

AMNESTY INTERNATIONAL

OPEN LETTER

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Open letter to the Chief Executive of the Macao Special Administrative Region of the People's Republic of China

Edmund Ho Hau Wah
Chefe do Executivo
Gabinete do Chefe do Executivo
Avenida da Praia Grande
Sede do Governo da RAEM
MACAU

Your Excellency,

Today as the representatives of your administration meet the Second Standing Committee of the Legislative Assembly on the proposed national security legislation (the Bill), I am writing to you on behalf of Amnesty International to express our concerns about the content of the Bill and its legislative process.

During the public consultation last year, Amnesty International submitted a list of concerns about the draft and the unreasonably short consultation period. We issued a press release on 9 January calling on the Legislative Assembly to revise the proposed security legislation to ensure it would not threaten the rights of the territory's 530,000 residents.

I reiterate in this letter that Amnesty International believes the issues surrounding the implementation of Article 23 of the Basic Law are very important in defining the future direction of human rights and the concept of "One Country, Two Systems". These issues not only affect Macao, but also neighbouring Hong Kong whose government decided to withdraw its own earlier proposed legislation to implement Article 23.

The current draft of the Bill would subject Macao to the same vague and broad definitions of "endangering state security" crimes in Part II, Chapter 1 of the People's Republic of China's criminal code. China's vaguely-worded provisions for "subversion", "inciting subversion" and "state secrets" which also appear in the Bill, have already been applied on the Mainland to intimidate, detain and punish many for peacefully exercising their rights to freedom of expression and association. Amnesty International considers persons detained in such circumstances as prisoners of conscience.

I urge you to withdraw the current Bill from the Legislative Assembly, revise the Bill and clearly and narrowly define the vague concepts outlined in the Bill, so that it will not violate the human rights of Macao residents. Specifically we are concerned about the following Articles:

ARTICLE 3: SUBVERSION AGAINST THE CENTRAL PEOPLE'S GOVERNMENT

The concerns Amnesty International raised about this article in our previous submission remain in the current Bill. Under the proposed provision for the offence of “subversion”, there is no definition of “other grave illegal acts” in the first paragraph. The lack of a clear definition allows broad interpretations of this provision. For example, this provision could be used to punish non-violent demonstrations or strikes that are interpreted as “attempting to overthrow the Central People’s Government” or “restrict its functions” and therefore could criminalize peaceful expression of opinion on issues the government considers sensitive.

Under international human rights law and standards, including Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which applies to Macao, the right to freedom of expression and information can be restricted only by such restrictions as are provided by law and necessary for respect of the rights or reputations of others; for the protection of national security or of public order or of public health or morals. Macao should incorporate these principles into the national security Bill and ensure that peaceful expression in accordance with them is always protected.

ARTICLE 4: SEDITION

The term “public and direct incitement” is not defined in the Bill but is elaborated in the explanation document attached to the Bill when it was submitted to the Legislative Assembly. The way it is defined allows the current text in article 4 to be used in a way to criminalize expression in the form of, for example, writings and public speeches, and could have a chilling effect on press freedom and limit open discussion on politically-sensitive topics.

The fact that there is no exemption for people peacefully exercising their rights to freedom of speech nor for media workers who are performing their roles is problematic. The Bill fails to limit the definition of “public and direct incitement” to clear and serious offences, such as violent acts against persons or causing damage to property.

In light of this, Amnesty International is concerned that your Government’s statement in paragraph 5.3 of the explanation document that the provision on banning sedition will not undermine Macao residents’ rights to freedom of expression as well as the implementation of the Basic Law, the ICCPR and the International Covenant of Economic, Social and Cultural Rights (ICESCR) in Macao may not, either in law or in practice, be the case.

ARTICLE 5: THEFT OF STATE SECRETS

The current text on state secrets will introduce the extensive, vague, and retroactive state secrets system used in the Mainland to Macao. In the Bill, state secrets are defined as “documents, information or objects that must be kept secret and are classified as such, in the fields of national defence, foreign relations and other issues concerning the relationships between the Central Authorities and the Macao Special Administrative Region as set out in the Basic Law of the Macao Special Administrative Region of the People’s Republic of China.” The Bill continues to provide that “If necessary, the judiciary can obtain from the Chief Executive or through the Chief Executive to obtain from the Central People’s Government a document certifying that the relevant documents, information or objects are classified as state secrets.” Amnesty International is concerned that this provision allows the central government in Beijing to determine, including arbitrarily, whether or not the material in dispute is a “state secret”.

Amnesty International is aware of the vagueness and all encompassing nature of the term “state secrets” in the Mainland and the numerous people who have been detained for allegedly

revealing what are purported to be state secrets but which would be treated as public information in many countries.

The organization is also concerned about the possibility for closed-door trials for “state secret” cases when the judge deems it necessary. Given the problems with the definition of “state secrets” in the Mainland, combined with the power of the authorities in Beijing to determine what are to be “state secrets”, this provision could put many Macao residents including journalists, researchers, academics and scientists in danger of prosecution beyond the view of public scrutiny.

LEGISLATIVE PROCESS

Amnesty International reiterates the concern made in our previous submission about the unreasonably short duration of the public consultation and the legislative process. Given the importance of the issues and the potential negative effects of the proposed legislation on some key human rights as set out in international human rights treaties binding in Macao, including the ICCPR and the ICESCR, Amnesty International urges more time to allow the for individuals and groups to fully study, understand and express their views on the potential consequences as well as:

1. withdraw the Bill from the Legislative Assembly and postpone the legislative process until proper public consultation has taken place;
2. reform the Bill so as to ensure that it fully accords with international human rights law and standards, including treaties binding on Macao;
3. clearly and narrowly define all offences and terms within the Bill, including but not limited to those highlighted in this letter;
4. remove the provision allowing the central government in Beijing to determine what is to be “state secrets” and make public the process for categorizing and classifying “state secrets”, and define this term in narrow terms of state-security related data, clearly defined by law;
5. limit restrictions on freedom of expression and information to those provided in international human rights law, and ensure they are narrowly interpreted and practised; and
6. ensure that the peaceful exercise of human rights, as provided by international law and standards, including the rights to freedom of expression and association, is not criminalized.

I am sending a copy of this letter to Ms Susana Chou, President of the Legislative Assembly and Mr Fong Chi Keong, President of the Second Standing Committee.

Yours sincerely,

For Sam Zarifi
Director
Asia-Pacific Program

Government of the Macao Special Administrative Region

Office of the Chief Executive

MACAO SPECIAL ADMINISTRATIVE REGION

Law no. /2008

(Draft bill)

National Security Law

The Legislative Assembly enacts, within the terms of articles 71 (paragraph 1) and 23 of the Basic Law of the Macao Special Administrative Region, on the prohibition of crimes against national security, the following law:

Article 1 Treason

1. Any Chinese citizen,

1) Who enlists in foreign armed forces and takes up arms against the state;

2) Who colludes with the government of another state, a foreign organisation or group, or any of their agents, with the intention of promoting or causing war or armed action against the state; or

3) Who cooperates directly or indirectly with another state during a war or armed action against the state or acts with a view to achieving the same objectives, with the intention of facilitating or assisting enemy military operations against the state or of damaging its military capacity,

shall be sentenced to a prison term of 15-25 years.

2. Any person who has undertaken preparatory acts for the crimes set out in the previous paragraph shall be punished by a prison term of 3 years.

3. For the purposes of the provisions of this law, the “state” is the People’s Republic of China.

Article 2 Secession

1. Any person using violence or practising other grave illegal acts to try to separate territory from the state or subject it to the sovereignty of another state, shall be sentenced to a prison term of 15-25 years.
2. Any person who has undertaken preparatory acts for the crimes set out in the previous paragraph shall be punished by a prison term of 3 years.
3. For the purposes of this law, the following conduct shall be considered “other grave illegal acts”:
 - 1) Crimes against the life, physical integrity and personal freedom of another person;
 - 2) Acts that damage or threaten the security of transport, communications or other public infrastructure facilities, including telegraph, telephone, radio, television and other electronic communications systems;
 - 3) Arson, the release of radioactive substances or toxic or asphyxiating gases, contamination of food or water supply for human consumption or the spread of diseases; or
 - 4) Crimes involving the use of nuclear energy, firearms, incendiary devices, biological or chemical weapons, explosive devices or substances, parcels or letters containing dangerous devices or substances.

Article 3

Subversion of the Central People’s Government

1. Any person using violence or practising other grave illegal acts to overthrow the People’s Central Government or prevent or restrict its functions shall be sentenced to a prison term of 15-25 years.
2. Any person who has undertaken preparatory acts for the crimes set out in the previous section shall be punished by a prison term of 3 years.

Article 4

Sedition

1. Any person publicly and directly inciting the crimes described in articles 1, 2 and 3 of this law shall be sentenced to a prison term of 1-8 years.
2. Any person publicly and directly inciting members of the Macao garrison of the Chinese People’s Liberation Army to abandon their functions or inciting them to rebel shall be sentenced to a prison term of 1-8 years.

Article 5
Theft of state secrets

1. Any person stealing, gathering or procuring state secrets, endangering or harming national independence, the unity and integrity of the state or its internal or external security, shall be sentenced to a prison term of 2-8 years.
2. Any person receiving instructions, orders, money or valuables from governments, organisations or groups or from their agents outside the Macao Special Administrative Region, in order to steal, gather or procure state secrets, or knowingly recruit others to carry out these acts, or in any way, provide support for or facilitate these acts shall be sentenced to a prison term of 3-10 years.
3. Any officials who have the duty to protect state secrets but violate duties specifically imposed by the statute of their function or service, or the mission conferred by a competent authority, and carry out these acts, shall be punished by:
 - 1) For acts described in paragraph 1, a prison term of 3-10 years.
 - 2) For acts described in paragraph 2, a prison term of 5-15 years.
 - 3) In the event of making state secrets public or accessible to unauthorised persons, a prison term of 2-8 years.
 - 4) With regard to clause 3), if the act is caused by negligence, a prison term of 3 years.
4. For the purposes of the provisions of this article, “state secrets” include documents, information or objects that must be kept secret and are classified as such, in the fields of national defence, foreign relations and other issues concerning the relationships between the Central Authorities and the Macao Special Administrative Region as set out in the Basic Law of the Macao Special Administrative Region of the People’s Republic of China. If necessary, the judiciary can obtain from the Chief Executive or through the Chief Executive obtain from the Central People’s Government a document certifying that the relevant documents, information or objects are classified as state secrets.

Article 6
Acts against national security committed by foreign political organisations
or groups in Macao

Without prejudice to the corresponding criminal responsibility of agents, foreign political organisations and groups are responsible for acts, as

described in articles 1, 2, 3, 4 and 5, in the Macao Special Administrative Region when committed in their name and in their collective interest by their organs or agents. The following main and supplementary penalties apply:

- 1) A fine as set out in paragraphs 3, 4 and 5 of article 8;
- 2) Supplementary penalties as set out in paragraph 3 of article 9.

Article 7

Establishment of links by Macao political organisations or groups with foreign political organisations or groups for the conduct of acts against national security

1. Without prejudice to the corresponding criminal responsibility of agents, political organisations and groups in Macao are responsible for acts, as described in articles 1, 2, 3, 4 and 5, when committed in their name and in their collective interest by their organs or agents, when establishing links with foreign political organisations and groups. The following main and supplementary penalties apply:

- 1) A fine and court ordered dissolution as set out in paragraphs 3, 4 and 5 of article 8;
 - 2) Supplementary penalties as set out in paragraph 3 of article 9.
2. For the purposes of the provisions of this article, “links” are considered to be:
- 1) Reception of instructions, orders, money or valuables from foreign bodies or their agents, as set out in the previous paragraph; or
 - 2) Collaboration with foreign bodies or their agents, as set out in the previous paragraph, in activities that consist of:
 1. The collection, preparation or public dissemination of false or grossly distorted news;
 2. The recruitment of agents or facilitating such recruitment by providing venues for meetings, subsidising or publicising them;
 3. Promises or donations; or
 4. Threatening or defrauding other persons.

Article 8

Criminal responsibility of collective persons

1. Without prejudice to the provisions of articles 6 and 7, collective persons and bodies that are irregularly constituted or without legal personality shall be responsible for the crimes set out in articles 1, 2, 3, 4 and 5 when committed in their name and in their collective interest by their organs or representatives.
2. The responsibility of the relevant bodies described in the previous paragraph does not exclude the individual responsibility of their respective agents.
3. The following main penalties shall apply for the crimes referred to in paragraph 1.
 - 1) Fine;
 - 2) Court ordered dissolution
4. Fines shall be calculated on a daily basis, with a minimum of 100 days and a maximum of 1000 days.
5. The fine shall be between 100 and 20,000 patacas for each day.
6. If a body without legal personality is fined, its property shall be used to pay the fine. If it has no property or the value of the property is insufficient, the fine shall be paid by the property of each of its members in the form of joint liability.
7. The penalty of court ordered dissolution will apply to the bodies referred to in paragraph 1:
 - 1) If their founders had the predominant intention to use the bodies to carry out the crimes described in paragraph 1, or
 - 2) If the repeated practise of such crimes described in paragraph 1 shows that those bodies were being used to this effect, by either their members or administrators.
8. Termination of employment as a result of application of the penalty of court ordered dissolution or any other supplementary penalties provided for in paragraph 3, article 9 shall be considered, for all effects and purposes, as dismissal without valid reasons by the employer.

Article 9 Supplementary penalties

1. Any person convicted of the crimes set out in articles 1, 2, 3, 4 and 5, depending on the seriousness of the fact and the social morality of the person, shall be subject to the following supplementary penalties:
 - 1) Suspension of political rights for 3-10 years.
 - 2) Ban on the exercise of public office for a period of 12-20 years.

- 3) Expulsion or ban from entering the Macao Special Administrative Region for a period of 5-15 years, but only limited to non-local residents;
 - 4) Judicial injunction, including a ban on or restriction of activities in the Macao Special Administrative Region.
2. The time during which agents are deprived of their freedom as a result of the compulsory measures, penalties or security measures taken against them during the litigation procedure shall not be counted in the period referred to in clauses 1) and 2) in paragraph 1.
3. The bodies referred to in articles 6, 7 and 8 paragraph 1 can be subjected to the following supplementary penalties:
 - 1) Ban on the exercise of activities for 2-10 years;
 - 2) Loss of the right to receive subsidies or allowance from public bodies;
 - 3) Closure of establishment for a period of between 2 months and 1 year;
 - 4) Definitive closure of the establishment;
 - 5) Legal injunction;
 - 6) Publicity of the sentence, at the expense of the guilty party, in the most widely read Chinese newspaper and the most widely read Portuguese newspaper in the Macao Special Administrative Region, and in an announcement, in the same two languages, for a period not less than 15 days, in the area where the guilty party's business is located, in a way that is very visible to the public.
4. The supplementary penalties can be imposed on a cumulative basis.

Article 10 Scope

1. This law shall be applied to acts that take place in the Macao Special Administrative Region or on board ships or aircraft registered in the Macao Special Administrative Region.
2. This law shall also be applied to the acts set out in article 1 by Chinese citizen residents of the Macao Special Administrative Region practised outside the Macao Special Administrative Region and to acts set out in articles 2, 3, 4 and 5 by residents of the Macao Special Administrative Region practised outside the Macao Special Administrative Region.

Article 11 Mitigation

When a crime set out in this law involves carrying out an act that is dangerous, the penalty may be mitigated or the act not penalised if the agent realises that the intended act will cause significant harm and voluntarily and significantly reduces or neutralises the danger.

Article 12
Public trial

The trial for the crimes set out in this law is public, except for the crimes listed in article 5, in which case the judge may determine that some stages of the trial shall not be public because they will constitute a threat to national security if conducted in public.

Article 13
Change to the Code of Criminal Procedure

Article 1 of the Code of Criminal Procedure approved by Decree Law 48/96/M of 2 September, with the wording given by Decree Law 63/99/M of 25 October and Law 9/1999, shall now be worded as follows:

“Article 1
(...)

1. (...)
2. (...)
 - a) Include the crimes set out in article 288 of the Criminal Code, articles 4, 5 and 6 of Law 3/2006 and articles 1, 2 and 3 of Law no. National Security Law;
 - b) (...)
 - c) (...)

Article 14
Supplementary application

In the absence of specific provisions, the Criminal Code and the Code of Criminal Procedure shall apply.

Article 15
Entry into force

This law shall come into force 30 days after its promulgation.

Approved on (date)

President of the Legislative Assembly, Susana Chou

Signed on (date)

Ordered to promulgate.

Chief Executive, Ho Hau Wah