

ICC-HK

Statement on Legislating the Hong Kong National Security Law

The sudden proposal to enact the national security law on behalf of Hong Kong came as a shock. Hong Kong has a duty to bring in legislation under Article 23 of the Basic Law, and the Hong Kong government will not abdicate this responsibility. Yet, the Central Government has chosen to do it itself, and without first obtaining public opinion in Hong Kong. This is sad and devastates confidence in the Central Government, and may be taken to reflect the Central Government's attitude towards the role, function and well-being of Hong Kong. This has given rise to doubts questioning inconsistency to the provisions of the Basic Law. Also there is a lack of clarity but much uncertainty and concern about Hong Kong's economy and individual freedoms and safety. We believe the drafting process of the Law should be transparent and provides opportunity for the people in Hong Kong to offer comments as they are those affected.

2. As the Law is being drafted, we gain the impression that the Central Government and the National People's Congress (NPC) *China* would welcome views from people in Hong Kong, and the Hong Kong Government would be consulted on this. On that basis, we should ask that an opportunity for people in Hong Kong, including ourselves, would be available to offer comments before the draft Law will be decided by the NPC Standing Committee for approval of the NPC. Since the NPC's decision is publicly known, media reports have led to speculation on the substance and wording of the Hong Kong National Security Law being drafted. This has caused fear and loss of confidence. The international community would see a troubling erosion of Hong Kong's high degree of autonomy and overseas talent will be unwilling to come and work in Hong Kong.

3. Hence, we should like to raise the following in general terms with respect to the law drafting according to NPC's decision:
- a) the Law will clarify what constitutes a contravention or an offence of the Law;
 - b) certain terms such as what constitutes "interference (干預)" or "collusion (勾結)" or "endangering (危害)" will be defined or clarified;
 - c) Article 23 of the Basic Law requires the Hong Kong Government to enact law on its own regarding national security, and obviously to administer it. It would seem there is no need for the national security-related organs in the Mainland to have agencies operating in Hong Kong. The Hong Kong Administration already has rich experience in working with law enforcement agencies in the Mainland and of other jurisdictions. After all, China is not a federal state. Moreover, to suggest that Hong Kong cannot deal with selected serious cases of national security breaches is tantamount to negating the authority bestowed on the Hong Kong government by the Basic Law;
 - d) the Law will align with the Hong Kong legal system built on common law for the rule of law regime. Indeed the Law is intentionally made for the governance of Hong Kong;
 - e) the Law should have no retrospective effect from the date of promulgation;
 - f) the Law will not diminish the independence of the Hong Kong Judiciary, and the existing practice or process of law enforcement and trial by court will continue;
 - g) there will not be a separate court for the Law, and judges who sit for trial will not be excluded because of race, religion, conscience, nationality or sex,
 - h) the Law will be constructed in accordance with international covenants on human rights and the Universal Declaration of Human Rights;
 - i) the Law will not have provisions like those of the withdrawn Hong Kong Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019, which has created uncertainty and eroded confidence; and

j) the Law will not be detrimental to Hong Kong's being an international financial, business and dispute resolution centre, under "Once country, two systems".

4. The Hong Kong Government should initiate public consultation in Hong Kong on the draft Law, hopefully the NPC too, before its being decided by the Standing Committee to move the draft law to the NPC for approval. There should be adequate time for proper public consultation.

5. The Law would be promulgated by the Hong Kong Government as deemed timely, but the effective date should depend on need, and be decided by the Chief Executive-in-Council.

6. An important aspect of the Basic Law is that in the eyes of the international business community, the important values and freedoms required to transact business competitively in Hong Kong, such as the rule of law and the free flow of information, are fully ring-fenced and protected by the "two systems" concept. But the way in which the National Security law is being introduced breaches this fence and is a considerable cause for further concern that it could be the precedent for further breaches in the future.

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