

7 June 2002

OPEN LETTER FROM AMNESTY INTERNATIONAL TO THE HONG KONG SPECIAL ADMINISTRATIVE REGION GOVERNMENT

Dear Chief Executive Tung Chee-hwa,

I am writing with regard to the recent Anti-Terrorist Ordinance which your government submitted to the Legislative Council for discussion and debate on 17 April 2002. Amnesty International understands that the Bill is under consideration by the Bills Committee. Amnesty International would like to make several recommendations and highlight some concerns the organization has with various aspects of the Bill in the hope that these concerns will be addressed and remedied in the final Bill.

Following the attacks in the United States of America on 11 September 2002, many states have taken steps to protect their populations from similar criminal acts. While Amnesty International recognizes the right of every government to ensure its own defence and indeed recognizes that governments in fact have a duty to ensure its citizens are protected from harm, the organization is concerned that several of the provisions within the proposed bill could be used to limit or derogate the human rights of Hong Kong citizens as well as non nationals.

Measures to ensure the safety of citizens should be implemented within a framework of protection for all human rights. The Universal Declaration of Human Rights was initiated by states in response to the widespread and serious abuses that some governments perpetrated on their own citizens during the Second World War. Human rights standards constitute the bare minimum of standards necessary to protect the safety and integrity of individuals from abuse of power.

The challenge to states, therefore, is not to promote security at the expense of human rights, but rather to ensure that all people enjoy respect for the full range of rights. The protection of human rights has sometimes been falsely described as being in opposition to effective action against "terrorism" and some people have argued that the threat of "terrorism" can justify limiting or suspending human rights. In fact, security and human rights are not conflicting aims, but complementary goals, and relate to the same idea of security that people expect their government to ensure.

Where criminal legislation and criminal justice procedures are amended to ensure security from criminal acts, such measures must be in accordance with international human rights law and standards.

Although in general the provisions contained in the draft Anti - Terrorism Ordinance do not breach fundamental human rights, laws and standards, there are still areas where the proposed legislation may be used to limit some rights. The following points highlight some of these concerns.

In particular, Amnesty International is concerned over the potential abuse of the Bill in

limiting peaceful exercise of the right to freedom of expression; the unfairness of the procedure for classifying an organization or funds as Aterrorist@ or Aterrorist property@ coupled with concern over the effectiveness of appeals against such classifications as well as a concern about the amount of power invested in the Chief Executive. Amnesty International is also concerned that the person or groups classified as >terrorist@ should have access to the evidence against them, and that rights to a fair trial are protected in full. The organization is particularly concerned at the proposal to hold trials in camera for unacceptable reasons.

Definition of “terrorist”

While the word "terrorism" is used frequently and its practice is generally opposed, there is no universally accepted definition of the word in general use or in treaties and laws designed to combat it. Frequently, the word indicates the user's attitude to a certain crime. States and commentators describe as "terrorist" acts or political motivations that they oppose, while rejecting the use of the term when it relates to activities or causes they support. This is commonly put as "one person's terrorist is another person's freedom fighter".

In a recent report, the UN Special Rapporteur on terrorism noted that the issue of "terrorism" has been "approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition to this very day." There are a number of UN conventions prohibiting specific acts, such as hijacking or bombing, which specify in detail various crimes which are commonly understood as "terrorist" crimes. However, recent attempts to finalize the UN Convention on "terrorism" stalled, *inter alia*, because of disagreements about the definition.

State laws and proposed laws on "terrorism" vary considerably in the range of acts that they proscribe and the clarity with which the acts are defined. Some of the laws and draft legislation examined by Amnesty International give rise to concern that the lack of precision creates uncertainty about what conduct is prohibited and they may criminalize peaceful activities and infringe unduly upon other rights such as freedom of expression and association.

The definition of a “terrorist” and a “terrorist” act contained within the Hong Kong Anti-Terrorism Bill is welcomed by Amnesty International in that it appears to focus on recognizably criminal acts such as those involving violence while allowing for peaceful protest. However, Amnesty International is concerned that the bill, as currently worded, may allow for defining a “terrorist act” in clause 2, parts (a) to (b) to be directed at peaceful protestors organising mass demonstrations by abusing clauses (B), (D), and (E) which relate to damage to property, electronic systems and public health and safety and which are not excluded from the definition of a terrorist act. Amnesty International asks that the Bill not be used to arbitrarily limit the rights of protestors to organize mass demonstrations.

Specification of persons and property as “terrorist’s” - “reasonable grounds”

Part 4, sections (1), (2), (3) and part XX of the Anti-Terrorism Bill state that “*Where the Chief Executive has reasonable grounds to believe that a person is a terrorist*” (4 (1)) or a “*terrorist*” associate (4 (2)) or that a property is “*terrorist property*” (4 (3)) the Chief Executive “*may publish a notice in the Gazette specifying the name or names of the persons or specifying that property*”.

The Gazette is an extremely public forum sited on the Hong Kong government web site. Amnesty International is seriously concerned in several respects.

Firstly Amnesty International would welcome some clarification as to what the term “associate” would mean in practice and how it would be defined.

Amnesty International is concerned at the power that such a clause confers on the Chief Executive - the decision to publish the name of a “terrorist” or “terrorist group” can seemingly be made by the Chief Executive alone without recourse to a court of law or to any other judicial or independent body and can be made solely on the grounds of the Chief Executive holding “reasonable grounds” for belief.

Amnesty international would like to seek assurances from the Hong Kong SAR government that “reasonable grounds” includes a genuine quantifiable criteria of proof and that such proof would be freely available to the people concerned as well as their legal representatives so that they can effectively answer allegations that they or their organizations are "terrorist".

Should the choice of names be faulty the publication of individual names and group names may put those individuals at risk of criminal liability and imprisonment. The Ordinance does not seem to allow any means for the person or property being classified as “terrorist” to appeal or halt the publication of the notice before it is actually published. Amnesty International is concerned that people who are working in, members of or associated with, an organization classified as “terrorist” may be immediately criminally liable simply for holding a post in, or being members of or associates of the organization.

This may well affect charitable bodies and academic or community based groups which may have links to governments or organizations, which are currently under suspicion of being closely linked to “terrorists”. The prime example of this includes Muslim community groups which, in some countries, have in the recent past been accused of diverting funding towards “terrorist” groups such as *al-Qa’ida* despite a relative lack of proof.

Removal of Notices

The only means to remove the notice of classification as a “terrorist” appears to be either when the Chief Executive “ceases to have reasonable grounds” to presume the person or group is “terrorist”, or when the notice expires after three years or on appeal. In all these three cases, it seems that the decision rests with the Chief Executive.

Amnesty international is pleased to see the clause 4(7) which allows for the expiry of the notice after three years, however given the fact that the Chief Executive is able to re-publish at any time, any notice of a person, group or object as “terrorist”, the clause is of limited value.

Amnesty International also welcomes the provision (4 (6)) allowing appeals to the Court of First Instance to revoke any notice in the Gazette of a named person or group or property as being that of a “terrorist”. However it seems inconsistent that the person has to appeal to the Court of the First instance to remove a name from the Gazette whereas, in order to place a name on the Gazette, the Chief Executive only has to express “reasonable grounds”. It is also clear that the Court of First

Instance shall only grant such an application for the notice to be revoked if the Chief Executive or Secretary of Justice does not have or “continues to have reasonable grounds to suspect”. This in effect suggests that the court actions simply comply with the views of the Chief Executive or Secretary of State. There is no mention of any investigation or independent judicial inquiry.

Offences and Punishment

The Anti - Terrorism Bill of Hong Kong provides for very long sentences (of up to 14 years imprisonment) to be imposed on any person contravening sections 6,7 or 8 which relate to supplying funds (or in the case of section 8, weapons) to “terrorist”s. It also provides for prison sentences for people sentenced on the same charges but facing “summary trials”.

Amnesty International is concerned that in all cases the person or party accused and liable to such sentences under the Bill should have access to the evidence against them and has the right to challenge that evidence.

It should also be stressed that any proceedings related to the summary trials mentioned in the Bill (which can provide for up to two years imprisonment) should contain the same internationally recognized provisions relating to fair trials - particularly to have adequate time and facilities to prepare a defence case, and to call and examine witnesses - as any standard criminal trial would contain. Amnesty International would welcome further details on the exact nature of the proposed summary trials such as information on when and why they may be used instead of the usual proceedings.

Fair Trial - Proceedings *in camera*

Section 17 discusses the holding of applications for appeal in whole or in part *in camera* allegedly “*in the interests of the security, defence or international relations of the HKSAR or any witnesses giving evidence in the proceedings.*”

Amnesty International urges the government to ensure that free and fair and open proceedings are held. Trials *in camera* should only be held when there are compelling reasons to do so, such as the safety of witnesses, protection of minors and national security interests. To hold a trial *in camera* to protect the interests of “International Relations” of the Hong Kong SAR is not enough to justify the withholding of such a basic right as an open trial. The rights of all those held on charges relating to the Ordinance must be respected and must include the right to be able to prepare a defense and to have a fair trial.

Amnesty International would welcome comments from the government of the Hong Kong SAR on these points and the opportunity to discuss them further.

Yours sincerely,

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Amnesty International