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**PEACEFUL ADVOCACY AS NATIONAL
SECURITY THREAT: THE JIMMY LAI
VERDICT AND THE LEGAL ATTACK ON
FREE EXPRESSION IN HONG KONG**

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ABOUT US

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After the Hong Kong National Security Law went into effect in 2020, GCAL launched a research project on the law's implementation, with a particular focus on the impact of the law on human rights and rule of law in Hong Kong. Over the past six years, GCAL has published a series of in-depth reports and shorter briefing papers on the NSL, often working closely with overseas Hong Kong and mainland Chinese lawyers and activists to publish research and analysis that, simply put, can no longer be published in Hong Kong. Our work has been cited by governments, UN bodies, academic researchers, and civil society organizations, and serves as an important resource for those seeking to understand key legal and political developments in Hong Kong.

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I. INTRODUCTION



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On December 15, 2025, the inevitable verdict finally arrived, no less shocking even despite its inevitability: the Hong Kong High Court found media mogul and longtime pro-democracy advocate Jimmy Lai guilty of seditious publication and of conspiracy to advocate for sanctions, in violation of the Crimes Ordinance and Article 29(4) of the National Security Law, respectively. Lai was later sentenced to twenty years in prison, likely a life sentence for the 78-year old, and the longest sentence by far ever handed down under the NSL.

The essential fact of Lai's prosecution and conviction was clear, even from the first day of his national security arrest, on August 10, 2020: Lai committed no crime, at least as defined in rights-respecting jurisdictions governed by the rule of law. Instead, he was criminally prosecuted for exercising his right to free speech, often in ways that captured the attention of the people of Hong Kong, and that deeply angered senior officials in Hong Kong and Beijing.

Lai's guilty verdict was met with a deluge of global media attention: his case had been seen as a barometer for Hong Kong's plummeting commitment to media freedom, and his final conviction seemed to many to signal the death knell for Hong Kong's once-vibrant media scene. But after the verdict and his sentencing, attention shifted elsewhere. In particular, the verdict itself was largely overlooked: at more than 850 pages, the High Court verdict is a daunting document, one that, by virtue of its sheer length, seems likely to scare would-be readers away.

The authors of this analysis have heard many Hong Kong watchers question whether the verdict merits any attention at all: whatever the details and lines of argument on those 850-odd pages might be, why bother to read a document that serves as little more than an absurdly overlong justification of the government's weaponization of the legal system to get Jimmy Lai?

The verdict is indeed both way too long and deeply unconvincing. Still, there is much to be gained from a careful reading of it. This report attempts to tease out what can be learned: what does the decision tell us about the Hong Kong judiciary's approach to the NSL, both in this case and more generally?

First and foremost, a close reading of the verdict confirms what was already known: that Jimmy Lai committed no crime. Lai's private correspondence, extracted from his phone and other devices, was paired with his public writings and comments on Twitter to create a mountain of evidence for the prosecution. These statements, both private and public, make up the bulk of the verdict's content. But this trove of evidence only showed that Lai is exactly as he presented himself to be: a committed advocate who was constantly thinking about how to advance a pro-democratic agenda, and how to bridge emerging splits within the 2019 movement. On the pages of *Apple Daily* and behind closed doors, Lai was committed to non-violence, and committed to making Hong Kong's formal political structures work for the people of Hong Kong.

In short, there is no smoking gun in the court's 850-page verdict. Instead, the court punished Lai's peaceful, pro-democratic political speech and activity, of the sort that was protected in Hong Kong prior to the implementation of the NSL on July 1, 2020. Lai should not have been convicted of any crime, and was guilty neither of seditious publication or sanctions advocacy.

This report proceeds in five parts. In **section II**, we discuss the new crime of sanctions advocacy from a comparative perspective, with a focus on why advocacy of targeted sanctions should be seen as a form of protected political speech under international human rights law. In **section III**, we discuss Lai's own sanctions advocacy. Our analysis makes clear that Lai committed no crime. In **section IV**, we discuss Lai's sedition conviction, and analyze the ways in which this colonial-era law was used to target Lai over his peaceful political speech. In **section V**, we discuss Lai and his co-defendants' sentencing. We argue that the courts should reassess their approach

to sentencing in national security cases. In **section VI**, we discuss the legal avenues for amnesty for Lai and his co-defendants, and conclude with a call on the U.S. and UK governments to press Beijing for Lai's release.

As **section II** makes clear, the "crime" of sanctions advocacy is a new invention, one that may have made its first appearance anywhere in the world in Hong Kong's 2020 National Security Law. As far as GCAL has been able to determine, only three other jurisdictions have explicitly criminalized sanctions advocacy, all of them following in Hong Kong's footsteps: Belarus (in 2021), Russia (2022), and Venezuela (2024). Because these provisions explicitly criminalize a form of peaceful political advocacy, they run afoul of Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

Lai's conviction, and the emergence of this crime in three other jurisdictions, suggest that this threat to free expression could grow in the years to come. Other states may follow suit in criminalizing sanctions advocacy, and in prosecuting individuals who call for targeted sanctions in response to human rights abuses.

In **section III**, we focus on Lai's own statements and actions. Before the NSL went into effect, Lai did engage in sanctions advocacy toward Western governments, in particular the U.S.: he publicly called for the U.S. Congress, for example, to pass new laws that would give the government new tools to impose targeted sanctions. And in the run-up to the NSL's implementation on July 1, 2020, he called for targeted sanctions to be imposed on Hong Kong and Chinese government officials. At that time, as the court itself admits, such advocacy was not a crime.

Lai knew that he was a key target under the new national security law, and he changed course after the NSL went into effect. Our analysis shows that, after July 1, 2020, Lai refrained from explicit sanctions advocacy. The court convicted him anyway. It found that his more general calls for international solidarity and support were a "more indirect and subtle strategy" to call for sanctions. In other words, even though NSL Article 29(4) wrongly criminalizes peaceful political speech, Lai did not in fact break the law. Sadly, even though the court had a clear factual route to a not guilty verdict, it chose not to take it.

In **section IV**, we focus on the conviction of Lai and his *Apple Daily* co-defendants under the sedition provision of the Crimes Ordinance. (After Lai and his colleagues were charged, the crime of sedition was revised, and is now part of the 2024 Safeguarding National Security Ordinance. Lai and his colleagues were charged and convicted under the older, colonial-era provision.) None of the writings cited by the court as seditious would be considered remotely criminal in rights-respecting jurisdictions, or under international law. Instead, the High Court cited the "context" of the 2019 protests, and Lai's sometimes sharp tone in his *Apple Daily* commentaries, as key factors in convicting him.

The court's reliance on Lai and *Apple Daily*'s tone to argue that Lai and his paper were "inciting disaffection" among the Hong Kong public only shows how truly political and subjective the crime of sedition is. No serious observer would argue that a more reserved tone in favor of democracy and human rights would have spared Lai and his *Apple Daily* colleagues from being found guilty. Instead, the court emphasized Lai's use of strong rhetoric as part of an effort to obscure the obvious: that Lai was convicted of sedition merely for advocating for political reforms that the government doesn't like, and for criticizing the government over its heavy-handed response to the 2019 protest movement. Advocacy in favor of democracy is now a crime in Hong Kong. And criticism of the government carries with it very real risks.

Lai and his co-defendants were sentenced on February 9, 2026. As we discuss in **section V**, the sentences handed down by the High Court were incredibly draconian.

Lai himself was sentenced to twenty years in prison, and his co-defendants were sentenced to ten years. The other co-defendants who aided the prosecution received sentence reductions. They were sentenced to terms ranging from six years and three months to seven years and three months.

As noted above, Lai's twenty-year sentence is the longest prison term handed down under the NSL by far. It is also much longer than the sentences given to high-profile mainland Chinese rights activists in recent years. In 2023, for example, rights activists Xu Zhiyong and Ding Jiaxi were convicted of subversion, and sentenced to fourteen and twelve years respectively. In 2009, prominent liberal intellectual and pro-democracy advocate Liu Xiaobo was convicted of inciting subversion over his role in the drafting of the pro-democracy manifesto Charter 08. He was sentenced to 11 years in prison. Liu died of cancer in 2017 while still behind bars.

The significant gap between Lai's sentence and those given by Mainland courts in many cases raises a key concern: we fear that the Hong Kong courts are overreacting to the political pressure they are under. They may be handing down excessive sentences in response to that pressure, in an effort to shield the courts from any potential backlash from Beijing.

A more strategic approach is needed. The authors of this report believe that sentencing is one area where the courts could start to experiment with efforts to lessen, even slightly, the cruel and unjust impact of the NSL.¹ Whereas guilty and not guilty verdicts are an on-off switch, sentencing decisions have various gradations, and offer a strategically viable opportunity to experiment with judicial outcomes that only partially frustrate the government's demands. Lower sentencing decisions push the government into a more complicated calculus: does it make sense to expend political capital to force the courts to impose a heavier sentence, or can the government live with a partial victory?

Seen in this light, High Court's sentencing decision represents a missed opportunity. Instead of issuing heavy sentences across the board, the court should have found a way to lessen the blow. Such an approach would have mitigated, at least in a small way, the extensive harm done to both Jimmy Lai and his co-defendants.

In our **section VI** conclusion, we argue that the international community needs to continue to pay attention to Lai's case, as a vital bellwether for human rights and rule of law in Hong Kong. In particular, we call on the international community to continue to press Beijing to release Lai and his co-defendants, immediately and unconditionally.

1. As the above analysis makes clear, neither Lai nor his co-defendants have committed any crime, at least as would be defined in rights-respecting jurisdictions around the world. To ask whether the courts could have handled sentencing differently is not to condone or accept the court's substantive findings, or its guilty verdict.

II. SANCTIONS ADVOCACY AND FREE EXPRESSION



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1. ARTICLE 29(4): A WORLD-FIRST CRIMINAL PROVISION?

Article 29(4) of the NSL is not the model of legislative clarity. In relevant part, it reads as follows:

Article 29 ... a person who requests a foreign country or an institution, organization or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, ... to commit any of the following acts shall be guilty of an offence:

(4) imposing sanctions or a blockade, or engaging in other hostile activities against the Hong Kong Special Administrative Region or the People's Republic of China...²

As the court makes clear, an offense under Article 29(4) consists merely of a request to a foreign entity to impose sanctions (or a blockade, or other “hostile activities”) against the HKSAR, or against the PRC itself. No foreign sanctions need be imposed in order for a crime under Article 29(4) to be committed.³ Those found guilty of violating Article 29(4) face a likely heavy sentence: prison terms range from three to ten years for less serious offences, and from ten years to life for offences of a “grave nature.”

This section proceeds in three parts. First, we look at criminalization of sanctions advocacy through a comparative lens: we look at the other jurisdictions that have enacted laws outlawing sanctions advocacy, and how these provisions have been used. Second, we discuss the rise of targeted sanctions as a response to human rights abuses, and their status in international law. And finally, we ask whether advocacy of targeted sanctions should be considered peaceful political speech that is protected under international human rights law, or whether it could be criminalized on national security grounds.

As a leading American academic center working on human rights and the rule of law in China and Hong Kong, GCAL has regularly criticized the Hong Kong government over its national security crackdown, now entering its seventh year. We have regularly documented cases in which the Hong Kong government has weaponized the NSL in order to punish individuals for their peaceful political activities, in violation of both the Basic Law and international human rights law. That goal — to document the ways in which the Hong Kong government has used the NSL as a tool of repression — remains at the core of our work.

While we believe that advocacy in favor of sanctions is a form of peaceful political speech that should be protected, nonetheless we do not take a position on sanctions as a foreign policy tool, or on the wisdom or effectiveness of sanctions as implemented against some Hong Kong and Mainland Chinese officials. The goal of our analysis is neither to vindicate nor condemn Lai's advocacy work, but instead to defend his right to peacefully engage in such advocacy.

2. SANCTIONS ADVOCACY: A NEW CRIME?

Notably, after the court refers to the language of Article 29(4), it then states that many other jurisdictions also have laws “safeguarding national security,” including the UK, Australia, and Canada.⁴ This reference to the laws of some constitutional democracies is disingenuous at best, intentionally misleading at worst. While it is true that virtually all states do have laws on the books that are meant to protect national

2. NSL, Article 29(4). This excerpt of Article 29(4) is the same as the one used by the Court itself in its verdict. See paragraph 44, p. 32.

3. Verdict, paragraph 59, pp. 41-2.

4. The verdict also refers to Singapore's Foreign Interference (Countermeasures) Act 2021. After the implementation of the NSL, Singapore now arguably has more space for free speech than Hong Kong. Nonetheless it too has significant limits on speech that is critical of the government.

security, it is not true that most other states specifically prohibit calls for sanctions against their own government or its officials.

In fact, it appears that Article 29(4) was a world-first: as far as the authors of this study have been able to determine, Article 29(4) is the first provision to explicitly criminalize sanctions advocacy. When Jimmy Lai was first arrested in 2020, no other government in the world had enacted a similar provision, making Lai and his co-defendants likely the first people ever to be arrested and charged with sanctions advocacy. Since the NSL's enactment, three other states have followed in Hong Kong's footsteps: Belarus, Russia, and Venezuela.

Belarus amended its Criminal Code in 2021, adding new national security provisions that expanded the government's authority to crack down on dissent. In particular, Article 361 prohibits "calls for restrictive measures (sanctions) and other actions aimed at harming the national security" of Belarus.⁵ Those who violate Article 361 can be sentenced to between three and ten years in prison. Interestingly, the government created a more severe punishment for online calls for sanctions, ranging from four to twelve years. The Belarussian government has put Article 361 to immediate regular use: since it went into effect in January 2022, at least 188 individuals have been convicted of the crime of sanctions advocacy, including 39 who were tried and convicted in absentia.⁶

There is an interesting parallel between the revisions to Belarus' Criminal Code and the Hong Kong NSL: both were passed in the wake of massive pro-democracy protests, and both were immediately deployed against both leading pro-democracy figures and rank-and-file activists.⁷

Russia amended its criminal code to explicitly criminalize sanctions advocacy in March 2022, just weeks after the invasion of Ukraine. Article 284.2 of the Criminal Code prohibits calls for the "introduction of Restrictive Measures (sanctions) against the Russian Federation, citizens of the Russian Federation, or Russian Legal Entities." Russia's Code of Administrative Offenses was similarly amended to create administrative liability for the same acts. Penalties range from fines to up to three years in prison.⁸

Here too, there are interesting parallels with Hong Kong. One leading exile Russian rights group noted that the "primary targets" of Article 284.2 are "Russian emigrants who advocate for international sanctions in foreign jurisdictions."⁹ Similarly, the Hong Kong government has used Article 29(4) as the basis to issue warrants against Hong Kong overseas activists who have pressed foreign governments to implement targeted sanctions against Hong Kong officials responsible for the implementation of the NSL.¹⁰

5. "The authorities are trying to make the very word 'sanctions' instill fear": at least 188 people were convicted in Belarus for calling for them," Viasna Human Rights Center press release, November 3, 2025. Other elements of Article 361 also mirror provisions of the NSL: Article 361(4), for example, prohibits "facilitating, promoting, or aiding and abetting extremist activity." If one substitutes the word "subversion" for "extremism," both equally broad and pliable terms, then the parallels between that provision and NSL Articles 22 and 23 become clear.

6. These figures are as of November 2025, according to the Belarussian human rights group Viasna. Viasna Human Rights Center press release, November 3, 2025.

7. For a perceptive analysis of the 2020 Belarussian protest movement, see Way and Tolvin, "Why the 2020 Belarussian Protests Failed to Oust Lukashenka," *Nationalities Papers* (2023), 51:4, pp. 787-802.

8. "Russia Criminalizes Independent War Reporting, Anti-War Protests," Human Rights Watch press release, March 7, 2022.

9. Margarita Kuchusheva et al., *The Price of Speech: Legislation and the Practice of Persecuting Anti-War Views in the Russian Federation*, The Anti-War Committee report, May 2026, p. 22. In 2026, the Russian government expanded the extraterritorial scope of the Code of Administrative Offenses provision related to sanctions advocacy, making it easier to apply administrative penalties — including asset seizure — against individuals based overseas who have engaged in sanctions advocacy. State Capture Accountability Project and International Partnership for Human Rights, "Briefing: Russian Transnational Repression," August 6, 2026.

10. Amy Hawkins and Daniel Hurst, "Hong Kong issues arrest warrants for eight overseas democracy activists," *The Guardian*, July 3, 2023.

Venezuela is the latest state to explicitly criminalize sanctions advocacy. In November 2024, the National Assembly passed the so-called Simon Bolivar Law, which prohibits the “promotion, request, or endorsement of the imposition of unilateral coercive measures and other restrictive or punitive measures by foreign states, powers, or corporations.”¹¹ The term “unilateral coercive measures” is a broader term, one that would include targeted sanctions against individual Venezuelan government officials, in response to human rights abuses.¹²

The law includes draconian penalties for those who engage in sanctions advocacy: such acts can be punished with prison terms of up to 30 years, as well as heavy fines. Other penalties — such as being barred from running for public office, and the forfeiture of assets — are also included in the law.

To be sure, there are important differences between Hong Kong and Belarus, Russia, and Venezuela. These three regimes are considered among the most brutal in the world, and their crackdowns on dissent far surpass what has been done in Hong Kong. Still, the uncomfortable parallels between Hong Kong’s use of Article 29(4) and the use of similar laws by deeply authoritarian states are a disturbing signal of Hong Kong’s turn away from liberal legality.

3. THE RISE OF TARGETED SANCTIONS: FROM IRAQ TO MAGNITSKY

The High Court fundamentally misunderstands what sanctions are, and the national security threat posed by their imposition. At one point, the court compared Lai’s sanctions advocacy to “the situation where an American national asks for help from Russia to bring down the US Government under the guise of helping the State of California.”¹³ In the verdict’s penultimate paragraph, the court stated that Lai’s sanctions advocacy, along with his seditious publications, “constituted a threat and harm to the national security in the PRC and the HKSAR.”¹⁴

Generally speaking, Lai called for the U.S. and other countries to impose what are called “targeted” sanctions against individual Chinese and Hong Kong officials, rather than what are sometimes called “comprehensive” sanctions, which generally target an entire country, and can have significant effects on the broader population. Targeted sanctions have been called “the precision-guided munitions of economic statecraft,” because the aim is to impact only those individuals who are specifically identified by the state, while “imposing minimal hardship on the mass public.”¹⁵ In general, targeted sanctions against named officials include three specific prongs: asset freezes, transaction prohibitions, and visa or entry bans.

Targeted sanctions emerged as an alternative to comprehensive sanctions, which came to be seen as essentially unworkable after a decade or so of use in the 1990s. This was in significant part because comprehensive sanctions had only a limited impact on state behavior, while imposing a heavy humanitarian toll on the civilian population of the targeted country. The Iraq case was particularly influential in shaping the debate: comprehensive sanctions imposed on the country in 1990 and 1991, in response first to its invasion of neighboring Kuwait, and then to curb its nuclear weapons program, resulted in a humanitarian catastrophe, with the death toll likely

11. For more on the Simon Bolivar law, see Acceso a la Justicia (Access to Justice), *When an act Transcribes Reality: Analysis of the Simon Bolivar Liberator Organic Act Against the Imperialist Blockade and in Defense of the Bolivarian Republic of Venezuela*, research report, December 2024.

12. For more on efforts to define the term “unilateral coercive measures” in relation to human rights, see “Thematic study of the Office of the United Nations High Commissioner for Human Rights on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures,” Human Rights Council, January 11, 2012, A/HRC/19/33. This report, and other studies like it, make clear that such measures should not target the civilian population at large. It therefore puts targeted sanctions in a separate category, distinct from other unilateral coercive measures that can affect civilian populations.

13. Verdict, paragraph 1799.

14. Verdict, paragraph 1810.

15. Daniel W. Drezner, “Sanctions Sometimes Smart: *Targeted Sanctions in Theory and Practice*,” *International Studies Review*, (2011) 13, 96.

in the hundreds of thousands.¹⁶ Women and children were among those most significantly affected, along with others who lacked tie

In the wake of the humanitarian devastation wrought by comprehensive sanctions in Iraq and elsewhere, the international community began to cast about for other possible tools to influence state behavior in more targeted ways. From this debate emerged a new toolkit, including arms embargoes, trade restrictions on specific goods, asset freezes against specific named individuals and companies, and travel restrictions on senior political leaders of the targeted country.¹⁷ With some important exceptions,¹⁸ the international community and individual states have generally turned away from comprehensive sanctions, and have instead increasingly pursued targeted sanctions as a key tool of economic statecraft.¹⁹

Targeted sanctions against individuals first emerged as a key response to human rights abuses in 2012, with the passage of the Magnitsky Act by the U.S. Congress. This law was followed just four years later with the passage of the Global Magnitsky Act in 2016. Passed in response to the death in detention of the Russian lawyer Sergei Magnitsky, both laws empower the President to impose economic sanctions on individual officials who have engaged in rights abuses or corruption, and to bar them from entry into the United States.²⁰ Other countries — including the UK, Canada, Australia, and the EU — have passed similar laws as well.

Magnitsky Act targeted sanctions against named individuals generally include three prongs: asset freezes, transaction prohibitions, and visa bans. Given the global reach of many U.S. companies, and the role of American banking firms in global economic and financial life, U.S. government-imposed targeted sanctions can have a particularly significant impact. Because major U.S. banks and companies run leading global financial and payment networks, for example, individuals subjected to sanctions can have their credit cards cancelled, can lose access to their own local banking services, and can find it almost impossible to book plane tickets or make hotel reservations online.²¹ When then-Hong Kong Chief Executive Carrie Lam was sanctioned by the U.S. government, for example, she complained about having to be paid her salary in cash, after losing access to regular banking services in Hong Kong.²²

These impacts are real, and have made it harder for Russian oligarchs, Burmese generals, and Serbian arms dealers, all sanctioned under the U.S. Global Magnitsky Act for involvement in human rights abuses or corruption, to benefit from their actions. Magnitsky sanctions also impose a measure of accountability on officials engaged in rights abuse or corruption when they are otherwise beyond the reach of justice.

16. Joy Gordon, *The Invisible War: The United States and the Iraq Sanctions*, Harvard University Press, 2010.

17. Joy Gordon, "Smart Sanctions Revisited," *Ethics and International Affairs*, Vol. 25, Fall 2011, p. 315.

18. Over the past twenty years, more narrowly-tailored country-level economic sanctions have been used to pressure regimes on key issues, such as Iran's nuclear program, or Russia's invasion of Ukraine. In these cases, the international community has used so-called "smart sanctions," which often squeeze particular sectors of the target country's economy, causing real pain but having a more measured impact on the broader civilian population. See Edward Fishman, "Even Smarter Sanctions," *Foreign Affairs*, November-December 2017.

19. One key exception is the longstanding U.S. embargo against Cuba. Since taking office in 2025, President Trump has ramped up U.S. economic pressure on Cuba, using the U.S. Navy to enforce a near-total blockade on energy imports into the country. For more on the U.S. embargo and its broader — essentially global — effectiveness, see Rob McLaughlin and Michael Schmitt, "The United States-Cuba Oil Embargo and International Law," *Just Security*, April 29, 2026.

20. Michael A. Weber, *The Global Magnitsky Human Rights Accountability Act*, Congressional Research Service Report, December 3, 2021.

21. The broad reach of U.S. sanctions means that it is imperative for the U.S. government to use these tools well; efforts by the Trump administration to deploy targeted sanctions — authorized under a different U.S. law — against several International Criminal Court judges, for example, was widely seen as a misuse of U.S. power. See Ashifa Kassam, "Credit cards cancelled, Google accounts closed: ICC judges on life under Trump sanctions," *The Guardian*, February 18, 2026.

22. "'Piles of cash at home': Hong Kong leader says US sanctions mean she has no bank account," *Agence France-Presse*, November 28, 2020.

But they cannot be meaningfully compared to the comprehensive sanctions that were imposed on countries like Iraq, or even the “smart sanctions” imposed on Iran or Russia in the 2000s and the 2010s. Their macroeconomic impact is virtually non-existent, and their impact on civilian populations is also more or less zero. Beijing may not like the fact that some Hong Kong citizens, including Jimmy Lai, called for the U.S. and other countries to impose targeted sanctions on senior government officials in the wake of the 2019 protest movement. But their advocacy did not and could not lead to any significant threat to China’s national or economic security. Over the past decade, targeted sanctions — both those imposed by the individual states and those imposed by the UN — have become an accepted tool, endorsed by key UN officials. In September 2025, for example, UN High Commissioner for Human Rights Volker Turk stated that “(t)argeted sanctions against individuals and companies... can be important tools in exerting pressure for peace, enhancing the protection of civilians, and protecting human rights.”²³

UN human rights officials have called for the deployment of targeted sanctions in several cases. In 2019, for example, the head of the UN Independent International Fact-Finding Mission on Myanmar called on both the UN Security Council and member states to impose targeted sanctions on companies run by the military, which has been implicated in serious human rights abuses.²⁴ In 2021, the UN Group of Eminent International and Regional Experts on Yemen called on the UNSC to impose sanctions on key individuals involved in serious international crimes related to the years-long conflict in that war-torn country.²⁵

As these and other examples suggest, targeted sanctions are increasingly seen as a legitimate tool, one that both the Security Council and member states have imposed in response to cases of serious violations of human rights, especially when other accountability mechanisms are lacking.²⁶ In Jimmy Lai’s case, the High Court failed to address the question of the growing acceptance of targeted sanctions, instead often mischaracterizing sanctions advocacy as tantamount to an effort to bring about anti-state violence, or even an effort to cause a military attack on one’s own home country by another state.

Instead, early in its verdict, the court explicitly rejected the relevance of international law scholarship and UN resolutions as a means of determining the meaning of key NSL Article 29(4) terms, including “sanctions,” “blockade,” and “hostile activities.” Instead, the court held that such terms should be “given their plain and ordinary meanings.”²⁷ That decision was a mistake, one that, intentionally or not, allowed the court to paint Lai’s sanctions advocacy as much more threatening to state interests, and to state security, than it actually was.

23. Volker Turk, “HC Turk addresses biennial panel on unilateral coercive measures and human rights,” remarks at biennial panel discussion, September 12, 2025. In that same speech, Turk condemned more broad-based sanctions that target an entire country’s economy, arguing that, in some cases, they can “pose serious risks to the enjoyment of human rights.”

24. “UN Independent International Fact-Finding Mission on Myanmar calls on UN Member States to remain vigilant in the face of the continued threat of genocide,” UN Human Rights Council press release, October 23, 2019.

25. “UN Group of Eminent International and Regional Experts on Yemen presents its fourth report to the Human Rights Council: A nation abandoned: A call to humanity to end Yemen’s suffering,” Office of the High Commissioner for Human Rights press release, September 14, 2021.

26. A state could, of course, embrace the legality of targeted sanctions when imposed by the UNSC, while questioning the legality of targeted sanctions imposed by individual states. The Lai verdict, however, ignores this distinction, and instead engages in a deeply distorted discussion of sanctions, one that has little grounding in the history of sanctions and their status in international and domestic law.

27. Verdict, paragraph 58(2).

Indeed, the Chinese government itself has embraced unilateral targeted sanctions, and has ramped up its use of this tool in recent years.²⁸ In 2018, for example, the Chinese government imposed sanctions on several individuals and entities involved with the EU's efforts to respond to the crisis in Xinjiang, including those who called for sanctions against Chinese officials in charge of the crackdown there.²⁹ Others in the U.S., Europe, and Canada were also sanctioned, both over their work on human rights in Xinjiang, and also over similar work related to Hong Kong and Taiwan. To be sure, China's move to sanction North American and European officials, parliamentarians, and experts over their rights advocacy work on China is illegitimate and wrong. But it is the *specific use* of those sanctions, to target those who have criticized China on human rights grounds, rather than the tool of targeted sanctions itself, that is the problem.

China has also voted at the UN Security Council in favor of targeted sanctions against individuals who have undermined peace and security in certain conflict zones, including those involved in serious human rights abuses.³⁰

As this short overview indicates, targeted sanctions have achieved a broad degree of acceptance and legitimacy under international law. China has supported the use of targeted sanctions by the international community, at least in some cases, and has increasingly used these tools itself in pursuit of its own foreign policy goals. With the passage of NSL Article 29(4), China has criminalized advocacy in favor of a legitimate and lawful tool. The Chinese government did this not because it believes the tool itself is illegitimate, but rather because it has been deployed against Chinese and Hong Kong government officials.

4. SANCTIONS ADVOCACY: PROTECTED POLITICAL SPEECH OR CRIMINAL ACT?

The question of whether sanctions advocacy is protected political speech turns on an analysis of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19 protects the right to freedom of expression, and also lays out permissible limitations that can be imposed by states, including those on the grounds of national security or public order. Though the right to free expression can be restricted on national security grounds, criminalization of targeted sanctions advocacy likely would not pass muster as a legitimate national security interest.

In its jurisprudence on Article 19, the UN Human Rights Committee (CCPR) has repeatedly reminded states that national security is not a blank check: reference to national security concerns cannot be used to crack down on peaceful criticism of government officials, state policy, or state structures. More broadly, pro-democratic advocacy or advocacy in favor of human rights generally cannot be censored or punished in the name of national security. Other key forms of expression — including pro-union advocacy and various forms of artistic expression — have also been held by the Human Rights Committee to be protected under Article 19, and not subject to the limited national security exception under Article 19(3).

In its analysis of restrictions on the right to free expression, the CCPR has put forward a multi-pronged test: the restriction must be provided by law, it must be in

28. China's longstanding antipathy toward sanctions is perhaps better seen as an antipathy toward sanctions imposed on *itself*, particularly those imposed on human rights grounds, rather than a principled stand against any use of sanctions as a means to shape the behavior of other states. It has long used the tools of economic statecraft, including sanctions, to achieve various foreign policy goals. For an excellent assessment of China's decades-long use of economic statecraft tools, including sanctions, see Blackwill and Harris, "Goeconomics in Chinese Foreign Policy," in *War by Other Means*, Harvard University Press, 2016, pp. 93-128.

29. Francesca Ghirelli, *How China Imposes Sanctions: A guide to the evolution of Beijing's New Policy Tool*, MERICS Report, June 2023.

30. See, e.g., U.N. Security Council Resolution 2140, February 26, 2014, on measures to bring peace and security to Yemen. In particular, Article 18(c) makes clear that targeted sanctions can be deployed against individuals engaged in rights abuses in Yemen.

service of national security (or the other legitimate state interests laid out in Article 19(3)), and it must be both necessary to achieve a legitimate state interest, and proportional to the state interest that is in play.³¹ According to the CCPR, states should also demonstrate “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”³²

Because only a handful of jurisdictions specifically bar sanctions advocacy, and because such advocacy is generally considered a constitutional right in most liberal jurisdictions, the CCPR has not yet issued an in-depth assessment of why sanctions advocacy is protected speech under ICCPR Article 19, or whether it can indeed be sanctioned on national security grounds, per Article 19(3). It has, however, clearly stated its view on the question. In 2022, for example, the CCPR stated that Russia should repeal articles in its Criminal Code that criminalized sanctions advocacy.³³

Because Lai’s conviction of the “crime” of sanctions advocacy is likely one of the first such convictions anywhere in the world, and because the High Court refrained from any significant free expression analysis, it is worth asking how this multi-pronged test would be applied to Lai’s advocacy for targeted sanctions against Hong Kong and PRC officials.

In Lai’s case, the restriction on sanctions advocacy is indeed provided for by law. That initial prong of the test is at least partially satisfied by the NSL. That said, the Human Rights Committee has made clear that national security laws must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly,” and that laws “must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.”³⁴

As with many of the key provisions of the NSL, Article 29(4) is deeply vague and overbroad, such that its terms can easily be applied to peaceful political activity.³⁵ It also makes use of several terms that are not generally a part of legal parlance in the common law tradition, such as “hostile activities.” Such terms can be stretched to cover all sorts of advocacy towards foreign governments. The court found that Lai’s advocacy of revocation of Hong Kong’s special status under U.S. law, for example, would be considered a “hostile activity,” even though it could not really be considered a form of direct sanctions advocacy.³⁶

The court also referred to Lai’s statements on Taiwan as yet another “hostile activity,” also covered by Article 29(4). In September 2020, for example, Lai called for stronger security ties between the U.S. and Taiwan, and referred approvingly to the U.S. “pivot to Asia.”³⁷ Even such general comments on security affairs are seemingly enough to run afoul of Article 29(4), which would mean that any number of leading

31. UN Human Rights Committee, General comment No. 34, CCPR/C/GC/34, July 2011, paragraph 22.

32. General comment No. 34, paragraph 35; *Shin v. Republic of Korea*.

33. UN Human Rights Committee, Concluding Observations on the 8th Periodic Report of the Russian Federation, CCPR/C/RUS/CO/8, December 1, 2022, paragraphs 29 and 29.

34. General comment No. 34, paragraph 25.

35. This point has also been made by both key UN human rights bodies and by scholars who have analyzed the content of the NSL. See, e.g., Working Group on Arbitrary Detention, Opinion No. 34/2024 concerning Mr. Lai Chee-ying, A/HRC/WGAD/2024/34, paragraph 104, September 26, 2024. For a scholarly critique of the vagueness of the NSL, with particular reference to NSL A29, see Han Zhu, *A Chinese Law Wedge into the Hong Kong Common Law System: A Legal Appraisal of the Hong Kong National Security Law*, 21 NW J. Hum. Rts. 43 (2023), p. 63.

36. Verdict, paragraph 1678.

37. Verdict, paragraph 1533.

international security experts would be in legal jeopardy if they were to travel to Hong Kong.³⁸

If the vague and overbroad terminology of Article 29(4) can be used to punish public advocacy of U.S.-Taiwan security cooperation, then it's possible that Article 29(4) could also cover advocacy of several policies related to geopolitics, geoeconomics, and global security that run counter to Beijing's own preferences. It's hard to conclude that Article 29(4) would therefore pass muster as sufficiently precise, such that individuals can regulate their conduct accordingly.

Next is the question of whether sanctions advocacy constitutes a legitimate security threat. The authors of this analysis would say no: by design, targeted sanctions do not harm government structures or civilian populations, and do not impact the day-to-day functioning of government. Their imposition may result in genuine hardship for the government officials so targeted, but their imposition, absent other moves by foreign governments, cannot be said to rise to the level of a genuine national security threat.³⁹ To the extent that there are harms imposed by targeted sanctions, those harms — again, such as they are in many cases — are borne by individual officials, and not by the state.⁴⁰

In Hong Kong's case, the level of the threat posed by targeted sanctions — or, more accurately, lack thereof — can be demonstrated by the fact that Hong Kong's government has continued to function normally, even after targeted sanctions were imposed by the U.S. government. The imposition of targeted sanctions also did not have an impact on Hong Kong's economy, or on the everyday lives of Hong Kong citizens.

That said, it is fair to say that the imposition of targeted sanctions against government officials does implicate a legitimate state *interest*: states do have an interest in whether their government officials are subjected to financial penalties, regardless of the level of actual harm imposed on the individual, and regardless of whether such sanctions impact a state's day-to-day operations. A state could argue, for example, that the risk of sanctions could impede recruitment and retention of senior officials. States could also argue that travel bans impact the ability of their officials to engage directly with their counterparts in the U.S. or elsewhere.

However valid these concerns may be, they do not rise to the level of a legitimate national security threat. State governance interests are not among the narrow exceptions listed in the text of Article 19 itself, and therefore cannot be used to justify a significant restriction on free expression, such as NSL Article 29(4).

Even if the Hong Kong government could make the case that sanctions advocacy poses a threat to national security, nonetheless the criminalization of sanctions advocacy would fail both the necessity and proportionality tests put forward by the CCPR.⁴¹ On proportionality, for example, criminalization of sanctions advocacy is not the least restrictive means available to respond to the challenges posed by sanctions advocacy. At the same time, a blanket ban on sanctions advocacy, without any

38. For just a few of several examples of expert analyses that make points somewhat similar to those by Lai that are quoted in the opinion, see Richard C. Bush, "Why does the US security partnership with Taiwan matter?" *Brookings Commentary*, September 16, 2024; Bonnie S. Glaser, Senate Foreign Relations Testimony, November 20, 2025; Gordon and Hass, "Nobody Lost Taiwan," *Foreign Affairs*, September 22, 2025; Haass and Sacks, "American Support for Taiwan Must Be Unambiguous," *Foreign Affairs*, September 2, 2020.

39. An assessment of advocacy of comprehensive sanctions is beyond the scope of this paper; in any case, the authors would make a distinction between advocacy of such sanctions by an individual and their actual application, either by a single state, or by the international community through the UNSC.

40. Clooney and Neuberger, *Freedom of Speech in International Law*, Oxford University Press, 2024, pp. 320-1.

41. For an excellent assessment of the application of these core principles to the NSL in general, see Yan-ho Lai, "Judicial Independence and the Rule of Law in NSL-Era Hong Kong," in Ortmann et al., eds., *Hong Kong After the National Security Law*, Routledge, 2025, pp. 44-6.

meaningful limiting language or exceptions, “constitutes a disproportionate interference in the rights of individuals.”⁴²

The authors of this study also question whether that the connection between the NSL Article 29(4) prohibition — that of sanctions advocacy — and the alleged national security threat — that of the imposition of sanctions by a foreign government — is sufficiently robust. There is no doubt that Lai is a prominent pro-democracy advocate, and that his views were taken seriously by policymakers in Washington, DC, and elsewhere. Still, Lai’s voice was one among many, and it would be a gross exaggeration to draw a straight line from his advocacy to the imposition of targeted sanctions on a limited number of Hong Kong government officials after the NSL went into effect. In other words, the Hong Kong government punished Lai over actions taken by the U.S. government, actions that Washington likely would have taken even if Lai had chosen to stay silent.

The UN Human Rights Committee has yet to weigh in with a full analysis of the general question of sanctions advocacy and free expression, an oversight that the authors of this study believe should be remedied. That said, several UN human rights bodies and experts have followed Lai’s case closely, and have issued strong statements condemning the handling of his case. In August 2024, for example, the UN Working Group on Arbitrary Detention issued an opinion on the various cases that had been lodged against Lai, including the national security case that is the subject of this analysis. The WGAD found that Lai’s detention, and the NSL and sedition charges against him, constituted a violation of his Article 19 right to free expression. In specific, it referred to Lai’s sanctions advocacy as “discussions about accountability for human rights violations allegedly committed by the authorities,” and concluded that the Hong Kong government’s effort to criminally sanction such discussions constituted a “clear violation of article 19 of the Covenant.”⁴³ The Working Group ended its analysis by calling for Lai’s immediate and unconditional release.

After Lai’s conviction, UN High Commissioner for Human Rights Volker Turk condemned the verdict, expressing concern that Lai had been convicted and sentenced merely for exercising his right to free expression.⁴⁴

There is no doubt that Lai’s conviction under Article 29(4) of the NSL for sanctions advocacy is a violation of his right to free expression under ICCPR Article 19. The High Court’s verdict represents a grim milestone in the history of the fight for free expression. Lai is one of the first individuals ever to be convicted of a crime, merely for his advocacy of targeted sanctions. The authors fear his case will serve as a grim precedent: Lai may have been among the first to be imprisoned for the “crime” of sanctions advocacy, but he won’t be the last, either in Hong Kong, or elsewhere in the world.

42. For more discussion of the application of the necessity and proportionality principles to national security laws, and to the NSL in particular, see UN Special Rapporteurs, Letter to the PRC on the Hong Kong National Security Law, 1 September 2020, OL CHN 17/2020; the reference to the proportionality test is found on p. 10.

43. Opinion No. 34/2024, August 2024, paragraph 64. In the next paragraph, the WGAD makes clear that Lai’s detention cannot be justified on national security grounds, in line with Article 19(3) of the Covenant.

44. “Hong Kong SAR: Turk urges release of Jimmy Lai following imposition of 20-year sentence,” Office of the High Commissioner for Human Rights press release, February 9, 2026.

III. CRIMINALIZING SANCTIONS ADVOCACY IN PRACTICE: LAI'S ACTIONS AND THE COURT'S ANALYSIS



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What did Lai say and do, both prior to July 1, 2020, and after the NSL went into effect? What statements and actions were found by the court to be criminal?

In this section, we try to explicate the court's verdict, in part as a means to demystify it: at a forbidding 850-plus pages, the court's verdict will go unread by all but the most determined readers. This section attempts to highlight Lai's specific statements and actions, in order to allow the reader to judge for him or herself whether they are a threat to Hong Kong and China's national security, or whether — as we argue below — they tell a very different story.

Much of the court's verdict reviews Lai's statements and actions prior to July 1, 2020, before the NSL went into effect.⁴⁵ It does so in order to document what it calls the formation of a criminal conspiracy, one that — according to the court at least — continued after the NSL went into effect. Our own review of Lai's statements and actions prior to July 1, 2020, as documented in the court's own verdict, paints a different picture, one of a committed pro-democracy advocate who sought to bridge emerging splits in the movement.

Even more importantly, our review of Lai's statements and actions after the NSL went into effect show that Lai did not actually explicitly advocate for sanctions against Hong Kong or Mainland officials. He came close to that line, but he didn't cross it.

Overall, what's notable about the court's exhaustive review of Lai's public statements and private correspondence is the complete absence of anything resembling a smoking gun. The court finds no evidence of a criminal conspiracy as it would be defined in other, rights-respecting jurisdictions, or any statements of support for unlawful action of any kind, including support for acts of political violence. Both the prosecution and the court waded through a mountain of evidence, including hundreds of text messages, emails, videos, and media articles by and about Jimmy Lai. They found, in essence, nothing.

1. JIMMY LAI'S GLOBAL HUMAN RIGHTS CAMPAIGN: SANCTIONS ADVOCACY IN HONG KONG AND WASHINGTON

Prior to July 1, 2020, Jimmy Lai spoke out in favor of targeted sanctions against Hong Kong and Mainland Chinese officials. He did this in order to put pressure on both governments to change course on the pro-democracy protest movement. On May 27, 2020, for example, Lai tweeted that then-president Donald Trump should impose sanctions on Chinese government officials. "The most effective sanction you can impose is to freeze Chinese officials' bank account in US. Expose how corrupted they are," Lai wrote.⁴⁶

Lai also publicly praised legislative moves by the U.S. Congress to bolster the authority of the U.S. government to impose targeted sanctions against Hong Kong officials involved in rights abuses in Hong Kong. Just days after the passage of the Hong Kong Autonomy Act in June 2020, for example, Lai took to Twitter to praise the new law: "This Bill is what #HK urgently needed to boost the morale of the resistance movement."⁴⁷

Lai also called for limits on technology transfers to China prior to July 1, 2020. On May 26th, 2020, for example, Lai stated in a television interview that the U.S. should "stop sending technology product (sic) to China," as a means to press China on

45. One leading Hong Kong legal scholar estimates that perhaps as much as 70% of the judgment covers events and actions that took place before the NSL went into effect. Green Bean Media, "Special Feature on the Jimmy Lai Case: Sebastien Lai Responds to the Verdict, Johannes Chan Analyzes the Judgment," December 15, 2025 (in Chinese).

46. Verdict, paragraph 1666, p. 780-1.

47. Verdict, paragraph 392, p. 216.

human rights.⁴⁸ The next day, Lai repeated the point, tweeting that “(n)ations should stop exporting technology.”⁴⁹ Both before and after the NSL went into effect, Lai also stated that the U.S. should link human rights concerns with trade in then-ongoing negotiations with Beijing over U.S.-China trade ties.⁵⁰

In its verdict, the High Court divides its discussion of Lai’s sanctions advocacy into two categories: Lai’s own public commentary and advocacy work, including the work carried out by U.S.-based lobbyists on his behalf; and Lai’s contacts with other international advocates, including Andy Li, Chan Tsz-wah (known as “Wayland”), and Finn Lau, a founder of the UK-based group Stand With Hong Kong.

Lai’s own commentary and advocacy is generally covered in Chapter 16 of the verdict, entitled “D1’s activities and conduct.” As with many of the verdict’s 29 chapters, Chapter 6 is a long recitation of Lai’s private correspondence, mostly conducted over WhatsApp and email, and his public comments, often made on Twitter (now known as X). That correspondence shows that Lai engaged intensively with key players in Washington, DC, between mid-2019 and June 2020, prior to the enactment of the NSL. Lai also visited the U.S. twice in 2019, in July and October, and made visits to Canada and the UK as well. During his visits to Washington, Lai met directly with senior U.S. government officials and members of Congress, and urged them to support the people of Hong Kong in their push for democratic reform.

The court’s verdict sheds light on the Lai’s direct engagement with the U.S. lobbyists he hired, and their work on then-pending legislation, including the November 2019 Hong Kong Human Rights and Democracy Act and the June 2020 Hong Kong Autonomy Act. Lai was also regularly briefed on political developments in Washington by his employee Mark Simon, who met regularly with key players, both inside and outside government.⁵¹

Much of the court’s analysis of Lai’s advocacy efforts focuses on the question of whether Lai advocated for sanctions during these meetings, and whether the lobbyists he had hired did so. Since all of this activity took place prior to the implementation of the NSL, such advocacy could not be considered a crime. Still, Lai supported the passage of both the HKHRDA and the HKAA, both directly during his meetings with U.S. government officials, and indirectly through the lobbying efforts that he financially supported. The record is less clear as to whether Lai advocated the imposition of sanctions on specific individual Hong Kong and PRC officials prior to July 1, 2020, although the court was able to point to a single *Apple Daily* news story to that effect.⁵²

Though it is impossible to know what Lai said in closed-door meetings in Washington and elsewhere, the account put forward in the verdict suggests that Lai saw the goal of U.S. legislation as threatening sanctions that would, in turn, pressure the Hong Kong government to come to the negotiating table, perhaps without actually being used to sanction Hong Kong officials.⁵³ Rightly or wrongly, Hong Kong’s role as a conduit for international investment into China was seen by many — Lai apparently included — as a means to put pressure on the central government.⁵⁴

48. Verdict, paragraph 638, p. 341.

49. Verdict, paragraph 1464, p. 698.

50. See, e.g., verdict, paragraph 636, p. 340, for comments to this effect made by Lai in August 2019. Lai made similar comments in December 2020; see verdict, paragraph 643, p. 343. For the sake of brevity, our analysis in this report focuses on Lai’s calls for sanctions, but the same analysis would also generally apply to Lai’s calls for limits on technology transfers to China, calls for linking human rights and trade, and his private comments on Hong Kong’s special status under U.S. law.

51. See, e.g., verdict, paragraph 556, p. 303.

52. Verdict, paragraph 1615, p. 760. According to the court, Lai acknowledged the veracity of the *Apple Daily* story during cross-examination at trial.

53. This thinking was common among many pro-democracy activists at the time. See, e.g., Ching Kwan Lee, *Forever Hong Kong*, p. 252.

54. Francis L.F. Lee, “Proactive internationalization and diaspora mobilization in a networked movement: the case of Hong Kong’s Anti-Extradition Bill protests,” *Social Movement Studies*, 2023, Vol. 22, No. 2, 232-49, p. 237.

The court also devotes extensive attention to Lai's contacts with younger advocates, including Andy Li, Chan Tsz-wah ("Wayland"), and Finn Lau. Lai was kept apprised of their international advocacy work, which included advocacy in favor of targeted sanctions against Hong Kong government officials.⁵⁵

According to Wayland's testimony, Lai discussed sanctions with both Wayland himself and with Finn Lau during a meeting at Lai's villa outside Taipei in January 2020. Lai denies having discussed the topic of sanctions with the two men during the meeting. He testified that he was instead interested in discussing with Lau his coalition-building idea, and his effort to push forward with a coalition-based approach to then-pending Legislative Council elections.⁵⁶ Lai apparently wanted Lau to become a candidate for a LegCo seat, but Lau refused, seeing himself as a behind-the-scenes worker rather than a politician who was in the arena.

Wayland also claims that Lai also discussed his efforts at coalition-building as part of a broader plan to achieve a "China implosion," which Wayland believed meant "the collapse of the economy and the political regime."⁵⁷ Lai denied making any such comments, referring to such notions as "impossible," and deriding the suggestion that targeted sanctions could lead to regime collapse as "ridiculous."⁵⁸

Wayland's claim that Lai was working toward a "China implosion" is highly implausible. Lai discussed his political vision for Hong Kong extensively, both in public and among close associates in private, including on text messaging apps whose content is regularly cited by the court. Indeed, for all of its many flaws, the verdict does provide a well-documented account of Lai's thinking on Hong Kong's reform path, and it simply does not include plans for regime change within China. It's worth noting that Wayland's claims are not supported by any contemporaneous documentation: over the course of an 855-page opinion, the court refers to Lai advancing such a theory just once, solely on the basis of testimony proffered by a single government witness. Wayland's claims also find no support in journalistic accounts of the meeting published prior to the court's verdict.⁵⁹ While such statements, on their own, are protected political speech, it nonetheless seems unlikely that Lai adopted such a line in that single conversation with two much younger men, one of whom he was meeting for the first time. And in any case, Wayland does not claim that Lai put forward a course of unlawful or violent actions that he and others would take to bring about a change of regime.

To be sure, the "China implosion" theory was making the rounds in Hong Kong in 2019.⁶⁰ It's certainly possible that the CCP's grip on power, and its long-term trajectory, were discussed. Lai would not be alone if he expressed doubts about the Party's political legitimacy, or its long-term prospects, during that meeting. Such matters are the subject of public and expert political debate and discussion across China and Hong Kong, and in expert circles in the West.⁶¹ But they are decidedly different from Wayland's testimony, which suggests that Lai was himself taking action to achieve a "China implosion." This notion seems highly doubtful at best, and willfully misrepresentative at worst.

55. Verdict, paragraphs 950-1.

56. Verdict, paragraph 1330, p. 647-8.

57. Verdict, paragraph 922, pp. 466-7.

58. Liam Scott, "Pro-democracy publisher Jimmy Lai tells court overthrowing CCP 'impossible,'" *Voice of America*, November 28, 2024.

59. Shibani Mahtani and Timothy McLaughlin, *Among the Braves: Hope, Struggle, and Exile in the Battle for Hong Kong and the Future of Global Democracy*, Hachette Books, 2023, pp. 226-7.

60. Regina Ip, "Hong Kong is not, and has never been, a 'stateless nation,'" *South China Morning Post*, November 10, 2019.

61. For two recent assessments of the Party's political standing and its long-term prospects, see Xu Chenggang, *Institutional Genes*, Cambridge University Press, 2025, and Minxin Pei, *The Broken China Dream*, Princeton University Press, 2025.

2. LAI'S 2019 ADVOCACY AND ACTIVISM: AN ALTERNATIVE READING?

Lai's statements and actions in favor of targeted sanctions, and in favor of new U.S. laws, were found by the court to be core elements of what became, after July 1, 2020, a criminal conspiracy. At the very least, the court's verdict does document the fact that Lai believed that pressure from the United States government and other governments could influence both the Chinese government and officials in Hong Kong, perhaps convincing them to change course on Hong Kong's pro-democracy movement and its core demands.

But there is also another, perhaps inadvertent, portrait of Lai that emerges on the pages of the verdict: that of a peaceful pro-democracy advocate, seeking to persuade younger activists to eschew violent tactics, and to embrace even the limited form of democracy that was on offer in Hong Kong in 2019.⁶²

As the verdict makes clear, Lai was deeply dismayed by the rise of violent acts by members of the so-called "Valiant" camp. By the fall of 2019, Lai was clearly looking for ways to connect with younger protesters, in part in order to persuade them not to embrace violent tactics, which he clearly believed would be counter-productive. Lai's efforts on this front led him to connect with Wayland: the two men met for the first time in October, just before Lai's then-pending visit to the U.S. According to the court verdict, the primary topic of conversation during that initial lunch meeting was Lai's concern over acts of violence or property destruction by the Valiants. Lai was deeply concerned that acts of violence would paint the entire movement in a negative light, potentially costing it much-needed international support.⁶³ Lai apparently believed that Wayland could help him establish contact with the Valiant camp, and could be part of a coalition-building dialogue in which the Valiants were convinced to de-escalate their tactics for the greater good of the movement.⁶⁴

Here we see Lai not as a conspiracist engaged in unlawful anti-government activity, but rather as an advocate for peaceful protest, a would-be coalition-builder, and a movement strategist. Lai was by no means alone in his concerns that acts of violence by a small number of protesters was hurting the cause. Conversations over movement tactics and strategy dominated the political conversation in Hong Kong in the summer and fall of 2019, with many older activists trying to find ways to start a dialogue with younger protesters, some of whom embraced violence and property destruction in response to serious and escalating police violence and abuse. Motivated no doubt by a mix of pragmatism and moral conviction, Lai tried to build direct ties with protesters who had all but given up on formal politics. He wanted to convince them that peaceful protest and political activism and engagement could in fact work.

The landslide victory by the pan-democratic camp in the November 2019 district council elections deepened Lai's conviction that formal politics could in fact deliver results. According to Wayland, during a follow-up meeting between the two men just days after the election, Lai put forward a coalition-based vision, one that combined peaceful street protests with electoral politics and international pressure.⁶⁵ In order to work, however, street protests had to be non-violent, and had to reinforce international advocacy and success at the ballot box. Lai further enunciated this vision in a piece for *Apple Daily* on December 22, 2019, arguing that young people would regain hope in the wake of electoral wins, which in turn would reduce the perceived need for "extreme" actions.

62. Verdict, paragraph 552, p. 301.

63. Verdict, paragraph 867, p. 16. One of the co-authors of this study made a similar argument at the time, emphasizing both the strategic and moral elements of non-violent political resistance. See Thomas Kellogg, "Violence by Hong Kong Protesters Won't Advance Their Cause," *ChinaFile*, November 14, 2019.

64. Verdict, paragraphs 864-6, pp. 442-3.

65. Verdict, paragraph 886, p. 451.

If anything, the Hong Kong government should have welcomed Lai's efforts to find ways to de-escalate the violence by a small number of protesters. Instead, Lai remained at the top of the government's enemies list. Far from being praiseworthy, his outreach efforts to younger activists was seen by the Hong Kong government as evidence of criminal activity once the NSL went into effect.

It is noteworthy that the verdict itself, which at times uses overtly political language to condemn Lai, also includes this hitherto unseen documentation of Lai's efforts to forge a broad pro-democracy coalition.⁶⁶ His hope was that a truly broad coalition could both reject political violence and be strong enough to resist the enormous pressure that both Hong Kong government and Beijing were bringing to bear, even before the implementation of the NSL in July 2020. Sadly, his efforts were overtaken by events, and may have been — unbeknownst to him — tragically moot even in real time. As subsequent scholarship has shown, the Party leadership decided to move forward with drafting the National Security Law as early as the summer of 2019, months before the historic election landslide victory for the pan-democratic camp that electrified Hong Kong and reinforced Lai's own faith in the power of the ballot box.⁶⁷

3. LAI'S ACTIVISM AND STATEMENTS AFTER JULY 1, 2020: THE POST-NSL CHILLING EFFECT

One of the few positive things that can be said about the NSL is that it does explicitly bar application of the law with retrospective effect.⁶⁸ This meant that Lai could not be charged with an NSL crime over actions taken or statements made related to sanctions prior to July 1, 2020. The government was under extreme pressure to arrest and prosecute Lai, making his statements and actions after that date particularly crucial.

And yet, even despite the law's explicit reference to the principle of non-retroactivity, the court's analysis of Lai's activism and statements after July 1, 2020 is incredibly weak. As the court itself acknowledged, Lai was aware of the threat — to himself and to his colleagues — posed by the NSL. Once the NSL went into effect, many in Hong Kong believed that Lai would be a chief target: he had been a thorn in the side of the Chinese government for years, protected by the very legal system and constitution that the NSL was put into place to undermine. That constitutional shield, in place since 1997, finally came down in July 2020.

Lai adjusted his approach accordingly. He stopped advocating for sanctions. Instead, he issued more general calls to the international community to support Hong Kong's pro-democracy movement, and to keep paying attention to Hong Kong during its hour of greatest need. Even with the extremely vague and overbroad Article 29(4) now on the books, Lai managed to avoid crossing that highly politicized line.

Thanks to the court verdict, we now know that Lai could see that he was going to be targeted by the new law: on the very day that the NSL was publicly announced, Lai texted Wayland quite bluntly, "Goddam, (it) is coming to get us!"⁶⁹ In his court testimony, Wayland noted that, at that time, "many people were saying that the purpose of setting up the NSL was to target" Lai.⁷⁰

The new law's chilling effect, on both Lai and the entire city of Hong Kong, was sweeping and instantaneous. The court reproduces conversations between Lai and

66. At the outset of the verdict, for example, the court referred to Lai as having "anti-China" sentiments. This is but one of several times in the course of the decision that such overtly political language was used, both in relation to Lai himself, and in relation to the 2019 pro-democracy movement.

67. Minxin Pei, "Investigation of a Death Long Feared: How China Decided to Impose its National Security Law in Hong Kong," *China Leadership Monitor*, Fall 2020, Iss. 65, September 1, 2020.

68. NSL Article 39.

69. Verdict, paragraph 955, p. 481.

70. Verdict, paragraph 956.

his colleagues, in which Lai states that the law should be handled with care. Soon after the NSL went into effect, for example, Lai told top editor Chan Pui-man that “we should think out a good strategy to deal with it (sic), and (we) should not be reckless.”⁷¹

Lai’s discussion of the NSL in the days after its implementation makes for painful reading: the reader can see him grappling with a new law that clearly targets him, and can even see him taking steps to distance himself from friends and colleagues based overseas.⁷² Yet it’s also clear that there was nothing that Lai could have done at that point to save himself. His criminal conviction was a nearly pre-ordained outcome, as was the lengthy sentence that was imposed a few weeks after his conviction.

Still, Lai tried. He tried to keep fighting, and to rally others by the force of his example, while staying beyond the reach of the NSL’s breathtakingly broad criminal provisions. He trimmed his sails, dropping his explicit advocacy for sanctions. Instead, he made vague calls for international solidarity and support. Interestingly, even the court itself notes Lai’s shift, writing that, “from 1 July 2020 onwards, [Lai] personally ceased to make any direct or explicit requests for sanctions.”⁷³ Instead, according to the court, he pursued the same goal — of sanctions — by a “more indirect and subtle strategy and by toning down his rhetoric.”⁷⁴

What did this “more indirect and subtle strategy” entail? On July 15, 2020, for example, Lai wrote on Twitter that “it is more important than ever for the world to voice out and to take actions to defend against suppressions of freedom by the CCP.”⁷⁵ This statement, with its call for unspecified “actions,” is representative. Repeatedly in the weeks after the NSL went into effect, Lai called on the international community to take action, and to continue to pay attention to Hong Kong. The court’s claim is that the meaning behind Lai’s calls for action is all too clear: if Lai called for sanctions prior to July 1, 2020, then clearly his calls for unspecified actions after the NSL went into effect must be interpreted in light of his prior statements.

The problem with this breathtakingly broad approach is obvious. It criminalizes not only direct calls for sanctions, but also more general comments that, in the view of the court, could be interpreted as indirectly referring to such actions. Rather than using common law interpretative tools to limit the already broad scope of NSL Article 29(4), instead the court chose to broaden the text of the law even further, to include vague and indirect comments like Lai’s.

What about Lai’s advocacy towards foreign governments? In general, Lai was circumspect on that front. His direct meetings with U.S. officials took place behind closed doors, and their content was generally not relayed over private chats. That said, the court did manage to cite to one specific example of Lai speaking privately in favor of U.S. government action that, arguably, goes against Hong Kong’s economic interests. On July 15, 2020, in response to a query from Mark Simon on behalf of a state department official, Lai stated that he did in fact favor the revocation of Hong Kong’s special status in U.S. law.⁷⁶ In the eyes of the court, this constituted “making a request for SBHA on China from the US administration.”

Again, such statements should be considered peaceful political speech. Putting constitutional and international human rights protections for free expression aside, as the court has done, does Lai’s statement in favor of revocation of Hong Kong’s

71. Verdict, paragraph 604, p. 327.

72. Verdict, paragraph 608.

73. Verdict, paragraph 1764, p. 827.

74. Verdict, paragraph 1767, p. 828-9.

75. Verdict, paragraph 1670, p. 783.

76. The Hong Kong Policy Act of 1992 enshrined into law Hong Kong’s status as a separate jurisdiction from Mainland China.

special status indeed constitute a violation of NSL A29(4)? One can make a strong case that it does not: the revocation of Hong Kong's special status under U.S. law is not a form of sanctions or a blockade. Instead, it merely means that Hong Kong will be treated as a part of China, for the purposes of U.S. law. The court holds that this action is a "hostile activity" under Article 29(4), but this reading is deeply strained: the U.S. has the sovereign right to define Hong Kong's legal status *vis à vis* China under U.S. law as it sees fit, and its change of status is an exercise of that right. The court could have adopted a more limited definition of "hostile activity," but it instead embraced the government's expansive definition, one that apparently includes advocacy in favor of any foreign government policies that the Hong Kong or Chinese government doesn't like.

There is another reason why the court could have found that Lai's response to Mark Simon's query did not violate the NSL. Under Article 29(4), it is a crime to "request" that a foreign country "impose sanctions or blockade, or engage in other hostile activities against the HKSAR or the PRC." Simon's query was dated July 15, 2020, the day *after* then-President Trump issued an Executive Order revoking Hong Kong's special status under U.S. law, and Lai's response came after that. In other words, Lai was commenting on an action already taken, and not requesting or advocating for it: one cannot "request" something that has already been done.⁷⁷

In sum, the High Court had a fact-based pathway to find Lai not guilty, but it declined to take it. The court was under extreme political pressure, and its handling of Lai's case was being watched closely, both by the Hong Kong government and by Beijing. The court almost certainly knew that finding Lai not guilty of advocating sanctions would create a political firestorm, one that would blow back on the court itself, and perhaps also the judicial system as a whole.⁷⁸ It therefore delivered the almost pre-ordained reading of Article 29(4) and the factual record, and found Lai guilty.

The shortcomings in the court's fact-based analysis of the NSL charge against Lai are all the more significant, given that it largely declined to engage in any human rights-based constitutional analysis. Over the course of more than 850 pages, the High Court refrained from any serious constitutional rights analysis of the NSL charges against Lai. There is no mention of Basic Law Article 27 anywhere in the verdict,⁷⁹ nor is there any discussion of Articles 4 and 5 of the NSL, which refer to the core constitutional rights protections found in the Basic Law.

The court may have felt bound by precedent on this front: in 2021, the Court of Final Appeal held that the courts could not engage in judicial review of legislative acts of the NPCSC — which would of course include the NSL itself — "on the basis of any alleged incompatibility with the Basic Law or the ICCPR as applied to Hong Kong."⁸⁰ Other prior cases have also established limits on the role of the courts in applying

77. This argument about the meaning and scope of Article 29(4) was made by two Hong Kong scholars in the context of the application of the law to the banking sector, but — presumably, at least — the same logic should apply to Lai. Chen and Young, "Liability for Imposing Sanctions under Hong Kong's National Security Law," 50 Hong Kong L.J. 353 (2020). The authors argue persuasively that financial institutions are not liable under Article 29(4) for compliance measures related to sanctions that are already in place; similarly, Lai could not be said to be advocating for sanctions, in violation of A29(4), if he is commenting on measures that are already in place.

78. The courts have already had to deal with critical and even hostile reactions from the Hong Kong government and Beijing over a limited number of procedural rulings that went against state preferences. In most of these cases, either the Hong Kong government or Beijing have taken steps to functionally subvert or overturn these rulings. See Johannes Chan, "Hong Kong's National Security Law Turns Three," USALI Perspectives, Vol. 3, No. 25 (2023).

79. Article 27 of the Basic Law protects the right to free expression, among other key rights. Also of relevance is Article 39 of the BL, which links the ICCPR to the interpretation of key BL rights provisions.

80. *HKSAR v. Lai Chee Ying*, [2021] HKCFA 3, paragraph 37. The court repeats the point in its final summary, at paragraph 70(a). The CFA does state at paragraph 70(c) that NSL Article 42(2) — the subject of that case — should be read in tandem with NSL Articles 4 and 5, although that interpretative approach has not yet been employed by the courts, including the CFA itself. Presumably this same interpretative approach would also apply to other NSL provisions.

constitutional human rights protections in national security cases. And yet, at the same time, Articles 4 and 5 of the NSL provide a potential avenue to read key NSL provisions, including Article 29(4), in ways that harmonize the two documents, rather than allowing one — the NSL — to functionally dominate the other.⁸¹

The High Court's failure to even address the free expression concerns raised by Article 29(4)'s application to the facts of this case is incredibly glaring, and deeply undercuts the credibility of the judiciary's claim to be the guarantor of constitutional rights in Hong Kong. While there are real political limits on what the courts can do in national security cases, the authors of this report believe that NSL Articles 4 and 5 provide at least one avenue for exploring the application of NSL criminal provisions "in accordance with the standards of the Basic Law," one that should be used by other courts in future national security cases.⁸²

81. Green Bean Media, "Special Feature on the Jimmy Lai Case: Sebastien Lai Responds to the Verdict, Johannes Chan Analyzes the Judgment," December 15, 2025. Chan called the court's failure to address the human rights concerns present in the case "astonishing." Other prominent Hong Kong scholars have also called for the active use of Articles 4 and 5 by the courts. See Fu and Hor, "Introduction: Re-balancing Freedom and Security in Post-NSL Hong Kong," in Fu and Hor, *The National Security Law of Hong Kong: Restoration and Transformation*, HKU Press, 2022, p. 13.

82. Fu Hualing, "Hualing Fu on the Relationship Between Hong Kong's Basic Law and the National Security Law," HKU Law Research Blog, August 12, 2020. There are other avenues available as well. Prominent legal scholar Po Jen Yap, for example, suggests using the concept of remedial interpretation in national security cases, "so that the law's operative scope is read down and additional safeguards are judicially inserted into the legislation." Yap, "Judging Hong Kong's National Security Law," in Fu and Hor, *The National Security Law of Hong Kong: Restoration and Transformation*, HKU Press, 2022, p. 151.

IV. SEDITION: DECADES-OLD TOOL, NEW TARGETS



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Jimmy Lai and his co-defendants were also charged with conspiracy to publish seditious publications, a colonial-era crime that had long lain dormant in Hong Kong law, but that was resurrected in the wake of the 2019 protest movement.

Sedition is defined in the law in part as the use of speech or publication to “bring into hatred or contempt or excite disaffection against [the SAR government],” or to “incite persons to violence,” or to “counsel disobedience to the law or any unlawful order.” There are some statutory defenses, including for speech or publication that attempts to “point out errors or defects in the government or constitution of Hong Kong.... With a view to remedying of such errors or defects.”⁸³

As even a facial reading of the law makes clear, the crime of sedition is inherently political: it is designed to punish speech that is critical of the government. Much political writing is in fact geared towards “exciting disaffection” among readers for the government, and convincing the audience that the government itself is unjust or even illegitimate. Governments can use sedition laws to crack down on speech that is particularly caustic and highly critical, or that touches on particularly sensitive subjects. Or they can take advantage of the incredibly vague and subjective nature of the crime to punish even political speech that is not particularly severe in its tone, but that still crosses the government’s red lines. Since 2020, the Hong Kong government has done all of these things, casting a wide net to punish a wide range of speech.

To the extent that there is a narrow sliver of the law that would pass muster in rights-respecting jurisdictions today, it is the prong that criminalizes incitement to violence. Under international human rights law and comparative best practice, direct incitement to violence can be subject to criminal sanction, but usually only in cases in which the incitement is “all of these things intended to excite violence, and likely to have that immediate effect.”⁸⁴

The sedition charge against Lai was likely included, at least in part, as a partial insurance policy: when Lai was first charged with sanctions advocacy in December 2020, the NSL was less than six months old. As noted above, after the NSL went into effect, Lai tried to be more careful about sanctions advocacy, and to avoid committing a sanctions advocacy offense. By including sedition charges, the government could draw upon Lai’s statements and writings both before and after July 1, 2020, as well as everything that had been published by *Apple Daily* both before and after that date.

After Lai’s trial began, the Hong Kong government revised the crime of sedition, as part of its package of so-called Article 23 national security law reforms in 2024.⁸⁵ Incredibly, the already vague and overbroad law was further expanded, to explicitly cover — and criminalize — criticism of the Hong Kong legislature and the courts, as well as the central government in Beijing. Because Lai was charged prior to the passage of the Safeguarding National Security Ordinance, he was tried under the pre-existing colonial-era sedition provision.

83. The full text of the relevant provisions is laid out in the verdict, paragraphs 64-5, pp. 43-5.

84. This more stringent test was first laid out in the U.S. context in *Brandenburg v. Ohio*, 395 U.S. 444 (1969). It is also encapsulated in Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression, and Access to Information, a key “soft law” source of guidance that augments more formal sources of international human rights law.

85. For more on the government’s legislative proposals, see Georgetown Center for Asian Law, *Submission on Hong Kong Government Public Consultation Document: Safeguarding National Security: Basic Law Article 23 Legislation*, February 27, 2024.

1. SEDITION IN THE NATIONAL SECURITY ERA: AN ALL-PURPOSE CENSORSHIP TOOL

Lai is far from the first individual to be convicted of sedition in the NSL era. Since July 1, 2020, the government has made regular use of the law: it ranks with subversion as among the most commonly-used criminal provisions in the government's national security criminal toolkit.⁸⁶ Over the roughly six-year period from July 1, 2020 to August 31, 2026, well over 120 individuals and four companies have been arrested for or charged with sedition. Over 50 men and women have seen their cases go to trial, and all of them have been convicted: the government maintains a perfect 100% conviction rate in sedition cases since 2020.⁸⁷

This prolonged, six-year period of regular deployment of the sedition provision makes Hong Kong among the heaviest users of this crime, compared with other common law jurisdictions which have kept their version of the crime on the books. Several jurisdictions have completely abolished sedition, finding it incompatible with constitutional free speech protections and international human rights law.⁸⁸ In the limited number of countries that still have sedition as part of their criminal code, prosecutions have often spiked in response to pro-democratic protest movements. In Thailand, for example, over 150 individuals have been charged with sedition in the aftermath of a wide-ranging crackdown on pro-democracy protests in 2020.⁸⁹

Since 2020, the Hong Kong government has used the law as an all-purpose tool to both punish, and to curb, speech and expression that it doesn't like. Immediately after July 1, 2020, many sedition cases involved speech and expression related to the 2019 protest movement, including pro-democracy slogans and pro-independence pamphlets. The first sedition prosecution in Hong Kong in a half-century involved the chanting of pro-democracy slogans by longtime democratic activist Tam Tak-chi. Tam was convicted of sedition and other crimes in April 2022. He was sentenced to five years in prison, of which 21 months were for sedition.⁹⁰

But the government's use of the sedition provision has evolved over the past six years. It is now an all-purpose tool, one that is regularly deployed to deal with new and emerging issues that have little or no connection to the events of 2019. Prior to November 2025, for example, disaster response and building safety codes would not have been thought of as sensitive topics. But after public anger grew over the government's response to the Tai Po apartment complex fire, officials quickly signaled that excessive public criticism of the government's response could be met with "severe punishment," clear codewords for a national security prosecution.⁹¹ Political commentator Wong On-yin, 72, is one such case: Wong was arrested in December 2025 over his YouTube reports on the Tai Po tragedy. He was later charged with both sedition and disclosing the details of a national security investigation. Wong's trial is set to begin in October 2026.⁹²

Interestingly, the government has used the law to crack down on a number of dif-

86. Thomas Kellogg and Charlotte Yeung, "Three Years in Hong Kong's National Security Law Has Entrenched a New Status Quo," *ChinaFile*, September 6, 2023.

87. For a listing of known national security cases since 2020, including both NSL cases, pre-SNSO sedition cases, and SNSO cases, see US Consulate in Hong Kong, "Bearing Witness." That said, the data on national security arrests is incomplete, given limits on government disclosures of arrests and other national security police activity. For more on this point, see Collective Society Reporter, "Six Years of the National Security Law: At least 70 people arrested over the past year, including figures from the social movement, 'yellow' businesses, and bookstores, with over 30 arrests not previously disclosed," *The Collective* (in Chinese), June 30, 2026.

88. Adam M. Smith et al., *The Crime of Sedition: At the Crossroads of Reform and Resurgence*, TrialWatch Fairness Report, April 2022, pp. 8-11.

89. Andrew Khoo et al., *Thailand v. Katanyu Muenkhamruang 'Pan'*, TrialWatch Fairness Report, June 2025, p. 6.

90. For more on Tam's case, see Elizabeth Wilmshurst, *Hong Kong SAR v. Tam Tak-chi*, TrialWatch Fairness Report, May 2022.

91. Thomas E. Kellogg, "The securitization of disaster response in Hong Kong and the apartment complex fire," *Melbourne Asia Review*, January 6, 2026.

92. Hillary Leung, "Political commentator to stand trial in Oct over disclosing nat. sec probe details," *Hong Kong Free Press*, April 28, 2026.

ferent forms of speech, including online commentary, public chanting of slogans, books, leaflets, and even graffiti scrawled onto the seats of public buses. Non-verbal public gestures are also not immune: in January 2022, six individuals were arrested after clapping during a court hearing involving prominent rights lawyer and activist Chow Hang-tung. Two individuals, Pastor Garry Pang, 59, and Chiu Mei-ying, 68, were later charged with sedition. Both were convicted, and were sentenced to 12 months and three months respectively.⁹³

Among the scores of cases that have been brought thus far, two more specific goals emerge: the use of the sedition provision to crack down on pro-democracy media outlets, and thus reshape the media environment in Hong Kong, and its use as a tool to police online speech by everyday Hong Kongers. Online and social media speech cases represent the largest number of cases that have emerged thus far. As this figure suggests, the Hong Kong government has expended significant resources to curb free expression by Hong Kongers online, perhaps reflecting the crucial role that the internet and social media played in the 2019 pro-democracy protest movement.

The government has also used the sedition provision to police expression that takes place outside of Hong Kong. In March 2023, Japan-based university student Yuen Ching-ting was arrested over her online commentary, including roughly 13 social media posts made over a more than four-year period that the government deemed seditious. In one post, Yuen stated, “I am a Hong Konger; I advocate for Hong Kong independence.” In another, she wrote, “as long as the Chinese Communist Party exists, how can there be a home?”⁹⁴ Yuen was arrested and charged when she returned to Hong Kong to renew her government-issued identity card. She later pled guilty to inciting sedition, and was sentenced to two months in prison.⁹⁵

Last but not least, Hong Kong authorities have also transferred to the Mainland one individual convicted of sedition. In October 2023, Hong Kong authorities announced that they had transferred CUHK graduate student Zeng Yuxuan to the Mainland. Zeng had been arrested in June of that year, and was later tried and convicted of sedition over her apparent plans to unfurl a banner related to the commemoration of the June 4, 1989 crackdown. She was sentenced to six months in prison. Though details remain scarce, it seems that Zeng was transferred to custody on the Mainland after serving her sentence in prison in Hong Kong.⁹⁶ Zeng’s current status and whereabouts are unknown.

2. STAND NEWS AND APPLE DAILY: CRIMINALIZING PRO-DEMOCRACY MEDIA

The government’s use of the sedition law to crack down on pro-democracy media outlets and journalists involves two key cases: the national security prosecution of Jimmy Lai and his *Apple Daily* colleagues, and the 2024 Stand News verdict. In August 2024, Stand News editors Chung Pui-kuen and Patrick Lam were convicted of sedition over the outlet’s publication of 11 articles from July 2020 to December 2021.⁹⁷ Stand News’ parent company, Best Pencil (Hong Kong) Limited, was also found guilty.

Chung and Lam were sentenced to 21 months and 11 months, respectively. The two

93. Almond Li, “Two Hong Kong court spectators jailed for sedition over critical comments about magistrate in protest case,” *Hong Kong Free Press*, October 27, 2022. The ages of the two defendants are at the time of their sentencing in 2022.

94. Irene Chan, “Hong Kong student pleads guilty to posting ‘seditious’ online speech whilst in Japan, faces up to 2 years in jail,” *Hong Kong Free Press*, October 27, 2023.

95. Hillary Leung, “Hong Kong student who made ‘seditious’ online posts in Japan jailed for two months,” *Hong Kong Free Press*, November 3, 2023.

96. Siyuan Cheung, “Fears grow for mainland Chinese activist deported from Hong Kong,” RFA Cantonese, October 17, 2023.

97. Tiffany May, “Hong Kong Editors Convicted of Sedition in Blow to Press Freedom,” *New York Times*, August 28, 2024.

were the first journalists to be convicted of sedition in the national security era. Lai and his colleagues follow directly in their footsteps. Other journalists and media outlets have been harassed and threatened, and a number of news outlets have been forced to shut their doors. But *Stand News* and *Apple Daily* are the only two-media outlets that have faced criminal sedition charges, and *Stand News* and *Apple Daily* journalists and editors are the only ones to be prosecuted for sedition over their journalistic work.

Founded in 2014, *Stand News* was one of the key media outlets covering the 2019 protest movement. Though it took a pro-democratic editorial line, its news reports were viewed as adhering to the highest journalistic standards, and readers rated its credibility very highly in public opinion surveys.⁹⁸ *Stand News* journalists won several awards for their hard-hitting coverage of the 2019 protest movement, including reports on police violence and the government's faltering response to the demands of protesters.

Once *Apple Daily* was forced to close its doors, many viewed *Stand News* as a likely next target. It was therefore not entirely surprising when over 200 Hong Kong police officers raided *Stand News*' offices in December 2021, arresting six editors, journalists, and board members, including Lam and Chung. The news outlet announced its closure almost immediately thereafter.

In reading through the 11 articles that the court found seditious, one can see why the government wanted *Stand News* shut down: a year and a half after the implementation of the NSL, *Stand News* continued to publish interviews with pro-localist and pro-democracy politicians, and also published opinion pieces that criticized the government's resurrection of the sedition law and the NSL. None of the pieces in question advocated or attempted to incite violence, and therefore would be considered protected speech under international law. But they did present political views that the government has decided are off-limits. They therefore were held to be seditious, even as a small part of a broader mix of articles with varying points of view.

In other words, the *Stand News* case is a classic case of viewpoint-based censorship, in which the government decided to shut down a platform for political views that it does not like, in the name of national security.⁹⁹

Crucially, the court relied heavily on the government's argument that seditious speech is heavily context-specific, and that it must be "understood against the contemporaneous social-cultural and political setting of society."¹⁰⁰ It then adopted a pro-government reading of the events of 2019 and 2020, in furtherance of its argument that, in a politically unstable and highly fraught Hong Kong, seditious speech is all the more dangerous, as it might stir an already on-edge population to take action — often seditious or otherwise unlawful action — against their own government.

A key flaw of this approach is that it accepts the government's line that pro-democracy protesters were stirred up by false claims and radical ideologies, rather than — as was actually the case for the vast majority of protesters — their genuine support for democracy, human rights, and the rule of law. In other words, this framing of the crime of sedition itself undercuts the legitimate aspirations and concerns of those who took to the streets in 2019, and misconstrues media reporting that documented and reflected the public's growing alienation with Beijing and with the Hong Kong government. It displaces the agency of those who took part in the protest movement

98. "A Tale of Two Media: How First Became Last in Chinese Communist Hong Kong," *Domino Theory*, September 11, 2024.

99. The court itself went so far as to ascribe a political stance to *Stand News*, arguing that it supported the "political ideology" of "localism." *Stand News* verdict, paragraph 485.

100. *Stand News* verdict, paragraph 156, p. 84. Here the court is quoting from the Court of Appeals sedition verdict against Tam Tak Chi, which had been decided just a few months earlier, in March 2024.

onto media outlets, claiming that their efforts to “poison the minds” of their readers caused the protests.¹⁰¹

Not incidentally, this framing also absolves the government of blame for causing the protest movement in the first place. If media outlets induced peaceful protesters to take to the streets, then the government itself did nothing wrong. In this telling, the government is forced to deal with a crisis that is not of its own making. Instead, the responsible parties are the journalists, editors, and media outlets who called on the public to protest in the first place.

In contrast to the Lai verdict, the Stand News verdict did engage in some amount of constitutional free speech analysis. The district court, for example, did make reference to Basic Law Article 27, which protects the right to free expression. But it followed the deeply flawed and distorted analysis put forward in other post-2019 sedition cases to find that the sedition provision’s restrictions on free expression were both necessary and proportional, and therefore could pass muster under Hong Kong’s relevant human rights jurisprudence.

The court also made reference to international human rights law and comparative best practice, but only in support of the notion that expression could be limited on national security grounds. The court made a single reference to Article 19 of the ICCPR, for example, so as to cite the limiting principles found in Article 19(3). Similarly, it made reference to various European Court of Human Rights and UK media freedom cases, only to cite the limits on press freedom, particularly as regards “propaganda” and “disinformation and misinformation,” in one case comparing Stand News articles to pro-Russian propaganda.¹⁰² None of these cases support the court’s finding that peaceful political speech can in fact be punished. Indeed, the cases cited by the Hong Kong court are generally not criminal cases at all, and in each case, a searching analysis was done by the court in question to square the government measures taken with free speech rights under international and domestic law.

This distorted use of international human rights law and comparative best practice is both deeply disturbing and damaging to the reputation of the Hong Kong judiciary. It was not long ago that the Hong Kong courts were praised for their ability to draw upon international human rights law and comparative law to give substantive meaning to Basic Law human rights protections.¹⁰³ As the Stand News case shows, that era is now over, at least when it comes to national security cases. The courts are now going in reverse, using international human rights instruments and comparative law to subvert human rights and criminalize free speech, all in the name of national security.

These two key characteristics of sedition cases — a reliance on a pro-government social stability argument, and a distorted or even absent constitutional free expression analysis — have been core components of the judiciary’s sedition jurisprudence since the resurrection of the crime in 2020. As discussed below, they would also play an important role in Lai’s conviction for sedition.

3. LAI’S SEDITION CONVICTION: THE CRIMINALIZATION OF POLITICAL SPEECH

More than once in the court’s opinion, the three-judge panel states that “(o)ne thing has to be stressed: D1 [Jimmy Lai] is not on trial for his political views and he is free to hold whatever views he likes on politics.”¹⁰⁴

101. Lai verdict, paragraph 8, p. 14.

102. The court directly cites the Graham Phillips case, for example. See *Phillips v. Secretary of State for Foreign, Commonwealth, and Development Affairs*, [024] EWHC 32 (Admin), 12 January 2024.

103. Sir Anthony Mason, “The Place of Comparative Law in the Developing Jurisprudence on the Rule of Law and Human Rights in Hong Kong,” *Hong Kong Law Journal*, Vol. 37 (2007), p. 299.

104. Verdict, paragraph 134; the High Court repeats the point at paragraph 1192.

This statement is false. Or at best, it is narrowly true: Lai is free to hold whatever views he likes on politics, but the expression of those views, either by himself directly, or by the newspaper he once ran, can be criminally sanctioned. As the court makes clear in its overview of Lai's public statements, and *Apple Daily's* day-to-day reporting and commentary, there are many comments that the government and the court have labeled seditious, despite the fact that they would generally be considered peaceful political commentary in other rights-respecting jurisdictions.

What's interesting about the court's recitation of Lai's statements and *Apple Daily's* published output is how normal, how — for lack of a better word — *journalistic* it all seems: there are no calls for violence, no calls to overthrow the government. Instead, the court reproduces page after page of comments, both by Jimmy himself and by others, which are deeply familiar to longtime readers, both of *Apple Daily*, and of other Hong Kong media outlets. *Apple Daily's* sometimes sharp tone might set it apart from many of its contemporaries, but none of the ideas cited in the court's verdict are particularly new or different from what one would have read in other newspapers in 2019 and 2020.

Instead, the excerpted quotes demonstrate the core purpose of the sedition case against Lai: to punish him for his peaceful political views, and to send a message to others that certain topics are off limits, and certain speakers — including exile activists calling for a renewal of peaceful protests or for sanctions — should not be given a platform.

The court's mostly factual recitation of Lai's management style and his published output, along with the output of *Apple Daily*, take up significant chunks of the verdict, including Chapters 7, 8, 9, 10, 11, and 12. Lai's public comments — including his tweets and his efforts to create an English-language online talk forum, are covered in Chapters 13 and 14. Lai's effort to publish some *Apple Daily* content in English, on a platform entitled "English News," is covered in chapter 15.

Long stretches of these parts of the verdict, including dozens of pages of the above chapters, consist of little more than factual summary, both of content published by *Apple Daily*, and things written or said by Lai. Though the quoted material was presumably chosen to illustrate seditious activity, none of what is quoted would be considered criminal in rights-respecting jurisdictions. Instead, it is, by and large, political commentary and rhetoric, much of it meant to build unity among different strands of the protest movement, and to urge Hong Kongers to continue to take to the streets.

Take, for example, an *Apple Daily* editorial that was published on May 12, 2020:

Today, the Chinese and the thieves are incompatible with each other. Hong Kong people will not kneel down and retreat. (We) vow to be in the same family with peaceful and valiant protesters, to have Hong Kong linked with the world and resist to the end.¹⁰⁵

Here, editorial writer Yeung Ching-kee calls for the movement to stay united, and for peaceful and so-called "Valiant" protesters — those engaged in property damage and who were more willing to mix it up with the police in street scuffles — to resolve their differences through respectful dialogue rather than allowing themselves to become internally divided, and thus more easily conquered by the government. In calling for solidarity, even in the context of genuine disagreement over strategy and tactics, Yeung reflected a common view among many in the pro-democracy movement: that protest and resistance had to continue, even amidst these differences over strategy and tactics.

105. Verdict, paragraph 254, p. 133-4. The phrase "the Chinese and the thieves are incompatible with each other" is a classical Chinese saying, one that is hard to render in English. More loosely translated, it means that two groups cannot be merged, and that a good-versus-evil dynamic is at play. Yeung contrasts the incompatibility between the public and the government with the need for unity between different groups of protesters.

To be sure, some of the commentaries cited by the court adopted a caustic tone: *Apple Daily* was a tabloid, and its at times bare-knuckle style was meant to appeal to a broad audience, and to sell newspapers. In one May 2020 editorial entitled, “CPC evilly spread virus to destroy Hong Kong, and bring the whole world into dilemma,” Yeung Ching-kee drew a parallel between COVID-19 and the then-pending NSL, and suggested that both were wreaking havoc, the former on a global scale, the latter on Hong Kong.¹⁰⁶ Yeung ended that editorial with a call for sanctions, which, according to the then-prevalent view, was a lawful act, given that the NSL had yet to go into effect, and the sedition provision of the Crimes Ordinance remained dormant.

Yeung was by no means alone in his use of strong language on the pages of *Apple Daily*. In a May 2020 editorial published on the *Apple Forum*, prominent Democratic Party Legislative Councillor Wu Chi-wai excoriated the then-pending NSL, and compared the Mainland national security authorities to be stationed in Hong Kong to the “Gestapo of Nazi Germany” and the Ming Dynasty’s Eastern Depot, the Yongle Emperor’s secret police.¹⁰⁷

It’s worth noting that such language, caustic though it may be, was quite common in Hong Kong prior to the enactment of the NSL. Writers like Yeung and Wu were used to speaking and writing freely, and — like many political commentators in free and open societies around the world — they used that freedom to produce some biting, sarcastic, and hard-hitting commentaries. When the government’s tolerance of free expression radically shifted, and the courts abandoned their constitutional duty to protect such speech, they were left vulnerable.

In his own writings for *Apple Daily*, Lai could both be both acerbic and moving: in an April 2020 editorial, for example, Lai sarcastically referred to Xi Jinping as “Emperor Xi,” but then closed with a call for Hong Kongers to “keep standing up and fighting until the end.”¹⁰⁸ Lai was seen by many as a leading pro-democracy voice, and he used his *Apple Daily* platform to rally his readers to keep taking to the streets in peaceful protest. He did this even when the implementation of the NSL was just weeks away, and the street protests had dwindled due to COVID restrictions.

If there was a last-chance moment to try to save himself, and to stop his pro-democratic activism in an effort to avoid being prosecuted for a national security crime, the final weeks before the NSL went into effect would have been it. Instead, Lai kept going. On April 26, 2020, he wrote:

What keeps us going right now is our cherishment of the rule of law and our love of freedom. We have no illusions about the CPC’s despotic tyranny. What we can stick to, as Chan Pui-man said, is our courage to knowingly do the impossible. Hong Kongers, the only thing we have to fear is fear itself.¹⁰⁹

Again, from a legal perspective, in both rights-respecting jurisdictions and under international human rights law, this is peaceful political commentary, which cannot and should not be criminalized. With the benefit of hindsight, with Lai now serving a twenty-year sentence, his calls to stay the course can only be seen as incredibly brave. Reading these excerpts from Lai in the verdict, one wonders: did the judges writing the verdict feel a pang of guilt, as they twisted Lai’s words into some sort of crime? Is it too much to wonder whether they felt some admiration for him as they plunged so deeply into his private communications, his public writings, and the published work of *Apple Daily*?

106. Verdict, paragraph 257, p. 135.

107. Verdict, paragraph 285, p. 152.

108. Verdict, paragraph 373, p. 198.

109. Verdict, paragraph 373.

After the NSL went into effect, *Apple Daily* tried to trim its sails, at least a bit, in an effort to avoid crossing any of the clear red lines laid out in the NSL. Lai did the same. Editor Yeung referred to this as “playing edge ball,” which meant trying to stay just within the lines of acceptable, non-criminal speech.¹¹⁰ Yeung referred to edge ball in the context of sanctions advocacy. But it applies equally well to other “sensitive” topics as well.

In any case, the effort to “play edge ball” had no effect: Lai himself was arrested just weeks after the NSL went into effect, and was charged with national security crimes just months later. *Apple Daily* managed to hold out at least a bit longer before it was finally shut down on June 24, 2021.

4. LEGAL ANALYSIS: CRIMINALIZING SHARP POLITICAL SPEECH

In its analysis, the court lists in particular 17 articles — including some of the articles quoted above — as seditious. The court then lists the shared characteristics of these articles, noting that they generally argued that “(t)he CCP, the Central People’s Government, the HKSAR government and the Police were portrayed as enemies acting with intent to harm Hong Kong people.”¹¹¹ Most *Apple Daily* readers would agree with the court’s statement that Hong Kong and central government officials were “not only subject to severe criticism, but were also made targets of ridicule and derogation to such a degree that it brought into hatred and contempt against them.”¹¹²

Furthermore, the court noted, “appeals were made for the public to openly resist the HKSAR government even after the withdrawal of the ELAB in October 2019.”¹¹³

As long as one adds the word “peacefully” to the court’s observation about open resistance, then these observations are generally correct: there is no doubt that *Apple Daily* had a general political stance, in favor of democracy and human rights. Not without basis, Lai and the newspaper he owned viewed the government as actively opposed to true democratic reforms. *Apple Daily* also argued that the government and the police were responsible for widespread violations of human rights. Both Jimmy Lai himself and other *Apple Daily* editorial writers used strong language to criticize Hong Kong and central government officials over their perceived policy shortcomings, in order to persuade members of the public to take to the streets to protest against these officials and these policies.

What’s important, however, is that these points of view, as expressed in the pages of *Apple Daily*, are forms of peaceful political expression that should be protected by Hong Kong’s Basic Law, and that are protected by Article 19 of the ICCPR and international human rights law more generally. In its General comment No. 34, the Human Rights Committee specifically mentions both political discourse and journalism as forms of expression that are protected by Article 19, and therefore by extension by Articles 27 and 39 of the Basic Law.¹¹⁴

As noted above, the Human Rights Committee has put forward a three-part test to answer whether a particular restriction on free expression can be justified, either on national security grounds or other grounds: the restriction must be provided for in law; it must pursue a legitimate state interest; and it must be necessary and proportionate in pursuit of that interest.

Both the sedition law itself and its application in this case raise concerns on all three of these prongs. But the authors of this analysis believe that the most significant concern is whether suppression of the specific articles cited by the court in its verdict can be said to be in pursuit of a legitimate state interest. As discussed above,

110. Verdict, paragraph 289, p. 155.

111. Verdict, paragraph 1749, p. 816.

112. Verdict, paragraph 1749(2).

113. Verdict, paragraph 1749(3).

114. General comment No. 34, paragraph 11.

the government argued that Lai and *Apple Daily's* political commentary was inciting disaffection among the public, and thereby undermining public support for the government itself, which in turn weakened social and political stability. Furthermore, the government argued, this damage to regime stability raised particular concerns during a time of social upheaval and political crisis, thus heightening the need for action to suppress such speech.

Such argumentation is all too familiar to scholars of free expression. This same argument is often used to justify limits on free expression, and the punishment of those who express views that the government doesn't like. No doubt, Lai's speech, and the published output of *Apple Daily*, did in fact expose the government to criticism and even ridicule, but protection from such ridicule is simply not a legitimate national security concern. Instead, that criticism — and its resonance among many members of the public — should be seen as a broader symptom of the government's self-generated crisis of legitimacy. Neither Jimmy Lai nor *Apple Daily* created the political crisis that the Hong Kong government and Beijing faced in 2019. The government did that to itself, and then blamed its lack of public support on its critics. In essence, the Hong Kong government used the NSL to punish the messenger, rather than taking steps to address the deep-seated problems of cratering political legitimacy and declining public support that it faced.

The response, in other words, to legitimate criticism is not repression, but continued political dialogue and debate, which should lead to policy changes that can win back public support. The NSL effectively ended a core feedback loop between government and the governed in Hong Kong, in ways that will impact Hong Kong's core political institutions for decades to come.

There is a second element of the court's analysis that is also worthy of note: part of its justification for finding Lai and *Apple Daily's* speech as seditious was its tone. As noted above, the court found — again, not without basis — that Hong Kong and central government officials were “made targets of ridicule and derogation,” which brought them into hatred and contempt. *Apple Daily* called then-Chief Executive Carrie Lam “evil,” and referred to President Xi Jinping as “Emperor Xi.” More than once, it referred to the Hong Kong Police Force as “black cops.”

Senior officials in democratic and rights-respecting countries around the world might find such language more moderate and restrained than much of the criticism they face on a daily basis. In any case, the court's effort to make Lai and *Apple Daily's* sometimes sharp language a key element of its sedition finding only shows the weakness of its legal reasoning. The language cited by the court as seditious falls far short of the kinds of vituperative, insulting, or openly hateful speech that sometimes can be punished in ways that are consistent with Articles 19 and 20 of the ICCPR.¹¹⁵ To the extent that one can find examples of strong rhetoric in the *Apple Daily* articles cited by the court, it is very much within that space that comparative best practice has made clear must be protected for speakers to have the right to “offend, shock, or disturb.”¹¹⁶

Instead of dwelling on Lai and *Apple Daily's* use of terms like “evil” and “Emperor,” the court instead should have focused on the peaceful nature of Lai's commentaries and *Apple Daily's* journalistic output. It could have, and should have, applied the sedition provision's statutory protections to Lai and his *Apple Daily* colleagues.¹¹⁷ In failing to do so, the court abandoned its role as the guarantor of constitutional

115. Nani Jansen Reventlow, “The Right to ‘Offend, Shock or Disturb,’ or The Importance of Protecting Unpleasant Speech,” in *Perspectives on Harmful Speech Online*, Berkman Klein Center for Internet and Society, 2017, pp. 7-9. ICCPR Article 20(2) does permit states to, in some limited circumstances, bar or punish speech that engages in “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence,” but the speech in question in this case falls well short of that very high bar.

116. *Handyside v. United Kingdom*, ECtHR, Application no. 5493/72, 7 December 1976.

117. Lai verdict, paragraph 1748.

rights, and allowed Lai to be punished for making statements that, in any constitutional democracy, would be protected speech.

The failure to engage with statutory protections was compounded by the lack of constitutional rights-based analysis. As with the NSL Article 29(4) charge, the court declined to engage in any serious constitutional rights-based analysis of the sedition charge against Lai, as applied to the facts of this case. Because the sedition provision of the Crimes Ordinance was a local law, constitutional review was at least somewhat more feasible, as compared with the NSL, which was imposed on Hong Kong by the NPCSC. Still, any serious constitutional analysis would have had to deal with recent CFA and Appellate Court precedent, which had effectively rejected constitutional challenges to the sedition provision.¹¹⁸ These prior verdicts are deeply flawed, and out of line with the global trend of either narrowing the crime of sedition or eliminating it altogether.¹¹⁹ Still, they are binding on the High Court, and they limit what the High Court could have done in terms of applying constitutional protections to Lai and his colleagues.

118. *HKSAR v. Tam Tak Chi*, FACC 12 of 2024; *HKSAR v. Tam Tak Chi*, [2025] HKCFA 4; *HKSAR v. Tam Tak Chi*, CACC 62/2022, [2024] HKCA 231.

119. *The Crime of Sedition: What Comes Next for an Archaic Law?*, Clooney Foundation for Justice report, February 2024.

V. LAI'S TWENTY-YEAR SENTENCE: A MISSED OPPORTUNITY?



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Lai's guilty verdict was handed down on December 15, 2025. When his sentence was announced by the High Court on February 9, 2026, the result was truly stunning, even though a stiff outcome was very much expected: Lai was sentenced to twenty years in prison, by far the longest prison term to be handed down under the NSL to date.

Lai's co-defendants also received heavy sentences. The court found all of the defendants to be in the upper sentencing band, and then adopted a starting point of 15 years for the Article 29(4) convictions. His *Apple Daily* colleagues Law Wai-kong, Lam Man-chung, and Fung Wai-kong all pled guilty, which meant that they could receive a one-third sentence reduction. This brought their sentences down to ten years, which is the minimum sentence that they could receive, once the court had determined that their crimes all fell in the upper sentencing band.¹²⁰ The other co-defendants, Chan Tsz-wah ("Wayland"), Li Yu-hin ("Andy"), Cheung Kim-hung, Chan Pui-man, and Yueng Ching-kee, received sentences ranging from six years and three months to seven years and three months. Because these latter five defendants agreed to serve as prosecution witnesses, they were granted sentence reductions that put them below the statutory minimum, in line with the court's reading of NSL A33, which governs sentence reduction for individuals who plead guilty and agree to testify against others.

The court's calculus for Lai's sentence was as follows: Lai received an additional three years and two months from the court, due to the fact that he was the "mastermind and driving force behind the conspiracies."¹²¹ It then made slight deductions for Lai's age, health condition, and solitary confinement, and also made some adjustments to the overall sentence based on consecutive and concurrent sentencing related to his other convictions, leading to a total sentence of twenty years. Lai's conviction for fraud was overturned in February, which meant that he began serving his NSL sentence earlier than expected. He is now eligible for release in April 2040, at which time he would be 92 years old.¹²²

As with the verdict itself, the court claimed that Lai's pre-July 1, 2020 activities were not criminally cognizable, because the NSL does not have any retrospective effect. That said, the court made clear that Lai and his co-defendants' pre-NSL actions "formed part of the context in which their offences took place," making them relevant to the determination of the seriousness of the offenses involved.¹²³ In particular, the court noted that the Article 29(4) offenses were committed "at a time when Hong Kong hardly recovered from the social turmoil caused by the Anti-Extradition Law Amendment Bill Movement in 2019."¹²⁴ This pre-NSL "context" helped to ensure that Lai and his co-defendants were all placed in Article 29's upper sentencing band: their offenses were deemed to be "of a grave nature," which meant that they were all subject to prison terms ranging from ten years to life in prison.

The court's reliance on a pro-government narrative of the events of 2019 to justify a heavier sentence is deeply disturbing. This narrative is now woven into Hong Kong's national security jurisprudence, which meant that the High Court was able to rely on this factor as established precedent.¹²⁵ It has become a central feature of several key NSL cases, including both the Stand News case mentioned above, and a num-

120. *HKSAR v. Lui Sai Yu*, [2023] HKCFA 26.

121. Reasons for Sentence, paragraph 64.

122. "Jimmy Lai Wins Fraud Conviction Appeal; 18-Year 'Collusion' Sentence to Begin Early — Earliest Release at Age 92," Radio France International (in Chinese), February 26, 2026.

123. Reasons for Sentence, paragraph 39.

124. Reasons for Sentence, paragraph 61.

125. *HKSAR v. Ma Chun Man* [2022] 5 HKLRD 246, at paragraphs 74-5. The High Court references *Ma Chun Man* in paragraph 35 of the Reasons for Sentence. In its verdict, the court also cited a legal basis for factoring in the "social context" of the 2019 protest movement: in paragraph 49 of the verdict, the court approvingly referenced an official Explanation from the National People's Congress on the need for the NSL, which referred to the events of 2019 as "activities [meant] to undermine national unity and split the country."

ber of other high-profile cases. It also raises questions as to whether the court is in fact convicting and sentencing Lai based on his actions prior to July 1, 2020, in clear violation of the fundamental principle of non-retroactivity.

In a very real sense, the legal sanctification of the government's account of the 2019 protests compounds the damage done by the crackdown on the pro-democratic movement. Peaceful protesters like Lai and his colleagues risked police violence and arrest when they took to the streets in 2019. Then, after the NSL went into effect, the government weaponized its flawed classification of the protest movement, in order to push for heavier criminal sentences for those convicted of national security crimes.

The court's analysis of other relevant sentencing factors is also highly politicized. As the court made clear in its verdict, it found the "actual or potential impact of the offence on the HKSAR and/or the PRC" to be significant, despite the fact that the targeted sanctions eventually imposed by the U.S. government had no real impact on Hong Kong's economy or on the government's day-to-day operations.¹²⁶

If the sentencing decision was based more on a weighing of political factors than legal ones, it begs the question: could the High Court have done anything different? Could it have weighed the political factors differently, and reached a different outcome? The authors of this analysis believe that the answer to that question is yes: even with a guilty verdict, the court could have and should have avoided such heavy sentences.

One important caveat: as the above analysis makes clear, neither Lai nor his co-defendants have committed any crime, at least as would be defined in rights-respecting jurisdictions around the world. To ask whether the courts could have handled sentencing differently is not to condone or accept the court's substantive findings, or its guilty verdict. Instead, we want to explore all of the possible avenues the court could have taken, and that future courts could take, to mitigate the damage done by the NSL, including the incredible human toll.

Since the NSL went into effect more than six years ago, conventional wisdom has set in. Some observers believe that the courts have no choice: judges simply **must** deliver a steady stream of guilty verdicts in virtually all national security cases, or risk a backlash from Beijing. Many fear that any effort to mitigate the impact of the NSL on individual defendants would be counter-productive: one way or another, Beijing would functionally subvert a not guilty verdict. Having done that, the Party would then use its extensive Basic Law and NSL powers to further curtail the authority of the courts, to ensure that such a "mistake" would not happen again.

Certainly, the judiciary's handling of national security cases strongly suggests that judges see themselves as trapped by a harsh but unchangeable reality. Over the past six years, the courts have delivered a close to 100% conviction rate, along with a near-perfect record of pro-government procedural and sentencing decisions. Though the judiciary's political calculus happens behind closed doors, this record indicates that a risk mitigation strategy is in effect: don't cross the government and Beijing by delivering a national security decision that is deemed politically unacceptable. Instead, wait for the storm to subside, and use the judiciary's remaining institutional strength to issue rights-respecting rulings in other, less sensitive areas.

The cost of this approach is very high. It has led to hundreds of convictions of individuals who have committed no actual crime, forcing them to serve sentences that can stretch on for years, or even a decade or more. And it fails to take into account the government's decision to use the NSL and other national security laws to police

126. Reasons for Sentence, paragraph 35.

peaceful political activity outside the realm of the 2019 protest movement.¹²⁷ Simply put, there is no way to wait out the government, no chance that the government will decide to return to a pre-2019 status quo on its own. Instead, the courts face a hard choice: they will have to either accept their current, deeply diminished role, and the functional end of constitutional rights protection in Hong Kong, at least in the national security cases. Or they will have to try a new strategy.¹²⁸

The authors of this report believe that sentencing is one area where the courts could start to experiment with efforts to lessen, even slightly, the cruel and unjust impact of the NSL. Whereas guilty and not guilty verdicts are an on-off switch, sentencing decisions have various gradations, and offer a strategically viable opportunity to experiment with judicial outcomes that only partially frustrate the government's demands.¹²⁹ Instead of a direct confrontation with the government and Beijing, lower sentencing decisions represent a more calibrated approach, one that forces the government into a more complicated calculus: does it make sense to punish the courts over a guilty verdict, when the defendant has been given a "lesser" sentence that is nonetheless measured in years? What will the public reaction to such a move be? Is it worth it to expend the political capital needed to force a different outcome, or can the government live with the partial victory that the courts have delivered?

Seen in this light, High Court's sentencing decision represents a missed opportunity. Instead of issuing heavy sentences across the board, the court should have found a way to lessen the blow. Such an approach would have mitigated, at least in a small way, the extensive harm done to both Jimmy Lai and his co-defendants.

More concretely, what would such an approach have looked like in this case? First and foremost, it would have involved categorizing Lai's co-defendants in the lesser sentencing band under NSL Article 29. None of the co-defendants are remotely as high-profile as Lai himself, and none of them represent the sort of clear high political priority for Beijing's retribution that Lai himself does. Sentencing them within this lesser band would have been a worthwhile, calculated risk on the part of the court. It also would have served as an acknowledgment that the court system itself has, however unwillingly, become a part of the machinery of national security repression in Hong Kong, and bears some responsibility for trying to limit the damage done.

As for Lai himself, the authors of this study believe that a lesser sentence was in fact possible: the twenty-year sentence handed down to Lai is both incredibly draconian on its face, and also much heavier than the sentences issued by mainland Chinese courts in high-profile cases involving Chinese activists.¹³⁰ To cite but a few recent examples: in 2023, rights activists Xu Zhiyong and Ding Jiaxi were convicted of subversion, and sentenced to fourteen and twelve years respectively. In 2009, prominent intellectual and pro-democracy advocate Liu Xiaobo was convicted of inciting subversion over his role in the drafting of the pro-democracy manifesto Charter 08. He was sentenced to 11 years in prison. Liu died of cancer in 2017 while still behind bars, making him the first Nobel Peace Prize winner to die while incarcerated since the German pacifist Carl von Ossietzky in 1935.

127. Thomas E. Kellogg, "The securitization of disaster response in Hong Kong and the apartment complex fire," *Melbourne Asia Review*, January 7, 2026.

128. As one leading Hong Kong scholar put it, "(a)t least in the authoritarian context, judges often have no choice but to make political and strategic calculations. They have to play the hand they are dealt." Julius Yam, "Judging Under Authoritarianism," *Modern Law Review*, 2023, p. 902. Yam's excellent analysis ranges far beyond Hong Kong, but is also deeply relevant to his home city.

129. For more on judicial strategy in the authoritarian context, see Yvonne Tew, "Strategic Judicial Empowerment," *American Journal of Comparative Law*, Vol. 72 (2024), p. 173. As Tew notes, "A fragile court may transform itself into a powerful one, but that endeavor often requires strategy."

130. The authors of this study are indebted to fellow China and Hong Kong scholar Jeffrey Wasserstrom for his insightful comments on this point. Other Hong Konger scholars have made similar arguments as well. See, e.g., "Jimmy Lai sentenced to 20 years; Chan Kin-man: Saddened and angry, hopes he 'holds strong,'" *United Daily News* (in Chinese), February 9, 2026.

As these and countless other examples illustrate, even in the Mainland context, twenty-year sentences for rights activists are extremely rare. The authors of this study fear that the Hong Kong courts are over-reacting to the political pressures they face, and are handing down excessively heavy sentences as a result. In this case, the High Court delivered a double blow: it both handed Lai and his co-defendants incredibly harsh sentences, and it missed an opportunity to gauge whether the Hong Kong government and Beijing would in fact accept lesser sentences against at least some national security defendants.

The question of whether the courts should experiment with lesser sentences in high-profile national security cases is a crucial one, with implications that go beyond Lai's own case. As this report was being prepared for publication, pro-democracy activist Joshu Wong pled guilty to collusion with foreign forces. The authors of this study fear that Wong could face a sentence of a decade or more, which will likely be served only after his current prison term has mostly or fully expired. A ten-year sentence, for example, would mean that he will serve a total of seventeen years in prison: he was previously convicted of five other crimes and sentenced to a total of 7 years and 10 months in prison.¹³¹ If he is sentenced to ten years on this latest charge, Wong, currently 29, would be behind bars until 2037, which would mean that he will have spent nearly half of his life behind bars.

As the above discussion illustrates, for the past six years, the courts have adopted a play-it-safe strategy, shielding themselves from the Hong Kong government and Beijing's wrath by giving the government more or less everything it has demanded, in each and every national security case. The twenty-year sentence handed down to Lai, and the cruelly long sentences levied against his co-defendants, show the horrible bankruptcy of this approach. The courts are sacrificing years of other people's lives in order to stay in Beijing's good graces. Something has to change.

131. Brian Kern, "The Regime is Trying to Make Joshua Wong its Next Forever Prisoner," Substack, September 4, 2026.

VI. CONCLUSION: WHAT IS TO BE DONE?



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As the above analysis makes clear, the factors that drove the prosecution and conviction of Lai and his co-defendants were political, not legal. From the first day the NSL went into effect, Hong Kongers expected Lai to be among the first to be imprisoned under the new law. One activist interviewed by GCAL soon after Lai's arrest in 2020 told us that his case was "not very surprising. If you read official sources, they have been targeting him for a very long time."¹³²

The overtly political nature of the case also points to the only potential solution: only the CCP leadership, and likely only Xi Jinping himself, can decide to release Lai and his co-defendants. The judicial system itself is powerless, which is likely one reason why Lai himself chose not to appeal his conviction. Western governments should therefore focus their advocacy efforts on Beijing. The U.S. and the UK governments in particular should press the Chinese government to release Lai and his co-defendants, immediately and unconditionally. Lai and his co-defendants are political prisoners, and their case should remain a priority for Western governments for as long as it takes to secure their freedom.

To be sure, such political prisoner releases are extremely rare, but they are by no means unheard-of: Democracy Wall activist Wei Jingsheng and 1989 Tiananmen Square protest leader Wang Dan are but two examples of activists who were released from prison, and who left China, after intense advocacy efforts on their behalf by Western governments. More recently, Liu Xia, the widow of Nobel Peace Laureate Liu Xiaobo, was allowed to leave China after years of advocacy efforts on her behalf by several Western governments, including the German government. She left China for Berlin in July 2018. In July 2026, detained Christian pastor Ezra Jin was released from criminal detention and allowed to leave China for his home in California.

If and when Beijing decides to allow Lai and his co-defendants to be released, there is a mechanism to effectuate this decision within Hong Kong Law. Under Article 48(12) of the Basic Law, the chief executive has the power to "pardon persons convicted of criminal offences or [to] commute their penalties." Since there are no statutory guidelines on how this power should be exercised, the chief executive is assumed to have wide discretion in his exercise of it.

The chief executive's Basic Law amnesty authority has been a part of the legal community's discussion of possible responses to the events of 2019 for several years now. In 2020, for example, two Hong Kong University scholars argued that amnesty for protesters was justified on the grounds of respect for the rule of law, democratic responsiveness, virtue, and the cultivation of political trust.¹³³ Though the chief executive has yet to use his amnesty powers, many of those same arguments could also be applied to Lai and his co-defendants.

If Beijing did allow Lai and his co-defendants to be released from prison, the Hong Kong government would stand to benefit. Since the NSL crackdown began, Hong Kong's international reputation has suffered greatly: a once world-renowned legal system has been repeatedly criticized by UN human rights bodies, professional associations, and legal scholars based outside Hong Kong.¹³⁴ Granting Lai and his co-defendants their freedom would be seen as a first small step toward undoing the extensive damage done by the NSL, and would thus also be seen as a small but significant first step toward restoring Hong Kong's reputation as a liberal jurisdiction that respects both constitutional rights and its obligations under international human rights law.

132. Lydia Wong and Thomas E. Kellogg, *Hong Kong's National Security Law: A Human Rights and Rule of Law Analysis*, GCAL report, February 2021, p. 36.

133. Anna Dziedzic and Julius Yam, "Amnesty for Street Protesters," *Hong Kong Law Journal*, vol. 50(2), 2020, pp. 585-608.

134. See, e.g., the Working Group on Arbitrary Detention's concluding observations on Lai's case, Opinion No. 34/2024 concerning Mr. Jimmy Lai Chee-ying (Hong Kong, China), 26 September 2024, A/HRC/WGAD/2024/34.

The verdict against Lai, and his twenty-year sentence, represent dark moments in the long struggle for democracy, human rights, and the rule of law in Hong Kong. But his courage and his sacrifice serve as powerful examples for pro-democratic advocates around the world. The authors of this report believe that his efforts on behalf of democracy in Hong Kong will one day be vindicated. If nothing else, Western governments have a moral obligation to continue to press for Lai's freedom, and that of his co-defendants. As this report was being finalized for publication, CCP General Secretary Xi Jinping was preparing to travel to Washington, DC, to begin his summit meeting with President Trump. During the visit, the Trump administration should press Xi on Lai's case, and should also press for the freedom of other national security prisoners in Hong Kong.

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