



# COMMITTEE TO PROTECT JOURNALISTS

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February 20, 2003

Regina Ip Lau Suk-yee  
Secretary of Security  
Security Bureau  
Central Government Offices  
Lower Albert Road  
Central, Hong Kong

*Via facsimile: 852-2521-2848*

Dear Secretary Ip:

The Committee to Protect Journalists (CPJ), an independent, nonprofit organization dedicated to defending press freedom worldwide, is submitting the attached memorandum in response to the National Security (Legislative Provisions) Bill to implement Article 23 of the Basic Law. In CPJ's view, the proposed legislation presents a grave threat to freedom of expression in Hong Kong.

CPJ believes that, in its current form, the bill exceeds the requirements of Article 23 and should not be enacted.

Please see the attached memorandum for CPJ's detailed critique of the proposed legislation.

Thank you for your attention to this urgent matter.

Sincerely,

Joel Simon  
Acting Director

CC:

President Jiang Zemin, People's Republic of China  
Premier Zhu Rongji, PRC  
Chief Executive Tung Chee Hwa, Hong Kong Special Administrative Region  
Secretary Elsie Leung Oi-sie, Department of Justice, HKSAR  
Robert Allcock, Solicitor General, Department of Justice, HKSAR  
HKSAR Legislative Council  
Foreign Correspondents Club-Hong Kong  
Hong Kong Journalists Association  
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## **Memorandum on the Hong Kong Special Administrative Region Government's National Security (Legislative Provisions) Bill proposing legislation to implement Article 23 of the Basic Law**

**Submitted to the Security Bureau by the Committee to Protect Journalists**

**February 20, 2003**

The Committee to Protect Journalists (CPJ) issues this memorandum in response to the National Security (Legislative Provisions) Bill to be submitted to the Hong Kong Legislative Council as legislation proposed to implement Article 23 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR). CPJ is a nonprofit, nonpartisan organization of journalists dedicated to the defense of press freedom worldwide. CPJ works in every region of the world to defend journalists against physical attack, imprisonment, censorship, and other threats to free expression. CPJ firmly believes that no journalist should ever be subject to criminal sanctions because of the content of an article or broadcast.

This memorandum follows a submission issued by CPJ on December 9, 2002, in response to the Consultation Document concerning this legislation (<http://www.cpj.org/news/2002/HongKong09dec02na.html>).

Like the Consultation Document, the draft National Security Bill provides no assurance that the everyday activities of working journalists in a free society will be protected against criminal punishment. In our earlier submission, CPJ joined journalists, lawyers, and legislators in Hong Kong in calling for this sensitive legislation to be released first in the form of a "White Bill," which could be reviewed by the public and amended as necessary before being submitted to the Legislative Council. The Hong Kong Government has ignored this request by submitting the legislation as a "Blue Bill" that can be modified only by limited means, one of which is by the Legislative Council itself, which has only 24 of its 60 members elected directly by the public.

CPJ strongly urges members of the Legislative Council to consider further revision of the draft National Security Bill to ensure that it does not unduly restrict the ability of working journalists in Hong Kong to do their jobs, including investigating and criticizing the government, without fear of criminal punishment.

Specifically, CPJ is concerned that the proposed National Security Bill:

- Significantly expands the investigative powers of law enforcement. There is no justification for such expansion. These expanded powers could easily be used to intimidate the press.

*(continued)*

*(CPJ Memorandum – page 2)*

- Provides no assurances that Hong Kong's judiciary will have the authority and the independence to restrict abuses in the enforcement of the proposed statute.
- Creates a subversion statute and expands the statutes covering theft of state secrets. Statutes on subversion and theft of state secrets are routinely used by the government of the People's Republic of China (PRC) to jail journalists.
- Defines Article 23 offenses in vague terms that would be open to interpretation by authorities. Without more precise language, the Government will be able to construe these offenses broadly and use them to prosecute anyone it wishes to censor.

In addition, CPJ remains deeply concerned about the following provisions regarding individual offenses:

## I. Subversion

CPJ is disappointed to see that the proposed National Security Bill creates a new offense of subversion. The creation of a subversion offense in a code that previously had none is extraordinarily disturbing, especially in light of the regular use of subversion statutes to imprison journalists in mainland China.

The language of the subversion offense also is unacceptably vague. For example, the draft bill provides that a person commits subversion if, among other things, he or she "intimidates the Central People's Government, by using ... serious criminal means." (Article 2A). Intimidation—a key element of subversion—remains undefined. While the Government claims that "only the actual use of force or serious criminal acts similar to terrorist activities will be covered" ("Government announces Bill to implement Article 23" at <http://www.info.gov.hk/gia/general/200302/13/0213140.htm>, visited February 14, 2003), the language of the proposed legislation itself does not so specify and could easily be read more broadly. Such an ill-defined law could be used prosecute journalists who criticize the government.

Moreover, as CPJ noted in its memorandum of 9 December 2002, limitations based on use of force may well have little effect if the experience of journalists in mainland China is any guide. Under Chinese law, it is a defense to a charge of subversion that "the circumstances are obviously minor [or] the harm done is not serious." Nonetheless, journalists whose only offense is to write about sensitive topics like political reform or social unrest are regularly charged with subversion even though their writings do not encourage the use of force.

## II. Secession

As CPJ noted in its memorandum of 9 December 2002, Hong Kong law on treason is sufficiently broad to address activities covered by the proposed secession statute. A new, separate provision criminalizing such acts is simply unnecessary.

Furthermore, although the Government claims, as it does with regard to the subversion statute, that "only the actual use of force or serious criminal acts similar to terrorist activities will be covered" ("Government announces Bill to implement Article 23" at <http://www.info.gov.hk/gia/general/200302/13/0213140.htm>, visited February 14, 2003), the language of the proposed legislation itself does not say this and could be read more broadly. The only likely effect of the enactment of a separate statute prohibiting secessionist activities is to chill public discussion of the status of Taiwan and independence movements in the Tibet and Xinjiang autonomous regions. The law should encourage and protect open discussion of such issues.

*(continued)*

*(CPJ Memorandum – page 3)*

## III. Sedition

CPJ is troubled by the Government's inclusion of a broad sedition clause in the proposed bill. A person commits sedition if he "incites others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or incites others to engage ... in violent public disorder that would seriously endanger the stability of [China.]" (Article 9A(1)(a)). Sedition laws provide special protection to high government officials against criticism by the press and public and are outmoded in modern society. Only a few other common-law countries have sedition statutes at all. In contrast to the statutes of these other countries, the proposed legislation fails to limit the definition of incitement to actions that are directly related to the ultimate offense and imminently produce the offense. Without such limitations, the routine activities of working journalists—such as reporting on opposition groups—may be classified as sedition.

Additionally, CPJ is seriously concerned about the new offense of handling a seditious publication (Article 9C). This section defines a seditious publication as "a publication that is likely to cause the commission of an offence under section 2 (treason), 2A (subversion) or 2B (secession)" (Article 9C(1)). Since what is "*likely to cause* the commission of an offence" (emphasis added) is highly subjective, such a definition allows the Government too great a latitude in categorizing publications as seditious.

CPJ calls on the Government to repeal the offense of sedition entirely. If a sedition offense must be maintained, however, the proposed bill should be amended. In order to be consistent with international standards, the law should define incitement as a call for an *imminent* action that is *directly related* to the treasonous, subversive, or secessionist offense that the call seeks to produce.

#### IV. Theft of State Secrets

CPJ strongly opposes the portion of the draft legislation that expands the crime of theft of state secrets. A person commits this offense if he unlawfully makes a "damaging disclosure" of information "that relates to any affairs concerning the Hong Kong Special Administrative Region which are ... within the responsibility of the Central Authorities" (Article 16A(1)(a)). A damaging disclosure is one that "endangers national security" or "is likely to endanger national security" (Article 16A(2)).

The wide range of material that can be construed as "within the responsibility of the Central Authorities" will act to chill disclosures regarding relations between the governments of the HKSAR and the People's Republic of China. Further, what is deemed as "likely to endanger national security" is so malleable as to encompass anything the Government wishes to censor. This section will effectively prevent public servants and government contractors from speaking to journalists about a broad range of topics involving relations between the HKSAR and PRC governments.

Moreover, the law makes no provision for a consideration of the public interest in evaluating whether disclosure is damaging. The Government may thereby be able to suppress disclosures that are essential to informed public debate about the relations between the HKSAR and the PRC. It is essential that the public interest be a factor in weighing any damage that may be caused by a disclosure of such information.

Journalists in Hong Kong, like their counterparts in mainland China, may therefore be subject to prosecution for their legitimate reporting on political issues. These issues are of vital public importance to residents of the HKSAR who have been promised that their political freedoms will remain intact.

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(CPJ Memorandum – page 4)

Hong Kong must not enact legislation that threatens to make reporting on these issues a criminal offense. Furthermore, any legislation covering the theft of state secrets should include a defense for information disclosed in the public interest. Journalists who seek to benefit the public by engendering the free flow of information should not be subject to conviction.

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CPJ recognizes that the proposed National Security Bill includes some limited improvements as compared to the Consultation Document, namely:

- Specifying that “serious criminal means” include only acts that constitute a criminal offense under Hong Kong law (Section 2A(4)(b)(vi); 2B(4)(b));
- Specifying a range of actions that are *not* to be considered seditious (Section 9D);
- Limiting the use of the special investigative powers to situations in which evidence is likely to be destroyed (Section 18B(1)(c));
- Specifically providing for jury trials in cases of secession, treason, subversion, and sedition (Sections 18D and 18E);
- Removing the phrase “reasonably should be known to be seditious” from the definition of a seditious publication.

These improvements are not enough. CPJ believes that the proposed National Security Bill, if enacted in its current form, would pose a serious risk to Hong Kong’s free press. We urge the Legislative Council to continue improving the draft bill by addressing the remaining serious concerns identified by CPJ above and in its more detailed memorandum of 9 December 2002. CPJ will join with other Hong Kong-based and international organizations in continuing to monitor the proposed legislation and the threat it poses to freedom of expression in Hong Kong.

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**FOR IMMEDIATE RELEASE:**

## **HONG KONG: Proposed national security bill threatens press freedom**

February 20, 2003, New York—The Committee to Protect Journalists (CPJ) today submitted a memorandum to the Hong Kong Security Bureau detailing serious concerns about the proposed National Security (Legislative Provisions) Bill drafted by the government. In its current form, this bill poses a grave threat to freedom of expression in Hong Kong.

"The Hong Kong government invited public comment on this legislation, only to disregard many of the substantive concerns raised about its potential to restrict press freedom and other civil liberties in the territory," said CPJ acting director Joel Simon. "CPJ strongly urges the government and, specifically, members of the Legislative Council to revise this bill so that it does not unduly restrict Hong Kong citizens' right to free expression."

Under Article 23 of Hong Kong's Basic Law, the territory's constitution, Hong Kong is required to enact "on its own" legislation covering subversion, sedition, secession, and theft of state secrets. (The Basic Law came into effect upon Hong Kong's return to Chinese sovereignty on July 1, 1997.) CPJ believes that the proposed legislation exceeds the requirements of Article 23 and should not be enacted.

CPJ had earlier presented a formal submission to the Security Bureau in response to the Consultation Document concerning this legislation.  
(<http://www.cpj.org/news/2002/HongKong09dec02na.html>)

In this previous submission, dated December 9, 2002, CPJ joined journalists, lawyers, and legislators in Hong Kong in calling for such sensitive legislation to be released first in the form of a "White Bill," which could be reviewed by the public and amended as necessary before being submitted to the Legislative Council. The Hong Kong government has ignored this request by issuing the draft legislation as a "Blue Bill" that will be more difficult to modify.

The government has announced that the bill will be introduced in the Legislative Council on February 26. The Hong Kong Bar Association issued a statement asking that the bill "not be rushed" through the Legislative Council, which has only 24 of its 60 members elected directly by the public. The group suggested that the legislature's consideration of the bill "be deferred until the public has had time to consider the bill and make its views known to the administration so that amendments could still be made to the bill before the legislative process gets under way."

Please see [www.cpj.org](http://www.cpj.org) for a copy of CPJ's memorandum to the Hong Kong Security Bureau.

*CPJ is a New York-based, independent, nonprofit organization that works to safeguard press freedom around the world. For more information about press freedom conditions in Hong Kong and China, visit [www.cpj.org](http://www.cpj.org).*