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## Concern for the rule of law and fundamental rights in Hong Kong SAR

The Law Council of Australia remains deeply concerned by the continued erosion of the rule of law and the abrogation of fundamental rights in Hong Kong SAR.

“We have previously outlined our concerns about the National Security Law (NSL) imposed by Beijing in June 2020 and have been disturbed by its application to prominent pro-democracy activists, former law makers, lawyers and journalists,” Law Council of Australia President, Greg McIntyre SC said.

“The NSL, which was introduced in the absence of a legislative process involving the people of Hong Kong, substantially undermines the independence of Hong Kong’s judiciary, as well as its power of legal interpretation of Hong Kong law. It empowers the Chief Executive to select judges to hear national security cases and make binding determinations as to whether a case involves issues of national security.<sup>1</sup>

“The Law Council has also expressed concern regarding the use of the NSL to issue arrest warrants and place bounties on the heads of overseas democracy advocates including Kevin Yam, an Australian citizen, and Ted Hui, a permanent resident of Australia. Mr Hui is also a member of the Australian legal profession.

“We share concerns expressed by others regarding the conviction and sentencing of members of the ‘Hong Kong 47’,<sup>2</sup> including Australian citizen Gordon Ng. As stated previously, the Law Council opposes efforts to arrest and detain individuals exercising their rights to peaceful assembly and expression, and reiterate Hong Kong’s obligations as a party to the International Covenant on Civil and Political Rights.

“The Law Council has also expressed the view that the Safeguarding National Security Ordinance introduced in March 2024 further restricts the rights to freedom of expression, assembly and association in Hong Kong, and that its broadly-defined offences – as in the NSL that preceded it – lack sufficient safeguards or exceptions to permit the legitimate activities of individuals, associations and civil society organisations protected under international law.

“We are deeply troubled by the framework established by the Ordinance which delays an accused access to a lawyer and prevents access to certain lawyers or firms. This is not only inconsistent with international fair trial standards and the right to legal assistance, but also the rights that should be

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<sup>1</sup> *Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* art 44, art 47.

<sup>2</sup> Minister for Foreign Affairs (Australia), ‘Sentencing of Gordon Ng’ (Statement, 19 November 2024) <<https://www.foreignminister.gov.au/minister/penny-wong/media-release/sentencing-mr-gordon-ng>>; Office of the High Commissioner of Human Rights, ‘Hong Kong: Grave concerns over sentencing under National Security Law’ (Press Release, 19 November 2024) <<https://www.ohchr.org/en/press-releases/2024/11/hong-kong-grave-concerns-over-sentencing-under-national-security-law>>; European Union, ‘Hong Kong: Statement by the Spokesperson on the sentencing in the “Hong Kong 47” case’ (Media Release, 19 November 2024) <[https://www.eeas.europa.eu/eeas/hong-kong-statement-spokesperson-sentencing-%E2%80%99Chong-kong-47%E2%80%9D-case\\_en](https://www.eeas.europa.eu/eeas/hong-kong-statement-spokesperson-sentencing-%E2%80%99Chong-kong-47%E2%80%9D-case_en)>.

# Media Release



guaranteed under Hong Kong's Basic Law, including the right to confidential legal advice from a lawyer of one's choosing.<sup>3</sup>

"We are also concerned that the Ordinance empowers the Executive to suspend the professional qualification of an 'absconder'. In the case of lawyers, we consider that the very existence of this power – bypassing regular disciplinary procedures, due process guarantees and appeal avenues – undermines the independence and self-regulation of Hong Kong's legal profession.

"National security frameworks should, by design, incorporate mechanisms for meaningful and independent scrutiny and review to ensure that such laws are and remain necessary and proportionate, and to assess their compatibility with international obligations. The Law Council regrets that this is not the case in Hong Kong.

"We call on the Hong Kong SAR and China's Central Authorities to uphold the rights protected under international law and Hong Kong's Basic Law, repeal legislation that undermines the rule of law, and guarantee and uphold the independence of the legal profession and judiciary."

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<sup>3</sup> Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China art 35.

*The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.*