



## ASIAN HUMAN RIGHTS COMMISSION

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### **Ref: Submission to the Legislative Council Security Panel on Hong Kong's Public Order Ordinance**

The Asian Human Rights Commission (AHRIC) is a regional human rights non-governmental organisation (NGO) based in Hong Kong. We have been following with great interest the recent debate within the local community over the Public Order Ordinance. Because Hong Kong is one of the world's leading cosmopolitan and international cities, we believe that its government would want to seek to incorporate in its laws the best human rights practices found in democratic societies around the world. As a result of our concerns, we appreciate this opportunity to submit our thoughts to you about this important issue in Hong Kong.

Our first concern is the manner in which the Public Order Ordinance was last amended in 1997. Passed in the middle of the night by the provisional legislature several hours after power was transferred from the colonial administration of Britain to the Special Administrative Region (SAR) government of China, this rapid change of a law that is extremely sensitive to ensuring people's freedom of expression and freedom of assembly gives the impression that the desire and intent of the incoming administration was to use the law through alterations to the Public Order Ordinance and Societies Ordinance to control demonstrations, rallies, and organisations that it felt might be politically threatening to its ability to manage dissent in the community. Whether or not this was the aim of the new government, it stimulated concerns among local citizens as well as overseas observers that this was the objective of the amended versions of the Public Order Ordinance and Societies Ordinance in 1997. In light of the many anxieties both locally and abroad about the degree of freedom that would be permitted in Hong Kong after July 1997, the swift enactment of these amendments as the SAR was being born only heightened these apprehensions.

Fears that these amendments in 1997 were made to give the Hong Kong government a legal weapon to use to regulate political dissent have been resurrected in the past few months with the arrests of several students related to demonstrations in April and June of this year, especially the timing of these arrests several days before the observance of the National Day celebration on October 1, for they give the appearance that these arrests were intended to use the law to curtail the activities of organised sectors of society which disagree with government policies and to further intimidate others who might seek to do so in the future. Other cases in the years ahead and questions over the intent of the law can also be expected if the present Public Order Ordinance is not amended.

In assessing the present situation, we believe that the previous amendment to the Public Order Ordinance in 1995 had expanded the scope of people's ability to express their views and, in our opinion, was a healthy development toward securing people's

right to freedom of expression and assembly in Hong Kong. In the two years that this amended version of the ordinance was in force, there were no incidents that would warrant the amendments that took place in 1997, except to contract the space available for people to freely express themselves. Other laws exist in Hong Kong that can be used by the police to charge people for breaking the law if violence or damage to property occur during a demonstration or rally.

In light of this introduction, AHRC would like to put forth the amendments below to the present Public Order Ordinance.

(1) The period for notifying the police prior to a public demonstration or rally should be reduced to 24 hours before the event.

(2) A notice of no objection from the police should no longer be required before holding a public demonstration or rally. Rather, the sole purpose of notifying the police should be to allow the police to arrange traffic control and to take other measures to ensure public safety of both the demonstrators and the general public. Any objection raised by the police to a public demonstration or rally must be referred to the courts for resolution with the burden of proof on the police to prove why a demonstration or rally should not be held. The evidence provided by the police must be consistent with the International Covenant on Civil and Political Rights (ICCPR), especially Article 19 on freedom of expression in which Paragraph 3 states:

“The exercise of the rights . . . of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and *are necessary*:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public) or of public health or morals.” (italics added)

Thus, any limitations to the exercise of freedom of expression and assembly by the police must be shown to be necessary in court.

(3) The present criminal penalties for failure to notify the police of a demonstration or rally—five years imprisonment—are too harsh for the offense. To our knowledge, such an excessive penalty cannot be found in any other democratic society and goes against all internationally accepted practices. It cannot be emphasized enough that there should be no prison sentence for such an infraction, for the only “crime” is a failure to get permission from the police to exercise one’s freedom of expression and assembly. If there is to be any penalty prescribed, however, it should be limited to a fine, for the offense—failure to notify the police—is technical in nature and is devoid of criminal intent.

These recommendations are offered out of our deep concern that the Public Order Ordinance in its present form denies people their right to express themselves and to peacefully assemble by transforming a right into a privilege granted by the police, especially with its provisions requiring a notice of no objection from the police, for the police should not be the arbiters of people’s freedom. The requirement to notify

the police of a demonstration or rally must be separated from giving the police the power to approve or disapprove of people's rights to express their views. In effect, the present system is based on an indirect permit system in spite of the denials of the government. Rather than ensure public order and political stability, the present Public Order Ordinance creates frustration and arouses passions within the community and leads as a result to political instability.

Lastly, one function of a modern government is to ensure that all voices within the community are heard and respected. This role is especially critical in ensuring that the opinions of a minority are encouraged and permitted to be expressed without real or perceived threats of intimidation by the government. In order for this openness to be realised, the government must facilitate an environment that is conducive for the free expression of views. AHRC feels, however, that the present Public Order Ordinance fails to promote this conducive environment and, thus, encourages the Hong Kong government and legislature to amend the present Public Order Ordinance by incorporating the recommendations above.