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Human rights situations that require the Council's attention

Written statement* submitted by Human Rights Now, 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.

[7 February 2022]

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.

Hong Kong Authorities Must End their Harassment and Prosecution of Civil Society and Journalists

In our last statement to this Council, Human Rights Now expressed alarm at the collapse of civil society organizations in Hong Kong since the passage of the National Security Law (NSL).[1] Since then, authorities have particularly cracked down on the free press, and the threats and attacks on civil and political rights in Hong Kong have only worsened, with promises to expand still further. We call on the relevant authorities to review all laws and legal practices, including the NSL and sedition law, and repeal any element inconsistent with Hong Kong's obligations under its Basic Law and the ICCPR.

1. Attacks on Civil Society and Press Freedom

As of January 25 this year, Hong Kong police have arrested 162 people since the NSL took effect in June 2020, of which more than 100 have been prosecuted.[2] Last year also saw a wave of crackdowns under the NSL which led to the shocking dismantling of more than 50 non-profit organizations in Hong Kong.[3]

More recently, journalists and media outlets have been targeted for prosecution and harassment. Stand News—one of the largest independent, pro-democracy news site still remaining after Apple Daily's shutdown following the crackdown against it last year—announced on 29 December 2021 that it was halting operations after 200 police officers raided its newsroom, froze its assets, and arrested seven current and former team members.[4] Two Stand News editors were charged with conspiracy to publish “seditious publications”, and one former director living in Japan was added to the police wanted list, alongside the outlet's co-founder and sole incumbent director who has moved to Australia. One day earlier, the prosecution leveled an additional sedition charge against Jimmy Lai, founder of the now dismantled Apple Daily newspaper, who already faces charges under the NSL.

The unyielding prosecutions and threats have significantly chilled independent journalism. Right after Stand News's closure, two other independent media outlets, Citizen News and Mad Dog Daily, announced their closures, with the former citing “drastic changes in society and the worsening of the media environment in the past two years”.^[5] Altogether more than 1,000 journalists and media workers have been put out of work.^[6] Alternatively, public broadcaster Radio Television Hong Kong partnered with Chinese state media giant China Media Group, completely compromising its journalistic independence.^[7]

2. Over-breadth of the Sedition Law

As we described in detail in our previous statement, the charge of sedition is overly broad as it allows officials to criminalize media publications that raise “discontent or disaffection” among local inhabitants or bring the government into “hatred or contempt”, even if that is not their intention. Thus, publications that are potentially offensive to some but fall short of inciting violence are still criminalized under the law. This clearly contravenes the well-established standard in free expression law against unnecessary and over-broad restrictions as articulated, e.g., by the Special Rapporteur on counter-terrorism for laws exactly like this one.^[8]

The Human Rights Committee has also expressed this same concern for this law in multiple reviews of Hong Kong,^[9] and six special rapporteurs and the Working Group on Arbitrary Detention noted the Sedition Law's incompatibility with international human rights law in an April 2020 report on Hong Kong.^[10] The purpose of such over-breadth is of course to crack down on independent media that report government abuses.

3. Unjustified Expansion of the NSL into Sedition Law Cases

Government threats against civil society have also been growing due to the expansion of the NSL's influence into further areas involving civil society related cases. On 14 December 2021, the city's highest court effectively extended the NSL's reach to cover other laws that involve national security, including sedition.[11] Placing sedition law into the domain of national security means that not only would the accused be afforded fewer procedural guarantees (including rights to bail[12] and jury trial[13]) and subjected to treatment unjustifiably assuming guilt,[14] but the police would also be empowered to employ its extensive powers under Article 43 of the NSL and its Implementing Regulations to, inter alia, freeze assets "used or intended to be used" in the offence.

These powers will have an extremely powerful effect in silencing journalism, as freezing the assets of a media outlet will in effect stall its operations and force its closure even before the accused is convicted. This is exactly what has happened to Apple Daily and Stand News when their assets were frozen.[15] Given the draconian effects that prosecution alone can bring, one can conclude that the "legitimate expression" defence under the sedition law, which exempts publications that merely "point out errors or defects in the government", has been rendered nugatory in effect.[16]

The combined effects of the sedition law's over-broad provisions and extensive police power under the NSL make the authorities well-armed with the power to suppress opposition and to arbitrarily restrict the right to freedom of expression in Hong Kong.

The unjustified blending of the sedition law and NSL is an extremely worrying trend, and worse still, the line has become so blurred that it has by now almost disappeared. This has created an even greater coercive pressure on the already crumbling civil society in Hong Kong. In addition, the Hong Kong government is preparing new legislation to create even more national security crimes, which threaten further abuses against civil society.[17]

4. Legal Aid Reform and the Ethical Duties of Lawyers

Another concern regards the independence of legal aid lawyers in light of recent reforms. According to a consultation paper tabled at the legislature in October, legal aid recipients will no longer have the right to choose their own criminal lawyers.[18] Instead, the Department of Legal Aid will assign lawyers to them unless "exceptional circumstances" exist.

While there is not a right to have a lawyer of one's own choosing when legal aid is provided by the state, this development is troubling as it indicates an early step towards a system similar to that of mainland China.[19] Under that system, criminal defendants, especially those in politically sensitive cases, can only be represented by government-assigned lawyers, which clearly violates the well-established right to be represented by a lawyer of one's own choosing.

The rhetoric surrounding the reform justifies the concern. It was passed after the NSL was passed in the context of criticisms that the legal aid system was being "abused" by the 2019 anti-extradition bill protesters, with the reform design to limit such "abuse".[20] This suggests that one purpose of the reform is for appointed lawyers to have an agenda different from their clients' protection, which would be inconsistent with relevant standards in the Basic Principles on the Role of Lawyers, including that state provided lawyers must act freely, must understand and respect human rights and their ethical duties, and must always loyally respect the interests of their clients.[21]

The imposition of disloyal lawyers would be a particular problem in NSL cases, which incur large expenses that may pressure defendants to either hire a legal aid lawyer assigned by the state, whose independence is now in credible doubt, or to plead guilty under undue pressure. This coercive effect can be seen in a recent case of eight legal aid applicants charged under the NSL who were suddenly prohibited from nominating the counsels who were originally in charge of their cases. As a result, three of them are planning to withdraw from the scheme.[22]

5. More Must be Done to End the Attacks on Civil Society in Hong Kong

In the year and a half since the NSL went into effect, the threats and attacks on Hong Kong's civil society have all but eliminated freedom of expression and a free press in the region. HRN protests the recent targeting of journalists and the expansion of restrictions against criminal defendants in Hong Kong.

We call on relevant authorities in Hong Kong and China to:

- Review and repeal any part of the NSL and sedition law inconsistent with Hong Kong's Basic Law and ICCPR, including overbroad language criminalizing non-violent speech;
- End the harassment and arbitrary arrests of activists and journalists;
- Ensure that defendants are protected according to their rights and international and common law standards, including a presumption of bail and the right to a lawyer of their own choosing or with effective measures taken to ensure that the lawyer acts freely and always loyally in the client's interests.

[1] <https://hrn.or.jp/eng/news/2021/08/23/hrc48-statement-hong-kong/>

[2] <http://www.xinhuanet.com/english/20220128/56ffb4c9bcb94db3986e5fd715512978/c.html>

[3] <https://hongkongfp.com/2021/11/28/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>

[4] Crimes Ordinance, Cap. 200, section 10. <https://www.nytimes.com/2021/12/29/world/asia/hong-kong-stand-news-arrest.html>; <https://hongkongfp.com/2021/12/29/breaking-hong-kong-national-security-police-arrest-stand-news-senior-staff-as-200-officers-raid-newsroom/>; <https://www.thestandard.com.hk/section-news/section/11/237562/Bail-rejected-for-top-pair-of-Stand-News>

[5] <https://hongkongfp.com/2022/01/02/breaking-independent-hong-kong-news-outlet-citizen-news-to-shut-down-on-tue-days-after-stand-news-raid/>; <https://www.voanews.com/a/two-more-hong-kong-media-outlets-close-amid-tough-environment/6382684.html>

[6] <https://www.japantimes.co.jp/news/2022/01/20/asia-pacific/hong-kong-journalists-job-losses/>.

[7] <https://rsf.org/en/news/hong-kong-rsf-concerned-future-partnership-between-public-broadcaster-rthk-and-chinese-state-media>

[8] <https://undocs.org/en/A/HRC/40/52>, para. 27.

[9] CCPR/C/CHN-HKG/CO/3, para. 14; CCPR/C/HKG/CO/2, para. 14; CCPR/C/79/Add.117, para. 18.

[10]

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

[11] HKSAR v Ng Hau Yi Sidney [2021] HKCFA 42

[12] HKSAR v Lai Chee Ying [2021] HKCFA 3.

[13] Tong Ying Kit v Secretary for Justice [2021] HKCA 912.

[14] <https://www.aljazeera.com/news/2022/1/27/hong-kong-bail>

[15] <https://hongkongfp.com/2021/12/30/hong-kongs-stand-news-deletes-website-and-wipes-social-media-ex-staff-to-appear-in-court-as-watchdogs-decry-raid/>

[16] Crimes Ordinance, Cap. 200, section 9(2)(b)

[17] <https://www.japantimes.co.jp/news/2022/01/12/asia-pacific/crime-legal-asia-pacific/hong-kong-new-security-crimes/>

[18] <https://hongkongfp.com/2021/10/25/legal-aid-reform-critics-fear-right-to-choose-lawyer-will-be-undermined-but-hong-kong-govt-advisor-says-plan-will-be-fairer/>

[19]

http://www.worldcourts.com/hrc/eng/decisions/2002.04.01_Teesdale_v_Trinidad_and_Tobago.htm, para. 9.6; <https://chinachange.org/2020/09/24/some-fundamentals-regarding-chinas-government-designated-lawyers/>

[20] <https://www.scmp.com/news/hong-kong/law-and-crime/article/3137551/hong-kong-authorities-could-tighten-limits-number>

[21] <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

[22] <https://agora0.gitlab.io/blog/stand/2021/12/01/STAND-%E6%B6%88%E6%81%AF-%E5%A4%8F%E5%8D%9A%E7%BE%A9%E9%96%8B%E5%AF%A9%E5%89%8D%E9%81%AD%E5%89%94%E5%87%BA-%E7%BE%8E%E9%9A%8A-2.0-%E6%A1%88-%E5%8D%97%E6%97%A9-%E6%B3%95%E6%8F%B4%E7%BD%B2%E4%BA%BA%E5%93%A1%E8%A6%AA%E5%88%B0%E8%B5%A4%E6%9F%B1%E7%9B%A3%E7%8D%84-%E8%AD%A6%E5%91%8A-%E9%A6%AC%E4%BF%8A%E6%96%87.html>