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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by Human Rights Now, a non- governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 May 2024]

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\* Issued as received, in the language of submission only.

## Hong Kong's National Security Legislation Continues to Threaten Hong Kong Journalists

### 1. A New Era of Threats against Hong Kong Journalists

With the near total collapse of independent civil society in Hong Kong following the 2020 National Security Law's (NSL) promulgation and the colonial era sedition law's revival, many journalists and media workers ceased operations or left Hong Kong in fear of prosecution.[1] Since 2020, more than 100 journalists have fled Hong Kong,[2] 70% of journalists remaining have admitted to self-censorship,[3] and at least nine non-establishment news media outlets have closed including Apple Daily, Stand News, Citizen News, FactWire, Transit Jam, and Citizens' Radio. The "Safeguarding National Security Ordinance" (SNSO), also known as the Article 23 law, followed in March 2024, further limiting civil and political rights protections and introducing harsher penalties and new offences that may target journalists.

Criticizing the SNSO's overbroad language, High Commissioner Volker Türk highlighted its risks to journalists and chilling effect on legitimate speech and conduct.[4] Other examples of a crackdown on Hong Kong journalists since 2020 including the disappearance of South China Morning Post journalist Minnie Chan in November 2023 after a work trip to attend the Xiangshan Forum in China, the arrest of chairman of the Hong Kong Journalists Association Ronson Chan in September 2022 for obstructing a police officer while reporting, the arrest of Stand News chief editors Chung Pui-kuen and Patrick Lam and closing of Stand News in December 2021 for sedition, and the arrest of media CEO Jimmy Lai in May 2022 for sedition and foreign collusion.[5]

The NSL and SNSO also have extraterritorial effects, with the SNSO providing sanctions for accused persons abroad, threatening journalists working inside and outside Hong Kong. The SNSO further restricts access to publicly important information and its distribution, particularly threatening journalistic work. These developments led the Press Freedom Index to demote Hong Kong to 140th out of 180 states in press freedom in May 2023.[6]

### 2. Offenses that May Target Independent Journalism in Hong Kong

This statement focuses on the on-going threats to Hong Kong journalists inside and outside Hong Kong under its national security legislation for undertaking normal journalistic activities. These threats include arbitrary arrest or sanction for the following offenses.

- Sedition

Several cases indicate the threat that sedition offenses pose to Hong Kong journalists.[7] In the Lai Man-ling, et al, case ("Sheep Village") five persons were convicted for publishing and distributing a "seditious publication" for a book about cartoon sheep defending themselves from wolves, in analogy to protestors and Hong Kong police. In the Tong Ying Kit case, the judge found that even a traffic violation rendered "law-abiding citizens to fear for their own safety and to worry about the public security of Hong Kong" sufficiently to justify a national security offense.[8] Both cases demonstrate the unreasonableness of politically-screened judges finding sedition-level threats to national security in non-inciting speech and activities.

In both the Sheep Village case and a decision in the Jimmy Lai sedition case, judges also found normal journalistic activities of publishing part of a seditious conspiracy once the underlying sedition was (unjustifiably) established, meaning that a single article could criminalize the normal work of a media enterprise, such as publication.[9] The SNSO offense of bringing a state official into contempt should work similarly to chill even legitimate criticism of officials common in journalism.

- Disclosing state secrets

The SNSO offense for theft of state secrets can target journalists insofar as the definition of “secrets” includes “major policy decisions”, “external affairs”, an “economic or social development”, and a “technological development or scientific technology”, practically covering any government information, chilling government sources essential to normal journalistic work.

- Collusion and external interference

The NSL offense of collusion with foreign forces and the SNSO offense of external interference, both of which apply extraterritorially, threaten journalists’ work by criminalizing, for example per Article 56 of the SNSO, communications with “any ... organisation in an external place that pursues political ends” on an issue that may benefit the organization, potentially criminalizing normal journalistic interviews and research.

Activists Elmer Yuen, Finn Lau and Anna Kwok were accused of foreign collusion after calling for sanctions against Hong Kong officials, suggesting that similarly worded op/ed articles by journalists could be criminalised, even if written overseas.[10] To highlight how overbroad the scope of “foreign forces” is (which includes any organization with members from two or more countries), even a letter to the UN High Commissioner for Human Rights was cited as evidence of the NSL offense of foreign collusion in one case.[11]

Receiving funds from overseas organizations may also trigger the offense. Many Hong Kong media outlets that moved overseas struggle to maintain secure financial support outside Hong Kong due to this threat.[12]

- Extraterritorial Sanctions

The extraterritorial effect of the NSL and SNSO extends their overbroad reach to overseas persons and activities, with authorities already issuing at least 13 arrest warrants for Hong Kong activists abroad, facilitated by bounties inviting coercive action to bring them to Hong Kong.[13] These extraterritorial effects are also backed by sanctions Hong Kong authorities can take to overseas “absconders” under arrest warrants, such as cancelling their HKSAR passports, which may abusively trigger Interpol’s red notice system, and suspending their professional qualifications.[14]

### 3. These Threats Bolster Special Rapporteur Khan’s Conclusions

These threats support Special Rapporteur for freedom of expression Khan’s conclusion in her recent report that the NSL and SNSO are examples of “vague, loosely drafted laws on national security” with “sweeping” and “extraterritorial” offenses that punish journalists when “journalism is not a crime.”[15] These threats also bolster her call on states to host exiled journalists and support them with visas and work permits. Exiled journalists also need improved protection from harassment and physical and online attacks, support from civil society and press freedom groups, and for “companies to ensure that the technologies that are essential to practice journalism are not disrupted or weaponized against them.”[16]

### 4. Hong Kong’s National Security Legislation Infringes Human Rights

As Special Rapporteur Khan also highlights, the challenges to protect journalists in exile are not due to a lack of international legal framework, but in governments’ failure to uphold their international obligations. To quickly review these obligations, the NSL and SNSO infringe multiple ICCPR rights to which Hong Kong is obligated including the freedoms of opinion and expression (Article 19), peaceful assembly and association (Article 21), freedom of movement (Article 12), and the right to take part in the conduct of participation in public affairs (Article 25). Restrictions on these rights under the NSL and SNSO do not meet the standard of necessity or legality required under the ICCPR as they are not narrowly tailored to target only national security threats without unduly restricting listed rights, and their over breadth and vagueness do not give legal certainty about the scope of

offenses, and in fact they are worded to permit the unjustifiable criminalisation of legal activities that Hong Kong is obligated to protect.

#### 5. Hong Kong's Overbroad National Security Legislation Must be Repealed

Given the threats that Hong Kong's national security legislation poses to journalists and consistent with Hong Kong's international obligations, HRN calls on relevant Hong Kong and Chinese authorities to:

- Repeal all overbroad national security legislation that criminalizes non-violent opinions and expressions, peaceful assembly, and association, including normal journalistic activities and organizations.
- Refrain from committing acts of transnational harassment or sanction on current or former Hong Kong journalists and activists overseas.

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[1] IFJ, "Journalists in exile", 6 April 2023, <https://www.ifj.org/media-centre/reports/detail/journalists-in-exile-a-survey-of-media-workers-in-the-hong-kong-diaspora/category/publications>.

[2] RSF, "Exile journalists map", 20 June 2023, <https://rsf.org/en/exile-journalists-map-fleeing-europe-and-north-america>.

[3] Leung, "Almost 70% of journalists have self-censored", HKFP, 6 July 2023, <https://hongkongfp.com/2023/07/06/almost-70-of-journalists-have-self-censored-83-say-conditions-have-worsened-hong-kong-press-club-survey/>.

[4] OHCHR, "Rushed adoption of national security bill a regressive step for human rights in Hong Kong – UN Human Rights Chief", 19 March 2024, <https://www.ohchr.org/en/press-releases/2024/03/rushed-adoption-national-security-bill-regressive-step-human-rights-hong>.

[5] HRN, "HRN Protests the National Security Law's Continuing Threat to Journalists in Hong Kong", 30 Jan 2024, <https://hrn.or.jp/eng/news/2024/01/30/hong-kong-journalists-statement/>; Tse, "Verdict for Hong Kong Stand News sedition trial postponed again to August", HKFP, 24 April 2024, <https://hongkongfp.com/2024/04/24/breaking-verdict-for-hong-kong-stand-news-sedition-trial-postponed-again-to-august/>; see also Grundy, "Gov't watchdog to probe HKFP's complaint over handling of media bans at press event", HKFP, 2 May 2023, <https://hongkongfp.com/2023/05/02/govt-watchdog-to-probe-hkfps-complaint-over-handling-of-media-bans-at-press-event/>.

[6] Alviani, "Press freedom is not fully protected in Hong Kong", RSF, <https://rsf.org/en/press-freedom-not-fully-protected-hong-kong-rsf-debunks-china-s-claims-10-points> (referencing <https://rsf.org/en/country/hong-kong>).

[7] Mosley, "A Legal Analysis of Hong Kong's New SNSO and What it Means for Lawyers", ALN, 26 April 2024, <https://www.asianlawyers.net/statements/2024-04-26-report-on-the-hong-kong-snso-impact-on-lawyers>.

[8] HKSAR vs. Tong Ying Kit, [2021] HKCFI 2200, para. 163.

[9] HRN, *supra*, note 5.

[10] AP, "Hong Kong police offer rewards for arrests of 8 overseas pro-democracy activists", 3 July 2023, <https://www.courthousenews.com/hong-kong-police-offer-rewards-for-arrests-of-8-overseas-pro-democracy-activists/>.

[11] HRN, "The Collapse of Civil Society Organizations in Hong Kong", 23 August 2021, <https://hrn.or.jp/eng/news/2021/08/23/hrc48-statement-hong-kong>.

[12] Forum Asia, Webinar, <https://www.youtube.com/live/jL5AMbptEXw>, at 58:32, 1:10:18; see also *id.* (on authorities' targeting of civil society fund raising and financial scrutiny).

[13] AP, "China defends bounties offered for Hong Kong dissidents abroad", 15 Dec. 2023, <https://apnews.com/article/china-hong-kong-bounties-dissidents-b0aeab923d05379039cbc0143aeb739>.

[14] Mosley, *supra*, note 6.

[15] Khan, "Journalists in exile", HRC, 26 April 2024, <https://undocs.org/en/A/HRC/56/53>, para. 43.

[16] Id., para.98