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HUMAN RIGHTS IN HONG KONG ON THE 30TH ANNIVERSARY OF
THE SINO BRITISH JOINT DECLARATION

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WORDS FROM THE EDITOR-IN-CHIEF

EDITORIAL
 Mabel Fui (Editor-in-Chief) / Debbie Tsui (Executive Editor)
 Connie Chan (Editor) / Michael Mo (Editor) / Damian Lai (Editor)
 Angie Tse (Editor) / Cherry Wong (Editor)

COLLATION
 Hugh Farmer / Jude Hui

INTERNS / VOLUNTEERS
 Bryan Kwok / Mini Cheung

EDITORIAL ENQUIRIES
 +852 2388 1250 / editoria@amnesty.org.hk

DESIGN
 TGE / www.tge.com.hk

PHOTO CREDITS
 Tai Ngai Lung (Interview)

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In 1984, China and the United Kingdom signed the Sino British Joint Declaration. This stipulates the promise of "one country, two systems" that would remain unchanged for 50 years. It is a legal binding instrument, universally recognized by the international community. It does not only cover constitutional reforms. In light of the 30th anniversary of the Joint Declaration, this issue tries to discuss the impact of human rights protection enshrined in the Joint Declaration through the aspects of the rule of law, civil rights, political rights, non-discrimination, and economic, social and cultural rights. In addition, we have invited various social activists and scholars to share their thoughts on human rights in Hong Kong, which enables us to see these issues from more angles.

In addition, TEAM AMNESTY is launched in this issue. When the Chief Executive of Hong Kong said that the religious and sports sectors did not contribute to the economy, we would like to reiterate through TEAM AMNESTY that equality and fair play are core values of sports. It contributes to our economy as it is our fundraising activity. Please participate and have fun while supporting human rights.



IN FOCUS

HUMAN RIGHTS IN HONG KONG ON THE 30TH ANNIVERSARY OF THE SINO BRITISH JOINT DECLARATION

BASIS OF HUMAN RIGHTS PROTECTION IN HONG KONG

In 1842, Hong Kong became a British colony. Article 3 of the Treaty of Nanking stipulated that the legal system in Hong Kong should follow that of the United Kingdom and implement the common law system. The Legislative Council (LegCo) passed a bill that English law applied to everyone in Hong Kong.^[1]

In 1976, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) came into force. The United Kingdom ratified both covenants and extended them to Hong Kong. Since then, the covenants have been applicable in Hong Kong and links Hong Kong with international human rights standards.

In 1984, the Sino British Joint Declaration was signed by China and the United Kingdom. China's basic policies regarding Hong Kong after the 1997 handover were stipulated in the Joint Declaration and the Basic Law would remain unchanged for 50 years.^[2] Hong Kong implements "one country, two systems" and enjoys a high degree of autonomy. The Joint Declaration also stated that the ICCPR and the ICESCR as applied to Hong Kong shall remain in force.

In 1989, China suppressed the democracy movement in Beijing by troops and gunfire. Some Hong Kong people panicked because of the 1997 handover and demanded that the United Kingdom should push for democracy, right of abode in the United Kingdom, legislation of bill of rights and establishment of a human rights commission. The United Kingdom implemented the demands partially except the human rights commission in order to soothe the anxieties of the Hong Kong people. Hence in 1991, the British government amended the Hong Kong Letters Patent and the LegCo passed the Hong Kong Bill of Rights Ordinance (HKBORO), which was the domestic law of the ICCPR. Since then, the Court has exercised a constitutional judicial review frequently and offered greater protection.^[3]

After the 1997 handover, Hong Kong has become the special administrative region of China and implements "one country, two systems" and enjoys a high degree of autonomy. The Basic Law is a constitutional instrument in Hong Kong. It guarantees the fundamental rights of Hong Kong residents in chapter 3. Article 39 of the Basic Law also stipulates that the ICCPR and ICESCR as applied to Hong Kong shall remain in force.

Moreover, 7 of the core international human rights treaties have been applicable in Hong Kong up to present. The Hong Kong government is obliged to implement the rights enshrined by the treaties and it has

to submit reports and attend the hearings of the United Nations (UN) treaty bodies regularly.

Concerning domestic laws, there are 4 discrimination laws regarding sex, family status, disability and race, the Crimes (Torture) Ordinance, the Interception of Communications and Surveillance Ordinance, Personal Data (Privacy) Ordinance, Independent Police Complaints Council Ordinance, the Ombudsman Ordinance etc in addition to the HKBORO.

Hence, the international human rights treaties, the Basic Law and the domestic laws are the basis of human rights protection in Hong Kong.^[4]

CORE HUMAN RIGHTS TREATIES	ADOPTION BY THE UN	ENTRY INTO FORCE	APPLICABLE IN HK
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	21 December 1965	4 January 1969	7 March 1969
International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 December 1966	3 January 1976	20 May 1976
International Covenant on Civil and Political Rights (ICCPR)	16 December 1966	23 March 1976	20 May 1976
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	18 December 1979	3 September 1981	14 October 1996
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	10 December 1984	26 June 1987	December 1992
Convention on the Rights of the Child (CRC)	20 November 1989	2 September 1990	7 September 1994
Convention on the Rights of Persons with Disabilities (CRPD)	13 December 2006	3 May 2008	31 August 2008
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	18 December 1990	1 July 2003	NA
International Convention for the Protection of All Persons from Enforced Disappearance (CED)	20 December 2006	23 December 2010	NA

THE RULE OF LAW

The Joint Declaration and the Basic Law stipulate that Hong Kong enjoys an independent judicial power, final adjudication and the maintenance of the common law. It connects the rule of law in Hong Kong with wider common law system and develops its jurisprudence rapidly.^[5]

As the government and legislature in Hong Kong are not elected by universal suffrage, the role of human rights protection by the judiciary is even more significant. Hong Kong people may use a judicial review to challenge human rights abuses committed by the government.^[6]

COURT CASES REGARDING HUMAN RIGHTS PROTECTION BY HONG KONG COURT

RIGHTS	CASE	CONTENT
Freedom of expression	Unauthorized assembly of Lung Her case in 2005 ^[7]	The Court of Final Appeal held that "public order (order public)" in section 14(1), 14(5) and 15(2) of the Public Order Ordinance did not satisfy the constitutional requirement of "prescribed by law". It pointed out that the government has a positive duty to take measures to enable peaceful assembly and applied proportionality test.
Non-discrimination and equality	Sexual orientation in Yau Yuk Lung case in 2001 ^[8]	The Court of Final Appeal ruled that the Crimes Ordinance Section 118F (1) which banned homosexual inquiry committed otherwise than in private constituted discrimination and thus violated the Basic Law and HKBORO.
Right to vote	Prisoner's right to vote in 2008 ^[9]	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 HKBORO.
Right to marriage	The right to marriage of Ms. W in 2013 ^[10]	The Court of Final Appeal ruled that the Marriage Ordinance and the Matrimonial Causes Ordinance which "restriated the criteria for ascertaining a person's gender to merely biological factors" deprived the essence of 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 minimal in principle to fundamental rights." ^[11]

However, one of the flaws of the judiciary in Hong Kong is that the power of interpretation of the Basic Law is vested in the Standing Committee of the National People's Congress (NPCSC). It unavoidably undermines the judicial independence in Hong Kong and "one country, two systems" as the concepts of law are totally different in Hong Kong and China.^[12] It will now the NPCSC has interpreted the Basic Law 4 times and only the last one meets the requirement of the Basic Law which the Court of Final Appeal seeks the interpretation of relevant provisions from the NPCSC.

HUMAN RIGHTS WATCHDOGS

There are several human rights watchdogs in Hong Kong including the

Equal Opportunities Commission (EOC), the Ombudsman, the Office of the Privacy Commissioner for Personal Data, the Independent Police Complaints Council and the Commissioner on Interception of Communications and Surveillance. However, the watchdogs have limited jurisdiction and fail to protect human rights comprehensively. For instance, the EOC only enforces 4 discrimination laws regarding sex, family status, disability and race and is not mandated to interfere discriminations based on other grounds. Despite repeated calls by the UN and Hong Kong civil society to establish a statutory, efficient, high level and independent human rights commission in accordance with the Principles relating to the Status of National Institutions (the Paris Principles), the Hong Kong government rejects these calls by stating that the current human rights protection mechanism works well.^[13]

CONCLUSION

Despite the Joint Declaration and the Basic Law guaranteeing the implementation of "one country, two systems" and high degree of autonomy in Hong Kong, China has meddled in Hong Kong affairs to a greater extent after the 500,000-people-protest opposing the Article 23 legislation regarding national security on 1 July 2003. As a result, Hong Kong's high degree of autonomy has been curtailed. In 2014, the State Council of China issued the Practice of "one country, two systems" Policy in the Hong Kong Special Administrative Region, which is known as the White Paper. The White Paper states that China's central government has comprehensive jurisdiction over Hong Kong and thus repudiates Hong Kong's high degree of autonomy guaranteed by the Joint Declaration and the Basic Law. It also raises concerns that human rights enshrined by the Joint Declaration and the Basic Law would be overturned by China at anytime and become a dead letter.

Footnote

- [1] Johannes M. M. Chen. "Legal system". *General Principles of Hong Kong Law*. Edited by Albert Chen and others. Hong Kong: Joint publishing, Page 9.
- [2] *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong*, 19 December 1984.
- [3] Barry Tai. "Development of the rule of law in Hong Kong". *The rule of Hong Kong Constitutionalism*. Hong Kong: Chung Hwa Book Co, September 2010, Page 94-95.
- [4] *Chong Yiu Kwong, Tsui Ka Wing. "Human Rights"*. Edited by Andy Chiu, Shirley Hung and Chong Yiu Kwong. Social Welfare and Law, Communication and Empowerment. Hong Kong: Red Publication, 2010.
- [5] Keith Gray. "Autonomy and the Court of Final Appeal: The constitutional framework". *Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong*. Edited by Simon N.M. Young and Yash Ghai. Cambridge University Press, 12/2013.
- [6] Leung Siu Ling. "Judicial Review". Edited by Andy Chiu, Shirley Hung and Chong Yiu Kwong. Social Welfare and Law, Communication and Empowerment. Hong Kong: Red Publication, 2010.
- [7] *Leung Kwok Hung and others v. HKSAR*. FACC 12/2005, 8/7/2005.
- [8] *Secretary of Justice v. Yau Yuk Lung and Another*. FACC 12/2006, 1/11/2007.
- [9] *Chan Kin Sum, Simon v. Secretary for Justice and another*. HCL 79/2008, 8/12/2008.
- [10] *Wan Yim The Registrar of Marriages*. FACC 4/2012, 13/5/2013.
- [11] "Statutory Provisions, Policies and Measures Held by the Court to be Inconsistent with the Hong Kong Bill of Rights Ordinance since the Establishment of the Hong Kong Special Administrative Region", Item 1, *LegCo: Hong Kong Bill of Rights Ordinance*, 18 May 2011.
- [12] Susan Wade S. Page 54-59.
- [13] *Chong Yiu Kwong, Kwok Hui Chung. "Situations and Moments on Hong Kong's Human Rights Development"*. *Thought and words, Journal of the Humanities and Social Science*, Issue 50, Volume 4, December 2012.

SIGNIFICANT HUMAN RIGHTS ISSUES IN HONG KONG

1984

The Sino British Joint Declaration was signed by China and the United Kingdom. Hong Kong would implement "one country, two systems" after the 1997 handover. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) would still be applicable in Hong Kong after the 1997 handover.

1989

Hong Kong citizens supported the Tiananmen Square Student movement and protested against the June Fourth Massacre. China tightened the text of Basic Law afterwards. For instance, subversion was reintroduced in the Article 23 of the Basic Law.

1990

The Basic Law was adopted by the National People's Congress of the People's Republic of China. The fundamental rights of the Hong Kong residents were stipulated in Chapter 3 of the Basic Law. Article 39 of the Basic Law stated that ICCPR and ICESCR "as applied to Hong Kong shall remain in force".

1991

The Hong Kong Bill of Rights Ordinance, which was the domestic law of ICCPR, was passed by Legislative Council (LegCo).

1991

Direct election was introduced to LegCo.

1993

The death penalty was formally abolished.

1996

The Equal Opportunities Commission (EOC) was established to enforce the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

1997

The sovereignty of Hong Kong was handed over from the United Kingdom to China on 1 July. The Basic Law was enacted. ICCPR and ICESCR were applicable in Hong Kong. The Hong Kong government was obliged to submit reports and attend hearings by the United Nations regularly.

1997

There was no through train and hence Legislative Councilors elected in 1995 were dismissed. It was replaced by Provisional LegCo elected by the 400-member Selection Committee of the Hong Kong government. The Provisional LegCo repealed laws on collective bargaining and enacted the provision of notification system of the Public Order Ordinance, which made human rights retrogress.

2009

The Race Discrimination Ordinance was enacted and implemented by the EOC.

2007

The Education and Manpower Bureau infringed academic freedom by requesting that the Hong Kong Institute of Education to fire 2 scholars who had written criticisms of educational reforms.

2007

After the preservation of Star Ferry Pier, the activists opposed the removal of Queen Pier by the government on the ground of collective memory and public space. But the Pier was eventually removed and undermining cultural rights.

2005

This was the third time the NPCSC interpreted the Basic Law and it was regarding the remaining term of the Chief Executive.

2004

This was the second time the NPCSC interpreted the Basic Law for constitutional reforms. It then decided to ban universal suffrage in 2007 and 2008.

2003

500,000 protesters joined the July 1 rally to oppose Article 23 legislation. Since then, the Chinese government has changed its ruling strategy of Hong Kong and meddled in Hong Kong affairs to a greater extent.

2000

The first known case of interference of academic freedom by the government officials after the 1997 handover occurred. Andrew Lo Cheung On, the senior special assistant of the Chief Executive's Office, demanded that the University of Hong Kong stopped publicizing the poll regarding the popularity of the government.

1997

This was the first time the Standing Committee of the National People's Congress (NPCSC) interpreted the Basic Law and it concerned right of abode cases. It was criticized for undermining judicial independence in Hong Kong.

1997

The Family Status Discrimination Ordinance was enacted and implemented by the EOC.

2009

The widespread social movement against the Express Rail Link questioned the high construction cost, forced evictions in Tsoi Yuen Village in the New Territories and conflicts of interest of functional constituencies in LegCo. Furthermore it curtailed the right to adequate housing, freedom to information, freedom of expression and the right to participate in public affairs etc. Protesters occupied roads in Central to surround the LegCo Building when it passed the rail funding in January 2010.

2011

This was the fourth time the NPCSC interpreted the Basic Law and it was regarding the absolute immunity in the Congo case. However it was the first time of the Court of Final Appeal to request an interpretation.

2011

Legislative Councilors from 5 geographical constituencies resigned and triggered a by-election, which became known as a de-facto referendum. 580,000 voters participated in the by-election and supported the motion of genuine political reform in Hong Kong and the abolition of functional constituencies.

2011

Freedom of expression and press freedom in Hong Kong was strictly controlled during the visit of Li Ke Qiang, the vice premier of China.

2012

The anti-brainwashing national education campaign successfully demanded that the government shelved the Curriculum Guide of the Moral and National Education Subject, which was criticized as involving brainwashing, violation of critical thinking, freedom of expression and the right to education.

2014

Several media personnel and journalists were attacked including former Ming Pao Chief Editor Kevin Lau Chun To who was attacked and suffered 6 slashes thus receiving international attention.

2014

A Civil Referendum was carried out in mid-June and a faced high-level cyber hackers attack. More than 40% of voters supported the Alliance for True Democracy Proposal to Occupy Central with love and peace put forward to the Hong Kong Government.

2014

Universal suffrage for Hong Kong was ruled out by the NPCSC. Students went on class boycotts and held public assemblies in the government headquarters. Police fired 87 canisters of tear gas at protesters which made the occupy movement extend to Admiralty, Causeway Bay and Mong Kok. This became known as the Umbrella Movement. Pro-democracy protesters were attacked by thugs and pro-establishment groups but stood firm with the occupy movement.

INTERVIEW: HUMAN RIGHTS DEVELOPMENT IN HONG KONG BY MARTIN LEE

Q / Amnesty International Hong Kong
A / Martin Lee Chu Ming (Senior Counsel, former Legislative Councillor and former member of the Hong Kong Basic Law Drafting Committee)



Q Do you think that the Sino British Joint Declaration and the Basic Law provide adequate protection for human rights in Hong Kong?

A Dating back to 30 years ago, on 26 September, Cheung Man Yee from the Information Services Department of the Hong Kong government let me take a look at the Joint Declaration before attending the TV interview. I was so delighted that the Joint Declaration adopted many of my recommendations, for example, the common law system shall remain in force in Hong Kong, the Court of Final Appeal should be situated in Hong Kong and judges from other common law jurisdictions should be invited to sit on the Court of Final Appeal.

The Secretary for Justice at that time reminded me to focus on the continued application of the international human rights treaties in Hong Kong. State parties have the obligation to promote the treaties if they are applicable. However, we had no idea that the treaties applied to Hong Kong until after the promulgation of the Joint Declaration. This shows that Britain failed to exercise its obligation to promote the treaties in Hong Kong.

The Joint Declaration stipulates that the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong shall remain in force. Article 39 of the Basic Law also stipulates that ICCPR and ICESCR are applicable in Hong Kong. The Basic Law is regarded as the "mini-constitution" of Hong Kong in which the rights of Hong Kong residents are prescribed in chapter 3. It is beyond doubt that the Joint Declaration and the Basic Law have provided adequate protection for human rights in Hong Kong. However, it is most important that, the Chinese and British governments show considerable sincerity in the implementation. The Chinese Constitution is well written yet remains a dead letter.

The Joint Declaration is well written. "One country, two systems" can be workable but its implementation is difficult. Democracy is the prerequisite for the successful implementation of "one country, two systems". Also, the Chinese government should by no means interfere in the internal affairs of Hong Kong.

Q Hong Kong has been ranked 16th in the world for its rule of law, which is way higher than China, which ranked 76th. The legal system, the concept of the rule of law and the role played by the courts are largely different in China and Hong Kong. This difference can be illustrated by the actual situation in China-cooperation of 3 powers and the Communist Party being above the law. It is the 17th year since the 1997 handover, how can the Court of Final Appeal deal such differences in order to uphold judicial independence and the common law?

A The continued application of the common law after the 1997 handover is the product of discussion with Li Chu Wen, the vice president of Xinhua News Agency. He visited my chambers before dinner and saw my collection of casebooks. I told him that many of them were English precedents while very few were from Hong Kong. I explained to him that judges decided cases based on precedents and Hong Kong court made reference to English precedents. He then said that Hong Kong should continue to apply the common law since the legal system in Hong Kong was completely different from that in China. In addition, the recommendation that the Court of Final Appeal should be situated in Hong Kong and judges from other common law jurisdictions should be invited to sit on the Court of Final Appeal was generated during the discussion with Li Ju Sheng over dinner. These recommendations were all adopted and written into the Joint Declaration and the Basic Law.

Justice Andrew Li Kwok Nang, the former Chief Justice of Hong Kong once said that judges had no master that they interpreted laws and decided cases based on legal principles and conscience. However, judges in China have to follow directions given by the Communist Party and consult the secretary in deciding cases, which are inconsistent with the common law.

Q The power of interpretation of the Basic Law is vested in the Standing Committee of the National People's Congress (NPCSC). How does this affect the judgment of Hong Kong courts?

A When drafting the Basic Law, I was against such a notion but my objection failed. Under the common law system, only judges have the right to interpret the law according to legal principles, not the legislators. The legislative intent is to construe the words used in the legislation rather than the intent of legislators.

Q In the Congo case, the Chinese government publicly demanded Hong Kong to follow the Chinese practice and applied the doctrine of absolute immunity instead of restrictive immunity, which is the practice under the common law. It was the first time for the Court of Final Appeal to seek interpretation from the NPCSC. How does it affect the rule of law in Hong Kong?

A The Congo case is the only time that the Court of Final Appeal sought interpretation from the NPCSC in accordance with Article 158 of the Basic Law. The first interpretation was sought by Elsie Leung Oi Sie, the Secretary for Justice at that time, which overruled the judgment of the Court of Final Appeal in the right of abode case. The second interpretation

was initiated by the NPCSC concerning the framework of political reform, which changed the 3-step process into 5-step process.^[1] The third interpretation was also initiated by the NPCSC regarding the remaining term of the Chief Executive by by-election. These 3 interpretations all contravene the Basic Law.

In the Congo case, the Court of Final Appeal actively sought interpretation from the NPCSC. It helps to establish the precedent, which allows the court to list out the key issues and detailed arguments before submitting to the NPCSC. But still, I think that the law should be interpreted by the court, but not the NPCSC.

Q The State Council of China issued "The practice of "one country, two systems" policy in the Hong Kong Special Administrative Region" (also known as the White Paper) this year. It mentions nothing about the Joint Declaration but emphasizes that the Basic Law is national law and has constitutional status in Hong Kong. Also, it is said that the Chinese government has comprehensive jurisdiction over Hong Kong and that judges are administrators and should show patriotism to the country. What is your view on the White Paper?

A In my opinion, the Chinese government has re-written the Joint Declaration by using the White Paper. It professedly describes the implementation of "one country, two systems" in these years. However, something more was added in the document, for example, the affirmation that the Chinese government has comprehensive jurisdiction over Hong Kong, which contravenes the notion of high degree of autonomy stipulated by the Joint Declaration. Indeed, the Chinese and British governments have stipulated the basic policies of China regarding Hong Kong when entering into the Joint Declaration. This is the condition for the transfer of sovereignty, which was agreed and authorized by the Chinese government.

The doctrine of separation of powers has been adopted in Hong Kong and judges are not administrators, as described in the White Paper. The court only deals with legal problems and decides cases based on legal principles. Take the example of the protest on 28 September in Hong Kong, the decision to use teargas to disperse protesters was made by the government but not the court.

Judges must obey the law and must not commit treason. They need not be patriotic to the country. It is mentioned in the White Paper that the administrators including judges, should safeguard national sovereignty, security and interests as well as maintain the long-term prosperity and stability of Hong Kong. This is inconsistent with the common law principle that judges are only responsible for deciding cases based on legal principles. If so, in the Hong Kong - Zhuhai - Macau Bridge judicial review case, the court will probably rule in favor of the government based solely on the development interest, which is entirely different from the actual judgment that ruled against the government based on the Environmental Impact Assessment Ordinance.

Therefore, in my opinion, the White Paper lacks legal perspective and is unacceptable.

Q How can we pursue the matter if the Chinese government breaches the Joint Declaration?

A In 1991, when being asked about a breach of the Joint Declaration by the Chinese government, John Major said that he would exhaust all means and might even invite foreign support if needed. On 1 July 1997, the British government pointed out that the matter would be handed to the United Nations, if the Chinese government breached the Joint Declaration. Yet, the British government has done nothing today in regard to the breach.

Q What is your expectation for the rule of law in Hong Kong in the coming years?

A The rule of law would be out at stake in the next few years, as stated in the farewell speech of Justice Kemal Bokhary NPJ, the former Permanent Judge of the Court of Final Appeal, warned that "a storm of unprecedented ferocity" was gathering over the rule of law in Hong Kong. The tempest has come and the White Paper is definitely an example: Hong Kong without the rule of law would be no different to other cities in China. The protection of human rights hinges on the rule of law. If there is no democracy, the protection of human rights and the rule of law would be virtually impossible. The rule of the law in Hong Kong depends on whether there is a truly democratic election.

It is beyond doubt that defending the rule of law is for the good of both Hong Kong and China. Do you know why "one country, two systems, high degree of autonomy" remains unchanged for 50 years? When drafting the Basic Law in 1982, Deng Xiaoping once said that an extra 50 years could be granted if 50 years was not enough. China was undergoing economic reform in 1982 and actively introduced foreign investment. Deng Xiaoping found Hong Kong adopting capitalism as well as enjoying the rule of law and human rights. He wanted to follow suit but he was worried that China would pull Hong Kong down, making it another Shanghai. Therefore, he implemented "one country, two systems, high degree of autonomy" which remained unchanged for 50 years, such policy is very visionary and does good to the country by making Hong Kong the role model for China.

Q What can we do to defend human rights and the rule of law?

A We can for example, by explaining the concept to people around us and telling them that social movements do not carry any bad motives. We can also cast our votes in elections and fulfill our civic responsibility. Besides, we should defend human rights with conscience even though such attempts may fail.

Footnote

[1] In 6 April 2004, the NPCSC interpreted the Basic Law and changed the 3-step process into 5-step process concerning the framework of political reform, which added (1) "The Chief Executive shall make a report to the NPCSC as regards whether there is a need to make an amendment"; (2) "the NPCSC shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law, make a determination in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress". They were followed by original steps which were "recommendation of a 2/3 majority of all the members of the Legislative Council and the consent of the Chief Executive and shall be reported to the NPCSC for approval or for the record".

HUMAN RIGHTS IN HONG KONG IN THE EYES OF SOCIAL ACTIVISTS

Questions

Q1: What do you think about human rights development in Hong Kong after the 1997 handover?

Q2: What do you think about human rights development in coming years?

MA NGOK

Associate Professor, Department of Government and Public Administration, CUHK



(1) There are improvements and setbacks in constitutional reform. For instance, the direct election seats of the Legislative Council have been increased while civil and political rights are shrinking. The democratic development in Hong Kong does not meet public expectations. The public desires faster reforms. And regarding human rights, there has been improvement as the public is aware of infringements of freedom of expression and police brutality.

(2) Regarding democratic development, the most alarming sign is that the current norms are changing. For instance, there is discrepancy in the attitude of government and law enforcement agency towards public demonstrations and assemblies organized by pro-establishment and pro-democracy non-governmental organizations (NGOs), in which they treat the former leniently while the latter strictly. This gradually upsets the human rights enshrined by laws and shakes public confidence in institutions.



WONG HO YIN

Former Convener, Police Powers Monitoring Group, Civil Human Rights Front

(1) Freedom of expression is closely related to police power issues. Netizens, general public and protesters have become more familiar with their rights, legitimate limitation and monitoring of police power than before. However, the police have progressively adopted greater force, more equipment and more sophisticated systems to regulate communications and surveillance, urban management, processions and public assemblies.

(2) The civic consciousness of Hong Kong people will grow again along with the occupy movement fighting for democracy. But the deteriorating political environment will undermine freedom of expression and assembly of Hong Kong people. Under the strict Public Order Ordinance, police can impose unreasonable conditions on public procession and assembly, which in turn will increase the risk of arrest and prosecution for the organizers and citizens joining in a peaceful assembly. In addition, the political neutrality of the police force is becoming more serious. It intensifies the tension between the police and citizens and leads to conflicts. As a result the restriction on freedom of expression and assembly enters a vicious cycle.



LAU CHUK KEI

Director, Sham Shui Po Community Association

After the 1997 handover, human rights in Hong Kong became worse. The Social safety net was tightened several times. The former Chief Executive Tung Chee Hwa significantly reduced Comprehensive Social Security Assistance at times of economic hardship, which made grassroots citizens more helpless. The government has been delaying a universal pension and standard working hours. It substitutes pension by the Mandatory Provident Fund, which is favourable for financial institutions to make profits.

The poverty rate keeps rising. There are 1.3 millions of people living in poverty and the number is higher than those before the 1997 handover. The right to adequate housing is going backwards as applicants who fall in accessing public housing are forced to live in expensive "ripped rooms". This is the result of the sharp reduction of public housing by the government in 2002, tightening the eligibility of youth and single persons for public housing, lack of regulation on private rental markets and high land price policy. Without changes in the unequal political system favouring the tycoons, human rights in Hong Kong will only keep deteriorating and is likely to arouse serious social instability.



CHAN PO YING

Social activist particularly regarding women and labour issues. Assisted in setting up Cleaning Workers Union. Participated in Hong Kong Women Workers' Association and the Link Watch. Legislative Assistant of Legislative Councillor Leung Kwok Hung, April fifth action and member of League of Social Democrats

Facing the fear, defending civil rights

The movie "Z" by Greek Director Costa Gavras in the early 1970s widened my horizon. The movie told us that when a totalitarian government needed "democratic institutions" to hide its totalitarian nature and it was inconvenient to exercise the use of force, the thugs controlled by police would be useful to suppress a democracy movement. The collusion of triads and police were not only individual black sheep, it was the frontier of the state apparatus for suppressing democracy movement.

I saw that the Chinese Communist Party provoked mass struggle during the Cultural Revolution and eroded by the People's Liberation Army. Hence the signs shown in Hong Kong under CY Leung's administration made me feel a chill down my spine. Firstly, we could see that the traditional Beijing loyalists mobilized people to subdue pro-democracy protesters and opinions. If it was still the stage of showing force, the Beijing loyalists groups proactively destroyed peaceful assembly. In the Umbrella Movement, which was the occupy movement fighting for universal suffrage in Hong Kong, there were physical, mental and sexual violence in an organized way to harass pro-democracy protesters. There was also a blockade of media. These actions were elevated and controlled by national authority and deterred the opposite opinions by fear.

A volunteer, who had been in the front line to argue with Beijing loyalists protesters, told me recently that she started worrying that her actions would affect her children. But she could not tell what the exact impact would be. How far would the national counterattack go? It is a sword hanging over the head of the public.

To prevent the spread of fear, Hong Kong people can only face the fear and defend civil rights and let us see how far we can go!



FATHER FRANCO MELLA

Social activist concerning civil, political, economic, social and cultural rights

(1) After the 1997 handover, the spirits of Hong Kong citizens to fight for human rights became lively. Some people with radical thinking promote an open society while some people are selfish and manipulate Hong Kong citizens to oppose Chinese people for political agenda. Unfortunately the Hong Kong government proactively asked the Standing Committee of the National People's Congress (NPCSC) to interpret the Basic Law regarding right of abode cases in 1999, which intensified the conflicts between Hong Kong citizens and Chinese people. At the same time, some people do undemocratic things by democratic ways. And during the Occupy Central movement, Hong Kong has been divided into 2 groups, which are light and darkness respectively. Not all pan-democrats belong to the group of light. For instance, some lawmakers suggested barring the entry of Filipinos into Hong Kong after the Manila hostage crisis. Some lawmakers opposed the right of abode of migrant domestic workers. These lawmakers give up their aspiration for votes. Hence it is difficult for us to see clearly whether a person belongs to light or darkness and it is a great challenge for us.

(2) I think the human rights development in Hong Kong is improving. There are people with advanced and radical thinking campaigning in Occupy Central and fighting for human rights including the right of abode, opposing North East New Territories new development and abolition of the death penalty etc.

I hope there is improvement in Hong Kong in the future. I also hope there is a unified nation in China and other places. I do not support one country, two systems. I support one country, one system in the sense that our world is a utopia similar to communist society in the early days, which is a just society in which people love each other as brothers and sisters and share resources.

AI GLOBAL CAMPAIGNS

GOOD NEWS

WRITE FOR RIGHTS

AMNESTY INTERNATIONAL 

LETTER WRITING MARATHON 2014

Amnesty sections across the world launched the annual Letter Writing Marathon from November to December. Tens of thousands of Amnesty members and supporters sent their messages of solidarity to prisoners of conscience and to demand justice as well as seeking for changes.

11 Human rights defenders, including Chinese anti-corruption activist Liu Ping, have featured among cases in the marathon this year. Victims of the Bhopal disaster have also featured.

We hope to organize a Letter Writing Marathon with our members and supporters so as to support people and communities who are seeking justice. Email us at volunteer@amnesty.org.hk if you are able to join us.

SECTIONS IN ASIA PACIFIC: REPEAL SEDITION ACT

Amnesty International Australia, Hong Kong, India, Japan and the Philippines have launched a joint action to support the call by Amnesty International Malaysia to repeal the Sedition Act in the country.

This colonial-era law has been utilized by the authorities to oppress freedom of speech and assembly in recent months. At least 12 activists and civil society leaders have been arrested and convicted.



INDONESIA

Oni Wea, a 21-year-old university student was arrested with Robert Yelemaken, a 16-year-old high school student, on 8 August for calling for an independence referendum for Papua. They were tortured and ill-treated by the police during this arrest and detention. After an urgent action launched by Amnesty International, Robert and Oni Wea was released on 18 August and 2 September respectively. Amnesty International will continue to call for an independent investigation into the students' allegations of torture and other ill-treatment, to bring all those responsible to justice in fair trials and provide reparations to the victims.

QATAR

The United Kingdom nationals Krishna Upadhyaya and Ghimire Gundev are researchers of the Global Network for Rights and Development. They were arrested and detained by local authorities when they were investigating the working conditions of Nepalese migrant workers. They were held incommunicado from 31 August until 6 September, when the United Kingdom consular officials met them and passed on messages to their families.

An informal coalition emerged to campaign for the speedy resolution of the case, including Amnesty International, Anti-slavery, the International Trade Union Confederation, Front Line Defenders, Human Rights Watch and Walk Free along with the 50,000 people who supported a petition. Krishna Upadhyaya and Ghimire Gundev were released on 9 September. They then returned to the police station and sought to recover the equipment they had used during their research including mobile phones and recording equipment.

TAJIKISTAN

Alexander Sodiqov is a PhD student at the University of Toronto and was detained on 16 June while conducting a research interview in Tajikistan. He was held in connection with investigations into a charge of "high treason". On 10 September, he flew to Toronto from Tajikistan after his release. His wife and daughter joined him on 12 September. The Tajikistani authorities responded positively to a request from Alexander Sodiqov to allow him to return to Canada and continue his university studies.

LOCAL HAPPENINGS

THIS IS YOUR PAGE:
ELIZABETH LUI



NAME
Lui Hin Ying, Elizabeth

OCCUPATION
Year 3 Student
Department of
Government and Public
Administration, CUHK

YEARS WITH US
2013 Internship
Programme

What do you think about the civil disobedience movement which was initiated by students in October?

I think it is really impressive since it is mainly led by the students. I always have had the impression that defending human rights has never been an easy topic for the public. However, following this movement, I found that human rights were actually around our daily lives. For example, I never thought that not allowing someone to go to the toilet was already a violation of human rights or even a kind of torture. Although the concept of defending human rights is still very weak among Hong Kong people, their knowledge of human rights is becoming richer and stronger because of this movement, particularly regarding freedom of expression and freedom of assembly. Freedom is not free. I am so glad to see many participants, especially the students, are willing to sacrifice their time, and bear the fear of being arrested. I can never feel this from books. It is totally different to be part of the movement and I have a deeper feeling towards the cost of freedom.

Moreover, I am also so proud to see Amnesty International Hong Kong has been working hard to monitor the human rights violations during this movement. It is unusual to see a non-governmental organization in Hong Kong brave enough to speak out during such a critical moment, and putting their mission into practice.

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

I consider freedom of expression to be the most significant thing in the world. Without it, you would not be able to speak out even if you are the victim of other human rights violations. Freedom of expression is the only way to demonstrate the dignity of humans, and independent and critical thinking. Unfortunately, freedom of expression is under threat not only in China but also Hong Kong. Thus, we must act now to defend our freedom of expression.

Why did you apply for Amnesty International Hong Kong's internship programme?

I applied for this internship through school. I am very interested in human rights, and also attended some human rights related courses this semester. It would be very wonderful if I could apply what I learnt in practice. What is more important is that, I think working in Amnesty International Hong Kong is very "cool"!

What was the most remarkable thing that happened during the internship?

Every single day was unforgettable. In the beginning, I was working on the TEAM AMNESTY project and I found it very interesting as I love playing sports during my spare time. This was so fascinating to integrate my interest in work. Another remarkable thing is the "Chen Guang Cheng Tote Bag", which was jointly designed with "Sell Words". I was responsible for the whole project and everything was really started from zero, from the concept, designs and the production. I went to the United States for the school's exchange programme after the internship. I still remember the moment I received the final product by air mail, I was very touched and impressed. I could never imagine that an intern can contribute that much to the organization.

CHALLENGE YOURSELF!

RUN / HIKE / SWIM / CLIMB / JOG /
WALK / RIDE FOR HUMAN RIGHTS

TEAM AMNESTY



ALL TEAM AMNESTY members will get a running singlet. It is made with moisture wicking fabric which keeps you dry during the competition (100% polyester 145gsm fabric)

TEAM AMNESTY is a series of fundraising sports activities. While fundraising for Team Amnesty, we can also share the joy of fair play and equality aroused from the happiness of participating in sports.

HUMAN RIGHTS AND SPORTS

Equality and respect for diversity are both core values of human rights and sports.

Not only do athletes face the pain of injuries, pressure from opponents and the fear of losing, they are also threatened by the ghost of racial segregation, exclusion of women and discrimination against minority groups in sport. The violation of human rights can cause unbearable trauma for some athletes.

- American athletes Marty Glickman and Sam Stoller were forbidden to join the 1936 Berlin Olympics because of their Jewish descent.

- African American athletes Tommie Smith and John Carlos were banned from the Olympics for life after they had made a silent protest against racial discrimination in USA with their heads bowed and a black-gloved fist raised during the victory ceremony of the 1968 Mexico Olympics

- Only girls in private schools in Saudi Arabia are allowed to attend PE lessons as the local government believes that femininity is incompatible with sports

Human rights are unscrupulously abused under our eyes. If you are also intolerant of the deprivation of human rights, join TEAM AMNESTY and speak up for human rights with every step you take.

EVERYONE CAN JOIN TEAM AMNESTY

We welcome everyone to join our big family. With a healthy body and a determined mind for the protection of human rights, you can now join TEAM AMNESTY and have fun while supporting human rights.

YOU CAN CARRY OUT TEAM AMNESTY EVENTS ANYWHERE

TEAM AMNESTY can happen anywhere with sports. We welcome TEAM AMNESTY participants to join local or even international sports events. You can plan for your own Team Amnesty fundraising event, like walkathon, marathon, trekking, cycling or bungee jumping - it's all up to you!

TEAM AMNESTY is a never-ending adventure. We believe in inspiration and determination. Join TEAM AMNESTY. Get ready to inspire and to be inspired for the protection of human rights.

How To Join TEAM AMNESTY

Simply tell us your ideas and fundraising targets and you can be part of TEAM AMNESTY.

Tel: +852 23001250 / Email: tr@amnesty.org.hk



On 14 March 2010 a campaign named "WINTERVEKØ VOSS: ACTION-FREE HU JIA" was organized by human rights activists in Voss from Amnesty International Norway. In WINTERVEKØ VOSS, a winter gathering for ski athletes, Amnesty International participants held a skiing trip and advocated human rights to support Hu Jia, a prisoner of conscience in China. They gathered at the top of Lun among hills to demand the release of Hu Jia, and presented a red banner saying "Free Hu Jia" so as to raise awareness of this prisoner of conscience.

HUMAN RIGHTS DOCUMENTARY SCREENING

Amnesty International Hong Kong is now calling for your participation in our Human Rights Documentary Screening. The screening aims at promoting international human rights issues to students, raising their interest and developing independent thinking.

Target / All local universities and colleges

Venue / Campuses

Format / In class activity or after class event organized by students. It is possible to arrange a discussion session after screening.

Topics / 10 documentaries including the death penalty, freedom of speech and gender rights

Email / dai@amnesty.org.hk

FINAL CALL: JOIN UNIVERSITY AI CLUB

Individuals at risk of human rights violations are found throughout the world. Some are unlawfully detained, tortured or sentenced to the death penalty because of their conscience and beliefs. Some women are forced to tolerate sexual violence and inequality for their whole life. Some people's lives are threatened just because they defend human rights. Your action could bring changes for them!

University AI Club is formed by local university and college students. It provides a platform for students to learn how to organize campaigns and to study in-depth international human rights issues. The members will then be able to organize campaigns independently to promote human rights, improve injustices and bring charges to people who are suffering.

Target / Students from local universities and colleges (including higher diploma, associate degree and undergraduate degree)

Fee / Free of charge (except the Human Rights Experience Camp)

Requirement / Communication (oral and written) skills in Chinese and English

Award / Participants will receive a campaigner training certificate upon successful completion of the project.

Application / Please email at dai@amnesty.org.hk

Application deadline / 31 December 2014

《人權紀錄片巡迴放映》

國際特赦組織香港分會將於通過放映《人權紀錄片巡迴放映》，讓學生更深入了解現今國際人權狀況，並藉著觀影手法引起學生對人權議題的興趣及獨立思考。

對象 / 香港各大專院校

地點 / 校園

形式 / 可於課堂進行或學生會舉辦觀影活動，可接換映或電影巡迴放映，官能自由及平等平等系列，共十部紀錄片

查詢 / 電郵 dai@amnesty.org.hk

最後召集·加入 UNIVERSITY AI CLUB

世界不少地區因為個人身份或其所持的宗教而遭非法禁錮，甚至受到酷刑或死刑，不少婦女一輩子受性暴力及不公平的待遇；有些人僅僅因為捍衛自己或他人應有的權利而遭受生命威脅，你的行動可為他們帶來改變！

University AI Club 是由香港各大專院校學生組成的網絡，透過一系列策劃工作的培訓以及深入探討國際人權議題，最後由大專生親身策劃巡迴活動，以推動社會關注國際人權議題，為受迫害的人及不公平狀況帶來改變。

對象 / 就讀本地專上教育課程學生（包括高職文憑、副學士及學士課程）

地點 / 全港（人權體驗營除外）

要求 / 具中英文溝通能力及寫作能力

報名 / 請電郵 dai@amnesty.org.hk

獎勵 / 順利完成計劃者可獲頒發活動策劃員訓練證書乙張

截止報名 / 二〇一四年十二月三十一日



你為甚麼申請國際特赦組織香港分會的實習計劃？

最近通過學校得知這個實習計劃。我不對人權十分有興趣，同時也覺得人權相關的事務，如果能夠在國際特赦組織香港分會實習的話，一定是件非常美好的事，而且我覺得能夠在國際特赦組織香港分會實習是一件「好」的事。

實習期間有甚麼難忘的事？

每一天也很難忘。一開始負責製作「TEAM AMNESTY」計劃，因為我，向也很喜歡做這項其他活動，所以很開心能把自己真真正正地投入工作之中。另外就是與「實字」合作的「陽光號衣裳」，因為這個計劃完全由零開始，由理念、設計直到完成製成品也是自己一手包辦。實習結束後，我到了美國交流，收到製成品那刻真的非常感動，也沒想到身為實習生可以為機構作出這麼多。



呂衍豐
香港中文大學政治與行政學系三年級生
二〇一三年實習生

最近由學生發起的公民抗命運動有改變你對人權的看法嗎？

真的非常令人感動。尤其因為這次運動由學生主導。我一直覺得與大眾對人權是「隔地」的事。但經過這次運動，我才發現原來人權真的跟我們日常生活是相連的。譬如知道期間不去洗拖把，我才知道原來人權其實跟我們個人生活是相連的。市民對人權的關注度也提高，但我相信這次運動後，大家會更積極地發現人權特別是日常生活中的自由與平等自由。由不為免費，也所有參與者充其量主也，介乎在，也活的活現的現。甚至受受受受受受。所以只能從受受受受受受受受受受受受。但這次真的在實踐中，感覺不一，更能受到自由的代價。

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？

我始終認為言論自由是最重要。如果你沒有言論自由，當其他自由被剝奪，你也無法表達出來。而且言論自由是能實踐人權的基礎、獨立和批判思考。現在無論是由國際還是香港，也面對收緊言論自由的威脅，所以我們必須出一分力去捍衛言論自由。

挑戰個人極限， 為人權比賽！

TEAM AMNESTY 希望透過每人擔任任務的任務，在每個項目中發揮責任，從而來不斷地改善香港的社會，弘揚公民參與，人人參與的社會價值。而這個為人權而戰。

大旗飄揚

今年大旗飄揚的任務包括：
• 為國際特赦組織的「陽光號」活動籌款。
• 為國際特赦組織的「陽光號」活動籌款。
• 為國際特赦組織的「陽光號」活動籌款。

- 國際特赦組織的「陽光號」活動籌款。
- 國際特赦組織的「陽光號」活動籌款。
- 國際特赦組織的「陽光號」活動籌款。

TEAM AMNESTY



國際特赦組織 TEAM AMNESTY 的成員在「陽光號」活動中，穿著印有「TEAM AMNESTY」字樣的 T 恤和短褲，展現他們的團隊精神。

如何成為 TEAM AMNESTY?

TEAM AMNESTY 每年在七月舉行，由七月開始，同時在七月開始。你可以向國際特赦組織香港分會查詢，或親臨國際特赦組織香港分會，或親臨國際特赦組織香港分會。

如何成為 TEAM AMNESTY?

你可以向國際特赦組織香港分會查詢，或親臨國際特赦組織香港分會，或親臨國際特赦組織香港分會。

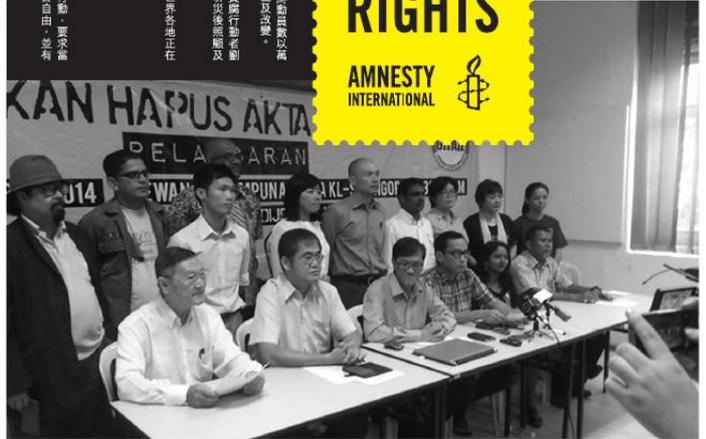
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國際特赦組織 TEAM AMNESTY
電話：+852 2101 2101
傳真：+852 2101 2101
網址：teamamnesty.org.hk

WRITE FOR RIGHTS

AMNESTY INTERNATIONAL



寫信馬拉松

國際特赦組織全球分會，將於十一月到十二月期間舉辦年度「寫信馬拉松」行動，活動動員數以萬計的會員及支持者，為全球各地不同的良心犯及政治犯上書，和他們一起爭取公義及改變。

今年的「寫信馬拉松」將為全球各地十一名思辯人每人上書一次公署，包括中國及美國行動者劉暉、馮博、還有為印度博帕爾化學毒氣事件遭害居民及其家屬，要求獲得確切切實後果賠償及賠償。

我們希望和各位會員及支持者，一同籌備年度的連串「寫信馬拉松」行動，為世界各地正在尋求公義的人和社群。

如有參與，請電郵： volunteer@amnesty.org.hk

亞太區各分會，要求馬來西亞政府釋放劉暉

國際特赦組織澳洲、印度、日本及菲律賓分會，與我們一同交聯馬來西亞分會行動，要求當地政府釋放劉暉訂立的「憲法」。該份劉暉當屆用作打擊言論及良心自由，並有最少十二名行動者及公民社社地因此被捕及判處。

印尼

二十一歲入會生Oni Yoa與十六歲中學生Robert Yalமாகer因通印而亞省進行非法公投，於八月八日被捕。他們在警方扣留期間及其他個人權利對待。國際特赦組織會員及支持者作出良心呼籲後，他們分別於八月八日及九月二日獲釋。然而，我們要求印尼當局就兩項非法公投獨立調查及公正審訊，為受害者討回公道。

卡塔爾

Global Network for Rights and Development 發信給印度Kri shna Upadhyaya 及 Ghimire Gundeey，於當地地亞尼治論僱傭勞工工作狀況時，遭當地執法單位拘捕。將其逮捕及拘留，他們於八月二十一日及九月九日獲釋。隨後安哥拉駐地領事與會商會，並簽署保證書釋放他們的家人。

國際特赦組織、人權觀察、國際工會聯盟、前線人權記者協會、Anti-Slavery & Walk Free 非機構組織聯合行動，要求立即釋放五名被拘留者，要求卡塔爾政府立即釋放各種形式的囚徒，並於九月九日獲釋後，隨即返回回國。要求立即釋放和停止非法拘留及監禁囚徒。

Global Network for Rights and Development 於 Kri shna 及 Ghimire 獲釋後，感謝所有迅速釋放兩位囚徒的僱傭公司及其他。

塔吉克

正於多倫多大學攻讀博士學位的前吉吉籍學生 Alexander Sadiqov，於塔吉克進行學術研究期間，遭當局以被監禁和拘留。他於六月十六日獲釋，於九月十日獲釋。隨即返回多倫多，其家人於兩日後到多倫多與他重聚。

問 | 國際人權組織對香港人權發展有何看法？

問 你認為《中英聯合聲明》及《基本法》有否為香港人權提供足夠保障？

答 三十年前九月二十六日午夜，我在接受電台訪問前，時任政府新聞處的張敬儀找我商量《聯合聲明》。當時我元氣很開，因為《聯合聲明》採納了我大部分建議，譬如香港繼續使用普通法，終審法院設在香港及處理其他普通法地區的海外國家來港擔任終審法官。

問 在全球法治指數中，香港排名十六，遠高於中國七十六。中國與香港法制、法治概念及法院角色迥異，譬如中國三權合作，黨大於法。主權移交十七年，香港終審法院如何應對中港差異，秉持司法獨立及普通法？

答 香港主權移交後繼續使用普通法，是我與新華社副社長李健文討論，他先來我的律師樓，看見我有許多例案，大部分是英國案例，香港沒有，我告訴他在香港法官是參考例案，大部分時候參考英國先例。他便問我這話是《基本法》裏的，其大於法不干涉香港內政。

問 中國國務院今年公布《「一國兩制」在香港特別行政區的實踐》(白皮書)，但白皮書完全不提《聯合聲明》，強調《基本法》是全國性法律及於香港具憲制地位，中國對香港有全面管治權，法官是治港者及必須愛國。你對此有何評論？

答 我認為中國用白皮書單方面重寫《聯合聲明》，表明上為這些年落實「一國兩制」，但實際上加了許多東西，譬如中央對香港有全面管治權，與《聯合聲明》高度自治相違。其實早在《聯合聲明》，中英雙方已訂明一九九七年主權移交後中國對香港的基本方針政策，在此條件下才有主權移交，而中央早已已同意，並已收回權力，就不應再更改及收回權力。

問 如果中國破壞《聯合聲明》，可如何追究？

答 一九九一年馬尼拉在菲律賓與中國違反《聯合聲明》，說明用一切方法來回應，馬尼拉又說若菲律賓其他城市支持，一九九七年七月一日英國將收回香港。《聯合聲明》、《基本法》及《中英聯合聲明》是國際公約，但今日中國破壞《聯合聲明》，英國只是袖手旁觀，甚麼也沒有做。

香港與中國法制不同，香港是普通法普通法。此外，我與新華社副社長李健文在監獄討論，普通法法源是英國而大英立法及處理公職法官出任終審法院法官，這些問題已獲解決，所以《聯合聲明》及《基本法》。

問 人大常委會掌握《基本法》最終解釋權。你認為這樣會影響香港法院的判決嗎？

答 起草《基本法》時，我反對人大常委會掌握《基本法》最終解釋權，但不果。在普通法體系，只有法官有權解釋法律，而不是由立法者解釋，立法原意是看法文字，而不是立法者。

問 二〇一一年，在剛果案中，中國政府施壓，公開要求香港跟從中國採取絕對豁免權，而不是根據普通法國家商業行為不獲外交豁免。後來終審法院首次主動向人大常委提出釋法。你認為此舉對香港法治有何影響？

答 在剛果案中，剛果政府施壓香港政府，毫不留情地拒絕普通法採用限制性豁免，另外三名法官採用外交絕對豁免，也有道理。剛果案是第四次人大釋法，也是唯一一次依照《基本法》第一百五十八條規定，由終審法院向人大請釋法。第一次人大釋法，是由自由行政區司理向人大請釋法，香港終審法院拒絕釋法。第二次人大釋法，是人大自行釋法，是第三次釋法，是五項出。第三次釋法，也是人大向終審法院自行請釋法《基本法》。第一次是第三次人大釋法也是不干涉香港。

問 你預計香港法治狀況在未來數年會怎樣？

答 香港法治在未來數年會很危險，譬如剛果案法官包攬金銀媒體發言所說，香港法治面對一邦所有有的打官應用，我認為香港用白皮書就是另一例，若香港沒有法治，就會其地中廢掉十年，人無保障有法治精神，而沒有民主，也保護不了人權法治。我對香港可否維持法治，標準有否真正的民主精神。

問 我們可以做甚麼捍衛人權法治？

答 我們可在自己崗位發聲，以內應外合，如何發聲的人權解人權法治，解釋士應主動不自閉。我們亦可向選舉投票，盡公民責任。此外，即使會失敗，我們也應盡良心去拒絕人權。



李柱銘

註釋：(一)二〇〇四年四月六日，人大常委會釋法，規定修改為五部，即增加「特別行政區政府修改特別立法權釋法」，向人大常委會提出釋法；(二)人大常委會依照《基本法》第四十五條和第六十八條規定，組織香港特別行政區政府向人大常委會提出釋法；(三)《基本法》附件一及附件二訂明的原由，即設立法會全體議員三分之二多數通過，始得向人大常委會提出。

香港人權重大事件

1984

中英簽訂《中英聯合聲明》，承諾香港於一九九七年主權移交後，實行「一國兩制、高度自治」，並訂明《公民權利和政治權利國際公約》及《經濟、社會與文化權利的國際公約》適用於香港。

1989

八九民運，港人上街聲援，其後中國政府收緊《基本法》條文，譬如第二十三條重新引入嚴懲罪。

1990

全國人大通過《基本法》，第三章訂明香港居民的權利，第三十九條訂明《公民權利和政治權利國際公約》及《經濟、社會與文化權利的國際公約》適用於香港的有關規定繼續有效。

1991

立法局通過《香港人權法案條例》，將《公民權利和政治權利國際公約》納入本地法例。

1991

立法局引入地庫首選。

1993

正式廢除死刑法例。

1996

成立平等機會委員會，負責實施《性別歧視條例》及《殘疾歧視條例》。

1997

七月一日主權移交，《基本法》生效，《公民權利和政治權利國際公約》及《經濟、社會與文化權利的國際公約》繼續適用，香港政府決定定期聯合國提交報告及接受審議。

2007

教育統籌局要求香港教育學院辭退撰文批評教育改革的學者，干預學術自由。

2007

繼續衝天示威抗議後，保衛人士拒絕集體回憶及公共空間，反對政府拆卸皇后碼頭但不果，港人參與文化生活的權利受損。

2005

人大常委會就補選特首餘下任期第三次釋法。

2004

人大常委會就政制第二次釋法，其後人大決定否決〇七〇八雙普選。

2003

五十萬人大遊行反對二十二條立法，自此中國政府加強介入香港事務。

2000

特首辦通過特別助理路林要求香港大學停止公布政府支持度的民意調查，干預學術自由。

1999

全國人民代表大會常務委員會《人大常委會》首次就香港釋法，損害香港司法獨立。

1997

《家庭崗位歧視條例》生效，由平等機會委員會負責實施。

1997

立法局並通過延期回響，全部議員落任，臨時立法會由四日人特首政府推選委員會選出，期間廢除工會集體談判權及恢復《公安條例》中七日前申請一反對通知書才可集會遊行的規定等，令人權倒退。

2009

《殘疾歧視條例》生效，由平機會負責實施。

2009

反高樓運動質疑樓宇工程價值高昂，並通過拆棄欄杆及功能船別利益衝突等，損害居住權、資訊權、表達自由及參與公共事務等。至二〇一〇年一月，立法會在爭議中通過六百六十九億工程撥款，示威人士衝出馬路包圍立法會。

2011

人大常委會就剛果案絕對豁免權第四次釋法，首次由終審法院主動釋法。

2011

立法會議員五區總辭，五十八萬人投票支持，齊實真普選，取消功能組別。

2011

中國國務院副總理李克強訪港，當面警告香港新聞自由。

2012

反國教運動成功爭取政府撤換國教及有違獨立思考的德育及國民教育科課程指引，以免學生的表達自由及教育權受損。

2014

傳媒老闆及新聞工作者相繼遭襲，前明報總編輯劉遵義身中六刀，轟動全球。

2014

六月二十二日民間全民投票，擁護梁振英再次連任，但四成選民投票決定和平佔中應採納真普選方案。

2014

人大常委會公布香港普選模式，較現時特首選舉倒退。學生罷課，於政府總部集會，警方施放八十七枚催淚彈驅散示威人士，卻促成多場佔領行動，包括金鐘、銅鑼灣及旺角等。佔領人士期間曾遭有背景人士及反佔中人士襲擊。

