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FREE LiuXiao

立即釋放

劉曉波

FREEDOM OF  
PEACEFUL ASSEMBLY

人權  
HUMAN RIGHTS

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# WORDS FROM THE EDITOR- IN-CHIEF

In recent few months, "Occupy Central" should have been the most controversial topic in Hong Kong. "Occupy Central" is a campaign organized by Benny Tai, Associate Professor of Law Faculty from the University of Hong Kong. We have been working closely with Benny in the area of Human Rights Education for a long time. We have produced educational materials, provided training for teachers of liberal studies and monitored civic education curriculum development together. However, we are not attempting to discuss the objectives of and the background to this campaign in this issue. Rather, we are very keen to provide useful information in the debate of "Occupy Central" regarding "Freedom of Expression" and "Freedom of Assembly" versus the meaning of "Unlawful Action". Therefore we have tried to illustrate how international standards, local laws and the courts protect our basic rights. Besides, we also have attempted to clarify relevant concepts. We hope that all these standards and concepts can help the public to have a rational discussion. Moreover, we hope that the authorities should keep their promise to the international community that they have to assist and protect any individuals who would like to exercise their civil rights and that they should treat fairly the people who participate in any kind of peaceful demonstration in this City.

An Mei Po

# GLOBAL CAMPAIGNS



## AI NORWAY: SOLIDARITY WITH THE SYRIAN PEOPLE

To support the Syrian people, AI Norway organized a rally at the Youth Square (Youngstorget) on 5 September. Ms John Peder Egenæs, Secretary General of Amnesty International; members of Parliament, and political party members joined. They urged all parties involved in the conflict in Syria to immediately stop attacks on civilians.

## AI GERMANY: END SEXUAL VIOLENCE AGAINST WOMEN IN EGYPT

In recent months, women protesters standing up for their rights have faced horrific sexual violence around Cairo's iconic Tahrir Square. However, the Egyptian authorities have done little to stop the assaults, or bring those responsible to justice. For years sexual violence and discrimination against women has largely remained unpunished.

Amnesty members gathered at the Brandenburg Gate on 18 August to collect signatures against the bloodshed in Egypt. They also protested in front of the Egyptian embassy in Berlin.

## NEW ANIMATION TEACH YOU HOW TO EVICT PEOPLE

Amnesty International partnered with video activism organization WITNESS ([www.witness.org](http://www.witness.org)) to create a short animation about forced evictions.

The aims of the animation are to energize supporters and mobilize new people to share the video and bring more attention and activism to our End Forced Evictions campaign. We are taking a new approach in telling what is really happening all around the world. The animation is available in English, Arabic, French, Italian, Khmer, Portuguese (BRA), Romanian and Spanish.

The End Forced Evictions animation will help promote the Kenya online petition - <http://youtu.be/ruIM8fpyySU>



# OVERVIEW OF INTERNATIONAL STANDARDS AND DOMESTIC LAW REGARDING FREEDOM OF PEACEFUL ASSEMBLY

Hong Kong is regarded as a “city of protests”. In 2012, more than 7,000 public assemblies and demonstrations took place in Hong Kong.<sup>1</sup> What does freedom of assembly cover? What protection are those who assemble given?

## RIGHT OF ASSEMBLY IS CONSTITUTIONAL RIGHT

Right of peaceful assembly is triple protected by domestic law, the constitution and international law. International Covenant on Civil and Political Rights (ICCPR) provides international human rights standards, which stipulates in article 21 that “The right of peaceful assembly shall be recognized”. Basic Law states in article 27 that it protects freedom of speech, assembly, procession and demonstration while ICCPR is applicable in Hong Kong according to Article 39 of Basic Law. Hence freedom of assembly is a constitutional right in Hong Kong. Furthermore, the Hong Kong Bill of Rights Ordinance (Cap 383) (HKBORO) is the domestic law of ICCPR and offers protection of freedom of peaceful assembly.

## FREEDOM OF EXPRESSION INCLUDES CONTENT AND FORM OF ASSEMBLY

Freedom of peaceful assembly is interdependent and interlinked with other rights. For instance, the content and form of assembly is protected by freedom of expression. It is enshrined by Basic Law, ICCPR and HKBORO.

Freedom of expression includes unpleasant speeches. The Court of Final Appeal stated in *Yeung May Wan and others v*

*HKSAR*<sup>2</sup> that “The freedom to demonstrate peacefully is a constitutional right protected by Article 27 of the Basic Law. It is closely associated with freedom of speech. Such freedoms of course include the freedom to express views which others may find disagreeable or offensive or which may be critical of persons in authority. Those freedoms are at the heart of Hong Kong's system and the courts should give them a generous interpretation.”

## SIGNIFICANCE OF FREEDOM OF PEACEFUL ASSEMBLY

Freedom of assembly is the foundation of democratic society and is important for social stability and development.<sup>3</sup> In its judgment *Leung Kwok Hung and others v HKSAR*, the Court of Final Appeal stated that “The resolution of conflicts, tensions and problems through open dialogue and debate is of the essence of a democratic society. These freedoms enable such dialogue and debate to take place and ensure their vigour. A democratic society is one where the market place of ideas must thrive. These freedoms enable citizens to voice criticisms, air grievances and seek redress. This is relevant not only to institutions exercising powers of government but also to organizations outside the public sector which in modern times have tremendous influence over the lives of citizens. Minority views may be disagreeable, unpopular, distasteful or even offensive to others. But tolerance is a hallmark of a pluralistic society. Through the exercise of these freedoms minority views can be properly ventilated.”<sup>4</sup>

1. LCQ13: Public meetings, processions and demonstration, 2013/6/6

2. *Yeung May Wan and others v HKSAR*. FACC19/2004. Date of judgment: 2005.5.5. Summary.

3-4. *Leung Kwok Hung and others v HKSAR*. FACC 1 & 2 /2005. Date of Judgment: 2005.7.8. Para 1 and 2

## FREEDOM OF PEACEFUL ASSEMBLY: OVERVIEW OF INTERNATIONAL STANDARDS AND DOMESTIC LAW

### BASIC CONCEPTS

#### A. Protection of right of assembly

ICCPR only protects peaceful assembly but not assembly by organizers and participants with violent intentions. However, the government cannot deprive freedom of peaceful assembly on grounds including "possible occurrence of violent counter demonstrations, possible participation of extremists with violent intentions who are not the members of the organizing association".<sup>5</sup>

#### B. Government's positive duty

The Court stated in the *Leung Kwok Hung* case that the right of peaceful assembly imposes a positive duty on the government to take "reasonable and appropriate measures to enable lawful assemblies to take place peacefully".<sup>6</sup> The Court also quoted Hong Kong government's "Second Report on the HKSAR in the light of the ICCPR" to the United Nations Human Rights Committee that "The HKSAR has an obligation to assist and provide for the right of peaceful public assembly and demonstration".<sup>7</sup>

#### C. Demonstrations and counter demonstrations

Freedom of peaceful assembly includes the right to demonstrate and counter demonstrate. But "the right to counter demonstrate cannot extend to inhibit the exercise of the right to demonstrate".<sup>8</sup> Even if a particular demonstration is offensive to people with the opposite views, the government should take effective measures to ensure the demonstration take place without threat of physical violence by opponents, otherwise it will be a deterrent to public expression of similar views and thus infringes freedom of expression.<sup>9</sup>

#### D. Restrictions must be proportional

ICCPR and HKBORO stated legitimate restrictions on freedom of peaceful assembly which "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others".

The United Nations Human Rights Committee published General Comment No. 34 on freedom of expression. It stated that restriction on freedom of expression must be "compatible with the provisions, aims and objectives of ICCPR" and "must not violate the non-discrimination provisions of ICCPR".<sup>10</sup> Restriction must be necessary, must conform to the principle of proportionality and adopt the least intrusive measures.<sup>11</sup>

The Court stated the constitutional requirements for restriction on the right of peaceful assembly should comply with "the prescribed by law requirement" and "the necessity requirement" based on the legitimate purposes by ICCPR and HKBORO. The restriction should be consistent with the principle of proportionality including "the restriction must be rationally connected with one or more of the legitimate purposes" and "the means used to impair the right of peaceful assembly must be no more than is necessary to accomplish the legitimate purpose in question".<sup>12</sup>

The Court also ruled that the notion of "public order (ordre public)" does not meet the constitutional requirement of "prescribed by law" and thus the Police Commissioner's statutory discretion to restrict the right of peaceful assembly based on the notion is inconsistent with the constitution.<sup>13</sup> Under the context of the Commissioner's discretion to limit the right of peaceful assembly, the notion of "rights and freedoms of others" may not meet the constitutional requirement of "prescribed by law".<sup>14</sup>

#### HK Human rights protection monitoring by the United Nations

Citizens may seek justice and remedy through legal proceedings and current human rights watchdogs when their rights are being infringed. For instance, the Court may judicially review whether the legislations, government policies and measures are consistent with HKBORO and ICCPR.

Freedom of assembly is also subjected to international monitoring. As ICCPR is applicable in Hong Kong, the Hong Kong government is obliged to fulfill rights enshrined by the ICCPR. The government is required to regularly submit reports and attend the United Nations treaty body hearings.<sup>15</sup>

The recent ICCPR hearing on Hong Kong by the United Nations Human Rights Committee is in March 2013. The Committee expressed concerns and recommendations regarding the implementation of ICCPR in Hong Kong in its concluding observations. Those related freedom of peaceful assembly are listed below:

5. "Vol 14: Human Rights (14) Right of peaceful assembly". *Halsbury's Laws of Hong Kong*, page 578-580

6. *Leung Kwok Hung and others v HKSAR*, FACC 1 & 2/2005. Date of Judgment: 2005.7.8. Para 22.

7. *Leung Kwok Hung and others v HKSAR*, FACC 1 & 2/2005. Date of Judgment: 2005.7.8. Para 23.

8. *Leung Kwok Hung and others v HKSAR*, FACC 1 & 2/2005. Date of Judgment: 2005.7.8. Para 24. "Vol 14: Human Rights (14) Right of peaceful assembly". *Halsbury's Laws of Hong Kong*, page 578

9. *Leung Kwok Hung and others v HKSAR*, FACC 1 & 2/2005. Date of Judgment: 2005.7.8. Para 24. "Vol 14: Human Rights (14) Right of peaceful assembly". *Halsbury's Laws of Hong Kong*, page 578

10. The United Nations Human Rights Committee. General comment No. 34 Article 19: Freedoms of opinion and expression. 12 Sept 2011. Para 26. Article 2(1) of the ICCPR stated that "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

11. The United Nations Human Rights Committee. General comment No. 34 Article 19: Freedoms of opinion and expression. 12 Sept 2011. Para 34 & 35.

12. *Leung Kwok Hung and others v HKSAR*, FACC 1 & 2/2005. Date of Judgment: 2005.7.8. Para 17.36. Basic Law Bulletin. Issue No. 8. Jan 2006. Page 10-12.

13. *Leung Kwok Hung and others v HKSAR*, FACC 1 & 2/2005. Date of Judgment: 2005.7.8. Para 95.

14. *Leung Kwok Hung and others v HKSAR*, FACC 1 & 2/2005. Date of Judgment: 2005.7.8. Para 88.

15. *Chong Yiu Kwong & Tsui Ka Wing. "Human Rights". In the book of Social Welfare and Law: Communication and Empowerment. Hong Kong: Red Publication (2011). Page 83-86.*

**Issues****Public Order Ordinance and freedom of expression****Concluding observations**

10. "The Committee is concerned about (a) the application in practice of certain terms contained in the Public Order Ordinance, inter alia, "disorder in public places" or "unlawful assembly", which may facilitate excessive restriction to the Covenant rights, (b) the increasing number of arrests of, and prosecutions against, demonstrators, and (c) the use of camera and video-recording by police during demonstrations (arts. 17 and 21).

Hong Kong, China, should ensure that the implementation of the Public Order Ordinance is in conformity with the Covenant. It should also establish clear guidelines for police and for records for the use of video-recording devices and make such guidelines accessible to the public."<sup>16</sup>

**Issues****Excessive use of force by police****Concluding observations**

11. "The Committee expresses concern about reports of excessive use of force by members of the police force, not compatible with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>17</sup> in particular by the inappropriate use of pepper spray to break up demonstrations surrounding the annual Hong Kong march on 1 July 2011, the visits of Vice-Premier and President of China, respectively in August 2011 and July 2012 (arts. 7, 19 and 21).

Hong Kong, China, should increase its efforts to provide training to the police with regard to the principle of proportionality when

using force, taking due account of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials."<sup>17</sup>

**Issues****Police complaint mechanism****Concluding observations**

Background: Currently, complaints against police are investigated by the Complaints against Police Office (CAPO), which is a branch of the police. The Independent Police Complaints Council (IPCC) is only entitled to review the classifications of complaint investigations and to make non-binding advice. It lacks the power of investigation, verdict and punishment.

12. "While noting that the statutory framework has reinforced the role of the Independent Police Complaint Council (IPCC), the Committee remains concerned that investigations of police misconduct are still carried out by the police themselves through the Complaints Against Police Office (CAPO) and that IPCC has only advisory and oversight functions to monitor and review the activities of the CAPO and that the members of IPCC are appointed by the Chief Executive (arts. 2 and 7).

Hong Kong, China, should take necessary measures to establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints."<sup>18</sup>

**Reference List:**

*International Covenant on Civil and Political Rights (ICCPR)* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

*The United Nations Human Rights Committee. General comment No. 34 Article 19: Freedoms of opinion and expression. 12 Sept 2011. CCPR/C/GC/34.*

<http://www2.ohchr.org/english/bodies/hrc/comments.htm>

*Best practices that promote and protect the rights to freedom of peaceful assembly and of association. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association. 2012.*

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf)

*The United Nations Human Rights Committee's hearings on Hong Kong including concluding observations and NGOs shadow reports in 2013.*

<http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm>

*Hong Kong Government's report to the United Nations Treaty Bodies on Constitutional and Mainland Affairs Bureau (CMAB)'s website.*

[http://www.cmab.gov.hk/oc/press/reports\\_human.htm](http://www.cmab.gov.hk/oc/press/reports_human.htm)

*LAW Man Wai Anthony. "Chapter 9 Freedom of assembly". The New Discussion of Human Rights Law in Hong Kong. City University of Hong Kong Press. July 2009.*

*Chong Yiu kwong & Tsui Ka Wing. "Human Rights". Law Yiu kai, Kwok Hiu Chung and Tsui Ka wing. "Police power". Co-edited by Andy Chiu, Shirley Hung and Chong Yiu kwong. In the book of Social Welfare and Law: Communication and Empowerment. Hong Kong: Red Publication (2011).*

*Leung Kwok Hung and others v HKSAR. FACC 1 & 2/2005. Date of Judgment: 2005.7.8. Basic Law Bulletin. Issue No. 8. Jan 2006.*

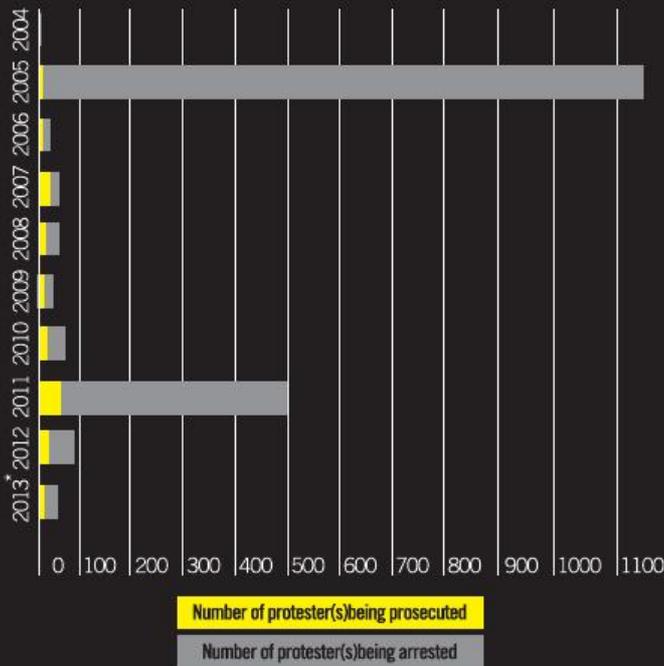
16. The United Nations Human Rights Committee. Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013). 29 April 2013. CCPR/C/CHN-HKG/CO/3. Para 10.

17. The United Nations 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. Para 11.

18. The United Nations 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. Para 12.

# IN FOCUS POLICING IN HONG KONG

## NUMBER OF ARRESTS AND PROSECUTIONS DURING PUBLIC ASSEMBLY



\*Figures for the first two months of 2013  
Annex 3 to LCQ 18: Figures on Arrest and prosecution during Public Order Events (2004-2013)  
[http://gia.info.gov.hk/general/201303/27/P201303270451\\_0451\\_108856.pdf](http://gia.info.gov.hk/general/201303/27/P201303270451_0451_108856.pdf)

## PEPPER SPRAY

	Small Size	Large Size
Concentration	Pepper Concentration 10%	
Effective Range	Within 5 meters	
Dosage	MK3.5 Flip top 2.2oz HVS	MK 9 16 oz foam
Power output of eruption	-	MK 9 with Fast Evaporating Delivery System and propellant
Effectiveness	One day only	> One day
Application	General equipment	In, 2005, South Korean farmers attacked the police's line of defence In 2012, China President Hu Jintao visited HK and pepper spray was used on protesters

Hong Kong Economic Journal "Big size pepper spray is more powerful than small size, revealed by manufacturers": 2012/7/5

Next Magazine. "Father of pepper spray: Hong Kong Police should not misuse pepper spray," 2012/7/11

Security Bureau. "Meeting of the Legislative Council Panel on Security on 4 July 2012 Item VI-Police's crowd control arrangements in relation to public meetings and public processions- Follow up issues". 2013/7/19

## WATER BARRIERS

### Weight

2 tonnes

### Height

2 metres

### Uses

2005 : WTO protests in HK  
2012 : China President Hu Jin - Tao's visit. More than 200 water barriers were put in position to surround the protest area in Wanchai

Source: Apple Daily "200 water barriers surround Convention and Exhibition Centre" 2012/6/29

## SOUND CANNON

### 2009

- Police purchased 2 LRADs (Long Range Acoustic Device) with the armoured vehicles
- Effective transmission range: 300 metres

### 2012

- Police purchased portable LRADs 100X
- Effective transmission range: 700 metres
- Maximum loudness: 137dB

### Uses

- Police explained that LRADS were a "broadcasting system"
- The purpose of LRADS was "to convey important messages over a long range in a noisy environment"
- Had not been used in any event?  
Police claimed they "will NOT be used at public meetings and processions"
- Police Commissioner Andy Tsang explained in LegCo that "LRADS would only be used in serious disasters, counter-terrorism operations or severe security incidents"

### Uses in Foreign Countries

- Used during European Nations Cup and London Olympics
- Nov 2011 - New York police planned to use sound canon to clear Occupy Wall Street
- Nov 2007 - Riot police in Georgia used sound cannon, rubber and plastic bullets and water cannon to disperse protesters
- Nov 2005 - Cruise ship used sound cannon to repeal Somalia pirates

Source: "LCQ4: Long Range Acoustic Device" 2012/11/28

<http://www.info.gov.hk/gia/general/201211/28/P201211280398.htm>

HK Economics Journal "Andy Tsang claimed sound cannon was not a weapon" 2013/1/31

Apple Daily "damage hearing in 4 seconds" 2012/10/20

## USE OF BODY WORN VIDEO CAMERA

### Body Worn Video Camera

- Police crews recorded protests during demonstrations
- Mar 2013 - Police had trial use of body worn video cameras to record conflicts or breaches of the peace. Yet guidelines for recording were not publicly available.

Source: Apple Daily "Body worn camera by police for surveillance" 2013/2/23.

## CENSOR JOURNALIST'S QUESTIONS

During the HK visit of China President Hu Jing-tao, a journalist was **TAKEN AWAY** by plain clothes police in a designated press zone for asking if President Hu had heard about Hong Kong people's hopes to vindicate the June 4th massacre.

Mak Yin-ting, former chairperson of HKJA, said no security officials removed her when she asked former China Premier Zhu Rongji about the June 4th massacre in Beijing.

Source: Apple Daily "IPCC urged the police for an explanation of police handling including use of water barriers and pepper spray with larger size"

Apple Daily "Reporter asking questions about June 4th was detained" 2012/7/1

## DESIGNATED PRESS AREA DURING CHINA OFFICIALS VISITS

China officials HK visits	Wen Jia-bo in 2003	Li ke-qiang in 2011
Distance of designated press area	20 metres	40 to 130 metres
Security check	-	Police checked the content of a journalist's wallet including receipts
Home Visits	Journalists could take photos and ask questions at a close distance	
Cordon or security zone	-	Journalists were asked to stand at 100m outside the venue

Source: Icabre news "Strict controls adopted by police during Li ke-qiang's visit". 2011/8/18  
HKJA "Examples of infringement of press freedom by police during Li ke-qiang's visit". 2011/9/1

## CHINA LIAISON OFFICE IN HONG KONG WITH "POLITICAL FLOWER BED"



2001 / 8 / 25

- Falungong members protested outside the Liaison Office.

2002 / 5 / 4

- A large flower bed was built outside the Office. The 9 metres pedestrian road was reduced to 3 metres and reduced the room for protests outside. A tough approach is taken towards protests outside the Office afterwards.

2010 / 10 / 10

- A group of citizens celebrated the awarding of Nobel Peace prize to Liu Xiao-bo outside the office. One of the portesters was arrested for common assault for accidentally splashing champagne. The absurdity of the arrest raised international and local concerns. The charge was finally dropped.

2011 / 2 / 27

- Police restricted League of Social Democrats (LSD) to protest 30 metres away from the office. Police also confiscated an LSD banner with a Jasmine revolution in China slogan for blocking police's sight.

2012 / 4 / 4

- Police set up a press area and prohibited journalists from walking close to protestors outside the Office. Journalists were not allowed to approach the Office's entrance. They could only go in groups of 3 to perform their duty outside the Office.

Source: Apple Daily. "Police surrounded journalists by metal barriers. Journalists were asked to interview in groups of 3 and not allowed to approach the Liaison Office's entrance." 2012/4/5  
Picture from: inmediahk.net, <http://www.inmediahk.net>

## IN FOCUS

### PUBLIC ASSEMBLY IN OTHER COUNTRIES

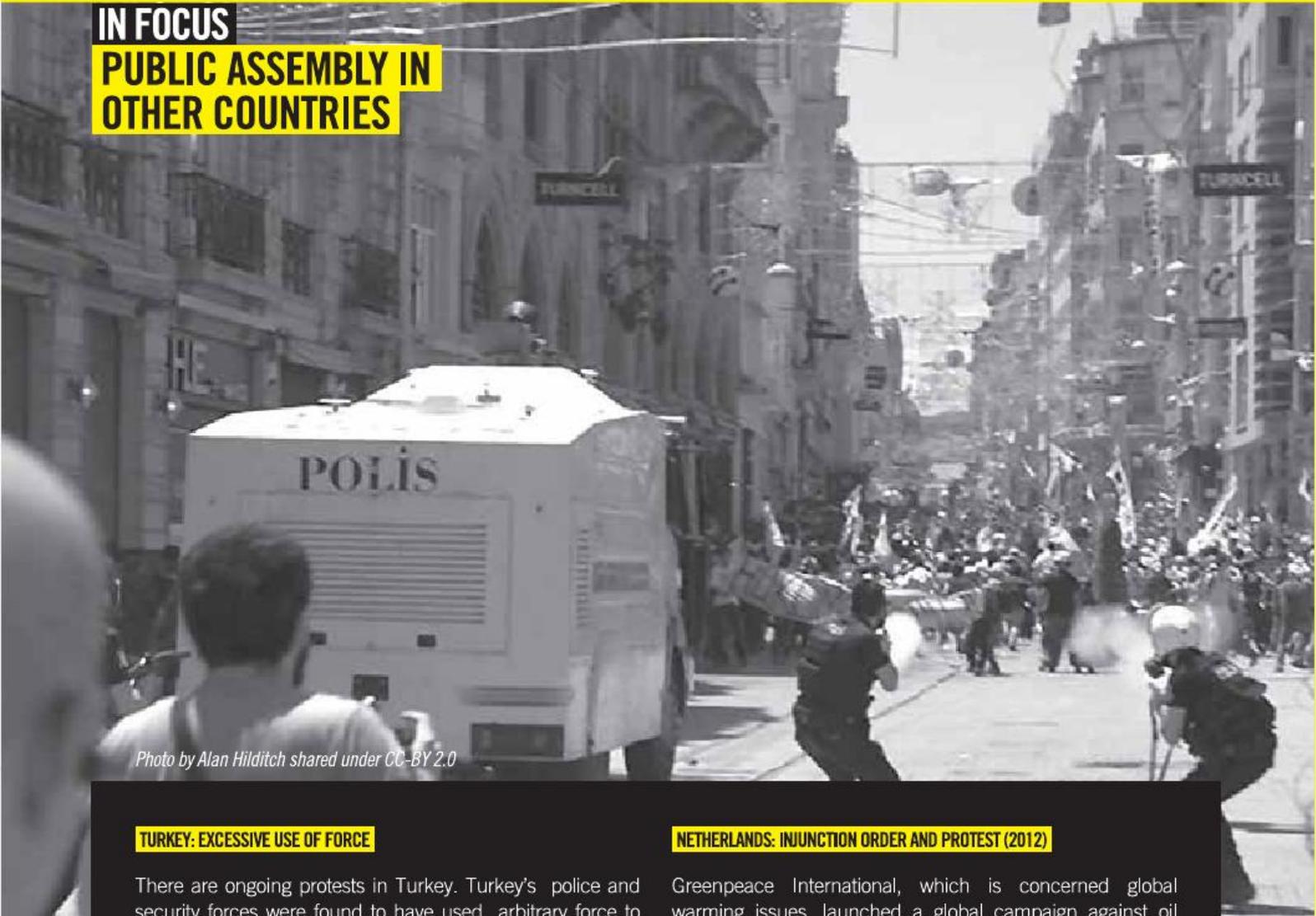


Photo by Alan Hilditch shared under CC-BY 2.0

#### TURKEY: EXCESSIVE USE OF FORCE

There are ongoing protests in Turkey. Turkey's police and security forces were found to have used arbitrary force to enforce restrictions on freedom of expression, association and peaceful assembly enshrined by the International Covenant on Civil and Political rights. They used tear gas and water cannon in arbitrary ways to disperse protestors. They fired plastic and rubber bullets at unarmed protestors, killing and seriously injuring some of them. They also beat thousands of protestors in order to suppress unrest. They arrested and detained protestors, journalists and human rights activists.

Amnesty International found that Hong Kong, Brazil, Belgium, China, the Czech Republic, India, Israel, South Korea, the UK and the USA supplied riot control equipment to Turkey including vehicles, tear gas and uniforms. AI called for the immediate termination of the transfer equipment to Turkey until the Turkish Authorities allowed prompt, independent and impartial investigations into the allegations of arbitrary use of force.

Source: Amnesty International. "Turkey: Disgraceful use of excessive police force in Istanbul". 1 June 2013.  
<https://amnesty.org/en/news/turkey-disgraceful-use-excessive-police-force-istanbul-2013-06-01>

#### NETHERLANDS: INJUNCTION ORDER AND PROTEST (2012)

Greenpeace International, which is concerned global warming issues, launched a global campaign against oil drilling in Arctic by Shell in 2012. Greenpeace Nederland blocked the entrance to Shell's headquarters for a period of time. It also went to 72 Shell petrol stations and locked the fuel nozzles in order to stop fuel transfer to vehicles. Shell applied for an injunction order to prohibit Greenpeace's action.

The Court issued this injunction order but protected freedom of expression and assembly by imposing proportional limitations at the same time. The Court ruled that Greenpeace was prohibited from taking actions at Shell petrol stations for six months unless such actions complied with the following conditions: prior written documents to Shell stating purpose of action, what action will take place, duration, security measures if applicable and the contact details of the person in charge on behalf of Greenpeace; action at fuel stations which hindered or significantly restricted the chance for the public to put fuel in their vehicles should not exceed an hour etc.

Source: Translation of Shell Judgment: *Shell Nederland Verkoopmaatschappij B.V. v Stichting Greenpeace Nederland, Stichting Greenpeace Council*. District Court of Amsterdam, Civil Law Sector, Court in Summary Proceedings 5 Oct 2012.  
<http://www.greenpeace.org/international/Global/international/publications/climate/2012/Arctic/finaltranslation%20of%20judgment.pdf>

**GOOD  
NEWS**


## AMNESTY INTERNATIONAL AMBASSADOR OF CONSCIENCE AWARD

The Amnesty International Ambassador of Conscience Award was held in Dublin, Ireland on 17 September, 2013. The award has been given jointly to Pakistani schoolgirl and education rights campaigner Malala Yousafzai and American singer and social justice activist Harry Belafonte.



## COMPLAINT PETITION "WILL BE INVESTIGATED" JAILED VIETNAMESE BLOGGER ENDS HUNGER STRIKE

Nguyen Van Hai (Known as Dieu Cay), 61, co-founder of the Free Journalists Club in Vietnam, was charged with "conducting propaganda against the Socialist Republic of Viet Nam" under Article 88 of Viet Nam's Penal Code. In the absence of a fair trial, he has received a 12-year prison sentence with 5 years' house arrest on release. He has been held in solitary confinement since he began his sentence".

He started his hunger strike in mid-June so as to protest against the political allegations. On 27 July an official visited Nguyen Van Hai and informed him that his complaint petition had been received and that it would be investigated. Nguyen Van Hai ended his hunger strike the same day.



More information - <http://bit.ly/asa41-006-2013>

# LOCAL HAPPENINGS

## INTERVIEW WITH DONOR: BENNY TAI

### WHY DID YOU START SUPPORTING AMNESTY INTERNATIONAL?

It was because I was invited to be a part of the Executive Committee of Amnesty International! Of course, I have long kept an eye on Amnesty International's work. Over the years, the kind of issues I have been working on were quite similar to that of Amnesty International. For instance, I had the chance to work with Amnesty International in the 90s to compile teaching materials for human rights education. As such, the courses we both engaged in were quite related. On the academic front, in contrast, most of the time my work is done on individual basis. Hence, not until I was invited to be a member did I formally join Amnesty International.

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

Not even when I was serving at Amnesty International a few years back have I ever given thought to that... Perhaps it signifies that human rights defenders around the globe need hope as a source of motivation. This is because defending human rights is a continuous challenge that requires great effort to preserve.

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

I would spread the importance of defending human rights by incorporating this action into my own work. I know Amnesty collaborates with other organizations and therefore I do not focus on one single organization personally. As a matter of fact, each group is committed to a respective worthy cause and hence it depends on the interest of an individual on which human rights issue to support.

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

It's a very difficult question to only choose one single issue. I would say that in Hong Kong, political rights would be an urgent issue that needs to be resolved. But every place has its respective issues to be addressed. In the case of Hong Kong, political rights should by far be prioritized, whereas in China, people may have other concerns.

### FREEDOM OF ASSEMBLY IS THE THEME OF THIS ISSUE'S HUMAN RIGHTS, WHAT IS YOUR OPINION ON THIS RIGHT IN HONG KONG?

I would say we still enjoy freedom of assembly in general. However, this freedom is not perfectly protected by the rule of law. In fact, this was an issue even before the handover in 1997. For example, protesters were not placed in favorable places to express their

views, and were instead restricted to a location far away from the person they were protesting to. This therefore accounts for the recent rise of clashes between protestors and the police in HK.

On this matter, the IPCC believed that the police should take into account the distance between protestors and their targets. The Court of Final Appeal also had cases indicating that the police has the duty to ensure proper protection of the freedom of assembly on the part of the people. In HK, therefore, though freedom of assembly is by and large shared by all, we lack a comprehensive and effective system to guarantee the right to peaceful assembly thoroughly. Overall, the extent of human rights protection in HK, if not a complete failure, remains at an elementary level.



NAME

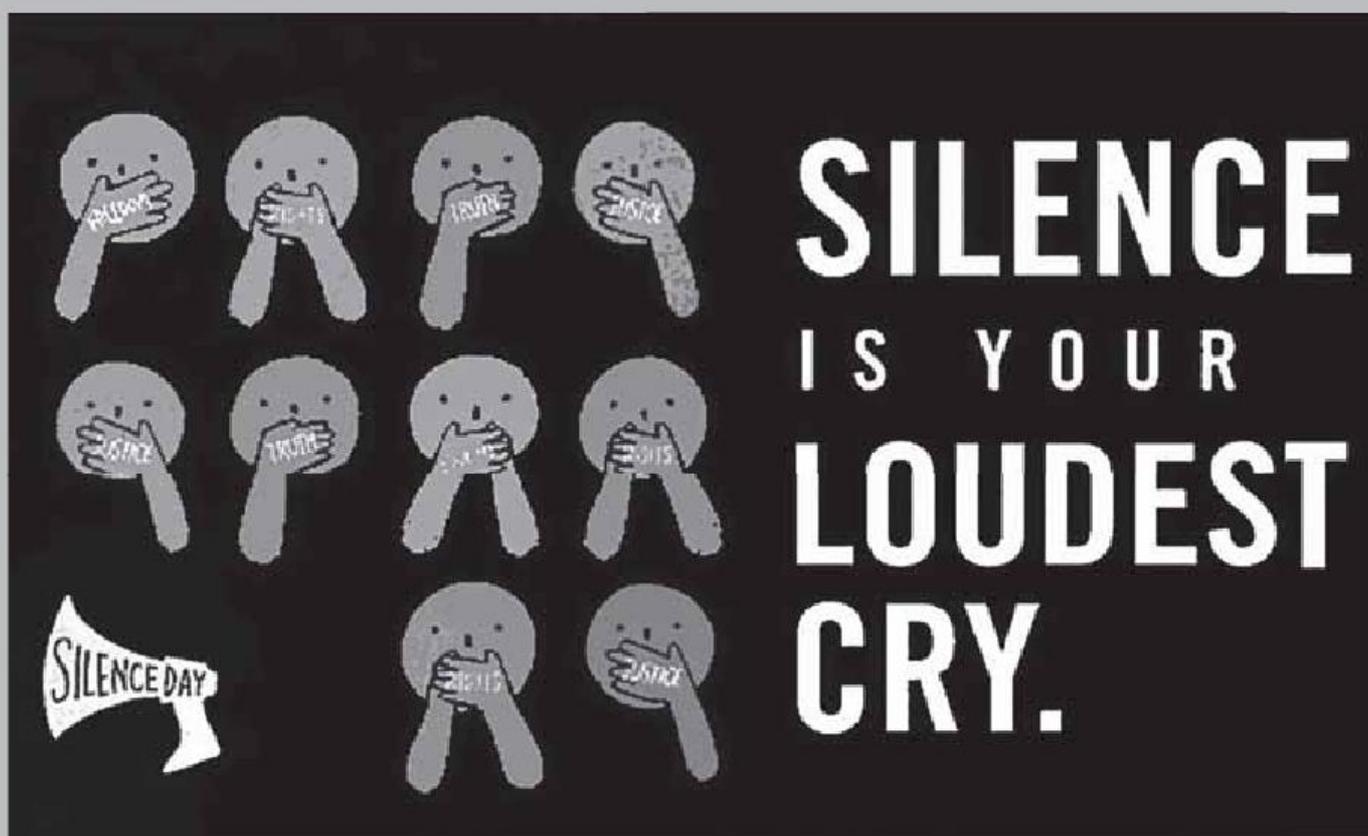
**Benny Tai Yiu Ting**

OCCUPATION

**Associate Professor,  
Faculty of Law, HKU**

YEARS WITH US

**Since 2010**

**SCHOOL EVENT  
– SILENCE DAY**

**SILENCE IS YOUR LOUDEST CRY**

Join Silence Day to show your firm stance in upholding freedom of expression on campus! Ask your family and friends to sponsor you for remaining in absolute silence during a specific period of time, for example, your lunch break. Not only you can raise funds for Amnesty International, you can also make your voice heard without making a sound.

If you'd like to organize Silence Day in your school, let us know and we can support you by providing promotional materials and in many other ways!

Email: [hre@amnesty.org.hk](mailto:hre@amnesty.org.hk)

## HUMAN RIGHTS DOCUMENTARY FILM SHOW

### 5 DOCUMENTARIES NOT TO MISS AT THE HUMAN RIGHTS DOCUMENTARY FILM SHOW

Kicking off with a screening of "The Defender of Death-row Convicts", the Human Rights Documentary Film Show will take over 2 cinemas in Hong Kong to raise awareness of the death penalty and of gender violence, from 10 Oct to 26 Nov.

**CLOSING FILM - THE INVISIBLE WAR, 21/10/2013 20:00 &  
25/11/2013 20:00 at Broadway Cinematheque**

A similar story one after another: young women aspire to serve their country, they are finally admitted into the military, but instead of achieving their aspirations, they are raped. Military punishment for possession of dangerous drugs is imprisonment for five years, while imprisonment for rape is only two weeks! This film was nominated for a 2013 Academy Award (Best Documentary).

**IT'S A GIRL 18/11/2013 19:30 &  
19/11/2013 21:30 AT HONG KONG ARTS CENTRE**

In South India, the village women openly discuss how they kill excess baby girls. Indian women pay a high dowry to secure a husband, but they become the ones who orchestrate the deaths of baby girls. China's one child policy brings about the serious problem of forced sterilization and child trafficking. Those who commit gendercide are government officials, neighbors and parents of baby girls.

**FORBIDDEN VOICES 31/10/2013 19:30  
AT AGNÈS B. CINEMA AT HONG KONG ARTS CENTRE**

Three well-known female bloggers' voices are constantly suppressed; they are Yoani Sánchez from Cuba, Farnaz Seifi from Iran and Chinese blogger Zeng Jinyan who we are familiar with. Facing authoritative dictatorial regimes, these three fearless women continuously reveal the hidden truth of their corrupted governments which makes dictators fear. This is an era where the truth cannot be forbidden!



**WHEN NIGHT FALLS 12/11/2013 19:30 &  
20/11/2013 19:30 AT HONG KONG ARTS CENTRE**

In 2008, Shanghai resident Yang Jia, armed with a knife, attacked police officers inside a police station, causing six deaths and five injuries. Film director Ying Liang pursued the case from Yang Jia's mother, Wang's perspective. Wang was "made" mentally ill and detained for four months. She was only released after her son's trial, two days before his execution. Through the calm lens of the director's camera, we are able to see the harsh reality and how Wang continuously searches for a possibility to appeal. She is determined to express to the judge, "I still have something to say."



**HONG KONG'S ROAD TO THE ABOLISHMENT OF DEATH PENALTY  
15/11/2013 19:30 AT ESLITE CAUSEWAY BAY 9/F FORUM**

This film portrays an inspirational history for Hong Kong, including interviews with Mr. Martin Lee S.C., a legislator who amended the motion of abolishing the death penalty; Mr. Ronny Tong S.C., who once defended a death row inmate; Mr. Justice Eric Barnes; Mr. Cheng Po Hung, an expert Hong Kong historian; Uncle Po, an ex-death row inmate; and Father Franco Mella, an activist who strongly supported the abolishment of the death penalty. These interviews reconstruct a valuable section of Hong Kong's history, uncovering myths and allowing the audience to reflect and think about Hong Kong's past and the death penalty, newly launched documentary by AIHK this year.

To see the full schedule of Human Rights Documentary Film Show, please visit AIHK website. <http://www.amnesty.org.hk/>

### 《人權紀錄片展》不能錯過的五部紀錄片

《人權紀錄片展》於十月十日至十一月廿六日在本港兩家戲院舉行，主題為反對死刑及性別暴力，以日本紀錄片《死刑辯護人》作為開幕電影。

**開幕電影：《戰場上的性侵》十月廿一日 晚上八時及十一月廿五日 晚上八時 百老匯電影中心**

一個又一個相近的個案：女生自小渴望上戰場保護國家，終於考進軍隊了，卻在軍中被強暴。這才發現，軍法懲罰藏毒是監禁五年，強暴才兩星期！本片獲提名二〇一三年奧斯卡金像獎最佳紀錄長片，公映後成功迫使美軍公開處理性侵案，鼓勵更多受害者挺身而出而廣受讚賞。

**《哀悼女孩》十一月十八日 晚上七時半及十一月十九日晚上九時半 香港藝術中心 agnes b. 電影院**

在南印度，村中婦女公開討論如何殺掉多餘的女嬰；印度女人出嫁要支付高昂嫁妝，繼而向自己的女嬰施以毒手。中國的一孩政策，帶來強制絕育與販賣兒童的嚴重問題。性別屠殺的兇手，是女孩的父母官、鄰人、親生父母。哀悼女孩，更哀悼整個社會的性別失衡。

**《真話禁不絕》十月三十一日晚上七時半 香港藝術中心 agnes b. 電影院**

這三位知名女博客的聲音經常被禁，她們是來自古巴的 Yoani Sánchez、伊朗的 Farnaz Seifi，還有我們熟悉的曾金燕，面對強權，繼續爆真料令獨裁者恐懼。這是一個真話禁不絕的年代！

**《我還有話要說》十一月十二日晚上七時半及十一月廿二日晚上七時半 香港藝術中心 agnes b. 電影院**

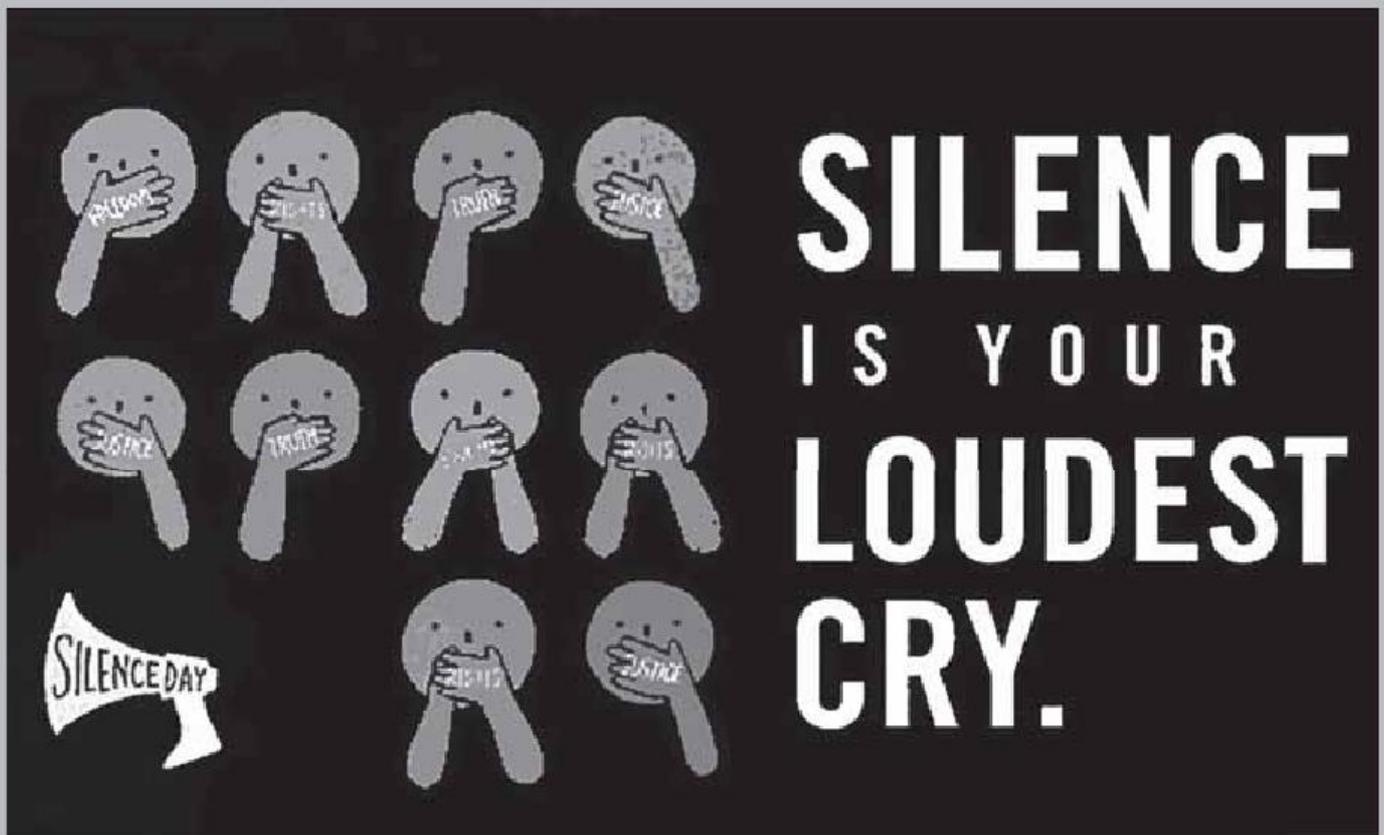
二〇〇八年，上海市居民楊佳手持一柄單刃刀在警局內襲警，導致六死五傷。導演應亮以楊母的角度追蹤案情，她「被精神病」而遭軟禁四個月，直到兒子執行死刑前兩天才送回來。在冷靜的長鏡下，她不斷在殘酷的現實中尋找上訴的可能，並堅定向法官表示：「我還有話要說」。

**《香港廢死之路》十一月十五日晚上七時半 誠品銅鑼灣店九樓 Forum**

此片訪問在九十年代修訂動議的前立法會議員李柱銘、曾為死囚上訴的辯護律師湯家驊、曾執行死刑判決的資深法官 Eric Bares、歷史學者鄭寶鴻、曾被判為死囚的寶叔及在港推動廢死運動甘浩望神父「甘仔」，重構這一段珍貴歷史，破除對死刑的迷思，發人深省。此片為本會最新製作紀錄片。

瀏覽《人權紀錄片展》之完整節目表，請前往國際特赦組織網頁。<http://www.amnesty.org.hk/>





### 沉默是最嘹亮的吶喊

Silence Day 是讓學生在校園以沉默去支持言論自由的活動。活動形式簡單，我們期望同學在一段時間，例如午膳時完全保持沉默，去感受被禁言及滅聲的人所面對的狀況。同學只要得到親友贊助及捐款給國際特赦組織香港分會便可參加。

如有興趣在學校舉行 Silence Day，請電郵至 [hr@amnesty.org.hk](mailto:hr@amnesty.org.hk) 聯絡我們。我們可以為舉辦 Silence Day 的學校提供宣傳物資及其他支援。



所有參加者將收到 Silence Day 的貼紙，同學可以把貼紙貼在身上，抵禦任何可能引誘他們說話的人和事！

# 本地迴響

## 戴耀廷專訪

**為何你會支持國際特赦組織？**

因為幾年前我獲邀加入了執行委員會！其實，我一直關注國際特赦組織的工作，那些議題和我的工作頗多共同之處，例如九十年代，我曾經與國際特赦組織的同事一同編撰人權教育的材料，可見我們在人權教育方面相當接近。然而，在學術方面我大多以個人身分工作，於是沒有成為你們的會員，直到幾年前得到你們的邀請，我便正式成為國際特赦組織的支持者。

**你認為國際特赦組織的蠟燭標誌代表甚麼？**

即使幾年前擔任委員時也沒有仔細想過這個問題……我想可能象徵著全球人權捍衛者都需要的希望，以作為精神支柱，因為爭取人權是對意志力的持久挑戰。

**你會如何游說朋友加入我們的人權運動？**

我會從自己實際工作入手，彰顯捍衛人權的重要性。我知道國際特赦組織與其他民間團體有不少合作項目，於是我不只是支持某一個機構，各個民間團體都有其值得大眾支持的地方，所以這視乎不同人士對人權議題的興趣。

**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？**

這是一條頗困難的問題，很難只選一個。我認為香港最迫切需要解決的問題是政治權利。不同地方各有不同的問題急需處理。以香港來說，首要處理的應是政治權利，而在中國則可能是其他關注。

**集會自由為本期《人權》主題，你認為香港集會權利如何？**

大體上我們仍享有集會自由，但並沒有得到完整的法治保障。其實早於一九九七年回歸前已有這方面的問題，例如示威者未必可在最有利向示威對象表達意見的地方示威，反被限制於遠離示威目標的位置，因而增加行使集會權利的人士與警方衝突的事件。

其實連監警會也認為警方安排示威區時，理應考慮到示威者與示威對象的距離。同樣，終審法院也有案例顯示警方有責任確保市民能夠實踐和平集會的權利。所以香港縱使有集會自由，卻欠缺完善且有效的制度確保每個人和平集會的權利。總括而言，香港人權保障雖不至於一敗塗地，但只是僅僅合格，乏善可陳。



姓名

戴耀廷

職業

香港大學法律系副教授

與我們同行的歲月

自二〇一〇年

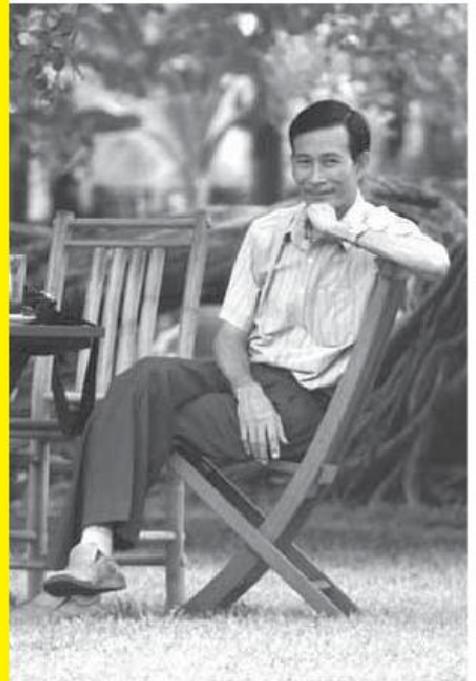
## 好消息



## 國際特赦組織良心大使獎

二〇一三年九月十七日，國際特赦組織於愛爾蘭都柏林頒發良心大使獎。今年獲得這項殊榮的是推動巴基斯坦女性接受教育權利的馬拉拉以及美國民權運動人士兼歌手 Harry Belafonte。

## 涉案將重新調查 越南新聞工作者停止獄中絕食



現年六十一歲越南自由記者會創辦人及著名博客 Nguyen Van Hai (又名 Dieu Ca), 於二〇一二年九月被越南政府控以「煽動顛覆越南社會主義共和國」罪行，在未有得到公平審訊機會下被重判十二年，入獄以來一直被單獨囚禁。

他自二〇一三年六月中起絕食，以抗議審訊不公。直至二〇一三年七月二十七日，當局官員探望他，並稱當局已收到他的投訴，將會重新調查其案件，他於是停止絕食行動。

更多資料 <http://bit.ly/asa41-006-2013>



專題

## 他山之石：其他國家的集會情況



Photo by Alan Hilditch shared under CC-BY 2.0

## 土耳其：過分武力限制和平集會原來香港有份提供防暴隊裝備

在土耳其持續示威中，警方和安全部隊採用過分武力，限制《公民權利和政治權利國際公約》所保障的表達、結社及和平集會的權利。土耳其警方和安全部隊鎮壓和平集會，包括任意發射催淚彈和水炮驅散示威人士，向手無寸鐵的示威人士發射橡膠子彈導致其傷亡、毆打示威人士藉以平息騷亂以及拘捕和扣留示威人士、記者和人權捍衛者。

國際特赦組織調查發現，香港、巴西、比利時、中國大陸、捷克、印度、以色列、南韓、英國及美國涉嫌為土耳其警方提供防暴隊裝備，包括車輛、催淚彈及制服，我們促請各地停止供應防暴裝備，直至土耳其當局承諾對警方和安全部隊肆意使用武力的指控進行迅速、獨立和公正的調查。

資料來源：Amnesty International. "Turkey: Disgraceful use of excessive police force in Istanbul". June 2013.

<https://amnesty.org/en/news/turkey-disgraceful-use-excessive-police-force-istanbul-2013-06-01>

## 荷蘭：禁制令與示威 (2012)

二〇一二年，關注全球暖化議題的綠色和平發起全球示威，反對蜆殼公司在北極圈鑽油。荷蘭綠色和平持續阻礙蜆殼總部入口。其後，荷蘭綠色和平到七十二所蜆殼油站示威，在燃油噴咀掛鎖，令司機無法入油。蜆殼於是申請禁制令禁止示威。

法庭頒布禁制令，但同時保障和平集會的權利。法庭裁定綠色和平可繼續和平示威，但須遵守下列條件：事前書面通知蜆殼公司該行動目的、形式、需時、安全措施（如適用）以及負責人聯絡電話；如油站示威行動不得阻止或大幅限制公眾入油機會逾一小時等。

資料來源：Translation of Shell Judgment: Shell Nederland Verkoopmaatschappij B.V. v Stichting Greenpeace Nederland, Stichting Greenpeace Council. District Court of Amsterdam, Civil Law Sector, Court in Summary Proceedings 5 Oct 2012.

<http://www.greenpeace.org/international/Global/international/publications/climate/2012/Arctic/finaltranslation%20of%20judgment.pdf>

自二〇一二年，香港青年關懷協會（青關會）多次阻止法輪功街頭表達活動，包括以大型或多層的印有反法輪功邪教等字樣的橫額遮掩法輪功橫額，據報道有身分不明的人同時向法輪功成員謾罵甚至亮刀恐嚇。

二〇一三年七月，青關會包圍法輪功旺角街站。當時警方未有採取有效措施，譬如分隔兩者，阻止青關會癱瘓法輪功街站，只是圍起封鎖線。警方未有保障法輪功行使和平集會的權利和表達自由，亦沒有履行協助和平集會舉行的積極責任。

期間，路過的休班老師林慧思質疑警方選擇性執法，未有處理青關會阻礙法輪功表達，遂與警員理論。警方仍然未有就保障法輪功成員行使和平集會的權利和表達自由行動，卻與林慧思各執一詞，理論期間林激動以粗口罵警員，其後警方及社會人士只著眼粗口罵警員爭議，卻沒有處理法輪功被持續阻止其行使和平集會和表達自由。

#### 利用娛樂牌干預示威集會

現時，警方一般只以《公安條例》規管示威表達活動。然而，當局亦曾利用規管戲院等娛樂活動的《公眾娛樂場所條例》干預示威表達活動，損害表達自由。

二〇一〇年五月底，食環署與警方聯手，利用《公眾娛樂場所條例》，強行搬走支聯會六四悼念活動中放於銅鑼灣時代廣場的民主女神像和浮雕，並拘捕支聯會成員。案件正等候上訴。

事隔一年，警方再次利用《公眾娛樂場所條例》，以主辦單位未有申領娛樂牌照為由，腰斬《國際不再恐同日》集會中的街頭舞蹈表演。及後，參與者市民提出司法覆核。最終上訴庭裁定上訴人得直。當局不應錯誤使用《公眾娛樂場所條例》限制示威表達活動。

同工同酬

## 本地示威集會與警權的案例

公民行使表達自由及集會自由的權利時，除了受到執法者——一般是警方的制約外，也會受到其他阻撓。以下是幾個香港例子：

### 當表達自由遇上禁制令

• 二〇〇三年，律政司曾申請禁制令禁止雷玉蓮，爭取居權人士張灶生及林道成到入境處大樓內示威，並索取訴訟費，其後在立法會議員和港大法律教授斡旋下，經過一年才獲和解。

• 多間銀行向高等法院申請禁制令，禁止雷曼苦主進入銀行、門外請願或展示橫額。

• 美孚新村發展商以禁制令對付那些為了阻止興建緊貼現有住宅的高樓而堵路的美孚居民。

• 匯豐銀行申請禁制令，停止在其總行大樓地下駐紮了十一個月的佔領中環行動。

由此可見，示威對象申請法庭禁制令，來限制向自己示威的行動，實有增加的趨勢。因為若欲限制示威一方向法院申請禁制令，示威人士或需付高昂訴訟費，這樣便足以阻止未能負擔昂貴訟費的人行使表達及集會的權利。

### 勞資角力中體現集會表達權

自二〇一三年三月底，和黃集團旗下香港國際貨櫃碼頭爆發工潮，歷時四十日。事緣外判碼頭工人投訴工時最長達七十二小時，工資低於一九九七年水平，為免扣飯鐘錢被迫在高空駕駛室內吃飯和大小便以及職業安全保障欠佳等，於是發起罷工，阻塞通道，要求與碼頭公司談判，爭取加薪、改善待遇、承認工會及

保障集體談判權等。其後罷工行動升級，集會移師至長江中心。最終，工人和外判商和解，加薪百分之九點八及承諾改善工作環境。工潮過後，外判商解僱了三名復工的罷工工人。另外，警方於兩個月後拘捕曾聲援碼頭工人罷工的市民，指其襲擊碼頭保安員。

工潮期間，被工人指控的財團也是利用禁制令阻止工人集會，首先，國際貨櫃碼頭公司成功向高等法院申請禁制令，禁止罷工工人和示威人士進入碼頭，工人遂遷至碼頭外馬路留守。其後，高等法院延長臨時禁制令，但法官同意平衡私有財產和罷工權，容許八十名工人在碼頭停車場以和平方式遊說工友參與罷工。

至於工人及聲援人士於長江中心門外空地長期集會時，長江實業要求工人撤離，並向法院申請臨時禁制令。法院指工人有權在長江中心外示威，拒絕就長江中心外集會頒令，但禁止罷工工人及工會代表進入長江中心大樓。

### 警察（政府）於公民表達權受非公權力侵害時的角色

雖然一九九九年中國政府取締法輪功，前特首董建華亦指法輪功是邪教組織，但在一國兩制、《基本法》、《公約》及《人權法》保障下，法輪功仍可在港自由活動，包括在街道靜坐、派發批評中共政權軍張、練功、懸掛「天滅中共」橫額、擺放譴責中共酷刑逼害法輪功成員的展覽及示威。



## 專題

國家領導人訪港	2003溫家寶	2011李克強
採訪區距離	20米	40米至130米
安全檢查	--	有警員逐格搜查記者 腰包內每張名片單據
落區家訪	記者可近距離拍攝	
封鎖區	--	數十米外集會 會場一百米外要求記者離開 大會堂二百米內行人止步

記者採訪區

## 攝錄隊

攝錄隊

## 隨身攝 (Body Worn Video Camera)

- 示威集會期間，警方有拍攝隊伍拍攝示威情況
- 2013年3月警方推行50部隨身攝錄機試驗計劃，拍攝衝突或破壞社會安寧事件，但未有公開拍攝指引。

資料來源：蘋果日報〈警隨身攝錄機監視遊行〉2013/2/23

有線新聞〈李克強訪港警方嚴陣佈防〉2011/8/18  
香港記者協會〈警方於李克強訪港期間侵擾新聞自由例證〉2011/9/1

2001/8/25

法輪功靜坐抗議

2002/5/4

中聯辦門外建花槽，9米行人路剩3米  
近年，中聯辦門外示威屢遭嚴格限制

2010/10/10

市民到中聯辦門外開香檳慶祝劉曉波  
獲頒諾貝爾和平獎，發生「香檳泡沫者通襲警事件」，  
令本地及國際譁然，該名被控襲擊人士其後獲撤銷控罪

2011/2/27

警方只准社民連在中聯辦門外30米示威，並以阻礙警員視線為由沒收  
「茉莉芬芳，傳遞中國，人民革命，遍地開花」橫額

2012/4/4

設立採訪區，以鐵馬阻止記者行近示威者採訪  
記者不准行近中聯辦正門，須三人一組，分批到正門採訪

中聯辦門口禁足  
設政治花槽

## 審查記者問題

審查記者問題

2012年國家主席胡錦濤訪港，蘋果日報記者提問：

「香港人希望平反六四，你聽到嗎？」

## 記者被便衣警員強行帶走

前記協主席梁嘉蓓指，她曾在北京人民大會堂訪問前總理朱鎔基有關六四問題，  
大陸安檢人員未有帶走她。

資料來源：

蘋果日報〈水馬陣 加大碼胡椒噴霧 監管會促警交代對示威安排〉2012/7/9  
蘋果日報〈「港人望平反六四 你聽到嗎？」向胡提問《蘋果》記者被扣〉  
2012/7/1

資料來源：蘋果日報〈警重重鐵欄包圍 限三人一組採訪 廣治警備 禁記者  
近中聯辦正門〉2012/4/5

## 圖解香港警方用以 管制公眾集會措施 之數字

### 水馬陣

重量

兩噸

高度

兩米

何時亮相

2005年世貿會議會展附近、  
2012年國家主席胡錦濤訪港期間、逾  
200個水馬陣包圍灣仔君悅及會展示威區

資料來源：蘋果日報〈200水馬陣 圍住會展君悅〉2012/6/29

2009

購入裝甲車時購入兩部長距離擴音裝置  
傳送距離：約300呎

2012

購入長距離擴音裝置LRAD 100X  
有效距離：約700米  
最高分貝：137dB，相等飛機引擎

用途

警方解釋：「廣播系統」  
「目的是在嘈吵環境下作長距離傳達重要信息之用」

未曾在行動使用？

警方解釋：「有關裝置並不會在公眾集會及遊行活動中使用」

曾偉雄在立法會解釋：「嚴重保安事故、嚴重災難和在反恐行動中使用」

外國使用情況

- 波蘭烏克蘭歐洲國家盃以及倫敦奧運均有採用
- 2011年11月- 美國紐約警方曾在佔領華爾街部署使用聲波炮清場
- 2007年11月- 協會吉亞防暴警發射催淚彈、橡膠子彈、水炮和聲波炮驅散示威者
- 2005年11月- 郵輪用聲波炮擊退索馬里海盜

資料來源：《立法會四題：長距離擴音裝置》2012/11/28

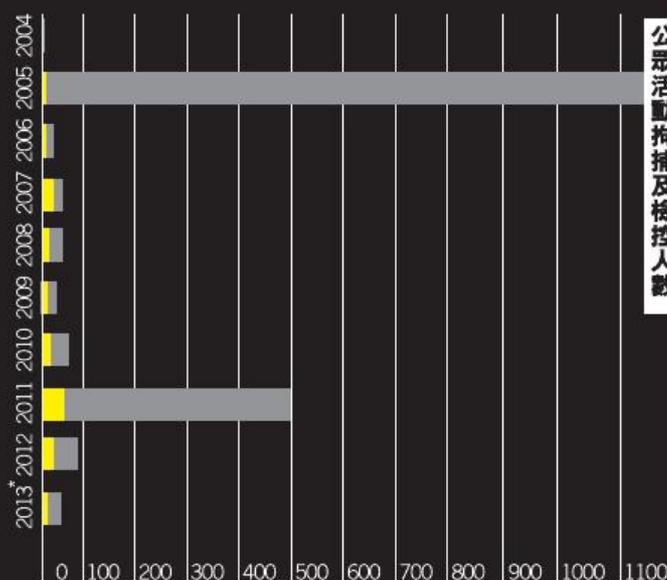
<http://www.info.gov.hk/gia/general/201211/28/P201211280398.htm>

紀曉風〈曾偉雄指聲波炮非武器 生產商簡介證一可說謊〉《信報》2013/1/31

蘋果日報〈如置身停機坪四秒損聽覺〉2012/10/20

水馬陣

聲波炮



\*2013首兩月

立法會提問：2004-13 拘捕及檢控示威人士數字 (2013.3.27)

[http://gia.info.gov.hk/general/201303/27/P201303270451\\_0451\\_108856.pdf](http://gia.info.gov.hk/general/201303/27/P201303270451_0451_108856.pdf)

	細支裝	家庭裝
濃度	胡椒濃度10%	
有效射程	5米內	
劑量	MK3.5 Flip top 2.2安士 「飄帶」HV5	MK 9 16 安士泡劑
噴發能力	--	MK9有快速填發裝置和推動劑
藥效	只有一日	較持久，多於一日
何時亮相	一般裝備	2005年WTO轉運衝擊警方防線、 2012年國家主席胡錦濤訪港向 水馬示威區噴射

胡椒噴霧

紀曉風〈大號胡椒噴霧廠商顯示 噴擊力覆蓋度遠勝細號〉。《信報》。2012/7/5

壹週刊〈胡椒噴霧之父：香港警察嗶亂噉〉。2012/7/11

保安局〈立法會保安事務委員會就2012年7月4日會議跟進事項〉2013/7/19

<http://www.legco.gov.hk/jyr11-12/chinese/panels/se/papers/se0704cb2-1648-1-c.pdf>

### 議題 警員使用過分武力

#### 段落十一

#### 審議結論

「委員會關注到警隊人員使用過分武力的報告，指不符合聯合國《執法人員使用武力和火器的基本原則》，特別是不適當使用胡椒噴霧驅散示威者藉以恢復秩序，尤指二〇一一年七月一日香港慣常的遊行，二〇一一年八月中國總理到訪和二〇一二年七月中國國家主席到訪而引起的示威（第七、十九及二十一條）。

中國香港應適度顧及聯合國《執法人員使用武力和火器的基本原則》，加強為警隊人員提供使用合適程度武力的培訓。」<sup>18</sup>

#### 議題 投訴警察機制

#### 段落十二

#### 審議結論

背景：現時，一切對於警察的投訴，先由警隊內投訴警察課調查和定案，再交由欠調查權、定案權及懲處權的獨立監察警方處理投訴委員會覆檢和建議。

「委員會得悉獨立監察警方處理投訴委員會（監警會）的角色已得到法定架構強化，但仍關注到調查警務人員不當行為仍然由警方通過投訴警察課自行調查，而監警會角色只是諮詢及監管，負責監察和檢討投訴警察課的活動，而且監警會委員是由行政長官委任（第二及七條）。

中國香港應採取適當措施確立一個完全獨立機制，負責就警方不適當使用武力或其他濫權行為進行獨立、適當及有效的調查，並有權對有關投訴的調查及調查結果制訂有約束力的決定。」<sup>19</sup>

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11 聯合國人權事務委員會一般性意見第34號(2011)，段34及35。

12 梁國雄及其他人訴香港特區行政區案。FACC 1 & 2 /2005。2005.7.8。段17-36。律政司《基本法簡訊》第八期。2006/1。頁10-12

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19 聯合國人權事務委員會。2013。《審議由締約國根據公約第四十條所提交的報告—中國香港第三次定期報告的審議結論》。段12。

## 基本概念

### 一、僅保障和平集會

《公約》所保障的集會權利只涵蓋和平集會，並不保障有暴力意圖的組織者和參與者的集會。然而，政府不能以有可能出現暴力反示威；或是有非組織者及懷有暴力意圖的極端主義者出現；或是遊行有真正風險，組織者無法控制，將發展至擾亂社會秩序為由，剝奪和平集會的權利。<sup>5</sup>

### 二、保障和平集會的積極責任

政府有責任保障市民行使和平集會的權利。而終審法院在梁國雄案指出，和平集會的權利同時意味政府有積極責任採取合理和適當措施，以確保合法舉行的集會能和平進行。<sup>6</sup> 法院引述香港政府亦於二〇〇五年提交聯合國人權事務委員會第二次報告段二二二表明「香港特區政府有責任利便公眾行使和平集會及示威的權利」。<sup>7</sup>

### 三、示威與反示威

和平集會權利包括示威及反示威的權利，但反示威的權利並不包括阻止他人行使示威的權利。<sup>8</sup> 即使示威會引起持反對意見的人士不滿，政府當局仍應採取有效措施，保障示威免受暴力威脅下進行，否則會窒礙該人及其他人表達相似意見，損害言論表達自由。<sup>9</sup>

### 四、限制須合乎比例

和平集會權利並非無遠弗屆，國際人權標準訂明合理限制。譬如《公約》及《人權法》訂明限制和平集會權利的條件：「除依法律之規定，且為民主社會維護國家安全或公共安寧、公共秩序、維持公共衛生或風化、或保障他人權利自由所必要者外，不得限制此種權利之行使」。

聯合國人權事務委員會於《一般性意見第三十四號》解釋表達自由，可作註腳一限制須符合《公約》條款、目標和宗旨，並合乎《公約》人人平等不受歧視原則<sup>10</sup>；限制須出於必要，通過相稱性原則，並選擇對人權侵害最小的方案。<sup>11</sup>

終審法院指若限制和平集會權利：（一）有關限制須由明確法律規定；（二）基於《公約》所訂合理目的，有必要才限制。該限制須符相稱性原則，包括限制須與一個或多個合理目的有關，且有合理理據；限制手段不能超越為達致有關合理目的所必需範圍。<sup>12</sup>

就合理目的而言，終審法院亦指公共秩序 public order (ordre public) 定義含混，不符法律需明確的憲制要求，因此裁定警務處處長按《公安條例》基於上述目的而限制和平集會不符合憲法。<sup>13</sup> 在警方行使酌情權限制和平集會權利的語境下，「保護他人權利自由」定義含混，或不符法律需明確規定。<sup>14</sup>

### 聯合國監察本地人權保障

若政府當局侵犯和平集會的權利，市民可透過司法訴訟以及現行監察機制申訴，捍衛權利。譬如就司法而言，香港法院可引用《人權法》以及《公約》作違憲審查，推翻侵權的法例、政府政策或行為。<sup>15</sup>

除了本地法律保障，和平集會的權利亦受國際監察。由於《公約》適用於香港，香港政府須履行公約責任，保障人權，並須定期接受公約機構聯合國人權事務委員會審議實施公約情況，落實建議。<sup>16</sup>

二〇一三年是聯合國人權事務委員會最近一次香港審議。委員會在香港審議結論關注若干香港政府限制表達自由議題，表列如下：

### 議題《公安條例》與表達自由

#### 段落十

#### 審議結論

「委員會關注到(a)《公安條例》若干用詞包括「公眾地方內擾亂秩序行為」或「非法集結」等在實際應用上可能為公約權利帶來過分限制；(b)愈來愈多示威人士被捕及檢控；及(c)示威時警方使用相機拍照及攝錄過程(第十七及二十一條)。

中國香港應確保《公安條例》的實施符合《公約》。中國香港也應為警方拍照及使用攝錄器材作紀錄用途訂立清晰指引，並讓公眾知悉有關指引。<sup>17</sup>

<sup>5</sup> 'Vol. 14: Human Rights (14) Right of peaceful assembly', Halsbury's Laws of Hong Kong, para578-580.

<sup>6</sup> 梁國雄及其他人訴香港特區行政區案，FA C 1 & 2 /2005，2005 7-8，段 22。

<sup>7</sup> 梁國雄及其他人訴香港特區行政區案，FA C 1 & 2 /2005，2005 7-8，段 23。

<sup>8</sup> 梁國雄及其他人訴香港特區行政區案，FA C 1 & 2 /2005，2005 7-8，段 24。'Vol. 14: Human Rights (14) Right of peaceful assembly', Halsbury's Laws of Hong Kong, para578

<sup>9</sup> 梁國雄及其他人訴香港特區行政區案，FA C 1 & 2 /2005，2005 7-8，段 24。

## 和平集會的權利——概論國際標準及本地法例

香港有「示威之都」之稱。去年，公眾集會遊行逾七千宗。<sup>1</sup>到底示威集會權利是甚麼？有何保障？

### 集會自由屬憲制權利

在香港，和平集會的權利受到本地法、憲制法律和國際法的三重保障。國際社會以《公民權利和政治權利國際公約》為標準，《公約》第二十一條訂明「和平集會之權利，應予確認」。《基本法》第二十七條保障言論、集會、遊行及示威等自由；第三十九條訂明《公約》適用於香港，繼續有效，屬憲制權利，所以和平集會權利亦受《基本法》保障，而《香港人權法案》（香港法例第三八三章）則是《公約》的本地法，同樣保障和平集會權利。

### 集會內容和形式屬表達自由

和平集會權利與其他權利息息相關。譬如示威集會內容和形式屬表達自由，同受《基本法》、《公約》及《人權法》保障。

二〇〇五年終審法院在楊美雲及其他人訴香港特別行政區案（法輪功成員於中聯辦外的示威被控阻街）<sup>2</sup>，指出表達自由與和平集會權利關係

密切，表達自由包括令人不悅的言論：「香港每個人都享有和平示威的自由，這是《基本法》第廿七條所保障的一項憲法權利。它跟言論自由有很密切的關係。這些自由當然也包括表達一些可能會令某些人不悅，或衝撞某些人，又或抨擊當權人士的意見的自由。上述這些自由，構成香港社會制度的核心，因此法庭對這些自由的涵義，應該給予寬鬆詮釋」。

### 和平集會權利有何重要？

和平集會權利是民主社會基石。二〇〇五年終審法院在梁國雄及其他人訴香港特別行政區案（梁國雄挑戰《公安條例》中賦權警方以「公共秩序 public order (ordre public)」為由，禁止公眾集會違反《基本法》所保障的集會自由）解釋，和平集會權利與表達自由，同屬民主社會基石，有助社會穩定和發展。<sup>3</sup>「在民主社會，要解決衝突、緊張局面及問題，主要有賴公開對話和辯論，如此社會才可廣開言路，百花齊放。這兩種自由可以讓市民宣泄內心怨氣，以求糾正失誤。互相包容是多元文化社會的標記。有了這些自由，少數人的意見，即使不為他人所贊同，也有機會表達。遊行是表達意見的有效方法，亦是很普遍的現象」。<sup>4</sup>

1 〈立法會二題：公眾集會及示威活動〉，2012/12/19。

2 楊美雲及其他人訴香港特別行政區案，FA C C 19/2004，2005.5.5，終審法院判決書中譯摘要，段1。

3 梁國雄及其他人訴香港特別行政區案，FA C C 1 & 2 /2005-2005.7.8，段1-2。

4 梁國雄及其他人訴香港特別行政區案，FA C C 1 & 2 /2005-2005.7.8，段2，參看中譯文。



### 挪威分會：聲援敘利亞人民

挪威分會於九月五日在青年廣場 (Youngstorget) 集會，向生活在戰火中的敘利亞人民表示支持，出席者包括挪威分會總幹事 John Peder Engnes，當地國會議員及政黨代表等。他們呼籲在敘利亞衝突的各方，立即停止襲擊平民。

### 德國分會：埃及必須停止性侵害婦女

近月，在埃及開羅解放廣場示威的女性每每遭性暴力威脅。可是，埃及政府卻視若無睹，無意阻止暴力發生或拘捕涉案者。多年來，大部分針對婦女的性暴力和歧視並沒有得到法律制裁。

德國分會成員於八月十八日在勃蘭登堡門前收集簽名，並前往埃及駐柏林大使館前示威。

### 新動畫 教你如何強拆別人的家

國際特赦組織影拍錄影行動組織 WITNESS ([www.witness.org](http://www.witness.org)) 製作新一輯有關強迫遷拆的動畫。

新動畫帶來新動力，激發更多人分享和關注，推動更多人支持停止強迫遷拆運動。動畫以創新方式，訴說全球各地強迫遷拆情況。動畫有英語、阿拉伯語、法語、意大利語、高棉語、葡萄牙語、羅馬尼亞語、西班牙語等版本。這段動畫有助推動支持肯亞停止強迫遷拆的網上簽名運動。  
新動畫：<http://youtu.be/rulM8fpySU>

## 主編的話

這幾個月來，香港社會討論最為熾熱的議題，可算是由香港大學法律學院副教授戴耀庭提出簡稱「佔中」的「佔領中環運動」。我們跟戴先生在人權教育工作的教材製作、通識科師資培訓及公民教育課程發展上可謂合作無間。可是「佔中」的目的及背景並非這期《人權》雜誌的內容，我們反而對於支持或反對「佔中」帶出何謂「表達權利」及「非法行為」的激辯甚感興趣，於是馬上搜集了在香港與「表達自由」及「集會自由」有關法例及最近一些案例，供市民參考，希望大家可以認識香港法例及法院賦予我們的基本權利，並且希望釐清一些概念，帮助大家理性討論，亦希望有關當局按國際標準及本地法例對待參與任何形式的和平示威人士，切勿忘記協助公民行使基本權利乃當局的國際承諾。

區美寶

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