

Report on Human Rights after the Implementation of the National Security Laws in the Hong Kong Special Administrative Region

In Hong Kong, human rights and freedoms are guaranteed by the Constitution of the People's Republic of China and the Basic Law of Hong Kong Special Administrative Region of the People's Republic of China. Both the rule of law and the independent judiciary provide the fundamental basis for the protection of human rights in Hong Kong

On 30 June 2020, the Standing Committee of the National People's Congress of the People's Republic of China passed the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("**National Security Law**") in the wake of anti-government protests triggered by a bill proposed in 2019 that enabled the extradition of certain accused persons to the Mainland. The National Security Law came into force on the same day.

The National Security Law established four offenses under Hong Kong law: that of secession¹, subversion², terrorism³, and collusion with foreign organizations⁴. In addition, any open speech or

¹ Article 20 of the National Security Law sets out the offence of secession, which reads, "*Any person who organizes, plans, commits, or participates in any of the following acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification shall be guilty of an offence:*

- (1) *separating the Hong Kong Special Administrative Region of any other part of the People's Republic of China from the People's Republic of China;*
 - (2) *altering by unlawful means the legal status of the Hong Kong Special Administrative Region of any other part of the People's Republic of China; or*
 - (3) *surrendering the Hong Kong Special Administrative Region of any other part of the People's Republic of China.*
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² Article 22 of the National Security Law sets out the offence of subversion, which reads, "*A person who organises, plans, commits or participates in any of the following acts by force or threat of force or other unlawful means with a view to subverting the State power shall be guilty of an offence:*

- (1) *overthrowing or undermining the basic system of the People's Republic of China established by the Constitution of the People's Republic of China;*
 - (2) *overthrowing the body of central power of the People's Republic of China or the body of power of the Hong Kong Special Administrative Region;*
 - (3) *seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People's Republic of China or the body of power of the Hong Kong Special Administrative Region; or*
 - (4) *attacking or damaging the premises and facilities used by the body of power of the Hong Kong Special Administrative Region to perform its duties and functions, rendering it incapable of performing its normal duties and functions.*
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³ Article 24 of the National Security Law sets out the offence of terrorist activities, which reads, "*A person who organises, plans, commits, participates in or threatens to commit any of the following terrorist activities causing or intended to cause grave harm to the society with a view to coercing the Central People's Government, the Government of the Hong Kong Special Administrative Region or an international organisation or intimidating the public in order to pursue political agenda shall be guilty of an offence:*

- (1) *serious violence against a person or persons;*
- (2) *explosion, arson, or dissemination of poisonous or radioactive substances, pathogens of infectious diseases or other substances;*
- (3) *sabotage of means of transport, transport facilities, electric power or gas facilities, or other combustible or explosible facilities;*

verbal promotion of Hong Kong's secession from China is considered an offence under the National Security Law.

Two years have passed since the implementation of the National Security Law. How has human rights fared under the new regime?

We are specifically interested in the legal framework that has been set up, and in this regard, we refer to the analysis of Mr. Ian Grenville Cross ('Mr. Cross'), Senior Counsel and Visiting Professor of Law of Chinese University of Hong Kong, and former Director of Public Prosecutions of the Hong Kong SAR.⁵ We agree with Mr. Cross' analysis and have summarised it below.

Mr. Cross noted that by virtue, firstly, of the Basic Law (Article 39), the International Covenant on Civil and Political Rights (ICCPR) is in force in Hong Kong. This is incorporated into local law via the Hong Kong Bill of Rights Ordinance (Cap. 383), and this protects the fundamental criminal justice guarantees to which an accused person is entitled as provided under the ICCPR. It also stipulates that somebody who has been lawfully arrested "*shall have the right to a fair trial by the judicial*

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- (4) *serious interruption or sabotage of electronic control systems for providing and managing public services such as water, electric power, gas, transport, telecommunications and the internet; or*
 - (5) *other dangerous activities which seriously jeopardise public health, safety or security.*

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⁴ Article 29 of the National Security Law sets out the offence of collusion with a foreign country or with external elements to endanger national security, which reads, "*A person who steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China shall be guilty of an offence; a person who requests a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to commit any of the following acts shall be guilty of an offence:*

- (1) *waging a war against the People's Republic of China, or using or threatening to use force to seriously undermine the sovereignty, unification and territorial integrity of the People's Republic of China;*
- (2) *seriously disrupting the formulation and implementation of laws or policies by the Government of the Hong Kong Special Administrative Region or by the Central People's Government, which is likely to cause serious consequences;*
- (3) *rigging or undermining an election in the Hong Kong Special Administrative Region, which is likely to cause serious consequences;*
- (4) *imposing sanctions or blockade, or engaging in other hostile activities against the Hong Kong Special Administrative Region or the People's Republic of China; or*
- (5) *provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the Government of the Region, which is likely to cause serious consequences.*

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⁵ Mr. Cross' views as referenced in this Report are extracted from the following media coverage:
<https://www.thestandard.com.hk/breaking-news/section/2/188975/Friday-Beyond-Spotlights---Mr-Grenville-Cross,-the-man-behind-and-beyond-the-spotlights>
<https://m.orangenews.hk/details?recommendId=1147960>

organs without delay and shall be presumed innocent until convicted by the judicial organs” (Article 87).

Secondly above and beyond the protections clearly enshrined in the Basic Law, the National Security Law specifically places the fundamental rights of criminal suspects at the front and centre of its operation. It not only stipulates that *“human rights shall be respected and protected in safeguarding national security”* and that the ICCPR’s provisions *“shall be protected”* (Article 4), but requires that *“the principle of the rule of law shall be adhered to”* (Article 5), with such things as legal certainty, the presumption of innocence and the right of defence being singled out for especial mention.

Mr Cross concluded that Hong Kong’s criminal justice system is human rights heavy, with fundamental protections being repeatedly stated, and this provides the context and background for consideration when conducting national security trials in other jurisdictions.

Under the Hong Kong National Security Law, Mr Cross asserts that the basic traditions of the common law are specifically highlighted to guarantee suspects the traditional protections they enjoy. In particular, Articles 4 and 5 of the National Security Law stipulate that human rights and the principle of the rule of law shall be respected and protected in the application of the National Security Law. *“Looking at the national security cases that have been tried, it is clear that all the traditional protections contained in the Basic Law and the International Covenant on Civil and Political Rights are being upheld as the National Security Law envisaged,”* he adds. *“The law has fitted nicely into our traditional legal apparatus and is functioning successfully so far.”*

Furthermore, the National Security Law has also proven beneficial to international businesses in Hong Kong. *“What businesses look for is stability, a place where they can operate without fear, danger, or violence,”* says Cross. *“The protests of 2019-2020, which turned extremely violent, made life difficult for businesspeople. But once the National Security Law was enacted, people felt safe again and businesses could resume their normal activities.”* This echoes the sentiment shared by the majority of the members of our group who have consistently reported improved business environment and increased confidence in the protection of personal safety and property.

With the success of the National Security Law and the implementation of a new electoral system, Mr Cross is optimistic about the prospects of Hong Kong. *“I am confident that Hong Kong will go from strength to strength. The development of the Greater Bay Area, combined with the fact that China is shortly becoming the world’s largest economy, signifies a bright future ahead for us.”* Members of our group demonstrate by action that there is confidence in the future of the Greater Bay Area, with keen interest in recent legal exams which permit Hong Kong qualified lawyers to apply for the license to practice in the Greater Bay Area. We are of the view that this is an excellent example of the flexible and pragmatic nature of the ‘One Country, Two Systems’. We are therefore in agreement with Mr. Cross when he maintained that the continuation of ‘One Country, Two Systems’ is in the interests of both the people of Hong Kong and the rest of China, thus, he is hopeful that the present system will extend beyond 2047.

We will continue to monitor how the National Security Law is implemented. As the Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China, we agree with the Hong Kong Special Administrative Region Government’s position that national security is closely connected with the well-being of every Hong Kong citizen and the prosperity, stability and development of Hong Kong in the future. We are also committed to helping promote national security and rule of law in Hong Kong, through participating in relevant local and overseas legal and other forums, so as to let people not just in Hong Kong but also other jurisdictions apprehend relevant legal provisions and facts, and to dispel any misunderstanding and misconceptions.

18 June 2022

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