

ARTICLE 23 AND THE ATTACK ON HUMAN RIGHTS

BY JAMES TO KUN-SUN

More than 100 groups and individuals (including HRIC) have submitted views on Hong Kong's National Security (Legislative Provisions) Bill, drafted to fulfill requirements in Article 23 of the Basic Law for Hong Kong to enact laws protecting state security. James To outlines how the legislation proposed in the current Blue Bill overreaches the requirements of Article 23 to the detriment of Hong Kong's human rights. While Hong Kong remains preoccupied with the SARS epidemic, the government is holding to its self-imposed schedule of passing the bill into law by mid-July, and discussions are currently underway in the Legislative Council Bills Committee.

Bad Laws Harm Human Rights

In the five years since sovereignty over Hong Kong reverted to China, the human rights situation of the Hong Kong Special Administrative Region has steadily deteriorated in every respect. Back at the time of the handover, Hong Kong's Provisional Legislature passed stringent laws dealing with the national and Hong Kong SAR flags and amendments to the Public Order Ordinance and the Societies Ordinance in an effort to control Hong Kong through bad laws. These laws have been used to arrest and prosecute Hong Kong people who have burned the national flag or the Hong Kong regional flag to express their dissatisfaction during demonstrations, to arrest and prosecute students carrying out protest marches without applying for permits, and to arrest and handcuff journalists reporting on events.

Subsequently, when the sons and daughters of Hong Kong residents fought for their right to live in Hong Kong, the government ignored the ruling of our own courts and appealed to the National People's Congress to overturn the judgment on the basis of a new interpretation of Article 24 of Hong Kong's



Photo: Reuters.

Basic Law, which defines which persons have a right to residency in the SAR.

Now five years after the handover the SAR government has drafted yet another bad law in the form of the National Security (Legislative Provisions) Bill to implement Article 23 of the Basic Law, using the excuse of protecting state security to further weaken the rights and freedoms of Hong Kong people. What concerns Hong Kong people most about this new law is that it targets freedom of expression and freedom of the press and suppresses freedom of association.

Hong Kong's present circumstances do not warrant rushing through implementation of Article 23 on the current tight schedule. During the past five years Hong Kong has been politically stable. There has been no seditious or subversive activity, and no one has openly supported independence for Taiwan, Tibet or Hong Kong. At the same time, Hong Kong's political development has regressed rather than moved for-

ward; the lack of oversight by a fully elected government or legislature leaves Hong Kong particularly vulnerable to abuse of rights through bad laws by an authoritarian government.

Once these bad laws are passed, the central government will be able to put even more pressure on the SAR government to prosecute anyone who criticizes it. This is certain to have a serious effect on Hong Kong's press freedom. Even more troubling is that because Article 23 concerns the relationship between the Chinese and Hong Kong governments, the power of final interpretation rests with the National People's Congress and not with Hong Kong's Court of Final Appeal.

New Crimes Target Political Dissidents

Article 23 of the Basic Law states that "the Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."

During the initial drafting of Article 23, there was widespread concern over a provision in the first draft that prohibited "any activity that harmed national unity or subverted the central government." As a result, the central government compromised in the second draft by stating that the Hong Kong SAR would enact its own laws. The drafters also removed the phrase "subversion against the Central People's Government," and more clearly defined "harming national unity" as prohibiting treason, secession and stealing state secrets. Unfortunately, this was only a temporary concession. After the democracy movement of 1989, the central government reinserted the phrase "subversion against the Central People's Government" into the third draft of the Basic Law, and added a provision prohibiting ties with foreign political organizations. This sequence of events clearly indicates that the central government at one time agreed that there was no need for a provision against subversion, but decided to target political dissidents when amending Article 23 into its final form.

Suppressing Freedom of Association

Hong Kong law in fact already has provisions against the crimes specified in Article 23 in the form of the Crimes Ordinance, the Official Secrets Ordinance and the Societies Ordinance. The government's consultation document and Blue Bill take these laws a step further, and the provision relating to Hong Kong organizations in fact overreach the requirements of Article 23 at the expense of freedom of association.

Article 23 requires enactment of laws prohibiting Hong Kong political organizations from establishing ties with overseas political organizations. But the provision in the draft bill also prohibits Hong Kong organizations from establishing ties with certain Mainland organizations.

The draft bill proposes that the Secretary for Security may by order proscribe any local organization falling under one of three categories:

1) the objective, or one of the objectives of the organiza-

tion is to engage in treason, subversion, secession or sedition or commit an offence of spying;

- 2) the organization has committed or is attempting to commit treason, subversion, secession or sedition or an offence of spying;
- 3) the organization is subordinate to a Mainland organization the operation of which has been prohibited on the ground of protecting the security of the People's Republic of China, as officially proclaimed by means of an open decree, by the Central Authorities under the law of the People's Republic of China.

Regarding organizations falling under the first two categories, under Common Law the government is already empowered to initiate prosecutions for preparing to commit a crime, which could include conspiracy or intent to commit treason, sedition, secession, inciting violent disorder or spying.

Similarly, the government can use the existing Societies Ordinance to proscribe organizations involved in such activities. The Societies Ordinance already empowers the Societies Officer, in consultation with the Secretary for Security, to refuse or cancel registration of any organization if there is good reason to believe this is necessary in the interests of national security or public safety. The decision of the Secretary for Security is based on the objective circumstances of Hong Kong rather than on whether or not the Hong Kong organization is subordinate to a Mainland organization.

What is worrisome about the draft bill is that the Secretary for Security's decision is now subject to proscriptions and open decrees against organizations based on Mainland Chinese laws. As a result, it makes a Hong Kong organization subject to prohibition through a Mainland political decision. In addition, the draft bill's recommended designation of an organization as "subordinate" is not limited to local organizations under the direct or indirect control of a Mainland organization, but is broad enough to include local organizations that have received direct or indirect financial support from a Mainland organization.

Many local organizations are worried that even if they have no intention of conducting activities harmful to state security, if a related Mainland organization is banned, the Secretary for Security already has "reason to believe" that it is necessary to ban the local organization for reasons of national security. This provision is bound to have a serious effect on freedom of association, and it has unjustifiably applied Mainland law to Hong Kong in contravention of the principle of "One Country Two Systems." Many Hong Kong organizations, including religious organizations and NGOs, have expressed serious concern about this provision and have called for its removal.

Endangering Freedom of Expression

The Blue Bill's provisions on sedition state that "a person commits sedition if, subject to section 9D1, he –

- a) incites others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or
- b) incites others to engage, in Hong Kong or elsewhere, in violent public disorder that would seriously endanger

the stability of the People's Republic of China.

The provision relating to handling seditious publications states that "subject to section 9D," a "seditious publication" is a publication that is "likely to cause the commission of an offence under section 2 (treason), 2A (subversion) or 2B (secession), and that it is an offence to –

- a) publish, sell, offer for sale, distribute or display any seditious publication;
- b) print or reproduce any seditious publication; or
- c) import or export any seditious publication.

Many organizations have pointed out that the proposed legislation causes considerable confusion over its designations of treason,² subversion³ and secession.⁴ There is also confusion over what constitutes inciting others to engage in violent public disorder. The lack of clarity can only discourage freedom of expression and is bound to lead to self-censorship in the media.

The Hong Kong Journalists Association and the Society of Publishers in Asia have called for removal of the offences of sedition and handling seditious publications on the grounds that these provisions would be too easily abused. Such a law has not been enforced in England since 1947, or in Hong Kong since 1952, which indicates that the concept is simply outdated. The Hong Kong Journalists Association has raised reporting on the recent SARS epidemic as a pertinent example of the effect such a concept can have on freedom of expression. Following Chinese premier Hu Jintao's public recognition of the disease, the content of news reports changed dramatically, suggesting the chilling effect that official denial of the disease had on earlier reporting.

The Hong Kong News Executives Association has also argued that making it a crime to incite violent disorder, even if no violent order never actually takes place, is unjustifiably harmful to freedom of expression. The NEA further points out that the proposed crime of handling seditious publications seems to be a redundancy of the crime of inciting violent disorder.

Last December, the Hong Kong Bar Association published a submission pointing out that the Law Commission of the United Kingdom and the Law Reform Commission of Canada have both recommended scrapping the crime of sedition. A recent study in Australia likewise found that nearly every Common Law jurisdiction had agreed that the crime of sedition should be made obsolete because it was anachronistic and an unjustifiable interference with freedom of expression. That research report recommended abolishing sedition throughout Australia at both commonwealth and state level rather than attempting to "modernize" the crime.

The Blue Bill provision against "inciting others to engage, in Hong Kong or elsewhere, in violent public disorder that would seriously endanger the stability of the People's Republic of China" is a new crime, and is not simply drafting a specific provision under the general Common Law concept of inciting others to commit a crime.

"Incitement" in common law is defined as any urging or encouragement, through speech or written articles. In order to bring a prosecution it is only necessary to prove that someone

published or wrote an article with the intent of urging or encouraging another. As a crime based on speech, incitement can seriously limit freedom of expression.

Media and legal professionals have requested that if the crime cannot be eliminated, in order to protect freedom of expression, prosecutions for sedition should be subjected to Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. This principle stipulates that expression may be punished as a threat to national security only if a government can demonstrate that:

- a) the expression is intended to incite imminent violence;
- b) it is likely to incite such violence; and
- c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

If the government is not willing to abide by this principle and the draft legislation does not contain adequate provisions protecting freedom of expression, the present bill places unreasonable restrictions on freedom of expression.

Several clauses in the proposed provisions on sedition and subversion (namely 9A(1)(b), 9D(1)(b) and 2A(1)) contain the phrase "seriously endanger the stability of the People's Republic of China." The measurement of "serious endangerment" to stability is subject to varying standards, and can mean different things at different times and in different environments. For example, Hong Kong people and overseas Chinese generally regarded the 1989 democracy movement as a patriotic democratic movement, but the Mainland government right up to the present considers it to have been a subversive movement that seriously affected national stability.

Another example is the Falungong religious movement. The Falungong is not regarded as a threat to national security in Hong Kong, but it is on the Mainland. Under the proposed legislation, if anyone encourages a Falungong member (whether that member is in Hong Kong or overseas) to carry out a demonstration calling for religious freedom in Hong Kong or elsewhere, if the government believes the demonstration would seriously endanger China's stability, that person can be prosecuted in Hong Kong for inciting violent disorder. With such broad and unclear boundaries it is very hard for ordinary people to judge what kind of activity is illegal, with the result that the law is bound to place unreasonable restrictions on freedom of expression.

Regarding the draft provisions on seditious publications, the government eliminated a proposal prohibiting possession of a seditious publication, but has retained the crime of handling seditious publications, which prohibits publishing, selling, offering for sale, distributing, displaying, printing or reproducing any such publication. The publishing profession has objected that this provision is much too broad and vague.

For example, can a library possess a seditious publication as long as it doesn't display it on a shelf? Or as long as it doesn't refer to the publication in any relevant seminars? Or as long as it doesn't allow any scholars, students or members of the public borrow or photocopy it? If the offending material is only printed or reproduced, but is not distributed or sold, then

there is no opportunity for it to influence anyone, so why should this activity be proscribed by law? These are unreasonable restrictions on freedom of expression.

The government's explanation is that if there is no criminal intent, and therefore no crime, then there will be no restriction on freedom of expression. But the government has not addressed the problems of executing these laws, which is that the police do not have to prove intent in order to carry out an investigation. In fact, the scope of a police investigation includes establishing whether there was intent to break the law. For that reason, under the broad and vague provisions of this clause, it will be easy for a person to fall under the scope of an investigation, and that is bound to inhibit freedom of expression.

The crime of handling seditious publications was originally subject to a time limit, with a prosecution required within six months of a crime being committed. But after the police objected that their investigations would require more time, this restriction was removed, and the police are now empowered to investigate someone for a lifetime if they so wish, clearly an unjustifiable restriction on freedom of expression.

In regard to search warrants, existing law states that a magistrate can issue a warrant for police to enter and search premises and seize evidence when they suspect that a crime has been committed. But the government has now added a provision allowing a police officer of the rank of chief superintendent or above to issue a search warrant. Inciting violent disorder and handling seditious publications are political crimes that involve only the dissemination of words and ideas rather than acts of outright violence. It is unnecessary to empower both the police and the courts to issue search warrants for such a crime. To do so poses an unjustifiable threat to freedom of expression.

Restricting Freedom of the Press

The draft bill proposes to amend the Official Secrets Ordinance by broadening prohibited disclosure of confidential information in three respects.

- While Article 23 of the Basic Law only calls for establishing laws to prohibit the theft of state secrets, the draft law extends this prohibition to any unauthorized disclosure of state secrets.
- The present Official Secrets Ordinance pertains to disclosure of information by public servants, and a non-official is only culpable if he knows that the source was a civil servant. The draft proposals, on the other hand, have extended the scope of the restrictions to also allow the prosecution of someone who has not committed a theft of state secrets himself, but who has received such material and then passed it on to others.
- The draft proposals include information concerning the Hong Kong SAR for which the Central Authorities are responsible. This extension of the protected category of information will without question threaten freedom of the press.

Since Hong Kong reverted to Chinese sovereignty, the central government has become responsible for innumerable local

issues. These include applications by spouses or children of Hong Kong residents to come to Hong Kong, information relating to Hong Kong health issues such as SARS, activities of the People's Liberation Army in Hong Kong, and financial information relating to state-owned enterprises operating in Hong Kong. Is it not possible that revealing certain information of this nature might be construed by the central authorities as harmful to state security?

The proposed legislation does not provide adequate protection for information disclosed in the public interest. If a law can be drafted to protect "national security," why can it not also be drafted to protect "public safety" and/or "public interest"? Using SARS as an example, given the proximity of affected areas of the Mainland to Hong Kong, it is clearly in the public interest for information on the disease to be made freely available, even though Mainland authorities might consider such disclosure a threat to state security.

In order to preserve a balance between protection of official secrets and freedom of the press, information and expression, the government should allow the defense of "public interest." Section 30 of the Prevention of Bribery Ordinance provides an appropriate precedent: if information regarding an investigation by the Independent Commission Against Corruption is disclosed in order to reveal unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by an ICAC officer, or a serious threat to the health or safety of the public, this is considered a "reasonable excuse." The government should include this kind of clearly defined defense in its draft proposals.

In addition, once an item of "confidential information" becomes a matter of public knowledge, for instance, when it has already been reported in the news media, further dissemination of this information should not be subject to prosecution.

Shelve Bad Laws, Protect Human Rights

Ever since the government began circulating its consultation paper on the proposed Article 23 legislation at the end of last year, the proposals have raised great concern among organizations in Hong Kong and overseas regarding the SAR's freedom of the press, expression and association and over the effective implementation of One Country Two Systems. Opposition to the proposals has continued unabated to the present. For the sake of Hong Kong and its future generations, it is crucial to ensure that no more bad laws are enacted in Hong Kong. The government should acknowledge the public's wish and shelve further action on Article 23 for the time being.

Translated by Stacy Mosher

HRIC's submission on Article 23 can be viewed on our Web site at http://iso.hrichina.org/download_repository/1/HK+23+Final.pdf

1. According to the National Security (Legislative Provisions) Bill, Section 9D, "Certain acts are not incitement," as follows:
 - 1) For the purpose of section 9A, a person shall not, by reason only that he does a proscribed act, be regarded as inciting others to –

- a) commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or
 - b) engage in violent public disorder that would seriously endanger the stability of the People's Republic of China.
- 2) For the purpose of section 9C, a person shall not, by reason only that he does any act referred to in section 9C(2)(a), (b) or (c) with intent only to do a prescribed act, be regarded as doing the first-mentioned act with intent to incite others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession).
- 3) In this section, "prescribed act" means –
- a) showing that the Central People's Government or the Government of the Hong Kong Special Administrative Region has been misled or mistaken in any of its measures;
 - b) pointing out error or defects –
 - i) in the government or constitution of;
 - ii) in the laws of; or
 - iii) in the administration of justice in,
 - the People's Republic of China or the Hong Kong Special Administrative Region with a view to the remedying of such errors or defects;
 - c) persuading members of the public in the People's Republic of China or in the Hong Kong Special Administrative Region to attempt to procure, by lawful means, the alteration of any matter provided for in the law of the People's Republic of China or of the Hong Kong Special Administrative Region, as the case may be; or
 - d) pointing out any matter which is producing or has a tendency to produce feelings of ill-will or enmity between different classes of the population of the People's Republic of China or of the Hong Kong Special Administrative Region with a view to removal of such matter."
- The full bill can be viewed at: <http://www.basiclaw23.gov.hk/english/download/s3200307077.pdf>
2. National Security (Legislative Provisions) Bill, op cit, Section 2: A Chinese national commits treason if he –
 - a) with intent to –
 - i) overthrow the Central People's Government;
 - ii) intimidate the Central People's Government; or
 - iii) compel the Central People's Government to change its policies or measures, joins or is a part of foreign armed forces at war with the People's Republic of China;
 - b) instigates foreign armed forces to invade the People's Republic of China with force; or
 - c) assists any public enemy at war with the People's Republic of China by doing any act with intent to prejudice the position of the People's Republic of China in the war.
 3. National Security (Legislative Provisions) Bill, op cit, Section 2A: A person commits subversion if by using force or serious criminal means that seriously endangers the stability of the People's Republic of China or by engaging in war he –
 - a) disestablishes the basic system of the People's Republic of China as established by the Constitution of the People's Republic of China;
 - b) overthrows the Central People's Government; or
 - c) intimidates the Central People's Government.
 4. National Security (Legislative Provisions) Bill, op cit, Section 2B: A person commits secession if he withdraws any part of the People's Republic of China from its sovereignty by –
 - a) using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China; or
 - b) engaging in war.

Old Crimes, New Crimes

By Stephanie Wang

The process of implementing Article 23 and its focus on tightening "national security" has raised heated public consultation and debate. The end result, the National Security (Legislative Provisions) Bill, was introduced into the Legislative Council on February 26, 2003, and primarily affects three statutory frameworks: the Crimes Ordinance (Cap. 200), the Official Secrets Ordinance (Cap. 521), and the Societies Ordinance (Cap. 151). The stated values of sovereignty, territorial integrity, unity and national security are prominent themes undergirding the proposed Article 23 legislation.

Human rights advocates have particularly objected to provisions relating to freedom of expression and association. The proposed amendments now stipulate that interpretation, application and enforcement are to be consistent with Article 39 of the Basic Law, which expressly states that the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) shall remain in force and be implemented through the laws of the HKSAR.

The consultation process has also resulted in securing some judicial safeguards. For example, any person

charged with treason, subversion, secession or sedition is to be tried by jury. Those accused of sedition by inciting violent public disorder, handling seditious publications or the unlawful disclosure of information can now opt for trial by jury.

The following charts compare existing provisions in Hong Kong law with the new provisions proposed under the National Security Bill. Descriptions of the offenses are drawn from the HKSAR Security Bureau's Consultation Document on Proposals to Implement Article 23 of the Basic Law, published in September 2002.

SUBVERSION	
<p>Subversion involves overthrowing or undermining, either overtly or covertly, the constitution, the constitutionally established government, or system of government by internal or domestic elements.</p> <p>Jurisdiction: applies to all persons who are voluntarily in the HKSAR, and has an extraterritorial effect on the actions of HKSAR permanent residents outside the HKSAR.</p>	
Acts Prohibited Under Existing Offense	Acts Prohibited Under National Security (Legislative Provisions) Bill
<p>No specific subversion offense, but covered by treason offenses.</p>	<p>To overthrow or intimidate the PRC government or disestablish the basic system of the constitutional state by engaging in war, use of force, or other serious criminal means that seriously endangers the stability of the PRC. (Cap. 200 §2A)</p> <p>Key definition: “Serious criminal means” include: causing serious injury to another person or property; creating a serious health or public safety risk; serious interference with electronic systems and services.</p> <p>Life imprisonment</p>

THEFT OF STATE SECRETS	
<p>Certain information must be kept confidential in order to protect the security of the country, and there should be suitable legal sanctions against its unauthorized access or disclosure. (Para. 6.14, 6.15)</p>	
Acts Prohibited Under Existing Offense	Acts Prohibited Under National Security (Legislative Provisions) Bill
<p>Unlawful disclosure of information obtained by virtue of official position or unauthorized disclosure. (Cap. 521 §13-20)</p> <p>2 years and \$500,000 on indictment, 6 months and \$50,000 on summary conviction</p>	<p>Unlawful damaging disclosure of information that was obtained by virtue of official position or unauthorized disclosure or illegal access. (Cap. 521 §16A-18)</p> <p>Key definition: “Illegal access” will be strictly limited to access through criminal means namely, hacking, theft and bribery.</p> <p>A disclosure is “damaging” if it endangers or is likely to endanger national security.</p> <p>Information protected against disclosure includes information relating to matters concerning the HKSAR that are within the responsibility of the Central Authorities under the Basic Law.</p> <p>5 years and \$500,000 on indictment, 3 years and \$50,000 on summary conviction</p>
<p>Failure to safeguard protected information or return documents. (Cap. 521 §22,25)</p> <p>3 months and \$25,000</p>	<p>Failure to safeguard protected information or return documents.(Cap. 521 §22)</p> <p>3 months and \$25,000</p>

TREASON	
<p>The concept of treason involves the betrayal of one’s country in collaboration with an external enemy. The interests to be protected against treason are the sovereignty, territorial integrity and security of the PRC as a whole, and the PRC government.</p> <p>Jurisdiction: Treason offenses apply to Chinese nationals only, and have an extra-territorial effect on Chinese citizens who are permanent residents of the HKSAR.</p>	
Acts Prohibited Under Existing Offense	Acts Prohibited Under National Security (Legislative Provisions) Bill
<p>Kill, wound, or cause bodily harm to the sovereign or head of state. (Cap. 200 §2(1)(a), §2(1)(b), §5)</p> <p>Sentence: Life Imprisonment</p>	<p>To be repealed.</p>
<p>“Levying war” against the state with intent to depose or compel sovereign or Central People’s Government (CPG). (Cap. 200 §2(1)(c))</p> <p>Life Imprisonment</p>	<p>Engaging in war by joining foreign armed forces with the intent to overthrow, compel by force or constraint, or intimidate PRC Government. (Cap. 200 §2(1)(a))</p> <p>Key definition: “Levying war”: in common law includes a riot or insurrection involving a large number of people for a general public purpose, but does not include an uprising for a limited, local or private purpose.</p> <p>Life imprisonment</p>
<p>Instigation of foreigner to invade the country. (Cap. 200 §2(1)(d))</p> <p>Life Imprisonment</p>	<p>The instigation of foreign armed forced to invade the country with force. (Cap. 200 §2(1)(b))</p> <p>Life imprisonment</p>
<p>Assisting “public enemy” at war.</p> <p>Cap. 200 §2 Life imprisonment</p>	<p>Assisting “public enemy” at war. (Cap. 200 §2(1)(c))</p> <p>Key definitions: “Public enemy at war”: foreign government or foreign armed forces at war with the PRC</p> <p>Life imprisonment</p>
<p>Treasonable Offenses: Manifest the intention to levy war or instigate invasion by overt acts. (Cap. 200 §3)</p> <p>Life imprisonment</p>	<p>To be repealed.</p>
<p>Misprision of treason</p>	<p>To be repealed.</p>
<p>Compounding treason</p>	<p>To be repealed.</p>

SEDITION	
<p>Seditious intent is defined as the intent to excite hatred, contempt or disaffection against the Central People’s Government, other competent authorities of the PRC, or against the administration of justice in the HKSAR, as well as the intent to incite or counsel persons to violence or disobedience of law and order. (Cap. 200 §9(1))</p> <p>Jurisdiction: The HKSAR should have jurisdiction over offenses of sedition committed by an HKSAR permanent resident anywhere.</p>	
Acts Prohibited Under Existing Offense	Acts Prohibited Under National Security (Legislative Provisions) Bill
<p>To incite others to commit treason.</p> <p>Common law</p> <p>Life imprisonment</p>	<p>To incite others to commit treason, secession or subversion. To incite others to sedition is not an offense. (Cap. 200 §9A(1)(a), 9B)</p> <p>Sedition does not include merely showing that the CPG or the HKSAR has been misled or mistaken, trying to eliminate group conflict or attempting to affect change by lawful means.</p> <p>Life imprisonment</p>
<p>Do, attempt, prepare or conspire with others to do acts with a seditious intention, or utter seditious words. (Cap. 200 §10)</p> <p>2 years and \$5000 for first offense, 3 years for subsequent offenses.</p>	<p>To incite others to violence or public disorder that seriously endangers the stability of the PRC. (Cap. 200 §9A (1)(b))</p> <p>7 years and unlimited fine.</p>
SEDITION PUBLICATIONS	
Acts Prohibited Under Existing Offense	Acts Prohibited Under National Security (Legislative Provisions) Bill
<p>Publication or importation of seditious intention. (Cap. 200 §10)</p> <p>2 years and \$5000 fine for first offense, 3 years for subsequent ones. Publications to be forfeited</p>	<p>To handle seditious publications while knowing or having reasonable grounds to suspect that doing so would be likely to incite others to commit treason, secession, or subversion. Judicial warrant is required for search or seizure of journalistic materials. (Cap. 200 §9(c), 13)</p> <p>Key definition: “seditious publication”: a publication likely to cause the commission of treason, secession or subversion.</p> <p>Intent to incite must be proved beyond a reasonable doubt.</p> <p>7 years and \$500,000. Publications to be forfeited.</p>
<p>Possession of seditious publication without lawful excuse.</p> <p>Cap. 200 §10</p> <p>1 year and \$2,000 for first offense and 2 years for subsequent ones. Publications to be forfeited.</p>	<p>To be repealed.</p>
<p>Posting of seditious publication.</p> <p>Post Office Ordinance Cap. 98 §32(1)(h)</p> <p>6 months and \$20000 fine.</p>	<p>To be repealed.</p>

FOREIGN POLITICAL ORGANIZATIONS

Under the Societies Ordinance (Cap. 151) a local society must register with the Societies Office unless it qualifies for exemption as a business, trade union, or co-operative society. The Societies Officer can refuse or cancel the registration of a local society that is a political body¹ suspected of being connected² with a foreign political organization (FPO)³ or Taiwan political organization (TPO)⁴. “Unlawful societies” are organizations that continue operation after having their registration refused or revoked.

Acts Prohibited Under Existing Offense	Acts Prohibited Under National Security (Legislative Provisions) Bill
<p>Unlawful societies “connected” with FPOs who participate in the political process of the HKSAR. (Cap. 151 §5)</p> <p>Continued operation after registration refused or canceled: Fines and 3 months for subsequent convictions.</p> <p>Continued operation after prohibition order issued: Officers: 3 years and \$100,000. Members, sponsors: 1 year and \$20,000, 2 years and \$50,000 for subsequent convictions.</p>	<p>To organize or support activities of an unlawful society or a proscribed organization. (Cap. 151 §8C)</p> <p>It is a defense if the person did not know or had no reason to believe that organization is proscribed.</p> <p>Key definition: “Support”: provide financial support to or carrying out the directives of the proscribed organization.</p> <p>Officers, members, paying supporters, and managers are subject to fines and 3 years imprisonment.</p>
	<p>Proscription of organizations endangering national security</p> <p>The Secretary for Security is empowered to proscribe an organization if it is engaged in or intends to commit treason, secession, sedition, subversion or theft of state secrets; or if the organization is subordinate to a Mainland organization which has been proscribed through an “open decree” by the Central Authorities on grounds of national security. (Cap. 151 §8A-E)</p> <p>Procedural safeguards: Before the proscription of an organization, the Secretary for Security must give that organization the opportunity to be heard or respond in writing, and a decision to proscribe shall be subject to appeal through the courts.</p> <p>Key definitions: “Public safety” and “public order” are interpreted under the ICCPR as applied to Hong Kong.</p> <p>“National security” is defined as safeguarding the territorial integrity and independence of the state.</p> <p>“Organization” is defined as an organized effort by two or more people to achieve a common objective.</p> <p>A “subordinate” Hong Kong organization asks for or receives substantial funding from, is directly or indirectly under the direction of, or has its policies determined directly or indirectly by, the Mainland organization.</p> <p>7 years and unlimited fine</p>

SECESSION	
<p>Preserving the territorial integrity of the nation lies at the heart of the welfare of a nation, and is a top priority for most countries. Breach of that integrity by force, threat of force, or other serious unlawful means almost invariably leads to war, and any efforts to tamper with territorial integrity should be discouraged. (Para. 3.5)</p> <p>Jurisdiction: Secession offenses apply to all persons who are voluntarily in the HKSAR, and have an extraterritorial effect on the actions of HKSAR permanent residents outside the HKSAR.</p>	
Acts Prohibited Under Existing Offense	Acts Prohibited Under National Security (Legislative Provisions) Bill
No specific secession offense.	<p>To withdraw a part of the PRC from its sovereignty, or resist the government in its exercise of sovereignty over a part of China, by engaging in war, use of force, or by other serious illegal means that seriously endangers the territorial integrity of the PRC. (Cap. 200 §2B)</p> <p>Life imprisonment</p>
<p>Conspiracy or attempt.</p> <p>Common law/ Cap. 200 §159A, §159G</p> <p>Life imprisonment</p>	<p>Extraterritoriality of conspiracy or attempt for subversion and secession offenses. (Cap. 200 §2C)</p> <p>Conspiracy or attempt to commit subversion or secession inside Hong Kong applies even to acts performed outside of Hong Kong.</p> <p>Life imprisonment</p>
ENHANCED INVESTIGATION POWERS	
Existing Provision	Proposed Provision under National Security (Legislative Provisions) Bill
<p>Basic investigative powers: search and seizure, etc.</p> <p>Police Force Ordinance Cap. 232</p>	<p>Officers at the rank of Chief Superintendent of Police or above may exercise emergency entry, search and seizure powers if they reasonably believe the act of treason, subversion, secession, sedition or handling seditious publications has been or is being committed and immediate action must be taken to avoid serious prejudice to the investigation of the offense. (Cap. 200 §18B)</p>

Endnotes:

1. The Societies Ordinance defines “political body” as a political body or an organization that purports to be a political party; or an organization whose principal function or main object is to promote or prepare a candidate for election. (Cap. 151 §2(1))
2. A “connection” to a FPO is defined to include solicitation or acceptance of financial contributions, sponsorships, loans, or support of any kind from an FPO or TPO; an affiliation with an FPO/TPO; determination of the society’s policies by an FPO/TPO; or direction, dictation, control or participation in the society’s decision-making process by an FPO/TPO. (Cap. 151 §2(1))
3. The Societies Ordinance defines “foreign political organization” as a government of a foreign country or a political subdivision of a foreign government; an agent of a foreign government or foreign political subdivision; or a political party in a foreign country or its agent. (Cap. 151 §2(1))
4. A “Taiwan political organization” is defined as the administration or a political subdivision of the administration of Taiwan; an agent of the Taiwan administration or political subdivision; or a political party in Taiwan or its agent. (Cap. 151 §2(1))

Sources:

National Security (Legislative Provisions) Bill (February 14, 2003)
<http://www.basiclaw23.gov.hk/english/download/s3200307077.pdf>
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http://www.basiclaw23.gov.hk/english/download/National_Security_Bill.pdf

Special Administrative Region Security Bureau (September 2002).
<http://www.info.gov.hk/sb/eng/23/reporte.pdf>
 Proposals to Implement Article 23 of the Basic Law—Comparison of Offences and Penalties
<http://www.info.gov.hk/gia/general/200209/24/annex-e.doc>
 Government further clarifies legislative proposals to implement BL 23, Press Release (January 28, 2003)
<http://www.info.gov.hk/gia/general/200301/28/0128198.htm>

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