

A STATEMENT BY THE BRITISH CONSULATE GENERAL ON THE HONG KONG SAR GOVERNMENT'S PROPOSALS TO IMPLEMENT ARTICLE 23 OF THE BASIC LAW

We are closely following the debate on the SAR Government's proposals for legislation to fulfil their obligations under Article 23 of the Basic Law. As a co-signatory to the Sino-British Joint Declaration on Hong Kong we have a responsibility to ensure that the rights and freedoms enshrined in the Joint Declaration are maintained.

We have studied the consultation document carefully. This is the most sensitive piece of legislation for Hong Kong since the handover and the consultation document sets out the issues in a comprehensive manner.

We welcome the fact that the SAR Government is conducting a consultation exercise. We note that many commentators and Legislative Council members have called for a "White Bill" to set out the detailed legislative proposals before the draft legislation is introduced into the Legislative Council. This is clearly a matter for the SAR Government but we hope that they will allow for some form of public consultation on the detailed legislation. A further crucial question is how the legislation, when passed, will be applied. This is something that we will follow closely.

We welcome the SAR Government's statement in the consultation document that it would, as a "guiding principle", need to meet fully the requirements of the Basic Law including Article 27 which guarantees certain fundamental rights and freedoms of Hong Kong residents (including freedom of speech), and Article 39 which stipulates, *inter alia*, that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as applied to Hong Kong, shall remain in force and shall be implemented through the laws of the HKSAR. Without seeing the precise wording of the proposed legislation, it is not possible to determine whether there is any conflict with the principles of the ICCPR and ICESCR.

We have noted the concerns that have emerged in Hong Kong during the consultation process about the proposals to ban organisations affiliated with Mainland organisations which have been proscribed in the Mainland on national security grounds, although we note that the Secretary for Security would have discretion not to follow suit. It is important that the integrity and independence of Hong Kong's legal

system, key factors in Hong Kong's success, are not compromised by the proposed legislation. We trust that the SAR Government will look very carefully at this particular issue when drafting legislation.

We have also noted the concerns raised about provisions relating to the media, including those about seditious publications. The free press is one of Hong Kong's distinctive strengths. Freedom of expression is provided for in the Joint Declaration. Any action which diminished press freedom or freedom of expression would not be in the best long-term interests of Hong Kong.

There have also been concerns expressed about other aspects of the proposals, including the extra-territorial effect of certain measures; the extension of police powers; definitions of key words and phrases and the breadth of some of the proposed offences. We trust that the SAR Government will also look closely at these, and other, concerns. We welcome indications that the SAR Government is willing in principle to be flexible on at least some of the areas of concern.

We believe that Hong Kong's main strengths include its adherence to the rule of law and its respect for human rights and fundamental freedoms - including the freedoms of association and expression. The Joint Declaration provides that the SAR Government shall protect these rights and freedoms. It is up to the SARG to ensure that any new legislation is compatible with them. Any legislation which undermined these principles would be seriously damaging to the SAR.

We shall continue to follow the debate closely.

18 November 2002