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**HUMAN RIGHTS**

**BASIC LAW ARTICLE 23 LEGISLATION AND NATIONAL SECURITY**

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## ERRATA FOR HUMAN RIGHTS MAGAZINE ISSUE 13

The list below identifies errors found in Issue 13 of Human Rights Magazine. We sincerely apologize for any inconvenience caused to our readers.

Page 14 (Original - Photo Credit: Leung Ching Yau Alex) Correction - Photo by Leung Ching Yau Alex, Shared under CC BY-NC-SA 2.0 <https://www.flickr.com/photos/cyalex/>

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# WORDS FROM THE EDITOR- IN-CHIEF

The Hong Kong public has only widely heard of the national security law since 2003. At that time, the Hong Kong government was trying to enact legislation concerning national security according to article 23 in the Basic Law. Since then, the public have been worried if human rights would be easily abused by the government in the name of national security. On the one hand, the concerns came from the vague definition of national security. The public continued to question the actual meaning of "national" whether it refers to the country? The people? The government? The ruling regime? It is believed that the clarity of the term can significantly influence public opinion over the legislation. On the other hand, there are many examples in Asia showing how easily governments can manipulate the usage of national security laws. For example, in Singapore, some social activists were jailed under the Internal Security Act (ISA) only because of running a drama club to reveal social problems but which so happened to become very popular with the public. In 2000 in Malaysia, activists were jailed under the ISA as they had criticized the unfair trial of Anwar Ibrahim, the ex-deputy prime minister. Amnesty International Hong Kong also joined the campaign to demand the release of these ISA detainees in the past. As there are suggestions to enact the article 23 legislation again, we have decided to make the national security law the theme of this issue to provide more information for the public to engage with this discussion.

I would also like to recommend that you read the item: This is your page. We have received a lot of positive feedback over the cover design of the magazine. Therefore we have interviewed Gary, our magazine layout designer in which he explains to you why he is so committed to Amnesty International Hong Kong and how he manages to help us carry out these human rights education projects. If you share his beliefs, you are most welcome to contribute your expertise by becoming one of our volunteers!

An Mei Po

## IN FOCUS

# NATIONAL SECURITY AND HUMAN RIGHTS

Human rights can be divided into absolute and qualified rights according to international human rights treaties. No restriction or derogation can be imposed on absolute rights by the government in any circumstance. One example of absolute right is freedom from torture. Besides, even in a state of public emergency, the government should not "involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin". Qualified rights such as freedom of expression may be restricted in certain circumstances, which are prescribed by law, necessary and proportional for legitimate aims including protection of national security.

### FREEDOM OF SPEECH PROTECTED BY INTERNATIONAL HUMAN RIGHTS LAW

Freedom of speech comprises freedom of expression and freedom of information. It is enshrined in article 19 of the United Nations International Covenant on Civil and Political Rights (ICCPR). It may be subject to restrictions which are "provided by law and are necessary" "for respect of the rights or reputations of others" or "for the protection of national security or of public order (ordre public), or of public health or morals".

The UN Human Rights Committee provides an authoritative explanation of freedom of expression in its General Comment No. 34. It states that "extreme care must be taken by States parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3". It also says that "it is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information". And it is generally inappropriate "to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress". In previous communications by the Committee, it "has found in one case that a restriction on the issuing of a statement in support of a labour dispute, including for the convening of a national strike, was not permissible on the grounds of national security". (Para 30)

## THE SIRACUSA PRINCIPLES

What does national security mean? Let us look into the Siracusa Principles.<sup>[1]</sup> The Siracusa Principles were adopted by experts in international human rights law in 1984 in order to interpret the principles of limitation and derogation provisions in the ICCPR. They are widely recognized by international human rights and the UN experts.<sup>[2]</sup> The Court of Final Appeal of Hong Kong has also cited the Siracusa Principles in its judgments<sup>[3]</sup>. Thus it is highly referential for Hong Kong.

The Siracusa Principles stipulate that the government may invoke the ground of national security to justify measures limiting certain rights only if "they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force" (Principle 29) and with "adequate safeguards and effective remedies against abuse" (Principle 31).

Moreover, it cannot be justified to impose limitations "to prevent merely local or relatively isolated threats to law and order" (Principle 30) or to impose "vague or arbitrary limitations" (Principle 31) or to suppress "opposition to such violation or at perpetrating repressive practices against its population" (Principle 32) on the grounds of national security. If the government has "systematic violation of human rights", it "undermines true national security and may jeopardize international peace and security" (Principle 32).

## THE JOHANNESBURG PRINCIPLES

The Johannesburg Principles further stipulate the principles for limiting freedom of expression and information on the ground of national security. It was adopted by experts in international law, national security and human rights in 1995.<sup>[4]</sup>

**WHAT IS LEGITIMATE NATIONAL SECURITY INTEREST?**

The Johannesburg Principles state that legitimate national security interest consists of protecting "a country's existence or its territorial integrity" or "its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government" (Principle 2(a)). If national security is invoked as a ground for limiting freedom of expression, it "must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest" (Principle 1.2).

**WHAT IS NOT LEGITIMATE NATIONAL SECURITY INTEREST?**

It is not legitimate national security interest if the restriction imposed by the government aims at protecting it "from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest" (Principle 2(b)).

**RESTRICTION ON EXPRESSION THREATENING NATIONAL SECURITY**

If the government punishes expression which may threaten national security, it has to prove the expression "is intended to or is likely incite imminent violence" and "there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence" (Principle 6(a)-(c)).

If a person peacefully exercises his/her freedom of expression, it should not be considered as "a threat to national security or subjected to any restrictions or penalties". "Protected expression" includes "advocating non-violent change of government policy or the government itself", "criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials", "objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes" and "directing at communicating information about alleged violations of international human rights standards or international humanitarian law" (Principle 7(a)).

**DISCLOSURE OF SECRET INFORMATION AND PUBLIC INTEREST**

If a person discloses secret information, he/she should receive no punishment on the grounds of national security provided that "the disclosure does not actually harm and is not likely to harm a legitimate national security interest" or "the public interest in knowing the information outweighs the harm from disclosure" (Principle 15).

Furthermore, once the information has become available in the public domain regardless of means and legality, "any justification for trying to stop further publication will be overridden by the public's right to know" (Principle 17).

**NATIONAL SECURITY AND HONG KONG**

The UN Human Rights Committee has expressed its concerns about article 23 legislation and treason and sedition provisions in the Crimes Ordinance several times. For instance, the Committee stated in its concluding observations in 2013 that it "notes Hong Kong's intention to deal with the offences of treason and sedition in the context of the new legislation implementing article 23 of the Basic Law" but it "remains concerned at the broad wording of the definition of the offences of treason and sedition currently in Hong Kong's Crimes Ordinance (arts.19, 21 and 22)". It urges Hong Kong to "amend its legislation regarding the offences of treason and sedition to bring it into full conformity with the Covenant and ensure that the foreseen new legislation under Article 23 of the Basic Law is fully consistent with the provisions of the Covenant".<sup>[5]</sup>

**Footnote**

- [1] *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. U.N. Doc. E/CN.4/1985/4, Annex (1985).
- [2] Sandra Coliver. *Secrecy and Liberty: National Security, Freedom of Expression and Access to Information*. Martinus Nijhoff Publishers. Page 18, 1999.
- [3] *HKSAR v. Ng Kung Siu and another*. FACCA/1999. 15 December 1999.
- [4] *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*.
- [5] *UN Human Rights Committee. Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013). 29 April 2013. CCPR/C/CHN-HKG/CO/3*.

## CASE: MALAYSIA

In recent years, the Malaysian government has been becoming more repressive by curtailing freedom of expression. For instance, it has been arbitrarily using the Sedition Act to suppress dissidents. The newly enacted Prevention of Terrorism Act in April is perceived as a replica of the notorious abolished Internal Security Act (ISA). It is a regressive step which will further stifle human rights.

### THE PREVENTION OF TERRORISM ACT: DETENTION WITHOUT TRIAL

According to the Prevention of Terrorism Act, terrorist suspects in Malaysia could be detained indefinitely without charge, trial or judicial review. This breaches freedom from arbitrary arrest or detention and the right to fair trial enshrined by ICCPR.

The Act resembles the abolished ISA. The ISA gave law enforcement the broad power to detain those suspected of endangering national security indefinitely and without trial. However the definition of national security was vague and was widely open to abuse. For instance, the Malaysian government used the ISA to detain dissidents and persons criticizing the government. In 2009, some Malaysians peacefully protested about abolishing the ISA but the police deployed disproportionate force against them. The ISA was finally abolished in 2012.

### SEDITION ACT: POLITICAL TOOL AIMING AT SILENCING DISSSENT

The draconian Sedition Act was enacted during the British colonial period. Its definition is vague as it criminalizes expression "with a tendency to excite disaffection against any ruler or government" or "question any matter protected by the Malaysian Constitution". Initially, it was deployed by the British colonial government to arrest persons calling for Malaysia's independence. In recent years, the Malaysian government has increased the use of the Sedition Act to suppress dissidents and thus breaches freedom of expression and has created a disturbing effect.

There were 29 persons investigated, 16 charged and 3 convicted of sedition last year. In the first quarter of 2015, at least 29 persons have been investigated. They include those from opposition political parties, social activists, scholars, journalists, lawyers and persons peacefully criticizing the government.

For instance, in January, human rights lawyer Eric Paulsen was charged with sedition for criticizing a government department on social media. Social activist Hishammuddin Rais was convicted of sedition for calling for the public to protest against the 2013 general election result. In April, 4 journalists and the publisher of the Malaysian Insider were arrested for sedition for publishing a report regarding the controversial Hudud Bill.

### GOVERNMENT REFUSED TO KEEP ITS PROMISE TO REPEAL THE SEDITION ACT

In 2012, the Prime Minister Najib Tun Razak promised to abolish the Sedition Act in order to comply with international human rights law. However, after being elected to the UN Security Council, the Prime Minister ate his words and the government refused to repeal the Sedition Act. It has even tabled in Parliament to amend the law which includes disallowing bail and raising the terms of imprisonment from 3 years to 7 years and 20 years for sedition causing bodily harm or damage to property.

### Reference

Amnesty International's press statements:

"Malaysia: Stop politically motivated arrests under the Sedition Act". 18 March 2015.

"Malaysia: Human rights 'black hole' expanding". 31 March 2015.

## CASE: SOUTH KOREA



The South Korean government has been invoking the National Security Law (NSL) to arrest and charge dissidents and persons being perceived as supporting North Korea since 2008. As a result, freedom of expression, peaceful assembly and association has been curtailed. The number of the NSL cases increased from 46 cases in 2008 to 129 cases in 2013.

### BROAD NSL PROVISIONS

The provisions of the NSL are broad. For instance, section 7 covers expression or acts which "praises, incites or propagates the activities of an anti-government organization". The wordings are vague and the government has been arbitrarily using section 7 to clamp down on persons criticizing the government or possessing different views concerning North Korea from the government.

### TARGETING POLITICAL DISSIDENTS

For instance, despite the Socialist Workers League, which was a non-governmental organization, peacefully expressing its calls "for the establishment of a genuine socialist state", "the abolition of the armed forces" and criticized labour exploitation in North Korea, 8 of its members were convicted of section 7 of the NSL in 2011 and were sentenced to 18 months to 2 years in prison and 3 years suspension. Moreover, the People's Solidarity for Participatory Democracy, a non-governmental organization in Korea, sent the UN Security Council a submission questioning the justifications of the South Korean government's official investigation alleging that North Korea played a role in the South Korean warship Cheonan sinking incident. Its members were arrested for "enemy benefiting act". Although no prosecutions were made, it already imposed a chilling effect. Furthermore, Kim Myeong-soo was convicted of "with the intention of endangering the existence and security of the State" in 2012 just because he sold 140 books and possessed 170 books

relating to North Korea study or literature. He was sentenced to 6 months in prison and 2 years suspension. However, these books are also available in the parliament library, public libraries and large bookstores.

### DISBANDING POLITICAL PARTY

The Constitutional Court of South Korea held that the Unified Progressive Party, which was a pro-North Korea political party, violated "fundamental democratic order" of South Korea and thus disbanded it and disqualified its lawmakers in December 2015. It is the first time for the Court to disband a political party since 1958 and this may stifle freedom of expression and association.

### INTERNATIONAL CONCERNS ON THE NSL

The NSL was enacted in 1948. It has been arbitrarily used by the government to clamp down on dissidents and to maintain solidarity by creating enemies. Thousands of writers, artists, scholars, journalists, students, publishers and political dissenters including "2 who later became presidents" Kim Yongsam and Kim Daejung were detained or prosecuted because of the NSL. From 1998 to 2008, the government rarely used the NSL to prosecute citizens under president Kim Daejung and Roh Moo-hyun's administration. Apart from vague definition, the use of confessions obtained through torture in the NSL cases is also problematic. The UN has pointed out that section 7 of the NSL violates the freedom of expression protected by the Article 19 of ICCPR and has urged the South Korean government to ensure the NSL's compliance with ICCPR.

### Reference

Amnesty International.

*The National Security Law: Curtailing Freedom of Expression and Association in the Name of Security in the Republic of Korea. 2012.*

Press Statement. "South Korea: Ban on political party another sign of shrinking space for freedom of expression". 19 December 2014.

## CASE: CHINA

There are various criminal offences related to the protection of national security in China. However, they are frequently used to silence human rights defenders. And the national security bill second review version in China is alarming as it is the first time that the bill mentions Hong Kong and Macau and may have an impact on human rights in Hong Kong and Macau.

### INCITING SUBVERSION OF STATE POWER

#### Liu Xiaobo

Liu Xiaobo is a scholar and commentator. He is also one of the leading drafters of Charter 08, which calls for political reforms and recognition of human rights in China. He was convicted of "inciting subversion of state power" and was sentenced to 11 years in prison in 2009. In 2010, he was awarded the Nobel Peace Prize. His wife Liu Xia has been under house arrest.

#### Tan Zuoren

Tan Zuoren is an environmental activist and commentator. He was detained for compiling a list of the names of deceased students in the Sichuan earthquake in 2008. He was convicted of "inciting subversion of state power" and was sentenced to 5 years in prison in 2010.



Photo Credit: Canyu.org

### OFFENCES RELATING TO STATE SECRETS

#### Huang Qi

Huang Qi is a human rights defender and the webmaster of 64tianwang.com. After the Sichuan earthquake in 2008, he assisted the parents of deceased students to demand accountability. He also published online articles regarding the problems of Tofu-dreg schools, where the schools were poorly constructed. He was convicted of "illegally possessing state secrets" and was sentenced to 3 years in prison in 2009.

#### Gao Yu

Gao Yu is a prominent senior journalist. She was convicted of "disclosing state secrets" and was sentenced to 7 years in prison in April. She was accused of sharing Document No. 9 of the Chinese Communist Party (CCP) paper with an overseas media. Document No.9 is also known as "Seven Don't Speak", which bans discussion about constitutionalism and democracy, universal values, press freedom, civil society, judicial independence, official bourgeoisie and errors in the CCP's history. However, the document is an internal paper of the CCP and whether it is a state secret is in doubt.

# INTERVIEW: ARTICLE 23 LEGISLATION AND NATIONAL SECURITY JOHANNES CHAN

*Q / Amnesty International Hong Kong*

*A / Johannes MM Chan,*

*Honorary Senior Counsel,*

*Professor of Department of Law,*

*the University of Hong Kong*



**Q** What is the difference between protection of national security and state power?

**A** It is a matter of constitutionalism. In democratic states, there are peaceful means to transfer state power from one party to another such as by regular elections or impeachment according to the constitution for accountability. Thus protection of national security is different from protection of state power and it does not need to protect the state power. Each state protects its national security, which is protecting itself from invasion and leakage of the state secrets.

But in totalitarian states, there is no peaceful means of state power transfer. Throughout 2,000 years of Chinese history, these were always carried out by revolution. Each dynasty overthrew the previous dynasty by warfare. Thus there is no difference between protection of national security and state power. The only way to transfer state power is to overthrow the existing state power, which will result in endangering national security.

China has adopted the party-state system without peaceful and concrete means of state power transfer. Endangering party's security is tantamount to endangering national security. Without explicit state power transfer, it will either resort to a power struggle or overthrow the state power. Thus when there is a riot in China, the government will clamp down on it to protect national security and state power.

**Q** The provision of national security legislation in the Basic Law changed several times during drafting. For example, the Draft Basic Law (for solicitation of opinions) in 1988 stipulated that HKSAR "shall prohibit by law any act designed to undermine national unity or subvert the Central People's Government". Why was the provision of "subvert the Central People's Government" deleted in the draft in February 1989 and re-introduced in the final version in 1990?

**A** In the late 1980s, the phrases "undermining national unity" or "subverting the Central People's Government" were reminiscent of the

vaguely worded crime of counterrevolution. From the Cultural Revolution to the early 1980s in China, the crime of counterrevolution targeted political dissidents. Thus we were very anxious if the crime of counterrevolution would be applicable in Hong Kong after the 1997 handover. Particularly if the definition of national security was broad enough to introduce these kinds of Chinese laws into Hong Kong. Many Hong Kong people were worried if the provision of "subverting the Central People's Government" would be a detriment to freedom of expression. For instance, whether we were not allowed to discuss the independence of Tibet and Taiwan. The Chinese government thus deleted the relevant provisions in the draft Basic Law in February 1989. However, the Chinese government changed its mind after the June 4 crackdown and observing the supporting and engaged role of Hong Kong in the 1989 democracy movement. It re-introduced the provision of "subverting the Central People's Government" to the Basic Law. Although the crime of counterrevolution has been abolished nowadays, there are similar criminal offences.

**Q** Are there any contradictions between protection of national security and human rights?

**A** When we talk about article 23 legislation, some people will say it is a must to protect national security. Some people will also question why a society or a state does not have national security legislation. These sayings are specious. It is right that every state needs to protect national security. So the problem is what the law actually is instead of the necessity of legal protection. There is a contradiction between national security and human rights. But it is no different from conflict of human rights and public interest. National security is one of the legitimate aims to limit human rights. The key is whether the restrictive means are appropriate and reasonable and whether a fair balance is struck between national security and human rights. For instance, although enacting martial law every day is the most effective way to ensure national security, this does not mean that we have to use this extreme means as it is unjustified and unacceptable. Repressive regimes can guarantee national security but again this is unacceptable.

**INTERVIEW:**  
**ARTICLE 23 LEGISLATION**  
**AND NATIONAL SECURITY**  
**JOHANNES CHAN**

**Q** It is said that article 23 legislation may have a chilling effect and undermine freedom of expression, press, assembly and association. Why?

**A** The statutory provisions are crucial to this question. In 2002-03, one of the justifications for article 23 legislation was that it does not matter to have national security legislation. Even though this is draconian, the government would not enforce the law arbitrarily. But the problem is when the law exists, it will make people worried and cause self-restraint. Particularly when it is worded in a broad and vague manner. For example what does "subversion against the Central People's Government" mean? What does "secession" mean? Does freedom of publication and expression amount to "subversion"? Did the Occupy Movement in 2014 constitute "secession", "subversion" or "sedition"? Strictly speaking, the Occupy Movement may fall within sedition. This makes people start to be afraid and hence a chilling effect is produced. Therefore the important safeguards are necessity of the law and fair balance of human rights.

**Q** Do you think that there is a need to have article 23 legislation in Hong Kong now and why?

**A** Article 23 of the Basic Law only asks Hong Kong to enact laws protecting national security, prohibiting any act of secession, subversion and sedition etc. But it does not ask us to enact new laws. We have to ask ourselves the following questions: Which acts stipulated in article 23 are not prohibited by existing laws in Hong Kong? If the existing laws have already prohibited the acts stated in article 23, why do we have to enact a new law? The supporters of article 23 legislation were unable to answer these questions in 2002-03.

In fact, the existing laws in Hong Kong cover most of the acts and even in a disproportionate manner. For instance, the Crimes Ordinance regulates sedition. Its section 10(1) is very strict and covers a person who "(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or (b) utters any seditious words; or (c) prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication; or (d) imports any seditious publication, unless he has no reason to believe that it is seditious" etc. In other words, speaking, writing, publishing and selling publications would breach the law. Its section 9(1) stipulates that intention "to incite persons to violence" and "to counsel disobedience to law or to any lawful order" constitute seditious intention and breach the law. It is too broad. Another example is treason which includes incitement to mutiny and disaffection. If a person urges members of the Chinese People's Liberation Army to

disobey China or encourages police officers or government flying service officers etc to disobey the Hong Kong government, he/she is guilty of an offence.

The only act which is not governed by existing laws is secession. But its element is actually largely covered by the offence of treason. The only difference is that this offence targets the invasion of Hong Kong or China by foreign forces but excludes non-foreign forces. Politically speaking, Taiwan is not regarded as a foreign country by China, thus the offence of treason is not bound to the "recovering" of China by Hong Kong and Taiwan as well as Hong Kong's independence.

Despite the offence of treason not covering Hong Kong's independence, what is the problem if it is only a mere speech? If an action is involved such as a person seeking armed forces to attack the Hong Kong government, this already falls within the scope of the Crimes Ordinance, the Public Order Ordinance and the Societies Ordinance as it inevitably involves violence, damaging property and inflicting bodily harm.

In fact, the colonial government amended the Crimes Ordinance to narrow the scope of sedition offences to speech leading to violence in June 1997. But the amended law was not put into practice. Therefore the necessary change is to narrow down the scope of the existing laws instead of setting up new laws. What scares us the most is that the concept of national security law of China is imposed on Hong Kong.

**Q** You just mentioned that the Occupy Movement might fall within the scope of the sedition offence. If there was article 23 legislation in Hong Kong, how about urging to put an end to one-party rule in China during the June 4 Candlelight Vigil? How about protests surrounding the Chinese Liaison Office and demanding the Chinese Government to release political prisoners? How about waving dragon-lion Hong Kong flags at demonstrations, producing publications discussing or promoting Hong Kong independence?

**A** It depends on the statutory provisions of article 23 legislation. We have enjoyed a high degree of freedom of expression and assembly in Hong Kong. Generally speaking, there will be no breach of law if it is a peaceful exercise of freedom of expression. Therefore we are worried that mere speech or writing or even peaceful assembly would not be allowed after article 23 legislation.

The aim of having a new legislation is to fill the inadequacy of the existing laws. But what is insufficient in our existing laws? I have asked for 10 years but nobody can answer this question. Article 23 legislation is indeed targeted at freedom of expression and assembly we have now. If article 23 legislation is done, it will further restrain freedom of expression and assembly. This is why we have to worry and be concerned about article 23 legislation.

**Q** Recently, it was proposed to introduce China's national security law into Hong Kong by Annex 3 of the Basic Law. It was also suggested to enact an anti-Hong Kong independence law. What is your comment?

**A** Firstly, what are the aims of these proposed laws? Why do we introduce them? What issues are covered by them which the existing laws cannot cope with? Do these issues really need to be coped with? Apart from freedom of expression and assembly, the existing laws already regulate issues relating to national security. So do the proposed laws target freedom of expression and assembly? The proposers have not addressed these questions. They demand the introduction of a national security law or anti-Hong Kong independence law without examining the protected scope of existing laws in Hong Kong.

Secondly, the discussion about national security legislation is still ongoing in China. It is irresponsible to introduce a law which has not yet finished been drafted.

Thirdly, there are technical problems. Article 18 of the Basic Law stipulates that the introduction of national laws into Hong Kong by Annex 3 should be confined to "those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy" of Hong Kong. However article 23 stipulates that Hong Kong "shall enact laws on its own" regarding national security and thus it falls within the limits of the autonomy of Hong Kong. In this case, the only way to introduce national laws to Hong Kong is to declare a state of war or emergency according to article 18. But are we really in a state of war or emergency now? Besides, if China's national security law is introduced to Hong Kong, who is responsible for its interpretation? If the Hong Kong Court of Final Appeal is entitled to interpret the law, what is the consequence when the Central Government disagrees with the Hong Kong Court?

What are the aims of the anti-Hong Kong independence law? Does it prohibit persons from mere oral expression? If somebody claims to want to overthrow the Hong Kong government by riots for Hong Kong independence, there is sufficient law to deal with it such as the Public Order Ordinance. What does anti-Hong Kong independence law add to the existing legal regulation? The answer is prohibition of speeches for independence.

**Q** Gao Yu, a prominent Chinese independent journalist was convicted of "disclosing state secrets" and was sentenced to 7 years in prison in April because of the "Seven Don't Speak" paper of the Chinese Communist Party (CCP). What is the implication for article 23 legislation in Hong Kong?

**A** Article 23 legislation offers protection of state secrets. In recent years, China has increased its use of the "disclosing state secrets" offence. For example, Ching Cheong, a journalist and Hong Kong citizen was sentenced to prison for disclosing state secrets in China. Moreover, the classification of state secrets is determined by the state power. It covers a wide range of matters including disclosing the speech of Chinese leaders prior to the embargo time. This is an alarm bell regarding freedom of expression in Hong Kong. There are cases that some Hong Kong scholars mistakenly accessed state secrets when they conducted research in China. Therefore, without a clear law, it will be easy for the government to abuse the law for political agenda. Furthermore, "Seven Don't Speak" also affects discussion on constitutionalism and human rights. A Hong Kong scholar's book with name "constitutionalism" could not be published in China till the book name was changed to "constitutional". The book was even awarded afterwards.

**Q** Is article 23 legislation acceptable if we have universal suffrage for the Chief Executive and Legislative Council elections? Why?

**A** Universal suffrage and article 23 legislation are separate matters. We should scrutinize justifications of legislation such as necessity, clarity, proportionality and fair balance on protecting human rights etc. If article 23 legislation is enacted without universal suffrage and citizen's authorization, we would be more sceptical about the legislation such as whether it is a draconian law or it has sufficient degree of protection of human rights. Article 23 legislation should be dealt with very cautiously even if we have universal suffrage. In democratic states, national security legislation is controversial and under strict scrutiny. The elected lawmakers cannot arbitrarily make any laws.

**Q** Is there anything else you would like us to know?

**A** The discussion on national security can be very emotional. Some people insist that legislation is necessary to protect national security and state based on ethnic sentiment. It is too general and simplistic.

More importantly, protection of national security is only an aim. But it is not tantamount to supporting any means to protect national security. For example, we do not think the way China protects national security by "illegally disclosing state secrets" offence is justified. The key is whether there is rational connection between restriction and legitimate aim and whether the restrictive mean is necessary and proportional. However, the public discussion on national security is sentimental and does not go into details of legislation such as the scope of legislation and the definition of legal and illegal acts. Sophisticated and rational discussion is required.

#### RAINBOW LEAFLET

In 2002, The Basic Law Article 23 Concern Group was set up by legal practitioners and academics in response to the Government's article 23 public consultation and bill. The Concern Group published leaflets in rainbow colours to explain the impact of article 23 legislation on human rights. Johannes Chan said they used traditional ways to educate the public, i.e. distributing leaflets on the street. It was the first time for some of the Concern Group members to take to the street and they even did not know how to distribute leaflets to public.



More than 500,000 people joined the demonstration to oppose article 23 legislation on 1 July 2003. After the government withdrew the bill in September, the Basic Law Article 23 Concern Group transformed into the Basic Law Article 45 Concern Group and demanded universal suffrage. The group was disbanded in 2006. Some of the former group members established the Civic Party, which Johannes did not join.

#### Reference

*National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny.* Edited by Fu Hualing, Carole J. Petersen and Simon N.M. Young. HKU Press. March 2005.

#### Website

Article 23 Legislation Resource Page: <http://www.article23.org.hk/>

# AI GLOBAL CAMPAIGNS

## Open To Syria photo action

Syria's armed conflict is the biggest humanitarian crisis this decade. Only 5 countries provide shelter for 3.8 million refugees. In contrast, the wealthy countries only receive a tiny fraction of Syrian refugees. Promoting our photo solidarity action on Tumblr now.

Further information at <http://opentosyria.tumblr.com/>

## AI Netherlands : Puts hundreds of tombstones in The Hague

Amnesty International urges European leaders and European Union countries to save the lives of refugees fleeing armed conflicts or persecution by conducting search and rescue operations at sea and providing safe and legal routes for them.

By placing hundreds of tombstones in the square in The Hague, Amnesty International commemorated hundreds of people who had drowned while crossing the Mediterranean to reach Europe in 2014.

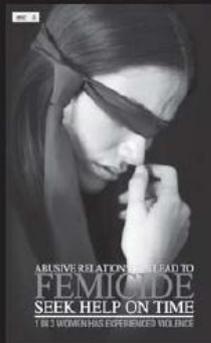
Photo Credit: Amnesty International (photo: Jörn van Eck)



## AI Venezuela: Abusive relationships lead to Femicide

The concept related to the official images of the movie 50 Shades of Grey. Taking into account the controversy about BDSM and the violence against the female character, it was why this design was similar to the one made for the movie.

Photo Credit: Amnesty International Venezuela



## AI India: Stand up or sit down? Gender-neutral restrooms

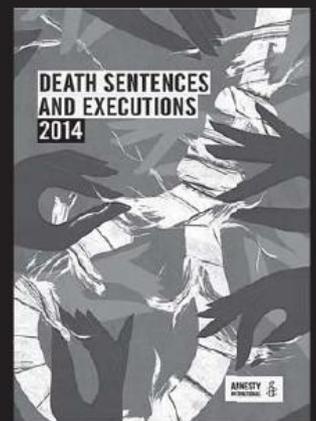
After the discussion of AI India Senior Management and Human Resources Department, they removed the Women/Men restroom signs and replaced them with "All genders restroom" signs in the office. AI India's implementation and call for gender-neutral restrooms in public spaces, complemented the Supreme Court of India's judgment on the case of National Legal Services Authority (NLSA), which required legal recognition of transgender persons' gender identities in April 2014.

Photo Credit: Amnesty International India



## Global action: the death penalty report in english launched on 1 april

According to Amnesty International's report on Death Sentences and Executions in 2014, China was again the top executor in the world. The number of executions which China carried out exceeded the total number of executions of the rest of the world. Furthermore, an alarming number of countries used the death penalty to tackle real or perceived threats to state security linked to terrorism, crime or internal instability in 2014.





### CHINA: 5 WOMEN'S RIGHTS ACTIVISTS RELEASED ON BAIL

The 5 activists, Wei Tingting, Wang Man, Wu Rongrong, Li Tingting and Zheng Churan, were arrested and detained on 7 March 2015 for planning to mark International Women's Day by launching a campaign against sexual harassment. Amnesty International sections and groups concerning the 5 activists around the world have launched the #FreeTheFive action, demanding the Chinese authorities immediately release them unconditionally.

With your support, they were released on bail on 13 April.

However, they have been charged with "picking quarrels and provoking troubles", which carries a maximum of 5 years in prison. Amnesty International continues to urge the Chinese government to drop all charges against them.

### CAMBODIA: HOUSING RIGHTS ACTIVISTS RELEASED AFTER RECEIVING A ROYAL PARDON

10 Cambodian housing rights activists, of which 9 are women representatives from Boeung Kak Lake community, were released on 11 April 2015 after receiving a royal pardon. The women, aged between 28 and 75 years old, who would mostly describe themselves as housewives, had been sentenced to 6 months or 1 year imprisonment for conducting a peaceful demonstration. They have seen the forced eviction at Boeung Kak Lake community of 3,500 households since August 2008.

On 10 November 2014, 7 of them, Nget Khun, Tep Vanny, Song Srey Leap, Kong Chantha, Phan Chhunreth, Po Chorvy, and Nong Sreng, were arrested during a protest in Phnom Penh which demanded the authorities relieve the latest severe flooding which was affecting their homes. On 11 November 2014, 3 more women housing rights defenders, Heng Pich, Im Srey Touch and Phuong Sopheap, were arrested outside the court while peacefully protesting for the women's release.

Women have been at the forefront of campaigning for the Boeung Kak Lake community for a number of years. They have been arrested and imprisoned on a several occasions as a result.

### NORWAY: TRANSGENDER PEOPLE HAVE HIGH HOPES TO CHANGE THEIR LEGAL GENDER WITHOUT UNDERGOING STERILIZATION

On 10 April 2015, the Expert Committee on Legal Gender Recognition and Access to Health Services for Transgender People presented its report "Right to Right Gender: Health to all Genders" during a press conference in Oslo.

The Expert Committee recommended the establishment of a timely, transparent and accessible procedure for legal gender recognition based on the individual's perception of her or his own gender identity, a procedure that is in accordance with Amnesty International's recommendations.

It is widely hoped that these recommendations will result in key reforms to a practice dating back to the 1970s that subjects transgender people in Norway to a set of onerous and discriminatory requirements to legally change their gender. This includes undergoing a psychiatric assessment, obtaining a psychiatric diagnosis and undergoing irreversible sterilization.

Amnesty International has highlighted how such process, which is still in place in many other European countries, is degrading and violating human rights.

John Jeanette, one of the cases of the 2014 Letter Writing Marathon of Amnesty International, thanked every Amnesty supporter who had been fighting along with her. "Without Amnesty International's support we would not have got to where we are today," she said.

# LOCAL HAPPENINGS

THIS IS YOUR PAGE:  
GARY TONG



NAME

GARY TONG

OCCUPATION

TGIF FOUNDER & DESIGN DIRECTOR

YEARS WITH US

ABOUT 4 YEARS

## Why do you support Amnesty International?

I cannot find many organizations who are willing to speak up for the public and fight for their rights like Amnesty International. Especially in this age, people are less eager to speak for others. Yet, Amnesty International still works very hard to defend everyone's rights. That is why I support Amnesty International. Moreover, I learnt about Amnesty International when I found out that other sections started their rebranding years ago. They strengthened the concept on graphic design such as unifying the logo colour, design and the use of font etc. Coincidentally, my friends introduced me to Amnesty International Hong Kong and this started my journey with the Hong Kong section.

## What inspires you most to design for us?

All my designs are inspired by the theme of the magazine. When I read the content, it helps me to shortlist all the inspirational elements. The themes of the recent issues are very clear and sharp, I can easily develop my feelings into them and turn the details to my design inspirations.

## Which design is the most remarkable one?

To be honest, all of the issues are remarkable to me. If I have to choose just one, I would say the last issue (Theme: Policing on protests and peaceful assemblies). Different from other global issues, this is something that really happened in Hong Kong just a few months ago and I also have some personal experience of this. Thus, I have a deep connection to this issue and applied it into my design. (Remarks: The transparent smoky cover of the Issue 13 highlights the use of tear gas by the police during the protest last year.)

## If you were granted the power to wish away one human rights issue, what would that be?

I hope that there is no more violation of freedom of expression. It is everyone's freedom to speak about what they want. As a graphic designer, some of our clients would demand us to remove the "sensitive elements" of our design. Those "sensitive elements" are not used to attack someone, instead, we just want to bring up some social problems or other opinions. Many designers are facing the same tough situation. I hope all these self-censorships will not happen again.

## HIGHLIGHTS OF UNIVERSITY AI CLUB

### HIGHLIGHTS OF UNIVERSITY AI CLUB

In recent months, have you found people waving Amnesty International flags or met some students who were advocating human rights issues when you walked in university campus? If yes, probably you have met our members of University AI Club! University AI Club members have already organized their first action at different universities to campaign about different human rights issues. Let us have a review of what they have done.

#### University AI Club: The Death Penalty Concern Group

Campaign's goal: Raising awareness of Hong Kong people about the death penalty imposed for sexually related crimes.

Campaign in campus: Among those death penalties imposed on sexually related crimes, stoning is one of the cruelest. In general, stoning is imposed on those who have committed "adultery" in Islamic countries.

The Death Penalty Concern Group held an exhibition about stoning to show the public the situation concerning stoning in different countries and the reasons for opposing stoning in the University of Hong Kong (HKU). A documentary on stoning in Iran was displayed to remind the public that this is an inhumane treatment and impairs human rights.

#### University AI Club: Freedom of Expression on Internet Concern Group

Campaign's goal: Raising awareness of Hong Kong and mainland Chinese people towards the lack of freedom of expression on the internet in China.

Campaign in campus: In order to prohibit any politically sensitive materials spreading on the internet, the Chinese government has imposed different tools to limit the freedom of expression on internet. One of the common tools is "The Great Firewall" (network firewall in China).

Freedom of Expression on Internet Concern Group made a simulation of "The Great Firewall" in the City University of Hong Kong. Participants had to climb over the "The Great Firewall" to show their dissatisfaction with such a policy and symbolized people's need to overcome "The Great Firewall" to express their opinions freely on the internet. During the action, printed materials regarding some background information relating to this topic were distributed and a petition form was also prepared for students to sign.

#### University AI Club: Violence against Women Concern Group

Campaign's goal: Urging Morocco's government to improve the national law in order to better protect women who suffer from sexual violence.

Campaign in campus: Currently, Morocco's national law is unable to protect women who have suffered from sexual violence to a certain extent. For example the legal definition of rape is too narrow; the punishment of the perpetrator of rape would be based on a survivor's virginity.

Violence against Women Concern Group held an exhibition in HKU to show the public actual cases of sexual crime survivors in Morocco. During the exhibition, participants listened to the views of different stakeholders in those cases. At the end, they were invited to play the role of judge to make a decision. This interaction enabled participants to understand the injustice that sexual violence survivors in Morocco are facing.

#### HKU AI Club is now established!

The first AI club which was established by university students themselves was born in HKU.

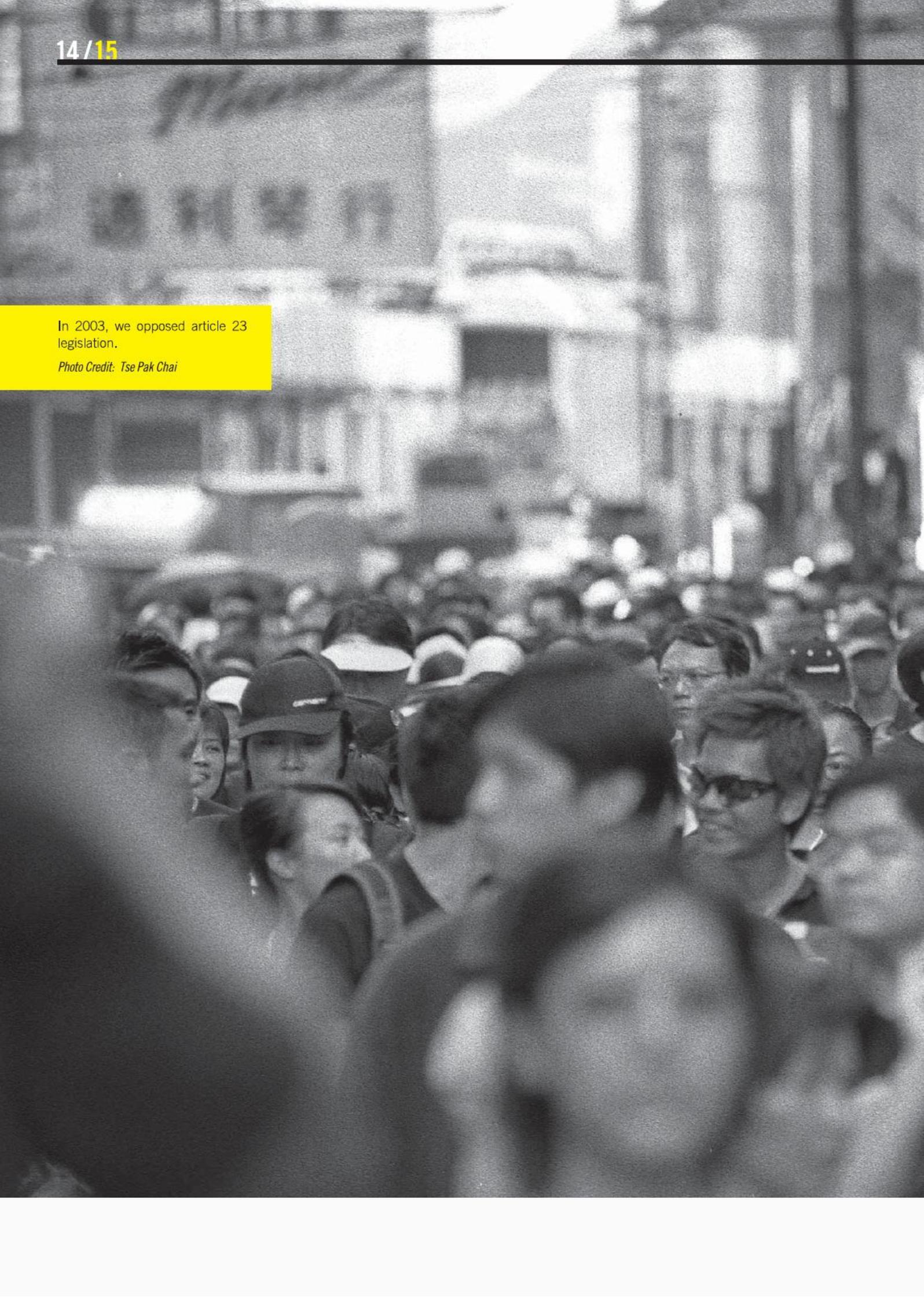
HKU AI Club has organized different campaigns to promote human rights in HKU in the past few months. In March, they organized various activities to advocate gender equality such as High Heels March and a film screening. In April, they initiated several events like an exhibition and talk to raise students' awareness about the difficulties and injustices that refugees in Hong Kong were facing.

In fact, AI Clubs are widely established at tertiary education institutions overseas including Cambridge, Oxford, Yale, Columbia and Brown. The members are able to organize campaigns independently to promote human rights education, improve injustices and bring changes to people who are suffering. If you are interested in establishing an AI Club at your university, please feel free to call 2116-2485 or email [dlai@amnesty.org.hk](mailto:dlai@amnesty.org.hk) if you have any enquiries.



In 2003, we opposed article 23 legislation.

*Photo Credit: Tse Pak Chai*



★ 獨裁管治  
香港滅亡  
23 惡法  
抗爭到底

二〇〇三年，我們反對過的二十三条立法。  
照片來源 / 柏齊



近月，當你經過各大專院校時，可能看見國際特赦組織的旗幟正在飄揚，更可能曾遇到熱心同學向你講解世界各地的人權狀況。沒錯！這群同學就是 UNIVERSITY AI Club 成員！他們紛紛在各大專院校策劃人權倡議活動，向大家講解多項人權議題，一同為人權發聲！

#### 死刑關注組

**目標 / 加強市民關注因性罪行而被處死刑的個案**

校園倡議活動：因性罪行而被處死的個案中，石刑是其中一種殘酷而古老的處決方法，即犯人被投石致死。現今一些伊斯蘭國家仍然用於通姦罪。死刑關注組透過一系列展板，向公眾介紹各地執行石刑的現況及要求廢除石刑的原因。活動期間亦放映相關紀錄片，希望喚醒公眾關注石刑並不人道及違反人權！

#### 網絡言論自由關注組

**目標 / 加強公眾關注中國政府限制網絡言論自由**

校園倡議活動：中國當局為禁止網絡流傳政治敏感內容，透過不同工具限制公眾的網絡言論自由，包括網絡防火牆。網絡言論自由關注組在校內設置模擬防火長城，並鼓勵參加者跨過防火牆自由表達意見，以示對中國限制網絡言論自由的不滿。關注組亦於活動期間派發相關刊物及邀請同學支持聯署請願行動。

#### 針對婦女暴力關注組

**目標 / 要求摩洛哥政府按國際人權公約改善當地法例，以更有效保障婦女免受暴力對待**

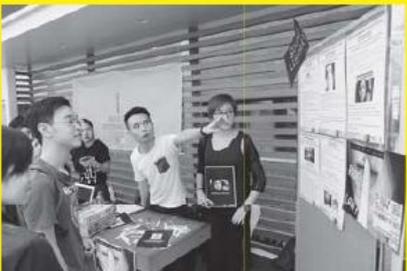
校園倡議活動：現時摩洛哥的法例未能有效保障性暴力受害婦女，例如強姦的法律定義太狹窄及判刑準則按受害人是否處女等不合理因素而定。針對婦女暴力關注組於校內舉行展覽，向同學展示摩洛哥性暴力倖存婦女的真實個案，並讓同學聆聽個案中不同持份者的意見，最後由模擬法官判決，揭示性暴力倖存者所受到的不公平對待。

#### HKU AI Club 成立了！

香港首個由大專生自發成立的 AI Club 終於在香港大學誕生！

HKU AI Club 成立後，隨即在校內舉辦推廣人權的活動。在三月舉辦了一系列推廣性別平等的活動，譬如高跟鞋遊行及播放相關議題的電影等。在四月舉辦展覽及座談會，探討本地難民的處境及其面對之不公平待遇。

世界各地包括英國劍橋大學、美國耶魯大學和澳洲墨爾本大學等著名學府的學生也成立了 AI Club，由大學生親身參與策劃人權運動，以推動公眾關注國際人權議題，為受迫害的人及社會不公帶來改變。如果你有興趣在校園成立 AI Club，歡迎致電 2116-2485 或電郵 [dilai@amnesty.org.hk](mailto:dilai@amnesty.org.hk) 查詢。



## 本地迴響

你的一頁：GARY TONG

## 你為甚麼會支持國際特赦組織？

社會上比較少這類會為大眾市民發聲及爭取其應有權利的機構。尤其在這世代，愈來愈少人會主動為其他人發聲，但國際特赦組織仍然著重捍衛每個人的權利，所以我非常支持這個理念。另外，第一次留意國際特赦組織，是因為注意到外國分會剛開始重新為機構形象定位，著重平面设计概念，例如重新統一品牌顏色設計及字體等，所以更加關注。在朋友介紹下，恰好知道香港分會亦希望做些平面设计工作，所以便開始合作關係。

## 當你為我們設計刊物時，你如何獲得靈感？

每次的設計靈感其實都是來自刊物主題，透過了解每期內容，把重要元素挑選出來，很快便可以完成封面和內容設計。特別是近期雜誌主題非常突出分明，亦為我帶來很多切身感受，所以較易把關鍵細節放大，變成不同的設計靈感。

## 哪個設計最難忘？

誠然，每本也非常難忘。不過，上期雜誌《警政與示威》令我有非常切身的感受。因為以往主題涉及不同的全球議題，但上期主題是最近在本地發生的大事，就個人來說也有相關親身經歷，所以非常有共鳴，並且把這些感覺加入我的設計中。（編按：上期雜誌封面加上印有「煙霧」的透明紙，呈現在催淚彈煙霧下警察舉警告旗的情況。）

## 如果可以願望成真，而只能許一個願，你會選擇解決甚麼人權問題？

我希望能解決言論自由的問題。每個人能夠發聲也是自由。特別是我們設計這行業，有時亦會因為用了「敏感元素」而被客人要求修改或「抽走」。其實所謂「敏感元素」並非帶有攻擊性的言論，可能只是想帶出一些社會問題或不同看法。這是很多設計師正在面對的難題。我希望這種自我審查的行為不要再發生。



姓名

GARY TONG

職業

TIGI 創辦人及設計總監

與國際特赦組織同行

四年左右

## 好消息



## 中國：五位女權行動者獲保釋外出

今年三月七日，五名中國女權行動者鄭楚然、李婷婷、章婷婷、王曼及武燦燦被中國當局以尋釁滋事罪拘捕。國際特赦組織全球分會與多個關注團體一同行動，要求當局立即無條件釋放她們。她們原定於三月八日國際婦女節當日，在公眾地方派發反性騷擾貼紙。

#FreeTheFive 行動得到你的支持，五名女權行動者於四月十三日獲保釋外出。

但是，五名行動者仍然面對當局控告她們尋釁滋事罪。一旦罪成，最高監禁五年。國際特赦組織將繼續行動，要求中國當局撤銷對她們的檢控。

## 柬埔寨：住屋權行動者獲皇室特赦釋放

十名住屋權行動者，當中九名為萬谷湖區女性代表，於今年四月十一日獲得皇室特赦釋放。她們年齡介乎二十八歲至七十五歲，多為家庭主婦，因參與和平示威而遭政府分別判處半年或一年監禁。

自二零零八年八月，她們目睹強迫拆遷萬谷湖區近三千五百戶。去年十一月十日，七名行動者Nget Khun、Tep Vanny、Song Srey Leap、Kong Chantha、Phan Chhunreth、Po Chorvay 及 Nong Streng 於首都金邊示威，要求政府協助區內受水浸影響的住戶時遭拘捕。去年十一月十一日，另外三名住屋權行動者Heng Pich、Im Srey Touch 及 Phuong Sopheap 在當地法院外和平示威，要求當局釋放上述七名行動者時被捕。

歷年來，女性行動者站在萬谷湖區社會運動的前線，遭當局拘捕甚至監禁，時有發生。

## 挪威：跨性別人士有望獲豁免接受變性手術，以轉換法定性別

今年四月十日，由挪威政府委任的跨性別人士性別認同及健康服務專家委員會在奧斯陸就《選擇合適性別的權利：健康服務予所有性別》報告舉行記者會。

委員會建議挪威政府應基於該人自身的性別身分認同，設立適切、透明及便捷的性別認同法律程序。此與國際特赦組織建議一致。

挪威自七十年代以來，要求跨性別人士接受精神評估、心理治療及不可逆轉兼絕育的變性手術等，方能轉換其法定性別，社會普遍希望委員會的建議將會改革這些歧視性政策。

國際特赦組織指出上述政策有辱人格待遇，有違人權，但仍有多個歐洲國家推行。

委員會的建議，對於去年國際特赦組織寫信馬拉松重點個案的 John Jenette 而言，可謂是長年爭取的成果。John Jenette 感謝國際特赦組織全球會員及支持者一直與她一同抗爭。

# 全球人權運動

## 「放眼敘利亞」相片行動

敘利亞衝突已經成為這個年代最嚴重的人道危機。僅有五個國家收容了三百八十萬名難民。相反，全球最富裕國家卻只接受極少數敘利亞難民。立即在Tumblr上廣傳「放眼敘利亞」相片，「click」撐行動吧！

詳情：

<http://opentosyria.tumblr.com/>

## 荷蘭分會：墓碑悼念遇溺難民

國際特赦組織敦促歐洲領導人及歐盟各國拯救逃避武裝衝突和迫害的難民，開展海上搜救及搜索行動，並為其提供安全合法的逃亡路線。



近百墓碑豎立於海牙廣場，正是國際特赦組織為了悼念過去一年，數百名由地中海到歐洲途中遇溺的人。

照片來源 / 國際特赦組織

(photo: Jorn van Eck)

## 委內瑞拉分會：被虐關係致令屠殺女性

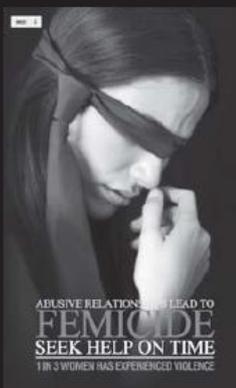
創作概念來自電影「格雷的五十道色戒」劇照。電影題材包括性虐待爭議及暴力對待女主角，因此分會海報概念取材自電影劇照。

照片來源 / 國際特赦組織委內瑞拉分會

## 印度分會：站著還是坐著？印度分會的無性別廁所

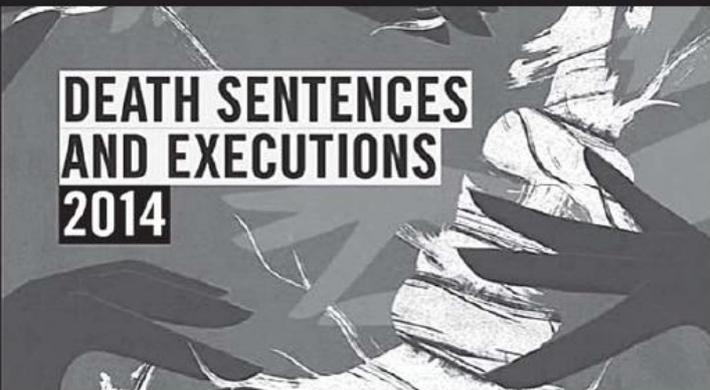
經過國際特赦組織印度分會人事部及管理層討論，印度分會現已採用了適用於所有性別的廁所標誌，取代原有的男/女廁標誌。國際特赦組織此舉及其推動在公共空間設立無性別廁所的倡議，旨在回應二〇一四年四月印度最高法院在有關國家法律服務局案件的判辭中，要求政府以法律承認跨性別人士的性別身分。

照片來源 / 國際特赦組織印度分會



## 全球行動：二〇一四年死刑報告英文版於四月一日出版

國際特赦組織在全球死刑年度報告指出，中國再次蟬聯全球處決國家榜首，其處決數字高於全球總和。二〇一四年，愈來愈多國家用死刑處理對國家安全的實質或潛在威脅，包括反恐、罪行及內部維穩。



其次，中國仍在討論國家安全法。連國安法是甚麼也未知，就提倡引入，實在有點不負責任。

第三，有技術困難。《基本法》第十八條訂明透過《附件三》引入的全國性法律，只限國防、外交和其他不屬於香港自治範圍內的法律。然而，二十三條訂明由香港自行立法，屬香港管治範圍。唯一可透過《附件三》引入全國性法律的方法，就是宣布香港進入緊急狀態或戰爭狀態，但香港是否已進入緊急狀態或戰爭狀態？還有司法管轄權的問題。若將國安法引入香港，誰去解釋法律？若由終審法院解釋，而中央政府不同意，那又如何？

反港獨法目的為何？是否不准講？如果真有人說要暴動、要推倒香港政府、要獨立，《公安條例》已有規管，已有足夠法例，反港獨法到底新增甚麼？除非不准人談論。

**問** 中國獨立記者高瑜因「七不講文件」被判「為境外非法提供國家秘密」罪成，並重囚七年。此案對香港二十三條立法有何啟示？

**答** 二十三條立法包括保護國家機密，而中國近年多用了洩露國家機密罪，譬如港人記者程翔也曾因洩露國家機密罪而入獄。而在中國，基本上國家說甚麼是國家機密就會是國家機密。譬如若在領導人未公開講話前發布相關內容，已是洩露國家機密。這對香港是個警號，將會影響言論自由。以往有香港學者在中國做研究時，也曾誤碰國家機密。所以，若法例不完善，無清楚界定，政府很容易濫用法例達到政治目的。此外，七不講對香港討論憲政和人權亦有影響。曾有香港學者用憲政為書名，卻不能在中國出版，直至改名，不用憲政，改用憲制，就能出版，甚至獲獎。

**問** 有雙普選，是否可接受二十三條立法？為甚麼？

**答** 普選和二十三條立法是兩回事。立法與否，應檢視立法本身的理據，譬如是否需要立法、法律條文會否太空泛、法律會否過分侵犯人權等問題。無雙普選，無民意授權，再通過法律，大家只會更加疑慮法律是否嚴苛及

有否足夠保障人權，即使有雙普選，二十三條立法仍須小心處理。即使在民主國家，國家安全立法也甚具爭議，一定要小心處理。

**問** 你有何補充？

**答** 國家安全討論可以很情緒化。因為建基於民族情緒，有些人會很民粹地覺得務必維護國家安全及立法保障國家，但這是相當籠統和簡單的看法。

更重要的是，維護國家安全只是目的，並不等於我們可以支持以任何手段維護國家安全。正如我們不覺得用中國那種控以非法提供或洩露國家機密的手段，可以維護國家安全。手段與目的是否有合理關係及手段是否合乎比例，才是討論要點。但很多時候，我們處理國家安全的討論往往流於感性，忽略討論立法細節，譬如立法範圍及何謂合法和非法行為等等，都需要細緻和理性討論。

#### 七色彩虹單張

二〇〇二年，法律界人士成立《基本法》二十三條關注組，回應香港政府《基本法》第二十三條立法諮詢文件及草案。關注組印製七色彩虹單張，解釋二十三條立法對人權的影響。陳文敏笑言，當年用傳統方法，上街派單張，關注組成員如梁家傑等也是第一次上街，連派單張也不知如何派。

二〇〇三年七月一日，逾五十萬人上街反對二十三條立法，政府於九月撤回草案後，二十三條關注組轉型成為四十五條關注組，著眼普選。後來部分成員另組公民黨，而他沒有參與。

#### 延伸閱讀

National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny.  
Edited by Fu Hualing, Carole J. Petersen and Simon N.M. Young.  
HKU Press, March 2005.

#### 網站

《基本法》二十三條資料。http://www.article23.org.hk/



於政府會否執行或檢控，而是當已有法例，大家就會擔心，於是自我約束，尤其當法例寫得含糊時，到底何謂顛覆中央人民政府？何謂分裂國家？出版或言論自由是否等於顛覆？甚至去年佔領運動算不算分裂國家、顛覆或煽動叛亂？嚴格來說可能是煽動叛亂罪。於是大家開始會怕，從而造成寒蟬效應。所以，最重要的把關是質疑：法律是否必要？可否做到平衡人權？

**問** 你認為香港現時是否有需要就《基本法》二十三條立法？為甚麼？

**答** 二十三條其實只要求我們立法保障國家安全，免於分裂、顛覆國家及煽動叛亂等，但沒說一定要另立新法處理。我們需要問，究竟二十三條所指的行為，有哪些現行法律並無保障？如果現行法律已禁止，又何需立法？當日二十三條立法支持者無法回答這些問題。

香港現行法例已保障大部分行為，甚至是保障得太過分，譬如《刑事罪行條例》規管煽動罪，其第十(一)條很嚴苛，包括規管「(甲)任何人作出、企圖作出、準備作出或與任何人串謀作出煽動意圖的作為」；「(乙)發表煽動文字」，即以言入罪；「(丙)刊印、發布、出售、要約出售、分發、展示或複製煽動刊物」及「(丁)輸入煽動刊物」等。換句話說，即是由發表意見、寫書、出版到賣書，已經可以犯法。又如第九(一)條訂明「煽惑他人使用暴力」及「縱使他人不守法或不服從合法命令」已屬煽動意圖，已經犯法，條例委實太闊。再如叛逆罪，有煽惑叛變及離叛罪，若呼籲解放軍不服從中央，呼籲警察或飛行服務隊等不服從香港政府，已屬違法。

唯一沒有規管的是分裂國家罪，但其實叛逆罪已包含分裂國家，唯一分別是叛逆罪針對勾結外國政府侵略香港或中國，而不包括非外國政府介入，而政治上，台灣不算外國政府，所以叛逆罪並不包括香港和台灣光復中國，亦不包括港獨。

即使叛逆罪並不包括港獨，如果只是說說，又有何問題？如果有行動，譬如港獨人士真的找軍隊攻打香港政府，《刑事罪行條例》、《公安條例》及《社團條例》已有所規管，因為如此必定涉及暴力、損害財物及人身安全。

誠然，一九九七年六月港英政府修訂法例，收窄煽動罪範圍，訂明煽動言論必須引致暴力才可構成罪行，但從來無生效。所以如果要改變，就是要收窄現行法例，而不是另立新法。大家最怕的是將中國那套國家安全法律概念移植香港。

**問** 剛才提到佔領運動可能已犯煽動罪。如果二十三條已立法，六四燭光集會要求結束一黨專政、遊行要求中國政府釋放政治犯並包圍中聯辦、示威集會中揮動龍獅旗、刊物探討港獨甚至宣傳港獨，會否犯法？

**答** 那就要看二十三條立法內容。香港一直有高度言論和集會自由。一般來說，只要和平進行，發表甚麼也不會違反香港法律，所以大家會擔心二十三條立法後，說話或寫文甚至可能連和平示威也不能。

立法一定是補回現行法律不足，但究竟現行法律有何不足，而需要立法處理？我問了十年，一直無人能夠回答這個問題。二十三條立法到底想針對甚麼現行法例未有規管的行為？那就是言論和集會自由。如果強行立法，即是比現行法例更進一步限制言論和集會自由，這正正是我們擔心和需要關注二十三條立法的原因。

**問** 近日有建議透過《基本法》附件三引入中國《國家安全法》，亦有建議制訂《反港獨法》，你對此有何評論？

**答** 首先，立法目的為何？為何引入這些法例？這些法例處理甚麼現行香港法律並無規範的問題？這些問題是否真的要處理？除了言論和集會自由，其實香港法律已有規範，那是否要規範這些自由，所以要在香港引用國家法律？提出的人並無回答這個問題，只是一廂情願要國家安全，於是要引入國家安全法，而未有檢視香港現行法例保障範圍。

答 / 陳文敏 (香港大學法律學系教授, 名譽資深大律師)  
問 / 國際特赦組織香港分會

## 問 維護國家安全與維護政權有何不同？

**答** 這和國家憲制有關。民主國家有和平轉移政權的方法，譬如透過定期選舉和平交替政權；或憲制上的彈劾過程，令當權者需要下台體現問責。所以在大部分民主國家，維護國家安全和維護政權是兩回事，因為有和平轉移政權的方法亦不需要維護政權。各國也會保護國家安全，所指的是保護國家免受侵略及保護國家機密。

可是，極權國家並無和平轉移政權的途徑。中國二千年來，所有政權交替都是革命，每個朝代的建立就是先推翻前朝，每次也是戰爭。在那些情況下，維護國家和維護政權並無分別，因為只有推翻政權才有政權轉移，而推翻政權亦會影響國家安全。

在中國，由於黨國一體，影響黨的安全就是影響國家安全，亦無政權交接的和平過渡具體方法。若無明顯政權交替，不是權力鬥爭，就是訴諸武力推翻政權。所以當中國出現騷亂，就會維穩，既是維護國家安全，也是維護政權。

**問** 在《基本法》起草過程中，國家安全立法條文歷經三次改變。譬如一九八八年《基本法（草案）徵求意見稿》訂明「香港特別行政區須立法禁止任何破壞國家統一或顛覆中央人民政府的行為」，為甚麼一九八九年二月《基本法（草案）》刪除「顛覆中央人民政府」，定稿則重新加入？

**答** 當年談及破壞國家統一或顛覆中央人民政府罪時，會令我們想起中國的反革命罪。反革命罪定義空泛，在文革至八十年代初期，政權往往以此罪名排除異己和不同聲音，所以當香港回歸，許多人擔心中國反革命罪是否適合香港，而國家安全概念空泛，往往很易引入中國這類法律。亦有許多人憂慮顛覆中央人民政府與言論自由的關係，譬如是否連談西藏獨立、台灣獨立

也不能，一說就是顛覆？中央政府於是在第二稿刪除相關字眼。可惜一九八九年後，中央政府看到六四事件及香港所扮演的角色，於是態度轉變，在《基本法》定稿「夾硬」放回「顛覆中央人民政府」。雖然中國現已廢除反革命罪，但仍有類似刑事罪行。

## 問 維護國家安全與保障人權是否矛盾？

**答** 當我們談二十三條立法時，許多人會說一定要保護國家安全，也會質疑為何有地方或國家沒有法例保護國家安全。這些說法似是而非。我同意每個國家需要保護國家安全，所以問題並非是否需要法律保護，而是要立甚麼法律。國家安全與人權有一定的衝突，其實它與其他人權或公共利益的衝突無甚分別。國家安全只是其中一個限制人權的理由，但手段是否合適？是否合理？如何平衡國家安全與人權才是討論重點。譬如維護國家安全並不等於日日戒嚴，戒嚴國家永遠安全，高壓統治的國家也會安全，但難以為人接受。

**問** 有評論指二十三條立法將造成寒蟬效應，損害言論表達、新聞、集會及結社等自由。為甚麼？

**答** 關鍵是法例條文。當時其中一個支持立法的論據，指立法並不要緊，雖然法例嚴苛，但政府不會隨便執行，所以市民不用擔心。但是，問題不在

## 專訪 / 陳文敏談二十三條與國家安全



在中國，有多項刑事罪行與保護國家安全有關，政府經常藉以打壓維權人士。而《國家安全法》的草案二次審議稿，更首次提到香港和澳門，令人憂慮其對港澳人權的影響。

#### 煽動顛覆國家政權罪

##### 劉曉波

劉曉波本為學者及評論員，參與起草《零八憲章》，呼籲中國政府推行政治改革及尊重人權，二〇〇九年被判煽動顛覆國家政權罪成，判囚十一年。二〇一〇年，劉曉波獲頒諾貝爾和平獎，其妻子劉霞一直遭當局軟禁家中。

##### 譚作人

譚作人是環保人士及評論員。二〇〇八年汶川大地震後，他收集學校「豆腐渣工程」，「死難學生名單」，及後遭拘捕。

二〇一〇年，他被指撰寫六四文章及在海外網站批評中國政府，被判煽動顛覆國家政權罪成，判囚五年。

照片來源：《參與》Canyu.org

註1：豆腐渣工程，即工程偷工減料，令建築物不合規格，容易倒塌。



#### 國家機密或秘密罪

##### 黃琦

黃琦創立天網，致力推動人權。二〇〇八年汶川大地震後，他協助遇難學生父母追討責任，網上撰文揭發學校豆腐渣工程，因而遭拘捕。二〇〇九年，他被判非法持有國家機密文件罪成，判囚三年。

##### 高瑜

高瑜是資深獨立記者，今年四月被判為境外非法提供國家秘密罪成，重囚七年。她被指向海外傳媒《明鏡》發放中共中央辦公廳規管內部意識形態的九號文件。九號文件亦稱「七不講」，禁止討論憲政民主、普世價值、新聞自由、公民社會、司法獨立、權責資產階級及中國共產黨歷史錯誤。然而九號文件是黨的文件，是否國家文件則尚存疑。

自二〇〇八年，南韓政府多次使用《國家安全法》，以維護國家安全之名拘捕和控告異見人士及被視為支持北韓的韓國國民，損害其表達自由、和平集會及結社自由。涉及國家安全的調查個案數字逐年上升，由二〇〇八年四十六宗上升至二〇一三年一百二十九宗。

#### 國安法定義廣泛

《國家安全法》定義廣泛，當中第七條涵蓋「讚揚、煽動或宣傳反政府組織的活動」，但並無清晰定義，因此當局經常輕易使用第七條對付批評政府或對政府的北韓政策持異見的人。

#### 打壓異見

譬如民間團體社會主義工人聯盟只是和平表達意見，呼籲成立真正的社會主義國家及廢除軍隊，又一直批判北韓剝削工人，八名成員卻於二〇一一年被判違反《國家安全法》第七條，上訴失敗後分別加刑十八個月至兩年監禁，三年緩刑。又如有南韓民間團體於二〇一〇年致函聯合國國安理事會，質疑南韓政府在調查中指北韓擊沉天安號護衛艦的理據，其成員遭南韓當局基於「有利敵人行為」罪拘捕。雖然當局最終並無起訴團體成員，但已達殺一儆百之效。又如 Kim Myeong-soo 因售賣一百四十本及擁有一百七十本有關北韓研究或文學書籍，被指意圖危害國家存在及安全，於二〇

一二年被判罪成，監禁六個月，兩年緩刑，然而那些書籍在政府圖書館、國會圖書館及大型書店也能找到。

#### 解散政黨

去年十二月，南韓憲法法院更裁定親北韓的統合進步黨違反南韓的基本民主秩序，並撤銷該黨議員資格。這是自一九五八年以來法院首次解散政黨，對表達及結社自由造成寒蟬效應。

#### 國際關注

南韓《國家安全法》早於一九四八年制定，曾用作打壓異見，製造敵人以維持「團結」。逾千名作家、藝術家、學者、記者、學生、出版人及反對派曾遭拘留或檢控，包括後來成為總統的金泳三及金大中。一九九八年至二〇〇八年，政府鮮用《國家安全法》控告市民。一般批評除了定義廣泛，酷刑逼供亦一直為人詬病。聯合國亦多次批評該法第七條違反《公民權利和政治權利國際公約》第十九條保障的言論自由，並促請當局確保法例符合公約。

#### 參考

##### 國際特赦組織聲明

Amnesty International. *The National Security Law: Curtailing Freedom of Expression and Association in the Name of Security in the Republic of Korea*. 2012. Press Statement. South Korea: Ban on political party another sign of shrinking space for freedom of expression. 19 December 2014.

近年，馬來西亞政府變本加厲侵犯言論自由，譬如大肆引用《煽動法》，打壓不同政見人士，令社會瀰漫白色恐怖。今年四月更通過《反恐法》——儼如已廢除但惡名昭彰的《內部安全法》，此舉令人權更為倒退。

#### 《反恐法》：未審先囚

根據《反恐法》，政府可基於國家安全利益，毋須審訊就可無限期拘留懷疑恐怖分子，被拘留人士無權司法覆核，違反《公民權利和政治權利國際公約》所保障的公平審訊及免受任意拘禁的權利。

《反恐法》儼如已廢除的《內部安全法》。《內部安全法》賦予執法部門廣泛權力，毋須審訊就可無限期拘留懷疑危害國家安全的人，但國家安全定義含混，容易出現濫權，過往政府經常藉此拘捕反對派及批評政府人士。譬如一九九八年，被辭去副總理職位的安華公開要求時任總理馬哈迪下台，遭當局以《內部安全法》拘捕。二〇〇九年，馬來西亞人上街和平示威，爭取廢除該法，最終成功令政府於二〇一二年廢除惡法。

#### 《煽動法》：打壓異己

《煽動法》是殖民時期制定的嚴苛惡法，定義廣泛，包括「引起對統治者或政府不滿」及質疑憲法保障的事宜，容易以言入罪。最初，英國殖民政府以此打壓主張馬來西亞獨立的人。近年，馬來西亞政府經常使用《煽動法》打壓異己，損害表達自由，造成寒蟬效應。

去年，有二十九人因煽動罪而遭調查，十六人遭檢控，三人罪成。今年首季，至少有二十九人遭調查。他們都是反對派、社運人士、學者、記者、律師和其他和平表達意見、批評政府的人。

譬如今年一月，人權律師 Eric Paulsen 在社交媒體批評政府部門，遭控告煽動罪。社會運動者 Hisanuddin Rais 因公開呼籲市民上街抗議二〇一三年選舉結果，被判煽動罪成。四月，《大馬內幕者》報導甚具爭議的穆斯林刑法內部討論後，遭警方引用《煽動法》拘捕該媒體機構四名記者及其母公司社長。

#### 政府食言拒絕廢除惡法

二〇一二年，總理納吉曾承諾廢除《煽動法》，以符合國際人權法。但自馬來西亞成功加入聯合國安全理事會後，當局不僅拒絕廢除《煽動法》，更建議修例，不准保釋，刑期由三年監禁提高至七年，若煽動涉及損害他人身體及財物，最高監禁二十年。

#### 參考

國際特赦組織聲明

<sup>1</sup>Malaysia: Stop politically motivated arrests under the Sedition Act. 18 March 2015.

<sup>2</sup>Malaysia: Human rights 'black hole' expanding. 31 March 2015.



見或鎮壓人民」（原則三十二），則不屬維護國家安全。以國家安全為名有系統地侵犯人權，才是「損害真正國家安全，甚至是國際和平及安全」。（原則三十二）

#### 《約翰內斯堡原則》

此外，《約翰內斯堡原則》更具體訂明基於國家安全限制表達自由及資訊自由的原則。它由國際法、國家安全及人權專家於一九九五年制定而成。<sup>[14]</sup>

#### 合法國家安全利益

《約翰內斯堡原則》指出合法國家安全利益包括「保護國家存在或其領土完整，免受武力或使用武力的威脅」或保障其「回應武力或威脅使用武力的能力，無論該武力來自外界，諸如軍事威脅，還是內部，如煽動以暴力推翻政府」。（原則二甲）若政府以維護國家安全為由限制言論自由，「必須具備保護合法國家安全利益的真正意圖及保護效用」。（原則一（二））

#### 合法國家安全利益不是甚麼？

而保護「政府免於尷尬或為其掩飾錯誤、隱瞞公共機構運作相關資料、鞏固某一意識型態、鎮壓工業行動」並不合乎國家安全利益。（原則二乙）

#### 限制威脅國家安全的言論

若政府要懲罰「威脅國家安全的言論」，須證明該言論「旨在煽動即時暴力」、「有可能煽動即時暴力」及「言論與暴力或有可能發生的暴力有直接和即時聯繫」。（原則六甲至丙）

和平行使表達自由「不應視為威脅國家安全」，亦不應「受到任何限制和懲罰」。例子包括「倡議以非暴力手段改變政府政策或更換政府」、「批評或侮辱國家或其象徵、政府、政府機構或官員，或外國或其象徵、政府、政府機構或官員」、「基於宗教、良知或信仰，反對或倡議反對徵兵或服役、某一軍事衝突或使用武力或威

脅使用武力以平息國際紛爭」、「傳播有關涉嫌違反國際人權標準或國際人道法的資料」。（原則七甲）

#### 洩密與公眾利益

若任何人披露機密資料，而「對合法國家安全利益並無造成實際損害或不大可能造成損害」或「公眾知情的利益超越披露資料所造成的損害」，則不應基於國家安全而受罰。（原則十五）

此外，「無論何種方式和合法與否，一旦資料已公開，公眾知情權凌駕任何企圖阻止其繼續發布的理據」。（原則十七）

#### 國家安全與香港

聯合國人權事務委員會多次關注香港《基本法》第二十三條立法及《刑事罪行條例》的叛逆罪和煽動罪定義廣泛。譬如在二〇一三年香港審議結論中，委員會「注意到香港準備按照執行《基本法》第二十三條立新法處理叛逆和煽動暴亂罪行，但仍關注香港《刑事罪行條例》內叛逆和煽動暴亂罪行的現有定義措辭廣泛（第十九、第二十一和第二十二條）」，並促請香港政府「修訂關於叛逆和煽動暴亂罪行的法例，令其充分符合公約規定，並確保準備根據《基本法》第二十三條制定的新立法完全符合公約規定」。（段十四）<sup>[15]</sup>

#### 註釋

[1] 全名為《關於〈公民權利和政治權利國際公約〉限制及減損條文的錫拉庫扎原則》。聯合國經濟及社會理事會文件：U.N. Doc. E/CN.4/1985/4 附件。

[2] Sandra Coliver, *Secrecy and Liberty: National Security, Freedom of Expression and Access to Information*, Martinus Nijhoff Publishers, Page 18, 1999.

[3] HKSAR v. Ng Kung Siu and another, FAO04/1999, 15 December 1999.

[4] 全名為《關於國家安全、言論表達自由及獲取資訊的約翰內斯堡原則》。此文中譯參考 ARTICLE 19 及香港人權監察中譯本。

[5] UN Human Rights Committee, Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013), 29 April 2013. CCPR/C/CHN/HKG/00/3.

在國際人權公約中，人權可分為絕對及相對權利。無論何時，政府不能侵犯任何人的絕對權利，譬如免受酷刑的權利，亦不能引起「純粹基於種族、膚色、性別、語言、宗教或社會階級的歧視」。至於相對權利，譬如言論自由，政府有權施加限制，但必須有合法目的，包括國家安全，並須出於必要，且合乎比例。

#### 國際人權公約保障言論自由

言論自由包括表達自由和資訊自由，受聯合國《公民權利和政治權利國際公約》第十九條所保障。若要限制，則須「經法律規定」，且為「尊重他人權利或名譽」、「保障國家安全或公共秩序或公共衛生或風化」所必要者為限。

聯合國人權事務委員會在第三十四號《一般性意見》解釋公約保障的言論自由時，特別提到「締約國必須審慎確保與國家安全有關的叛逆法或其他法律，譬如官方機密或煽動法等，其制定及應用必須嚴格遵從公約第十九（三）條要求」。若政府「引用上述法例禁止或扣起有合法公眾利益而無損國家安全的公開資料」或「起訴傳播上述資料的記者、研究員、環保人士、人權捍衛者或其他人

士」，均違反公約第十九（三）條。而將上述法例「涵蓋與商界、銀行或科學研究有關的資料」，「一般來說並不恰當」。委員會亦曾裁定「限制發表支持勞工運動，包括召集全國罷工的聲明，不符國家安全的合法目的」。（段三十）

#### 《錫拉庫扎原則》：合法國家安全利益

何謂國家安全？讓我們參考《錫拉庫扎原則》。「<sup>1</sup>該原則由國際人權法學專家於一九八四年制訂，旨在解釋公約有關限制及減損條文的原則，並獲國際法及聯合國專家廣泛承認，<sup>2</sup>香港終審法院案例亦有援引，<sup>3</sup>甚具參考價值。

《錫拉庫扎原則》訂明「只有在保護國家存在或領土完整或政治獨立，以免於武力或武力威脅時」（原則二十九），並有「足夠保障及有效補救，以防止濫用」（原則三十一），政府才可基於國家安全限制某些權利。

至於政府「為防止對法律與秩序的本地或個別威脅而施加限制」（原則三十）、「限制含混或任意」（原則三十一）或「打壓異

## 主編的話

自二〇〇三年起，香港市民對國家安全立法耳熟能詳，因為當年香港政府打算就《基本法》第二十三條立法。自此，市民擔心政府會否以國家安全之名輕易侵犯人權。首先，國家安全定義含混，市民質疑「國家」到底是指國體、國土、人民、政府還是政權？這些定義清晰與否，足以影響市民對二十三條立法的看法。其次，亞洲經驗反映政府輕易濫用國家安全的問題。譬如在新加坡，有些社會運動人士透過話劇反映社會問題，劇社演出廣受歡迎，他們卻因此觸犯內部安全法銀鐐入獄。二〇〇〇年，馬來西亞社運人士因為批評前副首相安華案件審訊不公，觸犯內部安全法而身陷牢獄。當時國際特赦組織香港分會促請馬來西亞當局釋放他們。近日，有聲音要求香港盡快就二十三條立法，我們特以國家安全為今期雜誌主題，希望提供更多資料，讓市民參與公共討論。

今期「你的一頁」主角是《人權》雜誌幕後功臣——令雜誌封面備受讚賞的設計師 Gary。他分享了支持國際特赦組織的原因，並細訴設計這份肩負人權教育重任的雜誌的心得。如果你有相似的想法，希望用你的專長推廣人權，歡迎加入我們的義工團隊。

區美寶

## 編輯部

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《人權》雜誌第十三期資料有誤，謹此致歉。勘誤對照如下：

## 頁十四

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