



CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

STAFF RESEARCH REPORT
July 2022



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HONG KONG PROSECUTORS PLAY A KEY ROLE IN CARRYING OUT POLITICAL PROSECUTION

SUMMARY

The Hong Kong government's hardline approach to dissent and pro-democracy views, and the growing number of political prisoners, raises serious concerns about the erosion of the rule of law in the city. A stable legal system, the free flow of news and information, and guaranteed rights protections have undergirded Hong Kong's economic and cultural vitality and were critical to both business confidence and U.S.-Hong Kong relations.

If Hong Kong's prosecutors are allowed to exercise the discretion given them under the city's Prosecution Code, the number of political prosecutions and arbitrary detentions could dramatically decrease, as at least 10,500 people were arrested for political and protest-related activity. However, the growing number of political prisoners in Hong Kong and the role of the Justice Department and prosecutors in expanding arbitrary detention may require actions from the United States and the international community to address the erosion of the rule of law and human rights, including additional sanctions authorized by the Hong Kong Autonomy Act and the Hong Kong Human Rights and Democracy Act.

I. Background

Hong Kong's Basic Law provides that “[t]he Department of Justice . . . shall control criminal prosecutions, free from any interference.” Within the department, the prosecutorial function is discharged by the Prosecutions Division and the National Security Prosecution Division. The latter was created in June 2020 by Article 18 of the National Security Law (NSL), but its operations and staffing have remained opaque, as the government has refused to disclose relevant details. Public reporting shows that cases involving national security and those arising from the pro-democracy protests in 2019 primarily have been handled by prosecutors in the Prosecutions Division's Special Duties team, which was set up in mid-April 2020, two months before enactment of the NSL.

In December 2021, Director of Public Prosecutions Maggie Yang Mei-kei, who heads the Prosecutions Division, issued a yearly review in which she acknowledged that some prosecutions carried out by her division were “politically sensitive” but maintained that her team adhered to prosecutorial independence as required by the Basic Law and the Prosecution Code. The yearly review, however, made no mention of prosecutions involving alleged national security, which observers have described as political persecution.

The increasingly apparent political motivation behind the department's actions had provoked some internal dissent, but such voices have not been heard since 2019, possibly due to retaliation. During the 2019 protests, a group of prosecutors questioned the integrity of their leadership anonymously in an open letter, saying that the then-Secretary of Justice and Director of Public Prosecutions placed political considerations above the Prosecution Code when they decided to charge 44 protesters with rioting the day after police arrested them at a protest against police brutality. Another prosecutor also wrote to the leadership criticizing the Hong Kong government's handling of the protests, but he was later suspended and faced further possible disciplinary action.

Since June 2019, the Department of Justice has prosecuted at least 2,944 individuals on NSL and protest-related charges, some of which infringed on the universal human rights of a wide range of people including protesters, journalists, civil society workers, and opposition political figures. The Commission has identified the Hong Kong government prosecutors responsible for some of these cases:

II. The Prosecutors

1. **Maggie YANG Mei-kei**¹ is Director of Public Prosecution, the head of the Prosecution Division.² Yang was promoted in August 2021 from her post as head of the Special Duties team two weeks after she reportedly made a trip to Beijing with the Secretary of Justice.³
 - Yang was the lead prosecutor in the case involving 47 pro-democracy activists who were arrested for organizing or participating in the informal primary election in July 2020 ahead of the scheduled Legislative Council election.⁴ In March 2021, she sought to deny bail for the detainees and appealed 11 of the 15 cases in which the detainees were granted bail.⁵
2. **Anthony CHAU Tin-hang**⁶ is acting Deputy Director of Public Prosecution of the Special Duties team.⁷
 - Chau prosecuted protesters Leon Tong Ying-kit and Adam Ma Chun-man and secured convictions against them on charges including “inciting secession” for

displaying or chanting slogans such as “Liberate Hong Kong, Revolution of Our Times.”⁸ Ma’s case in particular, as one that involved only speech,⁹ represents a setback for free speech protection in Hong Kong and a departure from the government’s previous deference to the Johannesburg Principles, which limits government restrictions on speech and access to information on national security grounds.¹⁰

3. **Laura NG Shuk-kuen**¹¹ is acting Senior Assistant Director of Public Prosecutions for the Special Duties team.¹²

- Ng oversaw the prosecution of seven editors and executives of the now-defunct pro-democracy online publication Stand News on the charge of “conspiracy to publish seditious content.”¹³ While the offense is not criminalized in the NSL, the case is being heard by a judge designated to hear NSL cases.¹⁴
- She also is responsible for prosecuting five trustees of the 612 Humanitarian Relief Fund that provided assistance to arrested protesters,¹⁵ and five speech therapists who authored children’s books deemed to convey anti-government messages.¹⁶

4. **William SIU Kai-yip**¹⁷ is acting Senior Assistant Director of Public Prosecutions for the Special Duties team.¹⁸

- Siu is one of two prosecutors who handled the “unauthorized assembly” case against 26 pro-democracy activists—including Jimmy Lai Chee-ying, Lee Cheuk-yan, Albert Ho Chun-yan, Chow Hang-tung, and Joshua Wong Chi-fung—for participating in a June 2020 vigil commemorating the 1989 Tiananmen protests.¹⁹

5. **Andy LO Tin-wai**²⁰ is acting Assistant Director of Public Prosecutions for the Special Duties team.²¹

- Lo is responsible for prosecuting four senior editors and executives of the now-defunct pro-democracy news outlet Apple Daily on the charge of “collusion

with a foreign country” in conspiracy with Apple Daily’s founder Jimmy Lai and others, alleging that they had asked foreign countries to impose sanctions on Hong Kong and Chinese officials.²² The NSL case against Jimmy Lai is being prosecuted by Ivan Cheung Cheuk Kan.²³ British lawyer David Perry, whom the Department of Justice instructed to prosecute Jimmy Lai and eight others on a separate “unauthorized assembly” offense, withdrew from the case.²⁴ A former policy advisor welcomed the move, saying, “British barristers should not become part of the repressive apparatus of President Xi’s dictatorship.”²⁵

6. **Ivan CHEUNG Cheuk-kan**²⁶ is acting Assistant Director of Public Prosecutions for the Special Duties team.²⁷

- Besides the above-mentioned NSL case against Jimmy Lai, Cheung is responsible for prosecuting student activist Tony Chung Hon-lam on the charges of “secession” and “money laundering.”²⁸ With respect to the latter charge, reports did not indicate that it was supported by wrongdoing independent of Chung’s activism.²⁹

The Commission also observed that other prosecutors (who are not or cannot be confirmed to be part of the Special Duties team) have handled political cases in varying degrees of involvement. They include—**Alice CHAN Shook-man**,³⁰ **Crystal CHAN Wing-sum**,³¹ **Cherry CHONG Man-yan**,³² **Derek LAI Kim-wah**,³³ **Wilson LAM Yi Yeung**,³⁴ **Edward LAU Wan-cheung**,³⁵ **Vincent LEE Ting-wai**,³⁶ **Karen NG Ka-yuet**,³⁷ and **Jennifer TSUI Sin-chi**.³⁸

III. U.S. Policy Options

Under U.S. law, foreign persons who violate human rights or undermine Hong Kong’s autonomy may be subject to sanctions. The Hong Kong Human Rights and Democracy Act of 2019 obligates the President to deny entry to the United States and block assets of foreign persons identified as being responsible for human rights violations including arbitrary detention.³⁹ While “arbitrary detention” is not defined in the law, the UN Working Group on Arbitrary Detention considers a detention arbitrary if, for instance, it

is used to suppress the exercise of universal human rights or is applied in a discriminatory manner based on a person's political opinions.⁴⁰ The Hong Kong Autonomy Act of 2020, which was enacted shortly after the NSL, similarly provides for sanctions on foreign persons who have “materially contribute[d] to the failure of the Government of China to meet its obligations under the Joint Declaration or the Basic Law,” obligations that guarantee that Hong Kong “will enjoy a high degree of autonomy.”⁴¹

Based on these legal authorities and Executive Order 13936, the Department of the Treasury in August 2020 imposed sanctions on 11 individuals “for undermining Hong Kong’s autonomy and restricting the freedom of expression or assembly of the citizens of Hong Kong.”⁴² Among them is then-Secretary of Justice Teresa Cheng Yeuk-wah, whom the U.S. Government sanctioned for “being responsible or involved in developing, adopting, or implementing the National Security Law.”⁴³

On July 1, 2022, **Paul LAM Ting-kwok** took office as the new Secretary of Justice.⁴⁴ Lam expressed that he was not concerned about being sanctioned,⁴⁵ and Reuters reported that he “is widely expected to continue to oversee the tough prosecutorial approach of his predecessor, Teresa Cheng, against opposition figures, activists and protesters.”⁴⁶ But prosecutors within the department are free to make decisions for themselves, as the Prosecution Code specifically grants them prosecutorial discretion, stating that they “shall not be bound to prosecute an accused person in any case in which [they] may be of [the] opinion that the interests of public justice do not require their interference.”⁴⁷

ENDNOTES

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- ⁵ Chris Lau and Brian Wong, “Hong Kong National Security Law: Defence Slams ‘Draconian’ Case against 47 Opposition Figures – but Proceedings Halted after Defendant Faints,” *South China Morning Post*, March 1, 2021; Chris Lau, “National Security Law: Surprise U-turn as Hong Kong Prosecutors Drop Challenge to Four Defendants Receiving Bail in Case Involving 47 Accused Opposition Activists,” *South China Morning Post*, March 5, 2021.
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- ¹² Hong Kong SAR Government, “Government Telephone Directory,” accessed June 24, 2022, <https://perma.cc/U868-DFY3>.
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