A “step by step” approach or dragging a horse to water? Hong Kong government, NGOs and the protection of human rights in Hong Kong 1990-2000

Andrew Byrnes
Faculty of Law
University of Hong Kong

Hong Kong has seen three major human rights protections added to its legal system in the last decade: the incorporation of the International Covenant on Civil and Political Rights as part of Hong Kong law in 1991, the enactment of legislation prohibiting discrimination on the ground of sex, marital status, pregnancy, disability and family status in 1995 and 1996 (and the establishment of the Equal Opportunities Commission to promote the implementation of that legislation), and the entry into force of the Basic Law of the Hong Kong Special Administrative Region on 1 July 1997, which constitutionally entrenches a range of rights, including those in both the ICCPR and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong.

These new guarantees of human rights were significant advances, especially when existing common law protections and the independence of the courts are taken into account, as well as other institutions such as the Office of the Ombudsman and the Office of the Privacy Commissioner. In addition to these domestic protections, the Hong Kong government, both before and after 1997, has been assiduous in submitting detailed reports to the United Nations treaty bodies under the various UN treaties that apply to Hong Kong. Yet the Government has been a reluctant initiator of human rights reforms – they have rarely come from a whole-hearted commitment by the government, leading the community, but have been a response to crisis, or an unwilling reaction to the energetic lobbying and legislative efforts of non-governmental forces.

Furthermore, despite this impressive array of rights guarantees and the existence of procedures to ensure their observance, Hong Kong’s system of protection of human rights has a number of major flaws. On the substantive side, there is still no legislation prohibiting
private racial discrimination – 30 years after the application to Hong Kong of the United Nations treaty on racial discrimination which requires such legislation – and it is still lawful for private employers and service providers to discriminate against persons on the ground of their sexuality. The existing law and practice on telephone tapping are blatantly inconsistent with human rights standards, Hong Kong’s immigration policies deny minor children the right to live with their parents and treat migrant workers in a discriminatory way, the law and its application in the field of elections and labour law violates international standards in a number of respects, to mention some of the more important areas.

This paper discusses a number of factors which explain this diminished level of human rights protection in Hong Kong. These are: (a) the government’s desire to assert and maintain control over every issue that it considers of importance and its unwillingness to accept that its view can be mistaken or wrong; (b) related to this, the lack of a human rights commission with a wide-ranging brief that could independently assess and evaluate government policy and actions, and ensure real access to redress for the average person; (c) the lack of real accountability of the political executive and the legislature to the people of Hong Kong; (d) the parsimony of the government (and frequently of the courts) in the interpretation of rights, manifested in the narrow interpretation of rights guarantees but the generous interpretation of limitations; and (e) the “China factor”, which has meant that sensible and required reforms cannot be made because they would involve too great a loss of face for those supported changes in the lead-up to the reversion of sovereignty over Hong Kong to China.

******