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Dear Director,

RESPONSE TO THE CONSULTATION DOCUMENT REGARDING THE IMPLEMENTATION OF ARTICLE 23

Amnesty International submits the following response to the consultation document regarding the implementation of Article 23 of Macao's Basic Law (draft bill) on national security. Our organization has several concerns regarding the draft bill's possible restrictions on fundamental human rights. The concerns fall into two main areas: the first on the consultation process and the second about the substance of the draft.

Amnesty International believes the issues surrounding the implementation of Article 23 of the Basic Law are very important in defining the future direction of fundamental freedoms and the concept of "One Country, Two Systems," which not only affects the Macau Special Administrative Region (Macao SAR), but also its neighbouring Hong Kong Special Administrative Region (Hong Kong SAR) whose government decided to take back its earlier proposal to legislate for the implementation of Article 23 of the Basic Law.

CONSULTATION PROCESS

Given the importance of the issues and the potential negative effects of the proposed legislation on some of the most fundamental human rights as set out in the International Covenant on Civil and Political Rights (ICCPR) as well as the potential harmful effects on freedoms, transparency and the potential repercussions therefore for the economic, social, and cultural rights and freedoms contained within the International Covenant on Economic, Social and Cultural Rights (ICESCR), Amnesty International has grave concerns that the period of a 40-day public consultation is not enough for the public to fully study and understand the potential consequences as well as for individuals and groups to respond to the draft bill.

SPECIFIC CONCERNS

Amnesty International is extremely concerned about the increased influence of China's vague and broad definitions of charges for crimes "endangering national security" and that these will be

applied in Macau. In China, the vaguely-worded national security, subversion and state secrets legal provisions have already criminalized and jailed many prisoners of conscience for peacefully exercising their right to freedom of expression and association.

Subversion

Amnesty International is concerned that under the proposed offence of subversion against the Central People's Government, there is no definition of "other serious unlawful means" when describing crimes other than "violence" in the first paragraph of Article 4 in the draft bill. There is also no definition on "attempting to overthrow the Central People's Government" as well as "forcing the Central People's Government to act or not act" in the same paragraph. Given the lack of clear definitions, Amnesty International is concerned that these terms can be opened to broad interpretations, could include non-violent demonstrations or strikes and could also be interpreted in a way to criminalize peaceful expression of opinion on issues the government considers sensitive.

Sedition

The term "public and direct incitement" in Article 5 is again not clearly defined in the draft bill. The lack of a definition of incitement can allow opportunities for harassment of individuals who exercise the right to freedom of expression and association and can also have a chilling effect on press freedom. The fact that there is no mention in the draft bill of an exemption for media workers who are performing their roles is problematic.

Theft of state secrets

Amnesty International is concerned that the provision on state secrets will introduce the extensive, vague, and retroactive state secrets system used in mainland China to the Macau SAR. In the draft bill, state secret includes "any classified documents, information and objects possessed by the central government" (Article 6, paragraph 4).

Amnesty International is aware of the vagueness and all encompassing nature of the term "state secrets" in China and the number of people who have been detained and even executed for allegedly revealing what are purported to be state secrets -- which include but not limited to revealing the health status of Chinese leaders, the passing on of published newspaper articles, news of demonstrations or statistics on the death penalty.

Preparatory acts

Article 9 of the draft bill stipulates punishment for the preparation of treason, secession, subversion against the Central People's Government, sedition, and theft of state secrets. As this provision allows punishment for acts that have not yet constituted crimes, Amnesty International believes that this particular article is unnecessary and should therefore be removed.

Recommendations:

- Amnesty International calls on the authorities to greatly increase the public consultation time period to allow the fullest possible discussion and study the proposed legislation as well as its consequences before the process moves to the legislative phase;
- Amnesty International urges the authorities to clearly define all critical terms, including but not limited to, those highlighted in this letter;
- Amnesty International calls for clear exemption for acts in which people peacefully exercise their right to freedoms of expression and association as well as other fundamental human rights;
- Amnesty International calls for the deletion of Article 9 of the draft bill which criminalizes the preparation of acts stipulated in articles 2, 3, 4, 5 and 6 in the draft bill.

Sincerely,

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Deputy Director
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