Impact of Hong Kong Trade Unions Ordinance, Public Order Ordinance, and NSL on trade unions

Before we examine the implementation of the National Security Law (NSL) in Hong Kong, it is crucial to obtain a basic understanding of the city’s constitutional document, namely the Hong Kong Basic Law. The Basic Law is a constitutional document of the Hong Kong Special Administrative Region (HKSAR), which sets out clearly the country's basic policies regarding Hong Kong. It enshrines within a legal document the important concepts of "one country, two systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy. It also prescribes the various systems to be practiced in the HKSAR and sets out the blueprint for the HKSAR's future development.

Under Article 27 of the Basic Law, “Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions; and to strike.” Furthermore, Article 39 of the Basic Law reaffirmed that, “The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

Strictly speaking, the basic law provide full protection, as well as legal foundation toward our civil and political rights in Hong Kong, and since the Chinese government resumed exercise of sovereignty over Hong Kong in 1997, Hong Kong remains one of the freest societies in the world. Besides of upholding the civil and political rights in Hong Kong, the HKSAR government also has its constitutional duty to safeguard our national security and to enact legislation on Article 23 of the Basic Law.

Under Article 23 of the Basic law, “the HKSAR shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government (CPC), or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.” Unfortunately, due to various internal political conflicts over the past 25 years, HKSAR government could not be able to enact Article 23 of the Basic Law in the local legislative branch, namely the Hong Kong Legislative Council, and it has then become a tremendous loophole and a significant threat towards our national security in China Hong Kong.

In 2019 to 2020, Hong Kong experienced unprecedented mass riots and unlawful demonstrations. These violent acts had seriously damaged our political system, divided our people into two antagonistic groups and most severely, it had rapidly escalated into what we referred as “color revolution”, where a consecutive of anti-regime protest movements occurred all over the city. In such regard, these acts were not solely social movement, but a significant threat towards our national security in China Hong Kong.

Given to such urgent circumstance at that time, the CPC, along with the HKSAR government had no choice, but to act decisively to safeguard our national security. In order to retore peace, safeguard our national security and at the same time to protect the lawful rights and interests of the people of Hong Kong, the CPC adopted a legal approach by implementing the NSL in Hong Kong. In the following, we will discuss about the NSL implementation process and the purposes and intentions of the law.

The Law of the People's Republic of China on Safeguarding National Security in the HKSAR (NSL) was gazetted for promulgation on June30th, 2022 and took effect at 11pm the same day. The Standing Committee of the National People's Congress (NPCSC) on the same day passed the NSL and listed the legislation in Annex III to the Basic Law after consulting the NPCSC's Committee for the Basic Law of the HKSAR and the HKSAR Government as required under Article 18[[1]](#footnote-1) of the Basic Law. The NSL was enacted according to the Constitution of the People's Republic of China, the Basic Law and the "Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in the HKSAR" (the Decision). The NSL was applied by promulgation in the HKSAR in accordance with the Decision, and the Chief Executive of Hong Kong signed the promulgation and the NSL took effect upon gazettal on June 30th 2022.

Some critics argue that the NSL constitutes impact on Trade Unions Ordinance and Public Order Ordinance, and therefore, citizens can no longer exercise civil and political rights in Hong Kong. In fact, this is definitely not the case. Indeed, the purposes of the NSL are only to prevent, curb and punish crimes, namely acts of secession, subversion of state power, terrorist activities, and collusion with foreign or external forces to endanger national security; maintain prosperity and stability of the HKSAR; and protect the lawful rights and interests of HKSAR residents. Therefore, the NSL has no intention whatsoever to undermine our freedom and with the implementation of NSL, the trade unions can continue to raise their voices, fight for their interests and most importantly to maintain and improve their conditions of employment.

As Mr Xia Baolong, Vice-Chairman of the National Committee of the Chinese People’s Political Consultative Conference (CPPCC), and the Director of the Hong Kong and Macao Affairs Office (HKMAO) of the Satae Council, mentioned in a NSL forum in Beijing on 13th January 2023, “The Hong Kong NSL is aimed at solving national security issues. It targets four types of serious crimes: acts of secession, subversion of state power, terrorist activities, and collusion with foreign or external forces to endanger national security.” In other words, the NSL only punishes a very small number of criminals who seriously endanger national security, and by punishing the said criminal, it helps to protect the vast majority of ordinary citizens in China Hong Kong.

Generally speaking, Hong Kong can no longer afford another colour revolution and by avoiding it, it is a must to implement the NSL in Hong Kong. However, I must once again clarify that the NSL would not undermine our civil and political rights, which have listed crystal clear in the basic law; instead, the NSL can strengthen and protect our freedoms in the coming future.

1. https://www.basiclaw.gov.hk/en/basiclaw/chapter2.html [↑](#footnote-ref-1)