

Foreign Lawyers' Right to Offer Legal Representation and Independence of Legal Profession in Hong Kong are at Risk

The 29 Principles, International Bar Association's Human Rights Institute, International Association of People's Lawyers (IAPL), International Association of People's Lawyers - Australian Branch, Leitner Center for International Law and Justice, American Association of the International Commission of Jurists, Bar Human Rights Committee of England and Wales, Law Society of England and Wales, and Paris Bar are gravely concerned that defendants' right to receive legal representation of their choosing in Hong Kong will be seriously impinged. On 28 November 2022, Hong Kong's Chief Executive requested the Standing Committee of the National People's Congress in Beijing's interpretation of relevant provisions of the National Security Law. This means that, as established in that law, a political body rather than a court would interpret the adopted legislation, in violation of the separation of powers.

The request followed the same day's ruling by Hong Kong's top court - the Court of Final Appeal - dismissing the Hong Kong government's appeal attempting to block British barrister Tim Owen KC, of Matrix Chambers, from representing media tycoon Jimmy Lai Chee-ying. The latter is the founder of the now-disbanded newspaper Apple Daily, who was arrested in August 2020 and currently faces the charge of "conspiracy to collude with foreign forces". Lai's trial was originally scheduled for 1 December 2022 but has been postponed to 13 December for prosecutors to arrange another date for the trial, pending any interpretation from Beijing.

The Hong Kong SAR Government initially argued in the Court of First Instance against Lai's application to engage a UK senior counsel to represent him in the criminal case brought against him under the National Security Law, that the national security law falls within the genre of continental law hence should not be handled by a common law lawyer from a different jurisdiction. After having lost their case in both the Court of First Instance and the Court of Appeal, the Hong Kong Government took this case to the Court of Final Appeal and for the first time argued that an offence indicted under the National Security Law should exclude representation by all foreign lawyers on the ground that state security is at stake. Having been dismissed by the Court of Final Appeal, the Hong Kong Government is now seeking the National People's Congress' interpretation of the National Security Law, so that no foreign legal representatives can carry out their work in any National Security Law cases in Hong Kong.

Foreign lawyers, who are not otherwise qualified to practise in Hong Kong, have always been allowed to represent their clients in Hong Kong Courts subject to the provisions of the Legal Practitioners Ordinance and Hong Kong's common law tradition. The Hong Kong government's decision to seek Beijing's intervention raises serious concerns about Hong Kong's autonomy as a special administrative region and the independence of the legal profession in Hong Kong. It seeks to undo a final and

binding judgment by Hong Kong's Court of Final Appeal by resorting to a political body in Beijing. Defendants would be deprived of the right to hire lawyers of their own choice. Due to the political nature of national security cases, local lawyers are already under tremendous pressure, often having to rethink whether to take up these cases. The chilling effect created by the National Security Law and its implementation results in a serious restriction of access to justice for Hong Kong citizens and residents.

According to article 1 and article 5 of the United Nations Basic Principles on the Role of Lawyers, "all persons are entitled to call upon the assistance of a lawyer of their choice". Article 16 also requires that governments should "ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference". The Hong Kong government's decision has clearly violated these international legal principles.

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