

# HONG KONG

## Basic Rights at Risk: Comments on the HKSAR Consultation Document of April 1997

### Introduction

This document sets out Amnesty International's comments on the Consultation Document entitled *Civil Liberties and Social Order* published on 9 April 1997 by the Office of the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC), Mr Tung Chee-hwa. The Consultation Document outlines legislative amendments which the incoming administration says are needed to comply with decisions taken by the Standing Committee of the PRC's National People's Congress and to "strike a balance" between safeguarding human rights and maintaining social order.

Amnesty International welcomes the spirit of consultation which has led the Office of the Chief Executive to issue the Consultation Document. The organization also welcomes the pro-active way in which the Office has sought the views of some non-governmental organizations and others since the publication of the Consultation Document. However, a three-week consultation period on legislative proposals which have such wide-ranging implications for future civil liberties in Hong Kong is unlikely to inspire confidence that this is more than a cosmetic exercise. This is particularly the case given the Hong Kong people's past experience of unconvincing "consultation" exercises by colonial administrations.

A genuine and transparent consultation by the future HKSAR authorities over proposed legal amendments could play an important role in bolstering public confidence in the authorities' commitment to human rights. However, improvements in public confidence will hinge on the HKSAR Chief Executive and Provisional Legislature taking clear steps to reinforce safeguards for human rights. In this respect, Amnesty International hopes that the Chief Executive will implement the recommendations made in the present document.

This commentary is based on the Consultation Document and on further clarifications officially published by the Chief Executive's Office on 20 April, concerning in particular the definition of "political organizations". The comments also take into account the provisions of the Basic Law of the HKSAR, which will come into force upon the handover of sovereignty over Hong Kong from the United Kingdom to the PRC on 1 July 1997. Other texts taken into account in this document include the International Covenant on Civil and Political Rights (ICCPR), which will remain in force in Hong Kong after the handover, and authoritative interpretations of the ICCPR published by the Human Rights Committee, the body of independent experts that monitors implementation of the ICCPR.

Amnesty International's specific recommendations are listed in the Executive Summary. The present document elaborates on the reasoning which leads Amnesty International to make these recommendations.

## 1. The Consultation Process

On 23 February 1997 the PRC's National People's Congress (NPC) Standing Committee reportedly resolved that certain sections of the Bill of Rights Ordinance (BORO), the Societies Ordinance (SO) and the Public Order Ordinance (POO) contradicted the Basic Law and should therefore not be adopted as laws of the HKSAR. The Consultation Document states that because of this decision it is necessary to amend these ordinances to avoid a "legal vacuum" once the sections are no longer in force.

To Amnesty International's knowledge, there has been no detailed *official* explanation of why the provisions concerned were seen to "be in contravention" with the Basic Law and it is unclear why the NPC Standing Committee so decided. PRC Foreign Minister and HKSAR Preparatory Committee Chairman Qian Qichen has referred to these ordinances as being in breach of Articles 8 and 160 of the Basic Law, but did not indicate why the specific provisions breach these articles.

In the absence of clear, specific reasons to repeal these sections, the NPC Standing Committee's determination calls into question the integrity of Hong Kong legislation as a whole and the autonomy of Hong Kong's institutions as protected by the Basic Law. Amnesty International believes that confidence in Hong Kong's legal system would be reinforced if the Standing Committee of the National People's Congress and the HKSAR authorities made clear that they are satisfied that all remaining Hong Kong laws are in conformity with the Basic Law (this would be subject to the proviso that, if in the course of implementation another Hong Kong law is found to contravene the Basic Law, the procedure set out under the Basic Law would be followed to amend or repeal it).

**Amnesty International considers it essential that the Office of the HKSAR Chief Executive publish an official and detailed explanation of the reasons why, and the extent to which, each section of the affected ordinances contravenes, if at all, the Basic Law. These explanations should accompany any legislation amending the ordinances and should be debated fully by the Provisional Legislature of the HKSAR, following a full public consultation.**

**Amnesty International also calls on the National People's Congress Standing Committee and on the HKSAR Government to make clear that they are satisfied that**

**all Hong Kong laws not already declared to contravene the Basic Law are in conformity with that law.**

Explanations of the reasons why the provisions of the ordinances contravene the Basic Law should form an integral part of the public consultation which the HKSAR Government's Consultation Document purports to aim at. Without these explanations, the need for amending the ordinances, and above all the extent of any necessary amendment, cannot be established, therefore reducing the effectiveness of the consultation.

Amnesty International recommends that these explanations should be officially published as soon as possible and that adequate time should be available for public consultation after their publication.

**Amnesty International recommends that the three-week period for consultation on the proposed legislative amendments should be extended for an adequate period following the publication of the explanation of the reasons why each section of the affected ordinances contravenes the Basic Law.**

## **2. The Basic Law and the Bill of Rights**

### ***The Basic Law***

The Consultation Document quotes parts of the Basic Law, in particular Articles 27 and 39, which it states contribute to safeguarding basic rights in the HKSAR. While Amnesty International welcomes these provisions, the organization has long been concerned that other articles of the Basic Law, including Article 23, contain provisions which appear to make possible sweeping limitations to the exercise of fundamental rights.

This concern is deepened by Amnesty International's experience of a pattern of human rights violations in China: for instance, legislation protecting state secrets has been used to imprison people for the disclosure of information on matters of legitimate public debate.

**Amnesty International is concerned that any legislation passed in the HKSAR to prohibit "any act of treason, secession, sedition" or "subversion against the Central People's Government" should not restrict the exercise of fundamental rights, such as the freedom of association and peaceful assembly. Similarly, the organization urges the HKSAR authorities to ensure that no legislation on political organizations limits the exercise of fundamental rights as safeguarded under international standards.**

### ***The Bill of Rights***

In February 1997, Amnesty International recommended that the Provisional Legislature abstain from amending or repealing the Bill of Rights and other legislation concerning human rights safeguards.<sup>1</sup> The proposed amendments to the Bill of Rights would lead to the removal of crucial references to the ICCPR which in practice means removing the link between the Bill of Rights and the ICCPR. This would open the way to weakening the Bill of Rights. The Consultation Document itself admits that, in time, the provisions of the amended Bill of Rights could be further superseded by newer legislation.

### **The Result of Proposed Bill of Rights Amendments**

Sections 2(3), 3 and 4 of the Bill of Rights help protect the rights of Hong Kong citizens by guiding lawyers, courts and the government in how to interpret Hong Kong laws. The repeal of these sections would remove this important protection.

Section 4 says that all future legislation should, if possible, be construed in a way that is consistent with the ICCPR. So, the interpretation of any ambiguous law should be guided by the plain meaning of relevant articles in the ICCPR and the way these articles have been applied by the Human Rights Committee, as the authoritative interpreter of the ICCPR.

Section 2(3) applies a similar rule of interpretation to the Bill of Rights itself. It says that in interpreting the Bill of Rights, it should be remembered that its purpose is to incorporate the ICCPR into Hong Kong law.

Section 3 says that all past legislation should, if possible, be interpreted in a way that is consistent with the Bill of Rights itself and if inconsistent, is considered repealed.

It is hard to see how such provisions are “in contravention of the Basic Law” as the Consultation Document says. On the contrary, these sections are consistent with, and enhance, the Basic Law. Article 39 of the Basic Law provides that the provisions of the ICCPR and other instruments “shall remain in force and be implemented through the laws of the HKSAR” and that restrictions on the rights and freedoms of HKSAR residents “*shall not contravene*” the ICCPR (emphasis added). Sections 2(3) and 4 of the Bill of Rights give this practical meaning and make it easier to apply, by making it clear that HKSAR laws, indeed, should be interpreted so they *do not contravene the ICCPR*. The Bill of Rights mainly implements the ICCPR so Section 3 of the Bill of Rights has a similar effect in relation to past laws.

The Preparatory Committee of the HKSAR has argued that these sections of the Bill of Rights should be repealed because they confer a quasi-constitutional pre-eminence on the Bill of Rights over other Hong Kong laws which only the Basic Law should have. The Basic Law,

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<sup>1</sup> See *Hong Kong - Human Rights, Law and Autonomy: the Risks of Transition*, AI Index ASA 19/04/97, published in February 1997, p. 14-16.

however, like all such broad statements of principle, needs more detailed legislation to give effect to the principles it contains. Sections 2(3), 3 and 4 of the Bill of Rights do just that. They are consistent with the Basic Law and provide one way in which Article 39 of the Basic Law will be implemented. The Bill of Rights serves the Basic Law and does not detract from its pre-eminence. The three sections of the Bill of Rights are precisely one way in which the ICCPR has been “implemented through the laws” of Hong Kong as required by Article 39 of the Basic Law.

Amnesty International is therefore concerned that the statement in Paragraph 2.8 of the Consultation Document, that repeal of sections of the Bill of Rights will not lead to rights and freedoms being diluted may not stand the test of time.

**Amnesty International recommends that the repeal of Sections 2(3), 3 and 4 of the BORO be reconsidered and that these sections be retained, as they do not contravene, but are consistent with and implement, the Basic Law. At the very least, Section 4, requiring that future legislation should be interpreted in a way that is consistent with the ICCPR, should be retained. If the repeal goes ahead, the HKSAR Provisional Legislature should pass or amend other legislation to provide similar guidance to interpretation of Hong Kong law as these sections of the BORO provide.**

### **3. Rights and restrictions under the ICCPR**

#### ***Rights, tolerance and stability***

The freedom of expression, association and assembly create a free space for people to speak and act and interact with other humans. What is said or done may not be popular. Most members of the community may even find it difficult to accept some of the words and acts because of their own ethical, political or religious beliefs. The right to speak and act is still protected. Respect for human rights law helps to create a tolerant society; it creates a space in which human beings are able freely to express their individuality, alone or together with others.

It is not for Amnesty International to judge the degree to which Hong Kong is vulnerable to external influences, referred to in Paragraph 3.4 of the Consultation Document. However the organization notes that safeguards for fundamental rights, far from causing instability, have in many countries contributed to reinforcing social stability and the legitimacy of governments. Since the mid-1980s, the number of demonstrations held in Hong Kong has increased in step with increased public concern over issues such as the environment, social issues and human rights. The past decade shows that this development has in no way hampered Hong Kong’s growth and prosperity. On the contrary it is in many countries the absence, the withdrawal or the curbing of such safeguards that has led to civil unrest.

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**Restrictions on rights: exceptional and narrow**

The proposed amendments to Hong Kong laws are said in the Consultation Document to be guided by the overriding proviso that they comply with the ICCPR, particularly the restrictions on the freedoms of association and assembly, permitted under Articles 21 and 22 of the ICCPR. It is important to understand what these restrictions in the ICCPR mean and in what situations they are meant to apply and then to ask whether the proposed amendments are true to the letter and spirit of the ICCPR.

Some rights in the ICCPR, such as the right not to be tortured, the right not to be arbitrarily deprived of life and the right to freedom of thought, conscience and religion, can **never** be restricted or suspended. Not even war or dire threat to the nation can justify ignoring these most basic rights. However, during times of officially declared public emergency which threatens the survival of the nation, other rights can be temporarily suspended if strictly required to deal with the situation. There are rigorous principles which guide what states are allowed to do and such measures have to be carefully justified by the state. Article 4 of the ICCPR deals with such states of emergency. The Consultation Document does not justify the amendments by reference to the need to suspend rights in a state of emergency.

The ICCPR also allows limited restrictions on some other rights. Article 22 of the ICCPR says that no restrictions may be placed on the exercise of the right to freedom of association

*"...other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."*

The permissible restrictions on the right to freedom of assembly (Article 21) are in almost exactly the same terms<sup>2</sup>. No other limitations are allowed. A state cannot just impose restrictions in general terms and say they are allowed by the ICCPR, as the proposed amendments to the Ordinances do. The burden is on the state to show that any restrictions on the rights to freedom of association or assembly comply with the ICCPR<sup>3</sup>.

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<sup>2</sup> Article 19, ICCPR, on freedom of expression, is similar, saying that the exercise of this right "carries with it special duties and responsibilities" and lists the permissible restrictions as those which are provided by law and are "necessary" "for respect of the rights or reputations of others... for the protection of national security or of public order (*ordre public*), or of public health or morals".

<sup>3</sup> The strict way in which the permissible restrictions are interpreted, which is summarized in the following paragraphs, is set out in: (i) *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, developed by a conference

The restrictions must be:

- *prescribed by law*;
- imposed only for *one of the purposes* set out in Articles 21 and 22, ICCPR;
- *necessary in a democratic society*.

Because limitations on human rights are seen as the exception, they are construed strictly and any doubt is resolved in favour of allowing the right to be exercised. Domestic authorities have to apply the ICCPR, but it is a question of international law whether national laws and practice comply with the ICCPR and states do not have unfettered discretion. Most importantly, as stated by the Human Rights Committee, the restrictions “may not put in jeopardy the right itself”.<sup>4</sup> As will be seen below, the amendments to the Societies Ordinance authorize the draconian measure of deregistration to be imposed in a way that could indeed destroy the very right to freedom of association. Finally, any restriction cannot be imposed in a way that discriminates against people on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The even-handed way in which powers are exercised by the Hong Kong authorities will be a mark of respect for human rights.

### **“Prescribed by law”**

The restrictions must not only be set out in legislation, but must be accessible and unambiguous. They must be precise and clear enough to allow the individual to know in advance whether a particular action is unlawful. As will be seen, the amendments to the Societies Ordinance leave too much to the discretion of the Societies Officer and the language is so vague in parts that it is very unclear what might be prohibited.

### **The only purposes for which restrictions may be imposed**

The six purposes for which restrictions may be imposed on freedom of association and assembly are not very well defined: national security, public safety, public order (*ordre public*), public

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of 31 international law experts in 1984; (ii) *Freedom of the Individual under Law*, a 1980 UN-commissioned study by Erica-Irene A. Daes, UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN, New York, 1990 and (iii) *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, developed by a meeting of experts in 1995 convened by the non-governmental organization ‘Article 19’.

<sup>4</sup> Human Rights Committee, General Comment No.10, 19th Session, 1983. This is reinforced by Article 5, ICCPR, which says that the ICCPR cannot be “interpreted as implying” any right to engage in any activity “aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent that is provided for in the present Covenant”.

health, public morals and protecting the rights and freedoms of others. Merely repeating these phrases in the Societies Ordinance and Public Order Ordinance may or may not uphold the rule of law, depending on how they are applied in practice. They could still be used to justify arbitrary and unreasonable limitations while paying lip-service to human rights principles. This makes it even more important to ensure that the grounds on which limitations can be imposed are tightly drawn, are limited to the most serious of situations, and that the authorities are required to justify in detail why the law is used in each case. There must also be a process for appealing to an independent judicial body.

Nevertheless, there is enough guidance in international jurisprudence to show that there must be a significant threat or issue at stake before restrictions can be justified for one of the six purposes. “*National security*”, for example, cannot be invoked to justify restrictions unless to protect a state’s existence or territorial integrity against the use or threat of force, whether external threat or a threat from within the state, such as an incitement to violent overthrow of the government. Local or relatively isolated law and order disturbances are not enough. The UN Special Rapporteur on freedom of expression, speaking about the closely related right to freedom of expression, has written that:

“Only in highly exceptional cases can a nation’s security be directly threatened by a person’s exercise of the right to freedom of expression. Such a threat would require, at the very least, the clear establishment of the person’s ability and intention to cause the taking of actions directly threatening national security, in particular by propagating or inciting the use of violence.”<sup>5</sup>

“*Public safety*” relates mainly to restrictions on public assemblies and aims at ensuring the safety of people’s lives, bodily integrity or health. “*Public order*” (or the French “*ordre public*”) refers to the functioning of basic public institutions necessary to keep a society together and the basic rules on which a society are founded. Respect for human rights is part of public order or *ordre public*. Protecting the “*rights and freedoms of others*” is limited to the rights recognized as human rights by international law. “*Public health*” relates to the need to prevent epidemics or other diseases, or other serious threat to the health of the population or parts of it.

### “Necessary in a democratic society”

The term “necessary” requires that even when a restriction is allowed on one of the six grounds, the actual restriction imposed must be *proportionate* to the threat being addressed. The restriction must be the least restrictive means of protecting the interest. As will be seen below, the proposed new powers for the Societies Officer will, in many cases, not be proportionate to

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<sup>5</sup> Report of the Special Rapporteur, Mr Abid Hussein, UN Doc: E/CN.4/1995/32, 14 December 1995.



the threat because there is only one sanction - refusal to register (or deregistration of) a society - regardless of the seriousness of the situation. In regulating public demonstrations to limit disruption of traffic or public order, reasonable restrictions could be placed on how the demonstration is to be carried out. But only in very rare and exceptional cases would it be justified to prohibit the demonstration taking place.

What is a “democratic society”? The definition of such a concept falls outside the mandate of Amnesty International, and there is no single or prescriptive model of a democratic society. However there are some common values that bind states parties to the ICCPR and are accepted by legal experts and non-governmental organizations as underlying a democracy for the purposes of interpreting and implementing the ICCPR. A democratic society for the purposes of the ICCPR is a society that respects the rights in the Universal Declaration of Human Rights and the two international human rights Covenants. It is a society in which the citizens are able to participate in public affairs and the will of the people is expressed through genuine, periodic elections (Article 25, ICCPR). As explained in a landmark case in the European Court of Human Rights, a democratic society values the ideals of pluralism, tolerance and broad mindedness (*Handyside v United Kingdom*<sup>6</sup>). It is in the context of such an ideal society that the necessity of the actual restriction is judged.

As the *Siracusa Principles* state (see footnote 3 above), the burden is on the state to show that the restrictions would not impair “the democratic functioning of the state” (Principle 20). As will be seen below, the amendments to the Societies Ordinance and Public Order Ordinance leave out entirely the concept of restrictions being “necessary in a democratic society”.

### **Incidents that justify further restrictions?**

Paragraph 3.3 of the Consultation Document refers to a number of incidents that it says justifies the need to “refocus the community on the ‘restrictions’ which the ICCPR places on the rights under Articles 21 and 22”. Yet these incidents are not such as would warrant further restrictions on the grounds allowed in the ICCPR, seem unrelated to the principal proposed amendments and anyway could be dealt with using laws currently in force or due to come into force upon the handover. They illustrate the importance of restrictions being proportionate to the problem being addressed.

The Consultation Document cites public concern over intrusions by protesters into a foreign consulate in Hong Kong. This refers to intrusions into the Japanese Consulate-General in Hong Kong by demonstrators protesting against Japan’s assertion of sovereignty over the Diaoyu Islands (known in Japan as Senkaku) during 1996.

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<sup>6</sup> Judgment of 7 December 1976, *Handyside*, Series A no.24, p.22

The proposed amendments, however, would do nothing to prevent such an incident, which is illegal under other Hong Kong legislation. Moreover, one of the national laws of the PRC which, under Annex III of the Basic Law, will apply in the HKSAR, entitled “Regulations of the PRC Concerning Diplomatic Privileges and Immunities”, adopted by the National People’s Congress in 1986, entrusts the Chinese authorities with ensuring that diplomatic or consular premises are not infringed upon. Under these regulations, the HKSAR authorities are responsible to ensure the integrity of diplomatic or consular premises, without any need for existing legislation on public order to be amended.<sup>7</sup>

Paragraph 3.3 of the Consultation Document cites two other situations: demonstrators blocking traffic and petitioners besieging commercial premises and disrupting the work of offices. These references are inadequate. Demonstrations are in many cases bound to disrupt traffic when they occur, but this in itself is not a justified reason to ban them. Indeed, the likelihood that traffic will be disrupted, and the legitimate need for the police to assess the scale of disruption and the measures to take to protect both demonstrators and the public, are the main reasons which make it legitimate for governments to request that plans for demonstrations be submitted to the authorities in advance. However a government would far exceed its legitimate authority if it banned a demonstration on the sole grounds of likely disruption to traffic.

The same reasoning applies to the disruption which may be caused by petitioners’ presence in commercial premises. In Hong Kong, many government offices, including Hong Kong Government departments, foreign consulates and offices of PRC institutions, are located within commercial premises. While it is legitimate for the Hong Kong authorities to ensure that petitioners seeking access to government departments do not unreasonably hinder the use of the premises by other tenants and visitors, the authorities would exceed their authorities if they banned petitioning aimed at government offices on the sole basis of disruption to the work of offices in the vicinity.

The two above-mentioned examples of disruptions do not in themselves constitute sufficient grounds to ban a demonstration or the delivery of a petition under the provisions of the ICCPR.

## **4. The Societies Ordinance**

### ***The Effect of the Proposed Amendments***

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<sup>7</sup> However it might be necessary for the Government of the PRC to pass specific legislation delegating to the HKSAR Government the authority to enforce within Hong Kong the regulations on diplomatic privileges and immunities.

The Consultation Document suggests that the amendments to the Societies Ordinance are proposed partly in pursuance of Article 23 of the Basic Law. Amnesty International has long-standing concerns about the compatibility of Article 23 with the ICCPR and believes that, in any case, Article 23 must always be read in conjunction with Article 39, which sets out the continuing applicability in Hong Kong of the ICCPR.

Amnesty International's concerns about the proposed amendments to the Societies Ordinance stem in part from the organization's work on behalf of human rights defenders worldwide. Societies, which include non-governmental organizations, political parties, etc, form structures that enable human rights defenders to carry out their work on behalf of social groups or individuals in need of such support. Amnesty International is concerned that the activities of human rights defenders in Hong Kong should not be hampered by legislation which could put at risk the continued existence of certain non-governmental organizations.

Amnesty International is also concerned that peaceful, legitimate political activities and other forms of exercise of freedom of expression, association and assembly are not restricted, particularly as this could lead to imprisonment of prisoners of conscience.

The proposed amendments to the Societies Ordinance would, if implemented, lead to a situation where non-governmental organizations could be threatened with denial of registration, or de-registration, for a single act if that act is deemed by the authorities to breach the provisions of the ordinance. As a result, non-registration or de-registration, which should form the ultimate penalty for a society's breach of the law, could become a widely applied sanction.

There is unfortunately some confusing inconsistency and ambiguity between the actual proposed amendments to the SO, the explanation in Chapter 4 of the Consultation Document and the further clarifications issued on 20 April 1997 by the Office of the Chief Executive. Nevertheless, the 20 April clarifications to some extent appear to reveal and emphasize the intended purpose of the amendments. It seems that the aim of amending the SO is to prevent Hong Kong political parties receiving foreign financial assistance and preventing foreign governments and political parties controlling Hong Kong political parties. This becomes clear from the following key paragraphs of the 20 April clarifications:

*“Basically, we envisage ‘political organisations’ to include political parties only.”*

*“The spirit behind the proposals is to prohibit financial assistance of a political nature.”*

*“The purpose of prohibiting local political organisations from establishing foreign ties is to prevent foreign political forces from controlling Hong Kong’s societies.”*

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*We believe financial assistance and participation in decision-making processes have a direct impact on the policy and operations of societies.”*

Unfortunately this is not the effect of the actual proposed amendments. They are ambiguous and much broader, and could be used to prohibit legitimate peaceful activities which are protected by the ICCPR. In broad terms, the principal amendments to the SO create the following regime:

- (*Section 1*) A society must apply to the Societies Officer for registration within one month of being established.

- (*Section 3*) The Societies Officer must register the society unless, after consultation with the Secretary for Security, he or she “reasonably believes” that to refuse registration would be in the interests of “national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”.

- (*Section 4*) In addition and regardless of Section 3, the Societies Officer may refuse to register a society “which engages in political activities” if it has one of a number of listed financial relationships with an alien or a foreign organization *or* if the society has a “connection” with a foreign political organization. The Societies Officer may, in effect, **deem** either of these situations to be not in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, “in the absence of evidence to the contrary”.

- (*Section 7*) The Societies Officer has similar powers as in Sections 3 and 4 to de-register an existing society.

The proposed amendments would to some extent restore the regulatory regime of societies to its pre-1992 state. This has been found in the past not to accord with the provisions of the ICCPR.

### ***Amnesty International's concerns***

Amnesty International's concerns regarding the above amendments include the following:

**1. The definition of “political activities” is broad enough that it includes not only the activities of political parties, but threatens non-governmental organizations which in no way seek to put up candidates for election to political office.**

The power to refuse registration is directed against societies that engage in “political activities”. This term is defined to include “promoting or preparing a candidate for an election

to act as a member” of one of the three tiers of government. Although “promoting” is an ambiguous term, it would appear to be the normal activity of a political party.

However, “political activities” also include the activities of an organization in “facilitating its members who are members of” one of the three tiers of government “in executing their functions as members of those bodies”. This would seem to encompass non-governmental organizations that are not political parties (ie, organizations which do not propose candidates for elections), but whose members are also members of an elected body, if the non-governmental organization provides information to these members about an issue being dealt with in the political body.

For example, if an environmental group’s member is a member of an elected body, and uses for her or his work as an elected representative any briefing on environmental matters prepared for her or him by the environmental body, then that body could be deemed to engage in political activities. It is not clear what else the ambiguous word “facilitating” might encompass.

**2. The terms “connections”, “political organization” and “foreign political organization” are defined so broadly and vaguely that they would allow the Societies Officer to prohibit legitimate and peaceful contacts with foreign organizations and other activities protected by the ICCPR.**

Under Article 4 of the proposed amendments to the SO, “connection” in relation to a society engaging in political activities with a foreign political organization would include direct or indirect loans or financial contribution or support; the determination of a society’s policies “at the suggestion” or “in collaboration” with the foreign organization, and situations where the foreign organization “controls, influences or participates directly or indirectly” in the decision-making process of the society. “Foreign political organizations” would include a department of a foreign government, an “instrumentality” of a foreign government, a foreign political party or an international political organization.

As drafted, Article 4 could outlaw a very wide range of legitimate activities. Hong Kong politicians could not discuss policies with any of their foreign counterparts, even in the context of academic or other exchanges; human rights activists who are members of an organization deemed as engaging in political activities (see 1 above) could not set up relationships with counterparts abroad, neither could they get funding from such sources as foreign development agencies, United Nations bodies, etc.

Article 4 of the proposed amendments defines foreign political forces in a very wide manner. In addition to foreign governments and political parties, the Article refers to undefined “instrumentalities” of foreign governments and “international political organizations”. These

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could include foreign institutions managed, owned, directed or funded by foreign states, such as foundations, academic bodies, regulatory bodies, and international parliamentary associations, United Nations agencies, international groupings of political parties, development organizations, etc.

Organizations or groups which could be defined as “foreign political organizations” carry out activities which could be deemed illegal under the proposed amendments, yet present no danger whatsoever to national security or public order, and are in no way restricted under the ICCPR. For example the development assistance arms of foreign governments or multilateral agencies provide grants to non-governmental organizations, or to individual members, to support projects, studies and other activities in which the organizations are involved. In Hong Kong, many non-governmental organizations, from social welfare groups to environmental organizations, would have been unable to develop without such help.

The combination of vaguely defined “connections” with vaguely defined “foreign political organization” results in the prohibition of legitimate contacts between people in Hong Kong and foreign organizations which in no way threaten national security. For example, a Hong Kong political organization would be in breach of the Societies Ordinance if some of its members discussed policy proposals with members of foreign political organizations.

**3. The power to refuse registration is so broad that, despite claims to the contrary in Chapter 4 of the Consultation Document, in practice it would not comply objectively with the permitted restrictions on freedom of association in the ICCPR.**

The Societies Officer has complete discretion under Section 4 to *deem* that a situation threatens national security, public order, etc, without any evidence that this is so “in the absence of evidence to the contrary”. Just the existence of the prohibited foreign financial or other connections would be enough for the Societies Officer to refuse registration, bypassing the terms of the ICCPR. A society threatened with refusal to register or deregistration would have the burden to show that its foreign financial or other connections did *not* threaten national security, public order, etc. This is unacceptable. The SO should clearly put the burden of proof on the authorities to establish objectively that there is sufficient evidence to show that the financial or other connection does indeed justify invoking one of the permissible restrictions in the ICCPR. This should be a heavy burden indeed.

**4. The grounds for refusing to register a society in Sections 3 and 4 (in the interest of national security, etc), taken from the ICCPR, only incorporate *some* of the terms of the ICCPR and it is not made clear that these terms should be interpreted in accordance with the understanding of their meaning in the ICCPR.**

The SO omits the all-important phrase “necessary in a democratic society” which is used in the ICCPR. This removes the test as to whether the restrictions are proportionate to the threat being addressed. The sanction of refusal to register or deregistration would clearly not be proportionate to many of the breaches of regulations. Particularly with the repeal of Section 4 of the BORO, it would also be important to reiterate in the SO that the provisions should be interpreted in a way that is consistent with the ICCPR. This would help ensure that terms such as national security are given the meaning they have in the ICCPR.

**5. The restrictions on the role of aliens in Hong Kong political activities could illegitimately restrict the activities of some Hong Kong residents who are not Chinese citizens, yet who under the Basic Law have the right to be elected to Hong Kong political bodies.**

Under Article 26 of the Basic Law, permanent residents (including foreign nationals) “have the right to vote and to stand for election in accordance with law.” In particular, permanent residents who are not Chinese citizens may be elected to the Legislative Council of the HKSAR, “provided that the proportion of such members of the Legislative Council does not exceed 20 per cent of the total membership of the Council.”

The Basic Law therefore clearly provides for the right of non-Chinese nationals to take an active part in Hong Kong politics. To effectively exercise this right, Hong Kong residents who are not Chinese nationals must enjoy the right to form or join Hong Kong political parties.

While restrictions on the political activities of aliens are not in themselves in contradiction with the ICCPR, any restrictions imposed in Hong Kong must fully respect the right of non-Chinese nationals to take part in political activities, safeguarded by the Basic Law.

**6. De-registration or refusal to register a society is the single, draconian sanction for breach of the regulations, rather than being the ultimate sanction in a process which encourages societies to come into compliance with the law.**

In this sense the amendments would create a hostile environment which seeks to cut down civil society rather than nurturing its growth.

**Amnesty International believes that any amendments to the Societies Ordinance should be entirely redrafted in light of the above concerns. In particular, Amnesty International recommends that, if any amendments are to be made to the Ordinance, they should:**

- provide precise and unambiguous definitions;**

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**- limit the powers of the Societies Officer so that he or she is not authorised to prevent legitimate activities protected by the ICCPR;**

**- set up a process for registration which puts on the authorities the burden of showing objectively that any restriction is imposed for a purpose that is consistent with the ICCPR and that the restriction is proportionate to the purpose;**

**- provide for the possibility of independent review of decisions taken by the Societies Officer, ensuring that a decision to deregister a society is suspended during the review; and**

**- include the phrase “necessary in a democratic society” in describing the limits on the powers of the Societies Officer and provide that the provisions of the Societies Ordinance are interpreted in a way that is consistent with the ICCPR.**

## **5. The Public Order Ordinance**

Under the proposed amendments, a different process would regulate demonstrations in Hong Kong. Under the new procedure a demonstration could only be held legally if the Commissioner of Police issues a “Notice of no objection”. Under the current notification procedure, the failure of the authorities to object to a demonstration within a given time frame amounts to authorization. The proposed amendments also make it impossible for a legal demonstration to be organized in less than 48 hours.

The proposed amendments also widen the grounds under which authorization for a demonstration can be denied. Under the proposals, a demonstration may not take place if the Commissioner of Police “reasonably considers” that holding it is not “in the interests of public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others”. Under the current procedure, only the interests of public safety or public order may be invoked to prohibit a demonstration. These grounds cannot be invoked if the Commissioner of Police considers that these interests can be met by imposing conditions on the organization of the demonstration.

The proposed amendments do not reproduce the ICCPR’s reference to any restriction being “necessary in a democratic society”, and do not make it clear that the interpretation of the terms used in the POO should be consistent with the ICCPR.

Amnesty International is concerned that the exercise by the Commissioner of Police of the powers to prohibit a demonstration might jeopardize the right to freedom of assembly itself.



In most cases reasonable restrictions could be imposed where the Commissioner of Police reasonably objects to a demonstration, rather than a ban.

The ordinance should also make clear that reasons for any objections to a demonstration must be detailed and should state why the imposition of conditions could not meet these reasons.

**Amnesty International believes that any amendments to the Public Order Ordinance should be redrafted in light of the above concerns. In particular, Amnesty International recommends that, if any amendments are to be made to the Public Order Ordinance, they should:**

**- limit the powers of the Commissioner of Police so that he or she is not authorised to prevent legitimate activities protected by the ICCPR;**

**- set up a process for regulation of public processions which puts on the Commissioner of Police the burden of showing objectively that any restriction is imposed for a purpose that is consistent with the ICCPR and that the restriction is proportionate to the purpose;**

**- include the phrase “necessary in a democratic society” in describing the limits on the powers of the Commissioner of Police, and provide that the provisions of the Public Order Ordinance are interpreted in a way that is consistent with the ICCPR.**