

Beijing's National Security Law and the Destruction of the Liberal Constitutional Order in Hong Kong*

*Michael C. Davis***

Abstract

Hong Kong people and their supporters across the globe have watched in dismay as Beijing and Hong Kong officials gobble up the city's basic freedoms and rule of law. The city, once promised a liberal constitutional order in the 1984 Sino-British Joint Declaration and its 1990 Basic Law, is now to live under a repressive national security constitution. The National Security Law (NSL) imposed in 2020 has effectively become superior to the Basic Law and had been used to arrest or bar the popular political opposition from the political process. This occurred in two stages, first, with the arrests or push into exile of most of the leading figures in the pan-democratic opposition, and second, with the imposition of "democratic reform" with strict vetting to insure only "patriots" can run for office. Leading opposition figures charged with

* This article is a revised and updated version of my testimony given in the U.S. Congress before the Lantos Human Rights Commission on October 14, 2021.

** Professor Michael C. Davis, a long-time professor in Hong Kong at both the Chinese University of Hong Kong and the University of Hong Kong, is currently a Global Fellow at the Woodrow Wilson International Center for Scholars, a Professor of Law and International Affairs at O.P. Jindal Global University, and a Senior Research Scholar at the Weatherhead East Asian Institute at Columbia University. He is the author of the recent book, *MAKING HONG KONG CHINA: THE ROLLBACK OF HUMAN RIGHTS AND THE RULE OF LAW*, the Asia Society Series, Columbia University Press, 2021.

Online: <http://publication.iias.sinica.edu.tw/92114022.pdf>.



subversion or collusion risk being sent to prison for years. After being arrested, they may linger in jail for months awaiting trial under an NSL presumption against bail. A mainland Office for Safeguarding National Security and a local Committee for Safeguarding National Security, as well as a candidate review committee, are effectively above the law, not subject to judicial review. Special branches of the police and the justice department operate under their guidance and supervision. The courts face intimidation, with only designated judges allowed to hear NSL cases. Human rights-oriented community organizations have been investigated and intimidated, forcing many to disband. Schools are under tight surveillance, with new regulations placing emphasis on national security requirements in education. Media face the same sorts of investigations, arrests, and pressures, with leading opposition media forced to close. Both Hongkongers and the world face official indifference as to their concerns over the collapse of the promised liberal order.

KEYWORDS: Hong Kong, constitutionalism, human rights, rule of law, free speech, democracy, national security, elections, China, repression.

Contents

- I. Background
- II. Criminal Justice: The Crushing of Human Rights and the Rule of Law
- III. Undercutting Political Freedom
- IV. The Rollback of Democracy
- V. The Path Forward

I. Background

The world is very familiar with the special character of Hong Kong as one of the world's leading cities of commerce, finance, and culture, widely respected for its freedoms and rule of law. The 1984 Sino-British Joint Declaration¹ and the 1990 Hong Kong Basic Law² sought to preserve Hong Kong's special character. They offer a very liberal constitutional framework, as was thought necessary to maintain Hong Kong as an open and rule-of-law-based society and to preserve the international human rights protections long-afforded its people. Hong Kong people and the world would not have relied on anything less.

Despite official arguments to the contrary, it is extremely difficult to interpret the comprehensive guarantees in these founding documents as envisioning anything other than a liberal constitutional order. The guarantees for Hong Kong include a high degree of autonomy, human rights, and the rule of law, as well as promises of self-rule through "universal suffrage". These guarantees promise that the courts will be independent and final and expressly commit to continued application of the International Covenant on Civil and Political Rights (ICCPR). The Hong Kong Bill of Rights incorporates the ICCPR content nearly verbatim. The highest courts in Hong Kong quickly understood that they had the power of constitutional judicial review to maintain such

1 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong [hereinafter Joint Declaration], Dec. 19, 1984, effective May 27, 1985, <https://www.cmab.gov.hk/en/issues/jd2.htm>.

2 The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China [hereinafter Basic Law], Apr. 4, 1990, effective July 1, 1997, <https://www.basiclaw.gov.hk/en/basiclaw/index.html>.

commitments. To preserve the integrity of the separate system, the Basic Law further provides that mainland laws will not apply in Hong Kong except for a limited number beyond the territory's autonomy, to be listed in Basic Law, Annex III.³ To emphasize this separation, mainland officials are not to “interfere in affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this law.”⁴ Basic Law article 23, of relevance to the current debate, further provides that Hong Kong shall enact national security protections “on its own.”

Both Hong Kong people and the international community were asked to rely on these solemn commitments and largely did so for over two decades after the 1997 handover — even while Beijing interventions slowly eroded the city's autonomy. Despite such erosion, with committed courts and vigorous activism on the ground, Hong Kong often secured the top spot in the Heritage Foundation's Index of Economic Freedom and saw its rule of law ranked among the top in the world.⁵

Weaknesses in the Basic Law model included Beijing's complete control over interpretation of the Basic Law and its foot-dragging over realization of the promised universal suffrage. These two limitations have led to many protests over the years, as Hongkongers feared the

3 Basic Law art. 18 allows for some mainland laws outside the scope of autonomy to be added to Annex III.

4 Basic Law art. 22 (H.K.).

5 Natalie Lung, *Hong Kong Dumped from Economic Freedom List It Had Dominated*, BLOOMBERG (Mar. 4, 2021), <https://www.bloomberg.com/news/articles/2021-03-04/hong-kong-dumped-from-economic-freedom-index-it-used-to-dominate>; and WJP Rule of Law Index, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/rule-of-law-index> (last visited Nov. 21, 2021).

degrading of their promised autonomy and the associated risk to the rule of law. Efforts to blame the many protests on local malcontents or foreign interference — allegedly promoting a color revolution — are misguided. Clearly, the mostly peaceful Hong Kong protesters had cause to be concerned about the failure of the Hong Kong government to guard the city's autonomy.

Any reliance on Beijing's commitments largely unraveled in 2019, with a massive crackdown on protesters demanding compliance with those very commitments and in 2020 with Beijing's imposition of a National Security Law (NSL) — and later in 2021 with new electoral changes.⁶ In the past couple years, the crushing of the rule of law and the abandonment of core human rights has been unprecedented for a modern highly developed open society. Beijing's model for its direct control has become evident, as it abandons the liberal order and installs a national security constitution in Hong Kong.

II. Criminal Justice: The Crushing of Human Rights and the Rule of Law

The NSL undermines the foundations for the rule of law, undercutting core elements of Hong Kong's common law system and the core elements of the city's criminal justice tradition. Passed without any public consultation, the NSL imposes four crimes in the speech area —

⁶ National People's Congress of the People's Republic of China (PRC), The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, June 30, 2020, [https://www.elegislation.gov.hk/doc/hk/a406/eng_translation_\(a406\)_en.pdf](https://www.elegislation.gov.hk/doc/hk/a406/eng_translation_(a406)_en.pdf).

secession, subversion, terrorist activities, and collusion with foreign forces — whose vagueness leave speakers with little sense of what is prohibited and what is not. These crimes apply worldwide regardless of nationality. These vague crimes have been used to silence opposition voices in Hong Kong, including street protesters, political organizations, the media, academics, the arts, and numerous politicians. Many of those arrested have been highly respected community leaders simply fighting for the guaranteed freedoms. With an NSL presumption against bail, a majority of those prosecuted — 165 arrest and 96 prosecutions so far — languish in jail for months awaiting trial.⁷

Such NSL arrests are only the tip of the criminal justice iceberg. Well over ten-thousand protesters were arrested for the 2019 protests under existing public order laws, with over 2,500 charged and hundreds already convicted, many with long jail terms.⁸ Prominent political leaders well known both in Hong Kong and foreign capitals, including Martin Lee, Margaret Ng, Benny Tai, Jimmy Lai, Joshua Wong and Cheuk-yan Lee have been among those convicted.⁹ These prominent leaders had all advocated non-violence during the recent protests.

7 Lydia Wong & Thomas E. Kellogg, *New Data Show Hong Kong's National Security Arrests Follow a Pattern*, CHINA FILE (May 3, 2021), <https://www.chinafile.com/reporting-opinion/features/new-data-show-hong-kongs-national-security-arrests-follow-pattern>.

8 Ng Kang-chung, *Hong Kong Protests: More than 10,200 Arrested in Connection with Unrest since 2019, Government Tells Lawmakers*, SOUTH CHINA MORNING POST (Apr. 9, 2021), <https://www.scmp.com/news/hong-kong/politics/article/3128836/hong-kong-protests-more-10200-arrested-connection-unrest>.

9 Helen Davidson, *Hong Kong Pro-democracy Figures Given Jail Terms of Up to 18 Months*, THE GUARDIAN (Apr. 16, 2021), <https://www.theguardian.com/world/2021/apr/16/jimmy-lai-martin-lee-hong-kong-pro-democracy-figures-sentenced>.

NSL prosecutions have targeted a large portion of the political opposition. By prosecuting publisher Jimmy Lai and the management and editorial teams of the Apple Daily newspaper, along with the use of financial tools to force the paper's closure, the leading media opposition voice has been silenced. Jimmy Lai's bail denial went all the way to the Court of Final Appeal, where the court concluded that it had no power to overturn any provisions of the NSL that violate Basic Law or common law principles — it thereby upheld the presumption against bail in NSL article 42.¹⁰

The arrests and prosecutions under the NSL of 47 politicians for organizing and participating in an opposition political primary sent a clear message of political intolerance. Of the 47 charged, 36 were denied bail and have languished in jail for months. Their alleged subversion appears to relate to an intention, should they win enough seats in the then planned Legislative Council election, to vote down the government's budget and thereby force the resignation of the Chief Executive.¹¹ Hong Kong may stand alone as a place, where using a constitutional provision to defeat the government in power is treated as subversion. Both these cases and the many others not mentioned here all relate to speech crimes in one form or another.

The prosecution and conviction of a young street activists, Tong Ying Kit, was the first of two NSL trials completed as of this writing. Tong was charged after he drove his motorcycle into a police cordon causing some minor injuries. He was convicted for incitement to

¹⁰ HKSAR v. Lai Chee Ying, (2021) 24 H.K.C.F.A.R. 33 (C.F.A.).

¹¹ *Explainer: How a Primary Got Hong Kong Activists in Trouble*, ASSOCIATED PRESS NEWS (Mar. 1, 2021), <https://apnews.com/article/beijing-primary-elections-democracy-hong-kong-elections-ccda7eb61403f721ba8e56423203f72a>.

secession for carrying a flag on his bike with the popular slogan, “Liberate Hong Kong, Revolution of Our Times.”¹² In the High Court he was denied a jury under a special NSL provision allowing the prosecution to opt for a three-judge panel. Even though NSL article 4 provides for continued application of the international human rights guarantees under the Basic Law, the court’s judgment did not even mention human rights, as is usually applicable regarding incitement in national security cases.¹³ In what appeared to be simply reckless driving, he was further convicted of terrorism. There was no indication that his actions instigated any popular fear. His total sentence for both charges was 9 years — with the case now under appeal.

We should be skeptical about protection of due process rights in the coming NSL trials. The NSL, which effectively amends the Basic Law, completely undermines the prior commitments to autonomy and the rule of law, introducing mainland control and methods into the Hong Kong system. It creates a local Committee for Safeguarding National Security (headed by the Chief Executive with a mainland adviser) and an Office for Safeguarding National Security, the latter staffed entirely by mainland public security officials. Both oversee local national security investigations and requirements, and neither is subject to judicial review by the local courts. These oversight organizations are backed up by special branches who operate in secret in both the Hong Kong police and the Department of Justice. The Committee for Safeguarding National Security has already issued special regulations for police that allow for

¹² HKSAR v. Tong Ying Kit, HCCC 280/2020 (C.F.I. July 27, 2021) (Legal Reference System) (H.K.).

¹³ See Michael C. Davis, *National Security Trial Ruling a Setback for Human Rights in Hong Kong*, SOUTH CHINA MORNING POST (Aug. 4, 2021), <https://scmp.com/comment/opinion/article/3143634/national-security-trial-ruling-setback-human-rights-hong-kong>.

warrantless searches, surrender of travel documents, seizure and confiscation of property, interception of communications and secret surveillance.¹⁴

These mainland intrusions have put the courts and the legal profession under severe stress, compromising judicial independence and fair trial rights. Beijing's distrust of independent judges is on full display under the NSL, which requires that only judges designated by the Chief Executive can hear NSL cases. Such designated judges are subject to removal from the list if they make statements that offend national security — presumably in court. Result oriented oversight does not stop there. The Secretary for Justice can withhold the right to a jury in High Court cases where juries are typically allowed, as was done in the *Tong Ying Kit* case. Judges have been under pressure, being subject to public attacks by Beijing officials and media if they dismiss cases or grant bail. The Court of Final Appeal faced a seeming threat published in the *People's Daily*, that the case might be removed to the mainland for trial if Jimmy Lai were granted bail.¹⁵ NSL article 55 allows official discretion for such removal in complex cases.

Lawyers have not escaped these attacks. The *People's Daily* recently likened the Hong Kong Bar to “street rats” and warned the Law Society to stay out of politics in its leadership election. The then Bar President, Paul Harris, was attacked for suggesting revisions to the NSL.

¹⁴ *Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region Gazetted*, GOVHK PRESS RELEASE (July 6, 2020), <https://www.info.gov.hk/gia/general/202007/06/P2020070600784.htm>.

¹⁵ See Su Di, *Observer: Approving Jimmy Lai's Bail Harmful to Hong Kong's Rule of Law*, PEOPLE'S DAILY (Dec. 28, 2020), <https://peoplesdaily.pdnews.cn/opinions/observer-approving-jimmy-lai-s-bail-harmful-to-hong-kong-s-rule-of-law-190555.html>.

The lawyer representing the legal functional sector in the Legislative Council, Dennis Kwok, was also forced out of office in November 2020, resulting in all opposition Legislative Council members resigning in protest. Even lawyers' groups formed to promote due process or provide pro-bono legal services to protesters, including the Progressive Lawyers Group and the 612 Humanitarian Relief Fund, have been threatened with prosecutions and forced to disband.

III. Undercutting Political Freedom

The NSL does not only provide for national security prosecutions, but rather in article 9 requires the government “to take necessary measures to strengthen public communication, guidance, supervision and regulation... relating to schools, universities, social organizations, the media, and the internet.” This includes a requirement in article 10 to “promote national security education in schools and universities and through social organizations, the media, the internet and other means...” The government has issued regulations requiring schools at all levels to teach national security and has warned universities and the media about possible violations — presumably involving critical views that do not match Chinese Communist Party (CCP) orthodoxy, expressed on campus by either teachers or students.¹⁶ These efforts at brainwashing

¹⁶ Education Bureau of Hong Kong, Education Bureau Circular No. 2/2021: National Security Education in School Curriculum — Implementation Mode and Learning and Teaching Resources (Feb. 4, 2021), <https://applications.edb.gov.hk/circular/upload/EDBC/EDBC21002E.pdf>; and Education Bureau of Hong Kong, Education Bureau Circular No. 3/2021: National Security: Maintaining a Safe Learning Environment Nurturing Good Citizens (Feb. 4, 2021), <https://applications.edb.gov.hk/circular/upload/EDBC/EDBC21003E.pdf>.

have led thousands to emigrate or send their children abroad for study.¹⁷ In traditional CCP Marxist style, professors have been attacked in official media as “reactionary academics” and even supporters as “loyal rubbish.”¹⁸ Student organizations have also come under attack and student unions have disband, as has the 95,000-member Professional Teachers Union (PTU), which was characterized by China’s Xinhua news agency as a “malignant tumor.”¹⁹ Even statues commemorating 1989 Tiananmen crackdown have been ordered removed from campuses, including the “Pillar of Shame” sculpture at the University of Hong Kong.²⁰ The Global Public Policy Institute has recently given Hong Kong a D-rating on academic freedom in its global survey.²¹

Intimidation stretches well beyond campuses. Government officials, elected or otherwise, have been forced to take loyalty oaths. Such oaths are then weaponized to disqualify people who have supported the political opposition or said anything judged disloyal in their past. Civil servants, subsequently judged to have made a false oath, face a loss of job and even their pensions, being dismissed for cause. Recognizing this

17 Vivian Wang, *'This Drop Came So Quickly': Shrinking Schools Add to Hong Kong Exodus*, N.Y. TIMES (Oct. 11, 2021), <https://www.nytimes.com/2021/10/11/world/asia/hong-kong-population-drop.html>.

18 Au Ka-lun, *A New Cultural Revolution Is on Its Way*, APPLE DAILY (Mar. 26, 2021), <https://collection.news/appledaily/articles/GDMGSIJ2AVBOLLW7QC5BUJUBY4>.

19 Lilian Cheng & Chris Lau, *Hong Kong's Biggest Teachers' Union 'Seeks to Speed Up Dissolution by Changing Its Rules' as Beijing Attack Continues*, SOUTH CHINA MORNING POST (Aug. 11, 2021), <https://scmp.com/news/hong-kong/politics/article/3144711/hong-kongs-biggest-teachers-union-seeks-speed-dissolution>.

20 Shibani Mahtani, *Hong Kong's 'Pillar of Shame' Sculpture for Tiananmen Victims Faces Removal*, WASH. POST (Oct. 13, 2021), https://www.washingtonpost.com/world/asia_pacific/hongkong-pillar-shame-tiananmen/2021/10/13/2a897036-2b0a-11ec-b17d-985c186de338_story.html.

21 *Hong Kong's Global Academic Freedom Index Regresses C-level to D-level, Lower than Vietnam, Causing Concern*, APPLE DAILY (Apr. 2021) (no longer available).

purpose, 260 members of the District Council, being the only level of government that had previously been almost fully directly elected, resigned, rather than take the oath. 55 opposition District Councillors who stayed on to take the oath were then disqualified, with their historic opposition being used to question their loyalty.²²

Most independent civil society organizations that traditionally supported the opposition, have now been threatened with prosecution and forced to disband.²³ Similar to the PTU, intimidation and disbanding has targeted, *e.g.*, the Civil Human Rights Front, the Labor Party, the Confederation of Trade Unions, the Social Workers General Union, the League of Social Democrats, and the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China. The arrest of a member (along with four other members) of the latter organization, lawyer Ms. Chow Hang-tung, has been condemned by UN experts: “Terrorism and sedition charges are being improperly used to stifle the exercise of fundamental rights, which are protected under international law, including freedom of expression and opinion, freedom of peaceful assembly and the right to participate in public affairs.”²⁴ The experts also raised concern that Hong Kong was imposing undue restrictions in

22 Of 452 directly elected district councillors elected in the last allowed election 392 were from the opposition camp. Owen Churchill, *US, Britain, and EU Voice Objections to Hong Kong’s Disqualification of Opposition District Councillors*, SOUTH CHINA MORNING POST (Oct. 22, 2021), <https://www.scmp.com/news/china/article/3153223/us-and-britain-voice-objections-hong-kongs-disqualification-opposition>.

23 Suzanne Pepper, *Hong Kong’s Civil Society under Fire: the Candidates, the Election, then the Democracy Movement Itself*, HONG KONG FREE PRESS (Sept. 3, 2021), <https://hongkongfp.com/2021/09/03/hong-kongs-civil-society-under-fire-the-candidates-the-election-then-the-democracy-movement-itself/>.

24 *Hong Kong: Arrests under Security Law Are Serious Concern, UN Experts Call for Review*, OHCHR (Oct. 12, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27648&LangID=E>.

accusing such organizations of collusion merely for receiving foreign funding.

Media intimidation likewise reaches beyond the forced closure of the Apple Daily, including most prominently the growing pressure on RTHK, the public service broadcaster long modeled on the BBC, that has now issued a 100-plus page editorial guideline for reporters that aims to insure NSL compliance and top-down editorial control.²⁵ The government has announced an intention to pair RTHK with the mainland's CCTV to encourage stronger patriotism among viewers.²⁶ The government has also appointed a new Director of Public Broadcasting from the Hong Kong civil service to better insure compliance — resulting in diminished independence and critical programming being withdrawn. Across the city art exhibits and critical documentaries have also come under attack.²⁷ A new bill just passed will allow the banning of films on NSL grounds without appeal.²⁸ In the most extreme case, two speech therapists have been charged with sedition

25 RADIO TELEVISION HONG KONG, EDITORIAL POLICIES AND PROCESSES OF RADIO TELEVISION HONG KONG (Sept. 2021), http://rthk9.rthk.hk/about/pdf/epp_eng.pdf.

26 Rhoda Kwan, *Hong Kong's RTHK Will Become State Media after Partnership with China's CCTV, Says Press Group Chief*, HONG KONG FREE PRESS (Aug. 11, 2021), <https://hongkongfp.com/2021/08/11/hong-kongs-rthk-will-become-state-media-after-partnership-with-chinas-cctv-says-press-group-chief/>.

27 HG Masters, *Hong Kong Arts Sector Faces New Political Scrutiny*, ARTASIAPACIFIC (Mar. 18, 2021), <http://www.artasiapacific.com/News/HongKongArtsSectorFacesNewPoliticalScrutiny>; Candice Chau, *Hong Kong Campus Protest Documentary Screening Cancelled Hours before Showing Following Attack by Pro-Beijing Paper*, HONG KONG FREE PRESS (Mar. 15, 2021), <https://hongkongfp.com/2021/03/15/hong-kong-campus-protest-documentary-screening-cancelled-hours-before-showing-following-attack-by-pro-beijing-paper/>.

28 Kelly Ho, *Hong Kong Passes Bill to Censor Films 'Contrary' to China's National Security — HK\$1m Fine, 3 Years Jail for Offenders*, HONG KONG FREE PRESS (Oct. 27, 2021), <https://hongkongfp.com/2021/10/27/hong-kong-passes-bill-to-censor-films-contrary-to-chinas-national-security-hk1m-fine-3-years-jail-for-offenders/>.

for publishing a children's book depicting sheep attacked by wolves.

IV. The Rollback of Democracy

Beijing has completely remodeled the electoral system to exclude the pro-democracy opposition from any role in government. The new electoral amendments in the Basic Law, set up a comprehensive system for vetting candidates to allow only “patriots” to run. While the number of legislative seats has been increased from 70 to 90, the number directly elected by geographical constituencies has been reduced from 35 to 20. Forty of the legislators are now to be selected by the Beijing friendly Election Committee. Historically, the 1200-member Election Committee was selected mostly by functional sectors, whose makeup effectively insured 80 percent would invariably support a Beijing-friendly candidate. The Committee is now further tilted.

The Election Committee is now increased from 1200 to 1500 members, with the additional 300 being Beijing-selected Hong Kong representatives to the Central Government. The functional sectors have now been modified in comprehensive ways to guarantee only “patriots” are elected to the committee. The seats previously held by the elected District Councilors have been given over to mainland affiliated organizations. As a result of these and other changes, in the recent Election Committee election 75 percent of the seats were filled uncontested.²⁹

²⁹ Lilian Cheng, *Record Number of Uncontested Seats for Hong Kong Election Committee Polls — and Li Ka-shing Is Not Throwing His Hat into Ring, for the First Time since 1997*, SOUTH CHINA MORNING POST (Aug. 12, 2021), <https://scmp.com/>

The Election Committee is now required to vet all candidates for Chief Executive and the Legislative Council on top of choosing the Chief Executive and 40 legislators. A small Candidate Eligibility Review Committee, composed of Beijing loyalists, will first vet the candidates and submit its findings to the Election Committee. This vetting committee will vet all candidates for elective office. It will be overseen by the Committee for Safeguarding National Security and all candidates will be investigated by the national security police unit. Opposition candidates run at their peril, at risk of being disqualified as non-patriots, and possibly prosecuted. No candidates from the leading pan-democratic parties participated in the December 2021 Legislative Council election. It is now illegal for anyone to advocate boycotting the election or spoiling ballots, though voters can do so individually — with only 32 percent of eligible voters participating in the recent election.

V. The Path Forward

The “One Country, Two Systems” model promised Hong Kong has surely been abandoned, in any recognizable form. Both Hong Kong people and the wider world long engaged with Hong Kong will now face a challenge of what to do in the face of such overwhelming oppression. In my own judgment, the narrow sanctions that have been used so far have had very little impact and may at worst cause Beijing to impose more draconian measures as blowback, as reflected in Beijing's recently

proposed anti-sanctions law.³⁰ Concerned governments will have to examine their international trade and exchange policies in a more comprehensive and multilateral way that advances the international human rights policies they may cherish, as contained in the international human rights regime. It is in every country's national interest that trade and finance does not operate outside national policies that seek to promote human rights. Beijing controlled companies, as well as Hong Kong and other foreign companies that operate in Hong Kong, have often been coopted to support Beijing's hardline policies. Their operations are clearly at the heart of Beijing's concerns with respect to the city.

The challenge will be to create a regulatory regime that incentivizes appropriate human rights behavior both in official policy and private activity. The US has already unilaterally built some of this sort of commercial oversight, to list companies that appear to violate US policy in this and related regards. Rather than unilateral sanctions such policy goals might best be achieved in a multilateral framework. Such a framework would aim to create human rights incentives that international businesses and other organizations would be expected to adhere to in conducting their activities. The current paper is not the place to tease this wider framework out but, at first glance, it would surely include some of the best practices regarding social responsibility in the literature on corporate social responsibility. A charter might be created that reaches beyond the immediate Hong Kong issues to include wider

³⁰ Jeffie Lam, *No Timetable for Hong Kong Anti-sanctions Law*, Finance Chief Paul Chan Says, SOUTH CHINA MORNING POST (Oct. 1, 2021), <https://scmp.com/news/hong-kong/politics/article/3150925/no-timetable-hong-kong-anti-sanctions-law-finance-chief>.

global practice. Countries that sign on to such a charter would be expected to enforce its principles in local law both as to entities organized locally and for those that practice within local jurisdiction. There could be a committee structure to report adherence to such requirements. Private causes of action might be allowed to supplement official oversight — as is even the case for Beijing's domestic anti-sanctions law. In the PRC context, similar issues have come up relating to Xinjiang and Tibet, as well as Hong Kong, but Beijing is not alone in this regard. The best approach to incorporate human rights concerns in the commercial and international organizational sector will require more substantial international discussions, but such a regulatory regime might offer a more acceptable incentive-based approach than the tit-for-tat approach currently available through unilateral sanctioning of officials.

In the interim, it seems most foreign policies directed at these developments in Hong Kong will target immigration access to provide sanctuary for those who want to leave the city. Immigration policies can look to the efficiency of access to the asylum regime and offering immigration options to those most at risks who do not qualify for asylum in the traditional sense. University graduates holding degrees from the host country's universities or Hong Kong people who have spent substantial time abroad may suffer the greatest loss under the current repressive policies and seek an exit for themselves or their families.