

## Amnesty International

### **Hong Kong's return to Chinese sovereignty: ten years on**

Hong Kong returned to Chinese sovereignty on 1 July 1997 after more than one hundred years as a British colony. In his first policy address, Chief Executive Designate Tung Chee-Hwa promised a 'fresh start' for Hong Kong and its people. The following short report looks at how certain basic human rights have fared since the handover and assesses how far the HKSAR government has taken the opportunity of a fresh start to safeguard and enhance protection of the rights and freedoms of the people of Hong Kong.

This report is based on documents issued by Amnesty International on Hong Kong over the last ten years. While it does not purport to be a comprehensive survey of all human rights issues, it focuses on a number of key areas that have been of longstanding concern to Amnesty International. These include freedom of assembly and expression; judicial independence; proposals for national security legislation under Basic Law Article 23; progress of legislation to protect minority groups over the past ten years; how far legislation protects the basic human right of women to be free from violence in the home; the treatment of asylum seekers and refugees; and the implications for Hong Kong residents of China's continued use of the death penalty elsewhere in the country.

While public fears that there would be a significant deterioration in human rights in Hong Kong after 1997 have not been borne out, the HKSAR authorities have missed several key opportunities to take concrete steps to enhance protection of the basic human rights and freedoms of the people of Hong Kong over the last ten years. When it comes to human rights, the 'fresh start' that Hong Kong was promised by former Chief Executive Tung Chee-hwa in 1997 has not materialized.

## **Amnesty International in Hong Kong**

Amnesty International has been monitoring human rights in Hong Kong since the 1970's, with research staff initially based in London, and from 1997 in Hong Kong. In 1976 an Amnesty International group was established in Hong Kong. Since then, this has grown from a handful of members to a staff of nine and over 5,000 members.

The Hong Kong section of Amnesty International (AIHK) is part of the worldwide movement of people who campaign for internationally recognized human rights to be respected and protected. Amnesty International's mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, social, cultural and economic. Amnesty International is independent of any government, political ideology, economic interest or religion and mobilizes volunteer activists – people who give freely of their time and energy - in solidarity with those whose rights have been abused. At the latest count, there were more than 2.2 million Amnesty International members, supporters and subscribers in over 150 countries and territories in every region of the world. They come from all walks of life, with widely different political and religious views, united by the determination to work for a world where everyone enjoys human rights.

In the past ten years AIHK has focused on working with sections worldwide on Amnesty International's major campaigns, which have included work on the Great Lakes crisis, the War on Terror, the rights of refugees, Stop violence against Women, Control Arms Campaign and many more global priorities. In addition, AIHK's local work has ranged from concerns over freedom of expression and demonstration to submissions on Article 23, race discrimination, the rights of minority groups, refugees and the independence of the judiciary among many other local issues.

## **Threats to freedom of assembly and police use of excessive force**

On 23 February 1997, China's National People's Congress Standing Committee (NPCSC) resolved that parts of the Public Order Ordinance (POO) contradicted the Basic Law and should therefore not be adopted as law of the Hong Kong Special Administrative Region (HKSAR). No further details were given as to why the POO was considered to breach the Basic Law, but on 1 July 1997, highly controversial amendments to the Public Order Ordinance were introduced by the Provisional Legislative Council (PLC), the interim body which governed Hong Kong before the election of a new Legislative Council in 1997. These amendments reintroduced the need to apply for permission to hold demonstrations. The Commissioner of Police had the power to prohibit peaceful public gatherings, not just on public safety and public order grounds but also where he "reasonably considers [it] necessary" "in the interest of national security" and "the protection of the rights and freedoms of others".

Amnesty International noted then that Hong Kong is party to the International Covenant on Civil and Political Rights (ICCPR) and is thus bound to respect the rights in this covenant. To this day, concerns remain that provisions of the Public Order Ordinance (POO) in Hong Kong contravene international human rights standards, including rights to freedom of expression and assembly as guaranteed by the ICCPR. On a practical level, Amnesty International considers that the procedure of approval for public

demonstrations in the POO is so complicated that this may also compromise the fundamental human right to freedom of expression and assembly.

Over the past ten years, Amnesty International has also raised concerns over apparent excessive use of force by the police when handling demonstrations. For example, at the annual meeting of the World Bank and International Monetary Fund (IMF) in Hong Kong in September 1997, one group of approximately 10 demonstrators were surrounded by over 150 uniformed and plain clothed police officers as they marched to and from the designated protest site. Access by journalists to protestors was arbitrarily controlled. Five demonstrators were charged after scuffles with police on 21 September 1997 when they tried to leave a restricted area to rejoin members of the public at the end of a march protesting IMF policies. Three demonstrators were charged with "disorderly conduct" and two with assaulting the police. One was acquitted of disorderly conduct when one policeman withdrew his evidence after a video showed it to be incorrect - the remaining disorderly conduct charges were then lessened to offences of obstructing the police. The magistrate also accepted that some of the police officers had exaggerated events.

Over the years, there have been further reports of police use of excessive force against peaceful protests. In August and September 2000, 16 demonstrators, including seven student leaders, were arrested under the POO for failing to give seven days' notice prior to a demonstration in June. Participants formally complained of excessive use of force by police who had used pepper spray and punched and kicked protesters. The arrests triggered large unauthorized solidarity marches and renewed public scrutiny of the ordinance. In October 2000, the charges were dropped.

In September 2001 a magistrate ruled that police had abused their powers when arresting three protesters during the visit of China's President Jiang Zemin. Ng Kwok-hung, Sunny Leung Chun-wai and Wan Shu-nam, all members of the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China, were acquitted.

In 2001 and 2002, members of the *Falun Gong* spiritual movement, a registered society in Hong Kong despite being banned in China, were arrested at peaceful demonstrations and alleged that they were victims of police violence. In August 2002, 16 *Falun Gong* members were convicted of obstruction during a demonstration in March. There were claims that the trial was politically motivated. In November 2004, an appeal court reversed the convictions for "public obstruction" and in April 2005, the Hong Kong Court of Final Appeal overturned all remaining convictions against the remaining eight *Falun Gong* practitioners for obstructing and assaulting police. The Court judgment pointed out that the police had not paid enough attention to freedom of association, assembly, procession and demonstration as guaranteed by Article 27 of the Basic Law.

In April 2002 there were reports of the use of excessive force in the clearing of right of abode protesters from Chater Garden. It was reported that about 300 police officers and over 50 immigration officers sealed all the exits and charged into the gardens to clear 100 - 200 protesters. They had been peacefully staging rallies there since 10 January 2001 against a Court of Final Appeal ruling that the majority of the 5,114 abode seekers did not have right of stay in Hong Kong and should return to other parts of China. In a press release issued shortly after the protest, Amnesty International urged the Hong Kong authorities to exercise restraint and ensure that minimum force is used to control such protests.

Also in 2002, three prominent activists, Leung Kwok-hung, Fung Ka-keung and Lo Wai-ming, were arrested and charged with organizing an unlawful assembly under the Public Order Ordinance. In November 2002, two other well-known activists were arrested and charged with the same offence after holding a demonstration in May in protest against the arrests of the three activists.

Experience of these events led Amnesty International to issue an Open Letter to the Secretary for Security before the opening of the World Trade Organisation (WTO) Ministerial Conference in December 2005, urging the Security Bureau to ensure that police handling of the planned demonstrations would be proportionate to public order concerns and not undermine public confidence in guarantees of freedom of expression and association. Police used pepper spray, tear-gas and bean-bag rounds against protesters during the demonstrations, prompting accusations by human rights monitors of excessive use of force. More than 1,000 protesters were detained, and several claimed to have been ill-treated in police custody. All 14 South Koreans charged with "unlawful assembly" after protesting outside the conference were acquitted in early 2006, sparking renewed calls for an independent inquiry into the actions of the police during the protests.

*Amnesty International continues to urge the HKSAR authorities to bring the Public Order Ordinance into line with international human rights standards and to ensure that police handling of demonstrations is proportionate to public order concerns and complies with HKSAR obligations to protect freedom of expression, association and assembly.*

#### **How did Amnesty International start?**

More than four decades ago, the story of two Portuguese students sentenced to seven years' imprisonment for raising a toast to freedom horrified British lawyer Peter Benenson. He wrote to a British newspaper calling for an international campaign to bombard authorities around the world with protests about the "forgotten prisoners". On 28 May 1961, the newspaper launched his year long campaign, Appeal for Amnesty 1961, calling on people everywhere to protest against the imprisonment of men and women for their political or religious beliefs – "prisoners of conscience".

Within a month, more than a thousand readers had sent letters of support, practical help and details about many more prisoners of conscience. Within six months, a brief publicity effort had developed into a permanent, international movement. Within a year, the new organization had sent delegations to four countries to make representations on behalf of prisoners and had taken up 210 cases. Its members had organized national bodies in seven countries.

The principles of impartiality and independence were established from the start. The emphasis was on the international protection of the human rights of individuals. As Amnesty International grew, its focus expanded to take in not just prisoners of conscience, but other victims of human rights abuses – such as torture, "disappearances" and the death penalty. In 1977, the movement's efforts were recognized through the award of the Nobel Peace Prize. In 1978, it was honoured with a United Nations Human Rights Award.

## **Freedom of expression**

Amnesty International's work is founded on the Universal Declaration of Human Rights, which states that, "Everyone has the right to freedom of opinion and expression". (Article 19). These principles are echoed in Article 19 of the ICCPR – which has remained applicable to Hong Kong since its transfer to Chinese sovereignty in 1997 through Article 39 of the Basic Law.

In the run-up to the handover, Amnesty International urged the Hong Kong government to ensure that the right of freedom of expression was not restricted. Immediately after the handover, the Provisional Legislative Council (PLC) passed the National Flag and National Emblem Ordinance, apparently without examining whether these laws were in compliance with Hong Kong's international human rights obligations, including the ICCPR. According to this law, "a person who desecrates the national flag or national emblem by publicly and willfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 years".

Less than a year later, the law was used to convict peaceful protesters. During a pro-democracy demonstration on 1 January 1998, two protestors waved and defaced national and regional flags. The police reportedly asked them to stop but did not interfere, videoing the incident instead.

The protesters were convicted on 18 May 1998. In sentencing them, the magistrate dismissed arguments that the relevant sections of the laws were unconstitutional as they ran counter to ICCPR guarantees of freedom of expression. The prosecutor argued that the laws sought only to restrict a very narrow mode of expression and was justifiable under paragraph 3 of Article 19 of the ICCPR. The laws did not prohibit expression of dissent as "at most they prohibit only one means of expression... all the things said and done by the defendants could be easily and permissibly expressed in other ways". The magistrate also ruled that the restrictions on the freedom of expression of Section 7 could be justified as necessary for the protection of public order. The defendants were conditionally discharged to keep the peace or forfeit HK \$4,000.

In December 1999 the Court of Final Appeal upheld their conviction. Regardless of the minimal penalty imposed, it is clear the incident in question posed no threat to public order and the case illustrates the capacity for this legislation to be used to curb legitimate, non-violent expressions of protest.

In 2004, Amnesty International expressed fears about threats to freedom of expression in the media after the resignation of three radio talk show hosts after they allegedly received threats for calling for greater democracy in Hong Kong.

In the same year, the organization also raised concerns over threats to freedom of expression following the reinterpretation of the Basic Law by the National Peoples Congress and the subsequent debate over the introduction of greater democracy into the Legislative Council elections and the election of the Chief Executive in the HKSAR (see below). Comments by a number of mainland news organisations, including *Xinhua*, the *China Daily* and *CCTV*, and high-ranking mainland officials, accused certain politicians advocating speedy universal suffrage of being "unpatriotic" and protests against reinterpretation of the Basic Law were characterized as showing a lack of respect for the Central Peoples Government. Of particular concern to Amnesty

International were statements made by the then Chinese Vice-Minister of Commerce, An Min, that Hong Kong political forces are wrong “to think that they are entitled to every right” (February, 2004) and the suggestion that peaceful political debates on this issue could be considered subversive. Amnesty International considered that such comments could have a chilling effect on freedom of expression in the HKSAR, especially when they were apparently endorsed by the official media in the rest of China.

Concerns about a growing climate of self-censorship in Hong Kong since the handover have been expressed by various parties, including journalist associations and official bodies. In 2000, the United Nations Human Rights Committee, which monitors implementation of the ICCPR, reported comments from a study on press practices in Hong Kong by the Political and Economic Risk Consultancy (PERC) that found "the practice of self-censorship in particular was very widespread".

Despite such concerns, a large number of media outlets remain in Hong Kong, expressing a diversity of opinion and reporting on various social and human rights issues. In 1996, Amnesty International Hong Kong, together with Hong Kong Journalists Association and the Foreign Correspondents Club of Hong Kong, launched an event to promote human rights reporting in the region: the Human Rights Press Awards. This has become an annual event and in 2006 received a record number of submissions - 339, second only to the 319 received in 1997.

## **Judicial independence**

The HKSAR and PRC governments are bound by a duty to uphold the principle of “one country, two systems”, enshrined in the Basic Law, which states that central government legislation and underlying concepts on these issues are not to be introduced into the HKSAR for a period of fifty years after 1997. However, controversy over interpretation of the Basic Law has exposed both the limits of the autonomy of the HKSAR and loopholes in the checks, balances and separation of powers, which underpin human rights guarantees in the Basic Law.

In January 1999, the Court of Final Appeal ruled against the HKSAR government over Basic Law provisions concerning the right of abode in Hong Kong of residents’ children born in mainland China. The HKSAR government claimed this would result in an insupportable population increase and its Chief Executive requested that the National People’s Congress Standing Committee (NPCSC) intervene and interpret the Basic Law’s provisions, effectively challenging the authority of the Court. The Committee gave an interpretation which had the effect of reversing the Court’s judgment. However, the Basic Law only explicitly provides for the courts to request such interpretations. This expedient also bypassed procedural safeguards governing amendment to the Basic Law.

In November 1999, the UN Human Rights Committee, commenting on the first report submitted by China on the implementation of the ICCPR in Hong Kong, expressed concern that government requests for reinterpretation of the Basic Law could undermine the right to fair trial.

The HKSAR government reassured critics that the first request for reinterpretation of the Basic Law had been “exceptional”, but refused to limit its future use. In April 2004, another interpretation restricted Hong Kong’s freedom to push ahead with political reform and a third NPCSC interpretation in 2005 limited the term served by the Chief Executive to the remainder of the term served by the previous incumbent who had recently resigned.

These interpretations have fueled anxiety among many in Hong Kong over a possible erosion of fundamental safeguards for judicial independence – a pre-requisite for upholding the rule of law and human rights. Amnesty International recognizes the right of the National People’s Congress to interpret the Basic Law. However, the organization remains concerned about the potential for such interpretations to undermine judicial independence – a fundamental safeguard for the protection of human rights - particularly when requests for such interpretations are made by executive rather than judicial bodies in Hong Kong.

## **The debate over Article 23**

In his first policy address, former Chief Executive Tung Chee-hwa promised Hong Kong people a new vision for the future. The introduction of a consultation document, followed by draft legislation to enact Basic Law Article 23 in 2002/3 proved to be a major test of the HKSAR government’s vision.

Under the Basic Law, the Hong Kong government is obliged to enact legislation “to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.” The issues surrounding the implementation of Article 23 of the Basic Law were viewed by many as a touchstone for defining the future direction of fundamental freedoms since the return to Chinese sovereignty.

When the HKSAR government presented its proposal, some offences, as drafted, appeared to risk conflicting with fundamental freedoms contained within the ICCPR as well as the Basic Law. In two submissions on the consultation document and on the draft legislation, Amnesty International urged the Hong Kong authorities to ensure that any legislation prohibiting “any act of treason, secession, sedition” or “subversion against the Central People’s Government” did not criminalize or restrict the exercise of fundamental rights, such as freedom of expression, association and assembly. The organization also urged the government to reconsider proposals under the section on the “theft of state secrets” which called for an expansion of the term “protected information” and the addition of a new class of protected information relating to “relations between the Central Authorities of the People’s Republic of China and the HK SAR”.<sup>1</sup>

Amnesty International was concerned that such provisions could be used to create broad and ill-defined categories of protected information (possibly mirroring ‘state

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<sup>1</sup> Response to Hong Kong SAR Government Consultation Document on proposals to implement Article 23 of the Basic Law, AI Index ASA 19/003/2002, November 2002.

secrets' legislation in the rest of China) and considered that such proposals went beyond the obligation imposed by Article 23. In addition, proposed revisions to some existing legislation, such as articles in the Societies Ordinance relating to proscription of societies, would strengthen legislation which already restricted fundamental human rights. Clauses within the draft legislation asserting the supremacy of legal concepts on proscribed societies applicable in the rest of China over Hong Kong definitions and traditions were also a cause for concern.

Public opposition to the proposed legislation grew, and Amnesty International, like many other human rights groups, mobilized its members and the wider public to demonstrate against the proposals. In July 2003, after protests involving an estimated half a million people, the Hong Kong authorities withdrew the proposed legislation. This was the largest public demonstration in Hong Kong since those held in response to the 1989 pro-democracy movement in Beijing and its violent suppression. In response to the protests, the authorities promised further public consultation on revised proposals, but made no commitment to a timescale for their reintroduction. So far, no attempts have been made to re-introduce this legislation.

Amnesty International recognizes the obligation to enact legislation under Article 23, but regretted that the HKSAR government did not take this opportunity to modernise HKSAR legislation by removing outdated colonial provisions, such as those on sedition, and to develop legislation in line with human rights and international laws and standards. An opportunity was missed to put in place a clear and tightly defined Ordinance, which would safeguard fundamental rights and freedoms. Instead the authorities included more offences, many of which had the potential to conflict with human rights standards.

Amnesty International was also concerned that the process of consultation was carried out within a tight timeframe which restricted the ability of interested parties to comment adequately on the proposals. The organization urged the government to issue a White Bill, allowing for changes in the wording of the legislation, rather than the Blue Bill which was issued in early 2003.

*AIHK's lawyer's group continues to monitor the impact of local legislation on human rights, including by assessing proposals for legislative reform against international human rights standards.*

## **The rights of minority groups**

AI's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Working to prevent and end discrimination against minority groups is a fundamental part of this mission.

The HKSAR currently has three Ordinances which give protection against discrimination on grounds of gender, disability and family status. Two important areas missing in Hong Kong legislation are laws applicable to all which protect against racial discrimination and discrimination on grounds of sexual orientation.



The HKSAR is party to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) and as such has an obligation to introduce legislation against racial discrimination. Over the past ten years, Amnesty International has repeatedly called upon the government to introduce such legislation, and made specific proposals for the content of that legislation during the consultation process.

Amnesty International welcomed the issuing by the Home Affairs Bureau (HAB) of an anti-race discrimination legislation consultation document in 2005 and draft legislation in 2006. However, the organization remains concerned that the draft bill contains several exclusions and in particular does not include protection from discrimination on the basis of their place of origin for new arrivals from elsewhere in China. The organization is also concerned that practical obstacles may prevent some categories of protected groups from effectively enjoying their right to non-discrimination. For example, foreign domestic workers who make up over 50% of the non-Chinese population in Hong Kong, must leave Hong Kong within 14 days of the termination of their employment contract, making it difficult for them to pursue any claims under an anti-discrimination law

Additionally, Amnesty International is calling on the Hong Kong government to legislate against discrimination on grounds of sexual orientation. Homosexuality was decriminalised in Hong Kong in 1991, many years after the United Kingdom. The HKSAR government's position over the last ten years has been that Hong Kong is a socially conservative society, and that legislation will only be introduced if it has majority support. Amnesty International and other groups have been actively conducting public awareness and educational activities, and have consistently lobbied the HAB to push for legislation.

The findings of a "survey on public attitudes to homosexuality", released by the HAB in 2006 revealed that the majority of the public had no objection to the HKSAR enacting a sexual orientation discrimination ordinance. The survey also showed that over 70% of the respondents recognised that homosexuals do face discrimination in Hong Kong.

Amnesty International notes the findings of this survey, which appear to support the case for legislation to prevent discrimination on grounds of sexual orientation. However, the organization maintains that the protection of the human rights of a minority group should not be dependent on the results of public opinion surveys. The organization urges the authorities to introduce such legislation on human rights grounds, irrespective of such findings.

In 2005, William Leung, a 20-year-old gay man, successfully challenged a law which prohibits sex between consenting men under 21 whereas the age of consent for heterosexual sex is 16. The Court of First Instance ruled that the law was discriminatory and a violation of human rights, and this ruling was upheld by the Court of Appeal in 2006. The Hong Kong authorities announced that they would not appeal further, but to date, no legislative reforms have been introduced in response to this ruling. This landmark case reinforces Amnesty International's position that legislation against discrimination on grounds of sexual orientation in Hong Kong is long overdue.

*The Lesbian, Gay, Bisexual and Transgender (LGBT) group of AIHK is particularly active in supporting legislation on discrimination in Hong Kong as well as campaigning against violations of the rights of LGBT people worldwide.*

## Asylum seekers and refugees

Although signed and ratified by China, the 1951 United Nations Convention relating to the Status of Refugees (Refugee Convention) has not been extended to Hong Kong. There is no domestic legislation providing for the legal right to seek asylum and obliging the Government to handle asylum requests, neither is there a statutory refugee determination procedure. The United Nations High Commission for Refugees (UNHCR) remains responsible for determining the status of those who seek asylum in Hong Kong.

Refugee issues became a topic of significant public concern and debate with the arrival in Hong Kong of large numbers of Vietnamese 'boat people' fleeing war and persecution since the mid-1970s. Amnesty International's report "Human Rights One Year On: No Room for Complacency", published in 1998, recommended that the HKSAR government, "pursue humane and durable solutions for Vietnamese refugees remaining in Hong Kong and to ensure that any new arrivals are treated in accordance with international standards, in particular the principle of *non-refoulement*." By May 1998 1,200 Vietnamese refugees remained in Hong Kong, many of whom had been in Hong Kong for years. In May 2000, the last remaining camp was closed and the remaining 1,000 refugees were issued with temporary identity cards, allowing them to resettle in Hong Kong.

While the Vietnamese refugee issue has now been resolved, the number of individual asylum seekers arriving in Hong Kong has continued to grow with the majority now coming from South Asia (90%) and Africa (9%). Amnesty International has on-going concerns about their treatment. The organization continues to receive reports that some asylum-seekers have been refused entry to Hong Kong without adequate consideration of their claims. Others continue to be detained for over-staying their visas or other immigration offences while their asylum applications are still pending. The arbitrary detention of asylum seekers during the asylum process runs contrary to international human rights law and standards.

In May 2000 the UN Committee against Torture recommended that Hong Kong's laws and practices to outlaw torture and to protect refugees be brought into conformity with the UN Convention against Torture, to which Hong Kong is a party. Four years later, in response to a Court of Final Appeal judgment on the case of Sakthevel Prabakar, an asylum seeker from Sri Lanka, the HKSAR government introduced a screening mechanism aimed at preventing the forcible return (*refoulement*) of individuals to a country where they would be at risk of torture or ill-treatment. Amnesty International welcomes this as an important step forward in safeguarding against torture or ill-treatment, but continues to urge the authorities to provide effective protection for the full range of rights of asylum seekers and refugees by ensuring the extension of the UN Refugee Convention to Hong Kong.

Amnesty International remains deeply concerned that asylum seekers are not provided with adequate assistance to cover basic needs such as shelter, food and education, despite limited government funding introduced after UNHCR ceased its funding in May 2006. In addition to its advocacy efforts on such issues, Amnesty International has also been active in providing training for volunteers and organizations who provide services

to asylum seekers and refugees. In 2004, Amnesty started to train volunteers and coordinate other organizations to offer services to refugees. This has led to the setting up of a refugee concern group made up of organizations who exchange information and work together on refugee issues

## **Violence against women**

In March 2004, Amnesty International launched a six-year global campaign to end violence against women. This coincided with an increasing awareness of the problem of gender-based violence in the family in Hong Kong, following a number of tragic deaths, including that of Kim Shuk-ying and her two daughters at the hands of her husband in April 2004. Amnesty International's campaign in Hong Kong has focused on amending the Domestic Violence Ordinance (DVO) to ensure that it provides sufficient protection and remedies for those facing violence within the family.

In June 2006, Amnesty International submitted a written briefing to the United Nations Committee on the Elimination of Discrimination against Women (the CEDAW Committee), prior to its hearing of the report submitted by the Chinese government concerning the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Hong Kong. The briefing primarily focused on the situation of gender-based violence in the family in Hong Kong and provided concrete recommendations for the HKSAR government to exercise due diligence to respect, protect, fulfill and promote the rights of women. These included revising the definition of 'violence' to encompass forms of abuse other than 'physical violence' directed against victims or their children, including threats of such abuse; providing training for all personnel who have contact with victims of gender-based violence in the family; and amending the DVO to ensure that courts have the power to determine the period of validity of an injunction order depending on the seriousness of the situation.

In August 2006, two delegates from AIHK presented Amnesty International's concerns at the hearing of the CEDAW Committee. On 31 August 2006, the CEDAW Committee published its recommendations to the HKSAR government, expressing among other issues, concerns about the low prosecution rate of domestic violence, the situation of women asylum seekers and refugees, discriminatory provisions contained in the 'Small House Policy' and the electoral system, as well as the situation of female foreign domestic workers. Amnesty International welcomed the Committee's recommendations, particularly its call for a strengthened effort from the HKSAR government to combat domestic violence..

Since then, the HKSAR government has taken steps towards amending the Domestic Violence Ordinance (DVO), although no concrete reforms have yet been introduced. Proposed amendments include: the incorporation of non-physical abuse into the definition of "violence"; the extension of the scope of application; and the extension of the duration of injunction orders. While welcoming these efforts towards reform, Amnesty International is concerned that these amendments are limited and will be insufficient to effectively prevent domestic violence.

*Amnesty International continues to lobby members of the Hong Kong Legislative Council to support amendments to the Domestic Violence Ordinance aimed at ensuring that it*

*provides effective protection against acts and threats of gender-based violence within the family. AIHK also conducts periodic public awareness activities on the issue of gender-based violence in the family in Hong Kong, and invites members of the public to sign petitions and write letters calling for Amnesty International's recommendations to be implemented.*

## **Death Penalty**

Amnesty International seeks abolition of the death penalty worldwide, believing that there is no evidence that the death penalty is more effective than other forms of punishment as a deterrent against crime. Amnesty opposes the death penalty unconditionally, on the grounds that it violates the right to life and is the ultimate cruel, inhuman or degrading punishment.

The death penalty was formally abolished in Hong Kong in 1992, and had previously not been used in practice since 1966, as death sentences were routinely commuted to life imprisonment. In contrast, the death penalty is retained in the rest of China (except the Macau Special Administrative Region) where far more people are executed than in the rest of the world put together. China imposes the death penalty for a wide range of offences, including non-violent crimes. Despite recent reforms to China's death penalty system, including the re-introduction of Supreme Court review of death sentences on 1 January 2007, those facing the death penalty in China do not receive a fair trial in line with international human rights standards.

Chief Executive Designate Tung Chee-hwa in 1996 took the view that reinstating the death penalty would not be beneficial to Hong Kong and in the lead-up to 1997, Amnesty urged the Chief Executive Designate to ensure that, in accordance with his earlier statement the death penalty would not be reintroduced in Hong Kong. There has been no attempt to reinstate the death penalty in the HKSAR since 1997, but of particular concern locally, is the steady number of Hong Kong residents sentenced to death on the mainland. Amnesty International has raised several cases of concern over the last ten years, including the following:

In December 1998, Hong Kong citizens Cheung Tze-keung, Chin Hon-sau and Chan Chi-hou were executed and 13 others were imprisoned in Guangdong, mainland China, for cross-border crimes and crimes committed in Hong Kong. The handling of the case appeared to undermine Hong Kong's judicial autonomy under the "one country two systems" principle. The HKSAR government and the Guangdong court cited the Chinese criminal code under which crimes "plotted, planned and prepared" on the mainland can be tried there even if committed elsewhere. However, little reliable evidence was reportedly presented at the trial to prove the crimes were planned on the mainland. The HKSAR government was heavily criticised for misinterpreting the Basic Law and failing to assert jurisdiction over the case. The government argued that it did not press for the defendants to be returned to Hong Kong because it did not have enough evidence to prosecute in Hong Kong and had no formal agreement with the rest of China on the return of criminal suspects. It promised to negotiate urgently such an agreement.

In April 1999, Li Yuhui was executed in Guangdong Province in mainland China after an unfair trial for the alleged murder by poison of five women in Hong Kong. He had been charged under the Chinese criminal code, which, under the “one country two systems” policy, should not apply in the HKSAR.

Negotiations between the Chinese and HKSAR governments on the return of criminal suspects continue but there appears to have been little progress made towards a formal rendition agreement between Hong Kong and China. The HKSAR government has also been slow to intervene on behalf of Hong Kong citizens detained elsewhere in China.

*The AIHK Death Penalty group has been campaigning over the years on behalf of victims of the death penalty in China as well as those sentenced to death and executed elsewhere in the world.*

## **Failure to establish a Human Rights Commission**

In April 1994, Amnesty International made a detailed analysis of existing flaws in the safeguards for human rights in Hong Kong.<sup>2</sup> The organization concluded that Hong Kong lacked a sufficiently accessible, affordable, speedy and effective mechanism under which individuals could seek redress and reparations for alleged violations of their human rights, and that as a result, some victims of human rights violations were left without an effective remedy, in contravention of the ICCPR.

Amnesty International’s study emphasized that, to implement the ICCPR, any government should ensure that all people understand their rights. Governments must ensure that all persons whose rights have been violated have access to affordable, effective remedies. These are obligations which the HKSAR government has not yet fully discharged, and which the government is bound to carry out under the terms of the ICCPR as applied to Hong Kong.

At present, responsibility for human rights monitoring and protection remains split between a number of different bodies. The Equal Opportunities Commission, the Office of the Ombudsman, and the Office of the Privacy Commissioner for Personal Data and the Security Bureau all have some role in upholding human rights in Hong Kong, with the work of coordination coming under the management of the Home Affairs Bureau.

Under the ICCPR (ratified for Hong Kong since 1976) the authorities are bound by an obligation to establish remedies that are effective in practice for all victims of human rights violations in Hong Kong. Amnesty International believes that a human rights commission, properly constituted, adequately resourced and genuinely independent, could provide an accessible, affordable, speedy and effective human rights complaints system, to complement the judicial system. Such a commission could also facilitate a more proactive, forward-looking and effective approach to human rights implementation and to effective human rights awareness, education and training programs.

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<sup>2</sup> See Amnesty International, *Hong Kong and Human Rights: Flaws in the System - A Call for Institutional Reform to Protect Human Rights*, April 1994 (AI Index: ASA 19/01/94).

A human rights commission should be independent from government and organized so that the terms of appointment and tenure of the commission members give the strongest possible guarantees of competence, impartiality and independence. Amnesty International regrets that over the past 10 years the HKSAR government has failed to take steps to establish such a body in line with its international obligations to respect, protect and fulfill the human rights of all in Hong Kong.

## **Human rights ten years on: still no room for complacency**

In the months leading up to Hong Kong's return to Chinese sovereignty in 1997, Amnesty International urged the incoming Hong Kong Special Administrative Region (HKSAR) authorities to build confidence amongst the public that there would be continued human rights protection in Hong Kong.

In many ways the last ten years have been a difficult period for the people of Hong Kong. Hong Kong's economy suffered badly during the Asian economic crisis and the SARS outbreak, negatively affecting the livelihood of millions of people. Yet these crises have also shown the importance of resilient human rights protection, the rule of law, government transparency and accountability, community participation and the free flow of information in safeguarding stability and prosperity for the people of Hong Kong.

The Hong Kong authorities received a clear message from Hong Kong people about the importance of human rights in the wake of official proposals for legislation under Article 23. The massive, peaceful demonstration of half a million people, out of a population of seven million, against Article 23 proposals was a clear sign to the government that they need to pay greater attention to the human rights implications of their proposals. While the HKSAR is obliged to legislate under Basic Law Article 23, the authorities failed to use this opportunity to remove archaic colonial laws, such as that on sedition, and to develop legislation in line with human rights and international laws and standards.

In areas related to the protection of minority rights, the Hong Kong authorities appear to have adopted a conservative approach, based largely on carrying out public opinion surveys or second-guessing the attitudes of the majority of Hong Kong people to change. Nevertheless progress has remained slow even when results of such surveys have revealed Hong Kong people to be less socially conservative than anticipated. The introduction of legislation to protect the rights of ethnic minorities has proceeded very slowly, with significant flaws remaining in the current draft, and as yet there are no plans to legislate against discrimination on grounds of sexual orientation.

Protection of human rights more generally remains spread over a number of different bodies and there is no Human Rights Commission to provide a unified approach to human rights implementation and an avenue for redress for Hong Kong people.

Ten years on, concerns remain over threats to freedom of assembly posed by restrictive provisions of the Public Order Ordinance as well as excessive and disproportionate use of force by the police, particularly during public demonstrations or protests in Hong Kong. The right to freedom of expression is highly valued by the people of Hong Kong, yet this fundamental right has also been threatened.

A lack of clarity on Hong Kong's relationship with the rest of China under 'one country, two systems' has also fueled concerns for the protection of the human rights in Hong Kong. Interpretations of the Basic Law by the National People's Congress Standing Committee have posed a worrying threat to judicial independence in Hong Kong. While Hong Kong has not reinstated the death penalty, executions carried out in the mainland for crimes committed in Hong Kong have also undermined the protection of human rights for Hong Kong residents.

In spite of these concerns, courts at all levels in Hong Kong have not been afraid to take an impartial and independent approach in many cases involving human rights issues. One illustration is the Court of Final Appeal, which overturned all convictions against a group of *Falun Gong* practitioners in 2005, thereby upholding fundamental human rights to freedom of expression, association and assembly.

Over the past ten years, Hong Kong's dynamic population has become increasingly active in civil society movements on a diverse range of social issues, including the environment, employment and social welfare, urban planning – and human rights. In July 1997, for example, Amnesty International had 300, mainly expatriate, members. Now the organisation has more than 5000 members, the vast majority of whom are local Hong Kong people.

As the people of Hong Kong look ahead to the next ten years, Amnesty International calls upon the HKSAR government to take the following steps as a matter of priority towards enhancing the protection and promotion of human rights in Hong Kong:

**Freedom of assembly**

Bring the Public Order Ordinance (POO) into line with the HKSAR's obligations under the ICCPR to respect and protect the fundamental human rights to freedom of expression, association and assembly.

**Police use of excessive force**

Ensure that police handling of demonstrations is proportionate to public order concerns and does not undermine public confidence in guarantees of freedom of expression, association and assembly.

**Freedom of expression**

Ensure that all legislation in Hong Kong, including any new legislation proposed under Article 23 of the Basic Law, conforms to guarantees of freedom of expression enshrined in Article 39 of the Basic Law and Article 19 of the ICCPR.

**Judicial independence**

Safeguard the independence of the Hong Kong judiciary, ensuring that this is not compromised by requests for Basic Law interpretation made by the HKSAR executive to the Standing Committee of the National People's Congress of the PRC.

**The implementation of Basic Law Article 23**

Ensure that legislation under Basic Law Article 23 is clearly defined, guarantees fundamental rights and freedoms as enshrined in the ICCPR and the Basic Law of Hong Kong.

**The rights of minority groups**

Ensure that the any legislation against racial discrimination conforms with Hong Kong's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Provisions should include adequate and effective protection for new arrivals from the Chinese mainland and foreign domestic workers.

Introduce legislation against discrimination on grounds of sexual orientation..

**Refugees**

Work with the central PRC authorities to ensure the extension of the United Nations Convention related to the Status of Refugees to Hong Kong and within this legal framework, establish an effective mechanism for refugee status determination, ensuring full protection for the rights of asylum seekers and refugees.

**Violence against women**

Ensure that the Domestic Violence Ordinance is amended so that it provides full and effective protection against acts and threats of gender-based violence within the family.

**Human Rights Commission**

Establish a Human Rights Commission, which is properly constituted, adequately resourced and genuinely independent, aimed at enhancing the protection of the human rights of all in Hong Kong.