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Hong Kong: Article 23 Legislation -- the potential for abuse

In a submission to the Legislative Committee of the Hong Kong Special Administrative Region (HK SAR), Amnesty International today urged the government to heed the widespread calls for a White Bill on its proposals for Article 23 legislation. The organization has grave concerns about the proposals in the government's consultation document and the lack of a draft White Bill which means that the public still do not know how the legislation will actually be worded.

"Until the draft legislation is seen, the people of Hong Kong have no way of knowing what exactly the proposals will mean for the future," Amnesty International stressed.

The implementation of Article 23 of the Basic Law is possibly the most important issue since the return of Hong Kong to Chinese sovereignty for defining the future direction of fundamental freedoms and the concept of "One Country, Two Systems".

"The current government proposals are vague and ill-defined, contrary to international law and standards which require that the definitions of criminal acts should be clear and specific to clarify what types of conduct are criminalized," Amnesty International stated.

"All proposed offences must be tightly defined and must specifically exclude the possibility of peaceful protests falling into the definition of these crimes."

"As they stand, the proposals go far beyond what is needed to implement Article 23 of the Basic Law and may increase restrictions on fundamental human rights," the international human rights organization said. "There is a danger that those exercising these rights could be imprisoned as prisoners of conscience."

Amnesty International underlined that the fundamental human rights at risk include the right to freedom of thought, conscience and religion protected under Article 18 of the International Covenant on Civil, Cultural and Political Rights (ICCPR); the right to freedom of expression (Article 19); and the rights to peaceful assembly and to freedom of association (Articles 21 and 22).

Amnesty International urged the HK SAR Government to ensure that any legislation prohibiting "any act of treason, secession, sedition" or "subversion against the Central People's Government" should not criminalize or otherwise restrict the exercise of fundamental rights, such as the freedom of association and peaceful assembly.

The organization also urged the government to reconsider proposals under the section on the

"theft of state secrets" which call for an expansion of the term "protected information" and the addition of a new class of protected information relating to "relations between the Central Authorities of the People's Republic of China and the HK SAR".

"Such proposals are far too vague and potentially encompass information which should be made public in the interests of transparency," Amnesty International stressed.

"The proposals could have negative effects on the HK SAR's reputation as an international centre for business and banking as well as on the media and civil society in general."

The proposed legislation on foreign organizations links proscribed organizations on the mainland to organizations in Hong Kong and goes far beyond the terms of Article 23. The proposals allow for People's Republic of China Central Government concepts of national security to have precedence in the HK SAR. This has far reaching consequences and may mean that if an organization is banned in China on national security grounds, then it may be banned in the Hong Kong as well.

Given the widespread restrictions on basic human rights on the mainland and the difficulties for some groups and organizations to obtain official registration -- which has often led to the arrest and detention of people involved in those groups -- it is feared that many organizations would be proscribed in the HK SAR. Groups of mainland Chinese dissidents in Hong Kong may well be at particular risk and face unnecessary restrictions on their work.

"We are disappointed that the need to implement Article 23 of the Basic Law has not led to the removal of archaic laws and the development of legislation in line with human rights and international laws and standards," Amnesty International stated.

"Instead the authorities have created more offences, many of which have the potential to conflict with international human rights standards."

Background

On 24 September 2002 the HK SAR government released its proposals for a controversial anti-subversion law, which China supports but democracy activists fear could stifle freedom of expression. The document was issued at the start of a three-month public consultation period. The Basic Law -- Hong Kong's "mini-constitution" which has governed the territory since its 1997 return to the Chinese sovereignty - required an anti-subversion bill to be passed under Article 23. Hong Kong's Chief Executive, Tung Chee-hwa, said that the planned law was necessary to ensure national security. The government, however, was aware of the disquiet it would cause in the sensitive years following the territory's hand-over and delayed its proposal until now.

Human rights organizations fear that the proposals, if passed into law, would undermine the existing human rights and civil liberties enjoyed by Hong Kong people and could be used against anyone China or Hong Kong objects to, including political dissidents and religious or spiritual groups such as Falun Gong -- already outlawed on mainland China.

Amnesty International will be presenting its submission to the Government at the Legislative Committee hearing on 14 December 2002 (9:30 until 12:30).

For more information, to arrange an interview or to obtain a copy of Amnesty International's Submission please call Amnesty International's press office in London, UK on +44 20 7413 5566. For interviews in Hong Kong call: +852 2385 7298.

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