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New Law, New Threat

**Beijing's National Security Law Endangers Hong Kong
Human Rights Lawyers**

June 2020

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We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

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ACKNOWLEDGEMENTS

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Introduction

Leading civil society figures in Hong Kong are responding with alarm and fear to the prospect of a new national security law that would give Beijing sweeping new powers to control daily life. The law, which was approved by China's parliament last week, and has yet to be finalized, is widely viewed as the most serious assault to date in a series of attacks on Hong Kong's rule of law and the civil liberties of its citizens.¹

Based on publicly available reports, the national security law is likely to ban a range of vague and ill-defined acts, including treason, secession, sedition and subversion, and will authorize China's security services to operate openly within Hong Kong. In effect, the law is likely to mark a significant turning point in Beijing's ability to directly control events in Hong Kong, including as relates to freedom of speech and the right to protest and dissent. The new law follows years of Beijing undermining the independence of Hong Kong's democratic institutions, including its judiciary.

Against this backdrop, the city is bracing for a potentially explosive month ahead. June 4 will mark Hong Kong's annual commemoration of the 1989 Tiananmen Square massacre, when hundreds (possibly thousands) of student-led protestors were killed by Chinese security forces. Five days later, the city will observe the first anniversary of the outbreak of the most recent round of major protests, with additional demonstrations planned. Mass demonstrations against the new security law have already taken place, and are likely to increase as the legislation proceeds in the coming weeks, despite the COVID-19 pandemic.²

Human rights lawyers have been among the main targets of Beijing's accelerating assertion of control over Hong Kong. Over the past year, under the sway of the Chinese government, Hong Kong authorities and their allies have smeared, "doxed" (revealed personal information), harassed, arrested, and physically assaulted lawyers as mass protests have swept the city.³ But the new security law is potentially the most devastating of all the threats against lawyers and other parts of the city's civil society.

Hong Kong's legal professionals warn that the law could effectively end the "One Country, Two Systems" agreement struck when the United Kingdom government returned Hong Kong to China in 1997 after 150 years of British rule. Under the terms of that agreement, China pledged to honor Hong Kong's Basic Law until at least 2047, with Hong Kong retaining its own currency and legal system.⁴ Beijing increasingly appears to be abandoning this commitment.

Last year, hundreds of thousands of Hong Kong residents repeatedly took to the streets in response to the perceived threat to the One Country, Two Systems arrangement from a now-shelved extradition bill that would have allowed the extradition of suspects to mainland China. Under the extradition bill, protestors feared, the Chinese government would have targeted opponents by alleging that they had committed crimes. Given China's repressive and politicized judicial system, the law threatened to impose a legalized form of rendition.⁵

¹ On the new law, see <https://www.chinalawtranslate.com/en/hknatsecdecisiondraft/>.

² https://www.google.com/amp/s/www.washingtonpost.com/world/asia_pacific/an-explosive-summer-of-discontent-is-brewing-in-hong-kong/2020/05/20/4252f026-98de-11ea-ad79-eef7cd734641_story.html%3FoutputType%3Damp

³ When this report refers to "lawyers" the term is meant to include other legal professionals, including law students, legal academics, judges and others.

⁴ <https://www.scmp.com/news/hong-kong/politics/article/3085738/what-does-beijings-new-national-security-law-hong-kong>

⁵ Although that legislation has been dropped, four other demands of the protestors have not been met: an independent inquiry into the use of force by police, amnesty for arrested protesters, an end to describing the protests as riots, and universal suffrage.

For decades, Human Rights First has documented attacks on human rights lawyers around the world, regarding them as an important indicators of a broader undermining of the rule of law. Lawyers who spoke to Human Rights First for this report say the undermining of Hong Kong's freedom has been under way for some time, and warned that the new security law would effectively abolish the current political system. These attorneys noted that, among other likely impacts, the new national security law is expected to override limited, existing protections for those protesting peacefully, as well as for those who represent them in court or provide them with legal advice.

In keeping with this view, in April 2020, three judges, speaking on condition of anonymity, told Reuters that Hong Kong's "independent judiciary, the cornerstone of the city's broad freedoms, is in a fight for its survival."⁶ And as Eric Cheung, a law scholar at the University of Hong Kong recently noted, "The Central Government is enacting a tailor-made law designed for the situation in Hong Kong under the guise of enforcing a nationwide law ... [it] would utterly violate the Basic Law, and annul the One Country, Two Systems model."⁷ More cautiously, the Hong Kong Bar Association has registered its "deep unease" with the proposed new law, which it described as containing "a number of worrying and problematic features."⁸

As part of their attack on Hong Kong's independent judicial system, local authorities backed by Beijing are directly targeting human rights lawyers, including those who have both represented protestors and themselves protested. In August 2019, thousands of Hong Kong legal professionals staged a silent march in opposition to the proposed extradition bill. Following these protests, on April 18, 2020, police arrested fifteen veteran pro-democracy activists, including leading human rights lawyers Albert Ho, Martin Lee, and Margaret Ng, for allegedly having organized and participated in unlawful assemblies.⁹

Ho, Lee and Ng appeared in the East Magistrate's Court on May 18th, facing charges under the Public Order Ordinance. Their trial is set to recommence on June 15.¹⁰

Ho, one of Hong Kong's highest-profile human rights lawyers, said that in November 2019, he was ambushed and beaten by three masked men with canes as he walked home. He went to the hospital with multiple injuries to his back and arms.¹¹ In the course of his arrest, Ho noted that his phone had been confiscated; indeed, the Hong Kong police may be arresting internationally recognized opposition figures in part to gain access to their phones.

While the harassment and arrests of protestors have received strong criticism from abroad—including from U.S. government officials—Hong Kong's human rights lawyers are calling for a more specific focus on their repression, especially now they are faced with the new threat of the security law. Support from international organizations and foreign officials could, they say, provide them a measure of protection.

In September 2019 Human Rights First released a report on the Chinese government's effort to undermine the rule of law in Hong Kong—an effort that has intensified. This new report is a joint initiative of the Law School of the University of Hong Kong and Human Rights First. It is based primarily on interviews with Hong Kong human rights lawyers conducted in 2020 and publicly available information.

⁶ <https://www.reuters.com/investigates/special-report/hongkong-politics-judiciary/>

⁷ <https://hongkongfp.com/2020/05/22/this-is-the-end-of-hong-kong-reactions-pour-in-as-beijing-proposes-security-law/>

⁸ <https://www.hkba.org/sites/default/files/20200525%20-%20Proposal%20of%20National%20People%27s%20Congress%20to%20enact%20National%20Security%20Law%20in%20Hong%20Kong%20%28E%29.pdf>

⁹ Rachel Wong, '15 Hong Kong pro-democracy figures arrested in latest police round up' (Hong Kong Free Press, 18 April 2020) < <https://hongkongfp.com/2020/04/18/8-hong-kong-pro-democracy-figures-arrested-in-latest-police-round-up-party-says/> > accessed 19 April 2020

¹⁰ <https://www.scmp.com/news/hong-kong/politics/article/3080529/least-12-hong-kong-opposition-veterans-arrested-police-over>; <https://qz.com/1844937/hong-kongs-mass-arrests-give-police-access-to-phones/>

¹¹ Interview with Albert Ho 16 April, 2020.

Some of the lawyers 'who agreed to speak with Human Rights First did so under a condition of anonymity. Their names have been changed for their protection.¹²

The New Security Law

Human rights lawyers have warned that the proposed new security law could spell the end of Hong Kong's autonomy and enable further direct attacks on them and their work.

Prominent barrister Dennis Kwok, a member of Hong Kong's Legislative Council, said of the proposed new security law: "When the world is not watching they are killing Hong Kong, killing one country, two systems ... This is the most devastating thing to happen to Hong Kong since the handover."¹³

"Our fear is that the sort of vague national security laws used to target human rights lawyers in mainland China will now happen here," said Wilson Leung of the Hong Kong Progressive Lawyers Group (PLG), an advocacy group that seeks to safeguard Hong Kong's rule of law. "Human rights lawyers on the mainland, such as Wang Quanzhang and Tang Jingling, have been arrested under those laws. We could be next. We've seen that China's security laws are so elastic they can be stretched to mean whatever the government wants 'terrorism' or 'security' to mean, and then use the law to target lawyers and other civil society leaders," added Leung.¹⁴

Hong Kong solicitor "Joey" warned that although the full text of the proposed law has yet to be published, "if we assume that it is in tune with the one in mainland China, then it would pose serious threat to lawyers representing those defendants charged with offences relating to national security. We know that many Chinese lawyers representing prisoners of conscience ended up being prisoners themselves."¹⁵

The new law is very likely to prohibit acts of "splittism, subversion, foreign intervention, and terrorism," with authorities almost certain to target dissidents under these vague terms.¹⁶

"We don't know whether enforcement agents of China will have power of arrest in Hong Kong, whether the arrested will be prosecuted and put on trial in Hong Kong, or whether there will be due process," said Joey.¹⁷

Local human rights lawyers are appealing to international legal bodies and foreign governments for support and protection as the political crisis deepens. "The U.S. and other governments should sanction officials in Hong Kong and Beijing who have violated human rights, and give asylum to dissidents who leave Hong Kong," said one leading Hong Kong human rights lawyer.¹⁸

"Martine" is a solicitor who has helped those arrested in connection with protests to apply for judicial reviews and in civil litigations. "The purpose of the [new national security] law is to silence dissidents," she said. "The boundary of the law is vague. It is worrying that human rights lawyers in Hong Kong would

¹² Human Rights First report September 2019: <https://www.humanrightsfirst.org/sites/default/files/Hong-Kong-Report.pdf>

Researchers of this new report include students in the Master of Laws in Human Rights (LLM (HR)) program at the University of Hong Kong. It was instructed by former United Nation Human Rights lawyer, Ms Alison Cole, and Ms Lindsay Ernst, lecturer in Human Rights Experiential Learning at the University of Hong Kong.

¹³ <https://hongkongfp.com/2020/05/22/this-is-the-end-of-hong-kong-reactions-pour-in-as-beijing-proposes-security-law/>

¹⁴ Correspondence with Wilson Leung, 22 May, 2020.

¹⁵ Correspondence with "Joey" (pseudonym), 23 May, 2020.

¹⁶ <https://www.hrw.org/news/2020/05/22/hong-kong-beijing-threatens-draconian-security-law>

¹⁷ Correspondence with "Joey" (pseudonym), 23 May, 2020.

¹⁸ Correspondence with human rights lawyer in Hong Kong, (name of lawyer omitted at his request), 22 May, 2020.

suffer the same fate as the mainland lawyers who are involved in some politically sensitive issues, like Falun Gong, and prosecuted for endangering national security.”¹⁹

Added “Martine:”

If the law is enacted in Hong Kong, lawyers would be more hesitant in defending human rights cases.... it is worrying that when a lawyer defends the legal rights of an accused under national security law, he or she may be threatened to be sued as challenging the state security. More lawyers may step back. The law is going to bypass Article 23 and the local legislation. It will be directly added to Annex III of the Basic Law, which is unprecedented.²⁰

Other leading lawyers also worry that the new law will threaten Hong Kong’s legal community. Barrister Craig Choy is a former spokesman of the PLG. “Human rights lawyers in Hong Kong can expect what happened to the human rights lawyers in China will happen to them very soon,” he said. “There will be a tighter control by the government, and objections to new lawyers with dissident views to be admitted [into the legal profession].”²¹

Sophie Mak is a Hong Kong law student, and fears that the security law will have dire consequences for a younger generation of lawyers. “The rights of Hong Kongers have already been restricted by the government, beginning last year,” she said. “I shudder to imagine the terrifying consequences of introducing a law that allows for criminal prosecution of free speech and assembly.... Many of my friends studying law in Hong Kong have hopes of becoming lawyers and human rights advocates. This won’t be possible if the law is passed.”²²

A Year of Making Life Difficult for Human Rights Lawyers

The new national security law is the latest threat to human rights lawyers who have been under sustained and intense attack over the last 12 months. Attorneys who spoke to Human Rights First describe a range of ways that authorities and private firms hinder their work. Some said the police were damaging their ability to do their jobs by making them wait unreasonably long times to meet their clients and by wrongly telling young people in custody they could only access a lawyer after they had confessed. Michael Vidler is a senior solicitor who has represented many Hong Kong human rights activists. “The denial of access to legal advice and assistance for detained persons is unacceptable,” he said.²³

Hong Kong’s Independent Police Complaints Council released a report in May 2020 into police behavior from June 2019 to February 2020 in the context of the protests. Complaints against the police included “14 allegations on the denial of access to lawyers; ...[and] 18 allegations about police officers’ failure to facilitate arrested persons to find a legal representation.”²⁴

Several lawyers also noted that law firms are pressing their employees not to express political views, partly out of fear of offending their clients in mainland China. “The stated aim is to ensure that everyone feels comfortable in the workplace, but of course the undeniable effect is that employees are censored

¹⁹ Correspondence with “Martine” (pseudonym), 23 May, 2020.

²⁰ Correspondence with “Martine” (pseudonym), 23 May, 2020.

²¹ Correspondence with Craig Choy, 23 May 2020.

²² Correspondence with Sophie Mak, 25 May, 2020.

²³ Interview with Michael Vidler 7 April, 2020.

²⁴https://hongkongfp.com/wpcontent/uploads/2020/05/IPCC.pdf?_gl=1*vjwns*_ga*YW1wLWFrdndBdkcydjlT51kxVG90YUtrRWc. p. 323

NEW LAW, NEW THREAT

from expressing their views on a matter of great public importance with people they see on a day to day basis,” said barrister “Peter.”²⁵

Solicitor “Martine” estimates that more than 90 per cent of law firms in Hong Kong discourage lawyers from getting involved in human rights matters. “Lawyers assisting the arrested in their private time... their employers may probably disapprove of them doing so,” she noted.²⁶

Some lawyers providing voluntary legal assistance to protestors say they do so secretly to protect their careers. Otherwise they would be unable to work for Chinese firms or firms with Chinese clients. But this means that in their volunteer work they’re not covered by insurance, including professional liability insurance. One young solicitor said she helps advise protests of their rights: “I’m not even a criminal lawyer,” she said. “And no, my employers don’t know I do this in my spare time.”²⁷

Vilification and Attacks

Smears and threats against human lawyers and other human rights defenders (HRDs) in various countries often lead to more serious physical assault, including murder. Human rights lawyers in Hong Kong described a wide range of vilification and attacks both online and off. Many pointed out that by comparison with their counterparts in mainland China, lawyers in Hong Kong they endure much less. But the pertinent question is not whether the Hong Kong lawyers are relatively safe, it is whether they are adequately protected and can do their jobs safely and without hindrance.²⁸

Doxxing, widespread in Hong Kong, is used against both those perceived as being pro-government and anti-government (“blue” and “yellow,” respectively, in the color coding of political identification). According to the Office of the Privacy Commission for Personal Data, there were more than 4,000 doxxing-related cases recorded in Hong Kong between June 2019 and December 2019. with a Hong Kong government minister claiming about 30 per cent of recent cases “concerned government and police supporters, while about 10 per cent were filed by people who opposed the government.”²⁹

Lawyers representing protestors complain of being doxxed, as do those working for or supporting the government, including barrister Vivien Chan and Junius Ho Kwan-yiu.³⁰

Jason Ng is an author and convener of the PLG. In September 2019, following a Facebook post that Ng made on his personal page expressing his views on pro-Beijing supporters, he became the subject of a doxxing campaign. His employer, an international investment bank, issued a public apology for the post

²⁵ Interview with “Peter” (pseudonym), 25 March, 2020

²⁶ Interview with “Martine” (pseudonym), 19 March, 2020.

²⁷ Interview (name of lawyer omitted at her request), September 2019.

²⁸ See Lawyers Committee for Human Rights <https://www.patfinucanecentre.org/pat-finucane/beyond-collusion-uk-security-forces-and-murder-patrick-finucane>; also Front Line Defenders report on the murders of HRDs, which were “not isolated events, but were preceded by judicial harassment, threats and physical attacks.” <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2018>

²⁹ <https://www.scmp.com/news/hong-kong/politics/article/3045239/hong-kong-protests-nearly-5000-doxxing-complaints-unrest>

³⁰ Junius Ho is known for his anti-protestor views. He has called for pro-independence protestors to be “killed mercilessly,” <https://www.scmp.com/news/hong-kong/politics/article/2112537/junius-hos-killed-mercilessly-comment-be-probed-fairly-hong> and that permitting same sex marriage in Hong kong could lead to “an acceptance of bestiality.” <https://hongkongfp.com/2017/05/02/gay-rights-attainable-court-hong-kong-govt-remains-passive-ensuring-equality-says-lgbt-rights-advocate/>

In October 2019 the UK Anglia Ruskin University stripped Ho of his honorary law degree, <https://www.scmp.com/news/hong-kong/politics/article/3035297/british-university-strips-pro-beijing-lawmaker-junius-ho> and the following month he was stabbed in a street in Hong Kong.

NEW LAW, NEW THREAT

and shortly thereafter he left his senior legal post at the bank.³¹ Ng remains active on social media. “Within minutes of posting a tweet, I’ll get dozens of nasty comments from accounts with strange names,” he says. “Those comments are clearly politically motivated to question my integrity and damage my credibility. Most of them are fake accounts generated by a computer algorithm.”³²

Barrister Craig Choy described a wave of online personal attacks, from being called ignorant to comments challenging his barrister qualification. In November 2019, his personal information, including photos, date of birth, sexuality, and social activism history were disclosed on a webpage.³³

He says those who did this “are a group of organized netizens who support the government, [and] once a key opinion leader retweets my post, all the netizens will attack me all together.”³⁴ The attackers’ motivation, he says, is “to diminish the dissidents’ influences, and even to make us unable to live by challenging our legal qualification.”³⁵

Other human rights lawyers say they have been attacked online in other ways. For instance, senior solicitor Michael Vidler noted that over the last year, he has received threatening emails warning him, “you better watch out.”³⁶

Philip Dykes, chairman of the Hong Kong Bar Association, has a long history of supporting human rights. At the start of the COVID-19 crisis he suggested the government provide financial assistance to those lawyers struggling financially.

Headline Daily—a pro-government newspaper handed out at over 1,500 locations across the city, including at transport hubs and shopping malls—has a daily circulation of around 720,000.³⁷ Headline Daily columnist Fanny Wong attacked Dykes and his proposal, and the paper’s website posted a series of attacks on Dykes under the article. Several commenters told Dykes to “go home to the UK.” Another said “These so-called legal professions are only doing good for themselves and they don’t care about harming others or the government.”³⁸ Another made reference to the killing of Dykes’ daughter, describing her 2017 murder in Lebanon as “karma.”³⁹

Human rights lawyers also face attacks offline. “Joey,” a solicitor, said that in July and August 2019 anonymous actors mailed roughly 20 letters to his office and those of his peers, as well as to select courts. The letters claimed “Joey” was in debt and threatened that, “if you do not pay the debts, the escalation of actions would be taken.”⁴⁰

In March 2020, “Joey” described receiving a hand-written letter purporting to come from the disciplinary committee of Chinese Communist Party. The letter read: “To appreciate your contribution to China’s human rights situation, we are giving you the sample of Covid-19.” There was saliva on the letter, “Joey” noted, adding that he guessed that the sender was someone loyal to the Beijing government who obtained his information through a Facebook account.⁴¹ In May 2020, he received another threatening

³¹ Interview with Mr. Jason Y. Ng on 9th April, 2020.

³² Interview with Jason Y. Ng 9 April, 2020.

³³ Interview with Craig Choy 18 April, 2020.

³⁴ Interview with Craig Choy 18 April, 2020.

³⁵ Interview with Craig Choy 18 April, 2020.

³⁶ Interview with Michael Vidler 7 April, 2020

³⁷ Headline Daily <https://hd.sheadline.com/location/> accessed 1 May 2020.

³⁸ HKABC <http://www.hkabc.com.hk/admin/reports/1783.pdf> accessed 18 May 2020.

³⁹ KABC <http://www.hkabc.com.hk/admin/reports/1783.pdf> accessed 18 May 2020.

⁴⁰ Interview with Joey (pseudonym), 29 March, 2020.

⁴¹ Ibid.

NEW LAW, NEW THREAT

letter, which warned “Bastard Cheating Rubbish lawyer ..., you know what you’ve done, your nightmare has just begun.”⁴²

Solicitor “Martine” said she has received anonymous silent phone calls once or twice a month. She said she felt like she was being followed, and is worried someone will attack her on her way to or from work.⁴³

Albert Ho, one of Hong Kong’s highest-profile human rights lawyers, was one of those arrested in the April 2020 roundup of veteran pro-democracy activists. In November 2019, he said, three masked men with canes ambushed and beat him, causing multiple injuries to his back and arms that required hospital treatment. He surmised that the attack was likely due to his repeated appeal to the public to participate in demonstrations prohibited by the authorities last year.⁴⁴

Most recently, when a solicitor was assaulted on May 24, 2020 at a protest against the new security law, the Law Society of Hong Kong “strongly condemned” the attack. The 41 year-old lawyer was reportedly beaten by dozens of protestors following a dispute between the man and demonstrators who were blocking roads, and was treated in hospital for his injuries.⁴⁵

Taking Precautions

“Making any complaints against the government and the police may not help you,” said Ho. Several lawyers noted that they take personal safety precautions, such as avoiding walking on quiet streets, changing their routine, and installing more CCTVs at their offices. Some have taken online digital security courses to better protect themselves. “I do not save any contacts or personal information in my phone,” said one.⁴⁶

Vidler said human rights lawyers increasingly feel under threat, particularly after the intense targeting of human rights lawyers in mainland China over the last decade. He now works on the assumption that he and other Hong Kong lawyers might be the subject of surveillance.⁴⁷

Sensitive to the possibility of digital surveillance, he uses sophisticated security technology to communicate with clients involved in politically sensitive cases, and has reverted to recording clients’ personal data with pen and paper to avoid the risk of computer hacking.⁴⁸

The International Context and Standards

Human Rights First (previously the Lawyers’ Committee for Human Rights) documented attacks on human rights lawyers and their work as human rights defenders (HRDs) for over four decades.

In January 2020, the Law Society of England and Wales released its Intervention Tracker, an annual compilation of attacks globally on lawyers. The Intervention Tracker’s data indicated the continued, pervasive nature of attacks on members of the legal profession, documenting instances on every permanently inhabited continent, including democracies and dictatorships, as well as relatively wealthy and poor countries. “The most frequent type of human rights violation committed against lawyers and

⁴² Correspondence with Joey (pseudonym), 23 May, 2020.

⁴³ Interview with Martine (pseudonym), 19 March, 2020.

⁴⁴ Interview with Albert Ho 16 April, 2020.

⁴⁵ <https://hongkongfp.com/2020/05/25/law-soc-condemns-attack-on-lawyer-at-national-security-law-demo-as-ex-hong-kong-leader-offers-hk300k-reward/>

⁴⁶ Interview with Craig Choy 16 April, 2020.

⁴⁷ Interview with Michael Vidler 7 April, 2020

⁴⁸ Interview with Michael Vidler 7 April, 2020

NEW LAW, NEW THREAT

HRDs worldwide has consistently been arbitrary arrest and detention,” the Tracker’s authors noted, adding “the percentage of harassment and threats doubled compared to 2018 and 2017.”⁴⁹

In January 2020, the Hong Kong-based China Human Rights Lawyers Concern Group, which monitors attacks on human rights lawyers in mainland China, reported that over a dozen human rights lawyers and other activists had been arrested, summoned or gone incommunicado.⁵⁰

In 1990, the United Nations (UN) adopted the Basic Principles on the Role of Lawyers, a non-binding document that sets out international standards for protecting lawyers. It says governments should ensure that lawyers are able to do their work without government interference, intimidation, or harassment: “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.”⁵¹

In 1994, the UN established a Special Rapporteur on the independence of judges and lawyers, noting “both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights.” And in 1998 the UN adopted the Declaration on Human Rights Defenders, which covers human rights lawyers as it recognizes that those who defend the rights of others are HRDs.⁵²

The International Bar Association was established in 1947 “to contribute to global peace and stability through the administration of justice.” Article 1 of its International Principles on Conduct for the Legal Profession stresses that lawyers shall maintain independence with protection such that they are able to provide unbiased advice and representation to their clients. The explanatory note states that lawyers “should be free from control, direction or interferences, in particular from those in power, in order to protect their clients.”⁵³

In theory, local Hong Kong law offers protection to lawyers. The Basic Law guarantees the right to freedom of speech, academic study, the choice of occupation and a range of other rights, and Article 85 states that, “courts shall exercise judicial power independently, free from any interference.”⁵⁴ Yet these standards and laws won’t be sufficient to protect human rights lawyers absent government efforts to follow and enforce them. And that, say Hong Kong lawyers, is precisely what the authorities should do.

International and Local Reaction

There has been strong, if intermittent, international reaction to developments in Hong Kong over the last year. Of particular note is the Hong Kong Human Rights and Democracy Act of 2019 (Pub.L. 116–76), which passed the U.S. Congress overwhelmingly in November 2019.⁵⁵

⁴⁹ <https://communities.lawsociety.org.uk/lawyers-at-risk/intervention-tracker-2019/6000719.article>

⁵⁰ <https://www.chrlawyers.hk/en/content/statement-large-scale-suppression-human-rights-lawyers-and-activists-china-over-new-year>

⁵¹ Basic Principles on the Role of Lawyers <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

⁵² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (adopted 9 December 1998) A/RES/53/144 < <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>> accessed 18 February 2020

⁵³ IBA-Int-Principles-on-Conduct-for-the-Legal-Profession.pdf

⁵⁴ https://www.gov.hk/en/about/abouthk/factsheets/docs/basic_law.pdf

⁵⁵ <https://www.congress.gov/116/plaws/publ76/PLAW-116publ76.pdf>

NEW LAW, NEW THREAT

Among actions, the Hong Kong Human Rights and Democracy Act authorizes the U.S. government to impose sanctions on Chinese and Hong Kong officials responsible for human rights abuses in the city. It also requires the U.S. Secretary of State to assess annually whether Hong Kong enjoys sufficient autonomy from mainland China to retain its special trading status privileges. On May 27, 2020, citing the proposed new national security law, Secretary of State Mike Pompeo certified that Hong Kong now lacks the required autonomy. He called the new security law a “disastrous decision,” and “the latest in a series of actions that fundamentally undermine Hong Kong’s autonomy and freedoms.”⁵⁶

More recently, the April 2020 arrests of the fifteen activists—including Ho, Lee and Ng—triggered a loud global response:

- Three United Nations Special Rapporteurs urged that charges against the activists be dropped.⁵⁷
- U.S. Attorney General Bill Barr condemned the arrests as “the latest assault on the rule of law and the liberty of the people of Hong Kong.”⁵⁸
- Former UK Foreign Secretary Sir Malcolm Rifkind stated, “The arrest of [lawyer] Martin Lee, the grandfather of Hong Kong’s democracy, barrister Margaret Ng and other prominent mainstream pro-democracy politicians in Hong Kong today is a truly appalling attack on the very heart of Hong Kong’s freedoms, the rule of law and autonomy guaranteed to the people of Hong Kong under the Joint Declaration and the Basic Law.”⁵⁹
- Members of the U.S. Congress Chris Smith (R-NJ) and Jim McGovern (D-MA), Co-Chairs of the bipartisan Congressional Tom Lantos Human Rights Commission, wrote to Hong Kong Chief Executive Carrie Lam, calling for charges to be dropped against Ho, Lee, and Ng.⁶⁰
- The New York City Bar Association condemned the arrests, noting the victims “include leading lawmakers, lawyers, and party leaders who have been recognized worldwide as proponents for the rule of law and human rights under domestic and international law.”⁶¹
- The International Bar Association, Bar Council of England and Wales, International Bar Association Human Rights Institute, Bar of England & Wales Human Rights Committee and International Commission of Jurists jointly stated that the “arrests demonstrate the continued assault on the freedom of expression and right to assembly in Hong Kong. Indeed, we are gravely concerned that the arrests of senior lawyers and legislators who set out to protect human rights in a non-violent and proportionate manner.”⁶²
- The Bar Council of Ireland criticized the arrests of Lee and Ng and urged the Hong Kong authorities to “ensure that the rule of law, including the necessity for an independent legal profession unhindered by any campaign which seeks to subvert lawyers’ ability to fully represent their clients’ interests and

⁵⁶ <https://www.bbc.co.uk/news/world-asia-china-52771718>; <https://www.state.gov/prc-national-peoples-congress-proposal-on-hong-kong-national-security-legislation/>

⁵⁷ <https://www.protecting-defenders.org/en/news/hong-kong-urged-not-silence-peaceful-protest-criminal-charges>

⁵⁸ <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-s-statement-recent-arrests-pro-democracy-activists-hong-kong>

⁵⁹ <https://hongkongfp.com/2020/04/18/8-reactions-to-hong-kongs-crackdown-on-democrats-this-is-not-the-rule-of-law-says-ex-governor-chris-patten/>

⁶⁰ <https://humanrightscommission.house.gov/news/press-releases/hrc-co-chairs-express-concern-over-hong-kong-arrests>

⁶¹ <https://www.nycbar.org/media-listing/media/detail/condemning-recent-arrests-of-pro-democracy-advocates-in-hong-kong>

⁶² <https://hongkongfp.com/2020/04/18/8-reactions-to-hong-kongs-crackdown-on-democrats-this-is-not-the-rule-of-law-says-ex-governor-chris-patten/>

rights, is respected and protected.”⁶³

Local human rights lawyers who spoke with Human Rights First welcomed such statements of support and urged the international legal community and legal organizations in Hong Kong to publicly and clearly reiterate the need to defend local lawyers. Ho noted to Human Rights First that there remains latent public support for the legal community. Because Hong Kong’s society generally sees violence as unacceptable, he said, lawyers are seen to be entitled to some form of protection against violent acts.⁶⁴

“The [Hong Kong] Law Society could give more recognition to the human rights lawyers, to hold meetings with us and give us protection,” said “Martine.” “The Law Society should consider publishing guidelines that help to protect employees on the expression of their views, whether online or in public.”⁶⁵

“Where firms are clearing infringing on such rights of employees, [Hong Kong law organizations] should consider writing to firms to warn them,” said “Peter.”⁶⁶ “Added Choy, “the rule of law should be promoted to different sectors, especially the business sector. Every sector is impacted by the decline of the rule of law.”⁶⁷ Said Ng, “We need lawyers’ organizations such as bar associations and the law societies both at home and abroad to pay attention to the legal community in Hong Kong and stand in solidarity.”⁶⁸

But “Joey” noted that more fundamental change – to policing, in particular – is needed. “The laws in Hong Kong are well written...,” he said. “However, the police execution is biased and unfair, causing harm to the victims. Hong Kong needs police reform. Otherwise, our system can hardly be changed.

Many lawyers consulted for this report referenced that the international legal community could demonstrate useful solidarity by recognizing local human rights lawyers with awards and by sending delegations to Hong Kong to meet with local lawyers and legal organizations.

Conclusion

The nascent national security law approved China’s parliament on May 28 is a serious and imminent threat to Hong Kong’s rule of law and a threat to its legal community.

Attacks on human rights lawyers in Hong Kong are increasing, and appear to be following a pattern seen in other contexts, whereby online abuse is a precursor to more serious attacks, including violence. In the context of a deteriorating human rights climate in Hong Kong, the vulnerability of human rights lawyers is likely to increase.

The international legal community in the United States and elsewhere can provide valuable protection to human rights lawyers in Hong Kong. Hong Kong’s human rights lawyers are appealing to them for vocal support.

⁶³ <https://www.irishlegal.com/article/irish-barristers-join-global-condemnation-of-hong-kong-lawyer-arrests>

⁶⁴ Interview with Albert Ho 16 April, 2020.

⁶⁵ Interview with “Martine” (pseudonym), 19 March, 2020.

⁶⁶ Interview with Peter (pseudonym) 25 March, 2020.

⁶⁷ Interview with Craig Choy, 16 April, 2020.

⁶⁸ Interview with Jason Y. Ng 9 April, 2020.

Recommendations

To the Hong Kong Government:

- Publicly announce adherence to the UN Basic Principles on the Role of Lawyers.
- Protect legal practitioners as provided by international standards, including those outlined by the UN Basic Principles on the Role of Lawyers.
- Consult with the legal community to enhance protections for legal professionals, including legislation against online abuses.
- Respect the freedoms of association and expression for everyone, including legal professionals lawyers.
- Investigate any credible allegations of a lawyer being threatened or intimidated or attacked.

To Hong Kong's Legal Organizations:

- Advocate with the Hong Kong government to support the above recommendations.
- Monitor and publicly and regularly report violations of lawyers' rights.
- Make clear that violence against or abuse of lawyers will not be tolerated.
- Include in relevant Codes of Conduct provisions that reflect the spirit of UN Basic Principles on the Role of Lawyers

To the International Legal Community:

- Publicly urge Hong Kong's legal associations, including the Hong Kong Law Society, to publicly address the ongoing crisis in the context of the rule of law
- Support the work of human rights lawyers in Hong Kong by recognizing them with academic and other awards.
- Send delegations to Hong Kong to engage with the government and the legal community on rule of law issues.
- Encourage legal academics in Hong Kong to public support rights to peaceful assembly and expression.

To the U.S. government:

- Implement the Hong Kong Human Rights and Democracy Act of 2019, paying close attention to the treatment of human rights lawyers in Hong Kong when assessing Hong Kong's record on democracy;

NEW LAW, NEW THREAT

- In close consultation with allies and partners, impose sanctions, including travel bans and asset freezes, against Chinese and Hong Kong officials responsible for human rights abuses in Hong Kong.
- Offer asylum to people from Hong Kong targeted for exercising their human rights.
- Regularly invite human rights lawyers and other members of civil society to testify at, and brief, the U.S. Congress on developments in Hong Kong.