

STATEMENT

Paris, July 14, 2020

Hong Kong National Security Law Threatens the Rule of Law

The Union Internationale des Avocats (“UIA”) and the UIA Institute for the Rule of Law (“UIA-IROL”) hereby express their grave concern concerning the “Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” (“NSL”). Both the manner in which the NSL was imposed on Hong Kong without any consultation with or approval by the Legislative Council or people of Hong Kong, and the serious threat to the Rule of Law posed by the substantive provisions of the NSL, raise a serious threat to Hong Kong’s democratic institutions and to the fundamental principles enshrined in the Hong Kong Basic Law.

In particular, the NSL poses a grave threat to liberty of expression, both within and outside Hong Kong, and to the independence of the Hong Kong judiciary and the Hong Kong legal profession.

We join with the Hong Kong Bar Association, a collective member of UIA, in noting with concern the following provisions (among others) of the NSL:

1. The creation of four new criminal offences that are so broadly defined as to permit the authorities to punish non-violent dissent rather than violent criminal conduct:
 - A. “Secession”, which could be interpreted to prohibit non-violent speech or other advocacy of changing the legal status of Hong Kong or its relation to the PRC;
 - B. “Subversion,” which could be interpreted to permit the criminal punishment of such democratic expression as peaceful picketing or media criticism on grounds of “interference” with or “undermining” of the Hong Kong or Chinese governments;
 - C. “Terrorist Activities,” including such vaguely-defined conduct as “dangerous activities which seriously jeopardise public health, safety or security”, as well as merely advocating such activities;
 - D. “Collusion with a Foreign Country or with External Elements to Endanger National Security,” which is so vaguely defined as to permit the criminal prosecution of Hong Kong and foreign academics, media and non-governmental organisations for mere opposition to Hong Kong or Chinese government policy, characterized as “provoking by unlawful means hatred among Hong Kong residents towards” the Hong Kong or Chinese governments.
2. Authorisation of the transfer of specific criminal prosecutions under the NSL from the Hong Kong courts to the courts of the PRC on the Mainland, without any judicial extradition proceedings, where the guarantees of fair trial provided in Hong Kong no longer will apply.

3. The deprivation of the right to trial by jury before the Hong Kong courts by simple, unreviewable decision of the Hong Kong government, without any judicial recourse;
4. Restriction of the independence of the Hong Kong judiciary by the designation of a list of judges to hear NSL cases by the Hong Kong Chief Executive, rather than by senior judges of the Hong Kong courts, and the disqualification of judges for inclusion on that list for having “made any statement or behaved in any manner endangering national security”, which could include prior judicial rulings or statements in court by any judge;
5. Authorisation of secret trials in which “all or part of the trial shall be closed to the public or the media but the judgment shall be delivered in an open court.”
6. The reversal of the presumption in favor of bail and its conversion to a presumption of preventive detention that is inconsistent with the presumption of innocence, to require that bail be denied unless the judge “has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security”;
7. The vesting of the “power of interpretation” of the NSL in the Standing Committee of the National People’s Congress, rather than in the courts of Hong Kong.

We also note with grave concern the assertion in Article 38 that the NSL applies to offenses committed outside Hong Kong by persons who are not permanent residents of Hong Kong. This could be applied extraterritorially to any person or entity anywhere in the world who or which comments on or criticises any aspect of the NSL or the manner in which it is enforced.

UIA and UIA-IROL note that the opening articles of the NSL state that it is consistent with the Hong Kong Basic Law and “the One Country, Two Systems” principle “under which the people of Hong Kong administer Hong Kong with a high degree of autonomy.” We further note that the early articles of the NSL specifically affirm that “human rights shall be respected and protected” in the enforcement of the NSL, along with “the rule of law,” the presumption of innocence, and “the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration,” and concede that the residents of Hong Kong enjoy those rights under the Basic Law and applicable international covenants.

Nonetheless, the specific provisions of the NSL create a grave, clear and present danger to the rights guaranteed to Hong Kong’s citizens by the Basic Law and the laws of Hong Kong.

We call upon the Government of Hong Kong and the Government of the PRC to suspend application of the NSL, and to modify it in consultation with the Legislative Council of Hong Kong, the Hong Kong Bar Association and the Law Society of Hong Kong to ensure that the rights and liberties of the people of Hong Kong are protected in accordance with the Basic Law and the Sino-British Joint Declaration of 1984.

More about UIA

UIA is the global and multi-cultural organisation for the legal profession, established in 1927 and now with members in 110 countries, which provides professional development, learning, promotes the rule of law, defends the independence and freedom of lawyers worldwide, and emphasizes friendship, collegiality and networking among members.

More about UIA-IROL

The Institute for the Rule of Law of the International Association of Lawyers (UIA-IROL) promotes the Rule of Law and supports and defends, in particular, (1) lawyers, judges and human rights defenders who are harassed, threatened and/or persecuted in the exercise of their professions, (2) the independence of the legal and judicial professions, and (3) the UN Basic Principles on the Role of Lawyers, especially in defense of human rights.

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