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## **China: Robust actions needed after imposition of draconian national security law for Hong Kong**

Human rights defenders in Hong Kong will face repression following the adoption of the draconian ‘national security law’ by the central Chinese government for Hong Kong. The law was published in full on the evening of 30 June 2020, shortly before it came into effect at 23:00 local time. Front Line Defenders urges the Chinese Government to revoke implementation of the law and urges concerned governments and the United Nations human rights system to take decisive actions to protect civic space and human rights defenders in Hong Kong.

The unilateral imposition of the law by the central Chinese government bypassed Hong Kong’s own legislative process, depriving persons in Hong Kong of the right to participate in public affairs, which they are guaranteed under the International Covenant on Civil and Political Rights (ICCPR). It violates Hong Kong’s “high degree of autonomy”, guaranteed under the Sino-British Joint Declaration, a binding treaty registered with the UN. No drafts of the law were published for meaningful and inclusive public consultation in Hong Kong prior to its adoption.

The law criminalises “secession”, “subversion of State power”, “terrorist activities”, and “collusion with foreign or external forces to endanger national security”. If found guilty of one of these four offences, those who are deemed as a “ring leader” or whose “crimes” are deemed “severe”, may be sentenced to life imprisonment or imprisonment for more than ten years. The four crimes are vague and ill-defined. Their equivalent provisions in Chinese law have long been used to target human rights defenders in the mainland and criminalise legitimate and peaceful actions that are protected by human rights law.

The law criminalises not only the use or threat of violence in committing the four offences, but also the use of undefined “other means”. For example, “severe interference, obstruction, and damage to the lawful implementation of duties by government organs” of both the Hong Kong or Chinese governments may constitute a crime of “subversion of State power” (article 22[3]). Requesting foreign entities to take action, or receiving funding or instructions from foreign entities that lead to actions which “may cause serious consequences for and seriously obstruct the formulation and enforcement of laws and policies” by the Hong Kong or Chinese governments, may constitute a crime of “collusion with foreign or external forces to endanger national security” (article 29[2]).

The new powers the law has granted to both the Hong Kong government and the central Chinese government have essentially undone the “One Country Two Systems” guarantees that have largely protected the basic freedoms and rule of law traditions that the citizens of Hong Kong, including human rights defenders, have enjoyed since 1997. The Chinese and Hong Kong authorities now possess a powerful tool, with which they can punish dissent and the peaceful exercise of fundamental rights, under the guise of “safeguarding national security”:

- The authority to interpret the law’s provisions is vested with the Chinese parliament’s Standing Committee. The national security law will take precedence over local Hong Kong laws if there is conflict between the two (articles 62 and 65). This essentially eviscerates the human rights protection provided for in current legislation and in [seven human rights treaties](#) that apply in Hong Kong;

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- A “Committee for Safeguarding National Security” will be established in Hong Kong, to be chaired by the city’s Chief Executive, and will be “supervised by and accountable to” the central government, which will appoint a “national security adviser” to sit on the Committee. The Secretariat of this Committee will be headed by a person appointed by the central government upon nomination by the Chief Executive. The work of the Committee will not be made public, nor will its decisions be subject to judicial review (articles 12-15);
- The central government will set up an “Office for Safeguarding National Security” in Hong Kong to collect and analyse intelligence, as well as “supervise, guide, coordinate with and support” the Hong Kong government in enforcing the law (Chapter 5). Article 55 specially empowers this Office to, upon approval by the central government, exercise jurisdiction over and investigate national security cases in “specified circumstances”. When this power is invoked, the investigation, prosecution, trial and enforcement of penalty will follow China’s notoriously flawed Criminal Procedure Law and “other relevant laws”. China’s Supreme People’s Procuratorate and Supreme People’s Court have the authority to assign prosecutors and courts to handle such cases, respectively. Detention measures, investigative actions, and court judgments by mainland authorities in such special cases have binding legal force in Hong Kong.
- Article 41 provides for the possibility of secret trials, closed entirely or partially to the media and the public, if cases are deemed to involve “state secrets” or “public order” concerns;
- Article 60 enshrines impunity for personnel of the Office for Safeguarding National Security, who are given immunity from Hong Kong’s local law when enforcing this law in the city;
- The Hong Kong Police Force will establish a special unit responsible for enforcing the law. The head of this unit is appointed by the Chief Executive after prior written consultation with the Office for Safeguarding National Security (articles 16-17);
- The Hong Kong Department of Justice will create a special unit responsible for prosecuting national security offenses. The prosecutors of this unit shall be appointed with the “consent” of the Committee for Safeguarding National Security (article 18);
- The Chief Executive of Hong Kong is authorised to appoint current or former “qualified” judges in Hong Kong to preside over national security trials. However, judges who are deemed to have “expressed or acted in a way that endanger national security” are ineligible. Judges who are found to have expressed or act in such a way, once they are appointed, will have their duties terminated (article 44);
- Articles 37 and 38 appear to extend the law’s coverage to overseas activities undertaken by Hong Kong permanent residents, legal entities registered in Hong Kong, groups in Hong Kong that are not legal entities, and foreigners residing outside of Hong Kong;
- Article 43 provides sweeping and ill-defined powers to the Hong Kong police intercept communication, conduct clandestine surveillance, confiscate passports, impose exit ban, seize and freeze assets, order information “service providers” to remove information or “provide assistance”, order the representatives of foreign or external political organizations or foreign governments to provide information, and order anyone suspected on “reasonable grounds” to be in possession of “materials relevant to investigations” in national security cases to turn over these materials;

- Article 54 requires the Office for Safeguarding National Security in Hong Kong, the Chinese Ministry of Foreign Affairs' representative office in Hong Kong, and the Hong Kong government to take "necessary measures" to "strengthen regulations" of foreign and international NGOs and media organisations with offices in Hong Kong, intensifying the crackdown on the many human rights groups and media outlets that operate in the city.

On 16 June 2020, seven UN human rights experts [wrote](#) to the Chinese government, raising their serious concerns regarding the compatibility of the draft law with China's human rights obligations, as summarized in a [Decision](#) adopted by the Chinese parliament on 28 May 2020. The experts expressed particular concern that "general assertions of conduct that threatens "national security" without proper definitions and limitations may severely curtail civic space and the rights of minorities and other civil society actors." On 19 June 2020, the UN High Commissioner for Human Rights [publicly warned](#) that China's own national security law, passed in 2015, does not comply with international human rights standards, and that such laws "can never be used to criminalize conduct and expression that is protected under international human rights law."

Front Line Defenders welcomes the unprecedented [joint statement](#) issued on 26 June 2020 by 51 UN Special Procedures experts urging for "renewed attention" on and "decisive measures" to respond to the Chinese government's actions against persons in Hong Kong, Xinjiang and Tibet, as well as human rights defenders across the country. The experts warned that the new law for Hong Kong "would undermine the right to a fair trial and presage a sharp rise in arbitrary detention and prosecution of peaceful human rights defenders at the behest of Chinese authorities."

The Chinese government has a [well-documented record](#) of subjecting human rights defenders, and their family members, to harassment, surveillance, censorship, detention, torture or ill-treatment, enforced disappearance, and imprisonment. Since June 2014, the UN Special Rapporteur on the situation of human rights defenders, individually or jointly with other experts, has sent the Chinese government at least 57 letters and issued 16 public statements, raising concerns about the targeting of over 80 human rights defenders in China. Since 2014, the UN Working Group on Arbitrary Detention found the detention of 36 human rights defenders in China to be arbitrary and in violation of international human rights law and standards. These cases are merely the tip of the iceberg.

The Chinese authorities' decision to impose a draconian and significant law on Hong Kong, during a pandemic, demonstrates a concerning intensification of its disregard for human rights. It also highlights the growing degree of impunity that the Chinese government enjoys in the face of inadequate international actions to hold it accountable for widespread and systematic rights violations elsewhere in the country, such as Xinjiang and Tibet.

Front Line Defenders calls on the Chinese Government to revoke the imposition of the national security law for Hong Kong.

Front Line Defenders calls on all concerned governments to take collective urgent action to heed the UN Special Procedures experts' call to:

- Convene a special session at this year's UN Human Rights Council (HRC) to address the full range of human rights violations in China highlighted by Special Procedures, including reprisals against human rights defenders;
- Establish an impartial and independent UN mechanism – such as a UN Special Rapporteur, a Panel of Experts appointed by the HRC, or a Secretary General Special Envoy – mandated to "closely monitor, analyse and report annually on the human rights situation in China".

Front Line Defenders further calls on concerned governments to:

- Review and ensure their strategies on the protection of civic space and human rights defenders in China are ambitious, holistic and result-oriented. These strategies should be accompanied by concrete goals such as the withdrawal or amendment of repressive or discriminatory laws and practices, and the release of or dropping of charges against human rights defenders, such as [pro-democracy figures](#) in Hong Kong who are facing “unlawful assembly” charges;
- Subject China’s future candidacy for the Human Rights Council to rigorous scrutiny, actively engage Chinese diplomats and officials inside and outside of China to raise key human rights issues and cases critically, and cast votes at the General Assembly which uphold the requirement that Council members adhere to the highest standards of human rights;
- Consider filing a case against China in the International Court of Justice over its breach of international obligations, including those under the Sino-British Joint Declaration.