人權字典 中英對照

Human Rights Dictionary

International, Mainland China Hong Kong, and Taiwan

(Bilingual)

總編：黃 默
主編：Theodore Orlin
司馬晉
Daniel Yu

教育部
教 育 部 出版
東吳大學張佛泉人權研究中心 編撰

人權字典 Human Rights Dictionary

教育部 發行

ISBN：978-986-00-9617-0
ISBN 9860096170-1
9 789860 096170
GPN：1009600764
工本費：75元

教育部
教 育 部 出版
東吳大學張佛泉人權研究中心 編撰

人權字典 中英對照

Human Rights Dictionary

International, Mainland China
Hong Kong, and Taiwan

(Bilingual)

編輯說明

「人權」指的是什麼？最簡單的說法，人權是基於對每個人的尊嚴及價值的尊重而與生俱來的權利。人權的概念承認每個人不分種族、膚色、性別、語言、宗教、政治或其他意見、國家的或社會的出身，都享有這些與生俱來的權利。人權的理念在人權法中獲得闡明並受到保障，透過條約、公約、宣言及習慣法，確保個人及團體最根本的權利與自由免於受到侵犯。人權法賦予國家義務，要求它們採取某些行動或是限制它們進行某些行為。

人權的三個基本的原則是：人權是普世的，應平等適用於所有人，不帶有歧視；人權是不可讓渡的，除了某些法律所預期的特定情況外，不能被剝奪或放棄；同時，人權也是不可分割的，所有的人權相互關連而依存，不能僅從零散的基礎來看待。

當然，上述原則只有在賦予具體的細節後才變得有意義。也因為這樣的需求，激發了這本人權字典的出版。本書由四個部份組成，編纂的工作已經進行了數年。最初的構想始於2003年，當時我們認為，如果能有一部彙編或字典從國際標準看待台灣的人權紀錄，對於促進台灣對人權的理解將十分地有助益。我們參考一本為因應阿爾巴尼亞讀者而出版的英文－阿爾巴尼亞文對照的人權字詞彙編作為藍本。但很快地，我們就意識到，這本字典的內容必需更為廣泛，其中至少應包括人權的概念、事件、法律與人物。於是，我們著手規劃了一本較英文－阿爾巴尼亞文對照版更為完整的字典。隨後，我們又決定將中國大陸[1]與香港的人權字詞也帶進來，以利華語地區的讀者及從事比較性人權研究的國際學者使用。中國與香港部份的寫作時間在2006年。因此，這本字典包括四個部份。最大的國際部份概略地涵括了國際的人權原則、法律、方法、制度以及議題。接下來，以「國際」的標準或規範對三個地區的人權詞彙作分析。

讀者很快就可以發現，本書的四個部份各有其重點。其中的原因，部份緣於四個部份乃由不同的寫作群執筆，部份也反映了三個地區不同的情勢發展。準此，台灣部份側重在1990年代快速而劇烈的人權實踐過程中，事件、制度以及人物所扮演的重要角色；中國大陸部份則有很強地政治關懷，反映當地尚待發軔的人權發展。香港部份反應出一個事實：當英國統治時，人權在法律上已

1 在這裡，本書作者不涉入領土主權的爭論。如使用「中國大陸」這個詞只是為了方便上的考量，並不影涉任何有關台灣（在2007年其正式名稱仍為中華民國）地位的意涵。同樣的，將西藏納入中國部份也無關乎中國對此地管轄權的主張。在這些議題上，還沒有達到任何共識。然而，香港的例子就不同了，一般都接受此地為中華人民共和國的一個特別行政區，唯一的問題是該地在未來能保有多少自治的權利，尤其是2047年以後。

有完善的保障，目前的問題是如何避免人權保障的退卻，同時進一步將觸角伸入新的人權領域。因此，香港部份有著十分強烈地法制傾向。我們並未將「國際」部份中所有的概念適用到三個地區，因為相對而言，這三個部份關注的焦點並沒有那麼廣泛。

作者群

中國大陸：大部份的字詞由Daniel Yu與John Balzano（章伯仲）共同執筆。Daniel Yu在紐約大學的助理與要求匿名的中國助理協助下負責審閱，並將英文轉譯成中文。另外，Eva Pils（艾華）撰寫憲法、Wooyeal Paik（白宇烈） 撰寫請願、司馬晉撰寫庇護、語言權、雙規、精神虐待、遷徙自由以及西藏。吳介民共同撰寫戶籍制度。

香　　港：除了下列幾個詞之外，主要由司馬晉執筆：集會自由（莊耀洸）；囚犯及囚犯權利Tobias Bandner（白德培）；庇護Mark Daly（帝理邁）；人權教育（梁恩榮）；公共秩序、上訴、自主、自決以及機會平等委員會（以上由Lison Haris撰寫）。莊耀洸負責譯成中文，王顥翰負責電腦打字。同時要特別感謝香港中文大學中國研究服務中心在設備上提供的支援。

台　　灣：主要由黃默及李仰桓完成，後者撰寫了大部份的字詞。其中一些字詞由其他學者執筆：性少數及政黨（司馬晉）；勞動三權（張一彬）。初稿的英譯由葉仁真負責。另外，陳美華、魏千峯、邱晃泉、林詩梅、陳建志以及賴偉傑分別提供了專業上的意見。

國　　際：大部份字詞由黃默撰寫，另一位主要撰寫人為Theodore S. Orlin。司馬晉撰寫其中一小部份並負責編輯。張一彬負責童工、童兵及國際勞工組織，人類發展由Devin Joshi（龍道文）執筆。Jean-Pierre Cabestan（高敬文）提供基本國策一詞的諮詢。英文的初稿由葉仁真翻譯成中文，鄭雯如負責中文部分的打字。

全書的編纂另有顧問團提供諮詢，成員包括黃文雄、雷敦龢、陳瑤華、廖福特以及湯梅英。

中文的文字編輯為孫家琦與鄭雯如。英文的文字編輯為Cyndy Brown，但香港部份則由Jeanne Marie Gilbert負責。

台北，2007年3月。

Preface

What do we mean by human rights? On a very general level, human rights are commonly understood as those rights, inherent in all human beings, that are founded on the respect for the dignity and worth of each person. The concept of human rights acknowledges that every person is entitled to enjoy his or her rights without distinction as to race, colour, sex, language, religion, political or other opinion, or national or social origin. Human rights are laid down and protected by human rights law; and expressed in treaties, conventions, declarations, and customary law, all of which protect individuals and groups against actions that would interfere with those rights. Human rights law places an obligation on states in particular to act in certain ways and to refrain from certain activities.

Three general principles underlie all of this: human rights are universal, meaning that they apply equally and without discrimination to all people; they are inalienable, in that they cannot be taken away or relinquished other than in specific situations foreseen by the law; and they are indivisible, meaning that all human rights, being interrelated and interdependent, cannot be respected merely on a piecemeal basis.

All this becomes meaningful only when fleshed out with concrete details. It was this need that inspired this human rights dictionary. The idea was first proposed in 2003 that a glossary that compared the Taiwan human rights record against international standards would be useful for promoting the understanding of human rights in Taiwan. The dictionary subsequently evolved over a period of several years. In the first stage it was modeled on an English-Albanian human rights glossary, published to serve the needs of Albanian speakers. It soon became clear, however, that for our purposes a broader reach of human rights concepts, events, phenomena, and laws needed to be included, and so we set out to create a far more elaborate volume. It was later decided to include sections on Mainland China[1] and

[1]The authors make no statement regarding any issues of territorial sovereignty. The use of such terms as "Mainland China" is for convenience only, and carries no implications regarding the status of Taiwan, formally still (at least as of 2007) known as the Republic of China. Likewise, the inclusion of Tibet under "Mainland" carries no implications regarding the validity of China's claim to the region. There is still no consensus on these matters. In the case of Hong Kong, however, there is universal acceptance of the fact that the region comprises a special administrative region (SAR) within the People's Republic of China, the only question being how much autonomy it will have in the future, especially after 2047.

Hong Kong in the volume so that it would be useful to the entire Chinese-speaking community and for international scholars of comparative human rights. These two sections were written in 2006. This volume is thus comprised of four parts. The large International section is a compendium of universal human rights principles, laws, methods, institutions, and issues. This is followed by the three area sections, in which these jurisdictions are analyzed in terms of the standards or benchmarks in "International."

The reader will quickly notice that each section has its own character. This reflects in part the different origins of the various sections, and also the different situations in the three areas. Taiwan thus focuses on events, institutions, and people who have played an important role in the sudden and dramatic realization of human rights on the island during the 1990s. The Mainland China section has a strong political focus, reflecting this area's inchoate state of human rights development. The Hong Kong section reflects the fact that under British administration, human rights became reasonably well established in the law, and the focus is now on preventing their erosion and expanding rights in new directions. Thus the Hong Kong section has a strong legalistic bent. There was no effort to apply all the concepts of the "International" section to the three jurisdictions, which have a relatively narrow focus.

Authorship

Mainland China: The entries were primarily written jointly by Daniel Yu and John Balzano. Daniel Yu supervised and edited the translation of the Chinese text with the assistance of his aides at New York University and people in China who prefer to remain anonymous. The entry on the constitution was written by Eva Pils; that on petitioning by Wooyeal Paik. Those on the subjects of asylum, language rights, shuanggui, psychiatric abuse, freedom of movement and Tibet were written by James D. Seymour. Wu Jieh-min co-authored the entry on household registration.

Hong Kong: The entries were written by James D. Seymour with the exception of those related to freedom of assembly (by Y. K. Chong), prisons and prisoners' rights (Tobias Bandner); asylum (Mark Daly); human rights education (Yan Wing Leung) and public order, appeal, autonomy, self-determination, and Equal

Opportunities Commission (all by Lison Haris). The Chinese translation is by Y. K. Chong. The Chinese was typed by Wang Hao-han. The provision of facilities by the Universities Services Centre for China Studies at the Chinese University of Hong Kong is gratefully acknowledged.

Taiwan: This section is largely the work of Mab Huang and Li Yang-huan. Li Yang-huan wrote the majority of the entries. The entries on sexual minorities and political parties were written by James Seymour, and that on the three labour rights was written by Chang Yi-bin. Jessie Yeh translated the first draft from Chinese into English. Chen Mei-hua, Wei Chien-feng, Chio Hwan-chuan, Lin Shih-mei, Chen Chien-chih, Nai Wei-chieh were consulted on various specific items.

International: The majority of the entries were written by Mab Huang, and most of the others by Theodore S. Orlin. James D. Seymour wrote a small portion of the entries and edited the entire manuscript. Chang Yi-bin wrote the entries on child labour, child soldiers, and the International Labour Organization. The entry on human development was written by Devin Joshi. Jean-Pierre Cabestan was consulted on ordre public. Jessie Yeh translated the first draft from English into Chinese. The Chinese text was typed by Cheng Wen-ju.

The volume benefited from input by a consulting committee, comprised of Peter Huang, Edmund Ryden, Chen Jaw-Hua, Liao Fu-Te, and Tang Mei-Yin.

Copyediting of the Chinese texts was performed by Sun Chia-chi and Cheng Wen-ju. Cyndy Brown copyedited the English text, except for the “Hong Kong” section, which was copyedited by Jeanne Marie Gilbert.

Taipei, March 2007.

Commonly Used English Abbreviations

CCP	Chinese Communist Party
DPP	Democratic Progressive Party (Taiwan)
c.f.	compare (with indicated entry). Latin: *confer.*
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KMT	Kuomintang (Nationalist Party)
NGO	Non-governmental organisation
NPC	National People's Congress (China)
PRC	People's Republic of China
PSB	Public Security Bureau (China)
q.v.	which see. (Plural: *qq.v.*) Latin: *quod vide.*
ROC	Republic of China
SAR	Special Administrative Region (Hong Kong)

凡例

大寫字母：當某一詞彙於本書首次出現時，其第一個字母以大寫顯示。

引註：期刊的卷數、期數及頁數以下列方式註明：如123:45表示該期刊之123卷（若無卷數則為該刊的期數），45表示第45頁。

在目錄中，如同一詞彙出現在多於一個部份時，另加「國際」、「中國」、「香港」、「台灣」以為辨識。

Conventions

Capitalisation: When an entry is referred to in the text, the first letter is normally capitalised.

Citations: Volume or issue number and page numbers are indicated as 123:45, with 123 being the volume number (or issue number if there is no volume number); and 45 being the page number.

Multiple identical entries: to indicate in which section it appears, the letters of C (Mainland China), H (Hong Kong), I (International) and T (Taiwan) will be used in the Index.

目　錄

【英文索引】

【B】

【C】

【G】

【H】

【I】

【中文索引】

【十二劃】

【十三劃】

【十四劃】

【十五劃】

》國際 International

Primary Authors: Mab Huang,
Theodore Orlin,
James D. Seymour

主要撰寫人：黃默
Theodore Orlin
司馬晉

First Draft Translated by Jessie Yeh
初稿譯者：葉仁真

Abduction 劫持

通常指祕密地及強制性地將嫌犯從一個法律轄區劫持至另一個轄區。這個行為是超出法律許可範圍的。當沒有引渡條約可供遵循時，有許多案例透過這種方式將人犯送交審判。例如阿道夫．艾希曼從阿根廷被劫持至以色列受審（1960年），馬丁．穆班加從尚比亞被劫至古巴的美軍關達那摩基地（2002年）。即使是為了讓嫌犯接受公平審判，劫持仍不被國際法所承認，同時也不符合保障被告人權之原則。

The extra-judicial taking (usually in secret and by force), including the extra-legal removal of a suspected criminal from one jurisdiction to another. There have been numerous cases of such abductions in order to face trial when no treaty of Extradition (q.v.) could be relied on. Examples are Adolf Eichman from Argentina to Israel (1960), and Martin Mubanga from Zambia to the U.S. base in Guantanamo, Cuba (2002). Abductions, even for the purpose of receiving a fair trial, are not considered legal under international law and are inconsistent with the accused's human rights.

Abortion 墮胎

墮胎是以醫療或其他方式故意終止懷孕的行為。在許多法律管轄區，墮胎是違法的行為，可能被控以殺人罪。在天主教教義影響之下，1969年美洲人權憲章第四條主張從受精那一刻開始胚胎應該受到保護；然而，在某些法律管轄區，在胎兒尚未發展體外存活的能力階段前，婦女有控制自己身體的權利。美國聯邦最高法院在1973年的一個案例中，即以「隱私權」來保護婦女的墮胎權利(Roe v. Wade, US Supreme Court (1973))。

The intentional ending of a pregnancy, either by medical procedures or other means. In many jurisdictions, abortion is criminal and may be considered a form of homicide. Under the influence of Catholicism, Article 4 of the 1969 American Convention on Human Rights (q.v.) provides that an embryo should be protected, “in general, from the moment of conception.” However, many countries give priority to a woman's right to be in control of her body. In some jurisdictions an abortion prior to a Foetus (q.v.) reaching a certain stage of development such as potential Viability (q.v.) outside the womb is a woman's protected right, or as the U.S. Supreme Court termed it in 1973, within the scope of her right to privacy (Roe v. Wade).

Abuse of power 濫用權職

凡是未依照法律或既定政策行使職權即為濫用權職。例如：警察未基於合理懷疑或法律所賦予的權力，逕行搜索人民住所。

Use of power by an authority that is contrary to law or policy, such as abuse of police power in searching citizens' residences without permission from the proper authorities.

Academic freedom 學術自由

學術界人士有透過教學、言論或著作發表意見（尤其具政治意涵）的自由，不需擔心來自於學校、國家或相關單位的報復行為，學術界乃泛指教授、教師、研究者及學生等。

The right of academics (teachers, researchers, and students) to teach, speak, and write freely, especially politically inspired expression, without fear of reprisal from the university, state, or other authority.

Accession, acceptance, *see* Ratification.

Accord 協議；議定書

在國際公法上，協議指民族、國家或政府之間友善的約定。協議與條約不同之處在於協議不具法律約束力，且不能成為國際公法的法源。國際法院規約不認可協議對國際公法的解釋效力。然而，赫爾辛基議定書(Helsinki Accord)不但受歐洲安全會議組織的重視，亦在歐洲的人權提倡方面常被引述。

An amicable agreement among parties (usually nation states). Unlike a treaty, an accord is not recognized as legally binding, and is not a source of international law. (The Statute of the International Court of Justice does not recognize accords in the interpretation of international law.) However, the Helsinki Accords are the documents relied on by the Organization for Security and Co-operation in Europe, and are widely referred to in the promotion of human rights in Europe.

Act of state 國家行為原則

根據傳統的解釋，國家行為原則目的在保護國家間之平等，禁止一個國家的法院對他國政府的行為作出裁定。「每個主權必須要尊重另一個主權國家的獨立性，一個國家的法院不應該在其國家的領土內，對另一個國家的政府行為作出裁定。」(Underhill v. Hernandez, 168 U.S. 250 (1897))然而近年來，美國法院認為由於侵害人權的行為不能被認定為國家的合法行為，因此這項原則並不適用於國家侵害人權的行為(Filartiga v. Pena Irala, 630 F.2d 876 (1980))。

One version of this legal doctrine protects the co-equal status of states and does not permit the courts of one state to rule on the governmental acts of other states. "Every sovereign is bound to respect the independence of every other sovereign State and the courts of one country will not sit in judgment on the acts of government of another within it own territory" (Underhill v. Hernandez, 168 U.S. 250 (1897)). In the past the doctrine protected state actors from legal responsibility when committing acts that were part of their official duties.

In recent years the "act of state" principle has been increasingly interpreted in a manner that does not prevent courts from acting in the case of any violation of human rights, since these violations are not seen as legal acts of states. Therefore a torturer will not be protected from litigation or prosecution on the basis that he/she was merely carrying out an order of a state official. (Filartiga v. Pena Irala, 630 F.2d 876 (1980)).

Adherence 同意加入條約

當一國同意加入某國際條約時，也即表示成為簽署國的意願，且願意受此國際條約約束，尊重並實行條約內容。與「批准」、「核准」、「加入」具有相同之法律效力。*另見*Accession, acceptance; Ratification.

A state adheres to an international treaty when it expresses its will to be a party to the treaty and therefore commits itself to respect and implement the treaty. Adherence has the same effect as ratification or accession. *See also* Accession, acceptance; Ratification.

Admissibility 受理

在國際法上，一般而言係指國際是否受理申訴，進而審理申訴事項，一般具有權力審理人權侵害申訴的國際機構，會先裁定是否受理此項申訴。若申訴符合審查的要件，才會對申訴內容作出決定。例如：申訴者必須已經用盡當地所有的救濟措施，歐洲人權法院才會審理申訴人所指稱的人權侵害事項。

In international law, admissibility can refer to the allowance of a human rights allegation to be made before an international body that is entrusted with the examination of complaints that allege violations of human rights. Such a body must first decide on its admissibility, i.e., if it meets the conditions of examination, before deciding on the merits of the case. For example, the exhaustion of domestic remedies is required before the European Court for Human Rights can decide on the merits of the alleged human rights violation.

Advisory opinion 諮詢意見

法院針對提出的問題所表示的一種不具約束力的意見。

國家或國際政府組織向國際性法院就重要問題徵詢意見。雖然在某些國家，法院依法不得表示諮詢意見，但對國際性法院而言，卻是相當普遍的，例如國際法院及其前身國際常設法院、歐洲人權法院（第二議定書）、美洲人權法院皆提供諮詢意見。雖然諮詢意見不似針對訴訟案件所為的判決一般，對當事人具有約束力，但是這些意見卻對國際法的發展和人權的保障有重要的影響，根據聯合國憲章第96條規定，聯合國大會和安全理事會均得因任何「法律問題」，請求國際法院作出諮詢意見；再者，經聯合國大會授權的其他聯合國機關或專門機構，亦有權針對與其職掌範圍有關的「法律問題」，請求國際法院作出諮詢意見。

如1951年國際法院有關防止及懲治危害種族罪公約的諮詢意見即認為對條約的保留如果違背了條約的目的，該保留沒有效力。又如1970年西南非洲案諮詢意見認為南非在那米比亞實行種族隔離政策違反國際法，因南非已經承認在具有國際地位的領土，不分種族遵守並尊重人權與基本自由。

A non-binding opinion of a court that interprets a question or questions presented to it.

Both states and inter-governmental organizations have presented important questions to international courts that have influenced policy making. While some

domestic court systems are prohibited from giving such opinions, it is a regular practice of international courts such as the International Court of Justice, its predecessor the Permanent Court of International justice, European Court of Human Rights (Protocol 2), and the Inter-American Court for Human Rights. While advisory opinions are not binding on the parties, unlike decisions in contentious cases, these decisions often have great influence on the development of international law and the protection of human rights.

According to Article 96 of the UN Charter, the General Assembly and the Security Council may request advisory opinions "on any legal question." Other organs of the UN and specialized agencies authorized by the General Assembly may also request advisory opinions of the court "on legal questions arising within the scope of their activities."

Examples: (1) The Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1951 I.C.J. 15) held that a reservation to a treaty was not valid if it was inconsistent with "the objects and purposes of the treaty" (art. 19 of the Vienna Convention on the Law of Treaties, q.v.). (2) In 1970, the International Court of Justice in a advisory opinion (South West African case) held that South Africa's presence and policy of apartheid in Namibia was contrary to international law because it had "pledged itself to observe and respect, in a territory having international status, human rights and fundamental freedoms for all, without distinction as to race. To establish …, and to enforce, distinctions…based on grounds of race…which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the UN Charter" (1971 I.C.J. 15).

Affirmative action 優惠待遇

又稱正向的差別待遇。政府或其他型態的組織為了排除對弱勢族群持續性的歧視，制定相關政策，給予他們較優惠的待遇，如婦女、少數族群。換言之，優惠待遇是為了要彌補過去歧視所造成的傷害及間接地遏止未來歧視再發生的可能性。

Also referred to as reverse, or positive, discrimination. Affirmative action is used as a policy of governmental or other bodies to give advantages, usually to minorities or women, in order to overcome the effects of discrimination. It is a remedy to undo past discrimination and indirectly reduce the likelihood of future discrimination.

African Charter on Human and People's Rights, *see* Banjul Charter.

AIDS 愛滋病

愛滋病是一種後天免疫系統發生病變的疾病。聯合國呼籲，一個充分保障人權的環境對愛滋病的預防及其病患應有下列幫助：減少愛滋病或HIV病毒感染的可能性；愛滋病患及HIV帶原者不受任何歧視且能過有尊嚴生活；減少愛滋感染對人際及社會層面的衝擊。

Acronym for Acquired Immune Deficiency Syndrome, which is caused by the human immunodeficiency virus (HIV). The United Nations has called for an environment in which vulnerability to HIV/AIDS is reduced, in which those infected with and affected by HIV/AIDS live in dignity without discrimination, in which the personal and societal impact of HIV infection is alleviated, and in which human rights are respected.

Resource: United Nations, "HIV/AIDS and Human Rights," http://www.ohchr.org/english/about/publications/docs/g6.pdf.

AIDS quilt 愛滋紀念被單

為了呼籲世人注重愛滋病及維護愛滋病患的人權，Cleve Jones及其同性戀朋友於1987年成立「名冊計劃基金會」(The Names Project Foundation)，並發起「愛滋紀念被單」活動。此活動要求世人將其死於愛滋病之家人、愛人、朋友等的名字寫進一條90公分X180公分的被單中，然後將被單寄至「名冊計劃基金會」在舊金山的總部，由該基金會工作人員將所有被單繡在一起，至各地展示。現在，許多其他國家的人，也用這種方式紀念死於愛滋病的親友。

In order to increase the world's awareness of AIDS and AIDS patients' rights, San Francisco gay rights activist Cleve Jones and his gay friends established the Names Project Foundation in 1987, which led to the creation of the AIDS memorial quilt. The families, lovers, and friends of those who had died of AIDS wrote their names and other memorabilia on 90cm by 180cm pieces of fabric, and sent the pieces to the headquarters of the Names Project Foundation. The foundation sewed the quilt together and put it on public display. Since then, many people in other countries have similarly commemorated their families and friends who have died of AIDS.

Alien 外籍人士

不具本國籍的外國人士。在憲法及人權法中，對基本人權的保障並無本國人及外國人之區別（世界人權宣言第2條、公民與政治權利國際公約第2條）。*另見*Citizen.

A person who is not a citizen of the country where he is residing. In constitutional and human rights law, the fundamental human rights of people are protected whether they are citizens or aliens (Universal Declaration of Human Rights, art. 2, ICCPR, art. 2). *See also* Citizen.

American Convention on Human Rights 美洲人權公約

又名聖荷西協定（哥斯大黎加），由美洲國家組織於1969年所通過，1978年生效的人權條約。本公約設立了美洲人權委員會及美洲人權法院，其宗旨為保障公約所列各項人權。*另見* Abortion.

Human rights treaty (also known as the Pact of San José) adopted by the Organization of American States in 1969 (entered into effect in 1978). The convention established the Inter-American Commission on Human Rights (q.v.) and the Inter-American Court of Human Rights (q.v.), both bodies that are responsible for the protection of the rights listed in the convention. *See also* Abortion.

American Declaration of the Rights and Duties of Man 美洲人權及義務宣言

美洲人權及義務宣言草擬的時間，較聯合國世界人權宣言早數個月，即使此宣言並不具有約束力，但已被美洲國家組織視為是對西半球人權，具有權威性解釋的文件。美洲人權委員會在提供諮詢意見時，可以採用宣言內容。

The American Declaration predated the UN Universal Declaration of Human Rights, having been drafted some months before the latter. Although it was not drafted as a binding instrument, it is now considered by the Organization of American States (q.v.) as an "authoritative interpretation" of human rights for the Western Hemisphere. The Inter-American Commission on Human Rights (q.v.) may use the declaration in advisory opinions in cases brought against member states.

Amnesty 特赦

對犯下特定罪行的一群人停止刑期的執行並提早自獄中釋放，既有別於赦免，也有別於減刑。前者只指涉個人，而後者雖減輕刑期，但不必然立即釋放。

The remission of punishment issued in each instance to those who were convicted of a specified category of crime. An amnesty is issued for all the persons who have committed the type of crime subject to the amnesty. C.f. Pardon (q.v.), which applies to individuals; and commutation, which refers to a lessening of a sentence but not necessarily the immediate release from prison.

Amnesty International 國際特赦組織；大赦國際

國際特赦組織是於1961年成立的一個非政府組織（中國大陸譯為「大赦國際」），總部設在倫敦，創辦人為畢恩松。成立宗旨為促進政治犯的釋放、停止刑求和任何形式的不人道待遇、譴責因政治因素所造成的失蹤和暗殺、反對死刑、要求在合理的時間內給予政治犯公平審判的機會等。於1977年獲頒諾貝爾和平獎。

An international, London-based, non-governmental organization created in 1961. Its founder is Peter Benenson. It acts to free prisoners of conscience, and to combat torture and executions. The organization opposes all forms of cruel, inhuman, and degrading treatment; denounces "disappearences" and political assasinations; and works to ensure fair trials. AI was awarded the Nobel Peace Prize in 1977.

Anti-personnel weapons, *see* Land mines.

Anti-Semitism 反猶主義

針對猶太民族與猶太教的仇視，如中古世紀天主教對猶太人的歧視或蘇俄境內的大屠殺。近代最嚴重的一次對猶太人的仇視與殘殺發生在二次大戰中納粹德國，估計有六百萬猶太人喪生。這個現象被稱為「德國納粹政府對猶太人的大屠殺」。*另見* Racial discrimination; Xenophobia.

The hatred of Jews that is manifested by prejudice and discrimination against the Jewish people as well as their faith in Judaism. Historically, anti-Semitism has

ignited the organized killing of Jews, for example, the "pogroms" during the Czarist rule in Russia and the religiously inspired targeting of Jews by the Catholic church in the middle ages. The most horrific modern example is the genocide conducted by Nazi Germany of six million Jews exterminated in concentration camps, ghettos, and elsewhere. This phenomenon is called the Holocaust (q.v.). *See also* Racial discrimination; Xenophobia.

Apartheid 種族隔離

認定主流文化具有優勢，而將不同族群區隔成不同等級的情況或政策（引自聯合國「政治、經濟、社會與文化領域中的種族歧視」特別研究案）。前南非的政治制度即是最佳佐證。當時的政權依法實行種族隔離制度，聯合國曾盡了極大的努力試圖加以瓦解。有數個國際人權條約都提及種族隔離制度，例如：「禁止與懲罰種族隔離罪國際公約」或「反對體育運動中的種族隔離國際公約」。「國際法院」於1970年的諮詢意見中表示，由於種族隔離與保障人權的承諾相違背，且不符合聯合國的宗旨與原則，因此南非在那米比亞持續實施的種族隔離制度違反國際法的規定。

"A condition or policy, based on the belief in the superiority of the dominant culture which aims at keeping certain ethnic groups separate, unmixed, and ranked in a hierarchical position" (United Nations, "Special Study on Racial Discrimination in the Political, Economic, Social and Cultural Spheres"). The term most commonly refers to the political system of the former South African regime that required, de jure, the separation of races. Until this system was dismantled, the United Nations devoted considerable attention to promoting its destruction.

There are several human rights treaties that refer to apartheid, notably the International Convention on the Suppression and Punishment of the Crime of Apartheid, and the International Convention against Apartheid in Sports. In a 1970 advisory opinion, The International Court of Justice found that South Africa's continued presence in Namibia was a violation of international law because apartheid was contrary to its human rights commitment and was contrary to the purposes and principles of the UN Charter.

Arab human rights NGOs 阿拉伯地區人權非政府組織

雖然阿拉伯國家在促進人權保障方面沒很好的紀錄，這個地區仍存在許多人權非政府組織，包括人權資訊網路(www.huinfo.net)、及阿拉伯人權入口網站(www.hrria.org)等。

Although the Arab countries do not have a good record of promoting human rights, various human rights NGOs do exist in this area, including the Network for Human Rights Information (www.hrinfo.net) and the Arabic Portal for Human Rights (www.hrria.org).

Arbour, Louise 露易絲・阿布爾

露易絲・阿布爾是著名的加拿大藉國際人權法的法官，擔任過律師與法學教授。1980年代擔任加拿大公民自由協會副主席(Canadian Civil Liberties Association)，1995年擔任調查安大略省京斯頓(Kingston, Ontario)婦女監獄情況委員會主席。1996年被任命為海牙前南斯拉夫國際刑事法庭及盧安達國際刑事法庭檢察長。2004年出任聯合國人權事務高級專員，在2005年訪問中國時與中國政府簽訂協議，協助中國政府廢除死刑並推動人權教育。

International human rights jurist and administrator. Trained in law, Arbour taught law school and served as a judge. She was appointed to the supreme court of Ontario, the Court of Appeal for Ontario (1990), and finally the Supreme Court of Canada in 1999. She was appointed the president of a commission of inquiry on allegations by prisoners at the prison for women in Kingston, Ontario in 1995. The next year Arbour was made the Chief Prosecutor of War Crimes before the International Criminal Tribunals for former Yugoslavia and Rwanda that tried many former political and military leaders of Yugoslavia. On February 2004, Arbour was given a post on the UN High Commission for Human Rights. On a visit to China in 2005 she signed agreements with the China government to promote the elimination of the death penalty and promote human rights education.

Armenian genocide, *see* Genocide; Genocide denial.

Arrest 逮捕

一個人被拘禁而失去自由。一般來說，代表公權力的政府官員可正式剝奪及限制疑犯的自由，但在特殊的情況下，一般民眾得暫時剝奪或限制他人的自由。根據國際人權標準，警察對嫌犯進行逮捕前，應向法官申請逮捕令。在法官簽發逮捕令前，警方應提出相當的證據，證明此一嫌疑犯可能犯下刑案。*另見* Arrest warrant; Habeas corpus.

To be seized and held. The detainee is officially deprived of liberty by an agent of the government or, under special circumstances, by a citizen. International human rights standards generally require that in making an arrest, the police present a warrant issued by a magistrate. The magistrate will issue a warrant when the police demonstrate that there is sufficient evidence to support a prima facie case that the suspect has committed the crime. *See also* Arrest warrant; Habeas corpus.

Arrest warrant 逮捕令

逮捕令是由法官簽發，授權對特定個人進行逮捕的法律文件。逮捕令申請人通常為檢警單位，由於逮捕令是對人民自由的一種限制，因此在逮捕令簽發前，申請人須有足夠的證據支持逮捕的合理性，以說服中立的法官作出簽發的決定。*另見* Arrest; Habeas corpus.

An arrest warrant is a legal document issued by an authorized official, pursuant to which a suspect may be apprehended. In many jurisdictions a quantum of evidence, probable (reasonable) cause, is required to be shown to a neutral and detached magistrate before the latter authorizes an arrest. *See also* Arrest; Habeas corpus.

Asian Human Rights Charter 亞洲人權憲章

亞洲人權憲章是亞洲非政府組織於2001年在韓國光州所通過的人權憲章。參與憲章起草工作的非政府組織多於200個，討論時間長達3年。基本上憲章以世界人權宣言為原則，主張人權為普世價值，並以此對抗若干亞洲威權政府的立場，然而由於缺少政府的支持且沒能設立執行機制，憲章的象徵性意義大於實質。

The Asian Human Rights Charter was adopted by Asian NGOs in 2001 after three years of drafting, debate, and negotiations, with more than 200 NGOs taking part in the process. It is based on the Universal Declaration of Human Rights and was conceived to challenge the authoritarian position of many Asian governments. However, as it does not set up any enforcement mechanism nor have support from any Asian government, the Charter is more symbolic than substantive in promoting human rights in Asia.

Asian values 亞洲價值

亞洲價值是亞洲威權政府用於抗拒人權普世價值的說詞。基本上認為人權觀念並非放諸四海皆準而是文化與歷史的產物。因之，亞洲人有獨特的人權觀，與歐美不同。進一步而言，亞洲人重視群體權利而歐美重視個人權利，亞洲人強調經濟、社會權而歐美強調公民、政治權利。新加坡的李光耀與馬來西亞的馬哈地一般被認為是亞洲價值的代言人。在1993年維也納世界人權會議中，中國、新加坡、馬來西亞及若干國家代表大力宣傳亞洲價值，與西方國家代表分庭抗禮。雖然大會堅守普世化原則，但也表示對不同文化與歷史給予尊重。*另見* Cultural relativism.

Asian values refers to the position held by some authoritarian governments on human rights. Against the claims of universality, it argues that human rights must be seen as the product of culture and historical epochs. Hence it is asserted that given different cultural and historical backgrounds as well as economic development, Asians have a distinct concept of human rights. In contrast to Western civilization and societies, Asians favour collective or group rights and emphasize economic and social rights rather than civil and political rights. Lee Kuan Yew of Singapore and Mahathir of Malaysia are regarded as the spokespersons for Asian values. In the 1993 UN Human Rights Conference in Vienna, the representatives of China, Singapore, Malaysia, and some other governments forcefully challenged the universality of human rights. However, the conference successfully opposed the Asian values position, although it was agreed that differences derived from cultural values and historical background should be respected. *See also* Cultural relativism.

Assembly and association, freedom of
和平集會與結社自由

集會為一群人在短時間內的聚集，而結社所代表的是一群人為共同目標或目的所為的長期結合。此自由所保障的是和平集會與參與非以犯罪為目的的團體或組織的自由。

許多公約對結社自由都有所保障，例如：世界人權宣言第20條、公民與政治權利國際公約第21條與第22條。然而除了工會之外，這些公約的條款是否亦保障由個人所組成的法人團體？近年來歐洲人權法院判決確認國際法保障組織合法登記的權利。

Whereas in assemblies people meet for a limited time, associations have a more permanent existence on the basis of common goals and objectives. The rights of freedom of peaceful assembly and association are indispensable fundamental freedoms in a democratic society.

The rights of freedom of peaceful assembly and association are recognized in a number of international instruments: The Universal Declaration of Human Rights (art. 20), and ICCPR (arts. 21, 22). However, with the exception of trade unions, until recently it has not been clear whether these provisions apply only to individuals or to the legal entities established by the individuals exercising the right to freedom of association. Recent decisions of the European Court of Human Rights has found that there is a right under international law to form legally registered associations and that, once formed, these organizations are entitled to broad legal protection.

Resources: United Communist Party of Turkey and Others v. Turkey, http://www.worldlii.org/int/cases/IIHRL/1998/3.html; Sidiropoulos and Others v. Greece, http://www.worldlii.org/int/cases/IIHRL/1998/114.html; Freedom and Democracy Party (ÖZDEP) v. Turkey, http://www.echr.coe.int/Eng/Press/1999/Dec/OZDEP%20judgment%20epress.htm.

Asylum 庇護

一個國家、大使館或享有外交豁免權的機構為避免某人遭到逮捕或引渡，所提供的保護，特別是針對政治難民所提供的保護。

世界人權宣言第14條第1項保障「尋求和享有庇護以避免遭迫害的權利」。這項權利在因非政治性的罪行或違背聯合國的宗旨和原則而被起訴的情況下，不得加以援用。雖然世界人權宣言不具法律效力，但難民地位公約卻明確規定

簽約國不得將逃亡難民遣送回國。

Literally means “shelter; refuge,” and according to Blacks Law Dictionary: “protection from the hand of justice.” More commonly, however, the term now means protection from the hand of injustice. In the context of human rights, this refers to protection from Refoulment or Extradition (qq.v.) given especially to political refugees. Asylum can be offered by the nation to which the refugee has fled, or by an embassy or other agency that has diplomatic immunity.

Article 14(1) of the Universal Declaration of Human Rrights cites “the right to seek and to enjoy in other countries asylum from prosecution.” (This right may “not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”)

Although the Universal Declaration of Human Rights itself does not have the force of law, parties to the Convention Relating to the Status of Refugees are legally bound not to repatriate people who have fled.

Resources: Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, http://www1.umn.edu/humanrts/instree/v1crs.htm; James D. Seymour, “The Exodus: North Korea's Out-migration,” in John Feffer, ed., *The Future of US-Korean Relations: The Imbalance of Power*, London, Routledge, 2006, esp. pp. 130-59.

Authoritative interpretation 權威解釋

法律的制定者，或條約監督機構的評論（如聯合國公民與政治權利國際公約所設立的人權委員會），對這些法律所作的解釋，稱為權威解釋。當法律產生疑義，造成多種相衝突的解釋時，權威解釋有助於釐清這些法律的實質內涵和目的。

An authoritative interpretation of a law is made by the body that issued it or general comments of a treaty-monitoring body, such as the Human Rights Committee (q.v.) of the International Covenant on Civil and Political Rights. When a provision of law is ambiguous and has different and conflicting interpretations, an authoritative interpretation helps clarify its fundamental substance and purpose allowing for its correct application. In international human rights law, the general comments of the UN are seen as an authoritative interpretation of a treaty's provisions.

Autogenocide 同族滅種

意指發動滅種行動者與受害者屬同一種族（有別於一般所稱之滅種是滅絕其他種族的人民）。這個詞最先用在赤棉政府對柬埔寨人民的屠殺，之後也用在北韓的情形。

Extermination of people of the perpetrators' own nationality (as distinct from Genocide, q.v., which involves killing people of another race or nationality). The term was first applied to the actions of the Khmer Rouge against fellow Cambodians (*see* Killing field), and has since been informally applied by some to the situation in North Korea.

Resource: Jared Gensere, "Stop Pyongyang's Autogenocide," *Far Eastern Economic Review,* November 2006, pp.15-18.

Bangalore Principles of Judicial Conduct, 2002

曼古羅司法行為與諸原則，2002年

曼古羅司法行為與諸原則，旨在維護各國法庭與地方法庭的獨立與公正。這些原則立基於世界人權宣言，保障每一個人平等享有公平、公開並獨立審判的權利。2002年在印度曼古羅與海牙會議中達到六項共識，分別為司法權獨立、公正、正直、適度、平等、稱職與勤勞。

These principles were designed to assist courts in national and sub-national jurisdictions in maintaining the independence and impartiality of the judiciary, consistent with modern international human rights standards. The principles took as their starting point the injunction in the Universal Declaration of Human rights that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge." They grew out of a 2002 conference held in the Indian city of Bangalore (now Bengaluru) as well as other occasions, and were finalized at a round-table meeting of judges held in The Hague. The principles explicate six "values": judicial independence, impartiality, integrity, propriety, equality, and competence and diligence.

Resource: The Bangalore Principles of Judicial Conduct, http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

Bangalore Principles on the Domestic Application of International Human Rights Norms, 1988

曼古羅國際人權規範適用於國內法諸原則，1988年

二十世紀後半葉國際人權法逐步發展，引起國際公約在國內法庭適用問題的爭論。傳統十八世紀看法認為國際法是國內法的一部份，威廉・布萊克斯通主張此看法，另一派主張國內法優先，國際法必須先經過立法才有效。

1988年曼古羅國際人權法國內法化諸原則重申國際法並非自動成為國內法的一部份，但認為如果國內法有關規定不明確時，法官可以用國際社會所普遍接受的法律以彌補其不足。尤其當一個國家承擔了國際條約義務時，不問這些義務是否已被納入國內法，法官引用國際法以釐清憲法或法律上的曖昧與不確定性是十分適當的作法。

With the emergence of the international human rights regime in the second half of the twentieth century, courts were often in doubt about the standing of the various international covenants and agreements in domestic law. At issue were two approaches to law, the old view of eighteenth century jurist William Blackstone that international law was part of domestic common law; and the more widely accepted view that domestic law was supreme, and that to be binding international law had to be enacted into domestic law.

These Bangalore Principles, which grew out of a colloquium on "The Domestic Application of International Human Rights Norms" held in Bangalore (now Bengaluru) in 1988, affirmed that international law per se is not automatically part of domestic law. They went on to say that in the gray areas where there is ambiguity or lacunae in domestic law, judges may look abroad and seek guidance from law as generally accepted by the community of nations. The principles took cognizance of the "growing tendency for national courts to have regard to these international norms for the purpose of deciding cases where domestic law—whether constitutional, statute or common law—is uncertain or incomplete," adding that it was quite proper "for national courts to have regard to international obligations which a country undertakes—whether or not they have been incorporated into domestic law—for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law" (Principles 4, 7).

Although controversial at first, these principles came to be influential, especially in common law jurisdictions. Thus in those cases where a law or constitution may refer in a sweeping manner to fundamental human rights, courts can seek guidance in extra-jurisdictional interpretations.

Resources: Michael Kirby, "The Road from Bangalore: The First Ten Years of the Bangalore Principles on the Domestic Application of International Human Rights Norms," http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_bang11.htm; "The Domestic Application of International Human Rights Norms," http://www.chr.up.ac.za/hr_docs/african/docs/other/cwn1.doc.

Banjul Charter 非洲人權及民族權利憲章

本憲章於1981年在甘比亞的班卓通過，又稱「班卓憲章」。憲章以「世界人權宣言」為基礎，但加入一些非洲文化中的元素，例如強調個人與社群（部落）間的關係。憲章中亦有條文保障「有利於人民發展的環境權」（第24條）。本憲章設有「非洲人權及民族權利委員會」，負責憲章內載各項權利之推動與保障。

Charter adopted at an international conference in 1981 in the Gambian city of Banjul. It is based on the Universal Declaration of Human Rights, but includes elements of the African culture, such as the attention given to the relation between the individual and the community (tribe). The Charter also has a provision protecting the "right to a generally satisfactory environment favourable to their development" (art. 24). The Charter established an African Commission on Human and Peoples' Rights, responsible for promoting and protecting the rights set forth in the Charter.

Resources: http://www1.umn.edu/humanrts/instree/z1afchar.htm.

Bill of rights 人權法案

憲法中的一章節或附錄，目的在於定義個人的權利及對國家權力的限制。

將人權法案加入憲法中的國家包括法國(1789)、美國(1791)、荷蘭(1798)、瑞典(1809)、西班牙(1812)、挪威(1814)、比利時(1831)、賴比瑞亞(1847)、薩丁尼亞(1848)、丹麥(1849)、普魯士(1850)、加拿大(1960)及阿爾巴尼亞(1998)。*另見* International Bill of Rights.

A section or addendum to a constitution defining the rights of individuals and state limitations of power.

Examples of states including a Bill of Rights in their constitutions are: France (1789), United States (1791), Netherlands (1798), Sweden (1809), Spain (1812), Norway (1814), Belgium (1831), Liberia (1847), Sardinia (1848), Denmark (1849), Prussia (1850), Canada (1960), and Albania (1998). *See also* International Bill of Rights.

Blue Helmets 聯合國維和部隊；藍色鋼盔

對聯合國維和部隊的通稱。依據聯合國憲章，安理會具有維護世界和平的責任，並可以透過集體安全措施達到此目的。然而美蘇冷戰使安理會功能不彰。維和部隊於是成為替代方案，即以維和取代懲罰侵略者。維和部隊最早用於1948年印度與巴基斯坦對喀什米爾(Kashmir)與查謨(Jammu)兩地主權爭議危機中。多年來，維和部隊致力於預防戰爭的發生。但在某些案例中，由於缺乏政治上的動機與堅持，維和任務終歸失敗。盧安達是一個例子。*另見* Peacekeeping.

Term used to describe the various types of armed UN peacekeeping forces. Originally the UN Security Council was authorized to maintain peace through collective security systems. However, the cold war made it impossible for the Security Council to function as had been planned. Thus, even in the UN's earlier years, peacekeeping forces were used to help maintain peace (as distinct from dealing with aggressor states, as was the case in the Korean War). They were first deployed in 1948 in the wake of the first war between India and Pakistan over Kashmir. Through the years peacekeeping forces have helped to prevent war but in some cases, due to the lack of political will, they have failed in their missions. Rwanda is a case in point. *See also* Peacekeeping.

Resource: Adam LeBor, *Complicity with Evil: The United Nations in the Age of Modern Genocide* (2006).

Burakumin liberation movement 賤民解放運動

日本當代社會的賤民是封建時代賤民的後裔，他們並非不同種族或族群，而是社會階級的烙印。根據1993年一項政府統計，日本共有四千多個賤民社區，人口約一百二十萬。但實際數目恐迫近六千個社區，三百萬人口。他們在教育、婚姻、就業多方面仍受歧視。

賤民解放運動早在1920年代已經開始，二戰時受到鎮壓，戰後再度活躍，1946年成立賤民解放全國委員會，幾經演變成為今日的賤民解放聯盟。面對壓力，政府也逐步回應。1965年內閣承認消弭歧視賤民是政府的責任，1996年通過人權保障法案。這些年來，賤民之社會經濟地位有所提升。賤民解放聯盟仍然十分活躍，為賤民爭取權利。

The Burakumin have traditionally been considered as those Japanese engaged in walks of life tainted in the public mind with death (undertakers, butchers, and so on). They still comprise a class subject to discrimination, and face problems in such matters as education, marriage, and employment. According to an estimate by the government in 1993, Japan has more than 4,000 Burakumin communities, with a population of 1.2 million. But according to other estimates, the real numbers approach 6,000 communities and a population of 3 million.

The Burakumin liberation movement began in the 1920s with the founding of the National Levelers Association (1922). It was suppressed during wartime and re-emerged in 1946 under the leadership of the National Committee for Burakumin Liberation, which later became known as the Burakumin Liberation League.

The government responded, and in 1965 the cabinet's Dowa Policy Council acknowledged government responsibility for solving the problem. The Law for the Measures for Promoting of Human Rights Protection was enacted in 1996. Since then, the life of the Burakumin has improved. The Burakumin Liberation League is still active.

Capital punishment, *see* Death penalty.

CARE 援助與救災合作社

CARE為Cooperative for Assistance and Relief Everywhere（援助與救災合作社）的簡稱。1945年於美國成立，總部設於美國亞特蘭大，由22個團體組成，最初的目的在於援助二次大戰的生還者。在戰後的20年間，援助與救災合作社總共發送了近一億份的「救難包裹」一其中有食物、調味品等一至歐洲、亞洲及其他發展中國家。援助與救災合作社後來轉型為國際性的組織，關心全球性的貧窮問題，尤其特別關心貧窮婦女的處境，認為婦女處境的改善有助於家庭，甚至整個社群脫離貧窮。除此之外，援助與救災合作社也提供戰亂地區和受災地區的人道救援及重建工作。

Founded in 1945, the Cooperative for Assistance and Relief Everywhere (CARE) is headquartered in Atlanta, GA, United States. CARE's original purpose was to help the survivors of World War II. Some 100 million CARE packages reached people in need during the next two decades, first in Europe and later in Asia and other parts of the developing world. Over the years CARE's mission has changed, turning to the issues of global poverty, especially focusing on poor women. CARE takes the position that, equipped with the proper resources, women have the power to help whole families and entire communities escape poverty. It also delivers emergency aid to survivors of war and natural disasters, and helps people rebuild their lives.

Case law, *see* Common law.

Cassin, René 勒內・卡森

法國法學教授，二次大戰時協助戴高樂將軍在流亡政府及戰後法國歷任要職。聯合國成立後代表法國參與世界人權宣言起草工作，最後宣言版本架構即來自他的草稿，並且於1968年獲得諾貝爾和平獎。*另見*Chang, P.C.; Humphrey, John P. Jr.; Malik, Charles.

A Parisian law professor, Cassin became the French representative to the UN. In 1968 he was awarded the Nobel Peace Prize for his contribution to the drafting of the Universal Declaration of Human Rights. *See also* Chang, P. C.; Humphrey, John P. Jr.; Malik, Charles.

Censorship 審查制度

政府剝削、侵犯言論自由、媒體自由的手段，透過對書報、電影、電視節目等的事先審查，控制意見的表達與資訊的交流。專制政府最習慣以違反傳統國家安全或社會善良風俗為藉口以達到壓迫異己的目的。自我審查制度即指報刊、媒體或基於政治意識型態或迫於壓力自我符合政府的政策。

The monitoring and restriction of speech and publication, and in our time telecommunication as well. It is usually done through review and approval mechanisms to ensure compliance with policies of the government in the name of traditional values, national security, or morality of the community.

Self-censorship is censorship self-imposed by the press or telecommunications industry themselves so as to conform to the ideology of the government or mainstream social opinions.

Chang, P. C. 張彭春

美國哥倫比亞大學博士、知名教育家。中國抗日戰爭後出任外交官，戰後擔任聯合國經濟及社會理事會代表，參與世界人權宣言起草，以協調各方不同見解著稱，對宣言的制定貢獻良多。他提出儒家「仁」的觀念，並建議秘書處約翰・漢弗萊在起草宣言綱要時研究儒學。 *另見* Cassin, René; Humphrey, John P. Jr.; Malik, Charles.

Wade-Giles: Chang Peng-ch'un; Pinyin: Zhang Pengchun. Chang received a Ph.D. from Columbia University in 1921, and became well known as an educator, playwright, and literary critic before going into the diplomatic service in the 1940s. As China's representative at the Economic and Social Council, Chang played a very important role in the drafting and adoption of the Universal Declaration of Human Rights (q.v.). He advanced the Confucian notion of *ren*, and advised John P. Humphrey (q.v.) to study Confucianism when Humphrey was preparing a draft outline later known as "Humphrey Draft," prelude to the Universal Declaration of Human Rights. *See also* Cassin, René; Humphrey, John P. Jr.; Malik, Charles.

Child 兒童

根據在1989年由聯合國大會所通過的兒童權利公約，除非國內法律規定在十八歲以前為成年，否則兒童係指「所有未滿十八歲之人」。此公約詳述兒童應享有的權利，包括國際人權法案適用的權利，及其他為保障和協助兒童人格充分發展的特別權利。

According to the Convention on the Rights of the Child, adopted by the UN General Assembly in 1989, a child is "every human being below the age of 18 years," unless majority is reached earlier under national legislation. The convention describes the rights to which every child is entitled, including all the rights set forth by the International Bill of Rights adapted to childhood, as well as specific rights to protect and facilitate the full development of the child.

Resources: Text of the convention: http://www1.umn.edu/humanrts/instree/k1drc.htm; Convention: http://www1.umn.edu/humanrts/instree/k2crc.htm; Optional protocol: http://www1.umn.edu/humanrts/instree/childprotsale.html.

Child labour 童工

國際勞工組織2000年報告指出，有二億五千萬名年齡介於五歲到十四歲的兒童在開發中國家工作，不論是基於強制或需要，這些兒童已被剝奪了正常的童年及充分發展的機會。

某些形式的工作被認為是對兒童的剝削或具有高度危險性。國際勞工組織第182號公約於1999年6月間無異議通過，要求締約國以最快的方式防止、禁止與排除「最惡劣的童工形式」。根據此公約的定義，「最惡劣的童工形式」包括販賣兒童、奴役、或強制性的勞動（包含在武裝衝突發生時對兒童的強制招募）、利用兒童賣淫或製作色情物品、販賣毒品等非法活動，及其他可能傷害兒童健康、安全或道德的工作。*另見* Child soldiers; Trafficking.

According to a 2000 report of the International Labour Organization, approximately 250 million children between the ages of five and fourteen, were working in developing countries. By having to work, either by force or economic necessity, such children are denied a normal childhood and opportunity for full development.

Some forms of child labour are considered exploitative and hazardous. The ILO Convention No.182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted unanimously in June 1999, committed state parties to take immediate steps to prevent, prohibit, and eliminate

"the worst forms of child labour." Under the convention, the worst forms of child labour include the sale and Trafficking (q.v.) of children; debt bondage; forced or compulsory labour (including the forced recruitment of children for use in armed conflict); using children for prostitution or production of pornography; using children for illegal activities, particularly drug trafficking; and other work likely to "harm the health, safety or morals of children." *See also* Child soldiers; Trafficking.

Child soldiers 童兵

在許多國家，利用兒童從事戰爭十分常見，然而此種作法已遭致許多國際批評，並有強化人權條約來禁止這種作法的聲浪。「非洲兒童權利及福利憲章」（1990通過，1999年11月29日生效）規定，招募的士兵必須年滿十八歲以上。國際勞工組織亦在其針對「最惡劣的童工形式」公約中，禁止十八歲以下非自願性的童兵。

在2000年5月25日，聯合國大會無異議通過兒童權利公約有關兒童參加軍事衝突之附加議定書，並於2002年生效。第1條明示：「締約國應採取所有可行的手段保證，若其軍隊成員未滿十八歲，這些成員不會參與戰爭。」第2條規定未滿18歲的成員「並非以強制的方式招募。」其他的規定包括，對未滿18歲的兒童自願加入軍隊的種種保護措施。

The use of children as soldiers, a prevalent practice among some states, has come under international criticism with a call for the relevant human rights treaties (*see* resources *under* Child) to be strengthened and implemented. As of 2000 some progress has been made in prohibiting the practice. The African Charter on the Rights and Welfare of the Child, entered into force November 29, 1999, now makes the minimum age for recruitment of soldiers eighteen years. The ILO included the prohibition of "involuntary" child soldiers (under the age of eighteen) in a convention dealing with the worst forms of child labour.

Adopted in 2000, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict entered into force in 2002. Article 1 reads, "State Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take part in hostilities." Article 2 states that those below 18 are not to be conscripted into their armed forces. There are additional safeguards protecting those under the age of 18 who volunteer to serve.

Circumcision, female 割除陰蒂

存在於非洲與亞洲部分地區的一種傳統習俗，在女性未成年時割除女性外生殖器。割禮基本上有三種，分別為割除、切除及密縫，程度不一但都對身心健康造成傷害。根據統計，有七千萬女性接受過這手術，而每日增加人數以數千計。雖然主張文化相對論者較多贊成這種做法，但在1982年世界衛生組織譴責這個傳統習俗，呼籲政府廢除並教育人民這個習俗帶來的傷害。1994年聯合國高級難民公署認定割禮為一個迫害行為，侵犯人權與兒童權利。因之如果婦女與她們女兒面臨接受割禮的壓迫時可獲得難民身分。

More properly known as female genital mutilation (FGM), a traditional practice prevalent in parts of Africa, and to a lesser degree in Asia and other parts of the world. FGM has three main types: circumcision proper, excision, and infibulation, all harmful to the health of women. It is estimated that there are 70 million circumcised women, with several thousand new operations performed each day. Defended by cultural relativists, this practice was nevertheless condemned by the World Health Organization in 1982. Governments were urged to abolish the practice and educate their people about its harmfulness.

In 1994 the UN High Commissioner for Refugees took the position "that FGM, an act which causes severe pain as well as permanent physical harm, amounts to a violation of human rights and of the rights of the child, and as such can be regarded as persecution." Hence refugee status can be granted to women and their daughters if they fear they will be compelled to undergo FGM against their will.

Citizen 公民；國民

一個人基於出生或歸化，被認定為屬於某個國家。每個公民都享有權利、特別權利及國家的保護。世界人權宣言第15條指出「人人有權擁有國籍」。

公民可能較外國人享有較多的特別權利，例如：選舉權，但是就基本人權與自由而言，不應有本國公民與外國人的區別。*另見* Alien; Statelessness.

A person who belongs to a country, either by birth or by naturalization. Article 15 of the Universal Declaration of Human Rights states that "everyone has the right to a nationality." A citizen enjoys the rights, privileges, and protections of his/her state.

Citizens may have more rights than aliens (e.g., the right to vote), but no person may be denied his or her fundamental human rights and freedoms. *See also* Alien; Statelessness.

Civil disobedience

和平抵抗；不合作主義；公民不服從

因對某一法律或某些法律的合法性及道德性提出質疑，而以蓄意但非暴力的手段從事違反這些法律的行為，目的在引起社會大眾的注意（布萊克法律大辭典）。

美國梭羅曾經說過，當法律缺乏道德性時，最高尚的責任便是違反這些法律，並接受懲罰及引導社會大眾注意到整個事件的不公平性。當美國政府發動梭羅認為不道德、以及缺乏正義的戰爭，他拒絕繳稅，並自願接受入獄的刑罰。

印度聖雄甘地在追求印度的獨立自主時，承襲了梭羅的傳統，帶領民眾違反英國法律。美國的金恩博士因拒絕遵守當時美國南方盛行的種族隔離政策，而自願入獄服刑。類似的非暴力抗爭行動也在其他的地方，包括科索沃及南非等地被使用過。*另見* Civil rights movement.

"A deliberate but non-violent act of lawbreaking to call attention to a particular law or set of laws of questionable legitimacy or morality" (Black's Law Dictionary).

American author Henry David Thoreau argued that when laws are immoral it is the duty of the honourable man to break the law, accept the punishment and call attention to the injustice at issue. In (date) he refused to pay his taxes when the U.S. government was pursuing a war that he felt was immoral and unjust. He willingly went to prison for his beliefs.

The Indian leader Mahatma Gandhi followed Thoreau's tradition in his pursuit of creating an independent Indian state when he led his people in violating existing British law. Martin Luther King's leadership followed in the same tradition when in (date) he willingly went to jail for refusing to obey the segregation laws prevalent in the U.S. South.

Similar non-violent techniques have been used throughout the world, including Kosovo and South Africa. *See also* Civil rights movement.

Civil liberties 公民自由

公民不受政府無正當理由的干擾或限制的自由，與民權同義，因此常交互使用。在美國，民權常被用來指稱種族中的少數的權利。*另見* Civil rights movement.

Liberties enjoyed by citizens free from unjustified government interference or restraint. Often the term is interchangeably used with civil rights (though in the United States the latter term refers primarily to race relations). *See also* Civil rights movement.

Civil rights movement 民權運動

美國1960年代的民權運動始於少數族群的抗爭，這些族群因為種族、膚色的緣故，而無法享有平等的待遇，特別是黑人族群。

這個運動是由黑人領袖，及其他宗教、族群團體人士領導。其中以金恩博士最著名。

這個運動迫使美國國會通過保護少數族群的法案，如工作及遷徙等權利。這個運動也對其他族群或團體起了激勵的作用。原住民、殘障團體等都紛紛效法，向美國政府爭取更多的保障。*另見* King, Martin Luther Jr.

The U.S. civil rights movement, which began in the 1960s, was instrumental in promoting the rights of blacks that had often been denied.

The movement was led by African Americans along with other champions for human rights from many different religious and racial groups. Dr. Martin Luther King, Jr. was known for using the tactics of Civil disobedience (q.v.). The movement was instrumental in influencing the U.S. Congress to pass into law further protection of minorities, guaranteeing rights such as the right to vote.

The movement was an inspiration for other oppressed groups, e.g., Native Americans and the disabled, who demanded protection of their interests from the government. *See also* King, Martin Luther Jr.

Clear and present danger 明顯而立即的危險

美國最高法院大法官霍姆斯在申克一案判決中提出此原則，作為是否不顧憲法保障而制止言論自由的判準。判準核心在於言論的情境及其影響，亦即言論是否會帶來明顯而立即的傷害，而這傷害是國會有權利阻止的。在申克一案中，基於美國已經宣戰，政府限制言論自由被認為不違憲。

A judicial doctrine first proposed by U.S. Supreme Court Justice Oliver Wendell Holmes Jr. as a test regarding any limitation on freedom of speech. In the case Schenck v. U.S. (1919), Holmes declared: "The question in every case is whether

the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree." The premise of Holmes's logic in Schenck is that under certain circumstances (exigencies) the government may limit fundamental rights to protect compelling public interest. The example in Schenck that allowed for limits on free speech was the declaration of war.

Collective bargaining agreement 集體談判契約

集體談判契約是資方與勞方們所訂立的勞動契約。集體談判決定勞動條件、薪資、福利、工時等事項。勞工經過長期而艱苦抗爭才獲得組織工會與集體談判的權利。當前在許多國家，這項抗爭仍然在持續中。工會通常代表勞方與資方進行談判。集體談判契約必須能在法律上強制執行才有實質意義。*另見* Labour rights; International Labour Organization.

A collective bargaining agreement is an agreement between the employer and the employees. Collective bargaining comprises the negotiations that determine such matters as employment conditions, salary, benefits, and hours. The employees are often represented by their unions in these negotiations. A long and arduous struggle was often required for workers to realize the right to organize and to bargain collectively, and in many countries the struggle continues.

To be meaningful, a collective bargaining agreement must be enforceable in the courts. *See also* Labour rights; International Labour Organization.

Collective rights, *see* Group rights.

Comfort women 慰安婦

二次大戰期間，日本軍隊為滿足官兵的性需求，而於占領地及殖民地廣設「慰安所」，強制募集各地年輕婦女提供性服務，這些女性統稱為「慰安婦」。雖名為「慰安」，但實為軍中性奴隸。

由於史料遭到銷毀，有關「慰安婦」的史實建立不易。但據研究，「慰安所」的設立遍及台灣、中國、香港、菲律賓、馬來西亞、爪哇、緬甸、新加坡等地，而「慰安婦」的動員約始於1937年至1945年終戰時結束，動員的範圍

包括日本、韓國、中國、台灣、菲律賓、印尼及荷蘭各國，總數可能達40餘萬人。

「慰安婦」的動員可視為日本軍方的一項政策。在當時，日本軍隊佔領各地，時常發生官兵強姦當地婦女的情形，以致性病在軍中蔓延，因性病死傷之人數還遠多於戰死者，戰力大為耗損。同時，日軍四處姦淫擄掠，對日本的國際形象是一大傷害，而日軍四處召妓，也易洩露軍機。有鑑於此，日本政府決定建立慰安婦制度，由日本官、憲、軍、警及民間掮客共同運作。

從日本戰敗後，一直到1988年，才有韓國的女性團體要求其政府對日軍慰安所的設置進行調查。1991年8月，韓國女子金學順公開控訴日本於二次大戰期間強行徵召韓國女子隨軍慰安，慰安婦問題成為國際注目之焦點。1992年2月，日本前議員伊東秀子在防衛廳研究所圖書館發現三通電報，證實台藉慰安婦存在。

1992年，日本學者證實日本官方直接參與慰安婦動員，日本政府始公開向各國慰安婦道歉，但拒絕以國家名義進行賠償，僅撥款成立「亞洲女性和平國民基金」，向日本民間募款，要求慰安婦向此基金求償。但因日本政府藉此躲避賠償之責，此一基金引起亞洲受害人不少反彈。*另見* Comfort Women, Taiwan section.

During the Second World War, the Japanese military established “comfort stations” in the occupied territories and colonies in order to satisfy the soldiers' sexual appetites. The Japanese military forced young “comfort women” to provide sexual services. These women were, in fact, sex slaves.

Because the historical records have largely been destroyed, it has been very difficult to establish the history of the comfort women. However, some research has shown that the comfort stations were common in Taiwan, China, Hong Kong, the Philippines, Java, and Singapore. The recruitment of the comfort women started around 1937 and lasted until the conclusion of the war in 1945. It is estimated that the total number of comfort women was as high as 400,000.

The mobilization of the comfort women can be viewed as a policy response of the Japanese military to a set of problems. Some claimed that the Japanese soldiers often raped local women in occupied territories, leading to the spread of sexually transmitted diseases in the military, and that sexual assaults committed by Japanese soldiers seriously damaged Japan's international image. Some claim that the number of Japanese soldiers who died from sexually transmitted diseases even outnumbered the number of soldiers who died in combat situations. Moreover, it was feared that

Japanese soldiers would inadvertently disclose military secrets when they solicited sex from prostitutes. As a result, the Japanese government decided to set up the comfort women system, which was operated jointly by government officials, military police, military, police, and brokers.

In 1988, women's groups from South Korea demanded that the Korean government investigate the establishment of the World War II-era comfort stations. In August 1991 a Korean woman, Kim Haksun, publicly accused Japan of forcing Korean women to serve as comfort women for the Japanese military. This led to the comfort women issue gaining international attention.

In February 1992, a former Japanese legislator found three telegrams in the Library of Japan Defence Agency that confirmed the existence of comfort women. The same year, Japanese scholars confirmed that the Japanese government had been directly involved in the mobilization of comfort women. The Japanese government began making official apologies to comfort women in various countries, but refused to grant compensation on an official basis. The Japanese government did allocate funds to establish an Asian Women's Fund, and raised funds from the private sector. The victimized comfort women are required to claim compensations from the fund, rather than from the Japanese government. As a result, the fund has triggered hostility from Asian victims because the Japanese government is perceived as evading its responsibility. *See also* Comfort women in Taiwan section.

Common law 普通法

法律建立在先前法庭的判決上，而非建立在成文法典上。英美法系國家包括英國、美國、加拿大、澳洲及紐西蘭等國家。*另見* Common law, Hong Kong section.

The law that is established from judicial decisions, not from statutes or codes, as in the English tradition. As of this writing (2006), common law jurisdictions include most former U.K. colonies. *See also* Common law, Hong Kong section.

Resource: Michael W. Dowdle, “Dicey, Lubman, and Bagehot: Chinese Law and the Common Law Mind,” *Columbia Journal of Asian Law*, Spring-Fall 2005, 19:72-96.

Common standard of achievement

所有人民和所有國家努力實現的共同標準

「共同標準」這個詞彙在聯合國世界人權宣言的序言中出現，世界人權宣言是個建議性的文件，聯合國大會宣示這項文件旨在促進對權利和自由的尊重。世界人權宣言與國際人權法案的其他文件不同，並不具法律約束力。其他的國際人權公約及人權條約則有法律約束力。

The term "common standard of achievement for all peoples and all nations" appears in the Preamble of the Universal Declaration of Human Rights (q.v.). Thus the declaration constitutes not law, but recommendations. The UN General Assembly proclaimed that this instrument would serve to "promote respect for these rights and freedoms by progressive measures." Unlike the other instruments considered part of the International Bill of Rights (q.v.), the declaration is not a legally binding instrument.

Communication 申訴

許多國際人權公約都使用這個詞彙，意指對公約所設立的機構提出人權受到侵害情事的請求，與訴願同義。條約可授權個人、群體或國家提出申訴。一般而言，申訴的受理與否，在於被控侵害人權的國家是否同意該公約機構享有此權利。

The term is used in numerous treaties to indicate a request to an official body to look into a particular situation, such as a human rights abuse. In this sense, it is synonymous with complaint and petition. A treaty can allow communications from individuals, groups, or states. In general, for a communication to be admissible the state to which it is addressed must recognize the competence of the examining body to consider such complaints.

Commutation, *see* Amnesty.

Conference on Security and Cooperation in Europe

歐洲安全合作會議

歐洲安全合作會議於1973年召開，兩年後結束並簽訂赫爾辛基協議。赫爾辛基協議提出人權保障的議題，對1990年代蘇聯解體扮演相當重要的角色。1995年CSCE正式改名為歐洲安全與合作組織(Organization for Security and Co-operation in Europe)。*另見* International Helsinki Federation.

The Conference on Security and Co-operation in Europe opened in 1973 and concluded in 1975 with the signing of the Final Act of Helsinki (The Helsinki Accord). This placed human rights on the agenda in the relations between Soviet Union and Western nations, and later played a role in the demise of the Soviet Union and the end of Communism in Eastern Europe. In 1995 the CSCE was officially transformed into the Organization for Security and Co-operation in Europe (q.v.). *See also* International Helsinki Federation.

Conscientious objector 拒服兵役者

基於宗教信仰或道德信念而拒絕參加戰爭或服兵役。

A person who refuses to participate in war (or to serve in an army) for reasons of personal religious and/or moral beliefs.

Consistent pattern of human rights violations

重大且經認證的侵害人權事件

根據聯合國大會第1503號決議，向聯合國人權委員會申訴時，申訴者需提出大量且在長時期中一再發生侵犯人權的案例，諸如刑求、隨意殺害人民等，以證明重大且經認證的侵犯人權事件。人權理事會十分可能採用同樣標準。基本上，這也是向聯合國憲章下轄單位申訴人權案件時應負的舉證責任。

Under UN General Assembly Resolution 1503, to bring a matter before the UN Commission of Human Rights a petitioner must allege a "consistent pattern of gross and reliably attested violations of human rights." A large number of cases must be demonstrated to the commission, such as torture and summary and/or arbitrary killing, over a considerable length of time.

Constitution 憲法

憲法是一個國家的根本大法，亦為規範一個國家組織的最高法律文件。憲法建立國家的基本規範、公部門的層級與責任、及機構間的關係。它同時也說明國家的主權權力，而人權法案常成為憲法的一部分，用以限制國家的權力。

憲法並不一定必須是以文字詳列，有些國家的憲法建立在慣例上，稱為不成文憲法，實行不成文憲法的國家包括英國等。在若干情況，憲法可能只是一個宣傳文件，並不具有實際的法律效力。因之，我們可以區分真實的憲政主義與一個在法律上少有作用的憲法。*另見* Bill of rights.

The fundamental law of a state. The constitution is the supreme legal text in the structure of the state. It establishes the basic rules of the state, the hierarchy and responsibilities of public authority, and the relationship among the different bodies. It describes and limits the state's sovereign powers, often by the inclusion of a Bill of Rights.

Constitutions are not necessarily written. Those that are not are referred to as unwritten constitutions, and may be based on customs and conventions, as in the United Kingdom. In some cases a constitution is merely a propaganda piece, rather than something that functions as an instrument of law. Thus one can distinguish between genuine constitutionalism and the existence of a constitution which carries little legal weight. *See also* Bill of rights.

Convention 公約

協議的一種，通常為多邊條約，締約國超過兩個國家，但僅對締約國具約束力。

An agreement among states; usually a multilateral treaty. It is binding only on the states that have agreed to be bound by it.

Convention against Discrimination in Education, *see* Education, Convention against Discrimination in.

Convention on the Elimination of All Forms of Discrimination against Women, *see under* Women.

Convention on the Elimination of All Forms of Racial Discrimination, *see under* Racial Discrimination.

Copenhagen Document, 1990 哥本哈根會議文件

正式名稱為「1990年歐洲安全合作會議人權面向哥本哈根會議文件」，在赫爾辛基進程的第二次會議通過。這份文件認為多元民主及法治原則是保障人權及基本自由的要件，並提供人權承諾的詳細清單，其中包括司法獨立、黨政分離等。*另見* Organization for Security and Co-operation in Europe.

Full name: Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Commission on Security and Cooperation in Europe (1990). It was enacted at the second meeting of the Helsinki Process. The document, which recognized "that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms," includes a detailed list of human rights commitments, including judicial independence, and separation between the state and political parities. *See also* Organization for Security and Co-operation in Europe.

Copyright 著作權

製作、重製、公開表演或出版原著或藝術創作的專屬權利。許多國家將藝術創作的範疇擴大，包含電腦程式及其他以電子形式儲存的資訊。發明物則由專利權保護，而非著作權。

聯合國世界人權宣言第27條第2項明示，人人對由於他所創作的任何科學、文學或美術作品而產生的精神的和物質的利益，享有受保護的權利。每年的4月23日是聯合國「圖書與著作權日」。*另見* Intellectual property.

The exclusive right to produce or reproduce (copy), to perform in public, or to publish an original literary or artistic work. The former concept of "literary work" has been expanded to include computer programmes or other electronically stored information.

Article 27(2) of the Universal Declaration of Human Rights states, "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." April 23 is designated UN World Book and Copyright Day. *See also* Intellectual property.

Corporal punishment 體罰

以身體為對象而不致命的懲罰，例如：鞭刑。根據歐洲人權公約第3條的精神，歐洲人權法院的判決指出，鞭打十五歲以下的兒童，違背對酷刑的禁止（泰勒訴英國案，1978年）。歐洲人權法院認為體罰不僅侵害人的尊嚴及身體的完整性，更使當事人受恥辱。在1994年，一位十八歲的美國學生因連續破壞十幾輛汽車，在新加坡遭受鞭刑，造成國際社會一片譁然。

Punishment (generally non-lethal) that is inflicted on the body, such as caning or whipping. Pursuant to Article 3 of European Convention on Human Rights (q.v.), in 1978 the European Court of Human Rights has held that the "birching" of a fifteen-year-old contravened the prohibition of "torture or cruel and inhuman or degrading treatment" (Tyrer v. United Kingdom). The Court held that the practice undermined personal dignity and physical integrity and was humiliating. In 1994, an eighteen-year-old American youth was flogged in Singapore because he had vandalized cars. An international uproar ensued.

Council of Europe 歐洲理事會

有鑑於當時歐洲極權主義十分活躍，一群擁有相同理念的歐洲國家，於1949年冷戰期間，成立了這個地區性組織，以促進民主、法治與團結。這個組織的會員國建立了一套有效的人權保護機制，包括歐洲人權法院及其所仰賴的歐洲人權公約及其議定書。近年來，俄國與若干東歐國家已加入歐洲理事會。

Established in 1949 and headquartered in Strasbourg, France, this regional organization was formed by like-minded states committed to promoting democracy, the rule of law, and greater unity in the wake of the growth of European totalitarianism. The council members have established an effective system of human rights protection that includes the European Court of Human Rights, and relies on the European Convention on Human Rights (q.v.) In recent years the Council of Europe has been expanded to include Russia and other Eastern European states.

Counsel, right to 獲得律師辯護的權利

許多國家的人權法案認為獲得律師辯護是公平審判不可或缺的要件而加以保護。公民與政治權利國際公約14條第3項規定「有相當時間和便利準備他的辯護」並與「他自己選擇的律師聯絡」；再者，第14條第4項則規範，「在司法利益有此需要的案件中，為他指定法律援助，而在他沒有足夠能力償付法律援助的案件中，不要他自己付費。」*另見* Due process.

The bills of rights of many states protect the right to counsel as a fundamental right essential for the right to a fair trial.

Article 14(3) of the ICCPR guarantees "adequate time and facilities for the preparation" of an accused's defence, "the right to communicate with counsel of his own choosing," and (in the case of those who cannot afford to pay) the right to be assigned counsel. *See also* Due process.

Crimes against humanity 違反人道罪

違反人道罪特指大規模，震撼人類良心的殘忍犯罪。在二次大戰之後所舉行的紐倫堡大審中，認定針對平民所為的謀殺、滅絕、奴役、遣送出境，及其他不人道行為，都為違反人道罪。同樣的，於1946至1948年間，遠東（東京）國際法庭與其他受日本侵略的國家所召開的法庭都宣判日本軍閥違反人道罪。另外，前南斯拉夫國際刑事法庭在波士尼亞的案例中主張強暴亦為違反人道罪的一種。*另見* International military tribunals; Rape.

Large-scale and persistent brutal criminal behaviour. At the Nuremberg Tribunal after World War II, murder, extermination, enslavement, deportation, and other inhumane acts that had been perpetrated against the civilian populations by the Nazis were determined to be crimes against humanity. Likewise, between 1946 and 1948 Japanese militarists were convicted in the International Tribunal for the Far East (Tokyo) and other trials held in the countries which had been victimized. In addition, in the Bosnian cases the International Criminal Tribunal for the former Yugoslavia held that rape can be a crime against humanity. *See also* International military tribunals; Rape.

Cruel or inhuman punishment

殘忍的、不人道的或侮辱性的待遇或懲罰

世界人權宣言第5條規定：「任何人不得被處以酷刑，或施以殘忍的、不人道的或侮辱性的待遇或刑罰。」另外，公民與政治權利國際公約第7條亦有相似的規定。又聯合國另於1984年制定禁止酷刑公約，以表達對禁止酷刑的重視。而歐洲人權公約及歐洲禁止酷刑公約(1987)則未使用「殘忍」這個字。這條款又與廢除死刑爭論密切相關。許多人認為等待執行死刑的時間若被拖延，且監禁條件惡劣的話，已構成殘忍、不人道的待遇。*另見* Corporal punishment; Death row phenomenon; Torture.

Article 5 of the Universal Declaration of Human Rights states: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." The phrase is also used in the ICCPR (art. 7), and it is the central concern of one of the UN treaties, namely the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (q.v.). The European Convention on Torture does not use the term "cruel punishment."

Closely related to this prohibition is the issue of the death penalty because some claim that prolonged delay before executions, especially when prisoners are held under degrading conditions, constitutes cruel and inhuman treatment. *See also* Corporal punishment; Death row phenomenon; Torture.

Cultural diversity 文化多元性

文化多元性跨越時間、空間，以不同的形式呈現，並透過文化間的分享和交流，使相互得到滋養。接受文化多元性，便是接受所有文化都平等，接受個人或群體在社會中享有對自己的獨特認同，捍衛文化多元性，即是捍衛人類基本自由與權利。聯合國教科文組織的大會於2001年10月間，通過了「文化多元性宣言」。

"Cultural diversity" expresses the various forms that cultures assume across space and time, and the presumed mutual enrichment that derives from the sharing and exchange among cultures. Advocates take the position that accepting cultural diversity acknowledges the equality of all cultures, not their uniformity, and to recognize the right of individuals or groups to enjoy their particular identities within society. They believe that defending cultural diversity is equivalent to defending the

fundamental rights and freedoms of humanity. The Universal Declaration on Cultural Diversity was adopted by the UNESCO's General Conference in October 2001.

Resource: UNESCO Universal Declaration on Cultural Diversity, http://www1.umn.edu/humanrts/instree/culturaldiversity.html.

Cultural relativism 文化相對論

文化相對論指的是權利和道德必需奠基並仰賴於地方或國家文化脈絡。而且，「文化」指涉的範圍，十分廣泛，除了本土傳統和習慣，也包括了政治的及宗教的意識型態及制度。由於各地文化相異，權利觀點和道德規範也就不同。文化相對論假設沒有先驗的或跨文化的權利觀點，因此以外來觀點影響本國人權概念的企圖都是不正當的。

與其相對的是普世價值，認為文化的差異不能用來當作侵犯人權的藉口。舉例而言，實行割禮的傳統文化，不能以文化相對論為由，違背兒童權利公約中所保障的女童及婦女健康權利。

目前多數採用的「中間立場」是「有限文化差異」的說法，即當文化差異不足以侵害人權的核心價值時，應當被容許。*另見* Asian values; Circumcision, female; Universality.

The theory that principles of morality and rights are encoded in, and thus dependent upon, local or national culture is sometimes conceived broadly to include not only indigenous traditions and customary practices but also political and religious ideologies and institutions. Notions of right, and moral rules based on them, necessarily differ throughout the world because the cultures where they are applied differ. Cultural relativism assumes that there are no transcendent or trans-cultural ideas of right, and thus outsiders' attempts to impose their concepts of what constitutes human rights cannot be justified.

Opposed to this theory is the perspective of universality, which denies that cultural diversity can be a legitimate excuse for the violation of human rights. For example, cultures that have a long tradition of performing "female circumcision" (female genital manipulation) may not argue that their cultural practice takes precedence over the universal norm of protecting the health of girls and women, as stated in the Convention on the Rights of the Child. (*See* Child.)

A widely held "middle position" states that in applying rights there is some argument for "limited cultural variations" when they do not violate certain core rights. *See also* Asian values; Circumcision, female; Universality.

Resource: Henry J. Steiner, and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (2000), pp. 366-367.

Cultural rights 文化權利

文化可以指稱一個涵括精神、物質、智慧與情緒等特徵交織而成的複雜體，用以辨識一個社會或社會群體。文化不僅包含藝術與文字，亦包含生活方式、價值體系、傳統及信仰。國際人權文獻通常將文化權與經濟和社會權利並列。經濟、社會與文化權利國際公約在第1、3、6和15條提到了這些權利，但並未予以定義。1986年所確定的經濟、社會與文化權利國際公約執行原則（也稱Limburg原則）以及1997年馬斯垂克有關侵害經濟、社會與文化權利的指導原則，都對這些主題作了較詳細的規定。

Culture can be defined as the whole complex of distinctive spiritual, material, intellectual, and emotional features that characterize a society or social group. It includes not only arts and letters, but also modes of life, value systems, traditions, and beliefs. International human rights instruments usually mention cultural rights in conjunction with economic and social rights. The ICESCR mentions these in Articles 1, 3, 6, and 15, but does not define the terms. The subjects are treated in more detail in the 1986 Limburg Principles on the Implementation of the International Covenant on Economic, Social, and Cultural Rights (http://www.abo.fi/instut/imr/ESC-files/Kap1/The%20Limburg%20principles%20on%20the%20Implementation%20of%20the%20ICESCR.doc), and the 1997 Masstricht Guidelines on Violations of Economic, Social, and Cultural Rights (http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html).

Customary international law 國際習慣法

國際習慣法是國際法的法源之一（參見國際法院規約第38條第1項(b)款，「基於普遍的實行，已被認定為法律」）。國際習慣法的存在，在於國際社會對一個規範已有廣泛的接受。當國際上對於國家的作為有廣泛的共識，這些作為便具有法律約束力。透過成文化法，許多習慣法成為國際法典。

When there is a broad consensus among states about a norm it becomes internationally binding, and thus a source of international law.

Death penalty 死刑

死刑也稱極刑，是國家基於刑法最嚴厲的懲罰。自古以來，已被用為懲罰罪犯及異議人士。即使死刑並未違反國際公法（參見歐洲人權法院1989年的判例Soering v. the United Kingdom，http://www.clea.org.uk/cases/summ/soer.htm），根據公民與政治權利國際公約第6條的規定，「死刑只能作為對最嚴重罪行的懲罰」。人權事務委員會也已討論過不少對死刑的申訴，並提出意見，逐步建立有關廢除死刑的法學基礎。在歐洲理事會通過的歐洲人權公約第六議定書中，「廢除死刑」已被普遍接受，甚至有些權威解釋認為廢除死刑已成為歐洲的習慣法。

廢除死刑是國際法的趨勢。聯合國大會於1971年通過第2857號決議，表達在世界各國透過逐步減少死刑罪名以達到廢除死刑的意願。2006年已有六十個國家成為政治與公民權利國際公約第二任意議定書的會員國，承諾不再執行死刑。主張廢除死刑的人認為死刑是一種侵犯生命權、不人道的處罰。若干國內法庭及國際機構已對死刑及其執行做出限制，但死刑本身是否與人權標準相符仍然深受質疑。

The death penalty, also referred to as capital punishment or death sentence, is the ultimate punishment that a state can render in criminal law. It has been practiced since ancient times to punish criminals and dissidents.

Capital punishment remains permissible in international law (Soering v. the United Kingdom, European Court of Human Rights, 1989). According to the ICCPR (art. 6) "A sentence of death may be imposed only for the most serious crimes." The Human Rights Committee (q.v.) considered a large number of death penalty complaints and has established considerable Jurisprudence on the matter.

In 1971 the UN General Assembly adopted a resolution (2857, XXVI) that urged the abolishing of the death penalty in all countries. "The main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries." By 2006, sixty countries were parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights (http://www1.umn.edu/humanrts/instree/b5ccprp2.htm), and were thereby bound to not carry out any executions.

Death penalty abolitionists argue that the death penalty is a violation of the right to life and constitutes inhumane punishment. There is jurisprudence by domestic

courts and international bodies that have limited the use of the death penalty and mandated safeguards for its application. However, some commentators question whether it is possible for any death penalty regime to meet the demands of due process and other human rights normative standards.

Death row phenomenon 待死現象

待死現象指涉被判處死刑的犯人在行刑前，因等待執行而處於嚴苛的環境及長時間的囚禁對其身心的傷害，歐洲人權法院在1989年，對Soering v. the United Kingdom案件作出判決，認為若將Soering引渡至美國，監禁於美國死囚牢房，勢必違反歐洲人權公約第3條對「酷刑或不人道對待」的規定；人權事務委員會亦討論過一些根據公民與政治權利國際公約議定書提出申訴的案件，這些申訴人採取相同的邏輯，主張其人權遭到侵害。

Death row phenomenon is the treatment of individuals sentenced to death and awaiting execution for extended periods, often under harsh conditions of Detention (q.v.), or where the wait is coupled with the uncertainties of appeal, commutation, and/or pardon. In 1989 the European Court of Human Rights (q.v.) in Soering v. the United Kingdom held that a person's detention in a prison in the United States on death row was violation of the convention's prohibition against "cruel and inhuman treatment," and that his extradition from the United Kingdom to Virginia was prohibited unless the American prosecutor agreed not to seek the death penalty. The Human Rights Committee (q.v.) considered a number of cases brought under the Optional Protocol of the ICCPR. It was found, with similar logic, that human rights were being violated for those who wait on death row.

Debt bondage 債奴

依據1956年「廢除奴隸、奴隸買賣及與奴隸相同境遇補充公約」（於1957年生效）的定義，債務人以他個人的服務或他所能指使的人所提供的服務作為保證，而這些服務沒有給予合理的估價，或所提供服務的時間及性質沒有明確的界定與限制，這樣的處境即為債務奴隸。

本條約的締約國同意儘速廢除這種作法，目前全世界有超過一百個國家批准本條約。*另見* Slavery.

Defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery (1956) as "the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

State parties to this treaty agreed to end this practice as soon as possible. Over 100 states have ratified this convention. *See also* Slavery.

Declaration Des Droits de l'Homme 人權與公民權利宣言

1789年法國人權與公民權利宣言是人權發展史中重要的里程碑，列舉各項權利與自由，如免於任意拘禁的自由、無罪推定、言論及宗教自由等都涵蓋其中。此宣言的最終文本經法國國會於1789年8月26日正式通過，作為1791年憲法的序言。

The French Declaration Des Droits de l'Homme et du Citoyen (Declaration of the Rights of Man and the Citizen) of 1789 was an important historical milestone in the development of human rights. It proclaimed a number of rights, including the right to be free from arbitrary detention, freedom of speech and religion, and the presumption of innocence.

Declaration of Independence (U.S.) 美國獨立宣言

1776年，英國在北美十三州殖民地的非官方領袖發表宣言，宣佈成立新的國家。美國獨立宣言是人權發展史中最具激勵性的文件之一。主要作者之一湯瑪斯．傑佛遜用高雅的語言，以人權理論的哲學深深的感動了許多的人。

美國獨立宣言前言：「真理是不言而喻的，人人生而平等，他們的『造物主』賦與了他們不可讓渡的權利，其中包括生命權、自由權和追求幸福的權利。」（宣言中有關「造物主」一詞的用法反映出十九世紀哲學家在主張公民自由的保障時對自然法理論的依賴）。

A 1776 document by a group of unofficial leaders from thirteen of England's North American colonies stating that they intended to establish a new nation state. Since then, the Declaration of Independence has inspired many human rights and national independence movements. The elegant language of its principal author, Thomas Jefferson, expresses for many around the world the philosophy of human rights

theory: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness” (preamble). (The Declaration's reliance on a “Creator” reflects the thinking of nineteenth-century philosophers who were dependent on natural law theory for their assertions of the protection of civil liberties.)

Defamation 詆毀

對第三者作出關於他人不實且有損名譽的陳述。詆毀(Defamation)是一個通稱，形式上區分為文字誹謗(libel)與口頭誹謗(slander)。雖然在公民與政治權利國際公約及經濟、社會與文化權利國際公約中並未處理這個議題，但在世界人權宣言第12條提到：「任何人的…榮譽和名譽不得加以攻擊。人人有權享受法律保護，以免受這種干涉或攻擊。」

False statements made to a third party which are harmful to the reputation of another. Defamation is generic in nature, with Libel (q.v.) generally being written defamation and slander spoken. Although the ICCPR and ICESCR do not deal with these issues, Article 12 of the Universal Declaration of Human Rights asserts: “No one shall be subjected . . . to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such . . . attacks.”

Democracy 民主

在希臘文中，Demo代表人民而kratos代表規範、主權。民主是一種以人民參與為基礎的政治制度，當代民主政體逐漸發展出三權分立制度，也即司法、立法及行政分立的權力制度及自由且定期的選舉。民主制度反應多數人的決定，但同時也保障少數人的權利。

民主也指涉一種哲學，強調人民的權利與能力，直接或間接掌控政治機構來滿足人民的訴求。尤其強調個人的平等，不受外力的約束。

This word, from the Greek demos (people), and kratos (rule, sovereignty), has a variety of meanings.

Pure democracy (which does not exist) means direct rule by the people. But democracy is more realistically viewed as a political system based on the participation of the people through the ballot box. Democracy in this sense requires free and reasonably regular elections. Democracies generally seek to have their governments reflect majority rule, but with the protection of the rights of minorities.

Democracy can also be seen as “a philosophy that insists on the right and capacity of a people, acting either directly or through representatives, to control their institutions for their own purposes…. [It] places a high value on the equality of individuals and would free people, as far as possible, from the restraints not self-imposed” (The New Columbia Encyclopedia).

Derogation of rights 克減

國家所享有的特權（在一個程度上也為國際法所接受），在遭遇戰爭或嚴重的危機，如：災禍、天災、政變等狀況下暫停或限制人民的權利與基本自由。即使如此，克減仍受一些國際公約的規範。公民與政治權利國際公民第4條第1項即明確限制克減的範圍，又第4條第2項明訂某些權利，諸如生命權、免於刑求、奴隸等權利不得克減。西拉庫薩原則更進一步限制國家克減權利。*另見* Non-derogable rights.

The prerogative assumed by many States (and to some extent permitted by international human rights conventions) to suspend or limit the enjoyment of human rights and fundamental freedoms, in case of public emergencies, such as war, exceptional public danger threatening the life of a nation, or a crisis threatening the independence of a nation, including calamities, natural catastrophes, and *coups d'état*. Derogations are, however, subject to conditions which are set forth in the various treaties. For example, Article 4(1) of the ICCPR limits derogations “to the extent strictly required by the exigencies of the situation” and requires that they not be applied in a discriminatory manner. Further, Article 4(2) restricts derogation of the rights. The Siracusa Principles (q.v.) places further limits on the states' power to derogate rights. *See also* Non-derogable rights.

Detention 拘禁；拘留

拘禁或拘留，指一個人事實上失去人身自由，無論失去自由的原因是否合法。在大多數情況下，拘留是刑事起訴過程的一部分，但也可能是長期拘留，如中國的勞改或美國在關塔那摩灣拘禁阿富汗戰爭的俘虜。這類拘禁一般被認為不符國際標準。

The de facto or de jure loss of liberty. Typically, detention is the first stage in a process that leads to a criminal prosecution if the charges are not dropped.

In some jurisdictions there may be no intention to bring formal charges, or the detention may last for years. Examples: various Chinese administrative detention regimes, and Guantànamo Bay under U.S. administration. Such detention is generally not considered legitimate by international standards.

Development Index, Human 人類發展指標

聯合國發展計劃署於1993年開始於年度報告中使用人類發展指標。這個指標測量國民所享有的社會與經濟權利，具體而言即國家在三個基本發展面向上的平均表現：

(1) 一個長壽與健康的生活，以預期壽命來做測量。

(2) 知識，以成年人的識字率與國小、初中及高中三個時期的就學登記率來做測量。

(3) 一個不錯的生活標準，由平均每人國內生產毛額(GDP per capita)來測量。

A relatively sophisticated measurement of the enjoyment of economic and social rights, used since 1993 by the United Nations Development Programme in its annual reports.

The Human Development Index (HDI) measures a country's average achievements in three basic dimensions of human development:

a. A long and healthy life, measured by life expectancy at birth.

b. Knowledge, measured by the adult literacy rate and the combined primary, secondary, and tertiary gross enrolment ratio.

c. A decent standard of living, measured by per capita gross domestic product.

Development, human 人類發展

人類發展關心的是如何創造一個人們能發展完全的潛能、過著豐富及具創造力人生的環境，以符合人們的需要與興趣。因此，人類發展不侷限於經濟成長，經濟成長只是擴大人們選擇的工具之一。

增加人們選擇的基礎在於建立個人能力，亦即人們在生活中能夠做之事的能力。對人類發展而言，最基本的能力是能夠活得久、有健康的生活、成為有知識的人、擁有過得不錯的生活所需的必要資源並且有能力參與社區的生活。

此外，人類發展具有與人權相同的視野與關懷。人們必須自由地去選擇並且自由地參與影響他們生活的各種政策的制定。人類發展與人權兩者相互強化，有助於確保所有人的幸福與尊嚴，建立對他人的尊重與自我的尊重。

The concept that the goal of human life, socio-economic activities, and politics is to achieve the best possible quality of life for all humans, not just to increase national income or industrial prowess. Emphasis is placed on the expansion of each individual's capabilities to function productively, make meaningful choices, and solve problems, these issues being the key to the improvement of people's lives. Although the specific capabilities that contribute to an individual's well-being depend on context and culture, it is believed that physical capabilities (health), intellectual capabilities (knowledge), and financial capabilities to maintain a decent standard of living are essential in all societies.

The increase of such capabilities enables people to escape poverty and destitution, and to have a long, healthy, and meaningful life from infancy to old age. Importantly, the extent of an individual's capabilities is conditioned not only by one's own choices, but also depend on social, political, and economic arrangements. In this sense human development and civil liberties can be mutually supportive.

Diaspora 流散

一群流散在外，但又維持文化認同的人。一般適用於猶太人，但也可指稱其他民族。

This term refers to a group scattered outside their ancestral homeland but still maintaining an identity associated with their original national culture. Examples: the Jews dispersed from the eastern Mediterranean; Chinese living in Southeast Asia and the West.

Dignity, inherent 與生俱來的尊嚴

聯合國世界人權宣言序言提及「與生俱來的尊嚴」，第1條提及「尊嚴」，而公民與政治權利國際公約及經濟、社會與文化權利國際公約亦在其序言中明白昭示「尊嚴」。「重申基本人權，人格尊嚴與價值」。「尊嚴」一詞亦出現在許多人權文件及人道法條約中。尊嚴既是人權的核心概念，也對人權的了解十分的重要。

「與生俱來的尊嚴」一詞，並沒有一個正式的法律意義。「尊嚴」的一般解釋為「價值和尊重」。而「與生俱來」則代表「一件事物自然存在的一部分或一件事物的基本部分，並且不能加以移除或改變」（劍橋國際字典）。

曾經有一位學者指出，聯合國世界人權宣言的草擬者，因相信人權的信念或保障不應建立在自然法或上帝存在的前提上，因而採用「與生俱來」一詞。這位學者強調，「人們擁有這些道德權利，乃因為他們是人類家庭的一分子，並非因為其他任何的外在因素」(J. Morsink, 1999)。

Phrase used in the first sentence of the Universal Declaration of Human Rights: "Whereas recognition of the inherent dignity…" The two covenants use "dignity" in their preambles. The UN Charter's preamble in its second sentence reaffirms, "Faith in fundamental human rights, in the dignity and worth of the human person." The term is found in a number of other human rights instruments as well as humanitarian law treaties. Dignity is a vital concept for human rights and essential to the understanding of human rights.

While there is no formal legal meaning to the term "inherent dignity," dignity's ordinary meaning is "valued and respected." "Inherent" means "existing as a natural or basic part of something; not able to be removed or changed" (Cambridge International Dictionary).

As the scholar Johannes Morsink has noted, the declaration's drafters were concerned that reliance on natural law and the existence of a deity should not be a precondition for belief in or the observance of human rights. Hence the term "inherent" rather than natural law or God was used. In explaining this, he stated, "People have these moral rights because of their membership in the human family, not because of any external force or agency" (Morsink, *The Universal of Declaration of Human Rights*, 1999).

Disabled, rights of the 身心障礙者權利

許多國家已經採取了進步的措施促進身心障礙者（以前稱「殘障者」）能過正常的生活。然而，在國際社會中，將身心障礙者權利整合至國際法中的努力卻剛起步而已。2006年，「保障及促進身心障礙者權利及尊嚴整全及總體國際公約」的特別委員會起草了「身心障礙者權利公約草案」以及相關的任意議定書草案。

在這個公約的草案中，提出了八項基本原則：1、尊重既有尊嚴以及自由選擇的個人自主權利，尊重個人獨立；2、不歧視的原則；3、完全而有效地參與並融入社會；4、尊重差異，且接受身心障礙為人類多樣性及人性的一部份；5、機會平等；6、近用；7、男女平等；8、尊重身心障礙兒童的發展能力，尊重身心障礙兒童維持其認同的權利（草案第3條）。這份草案共有五十個條文。

草案的第34條規劃建立一個「身心障礙者權利委員會」。在通過任意議定書後，這個委員會有權接受及確認會員國中受迫害人民所提出之申訴。委員會可以向該國政府提出報告，政府收到報告後必須在六個月內作出回覆。

Many nations have made great progress in enabling disabled persons (formerly referred to as the "handicapped") to live reasonably normal lives. However, the international community is only in the early stages of incorporating the rights of the disabled into international law. In 2006, an Ad Hoc Committee on the Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities completed work on a "Draft Convention on the Rights of Persons with Disabilities," and a "Draft Optional Protocol" relating to it.

The Draft Convention sets forth eight general principles: (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (b) non-discrimination; (c) full and effective participation and inclusion in society; (d) respect for difference and acceptance of disability as part of human diversity and humanity; (e) equality of opportunity; (f) accessibility; (g) equality between men and women; (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities (art. 3). The draft convention has fifty articles.

Article 34 of the draft would establish a Committee on the Rights of Persons with Disabilities. By adopting the Optional Protocol, states recognize the competence of that committee to receive and consider communications from certain aggrieved

individuals in such states. The committee may send the government concerned a report; the government would then be obligated to respond within six months.

Resources: Draft Optional Protocol to the International Convention on the Rights of Persons with Disabilities, http://www.un.org/esa/socdev/enable/rights/ahc8adart.htm; Optional protocol, http://www.un.org/esa/socdev/enable/rights/ahc8adart.htm#doptprotocol.

Disappearance 失蹤

70~90年代，失蹤成為一個嚴重的人權問題。拉丁美洲，尤其在軍人專政時期的阿根廷與皮諾切統治下的智利，以此手段對付異己，最為惡名昭彰。在政府默認之下，警察、軍隊綁架、刑求從而殺害異己。雖然聯合國人權委員會在1980年通過決議案譴責失蹤事件，但效力並不顯著。

Involuntary disappearance of an individual from society. The phenomenon is especially associated with Latin America in the 1970s and 1980s, such as during the so-called "dirty war" in Argentina, and Chile under the regime of Augusto Pinochet. In these situations, the victims were often abducted by the police or the military, or by others with the acquiescence of the state, to be tortured or killed without any notice or legal action. In 1980 the UN Commission on Human Rights condemned such practices.

Discrimination 歧視；差別待遇

造成差別待遇的區隔。消除歧視是人權保障的核心概念，幾乎所有國際人權法文件都強調平等與消除歧視。如世界人權宣言第2條明言「人人有資格享受本宣言所載的一切權利與自由，不受種族、膚色、性別、語言、宗教、政治或其他見解、國籍或社會出身、財產…」。*另見* Racial discrimination; Education, Convention against Discrimination in; Sex discrimination.

Adversely distinguishing among people, especially on prejudicial grounds. The prohibition against arbitrary discrimination is central to the protection of human rights. International human rights instruments, including the Universal Declaration of Human Rights and the two international covenants, are based on the principles of equality and non-discrimination. As the Universal Declaration puts it (art. 2): "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language religion, political or other opinion, national or social origin, property, birth or other status." *See also* Racial discrimination; Education, Convention against Discrimination in; Sex discrimination.

Double jeopardy 一罪二罰

因相同的罪名接受兩次的審判。公民與政治權利國際公約第14條第7項規定，「任何人已依一國的法律及刑事程序被最後定罪或宣告無罪者，不得就同一罪名再予審判或懲罰。」

To be prosecuted twice for substantially the same criminal offence. Although the term is not used in the ICCPR, the basic concept is covered in Article 14(7). "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

Due process 正當程序

保障當事人權利的法律程序，為美國憲法中的一個基本原則。即使國際人權文件通常並未使用正當程序這個詞彙，但這些文件亦提供相同的程序保障（參見公民與政治權利國際公約第13到16條）。

Primarily a U.S. term that refers to whether or not a legal proceeding conforms to rules and principles for the protection of the parties' rights. Although the term "due process" is not generally used in international human rights instruments, those instruments protect the human rights of those who are brought before courts (*See* ICCPR, arts. 13-16).

Economic and Social Council 聯合國經濟及社會理事會

經濟及社會理事會是聯合國主要機構之一，該單位以研究及撰寫報告有關經濟、社會、文化、教育、健康等事務為主要工作，也可以為了促進對人權的尊重與遵守做出建議，並且提出公約草案至聯合國大會（聯合國憲章第62條）。人權委員會隸屬於經濟及社會理事會，現已為人權理事會所取代。*另見* Human Rights Council.

A principal organ of the United Nations, empowered to initiate "studies and reports with respect to economic, social, cultural, educational, health and related matters." "It may make recommendations for the purposes of promoting respect for, and observance of, human rights" and "may prepare draft conventions for submission to the General Assembly" (UN Charter, art. 62). It creates sub-institutions such as the Human Rights Council (q.v.).

Economic rights, *see* Cultural rights.

Education, Convention against Discrimination in 消除教育歧視公約

1960年，聯合國教科文組織通過了本公約，並於1962年生效。此公約的第1條指出，歧視一詞包括任何基於種族、膚色、性別、語言、宗教、政治或其他意見、國籍或社會地位、經濟條件或出生，且以削弱及影響教育平等為目的，或對教育平等造成負面影響的差別、排擠、限制或優待。這個公約不僅強調教育歧視的排除，亦重視教育平等的提倡。*另見* Human Rights Education Decade.

In 1960 the General Conference of UNESCO adopted the Convention Against Discrimination in Education, which entered into force in 1962. Article 1 explains that "the term discrimination includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic conditions or birth, has the purpose or effect of nullifying or impairing equality of treatment in education." The convention calls for the adoption of measures aimed at promoting equality of opportunity and treatment in education. *See also* Human Rights Education Decade.

Resource: http://www1.umn.edu/humanrts/instree/p1cde.html.

Effective remedy 有效救濟

世界人權宣言第8條明確保障這項關鍵性的權利，「任何人在憲法或法律所賦予他的基本權利遭受侵害時，有權由合格的國家法庭對這種侵害行為作有效的救濟。」

著名的英國法學家威廉・布萊克斯通曾說過：「缺乏救濟的權利無異於不具有權利。」

Article 8 of the Universal Declaration of Human Rights guarantees "an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law." The doctrine has long been viewed as critical for an effective system of law. British jurist William Blackstone stated, "Rights without remedies are no rights at all."

Election observation 選舉觀察員

近年來由外國人士組團觀察選舉，以保障選舉確實反應民意，逐漸獲得重視。這幾年來，卡特中心即以觀察選舉聞名。2001年開始，在美國全國國際事務民主學會及聯合國的選舉援助處的倡導之下，發展出了國際選舉觀察宣言以及國際選舉觀察團的行為準則。這項宣言及準則在2005年10月27日獲得聯合國的肯定。台灣非政府組織在2004年組團觀察印尼總統大選為一例。

Outside observation of elections has become a common practice to ensure that elections are valid. Through the years The Carter Center has been known for its activities in this field. Beginning in 2001 at the initiative of the National Democratic Institute for International Affairs (NDI) and the United Nations Electoral Assistance Division (UNEAD), the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers was commemorated on October 27, 2005 at the United Nations. Example: in 2004, Taiwan human rights NGOs took part in observing the presidential election in Indonesia.

Elections, periodic and regular 定期選舉

聯合國世界人權宣言第21條第3項明白指出：「人民的意志是政府權威的基礎；這一意志應以定期的選舉予以表現，而選舉應依據普遍和平等的投票權，並以不記名投票或相當的自由投票程序進行。」自1948年開始，選舉權的發展

有長足的進步，例如：哥本哈根會議文件中提及對選舉的觀察機制即是。*另見* Copenhagen Document; Vote, right to.

Article 21(3) of the Universal Declaration of Human Rights states: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and regular elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." Since 1948 there has been much development in the area of election rights, such as the mechanism of election monitoring endorsed by the Copenhagen Document of the Organization for Security and Co-operation in Europe. *See also* Copenhagen Document; Vote, right to.

Emergency, state of, *see* Derogation of rights; Siracusa Principles.

Enforcement 強制執行

在人權受到侵犯時，強制國家遵守國際公約義務的能力。事實上強制執行的概念受到許多國家的挑戰，相較於國際人權標準的訂定，如何建立執行的制度與機制尤為艱難，建樹也不多。

Ability to compel respect for the legal norms, such as when the individual's human rights are being violated. Compared with enactment of international human rights standards, enforcement in this sense is controversial and often meets with opposition from governments. International enforcement of human rights norms has not been very effective.

Entry into force 生效

維也納條約法公約第24條規定，締約國決定條約何時生效，若未有足夠的國家完成批准程序，則條約仍不具效力。

一般來說，條約中會明文規定批准國家的最低數目，在達到這個數目以前，該條約還不具有拘束力。

Article 24 of the Vienna Convention on the Law of Treaties (q.v.) states that the negotiating parties of a treaty determine when the treaty shall come into force. The minimum number or ratifying states is typically cited in the treaty, and until that number ratifies, the treaty is not binding.

Environmental rights 環境權

早在1972年斯德哥爾摩會議宣言中，環境權已被界定為「人（類）享有自由、平等與在一個優質環境中過有尊嚴與幸福生活必需條件的基本權利」，這原則在1992年里約熱內盧會議再度重申，並提出全球夥伴關係的新觀念及有關國際法的制定。

雖是如此，當代社會強調經濟發展，對環境諸多破壞，如空氣、河川的污染等等。環境權也涉及到這一代人與後代子孫的關係，如這一代人是否有權利把森林砍光、石油耗盡或使某些物種因之消滅？這些議題，不論在法律或倫理層面都引起很大爭論。

In 1972 the UN Conference on the Human Environment declared in principle that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." This principle was reaffirmed in the Rio Declaration on Environment and Development in 1992, which also urged "a new and equitable global partnership," and the further development of international law in the field.

Nevertheless, given the emphasis on economic development of contemporary societies, much damage has been inflicted on the environment, such as pollution of air and water. Moreover, environmental rights pose many difficult questions: To what extent is it necessary to respect the needs and well-being of future generations? Can a generation use up more than its share of oil reserves? Is it permissible to take actions that result in the extinction of a species? This is a highly controversial area of law and ethics.

Resources: Primary texts: Declaration of the United Nations Conference on the Human Environment, http://www1.umn.edu/humanrts/instree/humanenvironment.html; The Need to Ensure a Healthy Environment for the Well-Being of Individuals, http://www1.umn.edu/humanrts/instree/healthyenvironment.html; Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment: Development Issues for the 21st Century, http://www1.umn.edu/humanrts/instree/dublinwater1992.html; Declaration by the European Council on the Environmental Imperative, http://www1.umn.edu/humanrts/environmentaldeclaration.html; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, http://www1.umn.edu/humanrts/instree/accesstoinfo.html; *Secondary sources:* Linda A.

Malone, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (2004); Aaron Sachs, *Eco-justice: Linking Human Rights and the Environment* (1995).

Equal protection 平等保障

根據《布萊克法律大辭典》，「在相似的情況下，政府對待一個人或一群人的方式，應與對待其他人或其他一群人完全相同」。許多國家的憲法均對機會平等有所保障，例如：美國憲法第十四修正案。

世界人權宣言第7條明定，「法律之前人人平等，並有權享受法律的平等保障，不受任何歧視。人人有權享受平等保護，以免受違反本宣言的任何歧視行為以及煽動這種歧視的任何行為之害。」

"The government must treat a person or class of persons the same as it treats other persons or classes in like circumstances" (Black's Law Dictionary). Many constitutions have equal protection clauses.

The Universal Declaration of Human Rights (art. 7) states, "All are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

Equality 平等

人人平等是法律的基本原則。世界人權宣言開宗明義闡述，「人人生而自由，在尊嚴和權利上一律平等」。平等原則引伸出來的是反歧視原則。

The essential equality of all human beings is a basic principle of law. The Universal Declaration of Human Rights begins by stating that "all human beings are born free and equal in dignity and rights." A corollary of equality is the principle of non-discrimination.

Ethnic cleansing 族群清洗

這名詞常被用於形容一個族群中的多數滅絕族群中的少數的措施。二戰時納粹德國企圖消滅猶太人與吉普賽人的政策最為惡名昭彰。1990年代在前南斯拉夫及盧安達的內戰也採取類似族群清洗的手段。雖然前南斯拉夫國際法庭、盧安達國際法庭及國際刑事法庭的設立都針對族群清洗的罪行，但法律的措施

效力不彰。*另見* Genocide; Genocide convention.

Efforts by an ethnic majority or its leaders to eliminate (not merely oppress) ethnic minorities. Nazi Germany's attempted elimination of such peoples as the Jews and Roma (Gypsies) is particularly notorious. Similar government policies were pursued during the 1990s in the ethnic wars of former Yugoslavia and Rwanda. Effective legal redress has been difficult to achieve, although the creation of the International Criminal Court and other institutions has provided ways to deter and bring to justice those who pursue policies of ethnic cleansing. *See also* Genocide; Genocide Convention.

Ethnic groups 族群

歷史上，族群中的多數掌握的政府常傾向同化政策，迫害族群少數的情況屢見不鮮。一次大戰以後，國際社會對族群少數的問題十分重視，並試圖解決。較早，美國威爾遜總統所倡導的民族自決原則十分有影響力，但一個族群建立一個國家的政策沒有達到預期的效果。二次大戰後，轉而試圖藉由對人權的提倡與保障來解決族群之間的衝突。

根據公民與政治權利國際公約第26條規定：「所有的人在法律前平等，並有權受法律的平等保護，無所歧視。在這方面，法律應禁止任何歧視並保證所有的人得到平等的和有效的保護，以免受基於種族、膚色、性別、語言、宗教、政治或其他見解、國籍或社會出身、財產，出生或其他身分等任何理由的歧視。」第27條：「在那些存在著人種的、宗教的或語言的少數人的國家中，不得否認這種少數人同他們的集團中的其他成員共同享有自己的文化、信奉和實行自己的宗教或使用自己的語言的權利」。這項原則在西方國家已獲得相當地成功，但在其他地區問題仍層出不窮。*另見* Nation; Self-determination.

Historically, states dominated by an ethnic majority have tended to adopt an assimilation policy, or otherwise tended to oppress ethnic minorities. Since World War I, minority ethnic groups have increasingly drawn the concern of the international community, which has tried two different approaches to protecting minorities. Initially the principle of national self-determination proposed by U.S. President Woodrow Wilson had considerable impact, but the attempt to create a nation state for each nationality did not prove very effective. After World War II there was a commitment to solve such problems through the promotion and protection of human rights. Article 26 of the ICCPR asserts: "All persons are equal before the law and are entitled without any discrimination to the equal protection of

the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 27 adds: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." This approach has been reasonably successful in the Western world, but elsewhere these problems are ongoing and often seem intractable. *See also* Nation; Self-determination.

Ethnocentric 民族中心主義；種族優越感

相信自己的民族、種族、風俗習慣及國籍優於他人。*另見* Cultural diversity; Cultural relativism.

The belief that one's own people, race, customs and/or nationality are superior to those of others. *See also* Cultural diversity; Cultural relativism.

European Convention on Human Rights 歐洲人權公約

歐洲人權公約於1950年起草，1953年生效，其目的在於促進二次大戰後歐洲國家合作、鞏固民主政治、保障人權，且以之對抗共產主義的擴張。歐洲人權法院即在公約基礎上設立，半世紀來成績斐然。隨之1990年代中歐與東歐國家加入歐洲理事會後，公約保障已從大西洋擴大到太平洋。*另見* Council of Europe; European Court of Human Rights.

The principal human rights treaty of the Council of Europe. The convention, which was drafted in 1950, aimed at promoting European unity and democracy and protecting human rights in the post-World War II period. It has become the most significant continental instrument to protect human rights, especially with the establishment of the European Court of Human Rights (q.v.). With the admission of Central and Eastern European states (including Russia) to the Council of Europe (q.v.) in the 1990s, the convention's purview now stretches from the Atlantic to the Pacific Ocean. *See also* Council of Europe; European Court of Human Rights.

European Convention on Torture

歐洲防止酷刑、不人道或侮辱性待遇或處罰公約

歐洲理事會保障人權的努力，逐步轉向於侵害的預防，並於1987年制定歐洲防止酷刑、不人道或侮辱性待遇或處罰公約。與1948年聯合國禁止酷刑公約比較，歐洲防止酷刑公約強調預防並設立一個委員會來審查締約國是否履行公約義務。委員會（詳見http://www.cpt.coe.int/en/）成員有權對締約國進行訪視。委員會成員為獨立的專家，來自法律、醫學、獄政及政治等不同領域。

這些委員有絕對的權力造訪拘禁處所，包括監獄、兒童拘留所、警察局、軍隊營房和療養院所，並享有完全的行動自由，以了解受拘禁者所受的對待，及對需要改進的地方作出建議。此委員會設立後三年間（至2000年1月）已定期訪視67次，不定期29次。

The Council of Europe's efforts to guarantee human rights have placed increasing emphasis on preventing violations, and in this spirit the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted in 1987. In comparison with the UN Torture Convention of 1984, it emphasized prevention and set up a Committee for Prevention of Torture (CPT) to ensure compliance.

The CPT's members are independent and impartial experts from a variety of backgrounds, including law, medicine, prison affairs, and politics. They visit places of detention—e.g., prisons and places of youth detention, police stations, army barracks, and psychiatric hospitals—to *see* how detainees are treated and, if necessary, to recommend improvements. By January 2000 the CPT had made sixty-seven periodic and twenty-nine ad hoc visits.

European Court of Human Rights 歐洲人權法院

歐洲人權法院位於法國史特拉斯堡，它的權限包括詮釋歐洲人權公約與受理個人請願案件及跨國的申訴（個人請願必須在各會員國內的救濟制度都用盡的情況才被允許）。歐洲人權法院的案例法在人權法的詮釋上具有廣泛及重要的影響力，並為位於盧森堡的歐洲法院所採用。*另見* Council of Europe; European Convention on Human Rights.

The European Court of Human Rights (ECHR), located in the French city of Strasbourg, has the authority to interpret the European Convention on Human

Rights and to accept cases from individual petitions after the exhaustion of domestic remedies. It may also consider interstate complaints. Its case law is influential in the interpretation of human rights laws and has been cited by the European Court of Justice in Luxembourg. *See also* Council of Europe; European Convention on Human Rights.

European Court of Justice 歐洲（正義）法院

歐洲（正義）法院位於盧森堡，有別於歐洲人權法院，歐洲（正義）法院是歐盟的司法機構。從1969年以來歐洲（正義）法院逐步發展出有關人權的理論。這理論建立於1957年羅馬公約的若干條款、會員國的憲政傳統及會員國所接受的國際條約。近年來歐洲聯盟進一步通過歐洲人權公約，歐洲（正義）法院與歐洲人權法院的整合也不無可能，各自發展前景有待觀察。

The European Court of Justice, located in Luxembourg, is the judicial organ of the European Union. It is to be distinguished from the European Court of Human Rights (q.v.). Beginning in 1969 it gradually included the protection of human rights. It included certain provisions of the Treaty of Rome, the constitutional traditions of the member states, as well as international treaties accepted by member states, especially the European Convention on Human Rights (q.v.).

European Social Charter (ESC) 歐洲社會憲章

歐洲人權公約不涉及經濟、社會權，而以維護民主政體及公民與政治權利為重。為進一步保障社會與經濟權利，於1961年制定歐洲社會憲章，並於1996年修訂，允許集體申訴。

The European Convention of Human Rights of 1950 had not included economic and social rights, but rather emphasized civil and political rights. That void has been filled by the ESC, which was adopted in 1961 and revised in 1996 to allow collective complaints.

Resource: http://www1.umn.edu/humanrts/euro/z33escchp1.html.

European Union (EU) 歐洲聯盟

歐洲聯盟為一個超國家的組織，於1992年成立。歐盟要求有可接受的人權紀錄始能加入，至2007年1月止已有28個會員國。歐盟的總部設在史特拉斯堡，這裡同時也是歐洲人權法院的所在地。*另見* European Union's Charter of Fundamental Rights.

A supra-national organization established in 1992 and comprised of twenty-eight member states (as of January 2007). An acceptable human rights record is a prerequisite to membership. The EU is headquartered in Strasbourg, as is the European Court of Human Rights (q.v.). *See also* European Union's Charter of Fundamental Rights.

European Union's Charter of Fundamental Rights 歐洲聯盟基本權利憲章

歐洲議會、部長理事會與歐盟在2000年共同宣言佈歐洲聯盟基本權利憲章，它是一份政治宣示，不具法律效力。但由於在歐洲人權法院辯護中被引用，影響日增。然而歐洲聯盟基本權利憲章與歐洲人權公約及歐洲人權法院的判例如何整合仍是一個爭論的議題。

Proclaimed by the European Parliament, the Council of the European Union and the European Union in 2000. The Charter is directed at the EU as an institution, and not at the member States. It was adopted as a political declaration and has no formal legal status. Nonetheless it has been cited in arguments before the European Court of Justice. It remains controversial as to how it can be reconciled with the commitments of the European Convention and the case law of the ECHR.

Euthanasia 安樂死

安樂死是協助安寧死去的行動，（牛津英文字典）。雖然安樂死並不必然具有個人意志的表達，但在當前的用法常被認為隱含了個人的意願。一個法律上的界定是：「在個人的要求下謹慎地終結他的生命。」或「基於病人（自願）的要求，由醫生有效及從容地終結病人的生命。」(Dutch Government Commission, 1985)。直到2001年，只有美國的奧勒岡州及荷蘭已經合法化安樂死的執行。但在奧勒岡州及荷蘭，這些病人必須患有經醫學專家認定無法治癒的疾病，同時病人們必須是有能力做決定的。在美國其他各州，安樂死是犯罪行為，是一種殺人的行為。安樂死有別於常見的協助自殺，後者指涉病人必須採取若干行動來結束他的生命，而安樂死的病人可能由於身體衰弱不能採取任何行動。*另見* Suicide, assisted.

"The action of inducing a gentle and easy death" (Oxford English Dictionary). Although by that definition any expression of the person's will is not necessary, in current usage it is sometimes implied that there should be. In 1985 a Dutch government commission defined euthanasia as "the deliberate termination of an individual's life at the individual's request," or "the active and deliberate termination of a patient's life, by a doctor, on the patient's (voluntary) request."

Aside from the Netherlands, only the single U.S. state of Oregon has legalized euthanasia. In both jurisdictions, to be eligible the patient must have an incurable disease as certified by medical professionals, and must be capable of making the decision to choose euthanasia by him/herself. Elsewhere in the United States euthanasia is a crime, a form of homicide. It is distinguished from the somewhat more widely accepted act of assisted suicide. The latter involves the patient physically acting to end his or her life, whereas with euthanasia the patient may be physically unable to do so. *See also* Suicide, assisted.

Ex post facto laws 溯及既往

事後的，具有溯及既往的效力。溯及既往的法律可回溯適法的效力，這在刑法上是不被允許的。雖然世界人權宣言中並未直接使用這個詞，但該宣言的第11條第2項規定：「任何人的任何行為或不行為，在其發生時依國家法或國際法均不構成刑事罪者，不得被判為犯有刑事罪。刑罰不得重於犯罪時適用的法律規定」。公民與政治權利國際公約第15條也有類似規定，但卻允許：「任何人的行為或不行為，在其發生時依照各國公認的一般法律原則為犯罪者，本條規定並不妨礙因該行為或不行為而對任何人進行的審判和對他施加的刑罰。」這個規定明確允許審判戰犯及違反人道罪者。

Ex post facto is Latin for "after the fact." An *ex post facto* law applies retroactively, and as such is prohibited in criminal law. Although the term does not appear in the Universal Declaration of Human Rights it is effectively covered in Article 11(2): "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed." There is a similar provision in Article 15 of the ICCPR, which, while it prohibits retroactive application of criminal law, allows for the "trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations" (art. 15). Thus the *ex post facto* exclusion does not preclude bringing to justice perpetrators of war crimes and crimes against humanity.

Exclusionary rule 排除原則

在刑事程序中，若某一證據的取得過程違反憲法或侵犯人權，則這個證據應被排除。在一些法律管轄區內，如美國，若政府侵犯了個人權利，如非法逮捕、拒絕其接受律師協助、強迫取供等，則因此而得的證據不被法官承認。又根據禁止酷刑公約第15條，任何由酷刑而獲得的證言不能引為證據，但被控刑求者的證言為例外。

A rule that excludes evidence from a criminal proceeding, typically because it is a product of the violation of a constitutional or a human right. In some jurisdictions such as the United States, if the authorities violate a person's rights, e.g., make an invalid arrest, deny counsel, or coerce a confession, then evidence so derived is excluded. Internationally, under Article 15 of the Convention against Torture, "any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceeding, except against a person accused of torture."

Exhaustion of domestic remedies 窮盡國內救濟辦法

窮盡國內救濟辦法是國際組織接受個人訴願的先決條件，她/他已試圖在國內司法體系內尋求解決所聲稱的侵犯行為。

公民與政治權利國際公約的第一任意議定書第2條要求所有可能的救濟行為已窮盡。因此，申訴者若能證明在申訴案件送至人權委員會之前，沒有任何可接受的救濟方法時，人權委員會可以就申訴的實質內涵審查。歐洲人權法院也有類似的規定。

A prerequisite that must often be met before international bodies may consider an individual petition (q.v.) or complaint for review. A petitioner must demonstrate that he/she attempted to resolve the alleged violation in the domestic courts before proceeding to seek recourse from an international body. For example, the first Optional Protocol to the ICCPR (art. 2) requires the previous exhaustion of "all available remedies." The European Court of Human Rights has a similar requirement.

Expression and opinion, freedom of 表意自由

世界人權宣言第19條保障持有及發表意見的自由。保障範圍超越語言及文字，其他的溝通模式亦受到保護，諸如基於符號、商業、藝術都在其列。再者，發表意見的自由亦應包括保持沉默的權利。又持有及發表意見的自由不限於散佈訊息的自由，也保障接受訊息的自由。同時，這項自由也不受國界的限制。*另見* Hate speech; Necessary in a democratic society; Fighting words.

Article 19 of the Universal Declaration of Human Rights asserts the right of freedom of opinion and expression. The former includes freedom to hold opinion without interference while the latter concerns the right to communicate in various media. Freedom of expression also includes the right to not speak. The right to freedom of opinion protects not just the right to impart information but also the right to receive information without regard to state borders. *See also* Hate speech; Necessary in a democratic society; Fighting words.

Extradition 引渡

被控犯罪的人民非自願地從一個法律轄區被移送至另一個轄區的法律程序。引渡的雙方需簽訂雙邊條約，其中明訂引渡所適用的罪名。若未簽署雙邊條約，嫌犯可主張留在原本轄區（只要該國同意）或前往其他國家的權利。正常而言，引渡的啟動應符合四個條件：1、需為嚴重的犯罪；2、表面上看來有犯罪行為；3、其行為在兩國都構成犯罪；4、預期能有公平審判，同時可能被課予的罪責亦應與罪刑相符。若嫌犯原本所在的國家沒有死刑，通常不會被引渡至有死刑的國家，除非該國同意不求處死刑（請與劫持作比較）。

Legal process by which persons accused of having committed a crime are involuntarily transferred from one jurisdiction to another. A bilateral treaty is required, which may specify the crimes for which extradition is applicable. Absent such a treaty, an accused person has the right to remain where he is (if the host country agrees), or to travel elsewhere. Normally for an extradition to be carried out, four conditions must be met: the crime must be serious, there must be a prima facie case against the person, the act must constitute a crime in both countries, there must be a reasonable expectation of a fair trial, and the penalty likely to be imposed must be proportionate to the crime. If the country where the accused is residing does not have the death penalty, it usually will not go forward with the extradition if the offence involved is a capital one in the receiving country, unless the prosecuting authorities in the receiving country agree to not ask for the death penalty. C.f. Abduction.

Fact finding 事實調查

指國際人權組織、政府及非政府組織對某一事件或情況從事調查，以判斷是否違反國際人權標準。聯合國於1978年派團到智利調查軍政府違反人權標準即為一例。

Can refer to the function of international human rights monitors in ascertaining the factual circumstances of a situation, and reporting as to whether international standards have been met. It is commonly carried out by international organizations and governments as well as by NGOs. An example is the 1978 UN fact-finding mission to Chile.

Family law 家事法

管理家庭關係的法律，例如：婚姻、收養、父母權力、離婚、父母義務。世界人權宣言第16條第3項及許多國際人權條約都給予家庭特殊保障。

The laws dealing with family relations, such as marriage, adoption, divorce, or parental authority and obligations. Article 16(3) of the Universal Declaration of Human Rights states that the family is "the natural fundamental group unit of society and is entitled to protection by society and the State." Other international instruments such as the Convention on the Rights of the Child provide international legal protection for the family.

Family life, right to 家庭生活的權利

世界人權宣言第16條第3項明示，「家庭是天然的和基本的社會單元，應受社會和國家的保護」。公民與政治權利國際公約第10條承認「作為社會的自然和基本的單元的家庭，應給予盡可能廣泛的保護和協助」，以及進一步承認對母親和兒童的「特殊的保護和協助措施」。

在兒童權利國際公約的序言中，「確信家庭為社會之基本團體，是所有成員，特別是兒童成長與福祉之自然環境，故應獲得必要之保護與協助，才能使其在社區中充分擔當其責任」。因此，兒童權利國際公約不但保障兒童的權利，同時亦尊重父母親的權利和責任。除此之外，公約亦重視地方習俗所衍生的大家庭制度。*另見* Child; Marriage, freedom of.

Article 16(3) of the Universal Declaration of Human Rights affirms that "the family is the natural and fundamental group unit of society and is entitled protection by society and the State."

The ICESCR's Article 10 recognizes that "the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society," and then proceeds to recognize the need for "special protection" for mothers and children.

In the preamble of the Convention on the Rights of the Child (*see* Child) it is noted that "the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that the child can fully assume its responsibilities within the community." Accordingly, this convention not only protects children but "respects the rights and duties of parents." It even notes the importance of the extended family provided by local custom (arts. 3, 5). *See also* Child; Marriage, freedom of.

Fighting words 攻擊性語言

美國聯邦最高法院在Chaplinsky v. New Hampshire一案中所使用的名詞，如果言論的表達構成對和平的立即擾亂，則不在憲法所保障的權利範圍之內。

這個法律概念較仇恨言論為窄。公民與政治權利國際公約第20條規定，「鼓吹歧視、敵視或暴力的語言，應加以禁止。」*另見* Expression and opinion, freedom of; Hate speech.

"Fighting words" is a term used by the U.S. Supreme Court in Chaplinsky v. New Hampshire (1942). In that case, the court held that making speech that by its "utterance will tend to incite an immediate breach of the peace" was not constitutionally protected. It is a narrower legal concept than Hate speech (q.v.), which does not necessarily lead to violence. Article 20 of the ICCPR allows for the prohibition of words that "constitute incitement to discrimination, hostility or violence." *See also* Expression and opinion, freedom of; Hate speech.

Foetus 胎兒

在人權的脈絡下，指懷孕最後六個月的胎兒，有別於最早三個月的胚胎。胎兒在法律上是否具有生命爭論不斷，1973年美國最高法院露對威德(Roe v. Wade)一案對孕婦身體自主權與胎兒生命權利的保障有詳盡的論述。深受天主教教義的影響，美洲人權公約（1969年）第4條第1項認為自從受精那一刻開始，

生命權即受保障（Foetus是英式；Fetus是美式）。*另見* Abortion.

In the context of human rights, this term refers to a prenatal human during the final six months of pregnancy (as distinct from "embryo"—first three months). Whether a foetus is a life for legal purposes has been hotly debated. *See also* Abortion.

Four freedoms 四大自由

美國總統富蘭克林．羅斯福於1941年的演說中，指出同盟國對抗法西斯軸心國的目的，「我們期待（未來）的世界建立在四大主要自由的基礎上：言論自由、宗教自由、免於匱乏的自由、免於恐懼的自由」。由於免於匱乏的自由指涉經濟福利，被視為是一大進步。四大自由的理念激勵了世界人權宣言的制定，因此在世界人權宣言序言第二段中即引述了這四大自由。

In a 1941 speech, U.S. President Franklin D. Roosevelt, outlining the aims of the Allies in fighting the Fascist Axis, announced, "We look forward to a world founded upon four essential freedoms: freedom of speech and expression, freedom of religion, freedom from want, and freedom from fear." The inclusion of freedom from want was seen as a progressive step that included economic well-being in the universe of human rights. The concept of the four freedoms provided inspiration for the drafting of the Universal Declaration of Human Rights, which directly references the four freedoms in the second preambular paragraph.

Framework Convention for the Protection of National Minorities (Europe)

歐洲保護少數族群架構公約

「保護少數族群架構公約」於1994年通過，並於1998年2月生效。

這個公約是第一個具有約束力的多邊文件，其宗旨為保障締約國領土內少數族群的權利與利益，公約中有數項屬於少數族群的自由與權利，包括和平集會的權利、結社的權利、表達意見的自由、思想、意識及宗教的自由，使用媒體的權利，和與語言、教育、跨國合作等相關的自由。

The first legally binding multilateral instrument that addressed the issue of minority rights, approved in 1994 and entered into force in February 1998. It aims to protect

the rights and interests of national minorities within the respective territories of those state parties to the convention. The convention includes several freedoms and rights belonging to minorities, among which are freedom of peaceful assembly; association; freedom of expression, thought, conscience, and religion; and access to the media, as well as other freedoms such as those relating to language, education, and trans-frontier cooperation.

Gay, *see* Sexual minorities.

Gender discrimination, *see* Sex discrimination.

General comments 一般評論

條約監督機構對條約中特定條款所作之解釋，為加強對條約內容的了解，而公佈的指導原則。例如：人權事務委員會針對公民與政治權利國際公約所作的評論。這些評論主要對象是針對公約簽署國，亦對法理學家及法律人士有所幫助，且日後可能成為對公約條款具有權威性的解釋。

In the context of human rights, this term generally refers to a set of guidelines issued by a treaty-monitoring body. For example, the Human Rights Committee has written commentaries on the ICCPR. They are generally intended for state parties, and provide an authoritative interpretation of the treaty's provisions. They are also useful to jurists and practitioners.

Generations of rights 權利世代

捷克學者瓦薩克(Karel Vasak)最先提出權利世代的概念，將人權分作三個世代：第一代、公民與政治權利；第二代、經濟、社會及文化權利；第三代、集體或族群權利。

以上的分類引起不少人權理論家的批評。這些批評包括人權是不可區分的，沒有一項權利比其他權利重要，也沒有一項權利應獲得較優先的保護。再者，也強調集體權利可能傷害到個人權利。

The Czech scholar Karel Vasak was the first to classify human rights into three generations, the first generation referring to civil and political rights; the second generation to economic, social, and cultural rights; and the third to the collective rights or the rights of peoples (in the ethnic sense).

This categorization has come under criticism by many human rights theorists, who contend that human rights are inseparable and there should be no implication that one right is more important than another, or that its protection should come earlier. There is also concern about the danger of individual rights being sacrificed in the name of collective rights.

Geneva Conventions 日內瓦公約

在1949年，紅十字國際委員會草擬了四個公約：

1、日內瓦改善在陸地戰爭中受傷及染病者情況公約

2、日內瓦改善在海上戰爭中受傷、染病者及船難者情況公約

3、日內瓦有關戰犯待遇公約

4、日內瓦有關在戰時保護一般平民公約

1977年兩項議定書擴大了這四項公約保障的範圍：

1949年8月12日內瓦公約附加議定書，有關武裝衝突受難者的保障（第一議定書）。

1949年8月12日內瓦公約附加議定書，有關非國際性武裝衝突受難者的保障（第二議定書）。

有些學者認為上述公約中若干條款已成為國際習慣法的一部份。*另見* Humanitarian law.

These four 1949 Conventions were drafted by the International Committee of the Red Cross (q.v.) and within a year were ratified by a sufficient number of countries to enter into force. They are:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of the Armed Forces at Sea
- Geneva Convention Relative to the Treatment of Prisoners of War
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War

Two Protocols of 1977 expand the protection of the four earlier conventions:

- Protocol Additional to the Geneva Convention of 12 August 1949, Relating to the Protection of Victims of Armed Conflicts (Protocol I)
- Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

Some scholars maintain that many of the requirements of Geneva have reached the standard of customary international law. *See also* Humanitarian law.

Resource: Law of Armed Conflict, http://www1.umn.edu/humanrts/instree/ainstls1.htm.

Genocide 種族大屠殺；滅種

滅種一詞是由二次世界大戰後一位波蘭流亡律師Raphael Lemkin所創造的，最早是用來描述納粹對非亞利安人所進行的滅絕政策或具有相同性質的國際性犯罪（希臘文“genos”代表種族、部落或國家；拉丁文“caedere”意即殺戮）。後來被國際軍事法庭（紐倫堡法庭）所接受，並以此為起訴納粹領導人的依據。之後又被用於聯合國大會的決議中，迅速地成為一個法定用語。滅種的法定定義為：以全部或局部毀滅一個民族、族群、種族或宗教群體為目的的行為。*另見* Autogenocide; Genocide Convention.

This word was coined by Polish lawyer Raphael Lemkin at the close of World War II. Its roots are from the ancient Greek genos which means race, tribe, or nation, and from Latin caedere, to kill. The term now refers to acts committed with the intent to destroy a national, ethnic, racial, or religious group. It was first applied to the Nazi policy of the extermination of the so-called non-Aryan peoples, and was then adopted by the International Military Tribunal (Nuremberg Tribunal), which used the term in the indictments of accused Nazi leaders. It was then included in a General Assembly resolution and quickly became accepted as a legal term. Since then it has been applied to equivalent instances. *See also* Autogenocide; Genocide Convention.

Resource: Adam LeBor, *Complicity with Evil: The United Nations in the Age of Modern Genocide* (2006).

Genocide Convention

防止及懲治危害種族罪公約；種族滅絕罪公約

「防止及懲治危害種族罪公約」是最廣為國際社會接受的人權條約之一。聯合國大會於1948年通過此公約，並於1951年生效。至2006年底，總共有140個國家通過，另有一個國家已經簽署。

此公約不僅將種族大屠殺定義為一種罪行，更將種族大屠殺的陰謀、直接且公開的鼓勵種族大屠殺、意圖執行種族大屠殺或共同執行種族大屠殺列為非法的行為。

針對某些國家對部份條文的保留，國際法庭的諮詢意見指出，防止及懲罰種族大屠殺已有國際習慣法的位階，此公約所彰顯的原則對所有國家都具有約束力，無論是否為締約國。

One of the most widely accepted human rights treaties. Adopted by the UN General Assembly in 1948 and entered into force in 1951, by the end of 2006 it had 140 state parties and one additional signatory.

Not only did the convention make genocide criminal, but it outlawed acts of conspiracy to commit genocide; direct and public incitement to commit genocide; attempts to commit genocide; and complicity to commit genocide. According to the International Court of Justice in an advisory opinion regarding reservations to the Genocide Convention, genocide has acquired the status of customary international law. “The principles underlying the Convention are principles which are recognized as binding on States, even without any conventional obligation.”

Resource: Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, http://www1.umn.edu/humanrts/instree/x1cppcg.htm.

Genocide denial 對納粹大屠殺的公開否認

企圖否認大屠殺曾發生的事實。有兩個例子：

「否認納粹對猶太人的屠殺」。即否認納粹在第三帝國時對猶太人的大規模滅絕行動，或企圖淡化滅絕猶太人的範圍和恐怖的程度。在1993年Faurisson v. France一案中，公民與政治權利國際公約設立的人權事務委員會肯認了Gayssot法案，這個法案修改法國的媒體自由法案，將質疑紐倫堡大審中所定義的違反人道罪的行為罪行化。人權事務委員會支持將一位公開否定曾發生納綷大屠殺的教授判刑，認定法國的法律並未與公民與政治權利國際公約所保障的言論自由有所牴觸，其基本理由為Gayssot法案在尊重他人權利與名譽上是必需的（人權事務委員會判決的原文請見http://www1.umn.edu/humanrts/undocs/html/VWS55058.htm）。

「否認亞美尼亞大屠殺」。土耳其政府的官方政策公開否認1915年開始在該國境內大量亞美尼亞人民被殺害及驅逐的事實。任何公開承認大屠殺事實者都被視為叛國以及破壞國家團結。2004年，亞美尼亞記者蘭克・丁克被依土耳其刑法第301條判刑六個月，原因是他堅持大屠殺確曾發生，因此傷害了「土耳其立國精神」。丁克後來雖獲緩刑，但卻在2007年遭到謀殺。*另見* Expression and opinion, freedom of; Genocide; Holocaust.

The attempt to deny that genocide took place. Two examples:

Holocaust denial, i.e., the denial of the mass exterminations of Jews by the Nazis during the Third Reich, or the general minimization of the extent and horror of the extermination of the Jews. In the 1993 case of Faurisson v. France, the ICCPR's Human Rights Committee considered the Gayssot Act, which had amended France's Freedom of Press Act by criminalizing the contesting of the category of

crimes against humanity as defined in the Nuremberg proceedings. The HRC upheld the conviction of a professor who publicly rejected the Holocaust and concluded that French law was not in contravention of the ICCPR's protection of freedom of expression. Essential to the committee's conclusion was the determination that criminalizing Holocaust denial was "necessary for the respect of the rights or reputation of others (Text of HRC decision: http://www1.umn.edu/humanrts/undocs/html/VWS55058.htm).

Denial of the Armenian genocide. It is the Turkish government's official policy to deny the fact that beginning in 1915 the country's previously large Armenian population was largely killed or expelled. Anyone who publicly affirms the fact of the genocide is deemed a traitor and a threat to national unity. In 2004 Armenian journalist Hrank Dink was sentenced to a six-month prison term under art. 301 of the national penal code; his insistence that the genocide had taken place was deemed to have "insulted Turkishsness." Although the sentence was suspended, Dink was murdered in 2007. *See also* Expression and opinion, freedom of; Genocide; Holocaust.

Group rights/Collective rights 群體/集體權利

在二次大戰後人權運動興起初期，世人關心重點在於個人權利的保障，但70年代以後群體/集體權利概念亦受重視，文化、宗教少數紛紛提出權利訴求。在學術界的討論也不再將群體/集體權利視為自由主義大敵，而轉向群體/集體權利應該且可能兼顧、互補的看法。然而群體/集體權利應由什麼人或哪些人為代表？又強調群體/集體權利是否可能迫害個人權利，剝奪個人自由？仍然是揮之不去的難題。另外，也有人認為，族群的經濟利益也應受到保障。

In the early years of the human rights movement, emphasis was placed on promotion and protection of individual rights. Later group or collective rights became increasingly important, as ethno cultural groups began to demand such rights ranging from the use of these languages and preservation of these traditional cultural practices to political autonomy. While it is not argued that demands of the ethno-cultural group must confront individual rights, they can be regarded as necessary for the enjoyment of individual rights. Nevertheless, the problem of representation for the groups and denial of individual rights within the groups still poses a serious challenge both in theory and in practice.

There is also an argument that groups' economic interests must be protected as well.

Gulag 集中營；勞改營

蘇聯集中營或勞改營指涉蘇聯內部警察所管轄的強迫勞工營，是蘇聯刑法懲罰體系的一部份。雖然勞工營中拘禁各種刑事犯，但以政治犯聞名於世。

勞改營初創於1920年代列寧時期。1928年在史達林統治時代達到高峰，共有476所，遍佈全國，尤以西伯利亞與蘇聯遠東地區最多。由於過度勞動、飢餓與虐待，數以百萬計的政治犯與刑事犯死於勞改營中。如在遠東哥里瑪地區估計有三百萬犯人死亡。

當今勞改營一詞已不為蘇聯專用，北韓勞改營即為一例。

Acronym for "Glavnoye Upravleniye Ispravitelno-trudovykh Lagerey i kolonii" (The Chief Administration of Corrective Labour Camps and Colonies). This was the branch of the Soviet internal police and security service that operated the penal system of forced labour camps, and associated detention and transit camps and prisons in the USSR. While these camps housed criminals of all types, the Gulag system has become primarily known as a place for political prisoners and as a mechanism for repressing political opposition to the Soviet state.

The gulag was first established under Vladimir Lenin during the early Bolshevik years (1920). The vast penal network, which ultimately included 476 camp complexes, functioned throughout the country with many located in desolate Siberia and the Soviet Far East. The system reached its peak after 1928 under Joseph Stalin, who used it to maintain the Soviet state by keeping its populace in a state of terror. Gulag deaths of both political prisoners and common criminals from overwork, starvation, and other forms of maltreatment are estimated to have been in the millions during Stalin's years in power. Most notorious was Kolyma, an area in the Far East about six times the size of France where about three million are believed to have died.

The term is now applied to non-Soviet situations, such as that in North Korea.

Resource: Aleksandr Solzhenitsyn, *The Gulag Archipelago* (1973).

Habeas corpus 人身保護令

是一種法院命令書狀，目的將受逮捕、拘留或囚禁之人帶至法庭上，以確定這些限制人身自由的行為是合法的。1679年人身保障法案是英國史上保障自由的重要法案之一，使得在非法囚禁的狀況下，權利受侵害的人，能有立即、快速的救濟方式。即使世界人權宣言並未使用人身保護令一詞，但是其中第9條、第10條保障免受非法逮捕或拘留的權利，且任何人都有接受公平公開審訊的機會。*另見* Arrest warrant.

Habeas corpus (literally, "That you have the body") is a writ that brings an arrested person before the court. It has the purpose of ensuring that the arrest, detention, or imprisonment is not illegal. The Habeas Corpus Act is one of the great charters of English liberty in that it secures speedy relief from unlawful imprisonment (1679). Although the Universal Declaration of Human Rights does not use the term, Articles 9 and 10 protect against arbitrary arrest or detention, and afford all persons a fair and public hearing of any criminal charge. *See also* Arrest warrant.

Handicapped, *see* Disabled, rights of the.

Hate crime 仇恨犯罪

因被害人的種族、族群、膚色、宗教或國籍等因素為犯案動機，所從事的犯罪行為。在許多國家，仇恨犯罪會加重刑責。

A crime motivated by hatred of the victim's race, ethnicity, colour, religion, nationality, or sexual orientation. In many jurisdictions there is an added penalty if a crime is a hate crime; that is, it is an aggravating circumstance.

Hate speech 仇恨言論

言論自由是最根本的人權之一，但這個自由並非沒有任何的限制，根據公民與政治權利國際公約第19條第3項規定，言論自由的限制必須透過法律程序，並為尊重他人權利與名譽或維護國家安全、公共秩序、公共衛生與道德。一般來說，美國十分堅持言論自由立場，英國對限制言論自由條件較為寬容。

公民與政治權利國際公約第20條第2項即明訂仇恨言論為法律所禁止。任何

鼓勵民族、種族、宗教仇恨的言論而能引起歧視、敵對或暴力都在其列。*另見* Expression and opinion, freedom of; Fighting words.

Although freedom of expression is one of the most fundamental of all human rights, it is not absolute. According to Article 19, paragraph 3 of ICCPR, it may be subject to certain restrictions but only as necessary and provided by law. Limitations can be based on the following considerations: (a) respect of the rights and reputations of others, (b) protection of national security or of public order (ordre public), or of public health or morals.

Article 20, paragraph 2 outlaws "any advocacy of national, racial or religional hatred that constitutes incitement to discrimination, hostility or violence." *See also* Expression and opinion, freedom of; Fighting words.

Helsinki Final Act 赫爾辛基最後議定書

1975年通過的國際協約，在相當程度上緩和了冷戰時期的緊張情勢。此議定書的全名為「歐洲合作安全會議最後議定書」（美國與加拿大也加入）。其第8條主張應尊重人權、基本自由、民主以及法治。

在具體的運作上，赫爾辛基議定書鼓勵成立非政府組織，以監督各國政府履行對議定書的承諾。赫爾辛基委員會是國際赫爾辛基聯盟的成員。

A 1975 international agreement that eased cold-war tensions. Full name: Final Act of the Conference on Security and Cooperation in Europe. (The United States and Canada also participated). Article 8 of the Act called for respect for human rights and fundamental freedoms, democracy, and the rule of law.

The Helsinki process encouraged the creation of non-governmental groups to monitor their governments for compliance with the accords. The Helsinki Committees are members of the International Helsinki Federation.

Resource: Website of the International Helsinki Federation: www.ihf-hr.org.

High Commissioner for Human Rights, Office of the 聯合國人權高級專員

在1993年維也納世界人權會議舉行之後，聯合國大會設立了聯合國人權高級專員這個職位，人權高級專員最主要的職務是在聯合國體系下，職掌人權相關事宜，監督所有人權機構，促進人權公約的批准，實行普世化的標準，人權

高級專員在全球皆有地方辦公室。人權高級專員在聯合國秘書長的授權下，為聯合國人權議題的發言人。

Office established by the UN General Assembly in 1993, that has principal responsibility for human rights activities, including overseeing all other UN human rights bodies, promoting the ratification of human rights treaties, and implementing standards worldwide. The Office of the High Commissioner for Human Rights has field offices around the globe. The High Commissioner operates under the authority of the Secretary General, and is thus the UN's chief spokesperson on human rights issues.

Holocaust 德國納粹政府對猶太人的大屠殺

納粹政權所實行的大屠殺。慘遭屠殺的一千二百萬人中，有六百萬為猶太人。聯合國人權宣言的序言提及激怒人類良心的野蠻暴行，係指希特勒對猶太人所進行的大屠殺，這一系列的屠殺，喚起了世界要保護人權的決心，並且避免人類浩劫悲劇的重演。

世界各地有不少紀念納粹暴行下受害者的紀念碑，在華盛頓首府及以色列的納粹大屠殺博物館尤為出名，在諸多對納粹大屠殺進行研究探討的文獻中，納粹大屠殺存活者埃利．維厄瑟爾(Elie Wiesel)的著作，曾獲得諾貝爾獎。*另見* Genocide denial.

Term used for the killing by Nazis of approximately twelve million people, six million of whom were Jews, the others being members of other ethnic minorities and homosexuals. The international reaction against it was one of the main propellants of the post-war human rights movement. The Universal Declaration of Human Rights' preamble refers to "barbarous acts which have outraged the conscience of mankind."

There are many memorials around the world that commemorate the Holocaust, including the Holocaust Museums in Washington D.C., and in Israel. *See also* Genocide denial.

Resource: Considerable literature has been written on the subject. The writings of Holocaust survivor Elie Wiesel are among those that chronicle this tragedy.

Holocaust denial, *see* Genocide denial.

Homosexual acts 同性戀性行為

在 Dudgeon v. United Kingdom一案中，歐洲人權法院對「性傾向」作出了判決。在本案中，歐洲人權法院檢視北愛爾蘭的法律，並針對申訴者的性行為及刑事責任作出判決。法院認為禁止同性間發生性行為的法律，並非「民主社會中的必要規範」。因此裁定申訴者的性傾向及性行為獲得保護。

法院主張：「沒有合理的理由支持社會有迫切的需要將同性間的性行為視為犯罪，亦沒有任何證據顯示，上述行為會對社會上易受傷害的族群，帶來任何傷害。因此，沒有必要將同性間的性行為罪行化。即使社會中有人必定會認為同性間的私人性行為違反道德，並且難以接受，然而，這種情緒及價值觀，不足以使成年人間合意的同性性行為視為犯罪。」2003年美國最高法院推翻歷年立場，在羅倫斯訴德州(Lawrence v. Texas)案例中，保障基於性別傾向的行為，不受刑法起訴的威脅。*另見* Sexual minorities.

The rights associated with sexual orientation (sexual preference) were considered by the European Court of Human Rights in Dudgeon v. United Kingdom (1982). The court reviewed the criminality of the petitioner's homosexual acts under the then existing law of Northern Ireland. The Court determined that the law was not "necessary in a democratic society" (q.v.), a decision that protected Europeans' right to live according to individual sexual preference and engage in its associated practices. The court held: "It cannot be maintained in these circumstances that there is a 'pressing social need' to make such acts criminal offences, there being no sufficient justification provided by risk of harm to vulnerable sections of society requiring protection or by the effects of the public." The court further stated: "Although members of the public who regard homosexuality as immoral may be shocked, offended or disturbed by the commission by others of private homosexual acts, this cannot on its own warrant the application of penal sanctions when it is consenting adults who are involved."

In 2003 the United States Supreme Court reversed a previous ruling and afforded the right of same-sex consenting adults to have sexual relations (Lawrence v. Texas 539 U.S 558). *See also* Sexual minorities.

Housing rights 擁有住屋的權利

聯合國經濟、社會與文化權利國際公約第11條第1項保障擁有住屋的權利，但在實際生活中難以付之實現。近年來該公約委員會透過審視成員國報告及一

般評論逐步推動這項權利。

The right to adequate housing, though difficult to enforce, has been confirmed by Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. The committee set up by the covenant has been promoting the right to housing through review of reports submitted by state parties and its general comments.

Human Rights Commission

經濟及社會理事會的人權委員會

通常簡稱為人權委員會。聯合國憲章68條授權經濟及社會理事會設立有關經濟與社會事務及以提倡人權為目的之各種委員會。

經濟及社會理事會於1946年設立人權委員會，幾經擴大組織現有53個成員，每三年改選一次，由政府提名並以政府代表身份行使職權，與人權促進及保障次委員會成員以個人身份行使職權的性質不同。人權委員會就保護少數族群、防止歧視及其他相關人權事項，以提案、建議或報告方式，提交給經濟及社會理事會，並協助經濟及社會理事會舉辦聯合國人權相關活動。近年來人權委員會因功能不彰，若干人權紀錄惡名昭彰的國家被選為成員而深受批評。2006年4月聯合國大會決議由人權理事會取代人權委員會。

Article 68 of the United Nations Charter mandates the Economic and Social Council to establish "commissions in economic and social fields and for the promotion of human rights."

ECOSOC created the Commission on Human Rights in 1946. There were fifty-three members (three-year terms) who nominated by country and acted as instructed governmental delegates. The members did not act in their individual or personal capacities. The commission submitted to ECOSOC proposals, recommendations, and reports that dealt with international human rights instruments, the protection of minorities and prevention of discrimination, and related human rights matters. It also assisted ECOSOC in co-ordinating the human rights activities of the UN system. However, governments that denied rights had considerable power on the commission, which increasingly came into disrepute. In 2006 it was thus replaced by the Human Rights Council (q.v.).

Human Rights Committee 人權事務委員會

聯合國公民與政治權利國際條約機構，主要任務為審查締約國的人權報告書（公民與政治權利國際公約第40條）、審理公約所保障的權利受到侵害的個人申訴，也會對公民與政治權利國際公約作出一般性評論。這18位委員是以個人身分行使職權，而非代表其國家，以確保人權事務委員會的獨立性。*另見* Human Rights Council; Optional Protocol No. 1 to ICCPR.

This UN treaty body, made up of eighteen members serving four-year terms (ICCPR arts. 28, 32), reviews periodic state reports (every five years) for their compliance with the ICCPR (art. 40). The committee can hear personal communications alleging violations of the ICCPR (art. 2 First Optional Protocol). The committee also prepares general comments that interpret the meaning and application of the ICCPR. The members of the committee serve in their personal capacity (Individual capacity, q.v.). *See also* Human Rights Council; Optional Protocol No. 1 to ICCPR.

Human Rights Council 人權理事會

聯合國為取代人權委員會而於2006年成立的機構。人權理事會評估會員國的人權紀錄，並起草國際法案，如有關失蹤者和原住民族權利。

人權理事會每年聚會三次，一共聚會十週舊的人權委員會只聚會六週。原本期望理事會由較多支持人權的國家組成，但第一次選舉時，古巴、沙烏地阿拉伯、中國和俄羅斯都取得席位。美國及其他三個國家曾在聯合國大會投票反對人權理事會的設置，他們希望的是一個規模較小的組織（美國後來並未爭取理事會的席位）。

理事會第一件實質的行動是在2006年通過對以色列人權紀錄的譴責案。中國一直企圖將理事會的焦點轉移到美國身上。「這些『人權模範』國在設定人權委員會的議程時通常都很有影響力量，他們打算把委員會變成一種『獵巫』的場所。」（China Daily，2006年6月22日）。

UN body established in 2006, replacing the Human Rights Commission (q.v.).

The council evaluates countries' rights records. It meets three times annually for a total of ten weeks a year (the prior commission only met for six weeks). The hope had been that the council would be comprised largely by pro-human rights nations, but the first selection process resulted in Cuba, Saudi Arabia, China, and Russia gaining seats. It has forty-seven members, compared with the commission's fifty-

three. The United States and three other states had voted in the General Assembly against establishing this council, favouring a still-smaller body. (The United States did not run for a council seat.)

The council's first substantive action in 2006 was to condemn the human record of Israel. China has seemingly been intent on turning the council's focus on the United States. "These 'human rights champions' used to be very influential when it came to setting the agenda of the UN's former Human Rights Commission. They managed to turn the commission into an arena for 'witch-hunting'" (China Daily, 22 June 2006).

Resources: Resolution establishing the Council, http://www.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf;

Human Rights Council website, http://www.ohchr.org/english/bodies/hrcouncil/specialsession/4/index.htm.

Human rights education 人權教育

人權教育本身即為人權的一部分，許多國際人權公約的條款中皆明示人人有接受人權教育的權利。例如世界人權宣言第26條第2項；經濟、社會和文化權利國際公約第13條；兒童權利公約第29條；消除一切形式婦女歧視公約第10條；消除所有形式種族歧視公約第7條。

根據聯合國人權教育十年行動計劃，人權教育是為了建立人權的普世價值，所作的訓練及資訊傳播。人權教育的目的在於加強學習者的技能與知識，及影響他們對下列各項的態度與行為：

(a) 加強對人權和基本自由的尊重；

(b) 充分發展人的個性和尊嚴；

(c) 提倡不同國家、原住民、種族、族群、宗教和語系間的相互了解、包容、兩性平等與友誼；

(d) 促使所有的人成為自由社會體系的一環；

(e) 促進聯合國維持和平的活動。

在人權教育十年計畫結束後，聯合國大會於2005年7月通過世界人權教育計畫，集中於國中、小學的人權教育。

Training and dissemination of information aimed at the building of a universal culture of human rights. The imperative of human rights education is based on the provisions of international human rights instruments, in particular article 26(2) of

the Universal Declaration of Human Rights, article 13 of the International Covenant on Economic, Social and Cultural Rights, article 29 of the Convention on the Rights of the Child, article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, article 7 of the Convention on the Elimination of All Forms of Racial Discrimination (qq.v.), all of which call for the teaching of the subject of human rights.

Following the Plan of Action for the United Nations Decade for Human Rights Education (q.v.), the current emphasis of human rights education is on imparting skills and knowledge, and to effect positive attitudes and behaviour with regard to:

(a) the strengthening of respect for human rights and fundamental freedoms;

(b) the full development of the human personality and the sense of its dignity;

(c) the promotion of understanding, tolerance, gender equality, and friendship among all nations, indigenous peoples, and racial, national, ethnic, religious and linguistic groups;

(d) the enabling of all persons to participate effectively in a free society;

(e) the furtherance of the activities of the United Nations for the maintenance of peace.

In 2004 the General Assembly announced the World Programme for Human Rights Education, and in 2005 it approved a resolution that established a plan for the World Programme (A/Res/59/113B) that focused on primary and secondary schools.

Human Rights Education Decade 人權教育十年

1994年聯合國大會通過決議，將1995-2004年訂為人權教育十年，並指定人權高級專員擬定十年國際行動綱領。除了評估需求及制定政策之外，此綱領目的在於加強人權教育計畫、發展教材、強化媒體角色及宣導世界人權宣言。

The United Nations Decade for Human Rights Education (1995-2004) was proclaimed by the General Assembly in 1994. The International Plan of Action for the Decade was entrusted to the High Commissioner for Human Rights (q.v.). In addition to assessing needs and formulating strategy, the plan sought to build and strengthen human rights education programmes, develop educational materials, strengthen the role of mass media, and promote the dissemination of the Universal Declaration of Human Rights.

Humanitarian intervention 人道干預

傳統的定義為「當一國以大規模且殘酷的手段對待其國民，而這些手段足以震驚國際社會的良知時，一國或多國以武力阻止其暴行的行動」。但近年來，人道干預的定義已不僅僅侷限於對本國國民的保護，更進而包括任何的個人。科索沃及東帝汶是近年來人道干預的兩個例子。*另見* State jurisdiction, essentially within.

Traditionally thought of as the use of force by one or more states to stop a state's maltreatment of foreign nationals. In a contemporary context it has been interpreted more broadly to protect any people, not just those from the intervener's own state. Humanitarian intervention is deemed acceptable when, and only when, the abuse is pervasive and brutal. International intervention in Kosovo and East Timor are examples. *See also* State jurisdiction, essentially within.

Humanitarian law 人道法

俗稱為「武裝衝突法」或「戰爭法」，為國際公法體系中的一部分，為降低國際或國內武裝衝突中人類的傷亡，而制定的原則與規範。人道主義法主要的法源來自於日內瓦公約及海牙公約，其勾勒出武裝衝突時對人權應有的保障。懲治滅種罪公約亦被視為人道主義法的一部分。國際刑事法庭進一步懲罰戰爭罪行，包括滅種罪等。*另見* Geneva Conventions.

Often referred to as the "law of armed conflict" or "the law of war," these provisions of international law comprise a body of principles and norms intended to limit human suffering during armed conflict, whether international or otherwise. Humanitarian law relies heavily on the Geneva Conventions (q.v.) and Hague Convention. The Genocide Convention is also considered part of Humanitarian Law. The International Criminal Court punishes serious crimes in time of armed conflict and war, including genocide, war crimes, aggression, and crimes against peace. *See also* Geneva Conventions.

Humphrey, John P. Jr. 約翰・漢弗萊

加拿大麥基爾大學法學教授，聯合國成立後出任秘書處人權部門主任，協助人權委員會起草宣言，最早提出一草案，稱「漢佛萊草案」。這草案在人權委員會經過討論，交由法國代表卡森修訂，逐步成為最後通過版本。當前在加

拿大政界、學界仍有不少人為他抱不平，認為漢弗萊而非卡森才應該是諾貝爾和平獎得主。*另見* Chang, P. C.; Malik, Charles.

A law professor at Canada's McGill University, John P. Humphrey was recruited to work for the UN as the head of the Division of Human Rights, and was entrusted to prepare the first draft of the Universal Declaration of Human Rights. This draft was given to René Cassin for revision. The Universal Declaration as finally adopted in 1948 by the General Assembly used Cassin's framework, for which he was awarded the Nobel Peace Prize in 1958. Even now there are still politicians and academics, especially in Canada, who argue that it was Humphrey and not Cassin who should have received the prize. *See also* Chang, P. C.; Malik, Charles.

Immunity 豁免

豁免使犯罪行為者免於法律的追究。就傳統國際法而言，國家享有主權，基於平等地位不受其他國家的法律所管轄，他國法院不得對國家行為作出裁定。但對國家行為的豁免只限於政府行為，商業行為不在其列。外交官與領事也唯有作為政府代表時的行為才享有豁免權。在二戰後，若干違反國際法行為，諸如違反人道法、和平與滅種罪行等已不再享有豁免權。因之，國家的官員違反國際法的行為也將受到國際法庭與國內法庭的控訴。若干政府以立法或行政命令試圖擴大元首或政府官員的豁免權，如前智利總統皮諾契一案，也受法院與法學家的質疑。

The shielding of individuals from the jurisdictional reach of the law.

Sovereign states are independent of the jurisdiction of other states. All states are endorsed with equal legal power, and no state may judge another. However, immunity is supposed to extend only to acts that reflect governmental functions, acta imperii, and not extend to commercial acts, acta gestionis. Diplomats and consular officials have immunity when they are acting as legitimate agents of their governments.

Since the close of World War II, immunity has been denied to those implicated in Crimes against humanity, War crimes, or Genocide (qq.v.). Hence agents of states who act beyond the realm of international legality are subject to prosecution by either an international tribunal or domestic courts.

States have often attempted to extend immunity, via legislation or government decree, to heads of state or other state actors. These efforts to afford immunity from justice, as in the instance of former Chilean president Augusto Pinochet, have been challenged as to their legality by courts and legal scholars.

Inalienable right 不可讓渡的權利

不可讓渡的權利意指人類與生俱來的、不能被剝奪、轉讓或放棄的權利。

聯合國世界人權宣言序言第1條明示：「鑒於承認人類家庭所有成員與生俱來的尊嚴及平等、及不可讓渡的權利，乃是世界自由、正義與和平的基礎。」 *另見* Dignity, inherent.

A right that belongs to people by virtue of their humanity, and thus cannot be transferred, denied, or relinquished.

The preamble of the Universal Declaration of Human Rights states that "the inherent dignity and . . . the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." *See also* Dignity, inherent.

Indigenous peoples 原住民

原住民議題在過去二十年來日漸受到重視。國際法對原住民權利保護較多關注。1957年國際勞工組織第106號公約與1991年第169號公約即具法律上效力。又聯合國從1977年也開始起草一項原住民權利宣言。但基於各國缺乏共識，因而對「原住民」一詞也有所保留。2006年，草案終於在人權理事會通過，但大會仍未採取行動。

In the last two decades issues concerning indigenous peoples have become increasingly important in the human rights movement, as the international community began to recognize their claims.

There are now two binding instruments on the subject: an International Labour Organization (ILO) Convention #106 (1957), and ILO Convention #169 (1991).

In 1977 a working group on indigenous population of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities began drawing up a non-binding Draft Declaration on the Rights of Indigenous Peoples. However, a consensus turned out to be difficult to achieve, and some states have maintained reservations over certain key issues, including the very term "indigenous peoples." In 2006 a draft was finally adopted by the UN Human Rights Council, but the issue then stalled in the General Assembly.

Resource: Text of draft declaration, http://www.iwgia.org/graphics/Synkron-Library/Documents/InternationalProcesses/HR%20Council/HRCouncil1streport2006.pdf, pp. 58-73.

Individual capacity 個人身份

當聯合國機構或其他國際組織的官員在不需事先經過其政府同意或與其政府磋商的情況下，即享有言論或行動的自由，他們便是以個人身份參加。公民與政治權利國際公約下所設立的人權事務委員會官員便是以個人及專家身份行使職權。

When members of UN bodies or other international organizations are free to comment and act without approval or consultation with a government, they are serving in individual capacity. The members (experts) on the Human Rights Committee serve in their personal capacity.

Individual petition, *see* European Convention on Human Rights; Human Rights Committee.

Inherent dignity, *see* Dignity, inherent.

Innocence, presumption of 無罪推定原則

被告在被最終審法院判定有罪確定前，應推定其為無罪。聯合國世界人權宣言第11條第1項明示：「凡受刑事控訴者，未經獲得辯護上所需的一切保證的公開審判而依法證實有罪以前，有權被視為無罪」。

A human right accorded to the accused in a judicial process. The criminal defendant is presumed innocent until the case against him/her has been proven in a court of law. Article 11(1) of the Universal Declaration of Human Rights provides: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defence."

Instrument 文件

為一個概括性的名詞，泛指各種具有不同法律效力的人權文件，例如：協議、宣言、條約，公約等。

Instrument is a generic term that, in the context of human rights, includes a variety of documents that may have various legal implications. For example, accords, declarations, treaties, and covenants are all human rights instruments with different legal effects.

Intellectual property 智慧財產權

智慧財產權指涉心智上的創作，包括發明、文學與藝術作品，以及商業上所使用的符號、名稱、圖像及設計等。*另見* Copyright; Property rights.

Creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. *See also* Copyright; Property rights.

Inter-American Commission on Human Rights 美洲人權委員會

為美洲國家組織中的一個機構，其功能為「提倡人權的保障及人權相關事務的諮詢」。

美洲人權委員會可以接受來自個人、團體或非政府組織的申訴，並有權力促成和解及進行調查。

在審理申訴時，美洲人權委員會得針對美洲公約的締約國，對違反美洲人權公約的部分提出建議，或審查美洲人權法院是否應受理申訴。*另見* Organization of American States.

An Organization of American States body, whose self-described function is "to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters."

The IACHR may hear petitions of individuals, groups, or NGOs, and is empowered to seek friendly settlements and to investigate such matters. It may make recommendations regarding violations of the American Declaration of the Rights and Duties of Man (q.v.), or review the petition for admissibility to the Inter-American Court of Human Rights (q.v.) for those states that ratified the American Convention. *See also* Organization of American States.

Inter-American Court of Human Rights 美洲人權法院

依美洲人權公約所成立的美洲國家組織機構，位於哥斯大黎加。美洲人權法院對於願意將人權事務交予其管轄的美洲人權公約締約國，有爭議及諮詢管轄權。未同意接受人權事務管轄權的國家，則可尋求美洲人權法院的諮詢意見。

An Organization of American States (q.v.) body, sited in Costa Rica, and established by the American Convention on Human Rights (q.v.). The court has contentious and advisory jurisdiction among those states that have ratified the American Convention and agreed to submit human rights matters to it. States that are not parties to the court may seek advisory opinions.

Inter-governmental organization, *see* International, interstate.

Internal Displacement: Guiding Principles

境內流民指導原則

由於境內流民並不具有難民的地位，因此對難民權利的保障並不適用於境內流民。聯合國人權委員會(1992)要求對境內流民提出保障，因而發展出此指導原則。

即使這些指導原則並無國際公法的效力，它們卻建立在國際人道法及人權文件的基礎之上，對政府有關境內流民地位與對待的政策，有重要的影響。有數個聯合國的聲明及文件曾引述此原則，非政府組織亦依此項原則，作為保護境內流民的依據。*另見* Internally displaced person (IDP); Refugee.

Inasmuch as an internally displaced person (IDP, q.v.) does not have the legal status of a refugee, the various forms of protection afforded refugees are not available. Thus, a set of principles were developed in response to a request by the Commission on Human Rights (1992). Although they do not in themselves have the force of international law, the principles are based on existing international humanitarian law and human rights instruments and are therefore important in influencing governments on the status and treatment of IDPs. There have been a number of references to the principles in UN statements and documents, and NGOs have used them as guidance in their efforts to protect IDPs. *See also* Internally displaced person, Refugee.

Internally displaced person (IDP) 境內流民

境內流民與難民最大的不同在於難民跨越了國際所認可的疆界，而境內流民雖然被迫離開家園，但卻仍身處在自己的國家中。根據「境內流民指導原則」，由於要避免及逃避武力衝突、全面性的暴力、人權侵害或天然及人為的

災難，「境內流民」或一群人被迫或必須離開自己的家園或居所，但未跨越國際認可的國界。*另見* Internal Displacement: Guiding Principles.

Unlike a refugee who has crossed over an internationally recognized border, an IDP has had to leave his/her home, but has remained in the country.

The introduction of the Guiding Principles on Internal Displacement defines internally displaced persons as those "who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally Recognized State border." *See also* Internal Displacement: Guiding Principles.

International agreement 國際協議

由國家和國際法主體間所訂定的協議。國際協議不必然是條約，而條約則專指由國家與國家間所訂定的協議。

An agreement concluded among states and other subjects of international law. International agreements are not necessarily treaties, as treaties are agreements made only among states (art. 3 of the Vienna Convention on the Law of Treaties, q.v.).

International Bank for Reconstruction & Development, *see* World Bank.

International bill of rights 國際人權法案

這是一個非正式的通稱。在狹義上，指的是世界人權宣言、經濟、社會與文化權利國際公約，以及公民與政治權利國際公約。就廣義而言，還包括了公民與政治權利國際公約的兩個任意議定書以及有關限制和克減規範的西拉庫薩原則。

An informal designation, which in its most narrow sense refers to the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights (qq. v.). More broadly, it sometimes includes the ICCPR's two optional protocols (*see*

Optional Protocol No. 1, and under Death penalty, and Death row phenomenon), and also the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (q.v.).

International Committee of the Red Cross
紅十字國際委員會

紅十字國際委員會自稱，也被認為是一個公正、中立及獨立的組織，其任務為保護受戰爭或國內暴力侵害之受害者的生命安全和尊嚴，並與以提供協助。當衝突發生時，紅十字國際委員會指揮與協調紅十字會及紅新月會從事國際救難活動。為避免衝突對人類所帶來的痛苦，紅十字國際委員會亦致力於人道法及普世性人道原則的提倡和強化。紅十字國際委員會於1863年成立，大部分經費來自瑞士政府。

一些評論家認為由於日內瓦公約及其議定書承認紅十字國際委員會的特殊地位，且根據這些國際公約行使職權，即使紅十字國際委員會是一個非政府組織，但實際上已享有國際法主體之地位。*另見* Anti-personnel weapons; Geneva Conventions; Red Cross and Red Crescent Societies, International Federation of.

The International Committee of the Red Cross (ICRC) describes itself as "an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Red Cross and Red Crescent Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles." Established in 1863, the ICRC receives most of its funds from the Swiss Government.

Since the ICRC exercises functions conferred by the Geneva Conventions and their protocols, and since these treaties recognize its special status, some commentators contend that the ICRC, although non-governmental in character, is in fact a Subject of international law (q.v.). *See also* Anti-personnel weapons; Geneva Conventions; Red Cross and Red Crescent Societies, International Federation of.

International Court of Justice 國際法院

國際法院的前身為國際常設法院，是聯合國主要的司法機構（聯合國憲章第92條），所有聯合國的會員國皆為國際法院規約之當然當事國（聯合國憲章

第93條），國家可接受國際法院強制性的管轄權，或個案管轄權（國際法院規約第35、36條）；管轄權亦可依據條約內容所規定之義務產生，僅有國家才能將爭議事件交由國際法院審議，聯合國大會及其他聯合國機構可以向國際法院尋求諮詢意見。

The principal judicial organ of the United Nations (UN Charter, art. 92), the ICJ is the successor to the Permanent Court of International Justice (q.v.). All UN members are, ipso facto, parties to the Statute of the Court (art. 93), although jurisdiction is a state decision. States can give compulsory jurisdiction to the court or may give jurisdiction on a case-by-case basis (arts. 35, 36 of the court's statute). Jurisdiction can be based on a treaty obligation. Only states can bring contentious matters to the court. The General Assembly and other UN organs may seek advisory opinions from the Court (UN Charter, art. 96).

International Court of Justice, Statute of 國際法院規約

國際法院規約為國際法院的組織法，規範國際法院的組織及職務，於1945年生效，共有七十條條文。*另見* International law.

This 1945 statute stipulates the structure, functions, and powers of the International Court of Justice, a major organ of the UN. *See also* International law.

Resource: http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm.

International Covenant on Civil and Political Rights
公民與政治權利國際公約

「公民與政治權利國際公約」是國際人權法案中的一項文件。這個公約更進一步發展世界人權宣言中的公民和政治權利，將這些權利變成締約國對其境內及在其管轄內之所有人，所必須負擔的法律義務。因此，無論是締約國的公民與否，皆有權享有這些權利。

「公民與政治權利國際公約」所保障的權利包括：生命權（第6條）、禁止酷刑或不人道刑罰（第7條）、奴隸（第8條）、人身自由及逮捕程序（第9條）、被剝奪自由者及被告知之待遇（第10條）、遷徙自由和住所選擇自由（第12條）、接受公正裁判之權利（第14條）、禁止溯及既往之刑罰（第15條）、私生活和家庭（第17條）、思想、良心和宗教自由（第18條）、表現自由（第19條）、禁止鼓吹民族、種族或宗教仇恨（第20條）、集會結社之自

由（第21條、第22條）、家庭的權利（第23條）、兒童的權利（第24條）、真正的定期選舉（第25條）、法律之前平等（第26條）及少數族群之權利（第27條）。公約設立人權委員會，其職權包括檢視締約國的報告書並可提出一般評論。*另見* Human Rights Committee; International Bill of Rights; International Covenant of Economic, Social and Cultural Rights; Optional Protocol No. 1 to ICCPR.

One of the human rights instruments that forms the International Bill of Rights (q.v.). The ICCPR further developed the civil and political rights found within the Universal Declaration of Human Rights and made those rights a legal obligation for ratifying states "for all individuals within its territory and subject to its jurisdiction." The protection of these rights is hence afforded not only to citizens but also to non-citizens.

The ICCPR prohibits torture, or cruel, inhuman, or degrading treatment or punishment (art. 7); slavery (art. 8); ex post facto application of criminal laws (art. 15); advocacy of national, racial, or religious hatred; and arbitrary detention (art. 9). It asserts the rights to life, liberty, and protection from arbitrary arrest (art. 9); detention rights (art. 10); liberty of movement (art. 12); rights before courts and tribunals (art. 14); privacy (art. 17); freedom of thought, conscience, and religion (art. 18); freedom of expression (art. 19); freedom of association (art. 22); family rights (art. 23); children's rights (art. 24); genuine periodic elections (art. 25); equality of rights (art. 26); and minority rights (art. 27).

The ICCPR Human Rights Committee reviews reports from the state parties and may make general comments. *See also* Human Rights Committee; International Bill of Rights; International Covenant of Economic, Social and Cultural Rights; Optional Protocol No. 1 to ICCPR.

International Covenant on Economic, Social and Cultural Rights

經濟、社會與文化權利國際公約

「經濟、社會與文化權利國際公約」是國際人權法案中的一項文件，這個公約更進一步的發展世界人權宣言中的經濟、社會與文化權利，使得這些權利成為締約國所必須負起的法律義務。

「公民與政治權利國際公約」要求締約國「尊重及保障個人的」公民和政治權利，而「經濟、社會與文化權利國際公約」在要求締約國盡義務時，需考慮到締約國間不同的發展程度。「經濟、社會與文化權利國際公約」第2條規定：「每一締約國家應盡最大能力採取個別行動或經由國際援助合作，尤其是經濟和技術方面的援助合作，以期用一切適當方法，逐漸完成本公約中所規範權利之充分實現，尤其是透過立法方式。」

「逐漸完成本公約中所規範權利之充分實現」暗示這些經濟、社會與文化權利不需要被立即實現。然而，締約國必須要負起經濟、社會和文化權利國際公約中的最低核心義務，且不能以缺乏資源做為延宕的理由。經濟、社會與文化權利國際公約所保障的權利包括：工作權（第6條）、組織工會權（第8條）、社會保障（第9條）、家庭（第10條）、相當生活水準（第11條）、健康（第12條）及教育（第13條）。

締約國必須定期提交報告，詳述「這些權利保障的提升」，此報告交由經濟、社會和文化權利委員會，由委員們來檢視締約國針對「經濟、社會與文化權利國際公約」中保障的權利和採取的行動。

A component of the International Bill of Rights (q.v.). The ICESCR further developed the economic, social, and cultural rights found within the Universal Declaration of Human Rights, and made those rights a legal obligation for ratifying states.

Whereas the ICCPR requires parties (states) "to respect and to ensure all individuals'" civil and political rights, the ICESCR obligation takes into account that states are at different levels of development. Article 2 states that such "each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

The phrase "achieving progressively the full realization of the rights" implies, unlike the obligations of the ICCPR, that economic, social, and cultural rights need not be achieved immediately. Yet the view is widely held that such "minimum core obligations" must be met despite claims of lack of resources. Protected rights lie in the areas of: work (arts. 6, 7), trade unions (art. 8), social security (art. 9), family (art. 10), standard of living (art. 11), health (art. 12), and education (art. 13).

States who are parties to the covenant are required to submit periodic reports detailing "the progress made in achieving the observance of the rights" of the

ICESCR. Members of the Committee on Economic, Social and Cultural Rights review these reports to analyse the steps the state has taken to achieve the rights included in the covenant.

International Criminal Court 國際刑事法院

經過長期的努力，設置一個永久國際刑事法院的構想終於在90年代實現。國際刑事法院位於海牙，乃根據1998年通過，2002年生效的羅馬規約所設立。根據規約，國際刑事法院對種族大屠殺、違反人道罪及戰爭罪，具有管轄權。

國際刑事法院與國家的國內管轄權是互補的，除非國內法院不願意或無力起訴，否則國際刑事法院無權受理及審判案件。為了保護美國士兵或軍官不受國際刑事法院調查或審判，美國拒絕簽署羅馬規約。*另見* Crimes against humanity; Genocide; Genocide Convention; Humanitarian law; International Criminal Tribunal for Rwanda.

In 1998 the long-term efforts to create a permanent criminal tribunal came to fruition with the approval of the Rome Treaty; this treaty called for the establishment of an International Criminal Court. The jurisdiction of the ICC, located in The Hague, includes genocide, crimes against humanity, and war crimes that have occurred since 2002 when the treaty came into force.

The court is complementary to national jurisdictions, and allows national judicial systems to take the lead in such prosecutions. The ICC is not permitted to try cases unless the domestic court is unwilling or unable to prosecute. For various reasons, primarily to shield American military officers and soldiers from prosecution by the ICC, the United States rejected the Rome Statute. *See also* Crimes against humanity; Genocide; Genocide Convention; Humanitarian law; International Criminal Tribunal for Rwanda.

International Criminal Tribunal for Rwanda 盧安達國際刑事法庭

盧安達國際刑事法庭是依據聯合國安全理事會第955號決議（1994年11月8日）所成立。當時在盧安達境內，違反國際人道法的情況十分嚴重。為避免對國際和平及安全造成威脅，安全理事會授權成立此法庭。其任務在將1994年間於盧安達犯下種族大屠殺和嚴重侵害國際人道法的人繩之以法，使受害者的正義得以伸張，並促進盧安達國內的和解及維護當地的和平。盧安達國際刑事法庭可以受理盧安達公民於同時期在鄰國所犯下的種族大屠殺和嚴重侵害國際人道法之罪行。盧安達國際刑事法庭的管轄權包括：種族大屠殺、違反人道罪、及違反1949年日內瓦公約第3條及第二議定書第3條之規定。盧安達國際刑事法庭僅對自然人具有管轄權，其職權不及於組織、政黨、行政主體或其他法律主體。即使盧安達國際刑事法庭與國內法院對於1994年間，在盧安達境內或其鄰國所犯下嚴重違反國際人道法的罪行，同時具有管轄權，但若盧安達國際刑事法庭能證明有助於促進國際正義，不論在調查或審理階段，皆享有優先權。*另見* Genocide; Humanitarian law; International Criminal Court.

Special court established in 1994 to address violations of international humanitarian law committed in Rwanda, and as a response to the threat to international peace and security posed by those violations. The mission of the ICTR was to bring to justice persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda in 1994, to render justice to the victims, to contribute to the process of national reconciliation in Rwanda, and to help maintain peace in the region. The ICTR was also authorized to deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in neighbouring states. While the ICTR and national courts have concurrent jurisdiction, the ICTR generally had primacy over national investigations and proceedings at any stage, when so doing proved to be in the interest of international law. *See also* Genocide; Humanitarian law; International Criminal Court.

International Criminal Tribunal for the former Yugoslavia 前南斯拉夫國際刑事法庭

由於自1991年起，在前南斯拉夫的領土內，違反國際人道法的情況十分嚴重，為避免對國際和平及安全造成威脅，聯合國安全理事會第827號決議（1993年5月25日），成立了前南斯拉夫國際刑事法庭。這個法庭的任務是將那些自1991年起，在前南斯拉夫違反國際人道法的人繩之以法，使受害者的正義得以伸張並且遏止類似的情況再度發生，進而重建和平及促進前南斯拉夫境內的族群和解。此法庭的管轄項目包括：嚴重違反1949年日內瓦公約、違反戰爭法及慣例、種族大屠殺和違反人道的罪行。前南斯拉夫國際刑事法庭僅對自然人具有管轄權，其職權不及於組織、政黨、行政主體或其他法律主體。即使前南斯

拉夫國際刑事法庭與國內法院對於從1991年起，在前南斯拉夫境內或其鄰國所犯下嚴重違反國際人道法的罪行，同時具有管轄權，但若前南斯拉夫國際刑事法庭能證明有助於促進國際正義，不論在調查或審理階段，皆享有優先權。*另見* International military tribunals.

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993 by the UN Security Council. It was founded in the wake of violations of international humanitarian law, which were believed to have been committed since 1991 in the territory of the former Yugoslavia, and as a response to the threat to international peace and security that these violations posed. The mission of the ICTY was not only to bring to justice persons responsible for violations, but also to render justice to the victims, to deter future crimes, to prevent revisionism, to contribute to the restoration of peace, and to promote reconciliation among the contending parties. The ICTY purview included grave breaches of the Geneva Conventions (q.v.), violations of the laws or customs of war, Genocide (q.v.), and crimes against humanity. The ICTY had jurisdiction only over individuals (not over organizations, political parties, or administrative entities). While the ICTY and national courts had concurrent jurisdiction, the ICTY generally had primacy over national investigations and proceedings at any stage, when this proved to be in the interest of international law. *See also* International military tribunals.

International Federation of Human Rights 國際人權聯盟

總部設於巴黎的非政府組織，與超過一百個非政府組織合作，致力於人權的監察及提倡。*另見* NGO.

A Paris-based non-governmental organization that works with nearly 100 affiliate NGOs in monitoring and promoting human rights. *See also* NGO.

International Helsinki Federation 國際赫爾辛基聯盟

由非政府組織及非營利組織所組成的團體，其目的在保障歐洲、北美及前蘇聯解體後的中亞各國的人權。其中最主要的任務是監督「赫爾辛基最後議定書」及其後續之文件是否被確實遵守。秘書處設於維也納，一般稱為IHF，負責支援及聯絡擁有四十個成員的赫爾辛基委員會及其他相關的人權團體，並在國際政治領域代表這些團體。IHF亦與未設有赫爾辛基委員會地區的個人人權工作者或人權團體有直接的往來。

The International Helsinki Federation for Human Rights is a self-governing group of non-governmental organizations that acts to protect human rights throughout Europe, North America, and the Central Asian republics formed from the territories of the former Soviet Union. A primary specific goal is to monitor compliance with the human rights provisions of the Helsinki Final Act and its follow-up documents. A secretariat based in Vienna, commonly referred to as "the IHF," supports and provides liaison among forty member "Helsinki committees" and associated human rights groups, and represents them at the international political level. The IHF also has direct links with individuals and groups supporting human rights in countries where no Helsinki committees exist. Website: http://www.ihf-hr.org/index.php.

International humanitarian law 國際人道法

國際人道法源自習慣法，但從十九世紀後條約的比重日漸增多，許多習慣法也多成文法化。其中最有名的條約為上世紀初的海牙公約與1949年的四個日內瓦公約，以及1977年日內瓦公約的兩個議定書。這些習慣法與條約，通稱人道法，用於規範戰爭中的行為，包括對平民與俘虜的對待等，以減低戰爭帶來的傷害與痛苦。*另見* Humanitarian law.

International humanitarian law grew out of customary law. Since the second half of the nineteenth century, however, treaties have become the more important source of such law. Among the treaties, the Hague Conventions at the turn of the century, the four Geneva Conventions of 1949, and two Protocols of 1977 (qq.v.) are some of the more significant treaties. The treaties cover a variety of problems, from the protection of wounded combatants and prisoners of war, to civilian populations affected by military actions in occupied territories. *See also* Humanitarian law.

International Labour Organization 國際勞工組織

國際勞工組織根據凡爾賽和約成立於1919年，於1946年加入聯合國體系，目前為聯合國下之一獨立機構，總部設於瑞士日內瓦。截至2005年底為止，總共有179個會員國，由勞方、資方及政府共同代表。國際勞工組織是所有國際機構中，唯一允許非政府部門與政府部門共同充分參與的機構。1998年通過的「工作基本原則與權利宣言」(Declaration on Fundamental Principles and Rights at Work)明示所有會員國均應尊重和提倡的四項原則：結社與集體協商權利、廢除

強制勞動、工作場所中機會的均等及對待、廢除童工。

A specialized, independent agency of the United Nations concerned with labour issues. The ILO, based in Geneva, was founded in 1919 under the Treaty of Versailles. It joined the UN system in 1946. It has 179 member countries (2005). In addition to government representatives, there are representatives of workers and employers. The ILO is the only international agency in which non-governmental sectors of society participate fully with governments. The 1998 Declaration on Fundamental Principles and Rights at Work sets out the four principles that every ILO member must respect and promote: freedom of association and the right to bargain collectively; abolition of any forced labour; equal opportunity and treatment in the workplace; and the elimination of child labour.

International law 國際法

英國哲學家傑諾米．邊沁於十九世紀創造出「國際法」(International Law)一詞，取代了過去使用的「萬國公法」(Law of Nations)。邊沁認為這些法律只規範國家的權利和義務，但隨著時間所帶來的改變，目前國際法的範疇逐漸擴大，亦包含個人及其它形式的法人。

聯合國國際法院組織法第38條第1項將條約、國際習慣、一般法律原則、判例與學說視為國際法淵源。*另見* Law of nations; Subjects of international law.

In the nineteenth century, British philosopher Jeremy Bentham coined the term "international law," replacing what was then called the law of nations. It was his concept that the law was concerned only with the rights and duties of states. International law now includes concerns for the individual as well as other legal personalities.

Article 38(1) of the Statute of the International Court of Justice describes the sources of international law as: (a) international conventions, (b) international custom, (c) the general principles of law, (d) as a subsidiary means, judicial decisions and the teachings of the most highly qualified publicists. *See also* Law of nations; Subjects of international law.

International military tribunals 國際軍事法庭

紐倫堡國際軍事法庭是歷史上第一個國際軍事法庭，依據1945年8月8日簽訂之倫敦協議所設立。由蘇聯、英國、過渡期之法國及美國所簽訂，目的是對

納粹戰犯進行審判，十九名被告遭到定罪，三人無罪釋放，其中十二人被處以死刑。

另一個法庭於戰後成立，通稱為東京法庭，之前被稱為「遠東國際軍事法庭」(IMTFE)，二十五人被定罪，其中七人被處以死刑。*另見* Crimes against humanity; Genocide; International Criminal Court; International Criminal Tribunal for the former Yugoslavia; International Criminal Tribunal for Rwanda; Peace, crimes against.

The first such court was established in Nuremberg, Germany, pursuant to the 1945 London Agreement among the Soviet Union, the United Kingdom, the provisional French Republic, and the United States to try accused Nazi criminals. Nineteen defendants were convicted and three were acquitted. Twelve Nazis found guilty of international crimes were sentenced to death.

Another tribunal was established after the conclusion of the Pacific War. It was formally known as the International Military Tribunal for the Far East (IMTFE), and more commonly as the Tokyo Tribunal. Twenty–five were convicted and seven were sentenced to death. *See also* Crimes against humanity; Genocide; International Criminal Court; International Criminal Tribunal for the former Yugoslavia; International Criminal Tribunal for Rwanda; Peace, crimes against.

International Monetary Fund 國際貨幣基金

國際貨幣基金與世界銀行同時設置於1944年，它的任務在於促進國際貨幣事務的合作，推動國際貿易的成長與平衡發展，以求達到高度就業與真正收入的提升。然而，由於國際貨幣基金的決定權是以一個國家的經濟規模以及這個國家對於國家基金資本的承諾為準，實際上決定大權卻操之於富裕的工業化國家。歷年來國際貨幣基金被批評為堅守一個教條式的立場，不顧貸款國家個別的情況，貸款的條件十分地苛刻。因之，一些貧窮國家的經濟發展政策都不能不遵從國際貨幣基金的立場，強調自由市場與平衡預算，而不顧人民的福利。近年來，許多勞工階級與環保團體、青年以及學生為了反對國際貨幣基金與世界銀行的政策而走上街頭。*另見* World Social Forum.

Established in 1944, at the same time as the founding of the World Bank, to promote international monetary cooperation through consultation and collaboration, and to facilitate the expansion and balanced growth of international trade so as to contribute to the promotion and maintenance of high levels of employment and real income. However, as the voting in the decision-making and executive board is weighted in

accordance with the size of the economy of each country and its contribution to the fund's capital, the rich industrial countries have the power of decision. Through the decades the IMF has been criticized for taking a doctrinaire monetarist approach. It is seen as insensitive to the international situations of borrowing countries and imposing onerous conditions, tending to dictate to the poorer nations what strategy of economic development to pursue, emphasizing free market and a balanced budget, and neglecting the well-being of the poor. In recent years many labour unions and environmental groups as well as youth and students have taken to the streets in opposition to the policies of the IMF and World Bank. *See also* World Social Forum.

International organizations, *see* International, interstate.

International, interstate 國際；國與國之間

「國際」(international)一詞的涵意很廣，可能指涉一個以上國家的人民或實體的關係，並不必然代表國家。

「國家間」(interstate)則指兩個或兩個以上國家間的關係。「國家間組織」的法律權限乃建立在界定和限制組織權限的條約之上，其中最廣為人知者如聯合國、歐洲聯盟以及美洲國家組織。而在同類的組織中，有一種特別的機制，處理的是多邊關係中的特定議題，如國際刑警組織及全球郵政聯盟。在國家間組織中，只有國家擁有投票權。*另見* Interstate complaints.

雖然國家間組織也常被用來指涉國際組織，但國際組織也可以是非政府組織，這類由不同國家的人民或團體所組成的。另有一種「政府間組織」，這並不是「國家間組織」（甚至不是國際的）。例如像國際議會聯盟，或國際間姐妹市的結合，就是這種非國家的政府間組織之例子。*另見* Interstate complaints.

The term "international" is very broad and can refer to a relationship involving people or entities from more than one state; they need not be representatives of a state per se.

The term "interstate" refers to a relationship between two or more states. The legal competence of an interstate organization is established by treaties that define and limit the organization's legal competence. The United Nations, the European Union, and the Organization of American States are among the best-known interstate organizations. Also included in this category are specialized agencies that reflect the need to deal with specific matters on a multilateral basis. Examples of such interstate

organizations are the International Criminal Police Organization (Interpol), and the Universal Postal Union. Only states have voting power in an interstate organization.

Although interstate organizations are often loosely referred to as "international organizations," an international organization can also be, for example, an NGO comprised of people or organizations from different countries. There are also inter-governmental organizations that are not interstate organizations (and perhaps not even international). The Inter-Parliamentary Union or international sister-city arrangements are examples of non-state inter-governmental organizations. *See also* Interstate complaints.

Interstate complaints 國家間相互的申訴

若干人權機構受理締約國間相互提出的申訴，例如：歐洲人權法院有權受理申訴。歐洲人權公約第33條規定：「若締約國聲稱其他締約國違反公約及其議定書內容，得將案件提交法院審理。」

在美洲國家組織系統，申訴是具有選擇性的，惟有締約國公開聲明接受申訴，法院才能審理締約國間對彼此的申訴（美洲人權公約第45條）。公民與政治權利國際公約所設立的人權事務委員會也有類似的程序，但迄今還未有任何國家對其他國家提出申訴。*另見* American Convention on Human Rights; European Convention on Human Rights; International Covenant on Civil and Political Rights.

Some human rights bodies permit complaints between contracting state parties. For example, the European Court of Human Rights can hear an interstate complaint. "Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols by another High Contracting Party" (European Convention on Human Rights, art. 33).

The Organization of American States system makes interstate complaints applicable only to those state parties who have made a declaration allowing such a complaint (American Convention on Human Rights, art. 45). There is a similar option to bring an interstate complaint to the Human Rights Committee (ICCPR, art. 41), though no such complaint has yet been made. *See also* American Convention on Human Rights; European Convention on Human Rights; International Covenant on Civil and Political Rights.

Judicial review　司法審查

法院針對法律違憲或行政權濫用的審查權力。美國與大部分歐洲國家不同，並未設立所謂的憲法法庭專門負責執行違憲審查。美國憲法並未明文授予任何政府機構這項權力，但1803年聯邦最高法院在馬伯瑞訴麥迪森(Marbury v. Madison)案中，宣告一項法律違憲無效。自此，一般法院即擁有違憲審查權。但此權力的行使必須透過對爭議的裁決，不得以諮詢意見的方式為之。二十世紀下半葉，美國最高法院藉由這項權力推動對公民自由的保障。

The power of a court to review the constitutionality of law or executive action. Unlike most European states, which have constitutional courts to review laws for constitutionality, the American constitution does not give any branch of government primary responsibility for interpreting it. It was not until 1803 in the case of Marbury v. Madison that the Supreme Court, relying on interpretation and the experience of British common law, took it upon itself to declare a law unconstitutional. American courts are empowered to Judicially review a law or governmental action only when there is a case and/or controversy. During the second half of the twentieth century the Supreme Court used this power to advance civil liberties.

Jury trial　陪審團審判

在英美法系下，陪審團制度是保障公民權利主要的機制之一。陪審團審判將事實及犯罪意圖的認定交給一般民眾，而非交由政府決定。因此，陪審團員必須依賴自身的對錯和正義的概念，並適用法律對案件作出判決。

A fundamental procedural mechanism for the protection of civil rights in Anglo/American law. The right to a jury trial protects the individual by giving the power to determine the facts (including the intent of an accused) to ordinary people rather than the state. Jury trials rely on the people to judge the merits of a case using their own sense of what is right and just, and lets them apply the facts to the law.

Just war　義戰

義戰的概念由來已久，不少學者回溯到古代羅馬西塞羅的論述。後來這個概念逐漸有了共識：一部分有關戰爭的正義，也即發動戰爭的目的是否是正義的；另一部分涉及戰爭中的正義，也即戰爭中所採取的手段是否正義。當代國際法也深受義戰概念的影響，倫敦協議第6條區分兩類戰爭：侵略戰爭或自衛。

紐倫堡大審對侵略戰爭的懲罰即是一個說明。聯合國憲章也保留單獨或集體自衛的權利，而安理會有權界定侵略行為並採取集體安全措施。*另見* Peace.

The concept of just war can be traced to ancient time, with Cicero's discussion on war waged by Rome. The concept was later divided into two parts: jus ad bellum, justice of war, that is, if the aims of the war are just; and jus in bello, justice in war, the manner in which the war is conducted. Contemporary international law incorporated this concept into its system. Article 6 (a) of the London Agreement (*see* International military tribunals) distinguished between war of aggression and self-defence. The UN Charter maintains this distinction as a fundamental legal principle, recognising "the inherent right of individual or collective defence if armed attack occurred against a member" (art. 51) and the authority of the Security Council to identify an "act of aggression" and to authorize collective action against an aggressor (arts. 41, 42). *See also* Peace.

Juvenile justice　未成年審判制度

是一種針對未成年人所設計的審判制度。從歷史上來看未成年人權利很少受到保障，二十世紀兒童權利公約或其他國際文件，例如：聯合國少年司法行政最低準則的修訂對未成年人權利有較多保障。

許多國家現今已著手進行司法改革或立法設立有別於一般刑法程序，以保護依刑事罪名起訴或行為不當的未成年人。*另見* Child.

The juvenile justice system is a system of substantive law and process applicable to children. States have generally protected children inadequately throughout history. With the Convention on the Rights of the Child and other international instruments such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, international human rights law has attempted to improve this situation in the twentieth century.

Many countries have seen reform in this area, or are considering legislation that provides protection to children accused of criminal acts or delinquent acts, allowing them to be adjudicated outside of the ordinary criminal processes. *See also* Child.

Killing field 殺戮場域

殺戮場域被用來指涉1975年赤棉游擊隊攻佔柬埔寨首都之後大舉屠殺。赤棉政府既殘殺前政府官員，也不放過受過教育的國人。根據不完整統計在短短數年內，最少約有十萬人，最多三十萬人被殺，另外數萬人被刑求。1978年越南邊界東區又有十萬人被殺，包括受牽連的赤棉幹部。這幾次大屠殺在越南入侵柬埔寨後才結束。

Term used to describe the massive killing of Cambodians by the Khmer Rouge government against its own population. When the Khmer Rouge guerrillas entered Phnom Penh in 1975, supposedly bringing the civil war to a close, they began a systematic purge of anyone who had served the previous government or was educated and considered an opponent of the new government. It is estimated that between 100,000 to 300,000 Cambodians were summarily executed, and 20,000 others tortured. In 1978 in what came to be known as the "eastern zone massacre," more than 100,000 persons, even including Khmer Rouge cadres, were killed. The massacres ended only with the invasion by Vietnam.

King, Martin Luther Jr. 馬丁・路德・金恩

美國黑人民權運動領袖，出身南部教會，擅長演講。1963年在華府以「我有一個夢」為題，主張種族平等，獲得好評。受甘地影響，主張非暴力手段、漸進改革，1968年被暗殺。他的妻子科瑞塔・史考特・金恩繼承他的事業，努力不懈。金恩的生日1月15日已被定為國定假日。

A clergyman from America's Deep South and a well-known civil rights leader. A great orator, Dr. King's 1963 "I have a dream" speech in Washington inspired millions around the world. Influenced by Mohandas Gandhi's philosophy of non-violence, he led the struggle for racial equality. After Dr. King's assassination in 1968, his widow, Coretta Scott King, continued his fight. His birthday, January 15, was designated a national holiday in the United States.

Kosovo 科索沃

科索沃原是前南斯拉夫邦聯的一省，享有自主權。1990年後，科索沃境內阿爾巴尼亞人深受塞爾維亞的壓迫，嚴重侵害人權的事件一再發生。在談判協議未能遏止對阿爾巴尼亞人的壓迫之後，北大西洋公約國家終於1999年對科索沃進行大規模轟炸。衝突結束後估計在一百五十萬阿爾巴尼亞人中有90%離鄉背井，無家可歸。當今在聯合國組織協助之下重建家園並逐步邁向獨立，但科索沃如何保障塞爾維亞少數仍有待進一步談判。

Former Yugoslavia province, populated predominantly by ethnic Albanians. Beginning in the 1990s, serious violations of basic rights of Kosovans by Serbia were reported that finally led to NATO air attacks from March to June 1999. When the conflict was brought to an end, over 90 percent of Kosovo's population of 1.5 million people were internally displaced or became refugees in the neighbouring areas of Albania, Macedonia, and elsewhere. Since then, pursuant to a UN mandate and with the protection of the UN (UN Mission in Kosovo, UNMIK), Kosovo has been rebuilding its society. Although technically it remained part of Serbia, as of this writing (July 2007) Kosovo appears on the path to independence. However, many issues remain to be resolved, including the protection of the Serbian minority there. As of 2006, negotiations on Kosovo's future continue.

Labour rights 勞工權利

世界人權宣言第23條保障「人人有權工作，自由選擇職業、受公正和合適的工作條件並享受免於失業的保障」。這項權利的保障包括「不受歧視獲得同等酬勞」、「享有公正和合適的報酬」、「組織工會」的權利。

社會、經濟與文化權利國際公約第三部份對此項權利及其內涵作了更詳細地規定，例如「公平的薪資」、「基本可接受的生活」、「安全衛生的工作環境」等。國際勞工組織公約對勞工權利也提供了廣泛地保障，其中第6至第8條列舉了適用於勞工的各項權利，諸如公平地報酬，安全與衛生的工作環境，平等升遷、休息與休閒的機會，適當地工時，組織和參與集體協商的權利。另有不少的法律處理特定的勞工議題。*另見* International Labour Organization; Trade unions.

Article 23 of the Universal Declaration of Human Rights guarantees "the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." Included within this right is the right to "equal pay without discrimination," "to just and favourable remuneration," and the right to "form trade unions."

Part III of the ICESCR provides a more explicit formulation of this right and its components, such as "fair wages," "decent living," and "safe and healthy working conditions." The International Labour Organization (q.v.) conventions also provide extensive protection for the right to work. Articles 6 through 8 list the various rights applying to workers, including fair remuneration; safe and healthy working conditions; equality of opportunity for promotion; rest, leisure, and reasonable hours; and the right to organize and engage in collective bargaining. There are also numerous instruments that deal with specific labour issues. *See also* International Labour Organization; Trade unions.

Resources: See "Employment and Forced Labour" instruments under http://www1.umn.edu/humanrts/instree/ainstls1.htm.

Labour unions, *see* Trade unions.

Land mines 地雷

埋藏在地下的一種炸彈，當人或車輛經過時，炸彈即被引爆。

由於地雷威脅的對象，並無軍人或平民的區分，甚至在武裝衝突或戰爭結束後，威脅依然存在，因此國際社會逐漸形成一股反地雷的共識。多年來紅十字國際委員會致力於禁止地雷的推動。1990年初，一個廣大的非政府組織聯盟取而代之，集合了六十幾個國家中一千兩百個團體共同努力。在短短幾年內通過了「禁止地雷之使用、儲存、製造和運送以及銷毀地雷公約」(the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction)，並於1999年3月生效。迄今已經有超過一百個國家批准此公約。美國雖承諾要致力於地雷的消除，但尚未批准此公約。該公約被認為是非政府組織最成功的一個案例，也是一百年來，一項武器被禁止，而非只是管制它的使用而已。

A bomb that is buried in the ground and is detonated when a person or vehicle goes over it.

Because of the indiscriminate dangers to non-combatants, often long after a conflict has been concluded, the use of land mines has come under international scrutiny. The ICRC has been making efforts to ban land mines. In the early 1990s a broad coalition eventually numbered more than 1,200 NGOs in sixty countries came together to promote the cause. In the span of a few years, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction was adopted; it entered into force in 1999. Over 100 states have ratified it. A major state that has not ratified the treaty is the United States, although it has made a commitment to work toward the elimination of land mines.

This convention is judged to be a great success by NGOs, whose efforts brought this treaty to fruition. For the first time in a century, a major, traditional weapons system has not merely been regulated, but banned outright.

Law of Nations 萬國公法；國際公法

在十九世紀之前，「Law of Nations」一詞用來代表國際公法，然而這個詞彙已逐漸被「International Law」所取代。*另見* International law.

Prior to the nineteenth century this was the term given to the body of law we now

call "international law." Although the term remains in use, it has generally been replaced by the term "international law" (q.v.).

Law of war, *see* Humanitarian law.

Law, rule of 法治

法治的概念與西方自由主義傳統密不可分。為了保障個人權利，法治必需建立在政府權力分立的基礎上。在民主與多元國家，司法獨立最為關鍵。法治有別於「依法而治」，後者常被專制政體的統治者用來維持政權的穩定而非保障人權。

The idea and ideal of the rule of law is closely tied to the liberal state and the liberal political tradition of the Western nations. It mandates some minimum degree of separation of government powers for the protection of individual rights. An independent judiciary is indispensable in a democratic and pluralist state. It is to be distinguished from "rule by law," which is a tool used by authoritarian rulers to maintain order without necessarily honouring human rights.

Lawyer, *see* Counsel, right to.

League of Nations 國際聯盟

源於美國威爾遜總統(Woodrow Wilson)的「十四點計劃」。國際聯盟於第一次世界大戰結束後成立，目的在於以集體安全體制維護世界和平，避免重蹈第一次世界大戰的覆轍。即使二次大戰後國際聯盟後來被聯合國所取代，但其下如國際勞工組織、國際永久法院（國際法院）等組織，仍舊成為聯合國體系的一部分。

Multilateral inter-state organization founded after the close of World War I. The proposal for such an organization was included in American President Woodrow Wilson's "Fourteen Points," which emphasized the need to ensure world peace through a collective security system. The Covenant of the League made no mention of human rights. Although the organization failed, after World War II many of the League's features, such as the International Labour Organization and the mandate system, became part of the UN regime.

Lesbian, *see* Sexual minorities.

Libel 誹謗

Libel是書面形式的誹謗。當一個人認為因他人公開的不實陳述，使其名聲遭到侵害，得採取訴訟的手段，向他人尋求損害賠償。*另見* Defamation.

Written defamation of character. To the extent that domestic law provides, a person who believes that her or his name or reputation has been publicly harmed by false writings can institute a lawsuit against the publication and/or author and seek monetary compensation for the damage. *See also* Defamation.

Liberalism 自由主義

自由主義，或較嚴格來說，西方自由主義政治思想的傳統，與當代人權運動的關係密不可分。自由主義核心價值是平等、反歧視與保障個人權利。多年來一個爭論是消極權利／自由，與積極權利／自由的對立。前者較容易理解，也就是那些政府不能任意干涉的權利與自由，如言論自由等，而後者指個人應得，也就是政府必須採取具體政策與措施，個人才能享有的權利與自由，如受育權或社會福利政策。然而，自由主義的國家在制度及實踐方面有多樣的面貌。

The Western liberal political tradition, closely related to the modern human rights movement. Emphasis has generally been placed on equality, non-discrimination, and individual rights.

A debate has been going on for many decades positing negative rights/liberty against positive rights/liberty. Negative rights/liberty is understood as those rights or liberties in which the state is not permitted to interfere, while positive rights/liberties refers to entitlement of individuals that the state must accommodate, such as access to education or social welfare policy. Nonetheless, liberal states exhibit a large variety of forms of institutions and practices.

Resource: Henry J Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals,* 2000, pp. 361-66.

Liberty 自由

自由具有數層涵意，主要的想法在於免於受干擾的自由，包括：第一、免於受限制或控制的狀態；第二、依個人意願及方式行動、信仰及表達自己的權利及權力；第三、在生理及法律上免受監禁、奴役和強制勞動的狀態。

The term has several meanings, all centred on the idea of freedom from interference. First is the condition of being free from restriction or control. Second is the right and power to act, believe, or express oneself in a manner of one's own choosing. Third is the condition of being physically and legally free from confinement, servitude, or forced labour.

Life, right to 生命權

生命權（世界人權宣言第3條、公民與政治權利國際公約第6條、兒童權利公約第6條）在人權法及人權理論中，有特別重要的意義。尤拉姆・丁斯坦曾說道，「若沒有生命權的存在，其他的人權便失去意義」。即使是公共緊急狀態下，生命權都無法被克減。然而死刑與墮胎權引起不少的爭論。一些國家宣稱死刑的執行是用以保護生命，但歐盟國家已經廢除死刑。又另外若干國家以保護生命權之名，對其他權利加以限制，例如：墮胎權。*另見* Customary international law; Death penalty; Derogation of rights .

The right to life (art. 3, UDHR; art. 6, ICCPR; art. 6, Convention on the Rights of the Child) has a special importance in human rights law and theory. As Yoram Dinstein noted, "If there is no right to life, there would be no point in the other human rights." It is an inalienable right; there can be no Derogation (q.v.) of it under ordinary circumstances even during public emergencies (art. 4, ICCPR).

However, such issues as the Death penalty (q.v.) and abortion rights have been hotly debated. The use of the death penalty in some jurisdictions, it is argued, is legitimate in that life is taken to protect life. However, many states, especially in Europe, have eliminated the practice of capital punishment. Some states have limited other rights in the name of the right to life, such as Abortion (q.v.). *See also* Customary international law; Death penalty; Derogation of rights.

Limburg Principles, *see* Cultural rights.

Lustration 淨化

淨化一詞源於羅馬時代的「儀式的淨化」。捷克於1990年代率先引用這個詞。捷克法律規定在共產政權下，曾經為活躍份子或擔任秘密警察線人的人士，在一特定期限內，不得擔任政府公職。許多中歐及東歐國家之後亦紛紛效尤。然而這些法律違反了諸如「罪行法定主義」等基本法律原則，被告的行為在行為當時並不違法，因此不得加以懲罰。*另見 Ex post facto* laws.

Lustration is based on an ancient Roman rite of "ritual purification." The word was first used in Czechoslovakia in the early 1990s in connection with a law that temporarily barred from government employment persons who had been active in the Communist regime, or who had been secret police informants. Similar laws were later enacted in many countries of Central and Eastern Europe. Such laws often violate basic rule-of-law principles; for example, they may punish people ex post facto for conduct that had not been illegal at the time it was committed. *See also Ex post facto* laws.

Magna Carta 大憲章

由於英國約翰國王施政專制，引起貴族們的不滿，群起反抗，並以發動戰爭做為威脅，迫使約翰國王於1215年簽署了限制君主基本權力的大憲章。大憲章第39條保障人身自由權，明定未經過同儕的合法判決或依據法律規定，任何囚禁、放逐或剝奪生命都是不被允許的。此即為人身保護令的前身。*另見* Habeas corpus.

Thirteenth-century English charter limiting government power. Because King John had ruled tyrannically, his barons rebelled and committed themselves to war until he agreed to relinquish some of his powers. Article 39 of the Magna Carta held that no man was to be "imprisoned, exiled or destroyed ... except by lawful judgment of his peers or by the law of the land." The Magna Carta also contains the seeds of the modern concept of Habeas corpus (q.v.). *See also* Habeas corpus.

Malik, Charles 查利・馬里克

黎巴嫩哲學教授，黎巴嫩獨立建國後被派駐華盛頓大使兼聯合國經濟、社會理事會代表。在起草世界人權宣言過程中鋒芒漸露，與中國代表張彭春併稱人權委員中思想上兩巨頭。1948年同時擔任經濟、社會理事會主席及大會第三委員會主席，對宣言得以通過，產生決定性的作用。*另見* Cassin, René; Chang, P. C.; Humphrey, John P. Jr.

An author of the Universal Declaration of Human Rights (q.v.). A Lebanese philosophy professor, Charles Malik only reluctantly became a diplomat but went on to play an important role in the UN.

In 1945 Malik was appointed the ambassador to Washington, and also Lebanon's representative at the UN Economic and Social Council. An active participant in the drafting of the UN Universal Declaration of Human Rights, he and P. C. Chang (q.v.) are considered the two intellectual giants in the Human Rights Commission. It was they who, in mid-course, took over responsibility for drafting the final version of the Universal Declaration. *See also* Cassin, René; Chang, P. C.; Humphrey, John P. Jr.

Margin of Appreciation Doctrine 裁量空間原則

歐洲人權法院在其案例中所採行的一種解釋原則。這個標準允許締約國在詮釋歐洲人權公約時有一個裁量的準則，其目的在於維持公約的一致性，並尊重歐洲各國文化、意識形態與法律的多元性。

An interpretive doctrine of the European Court of Human Rights used in its case law. It permits a contracting state a measure of discretion in interpreting the European Convention on Human Rights. The doctrine helps to maintain a balance between uniformity of interpretation on the one hand, and the cultural, ideological, and legal diversity of European states.

Marriage, freedom of 婚姻權

世界人權宣言第16條保障「成年男女，不受種族、國籍或宗教的任何限制，有權婚嫁和成立家庭。」世界人權宣言保障平等婚姻權以及解除婚約的權利，並且要求「婚姻的締結，需經雙方的自由的和完全的同意。」

經濟、社會與文化權利國際公約第10條第1項要求「婚姻必須經男女雙方自由同意。」*另見* Family life, right to.

Article 16 of the Universal Declaration of Human Rights guarantees that "men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family." The UDHR protects equal rights to marry and to dissolve a marriage, and moreover requires that "marriage shall be entered into only with the free and full consent of the intending spouses." Likewise, Article 10(1) of the ICESCR states: "Marriage must be entered into with the free consent of the intending spouses." *See also* Family life, right to.

Masstricht guidelines, *see* Cultural rights.

Mental health 精神健康

雖然對精神障礙與心智障礙者權利的確認尚在初步階段，但已有幾項國際法案處理這個議題。聯合國1971年的「心智障礙者權利宣言」（聯合國譯：智力遲鈍者權利宣言）中主張「心智障礙者所享有的權利，在最大範圍內，與其他人相同」，當這些權利必需受到限制時，限制的程序中「應包括適當的法律保障，以避免心智障礙者遭受任何形式的侵害」（第1條、第7條）。1991年「保障精神障礙者與促進精神健康照護原則」（聯合國譯：保護精神病患者和改善精神保健的原則）詳列了更細部的要求，在第1條中提到：「所有人都有權利獲得最佳的精神照護，這項照護必需是健康與社會照護體系的一環」。*另見* Psychiatric abuse.

Although the rights of the mentally ill and retarded are in their early stages of recognition, there are some international instruments on the subject. The UN's 1971 "Declaration on the Rights of Mentally Retarded Persons" asserts that the retarded have "to the maximum degree of feasibility, the same rights as other human beings," and when it is necessary to restrict those rights, the procedures used to determine such restriction "must contain proper legal safeguards against every form of abuse" (arts. 1, 7). The 1991 "Principles for the Protection of Persons with Mental illness and the Improvement of Mental Health Care" spell out the requirements in more detail, with the first article asserting: "All persons have the right to the best available mental health care, which shall be part of the health and social care system." *See also* Psychiatric abuse.

Resources: Declaration on the Rights of Mentally Retarded Persons, G.A. res. 2856 (XXVI), 26 U.N. GAOR Supp. (No. 29) at 93, U.N. Doc. A/8429 (1971); Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care, G.A. res. 46/119, 46 U.N. GAOR Supp. (No. 49) at 189, U.N. Doc. A/46/49 (1991).

Minimum wage 最低工資

最低工資指法律許可之下最少工資。聯合國世界人權宣言第23條第3項與第25條第1項及其他國際文件，如經濟、社會與文化國際公約、兒童權利公約等對勞工生活條件都有明文保障。如世界人權宣言第23條第3項，保障「每一個工作的人，有權享受公正和合適的報酬，保證使他本人和家屬有一個符合人的尊嚴的生活條件」。各國最低工資法律與規定有所不同。許多國家仍然沒有最低工資保障。

The minimum wage is a jurisdiction's lowest legal wage. Article 23(3) of the Universal Declaration of Human Rights calls for "just and favourable remuneration" ensuring everyone "an existence worthy of human dignity." Article 25(1) adds, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services." Other international instruments, such as the ICESCR, Convention on the Rights of the Child, and International Labour Organization conventions, create legal commitment to these rights that is partially realized through the minimum wage. Each country is allowed to set its own minimum wage laws and regulations, but many countries have no minimum wage guarantee.

Movement, freedom of 遷徙自由

自己選擇遷移到某地的權利。許多國家都在憲法中明文保障人民在國家內遷徙及入出國的權利。雖然尚有許多限制，但這些權利的內涵已經愈來愈趨向開放。見台灣部份，黃文雄「返國自由」案。

根據公民與政治權利國際公約第12條的規定，一個國家中所有的合法居留者都享有自由遷徙的權利，包括離開該國及返回自己國家的權利。但人民不能主張進入任何非其母國的權利。另外，聯合國大會所通過的「非居住地國民之個人權利宣言」第2條則主張了外籍人士離開居住國的權利。*另見* Asylum; Refugees; Statelessness.

The right to travel to a place of one's choosing. Many countries have constitutional provisions protecting the right to move within the country, and to exit and return to the country. Although there are often restrictions, the trend is toward a broadening such rights. *See*, e.g., Huang (Peter) in Taiwan section.

According to Article 12 of the ICCPR, all those lawfully within a state have the right to freedom of movement, including the right to leave the country and to return to one's own country. There is, however, no right to enter any country other than one's own. Regarding aliens, their right to leave the country is asserted in Article 2 of the General Assembly's Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in which They Live (1985). *See also* Asylum; Refugees; Statelessness.

Muslim law 伊斯蘭法律

傳統伊斯蘭宗教法律，也稱Shari'a，包括法律體系與倫理規範，主導公領域與私領域生活。Shari'a不是一個經立法程序修訂的法律，而是數世紀以來，尤其是第八、第九世紀法學家對可蘭經與先知言行所作的詮釋，並從其中引申出法律規範的意涵。十九世紀中葉以來，在大多數伊斯蘭教國家的Shari' a原則，在憲法、刑法與商事法領域逐步為西方法律所取代，唯有在家庭與財產繼承領域仍佔主導地位。近年來恢復Shari' a為法律基礎的力量日增，伊朗、巴基斯坦、蘇丹，都是例證。

In Arabic, Shari'a ("way"). The Islamic system of religious law has traditionally encompassed both law and ethics, and regulates every aspect of public and private life. It is not a formally enacted legal code, but a vast system of jurisprudence in which through the centuries the jurists have interpreted the meaning of the Qur'an

and Sunnah (a set of legal doctrines associated with the prophet Muhammad). Regarding commercial, criminal, and constitutional matters, Islamic law has been modernized in almost all Muslim countries. Only family law and inheritance is still commonly governed by Shari'a. In recent years there have been revivalist attempts in Iran, Pakistan, and the Sudan to reclaim Shari'a as the sole, or at least primary, legal system of the country.

Resource: Abdullahi Ahmed An-Na'im, "Human Rights in the Muslim World," *Harvard Human Rights Journal* (1990), 3:13.

Nation 民族

民族常用來指涉一群有共同語言、歷史、傳統及文化的一群人，然而歷史學者大多認為以這樣的客觀條件來界定民族並不完備，對社群主觀上的認同勢不能少。在過去，民族國家(nation-state)指涉一個國家的公民都來自一個民族。幾世紀來民族國家中族群衝突層出不窮，在極端的情況之下可能導致內戰或族群清洗。

在現代的用法中，「民族」一詞通常與「民族國家」同義，或是簡稱「國家」。*另見* Ethnic groups; Self-determination.

This term commonly refers to a group of people who share the same language, history, traditions, and culture. However, many scholars argue that to so define a nation by referring to objective terms is not adequate. A sense of community is needed to fully constitute a nation. The term nation-state refers to those states whose inhabitants comprise a national group within a distinct and defined geographical area who have sovereign power. Throughout history there have been conflicts among national groups inhabiting the same territory. Tensions among these groups have led to extreme situations such as civil war, Genocide, and Ethnic cleansing (qq.v.).

In modern parlance, the term "nation" is often synonymous with the term "nation state," or "state" for short. *See also* Ethnic groups; Self-determination.

Nationality 國籍

指涉一個國家的公民身份。一般而言，每個國家可自己決定誰是他們的國民。取得國籍最重要的原則有二：(1) 國民的後代（血統主義）；(2) 依出生地決定（出生地主義）。國籍也可以透過通婚、領養及歸化取得。

在國際法上，世界人權宣言第15條指出，人人有權擁有國籍。*另見* Alien; Citizen; Nation; Self-determination.

A term that has various meanings. It can refer to one's relationship with the state to which one is subject or of which one is a citizen. As a general rule, each state is free to define who are its nationals. The most important principles regarding the acquisition of nationality are first, descent from parents who are nationals (jus sanguinis); and secondly, the territorial location of birth (jus soli). Nationality may also be acquired by marriage, adoption, or naturalization, etc.

In international law, Article 15 of the Universal Declaration of Human Rights states, "Everyone has the right to a nationality." *See also* Alien; Citizen; Nation; Self-determination.

Natural law 自然法

自然法被理解為一個較高的法，這個法是一個標準，所有國內法與國際法都必須遵從。自然法強調獨立於法律制定與司法審判的普世價值。自然法的理論藉由約束主權者來提升人權。世界人權宣言第1條不是立基於自然法或是任何神學，而是將人權普遍化為「人人生而自由，在權利與尊嚴上一律平等。他們被授與理性與良知，並應以手足之情的精神相對待」。自然法不同於實證主義途徑。實證主義是依賴著有組織的社會強制力所支撐的權威性法令。因此，在實證主義的系統下，權利必須立足於法律制定或是憲法之上。*另見* Declaration of Independence, U.S.; Universal Declaration of Human Rights.

The concept of natural law reflects the belief that there is a high law to which all domestic and international law must conform. It emphasizes universal values that are not dependent on legislation or judicial decisions.

Natural law theory advanced human rights in holding sovereigns, such as kings, accountable to principles that recognized the inalienable rights of persons.

Article 1 of the Universal Declaration of Human Rights does not rely on natural law or any theology, but universalizes human rights as birthrights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Natural law differs from the positivist approach, which defines law as authoritative enactment sustained by state coercion. Hence in a positivist system rights must be created from legislation or constitutional law. *See also* Declaration of Independence, U.S.; Universal Declaration of Human Rights.

NGOs, *see* Non-governmental organizations.

Non-derogable rights 不可克減的權利

不可克減的權利指涉那些即使處於緊急情況，國家或政府都不能暫時解除義務不予保障的權利，諸如免於刑求或為奴隸等。公民與政治權利國際公約第4條有詳盡規定。*另見* Derogation of rights; Siracusa Principles.

Rights that must be fully honoured under all circumstances. According to Article 4 of the ICCPR, if certain conditions are met in times of public emergency some rights can be derogated. However, no derogation can be made from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18, making such rights as freedom from torture, slavery, or servitude secure under all circumstances. *See also* Derogation of rights; Siracusa Principles.

Non-governmental organizations 非政府組織

非政府組織是一種私人自願性的團體，其目的在於人權保障、環境保護到教育等等。它們獨立於政府與企業之外。就某種意義來說，它們扮演著遊說者的角色，同時／或是個人或集體利益的辯護者。

聯合國憲章第71條授予非政府組織在經濟與社會理事會內扮演諮詢的角色。雖然非政府組織不具有成員國的權利，但是這條規定允許團體或組織加入並且在某個程度上參與聯合國的活動。在某些國際組織裡，如美洲人權委員會非政府組織有權提起申訴。很多例子顯示，非政府組織協助請願者將其聲明與請願書送至國際法庭。歐洲人權公約第34條允許NGOs將申請書送至歐洲人權法院。

Private voluntary organizations that champion various causes, such as the protection of human rights, the protection of the environment, and education. True NGOs are independent of government and enterprise. They may serve as lobbyists, and/or defenders of individuals or collective interests.

Article 71 of the UN Charter permits NGOs to have consultative status with the Economic and Social Council. This allows groups to attend and to some extent participate in UN activities, although they do not have the rights of member states.

In some international bodies like the Inter-American Commission on Human Rights, NGOs have the right to file complaints. In many instances NGOs assist petitioners before international courts, committees, and commissions in bringing their claims and petitions. Article 34 of the European Convention on Human Rights permits NGOs to submit applications to the European Court of Human Rights.

Nuremberg Tribunal, *see* International military tribunals.

Ombudsman, Ombudsperson 監察使

監察使的工作是受理及調查對政府的申訴案件，針對調查結果提出建議並尋求爭議的調解。許多國家在憲法或法律中明文設立人權監察使，處理公民及個人權利遭受國家侵害的案件。

An officer who receives and investigates complaints with a view to the settlement of a dispute without the parties having to resort to the court system. Often established pursuant to a constitution or law, a human rights ombudsman/ombudsperson is concerned with alleged violations of citizens' rights by the government or other organization.

Optional Protocol No. 1 to ICCPR

公民與政治權利國際公約第一任意議定書

此議定書允許人權委員會審查個人的申訴案。此議定書於1976年生效。*另見* Exhaustion of domestic remedies; ICCPR; Human Rights Committee.

Protocol that allows individual complaints against states who are parties to the ICCPR to be considered by the Human Rights Committee. It entered into force in 1976. *See also* Exhaustion of domestic remedies; ICCPR; Human Rights Committee. *Resource:* http://www1.umn.edu/humanrts/instree/b4ccprp1.htm.

Optional Protocol No. 2 to ICCPR, *see* Death penalty.

Ordre public 基本國策（公共政策）

這個詞來自法文，在譯成英文時常被誤譯為「public order」（公共秩序），但這並非在人權法的脈絡中所使用的意義。在法文中Ordre public的涵意更為廣泛，帶有國家基本政策的意涵。西拉庫薩原則將這個詞定義為：「所有使社會能夠運作的規範，或者社會賴以建立的基本原則的總稱」，同時指出「尊重人權為基本國策的一部份」。

在國內人權法及國際公約中常常會接受基本國策（公共政策）這個例外。也就是說，在面對權利的訴求時，政府的基本政策應該列入考量，請參閱香港部份Assembly (freedom of)。在公民與政治權利國際公約中也允許因保障基本國策（公共政策）而對人權作出限制，例如第12條（遷徙自由）、第14條（公開審判）、第19條（資訊自由）、第21條（集會自由）以及第22條（結社自由）。因此，人權實踐的範圍在一個程度上會視基本國策（公共政策）之範圍大小而定。

Term of French origin, referring to fundamental policies of a state. It is often translated into English as "public order," but in the context of human rights law it has a slightly different meaning. The Siracusa Principles (q.v.) define the term as "the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded," and adds that "respect for human rights is part of ordre public."

Domestic human rights laws and international conventions often allow an ordre public exception, meaning that in making a determination that involves claims of rights, the fundamental policies of the government may be taken into consideration. *See*, for example, Assembly (freedom of) in Hong Kong section. Likewise, the ICCPR allows human rights to be subject to restrictions on grounds of protecting ordre public. Such allowances are provided for in articles 12 (freedom of movement), 14 (open trials), 19 (freedom of information), 21 (freedom of assembly), and 22 (freedom of association). The extent of realization of human rights may thus depend on how narrow or expansive a meaning the term ordre public is given.

Organization for Security and Co-operation in Europe

歐洲安全及合作組織

歐洲安全及合作組織是由1975年「歐洲安全及合作會議」發展而來的一個地域性組織。其成員來自北美，歐洲與中亞。到2007年時有56個成員國。歐洲安全及合作組織的任務包括選舉監督、武器管制與人權事務。它活躍於早期預警、衝突預防、危機管理及衝突後的修復等等。在聯合國科索沃任務之外，該組織在聯合國安理會決議下，已經被視為在治理科索沃上一個相當重要的角色。

Regional organization that developed from the 1975 Conference on Security and Cooperation in Europe. The OSCE's membership comes from North America, Europe, and Central Asia. In 2007 there were fifty-six members. The mandate of the organization includes election monitoring, arms control, and human rights. It is active in early warning, conflict prevention, crisis management, and post-conflict rehabilitation. Along with the UN Mission in Kosovo it has assumed a large role in the governance of Kosovo under the Security Council resolutions. Website: http://www.osce.org.

Organization of American States 美洲國家組織

由35個西半球國家所組成的國家間政府組織。在1967至1970年間已發展出當前的組織型態。

An inter-state governmental body comprised of thirty-five Western Hemisphere nations. It attained its present form between 1967 and 1970. Website: http://www.oas.org.

Oxfam International 國際樂施會

國際樂施會創立於1995年，是一個由13個非政府組織所組成的聯盟，工作遍及一百個國家，協助解決貧窮與災難的問題。國際樂施會在災難時期協助緊急疏困，也針對發展計畫提供資金，如訓練柬埔寨漁村社區領導人管理發展計劃。

樂施會的名稱來自於1942年設立所的「牛津救濟飢荒委員會」，當時以救濟希臘難民為主要的工作。

A confederation of thirteen organizations working in more than 100 countries to help solve problems of poverty and suffering. It was founded in 1995. It provides strategic funding for emergency relief in times of crisis, and for development projects, such as helping fishing villages in Cambodia train community leaders to manage development projects.

The name Oxfam is taken from Oxford Committee for Famine Relief, which had been set up in 1942, primarily to help refugees and displaced people in Greece.

Pardon 赦免

赦免是政府（一般是行政部門）將被定罪的人釋放，並免除部份或全部的罪責。赦免通常是基於寬憫的一種政治決定，或對法律可能帶來不正義的質疑。赦免並不表示被赦免的人沒有犯下罪行。*另見* Amnesty.

A government decision (often by the executive branch) to allow a person who has been convicted of a crime to be free, and partially or wholly absolved of a conviction. A pardon, which may imply forgiveness, is often a political decision and seen as an act of mercy, condoning the infractions that under the law would otherwise call for punishment. It is often used in cases where it is believed that a literal application of the law would result in an injustice. *See also* Amnesty.

Paris Principles 巴黎原則

聯合國成立後，為實踐人權保障，乃鼓勵會員國設立國家級人權機構，以確保國際人權標準能於各國國內獲得實踐。各國設立之機構名稱不一，但一般以「國家人權委員會」統稱之。1991年，聯合國在巴黎召開一次各國官方人權機構的代表會議，依各國之經驗，確立「關於促進和保護人權的國家機構的地位的原則」。這項原則在1992年為聯合國人權委員會所接納，1993年聯合國大會決議認可，一般稱為「巴黎原則」。「巴黎原則」強調國家人權機構的獨立性，包括組織、預算、人事及運作上的獨立。同時強調明確的管轄權與充分的權力，並能為人民所近用。

依據「巴黎原則」，國家人權委員會應有以下職責：

1. 提供政府部門諮詢意見，以協助立法、修改及行政措施之改善，促使人權保護之增進；
2. 促進及確保人權保護符合國際人權標準；
3. 激勵國內批准或加入國際人權條約；
4. 提供獨立意見，做為國家人權報告之參考；
5. 與聯合國、區域及各國內人權機構合作；
6. 推廣人權教育；
7. 宣導人權理念與知識，消滅各種可能的歧視，尤其是種族歧視。

*參考資料：*黃默，2003，〈「國家人權委員會」的倡導、爭論與展望：一個非政府組織的觀點〉，《全國律師》。

The United Nations has encouraged its members to set up human rights institutions at the national level so as to ensure that international human rights standards are fully implemented. Although the names of the established institutions differ from state to state, these human rights institutions are generally referred to as national human rights commissions. In 1991 a UN-sponsored meeting of representatives of official national human rights institutions was held in Paris, and guidelines for setting up national institutions for the promotion and protection of human rights were agreed to.

These principles, which were endorsed in 1992 by the UN Commission on Human Rights and adopted by the UN General Assembly in 1993, are commonly known as the Paris Principles. They stress the importance of the independence of the national human rights institutions, including control over organization, budget, human resources, and operation. At the same time, the principles emphasize clear jurisdiction and adequate powers, as well as easy access by people.

According to the principles, a national human rights commission should have the following responsibilities:

1. To advise on any questions regarding human rights matters referred by the government, and assist in the improvement of legislative and administrative arrangements to enhance the promotion of human rights;
2. To promote human rights and ensure that protections meet international human rights standards;
3. To encourage the state to ratify or become party to international human rights conventions;
4. To provide independent opinions as references for national human rights reports;
5. To work with the UN, regional, and national human rights institutions;
6. To promote human rights education and knowledge;
7. To seek the elimination all forms of discrimination, especially racial discrimination.

Parks, Rosa 羅莎・帕克斯

帕克斯在年輕時以裁縫業維生，同時也是「全國有色人種促進會」的成員，參與民權運動。1955年12月1日，帕克斯拒絕在公車上讓位給一位白人乘客

而遭逮捕起訴，引爆蒙哥里城拒乘公車為時382日，是一次最大規模且最成功的民權運動抗爭。這次抗爭使帕克斯在歷史上留名，也使馬丁・路德・金恩初露頭角。

Rosa Parks was a seamstress and a civil rights activist in the U.S. city of Montgomery, Alabama. She is famous for her refusal on December 1, 1955 to give up her seat in a bus to a white passenger, as mandated by local law. She was arrested and put on trial, which sparked the Montgomery bus boycott, one of the largest and most successful mass movements against racial segregation in history. The Montgomery bus boycott earned Parks an iconic status in American culture and launched the career of Dr. Martin Luther King (q.v.).

Peace 和平

聯合國憲章第1條指出，聯合國成立的宗旨為維持國際和平及安全。聯合國憲章序言開宗明義陳述，「我聯合國人民同力决心，欲免後世再遭今代人類兩度身歷慘不堪言之戰禍，重申基本人權」。第2條第4項亦指出，「各會員國在其國際關係上不得使用威脅或武力…」。

第五章賦予安全理事會維持國際和平及安全的主要責任。第六、七、八及十二章則列出安全理事會在履行其責任時之權力。

第39條規定「安全理事會應斷定任何和平之威脅、和平之破壞或侵略行為是否存在，並應依第41條及第42條規定之辦法，作成建議或抉擇」。*另見* Peace as a human right.

Article 1 of the United Nations Charter states that a primary purpose of the UN is "to maintain international peace and security." The charter's preamble refers to the need "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind and to reaffirm faith in fundamental human rights." Article 2(4) states that "all members shall refrain from the threat or use of force."

Chapter V confers on the Security Council primary responsibility for the maintenance of international peace and security. Chapters VI, VII, VIII, and XII specify the powers the Security Council holds for carrying out its responsibilities.

Under Article 39, the Security Council must "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and decide what measures it may take under Articles 41 and 42. *See also* Peace as a human right.

Peace as a human right 和平權

根據聯合國大會於1978年通過的「為和平生活的社會而準備」宣言及1998年通過的國際刑事法院規約（羅馬規約），和平權已被視為是一個法律規範概念。其內容被定義為「每個人對於和平有所貢獻的權利，包括拒絕參與軍事行動，以及每一個國家因為其他國家完全遵守不使用武力、不侵略、和平處理糾紛、日內瓦公約及議定書等其他類似原則，並在國際有效控制之下共同且完全解除武裝的政策實施，而獲得利益的共同權利。」

*參考資料：*黃默，2001，〈和平作為一項人的基本權利〉，《和平學論文集》，雷敦龢編。

By virtue of the Declaration on the Preparation of Societies for Life in Peace adopted by the General Assembly in 1978, the 1984 UN General Assembly declaration of peace as a human right, the 1998 Treaty of Rome Treaty, and many other instruments, the right to peace as a legal norm has been affirmed. The right to peace can be defined as "the right of every individual to contribute to efforts for peace, including refusal to participate in the military effort, and collective right of every state to benefit from the full respect by other states of the principles of non-use of force, of non-aggression, of peaceful settlement for disputes, of the Geneva Conventions and Additional Protocols and similar standards, as well as from the implementations of policies aimed at general and complete disarmament under effective international control" (S. Marks, "Emerging Human Rights," *Rutgers Law Review* (1981), 33:2). The rights protected in the Rome Treaty of 1998 have enormously enriched the content of peace as a human right.

Resource: Text of 1984 declaration, http://www1.umn.edu/humanrts/instree/q3drpp.htm.

Peace building 建構和平

透過對國際社會或個別國家、經濟發展、社會結構、民主制度及人權保障機制的支持，避免衝突的發生，增進和平的機會。

Efforts by either the international community or individual states to strengthen and improve the chances of peace by encouraging economic development, building social structures, developing democratic institutions, civil society, and political and legal mechanisms to protect human rights with the ultimate aim of avoiding conflict.

Peace making 營造和平

當有衝突發生時，國際社會便致力於消弭衝突帶來和平，安全理事會有時會借助於一些國家的結盟或像北大西洋公約組織這樣的區域性組織。

安全理事會的授權必須基於有和平之威脅、和平之破壞或侵略行為的事實存在。*另見*Security Council.

International efforts to end a conflict and effect peace. Such interventions must be authorized by the Security Council, whose decision is based on a finding of a "threat to the peace, breach of the peace or act of aggression." The Security Council often relies on a coalition of member states and regional organizations, such as the North Atlantic Treaty Organization. *See also* Security Council.

Peace, crimes against 違反和平罪

違反和平罪為紐倫堡大審所確認，涉及罪行包括計劃、準備發起及從事侵略性戰爭，違反國際條約、協議或保證的戰爭，或參與共謀違法戰爭的行為。*另見* International military tribunals; Peace.

Crimes against peace refer to the planning, preparation, initiation, or waging of a war of aggression; or a war in violation of international treaties, agreements, or assurances; or the participation in a common plan or conspiracy to engage in illegal war. Such actions and conspiracies have been criminalized by virtue of the Nuremberg Tribunal. *See also* International military tribunals; Peace.

Peacekeeping 維持和平

在草擬聯合國憲章時，聯合國維持和平的角色並未在計劃之中。聯合國第一次的維和任務於1948年在中東地區執行，由於加拿大籍拉斯特．皮爾遜的倡導，維和任務成為執行聯合國維持和平義務的機制之一。維和任務需要安全理事會的授權，內容可包括軍事或警察作業，觀察任務則不配備武器。維和作業建立在自願的基礎上且由國際社會負擔經費。

從維和任務開始到現在，將近有一百萬人參與過維和作業，有超過1500人殉職。維和部隊的角色因任務的種類而有所不同

1988年聯合國的維和部隊獲頒諾貝爾和平獎。

The UN peacekeeping role was not anticipated at the time of the drafting of the

UN Charter. The first peacekeeping mission was in 1948 in the Middle East. Inspired by Canadian Lester Pearson, peacekeeping missions have become part of the UN mandate. They are authorized by the Security Council and can include military and police operations. There are also observer missions, which are unarmed. Participation in peacekeeping operations is voluntary and financed by the international community.

Nearly one million people have served since peacekeeping operations began, and over 1500 have died.

In 1988 the UN peacekeeping forces received the Nobel Peace Prize.

Resource: Ramesch Thakur, *The United Nations, Peace and Security: From Collective Security to Responsibility to Protect* (2006).

PEN 國際筆會

國際筆會自稱為「全球性的作家組織，致力於文學的推廣與跨國界、跨文化的相互了解」。這個組織於1921年在倫敦成立，目前在101個國家設有144個中心。PEN這個詞為詩人、劇作家、散文家及小說家的縮寫。

International PEN describes itself as "a global NGO of writers committed to the promotion of literature and understanding across national boundaries and cultures." The organization was founded in London in 1921, and is now comprised of 144 centres in 101 countries. The name was originally an acronym for "poets, playwrights, essayists, and novelists."

Peoples' rights 人民權利

一般說來包括自決權及發展權等第三世代權利。這些權利的特色在於保障集體權利，而非個人權利。非洲人權及民族權利憲章十分強調這些權利。*另見* Banjul Charter; Generations of rights.

Peoples' rights, including the right to self-determination and the right to development, are sometimes referred to as the third generation of rights. They protect collective interests as distinct from individual rights. The African Charter on Human and Peoples' Rights (*see* Banjul Charter) tends to emphasize collective rights. *See also* Banjul Charter; Generations of rights.

Peremptory norm 普遍被承認的法律

指普遍為國際社會所承認的法律。如果一個條約與這類法律牴觸，這條約就失去效力。根據維也納條約法公約第53條，國際社會所普遍承認的法律不能任意豁免，且只能由同樣性質的法律所取代。雖然學者、專家議論紛紛，但一般而論，禁止奴隸制度、販賣奴隸、滅種政策及種族岐視都在其列。

When international laws are in conflict, jus cogens, or peremptory, norms prevail. A treaty is void if it conflicts with a peremptory norm of international law. Article 53 of the Vienna Convention on the Law of Treaties (q.v.) defines peremptory norm as one that is "accepted and Recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" (art.53). Although scholars and commentators disagree as to what norms can be considered as peremptory, it is generally agreed that the prohibition of slavery, genocide, and racial discrimination have obtained this status.

Periodic reports 定期報告

大部分的人權公約都要求批准公約的國家定期提出報告，並由公約機構針對報告內容進行審查。公約機構的成員通常是以個人身份行使職權。如人權委員會是公民與政治權利國際公約的條約機構；兒童權利委員會監督締約國履行兒童權利公約的義務。*另見* Report; Treaty bodies.

Human rights treaties often have provisions that require states that have ratified these instruments to make periodic reports, which are reviewed by treaty bodies for compliance with the treaties' substantive provisions. The committee members, experts in the field, are mandated to act in their Individual capacity (q.v.) and not represent the interests of their governments.

Examples of treaty bodies: The Human Rights Committee is the reviewing body of the ICCPR. The Committee on the Rights of the Child reviews compliance with the Convention of the Rights of the Child. The CEDAW committee is responsible for the oversight of the Convention on the Elimination of Discrimination Against Women. Committee on the Elimination of All Forms of Racial Discrimination is the treaty body for the Convention on the Elimination of All Forms of Racial Discrimination. *See also* Report; Treaty bodies.

Pinheiro Principles, *see* Property rights.

Political prisoner, *see* Prisoner of conscience.

Presumption of innocence, *see* Innocence, presumption of.

Prisoner of conscience 良心犯

根據國際特赦組織，良心犯指那些為信念或族群、性別、膚色及語言等，且不倡導或不使用暴力而被拘留的人。這個詞有別於政治犯，後者對倡導或使用暴力的立場並不明確。

Term coined by Amnesty International (q.v.), to denote people detained for their beliefs or because of their ethnic origin, sex, colour, or language who have neither used nor advocated violence. The term is distinguished from the term "political prisoner," which is ambiguous on the aspect of violence.

Prisoners' rights 受刑人權利

唯有根據法律規定及審判結果才能限制受監禁之人的自由。聯合國已經對受刑人的處遇建立標準，包括於1977年至1990年間通過的三項國際規範。

「受刑人處遇最低標準規定」要求所有的規定都應公平地適用，不因受刑人的種族或背景而有所差別。他們的宗教信仰與道德觀點也應予以尊重。監舍通風應該良好，並有充足的光線。每日至少應有一小時的運動時間，並提供醫療照護。紀律不應超過「監所安全及群體生活秩序的需要」（第27條）。限制的規範不應當懲罰來使用。身心健康的受刑人「應被要求」從事「有意義的工作」，尤其以「能維持及增進受刑人在獲釋後過以誠實的方式生活的能力」之工作為佳。（第71條）。

「保障所有遭受任何形式拘留或監禁之人的原則」包括39個原則。受刑人「應受人道對待，他們身而為人的基本尊嚴應受尊重」（第1原則）。「任何人都不應被刑求，或受到殘忍、不人道及侮辱性的對待與懲罰。任何情況都不得作為施加刑求或其他殘忍、不人道及侮辱性的對待與懲罰之理由。」（第6原則）其附註進一步說明：「『殘忍、不人道及侮辱性的對待或懲罰』一詞應加

以適當解釋，藉以提供最大程度的保障，以防止肉體或精神上的虐待，其中包括使被拘留或監禁之人暫時或永久性地遭剝奪視覺或聽覺等任何自然感官的使用，或使其喪失對地點或時間知覺的拘禁條件。」與外界聯繫的權利「不應被剝奪超過數天以上」（第15原則）。

「受刑人待遇基本原則」摘錄了這些已經建立的原則，同時增加「除了監禁所必要的限制之外」，只要該國為公民與政治權利國際公約或經濟、社會文化權利公約之會員國，這些公約所保障之權利仍應維持（第5條）。

An incarcerated person's liberty is limited only to the extent provided by law and according to the decision resulting from his or her trial. In addition, the United Nations has established standards for treatment of inmates, embodied in three international instruments adopted by the organization between 1977 and 1990.

The "Standard Minimum Rules for the Treatment of Prisoners" calls for all rules to be applied impartially, without regard, for example, to the background or ethnicity of the inmate, whose religious beliefs and moral precepts must be respected. There must be adequate air and natural light. At least one hour of daily exercise must be allowed. Health care must be provided. Discipline should not exceed what "is necessary for safe custody and well-ordered community life" (art. 27). Instruments of restraint should not be applied as punishment. Physically and mentally fit prisoners "shall be required" to engage in "work of a useful nature," preferably work that would "maintain or increase the prisoner's ability to earn an honest living after release" (art. 71).

The "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment" is a set of thirty-nine principles. Inmates are to "be treated in a humane manner and with respect for the inherent dignity of the human person" (principle 1). "No person . . . shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment" (principle 6). A footnote adds: "The term 'cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time." The right to communicate with the outside world "shall not be denied for more than a matter of days" (principle 15).

The "Basic Principles for the Treatment of Prisoners" is a digest of established principles, and adds that if the state is a party to the ICCPR or ICESCR, except as "necessitated by the fact of incarceration," all the rights in those instruments are retained (art. 5).

Resources: "Standard Minimum Rules for the Treatment of Prisoners," adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, UN Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 UN ESCOR Supp. (No. 1) at 11, UN Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 UN ESCOR Supp. (No. 1) at 35, UN Doc. E/5988 (1977), http://www1.umn.edu/humanrts/instree/g1smr.htm; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly resolution 43/173, annex, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49 (1988), http://www1.umn.edu/humanrts/instree/g3bpppdi.htm; Basic Principles for the Treatment of Prisoners, General Assembly resolution 45/111, annex, 45 UN GAOR Supp. (No. 49A) at 200, UN Doc. A/45/49 (1990), http://www1.umn.edu/humanrts/instree/g2bpt.htm.

Privacy, zone of 隱私權範圍

公民與政治權利國際公約第17條明示任何人之隱私不得加以任意或非法的干涉。

根據美國最高法院提出「隱私權範圍」的憲法原則，一系列的權利被認為是受到其他比較明確的憲法條文所保障。例如，即使美國憲法並未明文規定生育的保障，基於隱私權範圍原則，生育被認定為憲法所隱含的權利(Griswold v. Connecticut, 1964)。

Article 17 of the ICCPR asserts: "No one shall be subjected to arbitrary or unlawful interference with his privacy."

The United States Supreme Court has declared a constitutional doctrine called "zone of privacy," according to which a range of rights was found to be implied by various more explicit constitutional protections. Hence, although reproductive rights are not cited in the Constitution, they are still protected since they fall within the constitutional zone of privacy (Griswold v. Connecticut, 1964).

Property rights 財產權

公民與政治權利國際公約及經濟、社會與文化權利國際公約都沒有提到獲得財產的權利。但世界人權宣言第17條主張：「人人得單獨擁有財產及與他人共享財產」、「財產不得被任意剝奪」。同時，國際上也已經建立了措施，

對財產遭不當剝奪者進行補償，如潘海若原則（潘海若為2002年聯合國任命之「難民及境內流民住所及財產補償」特別報告員。潘海若原則則是基於他所提出的研究而發展出來）。這些公約包括了數項禁止對財產權的歧視。

Neither the ICCPR nor the ICESCR assert a right to acquire property. However, Article 17 of the Universal Declaration of Human Rights does hold that "everyone has the right to own property alone as well as in association with others," and that "no one shall be arbitrarily deprived of his property." Furthermore, there are instruments that call for proper restitution of wrongfully taken property, such as the Pinheiro Principles. (Paulo Sergio Pinheiro was appointed the Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons in 2002. The Pinheiro Principles are based on his draft.) The covenants do contain numerous prohibitions of discrimination in regard to property holding.

Resource: Principles on Housing and Property Restitution for Refugees and Internally Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (2005) (Pinheiro Principles).

Prostitution 賣淫

以提供性交等性服務來換取金錢或其他報酬的行為。*另見*Prostitution, forced; Sex worker.

The act of offering sexual services in exchange for money or other compensation. *See also* Prostitution, forced; Sex worker.

Prostitution, forced 被迫賣淫

受暴力或暴力威脅，非基於個人意願從事賣淫的行為。

Prostitution (q.v.) engaged in against the will of the prostitute, either due to force or the threat of force.

Protocol 議定書

議定書是一種因條約或公約而產生的國際契約，目的在於修正或補充原條約或公約。

An international agreement arising out of a treaty or convention, or an additional supplementary text, optional or otherwise, which modifies, interprets, or supplements a treaty.

Psychiatric abuse 精神虐待

蘇聯政府將精神病院當成監禁政治異議人士的場所，並施以精神上的虐待。這件事情在1970年代曝光後，馬上招致國際譴責。1990年代，國際上發現古巴、烏茲別克，尤其是中國也發生精神虐待的事情（請見中國部份 Psychiatric abuse）。2002年，世界醫學協會通過決議案，宣稱監禁異議人士與社會運動者是不能接受的事情，並呼籲政府「停止利用醫學和精神病學實施這種虐待」。隔年，世界精神病學協會也發表同樣的主張。*另見* Mental health.

When the Soviet practice of using mental institutions as venues for incarcerating and abusing mentally healthy political dissidents came to light in the 1970s, there was international condemnation. Similar concerns were again expressed in the 1990s when it became known that such abuses had occurred in Cuba, Uzbekistan, and especially China (*see* Psychiatric abuse in Mainland section). In 2002 the World Medical Association adopted a resolution declaring it unacceptable to detain and treat dissidents and social activists, and called on governments "to stop abusing medicine and psychiatry in this manner." The following year the World Psychiatric Association took a similar stand. *See also* Mental health.

Resource: Sidney Bloch and Peter Reddaway, *Soviet Psychiatric Abuse: The Shadow Over World Psychiatry* (1984).

Racial discrimination 種族歧視

根據消除一切形式種族歧視公約第1條之定義，基於種族、膚色，世系或民族或人種的任何區別、排斥、限制或優惠，其目的或效果為取消或損害政治、經濟、社會、文化或公共生活任何其他方面人權及基本自由在平等地位上的承認、享受或行使。

消除一切形式種族歧視公約第4條則對於主張特定種族、膚色、人種具有優越性的所有宣傳及組織，或試圖辯護或提倡任何形式的種族仇恨及歧視者，概予譴責。有些國家在批准消除一形式種族歧視公約時對第4條進行保留，因為他們對言論自由採取較廣義的解釋。*另見* Discrimination; Racial Discrimination, Convention on the Elimination of All Forms of.

Article 1 of the Convention on Elimination of All Forms of Racial Discrimination (CERD) defines racial discrimination as "any distinction based on race, colour, descent, or national or ethnic origin that has the purpose or effect of impairing equal enjoyment of rights in the political, economic, social, cultural or any other field of public life." Article 4 of CERD calls for the eradication of all propaganda "based on ideas or theories of superiority of one race or group of persons or one colour or ethnic origin." In ratifying CERD, some states have made a reservation to Article 4 based on their commitment to a broad interpretation of freedom of expression. *See also* Discrimination; Racial Discrimination, Convention on the Elimination of All Forms of.

Racial Discrimination, Convention on the Elimination of All Forms of

消除所有形式種族歧視公約

根據「消除所有形式種族歧視公約」第2條規定，締約國有義務要消除所有形式的種族歧視，締約國本身不得有種族歧視的行為、不得支持他人或組織的種族歧視行為，且必須審視中央政府、地方政府的政策，消除所有帶有歧視性的法令或做法，或會造成歧視結果的法令或做法。締約國應保障每個人在法律之前的平等，及享有公民、政治、經濟、社會及文化的權利，不因種族、膚色、國籍或社會地位而有所區別。

A 1965 convention that placed parties under an obligation to pursue a policy of eliminating racial discrimination in all its forms. Governments are obliged not

to engage in acts or practices of racial discrimination; nor to sponsor or support racial discrimination by any persons or organizations; and to review governmental, national, and local policies with a view to eliminating any laws, regulations, or practices of a discriminatory nature or effect. They are to guarantee to everyone, without distinction as to race, colour, or national or ethnic origin, equality before the law and the enjoyment of civil, political, economic, social, and cultural rights.

Resource: http://www1.umn.edu/humanrts/instree/d1cerd.htm.

Rape 強暴、性侵害

強暴或性侵害普遍被用於懲罰、強迫與威嚇女性。在若干情況下，政府官員如軍人與警察，採用這種手段來取得資訊。在前南斯拉夫內戰時期及盧安達族群戰爭時期，強暴與性侵害已成為戰爭的手段，對女性造成的身心傷害，慘不忍睹。但遲至1990年代隨著前南斯拉夫國際刑事法庭(1993)、盧安達國際刑事法庭(1994)及國際刑事法院(1998)的設置，強暴或性侵害才構成國際法上的犯罪行為。*另見* Comfort women.

Rape and sexual abuse have been widely used by government agents to coerce, humiliate, and punish women. In many instances it is used to extract information. In extreme cases, such as in former Yugoslavia and Rwanda, rape served military purposes in these civil wars and conflicts. In international law, it was not until the statute of the International Tribunal for the Former Yugoslavia (1993), the Statute of the International Tribunal for Rwanda (1994), and the Rome Statute of the International Criminal Court (1998) that rape was made an international crime. *See also* Comfort women.

Rapporteur 報告員

1980年代以後聯合國人權委員會開始使用特別報告員的機制來推動人權保障，也即所謂議題機制。報告員對特定議題，如失蹤人口或對婦女暴力作調查並提報告。近年來特別報告員十分活躍，數目大增對人權保障發揮不少作用。

The UN Commission on Human Rights has since the 1980s used the thematic mechanism for the promotion of human rights. This is a mechanism devoted to a theme such as disappearances or violence against women, rather than a region or state, and thus acquires global reach. The rapporteur is given the task of investigating the situation and reporting back to the commission. Her/his role has become increasingly important.

Ratification 批准

「批准」指涉在條約生效前，已簽署條約的國家依法律程序承諾條約義務。如果一個條約已經生效，則不稱「批准」，而稱為「加入」。根據維也納條約法公約第2條，加入、批准、承諾、接受皆指一個國家願意受條約的拘束。「接受」指涉一個政府繼承前任政府所承諾的義務，例如中華人民共和國接受中華民國在1949年前所批准的若干條約的義務。*另見* Adherence.

The act by which the original parties adhere to a treaty. If the treaty has already entered into force, the term "accession" is used instead of "ratification." According to Article 2 of the Vienna Convention on the Law of Treaties (q.v.), "accession" and "ratification" both mean that a state consents to be bound by a treaty, as does the term "acceptance." The latter refers to accepting a treaty by which a previous government had been bound. For example, the People's Republic of China "accepted" numerous treaties that had been ratified before 1949 by the Republic of China. *See also* Adherence.

Red Cross and Red Crescent Societies, International Federation of

紅十字會與紅新月會國際聯合會

紅十字聯合會成立於1919年，主導並協調各國紅十字會之工作，協助戰俘、士兵，以及戰後歐洲的重建。1983年10月，紅十字會協會改名為紅十字及紅新月會協會，並在1991年11月再改名為紅十字會與紅新月會國際聯合會。在伊斯蘭教國家，大多數以紅新月會為名。

「紅十字會與紅新月會國際聯合會」的工作以「紅十字及紅新月運動原則」為基礎。工作的重心在於動員人道的力量改善最弱勢族群的處境，尤以協助自然災害的災民、難民以及緊急公共衛生事件的受害者為主。*另見* International Committee of the Red Cross.

Founded in 1919 as the International Federation of Red Cross, this organization has coordinated the work of national Red Cross societies on behalf of prisoners of war and combatants. In October 1983, the League of Red Cross Societies was renamed the League of Red Cross and Red Crescent Societies, and then in November of 1991 became the International Federation of Red Cross and Red Crescent Societies.

On the basis of the principles of the Red Cross and Red Crescent movement,

the International Federation aims at improving the lives of vulnerable people by mobilizing the power of humanity, primarily by helping victims of natural disasters, refugees, and victims of health emergencies. *See also* International Committee of the Red Cross.

Refoulment 遣返

將難民驅逐出境或送回其本國。

「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約」第3條明示，「如有充分理由相信任何人在另一國家將有遭受酷刑的危險，任何締約國不得將該人驅逐、遣返或引渡至該國。」*另見* Refugee; Torture.

Expulsion or return of a Refugee (q.v.) from one state to another. Article 3 of the Convention against Torture (q.v.) states: "No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." *See also* Refugee; Torture.

Refugee 難民

1951年聯合國難民地位公約及其議定書對難民的定義是離開本國的人，這些人因種族、宗教、國籍、社會團體或政治見解等因素遭受迫害或面臨被迫害的恐懼，因此不能或不願返回母國。「難民」一詞與「境內流民」不同，後者指離開家園，但未離開其母國者，他們不在難民公約的保障範圍裡，但「境內流民指導原則」提供了相同的保障。

和所有人一樣，難民有權享有適當的生活水準、足夠的糧食、住所、以及身心健康的權利。然而，對難民而言，最基本的需要是安全（身體上的安全），由於其本國無法滿足他們在安全上的需求，因此，難民公約締約國的首要義務，即是不將難民遣返至可能會遭受迫害的國家，給予難民身份常被形容為由國際來代替其本國或居住國家，對難民提供保護。

In the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, a refugee is defined as a person outside of his or her country of nationality who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term is to be distinguished from internally displaced persons (q.v.) who have had to leave their homes, but have remained in their countries; these are not protected under the refugee treaties, although the Guiding Principles for Internal Displacement (q.v.) awards them some protection.

Of the rights enjoyed by the refugees, such as employment, housing and public education, etc., the most crucial is the right to physical security. Therefore, the state parties to the Convention have the duty not to place them in harm's way. The granting of refugee status is usually regarded as a promise of protection by the international community.

Refugees, UN High Commissioner for 聯合國難民人權高級專員

聯合國難民人權高級專員提供難民國際保護，協助政府永久解決難民議題，以及幫助志工團體促成難民自願返回其本國，或幫助難民融入及適應庇護國的新環境。*另見* High Commissioner for Human Rights.

Post operating under the authority of the General Assembly to provide international protection to refugees. The UNHCR assists governments to seek permanent solutions as well as voluntary organizations to facilitate the voluntary repatriation of refugees or their assimilation within new national communities. *See also* High Commissioner for Human Rights.

Resource: Statute of the Office of United Nations Human Rights Commissioner for Refugees, http://www.unhchr.ch/html/menu3/b/o_unhcr.htm.

Regional human rights organizations 區域性人權組織

二戰以後若干區域性人權組織逐步設立，歐洲理事會在1950年通過歐洲人權公約，且發揮很大作用。泛美組織在1969年通過類似公約，1981年非洲人權與民族權利憲章通過，並設立非洲人權委員會。亞洲迄今缺少一個地區性組織，可能與文化、宗教的多元以及經濟發展階段的差異有關。

多年來普世性組織與地區性組織優劣之爭相不下。平心而論，兩者不但可以共存，且有互補作用。*另見* Banjul Charter; Organization of American States.

Since World War II a number of regional human rights arrangements have been created for the promotion of human rights. Among these, the European Convention on Human Rights (q.v.), adopted by the Council of Europe in 1950, has been highly effective. In 1969 the analogous American Convention on Human Rights (q.v.) followed. It was not until 1981 that the African Charter of Human and People's

Rights (*see* Banjul Charter) was adopted and the African Commission on Human Rights established. In Asia, arguably due to the diversity in culture, as well as stage of economic development, no attempt to set up a regional system has succeeded.

Through the years there has been a debate as to whether the universal or regional arrangement is more effective. They are actually not incompatible; they reinforce and complement each other. *See also* Banjul Charter; Organization of American States.

Report 報告

在國際公法上，「報告」(Report)至少有兩種不同的意義：第一、締約國依條約規定必須向條約監督單位所提交的報告，例如：向兒童權利公約監督單位－兒童權利委員會所提交的報告；第二、由特派員向其任命單位所提交的報告。*另見* Periodic reports.

One meaning of the term refers to documents that parties to a treaty are required to submit to the treaty-monitoring body, such as to the Committee on the Rights of the Child.

The term also applies to documents submitted by a Rapporteur (q.v.), who presents it to the body that appointed him or her. *See also* Periodic reports.

Reservation 保留

根據維也納條約法公約第2條第(d)項的規定，「稱『保留』者，謂一國於簽署，批准、接受、贊同或加入條約時所做之片面聲明，不論措辭或名稱如何，其目的在摒除或更改條約中若干規定對該國適用時之法律效果。」

舉例而言，美國於1989年批准種族滅絕公約時，即做出保留的聲明：「本公約不得要求美國通過美國憲法所禁止之法律或行動，而前述法律之解釋應由美國為之。」

國際法院於其所作的諮詢意見中表示，締約國所做的保留不能違背條約的「宗旨及目的」。

維也納條約法公約第19條到第21條規範保留的權利和限制。

According to Article 2 of the Vienna Convention on the Law of Treaties (q.v.), "reservation means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby

it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to the State." For example, in ratifying the Genocide Convention (q.v.) in 1989 the United States made a reservation that "nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States interpreted by the United States."

The International Court of Justice (q.v.) held in an advisory opinion that a reservation must not defeat the "object and purposes" of the treaty.

The Vienna Convention on the Law of Treaties (arts. 19-21) details the right and limitations of a state to make a reservation to a treaty.

Restriction 限制

國家對人民的權利以及基本自由所為之可能限制。例如，公民與政治權利國際公約第12條第3項規定，人民的遷徙和選擇住所的自由「除法律所規定並為保護國家安全、公共秩序、公共衛生或道德、或他人的權利和自由所必需且與本公約所承認的其他權利不抵觸的限制外，應不受任何其他限制。」*另見* Siracusa Principles.

In the human rights context, the term refers to a state's limitations on the exercise of individual human rights and fundamental freedoms. For example, according to Article 12(3) of ICCPR, the right to liberty of movement and freedom to choose residence "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public [q.v.]), public health or morals or the rights and freedoms of others, and are consistent with the other rights Recognized in the present Covenant." *See also* Siracusa Principles.

Roosevelt, Eleanor 埃莉諾・羅斯福

美國社會運動份子，關懷弱勢族群。二次大戰後杜魯門總統任命她為聯合國代表，被選為人權委員會主席，對世界人權宣言的修訂有決定性貢獻。她生於1884年，於1962年去世。

A social activist during and after World War II, Eleanor Roosevelt was appointed a member of the American UN delegation by Harry Truman. She was elected the chairperson of the Human Rights Commission and played a decisive role in the drafting and adoption of the Universal Declaration of Human Rights (q.v.). She lived from 1884 to 1962.

Sakharov, Andrei 沙卡洛夫

著名蘇聯物理學家，被稱為「氫彈之父」。1960年代末期，開始從事人權與和平運動，成為自由主義知識份子代言人，主張結束冷戰、裁軍與蘇聯政治、經濟、司法制度的改革。1980年因批評蘇聯入侵阿富汗被布里茲涅夫放逐高爾基城，1986年政局丕變，在戈巴契夫之邀回俄羅斯。其後十年在政壇上十分活躍，身兼數職，包括科學院主席團，人民代表大會的區域共同主席，並擔任憲法起草委員會委員。在1989年11月他去世前幾日完成一部新憲草案分送同事徵求評論。

A physician by training, Sakharov was credited as the father of the USSR's H-bomb. In the late 1960s he became a leader of human rights and peace movements, arguing for the end of the cold war and disarmament as well as political, economic, and legal reforms. He was exiled to Gorky by Brezhnev in 1980 for his criticism of the Soviet invasion of Afghanistan, but was invited to Moscow by Mikhail Gorbachev in 1986. After that, Sakharov was actively engaged in politics and human rights affairs, occupying important positions including the presidium of the Academy of Science, and the inter-regional group of people's deputies, as well as serving as a member of the government commission to draft a new Soviet constitution. Only a few days before his death in December 1989, he completed a preliminary draft of a new constitution and circulated it for comment among his colleagues.

Secretary-General of the UN 秘書長

聯合國憲章第十五章規範秘書處與秘書長一職的執掌及功能，秘書長為聯合國最高的行政首長，經安全理事會做出建議後，再由大會任命。歷任秘書長對和平、安全及其他重要問題大都持主動態度，前任秘書長安南（任期為1997至2006年）亦然，他對盧安達、達夫的情勢十分關心，對聯合國組織的改革尤為關注。

The United Nations Secretary-General position is described in Chapter XV of the UN Charter. She or he is the chief administrative officer of the organization and is appointed by the General Assembly upon recommendation of the Security Council. Through the history of the UN, various secretaries general have launched initiatives on matters of on peace and security as well as other important issues confronting the world. Kofi Annan, who held the office from 1997 through 2006, is remembered for his concern with the situations in Rwanda and Darfur, and the reform of the UN system.

Security Council 安全理事會

安全理事會為聯合國的主要機構之一，由十五個國家組成，其中五個國家為常任理事國（中國、法國、俄國、英國、美國）。另外十個理事國由大會選出，任期兩年，每個理事國享有一投票權，常任理事國享有否決權，能阻止任何提案的通過。安全理事會的主要功能為維持和平及國際安全，並判定是否有威脅和平、破壞和平或侵略的情況存在並做出建議。在冷戰期間，除了有關韓戰所採取的行動之外，美國及蘇聯經常利用否決權來阻擾對方的提案，造成安全理事會運作上的癱瘓。又對侵犯人權的制裁，如對南非的制裁措施，是否有效也受不少質疑。近年來諸多改革、擴大安理會方案被提出，德國與日本積極爭取成為安理會常任理事，但未成功。日本的努力尤其受到抵制，二次世界大戰曾受日本侵略或統治的鄰近國家，紛紛反對日本的意圖，北京舉行大規模的抗議遊行。*另見* Peace; Peacekeeping; Peace making.

One of the principal organs of the United Nations. It is comprised of fifteen members, of which five are permanent (China, France, Russia, United Kingdom, and United States) and ten are elected for a two-year term by the General Assembly. Each member has one vote, but the permanent members have a veto power, which allows each of them to block the adoption of any resolution. The main responsibilities of the Security Council are to maintain peace and international security, and determine the existence of any threat to peace, breach of the peace, or act of aggression. It is to make recommendations on these matters. During the cold war era, with the exception of actions taken regarding the Korean War, the Security Council was relatively dormant. It has become more active since the 1990s because the veto became less of an obstacle for collective action. Additionally, the effectiveness of sanctions adopted in cases of violations of human rights has been questioned. In recent years, various proposals for reforming the Security Council have been made, with Germany and Japan particularly keen on joining the council. However, all proposals have been postponed. The Japanese initiative aroused strong emotions from neighbouring countries that had either been occupied or ruled by the Japanese. Large-scale demonstrations were organized in Beijing, China to voice objections to Japan's bid for permanent membership. *See also* Peace; Peacekeeping; Peace making.

Self-determination 自決

自決指在一領域內的族群，不受外來力量的脅迫，決定自己未來的政治前途。一戰時美國總統威爾遜提出這一政治上主張，而後成為國際法的一項權利，根據經濟、社會與文化權利國際公約及公民與政治權利國際公約第1條，「所有人民都有自決權。他們憑這種權利自由決定他們的政治地位，並自由謀求他們的經濟、社會和文化的發展。」假如賦予自決一個狹義的定義，只是針對歐洲與日本帝國，這兩個國際公約有助於二戰後在亞非殖民統治的結束。但如果賦予殖民主義廣義的解釋，沙皇俄國、蘇聯及中國也應被包含在內。蘇聯帝國已經解體，而對中國而言，台灣、西藏、新疆都有獨立訴求。*另見* ICESCR; ICCPR.

Means by which peoples are to freely determine their own fate or course of action. The idea was first proposed to the international community in 1917 by U.S. President Woodrow Wilson as a political doctrine, and later incorporated into international human rights law. According to Article 1 of both the ICESCR and ICCPR covenants: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." If self-determination is seen in a narrow sense of being relevant only to the European and Japanese empires, then it can be said that these two covenants' commitment to the principle of self-determination contributed to the political environment that brought an end to colonialism. However, if colonialism is thought of in broader terms, as including the Soviet and Chinese empires, then the former fell apart for other reasons, and in the latter case there are the still-unresolved issues of Taiwan, Tibet, and Xinjiang. *See also* ICESCR; ICCPR.

Self-incrimination 不被強迫自證其罪

「公民與政治權利國際公約」第14條第3項第7款給予每個人「不被強迫作不利於自己的證言或強迫承認犯罪的最低保障」。許多國家的人權法案皆對這項權利提供保障，以確保無罪推定原則，以及避免被告遭受刑求而認罪。國家必須負起刑事案件的舉證責任，換言之，國家必須在不強迫被告自白的情況下，提出證據證明被告有罪。

Article 14(3)(g) of the ICCPR secures to everyone, as a minimum guarantee, the right "not to be compelled to testify against himself or to confess guilt." This doctrine, found in bills of rights throughout the world, protects the accused by ensuring the presumption of innocence. The right discourages the use of torture to compel confessions. The burden of proof in criminal matters rests with the state to prove guilt. Accordingly, this right imposes on the state the burden to prove the case without compelling a confession.

Sex discrimination 性別歧視

基於性別之緣故，以差別方式對待一個人或一群人。在法律上性別歧視已被禁止。許多國家憲法與法律都有明確規定。聯合國憲章、世界人權宣言，兩個國際人權公約與不少有關婦女權利的法律也都禁止性別歧視。但事與願違，在較傳統或專制國家，婦女仍然深受壓迫與剝削，不論在教育、工作、參加政治活動等面向都較男性地位為劣。在族群衝突或戰爭中，婦女與兒童尤首當其衝，受害最大。即使在許多自稱進步的國家，性別歧視仍然存在。

Discrimination on the basis of sex is prohibited by constitution and laws in many countries, and by the UN Charter, the Universal Declaration of Human Rights, as well as many other international instruments, including the two Covenants and especially the Convention on the Elimination of All Forms of Discrimination Against Women. However, reality is very different from the law. Women, especially in the more traditional, authoritarian societies, are still severely oppressed and exploited. In times of ethnic conflicts or wars, women and children are more likely to be hurt. Even in countries claiming to be advanced, sex discrimination continues to be a blemish on their human rights records.

Sex worker 性工作者

性工作者是一新名詞，專指自願從事性服務的人，強調她與其他勞工應享有同樣尊嚴與權利，不應被污名化。

"Sex worker" is a relatively new term used to designate a professional prostitute who engages in the trade voluntarily. The term implies that their work is comparable to that of the office or factory worker, and encourages the protection of their basic rights as a worker. Implicit in the term is an assertion that sex workers should not be considered as immoral for selling their bodies.

Sexual minorities 性少數

性少數包括女性同性戀、男性同性戀、雙性戀以及跨性別。在民主國家，他們的權利日漸得到承認。少數的國家允許同性婚姻。但在保守的基督教與穆斯林教國家，他們仍然受到迫害。

2006年，以挪威為首的54個國家，不包括中國，在聯合國的人權理事會發表一份聯合聲明，指出基於性別傾向與性別認同的人權侵犯事實，證據充足，包括剝奪生命、喪失免於暴力與酷刑的自由等等，呼籲理事會注意這個問題。*另見* Homosexual acts.

This term encompasses lesbians, gay men, bisexuals, and the transgendered, also collectively known as "LGBT." In democratic countries their rights have increasingly been recognized, and a few jurisdictions permit same-sex marriages. However, in conservative Christian and Muslim areas the LGBT communities continue to be persecuted.

In 2006 fifty-four countries, led by Norway but not including China, issued a joint statement at the UN Human Rights Council citing "extensive evidence of human rights violations based on sexual orientation and gender identity, including deprivation of the rights to life, freedom from violence and torture," and urged the Council "to pay due attention" to the problem. *See also* Homosexual acts.

Resource: Brian Whitaker, *Unspeakable Love: Gay and Lesbian Life in the Middle East* (2006).

Shari'a, *see* Muslim law.

Siracusa Principles 西拉庫薩原則

其全名為「公民與政治權利國際公約中有關限制和克減規範的西拉庫薩原則」。這組原則為聯合國經濟社會理事會於1985年所通過，其目的在於防止國家濫用緊急權力。*另見* Derogation of rights; International Bill of Rights; Non-derogable rights; Ordre public.

Full name: Siracusa Principles on the Limitation and Derogation Provision in the International Covenant on Civil and Political Rights. Set of principles adopted in 1985 by the UN Economic and Social Council to prevent states from abusing emergency powers. *See also* Derogation of rights; International Bill of Rights; Ordre public; Non-derogable rights.

Resource: http://www1.umn.edu/humanrts/instree/siracusaprinciples.html.

Slander, *see* Defamation.

Slave Trade/Slavery 奴隸販賣

國際輿論對奴隸及奴隸販賣的譴責，是國際法涉入國家內部行為的例子。二十世紀末，奴隸與奴隸販賣已為國際法所禁止。當今禁止奴隸制度的國際規範包括世界人權宣言、公民與政治權利國際公約，及其他國際協定的公約。例如：1926年的禁奴公約及其1953年的修正議定書，根據此公約的定義，「奴隸制為對一人行使附屬於所有權的任何或一切權力的地位或狀況。」又「奴隸販賣包括使一人淪為奴隸的一切擄獲、取得或轉賣的行為；一切以出賣或交換為目的而取得奴隸的行為；將以出賣或交換為目的而取得的奴隸通過出賣或交換的一切轉讓行為，以及一般而言，關於奴隸的貿易和運輸行為。」

1956年「廢止奴隸制、奴隸販賣及類似奴隸制的制度與習俗補充公約」（於1957年生效）將奴隸販賣的範圍加以擴大，包括：債務質役、農奴制、非自願婚姻，販賣妻子、寡婦本身為他人所繼承、將兒童交給他人以供利用等。

不為奴隸的權利是不能克減的，即使在社會緊急狀態下，亦不得加以克減（公民與政治權利國際公約第4條）。

即使奴隸制度以及奴隸販賣明顯地違反人權，但在一些國家中，奴隸制度以及奴隸販賣仍依舊盛行。*另見* Customary international law; Debt bondage; Non-derogable rights.

The international condemnation of slavery and the slave trade are early examples of international law reaching into the domestic practices of states that are viewed as contrary to human dignity and rights. By the end of the twentieth century, slavery was prohibited by a number of international instruments including the ICCPR, and other more specific conventions such as the Slavery Convention of 1926. The convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." "Slave" means a person in such condition or status. Slave trade is defined as all acts involved in the capture, acquisition, or disposal of a person with intent to reduce to slavery; all acts involved in the acquisition, sale, or exchange of a slave; all acts of disposal by sale or exchange, and, in general, every act of trade or transport in slaves.

The 1956 Supplemental Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery expanded prohibited acts beyond the earlier definition to include Debt bondage (q.v.), serfdom, involuntary

marriage, sale of wives, inheritance of a widow, and sale of a child for purposes of exploitation.

The right not to be enslaved is a Non-derogable right (q.v.) and must be honoured even during a public emergency (ICCPR, art. 4).

Despite the fact that the slave trade and slavery are contrary to human rights, even for states that choose not to ratify human rights instruments, there are states where the practice is still prevalent and accepted de facto. *See also* Customary international law; Debt bondage; Non-derogable right.

Resources: "Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926, 60 L.N.T.S. 253, entered into force March 9, 1927, http://www1.umn.edu/humanrts/instree/f1sc.htm; and related documents listed at http://www1.umn.edu/humanrts/instree/ainstls1.htm.

Social rights, *see* Cultural rights.

Speech, freedom of 言論自由

在早期的憲法模式中，言論自由是受保障的權利，例如美國憲法第一修正案，但是隨著溝通技術的發展，諸如象徵性言論及藝術創作等形式的溝通方式，亦受到保障。國際法採用較廣意的發表意見的自由。而美國法院對言論自由的解釋也包含其他形式的溝通方式。

In early constitutional models, freedom of speech was the primary protected right. With the development of communications technology, it became apparent that other communication forms needed protection, such as symbolic speech and artistic endeavours. International instruments use the broader term "freedom of expression," while the jurisprudence of the U.S. courts uses "speech" to include other forms of communication, as is deemed appropriate given technological advances. This is an evolving area of law.

State 國家

在國際公法的架構下，國家要獲得國際的承認，必須符合下列四項條件：確定的領土、永久的人口、一個政府、建立國際關係的能力。一個主權國家有權獨立治理其領土內的人民，並制定自己的外交政策。

聯合國憲章第2條第1項明訂，「本組織係基於各會員國主權平等之原則。」

In international law, a state must meet four criteria to be recognized: a defined territory, a permanent population, a government, and a capacity to conduct international relations. A sovereign state independently governs its own population in its own territory and has its own foreign policy. Article 2(1) of the UN Charter states that there is "sovereign equality" among its members.

State interest, compelling 重要國家利益

一個強有力的利益使國家限制個人權利成為合法。例如，在美國因傳染病的危機而強迫個人接種免疫預防針。

An interest sufficiently strong to justify state interference with an individual's rights. For example, in the United States if there is a medical emergency the state may impose immunization even for those who claim that it is a violation of their right to privacy and a deprivation of their liberty.

State jurisdiction, essentially within 本質上屬於國內管轄

這個字彙涉及聯合國的管轄權。聯合國憲章第2條第7項，「本憲章不得視為授權聯合國干涉本質上屬於任何國家的國內管轄之事件…」。

當一些國家被聯合國指控有侵害人權事件情況時，多辯稱事件是屬於國內管轄，即使聯合國憲章第55條規定聯合國應提倡人權，及第56條規定各會員國誓言採取集體及個別行動與聯合國合作。即使有第55、56條的存在，許多國家宣稱聯合國大會及人權委員會不能介入這些人權侵害事件。由於現今大多數的國家已接受人權是國際關懷且為聯合國的使命之一，因此這種論調已逐漸失去正當性。*另見* Humanitarian intervention.

The phrase "essentially within the jurisdiction of a state" has significance for the jurisdictional mandate of the United Nations. Article 2(7) of UN Charter states that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State."

States accused by the UN of human rights violations often argue that the matter is essentially within their domestic jurisdiction. Despite the obligation to promote

human rights (art. 55), such states often claim that this language means that human rights violations may not be considered by United Nations bodies. However, this argument has gradually lost acceptance, with almost all states conceding, at least in principle, that human rights are properly a matter of international concern and within the UN's legitimate purview. *See also* Humanitarian intervention.

Statelessness 無國籍者

不是任何國家的公民的情形。

由於人權保障主要來自國家，無國籍表示個人權利可能形同虛設。因此，國際社會的基本政策是每個人都應屬於某一國的公民。不過，還是有幾個原因會造成無國籍的情形，例如，出身於一個非國家的地區，或其出生的國家不再存在，也沒有繼承的國家。另外，一個人也可以聲明放棄公民權，這時政府若同意，他也會成為無國籍人士。

The condition of not being a citizen of any state.

Because it is primarily the nation state that protects people's rights, being stateless means that one's rights run the risk of being more theoretical than real. Thus it is the policy of the international community that everyone should be a citizen of some country. However, statelessness can arise for a number of reasons, such as having been born in a non-state or a state that no longer exists and has no successor state. Also, a person may renounce his citizenship, thus becoming stateless to the extent that governments so recognize.

Resources: Convention on the Reduction of Statelessness (1975), http://www1.umn.edu/humanrts/instree/w2crs.htm; Convention Relating to the Status of Stateless Persons (1960), http://www1.umn.edu/humanrts/instree/w3cssp.htm.

Sub-Commission on the Promotion and Protection of Human Rights

人權促進及保障次委員會

之前稱為「防止歧視及保障少數族群次委員會」，於1999年正式改名，成員以個人專家身份行使職權，先由政府推薦，再由委員會選出。多年來次委員會相當獨立，常催促委員會積極以赴。今年委員會已升格為人權理事會，次委員會今後如何運作有待觀察。

Formerly known as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, it accepted its present designation in 1999. Its members serve in their individual capacities (q.v.), elected by the commission upon the recommendation of governments. For many decades, the sub-commission has been fairly independent and tended to urge the commission to do more. It remains to be seen how it will function in light of the commission being elevated to the status of a council.

Subject of international law 國際法主體

在傳統國際法，除海盜罪外，國家是國際法上唯一的主體，個人僅為國際法之客體，國際法的相關規定並不適用於個人。若一個國家對一個人造成傷害，該人無權利用國際法來尋求救濟，僅能依賴其本國來尋求賠償，該人的本國基於其公民受到他國傷害，有權向他國求償。

即使在現代，前述的原則依然存在，國際法院規約規定只有國家才能成為國際法院的當事人。

然而，人權法和人道法的發展逐漸改變個人在國際法上的地位。自紐倫堡大審以來，國際法庭將參與種族滅絕罪行的個人，依個人行為定罪；再者，歐洲人權公約以及公民與政治權利國際公約第一議定書賦予個人申訴權利，使得個人在國際法上的地位獲得提升，因此，在當今國際法的範疇中，現今個人所負有的權利和義務，已有很大的改變。*另見* International Court of Justice.

In traditional international law, with a few exceptions such as the crime of piracy, the only subjects of international law were states. Individuals per se were not limited by it, nor did they benefit from it. If injury were inflicted on an individual by a state the individual had no legal recourse but to rely on his/her own state in seeking compensation or justice. Even in the modern era this doctrine largely prevails, as is clear from the Statute of the International Court of Justice that states that "only states may be parties in cases before the Court."

The growth of human rights law and humanitarian law has significantly altered the status of the individual in modern international law. Since the Nuremberg trials and the universal acceptance that, for example, genocide is a crime, individuals have been held culpable for personal acts in international tribunals. Furthermore, with the development of the European Convention on Human Rights' right of individual petition, and the Optional Protocol to the ICCPR permitting individuals to petition the Human Rights Committee (qq.v.), the individual has increasingly gained rights and duties. *See also* International Court of Justice.

Submission 提出；呈交

向國際有關機構正式提出申訴的行為，這項名詞適用於所有基於人權保障所設立的機構。

In the context of human rights: the act of bringing a complaint before an international body competent to render a judgement. The term applies to all bodies mandated with the protection of human rights.

Suicide, assisted 協助自殺

英國上議院在1994年對協助自殺的合法性所持的意見，被大多數地區廣泛接受。該院的「醫學倫理特選委員會」在報告中指出：「我們認定，沒有任何事由可以允許協助自殺的存在；同時，我們也看不到在從事這個行為時，醫生與其他人有什麼區別」。只有荷蘭與美國奧瑞岡州不採這個論點。他們接受「有尊嚴地死亡」這個概念，也立法允許醫護人員在特定的情況下，協助自願的人結束其生命。*另見* Euthanasia.

The standard approach to the question of the legality of assisted suicide was taken by Britain's House of Lords in 1994. The Select Committee on Medical Ethics issued a report that stated, in part, "We identify no circumstances in which assisted suicide should be permitted, nor do we *see* any reason to distinguish between the act of a doctor or of any other person in this connection."

In very few jurisdictions (e.g., Netherlands, Oregon), a physician may assist Euthanasia (q.v.) under limited circumstances, where a individual has chosen to terminate his or her own life. *See also* Euthanasia.

Symbolic speech 象徵性言論

以非文字或言語的方式表達自己的意見，例如：穿著印有國旗或政治徽章的衣物。象徵性言論是言論自由的一種形式，因此受人權的相關保障。

Conduct that expresses ideas or opinions without words. The wearing of a flag or a political button are examples of public symbolic demonstrations of expression. These are forms of freedom of expression that are entitled to protection as human rights.

Terrorism 恐怖主義

即使國際社會同聲譴責恐怖主義，但是迄今尚未有一個廣為接受的定義。「恐怖」或「極端的恐懼」是恐怖份子用來壓迫政府或社會回應他們政治目的之手段。一般而言，恐怖手段是由非國家的組織或團體所採用，被認為違背人權的規範。但若干國家藉口鎮壓恐怖主義，置國際法或憲法上所承擔的義務於不顧，也容易侵犯人權。

有些國家與政治團體為「恐怖主義」辯護，認為是對付「國家恐怖主義」合法的工具。反之，這些國家與政治團體受國際社會的其他成員的譴責，稱他們鼓勵、支持「恐怖主義」。*另見* Torture.

Although the international community has condemned terrorism in a general way, no single legal definition has been agreed on. Terror, or extreme fear, is generated and exploited by terrorists in an attempt to coerce governments or communities to respond to their political objectives. Terrorism is often seen as a mechanism by non-state actors to achieve their goals, and is condemned as the antithesis of a human rights regime. States are often inclined to backslide from their international and constitutional obligations in response to this asymmetrical violence. Terrorism and the climate of fear and retribution that it engenders can breed disregard for human rights norms.

Although terrorism is by definition limited to non-state actors, the conduct (mass killing and mayhem) carried out by states is often not fundamentally different. Some state actors and political groups thus defend terrorist acts as a legitimate response to illegitimate state policies or what they argue is "state terrorism." However, states who support terrorists groups are accused of engaging in state-supported terrorism and are generally condemned by members of the international community. *See also* Torture.

Thought, conscience, and freedom of religion
思想、良心與宗教自由

在草擬世界人權宣言時，曾因是否應對宗教自由加以保障，引起很大的爭議。而世界人權宣言第18條不僅保障宗教自由，更包括了對思想和良心自由的保障。用羅斯福夫人的話，本條的意涵「涵蓋了信仰宗教者和無神論者的良心自由」。因此，第18條保障的範圍不只限定在宗教自由，還包括對非宗教信仰

者的保障及改變宗教信仰的權利。

即使聯合國憲章並未直接提及宗教自由，但卻在兩個地方提及宗教：聯合國憲章第10條及第55條陳述，聯合國提倡及鼓勵人權的尊重，不因個人宗教信仰而有任何區別。

世界人權宣言第18條保障思想、良心和宗教自由的權利，反映出世俗的、普世的宗教自由，並非僅保障對神學的信仰。第18條同時也保障「改變宗教或信仰的自由」，及「以教義、實踐、禮拜和戒律表達宗教或信仰的自由」。因此，不僅宗教自由受到保護，與信仰相關的行為亦受到保護。

In the drafting of the Universal Declaration of Human Rights there was considerable debate regarding the protection of religious freedom. The inclusion in Article 18 of "thought" and "conscience" as well as "religion" made it clear that not only was the practice of religion to be protected, but that the article, to use Eleanor Roosevelt's words, "covered full freedom of conscience for believers as well as atheists." Hence Article 18 protects more than "freedom of religion," it also protects the "freedom to change . . . religion or belief" as well as the right "to manifest one's religion or belief in teaching, practice, worship and observance." Not only is belief protected, but acts associated with belief are as well.

Torture 拷打；酷刑；刑求

對人的身體或心理造成劇烈的痛苦，以達到懲罰、逼供或僅為滿足施虐者樂趣的行為。

聯合國人權宣言第5條、公民與政治權利公約第7條均禁止刑求。

禁止酷刑公約在第1條定義了刑求：「不論是生理上或心理上，有意識地將極端痛苦或傷害的行為強加於他人身上，以達到諸如下列目的：從該人或第三者身上取得自白、獲得資訊；對該人或第三者曾犯或可能犯下的罪行加以懲處；恫嚇或強迫，或其他任何因歧視而引發的緣由。這些行為係在官員或任何執行公權力者所唆使、同意或默許下出現的」。與此同時，區域性條約如1993年歐洲禁止酷刑公約與1985年美洲公約也有明文規定。又禁止酷刑的義務，即使在公共緊急情況，也不能減免。因之對恐怖份子刑求逼供也為法律所不允許。

禁止酷刑也被認為習慣法，並普遍適用，不論一個國家是否簽署有關公約都受其限制。國際與國內法庭都享有管轄權。*另見* Corporal punishment; Cruel or inhuman punishment; Torture, Convention Against.

Torture is the infliction of intense pain, either to the body or to the mind, generally to punish or to obtain a confession or information, or for the sadistic pleasure of the torturer.

Article 5 of the Universal Declaration of Human Rights and Article 7 of the ICCPR prohibit torture, as does the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1 of the latter reads, "Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, which such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." There are regional instruments that prohibit and define torture as well, such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1993), and the Inter-American Convention to Prevent and Punish Torture (1985).

Derogations to the prohibition of torture are impermissible even in light of legitimately claimed "public emergencies" or other exigencies (ICCPR art. 4). Hence torture is impermissible as a response to terrorism or as a means to investigate possible terrorists.

The prohibition of torture does not only rely on treaty obligations. It is viewed as customary international law and pre-emptory in nature, and as such it is afforded universal jurisdiction whether or not a state has ratified the torture conventions. Torture not only constitutes a violation of human rights, but is considered an international crime punishable by domestic and international tribunals. *See also* Corporal punishment; Cruel or inhuman punishment; Torture, Convention Against.

Torture, Convention Against (CAT) 禁止酷刑公約

禁止酷刑公約在1984年通過，1987年生效，1984年有118個締約國。此公約的第2條宣稱，所有的締約國應採取有效的立法、行政、司法或其他措施，以防止酷刑在其管轄區中發生。沒有任何特殊的狀況可以正當化酷刑的施行，無論是戰爭期間、戰爭的威脅、國內政治局勢不穩定，或其他重大公共緊急狀況。除此之外，此公約亦要求締約國應將酷刑罪刑化，任何對他人施以酷刑之人，

即觸犯刑法。與此同時，此公約設立一個委員會監督公約的履行。這委員會被授權在擁有可靠訊息情況下有權展開實地調查（公約第20條）。然而締約國在批准公約時可以宣稱不受這條款的限制。*另見* Torture.

Full title: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment. Article 2 of this 1984 convention declares that "each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction," and that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Each state party shall ensure that all acts of torture are offences under its criminal law.

The Committee against Torture is the treaty body responsible for the oversight of the CAT. The committee is empowered to make site visits if it has received apparently reliable information that torture is being systematically practiced (art. 20). A ratifying state may opt out of this obligation. *See also* Torture.

Resource: http://www1.umn.edu/humanrts/instree/h2catoc.htm.

Trade unions 工會

工會是勞工為了保障利益而組成的團體。世界人權宣言第23條第4項明文保障組織與參加工會的權利，另外許多國際法律也有同樣的規定。這幾十年來國際勞工組織對勞工的權益貢獻良多，尤其是推動勞工結社與集體談判的權利，廢除強制的勞動以及廢除童工。*另見* Labour rights.

Trade unions are associations of workers that protect workers' interests. The right to form and join unions is guaranteed in Article 23(4) of the Universal Declaration of Human Rights, and by other international instruments. Through the decades the International Labour Organization (q.v.) has contributed much to workers' freedom of association and the right to bargain collectively, as well as abolishing forced labour and eliminating labour by children. *See also* Labour rights.

Trafficking 人口販運

根據2001年「預防、禁止與懲罰人口販賣議定書」，人口販賣指涉利用暴力威脅或利誘，為圖利與剝削他人而招募、運送、窩藏與接納的行為。剝削包括賣淫、強迫勞務、奴隸或器官移植等。

According to the 2001 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (text: http://www1.umn.edu/humanrts/instree/trafficking.html), trafficking means "the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power." "Exploitation" includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation; forced labour or services; slavery or practices similar to slavery; servitude; and the removal of organs.

Treaty 條約

維也納條約法公約第2條對條約所下的定義為：條約乃一種書面型式的國際契約，受國際公法的規範，由國家為當事人簽署而成立。條約得以簽署國的數目而分為雙邊或多邊條約，公民與政治權利國際公約乃多邊條約。它們已經成為國際法最重要的基礎，多邊條約對當代人權運動貢獻尤多。條約及其設立的機構對人權運動大有幫助，非政府人權組織得於集中力量。只有條約才能設立國際機構並界定其權力與管轄權，國際習慣法缺少此一功能。只有透過條約，國家才具有法律上義務。

Article 2 of the Vienna Convention on the Law of Treaties (q.v.) defines a treaty as "an international agreement concluded between States in written form and governed by international law." Treaties can be bilateral or multilateral.

Treaties have become the primary expression of international human rights law, and have served to codify existing customary international law, amplify its extension, and provide clearer and more precise normative definitions. Treaties and Treaty bodies (q.v.) have played a significant role in the human rights movement, allowing NGOs to focus their efforts on international forums. Unlike customary law, treaties can create international institutions and define their powers and jurisdictions, making states that are parties to the treaties legally obligated to conform to human rights norms, and accountable for the states' practices and policies.

Treaty bodies 監督條約機制

聯合國若干人權公約設置監督條約機制，例如，「公民與政治權利國際公約」所設置的「人權事務委員會」等。條約機構對人權法學貢獻良多，有助於人權規範進一步了解。

Various UN human rights treaties have established committees that review the periodic reports (q.v.) that states submit in compliance with treaties' mandates, and review individual communications (petitions) that allege violations of the treaties. Among the treaty bodies are: The Committee on Economic, Social and Cultural Rights; the Committee for the Elimination of All Forms of Discrimination Against Women; the Committee Against Racial Discrimination; Committee Against Torture; Committee for the Rights of the Child; and, most recently (2006), the Human Rights Council. The work of these committees has made a considerable contribution to the growing human rights jurisprudence, and is increasingly relied on for a fuller and more meaningful understanding of human rights norms.

Truth and Reconciliation Commission (TRC) (South Africa)

南非真相與和解委員會

南非於1995年所通過的「促進與重建國家團結法案」隨之設立「南非真相與和解委員會」旨在建立一個政治民主、種族和諧、個人權利與基本自由也充分得到保障的新國家。真相與和解委員會的運作透過三個單位，分別為：一、人權侵犯委員會，專管對人權侵犯事件的調查並舉辦公聽會；二、賠償與康復委員會，處理對受害人或其家屬賠償並協助他們正常生活，包括醫療等。真相與和解委員會主席屠圖主教十分強調寬恕精神，認為種族之間沒有寬恕，南非不可能有前途；三、特赦委員會，接受特赦申請，並作出決定，申請人大多數是前南非政府軍警人員。如果他們申請獲得許可，他們在民、刑法都不在負有責任。委員會在1998年基本上完成工作（當時特赦委員會沒能完成工作）並提出報告。

Body established by South Africa's Promotion of National Unity and Reconciliation Act in 1995. The mandate of the commission was to bear witness to, record, and in some cases grant amnesty to the perpetrators of crimes relating to human rights violations, as well as arranging reparations to and rehabilitation of the victims. Archbishop Desmond Tutu was appointed to chair the commission. He emphasized that South Africa would have no future if the races could not forgive each other and reach reconciliation.

The work of the TRC was channelled through three committees: (1) the Human Rights Violations Committee investigated human rights abuses that took place between 1960 and 1994, (2) the Reparation and Rehabilitation Committee was charged with helping victims through separation and rehabilitation such as monetary compensation and access to health care, (3) the Amnesty Committee considered applications for amnesty that were requested in accordance with the provisions of the act.

The commission was empowered to grant amnesty to those charged with atrocities during Apartheid (q.v.) as long as two conditions were met: the crimes were politically motivated, and the entire truth was told by the person seeking amnesty.

In October 1998 the commission basically completed its work and presented its report.

UNESCO 聯合國教科文組織

聯合國教科文組織是聯合國下的專門機構，總部設於巴黎，1945年舉行的倫敦會議通過其組織法，並於1946年11月正式生效，截至2005年止，教科文組織共有190個會員國。基於體認到由政府主導的政治和經濟的安排不可能帶來永久和平，而唯有建構在人類智慧及道德層次上的團結一致基礎，和平才得以持續。聯合國教科文組織成立的目的乃提倡國家間在教育、科學、文化及溝通的合作，以增進對正義、法治、人權以及基本自由的普世性尊重，以期對世界和平及安定作出貢獻。

聯合國教科文組織藉由：一、從事有關未來的研究；二、增進知識的移轉及分享；三、制定標準；四、提供專業；五、鼓勵專門知識的交流，等方式來達成上述之目的。

Acronym for United Nations Educational, Scientific and Cultural Organization. UNESCO is a specialized, Paris-based agency of the United Nations. Its constitution was adopted by the London Conference in 1945 and entered into force in November 1946. As of 2005 it had 190 member states. In the belief that a peace based exclusively on the political and economic arrangements of governments would not be lasting, and that therefore peace must be founded on the intellectual and moral solidarity of mankind, UNESCO's purpose is "to contribute to peace and security in the world by promoting collaboration among nations through education, science, culture and communication in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms."

UNESCO fulfils its mandate by (1) engaging in prospective studies, (2) advancing the transfer and the sharing of knowledge, (3) establishing standard-setting actions, (4) providing expertise, and (5) encouraging the exchange of specialized information.

UNICEF 聯合國兒童基金

聯合國大會於1946年通過設立聯合國兒童基金，由36名成員所組成的執行局負責管理，執行主任由聯合國秘書長任命。聯合國兒童基金以1989年兒童權利公約為基礎，其任務為提倡和保護兒童權利。

Acronym for United Nations International Children's Emergency Fund. UNICEF was created by the General Assembly of the United Nations in 1946. It is managed by an executive board of thirty-six members while its director general is nominated by the UN Secretary-General. Based on the 1989 Convention on the Rights of the Child, UNICEF is mandated to promote and protect the rights of the child.

United Nations 聯合國

聯合國於1945年10月24日由51個國家共同成立，這些國家承諾透過國際合作以及集體安全來保障和平。今日幾乎所有的國家都是聯合國會員國，至2006為止，聯合國總共有192個會員國。當一個國家成為聯合國會員國，即象徵該國同意且接受聯合國憲章所規範的義務，憲章乃規範國際關係基本原則的國際條約。

根據憲章的規定，聯合國的設立具有四項目的：一、維持國際和平及安全；二、發展國際間之友好關係；三、共同合作解決國際問題以及提倡對人權之尊重；四、構成協調各國行動之中心。

各會員國享有平等之主權（第2條第1項），聯合國並非一個超國家組織或世界政府。然而，聯合國能夠提供解決國際衝突的方案，以及針對高度歧見的事務研擬方案。

聯合國設有六大機構，其中五大機構（大會、安全理事會、經濟暨社會理事會、託管理事會、秘書處）位於聯合國總部紐約，而國際法院則位於荷蘭海牙。

聯合國及聯合國秘書長科菲．安南為2001年諾貝爾和平獎的共同得主。

The United Nations Organization was established on 24 October 1945 by fifty-one countries committed to preserving peace through international cooperation and collective security. By 2006 there were 192 member states, including nearly every state in the world. When states become members of the United Nations, they agree to accept the obligations of the UN Charter (q.v.). According to the charter the organization has four purposes: to maintain international peace and security, to develop friendly relations among nations, to cooperate in solving international problems and in promoting respect for human rights, and to be a centre for harmonizing the actions of nations.

UN members are equally sovereign states (art. 2). Although the United Nations is not a world government, it does provide the means to help resolve international conflict and formulate policies on widely diverse matters.

The United Nations has six main organs. Five of them—the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council

and the Secretariat—are based at UN Headquarters in New York. The sixth, the International Court of Justice, is located at The Hague, in the Netherlands.

The UN, along with its then Secretary-General Kofi Annan, was the recipient of the 1991 Nobel Peace Prize.

United Nations Charter 聯合國憲章

聯合國憲章是成立聯合國的多邊條約，於1945年6月26日於舊金山簽訂，其序言明示：「我聯合國人民同茲決心，欲免後世再遭今代人類兩度身歷慘不堪言之戰禍，重申基本人權，人格尊嚴與價值，以及男女與大小各國平等權利之信念，創造適當環境，俾克維持正義，尊重由條約與國際法其他淵源而起之義務，久而弗懈促成大自由中之社會進步及較善之民生，並為達此目的，力行容恕，彼此以善鄰之道，和睦相處，集中力量，以維持國際和平及安全，接受原則，確立立法，以保證非為公共利益，不得使用武力，運用國際機構，以促成全球人民經濟及社會之進展，用是發憤立志，務當同心協力，以竟厥功。」

聯合國憲章中的數項條文與人權議題相關，例如：第1條聯合國成立的宗旨，以及第13條、第55條、第56條和第62條，這些條文建構了聯合國人權體系的基礎。

第103條賦予憲章在國際公法體系中的特別地位，規劃「聯合國會員國在本憲章下之義務與其依任何其他國際協定所負之義務有衝突時，其在本憲章下之義務應居優先。」

Multilateral 1945 treaty by which the United Nations Organization was created in the U.S. city of San Francisco. Its preamble states: "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims."

At many points the Charter addresses human rights issues (arts. 1, 13, 55, 56, 62). It is on the basis of these provisions that the United Nations system for the protection of human rights evolved.

Article 103 gives special significance to the place of the Charter in international law: "In the event of conflict between the obligations of Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

United Nations Development Programme

聯合國發展計劃署

聯合國發展計畫署設置於1965年，以統籌技術援助計畫與聯合國特別基金的運作，這項整合工作到1971年才完成。發展計畫署是當前發展中國家技術援助的主要來源，數以千計的計畫，包括資源規範、訓練以及經濟與社會基礎建設都獲得支持。發展計畫署也同時管理聯合國特別基金，並與其他相關機構合作。

Specialized agency of the United Nations, established in 1965 to unify the operations of the Expanded Program of Technical Assistance and the United Nations Special Fund, which continued as separate components of UNDP until full unification in 1971. The UNDP is a major source of technical assistance in developing countries, with most of its grants being in the form of consultants' services, equipment, and fellowships for advanced study abroad. The programme supports thousands of projects in fields as diverse as resource planning, training institutes, the application of modern technology to development, and the building of the economic and social infrastructure. It also administers United Nations Special Fund for resource exploration, combating desertification, technology development and volunteers; and works with UN-associated agencies involved in development activities. It is funded by voluntary contributions from UN members.

United Nations High Commissioner for Refugees, *see* Refugees, UN High Commissioner for.

Universal Declaration of Human Rights 世界人權宣言

世界人權宣言由人權委員會草擬，經聯合國大會同意，「作為所有人民和所有國家努力實現的共同標準」。人權委員會經過兩年努力才完成起草工作。大會以四十八票贊成，八票棄權通過宣言。棄權國家分別是沙烏地阿拉伯、南非、蘇聯及東歐四個國家。雖然人權宣言並非有法律效力的文件，但激勵了其後所制定具有憲法地位的人權法案、人權條約或保障人權的國際機制。許多人認為世界人權宣言的三十條條文已享有國際公法上「國際習慣法」的法律地位。*另見* Common standard of achievement; Roosevelt, Eleanor.

A "common standard of achievement for all peoples and nations," drafted by the UN Commission on Human Rights and approved by the General Assembly in 1948. It took the commission two years to complete the drafting process. The tally of voting in the General Assembly was: forty-eight in favour, eight abstaining (Saudi Arabia, South Africa, Soviet-dominated lands). Though not a legally binding instrument, the declaration has inspired constitutional bills of rights, human rights treaties, and mechanisms for international protection of human rights. It is argued that many of the rights contained in its thirty articles have taken on the characteristic of Customary international law (q.v.). *See also* Common standard of achievement; Roosevelt, Eleanor.

Universality 普世性

人權具有普世性，普世性源於人類的平等。在世界人權宣言的序言中，提及「人類家庭所有成員的固有尊嚴及其平等和不可讓渡的權利」。世界人權宣言本身被稱為「所有人民和所有國家努力實現的共同標準」。

一些國家及地區認為人權的闡釋應考慮到不同的傳統及文化，因此，普遍尊重及人權保障的適用性，應依不同的文化規範而有所差異。*另見*Common standard of achievement for all; Cultural relativism; Dignity, inherent.

The prevailing view is that human rights are universal. This universality is founded on the unity and equality of mankind. In its preamble, the Universal Declaration of Human Rights makes reference to "the inherent dignity and the equal and

inalienable rights of all members of the human family." The declaration itself has been proclaimed as a "common standard of achievement for all peoples and all nations."

Some states and regional organizations argue that human rights are relative to local traditions and cultures, and that human rights should be applied with regard to different cultural norms. This claim to "cultural relativism" has been repeatedly rejected at human rights conferences and human rights bodies. *See also* Common standard of achievement for all; Cultural relativism; Dignity, inherent.

Viability 胎兒的生存能力

生存能力指胚胎能在母體外存活的那一個時刻。若干國家認定在這個時間點後的墮胎行為是犯罪行為，侵犯胎兒的權利。

The point in time after which a foetus could live outside a womb. In some jurisdictions abortion is thereafter deemed a violation of the unborn's human rights and thus a crime.

Vienna Convention on the Law of Treaties 維也納條約法公約

規範條約的聯合國公約。此公約界定「條約」為國家之間書面的國際協訂。其他相關的名詞如「批准」、「保留」等也都有明確的規範。維也納條約法公約將相當多的習慣法成文法化，是國家與司法機構權威性的規範。

The UN treaty that governs the law of treaties. The Vienna Convention on the Law of Treaties defines "treaty" as "an international agreement concluded between states in written form." Related essential terms such as "Ratification" and "Reservation" (qq.v.) are also defined. The convention, which codifies much of the customary law that had already governed treaty interpretation, serves as an authoritative guide for states and judicial organs.

Volunteerism 志工主義

志工泛指有意願和能力從事社區服務，且不求金錢上的回饋，達成利人利己目的的人。許多私部門的志工組織及非政府組織的運作多仰賴志工的協助，他們的活動對於公民社會的發展及人權的保障極為重要。

Volunteers are those people that have a personal desire and the ability to provide a community service without monetary compensation, and in a non-compulsory way. Many non-governmental organizations rely largely on volunteers. Their activities are important in the protection of human rights, and the general development of civil society.

Vote, right to 投票權

投票權意指公民基於一人一票原則選擇政府官員的權利。

世界人權宣言第21條第3項主張，「人民的意志是政府權力的基礎；這一意志應以定期的和真正的選舉予以表現，而選舉應依據普遍和平等的投票權，並以不記名投票或相當的自由投票程序進行。」

哥本哈根會議文件明示，歐洲安全及合作組織會員的政府應在合理期間內以秘密投票方式舉行自由選舉，或以同等的自由程序進行選舉，保障選舉人能在言論自由的前提下，選出他們的代表(5.1)。

歐洲安全及合作組織、國際政府組織以及國際非政府組織皆投入選舉觀察，以確保投票權的真正落實。*另見* Elections, periodic and regular.

The citizen's right to select officials on a one-person-one-vote basis.

Article 21(3) of the Universal Declaration of Human Rights states: "The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

The Copenhagen Document (q.v.) of 1990 committed member states of the Organization for Security and Co-operation in Europe (OSCE) to "free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives" (5.1).

The OSCE and various other inter-governmental organizations and international NGOs around the world are committed to election monitoring to protect the right to vote. *See also* Elections, periodic and regular.

Waitangi Tribunal 懷唐伊法院

為消弭及補償對毛利族群於十九世紀中期和末期所造成的不公平，紐西蘭國會於1975年通過了懷唐伊法案(Treaty of Waitangi Act)，懷唐伊法院(Waitangi Tribunal)於是根據此法律成立，處理違反懷唐伊條約相關規定的申訴。

In order to settle claims of land confiscations and injustices suffered by the Maori ethnic minority during the nineteenth century, the New Zealand Parliament passed the Treaty of Waitangi Act in 1975, in accordance with which the Waitangi Tribunal was established to deal with complaints about the breach of the Waitangi Treaty.

War crimes 戰爭罪行

在戰爭中，從事國際公法所禁止的行為，尤其是違反1949年四個日內瓦公約的行為，即視為犯下戰爭罪行。這四個日內瓦公約有共同條款界定什麼是對受保護的人與財產「嚴重違反」罪行，並建立普世管轄權。國際刑事法庭也將戰爭罪行，與滅絕種族罪、侵犯人道罪與侵略戰爭罪並列為該法庭管轄罪行。*另見* Geneva Conventions; International Criminal Court; International military tribunals.

Crimes committed during a war that are prohibited by international law, especially as the latter is defined in the four Geneva Conventions (q.v.). These conventions contain articles defining "grave breach" of the conventions for injuries to protected persons or property. They also establish a universal jurisdiction for grave breach. War crimes (along with genocide, crimes against humanity, and crimes of aggression) are among the crimes within the purview of the International Criminal Court for countries that have agreed to accept the court's jurisdiction. *See also* Geneva Conventions; International Criminal Court; International military tribunals.

Women, Convention on the Elimination of All Forms of Discrimination Against

消除對婦女一切形式歧視公約

消除對婦女一切形式歧視公約是有關婦女權益最完整的一個條約，保障婦女各項權利，也反應婦女權益問題的複雜性，政治、經濟、文化各層面都涉及。此公約在1979年通過，1981年生效，在2006已有185個締約國。公約第17條設立了「消除對婦女一切形式歧視委員會」，由23締約國所提交的報告，以確定締約國遵守公約的規定。*另見*Sex discrimination.

The most comprehensive and ambitious treaty concerning women's rights. Reflecting the complexity of the issue, CEDAW condemns discrimination against women in all its forms. It was adopted in 1979 and became effective in 1981. By the end of 2006, 185 states had become parties to it.

A Committee on the Elimination of Discrimination against Women is established by Article 17 of the convention. Its twenty-three members review the reports of the state Parties to assess their compliance with the convention. *See also* Sex discrimination.

Resource: http://www1.umn.edu/humanrts/instree/e1cedaw.htm.

Women's rights 婦女運動

婦女運動與女性爭取權利與自由息息相關。十九世紀歐、美婦權運動較多為爭取教育、工作、婚姻的平等權。二十世紀以來，婦權運動十分活躍，進一步提出生育權與身體的主體性等議題。*另見*Women, Convention on the Elimination of All Forms of Discrimination Against.

The women's rights movement has played and is playing a very important part in realizing women's security rights and freedom. The struggle for equality in education, employment, and participation in the political process began in Europe and the United States in the nineteenth century. Since then, feminist groups around the world have been advocating various measures, especially those dealing with sexual and reproductive rights, control of a woman's body, and protection from Trafficking (q.v.). *See also* Women, Convention on the Elimination of All Forms of Discrimination Against.

Work, right to, *see* Labour rights.

Workers' rights, *see* Labour rights.

World Bank 世界銀行

世界銀行設立於1944年，正式名稱為「國際重建與發展銀行」，為聯合國專門機構。其目的包括貸款給發展中國家及鼓勵國外投資。對發展中國家發展策略十分有影響力。在1990年代以前，世銀對人權議題並不關心，近年來這立場有所轉變，但仍缺少一個一致、有效的人權政策。許多世銀官員並不認為人權議題與他們職責有關，主張世銀應該採取政治中立，也因此受到許多人權組織、勞工與環保團體的抨擊。*另見* World Social Forum.

A specialized UN agency established in 1944 its main component being the International Bank for Reconstruction and Development. Its functions include making loans to developing countries and promoting foreign investment. It plays a powerful role in influencing the development strategies of the third-world nations. On the whole, human rights issues were absent from the bank's policies and practices until the early 1990s. The bank is presently more concerned with human rights issues, yet it is argued that it lacks a coherent and effective human rights policy. There are bank officials who argue that the issue of human rights is not an appropriate concern, and that the bank should not be politicized. Many human rights NGOs, and labour and environment groups have severely criticized the bank for its actions, which they view as contrary to human rights principles. *See also* World Social Forum.

World Social Forum 世界社會論壇

世界社會論壇是一個鬆散的非政府組織聯盟，目的在於提出一個有別於國際貨幣基金、世界貿易組織與世界銀行等所提倡的全球化策略，認為這些國際組織忽視和平、人權、勞工與環保的議題。世界社會論壇在2001年首次聚會，其後每年聚會一次，通常與支持全球化策略的世界經濟論壇同時舉行。

Loose alliance of NGOs formed as an alternative to the type of Globalization promoted by the International Monetary Fund, World Trade Organization, and the World Bank, which are viewed as insufficiently concerned with peace and human rights, especially labour and environmental issues. It has met annually since 2001, usually around the time of, and in opposition to, the pro-globalization World Economic Forum.

Resource: http://www.forumsocialmundial.org.br.

Xenophobia 極度的仇視外國人

對外國人、外國人的宗教、習俗等極度仇視的一種態度。1990年「新歐洲巴黎憲章」明確宣示了對抗仇視外國人的決心。

Extreme dislike or fear of foreigners, their customs, their religion, and so on. The Charter of Paris for a New Europe (1990) expressed determination to combat xenophobia.

Zone of privacy, *see* Privacy, zone of.

》中國大陸
Mainland China

Primary Authors and Translators: Daniel Yu, John Balzano
主要撰寫人及翻譯：Daniel Yu, 章伯仲

Abortion 墮胎

在中國，墮胎是被官方允許的。

中國的地方官員若不能有效地控制當地的人口，會受到獎懲制度的懲罰。因此，時常違反一胎化制度的婦女有時會被強制要求墮胎，以確保人口數能保持在允許的範圍。墮胎常帶有危險且在衛生條件不佳的地方進行。雖然中國在2001年頒佈了《中華人民共和國人口與計劃生育法》，在全國採用標準的程序以避免腐敗和權力濫用，但國家介入墮胎決定的過程仍然是個問題，也代表了中國婦女在生育權方面遭到嚴重的侵犯。

有些婦女因擔心第一胎為女孩，因而進行性別篩選的墮胎，不過這個行為不被官方認可。結果，中國的生育政策意外地造成了性別比例逐漸地失衡。據估計，中國將有數千萬的男性無法娶妻。*另見*Women's Rights; Women's Rights Law.

Abortion is officially permitted in the PRC.

A disincentive system punishes local officials who fail to control the population in their areas. Thus women who persistently violate the one-child policy are sometimes forced to have abortions so that population quotas can be met. Abortions are often conducted under dangerous, unsanitary conditions. Despite the enactment in 2001 of the Family Planning and Population Law (q.v.), which was intended to standardize practices across the country and prevent corruption and abuse, state interference in abortion decisions is still a problem and represents a significant impediment to Chinese women's enjoyment of reproductive rights.

Out of fear that their one child will be female, mothers sometimes opt for sex-selective abortions although the practice is not officially condoned. As a result an unintended consequence of the reproduction policies is a looming imbalance in the sexes, which may eventually leave tens of millions of men without wives. *See also* Women's Rights; Women's Rights Law.

Resources: Congressional Executive Commission on China, *2005 Annual Report* (2005); Human Rights in China, *Report on the Implementation of CEDAW in the People's Republic of China* (July 2006).

Administrative Litigation Law 行政訴訟法

《行政訴訟法》於1989年4月4日頒布實施，該法授權中國公民起訴政府。該法允許公民和組織就「具體行政行為」起訴政府官員。《行政訴訟法》所指

的具體行政行為與《行政復議法》規定的行為類似，包括收費、罰款，沒收財產或不作為。但是《行政訴訟法》規定抽象行政行為，如行政法規、規章不可訴。行政訴訟的案件由人民法院的行政庭審理。

面對政府濫用權力，雖然許多行政相對人努力運用《行政訴訟法》維護自己的權利，但他們發現正如採用其他救濟方式（如上訪、行政復議）一樣，《行政訴訟法》提供的救濟也是非常有限。這主要是因為該法給與司法審查的範圍很窄，而且司法機關的政治地位較弱。這兩個原因加上其他因素是提高行政機關效率的最大障礙。目前，全國一般每年有行政訴訟案件約10萬件。《行政訴訟法》的修改已在日程中，幾個草案已進入討論。《行政訴訟法》的修正案可能會在不同方面擴大司法審查的範圍。*另見*Administrative reconsideration; Law, administration according to; Law, rule according to.

A law enacted in 1989 that provides citizens with a means to launch court actions against the government. The Administrative Litigation Law (ALL) allows citizens and entities to sue officials in administrative sections of the people's courts for administrative acts. These acts can include the imposition of fees and fines, seizure of property, or failure to perform a statutory duty. In this respect, the ALL is similar to the Administrative Reconsideration Law (q.v.), but unlike the latter the ALL does not allow the plaintiff to challenge the validity of an abstract administrative act, such as an administrative regulation, rule, or even a lower-level official document called a normative or "red-letterhead document."

Although many have endeavoured to use the Administrative Litigation Law to seek relief from administrative abuses on the part of the government (there are about 100,000 such lawsuits each year), some plaintiffs have found that the law provides only a limited remedy because of the narrow scope of judicial review and weak political status of the judiciary. These and other factors may render ineffective many challenges that are otherwise well founded.

As of 2006, the Administrative Litigation Law is scheduled for revision. There are drafts in process, some of which may expand the scope of judicial review under the ALL. *See also* Administrative Reconsideration; Law, administration according to; Law, rule according to.

Administrative reconsideration 行政復議

根據《行政復議法》，行政復議是指公民、法人或其他組織挑戰具體行政行為合法性的行政程式。具體行政行為包括：罰款、行政機關作出有關許可證

的決定，徵收財產或行政官員沒有依法履行法定職責。 對於大多數案件，《行政訴訟法》允許當事人直接向法庭提起訴訟，與之不同的是，《行政復議法》規定申請復議人要向相關行政機關負責法制工作的機構提出行政復議申請，負責法制工作的機構可以在把申請移交給相關行政機關進行復議。申請復議人認為具體行政行為所依據的行政規章或規範性檔不合法，還可以向行政復議機關申請對該規定一併審查。這些規範性檔包括國務院部門的規定、縣級以上地方各級人民政府及其工作部門的規定，但不含行政法規，部委規章和地方人民政府規章。如果申請人不服行政復議機關的決定可以向人民法院起訴。

雖然對於行政復議程式是否能夠有效抑制官員濫用權力還存在疑問，但行政復議程式無疑是公民對抗官僚，尋求救濟，維護權益的主要方法，也是審查規範性檔的重要途徑。各個部門頒佈的規範性檔多如牛毛，而且很可能與其他立法相衝突。*另見*Administrative Litigation Law; Legislation, law on; Record and review.

An administrative process conducted pursuant to the Administrative Reconsideration Law, by which citizens, companies, and other organizations can challenge the legality of administrative acts. Examples of such acts include exacting fines, issue of licences, confiscation of property, and an official's failure to perform a statutory duty. Unlike the Administrative Litigation Law, which generally allows for suits directly in court, petitioners for administrative reconsideration submit their application to the legal affairs office of the relevant administrative agency or of the next highest level of government (which may pass the application on to another organ for review). Petitioners can also request a review of the legality of the administrative document or normative document that provided the basis for the specific act in question (which would not be possible under Administrative Litigation Law proceedings). This review applies to normative documents issued by central ministries and local governments and their departments down to the township level. Administrative regulations, ministerial rules, local regulations, and local rules are not subject to such review through administrative reconsideration. If the petitioner is dissatisfied with the decision of the agency he/she may appeal to a people's court.

Although there is some doubt about the effectiveness of administrative reconsideration in curbing official abuses, it remains one of the main channels through which citizens can seek redress of their grievances against bureaucrats, and an important means of forcing a review of the vast number of normative documents issued by organs of government at various levels that may conflict with one another. *See also* Administrative Litigation Law; Legislation, law on; Record and review.

Advanced education　先進性教育活動

先進性教育是胡錦濤為了解決因經濟改革帶來的如腐敗等黨內問題，改革共產黨的運動之一。胡錦濤認為由於經濟改革，中國社會出現了多種力量，共產黨對國家政權的控制和管理能力正在受到威脅。胡錦濤計畫進一步發展江澤民提出的三個代表理論，但在胡錦濤任期的第一年他所推行的理論帶有「民粹主義」（或平民主義）的色彩。胡錦濤計畫的其中一個要素是增強黨對人民需要的回應。「先進性教育」顯示了中共領導人希望改變黨的角色以適應越來越多樣化的中國經濟和社會的發展。

Part of Hu Jintao's policy to reform the Communist Party and combat socioeconomic problems resulting from the reforms, such as corruption. His position was that many of the forces created by the economic reforms had threatened the party's control over the country and its ability to rule. Hu's plan expanded on the theory of the Three Represents (q.v.), but it also reflected the elements of "populism" that characterized his tenure as president. One of the elements of the plan was to increase the party's responsiveness to the needs of the people. The Advanced Education policy reflected a desire on the part of the leadership to reform the role of the party to meet the changing and diversifying nature of Chinese economy and society.

Resource: Joseph Fewsmith, "CCP Launches Campaign to Maintain the Advanced Nature of Party Members," *China Leadership Monitor,* 13 (2005).

AIDS　愛滋病

1986年中國發現第一個感染愛滋病的病例。在過去的二十年來，被發現的愛滋病病例越來越多。由於政府視愛滋病為「外來」病，因此所制定的法律及政策僅僅旨在防止愛滋病的攜帶者進入境內，除此之外，沒有進一步的措施處理這一問題。但是，隨著新世紀的來臨，愛滋病的問題蔓延到中國的各個省份。目前估計中國有接近60萬到80萬的愛滋病患者，到2010將會有2百萬到1千萬的病例。中國政府開始採取更為實質性的行動。

這些行動包括增加派發宣傳冊，教育性資料，開放更多的檢測中心和增添醫療設備和資源，還有反對歧視的努力。雖然如此，還有許多人群（例如，性工作者，吸毒的和民工）對愛滋病知之甚少，非常容易受到感染。並且，人們普遍歧視愛滋病患者及其家人，情況嚴重。目前，愛滋病主要通過下列途徑傳播：性接觸，吸毒，懷孕及輸血。有關愛滋病的個案，最為引人注目的是90年代初河南省許多村民因輸入帶有病毒的血而感染愛滋病的案件，這些村莊後來

被稱為「愛滋病村」。

The first case of Acquired Immune Deficiency Syndrome (AIDS) was discovered in China in 1985. As cases gradually manifested over the remainder of the decade, the government's response was to treat AIDS as a "foreign" disease. Laws and policies were enacted in an attempt to prevent any more carriers from entering the country. Beyond that, little action was taken to address the issue. As of October 2006 the number of officially reported HIV cases was 183,733, with estimates of the number of undocumented cases running as high as 650,000.

There have been increased efforts to distribute education and awareness materials, an increase in the number of testing centres and treatment resources, and efforts to combat discrimination. Despite this work, various sectors of the population (e.g., sex workers, drug users, and migrants) remain highly affected and yet uneducated about the disease. Severe discrimination against those with HIV/AIDS and their families is also widespread.

The disease is currently spread in various ways, including sexual contact, drug use, uterine transmission, and blood transfusions. In the early 1990s there were many cases of HIV being spread via transfused contaminated blood, especially in Henan Province. The affected villages, in which often all but the children and elderly lost their lives, came to be known as "AIDS villages." As of 2006, no local officials had been held responsible.

All China Federation of Trade Unions 全國總工會

全國總工會是中國各地總工會的領導機關。全國總工會存在已久， 不過目前全國總工會以及地方工會是依照2001年實施的《工會法》及相應的中央和地方規則運作的。全國總工會及其分支機搆設立的目標主要是幫助解決工人與雇主之間的糾紛，並為工人爭取權益，但無論是《工會法》還是中國的《勞動法》都沒有給與工人罷工權。有證據顯示全國總工會並不總是有效且盡力的為工人爭取利益，而在涉及國有企業的個案中，總工會不能始終保持中立。在最近的立法提案中，如《集體勞動合同法》，有建議提出要使全國總工會在代表工人上扮演更為重要的角色。

Umbrella organization for all sanctioned unions, nominally founded in 1925. The All China Federation of Trade Unions and its local counterparts now operate according to the 2001 Union Law and related central and local regulations. The ACFTU and its branches are supposedly set up to aid workers in resolving their disputes with employers and advocate on their behalf. Most evidence indicates that the ACFTU is rarely a zealous and effective advocate for workers, nor even a neutral party. These unions frequently function similarly to the old "company unions" in the West; that is, against the interests of worker. Recent proposals for legislation, such as a 2005 draft of the Labour Contract Law, would provide for a somewhat expanded role for the ACFTU in representing workers.

Resources: China Labour Bulletin, http://www.china-labour.org.hk/public/main, Jianti Chinese: http://gb.china-labour.org.hk/gate/gb/big5.china-labour.org.hk/public/main.

繁体字參考: http://big5.china-labour.org.hk/public/main?; and China Labor Watch, English: http://www.chinalaborwatch.org/, *簡体字參考*:http://www.zhongguogongren.org/.

Anti-discrimination litigation, *see* Discrimination, law concerning.

Anti-Rightist Campaign, *see* Rightists, campaign against.

Arbitrary fees 亂收費

由於中央政府命令節省開支，地方政府機關人員臃腫，腐敗等等結構性的因素，地方的官員向居民亂收費，尤其是在農村，亂收費的現象更為嚴重。徵收這些費用的名目千奇百怪，在一些地方還引起民眾的暴力騷動。例如由於學校的經費不足，學校要求家長繳納電費、校服費、書費或者學費。有時候，居民還會因為所謂違反政策而被亂罰款。

中央政府若干年來試圖治理地方官員亂收費、亂罰款的現象。迄今為止，這樣的努力雖稍見成效，但仍引起許多抱怨。

Pressures to implement central government mandates on low budgets, unsanctioned expansions of the number of local government personnel, corruption, and other significant infrastructural factors have led local officials to impose a variety of "arbitrary fees" (more literally, "erratic fees") on local residents, particularly in rural areas. These fees come in many forms. For example, because of low budgets for schools parents may be forced to pay classroom electricity fees, uniform fees, book fees, or even much more general education fees. Sometimes local residents are also subject to arbitrary fines for alleged violations of policy. Such fees have caused

violent unrest in some localities.

The central government has tried for some years to curb the local officials' practice of imposing illegal arbitrary fees and fines. To date these efforts have met with limited success, and there continue to be complaints.

Resource: Thomas Bernstein and Lu Xiaobo, *Taxation Without Representation* (2003).

Arrest, *see* Detention, administrative; Custody and repatriation; Public Order Administrative Punishment Law; Re-education through labour.

Assembly and protest 集會遊行示威自由

雖然中國憲法規定公民享有集會遊行示威的自由，但是中國有嚴格的規定限制個體或公民的遊行示威。政府根據《集會遊行示威法》限制公民抗議。該法是在1989年六四運動結束的4個月後由全國人大常委會制定並頒佈實施的。政府吸取了學生運動的教訓，規定所有集會遊行示威都必須事先得到政府官員的批准。公安機關對於是否批准遊行示威的申請有絕對的決定權。事實上，自1992年該法施行細則實施後，只有極少的申請獲得批准。公安部只批准那些得到政府支持（或默許）的遊行示威，例如國慶日的遊行，1999年抗議美國轟炸中國在貝爾格萊德的大使館以及公眾抗議日本的遊行。其他組織和個人的許多申請都沒有得到批准。*另見*Constitution; Shanwei Incident; Tiananmen Incident。

Despite the constitutional guarantee of freedom of demonstration, the PRC has strict rules limiting the ability of individual citizens to gather and protest. Demonstrations are limited by the provisions of the Law on Assembly, Demonstration, and Protest, which was promulgated by the NPC Standing Committee four months after the 1989 Tiananmen Incident. Drawing lessons from the student movement, the law requires official approval for all assemblies, demonstrations, and public protests. Public Security Bureau authorities possess complete discretion over which demonstrations are permitted; since the promulgation of the implementation provisions of the law in 1992 very few applications have received approval. The Ministry of Public Security has only allowed officially sponsored (or at least tacitly approved) events, such as the National Holiday Parade, demonstrations against the U.S. bombing of the Chinese embassy in Belgrade in 1999, and public protests against Japan. Other than these exceptions, the numerous groups and individuals that have applied for approval have been denied. *See also* Constitution; Shanwei Incident; Tiananmen Incident.

Association, freedom of 結社自由

雖然中國憲法第35條規定中國公民享有結社自由，但是政府嚴格控制中國公民的自由結社權。在中國，如果沒有得到官方的支援或批准，任何社會組織或團體均不得成立。除了憲法的規定以外，管理社會組織的法律主要是1998年國務院頒佈的《社會團體登記管理條例》。根據該條例，任何想要成立社會團體的人都必須先得到業務主管部門的批准，業務主管部門就是該社團的管理機關。該條例還作出了一系列限制社會團體發展的規定，其中包括主管單位應對社會團體進行常規性的檢查，民政局要對社會團體進行年檢。社會團體還要求遵守許多籠統的規定，例如遵守憲法和法律，不得損害國家和人民的利益，不得危害國家的統一和各個民族的統一。

在中國設立社會團體，關鍵是獲得政府機關的支持。這一要求在事實上阻止了真正獨立的非政府組織的成立，因為非政府組織的主要功能是監督政府。為此，許多草根非政府組織不得不註冊成為營利性組織。沒有任何法律法規對傳統政黨的註冊作出規定。持異見人士曾經嘗試根據社會團體登記管理條例註冊成立政黨，但所有請求不是被拒絕就是束之高閣。這些努力成立政黨的人最終都遭到政府的鎮壓。*另見*China Democratic Party; Environmentalism; NGOs.

Notwithstanding the guarantee of freedom of association in Article 35 of the Chinese Constitution, the government sharply restricts the rights of citizens to form associations. Few associations are tolerated if they lack official sponsorship and approval.

In addition to that short provision in the Constitution, the controlling legislation are the Regulations on the Registration and Management of Social Groups, which were enacted by the State Council in 1998. According to the regulations, any individual who wishes to establish a social group must first obtain an official sponsor to act as an institutional guardian. The Regulations also lay out several other requirements, including routine investigations of the official sponsor's credentials and another annual inspection by branches of the Ministry of Civil Affairs. Social groups are also subject to other vague requirements such as upholding the Constitution and laws, refraining from damaging the interests of the state and people, and endangering the integrity of the nation and unity of the various ethnic groups.

Thus the key to forming a social group is to acquire formal sponsorship

from an official organ. This requirement makes unlikely the existence of any truly independent non-governmental organization that is capable of functioning autonomously, much less able to serve as a monitor of the government. Because of the onerous requirements, many grassroots NGOs have been forced to register as for-profit (and thus tax-paying) institutions.

There are no rules or regulations that cover the registration of political parties. Political dissidents who have tried to register a political party under the Social Group Regulations have either been rejected or ignored entirely. Those who tried to establish their own political parties were suppressed by the government. *See also* China Democratic Party; Environmentalism; NGOs.

Asylum 庇護

1982年，中華人民共和國成為「關於難民地位的公約」(1951)及「關於難民地位議定書」(1967)的簽約國。1995年，根據聯合國與中國間的協議，聯合國難民高級專員在北京成立了辦公室，當時中國正面臨來自東南亞的難民問題。依據協議，該辦公室可以行使聯合國難民總署的各種職權。中國應提供難民總署有關難民處境的資訊，也應開放上述辦公室接近難民的機會。如有爭論，應付諸有拘束力的仲裁機關。雖然在最初的時候，中國歡迎難民總署的到訪，但在1990年代末，許多身份不明的北朝鮮人民逃至中國時，難民總署的介入卻被視為干預內政或中國和北朝鮮的雙邊關係。唯一的一次例外，是中國曾允許難民總署的官員短暫地探視數十萬藏匿於中國東北的北朝鮮人民。

「關於難民地位的公約」對難民的定義是：「有正當理由畏懼將因種族、宗教、國籍、屬於某一社會團體或具有某種政治見解而受迫害，因而留在其本國之外，並且由於此項畏懼而不能或不願受該國保護的人；或者不具有國籍並由於上述事情留在他以前經常居住國家以外而現在不能或由於上述畏懼不願返回該國的人」。該公約第33條並規定若難民可能遭受危險的話，不應被遣返回國。然而，即使負有上述義務，中國仍然宣稱，根據與北朝鮮在1961年訂定的秘密條約，中國必需遣返「非法」入境的北朝鮮人民。雖然中國同意政治難民有資格獲得庇護，但北京仍將北朝鮮難民視為經濟移民，拒絕適用上述原則。但就這些難民回國後可能遭遇的處境來看，中國上述的主張是會被質疑的。而且，不管就國際法上的要求，或是中國本身的承諾而言，對難民的認定應是聯合國難民總署的職權。

In 1982 the PRC became a party to the 1951 Refugee Convention and the 1967 Protocol (*see* International section). In 1995, pursuant to a formal UN-PRC agreement, the UN High Commission for Refugees (UNHCR) established an office in Beijing at a time when the asylum issue related mainly to refugees from Southeast Asia. According to that agreement, the agency was to fulfil all of its functions in accordance with the UNHCR mandate. The PRC was expected to provide UNHCR with information about the condition of refugees, and to grant the agency unimpeded access to potential refugees. Disputes were to be submitted for binding arbitration. Although Beijing originally welcomed UNHCR's presence, with the arrival in the late 1990s of many undocumented North Koreans UNHCR came to be seen as meddling in internal or bilateral matters. Only rarely and briefly has the PRC permitted UNHCR personnel to visit northeast China, where hundreds of thousands of North Koreans have been hiding.

The convention defines a refugee as a person who, "owing to the well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and ... , owing to such fear, is unwilling to return to it." Article 33 states that such people may not be returned to their country if they face danger there. Notwithstanding its obligations under the convention, the PRC claims that, pursuant to a still-secret 1961 treaty with North Korea, it must return North Koreans who have entered China "illegally." Although the PRC appears to accept the principle that political refugees are entitled to asylum, Beijing has argued that the principle does not apply to the North Koreans, whom it considers economic migrants. This is a doubtful claim, given the fate that awaits returnees. At any rate, international law requires, and the PRC has promised to permit, UNHCR to determine who qualifies as a refugee.

Resource: James D. Seymour, "The Exodus: North Korea's Out-migration," in John Feffer, ed., *The Future of US-Korean Relations: The Imbalance of Power* (2006), pp.130-59.

Capital punishment, *see* Death penalty.

Central Propaganda Department, *see* Propaganda Department.

Chen Guangcheng 陳光誠

陳光誠，中國山東臨沂人，出生在一個貧窮的農民家庭，幼年時雙目失明。在盲人學校畢業後，陳光誠靠提供按摩服務謀生。目睹了官員濫用權力以及村民們沉重的稅費負擔後，陳光誠發現法律可以成為有利武器維護自己和其他人的權利。因此，他很快通過自學成為法律的專家，被人們親昵地稱為「赤腳律師」，專門幫助村民在多個問題上挑戰地方政府，與之展開合法的鬥爭，例如反對非法拘留，亂收費還有阻止地方政府使用強制手段甚至暴力執行計劃生育政策。

起初，他所發動的維權運動取得了一定的成功。他的行動引起了人們對問題的廣泛關注，使得政府採取了一定的解決措施。遺憾的是，隨著維權行動的深入，尤其是陳光誠對計劃生育政策的執行與當地政府產生正面的衝突時，當權者越來越覺得惱火。2005年開始，陳光誠常常因從事的工作被警告，拘留甚至長時間的軟禁。 政府還千方百計的切斷陳光誠與鄰居和外界的一切聯繫，以防止有關他受迫害的資訊洩漏給公眾。由於這些措施都不能阻止陳的維權行動，地方公安機關於2006年6月21日以完全莫須有的罪名「故意破壞財物罪」和「聚眾擾亂公共秩序罪」逮捕了陳光誠。2006年8月18日，沂南縣法院在陳的律師不在場的情況下開庭審理陳光誠一案。在庭審之前，免費為陳代理的律師被拘留且被阻止為辯護作準備。8月25日，沂南縣法院判處陳光誠有期徒刑四年零三個月。這個判決後來遭到中級人民法院撤銷，但更審後仍維持原判。

雖然中國大陸的媒體封鎖資訊，陳光誠的故事得到西方媒體和網路媒體的廣泛報導。陳光誠甚至被時代週刊評為2006年世界上100個最有影響力的人之一。陳光誠的案件被普遍認為是中國政府努力平衡兩方面發展的表現，一是如何面對因法治建設，公民維權意識覺醒的趨勢；二是如何保持社會穩定。*另見* Citizens' Rights Movement.

An activist who garnered significant attention for his legal and human rights work on behalf of his fellow villagers. Chen Guangcheng was born to a poor peasant family in Linyi City, Shandong and became blind as a child. After graduating from a special-education program, Chen made his living by providing messaging services.

As he witnessed official abuses of power and the undue tax burdens imposed on his fellow villagers, Chen used the law to protect his rights and the rights of people around him. Chen quickly became a self-taught legal expert and earned fame as a "barefoot lawyer," helping villagers to wage legal battles against local governments for various official abuses, such as illegal detention, arbitrary taxes, and ruthless enforcement of the state's family planning policies.

His initial campaign against the local government was somewhat successful. Chen was able to bring enough attention to the problems that officials were forced to react and some resolution was achieved. However, he upset the local authorities, especially when he confronted them on the implementation of family planning policies. Beginning in 2005, Chen was frequently warned, put under house arrest, or even detained because of his work. The authorities also isolated Chen's family and neighbours from the outside world in an attempt to prevent his mistreatment from being publicized. When these methods failed to stop him, he was formally arrested in 2006 on apparently groundless charges of disturbing public order and destroying public property. He was then tried by the Yinan county court. Shortly before the trial, his pro bono lawyers were briefly detained and prevented from preparing for his defence. He was thus denied effective assistance of counsel. At his first trial, Chen was sentenced to four years and three months in prison for damaging property and interfering with traffic. The verdict was overturned by the Intermediate People's Court, but in a retrial Chen was convicted again and given the same sentence.

Chen's story, though blacked out on the mainland, has been widely publicized in the foreign media including the Internet. Chen's case shows how the authorities are struggling to balance growing consciousness of rights among citizens (brought on in part by the rule of law initiative), and the government's growing concerns about social instability. *See also* Citizens' Rights Movement.

Resource: For a collection of several hundred Chinese language reports online, *see*

http://www.peacehall.com/hot/linxijisheng.shtml.

Children's rights 兒童權利

中國已批准了一系列有關保護兒童權利的公約，例如《兒童權利公約》和《禁止和立即行動消除最惡劣形式童工勞動公約》。雖然如此，中國兒童還面臨許多威脅。童工、失學、受虐缺乏照護及人口販賣等一系列問題仍然存在。這些問題迫使中國政府通過制定法律法規保護兒童的權利。全國人民代表大會於1986年通過《義務教育法》，1991年通過了《未成年人保護法》並頒佈《收養法》。1994年的《勞動法》對未成年人還作了特別的規定。2005前後，中國政府還嘗試設立青少年法庭專門審理未成年犯罪的案件。

受虐的問題並沒有引起關注，也少有措施阻止兒童受色情產業的剝削。千百萬沒有接受教育的兒童出於經濟或其他原因被迫放棄學業。例如，民工子女由於戶口問題而遭歧視，不能在城市裏獲得充分的教育和衛生保健。河南省有數千名父母感染愛滋病病毒的兒童沒有得到衛生保健和照護。另外，童工問題在中國許多地方日益嚴重。這些問題和其他與兒童權利有關的問題沒有引起政府當局足夠的重視。

在本文寫作的時候（2006年12月），中國正在針對《未成年人保護法》進行修改。

The PRC has ratified a number of international treaties on children's rights, such as the Convention on the Rights of the Child and the Convention Concerning the Prohibition of and Immediate Action for Elimination of the Worst Forms of Child Labour. Still, problems relating to child labour, deprivation of education, abuse, neglect, and human trafficking persist. These issues have spurred the Chinese government to develop laws and regulations for the protection of children. In 1986 the National People's Congress adopted a Compulsory Education Law (*see* Education), and in 1991 it enacted the Law for the Protection of Minors. The Adoption Law was promulgated in 1991. Special protections for minors were introduced into the 1994 Labour Law. Around 2005 the government also explored the development of special tribunals to try minors accused of crimes.

Insufficient attention is paid to the problem of abuse, and there are few protections against child pornography and exploitation. Many children still go uneducated, as millions are forced to quit school for financial or other reasons. The children of rural migrants may face discrimination in urban areas and receive less than adequate education and healthcare because of their Household registration (q.v.) status. Thousands of children orphaned or otherwise affected by the AIDS epidemic in places like Henan Province have found it difficult to find homes or education because of lack of funds and societal discrimination.

As of this writing (December 2006) the Law for the Protection of Minors is scheduled for amendment.

China Democratic Party 中國民主黨

1998年，一群政治異議人士經過長期的努力，試圖合法註冊為社會團體後，但在這些努力遭到失敗後，他們決定自行成立一個政黨，並取名為中國民主黨。中國民主黨最為核心的三個成員是北京的徐文立，湖北武漢的秦永敏，和浙江杭州的王有才。徐文利和秦永敏都是民主牆的資深異議人士，而王有才則是1989年六四事件的學生領袖之一。剛開始，政府當局並沒有採取行動，但後來就取締了中國民主黨，幾乎所有主要成員都被逮捕，並以「意圖顛覆國家」的罪名被判刑。徐文立、秦永敏和王有才分別在北京、武漢和杭州被判處有期徒刑13年，12年和11年。還有許多不知名的成員都被判刑。

中國民主黨的成立是對中國一黨制政治制度的挑戰，吸引了海內外的支持者和追隨者。許多海外的成員繼續支持民主黨並且要求中國政府釋放羈押中的其他成員。徐於1991年獲准保外就醫，並於2001年被政治放逐到美國。*另見* Exile, forced.

An unsanctioned opposition political party. The China Democratic Party was established in 1998 by a group of dissidents who had been consistently rejected for official registration as a social group. The three most prominent individuals involved were Xu Wenli from Beijing and Qin Yongmin from Wuhan, Hubei province, who had been dissidents from the Democracy Wall (q.v.); and Wang Youcai from Hangzhou, Zhejiang province, who was a student leader during the Tiananmen Incident (q.v.). At first authorities took little action, but they eventually cracked down on the group. Most of the leaders of the party have been harassed, detained, and then convicted of attempting to overthrow the government or subvert state power; Xu was sentenced to thirteen years, Qin to twelve years, and Wang to eleven years. Dozens of lesser-known members were also subsequently sentenced to harsh terms.

The China Democratic Party represented a challenge on some level to the PRC's one-party political system, and thus was able to attract numerous followers both domestically and abroad. Many of its overseas members continue to support the cause and have urged the release of those members still in custody. Xu was released from prison on medical grounds in 1999 and forced into exile in the United States in 2001. *See also* Exile, forced.

Resource: Merle Goldman, *From Comrade to Citizen*, ch. 6 (2005). The lengthy court ruling on Xu Wanping was published (in English and Chinese) in *Selected Decisions from Chinese People's Courts* 22 (Dui Hua Foundation 2006).

Chinese Communist Party, *see* Democracy in CCP.

Chinese People's Political Consultative Conference (CPPCC) 政治協商會議

人民政治協商會議是一個建議性的機構，對中國政府的政策提出建議。全國人民代表大會於1954年成立，在此之前，人民政治協商會議選舉中央政府的領導人，決定中國的國旗和國歌。目前，政治協商會議的成員來自各行各業，包括學術界、藝文界以及民間人士。同時，這個機構也是目前中國政府單位中一些附庸政黨（即官方承認的「民主黨派」）較有曝光機會，而中國共產黨也較不干預的領域。儘管人民政治協商會議對於政策的通過沒有實際的權力，但政協可以就社會和經濟問題提出建議。全國人民代表大會和人民政治協商會議還有內部的機制進行磋商和交流。因此有不少的議案都是由政協提出的。例如，2006年政協一個委員代表學者李銀河提交了有關同性婚姻的議案。人民政治協商會議每一年在北京召開大會一次，時間與全國人民代表大會的時間相同。

A united front-based advisory organ.

Between 1949 and the establishment of the National People's Congress in 1954, the CPPCC was the major legislative organ of government or "supreme organ of state power." It also decided on such formalities as the national flag and the national song. Its current role is as an advisory or consultative organ of government, including mainly non-Communist delegates.

The CPPCC is now an organ comprised of representatives from a broad array of the population: ethnic and cultural groups, academia, the arts, and now the private sector. It is one organ of the Chinese government in which political groups other than the CCP, such as satellite parties (the officially sanctioned "democratic parties and groups"), are more visible and in which the CCP itself takes a less-dominant role. Although the CPPCC has no actual power over the policy process, it can make recommendations on social and economic issues. It meets every year at the same time as the National People's Congress in Beijing for roughly the same amount of time. There is an inter-congressional mechanism between the NPC and CPPCC to facilitate such consultation. Various proposals are submitted by members of the CPPCC. For example, in 2006 a proposal for gay marriage was submitted to the Congress by a member on behalf of scholar Li Yinhe.

Resource: Tony Saich, *The Governance and Politics of China* (2001), pp. 111-113.

Citizens' Rights Movement 公民維權運動

公民維權運動是指中國的草根維權運動。這場運動肇始於2003年的孫志剛事件。孫志剛事件暴露了收容遣送制度對人權的踐踏，最後促使該制度被廢除。並且，在非典發生的早期，政府試圖封鎖資訊，一些勇敢的醫生不得不站出來向公眾公開真相，其中包括第301軍醫院的蔣永彥醫生，這使得中國民眾大聲疾呼，要求政府正視「公民知情權」被侵犯的問題。因此，政府頒佈了新的規定要求所有政府機關向公眾公開疫情。由於這一系列的「維權運動」，2003年被稱為「維權年」。從此，許多草根的維權分子漸漸成為監督社會不公正的中堅力量，他們會把侵權的情況報告給公眾或媒體，從而向政府施加壓力，要求政府採取合適的行動糾正社會不公正。

雖然偶爾遭受挫折，但這些維權運動引發公眾對許多問題進行認真的討論，例如基於性別，年齡和殘疾的歧視問題，刑訊逼供，冤假錯案，憲法的平等保護，私有財產權等問題。律師在一些著名的案件中成功地挑戰了歧視性的法律規定，但是在大多數案件，維權行動都以失敗告終，並且維權律師還受到了懲罰。例如為法輪功的信徒辯護的高智晟和郭國汀律師被取消執業資格。高智晟更於2006年被補，依「煽動顛覆國家政權罪」判刑三年。其他公民因為維護自己或他人的權利而受到了迫害，被拘留甚至坐牢。然而許多公民仍然參加這場維權運動。中國目前有一個由人權衛士建設的專門網站，發佈公民可以如何更好維權的資訊，網址是(http://www.gmwq.org/web/index.asp). *另見* Discrimination, law concerning; Evictions; Sun Zhigang.

A loosely formed grassroots movement that was launched in 2003 after the death of Sun Zhigang (q.v.), an incident that revealed abuses associated with the system of Custody and repatriation (q.v.). The Sun Zhigang Incident caused popular outcry and resulted in the termination of the custody and repatriation regime. In addition, the government's initial attempt to cover up the severity of the SARS epidemic prompted several doctors, including Jiang Yongyan from the No. 301 Military Hospital, to publicize the facts. The SARS incident also incited public outcry over the violation of every citizen's "right to know." As a result, the government enacted new rules that required all official agencies to report and publicize information relating to

epidemics. Because of these rights movements, participants cited 2003 as the year of defending rights. Since then, many grassroots activists have begun to play a more active role in monitoring social injustices and appealing directly to the general public and the media to pressure the government into taking the appropriate actions to address significant rights violations.

Despite setbacks, these rights movements have generated serious debate on many issues, such as torture; wrongful convictions; constitutional equal protection; property rights; freedom from arbitrary detention; and discrimination based on sex, age, and disability. In some high-profile cases lawyers were able to launch successful challenges to discriminatory rules. In most cases, however, the actions failed and the lawyers often found themselves subject to sanctions. For example, Gao Zhisheng and Guo Guoting, two lawyers who defended evictees and Falun Gong practitioners, had their law licences suspended. Gao was eventually charged with "subverting the state power" and sentenced to three years imprisonment. Other citizens have been harassed, detained, or jailed for pursuing their own rights or protecting the rights of others. Still, many citizens have joined this movement to defend rights. By 2006 a Web site had been established through which a group of domestic and international rights activists were trying to disseminate information and host debates on the best strategies for defending the rights of Chinese citizens (www.gmwq.org). *See also* Discrimination, law concerning; Evictions; Sun Zhigang.

Resource: Merle Goldman, *From Comrade to Citizen: Struggle for Political Rights in China* (2005).

Civil society, *see* NGOs.

Communication, *see* Internet police.

Communist Party, *see* Democracy in CCP.

Compensation Law 國家賠償法

1994年通過的法律。依據本法，當一般平民的個人權利遭到政府機關侵害時，可以向國家請求賠償。賠償有兩種形式，即行政賠償和刑事賠償。前者指

的是針對錯誤的行政措施進行的賠償，後者指在刑事案件的偵查、檢察和審判時，因官方的不當處置造成的損失進行的賠償。不過，跡象顯示，本法在處理官方的不法侵害時並未發揮完全的作用。在某些案件中，政府為了避免財務的支出，而勉為其難地糾正錯誤。而且，很多遭政府不法侵害的被害人因為擔心報復，而不敢提出賠償的要求。不過，本法的實施在保障個人權利上確實是向前跨出了一步。

A 1994 law allowing citizens to seek compensation for violations of their individual rights by government officials. There are two types of compensation: administrative and criminal. The former refers to compensation for wrongful administrative acts, and the latter to compensation for official misconduct that occurs during the course of investigating, prosecuting, and trying criminal cases. However, the Compensation Law has not always been successful in dealing with official abuses. In some cases officials have been reluctant to correct mistakes because they fear the financial consequences. In addition, many victims of official mistreatment are hesitant to come forward because they fear retaliation by officials. Still, the law represents a step in the direction of protecting individual rights.

Constitution 憲法

雖然中國的政府機構很少直接引用憲法，如立法過程或法庭的判決，但形式上憲法仍是最高的法律。現行憲法條文包括政府組織、政治原則並規定公民的基本權利與義務。中國建國至今，頒佈過四次憲法(1954, 1975, 1978, 1982)，且作過數次重大的修訂。現行的1982年憲法也經過幾次修正，在1999年納入了法治的原則，2004年加上了人權保障（第33條）及私有財產（第13條）。但在政府制度性權力的分配上，並未作明確的規定。

憲法第二章規定公民的基本權利與義務。其中包括法律之前的平等、選舉權、人身完整，言論、集會、結社、遊行、宗教等自由，還有個人尊嚴、隱私、批判政府以及工作和接受教育的權利與義務等。

在法院上引用憲法權利來對抗黨國體制的可能性很受限制。原則上，憲法的解釋和「執行監督」的權責不在法院，而是人民代表大會及其委員會（第62、67條）。除了2001年最高法院在齊玉苓案的判決中直接引用憲法之外，向法院提出憲法權利的訴訟或向人民代表大會提出的請願都沒有得到回應。在技術上，有些行動可能可以根據法律或規則來「落實」憲法，例如透過立法法或保障婦女權權益法等。而某些造成權利侵犯的政府行為（如人身自由或財產權）可透過行政訴訟法獲得救濟。

中國的公民社會開始傾向於利用其他的管道，如網際網路，主張在其他國家以憲法或公益訴訟保障的權利。*另見*Human Rights Amendment; Law, rule according to; Movement, freedom of; Women's Rights Law.

參考資料: 王磊，選擇憲法（北京, 2004）.

Formally the supreme law, although seldom directly enforced by the organs of government such as the legislature or the courts. The current Constitution contains provisions concerning the organization of the state and its political principles, as well as the basic rights and duties of citizens. The PRC has had four constitutions or significant constitutional revisions (1954, 1975, 1978, and 1982) since its inception. The current 1982 Constitution has been amended several times: in 1999 to include the rule of law , and in 2004 to include human rights protection (Article 33) and private property (Article 13). It does not accurately describe the distribution of institutional power within the government.

Chapter II, on the rights and duties of citizens, includes the right to equality before the law; election rights; integrity of the person; and the rights to freedom of speech, assembly, association, demonstration, religion, personal dignity, privacy, to criticise state authorities, and the rights and duties to work and be educated.

The justiciability of constitutional rights vis-à-vis the party-state is very limited. In principle, the tasks of constitutional interpretation and "enforcement supervision" of the Constitution are assigned to the National People's Congress and its Standing Committee (arts. 62, 67) rather than the courts. Although in the 2001 case of Qi Yuling (q.v.), the Supreme People's Court directly cited the Constitution in a decision, most constitutional actions in the courts or constitutional petitions to the National People's Congress have met with no results. Technically other actions may be brought according to laws or regulations that implement the Constitution, such as the Legislation Law or the Law for the Protections of the Rights and Interests of Women (q.v.). Certain concrete government actions that violate some rights, such as the freedom of the person or property rights, can be the subject of Administrative litigation (q.v.).

Civil society in China has tended to pursue other avenues, such as Internet postings, to assert claims that may be the subject of constitutional or public interest litigation in other countries. *See also* Human Rights Amendment; Law, rule according to; Movement, freedom of; Women's Rights Law.

Resource: Cai Dingjian, "The Development of Constitutionalism in the Transition of Chinese Society," *Columbia Journal of Asian Law* (2006), 19:1.

Counter-revolutionaries 鎮壓反革命

1950年中國共產黨中央委員會為了穩定國內的政治形勢發佈了《關於嚴厲鎮壓反革命分子活動的指示》，開始了清查和懲罰各級官員的運動。朝鮮戰爭爆發的第二年，由於國內形勢進一步惡化，中國共產黨推行更為嚴格的「懲治反革命分子的條例」。這些規定要求嚴厲懲罰「一切與帝國主義勾結背叛國家的分子」，最為嚴重的刑罰為死刑。

沒有明確的規定界定反革命罪，因此在實際操作中，鎮壓反革命運動成為誅滅持異見者和鞏固政權的工具。於1950年至1951年期間，約有一百萬人被逮捕，迅速受審判，最後被判處死刑立即執行。這場運動造成的其中一個嚴重後果是《懲治反革命分子條例》在很長一段時間裏成為中國刑法的主要根源，直到1979年該條例的規定才被收入《刑法》。1997年，反革命罪才被廢除，改為危害國家安全罪。*另見* Security endangerment.

In an effort to stabilize domestic politics, the Central Committee of the Chinese Communist Party issued in 1950 the Directive on Severely Suppressing the Activities of Counter-Revolutionaries, and launched the investigation and punishment of various officials. After the Korean War broke out the following year, domestic unease worsened and the party issued an even stricter piece of legislation: Provisions for Punishing Counter-Revolutionaries. These provisions mandated punishments for various crimes of "collaborating with imperialists in a betrayal of the nation." Under the provisions, the authorized punishments ranged up to the death penalty.

In practice, the suppression of counter-revolutionaries campaign became a tool for controlling dissent and consolidating the Communists' political power. Between December 1950 and October 1951, over a million people were arrested, summarily tried, sentenced to death, and executed. The Provisions for Punishing Counter-revolutionaries were retained and were one of the only codifications of criminal law in the PRC for a long period.

In 1979 crimes of counter-revolution were included in Part II, Chapter I of the Criminal Law and were given a broad definition. Although some who were convicted under these various provisions are still serving prison terms, this entire class of crimes (which often carried heavily penalties, including death, for ideological offences against the state) was eliminated in 1997. "Counter-revolution" has been replaced by laws that prohibit "endangering state security." However, the elimination of the offence of counter-revolution was not retroactive; people are still subject to prosecution as counter-revolutionaries for pre-1997 offences. *See also* Security endangerment.

Resource: Julia C. Strauss, "Paternalist Terror: The Campaign to Suppress Counterrevolutionaries and Regime Consolidation in the People's Republic of China, 1950-1953," *Comparative Studies in Society and History* (2002), 44:80-105.

Crackdown 嚴打運動

嚴厲打擊犯罪運動或是嚴打運動是1976年毛澤東逝世後發起的少數社會運動之一。1983年面對犯罪率可能升高以及媒體報導幾起惡性犯罪，中國領導人決定發起全國性的嚴厲打擊犯罪的運動。政府在全國範圍內大量公開逮捕，起訴和審批。這一運動很快造成問題，嚴重破壞中國的法制並遭到人權組織的批判。地方官員在上級的壓力下逮捕、審訊成千上萬的個人，經過所謂「簡易審判」就判罪定刑。簡易審判幾乎沒有給犯罪人機會進行辯護。該運動遭到嚴厲批評並最終於1986年結束。

1983年後，共有三次全國性的嚴打運動和不計其數的地方嚴打運動。在這些運動中，公檢法人員通常繞開保護犯罪人權利的程式進行逮捕、起訴和審判。嚴打期間的刑罰比一般時期更重。

The Crackdown (literally "stern blows campaign" or "strike hard campaign") against crime was one of the few campaigns sanctioned since Mao's death. In 1983, in response to a perceived rise in the crime rate and especially several particularly shocking crimes that were publicized in the media, the leaders instituted a nation-wide campaign to crack down on lawlessness. The government staged massive arrests, prosecutions, and convictions throughout the country. The campaign quickly became a problem, undermining Chinese laws and drawing sharp criticisms from the international human rights community. Local officials under pressure to arrest people resorted to summary procedures in interrogating thousands and convicting many, with little opportunity for criminal defence. The campaign wound down in 1986.

After 1983 there were three major nation-wide Strike Hard campaigns, and many more local ones. During these campaigns officials often bypassed procedural safeguards when arresting, prosecuting, and convicting people, and the punishments tended to be harsher than in normal times.

Resources: Murray Scot Tanner, "State Coercion and the Balance of Awe the 1983 – 1986 'Stern Blows' Anti-Crime Campaign," *The China Journal* (2000), 44:93.

Crimes of endangering state security, *see* Security endangerment.

Criminal Procedure Law 刑事訴訟法

《刑事訴訟法》於1979年第5屆全國人民代表大會第二次會議上通過。該法分為總則和其他部分，共有九章192條規定。該法對刑事偵察、提起公訴以及刑事審判的基本程式作出了明確規定。雖然1979年刑訴法只是規定了最為基本程式，甚至沒有納入許多國際公認的刑事司法準則，但畢竟是中國在規定刑事訴訟程式走出的第一步，結束了法庭審判刑事案件無法可依的局面。

刑訴法實施多年後，於1996年進行修訂。新的刑訴法擴大了犯罪嫌疑人和被告辯護律師在刑事偵察程式中的權利，並改革了審判程式，強調了公訴人舉證的責任。新法實施之初，許多人認為刑事訴訟法在刑事程式方面有很大的完善，但漸漸的隨著新刑訴法在實際中的實施，人們開始批評其弊端。事實上，新刑訴法反映了公安、檢察官、法官還有律師對刑事訴訟程式中所有重大問題的妥協。

新的刑事訴訟法實施後出現的最為重要的問題有：缺乏維護被告人利益的機制；被告人獲得律師協助的權利沒有落實；依靠非法獲取的證據定案；大量使用刑訊逼供，阻礙證人出庭作證。在實際操作中，該法其中一個嚴重的缺陷是辯護律師難以向犯罪嫌疑人和被告人提供法律幫助的問題。這些問題包括：難以會見被告，不能及時從公安或檢察官得到證據，也難以自行收集證據。這些問題嚴重妨礙了辯護律師對被代理人提供有效的辯護。

A law governing court procedure in criminal cases, enacted in 1979. It outlines procedures for criminal investigations, prosecutions, and adjudications. Although the law adopted in 1979 was quite basic and did not include many internationally Recognized principles of criminal procedure, it was a first step in the area of criminal procedure and ended an era in which courts had no procedural law to rely on in adjudicating criminal cases.

After several years of implementation, the law was amended in 1996. The revised law was intended to expand suspects' and defendants' right to counsel and reform the trial process, placing emphasis on the procurator's evidentiary burdens. At first, the 1996 law was widely regarded as marking significant progress in these respects, However, when put into practice the struggles and compromises among

different players in the criminal process, including police, procuratorate, court, and lawyers, became evident. In the end, the 1996 revisions failed to deal with significant problems, such as a general lack of recourse for protection of the procedural rights of the defendant, lack of enforcement of the defendant's right to counsel, reliance on illegally obtained evidence, frequent use of torture to extract confessions, and intimidation and obstruction of witnesses.

Finally, one of the law's greatest deficiencies is the fact that defence lawyers face various problems in providing legal assistance to suspects and defendants. Such issues include difficulty in obtaining permission to meet with the defendant, limitations regarding taking discovery of evidence from the government, and impediments to defence counsel's efforts to investigate independently. These issues have prevented defence lawyers from providing effective assistance to their clients.

Resources: Human Rights in China, *Empty Promise: Human Rights Protections and China's Criminal Procedure Law* (2001); Jonathon Hecht, *An Opening to Reform? An Analysis of China's Revised Criminal Procedure Law*, *Lawyers Committee on Human Rights* (1997).

Cultural Revolution 文化大革命

1966年開始至1976結束的文化大革命是由中國主要領導人號召政府官員和人民群眾打破毒害中國社會，反對社會主義舊傳統的一場運動。文化大革命是由毛澤東發起，並在人民解放軍軍委主席林彪和四人幫的幫助下完成的。四人幫由毛澤東的妻子江青和她的黨羽組成。這場運動是一場浩劫，嚴重擾亂了中國社會和政府。當時的學生自發組織成為「紅衛兵」迫害知識份子、 官員甚至國家主要領導人，如當時的國家主席劉少奇和他的夫人王光美。其他被迫害的重要領導人還包括當時擔任中國共產黨總書記的鄧小平，北京市黨委書記彭真。文化大革命使政府處於癱瘓狀態，造成國民經濟嚴重倒退，缺乏基本的生活必需品，使廣大人民遭受饑荒。雖然沒有明確的死亡數字，但據估計在文革中因被逼迫致死或害怕逼迫而自殺的人有數百萬。

文化大革命對中國的發展有很深刻 的影響。因為中國現任的領導人很多是在文革時期的混亂中成長起來的並在大學和學校無法正常運作的情況下受的教育。文化大革命還在很大程度上標誌著毛澤東群眾運動式統治的結束 。由於經歷了文化大革命的慘痛，80年代後的領導人雖均致力於發展和現代化，但對於改革非常謹慎，以確保發展不會導致社會不穩定或混亂。而現今的領導人與知識界會如此強調法治與秩序、依法產生領導人以及限制個人權利，部份也源於文化大革命帶來的結果。*另見*Expression, freedom of; Great Leap Forward; Law, rule according to.

Beginning in 1966 and not formally ending until 1976, the Cultural Revolution was a period during which major leaders called on those in the government and among the people to attack the unacceptably traditional or anti-socialist elements that were viewed as poisoning Chinese culture and society. Mao accomplished this with the help of People's Liberation Army head Lin Biao, and also the "Gang of Four," comprised of Mao's wife Jiang Qing and her colleagues. The resulting movement tore Chinese society apart. Students and other young people, who organized themselves into groups called the Red Guards, harassed intellectuals, officials, and even major leaders such as Liu Shaoqi (then president of the PRC) and his wife Wang Guangmei. Other important leaders, like Deng Xiaoping (then general secretary of the party) and Peng Zhen (the party secretary of Beijing Municipality), were purged as well. The government largely ceased to function, harming the economy, depriving many of basic living necessities, and causing people to go hungry. Although the numbers are not agreed on, it is estimated that millions of people were killed or committed suicide in fear of persecution during this time.

Even today, the memory of the Cultural Revolution deeply affects the country and its development. Many of China's present leaders grew up during the Cultural Revolution, when the universities and schools ceased to function or were in deep turmoil. The Cultural Revolution also marked the culmination of Mao's style of governance, characterized by mass-mobilization campaigns. It also included an element of un-institutionalized democracy, in that ordinary people were allowed and even encouraged to oppose those in authority. Since then, the leadership has been mainly committed to modernization and development, and has bent over backwards to ensure that development does not lead to societal instability and turmoil such as that seen during the Cultural Revolution. Partly as a result of the Cultural Revolution, the leaders and academics of today favour rules and order, leadership succession according to law, and limits on individual assertiveness. *See also* Expression, freedom of; Great Leap Forward; Law, rule according to.

Resource: Roderick MacFarquhar and Michael Schoenhals, *Mao's Last Revolution* (2006).

Custody and repatriation 收容遣送

2003年以前，收容遣送是一種行政性拘留，為了把民工遣送回其出生地或戶口所在地。由於在中國有許多盲流非法民工，因此該制度影響了千萬人。但是，由於該制度缺乏獨立的監督機制，員警濫用權力侵犯人權的事件時有發生。因此，不少官員已經考慮對這一制度進行改革，2003年孫志剛在收容時被毒打致死的事件曝光以後，收容遣送制度被正式廢除。*另見*Household registration; Rural migrants; Sun Zhigang; Torture.

A type of administrative detention that was formerly used to send migrants back to their place of birth or the place where they held a household registration. Because there was a great deal of unsanctioned migration, the system affected large numbers of people. The system lacked an independent monitoring mechanism, and therefore often resulted in serious human rights abuses by the police. The government, which had already been considering reform of the system, abruptly terminated the custody and repatriation regime in 2003 after the incident involving Sun Zhigang (q.v.). *See also* Household registration; Rural migrants; Torture.

Death penalty 死刑

中華人民共和國刑法第48條規定“死刑只適用於罪行極其嚴重的犯罪”。但在實際中，審判機關廣泛適用死刑。中國刑法規定可以適用死刑的罪名共有68個，其中不僅包括暴力性犯罪也包括非暴力犯罪，例如貪污。事實上，中國對很多案件均適用死刑。中國政府視死刑執行的人數為高度國家機密。可是根據國際人權保護機構，特別是大赦國際的年度報告的資料顯示，中國每年被執行死刑的人數超過幾千人，多於全世界保留死刑的國家每年執行死刑的總和。

除了死刑適用面廣以外，中國死刑制度被國內外詬病的還因為法庭在判決有關死刑案件的任意性：死刑的適用嚴重受到“嚴打”運動的影響。同時，死刑復核的制度有嚴重的缺陷。死刑復核制度是死刑案件在兩審結束後自動進入的復核制度。雖然法律規定最高人民法院對死刑案件進行復核，但是在過去的二十年裏，死刑復核權下放，大部分的死刑復核案件都由地方的高級人民法院來復核。事實上，地方高級法院將二個程式合二為一（高級人民法院同時也是死刑案件的上訴法院）。從1983年至2006年，省級法院對死刑判決有終審權。近年來，發生多起無辜者被判死刑甚至處死的案件，引發了全國性的抗議。2006年底，人民法院組織法要求所有死刑的復核收歸最高人民法院執行。最高人民法院已設立了三個新的刑事庭負責死刑復核的業務。*另見*Crackdown; Religious freedom; She Xianglin.

The death penalty is widely used in the PRC. Although Article 48 of the Criminal Law states that “the death penalty shall only be applied to those criminals who have committed extremely serious crimes,” in practice, judicial organs have applied the death penalty more liberally. Criminal law actually states that the death penalty can be applied to as many as sixty-eight crimes, including not only violent crimes but also such non-violent ones as corruption. In recent years, the number of people in ethnic minority areas executed for secessionist activities has increased. Thus, in practice, the death penalty is used in a wide array, and astonishingly large number, of cases. In 2004 an NPC delegate stated that the number was about 10,000 annually. Apparently an even higher figure had prevailed in the 1990s.

Since 2004 the number appears to have continued its downward trend. In 2007 the government officially stated that “our country still cannot abolish the death penalty, but [it] should gradually reduce its application…. Where there is a possibility that someone should not be executed, then without exception the person should not be killed.” Still, based on the data available as of 2006, China continued to execute a disproportionate number of prisoners compared to other nations in the

world, probably more than all other countries combined.

The death penalty is often meted out in an arbitrary manner. Although there is an automatic review process, it has had serious defects. Even though the laws require that the Supreme People's Court exercise the death penalty review authority, the strike hard campaigns of 1983 through 2006 resulted in the death penalty review process actually being conducted by the provincial-level courts. This process had the effect of conflating the appeal process (the provincial high court was the same court to which the original appeal had been taken), and the provincial courts usually had the final say. Each year the Supreme People's Court reviewed only a few hundred death sentences. In recent years several high-profile death penalty cases have caused widespread concern, such as when it was revealed that the wrong person was either awaiting execution or had already been executed.

In 2007 the Supreme People's Court took back the power of final review. The goal was to reduce the number of executions, and to apply greater consistency in the manner in which the death penalty is applied. *See also* Crackdown; Religious freedom; She Xianglin.

Resource: "Death Penalty Reform Should Bring Drop in Chinese Executions," *Dialogue, 26:1* (2007); Astrid Maier, *Die Todesstrafe in der VR China* (2005).

Democracy in CCP 黨內民主

黨內民主是一個政治宣傳口號，主要是指中國共產黨推進黨內的民主建設，甚至黨內競爭以鞏固中國共產黨的統治及合法性的努力。共產黨在有限範圍內開始在吸收各類精英進入黨內，增強黨內協商，並且在黨內，尤其在基層推進選舉競爭。

Intra-Party Democracy is a catchphrase that refers to the Chinese Communist Party's continuing efforts to promote democracy, and perhaps even competition within the party in its efforts to solidify its power and legitimacy. The party has taken limited steps to diversify power among the elite; strengthen the party congresses as forums for debate; and promote electoral competition within the party, in particular at the grassroots level.

Resource: Gang Lin, "Leadership Transition, Intra-Party Democracy, and Institution Building in China," *Asian Survey* (2004), 44:255.

Democracy Wall 民主牆

1978年至1979年，中國正經歷著從文化大革命的混亂狀態到改革開放新時代的轉換。受到不平對待的個人，由於未能找到其他途經向領導人表達自己的意見，發現了在北京西單附近長安街上的一堵很長的圍牆。人們把他們的委屈和訴求以「大字報」的形式張貼在牆上，希望領導人能夠注意到他們的心聲。這堵牆很快成為了人們表達各種政治意見和訴說親身經驗的論壇。魏京生，一個嶄露頭角的持異見者在牆上張貼了他的著名文章－「第五個現代化」，旗幟鮮明的要求中國進行民主政治改革。政府於1979年12月關閉該牆，並開始鎮壓利用這堵牆表達自己意見的政治異見人士，包括魏京生。其他城市，如上海、廣州、貴陽甚至拉薩，也出現過類似的民主牆。*另見* China Democratic Party; Tiananmen Incident; Wei Jingsheng.

During the 1978-1979 political transition from the turmoil of the Cultural Revolution to a new era of reform, aggrieved individuals who could not find any way to reach the leaders seized on a long wall in Beijing's Xidan neighbourhood as a venue for venting their concerns and frustrations. Individuals posted their bitter stories on "big-character posters," in the hope that leaders would take notice. The wall quickly became a forum for all types of political opinions and descriptions of experiences. Wei Jingsheng (q.v.), who was then fast becoming an internationally renowned dissident, posted his eye-catching article "The Fifth Modernization" there. The wall became famous for its bold messages urging democracy and political reform. In December 1979 the government ordered the postings to stop, and suppressed writers like Wei. There were similar democracy walls in other cities, including Shanghai, Guangzhou, Guiyang, and even Lhasa. *See also* China Democratic Party; Tiananmen Incident.

Resource: James D. Seymour, ed., *The Fifth Modernization: China's Human Rights Movement, 1978-1979* (1980).

Demonstration, freedom of, *see* Tiananmen Incident.

Detention, administrative 行政羈押

行政羈押是指無需經過司法裁判程式，僅由行政機關決定的限制人身自由的強制措施。公安機關是維持公共秩序的主要行政機關。公安機關依據法律和

法規有權對違反行政規定的人作出拘留的決定，以作懲罰。例如實施擾亂公共秩序，非法賭博，吸毒和賣淫等構不成犯罪行為的人都可以被行政羈押。最為常用的行政羈押形式包括治安行政拘留，收容教育，強制戒毒和勞動教養。

從人權的角度來看，中國的行政羈押制度存在嚴重的問題。首先，所有行政羈押的決定都是由行政機關作出，無須經過司法人員的檢察。雖然根據《行政訴訟法》的規定，被羈押人有一定的救濟，但很少，幾乎難以通過司法程式獲得救濟。並且，行政羈押的決定過程不透明，當事人不能獲得律師的幫助。中國的行政羈押制度違反了《公民與政治權利國際公約》第8條及第9條，這兩條規定有關剝奪人身自由的決定必須由司法機關作出。*另見*Public Order Administrative Punishment Law.

Detention of individuals by administrative authorities (e.g., the police) without judicial sanction or oversight. The Public Security (q.v.) bureaus, which comprise the administrative apparatus primarily responsible for the maintenance of social order, have the discretion to detain individuals under various laws and regulations in order to punish them for minor offences, such as disturbing public order, illegal gambling, drug abuse, and prostitution. Types of administrative detention include the public order administrative detention, custody and education; coercive drug treatment; and Re-education through labour (q.v.), the latter being the most common form.

The PRC's system of administrative detention has resulted in severe human rights abuses. First, the decision to detain is almost always implemented by administrative authorities without any oversight from other parts of the government, such as the courts. Despite a limited after-the-fact remedy sometimes provided by the Administrative Litigation Law (q.v.), aggrieved parties are rarely able to mount successful challenges. In addition, the whole process is completely lacking in transparency, and the individual has no access to legal counsel. The PRC system of administrative detention is inconsistent with the Articles 8 and 9 of the International Covenant on Civil and Political Rights (q.v.), which requires that under most circumstances decisions to detain or imprison be made by a court of law. *See also* Public Order Administrative Punishment Law.

Dignity 尊嚴

雖然憲法的第二章主張維持個人尊嚴的權利，但這個原則在法律或政策中發揮的作用並不多。然而，2007年，政府發表正式聲明，犯人不應該遊街示眾。

Although the Constitution (ch. 2) asserts the right to personal dignity, the principle has not worked its way very far into law or policy. However, in 2007 the government issued an official statement that condemned prisoners should no longer be paraded through the streets.

Discrimination, law concerning 反歧視訴訟

在過去26年來，隨著法律維權意識的逐漸提高，中國公民開始通過法庭和其他法律手段挑戰各種無理的歧視，尋求救濟。這些歧視大多基於毫不相關的特徵，包括身高、體重、迷信、性別、民族、宗教信仰、是否患有乙肝、出身地以及年齡等。可是中國幾乎沒有法律法規直接對歧視進行規定，能夠提供給受歧視人保護。無論是政府部門還是私人單位刊登的招聘廣告都提出一些特定的要求，例如特定的身高，年齡和性別，但這些特徵對於勝任工作本身沒有必然的聯繫。儘管沒有法律直接規範這個問題，許多受害者還是向法庭起訴，要求矯正這種無理的歧視。可惜大多數案件都敗訴。

其中，在安徽省發生的有關乙型肝炎歧視的案件引起了廣泛關注。法庭受理了該案，在判決中判定原告敗訴，但是值得注意的是，法庭撤銷安徽蕪湖市人事局作出不錄用決定的行政行為的依據是主要證據不足。一審結束後，一些省份已修改了禁止錄用乙肝攜帶者的有關規定。其他法律，例如《促進就業法》正在起草中，力求能夠通過法律為受到無理歧視的人群提供更為實在的保護。不過，這些法律是否能夠明確到給與公民足夠的保護，還有待分曉。

最後，中國已經批准了《消除對所有種族歧視公約》、《消除對婦女一切形式歧視的國際公約》，並在2006年批准國際勞工組織第111號《消除就業與職業歧視公約》。*另見*Qi Yuling; Vulnerable groups; Women's rights; Women's Rights Law.

The growing appreciation of law over the last twenty-six years has led citizens to seek remedies for various forms of arbitrary discrimination. Discrimination has taken place on the basis of a variety of irrelevant characteristics, such as height, weight, superstition, sex, ethnic origin, religion, asymptomatic health issues, place of birth, and age, but there are few laws and regulations that provide a direct remedy for such discrimination. Advertisements for jobs in the government and in the private sector often contain specific height, age, and sex requirements, when there is little or no relevance of these attributes to the job. Despite the lack of laws and regulations on this subject, many have sought redress for arbitrary discrimination in the courts. Most of these cases have failed.

One of the more high-profile cases, litigated in Anhui Province, involved discrimination on the basis of hepatitis B infection. The court ruled against the plaintiff, but noted that the decision not to hire lacked an adequate substantive basis. Soon after the ruling some of the standards for civil service hiring were revised, including the removal of hepatitis B infection as a legitimate basis for exclusion. Other laws, such as an Employment Promotion Law, are being proposed, researched, and drafted to provide more concrete remedies for arbitrary discrimination.

The PRC has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Discrimination (Employment and Occupation) Convention No. 111 with the International Labour Organization. *See also* Qi Yuling; Vulnerable groups; Women's rights; Women's Rights Law.

Resource: China Law & Development Consultants, "Voices Against Discrimination: Chinese Citizens Challenge Discriminatory Regulations and Practices," *China Law and Governance Review*, 2 (2004), http://www.chinareview.info/pages/main1.htm.

Dissent, *see* Harmonious society.

Dongzhou Incident, *see* Shanwei Incident.

Due process, procedural 正當程序

正當程序，或在自由或財產遭到剝奪前，有完整而公平的機會獲得告知的一種程序性保障，落實在刑事審判及行政程序上仍有很大的問題。許多在1979年之後施行的法律，如刑事訴訟法、行政懲罰法等都有正當程序的規定。然而，諸如力量薄弱的法院體系或律師公會等原因也讓正當程序難以落實。遭到剝奪財產的公民沒有適當的機會辯解或獲得賠償。刑事被告被剝奪了完整而公平的辯護權利。在某些案件中，當局使用有問題的「簡易」程序將被告判刑。最後，許多行政拘留或行政懲罰的方式都沒有提供被告辯解或獲得公正機構審判的權利。*另見*Crackdown; Criminal Procedure Law; Detention, administrative; Evictions; Judicial independence; Re-education through labour; Shuanggui.

Procedural due process, or procedural protections guaranteeing a full and fair opportunity to have notice and be heard before being deprived of liberty or property,

remains a problem with regard to criminal trials and administrative processes. Many of the laws enacted since 1979, such as the Criminal Procedure Law and the Administrative Punishment Law, contain due process protections. However, factors such as a weak court system and criminal defence bar have rendered many of these procedural guarantees hollow. Citizens are deprived of their property without an adequate opportunity to be heard or receive compensation. Criminal defendants are often deprived of a full and fair opportunity to defend themselves. In some cases authorities use problematic summary procedures to convict defendants. Finally, various forms of administrative detention or other administrative punishments are meted out without giving the accused any hearing or trial before a neutral party. *See also* Crackdown; Criminal Procedure Law; Detention, administrative; Evictions; Judicial independence; Re-education through labour; Shuanggui.

East Turkistan Independence Movement 疆獨運動

「疆獨」運動是指眾多力量與組織試圖在新疆地區建立一個獨立的東突厥斯坦國家的運動。新疆維吾爾族自治區是中華人民共和國疆域最大的的省份，維吾爾族占新疆人口的大多數，共約有9百萬。新疆的維吾爾族和其他少數民族(哈薩克、 回族)信奉伊斯蘭教。維吾爾語與土耳其語相似。維吾爾族人基本上與土耳人同宗，因此與中亞和南亞有密切的聯繫。

現時的新疆和中亞地區在歷史上曾被認為是東突厥斯坦地區。1940年，東突厥斯坦在伊犁等地區短暫建立過政權。許多人和組織之所以要謀求新疆獨立，脫離中國有複雜的歷史和其他原因，不過，中國政府對少數民族的政策無疑是其中一個很重要的因素。雖然新疆名義上是自治區，但是維吾爾族人仍然被漢族歧視，而未能真正的實現自治。*另見*Ethnic minorities; Language rights.

A movement comprised of various forces and organizations that seek to establish an independent state of East Turkistan in what is now the Xinjiang Uyghur Autonomous Region.

In terms of territory, the Xinjiang is the largest provincial-level unit in the PRC, and the Uyghur people are the largest ethnic group living in that region, numbering nearly 9 million. The Uyghur and other non-Han ethnic groups there (Kazakhs, Hui) practice Islam. The Uyghur language is similar to Turkish. The Uyghurs have numerous connections to groups in Central and Southwest Asia.

Historically, what is currently known as Xinjiang and parts of a few Central Asian territories were sometimes regarded as East Turkistan. In 1940, a much smaller East Turkistan was temporarily established in Yili Prefecture and other localities. Such historical factors partially explain why various individuals and organizations wish to separate from China and form a new country; another reason has been the policies of the Chinese government towards minority groups. Although Xinjiang is nominally an autonomous region, the Uyghur people there are still discriminated against by the Hans (ethnic Chinese) and are unable to exercise their rights to self-governance. *See also* Ethnic minorities; Language rights.

Education 教育

《義務教育法》規定九年義務教育，同時要求設立供身心障礙學生就讀的學校。然而，基於各種不同的原因，許多兒童（其中多數為女孩）未能接受正式教育。政府在教育上撥的經費並不多。2006年，在國內生產毛額中只有2.85%

提撥給教育。政府希望在2010年達到4%的目標。（發展國家的教育經費通常佔有5%。印度在2002年佔4.1%，尚不包括私人的花費）所以，雖然法律規定國小不應收費，但家長常常還是得支付各項費用，包括一些他們無法負荷的昂貴費用。

在文化大革命中幾乎停擺的大學教育已經漸漸恢復。雖然主要的大學仍由國家經營，並由教育部嚴密掌控，但這些學校開始要求較大的自治權及學術自由。比起過去數十年來的情形，當局已較能容忍獨立的學生團體。但大學的官員仍可能因發表不利政府的言論而遭解聘。1990年代開始，出現不少學生控告大學侵害其教育權利的案件，其中有多件在近年獲得勝訴。

總而言之，中國在教育上已有一些進展。2006年官方公佈的數據中，最低程度的試字率已達91%（男性95%，女性86.5%）。然而，整體的教育水準仍然不高。*另見*AIDS; Expression, freedom of; Qi Yuling; Rural migrants.

The Compulsory Education Law makes nine years of education mandatory (i.e., through lower middle school). The law also requires that schools for children with disabilities be made available. However, for a variety of reasons, many children (mostly girls) do not receive a formal education. The state does not generously fund education. In 2006, only 2.85 percent of gross domestic product was spent on education. The goal was to raise that to 4 percent by 2010. (Developed countries generally spend about 5 percent. In 2002 India spent 4.1 percent, a figure that does not include private spending on education.) Thus, although the law requires that no tuition be charged for primary school, parents of students are often forced to pay various fees, which can sometimes be prohibitive.

The university system has gradually recovered after higher education nearly ground to a halt during the Cultural Revolution (q.v.). Although the major universities are still run by the state and closely supervised by the Ministry of Education, they have gradually acquired some autonomy and academic freedom. Independent student groups are tolerated more widely than in past decades. University officials, however, are still dismissed for speaking out against the government. Since the 1990s there have also been numerous cases of students suing universities for violating their legal right to education. In recent years some of these cases have been successful.

The result is that China has made progress in providing education to its citizens. In 2006 the (minimal-standard) literacy rate was officially put at 91 percent (95% for males, 86.5% for females). However, the over-all educational level is not high. *See also* AIDS; Expression, freedom of; Qi Yuling; Rural migrants.

Resource: Thomas Kellogg, "Courageous Explorers? Education Litigation and Judicial Innovation in China, *Harvard Human Rights Journal*, 20 (2007).

Elections, local 村級選舉

在80年代早期，隨著1982年憲法的通過，中國政府開始著手建立鄉村委員會的直接選舉制度，目前也開始正式推行城市內的居民委員會的直選制度。根據憲法和法律規定，縣級以上的人民代表是間接選舉，即由縣級以下的人民代表投票選出。經過幾年村委會選舉的實驗後，全國人大於1998年頒佈實施《村民委員會組織法》。該法規定了選舉程式的具體要求。《村民委員會組織法》還是給與地方官員很大的權力，不過目前全國各地超過七十萬個鄉村都舉行這樣的直選。

雖然已經取得一定的進步，但是中國的選舉民主改革進程還存在不少問題，例如程式的公正性，地方政府和黨的干涉，被選舉官員的腐敗問題。一些個案表明因村官的腐敗或怠忽職守，公民已經開始行使他們罷免權和要求重新選舉，但遭到挫敗。在廣東省發生的太石村罷村官事件就引起了地方官員和村民的激烈衝突。1998年，四川的步雲鄉舉行鄉級的選舉，但被宣佈為違法。另外一個逐步浮現的問題是新選出來的官員權限受到剝奪，也缺少資源。*另見* Taishi Incident.

Since the adoption of the 1982 Constitution, the Chinese have established a system of direct election for village committees. Since 2003 the government has been working on implementing direct elections in the lower levels of governance in urban areas (e.g., Community Residents Committees) as well. (Delegates to the people's congresses above the county level are indirectly elected by the people's congress below them, rather than directly by the people.) In 1998, after years of experimental legislation on village committee elections, the NPC enacted an Organic Law on Villages Committees. The law lays out the requirements and some procedures for elections, although it still leaves a great deal to the discretion of local officials. At present, well over 700,000 villages hold such elections.

Despite this progress, there have been problems with the experiment in electoral democracy, such as procedural fairness, local government and party interference, and corruption of elected officials. In some cases citizens have attempted to exercise recall rights, or failed to elect or re-elect village officials due to corruption or unresponsiveness. In the case of the Taishi Village in Guangdong Province, a recall caused violent clashes between local officials and discontented villagers. In 1998

an election was held at a higher level in the Sichuan township of Buyun, but was declared illegal. Another emerging problem is the tendency to strip newly elective offices of much of their power and deprive them of funds. *See also* Taishi Incident.

Resources: Jamie P. Horsley, "A Legal Perspective on the Development of Electoral Democracy in China," in *Understanding China's Legal System,* 295 (2003); Yong Nam Cho, "The Politics of Lawmaking in Chinese Local People's Congresses," *China Quarterly* 187, September 2006, pp. 635-59; Dong Lisheng, "Direct Township Elections in China: Latest Developments and Prospectives," *Journal of Contemporary China*, 5:48, Aug. 2006, pp. 503-16; John James Kennedy, *The Face of "Grassroots Democracy" in Rural China: Real Versus Cosmetic Elections, Asian Survey*, 42:3 (May – June 2002), pp. 456-82; Yawei Liu, ed., *Village Elections in China, two special issues of Chinese Law and Government* (2001), nos. 4 and 6.

Environmental movement 環保運動

自從中華人民共和國建立，環境保護的問題就一直存在。隨著經濟的快速發展，環保問題日益惡化，但是中國政府採取的控制污染措施非常有限。新世紀之初，中國的公民開始自發建立組織推動保護環境的運動。一些知識份子還有環境保護的活躍分子成立了非政府組織監察中國環境污染的情況，並建議政府採取積極有效的措施防止環境的進一步污染。在這些民間組織中，較為有名的是「自然之友」。自然之友於1994年成立，成立至今已有超過1千名會員。該組織是中國國內為數不多的幾個被官方所承認的民間機構。雖然中國政府對非政府組織的發展及其活動進行嚴厲的限制，但近十年來， 政府對於一些環保團體的管理較為寬鬆。中央和地方政府甚至注意並採納了一些由這些組織提交的建議方案。但是，2005年開始，政府對環保團體的活動再一次嚴加管制。

Environmental problems have been mounting since the establishment of the PRC. As of this writing (2006), rapid economic development has worsened the situation even further. Despite international and domestic outcry, the government has taken only limited measures to stop pollution.

Since the turn of the century, Chinese citizens have begun to better organize movements to protect the environment. Activists have started organizations to monitor environmental pollution and press the government to take aggressive and effective measures to prevent more damage. Although the Chinese government exerts strict control over non-governmental organizational activities, between around 1995 and 2005 the government was increasingly lenient toward a small number of environmental organizations. The proposals of these organizations have received

the attention and even support of various levels of central and local government. However, since around 2005, the government has more heavily restricted the activities of environmental groups. One of the better-known organizations is Friends of Nature, which was established in 1994 and had over one thousand members by 2006. This group is one of the very few environmental protection organizations to be officially Recognized by the Chinese government.

Equality, *see* Constitution; Discrimination, law concerning; Ethnic Affairs Commission; Ethnic minorities.

Ethnic Affairs Commission 國家民族事務委員會

國家民族事務委員會是存在歷史最長的國家部委之一，負責管理民族事務。它的職責包括執行中央政府的民族政策，研究少數民族的情況，向中央政府提供有關民族政策的建議，並在中央和地方協調少數民族的工作。國家民族事務委員會由全職的委員和來自其他二十多個部委的副部長兼職委員組成。然而，國家民族事務委員會更多是一個協調機構而非決策機構。委員會的主任通常任命由少數民族人士來擔任。

因為害怕少數民族要求更多的自治或獨立所帶來的社會動亂，國家民族事務委員會致力於保持穩定，在少數民族地區協助政府消除民族爭端，特別是針對西藏和新疆地區。*另見*Ethnic minorities.

Bureau in charge of minority nationalities. One of the oldest ministerial-level state agencies, the State Ethnic Affairs Commission's duties include executing the central government's ethnic policies, conducting research on ethnic minorities, advising the central government on ethnic policy, and coordinating projects at both central and local levels of government. The commission is composed of full-time commissioners and adjunct commissioners from some twenty ministries, who are usually of vice-ministerial rank. The position of chairman of the commission is always assigned to a member of an ethnic minority. However, the commission is more of a coordinating than a decision-making body.

Fearful of social unrest and the demands of ethnic minorities for more autonomy or independence, the commission has focused on creating stability and quelling ethnic conflicts and unrest in all ethnic minority regions, particularly the Xinjiang and Tibet (q.v.) autonomous regions. *See also* Ethnic minorities.

Ethnic minorities 少數民族

除了漢族以外，中國官方認可的少數民族共有54個。這些少數民族占全國總人口的8%，共有1億三千萬人。其中，壯族、回族、蒙古族、滿族、維吾爾族、彝族和藏族占少數民族人口的一半以上。中國憲法和法律創立了少數民族地區自治制度，規定少數民族地區享有半自治權和保留少數民族的生活習慣。雖然相關的法律規定少數民族自治政府可以制定自己的法律，規定婚姻、教育、土地權利、繼承、計劃生育等問題，但是中央政府對自治地區仍然保留很強的經濟政治控制。

在少數民族地區，漢族和其他少數民族的關係常常很緊張，因為這些自治地區基本上由漢族人控制，自治政府被控忽視少數民族的需要以及侵犯他們的權利。批評人士認為中央政府和自治地區的資源分配是不公平的；沒有足夠的資源發展當地語言的教育；在執行計劃生育中政府當局濫用權力並且忽視保護少數民族的習慣和傳統。在中國的西南部，中國共產黨被批評為無視少數民族間的差異，強行塑造同一性，例如壯族。在新疆和西藏，當地政府嚴厲鎮壓當地要求獨立尋求更多自治的分裂分子。在新疆，政府當局與分裂分子發生嚴重的暴力衝突，造成了多人傷亡。

Mainland China has fifty-four officially Recognized ethnic minorities, in addition to the Han majority group. These peoples make up about 8 percent of the total population, but occupy about half the territory of the PRC. Of them, the Zhuang, Hui, Manchu, Uyghur, Yi, Tibetan, Miao, Manchu, and Mongol groups account for more than half of the total minority population. In view of this diversity, the Chinese Constitution and law create a system of ethnic minority regions, which are supposed to operate semi-autonomously and preserve the unique customs of the minority groups. However, although the relevant law and regulations permit the minority self-governments to promulgate their own local legislation on marriage, education, land rights, inheritance, and family planning, the Communist Party still retains tight political and economic control over these autonomous regions.

There are often tensions between Han and other ethnic minority groups in the autonomous regions. The authorities in these regions are dominated by Han people, who have been accused of ignoring local needs and violating the rights of ethnic minorities. Critics say that resource allocation between the central government and the region is unfair or exploitative; there is inadequate education in native languages; and authorities are negligent in preserving local customs and traditions. Moreover, critics have charged that in the southern part of the country the differences between

smaller local groups have been glossed over in order to create a larger artificial ethnic group for purposes of law and policy, as would appear to be the case with the Zhuang. In Xinjiang and Tibet, local authorities have cracked down heavily on separatists and those seeking more local autonomy. In Xinjiang violent clashes have erupted between authorities and separatists, resulting in numerous deaths.

Resources: Dru C. Gladney, *Dislocating China: Muslims, Minorities, and Other Subaltern Subjects* (2004); Pitman B. Potter, "Governance of China's Periphery Balancing Local Autonomy and National Unity," *Columbia Journal of Asian Law*, Spring-Fall 2005, 19:293-322; Katherine Palmer Kaup, *Creating the Zhuang: Ethnic Politics in China* (2000).

Evictions 強制拆遷

新世紀之初，中國的各級政府為了促進經濟和商業的發展，強制徵收城市和鄉村的土地。在城市裏或周邊地區，政府強制拆遷，要求居民搬離原來住處，但卻只給低於一般公認應得的補償。在拆遷的過程中，由政府決定或是給與拆遷戶一定的補償，或是提供郊外匹配的住房。可是在拆遷的過程中，拆遷戶通常沒有權利參與有關動遷補償費的決策，因此動遷補償費非常的低。這樣導致居民拒絕搬遷，最後政府採取強制措施強行拆遷。這種強行拆遷為了房地產發展商的巨額利潤而不顧犧牲居民的利益。

不合理的動遷和轉型引起拆遷戶的極大不滿。許多地方的拆遷戶激烈的抵抗政府和發展商的拆遷，造成社會的不穩定，甚至動盪。一些拆遷戶通過法律的途徑起訴政府部門或發展商。然而，中國政府採取限制動拆遷訴訟的政策，甚至對代理拆遷戶的律師進行打擊報復。例如，上海律師鄭恩寵因為積極維護拆遷戶的權益而以「對外洩露國家機密罪」被判處三年有期徒刑。*另見*Property rights; Zigong Incident.

Compulsory seizure of urban and rural land by governmental organs at various levels since the turn of the century, often for the stated purpose of stimulating commercial and economic development. In and around many cities local governments have compelled evictions from housing, frequently paying the inhabitants objectively inadequate compensation.

The government is supposed to either pay the homeowners compensation or find them an equivalent home elsewhere. But the evicted occupant is usually left out of the process of determining the amount of compensation, so the amount is often extremely low. The result has been huge profits for developers at the expense of the original occupants. This has led numerous residents to refuse to move; in such cases

the government may use coercive measures to evict. In many places there has been fierce resistance, sometimes even full-scale riots, on the part of the evictees towards the government or the development firm. Some evictees have attempted to utilize the law to sue the relevant government departments or development firms. However, it is the policy of the government to limit litigation in these cases, and the government has warned and even retaliated against lawyers who have tried to help the evictees. For example, Shanghai lawyer Zheng Enchong was sentenced to three years in jail for the crime of "releasing state secrets and information to the outside" because he was involved in an eviction rights case. *See also* Property rights; Zigong Incident.

Exile, forced 政治犯放逐政策

政治犯的放逐政策可以追溯至90年代初，當時中國政府在人權領域遭受來自國內外的社會壓力。為了化解緊張氣氛和壓力，中國開始放逐政治異見人士。例如，1990年6月，中國政府允許物理學家方勵之和他的妻子移居美國。當時方勵之夫婦被中國政府指控為六四天安門事件的背後黑手而不得不在北京的美國大使館尋求政治避難長達一年之久。魏京生被員警直接從監獄押解到機場登上飛往美國的飛機。一般估計在這一政策下，數十名著名的政治犯被放逐，他們大多前往美國。

另一個放逐方法是在這些異見人士在國外時取消他們的中國護照，使他們不能再回國。郭羅基和王若望都是持政治異議人士，在他們短期訪美的時候，中國政府採用了這一放逐方式，使得他們不得不向美國申請政治避難的居留身份。據報導說中國海關管理局有一份黑名單，在這份名單中的人不論是否為中國公民或持有有效入境的檔都不允許入境。

The policy of political exile in its modern guise can be traced back to the early 1990s when the country faced significant domestic social tension and international pressure to improve protection of human rights. In order to defuse these tensions and pressures, numerous political dissidents were exiled. For example, Tiananmen dissident Wei Jingsheng (q.v.) was escorted by officers directly from his jail cell and placed aboard an airplane to leave the country. Dozens of prominent dissidents have been forced from the country under this policy, deported mainly to the United States. A similar example is Fang Lizhi (q.v.).

Another method of forced exile is to invalidate Chinese nationals' passports while they are abroad, thereby preventing them from re-entering the country. Guo Luoji and Wang Ruowang, both veteran political dissidents, were subjected to this

type of forced exile. As a result they applied for refugee status in the United States. It is also evident that the Chinese Customs Administration keeps a blacklist of individuals who are not permitted to enter the PRC regardless of their citizenship and validity of their travel documents.

Resource: Human Rights Watch/Human Rights in China, China: *Enforced Exile Of Dissidents: Government "Re-entry Blacklist" Revealed* (1995). Available at http://www.hrw.org/reports/1995/China.htm.

Expression, freedom of 言論自由

中國憲法第35條保證中國人民享有言論自由。然而，迄今為止，政府卻沒有允許自由討論與公共利益有關的問題，反而嚴格限制言論自由。自毛澤東時代，知識份子或官員因公開批評、發表政治敏感言論而被解職、批判甚至被處死開始，政府的當權者就對個體發表獨立的言論進行嚴格的限制。目前，各種類型的出版，媒體的報導，學者的文章，講座，會議還有互聯網的資訊等都被嚴格控制，其中有些限制還有官方的法律與政策的明文規定。

公眾對黨國制度的批評以及對基本政治制度的言論基本上在國家權力能夠觸及的範圍內均受到限制，這類言論，從教室到互聯網上的聊天室都是被禁止的。一個人因為公開發表了他對政府或其他政治事務的意見而被捕，起訴甚至判刑都是常有之事。並且，中國政府幾乎控制了所有媒體，並且實施審查制度，限制在任何公共論壇上發表反對言論。

不過，值得注意的是普通的公民在私人場合已經可以自由談論這些問題。在其他政治上不太敏感的領域，例如公民的私人生活，人們享有更多的自由。並且，政府對媒體的干涉已經日趨減少，一是因為政府關注更為重要的政治言論，已經無暇顧及其他言論，二或是因為私有經濟改革使得政府的結構性控制變弱。雖然政府的管制依舊，但在一些地方，由於律師，人權組織和活躍分子和媒體的努力，反抗壓制言論的政策已經使得一些領域可以自由討論了。*另見*Democracy Wall; Expression, freedom of; Freezing Point; Internet police; Participation; Press freedom; Propaganda Department; Rightists, campaign against; Spiritual pollution.

Article 35 of the Constitution guarantees that people shall enjoy freedom of speech. Thus far, however, the government has not tolerated free and vigorous debate on issues of public concern, and has restricted freedom of speech more than any other right. Beginning in the Mao era, when intellectuals and government officials were purged, denounced, or even killed for criticizing the government or for speaking on politically sensitive subjects, authorities have routinely restrained the individual's ability to publicly express their views, desires, and preferences. As of this writing (2006), there are still heavy restrictions on publishing of all kinds, such as media reporting, scholarly writings, lectures, conferences, and Internet postings. Many laws and regulations contain general and specific provisions expressly limiting the content of published works and other informative and artistic media. For example, Article 105 of the Criminal Law punishes subversive political speech against the state.

Public criticism of the party-state system and other basic political arrangements is virtually prohibited in any place that the state power can reach, from classrooms to Internet chat rooms. It is common for people to be arrested, indicted, and convicted for nothing more than publicizing their opinions of the government on any number of political matters. The government also controls the media and imposes strong restrictions that effectively filter dissenting opinions from public forums.

Nevertheless, in private settings citizens do enjoy considerable freedom to speak freely. In contrast to the Mao era, citizens are rarely reported to the authorities and punished for expressing opinions to their inner circles of friends and colleagues. In addition, the government now interferes to a lesser extent with all types of media because it is either preoccupied with more serious political speech, or its infrastructural control is weakening as a result of the new private economic reforms. Despite government constraints, lawyers, activists, human rights groups, and some parts of the Chinese and foreign media have fought against oppressive policies and engaged in public debate on pressing issues. *See also* Democracy Wall; Expression, freedom of; Freezing Point; Internet police; Participation; Press freedom; Propaganda Department; Rightists, campaign against; Spiritual pollution.

Falun Gong 法輪功

法輪功是在1992年由李洪志創立的一個團體，進行靜坐和修煉以達到強壯身體，提高智慧的目標。法輪功的口號是「真、善、忍」。法輪功吸引了中國大陸，歐洲、美國和加拿大的許多人成為學員。1999年，超過1萬法輪功學員聚集在中南海附近抗議，並有一些學員在天安門自焚自殺，中國政府以後對法輪功活動進行鎮壓。全國人民代表大會常務委員會宣佈取締非法的邪教，許多人認為這一決定主要針對法輪功。相信法輪功的政府官員或是被解除職務或是接受重新改造。成千上萬的人被送去勞教場所 接受改造，還有一些被判刑。法輪功的興起被視為對中國政府造成威脅，明顯是因為法輪功是中國目前最大的非政府組織，同時也顯示出若人民擁有結社的自由，會發揮出的潛在力量。（參閱香港部份）

A large, quasi-religious group founded in 1992 by Li Hongzhi. Participants practice meditation and breathing exercises that are said to be beneficial to body and mind. Their motto is "Truth, benevolence, and forbearance." The group has attracted a wide membership throughout China and in Europe, the United States, and Canada. After the quiet assembly of ten thousand Falun Gong protestors in 1999 near the Zhongnanhai party-government headquarters, and the suicides in 2001 of several members of the group in Tiananmen Square, the Chinese government cracked down on Falun Gong's activities, and the NPC Standing Committee declared a ban on all illegal "evil cults," a term generally understood to refer primarily to Falun Gong. Members of the government who were adherents to the philosophy were either purged or "re-educated." Many were sent to re-education-through-labour camps, and others were sentenced to jail terms. This seemingly benign movement is apparently perceived as a threat by the authorities apparently because it is the largest non-governmental group in the PRC and purportedly illustrates the destructive potential of an unfettered right to organize. (*See also* Hong Kong section.)

Resources: James Tong, "Anatomy of Regime Repression in China: Timing, Enforcement Institutions, and Targeting in the Banning of Falun Gong," *Asian Survey* (2002), 42:795; Anne S. Y. Cheung, "In Search of a Theory of Cult and Freedom of Religion in China: The Case of Falun Gong," *Pacific Rim Journal of Law and Policy* (2004), 13:1.

Famine 大饑荒

1958年至1961年，中國經歷了嚴重的饑荒造成許多人死亡。這場饑荒被官方認為是自然災害造成的。但後來的研究表明是由於中國共產黨政策整體失敗的結果。例如人民公社化、大規模的政治運動和資源的浪費使得國家無力採取減輕自然災害損失的措施。

除了中央政府管理的失敗以外，地方政府沒有給遭受饑荒的群眾提供及時的幫助以及限制他們流動的做法進一步加劇因饑荒造成的死亡。據回憶，當時的地方政府甚至設置路障，阻止饑餓的人群湧向還有食物的城市。雖然學者對因饑荒死亡的數字估計不一，但一些研究指出至少有兩千萬人在大饑荒時期死亡。*另見*Great Leap Forward; Land Reform Campaign.

From 1958 to 1961, the PRC experienced a great famine that resulted in significant loss of human life. The famine was officially blamed on natural disasters, but in fact was the result of a combination of policy failures, including agricultural collectivization, mass political campaigns, and poor grain allocation strategies between urban and rural areas that wasted resources and inhibited disaster relief measures. In addition to mismanagement on the part of the national government, local governments also neglected to provide relief and restricted the movement of those who were suffering. According to anecdotal accounts, some local governments even set up roadblocks to prevent people from entering urban areas where there was food. There was also no free press, free expression, or other democratic mechanisms to curtail these missteps and abuses. Although estimates vary greatly, some studies state that at least 20 million people died of starvation during this time period. *See also* Great Leap Forward; Land Reform Campaign.

Resources: Jasper Becker, *Hungry Ghosts: Mao's Secret Famine* (1996); Vaclav Smil, "China's Great Famine: 40 Years Later," *British Medical Journal* (1999), 319:1619-21 .

Fang Lizhi 方勵之

方勵之是一個天體物理學家，在80年代是中國最敢於抨擊時政的知識份子。他在80年代初被任命為中國科技大學的副校長。他主張中國應進行激進的政治改革。在整個80年代，方勵志在全國大學講學，並於1986年呼籲學生推動政治改革。政府當局譴責方勵之鼓動1989年的天安門學生運動而撤銷他的大學副校長職務。

1989年六四運動初期，方勵志因在北京大學發表有關政治改革和個人權利

的演說在此受到矚目。與其他知識份子一起，方勵志支持1989年的學生運動，政府因此認定他為學生運動的幕後黑手。北京的戒嚴令發出後，人們開始擔心他的安全。後來他偕同妻子尋求美國駐京大使館的庇護。一年後，方勵之夫妻被允許離開中國到美國。自被放逐後，方勵志繼續活躍于提高中國人權保護的活動。他目前是亞利桑那州天體物理學的教授。*另見*Hu Yaobang; June Fourth Movement.

An astrophysicist and an outspoken democracy advocate, Fang Lizhi was appointed vice president of the University of Technology and Science of China in 1984 and thereafter advocated political reforms and respect for individual rights. During the 1980s he lectured widely at Chinese universities, urging students to push for political reforms. Authorities held Fang partially responsible for the 1989 Tiananmen student demonstrations, and removed him from his position as vice president of the university.

After the June 4 crackdown, authorities labelled him as one of the "black hands" behind the protests. At this point there was considerable concern about Fang's safety. He and his wife eventually took asylum at the American Embassy in Beijing, where he remained for more than a year. The Chinese authorities finally permitted the couple to leave for the United States. Since his exile, Fang has been active in promoting human rights for the Chinese. He is now a professor of astrophysics at the University of Arizona. *See also* Hu Yaobang; June Fourth Movement.

Floating population 流動人口

流動人口是一個很寬泛的概念，主要指那些不居住在出生地或家庭戶口所在地的人員。中國政府一貫嚴格限制公民自由遷徙的權利。流動人口不僅指那些貧窮的四處務工的農村人口，還包括離開出生地出外工作的律師和職業人士。根據目前的情況，一些在外地找到工作的流動人口或許可以註冊當地的戶口，但仍會面臨社會歧視。同時，他們要獲得其他福利，如醫療教育等仍然很困難。*另見*Custody and repatriation; Household registration; Rural migrants; Sun Zhigang.

Those individuals who do not live in the place where they were born or registered. The term is often associated with poor people from rural areas who seek work in cities, but it can also include professionals who have moved from their birthplace to work elsewhere. *See also* Custody and repatriation; Household registration; Rural migrants; Sun Zhigang.

Resource: Tingting Zhang, ed., *Migrant Population in China*, special issue of *Chinese Law and Government* (2001), no. 3.

Food, right to, *see* Famine.

Freedom of assembly, *see* Assembly and protest.

Freedom of association, *see* Association, freedom of.

Freedom of demonstration, *see* Assembly and protest.

Freedom of information, s*ee* Information, freedom of.

Freedom of religion, *see* Religious freedom.

Freedom of speech, *see* Expression, freedom of.

Freedom of the press, *see* Expression, freedom of; Freezing Point.

Freedom to protest, *see* Assembly and protest.

Freezing Point 冰點 事件

2006年1月中國青年報下屬深受歡迎的週刊《冰點》被中國當局勒令停刊。政府聲明命令《冰點》停刊的原因是因為它刊登了一篇袁偉時教授指出教科書不屬實的文章。雖然停刊的真實原因不甚明瞭，但多數人認為當局早已對《冰

點》記者發表的多篇批評時政的文章非常不滿，尤其是對冰點的編輯李大同不滿。李大同對現行的記者晉升制度頗有微詞。冰點的停刊事件引起許多著名學者甚至老一輩幹部的抗議。2006年3月，宣傳部允許冰點復刊，但把原本的兩個領導者，包括李大同調任到中國青年報，而復刊的第一篇文章即反駁袁偉時的文章。*另見*Expression, freedom of.

In January of 2006, a popular supplement to the China Youth Daily titled Freezing Point was forced to close by authorities. As its reason the government cited the publication of an essay by Yuan Weishi on inaccuracies in textbooks. That may not be the whole story, as the authorities had been upset about many Freezing Point articles, and by the fact that its editor, Li Datong, had criticised the system of promoting reporters. The closure drew strong protest from many prominent scholars and even older party members. The authorities allowed the paper to reopen in March 2006, but transferred two of its former leaders, including Li Datong, to another department of the China Youth Daily. The opening edition featured an essay in opposition to Yuan Weishi's piece. *See also* Expression, freedom of.

Gang of Four trial 審判四人幫

「四人幫」是指文化大革命後期中國共產黨中央政治局中的四個重要成員。毛澤東的妻子江青是四人幫中的核心分子。其他成員分別為：張春橋、王洪文和姚文元。四人幫被認為是毛澤東逝世前的高級助手，也是文化大革命中多次血腥清洗運動的主要策劃和執行人。毛澤東逝世後，四人幫成為在這些政治運動和清洗中受害者的主要敵人。毛逝世後的領導人逮捕了四人幫並譴責他們是文化大革命中所有慘案的罪魁禍首。1981年，四人幫被公開審判，許多人認為這是中國共產黨藉此平息公眾對文化大革命的復仇情緒和重新建立黨統治合法性的手段。

公開審判「四人幫」是對後毛時代領導人要恢復法律制度決心的第一次檢驗。為了公審「四人幫」，政府成立了特別的起訴機關和特別的審判機關。經過歷時3個月的法庭審判，特別法庭判決江青和張春橋死刑，緩期兩年執行，王洪文無期徒刑、姚文元20年有期徒刑。雖然在某種程度上，這次審判滿足了公眾報復的願望，但從法律的角度而言，這次審判有嚴重的缺陷。例如，特別法庭的所有法官幾乎都是四人幫當權時代的受害者；而且法庭完全沒有給被告人提供有意義的法律辯護；法官經常中斷或打斷被告人的辯護。至少在一個場合，江青被強迫離開法庭。並且，許多人相信中國共產黨中央政治局在法庭審判之前已經對判決結果作了決定。*另見*Cultural Revolution.

Label eventually applied to four important members of the Politburo during the Cultural Revolution. Mao's wife, Jiang Qing, sometimes known as "Madame Mao," was the core member. The other members were Zhang Chunqiao, Wang Hongwen, and Yao Wenyuan. These four were senior aides to Mao during his final years; they were at the forefront of many of the most radical and bloody purges during the Cultural Revolution. When Mao died, the Gang of Four became the primary target of the leaders who had been the victims of these campaigns and purges. The post-Mao leaders arrested the Gang of Four and blamed them for the tragedies of the Cultural Revolution. In 1981, the new leaders put the members of the gang on trial, a move perhaps intended to pacify popular resentment over the Cultural Revolution and regain the party's legitimacy.

The trial of the Gang of Four became the first test of the post-Mao leaders' commitment to restoring the legal system. A special prosecutorial agency and special tribunal were established for purposes of the trial. After a three-month proceeding, the special tribunal sentenced Jiang and Zhang to death with a two-year suspension, Wang to a life sentence, and Yao to twenty years in prison. Although the trial largely

satisfied the desire of many for retribution, it had serious legal flaws. For example, all of the judges of the special tribunal had been victims of the Gang of Four's policies. There was also little meaningful legal representation for the defendants. The judges repeatedly interrupted or otherwise impeded the defence. On at least one occasion, Jiang Qing was forcefully removed from the courtroom. Moreover, it is believed that in reality the CCP Politburo determined the verdict. *See also* Cultural Revolution.

Resource: David Bonavia, *Verdict in Peking: the trial of the Gang of Four* (1984).

Gao Zhan 高瞻間諜案

2001年2月美利堅大學的一位學者高瞻連同她的丈夫和兒子在北京的國際機場被國家安全局拘留，並被指控為臺灣的間諜。在拘留所被羈押5個月後，高瞻被判入獄10年，最後經過外交努力後被遣送到美國。高瞻一案引起人們對何為間諜活動，及其與正常學術研究的界線等問題的討論。法庭對高瞻的主要指控是她因研究需要，把中國政府對台政策的敏感資訊透露給她的同事。人權衛士則批評中國政府逮捕和審判高瞻是限制學術自由。

回到美國後，高瞻又被戲劇性地指控違反美國法律向中國軍隊研究機構銷售敏感技術，被美國聯邦法院判刑入獄7個月。

Accused spy. In February 2001 Gao Zhan, a research scholar from American University, was detained along with her husband and son at Beijing International Airport by the state security bureau under charges that she was spying for Taiwan. After more than five months in official custody, Gao was sentenced to ten years in prison and ultimately deported to the United States, with the help of significant diplomatic intervention. Gao's case raised questions about the vague boundaries under Chinese law between normal academic research and espionage. The purported basis for the charges against Gao was that she had passed sensitive information on the PRC's official Taiwan policy to her colleagues for research purposes. Human rights advocates criticised the detention and trial of Gao Zhan as representative of restrictions on academic freedom.

Shortly after returning to the United States, Gao was found to have violated American law by selling sensitive technology to a Chinese military institute; she was sentenced to seven months in prison.

Gender, *see* Women's rights.

Great Leap Forward 大躍進

大躍進（1958-1962）是中國共產黨在毛澤東領導下推行的一系列政策，旨在加速經濟的增長，並根據馬克思的社會發展理論將中國社會推進新的階段。由於早期的反右等政治運動已經清除了共產黨的反對派並且扼殺了公共參與和公開討論，尤其是對知識精英的壓迫，使得這些雄心勃勃的計畫得到快速的實施。然而，因為管理混亂，資源缺乏，大躍進的眾多計畫如大煉鋼鐵，人民公社都以失敗告終，損失慘重。

大躍進對中國的政治、經濟和社會都產生了巨大的影響。大躍進是使中國廣大地區陷入饑荒的主要原因，數以千萬人因此忍饑挨餓，雖然至今對於忍受饑荒的數字還沒有定論。並且，大躍進嚴重阻礙了中國經濟的發展，導致人民生活水平的倒退。中國經濟雖在大躍進後有幾年的恢復，但政治鬥爭最終引發了1960末的文化大革命。

The Great Leap Forward (1958-1962) was a series of events driven by policies initiated by the Chinese Communist Party under Mao Zedong. Based on Marxist theory, the goal was to accelerate the growth of the economy and speed the country through various stages of development. These ambitious plans were carried out quickly since earlier campaigns had removed nearly all opposition to the party; there was no open debate. Poor management and coordination, and inadequate resources caused the failure of various efforts, such as attempts to increase steel production and the collectivization of agriculture.

The Great Leap had massive political, economic, and social consequences. It became the main cause for a Famine (q.v.), and it set back China's economic development. Following the Great Leap there were a few years of economic recovery, which was cut short by the Cultural Revolution (q.v.).

Harmonious society 和諧社會

2004年，中國共產黨第十六屆中央委員會第四次會議提出了構建和諧社會的概念，指的是一種社會各階層和睦、齊心協力的社會狀態。胡錦濤主席和溫家寶總理都主張「構建和諧社會」的概念。雖然這一概念的含義模糊，但人們一致認為這一概念體現了中國共產黨執政的戰略任務：和解因經濟改革所造成的社會張力和矛盾，如城鄉分化、民工問題、環境污染和其他會破壞中國社會和諧的問題。這一概念也被認為是符合胡錦濤主席致力於使中國共產黨和政府滿足人民要求的主旨，減少官民衝突的政策。

In 2004 the Fourth Plenum of the Sixteenth Central Committee of the Communist Party resolved to construct a "harmonious society," in which all people have opportunities to prosper. President Hu Jintao and Premier Wen Jiabao presided over this policy. While somewhat vague, this concept is generally understood to refer to easing the tensions created by economic reform, such as urban-rural disparities, migrant worker issues, environmental pollution, and other social and economic issues perceived to threaten the harmony of Chinese society. In short, this concept fits in with Hu's drive to make the party and the government more attuned to the needs of the people and to reduce increasing conflicts between citizens and officials.

Health care 醫療保健

隨著國有企業的衰落，全民就業系統的解體以及私有經濟的興起，過去由國家所提供給每一個人的醫療、退休金等福利的制度也逐漸取消。為了應付這樣的變化，中國政府在過去的幾年裏開始起草法律法規來處理有關醫療保健的問題，如《醫療保健法》，通過立法降低藥品的價格。並且，政府通過管理醫院的行為改革醫療衛生部門，如限制醫院對病人濫收費和做不必要的手術等。政府還致力於提高醫院的設備，以及生產醫學藥品的質量。

舊的醫療保健體制令許多公民，尤其是民工、失業者無法享受醫療保障，加上低劣的手術、誤診、假藥事件連連曝光使得政府不得不著手改革。*另見* AIDS; Citizens' Rights Movement; Press freedom.

With the decline of state-owned enterprises and universal employment, and the rise of the private sector, many citizens, particularly migrants and the unemployed, find themselves without provision for health care. Those who go to the hospital find the available care is expensive. In 2003 73 percent of rural residents and 64 percent of urban residents did not seek treatment for serious illnesses because of prohibitive

costs. Furthermore, hospitals often put profit considerations ahead of quality of care. Misdiagnoses and botched surgeries occur, and counterfeit drugs are often sold on the Internet and in stores.

The result is poor health care outcomes. Using five performance indicators, the World Health Organization ranked China 144 out of 191 countries in 2000; in terms of fairness, China ranked 188. In 2006 China still spent only 2.7 percent of gross domestic product on health care (compared to 6.1 percent in India and more than 10 percent in developed countries).

To remedy this situation, the government has begun drafting numerous laws and regulations, such as a Primary Healthcare Law, and other regulations aimed at reducing the price of pharmaceuticals. In early 2006 nearly 406 million rural people joined the highly subsidized rural cooperative medical system, thus gaining some access to care. The government is also seeking to reform the healthcare sector further, not only in rural areas but also in urban centres, by addressing hospital issues such as overcharging patients or performing unnecessary tests and surgery. The government is also working to improve hospitals' technological level and the quality of manufactured pharmaceuticals. Officials have announced that their goal is to bring nearly every citizen into the insurance and health care system by 2010. *See also* AIDS; Citizens' Rights Movement; Press freedom.

Homosexuality 同性戀

同性戀者傾向於稱自己為同志（字面的意思是指夥伴、朋友），而學者則稱他們為同性戀者，翻譯成英文是"homosexual"，一個非醫學用語。

由於80年代後期愛滋病開始蔓延到中國，中國政府才承認同性戀者的存在。雖然同性戀仍被視為傳染愛滋病的高危險群，但這樣的界定是否適當還有待商確。在此之前，政府只間接的提到過同性發生性關係的合法性問題，不過也只局限於男性同性的關係，對於女性間的性關係則隻字未提。1957年，最高人民法院判決兩個男子在自願的情況下發生肛交性行為無罪。但實際上，流氓罪這一規定常被用來追究兩個成年男子自願發生性關係的刑事責任。1984年最高人民法院對刑法規定的流氓罪作出解釋，把一個男子與男孩發生的性關係包括在內。直到1997年刑法修改，全國人民代表大會才廢除了「流氓罪」規定。但是目前中國還沒有明確的法律規定有關兩個成年男子自願發生性關係的刑事責任問題。一位學者提出的承認同性婚姻的建議遭到全國人大還有政治協商會議的否決。

雖然在法律上同性戀的合法性得到一定的承認，但地方政府仍通過文化活動和限制同性酒吧壓制同性戀者，使之難堪。中國社會不接納同性戀的男女，使得大多數的同性戀者進行地下活動。公開自己的性取向將會意味著失業，與家庭疏遠等結果。儘管如此，隨著中國市民社會的發展，已有不少非政府組織產生來幫助同性戀者。這些組織能夠接觸到同性戀者，幫助他們成立更多的同性戀群體和社區。目前在中國各大城市已經有越來越多公開的同性酒吧和同性戀者公開聚集的地方。*另見*AIDS; Hooliganism; Transgender individuals.

Men and women who have sexual and intimate desires for individuals of the same sex. Homosexuality is tolerated in the PRC, although not expressly permitted.

The Chinese language has various terms for homosexuality. In the past, tongxinglian (same-sex love) has been most common, but because some consider it to be too clinical a term, tongxing aizhe (a person who loves same-sex [individuals]) is often substituted. Gays and lesbians themselves often prefer the term tongzhi, which literally means "comrade."

The overwhelming majority of PRC gays are "closeted." Revealing one's sexual orientation ("coming out") can result in the loss of one's job, and estrangement from family. Still, the growth of civil society has fostered NGOs that deal with various gay and lesbian issues. These groups have reached out to gays and lesbians and create more of a community.

With the advent of AIDS in the 1980s, the government began to move out of its state of denial regarding the presence of gays in society, and recognize that there were homosexuals in Chinese society in official pronouncements and regulations. Although gays are still considered a high-risk group in regard to the AIDS epidemic, it is unclear how appropriate this designation is.

The government had previously made only indirect statements on the question of the legality of male homosexual sex, and never on the legality of sex between women. In 1957 the Supreme People's Court declined to criminalize anal sex between two consenting males. However, homosexual relationships continued to be prosecuted under the vague rubric of "Hooliganism" (q.v.). Although in 1997 the NPC removed "hooliganism" from criminal law, there is still no clear statement in law permitting consensual sex between adult men. There have been proposals in the NPC and the CPPCC to allow gay marriage, but none have been enacted.

Despite legal improvements, local authorities continue to harass and repress homosexuals. Gathering places such as gay bars as well as cultural events are

sometimes subject to government interference. *See also* AIDS; Transgender individuals.

Hooliganism 流氓罪

中國1979年刑法第160條規定：「聚眾鬥毆，尋釁滋事，侮辱婦女或者進行其他流氓活動，破壞公共秩序，情節惡劣的，處七年以下有期徒刑 、拘役或者管制。流氓集團的首要分子，處七年以上有期徒刑」。

流氓罪是一條萬能條款，可以用來懲罰一切引起公共騷亂的暴力或侵犯財產行為。侮辱婦女、猥瑣等行為也被定義為流氓罪。1984年，最高人民法院對流氓罪的適用作出更為具體的解釋，但其總體概念仍然非常模糊，對於什麼事情是屬於滋事，什麼行為構成流氓罪並不明確。1997年，「流氓罪」這一用法在刑法的修訂中被廢除，但新刑法仍在其他條款中保留該規定的泛泛規定，如「擾亂公共秩序」的規定。2005年修改的《治安行政管理法》也廢除了「流氓」的提法。*另見*Homosexuality.

Article 160 of the 1979 Criminal Law of China states: "Where an assembled crowd engages in affrays, creates disturbances, humiliates women, or engages in other hooligan activities that undermine the public order, if the circumstances are flagrant, the offenders shall be sentenced to fixed-term imprisonment of not more than seven years, criminal detention, or public surveillance. Ringleaders of hooligan groups shall be sentenced to fixed-term imprisonment of not less than seven years."

The hooliganism provision was used as a catchall provision to punish a variety of behaviour, including engaging in mass public disturbances involving violence or damage to property, assaulting women, or committing sodomy. In 1984 the Supreme People's Court issued a judicial explanation of the crime of hooliganism, articulating with somewhat improved precision the categories of disturbances or activities that would constitute the crime of hooliganism. In 1997 the word "hooliganism" was removed from criminal law, but was replaced by other equally vague language, such as participation in "social disturbances." The 2005 amendments to the Public Order Administrative Punishment Law also removed the word "hooligan." *See also* Homosexuality.

Resource: Criminal Law of the People's Republic of China (1979), http://www.novexcn.com/criminal_law.html.

Household registration 戶籍制度

戶籍制度規定每一個人都要有戶口或戶籍。一個人的戶口通常有兩個方面：一是戶口類型為“城鎮”或是“農村”戶口，二是戶口所在地。此外，許多發展城市為了因應外來人口的湧入，還設計了其他戶口管理方式。

戶籍制度一方面便於政府掌握每個國民的行蹤，另一方面決定社會福利的分配。藉著戶籍制度，政府限制了公民在國內的自由遷徙。戶籍制度的規定非常複雜，具體規定因地而異。雖然可以根據不同情況改變一個人的戶口所在地，或戶口類型，但實際上這種改變非常困難。通常情況下，戶口所在地應是一個人居住和生活的地方，但是中國有相當大部分人口居住和生活的地方並非他們的戶口所在地，因此造成這一部分人受易到歧視，不能獲得社會福利，更為嚴重的是這些人還可能被剝奪在該地區生活的必要手段。

中國政府已經表示正在努力改變戶籍制度，但迄今為止並未看見實質上的重大改革，只有在一些地區設有試點專案，實行較為寬鬆的戶口開放規定。其中，這些專案允許民工在城市裡更容易找到工作，也有受教育機會和獲得社會福利的機會。這些相關的規定都由地方的公安、勞動與社保等部門執行，但卻缺少中央法律來指導他們。*另見*Custody and repatriation; Floating population; Rural migrants.

Every citizen is required to have a hukou, or registration of domicile. An individual's hukou generally has two aspects: a general designation of status as “rural” or “urban,” and the specific venue designation. In addition, to meet the inflow of population from other places, many developing cities have designed other methods of household control. The household registration system facilitates the government's keeping track of all citizens, and often governs the allocation of social benefits. This is also the system by which the government restricts the freedom of movement of citizens. Absence of a local hukou can result in discrimination, denial of social welfare and benefits, and deprivation of a legal means of living in the area. The national government has indicated that it is trying to change the household registration system. To date (2006), there have been no significant, comprehensive changes. The rules of this system are thus still complex and localized. Several localities have pilot programs to reduce restrictions and barriers to changing one's hukou. Some have designed their own hukou management measures in order to deal with the influx of people. For example, from the mid-1990s to the early 2000s in some cities, the “blue seal” system allowed people to obtain a local hukou by buying a dwelling in the host city. Around 2002-2003 in most major cities, the blue seal system was terminated. In the case of Shanghai, the municipal government instituted a rigorous “residence permit visa” system to replace the blue seal system in 2002.

Changing one's registration or status remains difficult. Although one's hukou still dictates where an individual is supposed to live, a growing portion of the Chinese population does not live where registered. To ameliorate the attendant hardships, programs have been instituted to allow migrants to obtain easier local access to employment, education, or social benefits. Such issues are handled by the local Public Security Bureaus and labour and social security departments, which can find little guidance in central law regulation. *See also* Custody and repatriation; Floating population; Rural migrants.

Resource: Kam Wing Chan and Li Zhang, “The Hukou System and Rural-Urban Migration in China: Processes and Challenges,” *China Quarterly* , 1999, No.160, pp.818-55.

Hu Yaobang 胡耀邦

胡耀邦是中國共產黨第二代領導人中最為有影響力的領導之一。胡於1915年生於湖南，參加過長征並最終成為中國共產黨的領導核心之一，他擔任過共青團中央書記，在文化大革命中被打倒。文革後，胡與鄧小平一道復出，並在1980年成為中國共產黨總書記。1981年胡出任黨主席，廣泛與知識份子合作，推動激進的改革。1987年，因其對1986年學生抗議採取溫和政策及其容忍對黨的批評而被迫辭去職位。1989年胡突然因心臟病逝世，學生藉此再次抗議，要求政府撤銷對胡過去所作的結論，這次抗議最後演變為1989年的「六四事件」。*另見*Fang Lizhi; June Fourth Movement; Tiananmen Incident; Tibet; Zhao Ziyang.

One of the most influential leaders in the second generation of Chinese Communist Party leadership. Born in 1915 in Hunan, Hu participated in the Long March, and eventually rose in the ranks of the Communist Party to become head of the Communist Party Youth League. After being purged during the Cultural Revolution, Hu again rose to power along with Deng Xiaoping and in 1980 became general secretary of the Communist Party. In 1981 he became party chairman, a post that he held until he was forced out of power in 1987 due largely to his “soft” handling of the 1986 student protests, ethnic minority issues, and his tolerance of criticism of the party. During the 1980s Hu associated widely with intellectuals and pushed for ever more progressive reforms. In 1989, when Hu suddenly died of a heart

attack, students again protested, demanding his posthumous rehabilitation. These demonstrations eventually lead to the June Fourth Movement (q.v.). *See also* Fang Lizhi; Tiananmen Incident; Tibet; Zhao Ziyang.

Hukou, *see* Floating population; Household registration.

Human Rights Amendment 人權入憲

2004年，全國人民代表大會修改中國憲法，加入一條「國家尊重並保護人權」。這一憲法修正案常被引用作為中國的改革開放的性質更為深入的標誌。不過，許多證據表明這一修正案最多只是象徵性的口號而已，因為人們的經驗顯示憲法及其相關法律並不使他們能夠通過法院、準司法機構或行政手段保護自身的權利。*另見*Constitution; Human rights dialogue; White papers on human rights.

In 2004 the National People's Congress amended the Chinese Constitution (q.v.) to include the phrase "the State respects and safeguards human rights." The amendment is often cited as a sign that the PRC is opening up and becoming even more reformist in nature. Still, there is little evidence that the amendment is anything more than a symbolic measure, and experience has demonstrated that the Constitution and related laws are not a viable means for people to seek to protect their rights in court or through quasi-judicial, administrative means. *See also* Constitution; Human rights dialogue; White papers on human rights.

Human rights dialogue 人權對話

從1990年代開始，中國政府就與不同國家展開一連串的人權對話。顧名思義，「人權對話」的目的乃就人權相關議題與其他國家交換意見，也藉此反駁國際社會對其不良人權紀錄的批判和壓力。「人權對話」的主要對象為歐盟和美國，而從1990年開始，又增加了十多個對話的國家，諸如加拿大、澳洲及挪威等。

基本上，「人權對話」都是閉門會議，偶爾會邀請人權團體加入。各國代表針對中國的人權議題交換意見，並尋求未來改進之道。對話的兩造經常在人權的定義上意見分歧，也關心中國的人權紀錄。這個對話既然是提供給關心中國人權狀況國家的一個論壇，則許多人批評其不夠透明。評論者認為，中國在

利用這種閉門會議的方式來逃避對其人權紀錄的公開批判。有些時候，當某個國家對中國提出公開的批評時，與這個國家的人權對話就會被擱置。例如在2003年，美國公開倡議在日內瓦的人權委員會通過譴責中國人權紀錄的決議案，中國便擱置了與美國的人權對話。*另見*Human Rights Amendment; White papers on human rights.

Since the 1990s the Chinese government has participated in a series of dialogues on human rights with various foreign governments. The purpose of these human rights dialogues is to exchange views with other countries on human rights issues. They were viewed as a way to defuse international criticism of and pressures on the PRC in the area of human rights. The main human rights dialogues have been conducted with the European Union and with the United States, but there have also been more than a dozen dialogues with other Western countries, such as Canada, Australia, and Norway.

These dialogues are typically closed-door sessions, sometimes involving non-governmental human rights groups. Delegations exchange views on the PRC's human rights situation and propose improvements for the future. The two sides often disagree on the definition of human rights, and on the assessment of the PRC's human rights record. While the dialogue serves as a forum for the foreign countries to address their human rights concerns, and could conceivably become a vehicle for change, many criticise it as lacking transparency. China avoids further public criticism and debate of its human rights abuses through its closed-door approach. In some cases, the PRC has suspended the dialogue, such as when a country has engaged in open criticism. For example, in 2003 the dialogue with the United States was suspended after the United States pushed for a resolution condemning the PRC's human rights record at the UN Human Rights Commission. *See also* Human Rights Amendment; White papers on human rights.

Human rights movement, *see* Citizens' Rights Movement.

Hundred Flowers Movement, *see* Rightists, campaign against.

Information, freedom of 資訊公開

自2003年以來，無論是在中央還是地方，中國政府和中國共產黨通過了一系列政策和法律推動政務的透明，顯示出促進資訊自由，資訊公開的決心。這一系列政策是加強政府對人民負責，監督地方官員防止腐敗眾多舉措的一部分。根據這些政策，政府決策的重要資訊在網上或其他媒體向公眾公開。並且，在一些情況下，公民還可以向政府要求披露相關信息。例如，居民可以要求政府機關告知有關房產居住人的記錄。越來越多的地方政府，如廣州和上海已經實施政務公開的計畫。國務院也正研究有關政務公開的問題，可能在不久將來會出臺全國性的法律。

雖然資訊公開已經取得一定的進展，但是這一制度在地方的推行還受到阻礙。資訊公開的政策常常與中國長久以來所持的“國家機密”和密封檔案等政策相衝突，對於哪些資訊是可以不公開的，哪些是公民知情權保障的範圍，其邊界還難以界定。*另見*Elections, local; Law, administration according to; Participation; Propaganda Department; Secrecy (leaking state secrets); State Secrets Bureau.

From 2003 through 2006, government and party documents have reflected an increasing commitment to the adoption of policies and laws to promote transparency or “open information” at both the central and local government levels. These policies are part of efforts to improve responsiveness to the people and deal with official abuses. Under these policies, governments at various levels are to disclose important information to the public through the Internet and other media. In addition, citizens can request information from the government under certain circumstances. For example, a citizen may ask local agencies to supply records identifying the inhabitants of property. An increasing number of localities, such as Guangzhou and Shanghai, have enacted local regulations pertaining to the new government information programs. As of late 2006, the State Council was working on national regulations on the subject.

Despite advances in open information, these regulatory regimes still meet with resistance to implementation among officials at the lower levels. The policies also often conflict with long-standing policies on “state secrets” and sealed personal files, making it difficult to define the boundaries of the exceptions to the “presumption of disclosure” and the citizen's “right to know” laid out in the regulations. *See also* Elections, local; Law, administration according to; Participation; Propaganda Department; Secrecy (leaking state secrets); State Secrets Bureau.

Resource: Jamie P. Horsley, “Access to Government Information in the People's Republic of China” *Bowker Annual Library and Book Trade Almanac* (2006).

International Covenant on Civil and Political Rights
公民與政治權利國際公約

中國政府於1998年10月簽署此公約，但還未批准。（參見國際部份）
China signed this covenant in October 1998, but has not yet ratified it. (*See* International section.)

International Covenant on Economic, Social and Cultural Rights
經濟、社會與文化權利國際公約

中國政府已經在1997年簽署此公約，並在2001年批准。（參見國際部份）
China signed this covenant in 1997 and ratified in 2001. (*See* International section.)

Resources: Leïla Choukroune, “Justiciability of Economic, Social and Cultural Rights: The UN Committee on Economic, Social and Cultural Rights' Review of China's First Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, *Columbia Journal of Asian Law*, Spring-Fall 2005, 19:1, pp. 30-49.

Internet police 網路員警

「網路員警」是指專門監視與網路有關的犯罪以及監察網路資訊的特別警力。早在1984年，公安部就成立了一個特別部門（第11局）專門負責保護電腦系統安全以及調查電腦犯罪。起初，網路員警只是監視或調查與計算機或網路有關的犯罪，但隨著網路成為資訊傳播越來越重要的媒介時，網路員警的工作從調查和防止犯罪變成控制資訊傳播。在2006年，估計有數以十萬計網路員警或準員警監視網路聊天室，通過敏感的關鍵字過濾網上的討論，禁止敏感網站的瀏覽和記錄任何可疑的言論。

網路員警工作的結果是在網路上發帖子發表批判政府的言論的人遭到政府的警告壓制，甚至被起訴判刑。第一個被判刑的案例是上海的電腦工程師林海，林海於1998年因向一個境外組織發了3萬封電子郵件而被判2年有期徒刑。另外一些有名的案例包括黃琦，因在網路上發表有關天安門事件的資訊而在

2000年被判5年有期徒刑；以及綦彥臣，因在網路上發表批判政府的言論而於1999年被判4年有期徒刑。*另見* Information, freedom of.

A special police force charged with monitoring Internet-related activities.

As early as 1984, the Ministry of Public Security placed a special bureau (Bureau Eleven) in charge of protecting the computer system and investigating computer-related crimes. This police force was then required to monitor and investigate computer-related (and later, Internet-related) crimes. With the increasing importance of the Internet in circulating information, the work of the bureau began to shift from criminal matters to information control. In 2006 it was estimated that more than 100,000 police and quasi-police units monitor Internet chat rooms, filter online discussion by screening sensitive key words, block sensitive Web sites, and record suspicious postings.

As a result of the work of the Internet police, people who post online opinions that are critical of the government have been harassed or even prosecuted. The first such case was that of Lin Hai, a Shanghai engineer who had sent 30,000 email addresses to a foreign organization, for which he was sentenced in 1998 to a two-year prison term. Other famous Internet dissidents include Huang Qi, who posted information related to the Tiananmen Incident (q.v.) and was sentenced to a five-year prison term in 2000; and Qi Yancheng, who published criticism of the government in online articles and received a four-year sentence in 1999. *See also* Information, freedom of.

Intra-Party democracy, *see* Democracy in CCP.

Judicial independence 司法獨立

中國的法院並不獨立於政府的其他部門或中國共產黨，中國的法官通常也不能根據自己的判斷獨立審判案件。法院的工作除了會受到同級的黨政領導干涉以外，還要接受共產黨的政法委員會日常的監督以及對審判工作的協調，尤其是對於涉及官員間糾紛的案件，法院的院長是該委員會的委員之一。在法院系統內， 對某些案件的判決可能需要得到審判委員會的同意或者完全由審判委員會來決定。並且，低一級法院的法官還可以非正式的向上級法院的法官諮詢對某一案件某一問題的意見，因此事實上剝奪了當事人上訴的權利。再說，中國的政府結構也是不允許法院獨立運作的。中國憲法規定國家和地方立法機關有權監督法院，並且有權任免法官。最重要的是，中國法官都是由相應的中國共產黨組織挑選出來，沒有工作保證。雖然在表面上法官是由法院院長提名，然後由全國人大常委會或地方人大常委會確認產生的，但是他們實際上必須向提名他們的黨委負責。

為了滿足經濟社會發展的需要，人們對人民法院系統改革的討論越來越深入，一些有識之士呼籲人民法院應該獨立於政府的其他部門，更為重要的是獨立於中國共產黨，這樣法院才可以監督審查國家行政部門甚至立法機關的行為。*另見* Due process, procedural; Judicial reform; Law, administration according to; Law, rule according to; National People's Congress; Political and Legal Committee.

Chinese courts are not independent of the other organs of the government, nor of the Chinese Communist Party, and judges are not free to use their independent judgment to decide a case. In addition to the arbitrary interventions by the party and government leaders at the corresponding level, the Political and Legal Committees of the party, of which the lead judge of the court is a member, can routinely supervise and coordinate work of the judiciary. Within the court system, the decision of each case may have to be approved or wholly decided by an internal adjudication committee. In addition, the lower court judge may informally seek assistance from a higher court judge on major issues or the overall decision, which may have the effect of depriving parties of any meaningful right of appeal. Not even the formal structure of the government necessarily allows the courts to operate independently. The Constitution vests the power to supervise the courts and appoint and remove

judges in the national and local legislatures. In reality, Chinese judges are virtually handpicked by the party committee at the corresponding level, and do not enjoy job security. They are ultimately responsible to the party, despite the appearance that they are elected or nominated by the president of the court and confirmed by the National People's Congress Standing Committee or local congress standing committees.

In the course of the increasingly serious discussions about reforming the people's court system in order to meet the needs of economic and social development and reform, some have called for the courts to become more independent from other parts of the government and, perhaps more importantly, from the Chinese Communist Party in order to fulfil their role as organs to resolve neutral dispute. *See also* Due process, procedural; Judicial reform; Law, administration according to; Law, rule according to; National People's Congress; Political and Legal Committee.

Resource: Stanley B. Lubman, *Bird in a Cage: Legal Reform in China After Mao* (1999).

Judicial reform 司法改革

司法改革是在1998年第十五屆中國共產黨全國會議首次提出依法治國後開始的，是中國社會和政治改革計畫的一個部分。當時，許多人希望中國能夠推進全面的司法改革從而徹底改變目前的司法制度。1999年最高人民法院發佈了第一個五年綱要改革人民法院系統。

但是，由領導人倡議的司法改革實施不久後，其改革的範圍就被迅速的限制和縮小。2003年第十六屆中國共產黨全國代表大會提出了「司法體制改革」，改革的範圍大大縮小，僅限於提高司法系統辦理案件的效率。但是，人們普遍認為由於缺乏相應政治體制的改革，目前的司法體制改革並不能對原來的司法制度產生根本性的變革。*另見*Death penalty; Judicial independence; Political and Legal Committee.

Proposed at the Party Congress in 1998 under the slogan "rule the country by law," as a part of the broader social and political reform package. At this time many hoped that there would be a full-fledged program of judicial reform that would change the legal system entirely. In 1999 the Supreme People's Court issued its first five-year plan to broadly reform the court system.

However, the judicial reform first vetted by the leadership was soon curtailed. In 2003 the Party Congress announced a much narrower "judicial system reform"

limited to improving the efficiency of the judiciary in dealing with an increasing caseload. Most reforms still remained under discussion (as of 2006), but some were actually implemented, most notably the Supreme People's Court's Death penalty reforms (q.v.). *See also* Judicial independence; Political and Legal Committee.

Resource: Mei Ying Gechlik, "Judicial Reform in China: Lessons from Shanghai," *Columbia Journal of Asian Law*, Spring-Fall 2005, 19:97-137.

Judicial review, *see* Constitution.

June Fourth Movement, *see* Tiananmen Incident.

Labour, *see* All-China Federation of Trade Unions; Workers' rights.

Labour reform 勞動改造

傳統的中國共產黨犯罪理論認為犯罪是資本主義的產物：罪犯犯罪的主要原因是為了逃避勞動，通過剝削其他階級而享受別人的勞動成果。根據這樣的邏輯，中國共產黨認為改造犯罪分子的最好方法是強迫他們勞動，要他們“自食其力”。因此，中國建立了勞動改造制度，把許多罪犯投入不同的工廠和農村進行勞動改造。

在過去五十多年來，超過百萬的罪犯被勞動改造。由於勞動改造的條件惡劣，不少人因此而生病、死亡。勞改制度的另一個問題是勞改經濟：被強迫勞動改造的人通常沒有或只有一點報酬，而他們勞動生產產品所獲得的利潤就會直接進入勞改系統的財政，在大多數情況下主要是直接監管勞改場所的幹部受益。根據官方的資料，勞改經濟包括許多產品，已有不少成為重要的經濟實體，成為了監獄的重要收入來源。勞改制度涉及了一系列人權保護的問題，其中包括：勞改制度帶有洗腦性質，勞動過度，以及惡劣的勞動條件。

Old name of the prison regime. According to traditional Chinese Communist theory, crime is a by-product of class exploitation. The primary explanation for crime is that some people escape labour by exploiting the class system and reaping the benefits of others' work. It followed from this logic that the best way to reform criminals is to require them to work in a manner so that workers could “eat the fruits of their toil.” Pursuant to this theory a reform system was established, and large groups of criminals were tried and placed in different factories and rural areas for “labour reform.”

Over the course of the last fifty years, criminals have undergone labour reform by the millions. Working under very harsh labour conditions, they have suffered bodily harm and even death. Another aspect of the system is the economics of labour reform. Most of these workers receive little or no compensation, and the profit from their labour goes directly into official coffers; in many cases the direct beneficiaries of the labour are the labour reform supervisory organs themselves. According to official statistics, the labour reform economy includes numerous products and has already become a significant economic entity and produces the majority of prisons' income. The labour reform system relates to a number of human rights problems

including unfair trials, the practice of brainwashing, the severity of the degree of labour, and poor labour conditions. In the mid-1990s the term “labour reform” ceased to be used officially, but the surviving prison regime underwent little change. The system holds about three-quarters of the country's inmates.

Resources: James D. Seymour, *Sizing Up China's Prisons*; Børge Bakken, *Crime, Punishment and Policing in China* (2005), pp.141-67.

Land Reform Campaign 土地改革運動

早在取得政權以前，中國共產黨在其所統治的解放區就推行土地改革，重新分配土地。土地改革主要是徵收地主的土地，然後分給農民。1950年6月，中國共產黨推行全國性的土地改革運動，許多地主和富農的土地被徵收，其中還有一些被打為“反革命”。土地改革運動是中國共產黨鞏固統治，得到農民支持的重要手段，這一運動徹底改變了中國土地的分配制度。但是這一土地私有化的過程持續不久，很快，幾乎緊跟土地的再分配，共產黨要求農民加入高級社等農村集體合作社。直至1956年，全國幾乎所有的農民加入了農村集體，而土地也成為集體所有。*另見* Evictions; Zigong Incident.

Before the Chinese Communist Party came to power in 1949, the Communists developed a reform program for the redistribution of land in the area under its control, taking the land from landlords and distributing it among the peasants. The year after coming to power, the CCP implemented a comprehensive national campaign to reform land distribution. During the campaign, many landlords and “rich peasants” had their land and assets seized, and some were even denounced as counter-revolutionaries. The Land Reform Campaign was an important tool for the CCP to consolidate its power and obtain the support of the farmers. It thoroughly reformed the system of land distribution. This privatization of land, however, did not last long. Soon after the land redistribution, peasants were “requested” to join cooperatives, and then form collectives. By 1956 almost all peasants had put their land into the collectives. *See also* Evictions; Zigong Incident.

Language rights 語言權

中國官方允許人民使用母語，並在憲法中特別保障少數族群保存及使用他們的語言。民族區域自治法及通用語言文字法落實了這些憲法條文。後者規定普通話為官方語言，簡體文字為官方文字。所有人都需用普通話，尤其在中學

階段。所有公民有權學習及使用普通話，事實上，中學以上都必需使用普通話。

雖然民族區域自治法允許官員在自治區中的教育、法庭以及政府機構使用少數民族的語言，但語言法仍規定，教育和政府機構在多數情況下仍應使用普通話。該法要求用普通話教學，而不同區域的幹部必需學習普通話以利彼此溝通。在實務上，漢族的官員很少學習其轄區內其他民族的語言。不過，該法也規定若用其他語言有利於政務推動的話，可使用其他語言。而有關文化，如廣播、藝術及媒體，若需用到中文外的其他語言，需得到當局批准。

但為了政治目的，少數民族的語言仍然受到政府的操控。

The official policy is to allow people to use their mother tongues. The Constitution specifically grants members of minority groups the right to preserve and use their languages. The constitutional provisions are reinforced through the Law on Regional Autonomy, and the Law on Commonly Used Language and Script. The latter law designates Mandarin as the national language and simplified Chinese characters as the national script. There is pressure to use Mandarin, especially at the secondary-school level. All citizens have the right to study and use Mandarin, and in reality Mandarin is essential beyond the secondary-school level.

Although the Law on Regional Autonomy allows officials in autonomous regions to use minority languages in education, court proceedings, and the performance of official duties, the Language Law requires that, under most circumstances, spoken Mandarin be used in education and government offices. The law requires that Mandarin instruction be made available and that cadres from different regions learn Mandarin to communicate with each other. In practice, Han Chinese cadres rarely learn the language of the peoples under their charge. Still, the law requires that other languages may be used if so required in the execution of government duties. With regard to cultural outlets, prior approval of the administrative departments in charge of broadcasts, or in art or like media is required before languages other than Chinese are used.

There has been considerable manipulation of minority written languages, largely for political purposes.

Resource: Minglang Zhou, *Multilingualism in China: The Politics of Writing Reforms for Minority Languages* (2003), pp.1949-2002 .

Law, administration according to 依法行政

2004年，國務院頒布了一項名為《全面推進依法行政實施綱要》的改革計畫，以推動各級政府依法行政。該項計畫的核心是進行制度建設，制定一系列的行政法律、法規規範行政程式和行政官員的行為。國務院希望在已有法律的基礎上，例如《行政許可法》、《行政處罰法》、《行政復議法》、《立法法》等及其實施細則，通過該計畫進一步推進「法治」概念的實施，從而促使政府依法行政，依法處理政府與人民的關係，抑制政府官員濫用權力，防止腐敗及浪費。其中，公共參與和資訊公開也是該計畫的一部分。

《行政強制措施法》正在草擬，《行政訴訟法》的修正案也在制定中，而《公務員法》已於2005年頒布實施。制定更為全面的《行政程式法》看起來還不成熟，一是因為此項提議較為初步，二是因為它究竟能否在提高政府行政能力，抑制官員濫用權力以及更好的回應人民要求等方面起到什麼重要作用還不清楚。*另見*Administrative Litigation Law; Administrative reconsideration; Information, freedom of; Participation; Petition system.

In 2004 the State Council issued a plan for administrative reform titled the Outline for the Comprehensive Promotion of Law-based Administration. The stated goal of this plan was to improve "administration in accordance with the law." The main thrust of this plan was to develop a body of administrative law and regulation that governed administrative processes and officials. Building on laws such as the Administrative Licensing Law, the Administrative Punishments Law, the Administrative Litigation Law, the Administrative Reconsideration Law, the Legislation Law, and the procedural regulations on enacting administrative regulations, the State Council sought to turn the "ruling according to the law" concept inward, to affect the government itself and its interactions with the people; and to curb official abuses, corruption, and waste. Public participation and open information initiatives are also part of the plan.

A Civil Servant Law was enacted in 2005; work then began on an Administrative Compulsory Measures Law and on amending to the Administrative Litigation Law. A more comprehensive Administrative Procedure Act has been proposed by scholars. *See also* Administrative Litigation Law; Administrative reconsideration; Information, freedom of; Participation; Petition system.

Law, rule according to 依法治國

「依法治國」這一提法於1999年被寫入中國的憲法，顯示出中國共產黨和中國政府致力於建設一個法制國家的決心。雖然把「依法治國寫入憲法」的時間相對晚，但早在改革之始，中國共產黨和政府已決定建立一個法制系統取代過去無法無天的狀態。儘管有一些人把依法治國等同於「法治」(rule of law)，但大多數人則認為這只是以法律來治理(rule by law)，即法律作為政治統治工具而已。

迄今為止，沒有多少證據表明中國的領導人真正願意受自己所制定的法律約束或中國存在能夠真正實行法治的司法機構存在，這樣的司法機構必須獨立和保護個人權利。中國政府的確在短時間內在各個層面制定並通過了大量的法律法規，但目前最為迫切的問題是需要建立有效的機制落實和執行這些法律，並且允許個人通過法律來維護權利。雖然成功的案例不多，但已有許多團體和個人嘗試透過法律尋求對冤情的救濟。*另見*Chen Guangcheng; Detention, administrative; Hooliganism; Judicial independence; Judicial reform; Law, administration according to; Lawyers and evidence; Legal aid; Legislation, law on; Political and Legal Committee; Record and review; Trial, fair.

Phrase added to Article 5 of the PRC Constitution in 1999. Despite this late addition to the Constitution, the phrase represents the party and government's commitment, stemming from the beginning of the Reform Era, to construct a legal system where almost none had existed before. While some equate this phrase with the rule of law (fazhi), others view it more as a pledge of the leadership to rule by law, meaning that law functions mainly as a political tool.

At present there is little evidence to suggest that the leaders are themselves constrained by the laws they make, or that the institutional independence required to implement the rule of law and protect individual rights exists. The government has quickly enacted an impressive number of laws and regulations at all levels of the system, but currently the need is to build effective institutions and implement that legislation, allowing private citizens to realize their rights and effect change by relying on the law.

Many groups and individuals have been attempting with limited success to seek redress of their grievances through the legal system. However, the government has at times been less than sympathetic to those arguments. In 2007 Politburo member Luo Gan stated that while it was sometimes necessary in legal proceedings to take "international factors" into consideration, nonetheless there was "no question as

to what positions legal departments should take. The correct political stand is where the Party stands," and the party must use the judiciary and the lawyers to fend off "enemy forces" (Qiu shi, 2 September 2007). *See also* Chen Guangcheng; Detention, administrative; Hooliganism; Judicial independence; Judicial reform; Law, administration according to; Lawyers and evidence; Legal aid; Legislation, law on; Political and Legal Committee; Record and review; Trial, fair.

Lawyers and evidence 律師偽證罪

刑法第306條規定：「在刑事訴訟中，辯護人、訴訟代理人毀滅、偽造證據，幫助當事人毀滅、偽造證據，威脅、引誘證人違背事實改變證言或者作偽證的，處三年以下有期徒刑或者拘役；情節嚴重的，處三年以上七年以下有期徒刑。」

這一條款不僅規定了偽造證據罪，還特別突出了律師作為犯罪的獨立主體。並且，該條款的規定模糊，對於什麼樣的行為構成「引誘」證人改變證言並無確切定義。直至本文寫作時（2006年7月），最高人民法院還沒有對這一條款作出合理的司法解釋。因此，有許多辯護律師僅僅因為犯罪嫌疑人進行辯護而被調查。當律師向證人取證的內容與公檢法機關在前些時候向證人取證的內容存在不一致時，律師通常被懷疑幫助或「引誘」證人改變證言。根據全國律師協會及其分會的不完全資料，約有200名律師因被懷疑違反刑法第306條而被調查。雖然，最後被定罪的個案不多（大多數被無罪釋放），但因306條的規定，律師很容易被起訴犯偽證罪，所以越來越少的律師願意為刑事案件辯護，即使他們承擔了刑事案件，也不願意盡心盡力的為當事人提供有效的法律服務。許多學者和法律工作者建議取消這一條規定。

Article 306 of the criminal law, which concerns lawyers who forge or tamper with evidence or coerce a witness into perjury, has become a tool for investigating and prosecuting criminal defence lawyers. If there are differences found between testimony given to a lawyer and the testimony given earlier to the investigating authorities, it is common for the lawyer to come under suspicion for helping or "enticing" the witness to change his/her testimony. According to the incomplete statistics of the All China Lawyers Association and its various provincial branches, more than 200 lawyers have come under investigation for Article 306 violations. It is true that the number of lawyers who have actually been found guilty is small—in most cases the matter either never reaches the trial stage or the lawyers are found not guilty. Nonetheless, due to the ease with which lawyers can be investigated

for Article 306 violations, many lawyers choose to not do criminal defence work, and those who do hesitate to provide their clients with zealous and effective legal assistance.

Resource: Criminal Law of the People's Republic of China,

http://www.cecc.gov/pages/newLaws/criminalLawENG.php.

Legal Aid 法律援助

指提供法律協助給窮困的原告和被告的措施。中國的法律援助在1990年代中期由司法部啟動，在地方設立試點，隨之民間機構也開始參與，因此在全國範圍內法律援助項目不斷發展。法律援助專案的形式多樣，有政府資助的法律援助中心，有律師事務所提供的法律援助，以學校為基地的獨立專案，還有政府運營的協會以及私人律師提供的義務援助等。不少有關法律援助的通知和規定出臺以鼓勵法律援助專案的發展，但直至2003年國務院才正式實行全國性的法律援助條例。該條例對法律援助的範圍，申請程式以及管理作出了規定。

儘管有不少的法律援助項目，但是這些項目還不足以為許多真正需要法律援助的人群提供及時的幫助。因此，有不少法律援助項目開始改變他們幫助的目標群體，更為關注有需要的人群，例如民工。

Program to provide legal assistance to poor plaintiffs and defendants.

China's Legal Aid program was launched in 1994 on the initiative of the Ministry of Justice. Since then, through local experimentation and in the context of the development of a more independent civil society, various legal aid programs have developed.

There are various types of legal aid programs and methods: government-funded centres, law firm providers, independent and university-based programs, government-run associations, and pro bono work by lawyers in private practice. Various notices and regulations were originally promulgated to encourage and guide the development of legal aid programs. More comprehensive central regulations on legal aid were issued by the State Council in 2003. The provisions broadly articulate the scope and procedures for legal aid application and administration.

Despite the development of these programs, they have not always been completely successful at providing the necessary legal services to the large number of people seeking redress for their grievances though the legal system. Accordingly, some legal aid programs have sought to adjust their targets to better serve more in-

need populations, such as migrant workers.

Resource: Benjamin L. Liebman, "Legal Aid and Public Interest Law in China," *Texas International Law Journal* (1999), 34:212.

Legislation, law on 立法法

規範法律和規章如何制定的法律。歷經多年，多個草案，全國人民代表大會終於在2000年通過了《立法法》。作為正在成形的憲法類法律的一部重要法律，立法法成為憲法以及各個組織法（如全國人民代表大會組織法）不可缺少的補充。《立法法》的適用範圍很廣，該法不僅對全國人大及其常務委員會通過的法律作出規定，還適用於國務院和各部委制定的法規和規章。《立法法》規定了法律效力高低的層級：憲法，法律和自治區的法規，國務院制定的法規，地方法規和部委及地方規章。該法對於全國人民代表大會及其常務委員會立法的程式作出更為詳細的規定。

《立法法》的重要性還在於它規定了政府各部門間所制定的法律法規產生衝突的解決方法。例如，全國人民代表大會常務委員會有權撤銷與憲法、法律或行政法規相衝突的行政法規和地方規章。政府的許多部門可以向全國人大常委會提起這樣的衝突。遺憾的是： 根據立法法的第90條，私人公司，團體或個人不可以向全國人大常委會提請審查法律法規合憲性的要求。目前，全國人大還從未直接撤銷國務院制定的法規，因此影響到這兩個政府機構的權力平衡。

《立法法》曾經是中國建設法治辯論中的核心問題，圍繞該法的制定，人們展開對憲法訴訟、政府機構間的權力制衡，法院的角色和中央與地方關係等問題的辯論。*另見*Law, rule according to; Sun Zhigang.

A 2000 law governing how laws and regulations are enacted. The Law on Legislation, part of the emerging body of basic law, was meant to supplement the Constitution and subsequent organic laws (e.g., Organic Law of the National People's Congress) and to resolve various issues that had arisen as the system of legislation evolved. The Legislation Law's scope is broad. It covers not only laws enacted by the NPC and its Standing Committee, but also the regulations enacted by the State Council, the ministries and commissions, and the local governments and congresses. The law establishes a hierarchy of legislation: Constitution, NPC-statutes and autonomous-region regulation, State Council regulation, local regulation, and ministerial and local rules. It also lays out more detailed procedures for the enactment of laws by the NPC and its Standing Committee.

The Legislation Law is also important because it dictates which organs of government can resolve conflicts of laws and regulations. For example, the Standing Committee of the National People's Congress has the power to cancel administration regulations and local rules that contradict the constitution, laws, or administrative regulations. Under Article 90 government organs, private companies, groups, and individuals can bring these conflicts to the Standing Committee's attention. To date, the Standing Committee has not exercised its power to cancel State Council regulations.

The Legislation Law has been at the centre of most major debates involving the development of the rule of law. The law serves as a basis for many debates in the areas of constitutional litigation, the balance of power between government institutions, the role of the courts, and central local relations. *See also* Law, rule according to; Sun Zhigang.

Letters and visits, *see* Petition system.

LGBT, *see* Homosexuality.

Migrant population, *see* Floating population.

Movement, freedom of 遷徙自由

1954年的憲法曾經規定遷徙自由，但在隨後的幾個版本中就被放棄了。尤其中國共產黨從未尊重過公民出國的權利。至少至2006年，西藏人民打算經由山路離開國境時，仍經常遭到邊境守衛開槍射殺。射殺的畫面透過Youtube網站揭露後，當局才開始考慮重新檢視此一政策。*另見*Floating population; Household registration; Rural migrants; Yang Jianli.

The right to freedom of movement had been provided for in the 1954 Constitution, but has been dropped from subsequent versions. In particular, the PRC does not honour citizens' right to leave the country. At least through 2006, Tibetans who attempted to do so via mountain trails were routinely gunned down on the spot by border patrols. After footage of such shootings appeared on Youtube the authorities apparently felt obliged to rethink this practice. *See also* Floating population; Household registration; Rural migrants; Yang Jianli.

Resource: http://www.youtube.com/watch?v=jUtc11vsaRI.

National People's Congress 全國人民代表大會

根據中國的憲法，全國人民代表大會是中國最高的權力機關，負責立法和監督國務院對法律的實施。

全國人民代表大會於1954年成立，但在六、七十年代，全國人民代表大會並沒有定期召開會議，直到進入八十年代，全國人民代表大會才開始每年召開全體大會。全國人民代表大會的年會一般在三月份召開，持續二、三個星期，主要是決議通過法律、批准條約還有制定政策。在決定法律的內容方面，全國人大目前已扮演較重要的角色。

全國人大休會期間由全國人大的常務委員會負責起草、討論法律，並通過不需要全國人大批准的基本法律之外的法律。全國人大常委會共有175到200個委員，既有全職也有兼職委員，並有政府官員、黨的幹部和中國社會各個階層的代表。雖然最高人民法院可以在適用法律時對法律作出司法解釋，但是憲法規定全國人大常委會主要負責解釋法律和憲法。

雖然全國人民代表大會在法案和政策的辯論上表現較為活躍，但還未能成為反應公民關懷的代議民主有效機制。

Supreme organ of state power, responsible for making laws and overseeing the implementation of those laws by the State Council and its various ministries.

The NPC was established in 1954, but it did not meet regularly during the 1960s and 1970s. In the early 1980s, however, the Congress resumed annual plenary sessions (usually remaining in session for several weeks in March) to decide on major laws, treaties, or policies. The Congress now plays an increasingly significant role in determining the content of national laws.

National election law calls for the NPC to contain a diverse body of deputies, representing every county, ethnic minority, profession, and political party. There have also been efforts to increase the number of women deputies as well. In reality, however, the NPC has not truly become a forum for meaningful representation of these diverse interests, and is still heavily controlled by the prerogatives of the CCP leadership. There is also an urban/rural imbalance. As of 2002 a resolution set the constituent to deputy ratio at 960,000:1 for rural areas and 240,000:1 for urban areas, meaning that urbanites are over-represented by a ratio of 4:1.

The Election Law calls for direct election of deputies to the local people's congresses at the township and county levels, but higher levels are chosen from among the deputies of the next lower level. Deputies to the national congress

are chosen from the provincial level local people's congress. The CCP has heavy influence over these elections at all levels, and produces the list of candidates for the national congress. There is no campaign for election, and no non-CCP approved candidate has ever stood for election to the national congress.

When the plenary session is not meeting, the Standing Committee of the NPC (consisting of 175-200 members) drafts, debates, and passes other laws supposedly less fundamental than the basic law that requires passage by the entire NPC.

Although the NPC has become more active in debating the merits of various laws and policies, it still comes up short as an effective vehicle for representative democracy of citizen constituents.

Resource: Kevin J. O'Brien, *Reform without Liberalization: China's National People's Congress and the Politics of Institutional Change* (1990); Murray Scot Tanner, *The Politics of Lawmaking in Post-Mao China: Institutions, Processes, and Democratic Prospects* (1999).

NGOs 非政府組織

中國並沒有像香港、台灣或其他民主國家普遍存在的那種真正獨立的非政府組織。但是隨著單位制度的解體，國家安排就業，分配房屋制度的崩潰，中國開始有了供各種各樣社會團體成長的空間，中國政府已經允許一些組織存在提供服務，參與宣傳教育，提高大眾對諸如愛滋病，兒童婦女權益等問題的認識。但這些組織若不是地下的，就是受到政府嚴重的干預和監督。

中國的非政府組織有幾種不同的形式。有一些非政府組織實際上是官方的組織，例如全國消費者保護協會和婦聯，這些組織受政府的控制，但仍能提供有效的服務和資訊。這一類組織被稱為官方組成的非政府組織或者官方非政府組織(GONGOs)。另外一些正式註冊的非政府組織相對獨立，常常依附在大學等學術機構上。這些組織更為獨立因此也能夠更好的對某些問題作出倡議和遊說。最後，還有一些非正式的或在地下活動的非政府組織。*另見* Assembly and protest; Association, freedom of; Environmentalism.

The truly independent non-governmental organization, as is common in Hong Kong, Taiwan, and other democratic jurisdictions, hardly exists on the mainland. The breakdown of the tightly controlled unit (danwei) system and state-controlled employment and housing systems, however, has opened up more space for different types of social organizations to emerge. The government has allowed these new organizations to provide services and promote education and awareness on issues, such as HIV/AIDS, children's rights, and women's rights, though they operate either

underground or with heavy government interference and supervision.

There are several different types of organizations. There are those that are actually connected with the government, such as the All China Consumer Protection Organization or the All China Women's Federation. These groups operate under the control of the government, but nonetheless often provide useful services and information. Both of the above organizations can be considered "government organized NGOs," or GONGOs. There are also more independent, officially registered NGOs, some of which are connected with universities. These organizations are often better advocates for their causes. Finally, there are NGOs that operate unofficially or even underground. *See also* Assembly and protest; Association, freedom of; Environmentalism.

Nie Shubin, *see* She Xianglin.

Non-governmental organizations, *see* NGOs.

Participation 公眾參與

公眾參與是中國政府改革專案之一，為了增加政府工作的透明度和創造讓公眾直接參與政府決策的渠道，如參與行政立法和監督政府工作等。根據《立法法》和其他相關法律的要求，中央和地方政府開始鼓勵公眾在法律法規頒布之前提出意見。人民代表大會和政府以及中央的各部委會就一些問題召開聽政會或通過網路收取公眾和專家的意見。特別是在2005年和2006年，全國人民代表大會公佈了《物權法》和《勞動集體合同法》的草案徵詢公眾的意見。中央的其他部委，如環境保護總局和食品和藥品管理局起草了增加公眾參與其決策的方案。

除了在一般的及地方層級上的政策，還沒有全國性的法律規定公眾參與的程式和途徑。不過廣州已著手進行相關的規劃。雖然法律出臺前已有聽證，通知或徵詢意見的期間，但這些程式不是必須的，事實上在一些重要問題上，還沒有公眾參與。並且，還有如何保證聽證的公平等問題尚有待解決。*另見*Elections, local; Information, freedom of; Law, administration according to; Legislation, law on; Petition system.

As provided for in the Law on Legislation (q.v.) and related regulations, governmental organs at both central and local levels have begun to solicit input from the public on certain laws and regulations before they are promulgated. The government has a program called "public participation" whose purpose is to increase transparency in government and create channels for the public to participate in governance decisions such as administrative rule making, and to "supervise" the government. Many localities (people's congresses and governments) and central ministries now hold hearings or solicit comments from the public or experts via the Internet on certain issues. In addition, in 2005 and 2006 the National People's Congress (q.v.) published for comment the drafts of two laws, the Property Rights Law (*see* Property rights) and the Labour Contract Law. Central ministries, such as the State Environmental Protection Agency and the State Food and Drug Administration, have also drafted plans to improve public participation in their rule-making processes.

Despite the progress in the general policy arena and at the local levels of government, at present there are no comprehensive central procedures for public participation, although at least one province, Guangzhou, has been working on such provisions. Although hearings and comment periods do occur, they are not always required even for the more important issues. In addition, there are problems

regarding the fairness of the hearings and of other methods of participation. *See also* Elections, local; Information, freedom of; Law, administration according to; Legislation, law on; Petition system.

Resource: Jamie P. Horsley, "Public Participation and the Democratization of Chinese Governance," in Yang Zhong & Shipin Hua, eds., *Political Civilization & Modernization: The Political Context of China's Reform* (2006).

Parties, political 政黨

中國實施一黨專政。中國共產黨於1921年成立，於1949透過軍事力量控制了中國。中共走的是列寧式路線，傳統上為菁英式政黨，不過至2006年其黨員數亦超過了七千萬人，其中包括社會不同領域的代表。（參閱「三個代表」）。黨的權力集中在中央。

中國另有七個「民主黨派」。這些政黨為1949年以前所延續下來的，大多傾向民主制度，其中最大黨為「民盟」。但在1949年後，這些政黨都遭到中共嚴厲的監控，其中只有一段特定時期（即1957年和1980年代末）表現了一些獨立性。

中國民主黨則嘗試著建立一個真正的反對黨，但很快就遭到鎮壓。*另見*Association, freedom of; China Democratic Party; Democracy in CCP; Three Represents.

The mainland effectively has a one-party system. The Communist Party was founded in 1921, and gained control of China by military means in 1949. The party is organized along Leninist lines. Traditionally, it has been an elite party, though by 2006 its membership had grown to approximately 70 million and now includes representatives of various sectors of society. Power is concentrated at the centre.

There are also seven "democratic parties and groups," remnants of pre-1949 democratically inclined organizations, the largest being the Democratic League. Since 1949 these groups have almost always been tightly controlled by the Communists, although at certain times (1957 and the late 1980s) they showed some independence.

There has been only one serious effort to establish a genuine opposition party; the China Democratic Party (q.v.) was quickly suppressed. *See also* Association, freedom of; China Democratic Party; Democracy in the CCP; Three Represents.

Resources: Roger Jeans, ed., *Roads Not Taken: The Struggle of Opposition Parties in Twentieth-Century China* (1992); James D. Seymour, *China's Satellite Parties* (1987); 司馬晉，*中國的衛星黨* (1992).

Peasant burdens 農民負擔

「農民負擔」是指目前中國大陸農民所承擔的各種責任和面臨的困難的總稱，尤其是來自於地方政府的負擔。由於村官的腐敗或迫於完成上級下達的各樣沒有資助的指標，農民經常要繳納超額的稅，費，罰款，甚至還要遭受身體和精神的懲罰。農民的土地常被無償徵收或只能得到極少的補償。農民不僅受到如此不公平的待遇，他們所居住的區域發展水平還非常低，因此引起農民的極大不滿，暴力衝突時有發生。2006年2月廢止的兩項農業稅將會大大的減輕農民的負擔，但到2007年，各種的收費及行政費用並沒有減少。*另見*Arbitrary fees; Rural migrants.

The various hardships faced by China's rural people, with particular reference to those imposed by local authorities. Rural inhabitants have been subject to excessive taxes, fines, arbitrary fees, and harsh physical and mental punishments at the hands of local officials who are either corrupt or under pressure from higher levels to enforce unfunded mandates. Rural residents may also suffer having their land taken without sufficient (or any) compensation. These injustices, along with frequently low levels of development in the countryside, have created significant discontent among rural residents and have resulted in sometimes violent conflicts. Although the 2006 termination of two rural taxation regulations exempting peasants from most agricultural taxes may relieve some of this tension, as of 2007 there have been no significant reductions in other fees and administrative dues. *See also* Arbitrary fees; Rural migrants.

Peasant survey 中國農民調查

《中國農民調查》是一份由陳桂棣和吳春桃夫婦共同撰寫一份農民調查報告，它首先在《當代》雜誌發表。這一調查詳細報導了安徽省農民在改革過程中受到的不公正待遇和不滿。這份報告因為公眾對農民承受的嚴重稅費負擔和城鄉貧困差距等問題進行激烈抗議時而受到廣泛的注意。這份報告還回應人們呼籲中央政府減輕農民負擔的要求。

這份調查報告後來出版成書，售出近十萬冊，但最後被當局查封。在書中

被指濫用權力欺壓農民的地方官員對作者提出了誹謗罪的訴訟。

Document by Chen Guidi and Wu Chuntao published in the journal Dangdai, dealing with peasant hardships and official abuses. The controversial Survey details the complaints of Chinese peasants in Anhui province about the injustices that they have experienced in the Reform Era. The Survey, which was published amid wide public protest over heavy tax burdens for peasants and the increasing urban-rural income gap, received much attention. It also coincided with calls for the central government to alleviate the burden placed on peasants by arbitrary fees and taxes.

The Survey was subsequently published as a book that sold almost 100,000 copies. It was eventually banned by the authorities.

Perjury, *see* Lawyers and evidence.

Petition system 信訪

通常指透過通信或親赴政府機構提出請願、告發或對違法的政府官員提出指控。這些請願活動已逐漸制度化，可視為憲法和地方性請願規則對政治權利的保障。然而，即使如此，民眾仍無法對政府提出較廣泛的政治要求。

遭申訴的政府單位應向信訪部門回報，說明相關的決策經過。接受申訴的信訪部門應將調查結果以及政府的解決方案知會請願人。從請願者的角度看來，信訪的程序較上法院打官司有彈性。

這個制度提供受迫害人民一多半為勞工和農民 — 一個申訴的管道，表達他們的不滿。政府已將這個制度的功能擴大，不只是解決問題而已。因此，信訪的權利已不只是安撫個人或群體的不滿，還是政黨領導人評估不同議題的方式。在當前還無法有真正的民主參與之時，這個制度有可能成為人民影響政黨制訂和執行政策的管道。*另見*Administrative Litigation Law; Administrative reconsideration; Zigong Incident.

More literally, “Letters and Visits”; usually takes the form of sending letters or paying visits to a governing institution in order to raise appeals, report offences, or submit accusations of illegal behaviour on the part of government officials. These petition activities have become increasingly institutionalized, to the point of becoming political rights protected by both the Constitution and national and regional petition regulations, even though there is still no right to put broad political demands on the government.

The government entity that is the object of a complaint is required to reply to the letters-and-visits bureau, indicating the course of action decided on. The bureau that had originally received the complaint must then notify the petitioner of the result of its review, and of any resulting governmental action. From the petitioner's point of view, the process is more flexible than a court procedure would be.

This system provides an outlet for aggrieved citizens—primarily workers and rural people—to express their frustrations. The government has expanded this institution, but more to contain these concerns than to resolve them fundamentally. Thus the petition right has served not only as a way to pacify individual and collective discontent but also as a way for party leaders to gauge concern on varying issues. This system may have the potential to enable people to influence the party-state's policy making and implementation, without actual democratic involvement in politics. *See also* Administrative Litigation Law; Administrative reconsideration; Zigong Incident.

*參考資料：*于建嵘：中國信訪制度批判， http://www.tecn.cn/data/detail.php?id=4842.

Phüntso Wangye, *see* Tibet.

Policing, *see* Public Security Departments.

Political and Legal Committee 政法委員會

政法委員會是中國共產黨的職能部門之一，存在於各級黨委。政法委員會早已存在，主要負責制定黨對法律的政策。現今的政法委員會是經歷了文化大革命停頓後於1980年重新成立的。政法委員會通常由法院，檢察院，公安機關和各級政府司法局的代表組成，主要負責研究地方的社會政治情況，協助黨委會制定法律政策，協調各個機關對某些特定案件的審理，實施中共黨中央的法律政策。其中，政法委員會最為重要的職責是挑選承擔司法機關職務的候選人，包括法院院長，檢察長，司法局局長和公安局局長。

政法委員會的組成常常反映了黨內的政治權力安排。因此，政法委員會書記通常由同級的黨副書記或高級幹部擔任。除了書記以外，公安局局長在政法委員會的地位最高，而法院院長或檢察院院長只是一般的成員。在解決公安機關、法院和檢察院對於敏感案件產生的爭議時，政法委員會扮演決定性的角色。

為了回應外界對政法委員會干預司法事務的批評，中共在1988年間撤銷了政法委員會，另外成立規模較小的單位，希望能夠給與司法部門更多獨立的空間。可是，經過1989年鎮壓後，中國共產黨重新恢復政法委員會所有的職能。

One of the CCP's functional committees that exist at various levels.

The central PLC was founded during the early days of the party itself to deal with party policy on law. The PLC in its current guise stems from 1980, when it was re-established after having been suspended during the Cultural Revolution. The committee and its lower-level counterparts are normally composed of representatives from the courts, prosecutor's offices, PSB, and branches of the Ministry of Justice. Its mandate is to survey social and political conditions at the given level; help the Party Committee to shape legal policy; coordinate the adjudication of specific cases; enforce central party legal policy; and, most importantly, to select candidates for important judicial vacancies on behalf of the Party Committee, including senior judges, the procurator general, the minister of justice, and the head of the PSB.

The composition of the PLC and its lower-level counterparts frequently reflects political realities. As a rule, the head of a committee is either a deputy secretary or a senior member of the Party Committee Standing Committee at the same level. The most senior position is that of party secretary, with the PSB head next in line of authority. The president of the court and chief procurator are often the only ordinary members. The committees play a critical role in resolving sensitive cases, such as when there is a dispute among the police, the prosecutor's office, and the court.

In response to the perceived problem of excessive interference in judicial affairs, in 1988 the Central PLC and its local committees were again briefly abolished (replaced with a smaller entity) in order to create room for the judiciary to operate with greater independence. However, after the 1989 crackdown the CCP restored all of the committee's previous functions.

Press freedom 新聞自由

雖然中國憲法第35條規定中國公民享有言論和出版自由，但真正的新聞自由在中國還不存在。中國有成千上萬的雜誌，電視臺和網站，但沒有一個媒體是獨立於政府控制，可以自由發佈資訊的。

首先，所有媒體都必須由獲得批准的官方機構擁有或管理。其次，中國共產黨的宣傳部和其他國家機關會定時檢查或干預媒體的運作，如頒佈一般的指

令，要求對某一特定事件或故事進行報導，還有指示或控制一些新聞的報導，有時候甚至還會因為新聞機構不遵守指示而停刊（參閱冰點事件）。再次，各個媒體都有審查機制以防止對某些敏感問題的討論。所有媒體都被要求有自我審查機制以確保其報導符合黨的宣傳部及國家新聞總署的規定。有些國際網路媒體也被同樣要求設置審查機制過濾資訊，如Google和Yahoo。Google和Yahoo均是國際有名的搜索引擎。Yahoo甚至主動清除所有持不同政見的網站鏈結。同時，如果想報導一個敏感話題，媒體還要向主管機關提出申請。如果涉及特別敏感的話題，例如評論或報導黨和政府的主要政策，如計劃生育，媒體要在報導前獲得主管機關的批准。

記者常常被訓斥不遵守官方的規定。有一些記者甚至被判處「洩露國家秘密」罪或者間諜罪，還有一些則被定莫須有的罪名，如佔用公共財物或商業詐騙。

一連串的國內外媒體記者因報導貪腐或公眾抗議事件而遭警告、解職、拘留以及判刑，「冰點事件」即為其中之一。最近，中國政府修訂法律，對未取得批准即報導國家災難及動亂者，予以重罰。

根據一個著名國際非政府組織的報告，至2005年底，至少有32位記者被投進監獄，其中包括兩名國外記者，即紐約時報的趙岩和新加坡海峽時報的程翔。

不過，媒體的自治在過去二十年來已經有顯著的提高。如南方週末這樣勇敢的媒體已經可以對抗政府而對一些敏感話題進行報導，如對非典疫情的報導。這些報導對中國社會和政治改革產生了積極的影響。遺憾的是，這些勇敢的記者最終常常被解職，而有關媒體也被整頓甚至停辦。*另見*Freezing Point; Propaganda Departments; Zhao Yan.

Promised in Article 35 of the Constitution. In reality, however, although there are thousands of media organizations, including newspapers, magazines, television stations, and Internet sites throughout the country, not a single one of these entities operates wholly independently of government control.

This can be seen in three respects. First, in general, news media entities must be owned and managed by an official organ permitted to operate a media entity. Second, the Party Propaganda Departments and other state agencies routinely monitor and intervene in the operation of media entities by issuing general instructions; enquiring into the coverage of a particular incidence or story; directing and managing certain news coverage; and, at times, even suspending operation of a media entity for non-compliance with official instructions or vague general rules. Third is the

issue of censorship. All media entities are expected to practice self-censorship in accordance with the general instructions of the Party Propaganda Department and the state information agency. When this fails, censorship mechanisms exist within all media entities to filter reports and prevent discussion of sensitive issues. At the same time, the media may have to submit a request to authorities in advance for approval, especially in sensitive or critical matters, such as reports on macro party or government policies on family planning policy. These censorship mechanisms reach the foreign Internet media entities, such as Google and Yahoo, which are required to filter Internet searches.

Reporters are frequently punished for straying from official guidelines. Some have been convicted for leaking state secrets, while others have been prosecuted under dubious criminal charges, such as embezzlement of public funds, business fraud, or espionage. Journalists have been reprimanded, fired, detained, or jailed in response to their reports on topics such as corruption or popular protest. The 2006 Freezing Point Incident is a case in point. In addition, the government has supported provisions in a national law that would fine reporters for unsanctioned reporting on natural disasters and riots. By the end of 2005 at least thirty-two journalists had been imprisoned, including two journalists for foreign newspapers: Zhao Yan (q.v.) of the New York Times and Ching Cheong of the Singapore Strait Times.

It is true that the autonomy of media has grown markedly during the last two decades. Bold publications such as Southern Weekend stand up to authorities and frequently report on sensitive issues like SARS. Such reports have contributed to positive social and political changes. Nonetheless, publications still often find their most valuable personnel discharged, and their publications are sometimes closed down altogether. *See also* Freezing Point; Propaganda Departments; Zhao Yan.

Resource: Committee to Protect Journalists Report, at http://www.cpj.org/attacks05/asia05/china_05.html.

Pre-trial release 取保候審

1996年修訂的《刑事訴訟法》允許被告在提供保證金或保證人擔保後獲釋候審。該法的第51條規定：人民法院、人民檢察院和公安機關對於有下列情形之一的被告人可以取保候審或者監視居住：（一）可能判處管制、拘役或者獨立適用附加刑的；（二）可能判處有期徒刑以上刑罰，採取取保候審、監視居住不致發生社會危險性的。被告人可以提出保證人或者交納保證金。在等候審

判的期間（候審期不應超過12個月），未經執行機關的批准，被告人不得離開所在地，不得以任何形式干擾調查取證。公安部，最高人民法院和最高檢察院都分別公佈了取保候審的更為詳細的規定，還有中央機關制定的其他規定，包括由最高人民法院和最高檢察院於1999年和2003年聯合發佈的規定。

取保候審由公安機關執行。但對於在哪些情況下和基於怎樣的條件被告人確實可以取保候審尚不清楚。許多報導顯示實際獲得取保候審的人數很低，即使被取保候審，也是因為被告人被判罪的可能性低。

Provision for an accused to be released before trial, subject to certain conditions. Specifically, Article 51 of the Criminal Procedure Law allows those accused of crimes that carry relatively mild penalties to be released on guarantee before trial by the people's court, procurator, and public security officials. The accused must pay a security deposit, or provide a guarantor who meets certain criteria. During the time of release, which cannot exceed twelve months, the accused normally cannot leave the locality in which proceedings are pending nor can he or she disrupt the investigation in any way. The Ministry of Public Security, Supreme People's Procuratorate, and Supreme People's Court have all issued separate interpretations of the terms under which a defendant may be released on guarantee. Additional regulations have been handed down by central organs, including the Supreme People's Court and Supreme People's Procuratorate.

The release under guarantee is supervised by the PSB. It is unclear how often defendants are actually released on guarantee and under what circumstances. Most sources indicate that the number is very low, and that if release does occur it is because there is a low chance of prosecution.

Prisons, *see* Labour reform; Re-education through labour.

Propaganda Department 中共中央宣傳部

中共中央宣傳部是中共中央委員會三個發揮關鍵性功能的直屬機構之一。其他兩個機構分別是中共中央組織部和中共中央統戰部。中共中央宣傳部及地方支部的宣傳部主要負責在大眾媒體宣傳共產黨的政策方針，並維護黨及政府的形象。中宣部的存在植根於中國共產黨的意識形態，即共產主義的理念必須成系統的且持續的在人民群眾中廣泛傳播。因此，中宣部具有政治動員的功能。然而，宣傳部還承擔比其名稱表面含義更為廣泛的職能。事實上，中宣部

負責審查和監督媒體的活動，以及核准出版、電視傳播，各類演出，甚至互聯網上的活動。

中宣部常常獨自或者聯合國務院的部委發佈有關文化市場、宣傳工作及大眾娛樂的一般指示，從而對出版、演出和大眾媒體進行控制。學者和人權倡議者批評中宣部這種干涉人民群眾日常生活，限制言論自由、出版和學術自由的做法。例如，2004年敢於直言的北京大學教授焦國標教授嚴厲批評中宣部限制新聞自由並迫切要求撤銷中宣部 。焦國標教授因此被北京大學解職。

One of the three key functional branches of the CCP Central Committee, the other two being the Central Organizational Department and the Central United Front Department. The Central Propaganda Department and its local counterparts are established to promote party policy among the public and enhance the image of the party and government. The Propaganda Department's work is rooted in the notion that the CCP's ideas must be spread and promoted systematically and constantly among the general public. In addition to such political mobilization work, these departments also approve and monitor media activities and grant permission to hold performances, publish, televise, and conduct Internet operations.

The Central Propaganda Department, sometimes jointly with various ministries often issues general instructions on how to conduct cultural and propaganda work, including controlling publications, performances, and other forms of entertainment. Propaganda departments routinely limit freedom of information, including academic freedom. These practices have come under criticism. For example, in 2004 Peking University Professor Jiao Guobiao condemned the Central Propaganda Department and pressed for its elimination, after which the university dismissed him.

Property rights 物權

在承認私有物權，並保障其不受任意侵害方面，中國現有的制度仍然十分薄弱。毛澤東時期(1949-76)，國家試圖將生產工具收歸集體擁有，真正的財產（即土地）掌握在國家或集體手中， 但個人物品及其他動產主要仍屬私人擁有。在短暫時期裡，國家企圖將農業生產集體化，以加快生產速度。其結果造成了大飢荒，以悲劇收場。

然而，從1970年代以來，主張私有物權者逐漸增多，尤其是1980年代後，在經濟改革政策中成長的私部門更是持這種看法。個人已被允許擁有土地的使用權。在法律和政策方面，2004年，全國人民大會通過憲法修正案，承認公民的私有物權。這項修憲其實是奠基在1980與90年代即付諸實行的許多有關私有

物權的法律，例如民法總則、契約法、繼承法等。物權法草案在十年前即開始起草，到目前為止已經在全國人民代表大會的各個單位作過七次的審查。

雖然如此，在當前保障新的一某種程度上有些模糊的一私有物權不受任意侵害和奪取的體制仍然十分薄弱。人民的私有財產遭受侵害時，有時仍無法得到法院或行政單位的救濟。而政府在徵收土地或人民財產時未作適當的補償(有時甚至沒有補償)也是一個嚴重的問題。政府雖然已承諾承認及落實智慧產權，但至今為止成效不彰，常引起外國政府及國內外企業的抱怨。*另見*Evictions; Land Reform Campaign; Yulin Oilfield Incident.

The system for the recognition and protection of private property rights from arbitrary infringement is weak. During the Mao era (1949-76) the state set out to collectivize ownership over the means of production, and real property (land) was owned by the state or the collective. Ownership of personal and other moveable property remained primarily private. During the Great Leap Forward (q.v.), the state endeavoured to collectivize agricultural production at a more rapid pace. The effects were disastrous and resulted in famine.

The period since the 1970s has seen economic reform and the growth of a private sector, and notions of property rights have gradually been strengthened. Individuals are permitted to own the use rights to land. With regard to law and policy, the National People's Congress added an amendment to the Chinese Constitution in 2004 that affirmed a citizen's right to private property. This built on a variety of other laws that had been enacted during the course of the 1980s and 1990s relating to private ownership rights, such as the General Principals of Civil Law, the Contract Law, and the Inheritance Law. The Property Rights Law, finally passed in March of 2007, had been in draft form for over a decade and reviewed by the organs of National People's Congress seven times.

The system to protect these new and somewhat vague private property rights from arbitrary infringement or seizures is still weak. When property rights are infringed on, the victims are sometimes unable to seek relief from the courts or administrative organs. Seizure of land and property by the government with either no or inadequate compensation is also a serious problem.

With regard to intellectual property rights, the PRC is committed to recognizing and enforcing them but efforts have been less than successful; the issue is a frequent source of complaint from foreign governments and businesses. *See also* Evictions; Land Reform Campaign; Yulin Oilfield Incident.

Resources: You-tien Hsing, "Land and Territorial Politics in Urban China," *China Quarterly* , 2006, No 187, pp.575-91; Eva Pils, "Land Disputes, Rights Assertion, and Social Unrest in China: A Case from Sichuan," *Columbia Journal of Asian Law*, Spring-Fall 2005, 19:235-92.

Psychiatric abuse 精神虐待

中國有兩種精神病機構。構成犯罪的失控行為（包括一些純粹只是政治異議份子）被居留在安康拘留所，這是公安部第13局主導的一個高度秘密單位。公安直接決定這些人是否被監禁（這個作法與前蘇聯不同，前蘇聯規定需有法院的命令才能監禁）。雖然安康拘留所內收留的大多數人確為精神病患，但卻幾乎得不到精神衛生上的照護。精神健康的犯人深受精神病患威脅，尤其是病人間的暴力。工作人員有時會動用刑求，如電擊或藥物（鎮靜劑、胰島素等）。因刑求導致的死亡並不少見，而安康拘留所中歷來都沒有工作人員因這樣的謀殺行為遭起訴或其他懲罰。

另外有不同的機構收留非罪犯的病患。這些機構多半由公共衛生部、民政部及公安部所管理。這些病患都是非自願地被送去的。這些機構能收容的人數遠比二十多個安康精神病院系統還多。1993年，全中國的精神病機構共有90,000張病床，其中安康的系統便佔了9,072張。在這些非罪犯的機構裡，公安與職員仍能全權掌控，法院幾乎不曾對其中的非法行為採取過法律行動。中國沒有精神衛生法（雖然草案在多年前已經提出）。異議人士經常被指為罹患精神病而被監禁。

在中國，練習氣功也被視為患有精神疾病。1980年代開始，中國認定氣功為精神異常，會導致認知失調甚至變態。1999年，法輪功學員被認定精神異常而遭監禁。大量官方統計顯示，因習法輪功而患「精神疾病」的案例大增。一位官員聲稱，中國精神病患中，有30%為法輪功學員。

文化大革命時，中共宣稱精神疾病為「資產階級反動世界觀」的產物，這個觀點使人聯想到當局宣稱氣功或法輪功為精神崩潰或心理異常的說法。在法輪功受迫害以前，總總宣稱精神疾病乃因「思想毛病」或「政治偏執狂」造成的說法已大致上被放棄了。但這幾年來，他們又被再度提出來，去合理化監禁人民的行為。

China has two types of mental institutions. People deemed criminally insane, including some who are simply political dissidents, are kept in Ankang asylums, highly secretive institutions run by Bureau No. 13 of the Ministry of Public Security. These people are incarcerated by the police at will, a fact that distinguishes the practice in China from that in the former Soviet Union, where a court order was the normal prerequisite. Although most of the inmates in Ankang institutions are truly mentally ill, they receive little psychiatric care. The mentally healthy inmates have much to fear from the deeply disturbed patients, with patient-on-patient violence commonplace. The staff also sometimes inflicts torture (electric shock and pharmaceutically induced). Anti-psychotics like chlorpromazine and other medications such as insulin to induce shock are administered. Deaths from such forms of torture are not uncommon. No Ankang staff member is known to have been prosecuted or otherwise punished for committing such homicides.

There are also a variety of institutions for non-criminal cases. They are variously run by the ministries of Public Health, Civil Affairs, and Public Security. Among the patients are those under "involuntary civil commitment." These institutions can accommodate far more inmates than the twenty or so Ankang asylums. In 1993 China's mental institutions had 90,000 beds, of which 9,072 were in the Ankang system. In these non-criminal institutions, the police and staff have a completely free hand; the courts almost never entertain lawsuits on the part of anyone unlawfully committed or treated. China has no mental health law, although drafts have been brought up for discussion for many years. It is common for whistle-blowers to be declared mentally ill and thus incarcerated.

A frequent cause of commitment has to do with the Chinese practice of qigong. Since the 1980s the Chinese psychiatric establishment had identified a cluster of qigong-related mental abnormalities, said to give rise to cognitive disorders and sometimes even psychoses. In 1999 there was an explosion of Falun Gong-related psychiatric incarcerations. A plethora of statistics has been officially published that convincingly confirm that the number of Falun Gong-related "mental" cases has skyrocketed. One official has claimed that 30 percent of China's mental patients are Falung Gong practitioners.

The government's claim that the tenets of qigong or Falun Gong themselves cause nervous breakdowns and mental illness is reminiscent of the Cultural Revolution notion that mental illness was the product of a "bourgeois reactionary worldview." Although the idea that mental illness was caused by "ideological pathology" or "political paranoia" had been largely abandoned, this theory has now been resurrected, and deemed a legitimate reason to incarcerate people.

Resource: Robin Munro, *China's Psychiatric Inquisition: Dissent, Psychiatry and the Law in Post-1949 China* (2006).

Public Order Administrative Detention 治安拘留

根據《治安管理處罰法》，公安機關因維持公共秩序有權拘留違反治安管理的人，最長時間為15天。被拘留人有權向高一級的行政主管機關提出復議或提起行政訴訟。但是，正在進行的訴訟不能中止拘留的執行，除非特殊情況發生或者被拘留人提交保證金。

治安拘留受到廣泛的批評，因為該機制使得公安機關在沒有經過司法審查程式的情況下即可以作出拘留的決定。除此以外，在地方，治安拘留的決定幾乎完全由公安機關作出。這一機制違反了聯合國《公民權利和政治權利國際公約》中有關剝奪人身自由的決定必須由獨立的司法機關作出的規定。

Under the Security Administrative Punishment Law, the PSB can detain a person who has committed a minor offence for up to fifteen days while exercising its power to maintain social order. The detainee can request a reconsideration of the decision by a higher administrative agency or commence an administrative lawsuit. However, the pending lawsuit will not suspend the detention unless there are urgent circumstances and the accused comes up with a monetary guarantee.

This type of detention has been criticised because there is no effective means of judicial review of the decision to detain. Despite limited access to the courts, administrative detention is handled almost exclusively by the PSB at local levels. This practice also violates generally accepted international legal norms, such as those identified in the ICCPR, which require that all deprivations of personal liberty be handled by an independent judiciary.

Public Order Administrative Punishment Law

治安管理處罰法

2005年8月28日全國人民代表大會常務委員會通過了《治安管理處罰法》，該法於2006年3月1日正式實施。《治安管理處罰法》是一部行政法規，規定了應當受處罰的但不構成刑法犯罪的違法行為。該法共有129條，規定了60種擾亂公共秩序的違法行為。

該法規定了五種行政處罰方式，包括警告，罰款，吊銷公安機關頒發的許可證，限期出境或者驅逐出境，以及長達15日的行政拘留。如果違反兩項以上規定則可處多至20日的行政拘留。雖然根據《治安管理處罰法》規定，被處罰人在有限的範圍內可以尋求司法救濟，但行政處罰的決定無需經過獨立的審查。公安機關可以單獨決定和執行行政拘留，這樣的安排不符合《公民與政治權利國際公約》第9條對人身自由的規定。中國已經在1998年簽署了《公民與政治權利國際公約》但在本文寫作時（2007年2月）尚未批准。

The Public Order Administrative Punishment Law, which grew out of the Public Order Administrative Punishment Regulations, was enacted by the NPC Standing Committee in 2005 and entered into effect in 2006. It is a comprehensive administrative law regulating minor offences that do not amount to "crime" as defined by the criminal law. It contains 129 articles and lays out more than sixty minor offences that disturb public order.

The law lists five types of administrative punishment, including warnings, fines, suspension of licence, restriction on an individual's entry or exit of the country, and deprivation of personal liberty for up to fifteen days (twenty days if there are two or more violations). Despite allowing the aggrieved party the limited right to a judicial remedy, these administrative punishments are imposed with virtually no independent review. Administrative detention can be imposed single-handedly by public security departments. This is at variance with international norms on the justification of deprivation of individual liberty as laid out in Article 9 of the ICCPR, which the PRC signed in 1998 but which it has still not ratified as of February 2007.

Public Security Departments 公安機關

公安部及其下屬機關管轄全國員警。公安機關負責維持公共秩序，偵查犯罪，管理戶籍制度、消防局、交通和檢查酒店和其他公共設施。中國公安機關的職能比其他國家的員警部門大很多。中國的公安機關依照前蘇聯的模式建立，是政府維持公共秩序的重要工具。各級公安機關構成一個縱橫交錯的網路，幾乎深入到中國的每一個單位。因為政府不僅以行政區劃為單位建立公安機關，並且每一個行政單位內都設有公安處。因此，通常情況下，大學和國有大型企業都分別設有公安派出機關，時刻向更高一級的公安機關彙報。

公安機關官員監督社會的不安定因素以及學生和工人的運動，為黨和政府收集資訊。一般而言，公安局局長是黨委會與政法委員會的重要成員，對法律和政策的制定有重大影響。*另見*Political and Legal Committee.

The Ministry of Public Security (MPS) and its lower-level bureaus oversee all law-enforcement personnel. Public security officials are charged not only with maintaining public order, regulating traffic, and investigating crimes, but also managing the household registration system, operating fire departments, and

inspecting hotels and other public facilities. Thus they play a much broader role than police forces do elsewhere. The system evolved from the old-style Soviet model. The security system is comprised of a pervasive network that penetrates into nearly every government or government-related unit. In addition to being organized by geographical area, it is also organized according to administrative unit. Thus within almost every public institution or state-owned enterprise there is a public security branch that reports to a higher public security bureau.

Public security officials monitor social unrest and student or labour movements and transmit information to the party and government. The head of a PSB is normally an important member of the party committee at the given level and also of the Political and Legal Committee, and thus has significant influence over law and policy making. *See also* Political and Legal Committee.

Qi Yuling 齊玉苓事件

這是一宗教育權的案件，在憲法上具指標性意義。1990年，山東省初中畢業生齊玉苓通過了職業高中入學考試，另一名高中生陳曉琪名落孫山。陳曉琪領走齊玉苓的錄取通知書，並冒齊玉苓的名報到入學。1998年，齊玉苓依據憲法起訴陳曉琪侵犯她的姓名權和受教育的權利。2001年，最高人民法院就山東省高院提出的齊玉苓案作出了批復，認為陳曉琪以侵犯姓名權的手段，侵犯了齊玉苓依據憲法規定所享有的受教育的基本權利，應承擔相應的民事責任。許多人認為齊玉苓一案是長期以來有關憲法能否直接適用問題的一個突破。最高人民法院對該案的批復似乎否定了50年代、80年代最高院作出的不能直接援引憲法定案的決定。最高人民法院的一位法官在此批復後還發表一篇文章，指出他認為中國憲法可以逐漸成為法院判案的依據。儘管經過該案後，大家對憲法司法化持樂觀的態度，但有關憲法的訴訟並沒有因此而大幅增加。*另見* Legislation, law on; Record and review.

A case of groundbreaking constitutional significance about the right to education. In 1990 Qi Yuling was a high school graduate in Shandong province, having passed the vocational school entrance examinations. Another student who had failed the examinations, Chen Xiaoqi, intercepted Qi's acceptance letter and enrolled in school under Qi's name. In 1998 Qi sued Chen for infringing her constitutional right to her name and her basic right to education. In its reply to the request of a lower court for guidance in 2001, the Supreme People's Court held that Chen had infringed on Qi's right to education under the Constitution and was therefore liable for civil damages.

Many viewed this case as a breakthrough in a longstanding debate about whether the Chinese Constitution could be a basis for a court decision. This reply appeared to be a reversal of less-positive Supreme Court replies in the 1950s and 1980s on the invoking of the Constitution as the basis for a decision. The reply was even followed by a long article by a judge on the Supreme People's Court, in which he stated that he believed the Chinese Constitution could gradually be introduced into the courts as a basis for deciding cases. However, little additional constitutional litigation of this type followed. *See also* Legislation, law on; Record and review.

Record and review 備案制度

為確保下級政府遵守憲法與國家法律的一系列機制。中國的中央和地方各級政府均有備案制度專門記錄和審查新的立法衝突。每通過新的法規都要報告給上級的法制辦公室備案。法制辦公室還可以主動審查新的法規是否與憲法、法律和條例有衝突，但無須對每一部法規進行審查。政府機關和一些情況下的個人可以要求法制辦公室審查新的立法，通常稱為被動審查。如果發現法規間出現衝突，上級機關將會要求下級機關及時改正，如果難以改正，上級機關將宣佈該法無效。

雖然全國人民代表大會設有備案辦公室審查新法律的合憲性問題，但與憲法有衝突或違背憲法的法律仍然存在是個嚴重的問題。下級政府制定的法律也經常與上級通過的法律有衝突，例如，地方的法規和全國法律設置了不同的行政處罰數額。儘管一些地方法規得到改正，但還有不少仍然存在使當地的居民繳納與上級法律不符的稅、費和罰款。*另見*Constitution; Legislation, law on.

A set of institutions for ensuring compliance with the Constitution and national laws by lower levels of government. The Bei'an, or record and review system, exists at various national and local levels of the Chinese government to record and review new legislation to check for conflicts. When new legislation is enacted it is reported to the Office of Legislative Affairs at the next higher level of the system for filing. That office may also conduct what is called an "active review" of the new legislation to ensure that it does not conflict with other regulations, laws, or the PRC Constitution. When there is no active review, citizens may sometimes request review of a new piece of legislation; this is often called "passive review." If a conflict is discovered, the higher organ will request that the lower organ correct the conflict. If that is unsuccessful, the higher organ may annul the legislation.

Despite the existence of a Bei'an Office in the National People's Congress, conflicts of laws and apparently unconstitutional legislation are significant problems. Also, lower-level legislation often conflicts with higher administrative regulations or laws. For example, a local regulation and a central regulation may exact fines of different amounts for the same administrative violation. Although some of the local conflicts are ultimately resolved, most persist and continue to cause problems for local residents who may be subject to numerous fees, fines, and taxes. *See also* Constitution; Legislation, law on.

Re-education through Labour 勞動教養

勞動教養是行政羈押的一種形式。這種形式由國務院於1957年創設，並於1979年由全國人大常委會正式認可。勞動教養主要用來懲罰罪刑較輕的罪犯。根據相關規定，公安機關可以判處不構成犯罪或犯輕罪者最長達3年的勞動教養。而勞動教養的執行機關可以根據情況延長勞動教養的時間，最長可至1年。

雖然根據相關規定，應由政府各個部門的代表組成勞動教養委員會定期開會討論決定或批准勞動教養的案件，但在實際操作中，公安機關負責審查和決定勞動教養案件，然後提交給勞動教養委員會批准。在整個過程中，司法機關沒有參與。那些被作出勞動教養審查的人員通常沒有機會為自己辯護或者獲得律師的幫助。但是被判勞動教養的人與經過刑事訴訟程式被判有期徒刑的被告人的待遇非常相似，都是被剝奪人身自由，並被強制進行勞動（只不過服刑的犯人刑期通常要長些）。勞動教養人員與外界的交流和親人的探訪也是被嚴格限制。

被判勞動教養的人唯一的救濟方式是根據《行政訴訟法》向法院提起訴訟。但是，法院只審理公安機關的決定是否合法，很少就該決定是否公平作出判決。專家認為在過去十年來，公安機關為了避開刑事訴訟程式的時間要求，利用勞動教養制度拘留犯罪嫌疑人然後再調查案件。據報導，每年有近25-30萬人被判勞動教養。勞動教養制度侵犯公民的人身自由權利，成為國內外學者和人權保護組織批評的眾矢之的。政府於2005年曾經考慮改革這一制度，但是最終未能成功。到本條撰寫期間（2007年2月），政府傾向於保留這一制度。*另見* Administrative Litigation Law; Public Order Administrative Detention.

A form of incarceration (not to be confused with reform through labour) that is the result of administrative rather than judicial proceedings. This system was established in 1957 and re-emerged in1979. According to the regulations, public security agencies can sentence those who may not be quite guilty of criminal conduct, or whose crime is not too serious, to up to three years of re-education through labour. Depending on the circumstances, the governmental organs that supervise re-education through labour can extend an individual's term up to one additional year.

There are administrative regulations that require the various levels of government to establish Re-education through Labour Commissions, comprised of members of government departments. These commissions are supposed to meet at specified times to discuss, examine, and approve the security organs' decisions on re-education through labour. However, in practice the public security organs acting alone perform the examination and approval work. Afterward the public

security organs hand the decision to the commission to rubber-stamp. Under such circumstances, the judiciary plays no role in the process. The treatment of those undergoing re-education through labour and the treatment of those given regular prison sentences are often quite similar, except that prison sentences are usually longer. Both types of prisoners are deprived of all personal freedoms and are in theory supposed to reform themselves through labour. Communications and visits can only be from family members, and such visits are strictly limited.

Beginning in the mid-1990s, public security officials began to use their near-absolute power over the re-education through labour system to detain individuals while investigating cases. By doing so they are able to avoid more stringent procedural requirements under the Criminal Procedure Law.

Every year approximately 250,000-300,000 people are reportedly sentenced to re-education through labour. Most of the sentences are for less than one year. In some areas, the number of those serving terms for drug-related offences has resulted in the increase of the reform-through-labour population; where this is not a problem the number of inmates tends to be declining.

Still, the re-education through labour system results in some of the most severe abuses of individual freedoms and has been criticised by domestic and foreign scholars and human rights organizations. Those facing re-education through labour frequently have no opportunity to defend themselves or to hire a lawyer to represent them in the proceedings. The only "appeal" they have is a lawsuit under the Administrative Litigation Law (q.v.), but the courts only have the power to determine whether the public security organs had followed proper procedures; it is not permitted to rule on the fairness of the decision. In 2005 the government appeared to be considering reform of the system, but as of this writing (March 2007) the party leadership appears intent on retaining this regime. *See also* Public Order Administrative Detention.

Resource: H. L. Fu, "Punishing for Profit: Profitability and Rehabilitation in a Laojiao Institution" in Neil J. Diamant et al., eds., *Engaging the Law in China: State, Society and Possibilities for Justice* (2005), pp.213-30.

Religious freedom 宗教自由

中國憲法規定中國人民享有宗教信仰自由，但是國家只保護正規的宗教活動。2005年前，法律和政策只承認五大主要宗教：基督教、佛教、道教、伊斯

蘭教以及中國天主教。其他宗教，如法輪功、羅馬天主教和地下的基督教會被認為是異端邪教或非法宗教活動，應予禁止。

2005年國務院頒佈有關宗教管理的新規定取消了有關五大宗教的特別提法，但仍保留異端邪教這一稱呼。未經政府批准的教會或宗教團體還會遭受地方政府的騷擾或迫害。沒有真正獨立的宗教組織獲得政府的批准。*另見*Falun Gong.

The Chinese Constitution states that although the Chinese people enjoy freedom of religious belief, the state will only protect "normal religious activities." Before 2005 law and policy only Recognized the five major religions: Protestantism, Buddhism, Daoism, Islam, and Chinese Catholicism. Although this five-fold designation ended in 2005, other groups, such as Falun Gong (q.v.) and Roman Catholicism, are still banned. Followers of illegal religions or "cults" were often subject to the death penalty, although no one is known to have been executed for such an offence since 1987. Unauthorized churches abound, but they are often harassed or persecuted by local authorities. No truly independent religious organizations are deemed legitimate.

Resource: Pitman B. Potter, in Daniel L. Overmayer, ed., "Belief in Control: Regulation of Religion in China," *Religion in China Today* (2003).

Representation; Representative Democracy, *see* Chinese People's Political Consultative Conference; Elections, local; National People's Congress; Participation.

Reproductive rights, *see* Abortion.

Rightists, campaign against 反右運動

1957年毛澤東號召知識份子對中國的制度自由表達自己的意見，減少社會矛盾，此舉揭開了反右運動的帷幕。毛澤東為了鼓勵知識份子發表意見，提出了「百花齊放，百家爭鳴」的方針。在這場名為「百花運動」中，知識份子擺脫了不敢直言的憂慮，對政府、中國共產黨的官員提出各樣的批評。可惜，爭論的發展超出毛澤東所預期的，令他無法忍受。當時，毛澤東認為他及共產黨的統治形勢大好。面對嚴厲的批評，1957年夏天，毛澤東的政策出現了

一百八十度的轉變，他發起鎮壓知識份子的「反右傾運動」。這場反右運動的結果是，大量知識份子和敢於直言的人被劃為右派，被投進監獄或勞改農場。據報導，約有55萬人被流放到勞改勞教農場，還有更多的人因此受到迫害和革職。

這場鎮壓知識份子自由辯論的運動對未來中國的政策產生深遠的影響。因為與50年代的其他運動（如，三反五反）一道，反右運動嚴重打擊了知識份子討論時政的意願和能力，言論自由的氣氛遭到嚴重的破壞，結果造成日後毛澤東一意孤行的推行一些具有摧毀性的政策，如大躍進，而鮮有反對聲音。*另見* Cultural Revolution; Expression, freedom of; Great Leap Forward; Three-Anti, Five-Anti Campaigns.

The Anti-Rightist Campaign began in 1957 after Mao had called on intellectuals to speak openly about the regime and thus reduce "contradictions" in society. In encouraging the intellectuals to speak, Mao had said, "Let one hundred flowers bloom and let one hundred schools of thought contend." Once intellectuals overcame their initial reluctance to speak out, they brought forth various complaints and criticism of government and party officials during what was called the Hundred Flowers Movement. This stream of debate, however, was apparently not what Mao had intended or expected. Believing that his policies were working well, he may have felt threatened by the heavy criticism. In response, during the second half of 1957 Mao reversed course and cracked down on the intellectuals in the Anti-Rightist Campaign. This backlash resulted in many intellectuals and outspoken individuals (reportedly 550,000) being thrown into prison or labour camps. Many more were persecuted and lost their jobs.

The crackdown on intellectual debate also had an enduring effect on future policymaking. The Anti-Rightist Campaign, along with other campaigns in the 1950s (e.g., Three-Anti, Five-Anti campaigns, q.v.) reduced the willingness and ability of intellectuals and others to debate the merits of policy and speak out. It significantly curtailed freedom of speech. Thus there was no resistance to highly destructive policies, such as those that gave rise to the Great Leap Forward (q.v.), which was soon advanced by Mao with little objection from others. *See also* Cultural Revolution; Expression, freedom of.

Resources: Roderick MacFarquhar, *Hundred Flowers Campaign and the Chinese Intellectuals* (1960); Mu Fusheng, *Wilting of the Hundred Flowers* (1962).

Rural migrants 農民工

民工或農民工是指約有一億到兩億的農民，因為經濟等各種原因離開自己的出生地到城市暫時或長期務工的龐大群體。民工通常成群的聚居在城市的周圍，形成巨大的網路，在很多情況下不受地方官員的行政控制。

雖然民工的人數眾多，但由於民工大多沒有當地的城市戶口，教育程度不高，加上地方歧視性的立法，民工常常被作為少數群體來對待，在城鎮裏遭受不同程度的歧視和不公平的待遇。因此，民工難以提高家庭兒女的生活水平。戶口的限制使得民工難以找到合適的工作，兒女的教育也是問題，醫療衛生沒有保障。2005年底，中央政府和其他政府機關公佈了一系列旨在改變民工生存狀況，使民工更為容易獲得工作所在地戶口的計畫。這些計畫的實施結果和影響尚待觀察。*另見*Floating population; Household registration; Peasant burdens.

A population of often impoverished people from rural areas who have migrated to the cities temporarily or more permanently to find jobs. They often live in groups in cities and have extensive networks that operate outside of the administrative control of local officials.

Rural migrants are treated like a minority group and face extreme discrimination and unequal treatment in cities and towns because of the absence of urban household registration and lower levels of education. Furthermore, discriminatory local legislation often prevents migrants from improving their lives and the lives of their children. Lack of Household registration (q.v.) in the urban locations where they settle often prevents migrants from acquiring certain jobs, finding education for their children, and using healthcare facilities. *See also* Floating population; Peasant burdens.

SARS, *see* Citizens' Rights Movement.

Secrecy (leaking state secrets) 洩露國家秘密

中國刑法共有七條對洩漏國家秘密作出規定。根據這些條文，尤其是第111條、第282條和第398條，洩露國家機密和情報者會被懲罰。情節重大者，可處以10年的徒刑。非法持有重要文件者也會觸法。而政府官員洩露保密資訊，無論是無心或故意，都會被判刑入獄。

因為這些條文並未對何謂機密和情報作出規定，最高人民法院也未提供較具體的定義，而將問題留給行政裁量，以致此一罪名的範圍變地十分寬鬆。官方時常將此罪名當成政治工具，用以限制言論自由以及知情權，有時候在事後才將一些具政治破壞力的訊息界定為情報。例如上海的律師鄭恩寵向境外組織提供有關地方政府強制拆遷政策資訊被判處向境外提供國家秘密罪。事實上，這些資訊應當屬於大眾有權獲知的公共資訊。*另見*State Secrets Bureau.

The criminal law contains seven articles dealing with the crime of leaking state secrets. According to these provisions, namely articles 111, 282, and 398, individuals are to be punished for leaking state "secrets" or "intelligence." Under severe circumstances, the prison terms can be as long as ten years. Individuals are also held for illegally obtaining or holding confidential documents. Finally, officials who release protected information, whether negligently or intentionally, are subject to imprisonment.

Because these articles contain little on what constitutes secrets or intelligence and the Supreme People's Court has failed to articulate a more concrete definition and left the matter to administrative discretion, the scope of this crime is very broad. Officials often use this crime as a political tool to restrict freedom of speech and the right to know, sometimes classifying potentially politically damaging information as restricted after the fact. For example, Shanghai lawyer Zheng Enhong released information about local government eviction policies to a foreign organization. By international standards, such information lies within the scope of what the general public should have a right to know. *See also* State Secrets Bureau.

Resource: Criminal Law of the People's Republic of China,

http://www.cecc.gov/pages/newLaws/criminalLawENG.php.

Sects, *see* Falun Gong.

Security endangerment 危害國家安全罪

1997年修改的中國刑法以危害國家安全罪取代了過去廣泛適用的反革命罪。但是，新刑法對這一節的規定似乎與舊法對反革命罪的規定一樣籠統。例如，刑法的第105條規定：以造謠、誹謗或者其他方式煽動顛覆國家政權、推翻社會主義制度的，處五年以下有期徒刑。可是，迄今為止，還沒有更為具體的規定。*另見*Counter-revolutionaries.

The 1997 revisions to the Criminal Law replaced crimes of counter-revolution with the crime of endangering national security. The provisions of this section, however, seem to be as vague as the ones for counter-revolution had been. For example, Article 105 allows the crime to apply broadly to anyone who "incites others by spreading rumours or slander or any other means to subvert the State power or overthrow the socialist system." Administrative and judicial organs have offered little guidance on the meaning of these provisions. *See also* Counter-revolutionaries.

Resource: Criminal Law of the People's Republic of China (1997),

http://www.cecc.gov/pages/newLaws/criminalLawENG.php.

Self-determination, *see* Tibet.

Sexual minorities, *see* Homosexuality; Transgender individuals.

Shaanxi Yulin Oilfield Incident, *see* Yulin Oilfield Incident.

Shanwei Incident 汕尾事件

2005年12月初，中國人民軍警向廣東省汕尾市的一群抗議村民開火。這些村民來自汕尾市的東洲村，在他們向政府徵用他們的土地建立發電廠以及可能產生的環境污染問題提出抗議時，軍警突然向人群開槍，村民因此死傷很多，但具體數字未明。幾天後，國際和地方媒體披露了當局的暴力和鎮壓。不同媒體公佈的死亡數字不一，大概在20到100人左右。中國政府最後向外公佈已經逮

捕了命令向村民開槍的責任人。

這一事件引起了廣泛關注，因為這是公安軍警向抗議者真正開火的少有案例之一，因為通常軍警都會使用催淚彈等方法驅散群眾。不過，這次抗議卻是人們就徵地、環境污染、貪污、權力濫用等問題眾多抗議的一例。村民在無比絕望的情況下，已經越來越勇於上街向官員抗議以期獲得救濟。

A violent crackdown by authorities in early December 2005,during which police opened fire on a large group of peasant protesters in Shanwei, Guangdong. People from the village of Dongzhou, under the jurisdiction of Shanwei, were protesting a power plant project that would deprive them of their land and have undesirable environmental effects. Armed police opened fire into the crowd, killing an undetermined number of villagers and wounding many more. It took the authorities several days to suppress the uprising, which received domestic and international press coverage. Sources reported varying numbers of wounded and dead, with death toll estimates ranging from twenty to one hundred. Chinese authorities eventually released the information that they had detained the commander of the forces responsible for firing into the crowd.

The incident attracted attention in part because it was one of the rare incidents in which the police had opened fired into a crowd of protestors. These protests are usually dispersed by non-lethal means. The protest was just one in a string of such protests over such issues as land seizures, assaults on the environment, local corruption, and official abuse of power. Rural residents have increasingly taken to the streets in protest as officials fail to meet their needs and remedy the sometimes desperate plight of these people.

She Xianglin　佘祥林事件

湖北農民佘祥林1994年被逮捕，在刑求逼供後被迫承認謀殺妻子，一審被判死刑。1998年，在二審中被改判為十五年有期徒刑。這個案子顯然透過刑求取得口供，而未經檢察官和法院的完全調查。佘祥林的妻子在他坐牢第11年的時候突然出現，佘祥林因此於2005年獲釋放。隨後，佘祥林根據《國家賠償法》提起訴訟，成功獲得460，000萬元（人民幣）國家賠償。

佘祥林事件曝光之前，媒體已經接連報導了多起被判死刑的錯案，其中包括河北農民聶樹斌案，聶樹斌在十年前被判死刑立即執行而真凶十年後出現。這些案件在中國引起強烈的反響和討論，對於刑法和刑事訴訟法實施狀況的擔憂以及對於執法人員濫用權力，草菅人命的不滿。中央政府承諾嚴肅處理這些

問題，但目前還不清楚實際的效果。*另見*Criminal Procedure Law; Death penalty.

Man who wrongfully confessed under torture and was imprisoned. She Xianglin was arrested in 1994 on a charge of murdering his wife, sentenced to death, and then, on retrial in 1998, to a fifteen-year term of imprisonment. The convictions were based on a botched and inconclusive investigation, reportedly involving a confession extracted by torture. His wife eventually turned up alive, but by then She Xianglin had already spent eleven years in jail. When his wife returned in 2005 he was released. She Xianglin then filed a large compensation claim under the State Compensation Law and received a reward of approximately 460,000 RMB.

She Xianglin's case arose immediately after a number of wrongful arrests and executions had been brought to light in the press, including that of Nie Shubin, a man executed ten years before the actual culprit surfaced. These cases stirred up massive controversy about the enforcement of criminal and criminal procedure laws and the grave consequences of official abuses and incompetence. It is still unclear to what extent the central government's promises to deal with these problems will be implemented and effective. *See also* Criminal Procedure Law; Death penalty.

Shuanggui　雙規

這是一個法律體系外的制度，1994年由黨制訂，1997年整合至行政監察法當中，由中國共產黨紀律檢查機關以及行政監察部行使，目的在於監禁違紀的行政人員。雙規指「在規定的時間與規定的地點接受調查」。行使的對象主要（但非絕對）為黨員。雙規不需要知會受雙規的家屬，這點與逮捕不同，同時也不說明拘留的地點以及拘留的時間。在某些案例中，受雙規者甚至遭拘留超過一年。

雙規的調查與程序十分地政治化，且通常極不專業。在拘留的時間裡，刑求常常發生，例如剝奪睡眠時間以及強迫維持在不舒服的姿勢。所以，因而自殺者並不少見。

受雙規者可再向法院提出訴訟，但這情形從未出現。

An extra-legal system, introduced in 1994 by party regulations and incorporated in the Administrative Supervision Law in 1997, for incarcerating alleged wrongdoers under the administration of the party's Discipline and Inspection Commissions and the Ministry of Supervision (jiancha bu). Referring to being investigated in a specific time and place, it is used primarily but not exclusively against party members.

Unlike other forms of arrest, there is no requirement that the family be notified. There are no specifications regarding where such people are held, nor is the duration for shuanggui detention spelled out. In some cases people have been held for more than a year.

The investigations and proceedings are highly politicized and generally unprofessional. Torture is widely employed during the detention. This may be combined with sleep deprivation or being forced to remain in an uncomfortable position. Suicides are not uncommon.

Individuals who have undergone shuanggui can be tried in the courts, but this usually does not occur.

Speech, freedom of, *see* Expression, freedom of.

Spiritual pollution 精神污染

抗拒資產階級影響的運動。1983年，中國進入改革開放的第五年。西方文化對人們日常生活的影響十分明顯，許多年輕人穿著比過去前衛，並開始欣賞西方的音樂和舞蹈。反映中國共產黨負面情況的小說和電影也開始出現。這些現象令年老的領導人和保守派甚為憂慮，他們尤其恐懼西方思想的傳播會危及共產黨對政治領域的控制。因此，中國共產黨發動了清除「精神污染」的運動。這場運動主要針對知識份子，在各大學和其他科研機構進行。但是由於知識份子對於文化大革命的慘痛還記憶猶新，所以堅決抵制，因此這場運動很快就流產了。不過，限制國外文化對中國人民的影響仍然是中國共產黨的重要工作。

Campaign against bourgeois influence. In 1983 the PRC entered the fifth year of its open-door policy. Foreign influences were making their mark on the everyday lives of ordinary people. Many young people dressed more boldly than before and enjoyed Western music and dancing. Novels and films revealing negative accounts of the party also emerged. This phenomenon offended some conservative party elders. Fearing the spread of Western influence in the political area in particular, the party launched a campaign to eliminate so-called "spiritual pollution." The campaign mainly targeted intellectuals, and was carried out intensively in universities and other academic institutions and associations. The campaign, however, proved short-lived because intellectuals, with fresh memories of the horrors of the Cultural Revolution,

resisted the government's efforts. Regardless, concern over foreign influence on Chinese citizens remained on the party's political agenda.

State Secrets Bureau 國家保密局

國家保密局是國務院下設的機構，專門負責處理有關國家機密的事務。它的職能是幫助政府各部門界定什麼屬於國家機密。它還回答政府機構和司法機構有關什麼資訊屬於國家機密的諮詢。1993年後，國家保密局與中國共產黨的中央保密委員會合併，兩者成為一體，向中國共產黨中央負責。*另見*Secrecy (leaking state secrets).

The State Secrets Bureau was an organ of government under the State Council that was formally responsible for managing affairs relating to state secrets. Its function was to manage and assist government departments in the definition of state secrets issues. It also answered requests from state organs and judicial organs on whether certain information was a state secret. In 1993 it merged with the Central Secrets Commission of the Communist Party, and thus now functions both for the CCP and the government. *See also* Secrecy (leaking state secrets).

State Security Department 國家安全部門

國家安全部門掌控中國秘密的員警力量。國家安全部門是在1983年7月由公安部等數個中央重要部委改組成立的。它在中央被稱為國家安全部，而在地方則被稱為國家安全局。國家安全部門的主要職責是偵查危害國家安全的犯罪，即企圖顛覆國家的外國勢力以及監視國內外的間諜。在過去二十多年來，國家安全部是鎮壓異見人士、特別是與國外組織有聯繫的異議人士的主要力量。由於功能相似，許多人把國家安全部與克格勃相類比。與其他政府機關不一樣的是，國家安全部從不公開職員名單和預算，它的運作也鮮為人知。*另見* Counter-revolutionaries; Public Security Departments; State Security Department.

The State Security Department (SSD) controls the nation's secret police force. The agency was formally established in 1983 during a reorganization of several other important ministries, including the Ministry of Public Security. The central unit is called the Ministry of State Security, and its local branches are referred to as state security bureaus (SSB). The agency's main task is to investigate crimes against state security, namely the activities of foreign elements against the state; and to monitor foreign espionage at home and abroad. However, for more than two decades the SSD

has been a major force in cracking down on political dissidents, especially those with connections to foreign individuals or entities. Because of its functions, some have compared the SSD to the KGB. Much less is known about its operations than other state agencies; the SSD does not reveal its budget nor the names of its employees. *See also* Counter-revolutionaries; Public Security Departments; State Security Department.

State Security, Law On 國家安全法

全國人民代表大會於1990通過了《國家安全法》，1994年國務院頒佈了實施細則。該法規定公民有維持國家安全的義務，給與國家安全部門調查拘留公民的廣大權力，這些權力包括通過搜查、沒收和逮捕限制，甚至剝奪公民的人身自由和財產。

《國家安全法》第4條非常籠統的界定危害國家安全的行為，規定危害國家安全的行為是指對境外組織和個人批評政府；顛覆政府，分裂國家，推翻社會主義制度；進行危害國家安全的其他破壞活動。實際上，該規定被常常用來限制中國公民的言論自由和結社自由。許多持不同政見的個人都是根據這一部法律被調查、起訴和判刑。1997年刑法修改時把《國家安全法》的規定大量吸收到危害國家安全罪一章中。但《國家安全法》仍被保留。

A law that collectively defines the citizen's duty to maintain state security and gives the state security organs of government broad investigatory and detention powers over citizens. These powers include the power to limit, and even deprive, citizens of their personal freedom and property, through searches, seizures, and arrests.

The law contains a broad definition of the behaviour that constitutes endangering state security. This definition includes criticizing the government to foreign individuals or organizations, splitting the nation, or overthrowing the socialist system as acts that endanger state security. In practice, this law and its implementation provisions impinge on freedom of speech and freedom of assembly. Many individuals holding disapproved political views have been investigated, prosecuted, and convicted under its provisions. In the 1997 revision of the Criminal Law, much of the content of the Law Preserving State Security was absorbed into the Criminal Law under the heading of Crimes of Endangering State Security, but the original law also remains on the books.

Resources: Human Rights Watch & Human Rights in China: *Who's Security?* (1997), at http://www.hrw.org/reports/1997/china5/.

Sun Zhigang 孫志剛

2003年一位名為孫志剛的年青人來到廣州開始新的工作，因當時沒有帶合適的身份證件而被公安機關拘留。雖然孫的室友在事發不久就把孫的身份證件送到拘留所，但孫並未獲釋放反被轉送至收容遣送中心。對於後來發生什麼事情各種報導不盡相同，但孫的朋友被告知孫在收容遣送中心的醫務室死亡。以後的調查顯示，孫是在收容遣送中心被毆打致死。

孫志剛事件引起公眾對公安和民政機關濫用權力以及收容遣送制度的憤怒。中央政府官員批評地方官員的行為，並起訴一些參與毆打孫的人，並判處一些參與人有罪，其中有兩個人被判死刑。一些學者和律師向全國人大常委會建議通過違憲審查程式審查收容遣送制度的合法性。可是，全國人大常委會並沒有採取正式的行動。因為，如果全國人大以立法的形式廢除這一行政規定，將會創立一個先例。最後國務院及時地廢除了收容遣送條例。儘管公安機關仍然保留有其他形式的行政羈押權利。*另見*Custody and repatriation; Floating population; Household registration.

A case of police abuse that resulted in the termination of the practice of Custody and repatriation (q.v.). In March of 2003 a young man named Sun Zhigang, who had gone to Guangzhou to start a new job, was detained by the police because he was not carrying proper identification. Despite the fact that Sun's roommate soon brought his identification materials to the holding centre, Sun was not released and was instead transferred to a Custody and Repatriation Centre. Reports about what happened next vary, but Sun's friend was told that he had died in the infirmary at the centre. It was later discovered that he had been beaten to death while in custody.

The Sun Zhigang case stirred up wide public indignation over police abuses of power, and over the custody and repatriation system. In response central officials condemned the behaviour of the local authorities, and several people, including police and inmates who acted at instigation of the police, were put on trial and convicted of beating Sun. Of those convicted, two were sentenced to death. In protest of the incident several scholars and lawyer activists submitted a petition to the National People's Congress calling for review of the custody and repatriation system. In response the State Council (the executive branch of government) simply unilaterally cancelled the Custody and Repatriation Regulations. *See also* Custody and repatriation; Floating population; Household registration.

Resource: Keith Hand, "Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People's Republic of China," *Columbia Journal of Transnational Law* (2006), 45: 116.

Supervised residence 監視居住

監視居住是刑事調查進行中的強制措施。中國刑事訴訟法第51條規定公安機關、人民檢察院和人民法院決定被告人或犯罪嫌疑人對社會沒有威脅時可以在待審的六個月內被監視居住。被監視居住的被告人或犯罪嫌疑人應當待在家中，如果沒有住所，應當待在指定的地方。監視居住的被告人和犯罪嫌疑人離開住所或會見其他人必須得到公安機關的批准。

但實際上，監視居住常常變為另一種形式的羈押。公安機關通常會把被告人或犯罪嫌疑人安置在隔離的地方，例如公安機關的拘留所，或特別的旅社或有守衛的賓館。觀察家批評這是當權者鑽程式的空子，以及規避其他羈押手段法律期限的規定。因為一般而言，審判前的拘留是有時間限制的。很多公安人員認為將犯罪嫌疑人關押在特殊的場所比花費人力物力派遣專門人員進行專門監視更為方便省力。政府當局正認真的考慮改革這一制度。

A coercive measure employed during criminal investigations. Article 51 of the Criminal Procedure Law (q.v.) stipulates that the public security departments, people's prosecutors, and people's courts can put an individual under supervised residence (also translated as “residence surveillance”) for up to six months while awaiting trial, if the individual is not determined to be a threat to society. Individuals under such supervision are required to remain at their home, or other designated place if they do not have a place of residence. Approval from the Public Security Bureau (PSB) is required for an individual under supervision to leave his or her home or to meet with others.

In reality, residence surveillance almost always turns into a type of administrative detention. Public security departments often hold individuals in an isolated place, such as a PSB detention facility, a special guesthouse, or a guarded hotel, thus circumventing formal procedural restrictions and time limits on detention. Local PSB officials often find such shortcuts preferable to employing the personnel necessary to supervise suspects. Authorities have considered reform of the system.

Taishi Incident 太石村事件

太石村是廣州附近的一座村莊，因地方官員和公民的衝突而廣受矚目。太石村事件是指太石村村民根據法律要求罷免腐敗的村主任的事件。根據法律，只要有20%的村民連署請願，就可以組成罷免委員會，但是當選者都是地方人士。政府旋即宣布多數原本參與連署的村民已撤回連署，因此請願無效。而多數委員在與官員諮商之後，也辭去了委員的資格。

2005年夏秋之際的幾個月內，太石村村民抗議政府的行為，且強烈譴責貪腐的村主任。圍繞這一罷免事件，太石村的村民與地方當權者產生衝突，造成多名村民以及幫助他們維權的律師被毆打、逮捕和拘留。當局後來釋放了一些因抗議行動而被拘留的居民，而且仍然堅稱當時情形極度動亂，必需採取逮捕及噴水注的手段。這個事件在國外媒體報導後，逐漸為外人所了解。後來，報導此事件的外國記者再次進入太石村時，便遭到惡意的騷擾，陪同的人大代表呂邦列更遭到毆打。中國當局警告國際媒體當地情勢十分危險，但卻未採取行動解決問題。

A citizen protest and subsequent government crackdown over local corruption and the recall of an elected official. Taishi Village, near Guangzhou, became the site of clashes between local officials and citizens who, following the Rural Villager Organic Law, demanded the recall of a corrupt local official who had embezzled funds. This law allows for the recall of a village committee member if 20 percent of the villagers sign a petition to that effect. Shortly thereafter the government announced that many of the signatures were withdrawn and the petition was defunct. Soon most of the members of the recall committee resigned after consultation with government officials.

While these events unfolded over the course of the summer and fall of 2005, the villagers protested the actions of authorities and against the corruption of their village chief. Their clashes with local authorities resulted in beatings, arrests, and detentions, including those lawyers advising them on their rights. Although authorities eventually released some of the activists, the government was insistent that arrests and other measures, such as the use of water hoses, had been necessary to control local discontent and unrest. The situation became even more visible to the outside world when it was reported that a foreign journalist was harassed when trying to enter Taishi, and that activist Lu Banglie, who accompanied him, was badly beaten. Chinese authorities warned foreign journalists of the danger of the situation, but took little action to prevent abuses.

Three Represents 三個代表

三個代表的理論是由前國家主席江澤民在2000年提出來的。根據此理論，中國共產黨代表了「先進生產力的發展要求」，「先進文化的前進方向」和「最廣大人民的根本利益」。在江澤民的主席任期之後，這理論被提升為官方的共產黨的方針政策。此理論是共產黨和前任主席江澤民努力拓展共產黨範圍，把中國市場改革過程中產生的日益有力的私營業主囊括進來。該理論的另外一層功能是填補「正統的」馬克思列寧毛澤東理論在公眾信仰中破產所造成的真空。

Theory of inclusion advanced by Jiang Zemin in 2000. The idea was that as market reforms progressed, the CCP should represent the "development trends of advanced productive forces," "the orientations of an advanced culture," and "the fundamental interests of the overwhelming majority." This theory was advanced as official party policy even beyond Jiang's tenure as president. It is an effort to expand the scope of the party's reach to include increasingly powerful private sector interests. The theory's other function is to fill the vacuum created by the loss of popular belief in more orthodox Marist-Leninist-Maoist theory.

Three-Anti, Five-Anti Campaigns 三反五反運動

在1951年到1952年間的三反五反運動主要是針對政府官員、工頭和在共產黨接管之後還殘存的企業家開展的運動。三反運動起始於毛澤東在1951年底所作的一次演講，這場運動從在滿洲里小規模的影響擴展成全國性的反貪污、反浪費、反官僚主義運動。其本意是增進政府效率，減少不必要的花費和浪費，同時處理黨內的腐敗因素。該運動波及到黨內和政府內涉及這些問題的幹部，同時也努力為共產黨招收新成員。

五反運動作為三反運動的擴充，是發動來針對商業界的。所反對的五毒包括行賄、偷稅漏稅、盜竊國家財產、偷工減料和公開國家經濟情報。五反運動造成了對於所謂的資產階級分子大量的政治迫害，令家人反目成仇，對商人和業主進行公開批鬥之際，造成了巨大的傷害。在大城市裏，數以百萬計的商人被判有罪，他們不得不將功贖罪，或者被嚴厲地懲罰。

Early 1950s drives against labour supervisors, industrialists, and government officials. The Three-Anti Campaign, which was launched by Mao in a late 1951 speech, spread from a small-scale effort in Manchuria into a national campaign. It targeted the three evils of corruption, waste, and bureaucracy. The effort was meant to increase productivity in the government and reduce unnecessary expenditures and waste, as well as deal with bad elements in the party. The campaign attacked cadres in the party and government who had engaged in such evils, and sought to recruit new members to the party.

The Five-Anti Campaign was launched in 1952 against business interests. The five evils under attack were bribery, tax evasion, fraud, theft of state assets, and publicity of state economic secrets. The Five-Anti Campaign resulted in a massive witch hunt of so-called bourgeois elements. It turned family members against each other and put great strain on merchants and industrialists as they waited to be publicly ridiculed and attacked. Millions of urban businessmen were pronounced guilty. Some were allowed to redeem themselves through merit, but others were punished severely.

Resource: Theodore Hsi-En Chen and Wen-Hui C. Chen, "The Three-Anti and Five-Anti Movements in Communist China," *Pacific Affairs* (1953), 26:1.

Three-Self Movement 三自愛國運動委員會

「三自愛國運動委員會」在1950年代成立，其目的在確保中國的新教教會不干涉共產黨統治，並保證新教教會不接受外國教會的資助、教訓和管理；故此名為「三自」。政府建立兩個官方組織監督基督教會，即「三自愛國運動會」以及中國基督教協會。天主教也存在一個類似的組織，叫做天主教愛國會。

官方批准的教會成為討論中國宗教信仰自由開放程度的爭論焦點。獨立的宗教團體或者家庭教會不見容於政府。官方常騷擾甚至監禁獨立宗教團體的領袖。*另見*Religious freedom.

A movement established in the 1950s to ensure that Protestantism did not interfere with Communist rule, and that Protestant churches were not influenced by foreign churches through funding, teaching, or governance; thus, the name "three-self" was used. There are two government-established organs that oversee officially sanctioned Protestant churches: the Three-Self Patriotic Movement Commission, and the China Christian Counsel. A similar organization exists for Catholicism, the Catholic Patriotic Association.

The subject of state-sanctioned churches has triggered controversy in the debate over the degree of religious freedom permitted today. Independent religious

organizations, sometimes referred to as house churches, are barely tolerated by the government, and authorities have harassed and even jailed their leaders. *See also* Religious freedom.

Resource: David Aikman, *Jesus in Beijing: How Christianity is Transforming China and Changing the Global Balance of Power* (2003).

Tiananmen Incident 六四事件

指1989年的民主運動及對此運動的鎮壓。

1989年3月15日，中國共產黨的前任總書記胡耀邦突然逝世。他的逝世成為了已經陷入混亂的中國政治局勢的轉捩點。自1988年始，社會各階層對於黨和政府的不滿情緒如當時的通貨膨脹一樣日漸升高。1980年代胡耀邦因對批評黨的言論持開明寬容態度而得到知識份子和學生的愛戴，而他在1986年的下臺被廣泛認為是改革遇到的嚴重挫折。因此，他逝世後，大學的學生和知識份子在各地舉行紀念活動來表達他們對胡的尊敬和支持。這些全國性的紀念活動很快演變成民主運動，許多市民上街呼籲政府進行實質性的政治改革和遏止腐敗。黨的領導核心對於如何處理學生的要求以及如何平息使首都北京陷入癱瘓的學生抗議產生了分歧。因為抗議活動，政府不得不改變中蘇高峰會的會談地點，這使得領導人在國際上備受羞辱。老一輩的領導人對事態的發展非常生氣，並且擔心政府會因此垮臺。

5月19日，中國共產黨決定對學生運動進行鎮壓。國務院要求佔領天安門廣場數星期的群眾馬上撤離，並在北京地區發佈了戒嚴令。當時的黨總書記趙紫陽試圖說服鄧小平等老一輩的領導不訴諸武力，但最終失敗而黯然下臺。外地調來的軍隊在北京城外聚集準備執行這一戒嚴令，但是許多聲援的民眾竭力阻止他們進城。因此軍隊和北京居民和平對持，但僵局在兩個星期後被打破，軍隊強行進入北京城並於1989年6月4日早晨佔領天安門廣場。在進入北京城中心時，士兵、坦克還有其他軍用車輛隨意開槍射擊路上的行人，打死幾百或上千人，其中包括不少學生。這次屠殺的幾天後，軍隊又任意的處決了被懷疑阻礙軍隊進城或妨礙軍隊執行戒嚴令的一些人。中國共產黨譴責學生領袖和北京的市民，認為他們應當對死者負責，並把大多數死難者認定為「反革命的暴亂分子」。*另見*Fang Lizhi; Hu Yaobang; Tiananmen Mothers.

The suppression of the 1989 democracy movement.

The sudden death of the former general secretary Hu Yaobang (q.v.) on March 15, 1989 marked a turning point in an already tumultuous political situation. The

nationwide memorials for Hu quickly became a kind of democratic movement. Protesters, mostly young people, took to the streets to demand political reform and an end to government corruption. The party leadership was divided on how to deal with the students' requests and how to quell the demonstrations that had effectively paralyzed the capital. The demonstrations also forced a change of venue for the Sino-Soviet summit, resulting in further humiliation for the leadership. The party elders were greatly angered by these developments and feared the possible collapse of the government.

On May 19 the party decided on a crackdown; the State Council ordered the evacuation of Tiananmen Square, which demonstrators had occupied for weeks. Local martial law was declared. Party Secretary General Zhao Ziyang was forced to step down after failing to persuade Deng Xiaoping and other party elders not to use force. Troops from outside Beijing were summoned to the capital to enforce martial law, but local activists stopped the troops from entering the city. After a peaceful two-week stalemate between the soldiers and Beijing residents, during the night of June 3-4 the troops forcefully moved into the city and took over Tiananmen Square. Tanks and other military vehicles rolled into the city centre. En route, bystanders were randomly shot, with hundreds and perhaps a thousand killed, including college students. Several days following the initial massacre, the troops wantonly shot those suspected of harassing the troops or interfering with the operation of martial law. The party and the government blamed the student leaders and Beijing residents for the deaths, labelling the victims "counter-revolutionary rioters." *See also* Fang Lizhi; Hu Yaobang; Tiananmen Mothers.

Resources: George Black and Robin Munro, *Black Hands of Beijing: Lives of Defiance in China's Democracy Movement* (1993); Zhang Liang, *Tiananmen Papers* (2001).

Tiananmen Mothers 天安門母親

天安門母親是在1989年6月3日到5日發生的天安門事件中失去他們子女的母親們組成的團體。這些年輕人遇難之後，很多人被扣上了「反革命暴徒」的帽子，另外一些人則被正式認定為「非正常死亡」。時隔多年，很多母親不能告訴別人他們孩子的真正死因，由於政治壓力，很多人甚至無意談及他們孩子的死亡。天安門母親的代表，丁子霖是中國人民大學哲學系的教授，她在六四鎮壓中失去了還在讀高中的兒子。她忍受了巨大悲痛，平靜地開始收集有關受害者的真相。她用了10年時間尋訪受難者和他們的家庭，最後聯繫到了200位死者

的母親。每年的四五清明節和天安門慘案的紀念日，這些母親都要悼念他們失去的親人。不僅如此，這些母親還常常呼籲政府詳細調查天安門慘案的真相並為之平反，他們得到了持不同政治觀點的人們的支持。

中國政府不僅堅持回絕考慮天安門母親重新調查天安門事件的要求，而且還派遣員警來監視並調查這些母親。政府經常阻止這些母親和外國支持者會面，甚至短期拘留她們以避免挑戰政府對於天安門悲劇的官方定論。*另見*June Fourth Movement.

A group of mothers who lost their sons or daughters in the brutal government crackdown surrounding the democracy protests in Tiananmen Square around June 4, 1989. Many of these youths were labelled "counter-revolutionary rioters," although some were also officially labelled "the wrongful dead." Due to political pressure, many of these mothers were unable or unwilling to tell the real reason behind the deaths of their children for years. The representative of the Tiananmen Mothers, Professor Ding Zilin of the philosophy department of People's University, lost her son, then a high school student, in the crackdown. Afterwards she quietly began the task of collecting the true facts about those killed. Ding spent over ten years identifying victims and their families, and finally succeeded in linking up 200 mothers of the dead. Every year on the anniversary of the Ching Ming Festival on April 5th and that of the Tiananmen Incident, these mothers mourn the loss of their relatives. In addition, these mothers often call for the government to thoroughly investigate the Tiananmen Incident, and make public a truthful account. They have received support from people of varying political viewpoints.

The Chinese government has not only consistently refused the requests of the Tiananmen Mothers to reinvestigate the Tiananmen incident, but it has also dispatched police to monitor and investigate these mothers. The government has often prevented them from meeting with foreign supporters, and has even temporarily detained them for short periods of time in order to avoid a challenge to the government's official verdict on the Tiananmen tragedy. *See also* June Fourth Movement.

Tibet 西藏

雖然經濟、社會與文化權利國際公約保障所有民族的自決權，已批准該公約的中國政府仍不承認這項權利

中國共產黨在1950年代以武力和威迫的手段接收了西藏。在這之前，西藏（或至少現今的西藏自治區）從不屬於漢民族統治。十三世紀元朝的蒙古帝國以及其後清朝的滿族帝國(1644-1911)均曾將西藏納入版圖，但隨著這兩個外族帝國的崩解，西藏再度脫離中國。明朝(1368-1644)對西藏沒什麼興趣，將之視為另一個國家。國民政府時期(1912-1949)國民黨政府曾有機會將清朝的領地都納入中國的範圍，但他們對西藏沒有實質的影響力。

中國共產黨將西藏分割成兩部份，其中一部份劃入中國的一省，並以鐵腕政策統治另一個部份，即西藏自治區。1959年，達賴喇嘛(來自非自治區)領導舊的西藏政府流亡至印度。從那時開始，雖然中國共產黨對中國大部份地區的管控已較為放鬆，唯獨對西藏地區仍採高壓統治。1980年代早期，胡耀邦曾試著想緩和這樣的情勢，但並未成功。

民族自決權當然不表示只有獨立或合併的選項而已。著名的西藏共產黨人平措汪杰就相信西藏為中國的一部份，但中國對西藏自治的承諾應該徹底落實。他主張西藏不應由中國軍隊控制，只有在外國勢力入侵時，中國軍隊才應介入。平措汪杰於1958年至1978年間被監禁在苦牢中。出獄後，他的名譽雖獲平反，但在西藏政府中已無影響力量。

西藏在各個層面仍持續遭受中共政府在人權上最嚴厲的迫害。

Although the ICESCR, which China has ratified, guarantees all peoples the right of self-determination, the Chinese Communists have denied the people of Tibet this right. Tibetan civilization was formerly very backward, and the Chinese insisted that outside forces were needed to modernize it (although internal memoranda also indicate that Mao Zedong was very interested in China's gaining control of Tibet's natural resources).

Prior to the Chinese Communists' takeover of Tibet over the course of the 1950s by a combination of military action and intimidation, the area now officially known as the Tibet Autonomous Region had never been under Han (ethnic Chinese) rule. The great Mongol empire of the thirteenth century did include Tibet, but the Ming Dynasty (1368-1644) had no interest in Tibet, which it considered a foreign country. The Manchu empire (1644-1911) also included Tibet, but when this international empire collapsed Tibet did not revert to China. During the Republican period (1912-1949) the Nationalists had some hope of incorporating the old Manchu-held territories into China, but they had virtually no influence in Tibet.

In 1959 the traditional Tibetan leadership, led by the Dalai Lama, fled to India. By this time, the Chinese Communists had added half of ethno-geographic Tibet to Chinese provinces. In 1965 the remaining part was designated the Tibet Autonomous Region (TAR). Since then, although most of the PRC has benefited from occasional

moderate policies, the TAR has always endured more severe government policies. In the early 1980s Chinese leader Hu Yaobang (q.v.) attempted to ease the situation, but was ultimately unsuccessful.

The right of self-determination does not mean that independence and total absorption are the only options. The most important Tibetan Communist, Phüntso Wangye, has always believed that Tibet should be part of China, but that the promised "autonomy" should be put into actual practice. He has argued that Tibet should not be ruled by the Chinese army, as it has been; rather, the army should only be concerned with addressing foreign military threats. Phüntso Wangye was imprisoned under excruciating conditions from 1958 to 1978. He was then nominally rehabilitated, but has not been allowed to play an active role in Tibetan governance.

Tibet continues to suffer some of the worst human rights abuses in the PRC. *See also* Hu Yaobang.

Resources: Congressional Executive Commission on China 2006 report on Tibet, http://www.cecc.gov/pages/annualRpt/annualRpt06/Tibet.php?PHPSESSID=9b25573a37d5c7d1551d7327ab3ee9ad; *A Tibetan Revolutionary: The Political Life and Times of Baba Phüntso Wangye* (2004).

Torture 刑求

是一種執法的工具，普遍用於逼供及處罰。儘管中共在1998年已經批准了聯合國禁止酷刑及其他殘忍、不人道或有辱人格的待遇或處罰公約，聯合國還是認為刑求的問題在中國持續存在。2007年，全國人民代表大會呼籲停止刑求，但還未有任何有效的法律或行政機制可以嚇阻或懲處動用刑求的人。

刑訊逼供是特別值得注意的現象。雖然在刑事訴訟法中明確規定禁止刑求（在訊問階段動用刑求的官員可處三年有期徒刑），但有多少刑求者被懲處並不清楚。因此，刑訊逼供的情形仍普遍存在，而其中部份原因在於中國的刑事偵查過於依賴坦白認罪。在破案的壓力下，調查人員常常使用暴力手段逼迫被告或嫌犯認罪，這些手段包括疲勞訊問以及剝奪食物和飲水等。

法律並未規範不在「刑訊逼供」範圍內的刑求（如一些準司法人員，如聯防隊員等所為者），只能以傷害罪起訴。

Widely used law-enforcement tool for extracting confessions or inflicting punishment. Despite the PRC's ratification in 1988 of the United Nations Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, the problem persists, as has been noted by UN authorities. During the 2007 National People's Congress there were calls to end the practice. However, effective legal and administrative mechanisms for deterring it and punishing perpetrators do not yet exist.

Of particular note is the phenomenon known as torture to extract confessions. Although explicitly prohibited by the Criminal Procedure Law (officials who use torture during an interrogation can be sentenced to up to three years in prison), it is unclear how often such abuses are punished. Thus the practice of torture to extract confession is still pervasive, in part because of the excessive reliance of Chinese criminal investigation organs on confessions. Under pressure to solve cases, investigators often use violence to extract confessions from those accused of crimes or other suspects, including continuous exhausting examinations or deprivation of food and water.

Torture that does not fall in the category of "torture to extract confession" (such as that performed by quasi-judicial personnel like the Joint Defence Forces) is not covered by the law, and can only be prosecuted as assault.

Transgender individuals 變性人

變性人是指那些經過變性手術而改變性別的人，變性人開始在中國出現。官方不僅允許變性手術，還同意讓經過手術後的變性人正式改變性別甚至結婚。但在一個婚姻的一方變成女性的個案中，民政局拒絕作出原婚姻無效的決定。民政局在諮詢過最高人民法院和公安部後宣佈兩個符合中國婚姻法規定正式登記註冊結婚成為夫妻的人，要終止婚姻關係必須經過正式的離婚手續。對於變性人婚姻問題的改進是政府對性、性別平等、婚姻自由和個人權利採取更開放態度的表現之一。*另見* Homosexuality.

Individuals who express their gender in alternative ways, including undergoing sex-reassignment surgery. Transgender individuals are increasingly free to express their identity in the PRC. Sex-reassignment surgery is permitted, and some localities have even allowed post-operative transsexual individuals to officially change their sex and to marry. Progress in the area of transgender marriage is part of a slow emergence of more progressive attitudes towards sexuality, gender, freedom of marriage, and individual rights in general. *See also* Homosexuality.

Vulnerable groups 弱勢群體

弱勢群體也被稱為不利群體和邊緣群體，是指在中國改革過程中出現的處於不利地位的群體。朱鎔基總理在其2002年的政府工作報告還特別使用這一詞指代中國社會中處於經濟弱勢的群體，例如失業者。學者和媒體使用這個詞更為廣泛，把兒童、老人和婦女都稱為弱勢群體。另外，愛滋病患者是否為弱勢群體仍有爭議。*另見*Discrimination, law concerning; Ethnic minorities.

Marginalized groups who have been exploited and disadvantaged in the wake of China's economic reforms. The term was used by Premier Zhu Rongji in his political work report in 2002, in which he emphasized the plight of the unemployed. Various scholars and the media have used the term "vulnerable groups" more broadly to refer to people such as children, the elderly, and women. There is still a dispute as to whether HIV/AIDS victims are included. *See also* Discrimination, law concerning; Ethnic minorities.

Wei Jingsheng 魏京生

魏京生於1950年5月20日出生在一個革命家庭，早年是一名電工。他因在北京西單的牆上張貼一篇名為「第五個現代化」的文章而出名。魏京生呼籲除了建設「四個現代化」，中國還應努力建設一個民主化的社會。四個現代化是指由中國領導人提倡的農業、工業、國防和科學技術的現代化。魏京生批評政府沒有足夠的努力推動民主改革。他後來以「向外國人提供與中越戰爭有關的軍事情報」的罪名被判有期徒刑15年。

魏京生於1993年被釋放。中國政府希望藉此向世界表明正在放鬆對政治犯的控制，期望以此獲得2000舉辦奧運會的資格。但是，當中國在競標失敗後，魏京生又被逮捕並且被另判有期徒刑14年。在美國人權外交的干預下，中國政府於1996年釋放魏京生並將之放逐到美國。現魏京生在美國居住。魏京生贏得過許多人權保護的獎項，其中包括自由思想的薩哈洛夫(Sakharov)獎和羅伯特·甘迺迪(Robert F. Kennedy)人權保護紀念獎。他仍是國際上最為著名的中國持異議人士。*另見*Democracy Wall.

Democracy activist Wei Jingsheng was born to a revolutionary family in 1950, and trained as an electrician. He is famous for authoring an article on the Democracy Wall (q.v.) titled the "The Fifth Modernization," in which he argued that in addition to Deng Xiaoping's Four Modernizations (agriculture, industry, national defence, and science and technology), China also needed political modernization. Wei criticised the government for not doing enough to promote democratic reform. He was subsequently detained under the pretext of leaking military secrets to foreigners (regarding the on-going Sino-Vietnam war) and sentenced to fifteen years in prison.

Wei served his prison term until 1993, when he was released as an indication that the government was relaxing political control to aid their bid for the 2000 Olympic Games. However, Wei was arrested again and sentenced to a fourteen-year jail term after that effort failed. As a result of U.S. human rights diplomacy, Wei was released and forced into exile in the United States in 1996, where he currently lives. Wei has won many international human rights awards, such as the Sakharov Prize for Freedom of Thought and the Robert F. Kennedy Human Rights Memorial Award. He is still the most internationally known Chinese dissident. *See also* Democracy Wall.

Resource: James D. Seymour, ed., *The Fifth Modernization: China's Human Rights Movement, 1978-1979* (1980).

White papers on human rights 中國人權白皮書

自1991年始，中國政府已經公佈了多份有關中國人權狀況的報告以回應國際社會對中國人權狀況的批評。雖然報告的具體名稱各異，但都被認為是中國官方的“白皮書”。在這些白皮書中，中國政府通常會列舉中國在過去幾十年內改善人權的成就，並且明確表明自己對人權所採取的政策和所持的意識形態。其中以下幾點經常被強調。首先中國強調在國家主權和個人權利產生衝突時，國家主權優先於個人。並且，中國強烈反對其他國家對中國人權狀況的批評，認為這些批評是干涉中國的主權和內政。其次，中國認為生存權比任何其他公民和政治權利更為重要。再次，中國質疑人權的普適性，主張人權的保護應該根據不同國家的國情而定。

自1999年，作為對美國人權外交的反擊，中國政府每年均發表有關美國人權狀況的年度報告。這一新策略似乎與中國一貫反對評論別國的人權狀況，干預別國主權和內政的立場背道而馳。

Government reports on human rights in the PRC, published since 1991, in apparent response to international criticism. Although the titles differ slightly, those reports are all considered official “white papers.” They list the achievements that have been made in the area of human rights over the last few decades, and articulate human rights policies and ideology. Typically the reports emphasize certain viewpoints. First, the PRC states that state sovereignty takes precedence over individual human rights whenever there is a conflict between the two; open criticism from other individual countries is usually flatly rejected as interference with Chinese sovereignty and internal affairs. Second, the Chinese government states that subsistence rights are more important than other individualistic civil and political rights. Third, the idea of universal human rights is questioned, and it is stressed that human rights may be different in each country depending on that country's particular circumstances and culture.

Notwithstanding the long-standing policy that one should refrain from criticizing the human rights record of other nations and thus interfering in that country's sovereignty and internal affairs, since 1999 the PRC has published an annual report on the human rights record in the United States, intended to counter-balance American human rights diplomacy.

Women's rights 婦女權利

長期以來，中國共產黨宣稱其致力於在傳統的父權社會中提升婦女的地位。黨和政府在20世紀80年代之前在性別平等方面取得了一定進步，自從改革開放以來，政府開始頒布國家法規和地方立法來保護婦女權益。中國也是《消除對婦女一切形式的歧視公約》的成員國，所以，中國政府承擔國際義務並採取恰當手段保護婦女。中國婦女的地位逐漸提高，表現在工作中逐漸實現同工同酬、財產權和離婚方面有較好的保障、獲得更好的教育以及參與政治的機會增多。

雖然如此，在幾乎所有的領域，婦女的待遇仍值得擔憂。婦女未能充分就業，就業的婦女中有很多超負荷勞動，婦女常成為性侵犯的受害者。最近的《婦女權益保護法》修正案雖然概略地保證男女在雇用方面平等，但並沒有改變婦女強制退休的年齡比男子早的歧視性規定。國內和國際調查顯示遭受家庭暴力或被丈夫強姦的婦女不斷增加。拐賣婦女和強迫婦女賣淫的問題仍然嚴重，尤其是農村的婦女。專家估計由於計劃生育造成男女比例的不平衡，數以千計的男子將難以找到伴侶，隨之而來的性犯罪和非法賣淫也會在未來幾年內劇增。*另見* Abortion; Women's Rights Law.

The Chinese Communist Party has long claimed a commitment to elevate women's status in this traditionally patriarchal society. The party and government made some progress towards gender equality before the 1980s; since the beginning of the Reform Era the government has begun enacting national laws and local legislation to protect women's rights. China is also a party to the Convention on the Eliminations of All Forms of Discrimination against Women. Chinese women have made some progress in terms of equal employment opportunities, property rights, divorce, education, and political representation.

However, serious concerns about the treatment of women still remain in nearly all areas. Despite legal improvements (*see* Women's Rights Law), women are still under-employed, more frequently subject to illegal and excessive work hours, and often become the victims of intense sexual harassment. Women are subject to mandatory retirement at an earlier age than men. National and international surveys show increases in the number of women who are physically abused in the home or raped by their husbands. Human trafficking and forced prostitution remain serious problems as well, especially for women in rural areas. Experts predict that sexual violence and illegal prostitution may increase in the coming years as severe imbalances in the male-to-female ratio will very likely leave tens of millions of

marriage-age men without partners. *See also* Abortion; Women's Rights Law.

Resources: Margaret Y. K. Woo, "Law, Development, and the Rights of Chinese Women: A Snapshots from the Field," *Columbia Journal of Asian Law*, Spring-Fall 2005, 19:1, pp. 345-60; United Nations, Committee on the Elimination of Discrimination against Women, "Concluding Comments of the Committee on the Elimination of Discrimination against Women: China" (2006), http://www.un.org/womenwatch/daw/cedaw/cedaw36/cc/CHINA_advance%20unedited.pdf.

Women's Rights Law 婦女權益保障法

全國人民代表大會常務委員會於1992年通過了《婦女權益保障法》。雖然中國《憲法》的修正案以及1950年《婚姻家庭法》的修改都加強了對婦女權利的保護，但《婦女權益保障法》是中國第一部給與婦女各樣權利並提供全面保護的法律。該法提高了婦女在工作單位，家庭和政府的地位。2005年，全國人大常委會對該法作了修改，其中包括性騷擾、家庭暴力和平等退休福利等問題。

《婦女權益保障法》雖然代表了在婦女權利保障上的進步，但在某些重要的面向，缺少明確的規定，以致法案無法適當落實。例如，雖然增列了禁止性騷擾的條款，但卻未對性騷擾一詞作出界定。另外，針對中國於2006年提交的《消除對婦女一切形式的歧視公約》執行報告，聯合國的評論也指出，中國在2005年修訂的《婦女權益保障法》中，仍未界定何謂歧視。*另見* Woman's rights; Vulnerable groups.

The first law to deal comprehensively with the subject of women's rights. (The various amended versions of the PRC Constitution, and the 1950 Marriage Law also signalled advancements in women's rights.) The 1992 Law for the Protection of the Rights and Interests of Women called for women's advancement in the workplace, the home, and the government. In 2005 the law was amended to deal with issues such as sexual harassment, domestic violence, and equal retirement benefits.

The law represents progress in the area of women's rights, but has been criticised for lacking specificity in important respects, thus preventing adequate implementation. For example, despite the addition of a prohibition on sexual harassment, the law does not define the term. Also, the UN's 2006 comments on China's implementation of the Convention for the Elimination of Discrimination against Women (CEDAW, *see* International section) criticised the 2005 revisions for not including a definition of "discrimination." *See also* Women's rights; Vulnerable groups.

Resource: United Nations, Committee on the Elimination of Discrimination against Women, "Concluding Comments of the Committee on the Elimination of Discrimination against Women: China" (2006), http://www.un.org/womenwatch/daw/cedaw/cedaw36/cc/CHINA_advance%20unedited.pdf.

Workers' rights 勞工權

在現行的法律和憲法中，勞工缺乏有效的機制保障他們的權利。罷工權利在1982年的憲法中被取消，其他與工會相關的法律與勞動法也未提供罷工的權利。雖然律師及一些倡議者試圖透過法院、勞工團體和僱用法為勞工申冤，但仍無法有效地阻止侵犯勞工權利的事件發生。

勞工面臨了很多問題。雖然法規增加了，但職場的安全，尤其是礦場仍少有人監管，以致時常發生意外，造成傷害甚至死亡。而且，受害者常無法得到有效的治療也承擔不起費用。許多勞工，尤其是臨時工常需長時間地工作而無法得到法定的酬勞。*另見* All China Federation of Trade Unions; Discrimination, law concerning.

Workers lack effective vehicles to protect their rights under the law and Constitution. The workers' right to strike was eliminated from the Constitution in 1982, and no right to strike is provided for in any union legislation or by the PRC Labour Law. Although some lawyers and advocates have attempted to use the courts and the growing body of labour and employment law to address grievances, these efforts have not effectively restrained abusive practices by employers.

Workers face many problems. Although increasingly regulated, workplace safety, particularly in coalmines, is still poorly supervised, and accidents resulting in injuries or even fatalities are common. Often those injured are not able to find and pay for effective treatment of their injuries. Workers, particularly temporary workers (e.g., Rural migrants, q.v.), often work long hours and are not always paid according to the law. *See also* All China Federation of Trade Unions; Discrimination, law concerning.

Xinjiang, *see* East Turkistan Independence Movement.

Yang Jianli 楊建利案件

楊建利是長住美國的政治異議人士。他畢業於美國柏克利和哈佛大學，分別獲得數學和政治經濟學的博士學位。楊參與了1989年學生運動，並自此以後一直活躍於海外中國持不同政見者的活動。楊是多個促進中國人權和政治改革組織和基金會的負責人。由於多次更新護照未果，2002年4月楊持朋友的護照進入中國做有關工運調查。在進入中國不久他就被拘留了，並在沒有任何律師協助的情況下羈押了2年。2004年5月，他以為臺灣充當間諜罪和非法入境罪被判有期徒刑5年。2007年4月，楊建利服刑期滿獲得釋放。

與其他敏感案件類似，楊的拘留到被判刑都反映了中國刑事訴訟制度的許多嚴重缺陷，尤其是涉及持政治異議人士的案件。這些缺陷包括長時間的羈押沒有司法機關的介入，沒有任何律師的協助。並且，楊更新護照的申請遭拒絕是中國放逐中國異見人士的典型手段。*另見*Exile, forced.

Accused spy. Yang had been a U.S.-based political dissident. He graduated from the University of California at Berkeley and Harvard with Ph.D. degrees in mathematics and political economy. Yang was involved in the 1989 Tiananmen Movement, and has since been active in the overseas Chinese-dissident movement. He has also been the chairman of several foundations and organizations promoting human rights and political reform in China. In April 2002, after several failed attempts to renew his Chinese passport, he entered China with the passport of a friend to do research on the labour movement. He was detained shortly after entering China and held without access to counsel for more than two years. In May 2004 he was convicted and sentenced to a five-year prison term for the crime of spying for Taiwan, and for illegal entry into China. He was released in April, 2007 after having served his term.

As in many other sensitive cases, Yang's detention through conviction illustrates many of the flaws in the Chinese criminal justice system, especially with regard to political dissidents. For example, there was a lack of judicial oversight of lengthy pre-trial detentions during which Yang had no access to counsel. In addition, Yang's inability to renew his passport is a typical example of the application of political exile policies to Chinese dissidents. *See also* Exile, forced.

Yulin Oilfield Incident 陝西榆林油田事件

在90年代，中國天然氣總公司授權陝西省政府開發一千平方公里的油田。這一片油田大部分位於榆林市。為了吸引投資，陝西省和榆林市政府與私人投

資者簽訂了一系列合同授權這些私人開發商在該地區開發油田。幾年後，油田開發逐漸繁榮，越來越多投資者參與。同時，地方政府和官員也因原油產量的升高而獲得巨額利益。

2001年，中國天然氣總公司在國務院的支持下決定收回所有油田的開發權。但此時私人開發商已經對這些油田作了投資，收回後他們只收到很少的補償費。天然氣總公司和陝西省政府收回油田的行動失敗後不得不強行關閉油井和封鎖油田，在遭到投資者的抵抗時，政府逮捕了一些投資者還通緝那些拒絕服從的投資者。

約有6萬投資者請求中央政府主持公道落空後開始提起一系列的行政訴訟，起訴榆林市和陝西省政府。這些投資者聘請了北京的律師作他們的代理律師。然而，政府卻因此以擾亂公共秩序的名義拘留了北京其中一個律師朱久虎以阻礙這場訴訟。朱久虎律師最後在中國律師協會和其他中央政府機關的干涉下才被釋放。與此同時，那些尋求法律或非法律救濟，積極維權的投資者卻被抓去坐牢。目前(2006)，政府和投資者仍然陷於僵局。

榆林油田事件表明政府沒收私人財產太隨意，沒有向投資人提供足夠的補償，同時也表明了目前的制度沒有足夠的救濟方式。*另見* Administrative Litigation Law; Evictions; Petition system; Taishi Incident; Zigong Incident.

Government seizure of private property. During the 1990s the China Natural Petroleum Corporation contracted some 1,000 square kilometres to the Shaanxi Provincial Government for oil exploration. Most of that area is within the jurisdiction of Yulin City. In order to attract investment, the local governments of Shaanxi province, including that of Yulin City, entered into a series of contracts with individual investors, permitting them to engage in oil exploration in the area. After a few years oil drilling became increasingly profitable, and many more private investors began to participate.

In 2001 the China Natural Petroleum Corporation, with backing from the State Council, decided to take over all the oil wells, paying the owners only minimal compensation. After an unsuccessful campaign to transfer ownership of the fields, the corporation and the Provincial Government of Shaanxi began to close down the drilling and forcibly confiscated the oil fields. When it encountered resistance, the government arrested a score of investors and hunted down those who refused to back down.

Although some 60,000 investors petitioned the central government, their efforts were in vain. They next commenced a series of administrative lawsuits against

the Yulin and Shaanxi governments. The investors hired lawyers from Beijing to represent them in the suits. In an attempt to thwart the lawsuits, the government detained one of these lawyers, Zhu Jiuhu, under charges of disturbing the public order. Meanwhile the activist investors who led the efforts to seek legal and non-legal remedies were rounded up and jailed. At the time of this writing (December 2006), the government and the investors are still at an impasse over the matter.

The Yulin Oil Field Incident demonstrates the government's power to take private property arbitrarily without sufficient compensation, and it highlights the inadequacy of the remedies available to those who have been wronged by the government. *See also* Administrative Litigation Law; Evictions; Petition system; Taishi Incident; Zigong Incident.

Zhao Yan 趙岩案

2004年9月7日，*紐約時報*刊登了一篇關於預測江澤民將會完全退休，不再擔任中央軍委主席的文章。十天後，紐約時報北京分社的調查員趙岩被逮捕，後被控「洩漏國家機密罪」，是指把有關江澤民正式退休的資訊通報給境外報紙。趙岩被拘留15個月後，案件才被移送到檢察機關。他於2005年12月23日正式以「洩漏國家機密罪」和詐騙罪被起訴，並將在幾個月後接受審判。但是2006年3月17日 ，在胡錦濤主席訪美前夕，檢察官突然通知法庭他準備撤銷公訴。許多人預測趙岩獲釋指日可待。然而，趙岩仍繼續在押，法庭於2006年7月14日正式審理該案。2006年8月，法院駁回對趙岩的洩露國家秘密罪的起訴，就其詐騙罪判處其三年有期徒刑。

趙岩一案引起人們對中國的新聞自由和國家保密法相關問題進行討論。例如什麼資訊才是國家機密？人們是否有獲取國家機密的合法途徑？該案顯示出中國刑事訴訟程式的許多漏洞，例如沒有經過司法裁決的長時間拘留公民，獲得證據的方法、限制與律師接近等問題。*另見*Criminal Procedure Law; Press freedom; Secrecy (leaking state secrets).

A journalist imprisoned for reporting on political events. In 2004, the New York Times published an article predicting the retirement of Jiang Zemin from the post of chairman of the Central Military Commission. Ten days later, Zhao Yan, a researcher for the newspaper's Beijing office, was detained and subsequently indicted for internationally leaking state secrets—supposedly the news of Jiang Zemin's formal retirement. Zhao was put in detention for more than fifteen months before the case was transferred to the procuratorate for prosecution. In 2005 he was formally indicted for leaking state secrets and also business fraud, and was scheduled to stand trial within a few months. In 2006, shortly before the visit of President Hu Jintao to the United States, the procurator suddenly notified the court that it was withdrawing the charges. At that time Zhao's release seemed imminent. However, Zhao's detention continued, and the case was reinstated. He was tried, convicted, and sentenced to three years on the fraud charge, with the state secrets charge being dismissed.

Zhao's case raises several important questions about the intersection between freedom of the press in China and the State Secrets Law: what can legitimately be considered state secrets, and what are the appropriate means of gaining access to a state secret? The lengthy pre-trial detention without judicial review, the methods of obtaining evidence, and limited access to counsel all point out flaws in the criminal justice system. *See also* Criminal Procedure Law; Press freedom; Secrecy (leaking state secrets).

Zhao Ziyang 趙紫陽

趙紫陽於1919年生於廣東省。在文化大革命被肅清之前，他擔任廣東省主要負責人。復出以後，他被提拔為四川省委書記，這是中國當時人口最多的省份。1980年，他成為中國的總理。趙紫陽被視為一個改革者，贊成中國加快經濟和技術革新和進步。當胡耀邦被罷黜後，趙紫陽接替他成為中國領導人，直到1989年全國性的學生抗議運動失控，他才被迫辭職。趙紫陽開始被黨內保守派（例如李鵬）批評為對於學生運動過於軟弱，隨後又因為他拒絕支持軍隊鎮壓運動被控「分裂黨」。雖然他從未被正式起訴和定罪，趙紫陽在軟禁中度過了他的餘生，直到2004年去世。*另見*Hu Yaobang; Tiananmen Incident.

Zhao Ziyang was born in Guangdong Province in 1919. He eventually rose to lead Guangdong Province until he was purged during the Cultural Revolution. Upon his rehabilitation, he was promoted from party secretary of Sichuan Province, the then most populous province, to become the premier of China in 1980. A reformer, Zhao advocated economic and technological progress. When Hu Yaobang was forced out of power, Zhao took over as leader and served as general secretary of the party until 1989, when his failure to control student protests throughout the country led to his forced resignation. Party conservatives like Li Peng initially attacked Zhao for being too soft on the student movement, then accused him of splitting the party because he refused to endorse the military crackdown. Though never formally indicted or convicted for any crime, Zhao remained under house arrest until his death in 2004. *See also* Hu Yaobang; Tiananmen Incident.

Zigong Incident 自貢事件

自1990年代開始，四川自貢市為了建設「高科技園區」對農民土地進行徵用。2005年，在補償不足的情況下，農民們開始尋求救濟，均告失敗。多年後，他們多次向地方政府請願，並到北京上訪，同時也向當地法院提起行政訴訟。雖然有最高人民法院的命令，但是他們的訴訟請求仍被省級高等法院駁回。

在過去的幾年中，許多農民的土地遭到徵用，他們沒有收入，其中有些仍還因抗議的行為遭到逮捕和迫害。由於缺乏適當的補償，被強制徵用土地的有些農民甚至沒有基本的生活手段。

人權活動人士指出，自貢事件是這些年來，中國為了發展經濟不公正地強迫徵收土地、強遷公民的典型事例之一。一方面，政府的土地徵用產生了數以

億計的豐厚商業利潤，另一方面，被剝奪土地或者住房的公民卻得到嚴重不足的補償。

A series of compulsory evictions that resulted in citizen protest. Since the 1990s peasants in Sichuan's Zigong City have attempted in vain to seek a remedy for the unjust way in which their farmland was taken from them to make way for a technology zone. Over the course of many years, the peasants have petitioned local agencies and the central government in Beijing. They also lodged an administrative lawsuit against the government; it was rejected. Even with an order from the Supreme People's Court, the provincial high court has refused to accept the petition.

Over the years, many of the peasants' land was taken in a process in which they had no input, and they were sometimes arrested or detained for protesting such actions. In addition, because of the lack of adequate compensation many of the evictees were barely able to survive after their land was taken from them.

Human rights activists cite the Zigong Incident as an example of the unfair compulsory evictions that are taking place to make way for more economic development. The compensation paid to the evictees for these seizures is extremely low, while projects like that in Zigong result in deals that are worth billions of Yuan.

Resources: Human Rights in China, "Peasant Advocates Hospitalized in Clash with Officials," http://www.hrichina.org/public/contents/press?revision_id=22211&item_id=22210; Eva Pils, "Land Disputes and Social Unrest in China: A Case from Sichuan," Columbia Journal of Asian Law (2006), 235-92.

》香港
Hong Kong

Primary Author: James D. Seymour
主要撰寫人： 司馬晉
First Draft Translated by Chong Yiu Kwong
初稿翻譯：莊耀洸

In addition to the works cited, this Dictionary is based upon interviews with various informants, and the following general works: Johannes Chan, H. L. Fu, and Yash Ghai, *Hong Kong's Constitutional Debate: Conflict over Interpretation* (2000); Johannes Chan and Yash Ghai, *The Hong Kong Bill of Rights: A Comparative Approach* (1993); Stephen Davies, *Political Dictionary for Hong Kong* (Hong Kong: Macmillan, 1990); *Hong Kong Legal Dictionary* (2004); William S. Hung, *A New English-Chinese Law Dictionary* (1979); Fu Hualing, Carole J. Petersen and Simon N. M. Young, *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny* (2005); and佳日思, 陳文敏,傅華伶,主編, 居香港引發的憲法爭論 (2000).

Abode 居留

香港有兩種居民：永久性和非永久性。只有前者有居留權，但後者可在定期更新的規限下獲發給香港身分證。維持了七年非永久性居民身份的人，通常有資格申請永久性身份。詳情已在基本法第24條詳細説明。

There are two types of residents in Hong Kong, permanent, and non-permanent. Only the former are deemed to have the right of abode, but the latter are issued Hong Kong Identity Cards, subject to periodic renewal. A person who maintains non-permanent residency for seven years is normally eligible to apply for permanent status. Details are spelled out in Article 24 of the Basic Law (q.v.).

Resource: Johannes Chan and Bart Rwezaura, eds., *Immigration Law in Hong Kong: An Interdisciplinary Study* (2004).

Abortion 墮胎

墮胎在香港是非法的，除非繼續懷孕會危害婦女的心理或生理健康情況，或當胎兒會有嚴重的生理或心理上的缺憾。如殺害可活產的未出生之胎兒（即懷孕28周或以上），此罪行叫殺胎罪（傷害人身罪條例）。但縱使法律如此規定，香港的墮胎率仍然很高，此一事實通常歸因於缺乏學校性教育。

Abortion is illegal in Hong Kong except when where continued pregnancy would endanger the physical or mental health of the woman, or when the child would have serious physical or mental handicap. In the case of an unborn capable of being born alive (i.e., 28 weeks or more into the pregnancy), the offence is termed "child destruction" (Offences Against the Person Ordinance). The law notwithstanding, however, Hong Kong has a high abortion rate, a fact often attributed to the lack of sex education in schools.

Resource: Medical News Today website: http://www.medicalnewstoday.com/medicalnews.php?newsid=11834.

Academic freedom 學術自由

基本法第34條的承諾已基本上得到兑現：「香港居民有進行學術研究、文學藝術創作和其他文化活動的自由」。

The promise in Article 34 of the Basic Law that "Hong Kong residents shall have

freedom to engage in academic research, literary and artistic creation, and other cultural activities" has basically been honoured.

Resource: Yash Ghai, "Academic Freedom on the Line," *South China Morning Post,* 8 February 2006, p. A-13.

Act of state 國家行為

由於基本法第19條已為某些行政行為訂定條文，尤其與國防和外交有關的屬國家行為，法院無權覆核。然而，法院可裁定何種行為屬於國家行為。所有條約及某些協議授權中國武裝部隊在特別行政區（此後稱「特區」）駐紮是國家行為。

As provided for in Article 19 of the Basic Law, certain acts of the executive, particularly pertaining to defence and foreign affairs, are "acts of state" and not reviewable by the courts. The courts may, however, determine whether an action is an act of state. All treaties, and certain agreements authorizing PRC armed forces to be stationed in the Special Administrative Region (SAR), are acts of state.

Adultery 通姦

一名已婚者與第三者之間有性行為。早前的法律容許已婚男士與一名合法妾侍有性行為。*另見*Concubinage.

Sex between a married person and a third party. Although this is technically illegal, sex between a married man and a lawful concubine is still accepted as legal under earlier law. *See also* Concubinage.

Age of consent 同意年齡

滿21歲的人不須家長同意即可結婚。滿16歲的人可合法地進行性交。16歲或以上的同性戀者進行肛交（異性戀者本已合法）的權利在2005年一宗法院案件中已經確立。

A person may marry without parental consent at the age of 21. A person may legally engage in sexual intercourse at the age of 16. The right of homosexuals over 16 to engage in sodomy (already legal for heterosexuals) was established in a 2005 court case.

Resource: Albert Wong, "Sodomy Is No Longer Criminal, Court Rules," *The Standard,* 25 August 2005, http://www.thestandard.com.hk/stdn/std/Metro/GH25Ak01.html. Also: http://lawprofessors.typepad.com/crimprof_blog/2005/08/hong_kong_high_.html.

Aged, *see* Social security.

Alien, *see* Asylum; Abode; Deportation.

Amnesty 特赦

雖然特首可赦免罪犯，基本法並無為特赦訂定條文。

The Basic Law does not provide for amnesty to be granted, though the Chief Executive may pardon criminals.

Ancestor, focal, *see* Tong.

Appeal 上訴

香港法院在審理案件時，若認定基本法關於中央政府的事務或中央和特區關係的條文過於含糊，在對該案件作出不可上訴的終局判決前，應由終審法院尋求全國人民代表大會常務委員會（人大常委）對該條文作解釋。人大常委對解釋基本法享有一般權利（基本法第158條）。在1999年，當終審法院就*吳嘉玲訴入境處處長*的入境案件作出決定後，香港政府要求人大常委行使該權力，隨後人大常委按照香港政府的要求再解釋基本法有關條文。這項權利令人憂慮，倘香港政府不同意判案結果，終審法院的決定不再是「最終」。*另見* Basic Law. The Court of Final Appeal replaced the Britain's Privy Council in 1997.

If, in adjudicating a case, a Hong Kong court finds ambiguity in provisions of the Basic Law concerning affairs of the Central Government or concerning the relationship between the Central Authorities and the Region, before making a final non-appealable ruling the Court of Final Appeal is required to seek interpretation of those provisions from the Standing Committee of the National Peoples' Congress (NPCSC). The NPCSC has a general power of interpretation of the Basic Law (Basic Law, art. 158). In 1999 the Hong Kong government requested that the NPCSC

exercise this power following the Court of Final Appeal's decision in an immigration matter *(Ng Ka-Ling v Director of Immigration).* The NPCSC's subsequent re-interpretation of the relevant provision of the Basic Law along the lines of the Hong Kong government's request led to fears that decisions of the Court of Final Appeal could no longer be considered "final," if the Hong Kong government disagreed with the outcome. *See also* Basic Law.

Resources: Tahirih V. Lee, "Exporting Judicial Review from the United States to China," *Columbia Journal of Asian Law,* Spring-Fall 2005, 19:1, pp. 152-184; Peter Wesley-Smith, "Hong Kong's First Post-1997 Constitutional Crisis," [1999] Lawasia 24.

Arrest 逮捕

人身被初步扣押或限制自由。逮捕必須是基於合理地懷疑已犯下罪行，而非僅有犯罪的可能。被逮捕人士有權知道為何被逮捕，但不履行此通知可在不損權利下於其後得到更正。基本法第28條、人權法第5(1)條，及公民權利和政治權利公約（此後稱「公民權利公約」）第9條均主張人民有不受任意逮捕的權利。*另見*Citizen's arrest.

The initial physical seizure or restraint of a person. It must be done on the basis of a reasonable suspicion that an offence has been committed, not merely if there is a possibility of guilt. An arrested person is entitled to know why he or she has been arrested, but failure to so inform can be subsequently corrected without prejudice. The right not to be arbitrarily arrested is asserted in Article 28 of the Basic law; art. 5(1) of the Bill of Rights Ordinance; and art. 9(1) of the ICCPR. *See also* Citizen's arrest.

"As applied to Hong Kong" 「適用於香港」

兩個國際人權公約只會有保留地施行適用於香港的部份，即以納入香港法律的為限。除聯合王國作出並由中國保留的聲明和保留另有規定外，此但書一般而言被視為顯示這些公約繼續在特區施行。這些保留均影響兩個公約的第1條，即宣稱自決的權利；公民和政治權利國際公約的第25（乙）條，即要求「真正的定期選舉……應是普遍的和平等的……以保證選舉人意志的自由表達」，及多方面的入境事宜，受制於這些保留，公民權利公約是透過基本法和人權法案全面納入香港法律。由於經濟、社會和文化權利國際公約（此後稱「經社文公約」）並未藉立法納入香港法律，看來法院不願以同樣方式履行。

所以，按適用於香港的但書，經社文公約看來沒有公民權利公約那麼有效。另一方面，香港政府給聯合國委員會的報告中，似乎暗示經社文公約與公民權利公約有同樣法律地位。

To the extent that the two international covenants on human rights were incorporated into Hong Kong law, it was with the qualification that they would only be operative "as applied to Hong Kong." This proviso is generally regarded as indicating that these covenants continue to operate in the SAR subject to the declarations and reservations entered by the United Kingdom and preserved by China. These reservations affect Article 1 of both covenants, which assert the right of self-determination; Article 25(b) of the ICCPR, which calls for "genuine periodic elections which shall be by universal and equal suffrage...guaranteeing the free expression of the will of the electors" and various immigration matters. (*See* Vote).

Subject to these reservations, the ICCPR is fully incorporated into Hong Kong law by means of the Basic Law and the Bill of Rights Ordinance (qq.v.) It appears, however, that the courts may be unwilling to enforce ICESCR in the same manner, as it has not been incorporated through legislation. According to the "as applied to Hong Kong" proviso, therefore, ICESCR is arguably less effective than the ICCPR. On the other hand, the Hong Kong government's report to the UN Committee would seem to suggest that ICESCR has the same legal standing as the ICCPR.

Assembly, freedom of 集結自由

集結自由與言論表達、結社、遊行、示威和新聞等自由關係密切。這項權利的範圍不適用於不和平的集結。基本法第27條和香港人權法案條例第17條分別在憲制上和法律上保障集結自由。

政府有積極責任採取合理和適當的措施，使和平示威得以進行。法院必須對此權利予以寬鬆方式解釋，以徹底體現個人權利。另一方面，對權利的限制，必須給予狹義解釋。

此權利的行使可受制於公民權利公約第21條所列出的限制。它們是兩個檢驗標準：法律必須明確和必需。在*梁國雄及其他訴香港特區*的案例中，公安法中公共秩序 (ordre public [法文]) 的概念被裁定為太空泛，不能通過法律必須明確的檢驗標準，這方面因而被宣告違憲。法院的解決方法是將公眾秩序（在「法律與秩序上的涵義」）從公共秩序 (ordre public) 中劃分出來。經劃分後，警務處長根據公安法規管理集結的酌情權被裁斷為符合上述兩個檢驗標準。

政治示威十分常見。最顯著的是2003年7月1日的示威迫使政府擱置就基本法第23條訂立安全法（*見*National security）。警方估計有三十五萬名群眾，有其他的估計高達一百萬人。（註：上述「」內的文字表示該翻譯是根據基本法的條文、香港法例的中文版作出）。

Freedom of assembly is closely associated with the freedom of speech, expression, association, procession, demonstration and media. The scope of this right does not extend to an assembly that is not peaceful. Article 27 of the Basic Law and art. 17 of the Hong Kong Bill of Rights Ordinance (q.v.) guarantee the right of assembly at the constitutional and statutory levels respectively.

The Government acknowledges that it has a positive duty to take reasonable and appropriate measures to enable peaceful demonstrations to take place. The courts have taken the position that there is a common law obligation to give such a right a "generous interpretation" so as to give individuals its full measure. On the other hand, restrictions on the right must be narrowly interpreted.

The exercise of this right may be subject to restrictions as set out in art. 21 of the ICCPR. They are two tests: legal certainty and necessity. In the case of *Leung Kwok Hung* & ors v *HKSAR*, the notion of "public order *(ordre public)*" in the Public Order Ordinance was found to be too vague to pass the legal certainty test, and this aspect was thus declared unconstitutional. The court's solution was to sever "public order" (in the law-and-order sense) from "public order *(ordre public)*." After the severance, the discretion of the Commissioner of Police to regulate assemblies under the Public Order Ordinance was found to satisfy both the above tests.

Political demonstrations are common. Most notable was that of 1 July 2003, which forced the government to shelve plans to institute security legislation based on Article 23 of the Basic Law (*see* National security). Police estimated the crowd at 350,000; other estimates ran as high as a million.

Resource: Ravina Shamdasani, "Freedom of Assembly Upheld," *South China Morning Post,* 9 July 2005, p. A-7; Agnes S. Ku, "Negotiating the Space of Civil Autonomy in Hong Kong: Power, Discourses and Dramaturgical Representation, *China Quarterly,* 2004, No 179, pp.647-664.

Association, freedom of 結社自由

結社自由的法律根據基本法第27條和人權法案第18條。這可理解基於個人聚集及追尋共同利益的權利。普通法確基於為任何目的而和平聚集的權利，只受制於公共安寧和國家安全。基本法第23條要求立法以「禁止外國的政治性組織或團體在特區進行政治活動，禁止特區的政治性組織或團體與外國的政治性組織或團體建立聯繫。」

The legal basis of freedom of association rests upon Article 27 of the Basic Law, and Article 18 of the Bill of Rights Ordinance (qq.v.). It is understood to mean the right of individuals to gather and pursue common interests. The common law (q.v.) recognizes the right to gather peacefully for any purpose, subject only to considerations of public safety and national security (q.v.). Article 23 of the Basic Law requires the enactment of laws "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."

Resource: Agnes S. Ku, "Negotiating the Space of Civil Autonomy in Hong Kong: Power, Discourses and Dramaturgical Representation, *China Quarterly,* 2004, No 179, pp.647-664.

Asylum 收容

庇護所或保護。更具體而言，對於誰是難民及其所以有權受到收容的國際定義在1951年聯合國關於難民地位的公約及其1967年，關於難民地位的議定書均有列出。一個人「如有正當理由畏懼由於種族、宗教、國籍、屬於某一社會團體或具有某種政治見解的原因留在其本國之外，並且由於此項畏懼而不能或不願受該國保護的人」一個人如符合定義即為難民，不需由國家或其代理所正式裁定。聯合國難民事務高級專員辦事處在鑒定難民地位的程序和標準手冊（日內瓦，1979）確認：「一個人一旦符合1951年公約定義中的標準即屬難民。這必然會發生在其難民地位被正式裁定之前。確認其難民地位並不使他成為難民，而是宣稱他為難民，他不是因為確認而成為難民，而是因他是難民而被確認。」

目前，並無國內法規管轄難民地位的裁定(RSD)，這留待聯合國難民事務高級專員辦事處去決定。這已引起有關裁定難民地位過程的公正性的重大關注，因為缺乏詳細書面的拒絕理由交給尋求庇護者，缺乏獨立的上訴程序，缺乏法

律代表的或可由法院覆核的條文。缺乏本地立法規範尋求收容者，亦導致有關全面支援（有權取得住宿、食物、醫療援助之類）、錯遭入境罪起訴以及有問題的扣留政策等。

香港特區的收容法律正引起更多的國際批評，包括聯合國經濟、社會和文化權利的委員會。「委員會注意到香港特區沒有一套清晰的難民收容政策；雖然中國是1951年難民地位公約及該公約1967年議定書的締約國，但有關公約和議定書卻沒有引申應用於香港特區。對於香港特區作為締約國主權下領土而未能及早把該公約及議定書引申應用，委員會深感遺憾。」（2005年5月13日聲明，第80段）。

Sanctuary or protection. More specifically, the international definition of who is a refugee and therefore entitled to asylum is set out in the 1951 United Nations Convention relating to the Status of Refugees, and its 1967 Protocol: A person is a refugee if, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. A person becomes a refugee upon meeting the definition, and not from the formal determination by a state or agency. The UNHCR in its *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, September 1979) affirms: "A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee, but declares him to be one. He does not become a refugee because of recognition, but is Recognized because he is a refugee."

At present there is no domestic legislation governing refugee status determination (RSD), which leaves the decision making with the office of the UNHCR. This has led to serious concerns with respect to the fairness of the RSD process since there are no detailed written reasons for refusal provided to the asylum-seeker, no independent appeal procedure and no provision for legal representation or access to review by the courts. The lack of domestic legislation governing asylum-seekers and refugees has also resulted in problems with respect to comprehensive support (entitlement to accommodation, food, medical assistance, etc.) and arguably wrongful prosecutions for immigration offences as well as a questionable detention policy.

The state of asylum law in the Hong Kong SAR is attracting more international criticism, including within the UN Committee on Economic, Social and Cultural Rights. "The Committee is concerned that the HKSAR〔Hong Kong Special Administrative Region〕 lacks a clear asylum policy and that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of the HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction" (13 May 2005 statement, paragraph 80).

Autonomy 自治

基本法第1條規定香港特區是中華人民共和國不可分離的部分。第2條授權特區實行高度自治，享有行政管理權、立法權和獨立的司法權。對於香港的法律和政治前景而言，決定「一國兩制」模式（鄧小平發明）下香港自治的性質和程度最富爭議性。*另見*Self-determination.

Article 1 of the Basic Law provides that the HKSAR is an inalienable part of the People's Republic of China. Article 2 authorises the region "to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power." Determining the nature and extent of Hong Kong's autonomy under this so-called "one-country, two-systems" formula (devised by Deng Xiaoping) is the most contentious issue in Hong Kong's legal and political future. *See also* Self-determination.

參考資料 / *Resources:* 佳日思、陳文敏、傅華伶主編，*居香港引發的憲法爭論*，2000; Johannes M. M. Chan, H. L. Fu, and Yash Ghai, eds., *Hong Kong's Constitutional Debate: Conflict over Interpretation* (2002); Albert H. Y. Chen, "The Concept of 'One Country, Two Systems' and Its Application to Hong Kong, Taiwan and Macao," *Macao Law Journal,* 2002, pp. 227-286.

Bail 保釋

按人權法案第5(3)條，屬刑事罪行的被告人有權於合理時間內獲得傳訊或保釋外出候傳。

According to Article 5(3) of the Bill of Rights Ordinance (q.v.), criminal defendants are entitled to trial within a reasonable time or to be released on bail pending trial. If bail is refused, the defendant may appeal the point through the courts.

Basic Law 基本法

通常被稱為香港的「小憲法」：自香港由英國移交給中國（1997年7月1日起）後開始生效。它是由親北京人士所草擬而很少本地民主的參與。不同的章次涵蓋中央與香港特區的關係，居民的基本權利和義務，政治體制及經濟等。基本法委員會由六名港人和六名國內人士所組成，其存在是期望（按姬鵬飛在1990年所說）能協助北京充份了解香港各界人士的意見，然而，實際上很少達到此一目標。

雖然香港法院可自行解釋基本法中有關特區自治範圍以內的條文，第158條賦予全國人民代表大會常務委員會（此後稱「人大常委」）全權解釋基本法，縱使曾有承諾只會在例外情況下採用。在某些情況下，此人大常委釋法是強制性的（*見*基本法第168條）。截至2006年6月，已有三次人大常委釋法：1999年在香港行政長官的要求下就居港權；2004年由中央政府主動地就選舉改革及2005年（表面上由香港行政長官要求，雖有評論員認為由北京主動）就特區行政長官的任期。這些先例顯示人大常委可在沒有案件的情況下釋法，及可被中央政府用於迫使香港作出限制或承擔，無論基本法有無明確列出。

Often referred to as Hong Kong's "mini-constitution," the Basic Law has been in effect since the handover from Britain to China (1 July 1997). It was drawn up by pro-Beijing elements with little local democratic input. The various chapters cover the relationship between the central authorities and the Hong Kong SAR, the Fundamental Rights and Duties of Residents, Political Structure, the Economy, etc. A Basic Law Committee, comprised of six Hongkongers and six Mainlanders, exists supposedly to (as Ji Pengfei said in 1990) help Beijing "heed fully the opinions of the people from all walks of life in Hong Kong," but in the event it has been active rarely and basically has served as a mouthpiece for Beijing.

Although Hong Kong courts may interpret on their own provisions of the Basic Law which are within the limits of the autonomy of the Region, Article 158 vests a plenary power of interpretation of the Basic Law in the Standing Committee of the National Peoples' Congress (NPCSC), though there was a pledge that NPC-SC interpretations would only be resorted to in exceptional circumstances. Such NPCSC interpretation is mandatory under certain circumstances (*see* Article 168 of the Basic Law). As of June 2006, there have been three NPCSC interpretations: 1999 on the right of abode (at the request of the Hong Kong Chief Executive), 2004 on electoral reform (initiated by central government), and 2005 on the SAR Chief Executive's term of office (on the surface this was at the request of the Hong Kong Chief Executive, though some observers believe that the initiative came from Beijing). These precedents indicated that a NPCSC interpretation may be resorted to without any court cases involved, and can be used by the central government to force on Hong Kong restrictions or obligations, whether or not explicit in the Basic Law.

Resource: Text of Basic Law available at http://www.info.gov.hk/basic_law/fulltext/. For drafting history, *see* Basic Law Drafting History Online (Hong Kong University's Centre for Comparative and Public Law), http://sunzi1.lib.hku.hk/bldho/.

Belief, freedom of 信仰自由

通常指宗教自由。基本法第32條宣稱人不單有宗教自由，亦有「良心自由」。不過，關於以此為標的的相關法律（人權法案條例、公民權利公約和基本法），容許對不同信仰作不同處理，法律範圍相對混淆。

This term generally, though not invariably, refers to freedom of religion (q.v.). Article 32 of the Basic Law asserts that people not only have freedom of religion but also "freedom of conscience." However, the various laws bearing on the subject (Bill of Rights Ordinance, ICCPR, and Basic Law) are a bit of a hodgepodge, allowing different treatment for different beliefs, so this is a confusing area of the law.

Bigamy 重婚

第二的、同時的婚姻被視為屬刑事罪行而無效。*另見*Concubinage.

Second simultaneous marriages are considered criminal and void. *See also* Concubinage.

Bilingualism, *see* Language.

Bill of rights 人權法案

和香港人權法案條例相較, 前者是權利的聲明，後者由條例第8條組成。這是在1990年草擬和在1991年通過。立法是為了將先前的權利條文化，包括為公民與政治權利國際公約制訂條文。它沒有涵蓋經社文公約的權利，當時認為經社文公約的條文與公民權利公約在性質上有分別。一般而言，那些權利不容易由法院履行。不過，聯合國（尤其聯合國經社文權利委員會）流行的觀點是這些權利是可以審理的。

The Bill of Rights is associated with the Hong Kong Bill of Rights Ordinance. The former is a statement of rights; it comprises Section 8 of the Ordinance. These were drawn up in 1990 and adopted in 1991 in an effort to codify pre-existing rights including those provided for in the International Covenant on Civil and Political Rights. It does not cover the rights in the International Covenant on Economic, Social and Cultural Rights, because (it was explained at the time): "The provisions of the ICESCR are different in nature from those in the ICCPR. In general, they are not rights that can easily be enforced in the courts." *(Commentary on the Draft Hong Kong Bill of Rights Ordinance 1990,* p. 2.) However, the prevalent view of the United Nations (especially of the Committee on Economic, Social and Cultural Rights) is that these rights are justifiable.

Resources: Johannes Chan and Yash Ghai, eds., *The Hong Kong Bill of Rights: A Comparative Approach* (1993); text of ordinance available in Chinese and English at the Bilingual Laws Information System, www.legislation.gov.hk/index.htm.

Breath test 呼氣測試

根據香港道路交通條例第39條，當警察合理懷疑移動車輛的司機體內存在酒精，或意外發生時，可要求司機作呼氣測試。

According to section 39 of the Road Traffic Ordinance, the police may require breath tests of drivers if there is reasonable cause to suspect that the driver had alcohol in his/her body when the vehicle was in motion, or there has been in an accident.

British Nationals (Overseas) passports, *see* Citizenship.

Capital punishment, *see* Penalties, criminal.

Children's rights 兒童權利

人權法案條例第20條規定「所有兒童有權享受家庭、社會及國家為其未成年身分給予之必需保護措施……」私人設施中的幼兒服務由幼兒服務條例規管。虐兒，包括心理上的殘酷對待，輕微或猥褻侵犯，性關係（包括同意）和故意忽略均是罪行。學校和日間照顧中心禁止體罰，但家長在家體罰十分普遍且不受禁止。政府向貧窮兒童提供經費，但不足夠。

公民權利公約和經社文公約均保護各種兒童權利。兒童權利倡議者爭辯說那些權利已透過基本法第39條納入本地法律之中。*另見*Prisons.

Article 20 of the Bill of Rights Ordinance asserts that "Every child shall have... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." Child care in private facilities is governed by the Child Care Services Ordinance. Child abuse, including psychological cruelty, minor or indecent assaults, sexual relations (including consensual) and wilful neglect are all crimes. Corporal punishment is banned in schools and day-care centres, but not in the home by parents, where it is common. The government funds education for poor children, but inadequately.

Both the ICCPR and the ICESRC enshrine various rights for children. Child rights advocates argue that they are thus incorporated into domestic law by virtue of art. 39 of the Basic Law. *See* also Prisons.

*Resources:*Jasmine Wang, "Nearly Half of Parents Hit Children, Study Shows; High Use of Corporal Punishment in the Home Spurs Call for Action," *South China Morning Post,* 2 March 2006; ---, "Child Welfare Miserable, says Lobby; School Costs Far Outweigh Payments, Concern Group Claims," *South China Morning Post,* 28 February 2006, p. C4.

Chinese customary law 中國習慣法

傳統上適用於本地華人的法律，是香港法律的構成部分，即使這些法律可能空泛和不成文（此情況由專家證人在法院中確立）。更狹義而言，此詞語指1843年之前所適用的法律和記載於大清律例的法律。它們一般與土地、家庭事務和解決爭議有關。*另見*Indigenous villager.

Laws which traditionally applied to local Chinese comprise part of the law of Hong Kong even if these laws may be vague and unwritten (in which case it is established in court by expert witnesses). More narrowly, the term refers to law applicable prior to 1843 and recorded in the Da Qing lu li (Qing code). They generally pertain to land, family matters, and dispute resolution. *See also* Indigenous villager.

Circumcision, female 割除陰蒂

這可能被視為攻擊，所以是違法的，縱使此做法並無被法律明確地禁止。

This would probably be considered an assault, and therefore unlawful, even though the practice is not specifically proscribed by law.

Citizen's arrest 公民逮捕

一名公民可在沒有手令的情況下逮捕一個他合理相信已犯下嚴重罪行的人，他可用足夠（但最低程度）的武力以 防止該人逃跑。

A citizen may, without warrant, arrest a person reasonably believed to have committed a serious crime. Sufficient (but minimal) force to prevent escape may be used.

Citizenship 公民身份

根據中國法律，所有在香港的中國人會被視為中國國民和公民，他們非海外華人，中國不承認雙重國籍，即使外國法律容許一個人可取得中國國籍而毋須放棄外國國籍。公民（永久性居民有居留權）通常有資格申請香港護照，但有些則持有英國公民（海外）護照。然而這些人是中國國民，無權在香港得到英國領事館保護。中國官方的看法是這些證件是旅行證件而已，並不是國籍和公民地位的證明。只有香港的中國公民（包括已歸化的前外籍人士）有權申請香港護照（這是中國護照的一種）。

Under Chinese law, all Chinese in Hong Kong are considered Chinese nationals and citizens; they are not overseas Chinese. China does not recognize dual nationality, though if foreign law permits it, a person may acquire Chinese citizenship without discarding foreign citizenship. Citizens (permanent residents with right of abode) are normally eligible for Hong Kong passports, but some hold "British Nationals

(Overseas)" passports. Such people are nonetheless Chinese nationals, and are not entitled to British consular protection in Hong Kong. The official Chinese view is that these documents are travel documents only, not proof of nationality or citizenship. Only Chinese residents of Hong Kong (including naturalized former aliens) are entitled to Hong Kong passports (which are a kind of Chinese passport).

Civil Human Rights Front 民間人權陣線

曾組織2003年7月1日的示威。*另見* Assembly, Freedom of.

Organized the 1 July 2003 demonstrations. *See also* Assembly, Freedom of.

Common law 普通法

在香港的脈絡中，普通法一詞採英國的用法，指透過司法先例和再解釋發展出來的法律。因此，意指法律由法官發現，而非由立法制訂。此制度在英語世界多被採用。在特區，由基本法第8條和84條，及香港回歸條例（1997年，第110號）所訂定，此語詞特別指1997年移交前已確立的法律（包括衡平法），雖然法官可參考其他地區的司法判例。

In the Hong Kong context, the term "common law" is used in the British sense, referring to law that has evolved through judicial precedent and reinterpretation. Thus, it refers to law "found" by judges, rather than enacted as legislation. This system is followed in much of the English-speaking world. In the SAR, as provided for in Articles 8 and 84 of the Basic Law, and also in the Hong Kong Reunification Ordinance (1997, no. 110), the term refers specifically to such law (including rules of equity, q.v.) as established prior to the 1997 handover, although judges may refer to other jurisdictions for precedents as well.

Communication 通訊

基本法第30條保障每個人（包括非居民）有權自由公開通訊，但當有保安利益的需要時，可審查通訊。*另見* Search and surreillauce.

The right to communicate freely and openly is asserted for everyone (including non-residents) in Article 30 of the Basic Law, which, however, provides for the inspection of communications when (subject to certain ground rules) the interests of security are deemed to so require. *See also* Search and surveillance.

Concubinage 妾侍制度

或「夫妾關係」。香港只承認在1971年10月7日前締結的夫妾關係，該安排必須為男伴的妻子所接受。此關係下的兒童被視為婚生。

Hong Kong recognizes concubinage (also known as, or Union of concubinage) only in the case of unions entered into prior to 7 October 1971. The arrangement must have been accepted by the wife of the male partner. Children of such unions are considered legitimate.

Confessions 供認

在刑事案件中，供認必須是自願的，而不是基於威嚇或期望得到好處。這必須是在說話或保持沉默的自由選擇中作出，若供認並非出於本身的意識，不可作為呈堂證據。警務人員的訊問由「向疑犯發問和錄取口供的規則和指引」所指引，而法官有酌情權不接納在違反該規則下所得的供認，即使是自願作出的供認。

In criminal cases, confessions must be voluntary, not based on intimidation or hope of advantage. It must be made in the context of a free choice to speak or remain silent. A confession made without volition is not admissible as evidence in court. Police interrogations are to be guided by the "Rules and Directions for the Questioning of Suspects and the Taking of Statements," and judges have discretion to disallow even voluntary confessions made after those rules have been violated.

Conscience, freedom of, *see* Belief.

Consumer protection 消費者保護

在民事侵權法中，一受屈消費者的主要追索權。香港並未發展出蓬勃的消費者運動。至於環保團體如綠色和平組織在食品中使用殺蟲藥或化學品的問題上就相當活躍。

An aggrieved consumer's main recourse is under tort law. There is no well-developed consumer movement. Environmental organizations, such as Greenpeace are active on the issue of pesticides and other chemicals in food.

Resource: Chandra Wong, "Banned Pesticides in Vegetables: Greenpeace found excessive levels of DDT and other chemicals in produce sold at supermarkets," *South China Morning Post,* 18 April 2006, p. C-1.

Contraception, *see* Family planning.

Court of Final Appeal 終審法院

此法院的司法管轄權由基本法（第82條）及由立法會所通過的各種立法所授予，值得注意的是香港終審法院條例所授予。終院無司法管轄權覆核任何國家行為。

This court's jurisdiction is conferred by the Basic Law (art. 82) and various legislation passed by the Legislative Council, notably the Hong Kong Court of Final Appeal Ordinance. The CFA has no jurisdiction to review any act of state (q.v.).

Cultural rights, *see* Bill of rights.

Customary law, *see* Chinese customary law.

Death penalty, *see* Penalties, criminal.

Defamation 誹謗

誹謗主要有兩種：短暫形式誹謗（口頭）和永久形式誹謗（書面）。這些爭議點詳見誹謗條例。短暫形式誹謗一般而言屬民事侵權（毋須證明意圖），但永久形式誹謗有時會以刑事案件方式處理。言論自由不能用以來為誹謗指控作辯護。

There are two main types of defamation: slander (oral) and libel (written). These issues are detailed in the Defamation Ordinance. Slander is generally a tort (intent need not be shown), but libel can sometimes be dealt with as a criminal matter. Freedom of speech is not a defence against a charge of defamation.

Demonstration, *see* Association; Assembly.

Deportation 遞解離境

入境條例第20條規定，下列入境者可遞解離境：當入境者並無獲得居留權或永久性居民地位而已干犯嚴重罪行，或行政長官裁定遞解出境是合乎公共利益的。在沒有引渡的法律根據下，遞解出境可代替引渡，即使這會導致遭遞解者在海外被指控。

Section 20 of the Immigration Ordinance provides for the deportation of an immigrant (a person who has not yet acquired the right of abode or the status of permanent resident) who has committed a serious crime or when the Chief Executive determines that deportation would be in the public interest. Such a deportation may be used in lieu of extradition where there is no legal basis for extradition (q.v.), even if it would result in prosecution abroad.

Detention, *see* Arrest; False imprisonment.

Disabled, *see* Handicapped.

Discrimination, *see* Equal opportunity.

Disorderly conduct 擾亂秩序行為

根據公安條例，作出騷擾他人或破壞社會安寧的行為屬於罪行。

Under the Public Order Ordinance, it is an offence to engage in behaviour which disturbs others or disturbs the peace.

District Councils, *see* Vote.

Drugs 藥物

種植和販售大麻及傷害性更強的藥品是非法的。

The cultivation and sale of cannabis (marijuana) and harder drugs is illegal.

Dual citizenship; Dual nationality, *see* Citizenship.

Economic rights, *see* Bill of rights.

Education, *see* Children's rights.

Elderly, *see* Social security.

Elections, *see* Vote.

Emergency powers 緊急權力

按基本法第18條，人大常委可宣布戰爭狀態，或因香港特區發生特區政府不能控制的危及國家統一或安全的動亂時，可宣布特區進入緊急狀態。中央政府可發布命令將有關全國性法律在特區實施。這假設為在香港宣布軍事法提供了法律根據。再者，香港有緊急情況或規例條例，行政長官會同行政會議以此為依據而宣布緊急情況或發生危害公安，並可基於公共利益訂立規例。此法例曾引來聯合國人權委員會的批評。

According to art. 18 of the Basic Law, the Standing Committee of the National People's Congress can declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the SAR, can declare that the Region is in a state of emergency. The Central Government may then issue an order applying the relevant national laws in the Region. This presumably would provide the legal basis for declaring martial law in Hong Kong. In addition, Hong Kong has an Emergency Regulations Ordinance, pursuant to which the Chief Executive in Council can declare an emergency or that a public danger exists, and thereupon make any regulations deemed to be in the public interest. The ordinance has come in for criticism from the UN Human Rights Committee.

Emigration, *see* Movement, freedom of.

Employment law, *see* Labour.

Entrapment 陷入圈套

若非被執法機構誘使犯罪，則不會犯罪，並不是有效的抗辯理由。不過，法院可根據不同環境考慮不接納陷入圈套所得的證據或減輕刑罰。

It is not a valid defence to argue that one was induced by law enforcement authorities to commit a crime which would not otherwise have been committed. However, under various circumstances a court may take evidence of entrapment into consideration for purposes of disallowing evidence or mitigating sentence.

Environmental rights 環境權

香港有嚴重的汙染，部份受到邊境以北所影響，部份則源於本地。參與環境保護的組織包括Asia XPAT、思匯、長春社、生態教育及資源中心、香港地球之友、綠色和平、綠色力量、嘉道理農場暨植物園、世界自然基金會及不同的大學校園組織。不過，這些組織對於被商界和親北京利益所主導的政府影響很小。當國際企業開始投訴和威脅要撤走，政府確有探索改善空氣品質的不同辦法，在2006年提出了23個改善空氣質素的方案。

Hong Kong has serious pollution, partly inflicted from north of the border, and partly of local origin. Organizations involved in environmental protection include AsiaXPAT, Civic Exchange, Conservancy Association, Eco-Education and Resources Centre, Friends of the Earth, Greenpeace, Green Power, Kadoorie Farm and Botanic Garden, World Wildlife Fund, and various university campus organizations. However, such organizations have little impact on the government, which is dominated by business and pro-Beijing interests. When international corporations started complaining and threatening to relocate, the government did explore ways of improving air quality. A Council for Sustainable Development was appointed, and in 2006 it came up with 23 options for improving air quality.

Resource: Cheung Chi-fai, "HK's Hard and Soft Options for Clearing the Air," *South China Morning Post*, 2 May 2006, p. A-1.

Equal Opportunities Commission 平等機會委員會

平機會是在1996年所成立的法定機構，它在香港落實性別歧視條例、殘疾歧視條例和家庭崗位歧視條例。雖然平機會已在法院確立數個重要司法案例，但大部份收到的投訴並沒有興訟。更確切地說，它們大多透過保密的調查調解

來解決。很多評論指出平等機會審裁處是落實條例更有效的方法。再者，平機會的獨立性備受質疑，減弱公眾對它作為政府監督者角色的信心。*另見* Equality

The EOC is a statutory body set up in 1996 to implement the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance in Hong Kong. Although the Commission has established several important precedents in the courts, the majority of complaints it has received have not been litigated. Rather, they are resolved through a largely confidential process of investigation and conciliation. Many commentators argue that an equal opportunities tribunal would be a more effective means of implementing the ordinances. Furthermore, the independence of the EOC has been called into question, undermining confidence in its role as a government watchdog. *See also* Equality.

Resources: www.eoc.org.hk; Carole J. Petersen, Janice Fong, and Gabrielle Rush, *Enforcing Equal Opportunities: Investigation and Conciliation of Discrimination Complaints in Hong Kong* (2003).

Equality 平等

人權法案第1條規定「人人得享受人權法案所確認之權利，無分種族、膚色、性別、語言、宗教、政見或其他主張、民族本源或社會階級、財產、出生或其他身份等等。」及「人權法案所載一切公民及政治權利之享受，男女權利，一律平等。」然而，在招聘方面的性別差異對待，很多時候是由政府所強化的。

關於經濟平等，有人估計中產階級占人口的半數，但此比重正在縮減。最貧窮和最富有的距離越來越大。在2005年， 8.6%人口的收入少於4000港元（1995年只是5.5%）。

香港最大的不平等問題在於投票制度。*另見*Vote.

一條禁止種族歧視的條例草案2006年6月正由民政事務局草擬。它受到商界的一些阻撓。*另見* Sexual minorities; Equal Opportunities Commission.

Article 1 of the Bill of Rights asserts: "The rights Recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" and that "Men and women shall have an equal right to the enjoyment of all civil and political rights set forth in this Bill of Rights." There is, however, gender distinction in hiring, much of it fostered by the government.

Regarding economic equality, the number of people one might classify as "middle class" makes up about half of the population, but the portion has been shrinking. The poorest and richest segments have been growing; 8.6% made less than HK$4,000 a month in 2005 (up from 5.5% in 1995).

Hong Kong's greatest inequality problem lies in the voting system. *See also* Vote.

A bill that would ban racial discrimination is currently (June 2006) being drafted by the Home Affairs Bureau; it is meeting with some resistance from the business community. *See also* Sexual minorities; Equal Opportunities Commission.

Resources: Hong Kong Human Rights Monitor, "Response to the Government's Consultation Document on Race Discrimination Legislation," http://www.hkhrm.org.hk/english/reports/docs/2004RDO.doc (2004); ---, "Shadow Report to the United Nations Committee on the Elimination of Racial Discrimination Regarding the Report of the Hong Kong Special Administrative Region of the People's Republic of China," July 2001, http://www.hkhrm.org.hk/english/reports/docs/2001CERDfinal.rtf; Eliza Wing-Yee Lee, ed., *Gender and Change in Hong Kong: Globalization, Postcolonialism, and Chinese Patriarchy* (2003); Ravina Shamdasana, "First Oppose 'Meddling' Race Bill," *South China Morning Post,* 13 May 2006, p. A-3; Nora Tong, "Integration Fails Pupils With Special Needs: Poll," *South China Morning Post,* 20 April 2006, p. C-4; Jake van der Kamp, "A Recovery, Yes, But Growing Wealth Gap Shows Not All Share Benefits," *South China Morning Post,* 9 May 2006, p. B-16; Zhao Xiaobin, Zhang Li, and Sit Tak O Kelvin, "Income Inequalities under Economic Restructuring in Hong Kong," *Asian Survey,* Jay 2004, p. 442-473.

Equity 衡平法

一個旨在為普通法引入更大公平性元素的法律體系。自1870年起，普通法和衡平法原則已經融合。

A system of law which was designed to introduce a greater element of fairness into the common law (q.v.). Since the 1870s the common law and principles of equity have been merged.

Euthanasia 安樂死

不合法，即使該人同意自己被殺，並不是檢控謀殺的合法抗辯理由。*另見* Suicide.

Not legal. Even if a person consents to their own death, this is not a legal defence against a charge of murder. *See also* Suicide.

Evidentiary standard, *see* Trial.

Expression, freedom of 表達自由

基本法第27條規定「香港居民享有言論、新聞、出版的自由…遊行、示威的自由」。再者，第39條將兩個國際人權公約適用於香港的納入特區法律。香港人權法案條例闡述這些權利。

法院只在下列情況容許限制表達自由：當有必要尊重他人權利和名譽、保障國家安全或公共秩序、保障公共衛生或風化。否則，應寬鬆地解釋表達自由，以體現以語言、出版物、藝術或任何方式尋求、接受及傳播各種消息及思想不分疆界的自由。

一般而言，主管當局是遵守這些法律的。不過，對資訊自由有不同的阻礙。文字媒界對廣告商有很大的依賴，而不刊出會觸怒中國領導人的新聞。再者，若冒險進入內地的香港記者蒐集豐富的資料或能深入蒐集新聞，會面對逮捕和長期監禁。

侮辱中國國旗的刑事成份已被終審法院（在*吳恭劭案*）作出裁決。有些觀點會在國內導致立即逮捕的，在香港卻是容許的（*另見*Religion），但在香港支持任何台灣或西藏的獨立運動，很可能不會有很大的進展。

大概由於缺乏認同或害怕遭報復，香港人傾向在這些問題上保持沉默。

資訊自由的權利在1992年一宗案件*(Parry & Anor v. Bentley & Anor)*中得以維持，但1997年後尚未經全面的測試。官方傾向嚴格地處理。政府很少舉辦新聞發布會，而經常將消息洩露給屬意的記者，這保留了否認的可能性，將正式公布和謠言的界線變得模糊。

禁止不禮貌的規例視為行為問題及因此不符表達自由的保障。*另見* Academic freedom;香港電台RTHK.

Article 27 of the Basic Law asserts that "Hong Kong residents shall have freedom of speech, of the press and of publication, ... of procession and of demonstration." Furthermore, Article 39 incorporates the two international human rights covenants (q.v.) ("as applied to Hong Kong," q.v.) into the law of the SAR. The Hong Kong Bill of Rights Ordinance (q.v.) elaborates on these rights.

The courts allow limitations on freedom of expression only when necessary to respect the rights or reputations of others, for protection of national security or public order, public health or morals. Otherwise, freedom of expression is interpreted broadly, embodying the right to use any medium to seek, receive and impart information and ideas (regardless of frontiers) orally and in print and art.

In general, these laws are adhered to by the authorities. However, there are various obstructions to freedom of information. The print media are heavily leaned on by advertisers not to publish news offensive to China's leaders. Furthermore, Hong Kong journalists who venture into the mainland are subject to arrest and long prison terms if they become too resourceful or penetrating in gathering news.

The criminality of desecration of the Chinese flag has been upheld by the Court of Final Appeal (*Ng Kung Siu case*).

Some views which would result in immediate imprisonment in the mainland are allowed in Hong Kong. *See* Religion. But it is likely that any movement in support of Taiwan or Tibetan (much less Hong Kong) independence would not be allowed to advance very far. Hongkongers have tended to remain quiet on such issues, perhaps as much out of lack of approval as fear of reprisals.

The right to freedom of information was upheld in a 1992 court case *Parry & Anor v Bentley & Anor,* but has not been fully tested since 1997. Official news tends to be handled tightly. Government press conferences are rare, with information usually being leaked to preferred journalists in private briefings. This preserves the possibility of deniability, and blurs the distinction between authoritative announcements and rumour.

Rules forbidding impoliteness are deemed behavioural matters and thus not inconsistent with guarantees of free expression. *See also* Academic Freedom; RTHK.

Extradition 引渡

將疑犯移交其他司法管轄區由雙邊引渡條約（例如與美國的文書在1998年生效）及逃犯條例規管。一般而言，一個人不能被引渡，除非有證據顯示他在特區做出該行為也屬犯罪。作為國際協議的引渡條約，必須經北京政府批准。

The delivery of suspects to other jurisdictions is governed by bilateral extradition treaties (such as an instrument with the United States which came into effect in 1998) and by the Fugitive Offenders Ordinance. In general, a person cannot be extradited unless there is evidence of what would be a crime if committed in the

SAR. Extradition treaties, being international agreements, must be approved by the central government in Beijing.

Resource: Janice Brabyn, "Extradition and the SARs After Reunification," *Macau Law Journal,* 2002, pp. 79-92.

False imprisonment 非法禁錮

故意束縛或扣留（即使非暴力地），也屬民事侵權。法律的定義為某種禁閉或完全剝奪自由，無論時間長短。

It is a tort (q.v.) to wilfully restrain and detain (even non-violently). The legal definition requires some kind of confinement, and complete deprivation of liberty, for however short a time.

Falun Gong（法輪功）, *see* Religion.

Family planning 家庭計劃

普通法確認不生育的權利。基本法第37條宣稱「香港居民的婚姻自由和自願生育的權利受法律保護。」

A common law right not to procreate is recognized. Furthermore, art. 37 of the Basic Law asserts that "the freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law."

Franchise, *see* Vote.

Functional constituencies, *see* Vote.

Gay rights, *see* Sexual minorities.

Homosexuality, *see* Sexual minorities.

Hong Kong Human Rights Monitor

香港人權監察

此非政府組織在1995年成立，旨在法律和日常生活方面促進香港的人權保障。網址：www.hkhrm.org.hk.

Established in 1995, this NGO "aims to promote better human rights protection in Hong Kong, both in terms of law and of practical daily life." Website: www.hkhrm.org.hk.

Hong Kong Journalists Association

香港記者協會

為促進新聞自由而工作。網址：www.hkja.org.hk/c_index.htm.

Works to promote freedom of the press.Website:www.hkja.org.hk/.

Human rights education in Hong Kong 人權教育

不論在學校或其他場合，人權教育都被視為公民教育的一環。

校園內的公民教育歷經了幾個階段的發展。在1984年以前，教育強調「去政治化」，並未提到任何與人權相關的內容。1980年代中期，人權教育正式納入學校課程中，成為公民教育的一個重點。這個發展與政治情勢息息相關，包括香港主權回歸中國大陸，以及幾項重要的政治事件。1997年後，教育再次「去政治化」，對國家認同的強調取代了人權教育。不過，通識教育將在2009年成為一個必修科目。如果教師能準備充份，他們應該能將人權教育與通識教育的目標、內容及教學相結合。

在社區的部份，人權理念的推廣萌芽於1990年代初期，但在接近1997年時逐漸沒落。在聯合國人權委員會的壓力下，政府於2003年重新啟動了人權教育。除了成立數個「人權論壇」，還組成了「人權教育工作小組」，相關的非政府組織也受邀參加。但在非政府組織看來，這些行動可能只是點綴的功能而已。

Any human rights education is considered an aspect of civic education, whether in school or elsewhere.

School civic education has evolved through various stages. Before around 1984, education was deliberately "depoliticized," and nothing about human rights was mentioned. In the mid-1980s human rights education was introduced into school curricula as one of the foci of civic education. This can be viewed as a political step, occasioned by the projected return of sovereignty to People's Republic of China, and other significant events. Since 1997, education has been again depoliticized, with the study of human rights now replaced by an emphasis on national identity. But in 2009, Liberal Studies is expected to be introduced as a compulsory subject. If teachers are properly prepared, they should be able to incorporate human rights education in the aims, content and pedagogies of this subject area.

In the community generally, promotion of the idea of human rights started to blossom in early 90s, but as 1997 approached, it gradually faded. However, starting from 2003, under the pressure of United Nations' Commission on Human Rights, the government re-launched human rights education to the extent of forming several human rights forums and a Human Rights Education Working Group, which involved relevant NGOs. But these steps are perceived as window dressing by the NGOs.

ICAC, *see* Independent Commission Against Corruption.

Identity card 身分證

除一些例外情況，每個人需領取身分證，被警務人員或入境事務主任要求時，每個人均需出示身分證。

With some exceptions, everyone in Hong Kong is required to obtain an identity card and show it to any police officer or immigration officer on request.

ILO, *see* International Labour Organization.

Immigration, *see* Movement, freedom of.

Indictment 公訴書

又稱公訴書擬稿，詳列被告人被指控的強制性陳述，目的是通知他或她被指控的罪名。公訴書必須是清楚易懂的語言，且包含所有陪審團應該考量的對被告的指控。

Also known as Bill of Indictment. This is a mandatory statement detailing the crime of which a defendant is accused, the purpose being to inform him or her of the charges. It must be in plain language, and contain any allegations to be considered by the jury.

Indigenous villager 原村民

1898年在香港建村的居民父系後裔。基本法第40條說：「新界」原居民的合法傳統權益受香港特別行政區的保護。」主要的爭論點在於1972年的法律中，將土地賦予新界男性建小型屋宇（丁屋）的權利。但有很多評論指法律被濫用，已失去其原擬目的，並歧視婦女。

A person who is descended (via male line) from someone who was a resident of an established village in Hong Kong in 1898. Article 40 of the Basic Law says: "The lawful traditional rights and interests of the indigenous inhabitants of the 'New Territories' shall be protected by the Hong Kong Special Administrative Region." Mainly at issue is the right, enshrined in a 1972 law, of New Territories males to be granted land on which to build a small house. But many argue that the law is being abused, has outlived its intended purpose, and discriminates against women.

Resource: Jake van der Kamp, "[The Heung Yee] Kuk's 'Inalienable Right' is Out of Step with Modern Hong Kong," *South China Morning Post,* 3 May 2006.

Information, freedom of 資訊自由

香港法律有「資訊自由」一詞，但在立法和普通法卻沒有充份發展。此原則有點被官方機密條例推翻，主管當局經常能有效地管理官方消息。

根據2006年一項調查，只有31%港人滿意報紙，因為報紙傾向將新聞和付費廣告的界線模糊化，讓讀者難以分辨。香港媒體亦並不受到尊重。香港電台

RTHK則有較高的評價。*另見*Expression.

The term "freedom of information" is known in Hong Kong law, but is not well developed in legislative or common law. The principle is somewhat over-ridden by the Official Secrets Ordinance. Official news is effectively managed by the authorities.

The press is not held in high esteem, with (according to a 2006 poll) only 31 percent satisfied with newspapers. (The latter tend to blur the distinction between journalism and paid advertising, making it difficult for readers to know which they are reading.) RTHK (q.v.) received a much more favourable rating. *See also* Expression.

Resource: Mary Ann Benitez, "Doubts Grow Over Credibility of News Magazines: Survey," *South China Morning Post,* 12 May 2006, p. C4; Martin Wong and Jimmy Cheung, "Nameless Briefings are Bad News, Critics Say," *South China Morning Post*, 24 April 2006, p. A-3.

International Covenant on Civil and Political Rights
公民與政治權利國際公約

透過基本法第39條，將適用於香港的部分納入法律。早前，為了在本地落實大部份公民權利公約而制訂人權法案條例，基本法第39條則將公民權利公約直接納入香港法律。

在1999年和2006年，聯合國人權委員會審議了兩份政府實施報告。一直以來，委員會倡議在香港設立獨立的法定人權機構，來調查和監管違反人權的情況，及在特區推動民主化（尤其改變功能組別制度），但這些建議無一被遵行。*另見*Self-determination; "As applied to Hong Kong"; Bill of Rights.

The ICCPR was incorporated "as applied to Hong Kong" (q.v.) into law by virtue of Article 39 of the Basic Law. Earlier, the Bill of Rights Ordinance (q.v.) was enacted for the purpose of making most of the provisions of the ICCPR applicable locally. Furthermore, art. 39 of the Basic Law incorporates the ICCPR directly into Hong Kong law.

In 1999 and 2006 the UN's Human Rights Committee examined two Hong Kong government's fulfilment reports. The Committee has long advocated the establishment of an independent statutory human rights body in Hong Kong to investigate and monitor human rights violations, and the further democratization of the region (and in particular to change the system of functional constituencies), but none of these suggestions have been abided by. *See also* Self-determination; "As applied to Hong Kong;" Bill of Rights *and also* International section.

Resources: Emily Lau, "Under the UN's Critical Gaze," *South China Morning Post,* 8 March 2006, p. A-19. The Human Rights Committee's 2006 report is available at http://www.un.org/News/Press/docs/2006/hrct677.doc.htm.

International Covenant on Economic, Social and Cultural Rights
經濟、社會與文化權利國際公約

憑藉基本法第39條將適用於香港的部分納入法律。*另見*Self-determination; Bill of Rights; *and also* International section.

Incorporated "as applied to Hong Kong" (q.v.) into law by virtue of Article 39 of the Basic Law. *See also* Self-determination; Bill of Rights; *and also* International section.

International Labour Conventions 國際勞動規約

依據香港基本法第39條，國際勞動規約應適用於香港本地的法律。

These have been incorporated "as applied to Hong Kong" (q.v.) into local law by virtue of Article 39 of the Basic Law.

International Labour Organization 國際勞工組織

香港在國際勞工組織並不享有獨立的會籍，但中國有。

Hong kong does not hold independent membership in the ILO, but China does.

Inviolability of person, *see* Person, inviolability of.

Involuntary confession, *see* Confession.

Joint Declaration, *see* Sino-British Joint Declaration on the Question of Hong Kong.

Judicial independence 司法獨立

基本法第85條規定「香港特別行政區法院獨立進行審判，不受任何干涉，司法人員履行審判職責的行為不受法律追究。」一般而言，這是受到尊重的，法官有終身職位，且不會被減薪，不過，人大常委對能解釋基本法享有一般權力。*另見*Appeal.

Article 85 of the Basic Law asserts: "The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions." In general, this has been respected. Justices have tenure, and salaries may not be reduced. However, the Standing Committee of the National People's Congress has a general power to interpret the Basic Law. *See also* Appeal.

Judicial review, *see* Appeal.

July 1 march 七一大遊行

於2003年舉行的遊行，目的在抗議嚴格的國家安全條例立法草案。

基本法第23條授權立法會擬訂法案以保障國家安全。特首董建華積極推動這項立法，而由保安局局長葉劉淑儀負責協調。為了抗議這項立法，香港民間舉辦了史上最大規模的遊行。這次遊行由「公民人權前線」主辦，這個前線是由五十個非政府組織組成的聯盟。約有五十萬人參與了這次遊行，幾乎占了全港人數的十二分之一。吸引人民參與遊行的主要理由是有關23條的立法（33%，數據來自香港經濟日報於2003年7月2日的調查）。但也有不少人是因為其他理由參與遊行的，諸如要求董建華下台（22%）。

遊行也造成原本親政府人士間的分裂。親企業的自由黨黨魁田北俊在遊行後辭去內閣職務。由於失去自由黨的支持，政府在立法會中可能無法通過國家安全條例。政府先是作出讓步試圖得到妥協，例如刪去一些爭議性條文，包括

允許無令狀的搜索與拘留、禁止與內地非法團體有關聯的組織。在竊取國家機密方面，政府也願意允許被告在法庭陳述他們揭露訊息的行為是符合公共利益的。

但這些妥協並未平息抗議的聲浪，葉劉淑儀因此辭職。董建華於二十個月後也辭去職務。至於北京曾堅持必需「按時通過」的條例，則胎死腹中。

Demonstration held in 2003 to oppose proposed strict security legislation.

Article 23 of the Basic Law (q.v.) mandates that the Legislative Council enact a law to protect National security (q.v.). The drive to promote such legislation was led by Chief Executive Tung Chee Hwa, and coordinated by the head of the Security Bureau, Regina Ip. Public resistance culminated in this event, the largest demonstration in Hong Kong's history. It was organized by the Civil Human Rights Front, a coalition of fifty non-governmental organizations. As many as 500,000 people may have participated, roughly one-twelfth of the region's entire population. The proposed security legislation was the main issue that impelled people to join the protest (33 percent, according to a poll published in the Hong Kong Economic Times, 2 July 2003). However, many participants were motivated by other issues , such as the not-unrelated desire to drive chief Executive Tung Chee Hua from office (22 percent).

The demonstration led to a split in the ranks of the government's supporters, resulting in the resignation from the cabinet of the head of the pro-business Liberal Party, James Tien. Without the support of his party in the Legco, it was questionable whether the government had the votes to pass the legislation. At first there was an attempt to compromise, with the government dropping some especially provocative provisions such as an allowance for unwarranted searches and seizures, and the ability to ban organizations related to groups already prohibited on the mainland. Also, regarding the theft of state secrets, the government was now willing to allow defendants to argue in court that the revelation had been in the public interest.

However, this did not quell opposition to the legislation, and Regina Ip soon resigned. Tung Chee Hwa's resignation came twenty months later. The bill, which Beijing had once insisted be passed "on time," was allowed to die.

Jury, *see* Trial.

Juvenile justice, *see* Prisons.

Labour rights 勞工權利

基本法第27條規定人民有組織和參加工會、罷工的權利和自由。工會需向政府註冊，不過，法院會寬鬆地解釋這些權利。這裡有高度的勞工流動性，政府在僱傭和失業方面提倡自由放任政策。普通法並無工作權，雖然基本法第33條列明「香港居民有選擇職業的自由。」經社文公約確認了工作權，經社文權利雖並未納入香港人權法案條例，經社文公約卻假定其對香港有約束力。

香港不同的法律規範僱主與僱員的關係，包括僱傭條例、職工會條例、僱員賠償條例、勞資關係條例、破產欠薪保障條例、勞資審裁處條例。有三條1995年的法律只載於文字，影響也很小：性別歧視條例、強制公積金計劃條例及殘疾歧視條例。

這裡有兩組主要的工會：親北京的香港工會聯合會（工聯會），關注焦點為愛國主義和工人福利，它有超過177個屬會和超過三十萬名會員。加上，另一個較小而支持民主的香港職工會聯盟（職工盟）。

Article 27 of the Basic Law asserts "the right and freedom to form and join trade unions, and to strike." Unions are required to register with the government. Otherwise, the courts interpret these rights broadly. But there is high labour mobility, and the government promotes a laissez-faire policy on employment and unemployment. There is no common law right to work, although art. 33 of the Basic Law states that "Hong Kong residents shall have freedom of choice of occupation." The right to work is recognized in the International Covenant on Economic, Social and Cultural Rights, which, though not incorporated into the Hong Kong Bill of Rights Ordinance, is nonetheless presumably binding on Hong Kong.

Hong Kong has various laws governing the relationship between employer and employee, including the Employment Ordinance, Trade Unions Ordinance, Employees Compensation Ordinance, Labour Relations Ordinance, Protection of Wages on Insolvency Ordinance, and the Labour Tribunal Ordinance. There are three 1995 laws that exist on paper but have had little effect: the Sex Discrimination Ordinance, Mandatory Provident Fund Schemes Ordinance, and the Disability Discrimination Ordinance.

There are two main groupings of trade unions: the pro-Beijing Federation of Trade Unions, which focuses on patriotism and worker welfare. It has over 177 affiliates and altogether over 300,000 members. In addition, there is the slightly smaller, pro-democracy Hong Kong Confederation of Trade Unions.

Resources: On the two labour organizations, *see* Wikipedia entries: http://en.wikipedia.org/wiki/Federation_of_Trade_Unions and http://en.wikipedia.org/wiki/Hong_Kong_Confederation_of_Trade_Unions.

Language 語言

中文和英文同樣是香港的法定語言。它們有同等的地位，在刑事案件（民事案件則不然）的法庭程序中，每個人（包括外籍人士）若不能明白箇中程序，有權享有免費的翻譯員。以法定語文條例為依據而有雙語法例諮詢委員會，其職責包括建議行政長官關於哪一版本（中文或英文）是法定版本。基層法院多數以廣東話進行，高等法院則以英語進行。

人權法案第23條宣稱每個人有使用其固有語言之權利。*另見*Offensive language.

Both Chinese and English are official languages of Hong Kong. The two have equal status and equality of use. In criminal (but not necessarily civil) court proceedings, everyone (including an alien) has the right to an interpreter at no cost if he or she cannot otherwise understand the proceedings. Pursuant to the Official Languages Ordinance, there is a Bilingual Laws Advisory Committee, whose duties include advising the Chief Executive regarding which version of a law (Chinese or English) is the official version. Lower courts are mostly conducted in Cantonese, higher courts in English.

Article 23 of the Bill of Rights asserts everyone's right to use his or her own language. *See also* Offensive language.

Lawyers; lawyer-client confidentiality, *see* Trial.

Legal aid, *see* Trial.

Legislative Council 立法會

基本法第4章第3節詳細地說明了立法機關的職權，立法會可通過法律、審核並通過政府財政預算、批准稅收和公共開支、同意高級的法官的任免，以及（三分之二多數通過）彈劾行政長官等。*另見*Vote.

The powers and functions of the Legislative Council (Legco) are spelled out in Chapter 4, Section 3 of the Basic Law. Legco can pass laws, "examine and approve" the government's budget, approve taxation and public expenditure, endorse the appointment and removal of high judges, and (by a two-thirds vote) impeach the Chief Executive. *See* Vote.

Lesbians, *see* Sexual minorities.

Libel, *see* Defamation.

Life, right to 生存的權利

香港人權法案條例第2條規定人人皆有天賦之生存權。此種權利應受法律保障。任何人之生命不得無理剝奪。*另見*Abortion; Capital punishment.

Article 2 of the Hong Kong Bill of Rights Ordinance (q.v.) asserts "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." *See also* Abortion; Capital punishment.

Marijuana, *see* Drugs.

Marital rape, *see* Rape, marital.

Marriage 婚姻

定義為一男一女自願終身結合（婚姻制度改革條例第4條）。

Defined as a voluntary union of a man and a woman (Marriage Reform Ordinance, sec. 4).

Martial law, *see* Emergency powers.

Media, *see* Expression; Information; RTHK.

Mental health 精神健康

根據精神健康條例，以法官或裁判官的命令為依據，在有需要時可為了他人的健康和安全，或為保護他人著想，將一個人在非自願的情況下羈押。

Under the Mental Health Ordinance, a person may be involuntarily kept in custody pursuant to an order of a district judge or magistrate, if in the interest of the individual's own health and safety or if necessary to protect others.

Minimum wage 最低工資

目前勞資顧問委員會正討論設立最低工資和最高工時的問題。

The establishment of a minimum wage and maximum working hours is under discussion by the Labour Advisory Board.

Resource: Anita Lam, "Tsang May Act on Minimum Wage: Issue Could Be Put to Development Commission," *South China Morning Post*, 15 November 2005, p. A-3.

Movement, freedom of 遷徙往來的自由

基本法第31條規定香港居民有在香港特別行政區境內遷徙的自由，有移居其他國家和地區的自由，有旅行和出入境的自由。有效旅行證件的持有人，除非受到法律制止，可自由離開香港特別行政區，無需特別批准。

香港人權法案條例第8條，更詳細地說明了此權利，包括擇居之自由。

Article 31 of the Basic Law (q.v.) asserts: "Hong Kong residents shall have freedom of movement within the Hong Kong Special Administrative Region and freedom of emigration to other countries and regions. They shall have freedom to travel and to enter or leave the Region. Unless restrained by law, holders of valid travel documents shall be free to leave the Region without special authorization."

The Hong Kong Bill of Rights Ordinance, art. 8, spells this out in more detail, and includes the right to choose one's residence.

Mui tsai 妹仔

意指童奴。歷史上，妹仔一般指為了在家中幫傭而買來的女童。十九世紀時，香港本地普遍接受這種情形，但後來招致國際上的批評。二十世紀中期，妹仔被視為非法。1956後的半世紀以來，已經沒有這樣的紀錄存在。然而，2006年時，發生一件十一歲女童被賣至中國大陸而且遭其「所有者」嚴重侵犯的案件。這位「所有者」最後遭到起訴。

Child slavery. Pinyin: Mei zai. Literally translated "little sister," historically the term generally referred to girls bought for the purpose of providing domestic service for their owners. The practice was locally acceptable in the nineteenth century, but eventually drew international criticism. In the mid-twentieth century mui tsai was outlawed. There were no recorded cases for a half century after 1956. In 2006, however, there came to light the case of an eleven year old girl who had been purchased on the mainland and had been seriously abused by her "owner." The later was duly prosecuted.

National security 國家安全

當作限制，有時甚至暫時中止公民自由的理由，國家安全是相當抽象的概念。基本法第23條要求立法機關立法澄清此概念，並詳細說明刑事罰則，但由於公眾反對（*見*Association, July 1 March）而擱置立法。國家安全的利益常被當作禁止對中國領土完整性挑戰的理由，例如宣揚台灣獨立。

Deemed grounds for restricting, and sometimes even suspending, civil liberties, "national security" is an elusive concept. Article 23 of the Basic Law requires the legislature to enact legislation clarifying the concept and spelling out the criminal penalties, but this failed in 2003 due to public opposition (*see* Association, July 1 March). When applied to organizations, the interests of national security are notably deemed to forbid allowing challenges to the territorial integrity of China, such as advocating Taiwan independence.

Resource: H. L. Fu, Carole J. Petersen, and Simon N. M. Young, eds., *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny* (2005).

Obscenity 淫褻

何謂淫褻由淫褻物品審裁處作出裁定，由高等法院司法常務官所委任，以普遍為社會所接受為標準。

The determination of what materials are obscene is made by the Obscene Articles Tribunal, which is appointed by the Registrar of the High Court. The standard is supposed to be what is generally accepted by reasonable members of the community.

Offensive language 令人反感的語言

侮辱性、侵略性、厭惡性語言在某些公眾地方，特別是交通設施，是被禁止的。

Insulting, aggressive or repulsive language is banned in certain public places, particularly transport facilities.

Official language, *see* Language.

Official secrets, *see* Information.

Ombudsman 申訴專員

這個職位有權審核有爭議的行政作為。如沒有滿意的決議，他可向行政長官提交報告，或將申訴案提交至法院審理。

Official with authority to review disputed administrative actions. If there is no satisfactory resolution, a report may be submitted to the Chief Executive, or the complainant may go to court.

One-country, two-systems, *see* Self-determination.

One-person, one-vote, *see* Vote.

Ordre public, *see* Public order.

Parole, *see* Penalties, criminal.

Parties, political 政黨

主要的政黨有民主建港聯盟和自由黨，他們均對商界和北京友好，而民主黨和公民黨則倡導由多數民意決定的規則。此外還有採取最強烈反政府立場的社會民主連線。

目前沒有特別為政黨立法，政黨係根據社團條例登記。一個政治性團體應定義為：「(a)一個政黨或以政黨為發展目標的組織，或(b)主要宗旨是推廣或為選舉準備候選人。」警務處處長可在諮詢保安局局長後拒絕團體的登記「(a)如他合理地相信該拒絕是為維護國家安全或公共安全、公共秩序或保護他人的權利和自由而有需要，或(b)如該社團或其分支機構與外國或台灣的政治性組織有聯繫。基於類似理由，現有的社團登記可被撤銷。這些條文假定滿足了基本法第23條的要求，第23條規定：香港特別行政區應自行立法…禁止特區的政治性組織或團體與外國的政治性組織與團體建立聯繫。」不過，中央政府看來並不滿足於此，而在2003年所草擬的國家安全立法（因公眾反對而撤銷）作出了嚴厲限制的建議。由於社團在法律上如此脆弱，一般來說，政黨傾向根據公司條例以公司登記。不過，公司需要披露其會員姓名。大抵上被北京不信任的政黨傾向為會員名單保密。不過，主管當局希望公布姓名以確保少數民主派人士在選舉委員會選舉行政長官時取得席位。撰此文時（2006年6月）正熱烈辯論披露會員名單與否的問題。

政黨從未在政策制訂上擔當重要角色。行政長官則被規定要放棄黨籍。

The main political parties are the Democratic Alliance for the Betterment of Hong Kong, and the Liberal Party, both friendly toward the business community and toward Beijing; and the Democratic Party and Civic Party, both of which promote majority rule. There is also the more progressive League of Social Democrats which takes the strongest anti-government stance.

There is no legislation devoted specifically to political parties. Logically, parties would register as societies under the Societies Ordinance. This ordinance includes political parties under the rubric "political bodies." A political body is defined as: "(a) a political party or an organization that purports to be a political party; or (b) an organization whose principal function or main object is to promote or prepare a candidate for an election." The Commissioner of Police, after consultation with the Secretary for Security, can refuse to register such a body "(a)

if he reasonably believes that the refusal is necessary in the interests of national security or public safety, public order *(ordre public),* or the protection of the rights and freedoms of others; or (b) if the society or the branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan." After registration, a society's registration can be revoked on similar grounds. These provisions would seem to satisfy the Basic Law requirement in art. 23 which provides, "The Hong Kong Special Administrative Region shall enact laws on its own ... to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies." However, the central government does not appear to be satisfied with this, and in 2003 draconian restrictions were proposed in the draft national security legislation (withdrawn due to public opposition).

Because societies are so legally vulnerable, parties generally prefer to register as enterprises under Companies Ordinance. However, companies are required to disclose the names of their members. The parties distrusted by Beijing generally prefer to keep their membership lists secret. The authorities, however, want the names published to ensure, for example, that few democrats gain seats on the Election Committee (which chooses the Chief Executive). As of this writing (November 2006) the issue of membership disclosure is being hotly debated.

Political parties have never played a significant role in policy making. The Chief Executive is required to renounce any party membership.

Resources: Lao Siu-kai and Kuan Hsin-chi, "Hong Kong's Stunted Political Party System," *China Quarterly,* no. 172, December 2002, p. 1010-1028. Lee Wing-tat, "The Power to Shape Policy: Next Step for Political Parties," *South China Morning Post,* 21 April 2006, p. A-15.

Passport, *see* Citizenship.

Penalties, criminal 罰則，刑事

自從1966年開始已不再執行死刑，1993年正式廢除。目前就謀殺罪行而言，最低刑罰是強制終身監禁。差不多所有的終身監禁最終減至35至48年，判刑前的扣押時間可在刑期中扣減。服長刑期的囚犯接受長期監禁刑罰覆核委員會的定期覆核。

假設行為良好，短或中刑期的囚犯通常會在三分之二刑期之後獲釋。雖然減刑並不普遍，囚犯仍有權申請在監管下提早獲釋。目前有監管下釋放計劃（很少授予）及釋前就業計劃。前者在服一半刑期後獲釋，後者是服滿三分之二刑期的前半年獲釋。懲教署有酌情撤回全部或部份減刑的權利。*另見*Prisons.

Capital punishment has not been employed since 1966; it was formally abolished 1993. Now, for the crime of murder, an initial life sentence is mandatory. Almost all life sentences are eventually reduced to 35 to 48 years. (Time spent in pre-sentence custody is deducted from sentences.) Prisoners with long prison sentences receive a regular review of their sentences by the Long-Term Prison Sentence Review Board.

Those guilty of lesser crimes receive finite terms.

Assuming good conduct, short- and intermediate-term prisoners are normally released after two thirds of their sentence has been served. Although it is much less common for terms (especially long-term sentences) to be further reduced, prisoners have the right to apply for early release under supervision. Two such programs exist: the Release Under Supervision Scheme (rarely granted) and the Pre-Release Employment Scheme. The former is a release after half the sentence is served; the latter is a release half a year before two thirds of the sentence is served. The Correctional Services Department (CSD) has the discretion to withdraw part or all of any remission as punishment. *See also* Prisons.

Resource: "The Death Penalty in Macao and Hong Kong (in the Year 2000)," *Macao Law Journal*, 2002, pp. 11-30.

Person with a disability, *see* Handicapped.

Political asylum, *see* Asylum.

Political freedom, *see* Vote; Association; Expression.

Presumption of innocence, *see* Trial.

Prisoners' rights 囚犯權利

囚犯權利的國際脈絡是公民權利公約、禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約（酷刑公約）、聯合國囚犯待遇最低限度標準規則（最低標準規則）、保護所有遭受任何形式拘留或監禁的人的原則（原則）、囚犯待遇基本原則（基本原則；上述條文參見國際部份）。

囚犯權利的基本概念是囚犯原則上與每個人的人權一樣，但有某些自由上的限制。因此，囚犯權利包括有權獨立接觸法律代表、獲得公共援助、社會福利設施及接觸宗教團體代表。囚犯有權參與宗教服務，他們可學習及保存學術書籍。對囚犯教育由私人基金提供財務支援；政府提供的學術支持則多限於青少年中心。

囚犯通常有權藉通郵方式與任何人通訊，但郵件必須接受審查，囚犯有權接受每月兩次各30分鐘的探訪。它們可申請兩次額外的探訪的特惠。犯人無權打電話，一般限於有重病家庭成員、重要法律事宜或家人居於海外的情況才有例外。

需妥為通知囚犯關於投訴的可能途徑。犯人可向懲教署的高級職員作內部投訴，或可選擇向外投訴，例如向太平紳士、申訴專員公署或立法會議員。當對待遇不滿，囚犯亦有權要求司法機構對案件做出判定。但事實上投訴權利時常受到損害：囚犯被勸阻提出投訴及缺乏保密，懲教署職員經常陪同定期來訪的太平紳士，對投訴的調查十分依賴懲教署人員所提供的證據，投訴人並可能面臨報復。

甲類囚犯通常被羈押於個人囚室，乙類或丙類囚犯通常在雙人或較大的集體宿舍，為了保護起見，感到受威脅的囚犯（出於它們罪行的性質或其以前的專業，或它們與司法制度的合作或出於其他原因）可單獨囚禁。不過，被單獨囚禁的囚犯羈押在囚室達每天23小時，只有1小時可運動和淋浴。

囚犯在法律上是需要工作的，但一星期不超過30小時。他們只獲得很低的薪酬以購買各種東西（食品和非食品如書本、報紙、菸或一部收音機）。他們可將薪酬轉至監獄以外的人或機構。收入可被扣起作為懲罰。

特惠（不同於權利）可被「沒收」。特殊（很少授予）特惠包括外出許可。*另見*Prisons; Penalties.

The international context for the definition of the rights of people in Prisons (q.v.) are the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the United Nations Standard Minimum Rules for the Treatment of Prisoners

(Standard Minimum Rules), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), and the Basic Principles for the Treatment of Prisoners (Basic Principles) (*on all of which see* international section). Locally, the rights of prisoners are further delineated in several ordinances passed by the Legislative Council.

The underlying philosophy is that prisoners have in principle the same human rights as everyone else, with certain limitations inherent in the restrictions on liberty. Thus, the rights of prisoners include independent access to legal representatives, access to public assistance and welfare facilities, and access to representatives of religious bodies. Prisoners have the right to participate in religious services. They may study and keep academic books. Financial support for such education is generally provided through private foundations; academic support from the government is largely limited to the juvenile centres.

The prisoners normally have the right to communicate through mail with anyone, though mail is subject to censorship. Prisoners have a right to receive two monthly visits of 30 minutes each. They may apply for the privilege of two additional such visits. Inmates have no right to make phone calls; such privileges are generally limited to cases of seriously ill family members, important legal matters, or if the family lives abroad.

Prisoners are duly informed about possible channels for complaints. Inmates can make internal complaints to senior staff of the Correctional Services Department (CSD) or they may choose to complain externally, for example to Justices of the Peace (JP), the Office of the Ombudsman, or to Legislative Councillors. Prisoners have also the right to call on the judiciary to decide cases where there is disagreement with the treatment. But in reality the implementation of the right to lodge a complaint is undermined: prisoners are dissuaded from making complaints, and there is a lack of confidentiality: A staff member of the CSD always accompanies the regularly visiting JP's. Investigations about complaints rely heavily on evidence from the personnel of the CSD. Complainants may also face retaliation.

Prisoners in Category A (*see* Prisons) are usually held in individual cells; those in Category B or Category C are mostly in double cells or larger dormitories. For their own protection, prisoners who feel threatened (due to the nature of their crime or their previous profession, or their cooperation with the justice system, or due to any other reason) may apply for detention in single confinement. However, prisoners in single confinement are held in their cells nearly 23 hours per day, leaving only one

hour for exercise and for showers.

Prisoners are legally required to work for up to 30 hours a week. They receive a modest salary that they can use to make various purchases (food and non-food items, such as books, newspapers, cigarettes, or a radio). They are allowed to transfer their salary to persons or institutions outside the prison. Earnings can be withheld as punishment.

Privileges can (in contrast to the rights) be forfeited. Extraordinary (and rarely granted) privileges include leave of absence. *See also* Prisons; Penalties.

Resource: Asian Human Rights Commission, Human Rights Correspondence School, Lesson Series 31: Prison Conditions and Complaint Mechanisms, http://www.hrschool.org/doc/mainfile.php/lessons/.

Prisons 監獄

特別行政區有28所監獄，全部由政府的懲教署（保安局轄下）管理。它們容納了平均11500名囚犯，大概是每10萬人口便有155名囚犯，此算是正常，若與其他不同的國家比較，則稍低於其他都市化的城市，但以特區的低罪案率而言則算高。

監獄中男性和女性被嚴格分開。需分開囚禁的還有少年與成年人、初犯與慣犯以及刑期較長的囚犯（甲類12年刑期以上）與刑期較短的（乙類或丙類）。還有專為藥物治療、心理治療和職業訓練而設的特別監獄。

過去30年來，監獄的犯罪次文化已被有效控制。現在，經過訓練的懲教署職員已能有效地管理監獄。囚犯的流動性被高度限制，活動亦受經常監管。部門以大量人手來達致此目的。包括純粹行政職員及部門的管理層，職員與囚犯的比例大概是1：1.7。

自從90年代後期，已加強罪犯更新方面的努力。不過，大部份更新的資源是分配給少年犯。*另見*Prisoner's right.

The SAR has 28 prisons, all managed by he government's Correctional Services Department (CSD), which is under the Security Bureau. They accommodate an average of 11,500 inmates. This is about 155 inmates per 100,000 general population, which is approximately normal compared to the various other countries (somewhat low compared to other urbanized societies, but high if viewed in terms of the SAR's low crime rate.) All inmates have been convicted of crimes in proper trials.

Males and females are kept strictly separate. Also segregated are youths from adults, first-time offenders from recidivists, and (in general) inmates with long sentences (Category A: sentences above 12 years) from those with shorter sentences (Categories B or C). There are special prisons for drug treatment, psychiatric treatment, and occupational training.

Over the past 30 years, effective measures have been implemented to seize the control of prisons from the criminal subculture. Now, trained custodial staff effectively runs prisons. Prisoner mobility is highly restricted and movement happens under constant supervision. The department achieves this goal with a high number of staff. Including the entire administrative staff and management of the department, there is a staff / inmate ratio of around 1:1.7.

Since the late 1990s there has been an increased effort to effect the rehabilitation of offenders. However most of the resources for rehabilitation are allocated to young offenders. *See also* Prisoner's rights.

Privacy, right to 隱私權

根據香港基本法第30條，「香港居民的通訊自由和通訊秘密受法律的保護。除因公共安全和追查刑事犯罪的需要，由有關機關依照法律程序對通訊進行檢查外，任何部門或個人不得以任何理由侵犯居民的通訊自由和通訊秘密」，其實質的內容則規定在「個人資料（私隱）條例」當中。然而，人權法案對政府當局只是一種約束，倘若政府官員觸犯本法，並不會被處以罪責。政府對個人隱密資料的保護一直有重大的瑕疵，有時還造成被害人遭到匿名的威脅。

本法並不提供對個人民事侵權提出訴訟的基礎。理論上，個人權利應受到與非法侵害相關的法律之保護，也受到公民與政治權利國際公約第17條的保障。後者禁止「所有對隱私、家庭、住所及信件強制而非法的侵害」，同時主張個人「有權在遭遇類似的侵害或攻擊時得到法律的保障」。根據聯合國人權委員會的見解，「政府應提供法律架構，以禁止自然人或法人類似行為（即對上述17條的侵犯）之發生」。*另見* Search and Surveillance.

According to Article 30 of the Basic Law, "The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of

communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences." This has been given some substance in the Personal Data (Privacy) Ordinance. However, this law only curbs public authorities (including officials), and there are no criminal sanctions for officials who violate the law. There have been serious lapses in the government's protection of private data, sometimes resulting in anonymous threats to the victims.

The law does not provide any basis of tort action against non-officials. Theoretically, individuals are protected by the law of trespass, or perhaps under Article 17 of the ICCPR. The latter forbids all "arbitrary or unlawful interference with his privacy, family, home or correspondence" and asserts everyone's "right to the protection of the law against such interference or attacks." According to the UN's Human Rights Committee, governments are required "to provide the legislative framework prohibiting such acts (violations of Article 17) by natural or legal persons." *See also* Search and Surveillance.

Resource: Norma Connolly, "Threats in the Mail Follow Data Leak," *South China Morning Post,* 28 April 2006, p. A3.

Proof, standard of, *see* Trial.

Property 財產

產權一般而言是受到尊重的，例外的是知識產權遭侵犯的情況相當普遍。所有土地為政府擁有並出租，大部份在香港島的租契長逾世紀，但別處的則在2047年期滿。*另見*Squatters; Indigenous villager.

Property rights are generally respected, except that violations of intellectual property rights are common. All land is owned by the government and leased. Most leases on Hong Kong Island are centuries long, but elsewhere they expire in 2047. *See also* Squatters; Indigenous villager.

Resource: Gordon N. Cruden, *Land Compensation and Valuation Law in Hong Kong (2002).*

Public Order 公共秩序

設立一個對公眾集結的事先限制的制度。一個公眾集會只可在通知警務處長及其同意之下始能進行。警務處長限制或禁止公眾集會遊行的酌情權已有些被終審法院限制，終審法院裁定公共秩序*(ordre public)*太空泛（*梁國雄及其他訴香港特區*）。警務處長仍可行使權力，如合理地認為，為了維護國家安全或公共安全、公共秩序或保護他人的權利和自由。

Establishes a system of prior restraints on public assemblies. A public meeting may only take place after the Commissioner of Police(CP)is notified and has made no objection to it. The CP's discretion to restrict or ban public meetings and processions has been limited somewhat by the Court of Final Appeal, which has ruled that the protection of "*ordre public*" was too vague *(Leung Kwok Hung and Others v HKSAR).* The CP may still exercise the powers where he or she reasonably considers that the objection is necessary in the interests of national security or public safety, public order, or the protection of the rights and freedoms of others.

Resource: Janice Brabyn, "The Fundamental Freedom of Assembly and Part II of the Public Order Ordinance," *Hong Kong Law Journal* (2002), 23:271.

Racial discrimination, *see* Equality.

Radio, *see* RTHK.

Refugee, *see* Asylum.

Religion, freedom of 宗教自由

按基本法第141條，政府不能限制宗教信仰自由，不干預宗教組織的內部事務，不限制與特區法律沒有牴觸的宗教活動。此承諾連法輪功（一個在內地被禁止的精神運動）也是容許的，雖然其信徒由海外進入香港受到限制。

不過，宗教組織可參與政治的程度，仍是有待討論的問題。本地法輪功信徒在沒有受到干預下公開支持內地受迫害的信徒，不過，當羅馬天主教會主教陳日君大力支持民主運動時，引起不滿，政府認為是他使2005年的政治改革方案失敗。

According to Article 141 of the Basic Law, the government shall not "restrict the freedom of religious belief, interfere in the internal affairs of religious organizations or restrict religious activities which do not contravene the laws of the Region." This promise is adhered to in practice, and even Falun Gong (the spiritual movement banned on the Mainland) is permitted, though practitioners have been restricted from entering Hong Kong from abroad.

What remains an open question, however, is the extent to which religious organizations may participate in politics. Local Falun Gong adherents openly support persecuted practitioners in the Mainland, without interference. However, when Roman Catholic Bishop Joseph Zen Ze-kiun strongly supported the democratic movement, eyebrows were raised. The government seemed to object, blaming him for the defeat of its constitutional "reform" package in 2005.

Resources: Greg So, "Encroaching on the Wall of Separation," *South China Morning Post*, 23 January 2006 p. A-13; Yvonne Tsui, "Falun Gong Watch List Disclosure Ordered," *South China Morning Post,* 9 May 2006, p. A-2.

Representation, *see* Equality; Vote.

Resident, *see* Abode.

RTHK 香港電台

某種程度上按英國廣播公司管理的非商業廣播媒體，除了港台以税收提供資金（每年最少五億元）。在2006年上半年觸發了有關港台應有編輯獨立或應推廣政府的工作，即作為政府的喉舌的辯論。政府看來不信任港台。在2006年，進行了一個審核，而結論是該服務已發展出不遵守政府規則的文化，這無助於強政勵治（「強政勵治」是行政長官曾蔭權的口號，他想影響編輯政策並非巧合的）。不過，一個2006年關於港台和商業傳媒的調查顯示，73%的民眾滿意電視，78%民眾相信港台應該是政府的監督者。此外，還有一個問題是究竟港台應否維持作為一個政府部門，或應成為一個分開的機構（看來政府並不屬意）。公眾選舉產生的立法會議員則希望該機構與政府之間有防火牆。

The non-commercial broadcast media have been managed somewhat according to the BBC model, except that they are funded out of tax revenue (at a modest HK$500 million per year). In the first part of 2006 a debate raged concerning whether RTHK should have editorial independence, or should "promote the work of the government" and be the latter's "mouthpiece." The government appears to distrust RTHK. In 2006 it conducted an audit and concluded that the service had developed "a culture of non-compliance with government rules" which is "not conducive to strong governance." ("Strong governance" was the slogan of Chief Executive Donald Tseng, who, not coincidentally wanted to influence editorial policy.) However, a 2006 poll concerning the media (RTHK and commercial) indicated that 73 percent of the public were satisfied with television, and 78 percent of the public believes that RTHK should be a watchdog vis à vis the government. Also, there is the question of whether RTHK should remain a government bureau, or should become a separate corporation (which the government does not appear to favour). Publicly elected legislators want a firewall between the institution and the government.

Resources: Mary Ann Benitez, "Doubts Grow Over Credibility of News Magazines: Survey," *South China Morning Post,* 12 May 2006, p. C4; website of the Committee on Review of Public Service Broadcasting, http://www.psb-review.org.hk/; Lisa Leung, "Hands Off Our public Broadcaster," *South China Morning Post,* 8 May 2006.

Search and surveillance 搜查和監察

基本法第28條禁止任意或非法搜查身體。基本法第30條規定：「香港居民的通訊自由和通訊秘密受法律的保護。除因公共安全和追查刑事犯罪的需要，由有關機關依照法律程序對通訊進行檢查外，任何部門或個人不得以任何理由侵犯居民的通訊自由和通訊秘密。」至今（2006年6月），並無任何法律授權如此監察，除了現已過時的電訊條例 。然而，政府（尤其是廉政公署）時常監聽私人對話，電話被截聽（尤其是政客）的現象相當普遍。官方承認，警務人員或反貪汙人員截取通訊至少一日數次，而當監察行動完成後，無需通知被監察的當事人。目前已出現改變現況的壓力，要求至少在錯誤監視的情況下應作通知。

雖然法庭在審訊過程中接納因秘密監察所得的證據，他們已開始質疑和警告此證據在日後的合法性。在2005年，行政長官的回應（經好幾年的延誤後）是以行政命令授權秘密監察，但無設立機制來管理此監察，亦無任何程序上的保障，因而被視為藉執法之名以損害公民自由。一般認為立法會需要採取行動，但政府的立法建議被評論員指為薄弱，例如沒有對非法監察作出刑事懲罰。*另見*Privacy.

Article 28 of the Basic Law forbids “Arbitrary or unlawful search of the body.” Article 30 declares: “The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.” To date (June 2006) there has never been any law authorizing such surveillance (other than the earlier Telecommunications Ordinance, which has been declared inconsistent with the ICCPR). Nonetheless, the Government (and especially the Independent Commission Against Corruption, q.v.) has often eavesdropped on private conversations. There is a widespread perception (especially among politicians) that phones are tapped. It is officially acknowledged that the police and anti-corruption officers intercept communications several times a day. There has been no requirement that individuals be told that they were surveilled after the operation is completed, though there is pressure to change this situation, at least in the case of people wrongfully spied upon.

The courts have allowed evidence thus obtained to be used in trials, but began to raise questions and issue warnings about the legitimacy of such evidence in the future. In response, the Chief Executive in 2005 issued an executive order authorizing covert surveillance. But no mechanisms were set up to manage such surveillance, nor are there any procedural safeguards. This has given rise to concerns that, in the name of law enforcement, civil liberties would be curtailed. It is widely recognized that the Legislative Council must act. But the government's proposals appear weak, with no criminal penalties for illegal surveillance. *See also* Privacy.

Resource: Hong Kong Human Rights Monitor, “Surveillance, Basic Law Article 30 and the Right to Privacy in Hong Kong,” http://www.hkhrm.org.hk/PR/Surveillance_All.doc, n.d.

Secret ballot, *see* Vote.

Self-determination 自決

自決是國際法的原則，按此原則，人民有權決定他們的政治地位。這已載於兩份國際人權公約的第1條。雖然這已十分普遍地被應用，在1997年主權移交前，中英雙方同意這並不適用於香港。但「一國兩制」是由鄧小平所制定的，這是設計來給予像香港這樣的地方享有高度自治，而同時很明確地保留在北京的管治之下。基本法第23條要求香港制訂法律禁止分裂國家的行為，但立法會尚未立法。*另見* “As applied to Hong Kong.”

Self-determination is a principle of international law according to which all peoples have the right to determine their political status. It is enshrined in the first articles of the two international human rights covenants. (*See* international section.) Although it has most commonly been applied in the decolonisation process, before the 1997 handover the British and Chinese agreed that this would not apply to Hong Kong. Instead, the “one-country, two-systems” formula was worked out under Deng Xiaoping. This was designed to give places like Hong Kong “a high degree of autonomy” while still remaining clearly under Beijing's rule. Article 23 of the Basic Law requires Hong Kong to enact laws prohibiting acts secession, but the Legislative Council has not yet acted. *See also* “As applied to Hong Kong.”

Resource: Albert H. Y. Chen, “The Concept of ‘One Country, Two Systems’ and its application to Hong Kong, Taiwan and Macao.” *Macao Law Journal,* 2002, pp. 227-286.

Self-incrimination 免使自己入罪

證人有權避免回答一些可能使自己入罪的問題。拒絕回答並無（不良的）法律後果。*另見* Silence, right to.

Witnesses have the right to refrain from answering questions if the answer might be incriminating. Refusal to answer is without legal implications. *See also* Silence, right to.

Sex discrimination, *see* Equality.

Sexual harassment 性騷擾

性別歧視條例第2(5)條將性騷擾訂為違法行為，其定義為「對一名女性提出不受歡迎的性要求，或提出不受歡迎的獲取性方面的好處的要求；或就一名女性作出其他不受歡迎並涉及性的行徑，而在有關情況下，一名理性的人在顧及所有情況後，應會預期該女性會感到被冒犯、侮辱或威嚇；或…自行或聯同其他人作出涉及性的行徑，而該行徑對該名女性做成一個在性方面有故意或具威嚇性的工作環境」雖然這定義看來只保護女性。按第2(8)條，對上述條文作出變通後同樣對男性提供保護。

Section 2(5) of the Sex Discrimination Ordinance outlaws sexual harassment, which is defined as making "an unwelcome sexual advance, or an unwelcome request for sexual favours, to her; or engag[ing] in other unwelcome conduct of a sexual nature in relation to her, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated; or ... alone or together with other persons, engag[ing] in conduct of a sexual nature which creates a sexually hostile or intimidating work environment for her." Although this definition seemed limited to protecting women, a subsequent modification (section 2, par 8), provides for equal protection for men.

Sexual minorities 性小眾

在香港，女同性戀者之間的性行為從來不是非法的。1991年之前，男性之間的性行為是非法的，違犯的可監禁達10年。在1990年，立法局將二十歲或以上的男性之間的性行為除罪化。

2007年，終審法院宣佈，一項法律其規範的對象若是同性戀者這樣的社會族群，則該法必需達到三個標準：法律的目的必需正當（亦即要區分出這樣的族群必需有確實的需求）；特殊的對待方式必需「與此正當目的有合理的連結」；以及這樣的區分「僅限於完成該目的之所需」。終審法院因此宣判該上訴的案件（包括發生於汽車中的性行為）不符合上訴要求。另見Age of consent.

Lesbian sexual behaviour has never been illegal in Hong Kong. Prior to 1991, homosexual behaviour was illegal, with prison terms for infractions ranging up to ten years. In 1990 the Legislative Council decriminalized sexual activities between males at or over 20 years of age.

In 2007 the Court of Final Appeal declared that to be valid a law that targeted a social group like homosexual would have to pass a three-fold test: the aim of the law must be legitimate (i. e. there must be a genuine need to differentiate among groups), the special treatment must be "rationally connected to the legitimate aim," and the differentiation "must be no more than is necessary to accomplish" that aim. In the case before the court (involving sex in an automobile) it was declared that this test had not been met. See also Age of consent.

Resources: Hong Kong Human Rights Monitor, "Sexual orientation and human Rights in Hong Kong" (n.d.), http://www.hkhrm. Org.hk/PR/sexualorientationpaper. Htm; website of the Internatioanl Lesbian and Gay Asspciation. http://www.ilga.info/Information/Legal_survey?Asia_Pacific /hong_kong.hem.

Silence, right to 緘默權

犯罪嫌疑人可依普通法賦予的權利拒絕回答問題，尤其一旦被指控罪行。不過，這不適用於證人或任何立法會調查的情況。*另見*Self-incrimination.

A suspect has a common law right to decline to answer questions, especially once charged with an offence. However, this does not apply to witnesses nor in the case of any legislative investigations. *See also* Self-incrimination.

Sino-British Joint Declaration 中英聯合聲明

中英關於香港問題的聯合聲明（常被稱為「聯合聲明」），這項於1985年成立的協議奠定殖民地主權移交至中國的基礎，並承諾現行生活方式可繼續五十年不變。香港特別行政區法律會保障權利和自由，包括人身、言論、出

版、集會、結社、旅行、遷徙、通信、罷工、選擇職業和學術研究以及宗教信仰。文本載於http://www.info.gov.hk/trans/jd/jdz.htm.

The Sino-British Joint Declaration on the Question of Hong Kong (the "Joint Declaration") was an 1985 agreement which laid the groundwork for the handover of the colony to China, with the promise that the existing "way of life" would be allowed to continue for fifty years. "Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region." Text available at: http://www.info.gov.hk/trans/jd/jd2.htm.

Slander, *see* Defamation

Social rights, *see* Bill of rights.

Social security 社會保障

政府並無對老人提供全面的社會保障。雖然強制性公積金保障很多僱員，但很多對家庭主婦、自僱和失業人士則不然。問題是嚴重的，由萎縮中的勞工人口去支撐膨脹中的65歲以上人口（到2040年預期達人口半數）將會十分困難。一些立法機關的成員正推廣設立全面的社會保障制度。不過，商界在當中占主導位置，對此不大感到興趣，而大眾傳媒則以小篇幅看待此問題。

There is no government provision for universal social security for the aged. Although many employees are covered by the Mandatory Provident Fund, many other people (housewives, the self-employed and the unemployed) are not. The problem is critical, because the birth rate is half what is necessary to maintain a level population, and it will be difficult at best for the shrinking working-age sector to support the expanding over-65 sector (expected to reach half of the population by 2040). Some members of the legislature are promoting the establishment of a universal social security system. However, the business community is in the dominant position there and has shown little interest, and the mass media gives the issue little coverage.

Resource: Albert Cheng, "Dignity for All in Retirement," *South China Morning Post,* 6 May 2006, p. A-13.

Speech, freedom of, *see* Expression.

Squatters 擅自佔領土地者

通常被視為侵佔土地的人，除非他們以被默許的方式佔據私人土地持續逾12年。

Squatters are normally considered trespassers unless they have occupied the premises in a "quality" manner for twelve continuous years.

Resource: Nick Gentle, "$30m Squatter's Row Goes to High Court," *South China Morning Post,* 10 March 2006, p. 1.

Strike, *see* Labour.

Suicide 自殺

自殺本身並非罪行，但協助或慫使其他人自殺則非法。政府已進行防止運動，除年輕的成年人外，該運動看來有點成效。整體而言，香港自殺率較美國和英國高50%，與台灣一樣，及低於日本。

Suicide per se is not a crime, but aiding or counselling another person's suicide is illegal. The government has been waging a preventive campaign, which seems to have had some success except among young adults. Over all, the suicide rate is about fifty percent higher than in the US and UK, about the same as Taiwan, and lower than Japan.

Resource: Simon Parry, "Suicide Rate Dips to Lowest in Two Decades," *South China Morning Post,* 28 April 2006, p C-1.

Surveillance, *see* Search and surveillance.

Television, *see* RTHK.

Tort 侵權法

這方面的法律原告人就侵犯他們的權利而控告個人或法團的侵權行為（錯誤行為），可涉及一個人身體上的安全、財物或名譽。一個成功的訴訟通常導致被告人需向原告人作出金錢賠償。

This area of law is available to plaintiffs to sue individuals or corporations for violations of their rights. A tort (wrongful act) might involve a person's bodily security, property, or reputation. A successful suit usually results in the defendant having to pay the plaintiff a monetary award.

Torture 酷刑

被基本法第28條視為非法。根據香港法律，酷刑被定義為蓄意施加（無論作出的行為或不作為）疼痛或痛苦（包括精神方面），但公務人員執行公務時，可以合法權限，理由或解釋作為實施酷刑免費的辯護。（刑事罪行條例第3(1)條）

Outlawed by Article 28 of the basic law. Under Hong Kong law torture is defined as the intentional infliction (whether by act of commission or omission) of pain or suffering (including mental), other than lawful sanctions. The law as it applies to officials is contained in the Crimes Ordinance, sec. 3(1).

Toug 人堂

同一祖先的父系後裔稱之為堂。根據中國習慣法，堂持有財產，由男性繼承人永久地享有。堂根據香港法律被承認並負有某些責任，但其成員所享有權利是有限的。*另見* Indigenous villager.

Male descendants of a focal ancestor, i.e. an ancestor nominated for the purpose. Under Chinese customary law (q.v.), the tong held property, to be enjoyed by male heirs in perpetuity. Tongs are Recognized under Hong Kong law and have certain responsibilities, but the rights enjoyed by members are limited. *See also* Indigenous villager.

Treason 叛國

基本法第23條要求香港立法禁止叛國，但這仍未進行。在此期間，叛國的意思由刑事罪行條例第2條所定義。

Article 23 of the Basic Law requires Hong Kong to enact laws prohibiting treason, but this has not yet been done. In the meantime, the meaning of treason is defined in section 2 of the Crimes Ordinance.

Trial, right to fair 公平審訊的權利

該權利是基於公民權利公約第14條及香港人權法案條例第10條而宣告，這權利包括在法院前平等及無罪假定（基本法第87條），在對訟式程序中，由獨立無私之法庭作迅速、公正及通常公開的審問。

公正審訊的權利並不單單適用於審訊本身，而是整個刑事過程。法律的事宜由法官裁決，在嚴重的刑事案件（及通常在民事案件中涉及誹謗、惡意檢控和非法禁錮），由陪審團在無合理疑問的舉證基礎上作出裁決。

法例上（不單是普通法）當被告人經濟能力有限，他或她有權選任由政府支付的法律代表。以法律援助條例為根據，這些事宜一般而言由法律援助署處理。不過，部門的服務並不提供很多人權、小額申索和難民的案件。因此，在2006年，一個由社區組織協會設立的私人法律援助中心，便有意先集中在與人權有關的案件，包括社會經濟權利如租戶被逐出公共房屋。

一般而言，律師與當事人之間的保密是受到尊重的。不過，在2005年，律政司委託的偵查人員帶備搜查手令企圖抄查法援署辦公室。法援署人員以律師與當事人之間的保密而拒絕。最後，偵查人員沒有採取行動，雖然他們仍然有意申請證人傳票，這會讓法援署人員務須提供證據和將文件呈堂。

This right is asserted based on provisions of art. 14 of the International Covenant on Civil and Political Rights, and in article 10 of the Hong Kong Bill of Rights Ordinance (qq.v.). Included is the right to equality before the courts, the presumption of innocence (Basic Law, art. 87), and an expeditious, fair and usually public hearing before an independent and impartial tribunal in an adversarial proceeding.

The right to a fair trial applies not only to the trial per se, but to the entire course of the criminal process. Matters of law are determined by a judge. In the most serious criminal cases (and often in civil cases involving defamation, malicious prosecution, false imprisonment, etc.) matters of fact are determined by jury, on the

basis of proof beyond a reasonable doubt.

By statute (but not in common law alone), defendants have the right to legal representation of his or her own choosing, paid for by the government in the case of persons of limited means. Pursuant to the Legal Aid Ordinance, these matters are generally handled by the Legal Aid Department. However, the Department's services are not available in many human rights, small claims, labour, and refugee cases. Thus, in 2006 a private legal aid centre was established by the Society for Community Organization (SoCO), which intended to focus first on cases involving human rights, including socio-economic rights such as tenants evicted from public housing.

In general, lawyer-client confidentiality is respected. However, in 2005 detectives from the Justice Department, armed with search warrants, attempted to raid the Legal Aid offices. The Legal Aid officials resisted on grounds of lawyer-client confidentiality. In the end the detectives backed off, though they still intended to apply for a witness summons, which would oblige legal aid officers to give evidence and produce documents.

Resources: Polly Hui, "City's First Free Legal Advice Centre Set to Open," *South China Morning Post,* 5 June 2006, p. D-1. Raymond Wacks, ed., *The Right to Representation: Problems and Prospects* (1994); Klaudia Lee, "No Pressure on Legal Aid, Says Justice Chief," *South China Morning Post,* 31 July 2005, p. 4; Benjamin Wong, "Plea to Protect Lawyer-client Privilege," *South China Morning Post,* 17 March 2006.

Vote, right to 投票權利

選舉以不記名投票方式進行，而普選立法會的競爭十分激烈。不過，投票權利及代議制政府，是受制於適用於香港的限制。行政長官由800人所組成的選舉委員會所挑選。選舉委員會的代表分四個同樣大小的組別（每組200人）：(1)工商、金融界；(2)專業界；(3)勞工、社會服務、宗教等界；及(4)經選舉及不經選舉的代表如國家機構的成員和立法會議員。前三個全屬「功能界別」（來自不同階層的人）總共有28個。因此，只有很小部份的代表由普及的選舉產生，而特殊利益則很大程度被過度代表。

以立法會條例為根據，立法會的挑選是基於28個功能組別各產生一名代表（其中勞工界有3個代表），及30個由全體選民自由地選出。基本法附件二的其中一個要求是，更改立法會議員的產生辦法須經立法機關三分之二通過。結果有些立法會成員代表數十萬人，而其他選民少而占議席較多的選區只代表少數人而已。因此，代表多數人的意願被代表少數人所否決是普遍的。

區議會選舉透過民主程序進行，但這些組織的權力很小。撰寫此文時（2006年6月），看來北京不會容許更自由的選舉。一個不正式的普選條件清單已列出，包括通過基本法第23條相關的立法，規管政黨的法律，在學校的有效愛國宣傳。一般抱怨普選缺乏政治上的共識。（倘有共識，亦需要北京的贊同）。

Elections are by secret ballot, and in the case of popularly elected legislative councillors are competitive. However, the right to vote, and therefore to representative government, is limited by the "as applied to Hong Kong" (q.v.) restriction.

The Chief Executive is chosen by an 800-member Election Committee, comprised equally of representatives (200 each) of four sectors: (1) Industry, commerce, and finance; (2) the professions; (3) Labour, social services, religious organizations, etc.; and (4) elected and unelected representatives such as Legco members and members of national bodies. The first three are all "functional constituencies" (people from various walks of life) of which there are 28 in all. Thus, only a tiny fraction of the representatives are popularly elected, and the special interests are vastly over-represented.

Pursuant to the Legislative Council Ordinance, the Legislative Council is chosen on the basis of one representative for each of the 28 functional constituencies (3 representatives in the case of labour), and 30 elected by the electorate at large. (One of the requirements of Annex II of the Basic Law is that any change in the

method of choosing legislators must be endorsed by a two-thirds majority of the legislature.) The result is that some members of the legislators represent hundreds of thousands of people, while other rotten-borough legislators represent only a handful. Thus, it is common for representatives of the vast majority to be overridden by those representing a small minority.

District Council elections are the most democratically chosen, but these bodies have little power.

At this writing (November 2006) it appears that Beijing will not allow freer elections. An informal list of preconditions for universal suffrage has been laid down, including the adoption of Article 23-related legislation, a law governing political parties, and effective "patriotic" propaganda in schools. It is complained that there is a lack of political consensus on universal suffrage (which, if attained, would have to be endorsed by Beijing).

Wire tapping, *see* Search.

Women, *see* Equality.

》台灣
Taiwan

Primary Authors: Mab Huang, Li Yang-huan
主要撰寫人：黃默、李仰桓
First Draft Translated by Jessie Yeh
初稿翻譯：葉仁真

Aboriginal rights, *see Gao Shan Ching*; Indigenous cultural norms; Indigenous names; Indigenous Peoples Congress; Indigenous redesignation; Indigenous Rights Declaration; Land rights; Nuclear waste; Self-determination.

Academic freedom, *see* NTU Philosophy Department Affair.

AIDS quilt 愛滋紀念被單

台灣的愛滋病防治團體「希望工作坊」在1995年成立「愛滋紀念被單計畫組織」，推廣縫製被單的意涵。縫愛滋被單的時候，通常是一群和逝者熟識的人，圍坐在桌前，一面拿著剪刀針線，一面閒聊逝者生前說過的話，做過的事。聊天的內容中，有和逝者共同經歷過的快樂和奮鬥，也有懷念逝者的悲傷。所以，縫被單不只是一件縫綴工作而已，它也是一個療傷的過程，讓生者藉著這個集體性的儀式，走出傷痛，得到希望。*另見* 國際部份。

In 1995 Taiwan's AIDS prevention organization Living with Hope began the AIDS Memorial Quilt Project to promote the idea of memorial quit sewing. AIDS quilts are typically sewn by acquaintances of those who have died of AIDS. As they work with scissors and needles at a table, they discuss what the deceased had accomplished in his/her lifetime. The conversations centre on the happiness, struggles, and sadness that they had experienced. The sewing of quilts is thus therapeutic, allowing the living to progress from sorrow to hope by means of this collective activity. *See also* International section.

*參考資料：*莊慧秋編，2002，*揚起彩虹旗*，p77；賀照緹，1998，「療傷．愛滋被單」，*張老師月刊*，247卷。

Article 100 刑法一百條

此處指中華民國刑法於1992年修正前的刑法一百條。該條規定：「意圖破壞國體，竊據國土，或以非法之方法變更國憲，顛覆政府，而著手實行者，處七年以上有期徒刑；首謀者，處無期徒刑」。學界稱「非暴動內亂罪」（或「和平內亂罪」）。

依據本條規定，被告只要被認定有本條所列四種意圖中的任何一種，而動手開始實行，就可以判處內亂罪。由於條文並未敘明何種行為始成立犯罪，以致法官享有極大的自由心證空間，凡與政府統治利益相違的政治言論或主張，或是以和平手段實現政治主張的行為，均可被列入。這個規定，明顯侵犯人民的各種基本權利（如言論自由、集會結社自由），被視為政府整肅異己之工具。「懲治叛亂條例」於1949年6月21日頒布後，更將一百條的刑責提高為唯一死刑，為執行最多死刑之條文，是威權時期對付政治犯的「黃金條項」。

1991年9月21日，台灣學界串連各個社會團體，成立「一OO行動聯盟」，要求廢除刑法一百條。經「一OO行動聯盟」與當時政府（國民黨政府）協議，該條只修不廢。1992年5月16日，立法院通過修正案，將原條文「著手實行」修改為「以強暴或脅迫著手實行」，自此使用非暴力方式實現和平政治主張之言論或行為，不構成刑法之內亂罪。*另見* Rebellion Statute.

This refers to Article 100 of the pre-1992 criminal code. According to the article, "anyone who intends and undertakes to destroy the national integrity, occupy the state territory, or change the Constitution or subvert the government by any illegal means is liable to imprisonment for a term no less than seven years; the lead criminal is liable for a life sentence." In academic circles this was referred to as the "crime of non-violent rebellion" (or of "peaceful rebellion").

According to the article, the defendant could be convicted of the crime of rebellion if he/she was deemed to have one of the four intentions, and begin to undertake any action. However, since the article failed to specify the courses of conduct that were required for conviction, judges had unrestricted discretion. Thus, if one's political ideology or speech was contrary to the government's interests, or if one sought to express his/her political ideology by peaceful means, one was subject to conviction under Article 100. This article violated many fundamental rights (such as freedom of expression, freedom of assembly and association), and was seen simply as a government tool to punish dissidents. After the Statutes for the Punishment of Rebellion was promulgated in 1949, the maximum sentence imposed by Article 100 was raised to a mandatory death penalty. Article 100 was often referred to as the "golden provision," by means of which the authoritarian government held political prisoners; it resulted in more executions than any other statutory provision.

In 1991 people from various academic circles established "the 100 Action

Alliance." In conjunction with other groups, they demanded the repeal of the article. Negotiations were initiated between "the 100 Action Alliance" and the governing Kuomintang (q.v.). The next year the Legislative Yuan adopted an amendment to Article 100 in which the original wording of "undertakes" was replaced by "undertakes by means of violence or coercion." Since then, peaceful speech or conduct to advance a political ideology by non-violent means has not been regarded as a crime. *See also* Rebellion Statute.

參考資料：「中華民國刑法」，全國法規資料庫：http://law.moj.gov.tw/Scripts/Query4A.asp?Fcode=C0000001&FLNO=100，2006/6/20；魏廷朝，1997，*台灣人權報告*，28、255~256頁；林山田，1991，*抗爭100—廢除刑法一百條抗爭札記*，35~39頁。

Assembly and demonstration 集會遊行法

我國於戒嚴時期，凍結憲法第14條人民集會遊行之權利，直到1988年1月20日，始制訂「動員戡亂時期集會遊行法」，其目的在保障人民集會、遊行之自由，並維持社會秩序。1992年7月27日更名為「集會遊行法」（集遊法）。

本法所稱「集會」，係指於公共場所或公眾得出入之場所舉行會議、演說或其他聚眾活動。至於「遊行」，指的是於市街、道路、巷弄或其他公共場所或公眾得出入之場所之集體行進。集會遊行之主管機關為各地警察局，人民欲發動集會遊行需經主管機關事前許可。

集會遊行法第4條規定集會遊行不得主張共產主義及分裂國土，第11條規定若違反第4條規定，主管機關可不允許集會遊行。大法官會議釋字第445號判定第11條違背憲法所保障之言論自由，應予廢止。同時也指出集遊法第9條要求即使偶發事件亦需前二日申請許可，與憲法保障集會自由之意旨有違，應該檢討。因此，集遊法於2002年6月26日修正。

2006年，台灣的人權團體串連，組成「集遊惡法修法聯盟」，指出修正後的集遊法仍保留事前的許可制，同時警察常以不符集遊法規定為由驅離集會民眾，因此提出民間版的「集會遊行保障法」，主張集會遊行法應保障人民走上街頭的權利而非予以限制，且應以報備取代審核、改保護群眾與維持交通而非任意驅散。

During the Martial law (q.v.) regime, the Constitution's Article 14 that guaranteed the right of freedom of association was suspended. An assembly and demonstration law was not enacted until 1988, its purpose being to protect people's freedom of assembly and right to demonstrate, and to maintain social order. "Assembly"

includes holding meetings, giving speeches, or other collective activities in public places or places of public access. "Demonstration" refers to gathering in streets, roads, lanes, or other public places or places of public access. Prior police permission is required for assemblies and demonstrations.

Article 4 of the Assembly and Demonstration Law still bans the advocacy of Communism and breaking up of the state. Article 11 allows the government to reject the application if the applicants disobey Article 4. Nevertheless, Interpretation No. 445 of the Council of Grand Justices determined that Article 11 was an unconstitutional violation of the freedom of speech. Furthermore, Article 9's requirement that any application for permission had to be submitted two days in advance, even in the case of unanticipated events, also violates the freedom of assembly and should be re-examined. The Assembly and Demonstration Law was amended accordingly in 2002.

In 2006, many human rights groups came together and organized the "Alliance for Revising the Assembly and Demonstration Law." Pointing out that the amended version of 2002 still retained the old permit policy and the police continued to disperse crowds in the name of this law, they drafted a new version designed to protect rather than constrain the rights of assembly and demonstration; instead of applying for a permit people should merely have to register. They argued that the police should protect the crowds and supervise the traffic rather than arbitrarily disperse crowds.

參考資料：「集會遊行法」，全國法規資料庫：http://law.moj.gov.tw/Scripts/NewsDetail.asp?no=1D0080058，2006/6/14；「大法官會議釋字第445號」，民國87年1月23日：http://www.judicial.gov.tw/constitutionalcourt/p03_01.asp?expno=445；集遊惡法修法聯盟部落格：http://blog.yam.com/right_of_assembly，2006/11/2。

Asylum 庇護

台灣並未通過庇護法。2002年，中國民運人士唐元雋為躲避中國的政治迫害，從福建偷渡至金門尋求政治庇護。台灣政府以無庇護法為由，將唐視為偷渡客移送法辦。台灣人權促進會等民間團體除極力聲援唐元雋外，正式呼籲政府訂定庇護法，以符合人權保障標準。唐元雋後來獲准前往美國接受政治庇護。

In 2002 Tang Yuan-jun, a Chinese democracy activist, fled from Fujian to Quemoy and sought political asylum in Taiwan. Citing the lack of a law on refugees and

asylum, the government prosecuted him as a illegal entrance. This action by the government provoked the opposition of many NGOs, including the Taiwan Association for Human Rights, who supported Tang in his quest for freedom and urged the government to adopt a law on refugees and asylum. He was later given political asylum by the United States.

*參考資料：*台灣人權促進會，http://www.tahr.org.tw。

Autumn Struggle 秋鬥

1988年11月12日，台灣九十多個工會團體，三千多名勞工，在台北市舉行「二法一案」遊行活動，抗議政府在修訂勞動基準法與工會法時偏袒資方，以及處理苗栗客運勞資糾紛事件不公。從這次遊行開始，台灣的工運團體每年11月都針對該年度最主要的勞工議題舉行遊行，是所謂「秋鬥」。

In 1988 over ninety Taiwanese labour organizations and upwards of 3,000 workers organized the "Two Laws, One Case" Movement. On November 12 they held a demonstration in Taipei to protest the government's siding with employers in amending the labour standards and the trade union laws, and in particular the government's partiality in handling a bus dispute in Miaoli. Since this demonstration, Taiwan's labour movement organizations have held Autumn Struggle demonstrations every November to call attention to major labour concerns.

*參考資料：*薛化元等著，2003，*戰後台灣人權史*，283~284頁。

Belief, freedom of, *see* Song Chi-li case.

Capital punishment, *see* Hsi Chi Three *and various* Death penalty *entries.*

Chinese Association for Human Rights 中國人權協會

中國人權協會設立於1979年，是台灣最早的一個民間組織，與政府關係密切，並受政府經濟上的支持。2000年，政黨輪替以後，中國人權協會一度轉而關心中國大陸人權以及泰緬邊境難民的處境。近年來，每年分別邀請各領域的學者專家負責人權指標的評鑑，頗受社會矚目，同時也關注人權教育的推動。

Founded in 1979, the Chinese Association for Human Rights (CAHR) was one of the earliest human rights NGOs in Taiwan. It enjoyed a very close relationship with and received financial support from the government. After the transfer of political power to the DPP in 2000, CAHR turned its attention to the human rights situation in mainland China and also to the plight of Chinese ethnic groups in the Thailand-Burma border areas. In recent years CAHR has issued an annual human rights index evaluating performance in different fields. University professors, lawyers and journalists were invited to evaluate the achievements in areas of rights. The Association also promotes human rights education.

Comfort women 慰安婦

根據台北市「婦女救援基金會」（婦援會）的統計，台籍慰安婦（見國際部份）至少在1200人以上。台北市婦援會及外交部設立申訴專線，查訪台籍慰安婦現況、建立口述歷史，協助生活、醫療與心理輔導，及代表受害者向日本政府求償。唯至2006止，日本法院仍宣判台灣慰安婦的求償官司敗訴。

According to Taipei's Women Rescue Foundation, the number of Taiwanese comfort women (*see* International section) is estimated to have been more than 1,200. The Foundation and the Ministry of Foreign Affairs have established complaint hotlines. Their representatives visit former Taiwanese comfort women, compile oral histories and provide medical, psychological, and livelihood assistance. However, as of 2006 the Taiwanese comfort women's claim for compensation was still not recognized by Japanese courts.

*參考資料：*婦女救援基金會，1999，*台灣慰安婦報告；*「何謂慰安婦」，婦女救援基金會網站：http://www.twrf.org.tw，2006/6/16。

Death penalty, *see* Hsi Chi Three *and the following.*

Death penalty alternative 替代死刑

根據台灣歷年來的研究調查，約有 70%~80%人民贊成維持死刑制度。但若問「以不可假釋的終身監禁為死刑替代方案，是否贊成死刑」時，則贊成的比例降至50%。國內反死刑團體因之認為說服民眾放棄死刑其關鍵在於提出一套合理的刑罰制度以取代死刑，因而成立「替代死刑推動聯盟」（即「台灣廢除死刑推動聯盟」的前身），督促政府提出替代死刑之方案。

Research has indicated that about 70 to 80 percent of Taiwanese support the retention of the death penalty. However, if asked whether they would still favour the death penalty "if life imprisonment without parole were used as an alternative to the death penalty," this rate dropped to 50 percent. Taiwan's anti-death penalty organizations believe that a rational alternative punishment system has to be proposed before people can be persuaded to abolish the death penalty. The Alliance Promoting the Alternative to the Death Penalty was established for this purpose.

*參考資料：*廢除死刑推動聯盟網站：http://www.deathpenalty.org.tw，2006/6/14；李仰桓，2005，「台灣廢除死刑運動」，*生活在一個沒有死刑的社會，*吳志光編。

Death penalty, discretionary 相對死刑

指在法律條文中規定觸犯該罪行者除死刑外還可以判處其他刑責，法官有裁量的空間。如我國刑法第103條：通謀外國人或其派遣之人，意圖使該國或他國對於中華民國開戰端者，處死刑或無期徒刑。

Discretionary death penalty refers to legal situations in which judges are given the option of sentencing a convicted person to death. For example, Article 103 of the Criminal Code allows but does not require a judge to impose the death sentence for collusion with foreigners or their agents with intention to incite that country or other counties to declare war against Republic of China.

Death penalty, mandatory 絕對死刑

亦稱「唯一死刑」。指在法律條文中規定觸犯該罪行者只能判處死刑，法官沒有另外裁量的空間。如我國「陸海空軍刑法」第27條：敵前違抗作戰命令者，處死刑。

The term applied when a court's only sentencing option is the death penalty. In Article 27 of the Criminal Law of the Armed Forces, for example, it is stipulated that a person who disobeys orders at the front lines shall be sentenced to death.

Defamed, right not to be 不受誹謗的權利

台灣曾發生過各種不同類型的誹謗案件，其中以政治人物控訴媒體報導內容誹謗最受矚目，因為這類的控訴常有是否侵犯新聞自由之爭議。

2000年11月，「新新聞周報」報導呂秀蓮副總統於某日深夜致電該周報總編輯，指出陳水扁總統與總統府顧問發生緋聞。呂副總統否認打過這樣的電話，並控告該周報誹謗。最高法院於2004年4月三審定讞，判決呂副總統勝訴，「新新聞周報」相關人員應負損害賠償責任。

法院認為，在呂副總統控告「新新聞周報」一案中，該周報並未善盡查證之義務，有「明顯理由足以懷疑報導之正確性」，所以判決「新新聞周報」敗訴。

In recent years, Taiwan has experienced various types of defamation suits. The most controversial have been those of politicians accusing news outlets of libel. For example, in November 2000 The New News Weekly reported that Vice President Annette Lü had telephoned its editor-in-chief after midnight, disclosing a love affair between President Chen and a female councillor. The Vice President denied making the call and took the Weekly to court. After three years, the Supreme Court decided the case in favour of Lü and ordered the relevant people at the Weekly to pay compensation. The court reasoned that the Weekly had had grounds to doubt the accuracy of this report, and should have fulfilled their duty to thoroughly investigate and confirm the report.

*參考資料：*http://www.gov.tw/EBOOKS/TWANNUAL/show_book.php?path=3_011_012，2006/10/29。

Democratic Progressive Party 民主進步黨（民進黨）

1986年，台灣的反對運動人士突破黨禁，成立了民主進步黨，積極參與地方政府與各級民意代表的選舉，挑戰中國國民黨的一黨專政。2000年，陳水扁代表民進黨當選中華民國第十任總統，為台灣首次的政權轉移，民進黨取代國民黨成為執政黨。2004年，陳水扁再當選第十一任總統。

民進黨強調台灣主體意識，追求本土化，與中國作出區隔。執政初期宣示「人權立國」，以政府的力量推動人權保障，例如於總統府成立「總統府人權諮詢小組」，於教育部成立「人權教育委員會」（後改名人權教育諮詢小組)等。但在2004年後，政黨之間的糾紛層出不窮，進而影響立法院的運作，人權政策的推動明顯受到挫折。*另見*Parties, political.

In 1986 local political figures, including lawyers and professionals opposed to the KMT-dominated government, founded the Democratic Progressive Party (q.v.), thus violating the ban on formation of new political parties. Such people had previously been referred to as “Tang-wai,” literally “those outside the (ruling) party.” The DPP actively participated in local elections and the legislative bodies at different levels, challenging the KMT's monopoly of power. In 2000 DPP candidate Chen Shui-bian was elected the tenth president of the Republic of China, and was re-elected four years later.

The DPP has emphasized Taiwanese self-identity, upholding Taiwanese values to distinguish Taiwan from China and things Chinese. During the early years of Chen Shui-bian's presidency, the policies for living up to international human rights standards and linking up with the international community were adopted. A Human Rights Consultative Group was set up in the presidential office to advise the president, while in various ministries mechanisms to promote human rights in their fields were established, such as the Human Rights Education Committee in the Ministry of Education. Nevertheless, during President Chen's second term (2004-2008), human rights concerns tended to be neglected due to political confrontations between the ruling party and the opposition parties, which tended to cripple the Legislative Yuan. *See also* Parties, political.

Demonstration, *see* Assembly.

Domestic violence 家庭暴力

家庭暴力指家庭成員間實施身體或精神上不法侵害之行為。其中以夫妻間的暴力行為為最大宗，且受害者絕大多數為女性。根據不同學者的調查，台灣地區約有12%~30%左右的婦女曾遭受家庭暴力。因此家庭暴力防治的成果成為保障台灣婦女人權之重要指標。

為解決家庭暴力的問題，在婦女團體及立法委員的努力下，台灣於1998年6月24日公布「家庭暴力防治法」。該法規定應於中央及各級地方政府設置「家庭暴力防治委員會」，各級地方政府並應設立「家庭暴力防治中心」，以防止家庭暴力事件發生及保障受害者權益。同時，法院應依法核發保護令，保障被害人之權益。而為宣導家庭暴力之防治，該法亦規定相關政府單位及各級中小學應實施家庭暴力防治之教育宣導。*另見*Protection order.

Domestic violence is the behaviour of one member of a family that unlawfully harms another member, either physically or psychologically.

Although the term “domestic violence” refers to violent behaviour between family members in general, most domestic violence occurs between husband and wife, the majority of victims being women. According to various scholars' research, 12 to 30 percent of Taiwanese women have been victims of domestic violence. The handling of domestic violence has thus become an important indicator of Taiwanese women's rights.

In 1998, due to the efforts of several women's rights groups and legislators, the Domestic Violence Prevention Act was promulgated. The law stipulates that the central and local governments are to set up domestic violence prevention committees and domestic violence prevention centres to prevent domestic violence from occurring and to protect victims' rights. At the same time, the courts were to issue Protection orders (q.v.) pursuant to the relevant laws, in order to protect the rights of domestic violence victims, and the relevant government agencies and schools were to provide domestic violence prevention education as well. *See also* Protection order.

*參考資料：*張錦麗、吳素霞，2003，「台灣家庭暴力防治工作的回顧與前瞻」，*2002年台灣人權報告*；「家庭暴力防治法」：http://law.moj.gov.tw/Scripts/NewsDetail.asp?no=1D0050071，2006/6/8。

DuPont affair 反杜邦運動

杜邦公司為全球最大的化學工業公司。1985年，杜邦向經濟部申請在鹿港的「彰濱工業區」設廠，生產二氧化鈦。此為當時四十年來最大的外資投資案，政府單位高度重視。但鹿港居民早已飽受工業污染之苦，而二氧化鈦的生產過程會產生一氧化碳、氯氣、四氯化鈦等廢氣及廢水，這項投資案因而引起居民恐慌。尤其「彰濱工業區」沿岸為台灣重要的養殖魚場，杜邦的設廠更引起漁民的反對。

反杜邦運動是台灣第一個反公害抗爭，也代表著當時台灣民間社會反威權統治的力量。該運動於1987年成功迫使杜邦取消計劃，也是台灣首例。1990年，杜邦公司轉而在桃園觀音鄉設廠。

DuPont is the world's largest chemical company. In 1985 it applied to the Ministry of Economic Affairs to set up a plant for producing titanium dioxide, or TiO2, in the Chang Ping Industrial Zone in Lu Kang. Since this was to be the largest industrial investment in Taiwan's history, the government accorded it high importance. However, the residents in Lu Kang had long been plagued by industrial pollution, and the production of TiO2 threatened to result in toxic waste gas and polluted water emissions. This project frightened local residents, particularly the fishermen, because the coastal area of Chang Ping Industrial Zone was an important fish culture area.

The Anti-DuPont movement represented a challenge from Taiwan's civil society to the authoritarian government. The movement forced DuPont to cancel its plan. This is considered Taiwan's first successful campaign to protect the environment. DuPont eventually established the plant in Kuan Ying Township of Taoyuan County instead.

*參考資料：*台灣環境事件記錄小組：http://www.e-info.org.tw/ecostory，2006/6/16；Mab Huang, “Capturing the Image of Justice between Generations: A Preliminary Report on Four Confrontational Situations in Environmental Dispute,” *東吳政治學報*，第十六期，2003。

Environmental Impact Assessment Act

環境影響評估法

台灣的「環境影響評估法」於1994年12月30日公布，2003年1月8日修正，其目的在於預防及減輕開發行為對環境造成的不良影響。依據本法規定，所謂「環境影響評估」係指開發行為或政府政策對環境，包括生活環境、自然環境、社會環境及經濟、文化、生態等可能影響之程度及範圍，事前以科學、客觀、綜合之調查、預測、分析及評定，提出環境管理計畫，並公開說明及審查。環境影響評估工作包括第一階段、第二階段環境影響評估及審查、追蹤考核等程序。

The Environmental Impact Assessment Act was promulgated in 1994 and was amended in 2003. The objective of this act is to minimize the environmental impact of human activity. In accordance with this act, an environment impact assessment is required for each new development or government policy. This involves the investigation, prediction, analysis, and assessment of the degree and scope of possible impact on the environment, including any affecting nature, society, the economy, culture, and people's livelihood.

參考資料：「環境影響評估法」，全國法規資料庫：http://law.moj.gov.tw/Scripts/NewsDetail.asp?no=1O0090001，2006/6/16。

Environmental rights, *see* Du Pont affair; Environmental Impact Act; Fifth Naphtha Plant; Fourth Nuclear Power Plant movement; Incineration issue; Li Chang-jon chemical factory, the; Mei-Nung Dam; Nuclear-free; Nuclear waste; Radio contamination case; RCA case.

Equality, *see* Gender Employment Equality Act.

Expression, freedom of, *see* Kaohsiung Incident; Lei Zhen; Publications law; Rebellion statute.

Family Code 民法親屬編

中華民國民法第四編是「親屬編」。本編規範婚姻關係中夫妻的權利義務，以及家庭中父母子女的權利責任，對婦女在家庭中的地位與權益有根本性的影響。民法親屬編制訂於1930年，至1985年才作第一次修訂。在此之前，親屬編完全反映了中國傳統對婦女地位的觀念。這個觀念要求婦女在家庭中只能有附屬的地位，不能獨立自主，亦不享有人格尊嚴及平等權，居住遷徙之自由及對財產的處分權等均遭剝奪。

1975年，當時之司法行政部邀請學者專家對親屬編進行第一次修法，歷時10年，至1985年完成。修正後的版本雖有意符合男女平等之原則，但因傳統封建父權思想堅固，在女性權益保障的進展上十分有限。1990年，包括「晚晴協會」及「婦女新知」等婦女團體提出民間「新晴版」的修正版本，企圖翻轉親屬編中歧視女性的條文。一般認為，至2002年「夫妻財產新制」通過後，「民法親屬編」的修法運動才大致告一段落。

The fourth part of the ROC Civil Code is the Family Code, which regulates the rights and duties between husband and wife as well as rights and duties between parents and children. The Family Code largely determines a woman's status and rights with respect to her family.

The original Family Code was formulated in 1930, and was not amended for fifty-five years. Until it was amended, the code reflected the traditional concept of women. Accordingly, women were secondary citizens, dependent on the male, and thus lacking equal rights and dignity. They lacked property rights and freedom of movement.

Thanks to the efforts of women's rights groups, 1985 saw the first step in the reform of the Family Code, a process that was completed in 2002, with the adoption of new regulations regarding property right between husband and wife.

參考資料：尤美女，2000，「民法親屬編修法運動與台灣婦女人權之發展」，*一九九九台灣女權報告*；婦女權益促進發展基金會編，1999，*女人六法—婦女權益法令彙編實用手冊*；呂麗榕，2002，「談夫妻財產新制」，http://warmlife.womenweb.org.tw/OrgNews_Show.asp?OrgNews_ID=258.

Female quotas 婦女保障名額

由於傳統父權思想的宰制，女性參與政治的空間受到結構性和制度性的限制，而難以在政治中占有一席之地。為保障女性參政權利，透過制度安排以保留一定比例的政治空間予女性，是謂「婦女保障名額」。

「婦女保障名額」之原意雖在保障女性參政權益，但以婦女團體的角度而言，女性的弱勢是長期以來性別歧視的結果，而非兩性差異的原因。女性的弱勢是資源上的弱勢，而非能力上的弱勢。「婦女保障名額」將婦女視為需受保護的弱者，無疑深化或再製了社會對女性的歧視。因此，近年來婦女團體倡議以「性別比例原則」取代。「性別比例原則」指任一性別的參政均不能低於某一比例，旨在促進性別的均勢，著重於性別正義的實現。

在台灣，不論是「婦女保障名額」或「性別比例原則」，均可以從四個領域來討論：

1、政務官的任命：這個領域沒有相關的法律規範，多由中央或地方政府宣示任用一定比例的女性政務官。

2、民意代表：我國憲法第143條規定：「各種選舉，應規定婦女當選名額，其辦法以法律定之」。由於法律規範不同，導致各種選舉的婦女保障名額有所差別：中央民意代表約十分之一，北、高兩市約為七分之一。然自1990年後，民意代表的婦女保障名額規定出現落後政治現實的情形，亦即女性在民代選舉中的當選人數常遠多於保障名額，規定因而形成具文，婦女團體乃有四分之一甚至三分之一「性別比例原則」之議。

3、政黨提名：在政黨的公職人員提名辦法中，採用性別比例原則。

4、黨職的任命：在黨工的任用上，採用性別比例原則。

Women's participation in politics has been impeded by structural and systemic limitations, and traditional paternalism. In order to protect women's right of political participation, certain quotas or seats are reserved for women. This is the guaranteed female quota.

The guaranteed female quota was intended to protect women's right to political participation. However, feminist scholars contend that the disadvantages suffered by women are products of long-term gender discrimination rather than differences between the sexes, and believe the guaranteed female quota treats females as vulnerable people who need to be protected, thus reinforcing gender stereotypes and discrimination. Accordingly, women's groups advocate that the guaranteed female quota be replaced by the gender proportional principle. Under this principle, neither males nor females would occupy more than a certain percentage; for example, two-thirds of the seats in the Executive or the Legislative branch of the government.

In Taiwan, either the principle of guaranteed female quota or of gender proportion can be applied in four arenas. First, central or local governments will appoint a certain number of female cabinet members, even though there are no enactments that force the government to do so. Second, according to Article 143 of the Constitution, the quota of female representatives is guaranteed at all levels of legislature. Third, party nominees for public positions are produced according to the principle of gender proportion. Finally, the recruitment of party activists is based on the principle of gender proportionality.

*參考資料：*黃長玲，2001，「*從婦女保障名額到性別比例原則—兩性共治的理論與實踐*」，*問題與研究*，第40卷，第3期；彭渰雯，2000，「*一九九九台灣女權報告—參政篇*」，*一九九九台灣女權報告*；楊婉瑩，2002，「告別婦女保障名額，迎向性別比例原則」，*國政評論*，網站：http://www.npf.org.tw/PUBLICATION/CL/091/CL-C-091-231.htm。

Fifth Naphtha Plant 後勁反五輕

1987年，中國石油公司（中油）決定於高雄後勁地區建立「輕油裂解廠」。該廠因為全台第五座，又名五輕。由於中油四十年來在該地已造成不少環境汙染的問題，包括嚴重的工廠噪音、油氣滲入地下水及空氣之中等，後勁居民因而群起抗議五輕的設立。同時，居民也要求中油搬遷原有工廠，並提出損害賠償。

「後勁反五輕」運動的一大特色，即環保運動與民間宗教信仰的密切結合。不但「後勁反五輕自救會」由該地信仰中心「鳳屏宮」撥款成立，每次抗爭時，民間習俗中的「宋江陣」也必定出現。甚至在抗爭運動面臨路線的分裂時，民眾也數次以求神問卜的方式確定是否繼續抗爭。1990年，後勁居民針對是否反對五輕設廠舉行台灣首次的公民投票，以總投票數68%的意見反對五輕設廠，但當時的經濟部表示此一投票結果「僅供參考」。同年，五輕廠強行開工，但政府承諾中油在25年內（即民國104年前）分三階段完成遷廠計劃。

In 1987 the Chinese Petroleum Corporation (CPC) decided to build a naphtha cracking plant in Hou-jin, Kaohsiung Municipality. Since the CPC had caused many environmental problems in the area during the previous forty years, including factory noise and permeation of oil and gas into underground water and air, Hou-jin

residents strongly opposed the construction of the plant. They also demanded that CPC relocate previously built plants, and pay compensation.

One major feature of what became known as the Hou-jin Anti Fifth Naphtha Cracker Plant movement was the close cooperation between the environmental protection movement and religions. The local Taoist temple, Feng Ping Kung, financed the establishment of the Anti Fifth Naphtha Cracker Plant Association. The martial-arts Taoist group Sung Jiang Chen attended all protests. In 1990 Hou-jin residents held a referendum on the Fifth Naphtha Cracker Plant; 68 percent of the voters opposed the plant's construction. The Ministry of Economic Affairs was only willing to accord reference status to the referendum, and construction began in the same year, but the government did promise to relocate the plant, in three phases, by 2015.

*參考資料/Resources：*呂欣怡，1992，「後勁反五輕運動的研究」，清華大學社會人類學研究所碩士論文；Ming-sho Ho, "Protest as Community Revival: Folk Religion in a Taiwanese Anti-Pollution Movement," *African and Asian Studies* (2006), 4:237-69.

Fingerprinting 拒按指紋運動

台灣於2005年7月全面換發新的國民身份證。依戶籍法第8條規定，請領新式身份證時，應按捺指紋，否則不予發給。人權團體認為此舉強制國民將個人生物特徵暴露在國家管制之下，儼然係警察國家的行為，嚴重侵害人民隱私。同時，內政部打算據此建立全民指紋資料庫，以利犯罪偵防，疑將全民視為潛在罪犯，違反「無罪推定原則」，有違基本人權之保障。而且國民身份證現已為人民生活所必需，不按指紋即拒發身份證的規定，被譏為是政府勒索人民，強迫人民就範。鑑於上述理由，人權團體發起「拒按指紋運動」，於領取身份證時，拒絕按捺指紋，據以提出行政訴訟。其最終目的在於由人民聲請大法官會議針對戶籍法第8條解釋其有無違憲。

大法官會議於2005年9月28日作成釋字第603號解釋，解釋文中強調：「隱私權雖非憲法明文列舉之權利，惟基於人性尊嚴與個人主體性之維護及人格發展之完整，並為保障個人生活私密領域免於他人侵擾及個人資料之自主控制，隱私權乃為不可或缺之基本權利，而受憲法第22條所保障」。指紋為重要之個人資訊，戶籍法第8條要求按捺指紋始換發身份證之規定，其立法目的不明，與憲法保障人民資訊隱私權之意旨不合；同時損益失衡、手段過當，不符比例原則之要求，因而判定違憲，不得再予適用。

In 2005 the government began issuing new identity cards. In accordance with Article 8 of the Household Registration Act, citizens were required to provide fingerprints before the new ID cards were issued. The Ministry of Interior intended to build a fingerprint database of all citizens to enhance crime investigation. Human rights groups argued that this compulsory requirement exposed individuals' biological features to government control, and thus violated citizens' privacy. Furthermore, the MOI's approach was viewed as regarding all citizens as potential criminals, and was thus inconsistent with the presumption of innocence. As an ID card was a necessity in citizens' daily life, this compulsory requirement was ridiculed as blackmail by the government to secure citizens' compliance. Such thinking gave rise to the "Anti-Fingerprinting Movement," which urged citizens to refuse to provide their fingerprints when applying for the new ID card, so as to force an administrative litigation. The ultimate objective of the litigation was to request the Council of Grand Justices to determine whether Article 8 of the Household Registration Act violated the Constitution.

The Council of Grand Justices produced Judicial Yuan Interpretation No. 603 on this subject on 28 September 2005. In this interpretation, the Council stated that although the right to privacy is not written into the Constitution, in terms of the protection of human dignity and subjectivity of individuals, as well as in order to prevent the individual's intimate life from being infringed on by others and to protect personal information, the right to privacy is an indispensable fundamental right and is protected by Article 22 of the Constitution. Accordingly, the implications of Article 8 of the Household Registration Act are ambiguous, and are not in accordance with those purposes for which the Constitution protects the right to private information. Furthermore, there is an imbalance between cost and benefit; the means called for in the act are extreme, and it does not conform to the principle of proportionality. Thus Article 8 was declared unconstitutional.

*參考資料：*劉靜怡，2002，「政府公權力之行使與人民隱私權之保障」，*2001年台灣人權報告*；台灣人權促進會，2005，「我不按指紋，給我身份證－拒按指紋運動連署書」，http://www.tahr.org/nonfingerprint；黃文雄，2005，「一場民主和法治的操演：人民拒按指紋運動簡介」，*人本雜誌*，6月號；大法官會議釋字第603號解釋文，民國94年9月28日，http://www.judicial.gov.tw/constitutionalcourt/p03_01.asp?expno=603。

Fourth Nuclear Power Plant movement 反核四運動

台灣的反核運動以反核四及反核廢料為兩大主軸。台灣目前擁有三座核能發電廠，台灣電力公司於1978年起，籌設核能四廠（核四），並選定位於台灣北海岸的貢寮鄉為廠址。1986年，蘇聯車諾比核電廠發生爆炸，造成全球恐慌。貢寮鄉民於1988年成立「台北縣貢寮鄉塭寮反核自救會」，開始民間反核四的序幕。

反核四運動認為，核能電廠的安全是無法確保的。核子分裂是最難駕馭的能源，即使科技先進的美、俄兩國都發生過嚴重的核電廠意外。台灣地區地震頻傳，核四廠五公里內共有六條斷層帶，近海區又有活火山活動的跡象，這些天然災害的威脅使核電廠的安全更難確保。

嚴重的核子事故會造成大量的放射性物質外洩，導致輻射汙染和輻射傷害。就發生過的案例而言，輻射汙染涵蓋面不但廣大，造成的傷害更是嚴重，包括受汙染者的致癌率大幅提高、孕婦產下畸型兒、嬰兒死亡率增加等。即使電廠未發生意外，其運作期間造成的環境汙染問題也十分驚人。如目前核二附近水域的魚類已出現畸型現象（即一般稱的「秘雕魚」），核三已造成珊瑚白化，核四的工程更造成福隆海灘流失的國土內縮現象。

1994年，貢寮舉辦核四公投，之後台北市及宜蘭縣也分別舉行。1994年「核四公投促進會」成立，希望推動將核四廠興建與否的決策交由全國性的全民投票決定。

反核四運動雖以阻止核四廠的興建為主，但其訴求其實涵括了台灣整體的反核運動。2000年，民進黨政府宣布停建核四，引發在野黨強力反彈，最後再次復工。朝野目前提出以「非核家園」作為台灣能源政策的共識，但其具體內涵為何，政府與環保團體間仍存在不少的歧異。*另見* Nuclear-Free.

Taiwan's anti-nuclear movement has centred on two major issues: the problem of Nuclear waste (q.v.), and the Fourth Nuclear Power Plant.

The Taiwan Power Company began preparations for the construction of the Fourth Nuclear Power Plant in 1978, the proposed plant site being Kung Liao Township on the north shore of Taiwan. Eight years later, at Chernobyl in the USSR, occurred the world's worst nuclear power accident. This event shocked the entire world, including Taiwan. As a result, Kung Liao residents formed the Taipei County Kung Liao Township Yen Liao Antinuclear Association, which launched the Anti-Fourth Nuclear Power Plant movement.

The supporters of the movement believed that the safety of such a nuclear power plant could never be fully guaranteed. They saw nuclear fission as the most difficult form of energy to control, noting that even the United States and the Soviet Union, countries with the most advanced technologies, could not prevent nuclear disasters from occurring. Taiwan is earthquake-prone, with six geographic fault lines within four or five kilometres of the site of the Fourth Nuclear Power Plant. There have been indications of volcanic activity. These threats of natural disasters are viewed as further compromises to the plant's safety.

It was believed that serious nuclear accidents would lead to massive emissions of radioactive substances, causing nuclear pollution and harmful radiation. Past experience has shown that nuclear pollution not only affects large areas but also has very serious consequences, including much higher than normal rates of cancer, birth defects, and infant mortality. Even if no accident were to occur, people worried about the environmental pollution caused by the operation of nuclear power plants. For instance, deformities have been found in fish in the water near the Second Nuclear Power Plant; the Third Nuclear Power Plant has caused the whitening of coral; the Fourth Nuclear Power Plant has resulted in the loss of Fu Lung Beach.

A 1994 referendum on the Fourth Nuclear Power Plant was held in Kung Liao Township, followed by similar referenda in Taipei City and Yilan County. The Association for the Promotion of Referendum on the Fourth Nuclear Power Plant was established to return the decision-making power on whether to construct this plant to the people. Although the movement's central purpose was to stop the construction of the Fourth Nuclear Power Plant, it has also incorporated Taiwan's generic anti-nuclear movement. In 2000, the new DPP government announced the suspension of the construction of the Fourth Nuclear Power Plant. However, the Kuomintang and other opposition parties vehemently opposed the suspension, which forced the government to resume construction.

The political parties eventually reached a consensus that Taiwan's energy policy should be governed by the principle of a nuclear-free homeland, but the government and environmental protection groups cannot agree upon the specifics. *See also* Nuclear-Free.

參考資料： 廖彬良編，1993，*台灣反核實錄*，前衛；「反對核四大事記」，*看守台灣*， http://www.taiwanwatch.org.tw/lufly/nonuke/story.htm，2006/6/20；「核電的真相」，台灣環境保護聯盟，http://mx.nthu.edu.tw/~hycheng/4policy/energy10.htm，2006/6/16；林碧堯，1994，「台灣的反核運動」，*核四決策與輻射災害*； Ming-sho Ho, "The Politics of Anti-Nuclear Protest in Taiwan: A Case of Party-

Dependent Movement (1980-2000)," *Modern Asian Studies*, 2003, 37:3, pp. 683-708; ---, "Weakened State and Social Movement: The Paradox of Taiwanese Environmental Politics after the Power Transfer," *Journal of Contemporary China* (2005), 14:339-52.

Free China Fortnightly 自由中國

「自由中國」半月刊由中國自由主義知識份子胡適、雷震、杭立武、王世杰等人成立。胡適任最初幾年的發行人，但實際領導人為雷震，之後殷海光、傅正等也加入編輯陣容。1949年創立於上海，但旋即因國民政府遷台而移至台灣，同年11月20日在台北發行創刊號。

「自由中國」創刊之際，台灣剛經歷「二二八事件」帶來的軍事鎮壓，政治氣氛冷冽，人民普遍恐懼政治，「自由中國」幾乎是整個1950年代台灣唯一的異議雜誌。而其一貫批判風格及對言論自由的堅持，鼓舞了台灣本地關心政治的人士，「自由中國」因而成為台灣與大陸籍反對人士合作的平台，共同推動了其後組織新政黨的運動。

「自由中國」創辦之旨在於宣傳自由與民主，以對抗中國共產黨的極權統治，目標在於使整個中華民國成為自由的中國。「自由中國」初期與國民黨關係密切，為國民黨向國際宣傳台灣保有言論自由之樣板。但雷震等人所堅持的自由主義精神很快與國民黨的專制統治衝突，開始遭到政府的圍剿與騷擾。

「自由中國」以自由主義為基本價值，強調「個人自由」，認為國家為保障人民自由之工具，駁斥國民黨政府宣傳之「國家自由」論。「自由中國」在判斷一時間無法反攻大陸後，其關懷逐漸從原先的反共抗俄轉到台灣內部政治的探討與反省。1956年的「祝壽專號」，提出蔣介石應選拔繼任人才、確立內閣制、實行軍隊國家化等主張。1954年至1960年間，不斷刊文反對蔣介石企圖凍結憲法第47條的規定，連任總統。1957年開始推出「今日的問題」系列，從「反攻大陸問題」開始，至「反對黨問題」結束，以十五篇社論探討台灣軍事、政治、經濟、教育等問題，成為當時批判國民黨政權的重鎮。

「自由中國」亦倡議組織反對黨。雷震、殷海光、傅正等人積極與台灣本地政治菁英（如郭雨新、吳三連等人）結合，鼓吹成立新黨，規劃黨外人士參與選舉，為當時領導反對運動的主要力量。1960年9月4日，台灣省警備總部以涉嫌叛亂，拘捕雷震與傅正，「自由中國」也因此被迫停刊。*另見* Lei Zhen.

Free China Fortnightly was a magazine established by liberal Chinese intellectuals Hu Shih, Lei Zhen (q.v.), Hang Li-wu, and Wang Shih-jieh. Hu Shih was the publisher for its first years, but the person actually in charge was Lei Zhen. Yin Hai-

guang and Fu Zheng later joined the editorial team. The publisher, a group called *Free China*, had originally been founded in Shanghai in 1949; it moved to Taiwan with the KMT (q.v.) government. The first issue was published out in Taipei on 20 November of that same year.

Prior to the first issue's publication, Taiwan had experienced the February 28 (1947) military crackdown, after which people were afraid to become involved in politics. *Free China* was the only dissenting magazine throughout the 1950s. Its independence and persistent critiques inspired some to become more interested in politics. The magazine soon became a platform for dissenting local Taiwanese and mainlanders, who worked together to promote the subsequent movement to establish new political parties.

The mission of *Free China* was to promote freedom and democracy in order to oppose the Chinese Communist Party's totalitarian rule, with the ultimate goal of a free Republic of China. At first the magazine had close relations with the KMT, and it helped promote Taiwan's international image as a place where freedom of expression was respected. However, the liberalism of Lei Zhen and others soon clashed with the KMT's authoritarianism, and the government began to attack and harass the magazine.

Free China was premised on the fundamental value of liberalism, with emphasis on individual freedom. The group believed that the state should be an instrument for protecting people's freedoms, and rejected the KMT government's line to the effect that it was the freedom of the nation as a whole that was paramount. After realizing that, at least in the short term, mainland China would not be recovered, the magazine's focus shifted from resisting the Communists to reflections on and critiques of Taiwan's internal politics. In a special issue marking the birthday of Chiang Kai-shek in 1956, the magazine raised such issues as the selection of a successor to Chiang, the establishment of the parliamentary system, and bringing the military under civilian control. Between 1954 and 1960 the magazine continuously published articles voicing its opposition to Chiang Kai-shek's suspension of Article 47 of the Constitution, which limits the president and the vice president to no more than two terms. In 1957 the magazine began to publish a series on "Issues of the Day," comprised of fifteen editorials on military, political, economic, and educational issues.

Free China also advocated the establishment of opposition political parties. Lei Zhen, Yin Hai-kuang, and Fu Zheng actively cooperated with local political

figures (such as Kuo Yu-hsin and Wu San-lien) to advocate the formation of such parties, and planned participation by non-KMT members in elections. As a result the magazine became a leading force in the opposition movement. In 1960 Taiwan Garrison Command arrested Lei and Fu on suspicion of inciting rebellion. The magazine ceased publication as a result. *See also* Lei Zhen.

*參考資料：*李筱峯，1987，*台灣民主運動四十年*；傅正主編，1989，*雷震全集*(13)：*雷震與自由中國*；「自由中國」，維基百科：http://zh.wikipedia.org/wiki/%E8%87%AA%E7%94%B1%E4%B8%AD%E5%9C%8B，2006/6/20。

Gao Shan Ching 高山青

1983年，三名台灣大學的原住民學生發行一本名為《高山青》的雜誌，針對台灣原住民族（當時稱「高山族」）的處境，提出兩個論點：1、高山族正面臨種族滅亡的危機；2、提倡高山族民族自救運動。這份刊物共發行六期，被視為台灣原住民族運動的源頭之一。

In 1983, three aboriginal students at the National Taiwan University published a magazine titled *Gao Shan Ching*. It stressed two major issues concerning Taiwan's indigenous people (then still known as Gao Shan Zu, or mountain ethnic groups): 1. Gao Shan Zu were facing extinction; 2. Indigenous peoples needed to work for their own salvation. This magazine published six issues, now regarded as seminal to Taiwan's indigenous peoples' movement.

*參考資料：*曳將．拔路兒，1994，「台灣原住民族運動發展路線之初步探討」，*山海文化雙月刊*，5月號；謝世忠，1977，「原住民族運動生長與發展理論的建立：以北美與台灣為例的初步探討」，*中央研究院民族學研究集刊*，第64期，秋季號。

Gender Employment Equality Act 兩性工作平等法

台灣的「兩性工作平等法」於2002年3月8日實施，一方面保障女性在就業市場的平等權利，另一方面宣示育兒為國家大事，應由男女兩性及國家社會共同承擔責任。

「兩性工作平等法」共七章四十條，重要規定如：各級主管機關應成立「兩性工作平等委員會」、消除職場上各種形式之性別歧視、防治性騷擾、促進工作平等之措施等。*另見* Pregnancy prohibition clause; Women workers, single. Taiwan's Gender Equality Employment Act became effective on 8 March 2002. The act protects women's equal rights in workplace, and declares that raising children is a public concern to be borne by both males and females, as well as the state and society.

The Gender Equality Employment Act has seven chapters and forty articles. The important provisions include: the establishment of the Gender Equality Employment Committee, the elimination of all forms of discrimination in the workplace, the prevention of sexual harassment, and the adoption of measures for promoting employment equality. *See also* Pregnancy prohibition clause; Women workers, single.

參考資料：「兩性工作平等法」，全國法規資料庫：http://law.moj.gov.tw/Scripts/NewsDetail.asp?no=1N0030014，2006/6/20；尤美女，「從立法到執法—談兩性工作平等法之落實」，見「婦女新知基金會」：http://www.ws0.taiwane.com/awakening; 焦興鎧；2003，「論我國剷除工作場所性別歧視之努力」，*2002台灣人權報告*，台灣人權促進會編。

Guomindang, *see* Kuomintang.

Health care, right to 健康權

台灣於1995年開始實施由政府管理的全民保險制度，獲得健康保障的人民比例從57%提升至97%，是世界上比例最高的國家。*另見*AIDS.

In 1995 Taiwan launched a government-managed insurance program to finance comprehensive health care. The portion of people with health coverage then grew from 57 percent to 97 percent, one of the highest rates in the world. *See also* AIDS.

Hsi-chih Three 汐止三死囚

1991年，蘇建和、劉秉郎、莊林勳三人因一宗雙屍命案被捕，並各判處兩個死刑。然此案因偵查程序違法，警方有刑求嫌疑，且法官僅依被告自白定罪，而引起台灣及國際人權團體批評，發動大規模的平反行動，一般習稱「蘇建和案」。

在台灣的司法改革運動或刑事被告人權的討論中，「汐止三死囚案」（也稱蘇建和案）是最常被引用的案例。一般認為此案至少暴露了台灣司法制度在落實「程序正義」、「無罪推定原則」以及「證據法則」上的嚴重問題，也涉及警察、檢察官乃至於法官的素質與養成教育。蘇建和等三人於2000年獲得再審，2003年台灣高等法院宣判三人無罪釋放，但檢察官提出上訴，最高法院撤銷無罪判決，發回更審。2007年6月29日，高等法院再次作出死刑判決，引起辯護律師及人權團體強烈抗議。辯護律師也立即提出上訴。

In 1991, Su Chien-ho, Liu Bing-lang, and Chuang Lin-hsun were arrested in connection with a double murder, and were later condemned to death. However, the investigation procedure was conducted in a manner contrary to the law. The men were convicted on the basis of their confessions alone, and the police were suspected of committing torture. These concerns triggered criticism from local and international human rights groups, who undertook to effect the reversal of what they considered a miscarriage of justice.

Also referred to as the Su Chien-ho case, this is the most famous case involving the reform of the criminal justice system. By and large, the Su Chien-ho case revealed the serious deficiencies in due process and evidentiary standards in Taiwan's justice system, and the lack of any meaningful presumption of innocence. Moreover, the quality and training of the police, prosecutors, and judges were called into question. The three were granted a retrial in 2000 and were acquitted by the Taiwan High Court in 2003. The prosecutor nevertheless appealed the High Court's

decision. The Supreme Court set aside the High Court decision and remanded the case for rehearing. On June 29, 2007, the High Court again sentenced the three to die, provoking a great outcry by the defense lawyers and human right NGOs. The verdict was appealed by the defense lawyers right away.

參考資料： 曾華真，2002，「喚不回的青春：蘇建和、劉秉郎、莊林勳案」，*正義的陰影*，民間司法改革基金會編；張娟芬，2004，*無彩青春*。

Huang, Peter case 黃文雄「返國自由」案

黃文雄於1996年從美國返回台灣。當他在隔年申請護照時，遭到台灣政府以國家安全法（國安法）第3條起訴。國安法第3條規定中華民國國民入境時，應申請政府許可。黃文雄提出辯護，認為該條款違憲，同時也侵犯了國際承認的人民返國自由權利。2003年，大法官會議釋字第558號判定國安法第3條違憲，但審理法官認為黃文雄在台灣並無固定居所，因此仍課予刑責。

In 1996 Peter Huang returned to Taiwan from the United States. When Huang applied for a passport in the following year, he was prosecuted for the violation of Article 3 of the National Security Act, which required ROC nationals to have government permission before returning to Taiwan. Huang challenged the constitutionality of the act, as well as regarding it as violating the internationally recognized right to return to one's country. In 2003 the Council of Grand Justices provided interpretation No. 558, in which Article 3 was declared unconstitutional. However, the Court stated that Huang had not been domiciled in Taiwan and thus upheld his conviction.

參考資料： 台灣高等法院，解釋憲法聲請書，院賓刑子字第3229號，2001年；「大法官會議釋字第558號」，民國94年4月18日，司法院大法官會議解釋文網站：http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=558；黃文雄、邱晃泉、林詩梅，「解釋憲法聲請書」，2003年。

Human Rights Commission 台灣國家人權委員會

為了將巴黎原則運用在台灣，二十多個人權非政府組織與學術機構於1999年底成立「國家人權委員會推動聯盟」，並於2000年10月提出民間版的「國家人權委員會組織法草案」。同時，行政院也在與總統府多次折衝之後，提出政府版的「國家人權委員會組織法草案」。這兩個草案雖然送到了立法院，但並未進入審查程序，沒有完成立法。

In 1999, in order to have the Paris Principles (*see* International section) applied in Taiwan, more than twenty human rights NGOs and academic institutions set up of Coalition for the promotion a National Human Rights Commission, which drafted an organic law on organizing a National Human Rights Commission. Meanwhile, the Executive Yuan proposed a government version on the same subject. However, neither bill received readings in the Legislative Yuan.

參考資料： 黃默，2003，「台灣國家人權委員會的倡導、爭論與展望：一個非政府組織的觀點」，*全國律師*，7:12；廖福特，「為國家人權委員會催生」，http://www.tahr.org.tw/site/committee/index3-2-5.htm，2006/6/8；「關於促進和保護人權的國家機構的地位的原則（亦稱巴黎原則）」，*人權雜誌*，台灣人權促進會編，2002年秋季號；廖福特，2002，「各國設立國家人權委員會之情形」，*人權雜誌*，台灣人權促進會編，秋季號。

Incineration issue 反焚化爐運動

環保團體認為，解決垃圾問題應從垃圾減量、推動資源回收與廚餘堆肥化等做起，政府將大量經費用於興建焚化爐其實是不經濟且不環保的錯誤方向。焚化爐燃燒垃圾會製造出大量有毒物質，尤其是被稱為「世紀之毒」的戴奧辛。焚燒產生的飛灰與底灰（即燃燒後的灰燼）也有劇毒，而使用這些灰渣所再製造的水泥、建築磚等，年久脫落後就會再度汙染環境。環保團體認為焚化爐產生的灰渣與核廢料一樣是無解的問題，停止興建焚化爐，全力推動垃圾減量與資源回收才是較佳的垃圾政策。

Environmental protection groups believe that the solution to the solid waste problem should start with the reduction of the amount of rubbish, promotion of recycling, and composing of kitchen bio waste. Massive government spending on the construction of incinerators is viewed as uneconomical and environmental unfriendly. It is noted that the burning of rubbish in incinerators releases many toxic substances, particularly dioxins (PCCDs), sometimes referred to as "the toxins of the century." Fly and bottom ashes generated by incineration are highly toxic. Even cement and bricks made from these ashes will eventually cause environmental pollution. Environmental protection groups believe that, just as with nuclear waste, there is no solution to the problem of ash generated by incinerators. They feel that the sounder policy is to stop the construction of incinerators and promote rubbish reduction and recycling.

參考資料：「反焚化爐行動網」，http://61.222.52.195/current/antiin/index.asp，2006/6/20。

Indigenous cultural norms 原住民族部落規範

傳統上，原住民族社會的秩序依賴一套不成文的部落規範所維繫，與現代國家仰賴成文法律進行支配有所不同。部落規範由約定俗成的智慧法則、古老禁忌與道德觀念所組成，是原住民族千百年來所發展出來的一套與自然共存的共生機制，也是原住民族社會運作的基本準則。

現代國家統治原住民族之後，將傳統部落規範貶為習俗，以成文法律取而代之。部落規範瓦解的結果，讓原住民族的價值觀紊亂、自我認知混淆、文化斷層並流失、部落內部失序、自信心喪失、缺乏對應外在社會變遷的應變能力，而產生諸多困境與社會問題。

恢復部落規範的運作為原住民族運動的重要訴求，而原住民族自治則是部落規範重新運作的最佳途徑。現行法律與部落規範需要相互協調，並取得一定程度的合作。學者建議，在法庭系統中，應增設原住民族專業法庭，以熟悉部落規範者審理原住民司法案件。另外，現行法律中也應納入合宜的部落習慣法，增加法律體系的多元思維。

The social order of the indigenous peoples has traditionally been maintained by means of unwritten tribal norms, as opposed to the codified laws usually relied on by modern states. These traditional norms are fundamental principles formed by ancient wisdom, taboos, and morals which have been elaborated through the ages. They are a set of principles for coexisting with nature and governing the behaviour of men and women.

As modern states colonized indigenous populations, they downgraded these norms into customs, and replaced them by codified laws. The collapse of tribal norms has shaken the values held by the indigenous peoples, resulting in social disorder, loss of confidence, and lack of ability to adapt to social changes.

The restoration of traditional norms has become an important demand of the indigenous movements, being judged the best avenue for achieving indigenous autonomy. Some Taiwan scholars recommend that the laws currently in force should function in concert with tribal norms, and specialized indigenous courts be established, to help deal with civil and criminal cases involving indigenous people. In addition, pluralism requires that traditional norms be properly integrated into the existing laws.

*參考資料：*楊智偉，2004，「原住民族部落規範的意義與發展」，*2003台灣人權報告*，台北：前衛。

Indigenous names 原住民族姓名權運動

殖民者強迫被殖民者放棄原本遵循的命方式，是常用的同化手段。國民政府來台後，制定「台灣省人民回復原有姓名辦法」，強迫原族民族將名字改為漢姓漢名。由於當初改名作業倉促，再加上戶政人員對原住民不尊重，出現同一戶人家卻有多個不同姓氏的情形。而且，當時由於許多原住民不諳中文，由戶政人員代為取名，結果出現不尊重或不雅的名字。諸如這些情形，不但原住民使用自己名字的權利遭到剝奪，也使原住民在面對社會大眾時倍感自卑。

為了回復傳統姓名，保留各族命名的傳統，原住民族發起姓名權運動。整個姓名權運動可分為兩個部份。一是「還我姓氏運動」，原住民運動人士與立法委員合作，於1995年在立法院中三讀通過姓名條例修正案，原住民可以在身分證上以中文譯音登記自己的傳統姓名。二是「原名運動」。由於中文譯音仍無法完整拼出傳統名字的字音，而羅馬拼音可以較完整地拼出各族的語言。原住民運動開始推動原名運動，促成姓名條例於2001年再次修正，使原住民名字可以在中文譯音旁再加註羅馬拼音。

One common method for colonial rulers to achieve assimilation is by forcing indigenous peoples to give up their traditional way of naming children. After the KMT government was established in Taiwan, the Directive Governing the Restoration of the Original Names for People Living in the Province of Taiwan was promulgated, under which indigenous peoples were forced to adopt Chinese surnames and given names. Some of the names given by household registration officials reflected prejudice, and sometimes members of a family were given different surnames. Thus, not only was the right to using their own name lost, but indigenous peoples were demeaned.

In order to reclaim their real names and preserve their traditions, the indigenous peoples launched a Right to Traditional Names movement. This movement had two components. The first was the Reclaim Our Traditional Surnames movement. Indigenous activists and legislators joined forces to amend the law and permit the indigenous people to register their names as transliterated into Chinese. However, Chinese transliterations distorted the names, so there was a second component of the movement, the non-Chinese Indigenous Name movement. Another amendment to the Statute of Names was passed in 2001, according to which the indigenous peoples

are now entitled to use the more accurate roman spelling next to the Chinese version.

*參考資料：*該映・犁百，2004，「原住民姓名權問題」，*2003台灣人權報告*，台灣人權促進會編。

Indigenous Peoples' Congress 原住民族議會

台灣原住民族曾因目的不同而推動不同型態的民族議會。1991年，各族為追求自治，共同籌備「台灣原住民族自治區議會」；1997年，為了監督行政院隸屬下的「原住民委員會」，並督促原住民各級民意代表、整合各族力量與國家對談，也共同成立了「台灣原住民族議會」。不過，上述的兩個組織後來都未能繼續運作。1997年開始，各族推動以單一民族為主體的議會，如「布農民族議會籌備會」、「泰雅爾族民族議會籌備會」、「鄒是會議」（鄒族），以及「達悟民族議會籌備會」等。這些議會都還未正式成型，規劃中的議會結構與功能也各有不同。*另見*Indigenous Rights Declaration.

Taiwan's indigenous peoples have organized various national congresses for different purposes. In 1991 the indigenous peoples organized the Taiwan Aboriginal Peoples' Autonomy Congress to aid in their pursuit of ethnic autonomy. In 1997 the National Congress of Taiwan's Indigenous Peoples was established to counter-balance the Executive Yuan's Council of Indigenous Peoples. Nevertheless, the above two organizations failed to continue their operations. In 1997 the various peoples began to promote single-tribe congresses; for example, the Bunun has their Preparatory Conference for a National Congress, and the Zou tribe has their National Issues Congress. *See also* Indigenous Rights Declaration.

參考資料：林淑雅，2000，*第一民族—台灣原住民族運動的憲法意義*，台北：前衛。

Indigenous redesignation 原住民族正名運動

台灣的原住民族最早被稱為「番仔」或「山地同胞」（山胞）。前者充滿輕視的意味，後者則隱含漢族的同化政策，企圖將原住民歸入「中華民族」或「炎黃子孫」的一支。1984年，「台灣原住民權利促進會」（原權會）籌備時，決定以「原住民」自稱，除對抗番仔與山胞的稱呼外，更強調「原住民是台灣這塊土地原來的主人」，並依此發展出原住民運動，主張原住民在台灣擁有某些不可置疑的權利。

1991年，國民大會召開憲改會議，原權會呼籲在憲法增修條文中以「台灣原住民族」一詞取代原訂的平地山胞和山地山胞，但未能成功。1994年，國民大會臨時會進行第三次修憲，在修正條文中正式使用「原住民」一詞，但仍將之區分為山地原住民及平地原住民。至1997年，國民大會第四次修憲，才在增修條文的第10條第9項中正式使用「原住民族」一詞。

Hans used to refer to Taiwan's indigenous people as Fantsai (barbarians) or Shan-ti Tung-pao (mountain siblings). The former reflects prejudice, while the latter reflects the assimilation policy of the Hans. When the Taiwan Association for the Promotion of the Indigenous Rights (APIR) was organized in 1984, they decided to call themselves indigenous peoples instead, and asserted that indigenous peoples were the original owners of the island.

When the ROC National Assembly called for a constitutional reform conference in 1991, the APIR urged adoption of the term "indigenous people" in the constitutional amendments. When the National Assembly undertook the third amendment to the Constitution, it did employ the term "indigenous people," but the distinction between "plains indigenous people" and "mountain indigenous people" was still drawn. The Constitution did not simply say "indigenous people" until 1997 (Paragraph 9 of Article 10 of the constitutional amendments), when the National Assembly amended the Constitution.

參考資料：夷將・拔路兒，1995，「從『山胞』到『原住民』的正名運動史」，*台灣史料研究*，第五期；林淑雅，2000，*第一民族—台灣原住民族運動的憲法意義*。

Indigenous rights, *see* Aboriginal rights *for cross references.*

Indigenous Rights Declaration 台灣原住民族權利宣言

原住民族長期來遭受經濟剝削、社會歧視、政治壓迫及文化漠視，面臨了滅族的危機。「台灣原住民族權利促進會」於1984年發表「台灣原住民族權利宣言」。在前言中，宣言聲明台灣原住民族屬於南島語系，與自認為是炎黃子孫的漢族不同。雖然已喪失主人的地位，但原住民族在意識上仍完全肯定自己是台灣的主人。

基於上述情勢，宣言提出十七條具體訴求，包括主張原住民人權、生活的基本保障權、文化權、自決權、區域自治、自我界定、參與國家政策以及國家對原住民族事務決策的最後否決權等。*另見 Gao Shan Ching.*

The indigenous peoples have long been subject to economic exploitation, social discrimination, political oppression, and public ignorance of their culture. In 1984

the Taiwan Association for the Promotion of the Indigenous Rights issued its Declaration of the Rights of Taiwan's Indigenous Peoples. Its preamble asserts that Taiwan's indigenous peoples are Austronesian and thus distinct from Han Chinese. Although the indigenous peoples have lost their dominion over the land, they still insist that they are the island's rightful heirs.

The Declaration has seventeen demands, including indigenous human rights, rights to decent livelihood, cultural rights, right to self-determination, autonomy, participation in national policy decision making, and a right of veto over decisions affecting the indigenous population. *See also Gao Shan Ching*.

參考資料：「台灣原住民族權利宣言」，http://web.my8d.net/m5a07/volem003/nowadays3.htm, 2006/06/20；林淑雅，2000，*第一民族—台灣原住民族運動的憲法意義*。

Indigenous self-determination 原住民族自治

台灣原住民族的自治訴求，係要求國家在憲法的精神下，制訂原住民族自治的程序法，各民族再依程序法提示的原則建構符合各民族需要的自治體系。原住民族自治的精神在於國家應尊重原住民族的自然主權與傳統部落規範，還給原住民族更多的權力與空間來解決自身的困境、創造民族的永續發展。

2005年，「原住民族基本法」通過，明文規定政府應依原住民族意願，保障原住民族之平等地位及自主發展，實行原住民族自治，並編列預算予以協助。

In their demand for self-determination, Taiwan's indigenous peoples have urged the government to formulate a procedural law governing indigenous autonomy within the constitutional framework. The indigenous peoples will then set up their own autonomous institutions employing the principles inherent in such a procedural law. The spirit of indigenous self-determination rests on the state's respect for indigenous peoples' permanent sovereignty over natural resources, and for traditional norms. In addition, self-determination empowers the indigenous peoples to solve their own problems and sustain their development.

Accordingly, an Indigenous Basic Law was adopted in 2005 to protect the indigenous peoples' equal status and self-directed development, implement indigenous autonomy, as well as to make budgetary allocations for achieving these ends.

參考資料： Voyu Yakumangaua（楊智偉），2005，「國中之國—新夥伴關係與台灣原住民族自治」，*第一屆人權學術論文研討會會議手冊*；「原住民族基本法」，全國法規資料庫，http://law.moj.gov.tw/Scripts/Query4A.asp?FullDoc=all&Fcode=D0130003，2006/6/20。

Information, freedom of, *see Free China Fortnightly*; Lei Zhen; Martial law; Publications Law; TV World Report Incident.

Kaohsiung Incident 美麗島事件

1979年6月2日，為推動台灣民主運動，黨外人士黃信介、許信良、張俊宏、姚嘉文及施明德成立美麗島雜誌社，發行美麗島雜誌，以「共同來推動新生代政治運動」為其目標。美麗島雜誌社成員涵括各種政治立場的人士，儘管立場各異，但「一定要在島內追求民主、自由」的想法卻為共識，為當時台灣民主運動人士的一大集合。雜誌也因此銷路極佳，短短數月內便印行達十一萬份以上。雜誌社規模迅速擴張，於全台各地設立據點，甚至在海外也有分社，滙集反對勢力，形成「美麗島政團」。施明德形容此政團為「沒有黨名的黨」。此反對勢力對國民黨政府造成極大威脅。

同年12月10日，美麗島雜誌社為紀念世界人權日，決定於高雄舉辦集會，演講人權議題。這次集會的申請並未獲准，再加上集會前台灣的政治情勢已因一些事件而緊繃（如黃信介服務處被砸、中泰賓館事件和鼓山事件等），終於引來警察和憲兵包圍集會群眾，而至少在三個地方發生大規模衝突，世稱「美麗島事件」或「高雄事件」。這是台灣繼1947年「二二八事件」後，發生最大規模的社會衝突。政府於事後以涉嫌叛亂等罪名逮捕並起訴事件關係人，其中八人交付軍法審判，三十三人交付司法審判，幾乎囊括反對陣營中所有重量級人士，引起舉世矚目。

美麗島事件後，政府受到強大社會與國際壓力，公開舉行軍法大審時，媒體大幅報導，反對人士的政治理念於是得以散播。其後幾次中央與地方民意代表選舉，美麗島事件被捕人士之家屬及辯護律師團投入選舉，並獲大勝，反對勢力因之得以進入各級民意機關，這些人士後來更成為反對黨「民主進步黨」之中堅人物，影響台灣政局甚鉅。

On 2 June 1979, opposition leaders Huang Hsin-chieh, Hsu Hsin-liang, Chang Chun-hung, Yao Chia-wen, and Shih Ming-teh established *Formosa Magazine* to promote democracy in Taiwan. (Formosa, meaning "beautiful," was the name once given to the island by the Portuguese.) Although members of *Formosa Magazine* held different political ideologies, they agreed on the importance of promoting democracy and freedom. Sales of the magazine skyrocketed, with circulation of over 110,000 copies within a few months. The magazine rapidly generated support from all over Taiwan as well as overseas, and led to the formation of the Formosa Political Group. Shih Ming-teh described this group as "a political party in all but name." It was seen as posing a threat to the Kuomintang (q.v.) government.

On 10 December 1979 (International Human Rights Day), the magazine tried to hold the first major human rights day celebration on the island. However, the government had not approved the gathering, which ended in chaos after police encircled the crowd. Large-scale conflict occurred in at least three venues. This incident, the most serious conflict since the 28 February 1947 Incident, came to be known as the Formosa Incident or Kaohsiung Incident. The government arrested and indicted those involved (who comprised virtually all well-known opposition leaders) for causing the disorder. Eight were tried in military court, while thirty-three others were tried in criminal court.

The government came under great international pressure and was forced to permit observers to attend the trials. Broad media coverage disseminated the political ideologies of the opposition leaders to the public. Relatives and defence lawyers of those arrested in the incident subsequently took part in elections, often winning by wide margins. In this way, the opposition was able to enter legislative institutions.

The Kaohsiung Incident figures would one day became key personnel of the Democratic Progressive Party (q.v.).

參考資料：李筱峰，1999，*台灣史100件大事（下）*；魏廷朝，1997，*台灣人權報告*，第37頁；黃富三，2001，*台灣地區戒嚴時期政治案件—五O～七O年代文獻專輯：美麗島事件*，台灣省文獻委員會；新台灣研究文教基金會美麗島事件口述歷史小組編，1999，*暴力與詩歌—高雄事件與美麗島大審*，台北：時報；新台灣研究文教基金會美麗島事件口述歷史小組編，1999，*歷史的凝結—1977~79台灣民主運動影像史*；Kaohsiung Incident，http://en.wikipedia.org/wiki/Kaohsiung_Incident，2006/6/7；Kaohsiung Incident of 1979，Taiwan's History: Present and Future，http://www.taiwandc.org/hst-1979.htm，2006/6/7。

Kuomintang 中國國民黨

1912年由孫中山先生創立。其意識型態融合了列寧主義、歐洲法西斯主義及西方的自由主義。從1928年到1940年代，國民黨統治全中國。從1945年到1990年代，在戒嚴法的施行下統治台灣長達五十年。然而，在1970年與1980年間深受地方政治菁英的挑戰，終於導致2000年政黨輪替。*另見*Parties, Political. Political party founded in China in 1912 by Sun Yat-sen. Based on a blend of Leninism, European fascism, and Western liberalism, the Kuomintang ruled China from 1928 through the 1940s. From 1945 through the 1990s it dominated Taiwan politics, relying largely on Martial law (q.v.), yet it was challenged by local political leaders through the 1970s and 1980s, culminating in transfer of power in 2000. *See also* Parties, political.

Resource: Dafydd Fell, *Party Politics in Taiwan: Party Change and the Democratic Evolution of Taiwan, 1991-2004* (2005).

Labour Charter 勞動憲章

「勞動憲章」為「台灣勞工運動支援會」（即現在「台灣勞工陣線」的前身）於1992年3月發表，旨在確立勞工之團結權、團體協商權、勞動爭議權、參與決定權及其他團體行動權，建立合乎人性尊嚴之勞動生活。主要內容包括勞動基本權、產業民主精神、就業安全、女性勞動保護及勞動法院的設置等。*另見* Three Labour Laws; Three Labour Rights.

In 1992 the Labour Charter was promulgated by the Taiwan Association Supporting Labour Movements (now known as Taiwan Labour Front), with the goal of ensuring workers' right to organize unions, to bargain collectively, to strike, to participate in decision-making processes and group campaigns, and to have a workplace situation in which human dignity is fully respected. The charter includes such standard rights as industrial democracy, occupational safety, protection of female workers, and the establishment of a labour court. *See also* Three Labour Laws; Three Labour Rights.

*參考資料：*台灣勞工陣線，「台灣勞工運動簡史：1920~1999」，http://labor.ngo.org.tw/history/history-tw-labor.htm，2006/6/14；台灣勞工陣線，2003，「推動勞動權納入新憲法，具體保障勞動人權」，http://www.coolloud.org.tw/news/database/Interface/Detailstander.asp?ID=77542；勞工運動支援會，1993，「勞動憲章」，*台灣工運經驗*，王淑芬、李建昌、鐘維達編。

Labour rights, *see* Workers' rights.

Land rights 還我土地運動

原住民族為台灣最早的主人。但清朝、日本及中華民國等政府來台後，都漠視原住民族長久以來居住於這塊土地的事實，視廣大的原住民族傳統領地為無主地，應為國家所有。原住民族或被迫遷離，或領地被國家收編，僅能以「原住民保留地」的名義保有使用權，而喪失所有權。

祖先的原始領地遭政府侵占，不只是經濟利益被剝奪而已。對原住民族而言，土地就是生命，是賴以存活、繁衍生命的母體。這與漢人將土地視為私有財產或資本經濟下的產品是不相同的。

原住民族於1988、1989及1993年共發起三次「還我土地」運動，要求國家還回侵占的土地。第一次還我土地運動的主要訴求是歸還原本屬於原住民族的土地，並立法保障原住民族之土地權。第二次還我土地運動除了重申第一次運動的訴求外，進一步要求加速歸還土地，山地保留地全面發給所有權狀。第三次運動的訴求更加廣泛，原住民族喊出「反侵占、爭生存、還我土地」的訴求，並發表運動宣言，將整個運動從前兩次個人權利的主張提昇至民族權利的訴求。除了爭取原有的土地權外，更要求以被侵略民族與入侵民族間的關係，就整體原住民族處境的問題與國家展開談判。

Indigenous peoples were the earliest residents of Taiwan. However, the Ching Dynasty, Japan, and the Republic of China regarded the traditional territory of the indigenous peoples as unowned land that thus belonged to the state. As a result, indigenous peoples were forced to relocate and could retain the use of land only in indigenous reservations.

The expropriation of indigenous traditional land was not only detrimental to the indigenous population economically, but it also seemed to cut to the very essence of their existence. Over the course of generations, indigenous peoples have relied on land to sustain life, whereas for the Han people, private property and its products are commodities.

The indigenous peoples' Reclaiming the Land movement developed in three phases. The first phase (launched in 1988) focused on the return of indigenous land, and enacting legislation to protect indigenous land rights. The second phase (1989-1993) promoted the acceleration of the restitution process. The final phase (1993-) has taken a more comprehensive approach, elevating those individual rights claimed in the previous two movements to collective rights. The indigenous peoples now demand that the interethnic relationship be defined as one between invaders and the occupied. This has prompted further negotiations between indigenous peoples and the state.

參考資料：陳舜伶，2002，「開創新局或開倒車的『新還我土地運動』？」，*原地發聲*，第二期，http://atipp.ngo.org.tw/%AD%EC%A6a%B5o%C1n%B2%C4%A4G%B4%C1.htm；楊長鎮，「資源掠奪、生態變遷與土地所有制：一個初步的觀察」，http://wildmic.npust.edu.tw/sasala/land.htm，2006/6/16；「台灣原住民－反侵占、爭生存、還我土地－運動宣言」，*原住民族*，第十七期，台北：原住民族部落工作隊，http://web.my8d.net/m5a07/volem017/land2.htm，2006/6/16。

Legal aid 法律扶助

法律扶助，乃指對於需要專業性法律幫助而又無力負擔訴訟費用及律師報酬之人民，予以制度性之援助，以維護其憲法所保障之訴訟權及平等權。台灣

的「法律扶助法」於2003年1月7日公布，透過「法律扶助基金會」的運作，提供法律扶助予無資力，或因其他原因，無法受到法律適當保護者。

Institutional assistance rendered to those who need professional legal service but are unable to meet the litigation costs and lawyers' fees. In order to protect the constitutional right to litigation and equality, Taiwan's Legal Aid Law was promulgated in 2003. Through the support of the Legal Aid Foundation, anyone who lacks legal protection due to financial or any other reason is eligible to receive legal aid.

參考資料：法律扶助基金會網站：http://www.laf.org.tw，2006/6/20。

Legal representation, *see* Wang Yin-hsien Provision.

Lei Zhen 雷震

雷震，字儆寰，1897年生於浙江長興，1979年逝世於台北。

雷震曾為中國國民黨要員，歷任教育部總務司司長、國民參政會副秘書長、政治協商會議秘書長、制憲國民大會代表、第一屆國民大會代表、總統府顧問等。1949年，與胡適、杭立武等人創辦「自由中國」半月刊，雷為實際負責人。「自由中國」秉持自由主義之風，批判時政，言論為當局不容，卻是當時最暢銷的政論雜誌，為1950年代台灣僅存的異議刊物。1954年，雷震因負責「自由中國」而遭開除黨籍。

雷震以大陸籍身份遷居台灣，對台灣政治十分關心，強調本省人與外省人之間應多了解，減少誤會，多合作。1958年，台籍政治菁英李萬居、吳三連、高玉樹等人發起「中國地方自治研究會」，雷震以同情者的身份加入，與台籍政治人物建立關係，協助他們參加地方選舉。1960年，同一批人士組織「地方選舉改進座談會」，雷震為發起人之一，並以此為據點，籌組新黨。雷震因曾任政治協商會議秘書長，於政黨事務經驗豐富，在組新黨的過程中成為重要領袖人物。

1960年，雷震因「自由中國」中刊載的文章被捕入獄，至1970年始出獄。在獄中奮力撰寫四百餘萬字回憶錄，手稿卻於出獄前遭軍方扣押。1988年，監察院決定依法追回手稿，卻傳出軍人監獄臨時燒毀的消息，引起輿論大譁。今日所見之雷震回憶錄，為其出獄後所重寫。

雷震於出獄後仍關心政治，曾於1971年寫「救亡圖存獻議」，建議成立國

號為「中華台灣民主國」的新國家，政府方面沒有回應。2002年9月4日，雷震去世後24年，台灣政府宣布平反雷震案。*另見 Free China Fortnightly.*

Lei Zhen (also spelled Lei Chen) was born in the mainland province of Zhejiang in 1897, and died in Taipei in 1979.

Lei Zhen was an important member of the Kuomintang, and also held several posts in the government and was a National Assemblyman. In 1949 along with Hu Shih and Hang Li-wu, he founded the magazine *Free China Fortnightly* (q.v.). Lei was the de facto person in charge. The magazine upheld liberalism, and criticized the prevailing politics of the 1950s. Although the government was irritated by the magazine, it was the top-selling periodical, and the only dissenting publication able to survive. In 1954 Lei Zhen's KMT membership was revoked due to his involvement in the magazine.

Lei stressed the importance of strengthening mutual understanding between local Taiwanese and his fellow mainlanders. In 1958 Taiwanese political figures Li Wan-chu, Wu San-lien, and Kao Yu-shou founded the China Local Autonomy Research Association; Lei was sympathetic to, and eventually joined, this organization. He forged ties with local Taiwanese political figures and helped them become involved in local elections. In 1960 the same group established a Local Election Improvement Forum, Lei being one of the promoters. Since Lei was experienced in party affairs, he soon became an important leader in the attempt to establish a new political party.

Lei Zhen was convicted and served a ten-year prison term due to the articles published in *Free China Fortnightly* and was released in 1970. While in jail, he wrote a four-million-word memoir, but the manuscript was seized by the military. In 1988, the Control Yuan sought to recover the papers, but they had been burned; this revelation led to public outcry. (The reminiscences available today were rewritten by Lei Zhen after his release from prison.)

Lei continued to be concerned with politics. He advocated the establishment of a new name for the country, "Zhonghua Taiwan minzhuguo," which literally means "The Chinese Taiwan Democratic State" but the government did not pick up on the idea. In 2002 the government publicly announced Lei's "rehabilitation," thus redressing what was widely viewed as a miscarriage of justice. *See also Free China Fortnightly.*

參考資料： 時與潮周刊，1960，「《時與潮》周刊的綜合報導」，*雷案始末（一），*

傅正主編；李筱峯，1987，*台灣民主運動四十年*; 維基百科，「雷震」條：http://zh.wikipedia.org/wiki/%E9%9B%B7%E9%9C%87； 李筱峰，1999，*台灣史100件大事(下)*。

Li Chang-jon factory, the 反李長榮化工事件

水源里位於新竹，其境內的「頭前溪」為新竹市的水源。「李長榮化工廠」於水源里設廠後，排放的廢水、廢氣以及製造的噪音嚴重傷害居民的健康及居住環境。1986年，該地居民證明了「李長榮化工廠」將廢水排放至頭前溪，因而發動三次圍堵行動，第三次圍堵更長達450天。該地居民在工廠門前設置路障，並搭起帳棚，埋鍋造飯，日夜輪流坐鎮，阻止工廠開工。最後該廠被迫遷移。

The Shui Yuan neighbourhood of Hsin Chu receives its water from the Tou-chien River. After Li Chang-jon built a chemical plant there, wastewater, waste gas, and noise emitted from the plant proved detrimental to health and living environment of local residents. In 1986 local residents established the fact that the Li Chang-jon Chemical Plant had been releasing wastewater into the river; this finding triggered a series of three sieges. Local residents put barriers in front of the plant entrance and set up camps to initiate a long-term protest. The third siege lasted 450 days. The plant was eventually forced to relocate.

*參考資料：*林美挪，「還我一瓢清淨水—記水源里與長榮化工的抗爭」，*人間*，76年7月；鍾淑姬，「迢迢環保路」，*文化研究月報*，http://hermes.hrc.ntu.edu.tw/csa/journal/16/journal_park114.htm，2006/6/20。

Martial Law 戒嚴令

戰爭或叛亂發生時，允許政府對全國或某一地域實施軍事管制的法令。台灣於1949年5月19日由「台灣省警備總司令部」發布戒嚴令，至1987年7月15日始解除，共長達三十八年，為世界史上最長的軍事統治紀錄。

依據戒嚴令，「台灣警備總司令部」有權力限制人民的基本自由，如集會、結社、言論、出版、講學及居住遷徙等各項自由均受到嚴格限制。

Martial law gives the government the authority to implement military rules. On 19 May 1949 the Taiwan Garrison Command declared the implementation of the Martial Law, which was not lifted until 15 July 1987. Taiwan's martial law regime lasted thirty-eight years, the longest military rule in world history.

According to the Martial Law, the Taiwan Garrison Command had the power to restrict people's fundamental rights, such as freedom to assemble, freedom of association, freedom of expression, freedom of press, freedom of teaching, and freedom to reside and move.

參考資料：朗文當代高級辭典，1998，台北：朗文出版公司辭典部；魏廷朝，1997，*台灣人權報告*，第1頁，台北：文英堂出版社；李筱峰，1999，*台灣史100件大事(下)*，頁38~39。

Mei-nung Dam 美濃反水庫運動

美濃鎮位於高雄縣，是一個客家聚落，境內的黃蝶翠谷為世界獨一無二的生態型蝴蝶谷。經濟部水資源統一規劃委員會（水資會）在經過十餘年規劃後，於1992年召開公聽會，宣布於該鎮的雙溪溪谷興建美濃水庫，引起居民強烈反對。

美濃反水庫的理由大致是：1、破壞客家文化；2、破壞黃蝶翠谷的生態；3、水庫位置離聚落過近，威脅鎮民安全；4、美濃地質脆弱，且位於地層斷層帶上，地震頻繁，不適合興建水庫；5、黑箱作業，水資會的決策完全沒有當地居民的參與；6、美濃水庫主要提供濱南工業區的用水，圖利財團，不符社會公平原則。

反水庫人士分別於1993年與1994年成功說服立法院刪去興建水庫的預算，並於1994年成立「美濃愛鄉協進會」。協進會除致力推行反水庫運動外，還將關懷擴展至客家文化的保存及生態環境的保護等。該協會於1995年開始，每年舉辦「美濃黃蝶祭」活動，要求停止美濃水庫的興建，並催生黃蝶翠谷生態公園。2000年，陳水扁總統當選後，宣示於任內不興建美濃水庫。

Meinung, a Hakka village in Kaohsiung County, is the location of the Huang Tieh Tsui Ku, an ecologically unique home to many varieties of butterflies. In 1992, after more than ten years of planning, the Water Resource Planning Committee of the Ministry of Economic Affairs held a public hearing to announce its plan to build a dam on the valley's Shuang River. Local residents objected, citing potential harm to Hakka culture, damage to the local ecology, threats to the safety of the village (especially because Mei-nung is located on a geological fault), lack of local consultation, and an affront to any sense of social justice since the sole beneficiary would be the Pin Nan Industrial Park.

In 1993 the anti-dam activists successfully lobbied the Legislative Yuan to deny funds for dam. The next year the Meinung Association was established. In addition to anti-dam campaigns, the Association emphasizes the preservation of Hakka culture and protection of the environment. The Association has held annual butterfly festivals as part of their efforts to prevent the construction of the dam, and to call for the establishment of the Huang Tieh Tsui Ku Ecological Park. After Chen Shui-bian was elected president, he announced that the government would not build Meinung Dam during his presidency.

*參考資料：*台灣環境事件記錄小組，http://www.e-info.org.tw/ecostory，2006/6/7；「美濃愛鄉協進會」，http://mpa.ngo.org.tw，2006/6/7。

Movement, freedom of, *see* Huang, Peter.

Nationalists, *see* Kuomintang.

NTU Philosophy Department Affair
台大哲學系事件

台大哲學系事件係指1972年12月至1975年6月間，國民黨政工系統透過台灣大學哲學系代理主任孫智燊之手，指控陳鼓應、王曉波等十三名自由派教授為共黨同路人。陳鼓應等人連名向台大校長閻振興反映孫智燊羅織罪狀，反遭不續聘處分。台大於1995年完成本事件調查報告，並訂定「受害人回復名譽及教職原則辦法」，當年被解聘的教師有四名復職，其餘教授亦獲慰問補償金。事件的調查小組並將調查報告寄至孫智燊任職之美國學校，告知孫當年的不當行為。2003年，所有賠償程序完成，台大校方舉行記者會，公開平反這起事件。

The National Taiwan University (NTU) Department of Philosophy Affair refers to a series of events that occurred between December 1972 and June 1975. The KMT's Political Work Department, working through Sun Chih-Sen, the then acting chairman of the National Taiwan University (NTU) Philosophy Department, accused thirteen professors, including Chen Ku-Ying and Wang Hsiao-Po, of being Communists. Chen Ku-Ying and other professors petitioned NTU President Yen Chen-Hsing against Sun, but were nonetheless dismissed. In 1995 NTU finalized an investigation into the matter and formulated a Directive Governing the Rehabilitation of the Victim's Reputation and Post, according to which four dismissed professors were "rehabilitated," and other professors were provided with compensation. In 2003 the investigation team sent a report about Sun's alleged misconduct to the American university where Sun had been teaching, and NTU followed up by holding a press conference to redress the wrongs done.

*參考資料：*薛化元等著，2003，*戰後台灣人權史*，第157~160頁，台北：國家人權紀念館籌備處；東森新聞報；http://www.ettoday.com/2003/12/24/545-1562222.htm，2006/6/20。

Nuclear waste 反核廢，驅惡靈

1980年，行政院以興建魚罐頭廠為名，在蘭嶼設置核廢料儲存場。1982年，蘭嶼達悟族人民發現受騙，群情激憤。1988年2月20日，達悟族（當時稱雅美族）發起「220驅逐蘭嶼惡靈」反核廢料運動，視核廢廠為惡魔，並緊接著於5月在台北進行反核示威。「220驅逐蘭嶼惡靈」運動此後三年繼續舉行，且在

1995年，於蘭嶼和台北同步發起「反核廢，驅惡靈」的示威抗議。

1999年，政府與達悟人簽訂於2002年底撤離核廢場的約定。同年，陳水扁於競選總統時承諾搬遷蘭嶼核廢料場。唯2002年政府仍未能實現遷場承諾，行政院長游錫堃公開道歉。經濟部長並赴蘭嶼，與達悟人簽訂保護達悟族自然主權及成立「遷場推動委員會」等六項協議。

In 1980 the Executive Yuan set up on Orchid Island what was nominally a fish cannery but was in reality a secret nuclear waste storage site. In 1982 the aboriginal Tao tribe discovered the truth and people were angered. On 20 February 1988 the tribe initiated what would be known as the February 20 Devil Expelling Anti-nuclear Waste Movement. In May of that year they held an anti-nuclear waste demonstration in Taipei. Annual meetings of The Orchid Island February 20 Devil Expelling Movement were held for three consecutive years. In 1995 Orchid Island and Taipei simultaneously held the Anti-nuclear Waste protests.

In 1999 the government and Tao tribe concluded an agreement to relocate the nuclear waste site by the year of 2002. During his election campaign the same year, Chen Shui-bian promised to relocate the Orchid Island nuclear waste dump. However, the government had still failed to relocate the dump by 2002. The president of the Executive Yuan, Yu Shyi-kun, made an official apology. The minister of Economic Affairs visited Orchid Island and reached a written agreement with the Tao people, which included the protection of Tao tribe's sovereignty over natural resources and the establishment of a Committee for the Relocation of Nuclear Waste Site.

*參考資料：*台灣環境事件記錄小組：http://www.e-info.org.tw/ecostory，2006/6/20。

Nuclear-free 非核家園

「非核家園」是個理想。其主要的訴求認為核能為人類所無法掌控的科技，為避免其潛藏的災害與威脅，主張無論在能源使用或軍事用途上都禁止或捨棄核能的運用，並以此為前提，建構未來能源運用的模式，達到「無」核的目標。

The Nuclear-Free movement was based on the idea that nuclear technology, with its inherent dangers, is difficult to manage. Thus, advocates of a nuclear-free homeland promote the prohibition or abandonment of the use of nuclear power plants as well as nuclear weapons.

*參考資料：*賴偉傑，2002，「非核家園的省思」，http://www.gcaa.org.tw/article/nuke/nonuke020416.htm，2006/6/20。

Parties, political 政黨

1990年代以前，台灣呈現一黨獨大的局面，雖有許多小黨，但都由執政的中國國民黨所掌控。90年代後，逐漸轉型成多黨制度，有許多小黨存在。在這些政黨中，親民黨、新黨及中國國民黨組成了泛藍陣營，而台灣團結聯盟與民主進步黨則組成泛綠陣營。

Until the 1990s, Taiwan had a virtual one-party system (*see* Kuomintang), with satellite parties controlled by the ruling party. The 1990s saw a gradual transition to a multi-party system (*see* Democratic Progressive Party). There have also been various smaller parties. The People First Party and the erstwhile New Party have, along with the KMT, comprised the loose pan-blue alliance. The Taiwan Solidarity Union and the DPP comprise the pan-green camp.

Resource: Mikael Mattlin, "Nested Pyramid Structures: Political Parties in Taiwanese Elections," *China Quarterly* (2004), 180:1031.

Pregnancy prohibition 禁孕條款

「禁孕條款」存在於許多服務業中。僱主以女性懷孕會影響外觀為由，強制懷孕員工離開職場。常見方式包括：如以約聘方式僱用女性員工，俟其懷孕即不再續聘；強制懷孕期間留職停薪或不計算考績；申請產假規定不符程序為由解聘等。為杜絕「禁孕條款」的歧視情形，「兩性工作平等法」第11條規定僱主不得規定受僱者有結婚、懷孕、分娩或育兒之情事時，應行離職或留職停薪，亦不得以其為解僱之理由。 *另見* Gender Equality Employment Act; Women workers, single.

The pregnancy prohibition clause was formerly a common practice in Taiwan's service sector. Employers claimed that the changed appearance caused by pregnancy justified their forcing pregnant employees to leave their jobs. It was common for people to be hired on a temporary basis, and not rehired after becoming pregnant. Other methods included forcing female employees to take unpaid maternity leave, regardless of performance, and dismissing female employees on the grounds that the application for maternity leave did not comport with the company's procedures. In order to put an end to such discriminatory practices, Article 11 of the Gender Equality Employment Act now stipulates that employers may no longer use marriage, pregnancy, childbirth, or child raising as grounds for dismissal, forced resignation, or unpaid leave. *See also* Gender Equality Employment Act; Women workers, single.

參考資料：「兩性工作平等法」，全國法規資料庫：http://law.moj.gov.tw/Scripts/NewsDetail.asp?no=1N0030014，2006/6/16。

Press, freedom of, *see* Kaohsiung Incident; Lei Zhen; Publications law; Rebellion statute.

Privacy, *see* Fingerprinting.

Property rights, *see* Land rights.

Protection order 保護令

在很多情形下，法院會核發保護令，以保護特定人（如證人、受害人等）使其免受侵擾、傳喚或發現真實。在台灣，重要的保護令係指「家庭暴力防治法」中，法院為保護特定人免受家庭暴力所發出之命令。由於保護令多由民事庭法官所核發，亦稱為「民事保護令」。

依家庭暴力防治法規定，保護令分為「通常保護令」及「暫時保護令」兩種。「通常保護令」的申請約費時二至三週，有效期限一至二年。「暫時保護令」針對面對立即危險的受害人而設，申請費時四小時。一般來說，保護令的內容包括不得有暴力行為，不得到受保護人的家裡，不得在路上、學校或工作場所或以郵件聯繫或騷擾受保護人。

Courts usually issue protection orders to protect certain potential victims, such as witnesses and other endangered people. One of the most common types of protection orders in Taiwan is that issued by a court pursuant to the Domestic Violence Prevention Act. Since most such protection orders are issued by civil court judges, this type is also referred to as a "civil protection order."

In accordance with the Domestic Violence Prevention Act, protection orders are classified as standard protection orders or ad hoc protection orders. A standard protection order requires two to three weeks to process and remains in force for one to two years; while an ad hoc order is designed to help victims who face immediate danger and can be issued within four hours. Generally speaking, protection orders can order the respondent to refrain from engaging in violent acts; going to the applicant's home; contacting the applicant or harassing the person on the street, by mail, on the phone, at school, or at work.

參考資料：婦女權益促進發展基金會編，1999，女人六法—婦女權益法令彙編實用手冊；高鳳仙，1998，*家庭暴力防治法規專論*。

Publications law 出版法

出版法於1930年12月16日公布，1999年1月25日廢除，為政府管制出版品其發行及內容之依據。出版法對出版品之言論採事前審核及內容審查，違背憲法第11條對言論自由權的保障。其第9條規定出版品首次發行前需向主管機關登記；第32條規定出版品內容不得煽動他人觸犯內亂、外患、妨礙公務、妨礙投票、妨礙秩序、觸犯褻瀆祀典及妨害風化等罪。

The Publications Law was promulgated in 1930 and repealed in 1999. That law enabled the government to control publications and their contents. The Publications Law authorized content censorship prior to publication, contrary to the protection of the freedom of expression provided for in Article 11 of the Constitution. According to Article 9 of the Publications Law, prior registration with the relevant authority was required before the first issue of a publication was circulated. Moreover, Article 32 stipulated that as to the contents of publications, inciting others to rebellion or foreign aggression, obstructing execution of public duties, voting, public order, disrespecting rituals, or offending decency are prohibited.

*參考資料：*薛化元等著，2003，*戰後台灣人權史*，第138~145頁；「台灣廢除出版法始末」，http://www.china.org.cn/chinese/TCC/haixia/17393.htm，2006/6/20。

Radioactive homes 輻射屋事件

1981年開始，台北市陸續發現有新建的房屋在不明原因下使用了輻射鋼筋。1981年之後，台灣的房價起飛，正規進口的鋼材早不敷國內市場之需。原料市場上的供需失衡，政府在建材管制上的放鬆，使得部分夾雜高放射性汙染的鋼筋建材，進口至台灣。這批鋼筋發出較一般高出數百甚至數千倍的放射線，嚴重影響到住戶的健康。行政院原子能委員會分別在二個地區偵測到輻射鋼筋的存在，但因缺乏環保意識，未進一步追查其來源及在台灣散佈的情形。1985年，一個牙醫診所遷到新的處所，意外測到高劑量的輻射，但原委會未追查原因，外界亦不知情。直到1992年，台電員工攜帶偵測計回家，意外測到高於尋常的放射線，輻射污染的問題才被媒體披露，引起恐慌。

Around 1981, some newly constructed Taipei apartments were found to have been built with radioactive steel bars that emitted hundreds or thousands of times the normal levels of radioactivity. The supply of regularly imported steel bars had fallen short of the Taiwanese domestic market's demand, at a time when the government's control over construction materials had relaxed due to this unbalanced supply and demand. Some radioactive steel bars were thus imported along with normal ones. This was detrimental to the health of the people living in the apartments. A few years later, the Atomic Energy Council （AEC） of the Executive Yuan became aware of additional buildings containing radioactive steel bars, but did not further trace their exact locations due to a lack of awareness of environmental protection. In 1985, however, a dental clinic moved to a new location where unusually high radioactive levels were detected. The AEC still did not investigate, and the public was not informed. It was not until 1992, when a Taiwan Power Company employee took a detector home and accidentally detected unusually high radioactive levels, that the story was brought to public attention, causing considerable panic.

參考資料：張武修、詹長權，1994，「台灣輻射屋的發現歷程與問題探討」，核四決策與輻射傷害，鄭先祐編。

RCA Case RCA案件

RCA即The Radio Corporation of America（美國無線電公司）的縮寫，這是美國一家著名的家用電器公司。RCA曾於1969年在台灣桃園、竹北、宜蘭等地設廠，1992年停產關廠。1994年，環保署揭發RCA多年來傾倒有毒廢料及有機溶劑，造成廠址土壤及水源嚴重汙染，技術上已無法整治。1998年更宣布RCA的桃園廠址為永久汙染區，成為台灣首例。當年任職該廠的員工從1997年開始

陸續傳出罹患肝癌、肺癌等九種致命的職業性癌症。至2001年4月止，已有1375人罹患癌症，216人因癌症死亡。經調查，當年RCA的外籍主管對該廠排放有毒物質一事知情，但卻對員工隱瞞，員工直接使用遭汙染的地下水，造成這起台灣史上最嚴重的職業災害案件。

1998年，「環境品質文教基金會」協助受害員工成立「RCA汙染事件受害者自救會」，並由「工作傷害受害人協會」及「民間司法改革基金會」等團體協助受害人進行跨國訴訟，要求RCA賠償。但由於疾病與汙染源的因果關係舉證工程浩繁，訴訟費用龐大，受害員工難以負擔，因此訴訟的進行十分艱難。

RCA is the acronym of the Radio Corporation of America, a well-known U.S. home appliance manufacturer. In 1969 RCA set up plants in the Taoyuan, North Hsin Chu, and Yilan areas, all of which closed in 1992. The Taiwan Environmental Protection Agency then discovered that RCA had dumped toxic waste and organic solvent in the grounds for many years, causing serious water and soil pollution. It proved technically impossible to clean up the sites. In 1998 the Taoyuan plant site was declared a permanently contaminated site. Beginning in 1997, former RCA employees began to be diagnosed with nine different potentially fatal occupational diseases, such as lung and liver cancer. Between that time and April 2001, 1,375 former RCA employees were diagnosed with cancer; 216 of them had already died of cancer during this period. Investigation revealed that RCA's foreign senior management had been aware of the dumping of toxic substances but had concealed the fact from employees, who had often come in direct contact with the contaminated underground water. This turned out to be the most serious occupational disaster in Taiwan history.

In 1988 an Environmental Quality Protection Foundation was founded and began assisting the victims in setting up the Self-salvation Association for Victims of the RCA Contamination Incident. The Taiwan Association for Victims of Occupational Injuries and the Judicial Reform Foundation have also assisted victims in litigating their various demands for compensation by RCA. However, inasmuch as the cost of acquiring the evidence required for establishing the causal relationship between the diseases and the pollutants has been virtually prohibitive, the lawsuit has proven to be a very difficult undertaking.

參考資料：顧玉玲，「台灣綠色矽島的黑色危機」，RCA工殤戰鬥網，http://61.222.52.195/rca，2006/6/16；工作傷害受害人協會，「RCA工人職業性癌症事件答客問」，http://www.jrf.org.tw/reform/file_5_3.htm，2006/6/16。

Rebellion Statute 懲治叛亂條例

「懲治叛亂條例」於1949年6月21日公布，為台灣「動員戡亂時期」懲治叛亂罪最主要的法令，在戒嚴時期，觸犯本條例者均由軍法審判。懲治對象包括該條例所稱之「叛徒」及其共犯，並擴及「參加叛亂組織或集會者」、「散佈謠言或傳播不實之消息者」及「以文字、圖書、演說為有利於叛徒之宣傳者」。該條例第2條第1項規定：「犯刑法第100條第1項、第101條第1項、第103條第一項、第104條第1項之罪者，處死刑」，以特別法的方式提高了四個條文在刑法中原本的刑責（無期徒刑或相對死刑），成為經審判執行最多死刑的條文，世稱「二條一」。「懲治叛亂條例」因「獨台會事件」的發生，在「知識界反政治迫害聯盟」及學生集結靜坐等群眾壓力下，於1991年5月22日由立法院廢止。*另見* Article 100.

The 1949 Statute for the Punishment of Rebellion was the most important law for punishing rebellions acts in Taiwan during the so-called Period of Communist Rebellion. People prosecuted for violation of the statute were court martialed. Those subject to punishment included anyone who was deemed to be a rebel or were an accomplice thereof, and the concept was further extended to cover anyone who engaged in "participation in rebellious association or assembly," "dissemination of rumours or untrue information," and "distributing words, pictures, speeches which helps promote rebels." Pursuant to art. 2(1) of the statute, anyone convicted under art. 100(1), art. 101(1), art. 103(1) or art. 104(1) of the Criminal Code was subject to the death penalty. The special law had the effect of increasing the sentences already imposed by the four provisions of the Criminal Code (life imprisonment or optional death penalty). Most death sentences were handed down pursuant to art. 2(1) of the statute.

In 1991, as a result of pressure from the public manifested in sit-in protests by the Alliance of Intellectuals against Political Persecution and by students who protested against the government's persecution of a member of the Association for an Independent Taiwan, the Legislative Yuan repealed the statute. *See also* Article 100.

參考資料：「懲治叛亂條例」，全國法規資料庫： http://law.moj.gov.tw/Scripts/Query4A.asp?FullDoc=all&Fcode=C0000010，2006/6/16；薛化元等著，2003，*戰後台灣人權史*，第101~102頁；魏廷朝，1997，*台灣人權報告*，第27~31頁。

Religion, freedom of, *see* Song Chi-li case.

Reproductive rights, *see* Surrogate motherhood.

Self-determination 自決

聯合國憲章第1條第2項明定，「本於人民自決原則的尊重以發展各國的友好關係」為聯合國的一大宗旨。因此，所有的人民都有自決的權利，聯合國在處理領土的爭議時，應尊重有關人民的共同要求與意願。同時，兩個國際人權公約第一條也都有同樣的規定。

主張台灣應獨立建國的人士認為，台灣在二次大戰後，國際法上的地位即懸而未決。來自中國的國民黨政權雖從日本政府手中接管了台灣，但只是代替聯合國暫管，並未在國際法上確立統治的地位。不論是1951年的「舊金山和約」，或者1952年的「中日和約」，都只載明日本正式放棄對台灣、澎湖的一切權利及領土要求，並沒有規定歸屬的國家，所以台灣不屬於中國，也不屬於其他任何一個國家。因此，台灣人民當然可使用自決的權利，要求獨立建國。*另見* Indigenous self-determination.

The right to national self-determination, or the self-determination of the peoples, is stipulated in various international instruments. For example, Article 1 of UN Charter confirms that one of its purposes is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." Article 1 of both International Human Rights Covenants states that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

In the case of Taiwan, those arguing for political independence take the position that Taiwan's status in international law is an undecided issue. The fact that the Chinese government received the surrender of Japan and reclaimed Taiwan can only be interpreted as administering the island on behalf of the UN. Both the 1951 San Francisco peace treaty and the 1952 treaty between the Republic of China and Japan stipulated only that Japan was giving up all claims to Taiwan and the Pescadores. They did not specify who was to succeed Japan as the sovereign state. Therefore, according to this reasoning, Taiwan does not belong to China or any other state, and the Taiwanese people are thus entitled to the right to the self-determination and to found a new and independent state. *See also* Indigenous self-determination.

*參考資料：*陳隆志，*台灣的獨立與建國*，1993。

Sex worker 罰娼條款

台灣人權團體將「社會秩序維護法」第80條第1項稱為「罰娼條款」。該條規定：「有左列各款行為之一者，處三日以下拘留或新臺幣三萬元以下罰鍰： 一、意圖得利與人姦、宿者。 二、在公共場所或公眾得出入之場所，意圖賣淫或媒合賣淫而拉客者。 」

根據憲法第23條規定，只有在防止妨礙他人自由、避免緊急危難、維持社會秩序或增進公共利益所必要者等四種情形，法律才可以限制人民自由。自願的性交易並不符合這四項規定，是以「罰娼條款」應為違憲。而「罰娼條款」賦予警察相當大的權力逮捕娼妓，傳出許多警察非法逮捕、逼供、罰站、索賄、白嫖等侵犯人權情事。

為抗議「罰娼條款」侵犯人權，台灣多個主張妓權的團體於2001年4月9日前往內政部陳情抗議，要求性產業除罪化、合法化及正常化。許多外國妓權運動者也加入聲援，提出「妓權即人權」、「娼妓無罪」的訴求。

Taiwan's human rights groups refer to of Article 80(1) of the Social Order Maintenance Law as "sex work criminalization." According to the provision, anyone who intends to have sexual intercourse with another for monetary gain or to solicit sex from others in public places is subject to detention or fines.

Article 23 of the Constitution stipulates that civil liberties may be restricted only in one of the following four situations: when the act impedes other's freedom, for prevention of public emergency, for posing threat to public order, and for promotion of the public interest. Voluntary sexual intercourse does not fall into any one of these constitutionally specified situations. Therefore, many see criminalizing sex work as unconstitutional. In addition, it gives the police arbitrary power to arrest sex workers and commit many other human rights violations, such as exacting bribes and having sex with a prostitute without paying, etc.

In 2001 several organizations supporting the rights of sex workers petitioned the Ministry of Interior, demanding decriminalization and legalization of the sex industry. Many overseas sex worker advocates have joined forces and demanded sex workers' rights be Recognized as human rights, and that the profession be decriminalized.

*參考資料：*台灣人權促進會，2002，*2001年台灣人權報告*，頁211~215。

Sexual minorities 性別弱勢

性別弱勢者指女同性戀、男同性戀、雙性戀者與跨性人 (LGBT)。現代的中文也稱「同志」。

在國民黨執政時期，同性戀團體被內政部視為非法。直到2000年民進黨執政後，內政部才核准了「台灣同志人權協會」的成立。不過，同性戀議題在較早的時候就引起社會上的關注。1990年2月，第一個女同性戀團體「我們之間」成立（見Wemen zhi jian），其宗旨在於對抗因性傾向所帶來的歧視。

1990年代間，性別弱勢團體以結盟的方式，一起監督對同性戀者的歧視行為。1993年，由於立法院不願增訂保障同性戀權益的反歧視政策，刺激了許多新的同性戀社團成立，包括「亞洲女同性戀者網路—台灣」、「台大男同性戀研究社」、「同志工作坊」等等。在立法委員顏錦福的協助下，這些團體出席了立法院第一次有關同性戀權利的聽證會。

1995年，「同性戀人權促進小組」成立，主要目的在於促進同性戀相關議題之討論，尤其是同性伴侶的平等權與同性婚姻的合法化。然而，直到本文寫作之時，台灣的同性伴侶之間仍無法擁有合法婚姻。

廿一世紀之初，台灣的性別弱勢者不再只是地下次文化組成的族群，他們已發展出一個有組織且全面性的社群。他們受到媒體的關注、有自己的團體、社會服務機制以及宗教集會，讓他們能團結在一起。*另見* Transgender.

Lesbian, gay, bisexual, and transgendered (LGBT) people. The contemporary Chinese equivalent, tongzhi, literally means "comrade."

When the Kuomintang was in power, the Ministry of the Interior refused to permit the formal establishment of any lesbian and gay human rights organizations. It was not until after the DPP gained power in 2000 that the Taiwan Gay and Lesbian Human Rights Association was allowed to register with the Ministry of the Interior.

However, the issue of homosexuality had already started to emerge. In February 1990, the first lesbian group, Wemen Zhi Jian (q.v.) was established de facto with the goal of ending discrimination based on sexual preference.

During the 1990s LGBT rights groups operated collectively to monitor overt discrimination against gays. In 1993, due to the fact that Legislative Yuan was giving no consideration to expanding anti-discrimination policy to protect gays and lesbians, several new gay rights groups appeared, such as Asian Lesbian Network-Taiwan, Gay Chat, and the Gay Workshop. In collaboration with Legislator Yan Jin-fu, these groups participated in the first legislative public hearing on gay rights.

In 1995 the Gay Rights Promotion Group was formed. The aim of this group is to encourage discussion related to gay issues, and especially to campaign for equality for gay couples and legalization of same-sex marriages. To this day, however, same-sex couples still cannot register their unions with the government.

By the early twenty-first century Taiwan's LGBT people was no longer merely an underground subculture, but had become a well-organized, overt community, with media recognition and its own organization, social service agencies, and religious congregations that brought them together. *See also* Transgender.

Soong Chi-li case 宋七力案

宋七力於1987年間，與友人自創宗教，宣揚「天人合一」之說，並稱天生具有「天眼力」、「天耳力」、「天鼻力」等七種神通。另外出示相片，說明本身為「宇宙光明體」，身體能分身、發光。他在台灣各地招募信眾，販賣該教相關書籍、照片，且接受供養。1996年，民意代表指控宋七力假宗教之名斂財，宋與其若干幹部依常業詐欺罪被起訴。本案經多次審理，最後台灣高等法院認為宋的信徒係因出於信仰才給付俸養金，沒有積極的證據可證明被告詐欺，因此於2005年宣判宋七力等人無罪。

社會上多認為宋七力出示的分身照片顯係利用攝影合成技術製作而成，詐騙的意圖明顯。但人權團體則提醒，警方與媒體在面對這個案件時，大肆渲染宋七力的信徒迷信邪教，已逾越追訴具體詐欺事實的界限，而干涉了個人信仰的自由。宋七力的律師也在辯護狀中引用國外判例和專業論述，強調本案的調查在許多方面都涉及政府對宗教自由的侵犯。他們指出，根據調查，本案信眾的供養、買書之行為，皆出自信眾的誠心，應被定義在宗教行為的範疇。宗教自由之要義在於阻止國家對人民信奉之宗教進行正教、異教之判斷。宗教是否正統，乃私人信仰之問題，本質上不容他人代為決定。

In 1987 Soong Chi-li and his friends established a religion promoting the unity of God and man. Soong claimed that he had seven supernatural powers. He showed photographs to demonstrate that he had more than one physical body, which radiated light. Soong attracted many followers, who purchased books and photographs from him and contributed monetary support. In 1996 a legislator accused Soong of embezzlement in the name of religion, and Soong and some of his colleagues were sued for fraud. After several trials, the Taiwan High Court declared Soong and his colleagues not guilty in 2005, finding that Soong's followers offering money because of their religious belief, and that there was no proof that fraud had been committed.

Many people believed that Soong's photos were computer generated and that he intended to commit fraud. However, human rights groups maintained that the police and media exceeded their mandate by exaggerating the fact that Soong's followers were a cult and thus interfered with people's freedom of religion. At his trial Soong's lawyers made references to judgments of foreign courts, suggesting that the government violated these people's freedom of religion. They pointed out that the provision of monetary support and purchase of books stemmed from the followers' sincere motives, which were within the scope of religious conduct. The essence of freedom of religion, they argued, is to prevent the state from passing judgment on people's religion. Each individual must decide whether or not his/her religion is heresy; no one else can do so on his/her behalf.

*參考資料：*魏千峰、鄭錦堂，「（宋七力案）聲請調查證據狀」；最高法院刑事判決，93年度台上字第4456號；台灣人權促進會，「人權時事之一：民氣可用下的人權保障」，*1996年台灣人權報告*；「為什麼高院改判宋七力無罪」，http://lifelong.taipei-elife.net/column/Column.asp?id1=3&id2=60&aid=1028，2006/6/20。

Surrogate motherhood 代理孕母

「代理孕母」指替代胎兒母親進行懷胎過程的婦女，但因此名詞牽涉「母親」定義的爭論，目前多以「代理懷孕者」或「代孕者」(Surrogate pregnancy)稱之。根據台灣衛生署歷來提出之草案，代理孕母多指「無血緣代孕」，即胎兒與代孕者沒有血緣關係，代孕者僅替代懷孕的過程，並不同時提供卵子。而且胎兒母親必須是先天性無子宮或子宮因病切除者。結合為受精卵的精子與卵子也只能來自委託夫妻。

A surrogate mother is a woman who carries an embryo for another person with the intention of giving the child up once it is born. However, since the term “mother” raises issues of definition, the more precise term “surrogate pregnancy” is preferred. According to the bill proposed in 2002 by Taiwan's Department of Health, “surrogate pregnancy” referred mainly to “gestational surrogacy”; i.e., the surrogate and the baby have no genetic connection. The surrogate only carries the embryo and does not provide eggs. To be an acceptable practice, the baby's biological mother has to be either born without a womb, or her womb has to have been removed for medical reasons. The genetic material (fertilized egg) can only be provided by the biological parents.

*參考資料：*代理孕母公聽會議閱讀資料，http://tsd.social.ntu.edu.tw/surrogatemotherhoodreadable.htm。

Taiwan Association for Human Rights
台灣人權促進會（台權會）

台灣人權促進會成立於1984年，是台灣一個最具影響力的非政府人權組織。早在80年代初，黨外份子開始籌設一個人權組織，直到陳水扁當選台北市長的時候才立案。在這一段時期，雖有活動，但在法律上是一個不被承認的民間團體。活動的重心在於維護黨外人士參加政治的權利與言論自由，營救受迫害的黨外活躍份子。2000年，政黨輪替以後，台權會開始轉型，力求獨立於民進黨與政府。近年來，擴大關懷的面向，兼及弱勢族群的經濟社會權利，也從事人權教育工作。

Founded in 1984, the Taiwan Association for Human Rights is one of the most influential human rights NGOs in Taiwan. In the early 1980s, opposition political leaders and professionals began to set up a human rights NGO; yet it was not until the election of DPP candidate Chen Shui-bian as mayor of Taipei that the Taiwan Association for Human Rights was allowed to register with the city government. During the 1980s and 1990s, the association was fairly active in defending the right to political participation and freedom of speech, but without the advantages of being a legal entity. Since the transfer of national political power to the DPP in 2000, the association has sought to be independent of the DPP and government, turning its interests to the promotion of economic and social rights of disadvantaged groups as well as human rights education.

Taiwan Garrison Command 台灣省警備總司令部

「台灣省警備總司令部」，俗稱「警總」，最早於1945年9月1日在重慶市成立。當初成立的目的，為確保抗日勝利後，台、澎地區之治安與主權，並處理軍事受降與接收、遣俘等事宜。1949年秋曾裁撤，改立「東南軍政長官公署」及「台灣省保安司令部」。至1958年5月，政府再將「台灣防衛總司令部」、「台灣省保安司令部」、「台灣省民防司令部」及「台北衛戍總司令部」等四個單位，以「保安司令部」為基礎，合併編成「台灣省警備總司令部」，並於各縣、市團管部下成立十七個警備分區指揮部，負責轄區內之警備、民防、戒嚴任務之指導、協調及執行。

在台灣威權體制時期，「台灣省警備總司令部」為政府秘密羈押與審問政治犯的主要處所之一。由於佈線綿密，作風殘酷，「警總」成為象徵台灣白色

恐怖的名詞。1992年8月因應動員戡亂時期終止而裁撤。*另見* Martial law.

The Taiwan Garrison Command was first established in the Nationalists' wartime capital Chungking on 1 September 1945 for the purpose of ensuring public order and Chinese sovereignty over Taiwan and the Pescadores. The organization took charge in the wake of the Japanese surrender; its duties included carrying out the repatriation of prisoners of war. Taiwan Garrison Command was dissolved in 1949, but was re-established in May 1958 by combining four garrison commands. Seventeen branch commands were established to take charge of and oversee matters related to civil defence and the implementation of martial law.

Taiwan Garrison Command was the government agency responsible for the secret detention and interrogation of political prisoners. Inasmuch as the Taiwan Garrison Command had very tight network and was known for its brutality, it came to symbolize the White Terror. It was not disbanded until August 1992. *See also* Martial law.

參考資料：「後備司令部沿革」，國防部後備司令部全球資訊網：http://afrc.mnd.gov.tw/Publication.aspx?CurrentNodeID=1019&Level=2&PublicID=572，2006/6/20；魏廷朝，1997，*台灣人權報告*，第37頁，台北：文英堂出版社。

Taiwan Labour Front 台灣勞工陣線

「台灣勞工陣線」成立於1984年，當時名為「台灣勞工法律支援會」，是台灣第一個工運組織，以法律服務協助勞工爭取權益。1988年，更名為「台灣勞工運動支援會」，脫離法律協助的角色，著重非國民黨掌控的自主工會組織、教育與串聯。1992年，再度更名為「台灣勞工陣線」，除了繼續推動工運外，以改造社會，打破台灣金權與政權結合的現象為主要宗旨。以「社會民主」為理念，促成社會的合理化為終極目標，亦即要建立一個沒有剝削，資源共享且人與人相互尊重與包容的新社會。

Established in 1984, the Taiwan Labour Front was Taiwan's first worker organization. It was at that time called Taiwan Labour Legal Assistance Association, and provided legal assistance for workers. In 1988 its name was changed to Taiwan Association Supporting Labour Movements, reflecting the expansion of its activities into the areas of education and networking among self-governing trade unions. In 1992 its name was finally changed to Taiwan Labour Front. It considers its mission to be breaking the stranglehold of economic and political power, as well as promoting social reforms based on social democratic principles. In other words, its ultimate goal is to create a new, exploitation-free society where there is resource-sharing, mutual respect, and tolerance.

*參考資料：*台灣勞動陣線簡介，http://labor.ngo.org.tw，2006/6/20。

Three labour laws 勞動三法

指台灣對應於「勞動三權」的三個法律：「工會法」、「團體協約法」及「勞資爭議處理法」。其中「工會法」規範勞工組織工會之相關事宜；「團體協約法」規範僱主團體與勞工團體間，以勞動關係為目的所締結之書面契約；「勞資爭議處理法」適用於僱主或僱主團體與勞工或勞工團體間發生勞資糾紛時。*另見* Three Labour Rights.

In Taiwan the term "the Three Labour Laws" refers to the Trade Union Law, the Collective Bargaining Law, and the Law Governing the Handling of Labour Disputes. The Trade Union Law governs matters related to the formation of trade unions by labourers; the Collective Bargaining Law governs written agreements made for the purpose of labour relations between the organization of employers and that of workers; the Law Governing the Handling of Labour Dispute applies to labour disputes between employers and workers. *See also* Three Labour Rights.

參考資料：「工會法」，全國法規資料庫：http://law.moj.gov.tw/Scripts/NewsDetail.asp?no=1N0020001，2006/6/12；「團體協約法」，全國法規資料庫：http://law.moj.gov.tw/Scripts/Query4B.asp?FullDoc=所有條文&Lcode=N0020006，2006/6/12；「勞資爭議處理法」：http://law.moj.gov.tw/Scripts/Query4B.asp?FullDoc=所有條文&Lcode=N0020007，2006/6/12。

Three labour rights 勞動三權

團結權、團體協商權與爭議權合稱「勞動三權」，係指國家介入勞資關係賦予弱勢勞工透過集體力量，使與資方立於平等地位，共同協商勞動條件的權利。「勞動三權」提供勞工針對工作條件進行集體協商、簽訂團體協約，並在無法達成協議時，容許運用爭議手段，向政府或資方施壓的權利，故又稱為勞動基本權。在法制上則是以「工會法」、「團體協約法」及「勞資爭議處理法」規範之。勞動三法保障了受雇者結社權，減少國家干預，冀圖建立平等之勞資關係，同時對僱主（或工會）之不當勞動行為做出規範，明訂僱主不得因勞工組織工會、參與工會事務、參加勞資爭議而解雇、調降、減薪或其他不利之待遇。也不得以是否加入工會或擔任工會職務為雇用條件，或妨害、支配或

限制工會的成立、組織或活動。

Workers' three rights consist of the right to organize labour unions, the right to engage in collective bargaining with employers, and the right to oppose employers. By these rights workers are given equal status to that of employers, and to negotiate working conditions with employers. Once negotiations fail, labour unions are allowed to call a strike to put pressure on employers and the government. In this sense, these rights are deemed workers' fundamental rights. In terms of legislation, the three labour rights are based on the Three Labour Laws (q.v.), which protect workers' right to organize unions, and prevent state intervention so as to establish a more equal relationship between employees and employers. Furthermore, these laws restrict inappropriate behaviour on the part of both employers and labour unions, and regulate the conditions under which employees can be laid off, demoted, or have their salary reduced. Whether or not employees join or serve in labour unions cannot be used as a necessary condition to recruitment. Employers cannot interfere with, dominate, or restrain the establishment or activities of the labour unions.

*參考資料：*潘世偉，陳正良，林昭禎，2001，「勞動三法之修正評析與建議」，*國家政策論壇*，第一卷第十期，http://www.npf.org.tw/monthly/00110/theme-180.htm；台灣人權促進會，2005，「勞動人權」，*1996年台灣人權報告*， http://www.tahr.org.tw/site/data/report96/11.html。

Torture, *see* Hsi Chi Three; Wang Yin-hsien provision.

Transgender 跨性別

「跨性別」（TG）一詞通用於自我性別認同與其生理性別不同者。一般而言包括「變性慾者」、「扮異性者」及「變裝者」。

但國內學者何春蕤指出，「跨性別」一詞其實有其歷史脈絡及相當複雜的分化與淵源。她的說明節錄如下：在美國1970年代的脈絡中，跨性別指的是全時間「活」在和本身生理性別相反的性別裡，專注的是跨性別主體的「生存活動」而非「身份認同」。但在認同政治開始發展後，「跨性別」開始被用來指涉兩種不一樣作用的意義：一方面，它被當作一個概括的名詞，用來涵蓋所有挑戰／跨越性與性別疆界的人。另一方面，為了打開這個曖昧流動的性別空間，「跨性別」有時也被用來區分那些在性別表現上被視為不符合其生理性別的人（TG），以及那些透過手術和其他方式將其生理性別重新設定為異性的人(TS)。

A blanket term for any person whose internal gender identity differs from their physiological gender. Generally speaking, the term "transgender" includes transsexuals, transvestites, and cross-dressers.

As scholar Chuen-juei Ho has pointed out, however, the term "transgender" has had a complicated historic background. In the 1970s, in the United States "transgender" referred to a person living a gender identity opposite to his/her biological gender; the emphasis was always on gender lifestyle instead of identity. Since the development of politics of identities, TG has come to have two different functional meanings. On the one hand, it is used as a generic term that includes anyone who challenges or crosses the boundary of sex and gender. On the other hand, TG is sometimes used to distinguish a person whose behaviour does not comport with his/her biological gender, or who has undergone a sex change by way of a surgical operation or other means.

*參考資料：*茉莉安娜的秘密花園，http://www.geocities.com/rachellesbian/juliana.htm，2006/6/15；何春蕤，2002，「認同的『體』現：打造跨性別」，*台灣社會研究季刊*，第46期。

Trial, fair, *see* Article 100; Hsi Chi Three; Legal aid; Rebellion Statute; Taiwan Garrison Command; Wang Yin-hsien provision.

TV World Report Incident 台視新聞世界報導事件

「台視新聞世界報導」為台灣電視台（台視）的一個新聞性節目。1992年3月12日，該節目的兩位記者潛入女同志酒吧偷拍，並影射某一女歌手為同志，引起同志團體強烈不滿。女同志團體「我們之間」發表聲明譴責台視新聞的欺騙手法與偷窺行徑。另有藝文界及傳播界人士發起連署，並發表「尊重同性戀的一封信」公開聲援。新聞局新聞評議委員會亦決議台視報導不當，台視表示「遺憾」並願意和解。

On 12 March 1992, two reporters of the news program Taiwan Television World Report, (produced by Taiwan Television,) surreptitiously entered a lesbian bar to shoot film footage which implied that a female singer was a lesbian. This led to a public outcry from gay groups. The lesbian group Wemen Zhi Jian condemned the

underhanded conduct of Taiwan Television. Art groups and mass media workers jointly issued a letter their respect for gay people to voice their public support. The News Evaluation Committee of the Government Information Office also criticized the report. Taiwan Television subsequently expressed regret and its willingness to settle with those affected by the report.

*參考資料：*莊慧秋編，2002，*揚起彩虹旗*，頁21~22、頁259。

Violence, domestic, *see* Domestic violence; Protection order.

Wang Yin-hsien provision 王迎先條款

台灣刑事訴訟法第27條原本規定犯罪嫌疑人於起訴後始得選任辯護人，以致犯罪嫌疑人在遭起訴前的偵查階段孤立無援。不但無法獲得辯護人之法律協助，也容易受到警方刑求，在司法人權的保障上有嚴重疏漏。

1982年4月14日，台灣發生第一宗銀行搶案，警方根據檢舉逮捕計程車司機王迎先。不料，王迎先疑因不堪警方刑求而於押解途中投秀朗橋自盡。同一天，警方根據另一線報逮捕李師科，並起出贓款，證明王迎先冤屈。事後法律界檢討本案，於1982年8月修正刑事訴訟法第27條，明訂被告得隨時選任辯護人，犯罪嫌疑人受司法檢察官或司法警察調查者亦同，使人民於被捕後即可主張獲得辯護的權利，以避免刑求逼供的情形再度發生。一般即稱此修正後的條文為「王迎先條款」。

Article 27 of Taiwan's Criminal Procedural law formerly allowed a suspect to have access to defence counsel only *after* the suspect had been indicted. As a result, suspects were unable to obtain assistance from legal counsel in the investigating stage. Moreover, they easily became victims of police torture. This provision gave rise to violations of human rights.

Taiwan's first bank robbery occurred in 1982. Based on information they received, the police arrested a taxi driver, Wang Yin-hsien. Reportedly as he could no longer bear the torture inflicted by the police, Wang committed suicide by jumping from Hsiu Lang Bridge while being escorted to the prosecutor's office. On the same day, based on a lead, the police arrested another suspect, Li Shih-ke, and soon discovered the illicit money. Faced with the proof that Wang had been wrongfully accused, the legal specialists reviewed the case, and as a result of their findings Article 27 of Taiwan's Criminal Procedural Code was revised. The amended article stipulates that not only does a defendant have the right to counsel, so too does any suspect who is under prosecutorial or police investigation. The purpose of this amendment (generally known as the Wang Yin-hsien provision) is to prevent coerced confessions.

參考資料：「刑事訴訟法」，全國法規資料庫：http://law.moj.gov.tw/Scripts/Query4A.asp?Fcode=C0010001&FLNO=27，2006/6/20；「人權里程碑：王迎先條款」，見東森新聞報：http://www.ettoday.com/2002/04/14/139-1290646.htm，2006/6/20。

Wemen Zhi Jian 我們之間

「我們之間」是台灣第一個女同性戀團體，也是台灣第一個同志社團。成立於1990年2月，由學生及社會人士共同參與、組織而成，是一個強調女同志自我認同、互相支持、一起成長的聯誼性公益團體。

「我們之間」出版《女朋友》雙月刊，提供女同志彼此溝通和支援的空間。這份刊物於1994年開始發行，約有2000份的發行量，是台灣第一份同志刊物。

「我們之間」在最鼎盛的時期有4000名會員，為台灣最大的同志團體。目前每年定期更新身份的會員已降至200人左右。

Wemen Zhi Jian was Taiwan's first lesbian organization, and also the first LGBT group in Taiwan (*see* Sexual minorities). It was established in 1990 with the participation of students and others. It is a public interest group that emphasizes self-defined identities and mutual support. It publishes Girlfriends, Taiwan's first LGBT publication, which began in 1994 with a press run of two thousand copies and provides a forum for lesbians to communicate with each other and provide mutual support. The group had four thousand members at its peak, giving it the distinction of being the largest LGBT organization. Although the magazine still appears regularly, currently (2006) the number of people who renew their memberships is down to about 200.

參考資料：「我們之間」網站：http://come.to/wzj，2006/6/20；林麗雲，1991，「記一個女同性戀團體—我們之間」，*中國人的同性戀*，張老師出版社；王雅各，1999，*台灣男同志平權運動史*。

Women workers, single 單身條款

所謂「單身條款」指事業單位利用內部之契約規定，強迫女性勞工於結婚後必須自動離職。台灣在「兩性工作平等法」實施以前，服務業或金融業普遍存有「單身條款」的情形。

1987年8月，國父紀念館57位女性員工及高雄市立文化中心44位女性員工，集體抗議兩單位的「單身條款」。為制止這種性別歧視的現象，乃由「婦女新知基金會」領銜，制訂「男女工作平等法草案」，送交立法院審議。但遲至十二年後，才於2001年12月通過「兩性工作平等法」，於其中第11條禁止「單身條款」的施行。*另見* Gender Equality Employment Act; Pregnancy prohibition.

The term "single female worker clause" refers to a contractual agreement used by employers to force female employees to resign after they get married, become pregnant, or simply reach a certain age. Prior to the implementation of the Gender Equality Employment Act (q.v.), the service and financial industries generally adopted such clauses.

In 1987 fifty-seven female employees of Sun Yat-sen Memorial Hall and forty-four Kaohsiung Municipal Cultural Centre female employees protested against the single female worker clause. Women's support groups found that there was no law or regulation to stop such gender discrimination. Following efforts spearheaded by the Awakening Foundation, a draft Gender Equality Employment Bill was submitted to the Legislative Yuan, but only in 2001 did it become law. Article 11 of the act bans single female worker clauses. *See also* Gender Equality Employment Act; Pregnancy prohibition.

參考資料： 陳伸賢，1996，「提倡兩性工作平等，廢除『單身條款』」，*勞工之友*，第552期，12月號；焦興鎧，2003，「論我國剷除工作場所性別歧視之努力」，*2002年台灣人權報告*，台灣人權促進會編。

Women's rights, *see* Comfort women; Domestic violence; Family Code; Female quotas; Gender Equality Employment Act; Pregnancy prohibition; Protection order; Sex worker; Women workers, single.

Workers' rights, *see* Autumn Struggle; Labour Charter; RCA case; Taiwan Labour Front; Three Labour Laws; Three Labour Rights; Women workers, single.

國家圖書出版品預行編目資料

人權字典 ／ 黃默總編輯/.-- 一版.— 臺北市
：教育部，民96
面：21x15公分
ISBN 978-986-00-9617-0（平裝）
1.人權 - 字典,辭典
579.2704 96008240

人權字典

發行人：杜正勝
總策劃：柯慧貞
策　劃：傅木龍、楊志忠
總編輯：黃　默
編輯與主要撰寫人：
黃 默、Theodore Orlin、司馬晉（國際部份）
司馬晉、莊耀洸（香港部份）
黃 默、李仰桓（台灣部份）
Daniel Yu, John Balzano（中國部份）
出版者：教育部
出版日期：中華民國96年6月
地　址：100台北市中山南路5號
網　址：http://www.edu.tw
版（刷）次：一版一刷
印　刷：晶銀印刷設計有限公司
電　話：（02）8252-8224
工本費：75元

GPN：1009600764　　ISBN-13：978-986-00-9617-0