

Hong Kong Adopts New National Security Ordinance: Article 23

April 1, 2024

On March 23, 2024, the government of the Hong Kong Special Administrative Region (HKSAR) promulgated an ordinance with the stated [purposed](#) of strengthening the “legal system and enforcement mechanisms for the HKSAR to safeguard national security.” The [Safeguarding National Security Ordinance](#) builds upon the People’s Republic of China’s (PRC’s or China’s) Law on Safeguarding National Security in the HKSAR (NSL), passed in 2020 to assert greater central government control over the HKSAR. HKSAR authorities [justified](#) the passage of the new Ordinance in terms of fulfilling their “constitutional responsibility” to enact such legislation under Article 23 of Hong Kong’s mini-constitution, the [Basic Law](#). U.S. policymakers, including some Members of Congress, have expressed concern about the Ordinance’s effect on rights and freedoms in Hong Kong. They also have considered whether or not China’s assurances that it will respect Hong Kong’s distinct system (under the arrangement known as “one country, two systems”) should continue to form a basis for U.S. policy toward Hong Kong. (For additional information, see CRS Report R47844, *Hong Kong Under the National Security Law*.)

Highlights of the New Ordinance

The Ordinance broadly [defines](#) national security *offences* as any offense “endangering national security under the law of the HKSAR.” These offenses include the four types of offenses established by the NSL and five new types of offenses (see **Table 1**). The Ordinance allows police to apply for extended pre-trial detention, restrictions on suspects’ consultation with legal representatives, and restrictions on bail for national security cases. It also authorizes punitive measures (including the termination of HKSAR passports) against “absconders” overseas with pending warrants in the HKSAR and against individuals who provide absconders with funds or financial assets.

Table 1. National Security Offenses Under the Ordinance and NSL

Safeguarding National Security Ordinance (2024)	National Security Law of the HKSAR (2020)
Treason	Secession

Congressional Research Service

<https://crsreports.congress.gov>

IN12341

Safeguarding National Security Ordinance (2024)	National Security Law of the HKSAR (2020)
Insurrection	Subversion
State secrets and espionage	Terrorist activities
Sabotage	Collusion with foreign countries and external elements
External interference	

Source: “Safeguarding National Security Ordinance,” [Government of the HKSAR Gazette](#), G.N. (E) 6 of 2024, March 23, 2024.

The Ordinance states that several offenses have extraterritorial effect, indicating they may be applied to persons for activities outside the HKSAR. Such offenses include “external interference” and “sabotage.”

[Critics](#) of the Ordinance, including organizations such as Amnesty International, note the Ordinance includes a “new vague and broadly worded crime of ‘external interference,’” which they suggest “could lead to the prosecution of activists for their exchanges with foreign actors.” Some international media reports [questioned](#) the bill’s rapid promulgation—11 days after the its introduction and after one month of public consultation. According to one [analysis](#), the average duration of public comment periods in Hong Kong between 2019 and 2021 was 76 days.

Selected Reactions to the Bill

The PRC’s Hong Kong and Macao Affairs Office [lauded](#) the passage of the Ordinance, stating that “to protect national security is to protect ‘One Country, Two Systems,’ Hong Kong’s prosperity and stability, and [...] democratic freedoms...” HKSAR authorities [claim](#) feedback received during the consultation period for the Ordinance was overwhelmingly (98.6%) positive.

Several local HKSAR organizations submitted comments during the consultation period. [The Hong Kong Bar Association](#) [called](#) on the HKSAR government to ensure “a proper and careful balance [...] between the imperatives of national security and constitutional guarantees of human rights and the rule of law.” The Hong Kong Journalists Association [urged](#) the HKSAR government “to provide sufficient protection for the press in its draft bill and avoid causing irrevocable damage to press freedom.” Some Hong Kong political parties aligned with the central government (e.g., the Democratic Alliance for the Betterment and Progress of Hong Kong and the New People’s Party) have issued [statements](#) in favor of the Ordinance. Some members of Hong Kong diaspora communities and critics of the Ordinance have held public [protests](#) overseas.

A U.S. Department of State spokesperson [stated](#) that the United States is “alarmed” by the Ordinance’s “sweeping” and “vaguely defined” provisions, adding that the Department is analyzing the legislation for “what the potential risk could be to not just U.S. citizens but other American interests.” Other governments—including those of the [United Kingdom](#) and [Japan](#)—also expressed concern. United Nations High Commissioner for Human Rights Volker Turk “[deplored the accelerated consideration and adoption](#)” of the Ordinance, which passed “despite detailed, serious human rights concerns raised with the authorities by his Office and UN human rights mechanisms.”

Issues Facing Congress

Some [Members](#) of [Congress](#) have expressed [concern](#) over the passage of the Ordinance and its potential chilling effect on the city’s autonomy and the rights and freedoms of its residents. Congress could consider:

- **Appropriations.** Congress could assess whether U.S. funding for (and the design of) programs aimed at supporting civil society in Hong Kong and its growing diaspora meet Congress’s objectives. The 117th Congress appropriated \$9 million in programs for Hong Kong. Congress could assess whether the new Ordinance poses risks for individuals and organizations engaged with U.S. government-funded programs, and assess how programs may respond to any such risks.
- **Hong Kong Policy Act.** The U.S.-Hong Kong Policy Act of 1992 (HKPA, P.L. 102-383, as amended, 22 USC 5701), which guides U.S. policy toward the HKSAR, is based partly on the predicate that Hong Kong would retain its “lifestyle and legal, social, and economic systems” as distinct from mainland China. Congress could consider whether or not relevant provisions of the HKPA merit clarification.
- **Oversight of Sanctions.** The U.S. government has [imposed](#) financial sanctions on 42 PRC and Hong Kong officials under E.O. 13936 “in connection with actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong.” Congress in its oversight role could assess the administration’s implementation of sanctions and the effectiveness of sanctions in advancing congressional objectives, including assessing any impact they may have on official exchanges.

Author Information

Ricardo Barrios
Analyst in Asian Affairs

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.