

33號意見書Submission No.33

April 2003

**LEGCO PUBLIC HEARINGS ON BL 23
WRITTEN SUBMISSION BY K K LJU****Purpose of Submission**

To explain some of my observations for supporting HKSAR's proposals to enact Article 23 of the Basic Law.

Source of Information Available to Me

- 1/ The Basic Law.
- 2/ Security Bureau's proposals as detailed in its Consultation Document issued September 2002.
- 3/ Myths and Facts, issued in Nov. 2002.
- 4/ Protecting Freedom of Speech issued in Dec. 2002.
- 5/ The 8 pamphlets prepared by the Concern Group on Art. 23.

My Observations

- 1/ HK has been returned by Britain to China on 1/7/97 and since, China has pledged to let HK operate under a "One Country Two Systems" model the essence of which is stipulated in the Basic Law dd. 4.4.1990 whereby HK will enjoy a "high" degree of autonomy.
- 2/ I also take it that it enables HK to have an administrative system of its own, separate and distinct from that of China and it also confers on HK rights and obligations. There are provisions such as those in Art. 27, 38 with guarantee on

1

freedom of speech, press, publication, association, assembly, procession etc. and Art. 39 with respect for human rights in provisions in ICCPR, and ICESCR. In the same token, HK residents are duty-bound to abide by laws currently in force in HKSAR.

- 3/ The Basic Law is virtually a HK Constitution and accordingly we have to live up to its requirement as demanded of us in Art. 23 i.e. the present exercise to enact laws of our own to protect national security.
- 4/ My understanding of the Security Bureau's consultation document is that they take stock of relevant provisions in various existing legislations such as Cap. 1, 151, 200, 221, 521 etc. where protection of national security is concerned and where they detect inadequacies, they would make proposals to address them or to plug loopholes so to speak.
- 5/ Since this is a very important piece of legislation, the Bureau has ear-marked a period of 3 months for the widest possible public consultation to enable HK residents in all quarters to get to know the details or if they so wish, make suggestion for refinement. The Bureau's subsequent documents e.g. Myths & Facts, Protecting Freedom of Speech are issued to clarify as early as possible misunderstandings whether or not such are genuine or conceived with ill-intent.
- 6/ If we do reckon we are duty-bound by law to enact Art. 23 we will then have to consider if this is the right time to work it out now. HK has already been returned to China for some 5 years plus. How much longer do we want to wait? There are noises in some quarters of the community that (i) we wait until China is no longer under the rule of one political party and (ii) HK has proceeded to universal

suffrage.

- 7/ I personally do not buy this kind of thinking at all. By virtual of "One Country Two Systems" we do not have to take account of the political development in China. We should be quite happy to have our own constitutional set up and also a free hand to go forward with our own political development at our own pace in so far as it does not breach any general provisions in the Basic Law.
- 8/ We do not need to wait for universal suffrage in HK since our present day Legco is legally constituted in accordance with provisions in the Basic Law and our Legco members have all sworn in to abide by such provisions. Any suggestion now of having a pro-HKSAR element in the present Legco is a debatable subject unless it is proved that the present set up is unconstitutional.
- 9/ I suggest that the legal system in HK today is virtually the same as that in colonial days. It is strange to find in some quarters of the community that people tend to hold a double standard about the role and performance of our courts. A case in point is the "place of abode" issue. Whenever the Court rules in the applicant's favour, they hail "justice is done" and when their interest is not served, they say "justice is dead"
- 10/ Where Art. 23 is concerned we should not have to worry about its final form or its implementation because the Security Bureau has promised that any controversy over its various details, if arises, is to be resolved through the common-law system, with trial by the jury, if need be, and to be heard by the courts including the CFA. If Art. 23 should be a bad law, there is no need for the learned lawyers to worry because they can always bring the Government to court and win their case on the

3

benefit of the slightest doubt. There will, however, be a different case if they do not believe in the rule of law or they have no confidence in the common-law system or its learned judges or they have doubts of their own professional performance in court.

- 11/ Personally I have faith in the Security Bureau believing that it is enacting Art. 23 for the national security of the motherland and doing the minimum necessary for the purpose. I also have faith in the common-law system and its judges who in exercising their duties would and should stand up against "trial" by the mass media and be honestly prepared to rule in favour of the Government if only the arguments for the Government are clearly proven beyond reasonable doubt. Since we accept the rule of law and the value of equality before the law, we should comply with decisions or rulings of the court, like it or not. We should not argue that people who breach laws regarding national security should be an exception or be placed above the law.
- 12/ Undoubtedly the present exercise involves a lot of legal concepts, terminology and jargons which are generally beyond the apprehension of the general public and whether or not there are devils on the details are matters for the professionals. On this count, there is quite a wide media coverage of dissenting views including those from some legal practitioners. Yet the Government's proposals appear to win some fair comments from some other legal practitioners such as
- Mr. David Pannick QC of UK
- Mr. Benjamin T. M. Liu, the retired Justice of Appeal

Mr. Michael Thomas, the ex-AG of HK

Mr. Gerald McCoy, SC

Mr. Michael Blanchflower, SC

Mr. Allan Hoo, SC

Mr. Martin Liao

all of whom are, unfortunately, quite alien to common people on the street and who do not appear to be popular enough to win wide media coverage of their views that they deserve by virtue of their standing in the profession. I suggest that their fair comments should be given due weight.

13/ Finally I believe any layman who cares to read with some intelligence all the papers carefully can come to the only reasonable conclusion i.e. HKSAR is doing the right thing properly. In my view the Blue Bill now before the Legco is a great improvement vis-à-vis the initial proposals high-lighted in the Consultation Document and it is a right step in the right direction having taken on board constructive suggestions from the community.

5