

Members
Legislative Council
Hong Kong Special Administrative Region of the People's Republic of China
Legislative Council Building
8 Jackson Road, Central
Hong Kong

21 Oct 2002

Dear Members of the Legislative Council,

Amnesty International Hong Kong Section would like to express our concerns and regrets over the rushing through of the United Nations (Anti-Terrorism Measures) Ordinance. Though the amended legislation is in some aspects more acceptable than the draft bill, there are still some provisions, which remain problematic.

Our outstanding concerns go to the following areas:

- 1 The definitions of terrorist, terrorist act, terrorist associate are so broad and ambiguous that the Legislation may be used against certain organisations and acts, which, legal or otherwise, are totally unrelated to “terrorism” in our commonsense understanding of the term. For instance, even participating in a peaceful mass demonstration without prior approval from the police may be caught under some of the provisions.
- 2 According to article five of the ordinance, the Chief Executive may make an application to the court of First Instance for an order to specify a certain person as a terrorist. However, there is no procedure to allow that person to appeal to the court before the publication of the Gazette. He/ she only has the right to appeal for removal of his/ her name from the list after it has been made public in the Gazette. This mechanism is clearly not fair. Once he/ she has been identified as a terrorist, colossal damage to the accused has already been done. Also, under the ordinance, evidence against the accused may be withheld from him/her for interests of “national security”. This may put the defendant in a very vulnerable position. We would like to call for clarification that the defendants have full and proper access to the evidence against them and that they are entitled to sufficient and effective means of appeal.
- 3 The Secretary for Security is granted power to make regulations for the purpose of handling terrorist properties, collect evidence and prescribing relevant offences in the form of subsidiary legislation. Some provisions concerning appeal process and private hearing were withdrawn in response to vigorous objections but will be re-incorporated into the ordinance later, also in the form of subsidiary legislation. This arrangement blurs the roles of principal and subsidiary legislation. Given that the contents of these legislation are of tremendous importance and provide for long sentences, they should be embodied in the principal legislation.

No proper public consultation has been carried out over this ordinance. The public is, in general, unaware of its great impact. One can easily infringe the offences and be criminalized. We would like to urge the government to clarify the above areas and to review the additional powers extended to the Police, the Security Bureau, the intelligence unit and other departments involved, so as to prevent the unnecessary restriction and derogation of basic human rights.

Given that time for drafting the legislation has been limited, it is inevitable that some of the provisions are problematic and, indeed, anyone would agree that loopholes can easily be identified. The catastrophic consequence of such legislation is that a wide range of citizens may be put at risk. In this regard, we sincerely urge you to seriously consider the cancellation of the power of the Chief Executive to stipulate the title of terrorists through application to the court of First Instance in addition to that of the list of terrorists released by the UN Security Council.

Given these concerns and considering the many problems resulting from rushed and improperly consulted anti-Terrorism legislation, we urge that the implementation of s.23 of the Basic Law should go through the process of issuing of a white paper, so that the provisions in detail can be scrutinized and modified before submission to the law drafting committee for thorough examination. AI calls for extreme caution in the approach of the implementation of s.23 of the Basic Law so as to safeguard human rights and the principle of “One Country, Two Systems”.

Sincerely yours,

Sarah Carmichael
Chairperson
Amnesty International Hong Kong Section