

The Jimmy Lai case: The National Security Law and the future of dissent in Hong Kong

It was a quietly dramatic moment: Just after dawn on August 10, 2020, Hong Kong police arrived at the home of media mogul and prominent pro-democracy advocate Jimmy Lai and arrested him. At roughly the same time, police arrested his two sons at their residences.

Lai was arrested under Hong Kong's wide-ranging National Security Law (NSL), passed in June last year, for alleged collusion with foreign forces, under Article 29 of the NSL. He was released on bail the next day, as were his two sons.

That same afternoon, leading pro-democracy activist Agnes Chow was arrested at her home. She was held for over 30 hours, before being released on bail at 11 p.m. the next day. After her release, Chow suggested that her detention was politically-motivated, and that the authorities had failed to clearly inform her of the reasons for her arrest. 'It is political persecution and political suppression,' Chow said. 'I still don't understand why I was arrested.'

August 10 would turn out to be a very busy day for Hong Kong's national security authorities: in total, ten individuals were arrested by the Hong Kong police's national security unit on that day. Lai's Next Digital holding company, which publishes the pro-democracy tabloid *Apple Daily*, was a clear target: seven of the ten arrestees are Next Digital executives or members of Lai's immediate family.

Six individuals were arrested under the NSL: Jimmy Lai; his younger son Ian Lai Yiu-yan; Royston Chow Tak-kuen, Next Digital chief operating officer and chief financial officer; Agnes Chow; Wilson Li, a freelance journalist and former member of the now-defunct student activist group Scholarism; and Andy Li, a pro-democracy activist.

Four other Next Digital executives were also arrested on August 10, including Timothy Lai Kin-yang, Jimmy Lai's elder son; Next Digital CEO Cheung Kim-hung; Next Digital chief administrative officer Wong Wai-keung; and Next Animation Director Kith Ng Tat-kong. The four were arrested for allegedly engaging in conspiracy to defraud under Hong Kong's Crimes Ordinance. The four—along with

Jimmy Lai himself and Royston Chow, who were also accused by the police of conspiracy to defraud, along with the NSL allegations—were detained over the subletting of part of Next Digital’s offices to a consulting company, which the government alleged violated the terms of the media company’s land lease.

The fraud charges against Lai, his sons, and his colleagues struck legal experts we interviewed as unusual, and likely politically-motivated. Lawyers we spoke with suggested that any violations of Next Digital’s lease agreement could be handled administratively, and that the criminal charges seemed heavy-handed, at best.

Just hours after taking Lai into custody, more than 200 police officers raided the offices of Next Digital, which also houses the *Apple Daily*. The office raid was live-streamed by *Apple Daily* journalists, many of whom were taken aback by the presence of dozens of police officers in their newsroom. Twenty-five boxes of documents were taken by the police as evidence during the raid.

Lai and Chow’s arrests signaled to many that Beijing would use the National Security Law to overtly target its political opponents. Their arrests came just six weeks after the law came into effect, and the two remain among the highest-profile individuals arrested under the law. Arresting both Lai and Chow on the same day also fed Beijing’s longstanding political narrative of the protest movement: that Hong Kong elites like Lai are colluding with foreign powers, and using young radicals like Chow to undermine political stability in Hong Kong.

Passed by the National People’s Congress Standing Committee in Beijing and applied to Hong Kong, the National Security Law was seen as the Communist Party’s response to the 2019 pro-democracy protests that rocked Hong Kong. The law creates four new crimes: secession, subversion, terrorist activities, and collusion with foreign forces. As we document in our recent report on the NSL, all four criminal provisions are broadly-worded, and could be used to punish pro-democracy advocates and other peaceful critics of the Hong Kong government and Beijing.

Perhaps unsurprisingly, the law was put to work almost immediately after it went into effect on June 30, 2020. On July 1, 11 individuals were arrested and charged with crimes under the NSL, mostly in relation to the use of pro-democratic slogans or banners during public protests held on that day. Since then, over 100 individuals have been arrested under the law, on charges ranging from secession to subversion to terrorism. The vast majority of arrests thus far have been politically-motivated, targeting both youth activists and also mainstream pro-democratic politicians,

among others.

Lai's arrest in particular seemed to confirm the fears of activists in Hong Kong that the NSL would be used as a political weapon. One activist told us that Lai's arrest was 'not very surprising. If you read official sources, they have been targeting him for a very long time.' In August 2019, for example, pro-Beijing media outlets launched a series of attacks on Lai, calling him one of a 'gang of four' who—along with pro-democracy leaders Martin Lee, Anson Chan, and Albert Ho—was responsible for colluding with foreign forces to incite the large-scale protests then rocking Hong Kong.

Others agreed that Jimmy Lai was at the very top of Beijing's enemies list. 'Jimmy is the lead target', one Hong Kong-based lawyer told us. 'He runs the one media group in Hong Kong that is uncensored, that is critical of Beijing. The aim is to topple Jimmy.' In other words, according to several Hong Kongers we spoke to, Lai was arrested not because of specific actions that could constitute a crime under the NSL, but rather because the new law finally gave Beijing the tool it needed to go after him.

At the same time, the arrest of Lai and the raid on *Apple Daily's* offices was also seen as a broader attack on press freedom in Hong Kong, seen by many as sending a signal to journalists about the perils of critical reporting in the wake of the implementation of the National Security Law. One activist told us, 'he has been the target all the time. He runs the only paper that is not under control... They really want to get *Apple Daily*.' The raid was condemned by key press freedom watchdogs in Hong Kong, including both the Foreign Correspondents Club and the Hong Kong Journalists Association.

The case against Jimmy Lai: punishing peaceful political advocacy?

Lai has long been one of Hong Kong's most prominent pro-democracy advocates. Born in Guangzhou in 1948, he emigrated to Hong Kong at the age of 12. Starting as a lowly factory worker, Lai made his fortune in the garment industry, founding a series of companies that did well both in the West and in the burgeoning Chinese market of the 1980s. His support for the 1989 Tiananmen Square protests made him *persona non grata* on the Mainland; Lai was eventually forced to sell his companies to other shareholders in the wake of various threats and harassment.

Lai turned the loss of his companies into a moment of opportunity: he began focusing heavily on Hong Kong media, founding the *Apple Daily* newspaper in 1995. The newspaper quickly made its mark for its outspoken support for democracy and human rights, and its at times scathing criticism of the Hong Kong government and of the Communist Party leadership in Beijing. Lai himself called the paper the ‘voice of the Hong Kong people’, and in many ways, the people of Hong Kong have embraced both the paper and its outspoken owner: according to a 2019 survey, *Apple Daily* has the highest share of readers in Hong Kong across paid newspapers, news websites, and mobile platforms.

Apple Daily has also become a symbol of the fight for democracy, one that the Hong Kong public supports as a means of political protest. On August 11, 2020, the day after the paper’s offices were raided by national security police, more than 500,000 copies of the paper were bought, with many members of the public queuing up to newsstands across the city in a show of solidarity that did not go unnoticed by Beijing.

The Party leadership has made clear that it sees Lai as a threat, referring to him as a ‘traitor’ and a ‘pawn’ of ‘anti-China forces in the West”. In the wake of the 2019 protests, senior Party officials have openly called for Lai to be punished, a thinly-veiled reference to efforts to prosecute Lai under the National Security Law. Facing this tremendous pressure, however, Lai has refused to back down. ‘I came here empty-handed, and I owe everything I have got to the freedom of this place. It is time for me to pay back, Lai said in a media interview just days before the NSL went into effect.

In the weeks following Lai’s August 2020 arrest, Hong Kong police said little about their investigation. Legal experts we interviewed expressed concern that Lai’s arrest seemed to be a fishing expedition, an effort to use the broad provisions of the NSL to look into Lai’s business activities in the hope of finding criminal wrongdoing. ‘They [the Hong Kong authorities] are probably working hard behind the scenes, hoping they will find something that will stick’, one Hong Kong-based lawyer told us during the investigation phase of Lai’s case.

That said, statements by Hong Kong authorities, as well as reports in pro-Beijing media outlets, suggest that both Lai and Agnes Chow were investigated for peaceful political activities, seemingly all undertaken before the NSL went into effect, and that the case against them will be built on various political statements, tweets, and advocacy meetings with foreign government officials.

Speaking at a press conference convened in the evening of August 10, National Security Department Senior Superintendent Li Kwai-wah stated that two men and one woman—presumably referring to Chow, Wilson Li, and Andy Li—allegedly participated in an organisation that advocates for the sanctioning of Hong Kong officials by foreign governments. Li also stated that three others—almost certainly Lai and his two *Apple Daily* colleagues—were suspected of financially supporting the organisation through overseas bank accounts. Li claimed, without presenting any evidence, that this group was still active after July 1.

On August 12, the pro-Beijing newspaper *Wen Wei Po* revealed that the organisation that Li referred to is *Wo Yao Lam Chau* (I Want Mutual Destruction; the group is also known by its English name, Stand With Hong Kong, or SWHK), a loosely-affiliated group formed in 2019 to conduct peaceful overseas campaigns to lobby for sanctions against Hong Kong officials. Multiple pro-Beijing media outlets also reported that the National Security Department had issued an arrest warrant for Finn Lau, the leader of SWHK who coined the term *lam chau*. Lau, who had been based overseas during the 2019 protests, fled Hong Kong for the UK in early 2020.

For reasons that remain unclear, the police investigation seemed to focus quite heavily on actions that took place before the NSL went into effect, despite the NSL's explicit prohibition on retroactive prosecution. Both the official statements of Hong Kong Police Force officials, as well statements by prosecutors, suggest that national security investigators have looked quite closely at the actions of both Jimmy Lai and Agnes Chow before June 30, 2020.

On the day of Lai and Chow's August 10 arrests, for example, police investigators visited the office of the Nikkei, Japan's leading business newspaper, asking about an advertisement allegedly placed by SWHK in 2019, as part of its broader global advocacy effort. Chow, a fluent Japanese speaker, is thought to be a key point of contact with Japanese media outlets, and many in Hong Kong believe that the visit to the Nikkei's Hong Kong office was tied to the police investigation of Chow herself, in seeming violation of the NSL anti-retroactivity provision.

Nearly four months after his initial arrest, Lai was arrested again on December 2, and formally charged with fraud. On December 11, he was charged with 'collusion with a foreign country or external elements to endanger national security' under Article 29 of the NSL, which could lead to maximum sentence of life in prison.

At a court hearing on December 12, prosecutors outlined the charges against Lai,

and argued that the seriousness of the charges against him meant that he should be denied bail. And yet, many of the specific actions that the prosecution pointed to seemed largely to consist of peaceful political speech and advocacy, such as his July 2019 meeting with then U.S. Secretary of State Mike Pompeo, and Lai's online calls for the release of the so-called 'Hong Kong 12' who were then being held in pre-trial detention on the Chinese mainland. The prosecution also cited Lai's participation in pro-democracy international campaigns before June 30, 2020, including his alleged financial support for the SWHK advertisement in Nikkei; his published commentaries criticising the central government's policies in Hong Kong; and efforts to launch an English-language version of *Apple Daily*.

Lai was denied bail after the December 12 hearing. On December 23, however, High Court Judge Alex Lee granted Lai bail on appeal, citing the bail decision in the another NSL case, that of pro-democracy protester Tong Ying-kit's support for his decision. (Tong, who remains in custody pending trial, was denied bail, but the judge in his case made clear that the NSL was not meant to prohibit bail altogether.) Lai's bail terms included a number of restrictions, including blanket prohibitions on media interviews and social media postings. Lai was also forbidden from leaving his home and ordered to report to police three times a week.

Just days later, however, the Court of Final Appeal revoked Lai's bail, sending him back to pre-trial detention on December 31. In the run-up to the hearing, prominent Mainland state-run media outlets ran pieces heavily critical of the High Court's bail decision, at times suggesting that Lai should be sent to the Mainland for trial under Article 55 of the NSL. While no evidence has emerged to suggest that central government propaganda efforts had any impact on the Court of Final Appeal's bail decision, nonetheless the reversal pointed to the highly-charged political atmosphere that surrounds key NSL cases, including the case against Lai.

A test case for judicial independence?

In the weeks following the decision by the Court of Final Appeal, Lai exhausted his other appeals, and failed to win bail. For over three months, Lai has remained in jail, leaving only to attend court hearings related to some of the other cases against him. On April 1, Lai, along with six other prominent pro-democracy advocates, was found guilty of unlawful assembly in relation to a protest against the government's since-withdrawn extradition proposal on August 18, 2019. A decision on sentencing in that case is expected later in this month.

When Lai's NSL trial begins in the next few months, he will most likely already be serving time. Lai could be sentenced to up to five years in jail on the unlawful assembly conviction. An NSL conviction carries with it the threat of an even longer jail sentence, one that could stretch on for years or even a decade. In the most serious cases, individuals can be sentenced to life in prison. If convicted, Lai, now 72, could spend the rest of his life in jail.

Lai's case will be followed closely around the world: it will be seen, quite rightly, as a test case for judicial independence in Hong Kong in the post-NSL era. If Lai is convicted, his jailing will serve as a clear signal to Hong Kong's pro-democracy movement that Beijing is in charge, and that the rights protections found in Hong Kong's Basic Law will offer little protection to those whose words anger Beijing. A guilty verdict will make clear that criticising the government in Hong Kong brings with it serious risks, and that international advocacy, now a clear red line for Beijing, will not be tolerated.

A conviction will also serve as a signal to the international community that Hong Kong is rapidly becoming less open, less free, and more and more like Mainland China. In the months and years to come, Western governments must continue to press Beijing to end its crackdown on pro-democracy advocates in Hong Kong. For decades, Western diplomats have brought lists of political prisoners to their meetings with their Mainland Chinese counterparts, urging them to release prominent advocates like Liu Xiaobo and Xu Zhiyong. Sadly, for the first time, a growing number of Hong Kong NSL detainees may have to be added to the list, chief among them Jimmy Lai.

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Image: Jimmy Lai leaving court, December 2020. Credit: Michael Ho/Studio Incendo