

JUSTICE

THE HONG KONG SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS

Chairman
Gladys Li, S.C.
Vico Chairman
Margaret Ng
Executive Secretary
Hay Yiu Wong

Statement on the Public Order Ordinance (Cap 245)

1. JUSTICE considers the following principles to be of fundamental importance in any discussion on the provisions of the Public Order Ordinance regulating public meetings and public processions —
 - (a) The following rights are among those constitutionally guaranteed under the Basic Law —
 - (i) The rights to freedom of religion and belief, including the right to manifest one's religion or belief in public by worship, observance, practice and teaching (Basic Law, Article 32/ICCPR, Article 18);
 - (ii) The right to freedom of expression, including the freedom to impart information and ideas of all kinds, freedom of speech, of the press and of publication (Basic Law, Article 27/ICCPR, Article 19);
 - (iii) The right to freedom of assembly, of procession and of demonstration (Basic Law, Article 27/ICCPR, Article 21);
 - (iv) The right to freedom of association (Basic Law, Article 27/ICCPR, Article 22);
 - (v) The right to take part in the conduct of public affairs (ICCPR, Article 25).
 - (b) Freedom of expression, of assembly, of procession, and of demonstration are essential conditions for the effective exercise and full enjoyment of the constitutionally guaranteed right of every citizen to take part in public affairs, which includes the freedom to engage in political activity individually or through

political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election, and to advertise political ideas. These are the sustenance of a democratic society based upon the values of pluralism, tolerance, broadmindedness and people's sovereignty.

(c) The provisions of the Public Order Ordinance regulating public meetings and public processions restrict the exercise of these constitutionally guaranteed rights.

(d) Such restrictions are unconstitutional under the Basic Law if they do not serve one of the legitimate grounds of limitation set out in Article 18, 19, 21 or 22 of the International Covenant on Civil and Political Rights (where appropriate); or if they are not necessary for the attaining of a legitimate ground of limitation. The test of necessity implies that a restriction is unconstitutional if it is disproportionate in terms of severity and intensity to the purpose sought to be achieved.

2. JUSTICE accepts that legitimate interests in preserving public order and protecting the rights of others justify a notification system for public meetings and public processions.
3. JUSTICE does not accept that failure to give the required notification should render the meeting or procession unlawful. This is to put an administrative requirement above the right.
4. Any sanction for such default in fulfilling an administrative requirement should be proportionate to the offence. Liability to imprisonment is wholly disproportionate and unreasonable for such default.
5. JUSTICE accepts that legitimate interests in preserving public order and protecting the rights of others justify empowering the police to impose conditions as to the time, place and manner of the holding of the public gathering. All conditions sought to be imposed should be objectively justified as being necessary and proportionate. The power to impose conditions must not be applied to stifle the expression of unpopular or anti-government views or to target particular groups or organizers.
6. If the authorities seek to prohibit the holding of a public gathering, they must justify such a prohibition as being necessary before a court and such prohibition must have

the sanction of a court.

7. JUSTICE notes that the existing criminal laws of the HKSAR are more than sufficient in dealing with violent behaviour or damage to property belonging to others occurring in the course of, or as a result of, a public gathering.

Dated 21st November 2000.

Gladys Li, SC
Chairman, JUSTICE