

Joint Statement of International and Regional NGOs in Hong Kong on Article 23

Article 23 Opens the Door to Repression in Hong Kong

Don't Sacrifice Hong Kong's Freedoms!

We are a group of international and regional non-governmental organisations (NGOs) based in Hong Kong. Like many other people and organisations, we have chosen to set up our offices in Hong Kong because of its relatively free environment and respect for the rule of law. At the same time, the free flow of information enhanced by an efficient communication system provides great convenience for the promotion of international cooperation and exchange among people in the region. All these advantages have made Hong Kong a valuable part of international society in the region.

However, we are deeply concerned that the proposals in the recent Hong Kong government's consultation document entitled "Proposals to Implement Article 23 of the Basic Law" will lead to the deterioration of human rights and the rule of law in Hong Kong. In particular, the rights of Hong Kong's people to freedom of expression, freedom of the press, freedom of association and freedom of information will be threatened if the proposals become law.

Our anxiety about the Article 23 proposals stem from a number of concerns.

First, the present consultation document only provides an outline of the proposals. The content of the consultation document seems to have been ill-defined, causing confusion and uncertainty. The key offences of treason, secession, sedition and subversion are referred to with an ambiguity that would allow the government to use the law as a legal weapon to deny, rather than protect, people's rights.

Second, the intention to proscribe any organisation in the community that has been banned on national security grounds by the central government in mainland China thereby absolves the Hong Kong government from having either any responsibility or authority over such matters. Under this particular proposal, the definition of "national security" in Hong Kong would be determined in Beijing, and local organisations would become unlawful without any oversight and protection by the courts in Hong Kong, thereby eroding the "one country, two systems" model.

Third, there is much uncertainty surrounding the expansion of police power given in the consultation paper to enter premises to conduct a search and seize materials merely for investigative purposes without any warrant issued by a court. The oversight function of the judiciary in granting warrants must be preserved if the rule of law is not to be diluted or threatened. This section of the consultation document clearly grants too much discretionary power to the police, regardless of the rank of the officer.

Fourth, the proposal to widen the provisions on unlawful disclosure of information may inhibit freedom of information and the press, for what is deemed a "state secret" may, in reality, merely be a remark or decision that is politically embarrassing. While the consultation paper outlines the types of information that should not be unlawfully disclosed, it does not indicate who will make the important decision about what specific information is a state secret. Journalists and other local and international observers have already noted a trend towards self-censorship in the Hong Kong media since 1997. The provisions of this consultation document, if enacted into legislation, will only further contribute to the decline of press freedom in the territory.

Fifth, problems also exist regarding the possible targets of the proposed legislation. In particular, members of Hong Kong's diverse expatriate communities could be at risk of committing one of these crimes, especially if their country were at war with the People's Republic of China (PRC). The growth of a perception among the international community in Hong Kong that its members are exposed to personal risk under the proposed amendments may have an adverse effect on the atmosphere in Hong Kong, particularly among foreign investors.

In all countries of Asia where laws similar to the new proposals under Article 23 have been adopted, the rule of law has suffered severely. Indonesia's long years of national security laws, for instance, have led to a society where it is now very difficult to reroot basic institutions for justice. Similarly, in more affluent Malaysia, basic freedoms and the independence of the judiciary are also in peril due to such legislation. And special mention must be made of Singapore. Unlike Hong Kong, the development model of Singapore was premised on the sacrifice of rights and freedoms. Hong Kong was able to achieve equal or greater economic development while at the same time preserving its open society with basic freedoms. It would be a tragedy to needlessly sacrifice this advantage.

Considering the above concerns about the government's proposals and their threats to human rights, we oppose the proposals in the consultation document. We are of the view that there is no need to create new offences for Articles 23 and that the present proposals should be withdrawn. According to the Hong Kong Bar Association, the existing laws of the HKSAR are sufficient to prohibit the acts listed in Article 23, and there is no need to create new offences or enact additional laws under Article 23. The Bar also points out that many parts of these existing laws are out of date and not compatible with the International Covenant on Civil and Political Rights (ICCPR). Thus, what the Hong Kong government should do is to revise the existing laws to make them in line with the ICCPR, rather than create new offences to limit the freedoms of Hong Kong's people in the name of national security.

While the proposals ought not to proceed at all, if they appear destined to do so nonetheless, then it is vital that a white bill is presented, that is, the draft legislation itself is submitted for further consultation to permit more well-informed feedback. Moreover, there should not be any deadline set that may result in an undue element of hurry and an air of inevitability to the whole procedure that would harm the social morale in Hong Kong, which is already sufficiently damaged by the government's treatment of these proposals to date.

Signed by:

Amnesty International, Hong Kong Section
Asia Monitor Resource Centre
Asian Centre for the Progress of Peoples
Asian Human Rights Commission
Asian Migrant Centre
Asian Students Association
China Labour Bulletin
Documentation for Actions Groups in Asia
Human Rights in China Hong Kong Office
World Student Christian Federation—Asia-Pacific Region