

叛國

一．政府的建議

下列罪名定為叛國罪，刑罰是終身監禁：

- 與外國人聯手發動戰爭，旨在—
 - (一) 推翻中華人民共和國政府；或
 - (二) 以武力或強制手段強迫中華人民共和國政府改變其政策或措施；或
 - (三) 向中華人民共和國政府施加武力或強制力；或
 - (四) 向其作出恐嚇或威嚇。
- 鼓動外國人入侵國家領土—“外國人”的定義為“受外國政府指揮和控制或並非以中華人民共和國為基地的武裝部隊。”
- 協助與中華人民共和國交戰或公開敵對狀態的公敵。
- 企圖干犯、串謀、協助和教唆、慫使和促使他人干犯實質叛國罪，刑罰同樣是終身監禁。
- “隱匿叛國”指知道別人犯了叛國罪而沒有在合理時間內把所知向適當當局披露，刑罰是監禁7年及不設限罰款。
- “發動戰爭”包括非暴力攻擊。
- 叛國罪適用於香港特區內任何人，及香港永久性居民在香港以外的行為。
- 取消在3年內必須檢控的限期。

二．建議引起的質疑

- 《基本法》23條立法應禁止叛國的行為。建議沒有界定哪些是禁止的行為，因此市民無法確定什麼時候犯了罪。
- “發動戰爭”並不是限制於中華人民共和國宣戰或外國向中國宣戰，更不必涉及軍裝武力。建議沒有指定任何方式。舉例說，聯同外國政府要求對中國封鎖貿易，或實行對中國貨物施加限額或關稅，是否已屬叛國？
- 犯罪意圖過於廣泛，意圖使中華人民共和國改變貿易政策或對公民、政治，經濟，社會及文化權利的政策，也涵括在內。
- 鼓動外國人入侵的罪名完全沒有必要：企圖、串謀、慫使和促使他人犯叛國罪也是叛國罪，而煽動他人叛國即屬煽動叛亂；煽動他人分裂國家本身是另一項罪名。
- 協助公敵罪，毋須證明當時知道中華人民共和國與該敵國是在於敵對狀態，而出於人道精神給予的濟助也可能屬於協助行為。

· 以不舉報別人而入罪可能亦經常用作壓逼手段，令無知、幼稚或信任別人的人陷入法網，很易濫用。將舉報叛國的責任加諸本來沒有這個責任的普通市民身上，原則上不能接受，特別是鑒於叛國罪的定義異常複雜難明。

· 香港永久性居民不少居住在海外並可能有雙重國籍，另外又有不少在香港居住而非中國公民，他們的特殊處境完全得不到考慮。

三．我們爭取

- 發表白紙草案，使公眾能確實知道哪些行為被建議成為罪行。
- 清楚界定“叛國”是作出某些狹義的涉及使用暴力的指定行為，例如參與外國軍事力量，或明知中華人民共和國與某國交戰而向該國供給軍火，意圖協助。戰爭應限於公開宣戰或宣布敵對狀態。協助敵國公民不應構成罪名。
- 廢除普通法的隱匿叛國罪，而不是單單廢除「有代價地不檢控叛逆罪」。
- 不應有其他叛國罪名。
- 清楚顯示訂明的刑罰是指最高而非必定判處的刑罰。
- 保留檢控限期。

資深大律師李志喜

《基本法》二十三條立法 為什麼你要關心？

- 二十三條之下訂立的法例約束你、我及在香港的每一個人而不是只影響某些人或團體。香港永久居民不拘國籍，在香港以外的行為也會受23條立法管制。涵蓋面這樣大的法例極不尋常。
- 二十三條立法不是普通刑事罪行，它帶有政治罪名的色彩，可以被利用為壓制異己、限制新聞自由、思想及研究發展自由，以及言論和信仰自由。敢言的人變成沉默，政府的透明度和問責性就會隨著消失。這些立法將對我們的文化和社會帶來深遠影響，因而影響我們每個人的生活方式。
- 二十三條立法毋須涉及發動戰爭或使用暴力，而是可能以言論、出版甚至作為被政府禁制的組織的成員而觸犯。對別人的叛國行為知情不報是犯罪。威脅使用武力或以定義含糊的「嚴重非法手段」，已可觸犯分裂國家及顛覆。管有可能煽動別人犯叛國、分裂國家或顛覆罪的刊物，已是犯了煽動叛亂罪。未經政府授權而損害性地披露「受保護資料」，就是竊取國家機密。
- 這些立法建議把內地的國家安全概念及法律帶入香港特區，約束特區法院。它們大大超出了23條的範圍，一旦在法庭上受到挑戰，勢必導致另一場人大釋法，動搖國際信心。

我們正努力阻止損害香港的立法。請以下的行動加入我們的隊伍。

- 發出這本小冊子內的回條；
- 直接寫信給特區政府表達你的意見和關注。

切勿延遲！諮詢期會在二〇〇二年十二月二十四日屆滿。

立法會議員吳靄儀

電子版小冊子，請瀏覽 <http://www.margaretng.com>

回條

致： 保安局
(保安局助理秘書長 F2)
中區政府合署東座6樓

傳真號碼： 2521 2848

電郵地址： bl23@sb.gov.hk

○ 我反對根據諮詢文件的建議就二十三條立法因為：

- 特區政府拒絕讓社會就條例的具體和詳細條文進行恰當和廣泛的諮詢。
- 諮詢文件的建議並不符合文件第一章所指有關落實《基本法》二十三條建議的指導原則，即法例內的所有罪行均適當地盡量清楚嚴謹訂明，以免生歧義。
- 諮詢文件的建議侵犯《基本法》所保障的基本權利和自由，而特區政府一直拒絕清楚交代一旦所建議的法例獲通過後，將有何特定措施防止對基本權利和自由的損害。

○ 我要求特區政府公佈白紙草案，以進行真正的公眾諮詢。

○ 其他意見： _____

[注意：請盡量揀選和填寫你認為正確的答案和意見]

姓名： _____

簽署： _____

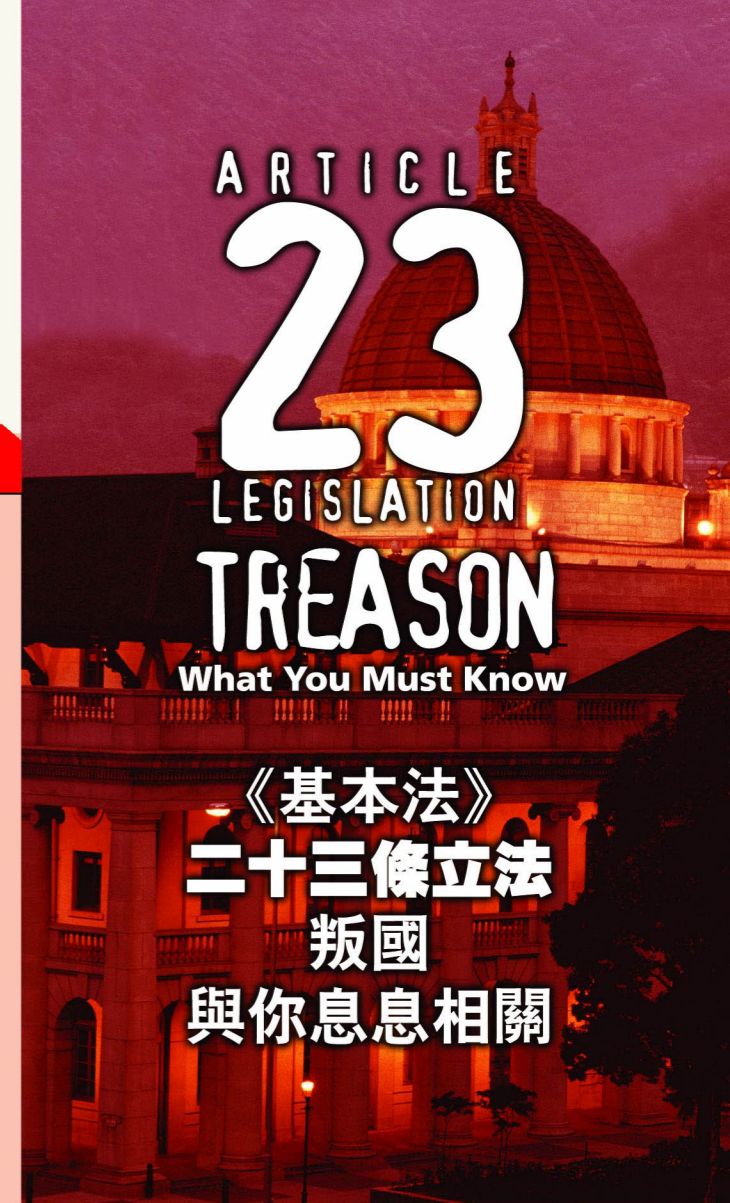
日期： _____

聯絡方法（可不填寫）： _____

如有查詢，請致電吳靄儀議員辦事處：

電話號碼： 2537 2725 / 2869 8317

傳真號碼： 2179 5190



《基本法》 二十三條立法 叛國 與你息息相關

By Gladys Li, S. C.
撰稿人：資深大律師李志喜

Other pamphlets in this series:
State Secret by Ronny Tong, S.C.; Proscription & the Role of Court by Audrey Eu, Q.C., S.C.;
Secession by Alan Leong, S.C.; Subversion by Professor Johannes Chan;
Sedition by Mark Daly; Comparison with Foreign Law by Professor Michael Davis

其他有關《基本法》二十三條的小冊子包括：
國家機密—資深大律師湯家驊撰稿；
禁制組織及法庭可以保障市民嗎？—資深大律師余若薇撰稿；
分裂國家—資深大律師梁家傑撰稿；顧禮—陳文敏教授撰稿；
煽動叛亂—Mark Daly 撰稿；與外國法律的比較—Michael Davis 教授撰稿

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Treason

I. WHAT THE GOVERNMENT PROPOSES

Treason is to be punishable by life imprisonment and defined as follows:

- levying war by joining forces with a foreigner with intent to:
 - overthrow the PRC Government (PRCG); or
 - compel the PRCG by force or constraint to change its policies or measures; or
 - put any force or constraint upon the PRCG; or
 - intimidate or overawe the PRCG.
- Instigating a foreigner to invade the territory of the State ("foreigner" is defined as "armed forces which are under the direction and control of a foreign government or which are not based in the PRC").
- Assisting a public enemy at war or engaged in open hostilities with the PRC.
- Attempting, conspiring, aiding and abetting, counseling and procuring commission of any of the substantive offences shall be punishable by life imprisonment.
- "Misprision of treason", which is the failure to report to the proper authorities within a reasonable time that another person has committed treason, shall be punishable by 7 years imprisonment and unlimited fine.
- "Levying war" will include non-violent attacks.
- The offences will apply to all persons who are voluntarily in the HKSAR and to all permanent residents outside HK for their actions outside Hong Kong.
- The time limit of 3 years within which a prosecution must be commenced is to be abolished.

II. WHAT IS WRONG?

- Article 23 legislation is to prohibit acts of treason; the proposals fail to define what are the prohibited acts, so that it is not possible to know with certainty when offences are committed.

"Levying war" is not confined to a situation where war is declared by or against the PRC and no use of military force need be involved. No means are specified. It is not clear, for instance, whether someone who joins with a foreign government to call for the imposition of a trade embargo or the imposition of a quota or tariff on goods made in the PRC will commit treason.

- The intents are sweeping. They would include an intent to make the PRCG alter its trade policies or its policies towards civil, political, economic, social and cultural rights.
- The offence of instigation of a foreigner to invade the country is totally unnecessary as attempting, conspiring, counseling or procuring the commission of treason will be treason and incitement of others to commit treason will constitute sedition and inciting secession will be a separate offence.
- There is no requirement for knowledge or intent in several of the offences.
- The offence of assisting public enemy at war can be committed without knowledge of the existence of hostilities between the PRC and the enemy State and any act of assistance including humanitarian aid can be caught.
- Offences of failing to report on other people are and can be used oppressively to criminalise the ignorant, the naive and the trusting. They are easily abused. It is wrong in principle to impose a duty to report treason on ordinary citizens which they would not otherwise have, particularly when treason is an ill-defined offence.
- No account is taken of the special circumstances of Hong Kong Permanent Residents who live overseas and may have dual nationality or who live in Hong Kong but who are not Chinese nationals.

III. WHAT WE FIGHT FOR

- Publish a White Bill so that the public may know with certainty what acts are proposed to be criminalised.
- Define "treason" as committing specific acts narrowly defined which involve use of violence such as joining a military force with a foreign State, or provision of weapons to the State knowing that the PRC is at war with that State and with the intent of assisting that enemy. War should be confined to publicly declared war or state of hostilities. Assistance to nationals of an enemy state should not constitute an offence.

- Abolition of common law offences of misprision of treason as well as compounding treason.
- No other offences of treason should exist.
- Make clear that the punishments are maxima and not mandatory.
- Retain the time limit for prosecutions.

Gladys Li, S.C.

ARTICLE 23 LEGISLATIVE PROPOSALS WHY YOU SHOULD CARE

- The law once passed, applies to everyone in Hong Kong and not just a few groups or individuals. It also applies to all Hong Kong permanent residents whether Chinese or non-Chinese nationals, for what they do outside Hong Kong. Few laws are of such wide application.
- Article 23 offences are not ordinary crimes - they can be political crimes. They can be used to silence opposition, restricting press freedom, ideas, research, freedom of speech and freedom of belief. If outspoken people are inhibited, the Government will become less transparent and accountable.
- Article 23 offences can be committed without war or acts of violence. It can be committed by speech, publication or membership of a proscribed group. Failure to inform on someone who committed treason is a crime. Secession and subversion can be committed by threat of force or "serious unlawful means" which is not clearly defined. Sedition can be committed by the possession of a publication which may incite someone to commit treason, secession or subversion. Theft of state secret includes the disclosure of "protected information" without government authority.
- The legislative proposals endanger "one country, two systems" by bringing into Hong Kong the Mainland's concept of national security and giving it force in our courts. The proposals exceed Article 23 but a challenge is almost certain to lead to another Interpretation by the Standing Committee of the NPC.

We are making an effort to prevent legislation which would harm Hong Kong.

Join us by:

- Filling in the Reply Slip in this pamphlet
- Writing directly to the Government to voice your views and concerns.

Act now! Consultation period ends on 24 December 2002.

Margaret Ng
Legislative Councillor

An electronic version can be found at <http://www.margareting.com>

REPLY SLIP

To: Security Bureau (AS (F)2, F Division)
6/F, East Wing, Central Government Offices, Central

Fax: 2521 2848
Email: b123@sb.gov.hk

I oppose the proposed legislation of Article 23 because:

The HKSAR Government has refused to allow proper and open debate on detail provisions of the legislation.

The current proposals do not meet the guiding principles set out in Chapter I of the Consultation Paper that the legislature has to be "clearly and tightly defined as appropriate, so as to avoid uncertainty".

The current proposals infringe on basic rights and freedoms guaranteed by the Basic Law and the HKSAR Government has refused to make clear what specific safeguards are available to prevent infringements once the proposals become law.

I demand the HKSAR Government to publish a White Bill to enable genuine public consultation to take place.

I have further comments: _____

[N.B. You are asked to endorse as many of the above statements as it appears to you to be right.]

Name: _____

Signature: _____

Date: _____

Contact particulars (Optional): _____

Should you have any queries, please contact Margaret Ng's Office:

Telephone No. 2537 2725/2869 8317
Fax No. 2179 5190