

Oxfam Hong Kong's Submission on the "Proposals to Implement Article 23 of the Basic Law"

Oxfam Hong Kong is a non-governmental development and humanitarian relief organisation that works with people to find solutions to problems of poverty and suffering, many of which are caused by exploitation and injustice. We seek lasting change through long-term development programmes and policy advocacy and through raising awareness amongst the public with development education.

Oxfam Hong Kong seeks to build on its national and regional rootedness and experience to maximize its international role and responsibilities, in a strategic partnership with other members of Oxfam International.

Oxfam Hong Kong is a local and independent organization registered in Hong Kong and governed by a Council composed of Hong Kong residents. Oxfam Hong Kong is also a member of Oxfam International which is a confederation of autonomous affiliates having the same mission of addressing structural causes of poverty and suffering through humanitarian response, development programme, advocacy and campaigning at national, regional and international levels.

We would like to submit our comments in relation to the Hong Kong SAR Government's proposals to implement legislation under Article 23 of the Basic Law.

We believe that a vibrant civil society must be safeguarded with the following freedoms: freedom of speech, freedom of flow of information, freedom of the press and publication, and freedom of association and assembly. These rights enable civil society to advocate on eradication of poverty and injustice both locally and globally. We believe that the fundamental human rights in Hong Kong that are provided for under the Basic Law should neither be compromised nor threatened with the need to protect national security.

We agree that the legislation under Article 23 may provide the HKSAR with an opportunity to review existing laws and to make changes as are necessary due to the change of sovereignty.

However, we also believe that any laws in relation to Article 23 must comply with the spirits that are pertinent to the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights as guaranteed under article 39 of the Basic Law; and the Johannesburg Principles on National Security which seeks to allow for effective national security laws which fully respect basic human rights.

We do not think the consultation paper has provided sufficient information to the public to facilitate a clear understanding as to what aspects of their activities might be affected or indicted. Many of the proposed changes are ambiguous, loosely defined, and open to interpretation. This, as we understand, has already led to unnecessary anxiety and fear in the community.

We strongly urge the Government to publish a "White Bill" and allow at least six months for the public to examine and debate the proposed provisions of the legislation, before

proceeding to the legislative phase.

Although the consultation document states that “adequate and effective safeguards” (ref.: para 3.7) will be in place to protect the freedom of demonstration and assembly, including peaceful assembly and advocacy, as provided for under the Basic Law, but these “adequate and effective safeguards” have not been detailed or clearly explained.

The specific concerns relating to Oxfam Hong Kong as a local non-government organisation (NGO) and an internationally affiliated NGO are as follows:

1. Treason: Para 2.10 and 2.11 covers assisting public enemy at war. As a humanitarian organization, Oxfam Hong Kong proposes to limit the definition of ‘assisting’ to exclude humanitarian relief work which are not in any manner contributing to war effort in countries irrespective of their relationship with China.

Recommendation 1: We recommend to exclude humanitarian work from being covered under ‘assisting public enemy at war’.

2. Sedition:
 - i. The proposed offences on sedition are too broad and unnecessarily induce fear about how an action could be criminalized by being interpreted as “inciting others to cause violence or public disorder which seriously endangers the stability of the state or the HKSAR.” (4.13 b.)

Recommendation 2: We urge the government to define clearly and narrowly the concept of incitement according to the Johannesburg principles.

- ii. Seditious Publications: The definition of seditious materials is too broad and vague.

Recommendation 3: We urge the government to concisely and narrowly define the concept of ‘ seditious publications’.

3. Theft to State Secret: On theft of state secrets, the categories of “state secret” and “protected information” are too broad and open to interpretation, such as “information related to international relations” and “relations between PRC and HK SAR”. It is difficult to judge whether the disclosure of certain information is motivated by “purpose prejudicial to the safety or interest of the state or the HKSAR.”

As the interpretation of what constitutes ‘state secret’ in the Mainland and in Hong Kong differs enormously, we might be unknowingly handling some protected information or information unauthorized for release. It may therefore be rather possible to have violated this legislation by releasing information that may be classified as state secrets, and thus should not be possessed or released.

Recommendation 4: To avoid the definition of protected information being defined too broadly and vaguely, we recommend to narrowly define the categories of “ information related to international relations” and “relations between PRC and HKSAR” according to the Johannesburg principles.

4. On Foreign Political Organisations: The concept of “connection” is defined to include “Solicitation or acceptance by the association of financial contributions, financial sponsorships or financial support of any kind or loans from a proscribed organisation, or vice versa”; and “participation” in the proscribed organisations’ decision-making process (para 7.17).

The future legislation along these lines will put organizations such as OHK in a risky position, as the ‘connection’ can be indirect and through layers of intermediaries. And worse, an overly sensitive screening of mainland organizations might become inevitable, which in many cases, should not be necessary. In our view, this may result in an overall reduction of development and/or funding programme engagement of HK-based development agencies in the mainland and other organizational and cultural exchanges among organizations.

We also have concerns over the expanded power of the Secretary of Security. Any Hong Kong organization that has a connection with the proscribed organization – even if it is not affiliated – can itself be unlawful if the Secretary for Security “reasonably believes that this is necessary in the interests of national security or public safety or public order”.

Recommendation 5: We recommend the disconnection of proscribed organizations in the mainland with organizations in Hong Kong. The HKSAR government could judge whether the organizations in Hong Kong should be proscribed or not base on the fact that whether they have committed unlawful acts.

In conclusion, we urge the government to address the concerns that we have raised, and allow a genuine public consultation of the proposed legislation with the publishing of a White Bill.

In fulfilling its duty to protect national security, the Hong Kong Government should take all necessary measures to ensure that the basic human rights that are provided for under the Basic Law are properly protected.

Oxfam Hong Kong
17th Dec., 2002.