



Roundtable Series on National Security Law

Hong Kong's National Security Law: Implications for Companies and their Human Rights Responsibilities

30 July 2020

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Companies operating in Hong Kong and their employees face significant uncertainties about their obligations and potential liabilities under Hong Kong's National Security Law (NSL), which came into force on 1 July 2020. Apart from concerns related to broad and ambiguous definition of four NSL crimes (i.e., secession, subversion, terrorism activities, and collusion with foreign country or external elements) and the extraterritoriality principle, companies might find it difficult to comply with the NSL on the one hand and legislation of other countries as well as international soft standards such as the UN Guiding Principles on Business and Human Rights (UNGPs) on the other hand. Failure to operate in accordance with all applicable standards may expose companies to legal sanctions, market risks and reputational damage.

To discuss some of these issues, on 30 July 2020, the Public Law and Human Rights Forum (CPLR) at the School of Law of City University of Hong Kong hosted its first webinar as part of a roundtable series on the NSL, with a specific focus on its implications for companies and their human rights responsibilities. The panelists included following experts representing different stakeholders (academia, chambers of commerce, trade unions and non-governmental organizations): **Tara Van Ho**, Lecturer, School of Law, University of Essex; **Rebecca MacKinnon**, Director, Ranking Digital Rights; **William Nee**, Business and Human Rights Strategy Advisor, Amnesty International Hong Kong; **Carol Ng**, Chairperson, Hong Kong Confederation of Trade Unions; and **Kristian Odebjør**, Chairman, Swedish Chamber of Commerce in Hong Kong. The webinar was moderated by **Surya Deva**, Associate Professor and CPLR Associate Director, School of Law, City University of Hong Kong.

All the panelists agreed that there are a "lot of unknowns" about the NSL and that the resultant uncertainty about the scope of this law is not desirable from the perspective of companies and Hong Kong's status as an international financial status. Lack of adequate guidance on the part

of the Hong Kong Government imposes greater responsibilities on part of foreign and local corporations in doing their own due diligence and continual risk assessment of their compliance with the requests made by authorities under the NSL, as noted by **Kristian Odebjør**. He also wondered whether companies should their own red lines while operating globally. **Rebecca MacKinnon** pointed out that privacy and data safety in cyberspace have turned out to be some of the key issues, as several major corporations have already suspended requests from the Hong Kong Government for information about their users. Some companies could also potentially seek to relocate their data storage servers to another jurisdiction.

Tara Van Ho highlighted that the UNGPs expect companies to respect human rights at all times wherever they operate. Companies will now face a dilemma as to how far they should comply with the NSL's broad requirements, as they might face legal and reputational risks elsewhere for ignoring their human rights responsibilities. **Carol Ng** expressed concern whether the NSL would impact trade unions' role to call for strike or raise other concerns of their members to the government. She also feared that companies may be pressured by authorities to curtail the right of their employees to express their political opinion. **William Nee** observed that all four offences under the NSL are so broadly defined that they could easily become "catch all" provisions, and that the sweeping nature of this law is causing uncertainties to businesses because they might unknowingly step on to landmines.

On behalf of the CPLR, **Surya Deva** thanked all invited panelists and participants for contributing to discussion on this important issue.

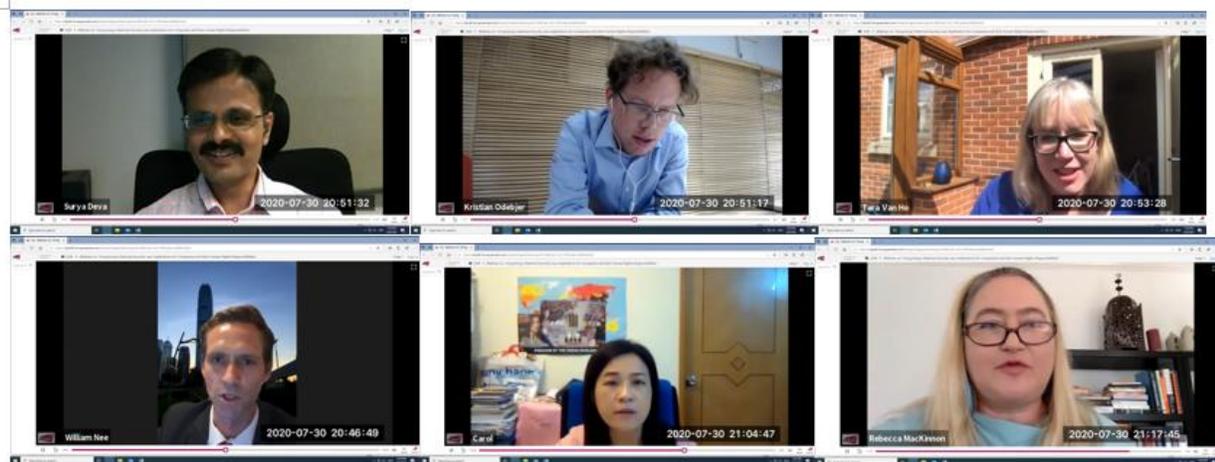


Photo: A screenshot of our Panelists who contributed to the roundtable discussion on 30 July 2020