

Congress of the United States
Washington, DC 20515

March 14, 2024

The Honorable Antony Blinken
Secretary of State
Department of State
Washington, DC 20520

Dear Secretary Blinken,

We are writing to you with grave concern about the Hong Kong government's intention to expand local national security legislation (Article 23) which will further erode the rule of law and fundamental freedoms of people of Hong Kong and U.S. interests in the city. We ask you to take concrete actions to hold responsible Hong Kong officials who play a role in eroding Hong Kong's democracy and alert American businesses and citizens about the risk they may face in Hong Kong as a result of Hong Kong's increasingly close alignment with Beijing.

Hong Kong was once a bastion of freedom, with its vitality and prosperity undergirded by the rule of law and democratic freedoms guaranteed by the Sino-British Joint Declaration and the territory's *de facto* Constitution, the Basic Law. Sadly, this Hong Kong no longer exists. The Hong Kong government's pursuit of the Article 23 legislation confirms this tragic fact. Whatever the Hong Kong government's reason for issuing the draft law as a supplement to the Hong Kong National Security Law of 2020 (HKNSL) imposed by the People's Republic of China (PRC), an ever-expanding notion of national security will only make Hong Kong less safe for U.S. businesses and citizens living in Hong Kong as well as Hong Kongers seeking to exercise their fundamental freedoms.

The Hong Kong government already routinely uses the pretext of "national security" to gut the free press and quash any semblance of political opposition. Due to the aggressive implementation of the HKNSL, with over 1,000 Hong Kongers in custody for peaceful political activism, Hong Kong now detains political prisoners at a rate only surpassed by a handful of authoritarian countries, such as Belarus, Burma, and Cuba.¹ This is bad company for a city desperately seeking to maintain its reputation as a global hub for business and investment.

There is little opposition left in Hong Kong to protest the introduction of Article 23 legislation as there was in 2003, when attempts to introduce such legislation were met with widespread public protests. The absence of genuine civic participation and the silencing of pan-democratic political institutions is a testament to the power of the Hong Kong government's repressive legal regime.

With Article 23 legislation, the Hong Kong government explicitly seeks to bring local laws in line with the PRC's expansive concept of national security. This aligns with General Secretary Xi Jinping's political agenda as codified in the 2015 PRC National Security Law. In addition to traditional national security concerns, such as military and public security, Hong Kong's Article 23 legislation also includes non-traditional areas, such as cultural security, ecological security,

¹ One City, Two Legal Systems: Political Prisoners and the Erosion of the Rule of Law in Hong Kong, Hearing of the Congressional-Executive Commission on China, 118th Cong. (2023), <https://www.cecc.gov/events/hearings/one-city-two-legal-systems-political-prisoners-and-the-erosion-of-the-rule-of-law-in>.

biosecurity, and overseas Chinese affairs. The broad definition of “state secrets” employed by the draft legislation encompasses a wide array of speech, association, and assembly within the ambit of the HKNSL – virtually anything that the PRC or Hong Kong government finds politically offensive can be prosecuted under Hong Kong’s Article 23 legislation under the broad definitions of “state secret” and “external interference.”

In addition to expanding the list of punishable offenses, the HKNSL curtailed the due process rights of criminal defendants, affecting procedures such as pretrial release, trial by jury, and representation by legal counsel of one’s choosing. While the Article 23 consultation document does not lay out specific legal provisions regarding due process rights, its emphasis of the importance of law enforcement expediency suggests that the final rules will expand the police’s investigative powers and will further subordinate procedural safeguards for defendants.

Of particular concern is the Article 23 consultation document’s explicit call for extraterritorial application of the proposed offenses.² At least 13 exiled activists have already been put on the police’s wanted list for their peaceful political speech and advocacy. The Hong Kong government has even tried to ban a protest song, *Glory to Hong Kong*, on U.S.-based YouTube, under the powers of the HKNSL.

Given the zealous implementation of the HKNSL by the Hong Kong government and the further human rights abuses that will likely occur with the passage of Article 23 legislation, the best course of action for the Hong Kong government would be to withdraw the draft law completely and repeal the HKNSL – as eighteen U.N. Members states have called on the PRC to do at the PRC’s January 2024 Universal Periodic Review at the U.N. Human Rights Council.³

Unfortunately, we know that such a repeal is unlikely to happen. Since current members of the Hong Kong Legislative Council were vetted for political alignment with the PRC before assuming office,⁴ whatever law the Hong Kong government proposes will simply be rubber-stamped. It will likewise be vigorously enforced by the national security arms of the Hong Kong police force and the public prosecution office, as they try to justify their continued bureaucratic relevance, even after all political opposition has been snuffed out.

In light of these concerns, the United States government must take additional steps to protect American citizens and businesses, as well as other U.S. interests, in Hong Kong by upholding international law and treaties. The State Department should thoroughly re-evaluate business and travel advisories to inform the American public of the risks presented by the PRC and Hong Kong governments. If Article 23 legislation is to pass, which we expect it will, a Level 2 travel advisory for Hong Kong may no longer be defensible.

The U.S. Administration has not sanctioned any Hong Kong government official since August 2020. As we await the sentencing of Jimmy Lai and the trial of the Hong Kong 47, it is time for the Administration to use the authorities available under the Hong Kong Human Rights and Democracy

² Security Bureau, Hong Kong Government, SAR, “Safeguarding National Security: Basic Law Article 23 Legislation. Public Consultation Document,” January 2024, para. 8.9, <https://perma.cc/A8MG-AN5Z>.

³ Freedom House et al., “Joint Statement from Civil Society Groups on the Hong Kong Government’s Consultation for Article 23 Legislation,” February 21, 2024, <https://perma.cc/42C4-8VSE>.

⁴ “Members’ Biographies; Seventh Legislative Council” webpage of Legislative Council of the Hong Kong Special Administrative Region, accessed February 16, 2024, <https://perma.cc/9VJV-NFWX> (English), <https://perma.cc/4KMH-5ZBB> (Chinese).

Act and the Hong Kong Autonomy Act to consider sanctions against those Hong Kong government officials who have played an instrumental role in carrying out Beijing's bidding to undermine democratic freedoms and the rule of law in Hong Kong.

Relatedly, we urge you to address the transnational repression experienced by Hong Kongers on American soil and to consider stripping the diplomatic privileges and immunities from the three Hong Kong Economic Trade Organization (HKETO) offices operating in the United States. HKETOs have become propaganda arms of the PRC, obscuring the truth about increasing repression in Hong Kong, defending the permanent erosion of the rule of law, and spreading PRC misinformation.

To give the Administration additional authorities to act in these areas, we will work with our colleagues in the Congress to pass the Transnational Repression Policy Act and the Hong Kong Economic and Trade Office Certification Act. These are common sense and bipartisan bills that have languished for too long.

The Hong Kong government claimed recently that it had not heard any opposition from diplomats or business groups to the proposed Article 23 legislation.⁵ This is unfortunate, as our analysis of the draft bill is that it will worsen an already bad human rights situation in Hong Kong and permanently erode what is left of a once robust rule of law. We oppose the introduction of Article 23 legislation and urge the State Department to continue to do so robustly and to coordinate with allies and business groups in Hong Kong to clearly register their deep reservations about Article 23 and continued implementation of the HKNSL.

Sincerely,



Representative Chris Smith
Chair
Congressional-Executive Commission on China



Senator Jeff Merkley
Cochair
Congressional-Executive Commission on China



Representative Mike Gallagher
Chairman
House Select Committee on the CCP



Representative Raja Krishnamoorthi
Ranking Member
House Select Committee on the CCP

⁵ Harvey Kong, "No Envoys, Business Chambers Opposed Hong Kong National Security Law During Meetings, Minister Says," South China Morning Post, February 6, 2024, <https://www.scmp.com/news/hong-kong/politics/article/3251175/no-envoys-business-chambers-opposed-hong-kong-national-security-law-during-meetings-minister-says>.