

**Event on The Trial of Jimmy Lai, Media Freedom and Democracy in Hong Kong
The Sydney Peace Foundation at The University of Sydney, 28 June 2024**

**Remarks of the Special Rapporteur on the Promotion and Protection of Human Rights
and Fundamental Freedoms while Countering Terrorism, Ben Saul**

Good evening. I am pleased to welcome you to The University of Sydney, which has a long history as a public platform for freedom of expression. Most recently I have been proud that the University has safeguarded the right of peaceful assembly by enabling the encampment of protesters concerned about the war in Gaza, in the face of strong political and other pressures.

First let me express my sympathy and solidarity to Sebastian Lai here tonight, the son of Jimmy Lai, and to his family. You are in excellent hands with your lawyers here on the case – Caoilfhionn Gallagher KC and Jennifer Robinson – both of whom are relentless, determined, clever and strategic advocates.

As Special Rapporteur one of my functions is to issue formal diplomatic communications to governments where I am concerned about plausible violations of human rights. I and other United Nations independent experts have repeatedly brought the case of Mr Lai to the attention of the Chinese Government.¹ We have separately reviewed China’s 2020 national security law under which he is charged, as well as the latest 2024 Hong Kong national security law.²

We have repeatedly called on the Chinese government to drop all charges against Mr Lai and to immediately release him. Mr Lai has spent decades campaigning for freedom of speech, press freedom and democracy in Hong Kong. His arrest, detention and harassment through multiple prosecutions over the past few years appear to be directly related to his criticism of the Chinese Government and his support for human rights and democracy in Hong Kong.

After being arrested in August 2020, his current trial involves charges under mainland China’s 2020 Safeguarding National Security Law. He has been charged with sedition and “conspiracy to collude with foreign forces”. The charges relate to tweets, interviews and articles published in his newspaper, *Apple Daily*, about the negative impact of the National Security Law itself on human rights. Mr Lai could face life in prison if convicted.

Mr Lai’s trial is the second under the National Security Law, after last year’s trial of 47 pro-democracy activists. Forty-five people were convicted, including legislators, students, activists, academics, and will be sentenced very soon for up to life imprisonment. Hundreds more have been arrested under the Law, including children.

As United Nations independent experts we have been alarmed by the misuse of the criminal law to gravely violate Mr Lai’s freedom of expression, peaceful assembly, and association. We

¹ See communication [CHN 1/2023](#).

² See communications [CHN 5/2024](#), [CHN 16/2023](#), [CHN 12/2023](#).

are further concerned about his fair trial rights, including the handpicking of judges by the political authorities, the intimidation of Mr Lai's lawyers, and restrictions on his ability to be represented in proceedings by lawyers of his choice.

The misuse of criminal proceedings against also has chilling effect on others in Hong Kong, including the media, political dissidents, legislators, human rights defenders, lawyers, students, bloggers and artists. It is designed to send a message that no-one is too big to take down. It also appears to be a deliberate misuse of the law, under the pretext of national security, to undermine the democratic governance system and to diminish the space for political and civil freedoms in Hong Kong. The UN Human Rights Committee has further raised concerns about the excessive number of civil society organizations, such as trade unions and student unions, that have relocated or ceased to operate since the enactment of the Law.

National security laws and offences, and arrest and detention, should never be misused against those exercising their freedoms of expression, association and peaceful assembly. The specific concerns that United Nations independent experts have expressed with the 2020 Law include:

- The overbroad scope of crimes such as secession, subversion, terrorism, and foreign collusion, where the conduct covered does not involve incitement to violence or other genuinely serious criminal harms;
- Consequent infringements on freedoms of expression, peaceful assembly, association, and participation in public affairs, including the legitimate activities of civil society;
- Provisions which undermine the independence of judges and lawyers; and
- The possibility to transfer cases from Hong Kong, where the International Covenant on Civil and Political Rights (ICCPR) applies, to mainland China, where it does not.

We emphasize that any restriction on freedom of expression on grounds of national security must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest, strictly and precisely defined. Freedom of expression protects speech that offends, shocks and disturbs, or criticises government, as long as it does not amount to incitement to hatred, hostility or violence.

We have also expressed alarm at the Hong Kong Government's own 2024 Safeguarding National Security Ordinance, which deepens repression. It establishes offences including treason, secession, sedition, subversion, insurrection, incitement to mutiny and disaffection, "revealing state secrets", "sabotage endangering national security" and "external interference in activities endangering national security" by collaborating with an "external force".

Many of our concerns echo those applicable to the 2020 Law, including:

- Vague and over-broad offences that do not satisfy the international legal requirement of legality, namely that offences must be precisely and narrowly defined;
- The consequent undermining of freedoms of opinion, expression, peaceful assembly, association, and movement; the rights to liberty, fair trial and privacy; the right to participation in public affairs; and academic freedom;
- The criminalization of and chilling effect on civil society, the media and human rights defenders, specifically including legitimate civil society engagement with the United Nations and its human rights procedures – contrary to international human rights law and the United Nations Charter; and
- Disproportionately heavy criminal penalties.

Procedurally, the 2024 Law provides for excessive periods of pre-charge detention, which enables abuses even if no charges are ultimately laid. It restricts access to the choice of legal representation, in violation of the rights of defence and fair trial. It enables the government to hand-pick judges in security cases, infringing judicial independence and impartiality.

While the Hong Kong authorities claim that these kinds of offences are typically found in other common law jurisdictions, this ignores the context of the compromised legal system prevailing in Hong Kong. The territory's constitutional and other legal safeguards for basic rights do not adequately protect international human rights, which are subordinate to Chinese law.

Another concern is that the law applies extraterritorially, enabling transnational repression of dissidents, including Australian residents, some of whom have been subject to "bounties".

As United Nations Special Procedures we urge the Chinese and Hong Kong governments to urgently review both of the national security laws to ensure their compliance with international human rights law. We have offered our constructive technical assistance to that end.

I also urge other countries to publicly denounce these violations of international law, to refuse to cooperate with any extradition or mutual legal assistance requests, and to be vigilant to prevent and counter interference by foreign authorities in their own territories.

Thank you.