

**Amnesty International, Hong Kong Section**      June 12, 2003

**Response to the Proposed Committee Stage Amendments  
to the National Security (Legislative Provisions) Bill**

Amnesty International has already made two submissions on the proposals for the enactment of BL Article 23 legislation in Hong Kong. On December 12, 2003, made a submission to Legco in which we expressed our concerns about the Consultation Document and on April 29, 2003, we expressed our concerns about the legislative proposals contained in the “Blue Bill”. The Proposed Committee Stage Amendments to the National Security (Legislative Provisions) Bill have not reduced these concerns.

**Sedition**

With regard to the offence of sedition, Amnesty International has expressed its disquiet at the concept of “incitement”. This term seemed to us to be vague and the proposed addition of the word “intentionally” in the amendment does not seem to improve the situation.

We welcome the attempt to make a link between seditious expressions and an actual violent result, but we note that this amendment does not in fact comply fully with the recommendations of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. These principles state that expression might be punished only if the government can demonstrate the expression was intended to incite imminent violence, the expression was very likely to incite such violence, and *there was direct and immediate connection between the expression and the likelihood or occurrence of such violence* (our italics). The amendment remains vague and ill-defined, without the tight restriction recommended in the final, italicized, recommendation in the Johannesburg Principles.

With regard to offences related to the handling of seditious materials, we do not feel that the amendments make more than cosmetic changes.

The draft legislation continues to include provisions relating to the handling of such materials, namely the possibility of prosecution for anyone who publishes, sells, offers for sale, distributes or displays seditious materials. These provisions go far beyond requirements under Article 23 of the Basic Law and could seriously erode the right of Hong Kong’s media, journalists, academics, libraries and NGOs to collect, research, publish and distribute important but controversial materials, such as information considered to be subversive in the PRC.

We note the limitation of prosecution to three years from an unlimited period; we also note that under the Crimes Ordinance as it stands, the time limit for prosecutions is 6 months after the committing of the offence. We see no reason to welcome an “amendment” which is in fact a retrograde step.

## **Police Powers**

Amnesty International's concern at the additional powers contained in the draft legislation given to police officers of or above the rank of chief superintendent has not been allayed by limiting these powers to those of assistant commissioner level. We have expressed our concern at the vagueness of employing the term "reasonably believe" that offences have been or are being committed to justify searching and removing evidence from private premises. The term "reasonably believe" needs to be further defined. To protect fundamental rights of privacy the police should make an application to a magistrate before searching and removing evidence. Amnesty International reminds the HK SAR Government that police powers must be consistent with Articles 29 of the Basic Law which require substantive and procedural safeguards against unnecessary police intrusion and promotes privacy; *"The homes and other premises of Hong Kong residents shall be inviolable. Arbitrary or unlawful search of or intrusion into, a resident's home or other premises shall be prohibited."*

## **Proscription of organizations**

Amnesty International has serious concerns about these provisions and believes that they go far beyond what is called for in Article 23 and introduce into Hong Kong PRC legal definitions and standards, contrary to the principle of "One County-Two Systems". There is nothing in Article 23 which calls for the HK SAR Government to proscribe local organizations or defer to mainland proscription of organizations. Article 23 only refers to the need to proscribe foreign political organizations or for local organizations that have ties to foreign political organizations.

The recent amendments made to the legislative proposals do nothing to reassure us. We have already noted that the draft legislation gives additional powers to the Secretary for Security to proscribe an organization if he or she "reasonably believes" that the proscription is necessary in the interests of national security and is proportionate for such purposes.

Amnesty International believes that the need to legislate against groups as outlined in Article 23 is already more than adequately covered by existing legislation including the recent Anti-Terrorist legislation, the Societies Ordinance on grounds of national security and by existing power of the Chief Executive to ask the courts to proscribe a group. Amnesty International believes that there is no need to add further legislation to cover the proscription of societies. The proposals already give a great deal of power to the Secretary for Security, and the amendment proposed, by replacing the Chief Justice with the Secretary for Security in the appeals against proscriptions process, concentrates yet more discretionary power in the hands of the Secretary for Security.

Amnesty International is strongly opposed to any use of trials in camera and in absentia which restrict universally respected rights to fair trials unless they strictly comply with the narrow limits placed on their use set out in the ICCPR. Amnesty International notes that certain similar provisions were included in the draft Anti-Terrorism Legislation but subsequently amended after debate and criticism.

Amnesty International very much regrets that the HKSAR government has not amended these provisions in the proposed legislation. Amnesty once again urges the Hong Kong SAR Government to be mindful of its obligations under international standards and Article 35 of the Basic Law to accord the right to adequate legal defense for defendants. To deny people the right to know the reasons for proscription and to hold hearings without either themselves or their lawyers being present runs counter to internationally recognized legal standards.

## **Conclusion**

Amnesty International has been extremely disappointed by the way in which the government has handled the consultation process, from the beginning to the imminent end.

The government Compendium of Submissions (the Compendium) presented during the consultation process was deeply flawed: many submissions were not included in the Compendium. For example, Amnesty International's submission, though mentioned in the foreword to the compendium was not, in fact, included. The classification of submissions has also been shown to be highly inaccurate.

Amnesty, along with many other groups, were appalled that submissions made to the Legislative Council (Legco) security panel on 14 December 2002 were not included in the Compendium. We believe this omission reflects the lack of respect afforded to the public submissions and to members of Legco.

There appears to be no objective necessity for the legislation to be rushed through the legislative process and indeed, legislation on Article 23 is so important and potentially damaging to basic human rights that Amnesty International believes there should have been far greater opportunity for public debate, and the publication of a "white bill". It is a great pity for the future of human rights and freedom of expression in Hong Kong that this has not taken place.