

Amnesty International, Hong Kong Section
18 June 2003

Response to

修訂建議 – (a) 上訴反對取締的特別程序; 及 (b) 處置被取締組織財 的安排

Amnesty International has serious concerns about the provisions for the proscription of societies and believes that they go far beyond what is called for in Article 23 and introduce into Hong Kong PRC legal definitions and standards, contrary to the principle of “One Country-Two Systems”. There is nothing in Article 23 which calls for the HK SAR Government to proscribe local organizations or defer to mainland proscription of organizations. Article 23 only refers to the need to proscribe foreign political organizations or for local organizations that have ties to foreign political organizations.

The draft legislation gives additional powers to the Secretary for Security to proscribe an organization if he or she “reasonably believes” that the proscription is necessary in the interests of national security and is proportionate for such purposes. Amnesty International believes that the need to legislate against groups as outlined in Article 23 is already more than adequately covered by existing legislation including the recent Anti-Terrorist legislation, the Societies Ordinance on grounds of national security and by existing power of the Chief Executive to ask the courts to proscribe a group. Amnesty International believes that there is no need to add further legislation to cover the proscription of societies.

In addition the organization or groups proscribed do not have adequate opportunity prior to proscription to make representations and will in fact denied the opportunity to make such representations should the Secretary for Security “reasonably believe” that such an opportunity is not practicable. Appeals against proscription include appeals on the grounds that the evidence is insufficient to prove the group or organization in question falls in section 8A (2) A,B, or C. It would be extremely difficult to appeal as the definition of such groups is so wide ranging and the Secretary for Security need only have “reasonable belief” that the group is engaged in treason or similar activities. It will also be very difficult for any group to actually make an appeal against proscription on the grounds of 8A (1) c as this proscription depends solely on whether or not it has been proscribed in Chinese mainland law on the grounds of national security.

Punishments are overly harsh and include imprisonment for up to three years for any person who is a member of a proscribed organization.

The introduction of provisions on groups with links to organizations proscribed on the mainland goes beyond the terms of Article 23 and allows for PRC concepts of national security to take precedence in the HK SAR. Although Amnesty International welcomes the narrowing of the definition of the relationship between groups in Hong Kong and proscribed groups in the mainland, the current definition is still too loose could have very serious repercussions for Hong Kong as a centre for study, research, debate, and civil society activism about the full diversity of issues on the mainland. This offence could seriously impede the freedom of expression and association of exiled mainland dissidents in Hong Kong.

Amnesty International is also strongly opposed to any use of trials in camera and in absentia which restrict universally respected rights to fair trials unless they strictly comply with the narrow limits placed on their use set out in the ICCPR. Amnesty International notes that certain similar provisions were included in the draft Anti-Terrorism Legislation but subsequently amended after debate and criticism. Amnesty International very much hopes that these provisions will be removed from this proposed legislation, in the interests of protecting the fundamental rights of Hong Kong citizens and fulfilling the responsibility of the Hong Kong SAR government to uphold the relevant articles of the Basic Law protecting the rights to fair trials.

Amnesty International is concerned at the proposed amendments to the Societies Ordinance that the government may make provisions “*enabling proceedings to take place without the appellant being given full particulars of the reasons for the proscription in question*” and 8E(3) (b) that the “*Court of First Instance may hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him*”. Amnesty again urges the Hong Kong SAR Government to be mindful of its obligations under international standards and Article 35 of the Basic Law to accord the right to adequate legal defense for defendants. To deny people the right to know the reasons for proscription and to hold hearings without either themselves or their lawyers being present runs counter to internationally recognized legal standards.

Amnesty International would like to reiterate the point that there appears to be no objective reason for the rushing through of this important legislation. Organisations and individuals are being given minimal time to respond to amendments. If the government of the HKSAR is truly interested in hearing the public’s views on these legislative proposals, it should allow sufficient time for consultation.