



ITUC International Trade Union Confederation
CSI Confédération syndicale internationale
CSI Confederación Sindical Internacional
IGB Internationaler Gewerkschaftsbund

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ITUC/LEX

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Escalation in the climate of fear, intimidation, arrests, arbitrary prosecutions, threats for the exercise of trade union rights and civil liberties in Hong Kong and the disproportionate and unwarranted application of the National Security Law to target trade unionists, human rights defenders and pro-democracy advocates by the Authorities of the Hong Kong Special Administrative Region

Dear Mr. John Lee Ka – Chiu,

The International Trade Union Confederation (ITUC), representing nearly 200 million workers in 167 countries and territories, expresses our deep concerns regarding the acute deterioration in the climate for the exercise of civil liberties and trade union rights in the Hong Kong Special Administrative Region (HKSAR), in particular for the independent trade union movement, human rights defenders and pro-democracy advocates.

We urge you to respect and fully implement the conclusions and recommendations of the ILO supervisory bodies and the UN Human Rights bodies, in law and practice, including those regarding the National Security Law.

We also urge you to release all those arrested and imprisoned for allegations related to the exercise of civil liberties including freedom of assembly, expression, press and association and those participating in pro-democracy activities. In line with article 5 of Convention 87, we urge you to drop all charges related to the activities of independent trade unions or trade unionists in the exercise of their right to join or enjoy the solidarity of international workers' organizations.

On 4 July 2023, the HKSAR authorities announced, under the National Security Law, the issuance of arrest warrants against (8) eight human rights defenders and pro-democracy advocates including a trade unionist and placed a bounty of One Million Hong Kong Dollars (HK\$1,000,000) on each of their heads.

We unequivocally deplore the criminalization and securitization of trade union activities as well as activities aimed at furthering democracy including the exercise of civil liberties by the HKSAR authorities.

We consider it particularly egregious, especially given the risks to life and safety faced by trade unionists, human rights defenders and pro-democracy advocates around the world for their legitimate

activities, that the HKSAR authorities approved and announced a bounty on the heads of these eight people for exercising their civil liberties or trade union rights.

We recall that HKSAR ratified ILO Convention 87, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Convention 105, Abolition of Forced Labour Convention, 1957 (No. 105) in 1997.

HKSAR, as a special administrative region of a member State of the ILO, China, is also obliged to respect and promote the fundamental principles and rights at work including freedom of association and treat with the utmost regard, the authoritative guidance of the ILO's supervisory bodies.

In 2021, the ILO Committee on the Application of Standards (CAS) examined HKSAR's application of Convention 87 and made the following recommendations and conclusions, among others;

- Keep under review, in consultation with social partners, the application of the National Security Law, so that the rights of workers, employers and their organizations under the Convention are fully protected;
- And to continue to provide up-to-date information on the impact that the National Security Law has on the application of the Convention.

In the 2022 report of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Committee recalled the resolution adopted by the International Labour Conference in 1970 concerning trade union rights and their relation to civil liberties which reaffirms the essential link between civil liberties and trade union rights as contained in the Declaration of Philadelphia (1944). It also outlines those fundamental rights that are necessary for the exercise of freedom of association, in particular:

- (i) the right to freedom and security of person and freedom from arbitrary arrest and detention;
- (ii) freedom of opinion and expression, and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;
- (iii) freedom of assembly;
- (iv) the right to a fair trial by an independent and impartial tribunal; and,
- (v) the right to protection of the property of trade union organizations.

The Committee on Freedom of Association (CFA), under case number 3406 (Case No. 3406), has also requested the HKSAR authorities to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation and within the framework of a system that guarantees the effective respect of civil liberties. The authorities must not act in law or practice in a manner which would restrict freedom of association and assembly or impede the lawful exercise thereof and must take proportionate measures to ensure that the exercise of the right does not cause a serious *and* imminent threat to public order.

We assert that seeking to apply the National Security Law in an extraterritorial manner and placing a bounty on the heads of pro-democracy advocates and human rights defenders for alleged crimes related to the exercise of civil liberties and trade union rights is an overreach and certainly not proportionate - its coercive and chilling effective is wide ranging.

With the use of the National Security Law in this disproportionate and arbitrary manner, the HKSAR authorities are violating their obligations under the Constitution of the ILO and Convention 87.

In July 2022, the Committee on Civil and Political Rights (CCPR) considered the report submitted by Hong Kong at its 3891st, 3893rd and 3895th meetings. The Committee expressed its deep concern that "the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the National Security Law") prevails over other local laws in case of conflicts and consequently overrides fundamental rights and freedoms protected by the Covenant" and

reiterated its concerns about the constitutional interpretation by the Standing Committee of the National People's Congress ("the Standing Committee"), as well as "the absence of measures to ensure the full conformity of the interpretation of the Basic Law by the Standing Committee with the Covenant (arts. 2 and 14)."

The Committee noted with concern that the "National Security Law was passed by the National People's Congress of the People's Republic of China without consultation with the public and civil society in Hong Kong, China" and was "deeply concerned about the overly broad interpretation of and arbitrary application of the Law."

The CCPR was also concerned that despite article 4 of the National Security Law guaranteeing respect and protection of human rights in safeguarding national security, the application of the Law and the Implementation Rules for Article 43 of the National Security Law ("the Implementation Rules") have unduly restricted a wide range of Covenant rights such as arts. 2, 4, 7, 9, 10, 12, 14, 15, 17, 18, 19, 21, 22 and 25.

In particular, the Committee, "with grave concern" raised the following gaps regarding the National Security Law's compliance with the obligations under the Convention;

- (a) The lack of clarity on "national security" and on the types of behaviour and conduct that constitute a criminal offence under the Law, which undermine the principle of legal certainty;
- (b) The transfer of national security cases to the organs of the Central People's Government, China not being a party to the Covenant, for investigation, prosecution, trial and execution of penalties, as provided for in articles 55, 56 and 57, which may lead to the de facto breach of obligations of Hong Kong, China under the Covenant;
- (c) The absence of mechanisms, provided for in the Law, allowing suspects of national security offences to challenge enforcement measures carried out by the authorities of the Central People's Government and seek judicial remedies in case of violation of Covenant rights by law enforcement officers of the Central People's Government;
- (d) The excessive power of the Chief Executive and other measures provided for in the Law, which can effectively undermine the independence of the judiciary and procedural safeguards for access to justice and right to a fair trial;
- (e) The extensive investigative powers of the Department for Safeguarding National Security of the Police Force of the HKSAR and the absence of judicial oversight thereof, provided for in article 43 of the Law and its Implementation Rules;
- (f) The lack of clarity on the grounds for invoking extraterritorial application of the Law.

In its recommendations, the Committee requested the HKSAR authorities to:

- (a) Take concrete steps to repeal the current National Security Law and, in the meantime, refrain from applying the Law;
- (b) Ensure that the legislative process for enacting a new national security law is inclusive and transparent, facilitating the free, open and meaningful participation of civil society and the public, and that it addresses the concerns relating to the current National Security Law expressed by international human rights mechanisms so that the new legislation fully conforms with the Covenant.

It was important to the Committee on civil and political rights that the authorities ensure that the Covenant prevails over local legislation and laws applicable in Hong Kong, including the National Security Law, and to bring these laws and practices in full conformity with the Covenant including all the interpretations by the Standing Committee regarding the Basic Law and all other laws applicable in

Hong Kong.

We are all aware that in the context of the principle of “one country, two systems”, not all the international human rights obligations of Hong Kong have been ratified by China.

Therefore, Hong Kong SAR authorities must live up to their international human and labour rights obligations. The laws in Hong Kong, including criminal and security laws, must comply with HKSAR’s international human and labour rights obligations. Otherwise, the laws themselves become arbitrary.

The recently announced retaliatory measures by the authorities under the National Security Law creates a dangerous climate for the exercise of civil liberties and the full realization of freedom of association under ILO Convention 87 and the Constitution of the ILO.

Its extraterritorial character including the placement of a bounty on the heads of human rights defenders and pro-democracy advocates is also contrary to the values of the UN Charter, the Universal Declaration of Human Rights as well as the specific obligation undertaken by the HKSAR under the Covenant on Civil and Political Rights and the fundamental principles and rights of the ILO.

As Constituents of the ILO, we are committed, by virtue of the Constitution and Philadelphia declaration of the ILO, to the universal realization of the fundamental principles and rights at work as a means for achieving social progress, universal peace and social justice and in that regard the role of independent and autonomous workers’ organizations is indispensable.

We therefore urge you to respect and fully implement the conclusions and recommendations of the ILO supervisory bodies and the UN Human Rights bodies, in law and practice, including those regarding the National Security Law.

We also urge you to release all those arrested and imprisoned for allegations related to the exercise of civil liberties including freedom of assembly, expression, press and association and those participating in pro-democracy activities. In line with article 5 of Convention 87, we urge you to drop all charges related to the activities of independent trade unions or trade unionists in the exercise of their right to join or enjoy the solidarity of international workers’ organizations.

The ITUC remains ready to engage with you to ensure the restoration of a climate that fully respects and realizes freedom of association and civil liberties for the exercise of trade union rights and the protection of workers’ and their organizations including by independent trade unions.

Yours sincerely,



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