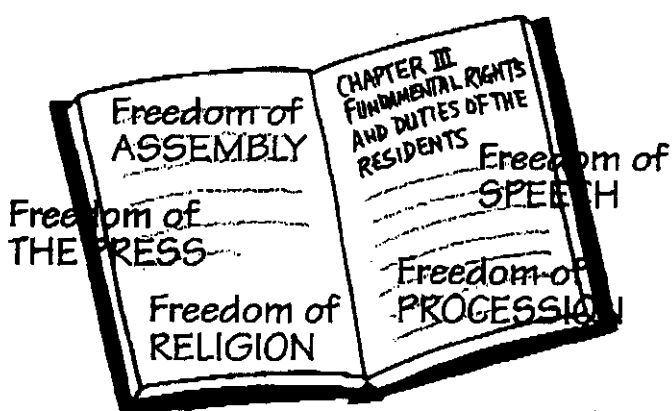


LC Paper No. CB(2) 1069/02-03(01)

The HKSAR has the obligation to legislate

Every nation has laws to protect national security. The HKSAR enacting legislation on its own to implement Article 23 of the Basic Law is necessary in the interest of national security. It is also an obligation of the HKSAR Government and every Hong Kong resident.



According to the Basic Law, the HKSAR continues to practise the common law system and principles, and to comprehensively protect the rights of Hong Kong residents, including the freedom of speech, of the press, of assembly, procession and religion. Legislation implementing Article 23 must comply with the principles laid down in the Basic Law that the existing laws of Hong Kong shall be maintained, and the freedoms and rights currently enjoyed by Hong Kong residents shall continue to be protected.

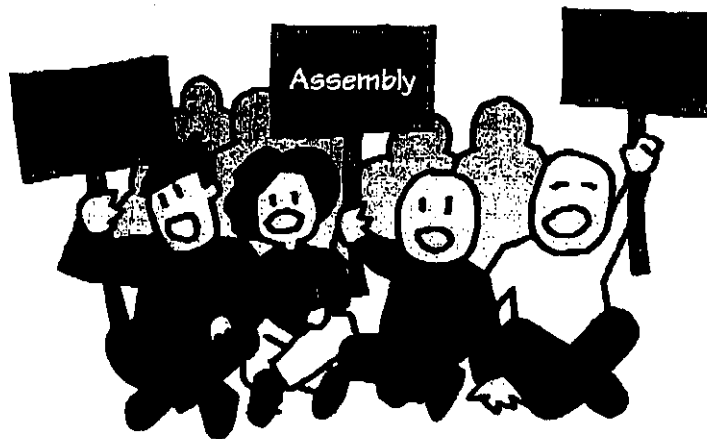
Following extensive public consultation, the HKSAR Government will draft a clear and precise Bill and present it to the Legislative Council as soon as possible.

1. More precise definitions and clearer concepts

The HKSAR Government will state clearly in the provisions:

- 'war' will be clearly defined as actual war or armed conflicts in the treason offence. General demonstrations, conflicts, riots, etc. are not considered 'war'.
- the reference to 'threat of force' will be deleted in the secession and subversion offences, and only the actual use of force or serious criminal acts similar to terrorist activities will be prohibited.
- the reference to 'resisting the exercise of sovereignty' will be deleted in the secession offence.

The rights and freedoms of speech, of the press, of procession, demonstration and assembly will in no way be undermined.



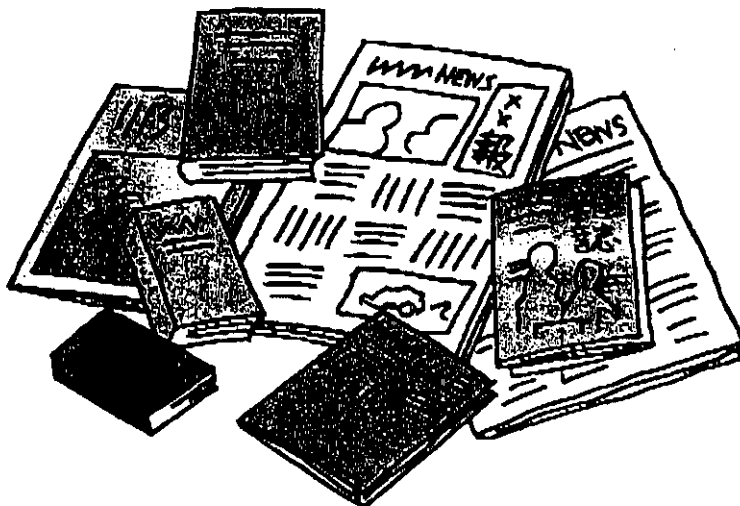
2. Misprision of treason to be abolished

To allay public concerns about criminal liability under the relevant offence, the common law offence of misprision of treason will be abolished, and no new statutory offence will be created.

3. Clear definitions for the offence of dealing with seditious publications

In relation to the offence of seditious publications (such as printing, publishing or selling such publications), the prosecution will have to prove beyond reasonable doubt the intention of the concerned persons was to incite others to commit the offence of treason, secession or subversion before those persons can be convicted.

The offence of possession of seditious publications will be abolished. Freedoms of speech, publication, and academic research, etc. will be adequately protected.



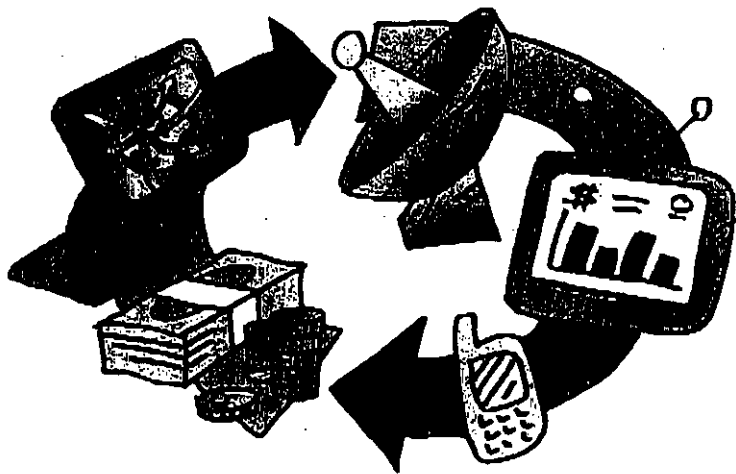
4. Freedom of the press protected

The definition of 'unauthorised access' to protected information will be strictly limited to access through criminal means such as hacking, theft or bribery. Freedom of the press and the free flow of information will not be affected.



5. Free flow of financial information protected

Regarding the protection of information relating to 'relations between the Central Authorities and the HKSAR', protection will be limited to information on matters concerning the HKSAR that are within the responsibility of the Central Authorities under the Basic Law. Moreover, disclosure of such information will only be an offence if it is damaging to interests of national security. The free flow of financial information will not be impeded in any way.



6. Proscription mechanism clearly defined

It will be explicitly provided that only after a Mainland organisation is proscribed by an 'open decree' on grounds of national security by the Central Authorities, and when an organisation in Hong Kong is subordinate to that Mainland organisation, would the local organisation be subject to the relevant proscription power. Even then, the standards of international human rights covenants will have to be complied with.

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7. Investigation powers to be limited

There are precedents for emergency powers of entry, search and seizure of evidence of crime in the current laws of the HKSAR as well as other countries. To further protect freedom of the press, the Government has undertaken to protect journalistic materials by requiring a judicial warrant in respect of any such search or seizure when investigations under Article 23 offences are conducted. This will ensure that the freedom of the press will not be affected.

The Government has also committed not to extend financial investigation powers. The status of Hong Kong as a commercial and financial centre will not be affected.

Moreover, it will be stipulated that only police officers at the rank of Chief Superintendent of Police or above could authorise the exercise of powers under emergency situations. In the vast majority of cases, judicial warrants must be applied for.



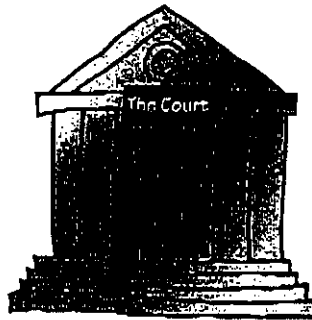
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8. Clear application of treason offence

The application of the treason offence will be more clearly specified. Within the territorial boundaries of the HKSAR, the offence will only apply to Chinese nationals. The extra-territorial application of the offence will be limited to Chinese citizens who are permanent residents of the HKSAR. The offence will not apply to persons who are not Chinese nationals, whether within or outside the HKSAR.

9. Judicial safeguards

It will be stipulated that any person accused of treason, secession, sedition, subversion or any of the unlawful disclosure offences could opt for trial by jury.



Whether anyone is convicted would ultimately be determined by the jury.

Regarding the appeal mechanism for proscribed organisations, the proposal to establish a special appeal tribunal will be dropped. Appeals, regardless of whether they are on points of fact or points of law, will be adjudicated by the courts.

Next steps

In accordance with the above direction, the HKSAR Government will introduce a Bill into the Legislative Council as soon as possible.

Security Bureau
28 January 2003

Information on the implementation of Article 23 of the Basic Law can be browsed at www.basiclaw23.gov.hk

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Implementation of
Article 23 of
the BASIC LAW
Way Forward

National security
Protection of human rights
Constitutional obligation
Judicial independence