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Contact: Eric Friedman
efriedman@nycbar.org

Eli Cohen
ecohen@nycbar.org

New York City Bar Association Statement on China's Proposed National Security Legislation for Hong Kong

The New York City Bar Association is gravely concerned about the Draft Decision being considered by the People's Republic of China's National People's Congress (NPC) to impose tighter control over Hong Kong through security legislation.¹ The new legislation, which the NPC will likely pass and implement, will prohibit acts of separatism, subversion, terrorist activities, and "activities by foreign and overseas forces that interfere in the affairs of the Hong Kong,"² poorly defined terms that are already used in Chinese legislation and have been used to silence dissent and punish people for exercising fundamental human rights. The City Bar is deeply concerned by this new move to erode the autonomy of the Hong Kong legal system and further undermine the rights of Hong Kong people.

The Decision, "Establishing and Completing the Hong Kong's Special Administrative Region's Legal System and Implementation Mechanisms for the Preservation of National Security,"³ is scheduled for a vote for adoption on May 28, 2020, and the national security legislation passed as a consequence of the Decision would be added to Annex III of the Basic Law, as part of national Chinese laws that apply in the territory. The content of the new legislation has not been

¹ 全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定（草案）(Decision of the National People's Congress on Establishing and Completing the Hong Kong's Special Administrative Region's Legal System and Implementation Mechanisms for the Preservation of National Security (Draft)), unofficial translation provided by China Law Translate, available at: <https://www.chinalawtranslate.com/en/hkntsecdecisiondraft/>.

² Establishing and Completing the Hong Kong's Special Administrative Region's Legal System and Implementation Mechanisms for the Preservation of National Security, unofficial translation provided by China Law Translate, available at: <https://www.chinalawtranslate.com/en/hkntsecdecisiondraft/>.

³ Unofficial Translation provided by China Law Translate, available at: <https://www.chinalawtranslate.com/en/hkntsecdecisiondraft/>.

made public, but the general outline in the Decision pertaining to acts to be prohibited underscore the problematic nature of a future enacted legislation.

The City Bar is concerned that the Draft Decision threatens fundamental rights guaranteed under both international law and the Hong Kong Basic Law to which Beijing is committed to uphold. Among others, Hong Kong is guaranteed the rights of peaceful assembly and free speech under international and municipal law. The Sino-British Joint Declaration, a binding international agreement between China and the United Kingdom, guarantees that Hong Kong shall enjoy separate legal and economic systems through 2047 under the policy of “One Country, Two Systems.”⁴ Among the fundamental rights to be preserved are: freedom of speech, of the press, and of publication; freedom of association, of assembly, of procession, and of demonstration. Moreover, Hong Kong’s Basic Law, which implements the agreement, incorporates the International Covenant on Civil and Political Rights into local law.⁵

The Draft Decision broadly mandates the prevention of “activities that endanger national security,”⁶ but does not include any information about how those activities will be defined nor information about how fundamental freedoms in the Basic Law will be protected against charges of separatist, subversive, terrorist activities, or interference in Hong Kong affairs. Specifically, core rights to speech, assembly, and demonstration (Article 27), prohibitions against arbitrary or unlawful arrest, detention, or imprisonment (Article 28), search (Article 29), privacy of communication (Article 30), freedom of movement (Article 31), and rights to confidential legal advice and access to the courts (Article 35), among others, are all of fundamental importance and will be negatively impacted by Central legislation prohibiting broad and ill-defined categories of activities. The draft further directs Hong Kong “administrative, legislative, and judicial organs” to “prevent, stop, and punish conduct endangering national security,” adding to concerns about the independence of the judiciary in Hong Kong.

The Draft Decision moreover states that offices for Chinese national security organs will be established in Hong Kong to facilitate implementation of the law. Without details, the full scope of the impact of this provision cannot be assessed. At a minimum, however, the City Bar is concerned that those agencies will be empowered with authority outside the existing legal system, bringing into Hong Kong the measures, methods, and habits of the security apparatus in mainland China, which have a long and troubling history of violating the rights of dissenting people and groups.

The City Bar is also concerned that the Draft Decision is being made without proper authority. Article 23 of the Hong Kong Basic Law provides that Hong Kong “shall enact laws on its own” to prohibit acts of “treason, secession, sedition, subversion” against the central government. Therefore, under the Basic Law the power rests with Hong Kong to enact security legislation for Hong Kong. In 2003, the Hong Kong government introduced a bill under Article 23 of the Basic Law, which led to massive protests by the Hong Kong people owing to concerns about fundamental rights being infringed upon by legislation which did not address those provisions adequately. The bill was subsequently withdrawn.

⁴ Hong Kong Basic Law, Preamble.

⁵ Hong Kong Basic Law, Art. 39.

⁶ Art. 1, *supra* note 2.

The City Bar is troubled that the Draft Decision follows other developments in Hong Kong impacting freedoms in the territory, including the arrest of fifteen prominent pro-democracy advocates on April 18, 2020; the New York City Bar issued a statement on those arrests on April 24, 2020.⁷ This escalation of measures to curtail freedoms that are a core part of the city’s legal framework continue to erode Hong Kong’s autonomy despite China’s commitment to maintain the city’s autonomy and basic freedoms. As such, this escalation threatens Hong Kong’s position as a leading center for investment, trade, and finance under the rule of law.

The City Bar calls on the NPC to withdraw the Draft Decision and cancel the vote on national security legislation for Hong Kong. We further urge authorities both in Hong Kong and Beijing to honor their obligations under international and domestic law and renew their commitments to the rule of law and human rights under their pledge to maintain “One Country, Two Systems.”

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. www.nycbar.org

⁷ <https://www.nycbar.org/media-listing/media/detail/condemning-recent-arrests-of-pro-democracy-advocates-in-hong-kong>.