

BL 23 proposals comply with human rights guarantees

One of the guiding principles adopted by the Hong Kong Special Administrative Region (HKSAR) Government when formulating its proposals on implementing Article 23 of the Basic Law is that the proposals must comply with the human rights guarantees in the Basic Law, the Solicitor General, Mr Bob Allcock, said today (December 5).

Speaking at a seminar, Mr Allcock said that Article 39 of the Basic Law provides that the International Covenant on Civil and Political Rights (ICCPR) shall remain in force and shall be implemented through the laws of the Region.

It also provides that rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law.

Mr Allcock said that the proposals contained in the Consultation Document on proposals to implement Article 23 of the Basic Law did comply with these human rights obligations, adding that this view was endorsed by a leading human rights expert from the UK, Mr David Pannick QC.

Referring to suggestions that the proposals should also comply with the Johannesburg Principles, Mr Allcock said that the Administration had paid attention to these principles in developing its proposals.

"I would say that, broadly speaking, the Article 23 proposals comply with most of the Principles, " he said.

"However, in so far as they are more restrictive than the obligations contained in the Basic Law or the ICCPR, they are not legally binding on the HKSAR," Mr Allcock said.

He quoted a renowned human rights commentator, Ms Sandra Coliver, as saying that "some of the Principles undoubtedly are more protective of freedom of expression than widely accepted international norms".

Ms Coliver, who was a former Law Program Director of Article 19, an

international human rights group, added that the Principles reflected the drafters' view of the direction in which international law was, or should be, developing.

On compliance with the Principles, Mr Allcock said, "Principle 5 states that no one may be subjected to any sort of restraint, disadvantage or sanction because of his or her opinions or beliefs.

"That principle is fully respected by the proposals. Opinions or beliefs held on such sensitive subjects as the independence of Taiwan or the future governance of the People's Republic of China will be entirely unaffected by the proposed new laws.

"Principle 7 enumerates a list of protected expression which should not be considered a threat to national security, including expression that advocates non-violent change of government policy or of the government itself. The Article 23 proposals do not seek to prohibit any such forms of expression."

Mr Allcock however pointed out that Principle 6 appeared to be unnecessarily restrictive.

Principle 6 states that expression may be punished as a threat to national security only if a government can demonstrate that :

(1) the expression is intended to incite imminent violence;

(2) it is likely to incite such violence; and

(3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

"I would respectfully submit that there may be many situations where it would be consistent with international human rights standards, and also appropriate, to prohibit the incitement of non-violent acts.

"And where a person intentionally urges another to commit a crime of violence, is there any reason to distinguish between imminent violence and violence at a later date? The imminent violence test would seem to leave the state powerless to deal with such threats," he said.

In conclusion, Mr Allcock said that the Johannesburg Principles clearly provided a useful benchmark against which the proposals may be judged.

"I would nevertheless suggest that those Principles are not the only criteria we should be applying. Provided that the proposed new laws are consistent with the Basic Law and the ICCPR, in the final analysis it is for the people of Hong Kong, and their legislature, to decide where to strike the balance between the protection of national security and freedom of expression and freedom of information," he noted.

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