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IRB – Immigration and Refugee Board of Canada

China and Hong Kong: Political situation and treatment of protesters; implementation of national security law and treatment of protesters sent to mainland China (2019–October 2020) [ZZZ200321.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Political Situation and Treatment of Protesters

1.1 Overview of Hong Kong Protests

According to a Reuters article, in February 2019 an amendment to Hong Kong's extradition laws that would allow suspects to be extradited to mainland China was proposed by Hong Kong's Security Bureau (Reuters 30 May 2020). The same source indicates that on 31 March 2019 there were protests in response to the extradition bill (Reuters 30 May 2020). An Amnesty International report on human rights in the Asia-Pacific region in 2019 notes that the protests began in March 2019 and that, as part of the protests, there were three mass peaceful protests (on 9 June 2019, 16 June 2019, and 18 August 2019) with an estimated attendance of more than a million people at each protest (Amnesty International 29 Jan. 2020, 19). Sources report that while the extradition bill was withdrawn by the government in September 2019, protests continued because of broader demands, including an independent investigation of the use of force by the police during the protests (BBC 23 Oct. 2019; *The Washington Post* 4 Sept. 2019; Amnesty International 29 Jan. 2020).

1.2 Treatment of Protesters

Sources report that police used excessive force against protesters (US 11 Mar. 2020, 110; Amnesty International 19 Sept. 2019; HRW 14 Jan. 2020, 132). The US Department of State's *Country Reports on Human Rights Practices for 2019* indicates that "[s]ignificant human rights issues included: police brutality against protesters and persons in custody; arbitrary arrest; substantial interference with the right of peaceful assembly and freedom of association; and restrictions on political participation" (US 11 Mar. 2020, 109). A report on Hong Kong covering the period from 1 January to 30 June 2019 published by the UK's Foreign and Commonwealth Office notes that police used "aggressive tactics" against protesters including tear gas and rubber bullets (UK 31 Oct. 2019, 3). The report further notes that "[a] protester was shot with live ammunition, and warning shots have been fired on a number of occasions" (UK 31 Oct. 2019, 3).

A UK Home Office report on the Hong Kong protests published in February 2020 indicates that more than 4,000 people have been arrested since the start of the protests (UK Feb. 2020, 6). The report also notes that most of these arrests occurred during protests (UK Feb. 2020, 6). According to the ANTI-Extradition Law Amendment Bill (ANTIELAB) Research Data Archive, a repository of data on the ANTIELAB social movement created by the Journalism and Media Studies Centre at the University of Hong Kong (ANTIELAB Research Data Archive 2020a), between 9 June 2019 and 23 January 2020, 7,165 people were arrested (ANTIELAB Research Data Archive 2020b). A June 2020 article by the *South China Morning Post (SCMP)*, an English-language newspaper based in Hong Kong, reports that during the period from 9 June 2019 to 29 May 2020, 8,981 people were arrested in relation to the protests and that amongst them 1,749 have been charged (SCMP 11 June 2020). The same source notes that "[a]mong those arrested, **1,707** were under 18 years of age, including **1,602** secondary students and **eight** primary school pupils. Another **5,640** arrestees were aged between 18 and 30 years old" (SCMP 11 June 2020, emphasis in original).

According to a September 2019 report on police treatment of protesters by Amnesty International, based on interviews conducted with around two dozen people who were arrested and other observers including lawyers and health workers, there is "an alarming pattern of the Hong Kong Police Force deploying reckless and indiscriminate tactics, including while arresting people at protests, as well as exclusive evidence of torture and other ill-treatment in detention" (Amnesty International 19 Sept. 2019).

An October 2019 *SCMP* article, citing the chairman of Hong Kong's equal opportunities watchdog, reports that the watchdog has received more than 300 "questions" related to the protests and most of them are related to allegations of sexual harassment by the police (SCMP 16 Oct. 2019). The same source explains that allegations are classified as "questions" unless they come directly from the victim (SCMP 16 Oct. 2019). The article notes that according to the chairman of the equal opportunities watchdog, there was an increase in the amount of inquiries after a video of a female protester in a skirt being dragged, exposing her "private parts," was circulated (SCMP 16 Oct. 2019).

An article published in August 2019 by the *Hong Kong Free Press* (HKFP), an independent English-language news source in Greater China (HKFP n.d.), reports that during the arrest of a female protester in Tin Shui Wai, her privates were exposed (HKFP 5 Aug. 2019). The same source reports that on 12 June 2019 a female protester's bra was exposed when she was removed from a group by police officers (HKFP 5 Aug. 2019). An August 2019 SCMP article reports that a Hong Kong woman alleges that she was subject to "a humiliating and unnecessary strip-search" when she was arrested at a protest (SCMP 23 Aug. 2019). Similarly, an August 2019 HKFP article indicates that a Hong Kong woman alleges that a female police officer carried out "an unreasonable full strip search without gloves" (HKFP 23 Aug. 2019). Sources report that a student at the Chinese University of Hong Kong (CUHK) accused the police of sexual violence when she was detained during the protests (HKFP 11 Oct. 2019; SCMP 11 Oct. 2019). A November 2019 HKFP article states that "[a] woman has filed a complaint against the police alleging that she was raped in the Tsuen Wan Police Station" (HKFP 9 Nov. 2019). A June 2020 HKFP article indicates that "[a] 17-year-old female student has accused at least one Hong Kong police officer of sexual assault during her arrest at a protest last September" (HKFP 23 June 2020).

2. National Security Law

2.1 Legislation

Sources indicate that on 30 June 2020 the new Hong Kong national security law came into effect (Amnesty International 17 July 2020; *The Guardian* 30 June 2020; SCMP 30 June 2020). A July 2020 Amnesty International article on the national security law states that "[t]he law is dangerously vague and broad: virtually anything could be deemed a threat to 'national security' under its provisions, and it can apply to anyone on the planet" (Amnesty International 17 July 2020). Similarly, a July 2020 *New York Times* article notes that "[t]he four major offenses in the law – separatism, subversion, terrorism and collusion with foreign countries – are ambiguously worded and give the authorities extensive power to target activists who criticize the party, activists say" (*The New York Times* 13 July 2020a). Sources note that the new law introduces severe penalties, including life in prison (BBC 1 July 2020a; *The New York Times* 13 July 2020a).

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region provides the following:

Chapter III

Offences and Penalties

Part I Secession

Article 20 A person who organises, plans, commits or participates in any of the following acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification shall be guilty of an offence:

1. separating the Hong Kong Special Administrative Region or any other part of the People's Republic of China from the People's Republic of China;
2. altering by unlawful means the legal status of the Hong Kong Special Administrative Region or any other part of the People's Republic of China; or
3. surrendering the Hong Kong Special Administrative Region or any other part of the People's Republic of China to a foreign country.

A person who is a principal offender or a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; a person who actively participates in the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and other participants shall be sentenced to fixed-term detention or restriction.

Article 21 A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offence under Article 20 of this Law shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years; if the circumstances of the offence committed by a person are of a minor nature, the person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction.

Part 2 Subversion

Article 22 A person who organises, plans, commits or participates in any of the following acts by force or threat of force or other unlawful means with a view to subverting the State power shall be guilty of an offence:

1. overthrowing or undermining the basic system of the People's Republic of China established by the Constitution of the People's Republic of China;
2. overthrowing the body of central power of the People's Republic of China or the body of power of the Hong Kong Special Administrative Region;
3. seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People's Republic of China or the body of power of the Hong Kong Special Administrative Region; or

4. attacking or damaging the premises and facilities used by the body of power of the Hong Kong Special Administrative Region to perform its duties and functions, rendering it incapable of performing its normal duties and functions.

A person who is a principal offender or a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; a person who actively participates in the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction.

Article 23 A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offence under Article 22 of this Law shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years; if the circumstances of the offence committed by a person are of a minor nature, the person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction.

Part 3 Terrorist Activities

Article 24 A person who organises, plans, commits, participates in or threatens to commit any of the following terrorist activities causing or intended to cause grave harm to the society with a view to coercing the Central People's Government, the Government of the Hong Kong Special Administrative Region or an international organisation or intimidating the public in order to pursue political agenda shall be guilty of an offence:

1. serious violence against a person or persons;
2. explosion, arson, or dissemination of poisonous or radioactive substances, pathogens of infectious diseases or other substances;
3. sabotage of means of transport, transport facilities, electric power or gas facilities, or other combustible or explosible facilities;
4. serious interruption or sabotage of electronic control systems for providing and managing public services such as water, electric power, gas, transport, telecommunications and the internet; or
5. other dangerous activities which seriously jeopardise public health, safety or security.

A person who commits the offence causing serious bodily injury, death or significant loss of public or private property shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; in other circumstances, a person who commits the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years.

Article 25 A person who organises or takes charge of a terrorist organisation shall be guilty of an offence and shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years, and shall be subject to confiscation of property; a person who actively participates in a terrorist organisation shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall be imposed with a criminal fine; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction, and shall be liable to a criminal fine.

For the purpose of this Law, a terrorist organisation means an organisation which commits or intends to commit the offence under Article 24 of this Law or participates or assists in the commission of the offence.

Article 26 A person who provides support, assistance or facility such as training, weapons, information, funds, supplies, labour, transport, technologies or venues to a terrorist organisation or a terrorist, or for the commission of a terrorist activity; or manufactures or illegally possesses substances such as explosive, poisonous or radioactive substances and pathogens of infectious diseases or uses other means to prepare for the commission of a terrorist activity, shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years, and shall be imposed with a criminal fine or subject to confiscation of property; in other circumstances, a person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction, and shall be imposed with a criminal fine.

If an act referred to in the preceding paragraph also constitutes other offences, the person who commits the act shall be convicted and sentenced for the offence that carries a more severe penalty.

Article 27 A person who advocates terrorism or incites the commission of a terrorist activity shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years, and shall be imposed with a criminal fine or subject to confiscation of property; in other circumstances, a person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction, and shall be imposed with a criminal fine.

Article 28 The provisions of this Part shall not affect the prosecution of terrorist offences committed in other forms or the imposition of other measures such as freezing of property in accordance with the laws of the Hong Kong Special Administrative Region. (China 2020)

2.2 Implementation of the National Security Law

Sources report that on 1 July 2020 the first arrests under the new national security law were made and 10 people were charged with offenses (*The New York Times* 13 July 2020b; BBC 1 July 2020b; *SCMP* 1 July 2020). According to sources, one of the people charged was a 15-year-old girl who was waving a Hong Kong independence flag (*The New York Times* 13 July 2020b; *SCMP* 1 July 2020). A July 2020 *SCMP* article indicates that one of the protesters who was arrested on 1 July 2020, who was accused of holding a flag and riding his motorcycle into police officers, has been charged with secession and terrorism and was the first person charged under the national security law (*SCMP* 6 July 2020). A July 2020 Human Rights Watch (HRW) article notes that during the first month since the adoption of the national security law, it had been used "at least" four times to charge participants at pro-democracy protests (HRW 29 July 2020). The report further states that, at protests, police now raise a National Security Law flag to signal to protesters that under the law they can be arrested for waving flags (HRW 29 July 2020). A July 2020 *New York Times* article reports that Hong Kong's police have frequently used different flags to warn protesters, including "black banners to warn of the imminent firing of tear gas and red flags to signal that a failure to stop advancing would be met with force" (*The New York Times* 7 July 2020). The same source indicates that hours after the adoption of the National Security Law, the police began using "a purple flag warning demonstrators that shouting certain slogans or carrying banners could now bring criminal charges" (*The New York Times* 7 July 2020).

Sources report that on 29 July 2020, four young people, between the ages of 16 and 21, were arrested on suspicion of pro-independence activism (*The Washington Post* 29 July 2020; BBC 30 July 2020; *SCMP* 29 July 2020). A July 2020 *Washington Post* article notes that the four individuals are all former members of Studentlocalism, a pro-independence group that had broken up on 30 June 2020 when the security law was adopted (*The Washington Post* 29 July 2020).

Sources report that on 10 August 2020, Jimmy Lai, an activist who owns the Apple Daily Newspaper, was arrested and the Apple Daily offices were searched by hundreds of police (BBC 12 Aug. 2020a; *The Washington Post* 11 Aug. 2020; *SCMP* 14 Aug. 2020). Sources indicate that Jimmy Lai's sons, as well as executives from Next Digital, Apple Daily Newspaper's parent company, were also arrested (*The Washington Post* 11 Aug. 2020; *The Guardian* 12 Aug. 2020). According to sources, on the same day, a 23-year-old, pro-democracy activist was also arrested (*The Washington Post* 10 Aug. 2020; BBC 12 Aug. 2020b); according to the BBC, she was released on bail late on 11 August 2020 (BBC 12 Aug. 2020a). An August 2020 article published by the *Guardian* states that most of the people arrested on 10 August 2020 were released on bail late on 11 August 2020 (*The Guardian* 12 Aug. 2020). According to an August 2020 Reuters article, Jimmy Lai was released on bail on 12 August 2020 (Reuters 13 Aug. 2020).

3. Treatment of Protesters Sent to Mainland China

Information on the treatment of protesters sent to mainland China was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources report that a former employee of the UK's consulate in Hong Kong was detained in August 2019 when he was on a trip from Hong Kong to mainland China (*The New York Times* 25 Nov. 2019; BBC 20 Nov. 2019; Amnesty International 20 Nov. 2019). According to sources, he was tortured and beaten by agents who sought information about the involvement of the UK in the Hong Kong protests (BBC 20 Nov. 2019; *The New York Times* 25 Nov. 2019; AP 20 Nov. 2019). Sources indicate that he was released after 15 days of detention (*The New York Times* 25 Nov. 2019; AP 20 Nov. 2019).

According to sources, the national security law gives the Chinese government the authority to create a new national security office that is under its jurisdiction (CBC 2 July 2020; BBC 30 June 2020). A July 2020 BBC article reports that a new national security office under the jurisdiction of the Chinese government opened in Hong Kong in July 2020 (BBC 8 July 2020). The same source states that "[s]ecurity agents from the mainland who are based in the new office will, for the first time, have the power to investigate people for a wide range of crimes defined by the new law, and potentially extradite them to the mainland for trial" (BBC 8 July 2020). In a June 2020 interview with *SCMP*, Hong Kong's security minister indicated that the office would possess intelligence gathering, investigation, and training abilities (*SCMP* 10 June 2020).

Sources report that the national security law means that some cases can fall under the jurisdiction of mainland China (AP 13 Aug. 2020; CBC 2 July 2020). The June 2020 BBC article notes that "[t]his office can send some cases to be tried in mainland China – but Beijing has said it will only have that power over a 'tiny number' of cases" (BBC 30 June 2020).

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region provides the following:

Article 55 The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall, upon approval by the Central People's Government of a request made by the Government of the Hong Kong Special Administrative Region or by the Office itself, exercise jurisdiction over a case concerning offence endangering national security under this Law, if:

1. the case is complex due to the involvement of a foreign country of external elements, thus making it difficult for the Region to exercise jurisdiction over the case;
2. a serious situation occurs where the Government of the Region is unable to effectively enforce this Law; or a major or imminent threat to national security has occurred. (China 2020)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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