

**In light of trajectories of – China's policies towards Hong Kong, the Hong Kong Government's approach to governance, police powers in Hong Kong, and the rights situation in the territory – what might be the impact on civil society, the enjoyment of rights and liberties and accountable governance if the revised Bill is to be enacted? Have new concerns emerged – those that did not exist in 2003 given developments in the past decade?**

Amy: The political situation is currently highly charged in Hong Kong and in light of this it does not seem feasible to attempt to introduce the revised Bill at this stage. The forthcoming legislative elections are indicative of a political landscape that has changed significantly since 2003. Writing as recently as 2011 in his article 'Is National Security Legislation Necessary,' Bob Hu stated that there was no active independence movement within Hong Kong. In a relatively short period of time, Hong Kong has seen the emergence of localism and pro-independence movements. In the forthcoming legislative elections there are more political parties and candidates than in previous legislative elections signifying growing frustration and distrust with both pro-establishment and pan-democrat parties. Set against this backdrop, how can Article 23 be effectively legislated?

In the past thirteen years since Article 23 was first tabled, a series of high profile incidents have raised concerns regarding the potential erosion of 'One country, two systems' and the implications for the rights situation in the territory, particularly relating to freedom of the press and freedom of speech. Perhaps most significantly, the recent Causeway Bay Bookshop incident has raised concerns that China is already applying its own national security laws within the territory. During several crackdowns on the Mainland in recent years a number of human rights lawyers and activists have been disappeared. However the case of Lee Bo and his disappearance from Hong Kong, only to resurface in the Mainland and give a televised confession raise new concerns about China's enforcement of national security laws and the boundaries of freedom of expression within Hong Kong.

In considering about how Article 23 may be effectively legislated, it is important not to look at Hong Kong in isolation - we also have to consider the current social and political climate within Mainland China.

Globally, post 9/11 understandings of security have reverted to state-centred conceptions and individual states have taken steps to adopt national security legislation. In the Chinese context and in other authoritarian states,<sup>1</sup> this focus on state-centred national security has also led to the adoption of other laws and policies regulating civic space which has resulted in the shrinking of spaces for civil society. The adoption of a foreign NGO management law, which is due to come into force on 1 January 2017, states that:

'Overseas NGOs that conduct activities in China shall operate according to Chinese laws; not threaten China's security or national and ethnic unity; and not harm China's national

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<sup>1</sup> Other authoritarian states have adopted similar laws including Russia, which adopted a Foreign Agent Law in 2012 requiring NGOs to register with the Ministry of Justice as foreign agents if they are in receipt of foreign funding and engage in political activities. See Russia: Government against rights groups, *Human Rights Watch* (August 16, 2016) <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle> (Accessed 30 August 2016).

interests, societal public interests, and the legal rights of citizens, legal persons and other groups' (Article 5).<sup>2</sup> In January 2016 Peter Dahlin, a Swedish human rights activist working in China was disappeared and subsequently appeared in a televised confession before being deported from China.<sup>3</sup> What does the recent crackdown on civil society (including overseas organisations) mean for Hong Kong?

As recently as the beginning of August, it was reported in the SCMP that the Supreme People's Procuratorate, using its official Weibo account had suggested that Joshua Wong, a prominent Hong Kong youth leader, was a pro-independence advocate backed by the U.S.<sup>4</sup> It is evident that the CCP are deeply concerned about Hong Kong's potential use as a base for subversive activities.

The growth of pro-independence movements and formation of political parties on a pro-independence platform following the Umbrella movement in 2014 may serve as a pretext for both the central and local governments to implement Article 23 legislation without further delay. However, given the recent crackdown on civil society in China and incidents aforementioned within Hong Kong it is conceivable that the scope of Article 23 legislation proposed may be wider than previously tabled. It is important to safeguard the rights contained within the ICCPR. Explicit reference should be made to the ICCPR and Article 23 legislation's interpretation in line with the provisions of the ICCPR to try to prevent the erosion of civil liberties within Hong Kong.

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<sup>2</sup> English translation Foreign NGO Management Law available at <http://chinadevelopmentbrief.cn/articles/the-peoples-republic-of-chinas-law-on-the-management-of-the-activities-of-overseas-ngos-within-mainland-china/> (Accessed 30 August 2016).

<sup>3</sup> 'China releases Swedish rights activist Peter Dahlin,' BBC News (26 January 2016) <http://www.bbc.com/news/world-asia-china-35406911> (accessed 30 August 2016).

<sup>4</sup> 'The dark shadow of the Stars and Stripes': Beijing blasts Hong Kong activist Joshua Wong as a pro-independence advocate backed by the USA' South China Morning Post (2 August 2016) <http://www.scmp.com/news/hong-kong/politics/article/1998329/beijing-blasts-hong-kong-radical-joshua-wong-pro> (accessed 20 August 2016).