of all of the candidates, specifically whether they had complied with the National Security Law".<sup>48</sup>

## Fresh elections to be held in 2021 & 2022 under new system

The electoral process under the new system will start on the 19 September 2021 with votes to elect members of the Election Committee tasked with choosing the Chief Executive, and 40 of the 90 Legislative Council seats (see Box 1 for further details).

Government announcements in August 2021 revealed that pro-Beijing candidates are running uncontested for most seats on the Election Committee. [Reuters calculated](#) that around 70 per cent of the nominees were new faces who did not feature in the last two polls for the committee.

Candidates will still have to be vetted by the "candidate qualification review committee".

The Hong Kong Legislative Council election is scheduled on 19 December 2021. The Chief Executive election is slated for 27 March 2022.<sup>49</sup>

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<sup>47</sup> [‘First Hong Kong election under revamped system to be largely uncontested’](#), Reuters, 13 August 2021.

<sup>48</sup> [‘China formalises sweeping electoral shake-up for Hong Kong, demands loyalty’](#), Reuters, 30 March 2021.

<sup>49</sup> [‘Polling days set for HK’s legislature, chief executive and election committee’](#), China Daily, 13 April 2021.

### 3.3

## Historic sedition laws reapplied and proposals for new local National Security Law

### Colonial era sedition laws used once again

While the National Security Law has been used to arrest political activists and target media outlets, the Government has started to use historic colonial era sedition laws to prosecute free speech and literary publications.<sup>50</sup>

In July 2021, Tam Tak-chi, a prominent political activist and radio show host stood trial under the 1938 Seditious Ordinance that defines sedition as any words that generate "hatred, contempt or dissatisfaction" with the Government, or "encourage disaffection."<sup>51</sup>

In September 2021 the authors of two children's books, that were said to be "Orwell-style allegories" of the Hong Kong protests, were reported to have been arrested and charged with conspiracy to "print, publish, distribute, or display seditious publication," for inciting hatred of the Government and the judiciary among children.<sup>52</sup>

### Proposals for further offences under new local National Security Law

On 14 September 2021, Hong Kong's security secretary, Chris Tang, announced that officials will start work on local legislation that would define new crimes under the security law. Mr Tang said they hoped to complete the legislation "within the next term of legislature", and that "we will consult with the public".<sup>53</sup> He added "we didn't pay much attention to espionage activities in the past and now we are studying whether we need to regulate that".

As explained in Section 2.1, Article 23 of Hong Kong's Basic Law calls for the territory to pass its own National Security Law to prosecute a range of offences.

Some of offences mentioned in Article 23 are already covered by National Security Law passed by Beijing– such as secession and subversion. But the

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<sup>50</sup> Legislation such as the 1914 Seditious Publication Ordinance and the 1938 Seditious Ordinance were used into the latter half of the twentieth century in Hong Kong to censor publications and imprison political dissents. They are still on the statute book; however, they have not been used in the last few decades and the Basic Law that came into effect in 1997, assured the protection of basic human rights in compliance with international human rights conventions.

Nevertheless, the Government have now after the enactment of the new national security law, once more started to use them. For further details see The Diplomat, '[Hong Kong's Seditious Law Is Back](#)', 3 September 2021.

<sup>51</sup> '[Prominent Radio Talk Show Host Stands Trial in Hong Kong For 'Sedition'](#)', Radio Free Asia, 29 July 2021

<sup>52</sup> The Diplomat, '[Hong Kong's Seditious Law Is Back](#)', 3 September 2021.

<sup>53</sup> '[Hong Kong to create more national security offences](#)', Al Jazeera, 14 September 2021

new domestic legislation may define treason, sedition, theft of state secrets and the operation of “foreign political organisations” in Hong Kong.

The South China Morning Post reported that human rights watchers generally expect the Government to opt for a hard-line approach when enacting Article 23 and taking their lead from the stringent standards laid down by the National Security Law.<sup>54</sup>

Icarus Wong Ho-yin, co-convenor of the Civil Rights Observer, told the newspaper:

The national security law has granted law enforcers great power in collecting evidence, freezing assets and even shutting down websites. We are concerned about whether the authorities will be given even more power under Article 23.<sup>55</sup>

He called on the Government to clearly define the specific offences and conduct a thorough public consultation exercise over the legislation.

## 3.4 Reaction of human rights groups

A month after the new National Security Law was imposed, Human Rights Watch (HRW) said that it had been used to “prosecute peaceful speech, curtail academic freedom, and generate a chilling effect on fundamental freedoms in the city”. Maya Wang, senior China researcher at HRW said “Hong Kong people now face the prospect of lengthy prison terms for possessing banners or chanting slogans that the authorities dislike”.<sup>56</sup>

After the charging of 47 pro-democracy activists in March 2021, Ms Wang said that the Hong Kong Authorities had used the National Security Law to “wrongfully” charge people who “sought peaceful change through the democratic process”. She added that “the Chinese Government is showing Hong Kong and the world that it stands in direct opposition to human rights and democracy”.<sup>57</sup>

In April 2021, responding to the [sentencing of 10 Hong Kong pro-democracy activists](#) to between eight and 18 months in prison for taking part in two “unauthorized” protests in August 2019, Amnesty International’s Asia-Pacific Regional Director Yamini Mishra said:

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<sup>54</sup> [‘Explainer | National security: what is Article 23 in Hong Kong and why is the issue back in the spotlight?’](#), South China Morning Post, 28 June 2021.

<sup>55</sup> Ibid.

<sup>56</sup> Human Rights Watch, [‘China: New Hong Kong Law a Roadmap for Repression’](#), 29 July 2020.

<sup>57</sup> Human Rights Watch, [‘Hong Kong: 47 Charged Under Abusive Security Law’](#), 2 March 2021.

*The wrongful prosecution, conviction and sentencing of these 10 activists underlines the Hong Kong government's intention to eliminate all political opposition in the city.*

*Having arrested the majority of Hong Kong's most prominent dissidents using the repressive national security law, the authorities are now mopping up remaining peaceful critics under the pretext of bogus charges related to the 2019 protests.*

*These convictions are a violation of international law, which states that participating in and organizing peaceful assemblies does not require prior permission by the state. Nor does failure to notify the authorities about an assembly make it unlawful to take part in it. The prosecution's case against these activists is simply not tenable.<sup>58</sup>*

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<sup>58</sup> Amnesty International, '[Hong Kong: Jailing of opposition figures over protests is violation of international law](#)', 16 April 2021.

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