

China Labour Bulletin

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On the Enactment of Article 23 Legislation in Hong Kong

"The HK SAR shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."

Article 23 of the Basic Law of the Hong Kong SAR

General Concerns

The implementation of legislation on Article 23 of the Basic law is one of the most important legislative decisions and discussions in Hong Kong since 1997. China Labour Bulletin is disappointed therefore that the HK SAR Government has not used the opportunity to introduce into Hong Kong a clear and narrowly drafted bill which respects fundamental human rights and ensures that there is no conflict between any new legislation and basic human rights as guaranteed to the Hong Kong people by the Basic Law and by international covenants to which Hong Kong is a party.

CLB is additionally disappointed that the government has made proposals, which actually undermine international standards on human rights, and, in its haste to legislate, has done so in a manner that shows an underlying disregard for public opinion.

All and any legislation passed on such a potentially abusive area as Article 23 should be clearly and narrowly defined to limit any disproportionate restrictions on human rights. All and any legislation on Article 23 must avoid criminalizing any legitimate expression of fundamental human rights so that the Hong Kong public and civil society can be certain about what exactly constitutes a criminal offence.

As the proposals stand, China Labour Bulletin is deeply concerned that the outcome of this legislation will be an erosion of the principle of "One Country-Two Systems" and a decrease in the protection and promotion of fundamental human rights in Hong Kong. The implementation of the legislation as it stands will further undermine Hong Kong's status as a "World City" and could potentially destabilize Hong Kong society, criminalize the legitimate actions of its independent civil society, undermine Hong Kong's independent media and further underscore the movement of Hong Kong away from the

international community of states which uphold and promote internationally recognized human rights.

While China Labour Bulletin welcomes some of the revisions that have gone into the proposed Bill, we remain concerned that many of the major criticisms of the Consultation Paper published last year have not been addressed and serious problems remain. In general the proposed legislation still goes far beyond what is needed to implement Article 23 and is likely to increase restrictions upon the fundamental human rights of Hong Kong citizens. In the light of the definition or indeed lack of definition of several of the proposed offences we remain appalled at the potential for abuse of the proposed legislation.

Public “Consultation”

The apparent desire of the Hong Kong SAR Government to enact this legislation by July seems both unnecessary and contrary, given the fact that the government has devoted considerable resources to drafting the legislation but has not allowed for the level of public consultation that such legislation – which ultimately may change the whole fabric of Hong Kong – should deserve.

We are deeply worried by the government’s determination to rush through the legislation and we urge the government to halt this headlong rush towards early legislation.

Given the lack of a detailed and clear outline of the proposed legislation the public consultation exercise was severely hampered. The consultation document was vague, unclear and contained misleading and inaccurate references to other state and international legislation.

In addition, we are appalled that the submissions made by CLB and other groups to the Legco Security Panel on 14 December 2002 were not included in the Government Compendium of Submissions on Article 23 and find this omission to be a blatant example of the lack of respect afforded to the public submissions and to members of the Legislative Committee. The publication of faulty findings and an incomplete compendium of submissions reveal a lack of real commitment to consultation and underscores the faulty nature of the proposed Bill.

Specific Concerns

China Labour Bulletin affirms the comments made by the Hong Kong Bar Association, the Hong Kong Law Association and the Article 23 Concern Group, which specifically address the legal complexities and flaws contained in the proposed Bill. CLB hopes that the Hong Kong SAR government will properly address the remarks and requests for revisions made by these groups.

CLB will confine itself in this submission to pointing out the most dangerous and potentially draconian aspects of the legislation and make suggestions for the revision or removal of these areas. CLB notes that many respected organizations such as the Bar Association have made many detailed suggestions and sincerely hopes that the government will not ignore these attempts to support the government in making a

properly defined and internationally acceptable law and will instead look closely at the proposals.

Treason, Secession, Subversion and Seditious

Although we welcome some revisions made to these offences in an attempt to reduce some of the initial vagueness of the offences, we are worried that the proposed legislation still defines all the four offences of treason, sedition, subversion and secession in vague terms which could easily be abused and used against civil society or political opponents – in much the same way that existing legislation is used in mainland China.

In particular we believe that there needs to be more clarity in defining what acts constitute treasonable, secessionist and subversive acts. The Bill must clearly exclude all peaceful demonstrations and other legitimate expressions of public opinion from the offences of treason, secession and subversion. In the current definition it is arguable that mass public demonstrations that may “disturb” electronic systems or endanger public safety could be classified as subversive or secessionist. Unless these acts are clarified further the definition of sedition remains too broad.

CLB is additionally worried at the removal of the existing time limits for prosecution for both treason and sedition and urges the government to reinstate these time limits to avoid the use of prosecutions many months or even years after an alleged act of “treason” or sedition” in order to silence political dissent and opposition. CLB does not see any need for the removal of these safeguards and urgently calls for their reinstatement.

Freedom of Information

CLB is concerned at the broad definition of information which is to be included in its proposed revisions to the Provisions of the Official Secrets Ordinance. The exact definition of what exactly could “endanger national security” remains unclear and needs to be narrowed to prevent a subsequent shrinking of government transparency, the introduction into Hong Kong of PRC concepts of “national security” and “state secrets” as well as an increase in the existing self censorship of the media.

CLB urges the government to heed the calls for the introduction of a “public interest” defence clause, which will at least provide the legitimate actions of newspapers, NGOs and others with some protection from prosecution and restriction.

Proscription of Societies

CLB is strongly opposed to the linking of proscribed organizations on the mainland to organizations in Hong Kong – a proposal that goes far beyond the terms of Article 23.

Article 23 states clearly that legislation should be implemented to “*prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.*” It does not ask that the Hong Kong SAR government enact legislation proscribing local organizations with ties to mainland groups banned in China.

The Governments proposals in particular allow for PRC concepts of national security to have precedence in the HK SAR. This has far reaching implications and further erodes the sovereignty of the HK SAR. Given the widespread restrictions on basic human rights on the Chinese mainland it is likely that many organizations may be proscribed in the HK SAR. Groups of Chinese dissidents in Hong Kong as well as NGOS such as CLB may be at particular risk and face unnecessary restrictions on their work.

We remain concerned that independent groups, such as CLB itself, researching human rights abuses in the mainland and taking action to redress such abuses could be criminalized. The implications for freedom of expression and the media remain worryingly unclear and the potential for increased censorship and self-censorship of the media and civil society in general remains high.

CLB urges the Hong Kong SAR to consider existing legislation on the proscription of societies and notes that the government already has the power to proscribe societies through existing legislation in the Societies Ordinance and in the recent Anti-Terrorism legislation. CLB believes that the existing provisions contained within the Societies Ordinance are already a restriction on the rights of Hong Kong society to exercise their right to freedom of expression and association and believes that any further legislation on this matter will only increase the likelihood of political suppression of legitimate dissent and demonstration.

Fair trial – a basic right

CLB is also concerned at the provisions relating to the proscriptions of societies, which state that the Court of First Instance, upon application by the Secretary for Security may hold trials in-camera. The Chief Justice may also allow for appeals to take place *“without the appellant being given full particulars of the reasons for the proscription in question”, “In the absence of any person, including the appellant and any legal representative appointed by him”* and give the appellant only a *“summary of any evidence taken in his absence”*

CLB notes that this proposal in effect strips Hong Kong citizens of the fundamental right to a fair trial. This contravenes Article 35 of the basic law, which guarantees the right to adequate legal defense.

In addition, the proposal appears to contravene articles 9 and 14 of the International Covenant on Civil and Political rights to which Hong Kong has an obligation to uphold. CLB believes that this proposal has serious and far reaching implications for the foundation of the Hong Kong judicial system and in effect further compounds the potential abuses which could ensue from the proposed legislation on proscription which subordinates the judicial independence of Hong Kong to mainland definitions of proscribed organizations by denying these groups the fundamental right of appeal and fair trial. The proposals could in effect strip groups of the right to a fair trial, the right to know on what grounds they are proscribed and the right to make an effective appeal against proscription.

We remind the government of its commitment to the right to fair trial and the need to ensure that all trials conform to international standards, which have clear restrictions on the use of trials in absentia and in camera.

CLB believes that should this proposed revision be implemented then Hong Kong will be seen as a place where NGOs are banned according to the political judgments of the mainland government and subsequently denied access to justice. CLB reminds the HK government of its obligations to the ICCPR and to the international community to show that the principle of “one country- two systems” remains strong. Sadly, if this proposal goes ahead, the future of “One Country-Two systems” appears bleak.

The effect of proposed legislation on local NGOs – a case in point

“Subversion”

China Labour Bulletin (CLB) is a locally registered organization dedicated to the promotion of the independent trade union movement in China. Our objective is to set up independent trade unions of the workers’ own choosing. Supporting the Chinese workers in their independent peaceful struggles to defend their rights, CLB’s scope of work includes trade union education, information dissemination and direct facilitation.

However, what are internationally held as the fundamental workers’ rights - freedom of association and collective bargaining – are denied in Mainland China. It is illegal to set up trade unions outside the auspice of the government-controlled All-China Federation of Trade Unions. Even appeals to that purpose are indictable offences, and labour activists have been put behind bars for “threatening national security” or “subverting the state” or sometimes even “revealing state secrets”. Worker organizers are often sentenced on charges relating to subversion in their struggles against unfair dismissal or when they try to bargain for fair redundancy compensation. In addition, others, such as lawyers, are also sentenced to long prison terms for supporting their struggles.

A large part of the work of China Labour Bulletin is defending such workers and campaigning for the release of people who are detained solely for their involvement in peaceful protests and the exercise of their fundamental right to freedom of association and expression.

One example is that of **Xu Jian**, a lawyer in Baotou City, Inner Mongolia. Convinced that the workers should independently defend their rights through legal channels, Xu provided legal counseling to the workers at his office and via its hotline. Moreover, he provided assistance in filing labour dispute cases for arbitration as well as litigation. Despite the strictly legal basis of Xu’s work, the court rejected the main line of his defense that his activities did not constitute a danger to the state. Instead the verdict holds that the judgment has been made *“in order to protect national security and uphold the people’s democratic dictatorship and the socialist system”*.

Xu was sentenced to 4-year imprisonment in July 2000 on the charge of “inciting to subvert the state”. His case is just one of many which reveal the political repression done in the name of “protecting national security” which renders legal protection meaningless.

In the light of current economic and social reforms within China, the entry into the WTO and the global economic climate, workers in China will increasingly have to struggle to protect even their most basic rights to wages and other benefits. CLB believes that more and more workers’ organizers will be facing subversion charges as they stand up for their rights. CLB will continue to work in solidarity with the international trade union movement in securing their release as well as raising funds to support their families.

China Labour Bulletin has therefore first hand knowledge of what constitutes “subversive” actions on the mainland and is extremely worried at the potential for abuse of fundamental rights that legislation on subversion could entail for Hong Kong. It is further worried therefore at the vagueness of the definitions of subversion contained in the proposed legislation and the subsequent potential for abuse. We urge the Hong Kong Government, as a matter of urgency; to redefine and clarify all proposed amendments to the Crimes Ordinance relating to subversion.

Sedition and State Secrets

CLB produces research documents, investigative reports and campaigning materials on labour protests and working conditions in China as well as first hand accounts of the trials and sentences of labour activists detained for their work in China.

Much of the material that CLB and other NGOs working on human rights in China produce is considered by mainland authorities to be both subversive in nature and to contain “state secrets”. Research, collection and publication of such material would be considered “seditious” and subversive in the mainland. Reporting on workers’ protests from unofficial sources in the mainland is repressed and those attempting to publicize details of such protests are often detained. For example, in 1998, **Zhang Shanguang** released to the media abroad a news report on a demonstration staged by farmers and laid-off workers in his home province of Hunan. For this, he got a 10-year prison term on the charge of “passing intelligence to organizations outside China.

CLB is extremely concerned that the proposed legislation on the handling of seditious publications and other clauses relating to sedition may seriously limit the work of CLB and other groups and may well severely restrict the reputation of Hong Kong as a place well known for its academic research and independent publishing. The introduction into Hong Kong of the proposed legislation on sedition, should be reviewed and the crime of handling seditious publications be removed from any legislation on Article 23.

Free information flow is at the core of trade union education programmes, and is also instrumental for the organization of collective actions in defending workers’ rights. The Hong Kong SAR Government should also be reminded that freedom of information is at the core of any international economic and financial center and that Hong Kong is at risk of losing its reputation as an international trade center if it goes ahead with its proposals to narrow information in the public domain and ignore widespread calls for the introduction of the defence of “public interest” to protect the legitimate work of journalists and groups like CLB.

It remains to be seen how the dissemination of information of this kind will be censored with the enactment of Article 23. However, CLB believes that it is the duty of the Hong Kong SAR Government to ensure that all and any legislation passed to fulfill its obligations under Article 23 of the Basic Law minimizes threats to civil society and to freedom of information and expression. To this end, we ask the government to clarify the definitions of restricted information and introduce safeguards that will allow the continuation of Hong Kong’s free media, academic research and civil society.

Political Labeling

In the Chinese Mainland, “subversion”, “national security” and “state secrets” are arbitrarily and politically determined. Opinions and actions that simply the legitimate

exercise of the legitimate right to freedom of expression can be branded as “subversive” on political grounds. CLB urges the Hong Kong government to ensure that Hong Kong does not fall victim to such repressive and draconian action and instead implements a narrowly defined Bill that explicitly protects fundamental human rights.

Political Regression

In China, people have been struggling hard for democracy and human rights. Instead of joining their struggle, the Hong Kong government is trying to push through the enactment of Article 23 without comprehensive and thorough public consultation; a unilateral action which could strip Hong Kong citizens of legally protected human rights. This kind of political regression cannot be justified on any grounds.

We also remind the Hong Kong SAR government of its obligations to the International Covenant of Civil and Political Rights as well as its obligations to uphold the Basic Law (in particular articles 4, 5, 11,19, 22,27, 30,34, and 35).

CLB is concerned that the ‘legality’ of our work – in particular, ties with political organizations abroad, our support of the organizing of independent trade unions, and our provision of assistance to the families of imprisoned workers organizers – will be called into question after the enactment of Article 23 if the proposed legislation stands. As a legitimate independent organization we are concerned that the proposed legislation, unless further defined, could restrict our ability to independently research and publish information on events and issues which the Central People’s Government believes are subversive. We also believe that the current proposals on the proscription of societies could dramatically weaken the confidence and ability of both the funders and the staff of NGOS to continue working in an environment where the independence of Hong Kong judicial definitions and practices are subsumed under Mainland concepts of “national security” and its opposition to any independent civil society.

We are also extremely worried that, under the current proposals for Article 23 legislation, our fundamental right to a fair trial and for an appeal against possible proscription will be removed, contrary to internationally recognized standards and indeed contrary to the Hong Kong Basic Law.

We believe that there is no necessity for this legislation to be pushed through and ask that the Government ensures that there are further opportunities for debate on this important issue and to revise the proposed legislation in order to conform to international and national standards on human rights.

CLB urges the Hong Kong SAR government to review its proposed legislation in line with the huge number of public comments and the careful and thorough criticisms of the proposals by groups in Hong Kong which represent a wide cross section of society. We reiterate our belief that unless the proposed legislation is revised the Bill, as it stands, would extensively reduce the ability of Hong Kong citizens to exercise their legitimate rights of freedom of expression and association.

CLB remains committed to the defence of those human rights and will continue its work for the development of the independent trade union movement in China regardless of any illegitimate restrictions placed on it by the enactment of oppressive and over reaching legislation. We will continue to exercise our right to freedom of expression, association and information in accordance with internationally recognized standards.

