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Hong Kong Watch Briefing to European Parliament: Destruction of Judicial Independence and the Persecution of Democrats in Hong Kong

Background

Today, the human rights situation in Hong Kong continues to deteriorate at a rapid pace since the 2019 protests, and the government crackdown that has followed.

In June 2023, the European Parliament adopted a [resolution](#) which highlighted the alarming deterioration in fundamental freedoms, the rule of law, and judicial independence in Hong Kong since the National Security Law was passed, and that it is “in clear breach of the so-called “One Country Two Systems” principle.”

This follows from the 2022 and 2020 European Parliament [resolutions](#) on Hong Kong which also called on Member States to prepare concrete responses to the National Security Law and implement a “lifeboat scheme” for Hongkongers, and to suspend extradition treaties with China, among other points.

The United Nations has repeatedly called for the repeal and suspension of the National Security Law, including at the review of Hong Kong’s [ICCPR](#) obligations, where the UN Human Rights Committee was “deeply concerned about the overly broad interpretation” of the National Security Law and recommended that the HKSAR repeal the law and refrain from applying it in the meantime; at the [CESCR](#) review which concluded that the National Security Law “has de facto abolished the independence of the judiciary” and raised concerns about independence of the judiciary, the right to fair trial, academic freedom and artistic freedom; and the [CEDAW](#) review which raised concerns about “over-prioritizing public order and security concerns when considering restrictions on democratic manifestations” which violate women’s rights.

47 Democrats Trial

The [long-anticipated trial](#) of the 47 democrats opened on Monday 6 February 2023. The trial concerns the 47 democrats who organised or participated in “unofficial” primaries in July 2020. As a result of these primaries, 55 people were arrested in January 2021, in the largest crackdown since the National Security Law was passed.

Of these, 47 have been accused of “conspiracy to commit subversion” and are now facing trial. The majority of defendants have been in detention for 2 years, as only 13 have been granted bail. 31 of the defendants have pleaded guilty. This is one of the most significant trials since the National Security Law was passed.

Political Prisoners

Since the 2019 protest movement started, more than 10,000 people have been arrested in protest-related cases, and over 2,300 charged. Many of them have been detained and are facing prosecution under the National Security Law and illegal-assembly rules. Hong Kong Watch has documented 112 cases of political prisoners, which meet the criteria that (1) the nature of the case must be non-violent, all violent cases will not be counted and

(2) the case has to be reported by some English media which mentioned the defendant's name to support the story. For this reason, our number is much lower than other estimates, and there is no official count. Most of the political prisoner charges are for unauthorised assembly, sedition, and violations of the Societies Ordinance.

Prominent Political Prisoners

Jimmy Lai - a Hong Kong businessman and politician. He founded multiple clothing brands and the newspaper outlets, including Apple Daily. He is a key personality in the Hong Kong pro-democracy movement and a prominent critic of the Chinese Communist Party. Lai is also a British citizen who has not received consular assistance, also the British consulate staff are able to attend the trials.

Lai was arrested on 10 August 2020 by the Hong Kong police on National Security charges. Lai was allowed bail on 12 August but was accused of fraud on 3 December 2020 and his bail was revoked. He has been convicted for fraud and is currently in prison. He has also been sentenced for organising illegal protests, and faces up to life in prison under the National Security Law.

Chow Hang Tung - an activist, barrister and politician who faces charges under the National Security Law for being a convenor of the group that organised the annual vigils in remembrance of the 1989 Tiananmen Square protests and massacre. She has been convicted for taking part in unlawful assembly on the occasion of the vigil in 2020, and for organizing the vigil in 2021. She faces a trial later this year and up to life in prison.

Political Parties

The general situation for political parties is increasingly difficult, with the **Civic Party** formally dissolved in May 2023. The Civic Party was formed in 2006 and has been a core part of the pro-democracy camp in Hong Kong, promoting a democratic political system and civic education.

Decline of Judicial Independence and Rule of Law

Since the imposition of the National Security Law by the Chinese Government on Hong Kong, the rule of law in the city and judicial independence has increasingly been under assault. This law was not discussed, reviewed, or voted on by any Hong Kong official before it was imposed on the city.

For example, Under Article 44 of the National Security Law, judges are hand picked by the Committee for Safeguarding National Security to oversee National Security cases. The Hong Kong Chief Executive is granted the powers to appoint incumbent judges to handle National Security cases for a one-year term and requires the removal of judges who are deemed a threat to National Security.

As it stands, the Committee for Safeguarding National Security has vetted and approved just 29 members of the Hong Kong judiciary to handle National Security cases.

In addition, under Article 46 of the National Security Law, the Hong Kong Secretary of Justice has the power to issue a certificate denying the right of a jury on the safety grounds of jurors and the impairment of the administration of justice.

As it stands no National Security trial has been able to proceed as a jury trial, this includes the trial of Tong-Ying Kit, Tony Chung, the 47 democrats, and others.

The right to bail has historically been enshrined in Hong Kong's Basic Law. Under Article 42 of the National Security Law, the universal presumption of innocence in bail determination is reversed, prohibiting pretrial release unless the judge believes that the defendant will not continue to commit acts endangering National Security.

In the case of the 47 democrats, currently standing trial under the National Security Law for organising and participating in primary elections, 31 of the defendants have been denied bail. The grounds for which the defendants have been denied bail by the authorities have been very unfair, and vastly different to bail hearings before the National Security Law.

What can the European Union do?

- Lifeboat routes for Hong Kongers who need a lifeline out of the city;
- Targeted sanctions against Hong Kong and Chinese officials responsible for the crackdown on human rights & the targeting of pro-democracy activists including Jimmy Lai, Chow Hang Tung, Albert Ho, and Benny Tai;
- Suspension of extradition treaties with the People's Republic of China and the Hong Kong SAR;
- Review of the diplomatic status of Hong Kong Economic and Trade Offices (HKETO);
- Creation of an EU special rapporteur for political prisoners who could advocate for political prisoners globally, including in the Hong Kong SAR.