

OPEN LETTER

June 16, 2020

Li Zhanshu

Chairman of the Standing Committee of the National People's Congress (NPCSC)

Re: Reject National Security Legislation

Dear Chairman Li,

We are writing to express our grave concerns regarding the recent adoption by China's National People's Congress (NPC) of a formal decision to directly impose national security legislation on Hong Kong. We urge the Standing Committee of the National People's Congress (NPCSC) to reject the legislation.

Although no details of the law's contents have been made publicly available, the decision – along with recent comments by Chinese and Hong Kong officials – suggest that it will threaten the basic rights and freedoms of the people in Hong Kong. We are particularly concerned about the law's impact on Hong Kong, especially its vibrant civil society.

According to the NPC decision, the law is expected to prohibit acts of “splittism, subversion, terrorism,” and activities of “foreign and overseas intervention in Hong Kong affairs,” vague terms that can encompass any criticism of the government and be used against people peacefully exercising and defending their human rights. Standing Committee member Tam Yiu-chung has already [suggested](#) that those who oppose the national security legislation be disqualified from Hong Kong's Legislative Council. The deputy director of the Standing Committee's Hong Kong Basic Law Committee, Elsie Leung, “[has not ruled out](#)” that the law may even be retroactive. These restrictions contravene the International Covenant on Civil and Political Rights (ICCPR), which is binding on Hong Kong.

People's Republic of China law conceptualizes “national security” in such a broad manner that peaceful activists, [human rights lawyers](#), [scholars](#), [ethnic minorities](#), [journalists](#), and netizens, are detained, charged, and imprisoned for years – sometimes for life – for vaguely defined crimes such as “subversion,” “[inciting subversion](#),” “splittism,” and “leaking state secrets.” The law's expected prohibition on “foreign intervention” is another vague term that could apply to any group or individual perceived to be interacting with those outside Hong Kong. In fact, the central and Hong Kong governments and officials have already alleged that [nongovernmental organizations](#) and [activists](#) are steered by “foreign forces,” and that their peaceful activities – including attending protests, [receiving donations](#), and [criticizing](#) the government – constitute “foreign intervention.”

International human rights standards such as those found in the Johannesburg and Siracusa Principles set out that “national security” cannot be invoked to justify restrictions on rights and freedoms unless to protect a state's existence or territorial integrity against the use or threat of force. A state cannot use national security as a reason to impose limitations on rights to prevent merely local or relatively isolated threats to law and order. A state must not invoke national

security as a justification for measures aimed at suppressing opposition to human rights violations or at perpetrating repressive practices against its population. Any national security law must be accessible, unambiguous, and formulated narrowly and with precision, so as to enable individuals to foresee whether a particular act is unlawful. A state must also provide adequate safeguards and effective remedies against abuse. Without the requirement to comply with international human rights law, these vague terms leave the proposed law open to abuse by authorities to crack down on a wide range of rights and freedoms.

The national security law as proposed in the NPC decision appears to contain matters covered by Article 23 of the Basic Law. According to its Concluding Observations in 2013, the United Nations Human Rights Committee recommended that the Hong Kong government ensure any new legislation under Article 23 of the Basic Law was “fully consistent” with the provisions of the ICCPR.

On April 23, 2020, six United Nations Special Rapporteurs [expressed concerns](#) to the Hong Kong government about its overly broad and imprecise definitions of acts of terrorism, which may result in unintended human rights abuses. The Special Rapporteurs cautioned against the loose characterization of protests and collective acts of assembly as “terrorism” or “national security threats,” criticizing the current domestic legal standard as steering away from the core emphasis found in agreed international treaties on terrorism and UN Security Council Resolution 1566 on the targeting of civilians.

The NPC’s decision to directly insert the national security legislation into Annex III of the Basic Law raises serious concerns about human rights protections. Hong Kong’s “one country, two systems” constitutional arrangement means that China’s national laws normally do not apply to the Hong Kong Special Administrative Region. While article 18 of the Basic Law allows for the application of certain national laws via Annex III, the laws must undergo either legislation or promulgation. The draft law will be introduced to Hong Kong through promulgation and without a legislative process, bypassing popular oversight through the Legislative Council and meaningful public consultation.

The NPC decision also raises concerns because Article 18 of the Basic Law states that such insertion of Chinese national legislation into Annex III “shall be confined to those relating to defense and foreign affairs as well as other matters outside the limits of the autonomy of the Region.” Under the Basic Law and the bilateral treaty between the United Kingdom and China at the time of Hong Kong’s transfer of sovereignty, Hong Kong has a “high level of autonomy.” The Hong Kong government has autonomous powers to manage the city’s affairs, except for defense and foreign affairs. Article 23 of the Basic Law empowers the Hong Kong government to “enact laws on its own” to prohibit subversive acts.

The NPC decision also states that the law will allow the central government to set up “relevant” institutions to protect “national security” in Hong Kong as needed. Although there are few details, this could mean the establishment of agencies such as the Ministry of State Security and the National Security Bureau of the Ministry of Public Security – agencies long known for serious rights violations in China, including arbitrary detention and torture of activists and members of nongovernmental organizations – to operate in Hong Kong. The Ministry of Public

Security has [said](#) it would provide “support” to Hong Kong police on national security matters, without giving specifics.

This arrangement raises questions as to its compliance with Article 22(1) of the Basic Law, which provides that no department of the Central People’s Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with the Basic Law. Currently, on the mainland there are essentially no institutional checks and balances on the power of national security agencies and no effective mechanisms to hold them accountable for their systemic violation of human rights. Allowing these agencies to operate in Hong Kong or having similar agencies set up by the Hong Kong government poses an imminent threat to not only human rights defenders, the independent media, and dissidents, but essentially every person in the city.

The NPC decision also provides that “the HKSAR’s administrative, legislative and judicial organs must, in accordance with relevant laws and regulation, effectively prevent, stop and punish acts endangering national security.” The city’s judiciary has already experienced intensifying pressure in “sensitive” cases. This direction may effectively undermine the independence of the judiciary, which is the cornerstone of the rule of law in Hong Kong. While Hong Kong courts have long been regarded as independent and professional, the Hong Kong Secretary of Justice Teresa Cheng has [said](#) a separate “special court” may be established to handle these national security cases to “help the judiciary navigate uncharted territory.” We are concerned that this suggests that the suspects may not enjoy the same fair trial rights as others in Hong Kong’s judicial system. In the mainland, suspects in national security trials are regularly deprived of procedural rights, including [access to legal counsel](#) of their choice and the right to a public hearing. While Cheng said national security hearings should “generally” be open to the public, she also said judges may “at times” deny suspects an open hearing. Executive Council member Regina Ip Lau Suk-yea further [suggested](#) that it would not be “appropriate” to have juries for these trials.

We urge the NPCSC to abandon plans to introduce national security legislation for Hong Kong, as what is known about the draft law so far and the experiences with respective national security laws in mainland China strongly indicate that neither the law nor its application would conform to international human rights law and standards.

We look forward to your reply and would appreciate receiving your response on this matter.

Sincerely,

2047 HK Monitor
Amnesty International
Article 19
Asia Monitor Resource Centre
Australia Hong Kong Link
Baptist Oi Kwan Social Service - Fellow Workers Social Action Concern Group
Beyond the Boundary-Knowing and Concerns Intersex
Borderless Movement

Brisbane International Student Solidarity with Hong Kong
Canadian Friends of Hong Kong
Canberra Hong Kong Concern Group
China Criticism Society of Denmark
China Labour Bulletin
Chinese Human Rights Defenders
Chinese Human Rights Lawyers Concern Group
Christian Social Workers
Christians for Hong Kong Society
Citizen Power Initiatives for China
Citizens' Radio
Civil Human Rights Front
Civil Rights Observer
Civil Society Development Resources Center
Covenants Watch
Equality Project
Forthright Caucus
Forum Worlds of Labour / Forum Arbeitswelten e.V.
Freedom House
Friends of Conscience
General communication worker union
Grassroot Cultural Centre
Hong Kong Affairs Association of Berkeley
Hong Kong Alliance in Support of Patriotic Democratic Movements of China
Hong Kong Christian Fellowship of Social Concern
Hong Kong Christian Institute
Hong Kong Committee in Norway
Hong Kong Confederation of Trade Unions
Hong Kong Forum, Los Angeles
Hong Kong Human Rights Monitor
Hong Kong Sheng Kung Hui Welfare Council Workers Trade Union
Hong Kong Unison Limited
Human Rights in China
Human Rights Network for Tibet and Taiwan
Human Rights Watch
Humanitarian China
International Bar Association's Human Rights Institute
International Human Rights Council – Hong Kong
International Service for Human Rights
Justice and Peace Commission of the HK Catholic Diocese
Kwai Chung Estate Christian Basic Community
Labour Education and Service Network
McMaster Stands With HK
Netherlands for Hong Kong
New School for Democracy
New Yorkers Supporting Hong Kong

Northern California Hong Kong Club
One Body in Christ
Open Data Hong Kong
Planet Ally
Power for Democracy
Progressive Lawyers Group
Queer Theology Academy
Rainbow Action
Reclaiming Social Work Movement
Reporters Without Borders
Retail, Commerce and Clothing Industries General Union
Right of Abode University
Scholars' Alliance for Academic Freedom
Sheng Kung Hui Lady MacLehose Centre Staff Social Movement Concern Group
Sounds of the Silenced
SRACP Staffs Union
Taiwan Alliance to End the Death Penalty
Taiwan Association for Human Rights
Taiwan East Turkestan Association
The Academic Staff Association of The Education University of Hong Kong
The Association for the Advancement of Feminism
The Hong Kong Society for Asylum-seekers and refugees
The Norwegian Taiwanese Friendship Association
The Norwegian Tibet Committee
The Rights Practice
Torontonians HongKongers Action Group
TWGHs Staff Social Movement Concern Group
United Nations ECOSOC NGO International Career Support Association
Uyghur Human Rights Project
Vancouver Society in Support of Democratic Movement
Worker Empowerment
World Uyghur Congress

CC:

Chairman of the NPCSC Legislative Affairs Commission (全國人大常委法制工作委員會)

Members of the HKSAR Basic Law Committee (香港特別行政區基本法委員會)

