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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Jubilee Campaign, a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 May 2021]

* Issued as received, in the language(s) of submission only.

Interactive Dialogue with the Special Rapporteur on Peaceful Assembly – The Looming Threat of the Hong Kong National Security Law

Jubilee Campaign would like to raise to the Council’s attention the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, colloquially referred to as the Hong Kong National Security Law. This legislation broadly criminalizes acts that allegedly “endanger national security”, thus posing a threat to essential freedoms such as that of assembly.

The Hong Kong National Security Law Broadly Criminalizes Acts that “Endanger National Security”

In late May 2020, China’s parliament, the National People’s Congress, finalized its decision to draft a national security legislation for Hong Kong in a unilateral decision without first engaging with Hong Kong officials.(1) Hong Kong’s Basic Law of 1997 expressly prohibits the Chinese government from applying national laws to the territory, with the exception of those regarding defense and foreign affairs. The National People’s Congress’ imposition of a national security legislation upon Hong Kong by promulgation further broke tradition by bypassing the Hong Kong Legislative Council. In essence, the June 2020 enactment of the Hong Kong National Security Law contravened the “one country, two systems” promise of the Chinese government.(2)

Moreover, Chinese officials claimed that the new legislation would neither diminish Hong Kong’s autonomy nor be excessively broad, though such claims became baseless from the outset.(3) Hong Kong’s National Security Law contains four main criminal provisions, including secession, subversion, terrorism, and collusion with foreign entities. However, the vague and imprecise language of these four terms presents difficulties for citizens to know to what extent certain political actions are considered legally permissible. Such language contravenes internationally-recognized tenets of rule of law, including the principle of legal certainty, which maintains that criminal law must be clearly outlined so that there is no uncertainty regarding what actions and behaviors constitute criminal offenses.(4)

As such, the vague language of the Hong Kong National Security Law allows authorities to punish civilians for exercising their most basic freedoms such as that of assembly, expression, and association should they be construed as fitting the nonspecific crimes of secession, subversion, terrorism, or collusion.(5) As explained by Human Rights Watch, the “crimes of ‘secession’ and ‘subversion’ make criminal acts that do not involve ‘force or threat of force,’ meaning that peaceful actions, such as speeches advocating these ideas, can violate the law.”(6)

It is therefore no coincidence that the introduction of the National Security Law has caused anxiety among civilians and activists who have engaged in political activity. Immediately following the implementation of the Hong Kong National Security Law, civilians began to visibly self-monitor their actions to avoid criminalization. Individuals deleted previous social media posts promoting Hong Kong independence; journalists erased their names from online article archives; shops and businesses have taken down pro-democracy post-it notes; peaceful protesters began using message codes rather than verbally chanting during assembly.(7)

The Hong Kong National Security Law Has Been Used to Charge Individuals for Assembly-related Activities

While the Hong Kong National Security Law, to date and according to common knowledge, has not been explicitly applied to directly criminalize assembly itself, it is imperative to highlight that immediately following the signing into force of the legislation, authorities have used it specifically against protesters and demonstrators to criminalize assembly-related and protest-related activities. By 29 July 2020, exactly one month after the law was initially implemented, authorities had already arrested a handful of civilians. Participants of the 1 July

2020 pro-democracy protest were charged for violating the national security law by “displaying flags or banners” and “chanting slogans”. The next day, on 2 July 2020, the popularized slogan of the 2019 democracy and anti-extradition protests, “Liberate Hong Kong, the revolution of our times” was made illegal because it allegedly incited subversion and secession.⁽⁸⁾ In December 2020, eight men between the ages of 16 and 34 were arrested for their actions during a peaceful pro-democracy demonstration the month prior at Chinese University of Hong Kong (CUHK). While the men were separately charged for unlawful assembly – though it is unclear under what legislation they were charged – three were charged under the national security law for singing the protest anthem Glory to Hong Kong, and holding a banner stating “Hong Kong Independence, the only way out”.⁽⁹⁾ The implementation of the Hong Kong National Security Law by authorities, since its production, has been in clear violation of Article 21 of the International Covenant on Civil and Political Rights (ICCPR).

The Human Rights Committee, in its General comment No. 37 on the right of peaceful assembly has clearly outlined that “the use of flags, uniforms, signs and banners should be regarded as legitimate form[s] of expression that should not be restricted”.⁽¹⁰⁾ The only justifications for restricting their use is during “exceptional cases” where such symbols are “directly and predominantly associated with incitement to discrimination, hostility or violence.”⁽¹¹⁾ The Hong Kong Security Law, in contrast, has been used to arrest protesters for the content of their speech, signage, and banners;⁽¹²⁾ the Human Rights Committee has clearly outlined that restrictions placed by states on freedom of assembly according to Article 21 ICCPR must be “content neutral.”⁽¹³⁾ Moreover, the Committee also cited the Organization for Security and Cooperation in Europe (OSCE) guidelines for peaceful assembly which state that any restrictions on freedom of assembly “should not be based on the content of the message(s) that they seek to communicate.”⁽¹⁴⁾ The restrictions on freedom of assembly applied by authorities in reference to the Hong Kong National Security law therefore clearly breach these recommendations making their restrictions unlawful, as they target both the content of the expression and the use of symbols without sufficient justification as to why the banners and slogans would ‘incite violence’. Thus, the Hong Kong National Security Law is used to indirectly target peaceful assembly in general and poses a threat to the right and freedom of Hong Kong civilians to participate in protests.

Conclusion

We remain concerned by the implications of the Hong Kong National Security Law on multiple rights and freedoms, including that of assembly through indirect means. The freedom of assembly is guaranteed in Article 21 of the International Covenant on Civil and Political Rights⁽¹⁵⁾ and Article 27 of the Basic Law of the Hong Kong Special Administrative Region.⁽¹⁶⁾ Hong Kong authorities have applied restrictions, as explained above, that indirectly criminalize the act of assembly by targeting relevant activities. These restrictions threaten the enjoyment of peaceful and nondisruptive protest, which is a distinct requisite of a democratic society.

Recommendations

Jubilee Campaign urges members and observer states of the Human Rights Council to call on the People’s Republic of China to:

1. Cease the practice of applying the Hong Kong National Security Law to clamp down on peaceful assembly-related activities which are related to the content of the protesters’ speech and expression in contravention of Article 21 ICCPR and the Basic Law of Hong Kong.
2. Clarify what constitutes criminal offenses in the Hong Kong National Security Law and repeal clauses which violate rights and freedoms protected in both the ICCPR and The Hong Kong Basic Law.

- (1) The Conversation, “Hong Kong: how China’s new national security law subverts the territory’s cherished rule of law”, 29 May 2020.
- (2) Larry C. B. Lai & Debby S. W. Chan, “National Security Laws in General Are Not a Problem. Hong Kong’s Is.”, The Diplomat, 5 June 2020.
- (3) Al Jazeera, “China’s parliament approves Hong Kong national security bill”, 28 May 2020.
- (4) Fenwick M., Wrбка S. (2016) The Shifting Meaning of Legal Certainty. In: Fenwick M., Wrбка S. (eds) Legal Certainty in a Contemporary Context. Springer, Singapore.
- (5) Lydia Wong & Thomas E. Kellogg, Hong Kong’s National Security Law: A Human Rights and Rule of Law Analysis, Center for Asian Law, Georgetown Law, February 2021.
- (6) Human Rights Watch, “China: New Hong Kong Law a Roadmap for Repression”, 29 July 2020.
- (7) Laignee Barron, “‘It’s So Much Worse Than Anyone Expected.’ Why Hong Kong’s National Security Law Is Having Such a Chilling Effect.”, Time, 23 July 2020.
- (8) Supra note 6.
- (9) Selina Cheng, “Hong Kong police confirm 8 arrested for unlawful assembly and ‘inciting secession’ during peaceful CUHK campus demo”, Hong Kong Free Press, 7 December 2020.
- (10) UN Human Rights Committee, General Comment No. 37 (2020): on the right of peaceful assembly (article 21), 17 September 2020, CCPR/C/GC/37.
- (11) Ibid.
- (12) Supra note 9.
- (13) Supra note 10.
- (14) Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), Handbook on Monitoring Freedom of Peaceful Assembly: Second Edition, 2020.
- (15) UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999.
- (16) Hong Kong: Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, 1 July 1997.