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HUMAN RIGHTS



**ECONOMIC, SOCIAL
& CULTURAL RIGHTS**



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AI GLOBAL CAMPAIGNS

AI SLOVAKIA

Anna Goodson is releasing a collection of over 40 images, calling them "Art Speaks Louder Than Words", about Russia's anti-gay propaganda law and violence. Goodson mobilized her international group of illustrators and put out an open call for artwork that showed solidarity with the Russian LGBT community.



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AI FINLAND

AI Finland activists demonstrated in central Helsinki on 12 January this year, the 12th anniversary of the opening of Guantánamo. Amnesty International is calling for all victims of US human rights violations – including current and former Guantánamo detainees – to have genuine access to meaningful remedy.



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AI JAPAN

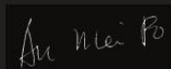
Hakamada Iwao is one of the most pressing death penalty cases in Japan and has been on death row since 1968. On 14 January, Hakamada's elder sister and the AI Japan Executive Director visited the Shizuoka District Prosecutor's office and submitted 41,327 signatures to ask for a retrial of Hakamada. The signatures were collected by AI Australia, AI UK, AI Netherlands, AI Germany and AI Japan. The Shizuoka District Court will decide whether the court should resume a retrial in this case by the end of March.



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WORDS FROM THE EDITOR-IN-CHIEF

Amnesty International Sections decided to strengthen its advocacy work on economic, social and cultural rights and highlighted forced evictions in the International Council Meeting in 2009. As a result, AIHK organized a human rights workshop on forced evictions last year. AIHK invited NGOs, concerned with forced evictions, from Taiwan, Malaysia, South Korea and Hong Kong and discussed how to apply international human rights standards on the right to adequate housing and ban on forced evictions in the context of developed societies so as to enrich our knowledge about ESC rights. We would like to share with you our knowledge about ESC rights in this feature.



IN FOCUS

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

OVERVIEW OF ECONOMIC, SOCIAL AND CULTURAL (ESC) RIGHTS

The International Bill of Human Rights consists of The Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights (ICCPR) and The International Covenant on Economic, Social and Cultural Rights (ICESCR) which are the foundation of international human rights law. UDHR was passed by The United Nations (UN) General Assembly in 1948 and serves as a checklist of universal human rights. ICCPR and ICESCR were passed by the UN in 1966 and serves as the international human rights standard for reviewing implementation in State Parties.

CONTENTS OF ESC RIGHTS

ICESCR stipulates the international human rights standards of ESC rights. The Covenant rights include equality and non-discrimination, which is the core principle of international human rights treaties, right to enjoyment of just and favourable conditions of work, right to social security, right to adequate standard of living, right to enjoyment of the highest attainable standard of physical and mental health, right to education and right to take part in cultural life etc.

CIVIL AND POLITICAL RIGHTS AND ESC RIGHTS ARE EQUALLY IMPORTANT

Due to differences of ideologies and cold war,¹ UN protects human rights by ICCPR and ICESCR respectively. However, human rights are universal, inalienable, indivisible, interdependent and inter-related. Civil and political rights carry the same importance as ESC rights.² It is stated in the ICESCR preamble that "The ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his ESC rights as well as his civil and political rights".

FOOTNOTES

¹ Ilias Bartelis, Lutz Oette (2013) *International human rights law and practice: "International human rights law and notions of human rights: foundations, achievements and challenges"*. Cambridge University Press. Page 23.

² *Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna, 25 June 1993*. Para 5.

³ UN ESC Committee. *General Comment No. 4: right to adequate housing*. 1991.

EXAMPLES SHOWING CIVIL AND POLITICAL RIGHTS AND ESC RIGHTS ARE INTERRELATED

Right to food + Democracy	Nobel laureate Amartya Sen opined substantial famines did not occur in democratic society because of accountability of democratic elected government and free press.
Right to adequate housing + Freedom of speech	The right to adequate housing does not only include shelter. It is integrally linked to respect for human dignity, subsistence, legal protection against forced eviction, expression of cultural identity, freedom of speech, assembly, information and participation in public policy. ³
Right to election + ESC rights	The UN ESCR Committee stated in its concluding observation of Hong Kong in 2011 that "while the ultimate aim is the election of all the members of the Legislative Council by universal suffrage (article 68, Basic Law), the Committee notes that the current arrangements for the election of the Legislative Council include some undemocratic features which impede the full enjoyment of economic, social and cultural rights in HK SAR". It also expressed concern that "The Public Order Ordinance may be used to restrict trade union activities, such as peaceful campaigns to promote labour rights".

REFERENCE

- ▶ Certified true copies of ICESCR in 1967 with different languages including Chinese. https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20PMCH_IV_D3.pdf
- ▶ *Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights*. Office of the UN High Commissioner for Human Rights, 1991.
- ▶ *Fact Sheet No.33, Frequently asked questions on Economic, Social and Cultural Rights*. Office of the UN High Commissioner for Human Rights, 2008.
- ▶ *Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights*. Edited by Yash Gai and Jill Cottrell. INTERIGHTS, 2004.
- ▶ Karen Kong. "Social Justice and Social Rights in Hong Kong: Recent Judicial Review Developments and Proposal for Legislative Change". *Socio-Economic Rights in Emerging Free Markets: Comparative Insights from India and China*, 2013. University of Hong Kong Faculty of Law Research Paper No. 2013/025

PRINCIPLE OF PROGRESSIVE REALIZATION

While ICCPR requires immediate obligation, ICESCR adopts progressive realization, which is stated in Article 2 that the State Parties "undertake to take steps", "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant". The UN Committee on Economic, Social and Cultural rights explained in General Comment No.3 that it recognized resource restraints and at the same time imposes obligation for State Parties to "move as expeditiously and effectively as possible" towards the full realization of ESC rights.

And for retrogressive measures, the ESCR Committee stated in General Comment No.3 that "any deliberately retrogressive measures would require the most careful considerations and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources". Justice Bokhary cited Sandra Liebenberg and Professor Karen Kong's views in his concurring judgment of the *Kong Yun Ming* case in Hong Kong that "claims involving a deprivation of basic needs should attract a high level of judicial scrutiny". Stricter test and "a heavier burden to justify potentially retrogressive measures" will be imposed on the government. (Para 180)

INTERNATIONAL MECHANISM PROTECTING ESC RIGHTS

As ICESCR stipulates the international human rights standard of ESC rights, the State parties are obliged to implement ICESCR. UN ESCR Committee is the treaty body responsible for monitoring the implementation of ICESCR through regular hearing, issuing concluding observations with lists of concerns and recommendations after hearing, issuing general comments which are authoritative interpretive instrument of the Covenant. Besides, the Optional Protocol to ICESCR entered into force in May 2013, which allows the ESCR Committee to receive and consider individual communications concerning State Party which has ratified the protocol.

ESC RIGHTS PROTECTION IN HK

ICESCR has been applicable in Hong Kong since 1976. After the 1997 handover, ICESCR was applicable in Hong Kong as stated in Article 39 of the Basic Law. The Hong Kong government is obliged to regularly hand in reports and attend UN hearings.

Chapter 3 of the Basic Law stipulates fundamental rights of Hong Kong residents including ESC rights like freedom to choose occupation, freedom to engage in academic research, literary and artistic creation, right to social welfare, freedom of marriage and right to raise a family etc. It shows that ESC rights are constitutional rights. If such rights are infringed, citizens may seek justice through judicial proceedings by relying on Basic Law and the International Covenants.

ROLE OF COURT IN PROTECTING ESC RIGHTS

The Court of Final Appeal stated in the recent main judgment of the *Kong Yun Ming* case that "the Court has a duty to intervene only where the impugned measure is manifestly without reasonable foundation" (Para 41). Justice Bokhary cited Professor Yash Gai and Professor Johannes Chan in the concurring judgment that "in countries with an established tradition of constitutionalism, the rule of law is acceptable because economic and social rights are woven into the fabric of public law" (Para 167). He also cited John Humphrey that "human rights without social and economic rights have little meaning for most people" (Para 167). He stated that the right to social welfare is a constitutional right in Hong Kong and "socio-economic ones no less than other ones, rest with the courts". While the "courts are not ideally equipped to undertake resource allocation", they "cannot decline to intervene if the legislative (or administrative) scheme in question fails to accord people the basic necessities to which they are constitutionally entitled" (Para 147).

BACKGROUND: WHAT IS THE KONG YUN MING CASE ABOUT?

Rights: Constitutional right to social welfare
Judgment: *Kong Yun Ming v The Director of Social Welfare*, FACV 2/2013, 17/12/2013

Summary:

1. Article 36 of the Basic Law protects "a right to the social welfare benefits under the CSSA Scheme as it stood on 1 July 1997 (with a qualifying condition of one year's residence)". The government has power to modify the social welfare benefits according to Article 145 but subjects to proportionality test and cannot be "manifestly without reasonable foundation".
2. The Court of Final Appeal ruled that the 7-year residence requirement was unconstitutional. It "was not rationally connected to the declared aim of ensuring sustainability of the social security system, or was a measure which was manifestly without reasonable foundation". For instance, it "conflicted with the one way family union policy" and "population policy aimed at rejuvenating the ageing populations". Only insignificant savings were achieved after introducing the requirement. (Press Summary Para 3-4)



Brother Wah

INTERVIEW

BROTHER WAH AND UNCLE PING FROM KWU TUNG VILLAGE

In Hong Kong, residents living in rural and urban areas are subjected to land resumption and forced eviction for the purpose of development. In 2017, the government will start the North East New Territories Development Project, which means residents living in non-indigenous villages in Fanling North and Kwu Tung North will be forced to leave their homes. Their right to adequate housing will be infringed.

Q: Amnesty International Hong Kong
A: Brother Wah from Kwu Tung Village

Q: WOULD YOU SHARE WITH US THE HISTORY OF KWU TUNG?

A: There were hundreds of Guang Dong people living in Kwu Tung in the Song dynasty and may deem as miniature of Kwu Tung Village. Kwu Tung Village has existed for more than a hundred years. However, Kwu Tung Village was not recognized as indigenous village by the Colonial government. This may be due to the late submission of required documents at that time.

Q: WHAT IS THE SIZE AND POPULATION OF KWU TUNG VILLAGE?

A: Kwu Tung village was once the biggest village. The land of Kwu Tung South is now high-end house. The size of Kwu Tung North is around 400 hectares. There are more than 20 small areas in the village though some of them have been abandoned. There were more than 50,000 villagers in the heyday of Kwu Tung Village (1970-80s) while there are 8,000 villagers now. Many of us are from Hakka and Chiu Chow with different surnames. We speak Cantonese. Traditionally we worship Kwun Yum (Goddess of Mercy). In the heyday of Kwu Tung Village, we had large scale activities to celebrate Kwun Yum's birthday such as having a bamboo theatre for Cantonese and Chiu Chow opera and Pun Choi (big bowl) banquet. Sun Ma See Tsang, the famous Cantonese opera singer, was invited to perform for us. But now the scale is reduced to Pun Choi banquet.

Q: WHAT WAS THE KWU TUNG COMMUNITY LIKE?

A: We had crops, livestock, a school, a clinic and a bazaar and were a self-sufficient community. In the early days many of the villagers farmed for a living. We had more than 50 kinds of vegetables, rice, wheat and grain. Villagers went to Tsuen Wan or Hong Kok on foot or by bicycle to sell vegetables. After the establishment of Kwu Tung Vegetable marketing and credit co-operative society in 1960s, the society delivered villager's crops to Cheung Sha Wan market to sell till now. Many of the "New Territories vegetables" stated in the menu of "Cha Chan Teng" (tea restaurant) were from Kwu Tung before. In 1980s, there were lots of factories in Kwu Tung including those making sauces and leather etc. Many villagers worked in factories nearby.

The circular road (Castle Peak Road - Kwu Tung) was once a bazaar with approximately 200 shops selling pork and vegetables, groceries, stores, herbal medicine etc and 4 restaurants. Only one tenth of the shops are present now and all of them have been moved to the new market. There was a school changing from "Oi Wah Private School" in 1950s to "Ku Tung Public Oi Wah School" in 1960s where the land was purchased by the villagers and the school was constructed with a government subsidy. However the school was shut down in 2007 because of short-falls in number of students. Kam Yick restaurant is the only restaurant which is still in the same location. It has been the space for villagers' gathering for about 50 years.

There were training grounds, fields for firing and grenade nearby. Kwu Tung is also the place for martial arts film or TV drama shooting in 1970s-80s.

Q: HOW DOES THE NORTH EAST NEW TERRITORIES DEVELOPMENT PROJECT AFFECT THE VILLAGERS?
WHEN DID YOU KNOW ABOUT THE DEVELOPMENT PROJECT?

A: The government planned to build a "smokeless environmental city" in Kwu Tung in 1990s. After the 1997 handover, the government changed its idea to "city of university" but it was halted because of financial crisis and SARS. The property developers have been reserving land in Kwu Tung. In 2005, the government built Kwu Tung station of Lok Ma Chau Spur Line for development. The current North East New Territories Development Project is highly confidential and we only know we are forced to move at last stage. The government only tells us about the project in general such as eligible persons may get either ex-gratia compensation or in-situ re-housing of public housing. But it does not tell us the details such as the definition of in-situ, arrangement for waiting period etc. It does not address our needs.

Q: WHAT ARE THE WORRIES OF VILLAGERS FOR THE FUTURE?

A: We are anxious about losing our homes, social network, tremendous change of mode of life, hard to adapt the fast pace of life outside the village particularly for the elderly villagers. For instance, a 90-year-old villager has been living in Kwu Tung for most of her life. She still farms every day and it supports her living. If land resumption is carried out under the Development Project, she will lose her farmland, subsistence mode and spiritual sustenance. She cannot stay in her familiar home for her whole life. Her family will be very worried of her. Besides, we are also worried about the cats and dogs in our village.

Uncle Ping: I am an old man. I moved to a public housing estate because of land resumptions in Kwu Tung. However, I could hardly adapt to my new urban life in public housing compared to village life. It was relatively noisy and light. I could not fall asleep. Finally I moved back to village by staying in the abandoned house of other villagers. Before land resumption, I used to drink tea with my elderly friends. They moved to public housing because of land resumptions for building circular road too. Many of them committed suicide or passed away within 3 years. They could not adapt to such a big change from rural life to unfamiliar city life and became very stressed.

Q: WHAT ARE THE DEMANDS OF KWU TUNG VILLAGERS?

A: (1) We insist "No moving, no demolition". It is the result of two referendums by villagers. (2) The government plans to carry out land resumption in 2017. The Lands Department has begun freezing surveys recently. Apart from jumping steps by the government while the project has not been passed by Town Planning Board, we are very discontented that the government did not notify us about the start of freezing surveys.

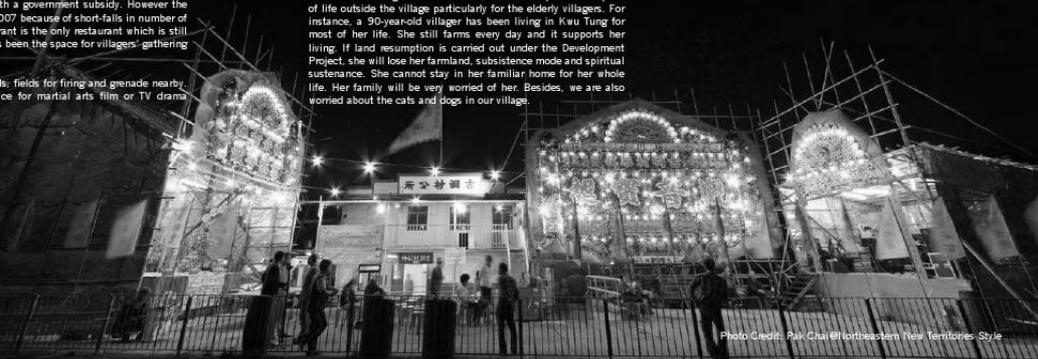


Photo Credit: Pak Chai @Northeastern New Territories Style

IMPACT OF CSSA 7-YEAR RESIDENCE REQUIREMENT ON NEWLY ARRIVED WOMEN FROM THE MAINLAND



YEUNG MEI
Organizer,
the New Arrival Women League

Mon Ching (anonym), a Mainland woman, fell in love and raised a family with a Hong Kong man. Years later she resided in Hong Kong with a one-way permit with their baby son. She discovered her husband was bankrupt and homeless. Her husband said he could not take care of her and their child and suggested she seek help from the government.

Mon Ching became homeless. She could not stay in a shelter because she was not a domestic violence victim. Every time she asked the social workers for help, she was scolded and told to go back to the Mainland with her son. She said she felt very stressed and cried a lot as she was very unfamiliar with Hong Kong and was always being blamed though she was in need. She said her son was born in Hong Kong and did not have household registration in the Mainland, which made it very difficult for him to have access to education in the Mainland.

As she did not meet the CSSA 7-year residence requirement, she was not able to get CSSA financial aid even though she was in great financial difficulty and could not sustain her basic needs. She instead lived on CSSA for her Hong Kong-born child to pay the rent and tuition fees. She went to a food bank for food assistance or collected rotten vegetables in a wet market.

Later with help from the New Arrival Women League (Tonggen), she was granted CSSA discretion if she worked 120 hours per month and obtained a certification letter showing continuous work from her employer. But she had to take care of her young child and found difficulty in fulfilling this requirement. She worked for 3 hours a day in a tea restaurant when her child was at school during weekdays. Sometimes she might apply for leave if her child had

school holidays during weekdays. Employers did not welcome such short working hours and she had to change jobs a few times.

Yeung Mei, the Organizer of the New Arrival Women League, said the CSSA 7-year residence requirement created hardship for newly arrived women who could not sustain their basic needs. She opined that the discretion did not have clear standards and it had a high threshold. For some cross-border families, Hong Kong husbands did not work because of sickness, unemployment and being disabled while the newly arrived women did not work because they needed to take care of the husband or young children. Some newly arrived women were victims of domestic violence, but they did not have access to information and did not know they could apply for discretion.

POSTSCRIPT

CSSA 7-year residence requirement unduly affected the newly arrived women. In a 2004 Tin Shui Wei family murder case, domestic violence victim Kam Shuk Ying and her twin daughters were killed by her husband. When Kam resided in Hong Kong with a one-way permit for family union, her husband was unemployed and asked the social worker to increase CSSA. However, CSSA was reduced as her husband lost the eligibility of single parent financial aid and Kam did not fulfill the 7-year residence requirement. Quarrels among the couple increased in their poverty-stricken life. Kam was beaten by her husband several times. The 7-year residence requirement led to a family crisis.¹

¹ Cheng Yiu Kwong, "Struggle to survive but failure to escape from death: Death Inquiry into Tin Shui Wei Family Tragedy", *Five years after Tin Shui Wei Domestic Violence Tragedy: turn grief into power*. Association for the Survivor of Women Abuse (K was Fook), 2010. Page 90-99. (Chinese)

TIMELINE



INTERVIEW

JUSTICIABILITY OF ESC RIGHTS



KAREN KONG

ASSOCIATE PROFESSOR
FACULTY OF LAW,
THE UNIVERSITY OF HONG KONGQ: Amnesty International Hong Kong
A: Karen Kong

Q: Will ESC rights protection including the right to social welfare turn society into welfare society?

A: ESC rights protection is different from welfare society. For example, the aim of social welfare is to satisfy basic needs for dignified life. The government has a fundamental obligation to offer money or material assistance to the needy to fulfill basic needs at times of disability, being elderly, being unable to work and natural disasters etc. Besides, ICESCR is applicable in different political and economic systems.

Q: In what ways ESC rights are protected by constitution and court?

A: ESC rights are constitutionally guaranteed as fundamental rights. In some countries, such as India, they are non-enforceable directive principles of state policies. Usually the new constitutions offer more protection of ESC rights, while the old constitutions will read into existing civil and political rights and offer indirect protection for ESC rights. For instance, right to life is adopted in India's right to food campaign; right to health is protected through equality right in the case in Canada of *Eldridge v. British*

Columbia (Attorney General), which concerned the provision of interpreter service for those hearing impaired at public hospitals; right to contributory social welfare is read into property right in the European Court of Human Rights.

Q: What are the main challenges for the court in protecting ESC rights?

A: (1) The court's attitude towards reviewing policy decisions of government in light of separation of powers principle. (2) The expertise of the court in dealing with social science evidence. (3) It also depends on the court's understanding of ESC rights. Some judges view ESC rights as positive rights and lesser than negative rights like liberty. They have less experience in dealing with it.

Q: Are there any good practices?

A: Good practices should be kept in line with international human rights development and standards including general comments issued by ESCR Committee. The optional protocol of ICESCR is now in force, so there is no doubt about enforceability of ESC rights.

Q: Do you have any comments on the approach of justifiability of ESC rights in Hong Kong courts?

A: (1) In the past, the court took a very conservative attitude like regarding ESC rights as aspirational and promotional. In the early stages, judges were reluctant to decide issues concerning policies. They applied a great degree of deference to the government.
(2) There had been a stage where judges used equality rights enshrined by Article 25 of the Basic Law to indirectly guarantee ESC rights. But they applied high degree of deference when government socio-economic policies were involved. The court also used administrative law procedural safeguards including legitimate expectation, reasonableness, procedural fairness, breach of statutory rules to indirectly protect ESC rights.
(3) The *Kong Yun Ming* case is the first case where the court directly uses ESC rights and adopts proportionality approach in reviewing and giving effect to ESC rights.
(4) So there have been major developments of ESC rights protection in Hong Kong courts over the years.

IMPLICATION OF KONG YUN MING CASE REGARDING ESC RIGHTS PROTECTION

Q: While the court expressed reluctance to adjudicate government socio-economic policies in the *Fok Chun Wah* case, why was there a change of attitude in the *Kong Yun Ming* case?

A: The court's approach was more hands-on and proactive in the *Kong Yun Ming* case compared to the past. It is more willing to review the justifications and evidence provided by the government. It requires the government to have strong reasons to justify retrogressive measures. For instance, it will scrutinize the figures provided by the government on expenditure on CSSA on new Mainland immigrants. This is unlike in the past where the court gave a high degree of deference to the government. Although the court still gives sufficient respect to the government, it will intervene only when the government policy is manifestly without reasonable foundation.

Q: How important is Justice Bokhary's judgment as he is the only judge adopting ICESCR in the *Kong Yun Ming* case?

A: Justice Bokhary's judgment is obiter. He also mentioned that he could decide the case without referring to ICESCR. However, his judgment still serves a very important function and has great significance. He recognized the content of ICESCR and the ESCR Committee's general comments including progressive realization of ESC rights and assumption against retrogressive measures. He referred to the ESCR Committee's general comments and concluding observations on Hong Kong, thus recognized the status of ICESCR in influencing domestic decision making in court.

GLOSSARY

General Comment: The UN treaty body provides authoritative explanations on Covenant rights or State Party's obligations through general comment.

Optional protocol: It is optional to State Party for ratification. It "complements and adds to an existing human rights treaty" including procedural mechanism such as individual complaint system and substantial issue which have not been addressed in current Covenants. (ESCR-Net, "Section 2: Improving Supervision of the ICESCR: an optional Protocol", <http://www.escr-net.org/docs/1425247>)

Positive & Negative Rights: Positive rights usually involve resources and actions needed to fulfill the rights while negative rights usually require the parties not to interfere or act against the rights.

Q: The Hong Kong court once opened ICESCR as aspirational and promotional. Does the *Kong Yun Ming* case have any implications about that?

A: Obviously ESC rights are now treated as enforceable in Hong Kong courts. In this case the court made its decision based on Article 36 of the Basic Law and did not address this issue. But it only waits for a chance for the court to formally overrule that position when there is a direct point at issue before the court.

Q: Do you have any comments on the opinion that the *Kong Yun Ming* case will serve as precedent which may affect the restriction of social welfare on non-permanent residents including public housing or may impose a long term impact on Hong Kong finance like *Director of Immigration v. Chong Fung Yuen*?

A: (1) The court will look at factors like availability of resources and the socio-economic condition at the time. The *Kong Yun Ming* case does not mean all social welfare has to be equalized between Hong Kong permanent residents and Hong Kong non-permanent residents. But the government needs to have good justification when restricting welfare to Hong Kong permanent residents, particularly when it involves a retrogressive measure. The government will need to formulate a more coherent and comprehensive policy and take into account the human rights implications of the policy decisions.
(2) Moreover, the definition of social welfare is not clearly defined in the Basic Law. In the *Kong Yun Ming* case, CSSA was regarded as welfare as it involved basic needs. It depends on the court whether public housing falls within the meaning of welfare, or some other rights like the right to adequate housing, which may be subject to different treatment as it is not an expressed right under the Basic Law. The nature of CSSA and public housing are different, as the former involves direct money subsidy while the latter one involves land supply. Furthermore, the residence requirement of public housing was 7 years before 1997. It does not involve any retrogressive measures as in CSSA.

Q: Would you share with us your prospects of ESC rights protection in Hong Kong?

A: My initial thought is the adoption of social impact assessment whenever the government formulates and implements social policy. For instance, before the government determined to extend the residency requirement from 1 to 7 years for CSSA, it should study whether the policy is proportional, discriminates, has an impact on disadvantaged groups and if there are any alternative measures and if it they are the least intrusive measure. Besides, the government should make more effort in promoting ESC rights and public education.

GOOD NEWS

USA

KIMBERLY RIVERA RELEASED FROM PRISON

Kimberly Rivera was granted early release from her 10 month prison sentence on 12 December, 18 days after giving birth to her fifth child. Kimberly Rivera was arrested and detained by US military authorities in September 2012 for desertion from the army. She had left the army without authorization while on leave from deployment to Iraq in early 2007 after deciding that given her moral convictions she could no longer participate in the war in Iraq or any other conflict.



RUSSIA

PUSSY RIOT MEMBERS FREED

Maria Alekhina and Nadezhda Tolokonnikova, members of the Russian band Pussy Riot, were released from imprisonment before Christmas 2013. The release is 3 months ahead of their official sentence. We thank all of our supporters who have backed their peaceful means of expression in the past two years.

BANGLADESH

NO TORTURE RISK FOR NEWSPAPER EDITOR MAHMUDUR RAHMAN

After having been transferred from jail to Tajgon police station in the capital, Dhaka, on 4 December, Mahmudur Rahman was produced before a magistrate and sent back to jail on 8 December. He is not currently at risk of torture.

UKRAINE

DETAINED PROTESTERS RELEASED ON BAIL

6 of the 9 street protesters unfairly detained in Ukraine have been released under bail conditions or house arrest. Yuriy Bolotov and Vladyslav Zagorovko, who confessed to participation in mass disorder, have been fined 75 Euros and released. Yaroslav Prytulenko remains in detention.

LOCAL HAPPENINGS

THIS IS YOUR PAGE: CHONG CHAN YAU

WHY DO YOU SUPPORT AMNESTY INTERNATIONAL?

The international human rights campaigns Amnesty International conduct reach places where human rights of various issues are being neglected. Their individual voice goes beyond all barriers, be it race or any other background. Hence, whenever there is a case of human rights violation, Amnesty International will represent anyone who cannot speak up for themselves and this is why I support Amnesty International.

WHAT DO YOU THINK THE CANDLE THAT REPRESENTS AMNESTY INTERNATIONAL STANDS FOR?

The candle represents light, a symbol for justice, and should be visible to all people because justice is for all people. Yet, the barbed wire represents how human rights are suppressed in many places and requires light to fight the injustice.



CHONG CHAN YAU
President of the Hong Kong Blind Union

HOW WOULD YOU PERSUADE YOUR FRIENDS TO BECOME PART OF OUR HUMAN RIGHTS MOVEMENTS?

I haven't intentionally persuaded my friends to become part of the movement as I believe it is more important to understand the value of human rights itself and we need to uphold our rights by practicing it. Here in Hong Kong, we are in a better position than many places, say the Mainland, and if we don't understand and treasure our human rights, we may lose this important value.

IF YOU WERE GRANTED THE POWER TO WISH AWAY ONE HUMAN RIGHTS ISSUE, WHAT WOULD THAT BE?

Human rights is not something that can be dealt with individually, it is an entire concept that is indivisible from one item to the other. Although the Universal Declaration of Human Rights of the United Nations categorizes human rights into many aspects, it is in fact a single concept that is inter-related with one another. Therefore we must protect our freedom of expression so that we can continue to speak up for human rights.



AMNESTY INTERNATIONAL HONG KONG CHARITY PREMIERE

MANDELA: LONG WALK TO FREEDOM

Singer Mr. Anthony Wong, President of the Hong Kong Blind Union Mr. Chong Chan Yau, Director of Centre for Civil Society Studies of the Chinese University of Hong Kong Professor Chan Kin Man, and Campaign Officer of Hong Kong Unison Ms. Annie Li attended the opening ceremony by joining a toast to a discrimination free world. Apart from our guests and supporters, university students, youths from ethnic minorities, refugees, disabled groups and migrant domestic helpers have also been invited to take part in the premiere. We hope the long walk to freedom of Nelson Mandela can inspire their lives and to motivate them to fight for equality in future.

Mandela stood together with the people in his non-military struggle and never forgot his followers. Although youths at that time chose other means to fight against the system, Mandela attempted to guide them patiently. Eventually, he successfully abolished the apartheid policy in South Africa in 1994 and built a peaceful and harmonious nation. Amnesty International hopes that Mandela's perseverance in fighting for equality can inspire youths to devote themselves to building a equal society and to believe that the power of individuals can make a difference in the world.

Although anti-discrimination laws have been established in Hong Kong, there are still cases of discrimination and human rights violations in our society. However, if we persist in fighting against inequality, the current situation will be improved, to demonstrate what Mandela said: "It always seems impossible until it's done".

CITIES FOR LIFE - FOR A WORLD WITHOUT THE DEATH PENALTY

30 November is "Cities for Life" World Day. It started at 1pm in East Point Road, Causeway Bay. AIHK joins over 1,625 cities around the world celebrating abolition of the death penalty and campaigning for a worldwide end to state killing.

HIGHLIGHTS OF THE DAY
 Installation: "Last Words in the Dark"
 Exhibition and signature collecting on Xia Junfeng & Cheng Hsing Tse
 Guest Speakers: "From the Queen to the Chief Executive" - Director Herman Yau, Lawmaker Leung Yiu-Chung, Kong King Chu
 Performance & Sharing by ex-death row inmate Mandy

Co-organisers: Amnesty International Hong Kong, The Community of Sant'Egidio, Joint Committee for the Abolition of the Death Penalty and The Justice and Peace Commission of the Hong Kong Catholic Diocese.



Left: former death row inmate Mandy

MY BODY, MY RIGHTS VOLUNTEER RECRUITMENT



In Burkina Faso, women can be refused contraceptives at health clinics unless they are accompanied by their husbands. In Morocco, girls can be forced to marry their rapists to preserve family honour and "protect" the attacker from prosecution. Over 150,000 women travelled to the UK from Ireland for a termination between 1980 and 2012 because abortion there is illegal unless the woman's life is at serious risk. And in many countries, loving someone of the same gender – or simply dressing outside the social norm – is enough to land you in jail.

Through My Body, My Rights (MBMR) campaign, we break the silence. If you are interested in defending sexual and reproductive rights, stand up and join us. We will expose states that violate these rights and demand change.

MBMR Group will bring you: training on sexual and reproductive rights, empowerment, and campaign opportunities. You will get into global issues of sexuality, sex/gender, sexual rights as human rights.

Registration: volunteer@amnesty.org.hk

Open to all gender and sexual orientations. Campaign experience not required. All volunteers must be Amnesty International HK members. You will be asked to register later. Membership fee: \$20 (full-time student), \$100 (individual).

停止強迫遷拆 STOP FORCED EVICTIONS

圖片：龍@新界東北style
Photo: Lung@Northeastern New Territories Style



人物專訪

香港大學法律學院助理教授江嘉恩



圖：香港大學法律學院助理教授江嘉恩

保障經濟、社會及文化權利（下稱經社文權利），例如社會福利，會否變成福利主義？

江嘉恩：福利主義的討論，在國際法中討論得最多。福利主義的討論，是關於福利的分配，以及福利的分配是否公平。福利主義的討論，是關於福利的分配，以及福利的分配是否公平。福利主義的討論，是關於福利的分配，以及福利的分配是否公平。

法院如何保障經社文權利？有何難處？

江嘉恩：法院保障經社文權利，是通過對政府的行為進行審查。法院可以對政府的行為進行審查，並對政府的行為進行判決。法院可以對政府的行為進行審查，並對政府的行為進行判決。法院可以對政府的行為進行審查，並對政府的行為進行判決。

法院保障經社文權利時有何困難？

江嘉恩：法院保障經社文權利時，面臨著許多困難。法院需要對政府的行為進行審查，並對政府的行為進行判決。法院需要對政府的行為進行審查，並對政府的行為進行判決。法院需要對政府的行為進行審查，並對政府的行為進行判決。

有沒有良好做法可供參考？

江嘉恩：在國際法中，有許多良好做法可供參考。例如，一些國家通過立法來保障經社文權利。一些國家通過立法來保障經社文權利。一些國家通過立法來保障經社文權利。

你對香港法院保障經社文權利的態度有何評價？

江嘉恩：香港法院在保障經社文權利方面，表現出了積極的態度。香港法院在保障經社文權利方面，表現出了積極的態度。香港法院在保障經社文權利方面，表現出了積極的態度。

孔允明案對經社文權利保障的啟示

江嘉恩：孔允明案對經社文權利保障的啟示，是法院在保障經社文權利方面，應該採取更積極的態度。法院在保障經社文權利方面，應該採取更積極的態度。法院在保障經社文權利方面，應該採取更積極的態度。

孔允明案則不然，為何會有如此轉變？

江嘉恩：孔允明案則不然，是因為政府採取了更積極的政策。政府採取了更積極的政策。政府採取了更積極的政策。政府採取了更積極的政策。

在孔允明案，包致金法官是唯一引用經社文權利公約的法官。其判決的重要性為何？

江嘉恩：包致金法官的判決，是香港法院在保障經社文權利方面，第一次引用經社文權利公約。包致金法官的判決，是香港法院在保障經社文權利方面，第一次引用經社文權利公約。

香港法院曾指經社文權利公約屬「推廣」及「啟發」性質。

江嘉恩：香港法院曾指經社文權利公約屬「推廣」及「啟發」性質。香港法院曾指經社文權利公約屬「推廣」及「啟發」性質。香港法院曾指經社文權利公約屬「推廣」及「啟發」性質。

孔允明案有否改變經社文權利公約的性質？

江嘉恩：孔允明案有否改變經社文權利公約的性質，這是一個值得討論的問題。孔允明案有否改變經社文權利公約的性質，這是一個值得討論的問題。孔允明案有否改變經社文權利公約的性質，這是一個值得討論的問題。

有評論指，孔允明案將成先例，影響其他對非永久居民社會福利的限制，如公屋，或如狂醫案家長影響香港財政。你有何評論？

江嘉恩：孔允明案將成先例，影響其他對非永久居民社會福利的限制。孔允明案將成先例，影響其他對非永久居民社會福利的限制。孔允明案將成先例，影響其他對非永久居民社會福利的限制。

你對香港保障經社文權利有何展望？

江嘉恩：我對香港保障經社文權利充滿信心。我對香港保障經社文權利充滿信心。我對香港保障經社文權利充滿信心。

照片：Jimmy Wan

esc 香港爭取經濟、社會與文化權利案件一覽

- 2001**
權利：性別平等
議題：中學學位分配機制男女分開派位
案件：平等機會委員會訴教育署署長
HCAL 1555/2000 · 22/6/2001
- 2001**
二〇〇一年五月，聯合國經濟、社會及文化權利委員會審議香港實施《公約》的情況。在審議結論就香港法院指公約屬「推廣」及「啟導」性質表示遺憾，並提醒公約對締約國構成法律責任。
- 2005**
二〇〇五年五月，聯合國經社文權利委員會審議香港實施《公約》情況，並公佈審議結論。
- 2005**
權利：適足住屋權(第十一條)
議題：公屋租金調整
案件：何貴慶對香港房屋委員會
FACV 1/2005 · 21/11/2005
人權含義：包致金法官在異議判決提到引用《公約》第十一條協助解釋《房屋條例》。
- 2007**
權利：健康權利(第十二條)
議題：空氣污染政策
案件：Clean Air Foundation v The government of HKSAR
HCAL 35/2007 · 26/7/2007
- 2009**
權利：平等權
議題：港人持雙程證內地妻子不滿來港產子服務收費比本地孕婦高
案件：霍春華訴醫院管理局
FACV 10/2011 · 2/4/2012
- 2009**
權利：教育權(第十三條)、平等權
議題：智障學童十八歲離校規定
案件：唐偉庭訴教育局局長
HCAL 73/2009 · 24/8/2009
- 2011**
權利：工作權(第六條)
議題：難民及酷刑聲請人無法在港工作
案件：MA 訴入境事務處處長，CACV 44/2011 · 6/1/2011
人權含義：法院認為無論《公約》是否在本港有效，由於有保留條文，公約第六條工作權並不適用，入境處決策時毋須考慮公約。然而，法院裁定入境處未有運用酌情權及考慮申請人所有情況並不合理，剝奪國際人權公約保障的工作權。
- 2013**
權利：社會福利(第九條)
議題：綜援七年居港規定是否違憲
案件：孔允明訴社會福利署署長
FACV 2/2013 · 17/12/2013
人權含義：包致金法官在同意判決引用《公約》、《一般性意見》及審議結論。
- 2014**
聯合國經社文權利委員會將於二〇一四年五月審議香港實施《公約》的情況。

綜援七年居港規定對新移民婦女的影响

關於中國大陸的經濟(古)與「白富貴」土相連，這也發生在土。後來她產後發現原來才發現丈夫已移居。雖然居港，丈夫未獲准回港居住，但政府對其申請回港的決定，她感到不滿。她認為政府不應將她列入「居港中心」。

她認為，她作為新移民，在申請回港時，政府不應將她列入「居港中心」。她認為，她作為新移民，在申請回港時，政府不應將她列入「居港中心」。

同地社組織辦事處表示，以綜援七年居港規定對未能維持基本生活的新移民婦女造成困難，而對情懷脆弱、生活無依、經濟困難、部分香港家庭的丈夫失業、失業或海外工作，亦造成婦女經濟困難。此外，婦女在港工作，亦造成婦女經濟困難。此外，婦女在港工作，亦造成婦女經濟困難。



同地社組織辦事處辦事處主任孔允明(左)與一名新移民婦女(右)在辦事處內。



人權

HUMAN RIGHTS

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