

## Opinion – How China Is Keeping a British Political Prisoner in Hong Kong

Written by Ka Hang Wong

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KA HANG WONG, OCT 4 2025

On 17 September 2025, the UK's Ambassador to the UN Kumar Iyer urged Beijing to end Jimmy Lai's political trial. Beijing refuses British consular access, insisting Lai is Chinese, though in reality, he is British. I have argued elsewhere that many who obtained British citizenship through the 1990s selection scheme now serve in Hong Kong's administration, betraying the very British values from which they once benefited. Jimmy Lai is different: he became a full British citizen before the handover, and unlike those quislings, he has remained steadfast in defending freedom. His persecution lays bare Beijing's forced imposition of Chinese nationality, stripping millions of Hongkongers of the right to choose their own identity.

The imposition of Chinese nationality on Hongkongers dates back to the Sino-British negotiations. One of the thorniest questions during the negotiations was nationality. From the outset, China claimed Hongkongers would become Chinese at the transfer of sovereignty. It was written into the Chinese memorandum attached to the Joint Declaration, and later clarified in the 1996 "explanations" of how China's nationality law would apply after the handover. None of this involved public consultation, yet it laid the legal and ideological foundation for Beijing's repression today.

In 1981, the UK had already restructured its nationality laws, creating categories that downgraded Hongkongers to British Dependent Territories Citizens (BDTC). Because this status would vanish after 1997, Britain created a new category in 1986: British National (Overseas), or BN(O), which until recently offered a limited form of British nationality in the form of a "travel document" connected to Hong Kong residency.

But China refused to recognise any form of foreign nationality in Hong Kong. Hongkongers' Chinese nationality thus was never a choice but an imposition. Many middle-class families emigrated to the West after the 1984 signing of the Joint Declaration. Yet Beijing does not recognise their new citizenship, treating them as Chinese nationals regardless of the passports they hold. In practice, Hongkongers have little choice over this designation. Beijing's 1996 "explanations" of the Chinese Nationality Law states that those with foreign passports could only use them as "travel documents" unless they formally renounced Chinese nationality at Hong Kong Immigration.

China's nationality law operates differently in Hong Kong than on the mainland. On paper, mainland Chinese citizens who acquire foreign nationality are presumed to have automatically lost their Chinese citizenship. In Hong Kong, however, that rule applies in reverse. Chinese nationality is presumed to apply to all Hongkongers of Chinese descent on 1 July 1997, regardless of whether they hold another passport. This selective approach targets individuals like Jimmy Lai, who became a full British citizen prior to the handover. Born in Guangzhou, Lai would normally have lost Chinese nationality upon acquiring British citizenship. Yet Beijing refuses to honour his citizenship, declaring him Chinese in order to silence him. The result is a clear double standard: the law is applied politically rather than consistently, underscoring the lack of genuine choice for Hongkongers.

Beijing's stance is rooted in Deng Xiaoping's distorted view of Hong Kong as a Chinese territory. During the negotiations leading to the Joint Declaration, he created a "legal fiction," framing Hong Kong as historically belonging to China but temporarily administered by Britain. Yet, Deng's institutional imaginary has never been accepted by any

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international court. In reality, Hong Kong's entire history of civilisation was initiated by the British Empire, except for a brief period under Japanese occupation during the Second World War, and it was governed as a British crown colony under common law. But Deng Xiaoping's flawed reasoning now allows China to disregard nationality granted by Britain, and by extension, affects Hongkongers who emigrated abroad and acquired foreign citizenship. Deng's distortion of history now underpins the current non-recognition of foreign nationality in Hong Kong.

The denial of consular access to British citizens and, by extension, other foreign citizens living in Hong Kong is not just a legal technicality. Jimmy Lai is a high-profile case, but millions of Hongkongers who hold foreign passports face similar restrictions. Without recognition of their citizenship, they are vulnerable to detention, prosecution, or pressure from Chinese authorities with little recourse to foreign diplomatic support. For those who acquired foreign citizenship, this creates persistent uncertainty. Despite holding passports from Australia, Canada, or the UK, they remain legally Chinese in the eyes of Beijing, limiting the protections normally afforded to foreign nationals.

The situation exposes a broader tension at the heart of the Sino-British Joint Declaration. The treaty was meant to guarantee Hongkongers' rights and freedoms. Under the Chinese memorandum, consular protection is denied in Hong Kong. This allows China's selective application of its nationality law and creates real-world limitations for Hongkongers who hold foreign citizenship. Even though the UK ceded sovereignty to China, the promises made to the people of Hong Kong in terms of autonomy and protection under international law are not fully realised in practice. For Britain, this creates a moral and political dilemma. The UK can advocate for consular access, but it cannot compel Beijing to comply.

Jimmy Lai's case highlights why recent expansions of BN(O) rights, including the visa scheme and the pathway to UK citizenship, are so significant. They offer tangible protections for Hongkongers whose British nationality and potential future citizenship are otherwise disregarded in practice. Ultimately, China's refusal to grant consular access to British and other foreign citizens in Hong Kong is more than just a technicality. It is a reminder that in the absence of genuine respect for Hongkongers' rights and choices, the protections promised under the Joint Declaration remain fragile and contingent.

For individuals like Jimmy Lai, the issue is immediate and personal. For the wider community, it is emblematic of the tensions between Beijing's legal interpretations and the international norms of citizenship and consular protection, which Beijing pre-empted by appending a memorandum to the Sino-British Joint Declaration, declaring Hongkongers to be Chinese nationals only. This is exactly why China denies British consular access to Jimmy Lai.

By appending the Chinese memorandum to the Joint Declaration, Beijing effectively bypassed Article 36 of the Vienna Convention on Consular Relations, denying British consular access to Jimmy Lai. While the UK could theoretically bring China to the International Court of Justice over this breach, Beijing would almost certainly refuse to submit. This makes any ruling largely symbolic, but sends a powerful signal to the international community about China's disregard for international norms. Just as the UK took a moral lead in expanding BN(O) rights to provide refuge for 5.4 million people of Hong Kong, it can again take a lead in defending those vulnerable under its jurisdiction. Precedents such as *LaGrand* (Germany v. US) and *Avena* (Mexico v. US) demonstrate that consular access violations have been adjudicated, highlighting the international principle at stake.

Similarly, the UK and other countries can draw attention to the absence of a jury in Jimmy Lai's case. While the International Covenant on Civil and Political Rights guarantees the right to a fair and impartial trial, it does not specifically mandate a jury. Yet Hong Kong's common law system, inherited from British rule, relies on jury trials as a core safeguard of independence and impartiality. Suspending the jury under the National Security Law undermines both the spirit of these protections and the integrity of the courts. Highlighting this violation reminds the world that Hong Kong's legal system, once a model of fair justice, is being systematically eroded by a totalitarian regime.

Finally, returning to the argument at the start of this article: then Chief Executive Carrie Lam and other Hong Kong civil service elites were granted full British citizenship in the 1990s through the British Nationality Selection Scheme, yet they have now betrayed the British values they were charged to uphold. The UK could revisit calls to audit the property holdings of officials responsible for arresting Jimmy Lai and impose targeted sanctions on them, especially if

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they have since renounced their British or other foreign citizenship under the Articles 44 and 61 of the Basic Law upon becoming principal officials. Even if they were never granted British citizenship under the scheme, they have turned against the institutions entrusted to Hong Kong under the benevolence of the British Empire. Such targeted sanctions could include asset freezes, preventing these individuals from selling, transferring, or benefiting from their holdings within UK jurisdiction.

Jimmy Lai's persecution stems from Deng Xiaoping's distorted view of sovereignty and his rewriting of Hong Kong's history. By imposing Chinese nationality on all Hongkongers at the 1997 handover, Beijing can now deny consular access to British and other foreign citizens in Hong Kong. The Chinese memorandum appended to the Joint Declaration effectively sidesteps the protections of the Vienna Convention on Consular Relations. The UK has the power to act. It could take symbolic legal steps against China, shine a global spotlight on the erosion of Hong Kong's British-inherited common law system, and impose targeted sanctions on the officials who engineered Lai's political trial. This is not just a legal matter; rather, it is a test of international norms, justice, and the world's commitment to human rights and the fight against China's totalitarianism.

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## About the author:

**Ka Hang Wong** is a PhD candidate at the University of Technology Sydney. His thesis provides a historical analysis of BN(O) status and how it evolved from being a token of British nationality into a tool of political resistance against a totalitarian party-state's assault on Hong Kong.