

**Statement of the Hong Kong Bar Association on NPCSC's deliberation of the  
proposed national security law and reported details**

1. It has been reported that the Standing Committee of the National People's Congress ("NPCSC") will scrutinise the proposed national security legislation for Hong Kong in its current 19<sup>th</sup> meeting being held from 18 to 20 June 2020. The Hong Kong Bar Association ("HKBA") calls upon the NPCSC to disclose the draft legislation for consideration by the public in the Hong Kong Special Administrative Region ("HKSAR") as soon as possible.
2. The HKBA is deeply concerned with reports in the past few days of features of the proposed national security law that have been disclosed by Mainland officials and officials of the HKSAR Government.
3. On 14 June 2020, the Secretary for Justice ("SJ"), Ms Teresa Cheng, said that *"it is impracticable and unreasonable to expect that everything in a national law, the National Security Law, will be exactly as what a statute in the HKSAR common law jurisdiction would be like"*.
4. On 15 June 2020, the Deputy Director of the Hong Kong and Macau Affairs Office, Mr. Deng Zhonghua said the Mainland Government shall assume jurisdiction over cases *"in very special circumstances"* and that the new Mainland security office in the city is an *"unequivocal demand"* of the government and will *"supervise"* enforcement of the new law. Mr. Deng also said that the national security law is unchallengeable and no local laws of the HKSAR are allowed to contradict the national security law.
5. The SJ's statement gives rise to serious concerns as to whether the proposed national security law will be applied and interpreted according to long established principles under the common law, which

is the system of law applied in the HKSAR under Article 8 of the Basic Law. Given the current examination of the proposed legislation by the NPCSC, we invite the SJ to explain her statement and, if a hybrid law is planned, to inform how judges and lawyers are supposed to interpret and apply the new law.

6. The suggestion that some cases (albeit “*special and few*” cases) will be subject to the jurisdiction of the Mainland is a serious and worrying one. It raises the question whether individuals will be tried within the criminal justice system in the HKSAR by the Hong Kong courts or sent to the Mainland for trial and serve any terms of imprisonment in Mainland prisons. The prospect of trial in the Mainland was the reason that a substantial cross-section of the public was opposed to the HKSAR Government’s attempt to introduce the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 a year ago out of concerns about the lack of minimal human rights guarantees for a criminal trial in the Mainland. The other suggestion about the apparently supreme status of the national security law raises concerns as to whether the national security law will take precedence over local legislation which safeguards human rights such as the Hong Kong Bill of Rights Ordinance if and when the former is in conflict with the latter.
7. Further, even assuming that a new Mainland national security office is to be set up in the HKSAR (in accordance with Article 22 of the Basic Law), the suggestion that it will “*supervise*” local law enforcement agencies in national security cases is unprecedented and lacks any constitutional support. If implemented in any form or degree, it will create a parallel law enforcement system where one part – the office of the Mainland security agency – may not be subject to the usual legal scrutiny and accountability that is in place for the law enforcement agencies in the HKSAR.

8. We invite the NPCSC to seriously consider the above submissions in its deliberation of the draft legislation.
  
9. Furthermore, and if NPCSC were to approve the legislation, we call on the Chief Executive of the HKSAR to reveal the contents of the legislation before promulgating the same. Lawyers, judges and the public need adequate time to consider the law's contents, application and implications before it comes into force.

Hong Kong Bar Association

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