

20 December 2002

Security Bureau
(Attn: AS(F)2, F Division)
6th Floor, East Wing
Central Government Offices
Lower Albert Road
Central
Hong Kong

Dear Sirs,

Re: Proposals to Implement Article 23 of the Basic Law

I refer to the consultation of the Hong Kong public on the subject. I, as a resident of Hong Kong, would like to express my concern and my viewpoints on the proposals.

The consultation paper, in its present form, does not inform fully what will the exact detail be. Rather, it only gives some basic ideas. From what is being proposed, it seems that the freedom of Hong Kong people will be adversely affected. As such, I have made the attached comments and would urge the government to consider my viewpoint and fully elaborate the details, in the form of white paper, in order to allay my concern. I am quite certain that the Hong Kong general public shares similar concerns.

Thank you for your kind attention

Yours faithfully,



MF Yan

Cc: Office of the High Commissioner for Human Rights
British Consulate General
The Legislative Council
Hong Kong Bar Association
The Law Society of Hong Kong

Comments on the Consultation Paper on Implementation of Article 23 of the Basic Law

1. The offences as detailed in Article 23 of Basic Law while are very serious however, are also prone to political manipulation. Drafting of new law to fight such offences is therefore very sensitive. The consultation paper does not give enough detail to ensure that balances have been strike so that the civil right of average citizens in Hong Kong are protected against the eventual enlargement of power of the government to prosecute under the new law. In this regard, a white paper is absolutely necessary to give the detail so that a public consultation is effective.
2. The government has more than one time says that the white paper and the blue bill are the same, or at least all the things that can be worked out by the white paper can be equally achieved with a blue bill. I do not agree. The white paper aims to obtain the opinion from the general public while the blue bill means that the legislative process has been started. I insist that the general public has the rights to know the details, to give their opinion before the law itself is presented to the Legislative Council.
3. The Hong Kong government has given numerous pledges that the basic right of average Hong Kong people will not be affected. Nonetheless, their personal pledge is only as good as to themselves. The proposed changes as contained in the consultation paper does appear to affect the life of Hong Kong people, negatively, so that the proposed changes themselves negate all the guarantee as given by the government officials.
4. The Hong Kong government has publicly stated that it aims to finish the legislative process by July of 2003. I do not agree. I believe that for a law with so much consequence, we must have consider and debate all the details thoroughly before they are being passed. Creating a deadline is absolutely unnecessary. By the way, the Basic Law did not have a deadline to enact laws to implement Article 23. Just ensuring all the processes required to create the law are on-going is enough.
5. In item 1.12 of the paper, it has been stated that "The HASARG has examined carefully the view put forward on this subject, both before and after the Re-unification, including those submitted by the Bar Association, the Law Society of Hong Kong, Justice (Hong Kong Section of the International Commission of Jurists), the Hong Kong Human Rights Monitor, the Hong Kong Journalists Association and various political

parties and legislators." Nonetheless, after the publishing of the Consultation Paper, most of the above-mentioned bodies have voiced loud and differing opinion from those contained in the Consultation Paper. It is obvious that their views have not been considered fully. I urge the Hong Kong government to fully consult their view point and put the law into a white paper so that these bodies can have a detail understanding of the proposed new law, discuss them fully before the proposed new law is put into the legislative process.

6. For items 2.10 and 2.11 as contained in the Consultation Paper, I urge the government, in the process of codify public enemy, to adopt a narrow definition. For instance, if a citizen of the waring state, is not engaging in war with us, that citizen should not be a public enemy. Also, the government should apply a narrow definition of assist to explicitly state what kinds of conduct belong to assist. Any conducts not falling into the definition are excluded from the offence.

7. Item 2.14 proposes that failure to take reasonable steps within a reasonable time to inform the Police of the fact that another person has committed treason. I believe this proposal is totally unacceptable.

While it may be a citizen's moral obligation to report case of treason, it should not be a legal obligation. Making this as a legal requirement will only create scenarios happened in China's cultural revolution where families are broken up. Journalists will commit offences in the process of carrying out their normal duty of gathering news while not reporting to the Police, creating a threat to the news freedom.

8. Item 3.6 proposes to create specific offences relating to secession attempts where they are undertaken by levying war, force, threat of force or other serious unlawful means. I urge to delete "force, threat of force or other serious unlawful means". First, only levying war should be included in the offence of secession. Secondly, the further explanation on serious unlawful means as detailed in item 3.7 should have been prohibited by law. It is not necessary to make a person conducting one action as committing two offences.

9. Items 4.17 proposes to make "print, publish, sell, offer for sale, distribute, display or reproduce any publication or import any publication, knowing or having reasonable grounds to suspect that the publication, if published, would be likely to incite others to commit the offence of treason or secession or subversion" offences. Allowing this to become a law will seriously impede the flow of information within Hong Kong, shaking one

of the foundations of Hong Kong's success. The Hong Kong government has on occasion saying that library can be exempted from this law. I wonder why only libraries are entitled to exempt from this law while every other citizen are liable to the offences mentioned. The logic is absurd: a material is illegal to be displayed in a bookstore but legal to be displayed in a library. In this regard, I urge the government to drop item 4.17.

10. Item 5.5 proposes to make it an offence of subversion to intimidate the PRCG or to overthrow the PRCG or disestablish the basic system of the state as established by the Constitution, by levying war, use of force, or other serious unlawful means. I propose to drop "use of force, or other serious unlawful means". Reasons are the same as mentioned in my opinion (8) above.

11. Items 6.21 proposes that a state secret be protected from the source. I believe the concept is fundamentally wrong. A state secret should be classified from its nature, not source. I would also urge the government to clearly define what is state secret.

12. Item 6.22 proposes that unauthorized and damaging disclosure obtained illegally an offence. As stated in my opinion (11) above, a state secret should be classified according to nature, not source of information. In this regard, unauthorized and damaging disclosure can only be an offence if the disclosure of state secret (already clearly defined).

13. Laws about state secret are very sensitive. There are cases that restricting the flow of information (by declaring state secret) would only hinder the improvement of the government. This is especially true that by nature, laws on state secret will invariably limit freedom of press. I urge the government to apply a narrow definition of state secret in order to ensure freedom of press and freedom of information is still possible in Hong Kong.

14. Item 7.15 proposes to enlarge the power of Secretary for Security, by giving him (her) the power to proscribe an organization, if (s)he reasonable (sic) believes that this is necessary in the interests of national security or public safety or public order. I believe such enlargement of power is not necessary as the government already has enough power, under the Societies Ordinance, to deal with such organization.

15. Item 7.16 states that the HKSAR may not be in a position to determine whether an organization poses a threat to national security, especially for those entities based in Mainland with cells in the HKSAR affiliated with

- them. Therefore we should defer to the decision of the Central Authorities. I strongly object this idea. I believe that the HKSAR should bases its decision on its own judgement, after assessing all the information available. Simply deferring the decision to Mainland Authorities would destroy the existing arrangement of one country two systems and bringing in, unnecessarily, the Mainland system to Hong Kong.
16. Because I propose not to enlarge the authority of the Secretary of Security, as contained in item 7.15, logically, I propose to drop 7.17 as well.
17. Item 7.18 proposes that the procedure for appeal against the decision to proscribe and to declare an organization unlawful be split into two levels – a tribunal and court. I propose that the procedures should be carried out in court only, to ensure the independence of decision.
18. Items 8.4 and 8.5 concern the enlargement of the power of police by stating that critical evidence for suspected offences could have been destroyed if a search warrant could not be obtained in time. I wonder why for other serious offences, the police are facing the same problem but they still need a court warrant. I do not believe that the power of police should be enlarged solely for the sake of offences in Article 23. The only effect of enlargement of power of police is to make Hong Kong a police city, which is totally unacceptable. In this regard, I propose to drop items 8.5 altogether.
19. Item 8.6 concerns the enlargement of financial investigation power of police. I believe that such power should be kept by the court, but not be transferred to the Commissioner of Police.
20. Item 8.7, it proposes several change to the power of Secretary for Justice, including issuing witness order, production order and search warrant. I object to this enlargement of power of Secretary for Justice because it will deprive the witness, or even the suspect, the right to be silent. The suspect may be self-incriminated.
21. All the offences mentioned involve extra-territorial application. I believe the consultation paper has not taken into consideration of dual nationality and the fact that Chinese nationals are not allowed to denounce their nationality. In this regard, all the suggestions as contained in extra-territorial application will only incriminate all the persons who do not have the freedom to choose. In this regard, I propose that all the offences be limited to offences committed in Hong Kong only.