

4th March, 2021

## **On EFTA's free trade agreement with Hong Kong: A call for action**

The [Free Trade Agreement](#) between EFTA and Hong Kong states in the preamble that the parties are “*REAFFIRMING their commitment to democracy, the rule of law, human rights and fundamental political and economic freedoms in accordance with their obligations under international law, and principles and objectives set out in the United Nations Charter and the Universal Declaration of Human Rights*”.

### **Commitment to democracy – the rationale**

These obligations cannot be taken lightly. First, we note that in a number of other FTAs signed by EFTA (e.g. with the [Gulf Cooperation Council](#)), as well as in joint declarations of co-operation (e.g. with [Mongolia](#)), no reference to democracy is provided. More importantly, the fact that the non-state community of Hong Kong can enter the trade agreements separate from mainland China, is entirely due to its status under the “one country, two systems” arrangement in which the Basic Law promises election of the leader and legislature by universal suffrage (in [Articles 45 and 68](#), respectively). The commitment to uphold political freedoms such as freedom of speech, freedom of association and freedom of assembly is given by Basic Law [Article 27](#). Hence, with the commitment to democracy gone, and with the disintegration of the population's fundamental rights, the justification for Hong Kong to act as an independent party to an FTA has vanished. This underscores the significance of the pledge in the FTA's preamble.

### **The end of "one country, two systems"**

The “one country, two systems” arrangement has been challenged by the Hong Kong government and their supporters in the Legislative Council for some years now. The proposition of an extradition law amendment bill in 2019 was in breach of the promise of an independent Hong Kong judiciary, as laid out in Basic Law [Article 19](#). The national security law (NSL), implemented by Beijing on 30th June 2020, was an unquestionable violation of Basic Law [Article 23](#), which explicitly states that such legislation is to be introduced by Hong Kong on its own.

As a consequence of the NSL, all impulses towards true democracy in Hong Kong now lie in tatters. In July, a large number of opposition politicians were [disqualified](#) from being candidates for the September 2020 Legislative Council (LegCo) elections, in violation of Basic Law [Article 26](#). Then, the elections were postponed for a full year, in violation of Basic Law [Article 69](#) and Hong Kong Bill of Rights [Article 21\(b\)](#). Then, in November, all four elected representatives from the Civic Party in the LegCo were [disqualified](#) from continuing to serve their constituents. In January, all opposition

politicians who intended to run for seats in the LegCo were [arrested and charged](#) under the NSL for subversion. If found guilty, they face prison terms of 3 years to life. Their alleged crime is that they intended to win a majority in LegCo, and, if successful, an opportunity to veto the budget. The absurdity of this allegation is glaring, as the Basic Law sets out procedures for the event that a budget is not passed by LegCo, in Basic Law [Articles 50, 51 and 52](#). Under the NSL, the pro-democrats are now imprisoned with bail denied, in effect making them prisoners of conscience, and making all real opposition to the government a crime punishable by lengthy prison terms.

### **Demands of the Hong Kong government**

There is no longer any doubt whatsoever that Hong Kong's present administration has no intent to implement the democracy that was promised in the Basic Law, and to which it is committed by the FTA with EFTA. This situation cannot be accepted by EFTA. We urge EFTA to immediately state the following demands of the Hong Kong Government:

1. All political prisoners in Hong Kong must be set free immediately, including the 47 men and women who were charged with subversion and imprisoned on 28th February.
2. The National Security Law imposed by Beijing is a brazen attack on the commitment to democracy, and civil and political rights, in Hong Kong. The law must be abolished without delay.
3. This year's elections of representatives to the Legislative Council must be performed in the true spirit of democracy, and no one can be barred from standing as a candidate.

If these terms cannot be met by the Hong Kong government, EFTA must state that Hong Kong is in flagrant violation and has defaulted on the terms set out in the Free Trade Agreement.

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