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人權
HUMAN RIGHTS

THE
RULE
OF
LAW

CONTENT

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WORDS FROM THE EDITOR- IN-CHIEF

We feature the rule of law in this issue. Previously, I worked in Southeast Asian countries. One of my Southeast Asian friends once told me that Hong Kong is an advanced society. I thought he was about to say it is because Hong Kong is prosperous and trendy. Unexpectedly he explained he learnt from a Hong Kong TV drama that when a police officer arrests a suspect, he/she identifies him/herself and then gives a police caution as follows: "you are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence". However this was not the case in his country.

The story above is indeed a matter of the rule of law. Generally speaking, some of us may mistake the rule of law as difficult legal provisions which only judges, lawyers and law enforcement officers can understand. Some of us may think we would never get involved in lawsuits and it does not matter if we do not understand the rule of law. In fact, the rule of law is inextricably linked to our daily lives. We can only protect our rights and defend social justice by understanding the rule of law.

Annie Po

IN FOCUS

THE RULE OF LAW AND HUMAN RIGHTS

"All human beings are born free and equal in dignity and rights", stated in article 1 of the Universal Declaration of Human Rights (UDHR). To turn the words of human rights protection into a reality, they must thrive on the rule of law. This is because the rule of law provides the "common normative framework" for protecting civil, political, economic, social and cultural rights.

THE RULE OF LAW IS ONE OF THE UN'S CORE VALUES

The rule of law is one of the core values of the United Nations (UN). It is "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards". This means there are certain requirements including "adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency".^[1] Moreover, article 26 of the International Covenant on Civil and Political Rights (ICCPR) enshrines that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law".

EQUALITY BEFORE THE LAW AND JUDICIAL INDEPENDENCE PROTECTED BY THE BASIC LAW

In Hong Kong, the principle of "equality before the law" and "judicial independence" are fundamental values to the rule of law. They are guaranteed by the Basic Law, Hong Kong's constitutional document. For instance, article 25 of the Basic Law warrants that "all Hong Kong residents shall be equal before the law" whilst articles 2 and 19 state that Hong Kong "shall be vested with independent judicial power, including that of final adjudication". In addition, article 85 stipulates that the Hong Kong courts "shall exercise judicial power independently, free from any interference".

According to a speech delivered by the Hon Chief Justice Geoffrey Ma Tao-li, the rule of law is the foundation of society. The objective of the court is "to ensure that fundamental human rights are properly enforced by the courts, and that individual rights and the rights of others in our community are all respected". The "starting point" is "an acceptance that everyone is equal before the law". "No person, group of persons or organization can claim to be above the law nor to enjoy any preferential treatment by the courts". Secondly, the courts "apply only the law and its spirit, and that they do so independently of any outside influences - whether the Government, the authorities, the public or any section of the public".^[2]

HK COURTS: HUMAN RIGHTS ARE PROTECTED THROUGH THE RULE OF LAW

Human rights protection is based on the rule of law. There are numerous cases of human rights protection by the Hong Kong courts. For instance, in the case of Leung Kwok Hung's unauthorized assembly in 2005, the Court of Final Appeal (CFA) held that the phrase "public order (ordre public)" in certain sections of the Public Order Ordinance did not satisfy the constitutional requirement of "prescribed by law". The CFA pointed out that the government had a positive duty to take measures to enable peaceful assembly and apply the proportionality test.^[3] In the case of a prisoner's right to vote in 2008, the High Court opined that the right to vote was a highly important political right and held that disenfranchisement of the prisoner's right to vote by the Legislative Council Ordinance contravened the Basic Law and the Hong Kong Bill of Rights Ordinance (HKBORO).^[4] In the case of the right to marriage of Ms. W in 2013, the CFA ruled that the Marriage Ordinance and the Matrimonial Causes Ordinance which "restricted the criteria for ascertaining a person's gender to merely biological factors" deprived the essence of a transsexual woman's right to marry a man and thus contravened the Basic Law and the HKBORO. The court further held that "reliance on the absence of a majority consensus as a reason for rejecting a minority's claim is inimical in principle to fundamental rights".^[5]

THE RULE OF LAW FACILITATES SOCIAL DEVELOPMENT

Apart from human rights protection, the rule of law facilitates the stability and development of a democratic society. For instance, the UDHR states that "whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". The Hon Mr. Justice Kemal Bokhary cited in his dissenting judgment in 2005 that "the greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means."^[6]

Endnotes

[1] *The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General. UN Security Council, S/2004/616. 23 August 2004.*

[2] CJ's speech at Ceremonial Opening of the Legal Year 2015. 12 January 2015.

[3] *Leung Kwok Hung and others v. HKSAR. FACC 1/2005. 8/7/2005.*

[4] *Chan Kin Sum Simon v. Secretary for Justice and another. HCAL79/2008. 8/12/2008.*

[5] *W and The Registrar of Marriages. FACV 4/2012. 13/5/2013.*

[6] *Supra note [3]. Para 121.*

THE RULE OF LAW

What is the rule of law?

Source: The United Nations

- # EQUALITY BEFORE THE LAW
- # SUPREMACY OF LAW
- # INDEPENDENTLY ADJUDICATED
- # CONSISTENT WITH INTERNATIONAL HUMAN RIGHTS STANDARDS
- # ACCOUNTABLE TO THE LAW
- # FAIRNESS IN THE APPLICATION OF THE LAW
- # SEPARATION OF POWERS
- # PARTICIPATION IN DECISION-MAKING
- # LEGAL CERTAINTY
- # AVOIDANCE OF ARBITRARINESS
- # PROCEDURAL AND LEGAL TRANSPARENCY

What is the purpose for the rule of law?

**TO PROTECT HUMAN RIGHTS /
TO FACILITATE DEVELOPMENT OF
DEMOCRATIC SOCIETIES /
NOT TO BE COMPELLED TO
REBELLION AGAINST TYRANNY
AND OPPRESSION AS A LAST
RESORT**

Global ranking of the rule of law

World Justice Project : Rule of Law Index (2015)

- 1. Denmark**
- 2. Norway**
- 3. Sweden**

EAST ASIA

9. Singapore / 11. South Korea / 13. Japan /
17. Hong Kong / 71. China

World Economic Forum: Judicial Independence (2015-16)

- 1. New Zealand**
- 2. Finland**
- 3. Norway**

EAST ASIA

4. Hong Kong / 12. Japan / 23. Singapore /
47. Taiwan / 67. China / 69. South Korea

INTERVIEW WITH PAUL SHIEH WING TAI ON THE RULE OF LAW

Q / Amnesty International Hong Kong

A / Paul Shieh Wing Tai, SC, former Chairman of Hong Kong Bar Association



Q What are your comments on human rights protection by the Hong Kong courts?

A International human rights covenants were introduced to Hong Kong through legislation, i.e. the Hong Kong Bill of Rights Ordinance (HKBORO) in 1991 and the Basic Law after the 1997 handover. Since the 1997 handover, human rights in Hong Kong have been protected under Chapter 3 of the Basic Law as well as the HKBORO; Hong Kong courts determine whether legislation passed by the Legislative Council complies with the above legal instruments. Whenever there are people challenging the acts of the Hong Kong Government through judicial reviews and alleging that those acts contravene the human rights principles stipulated in the Basic Law and the HKBORO, Hong Kong courts are responsible for adjudicating the claims.

It is not up to me to say whether Hong Kong courts have been doing their jobs well - and I should not make unnecessary comments. I would say that Hong Kong's practice is the same as any society respecting the rule of law, i.e. enforcing international human rights covenants and protecting human rights through independent judicial bodies. Hong Kong's infrastructure encompasses a few characteristics: firstly, Hong Kong's judiciary is independent, open and transparent, the legal system is entirely independent from the administrative and Chinese courts; secondly, the Court of Final Appeal (CFA) has sufficient international vision and is of high quality; thirdly, courts make reference to international case law and deliver judgment with sufficient justifications.

Apart from that, some people worry that the legal sector may be politically infiltrated by the Communist Party of China and judges will become part of the political power one day. However, I think that we should not be worried about this since the Basic Law stipulates that the CFA may invite judges from other common law jurisdictions to participate in a trial. Non-Permanent Judges of the CFA come from leading common law jurisdictions such as the United Kingdom, Australia and New Zealand. They are current or former respectable judges in those jurisdictions. This system enables the CFA to have sufficient international vision and thus understand other regions' views towards rights protection. What is more, the system can help build the Hong Kong courts' image as impartial, just and authoritative adjudicators. Overseas judges come to Hong Kong and take office as Non-Permanent Judges of the CFA because they have confidence in the rule of law in Hong Kong and believe that courts can run independently. It will definitely cause a big shock if the political power damages the rule of law in Hong Kong and thus makes overseas judges leave Hong Kong.

Q This year, the Central Government mentioned in its working report that "One Country, Two Systems" should be "put into effect fully and accurately". Qiao Xiaoyang, the Chairperson of the National People's Congress Law Committee, said that the Basic Law had to be understood "fully and accurately". What is your comment?

A **SUBTEXT OF "FULL AND ACCURATE UNDERSTANDING":
CONSTRUED ACCORDING TO THE CENTRAL GOVERNMENT'S
INTERPRETATION**

A lot of public statements are actually obvious and are overly broad. On the surface of the wording, there is no disagreement but it is the interpretation behind that matters. Merely saying that "One Country, Two Systems" should be "put into effect fully and accurately" is uncontroversial; the content of this system is however the crux of the matter. Similarly, the Basic Law is a constitutional document and therefore must be understood fully and accurately. Yet, when the Chinese authority says that the Basic Law is to be "understood fully and accurately", the subtext is that only the Central Government's interpretation should be followed.

COURTS' INTERPRETATION OF A CONSTITUTIONAL DOCUMENT IS THE CORRECT INTERPRETATION

Some Chinese commentators contended that the Hong Kong Government and even the judges do not fully understand the Basic Law - that is untrue indeed. In the common law system, interpretation of the laws including ambiguous legal and constitutional provisions is a matter solely for the independent courts. Although the Basic Law may be interpreted by the Standing Committee of the National People's Congress (the NPCSC), we should still follow the interpretation of the courts as long as the NPCSC has not re-interpreted the relevant provisions.

These comments from China give people an impression that the Chinese authority, professors or some other authoritative persons have a "marking scheme" for the correct interpretation of the Basic Law, and such people judge the Hong Kong courts' interpretation pursuant to their own preference. Nevertheless, this is neither the culture of Hong Kong nor any society respecting the rule of law. One can disagree with the courts' interpretation, but he/she should provide reasons instead of boastfully announcing a so-called "marking scheme". In the future, whenever there are people who do not share our rule of law culture saying that Hong Kong courts fail to understand the Basic Law correctly, we should realize that their underlying mindset is contrary to the rule of law culture that Hong Kong has long been respecting.

Q The Standing Committee of the National People's Congress has the ultimate power to interpret the Basic Law. How does it affect the rule of law in Hong Kong?

A In the narrow sense, the NPCSC has the power to interpret the Basic Law according to the Basic Law. On the other hand, it does not conform to international norms of the rule of law principles if non-judicial bodies are to interpret constitutional instruments or legislators are to explain the legislative intent.

If the NPCSC exercises its power too often, it will potentially affect how the international community views the rule of law tradition in Hong Kong. This has already created a big shock even though the NPCSC only interpreted the Basic Law a few times since 1999. It is not very remarkable when Hong Kong courts request the NPCSC to interpret the Basic Law since Hongkongers have trust in the courts; it will however lead to big crises when the Hong Kong Government requests the NPCSC to interpret the Basic Law after being defeated in lawsuits. The Hong Kong Bar Association once said that, the Chinese authority had to realize the potential harm to the rule of law every time the NPCSC interpreted the Basic Law.

Q According to the State Council of China's White Paper on the practice of the "One Country, Two Systems" in 2014, judges are regarded as administrators in Hong Kong and must love the country. Do you think this is in line with the spirit of the rule of law?

A Some put that it was only a problem of translation that judges were described as administrators of Hong Kong, but I feel that it is a problem stemming from a basic mindset. Judges do not bear the responsibility to administer, but to monitor whether the government acts within the legal boundary. Therefore, it is incorrect to define judges as administrators of Hong Kong. It will also be a big issue if judges are required to love the country. Is it necessary to prioritize national interests for one to love the country? If yes, then will judges still be considered as loving the country when their ruling is not in favour with the government and the government thus has to pay the costs? One of the elements of the rule of law is judicial independence, that is, judges rule whilst putting aside considerations such as patriotism and background of the parties (e.g. the nation).

Q Recently, some organizations criticized judges saying they are too lenient allowing the arrested to get acquitted. What are your comments?

A Such kind of statements show that many people in Hong Kong have only a superficial understanding of the rule of law, and that they do not truly understand the rule of law although they say that they pay respect to it. They just pay lip service. What astonishes and frustrates me is that these speeches actually come from some so-called "research organizations" and prominent persons. It is truly scary that such a belief is held by people equipped with legal knowledge and even former law enforcement officers. Following the Central Government every time it calls for support? Judicial independence is absolutely the other way round.

The prerequisite of such statements is that police must have acted correctly by arresting the defendants, but is that the truth? The judiciary is clearly not independent when judges are required to convict every person arrested by the police. Secondly, judges did not in reality acquit many of those defendants. It may well be the case that only a small portion of defendants were acquitted but those incidents were exaggerated. Judges acquit the defendants based on various reasons, for example, the police might have genuinely or intentionally arrested the wrong persons; judges thought that the available evidence was insufficient to convict the defendants while police thought otherwise; there are doubts as to whether defendants have the intention during physical conflicts and so they have the benefit of the doubt. Judges make their reasons

explicit when they acquit the defendants. If some people are not satisfied with certain reasons of the judgment or find that there are errors in evidence, they may discuss it openly since no judges are entirely correct. However, the recent attack towards Hong Kong courts is undoubtedly not an academic discussion. Such emotional abuses lack analysis of the evidence in those cases, but simply allege that judges are all pan-democrats. Such absurdity is the greatest threat to judicial independence.

Nevertheless, when the ruling is against protestors, protestors or netizens, there may still be criticism of the judges as well. For example, in the public assembly against the teacher Ms Lam Wai-sze in August 2013, one of the participants, who was a retired policeman, had physical conflicts with opposing protestors and was subsequently charged with common assault. The judge acquitted the retired policeman in the end, on the basis that the prosecution failed to prove the intention of the assault. Frankly speaking, these incidents are not uncommon and it just happened to be a pro-establishment person who was acquitted this time. However, a newspaper commentary "Tiger Lui (1) and the rule of law" dated 13 February 2014 made a mountain out of a molehill and alleged that all levels of courts had fallen into the Chinese authority's hands, "Xi Jinping's instruction regarding 'cooperation of powers' in Hong Kong had been largely implemented", "Lady Justice changed to cover her eyes with a transparent blindfold such that she can now classify who are the bigwigs and who are thorns in the bigwigs' flesh".

Hong Kong's judicial independence has a rather high ranking internationally, for instance, it ranked 4th in the Global Competitiveness Report. Judges sitting on the CFA are the smartest; mistakes may be made in lower courts occasionally but they can be corrected through appeal so there is no problem with regard to the system. Hong Kong's court system is great, but there will be a threat to the rule of law whenever there are emotional abuses targeted at the courts, no matter if abuses come from protestors or pro-establishment people. It will make outsiders wrongly believe that Hong Kong judges adjudicate based on political preference. As time goes on, there will be big trouble when such statements continue to be frequently repeated.

Q Do you think clouds heralding "a storm of unprecedented ferocity" are gathering over the rule of law in Hong Kong?

A Justice Bokhary did not put it explicitly about the "ferocious storm" so it is difficult for me to comment. However, there are certain areas of the rule of law in Hong Kong about which we have to be vigilant .

Firstly, we have to educate the public about judicial independence, the role of courts and restrictions of public authority. Otherwise, those absurd statements, if uncorrected, will spread rapidly and make ordinary citizens and students either look down on the courts or wrongly believe that the public authority must always be right and courts are obstructive. We must keep alert to such statements.

Secondly, the main difference between Hong Kong and China is that Hong Kong upholds the spirit of the rule of law. China has its own so-called "rule of law" and always talks about it, but its version is different from that of Hong Kong. We must realize the meaning of "rule of law" when spoken by different people, and keep alert to China's "rule of law" comments such as cooperation of powers, judges are administrators and must love the country. Very often, people come to believe in certain things when they are repeated frequently.

Extended reading

Speech of the Chairman of the Hong Kong Bar Association at the Opening of the Legal Year 2015. 12 January 2015.

Endnote

[1] Tiger Lui is a hot-headed hooligan in Chinese fictions and films.



THE RULE OF LAW TOUR@CENTRAL

This year, Amnesty International Hong Kong held its first-ever Rule of Law Tour, 4 events for the general public and 6 for schools in total. During the spring, we walked in Central together with students and citizens, from the Former Legislative Council Building to the HSBC Main Building, then to the Former Court of Final Appeal Building (Former French Mission Building) and finishing at the Former Central Police Station Compound. Along the way, participants listened to accounts of the old stories in relation to the rule of law, and learned about Hong Kong's path towards the rule of law through its historical architectures and streets.

While summer brings us rain, the hot and humid weather may be unfavourable for the tour. We plan to wait and start the tours again in September. Please pay attention to the news about the Autumn Tour.

USEFUL INFORMATION

Medium

Cantonese (English tours to be launched)

Best for

Secondary school students and the public

Related values

The rule of law, human rights, equality

Related subjects

Liberal Studies, Integrated Humanities, Moral and Civic Education, Human Rights Education

Enquiry

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ERECTED A.D. MDCCCXX

AI GLOBAL CAMPAIGNS

1/ AI Mali

AI Mali launched the Death Penalty Annual Report at the Parliament Building on 6 April. 16 members of Parliament as well as the national television and the print media were present.

Photo Credit: Amnesty International Mali

2/ AI Germany

AI Germany "welcomed" the Mexican President Peña Nieto with a loud protest right before his meeting with the Chancellor of Germany Angela Merkel in Berlin in April. Activists demanded a proper investigation by the Mexican Government into thousands of cases of disappearance including 43 missing university students in Ayotzinapa.

Photo Credit: Amnesty International Germany

3/ AI Brazil

The power of the images presented in the photo exhibition of the Eldorado dos Carajás Massacre, which was organized in partnership with the Landless Workers Movement (MST) and AI Brazil in 2016, is a contribution not only to the memory of those who lost their lives, but also to the struggle for the right to land and an end to impunity for those who were guilty in 1996, when more than 271 rural workers and leaders were killed in Pará alone.

Photo Credit: Amnesty International Brazil

4/ International Secretariat

The AI International Secretariat conducted a joint campaign with Oxfam in New York. The artists Joe and Max created a 3D pavement artwork on 15 March in order to represent a scene from the bombed streets of Aleppo in Syria. The artwork was placed outside the Headquarters of the United Nations in New York. Its key message was "5 Years. No more excuses. Stand with Syria" and urged the international delegates to bring the voices of Syrians to the UN.





PHYOE PHYOE AUNG RELEASED

On 7 April, Phyoe Phyoe Aung, the Write for Rights 2015 case and prisoner of conscience, was released along with her husband Lin Htet Naing as well as other protesters who had been arrested in Myanmar for their activism. This is a huge victory for human rights and human rights defenders. We thank all of you who participated in our Write for Rights 2015. Your actions set Phyoe Phyoe free!

The detention of Phyoe Phyoe Aung followed nationwide student peaceful protests, which started in 2014 and ended with the beating of students by police in March 2015. Students and their supporters were arrested and detained throughout the country.

ALBERT WOODFOX RELEASED

On his 69th birthday, 19 February 2016, Louisiana prisoner Albert Woodfox walked free – 44 years after he was first put into solitary confinement.

In the last 5 years, AI members and supporters generated more than 700,000 actions on behalf of Albert and the Angola 3. Thank you for all of your hard work and support especially to AI Club students from various international schools who took action for Albert in the Write for Rights 2015.

With the knowledge of his release, Albert took the time to thank many people, including AI, who helped him secure his freedom: "I also wish to thank members of the International Coalition to Free the Angola 3, Amnesty International and the Roddick Foundation, all of whom supported me through this long struggle".

Photo Credit: Amnesty International USA (Jasmine Heiss)



BURKINA FASO IS GOING TO TAKE ACTION ON PROTECTING WOMEN AND GIRLS

In December 2015, the Burkina Faso Government adopted a national strategy (2016-2025) and a 3-year action plan (2016-2018) to prevent and eliminate child marriage in Burkina Faso.

This is certainly a positive step and we thank all of you who took action for women and girls in Burkina Faso in our Write for Rights campaign.

LOCAL HAPPENINGS

THIS IS YOUR PAGE:
MARY PACIELLO

Why do you support Amnesty International?

I have been a member of Amnesty International since I was 18. I first became interested during the time Pinochet was in government in Chile; there were many cases of people going missing and being tortured. When I was at school in the United Kingdom, an Amnesty speaker gave us a very powerful assembly about the Chilean military government. This really inspired me and since then I became more aware of human rights. When I came to Hong Kong in 1990, I joined Amnesty International Hong Kong.

What do you think about human rights education in your school?

Human rights education is very important. In the international school I am working for, our students are quite aware of global issues including human rights. We have some compulsory subjects that help to develop students' knowledge of global and human rights issues including child labour and human trafficking. When they get older, they are required to conduct a project to raise awareness and for which they may choose to work with a charity. Recently we had a film screening of "He Named Me Malala" for fundraising. The donation went to a charity for refugees in Hong Kong. Our students also explore human rights issues in drama lessons.



NAME
MARY PACIELLO

OCCUPATION
TEACHER

YEARS WITH US
MORE THAN 35 YEARS

How would you encourage your students to stand up for human rights?

In the 1990s, we had lots of letter-writing campaigns. The Chairperson of Amnesty International Hong Kong would come to our school regularly and gave talks on the Vietnamese refugee camps in Hong Kong and the death penalty.

We have an Amnesty International group of about 20 students at school. They supported the Write for Rights campaign 2015 by collecting signatures. They set up a Facebook page for promotion as well as making a huge Amnesty logo and had students take photos holding it and then posted it online.

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

There are 3 issues that I am really concerned about. As a teacher, I am passionate about education for all, especially for girls in places where they are not given equal opportunities or need to leave school at a very young age. Other injustices that have drawn my attention are the migrant domestic workers not being given the right of abode in Hong Kong and child trafficking. I have been to Cambodia a few times and I saw many children sell stuff at tourist spots. They were just young children who should be in school.

TEAM AMNESTY

We had our very first TEAM AMNESTY event on campus in April! With the support from Wu Yee Sun College at the Chinese University of Hong Kong, *S'port Amnesty* was held in the gym room in Wu Yee Sun College.

S'port Amnesty is a sports event which aims at raising awareness of human rights through strenuous physical activity. Participants competed on gym machines, like the rowing machine, to see how far they could row in a specific period of time. We hope that through the hardship of strenuous physical activity, participants can experience the tiresome, defeated sensation of those whose rights are violated and suppressed, and encourage them to stand up for human rights.

Amnesty International believes that human rights, like sports, should not be the luxury of a select few people, and should be shared and encouraged by anyone and everyone. If you would like to organize a *S'port Amnesty* in your school or your work place, please contact us at fr@amnesty.org.hk.

Visit

www. Team.Amnesty. org.hk

to learn more about TEAM AMNESTY and join us.



UNIVERSITY AI CLUB

University AI Club Programme

This year's University AI Club Programme was completed. After 4 thematic human rights workshops, participants of the University AI Club obtained a deeper understanding of various human rights issues such as freedom of expression, women's rights, the rights of refugees and the abolition of the death penalty. Through expert talks at the workshops, students gained invaluable human rights knowledge and got a glimpse of the speakers' human rights work experience. They also acquired campaigning skills through training sessions in the workshop. In late March 2016, participants organized 5 events on various university campuses with an objective to raise awareness amongst university students on human rights issues. In the future, AIHK will continue to develop the University AI Club Programme so as to recruit more university students to join our human rights movement.

AI Club@HKU

The AI Club @ HKU held their Annual General Meeting on 26 February 2016 and the election session of the 2016-17 Executive Committee (ExCo). According to the annual report of the previous 2015-16 session, the AI Club @ HKU ExCo recruited 90 full members and 11 associate members, and undertook a total of 8 actions in relation to the rights of ethnic minorities. We would like to thank them for the actions they took and the causes they campaigned for. We look forward to collaborating with the newly elected ExCo in the near future.

CUHK AI Society

The CUHK AI Society collaborated with AIHK to host the Migrant Domestic Workers Photo Exhibition on campus. Just as the previous 2 exhibitions at the University of Hong Kong and Lingnan University, the CUHK AI Society recruited several volunteers to introduce the photos to passers-by. Student volunteers received training from AIHK so that they could have a better understanding of the situations of migrant domestic workers in Hong Kong. The exhibition was held from 7 to 10 March 2016 and a good number of students expressed interest in knowing more about the topic.



LAWYERS' PROTESTS@ HONG KONG AND MALAYSIA



In June 2014, Hong Kong lawyers wore black and protested in silence against the White Paper on the practice of the "One Country, Two Systems" published by the State Council of China, fearing that it places judicial independence in jeopardy.

Photo Credit: Apple Daily



In October 2014, Malaysian lawyers protested and demanded the Malaysian Government to keep its promise to repeal the Sedition Act. Amnesty sections across the Asia Pacific region jointly launched an online petition and demanded the Malaysian Government to repeal the Sedition Act so as to safeguard freedom of expression.

Photo Credit: EPA

Petition launched by Amnesty sections across the Asia Pacific region



法律界示威： 香港和馬來西亞



二〇一四年六月，香港法律界舉行黑衣靜默遊行，抗議中國國務院《一國兩制白皮書》損害香港司法獨立。
圖片由《蘋果日報》提供



二〇一四年十月，馬來西亞律師上街示威，要求政府履行承諾廢除《煽動法》。國際特赦組織亞太地區分會亦發起聯署，促請馬來西亞政府立即廢除《煽動法》，以保障言論自由。
照片來源：EPA
國際特赦組織亞太地區分會聯署



TEAM AMNESTY



www. Team. Amnesty. org.hk

今年四月，我們舉行了首個校園 TEAM AMNESTY 活動。在香港中文大學伍宜孫書院的支持下，S'port Amnesty 在該校的健身房順利完成。

S'port Amnesty 是一個以運動提高人權意識的活動。譬如參加者須在指定時間內，在划艇機上划出最遠距離。我們希望參加者透過劇烈體能活動，在身心承受巨大壓力及筋疲力倦的情況下，體驗到權利受侵犯的感覺，同時鼓勵他們為人權發聲。

國際特赦組織深信人權跟體育運動一樣，不應只屬於一小撮人。如果你有興趣在校園或公司舉行 S'port Amnesty，請電郵至 tr@amnesty.org.hk 與我們聯絡。

如欲了解更多有關 TEAM AMNESTY 的理念，請瀏覽 www.Team.Amnesty.org.hk

University AI Club

本學年度 University AI Club 計劃已經完滿結束。參加計劃的同學透過四節人權工作坊，學習表達自由、婦女權利、難民及廢除死刑各項人權議題。同學從各專家講者的演講中，獲得人權知識及工作經驗分享，並在訓練中掌握策劃行動的技巧。今年三月底，同學在各大專院校舉行了五次行動，呼籲大專生關注人權。本會將會繼續舉辦 University AI Club，招募更多大專生加入人權行動。



香港大學 AI Club @ HKU

香港大學 AI Club @ HKU 已於今年二月二十六日舉行年度會員大會，並選出二〇一六至一七年度幹事會。根據上屆幹事會的工作報告，他們於過去一年招募了九十名會員及十一名聯席會員，並舉辦了八次有關少數族裔權利的行動。本會感謝上屆幹事會的努力，亦期待與現屆幹事會合作。

香港中文大學：國際特赦組織學會

本會與香港中文大學學生會國際特赦組織學會早前於中大校園合辦外傭相片展覽。如同之前在香港大學及嶺南大學舉辦的相片展，中大國際特赦組織學會招募了數名負責為其他同學導賞的學生義工，並由本會提供培訓，加深他們對香港外傭處境的認識。展覽已於今年三月七至十日舉行，多名中大同學表示希望多加認識外傭議題。



UNIVERSITY AI CLUB

本地迴響

你的「頁」· Mary Paciello

你為甚麼會支持國際特赦組織？

我自十八歲就成為國際特赦組織會員。那時皮諾切特擔任智利總統，發生許多市民失蹤和遭受酷刑事件。當時我在英國讀書，國際特赦組織代表舉辦關於智利軍政府的到校講座，並啟發了我關心人權。一九九〇年，我來到香港，加入了香港分會。

對於任教學校的人權教育，你有什么意見？

人權教育非常重要。我在國際學校教書，學生頗為關注全球議題，包括人權。學生透過必修科學習全球議題的知識，譬如童工和人口販賣問題。高年級學生須完成專題研習，他們可以選擇與慈善機構合作。我們最近亦舉辦了「馬拉松：改變世界的力量」慈善放映會，捐助關注難民的本地慈善團體。此外，學生也可在戲劇課探索人權。

你如何遊說學生為人權發聲？

九十年代初，我們以寫信活動為主。當時的主席亦定期到校出席講座，議題包括香港的越南難民營和死刑。我們亦有國際特赦組織學生小組，現時大約有二十名學生成員。他們去年支持了「寫信馬拉松」活動，收集簽名，又設立「臉書」宣傳專頁，邀請其他學生與自製大型蠟燭拍照上傳至專頁。

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？

我有三個特別關注的人權問題。身為老師，我希望所有人也可接受教育，特別是各地仍有很多女童欠缺平等的學習機會，或是年紀輕輕已被迫輟學。我亦關注香港外傭不獲居留權及販賣兒童的問題。我曾數次到柬埔寨，看到當地很多兒童在旅遊景點賣東西。他們只是小孩，理應享受校園生活。



姓名
Mary Paciello

職業
教師

與國際特赦組織同行
逾三十五年



翁斐斐獲釋

今年四月七日，緬甸政府釋放多名示威人士，包括二〇一五年「寫信馬拉松」個案主暨良心犯翁斐斐及其丈夫 Lin Het Nang。我們感謝曾參與二〇一五年「寫信馬拉松」的你，令翁斐斐重獲自由。

二〇一四年，緬甸學生示威浪潮席捲全國。直至去年三月，警方武力鎮壓，示威才告一段落。其後，當局拘捕及檢控翁斐斐、抗議學生和支持者。

好消息

Albert Woodfox 獲釋

今年二月十九日，美國著名 Angola 3 案的 Albert Woodfox，遭當局單獨囚禁四十四年後，於其六十九歲生日當天出獄。

國際特赦組織會員及支持者，於過去五年為 Angola 3 舉行逾七十萬個行動。我們感謝國際學校 AI Club 同學，參與二〇一五年「寫信馬拉松」，為 Albert 寫信。

Albert 感謝眾多團體，包括國際特赦組織會員及支持者，讓他重獲自由。「感謝促成釋放 Angola 3 的國際聯盟、國際特赦組織及羅迪克基金會，支持我走過漫長的抗爭路。」

圖片來源 / 國際特赦組織美國分會 (Jasmine Heiss)



布基納法索政府將採取行動 保障婦女及女童權利

去年十二月，布基納法索政府公布國家十年策略，包括推行為期三年的「預防及消除重婚行動計劃」。

我們衷心感謝參與「寫信馬拉松」聲援布基納法索婦女及女孩的你。你的行動推動了該國政府決心消除重婚。

全球人權運動



1 / 馬里分會
今年四月六日，馬里分會在議會大樓公布全球死刑報告。當天有十六位議員出席，更有來自全國各地的電視及新聞媒體採訪。照片來源 / 國際特赦組織馬里分會

2 / 德國分會
今年四月，在墨西哥總統涅托與德國總理默克爾會面之前，德國分會以震耳欲聾的示威「歡迎」他。他們要求墨西哥當局徹查數以千計失蹤事件，包括四十三名曾參與學運而不知所蹤的 Ayoztli naps 大學生。照片來源 / 國際特赦組織德國分會

3 / 巴西分會
一九九六年，巴西 Eldorado dos Carajás 地區發生大屠殺，超過二百七十一名工人及領袖被殺。今年正值二十周年，巴西分會與「無土地工人運動」合辦有關大屠殺的照片展覽。相展不僅為了紀念，更是聲援爭取土地權運動，並要求將殺害工人的元兇繩之以法。
照片來源 / 國際特赦組織巴西分會

4 / 國際秘書處
本會國際秘書處與樂施會於紐約舉行聯合行動。三月十五日，藝術家 Joe 和 Max 繪製一幅立體畫，以反映敘利亞第一大城市阿勒頗的炸毀情況。作品已放於紐約聯合國大樓前面，旨在表達一五年了。不容藉口。支持敘利亞」的訊息，提醒更多國家代表將敘利亞人民的聲音帶入聯合國。

中環法治之旅導賞團

國際特赦組織香港分會在二〇一六年推出前所未有的「法治之旅」導賞團，迄今共舉辦了四次公眾團及六次學校團。我們趁春和日麗的周末，帶學生和市民結隊遊走中環，從舊立法會大樓走到匯豐銀行總行，再拾級而上往前終審法院大樓，然後到前中區警署建築群。參加者沿途細聽昔日法治故事，並從建築物街道窺探香港法治之路。

「夏天為大地帶來雨水」，而且暑氣迫人，讓我們歇息一會，待九月秋高氣爽再次起程。請留意秋季團最新消息。

實用資訊

語言 廣東話

建議對象 中學生及公眾

相關價值 法治、人權、平等

相關科目 通識科、綜合人文科、德育及公民教育、人權教育

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ERECTED A.D. MDCCC



不過，當法院判決不利抗爭者，抗爭者或網民亦會大肆批評。譬如二〇一三年八月反林慧思老師公眾集會中，參與集會的退休警員與持相反立場的示威者有肢體衝突，被控普通襲擊，但法官基於控方未能證明蓄意襲擊，裁定退休警員罪名不成立。平心而論，這些事情經常發生，不過這次法官釋放的是親建制人士，但二〇一四年二月十三日一篇題為〈雷老虎與法治〉的報章評論文章卻上綱上線，竟說成各級法院陷落，「習近平的『香港行政、立法、司法三權必須合作』指示已經大致實現」，「蒙眼司法女神」「今天還危立香港，但顯然已經改用透明蒙眼布，能夠清楚分辨誰是權貴，誰是權貴眼中釘」。

香港法院司法獨立於國際排名頗高，譬如在《全球競爭力報告》中，香港司法獨立全球第四。香港最高級法院的法官最精明，下級法院偶會犯錯，但可透過上訴糾正，這並非制度問題。香港法院制度很好，但無論抗爭者還是親建制人士說三道四，也會對法治造成衝擊，令不知就裡的人誤以為法官判案憑政治取態。久而久之，不同聲音重複同一批評，不斷蔓延，就會不得了。

問 你認為香港法治是否籠罩「前所未有的兇猛的暴風雨」？

答 包致金法官未有言明「暴風雨」，我難以評論。不過，香港法治有需要保持警惕的地方。

首先，我們需要教育公眾何謂司法獨立、法院角色及對公權力的限制，不然至論一出，欠缺糾正，就如星星之火，令一般市民及學生對法庭完全欠缺尊重，或誤以為公權力永遠是對的，或警察「拉人」不會出錯，只是法院「阻頭阻勢」。我們要有所警惕。

第二，香港和內地最大分別是香港有法治精神。雖然內地也談「法治」，也有自己所謂的法治，但與香港所說的法治截然不同。我們要認清楚大家口中的「法治」定義為何，要對內地諸如三權合作、治港者及愛國等「法治」說法保持警惕。很多時不斷重複，就會有人信以為真。

延伸閱讀

〈香港大律師公會主席於二零一五年法律年度開啟典禮演辭（中文譯本）〉。
二〇一五年一月十二日。

問 人大常委會掌握《基本法》最終解釋權。你認為此如何影響香港法治？

答 狹義而言，根據《基本法》，人大常委會有權釋法。但另一方面，由非獨立司法機關演繹憲制文件，甚至是立法者演繹立法原意，並不符合國際社會一貫的法治原則。

如果人大常委會過於有權必用，會潛在地影響國際社會對香港法治傳統的看
法。人大常委會不是經常釋法，但當年釋一兩次法已很震撼。由法院要求提
請人大釋法，震撼不大，因為香港人相信法院，但政府輪官司，主動要求釋
法，就會引起軒然大波。當年大律師公會曾言，內地需要知道，每釋一次法
也會潛在引致對法治的震撼。

問 中國國務院於二〇一四年公布《一國兩制白皮書》，提到法官是治港者及必須愛國。你認為此是否符合法治精神？

答 曾有人說「法官是治港者」是翻譯問題，但我覺得這是基本思維問題。法官的責任並非管治，而是監察政府行事是否符合法定規限，所以將法官界定為治港者並不正確。若要求法官愛國，會有好大問題。愛國是否一定要將國家利益放於前提？若是，法官裁定政府敗訴和賠錢，或說政府舉措雖然出於好意，但法律不容，那是否愛國？法治精神其中一個元素就是司法獨立，即是法官判案不應因愛不愛國或訴訟一方是否國家而受到影響。

問 近期有團體批評「警察拉人，法官放人」。你有何評論？

答 這種說法突顯香港有許多人對司法獨立認知皮毛，口頭說尊重，但心底毫不明白。我所詫異的是，有所謂研究組織或有頭有面的人，竟然說出如斯評論，真的令人懊惱和氣憤。有法律知識的人甚至前執法者居然有這種看法，令人心寒。「阿爺吹雞」（中央號召，眾人隨從）就一定要跟主調，但司法獨立豈是如此。

「警察拉人，法官放人」這句說話，前設是警察一定是對的，法官放人就不行，但事實是否如此？若警察「拉人」，法官全部奉旨要「釘」（判罰），這並不是司法獨立。第二，現在法官並無釋放所有被告。好多人放人可基於不同理由，譬如案件，但其實可能只有少數案件如此。法官放人可基於不同理由，譬如可能警察秉公行事但錯誤拘捕；「砌生豬肉」（誣捏）；警察拘捕疑犯時覺得證據足夠，但法官認為證據不足；有肢體碰撞，但是否蓄意有疑點，而疑點利益歸於被告。法官放人的理據都寫了出來。如果不滿法官某一判決的理據，大可公開討論，無法官會絕對正確，但明顯早前對香港法院的攻擊，完全不是學術研究。這些情緒化謾罵，完全缺乏分析案件證據，純粹說法官皆是泛民主派人士。如此說三道四，實在是對司法獨立最大衝擊。



專訪 / 石永泰談法治

問 / 國際特赦組織香港分會
答 / 石永泰資深大律師、前香港大律師公會主席

問 你對香港法院保障人權有何評價？

答 國際人權公約透過立法方式引入香港，即一九九一年透過《香港人權法案條例》（人權法）及一九九七年回歸後透過《基本法》引入。回歸後，香港人權保障來自《基本法》第三章及《人權法》，並由香港法院審視立法會制訂的法律是否符合上述兩份法律文書。當有人對政府舉措作出司法挑戰，指其違反《基本法》和《人權法》，訂明的人權原則，香港法院就會負責裁決。

香港法院是否稱職，這不由我品評，我亦不應指指點點。我會說香港做法如同一般崇尚法治的社會，透過獨立司法機構執行國際人權公約，保障人權。香港制度有幾個特點：一、香港司法獨立，法律制度完全獨立於行政當局和內地法院，且公開透明；二、終審法院有足夠國際視野和質素；三、法庭援引國際案例，判案有充足理據。

此外，有人擔心法律界被染紅（意即被中共滲透），法官遲早會淪為強權的一部分，但我覺得此時未必需要擔心，因為《基本法》規定終審法院可邀請海外普通法地區的法官參加審判。終審法院以往一直都有非常任法官是來自英國、澳洲和紐西蘭等領導性普通法地區，並為當地德高望重的現職或前法官。這機制確保終審法院有足夠國際視野，了解其他地方對權利保障的看法，亦有助建立外界對香港法院公正和權威的看法。有海外法官來港出任終審法院非常任法官，是因為對香港法治有信心，相信法院獨立運作。若當權者破壞香港法治制度，海外法官因而離開，就會造成很大震撼。

問 中央於今年工作報告提到要「全面準確貫徹一國兩制」。全國人大法律委員會主任委員喬曉陽指「要『全面準確』理解《基本法》」。你有何看法？

答

全面準確的潛台詞：奉中央理解為尊

許多公共論述都是「阿媽係女人」（人所共知的事），很空泛，表面字眼不會有異議，但背後演繹截然不同。純粹說「全面準確貫徹一國兩制」，我對此不會有異議，但問題在於一國兩制的內容是甚麼。同樣，《基本法》是憲制文件，一定要全面準確理解，但內地說「全面準確理解《基本法》」，潛台詞是要根據中央的理解來理解。

法院對憲制文件的理解就是正確理解

內地評論指香港政府甚至法官不太全面理解《基本法》，這是倒轉來說。因為在普通法制度，如果法律或憲制條文含混不清，應由獨立法院解釋，而非當權者說了算。香港有人大釋法，但人大常委會尚未釋法之前，在我們的文化中，正確理解應以法院為準。

這些內地講法，令人覺得當權者、內地教授、護法或權威人士，好像手執正確理解《基本法》的 marking scheme（評分表），然後視乎香港法院判決是否合其心意，能合意就是司法獨立，不合就是理解錯誤，需要糾正，但這並非香港或崇尚法治文化應有的說法。你可以不同意，但要道出理由，而不是抱持這種居高臨下，我手中就是正確的態度。以後再有不是來自我們法治文化的人，說香港法院未能正確理解《基本法》，大家要洞悉其背後思維，是與香港一向崇尚的法治文化相違。

法治有何用？

保障人權 /

促進民主社會發展 /

不致迫不得已

鋌而走險反抗暴政

香港法治成績表

世界法治指數 (2015)

World Justice Project

冠 / 丹麥
亞 / 挪威
季 / 瑞典

東亞

第9名：新加坡 / 第11名：南韓 /
第13名：日本 / 第17名：香港 /
第71名：中國

全球經濟論壇：

司法獨立排名 (2015-16)

冠 / 紐西蘭
亞 / 芬蘭
季 / 挪威

東亞

第4名：香港 / 第12名：日本 / 第23名：新加坡 /
第47名：台灣 / 第67名：中國 / 第69名：南韓

法治定義

聯合國

法治懶人包

#法律面前，人人平等

#法律凌駕一切

#司法獨立

#符合國際人權標準

#向法律負責

#公平執法

#三權分立

#參與決策

#法律須明確

#避免任意

#程序和法律透明

秩序 public order (ordre public)」而限制和平集會權利的法定酌情權，並不符合法律需清晰明確的憲法要求，並指出政府有積極責任協助和平集會及應用相稱性測試，闡明表達自由的合理限制。^[3]又如二〇〇八年囚犯爭取投票權案，高等法院認為投票權是重要政治權利，裁定《立法會條例》「一刀切剝奪在囚人士投票權違反《基本法》和《香港人權法案》。^[4]二〇一三年三小姐爭取結婚權案，終審法院裁定《婚姻訴訟條例》及《婚姻條例》將性別準則僅限於生理因素，剝奪變性人士以新性別與異性結婚的權利，違反《基本法》及《香港人權法案》，法院亦指保障基本權利並不取決於社會共識。^[5]

法治促進社會穩定

法治除了保障人權，亦可促進民主社會穩定和發展。譬如《世界人權宣言》序言訂明「鑒於為使人類不致迫不得已鋌而走險對暴政和壓迫進行反叛，有必要使人權受法治的保護」。二〇〇五年時任香港終審法院常任法官包致金曾在判辭指出，「為保護社區而防止有人煽動以武力和暴力推翻社會制度的重要性愈高，便愈有迫切需要維護自由發言、自由報導和自由集會等憲法權利，確保這些權利免受侵犯，以維持自由政治討論的機會，讓政府可適切地回應人民的意願，並讓社會所渴望的任何改變能夠以和平方式實現。」^[6]

註釋

- [1] The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General. UN Security Council. S/2004/616. 23 August 2004.
- [2] 終審法院首席法官二〇一五年法律年度開啟典禮演辭。二〇一五年一月十二日。
- [3] Leung Kwok Hung and others v. HKSAR. FACJ 1/2005. 8/7/2005.
- [4] Chan Kin Sum Simon v. Secretary for Justice and another. HCAL79/2008. 8/12/2008.
- [5] W and The Registrar of Marriages. FACV 4/2012. 13/5/2013.
- [6] 同 [3]。段 121。

「人人生而自由，在尊嚴和權利上一律平等」，《世界人權宣言》第一條如是說。若要將保障人權付諸實行，則有賴法治。因為法治提供規範如何行使權力的共同框架，從而保障公民、政治、經濟、社會與文化權利。

聯合國：法治原則

法治是聯合國的核心價值。它是「適用於所有人包括政府的公開管治原則」，要求人人「向公布周知、平等實施、獨立裁決和符合國際人權標準的法律負責」。法治原則亦有下列要求：「法律凌駕一切」、「法律面前，人人平等」、「向法律負責」、「公平執法」、「三權分立」、「參與決策」、「法律必須明確」、「避免任意」及「程序和法律透明」。^[1]此外，《公民權利和政治權利國際公約》第二十六條亦訂明「人人在法律上一律平等，且應受法律平等保護，無所歧視」。

《基本法》訂明人人平等及司法獨立

回到香港，「法律面前，人人平等」及「司法獨立」皆是法治精神要素，並有憲制條文訂明保障。譬如《基本法》第二十五條保障「香港居民在法律面前一律平等」；第二條及第十九條訂明香港享有「獨立的司法權和終審權」；第八十五條訂明香港「法院獨立進行審判，不受任何干涉」。

終審法院首席法官馬道立亦指，法治乃社會基石，法院的目標是「確保基本人權可獲法院恰當執行」。而實現的起點正是「法律面前，人人平等」。換句話說，無論任何人，包括行政長官，也不能凌駕法律之上。第二，法院「只會根據法律及法律精神斷案，並在判案時保持獨立，不受任何外界影響」。^[2]

香港法院：法治保障人權

法治保障人權。香港法院亦不乏保障人權的例子，譬如二〇〇五年梁國雄未經批准遊行案，終審法院裁定在《公安條例》中，警務處處長以「公共

主編的話

今期專題是法治。我想跟讀者分享一個小故事：我早年在東南亞國家工作，在一次閒談之中，當地的朋友稱讚香港很進步，我猜想他會舉例說香港經濟繁榮、城市五光十色之類，他卻這樣說：「在香港電視劇中，如果有警察拘捕疑犯，那個警察表明身分後，會說『唔係事必要你講，但你所講的將會成為呈堂證供』。我們的警察可不是這樣。」

以上一則小故事跟法治很有關係。一般來說，大家可能會覺得「法治」即是法律條文，太深奧了，一定要法官、律師及執法人員才懂。換句話說，很多人都認為自己是一等良民，不會「惹官非」，既沒有能力明白法律條文，亦覺得不掌握法治精神也不要緊。事實上，生活中有太多事情跟法治息息相關，我們要明白法治的基本概念，才可以保障自身權益，才可以捍衛社會公義。

一
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