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Press Release

From: Hong Kong Centre for Human Rights

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Hong Kong human rights group regrets HK National Security Law verdict

In 2020, pro-democracy activists organized a primary elections. 47 organizers and participants were charged with conspiracy to commit subversion under the Hong Kong National Security Law (“NSL”) in 2021. Today, the Hong Kong court convicted 14 out of the 16 defendants who pleaded not guilty. The Hong Kong Centre for Human Rights expresses disappointment and regret, as this verdict shows that the court prioritizes national security over civil rights, including the right to participate in elections and public affairs.

We reiterate that the procedures of this trial as provided in the Hong Kong National Security Law diverge from the ordinary criminal procedures of the High Court. These include being presided over by designated judges appointed by the Chief Executive in accordance with NSL, and an order by the Secretary for Justice to deny trial by jury. The Hong Kong government claims these arrangements are in accordance with Hong Kong law. However, we find a significant discrepancy between these measures and international human rights standards, as well as the public’s expectations for fair trials and justice.

In fact, in April 2023, the United Nations Special Rapporteur on the independence of judges and lawyers expressed concerns to the Chinese and Hong Kong governments regarding the appointment of designated of judges and the power to remove jury trials under the NSL. They reminded the authorities of their obligation to uphold the right to a fair and public trial as stipulated in Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights (“ICCPR”).

This case has profound implications for the development of Hong Kong's legal system and the individual rights. We are concerned that the interpretation of the NSL in the present reasons for verdict enables the authorities to broadly interpret the legal provisions in the NSL, as well as elements of crimes during enforcement, resulting in an all-encompassing law with severe penalties.

We are deeply concerned about the court’s construction of "unlawful means" under Article 22(3) of the NSL, which extends beyond criminally sanctioned acts without providing clear limits. According to this construction, carrying out lawful activities or acts that are not clearly in contravention of any law, with a specific intent, could constitute the offence of subversion under the NSL. This approach severely undermines the principle of legal certainty, allowing authorities

discretion and increases the risk of misuse and arbitrary enforcement. Moreover, the difficulty to assess the lawfulness of an action, compounded with the disproportionate sentence, further fosters self-censorship and erodes the already severely impacted civic space and freedom in Hong Kong.

The court's decision today confirms the concerns of UN human rights experts. Over the past four years, multiple UN human rights experts have sent at least ten letters to the Chinese and Hong Kong governments expressing concerns about issues related to the NSL, such as fair trials, freedom of expression and assembly, police powers in investigation, and inhuman treatment. In 2022, the UN Human Rights Committee and the Committee on the Rights of Persons with Disabilities recommended that the Hong Kong government urgently repeal the NSL. The Human Rights Committee noted that the NSL's definition of "national security" is unclear, and the law lacks sufficient legal certainty regarding criminal conduct. Furthermore, the committee stated that the provisions allowing the government to appoint designated national security judges and deny jury trials undermine judicial independence and restrict access to justice and the right to fair trial.

The Hong Kong Centre for Human Rights urges the Hong Kong government to heed the recommendations of the UN Human Rights Committee to immediately repeal the NSL and ensure that any new national security legislation complies with the ICCPR. Pending its repeal, refrain from applying this law, and discontinue all cases against individuals charged for exercising their right to freedom of expression under this law or the sedition offence.

About us

Hong Kong Centre for Human Rights is established in 2022 by a group of human rights defenders from Hong Kong with background in policy and legal research. We aim to provide credible information on Hong Kong's legal, political, and human rights development with the goal of supporting the resilient civil society of Hong Kong and upholding international human rights standards.

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新聞稿 即時發放

由：香港人權資訊中心

日期：2024 年 5 月 30 日

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回應判決：國家安全凌駕公民權利 寬宏定義製造寒蟬效應

民主派 2020 年組織「35+初選」，47 名組織者和參加者於 2021 年被控串謀顛覆國家政權。香港法庭今日裁定，該案 16 名不認罪被告中 14 人罪成。香港人權資訊中心對此表示失望及遺憾，是次判決顯示法庭將國家安全凌駕於公民權利，包括公民參與選舉及公共事務的權利。

我們重申案件的審訊過程有別於《國安法》實施前的高等法院刑事程序，包括此案件由《國安法》指定法官審理，以及由律政司主動申請不設由公眾人士組成的陪審團審訊案件。縱使香港政府聲稱這些安排都是根據香港的法律進行，我們認為這依然與國際人權標準和公眾所期望的公平審訊及司法公義存有巨大落差。

事實上，聯合國獨立法官和律師特別報告員便曾於 2023 年 4 月就國安法指定法官及剔除陪審團審訊的問題向中國及香港政府提出關注，並提醒當局有義務履行《世界人權宣言》第 10 條及《國際公民與政治權利公約》(《公約》)第 14 條保障每個人都獲得公正和公開審判的權利。

毫無疑問，是次案件對香港的法律發展、個人權利的界限影響深遠。我們認為法庭的裁決及對《國安法》的詮釋，等於確認政府當局在執行《國安法》時，可以就法律條文的意思及關鍵罪行原素的定義作出廣泛和彈性的詮釋，令具有嚴厲罰則的國安法律可以包羅萬象。

法庭裁定《國安法》第二十二(三)條中所指的「非法手段」並不止於刑事行為，我們對此詮釋深感憂慮：法庭以具有法律效力的解釋令非刑事的行為在《國安法》下可能具有刑事後果，同時法庭卻未有盡列可構成「非法手段」的非刑事行為，或提供指引。此做法令相關法律變得更不確定，令當局在運用相關的法例時具有過大的彈性，增加法例被濫用和任意使用的風險；同時，這項詮釋令人難以判斷一項行為是否違法或所涉的刑事責任，會進一步助長自我審查，進一步侵蝕香港已經受到嚴重打擊的公民和自由空間。

我們認為今日法庭的判決正正印證聯合國人權專家的憂慮，過去四年多名聯合國人權專家至少 10 次去信中國及香港政府就《國安法》所涉的公平審訊、言論及集會自由、警察調查權、酷刑及不人道待遇等問題表達關注。聯合國人權事務委員會及殘疾人權利委員會曾於 2022 年建議香港政府緊急廢除國安法；人權事務委員會指《國安法》對於「國家安全」的定義不明確，以及法律中對於構成刑事犯罪行為的明確性不足，欠缺法律的確定

性。同時，委員會表示由政府指定《國安法》法官及可以拒絕陪審團審判，這些條款實質上削弱了司法獨立，限制了尋求司法公正和公正平審訊的權利。

香港人權資訊中心促請香港政府遵從聯合國人權事務委員會的建議，立即廢除《國安法》，並確保重新訂立的《國安法》符合《公約》的要求；並在未廢除前，停止使用這條法律，並中止以《國安法》或煽動罪對因行使表達自由而被控的人的檢控。

關於我們

香港人權資訊中心於 2022 年成立，由一群專注法律及政策研究的香港人權工作者組成，目標是向外界提供有關香港人權、法治及政治發展的最新和可靠的資訊，以支持香港的公民社會，並以國際人權法和標準，捍衛香港的人權和自由。

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