

Giving animals a voice in Hong Kong

為香港的動物發聲

Hong Kong Lawyer talks to Agnes Tam, a cruelty case and legal officer for PETA, about her compassion for animals and the state of animal welfare laws in Hong Kong

In July 2001, Agnes Tam Nga Yin was denied right of abode in Hong Kong when the Court of Final Appeal, in *Tam Nga Yin (an infant suing by her mother and next friend Man Yuet Kwai) and others v Director of Immigration* (2001) 4 HKCFAR 251, held that Art 24(2)(3) of the Basic Law applied only to natural children of Hong Kong permanent residents and not to adopted children. After the ruling, Agnes became a cause célèbre, winning support from the public, legislators and the media. On 25 October 2001, she was granted a one-way permit by the Chinese government on humanitarian grounds, allowing her to permanently reside in Hong Kong.

Agnes is now a cruelty case and legal officer for the People for the Ethical Treatment of Animals (PETA) dedicated to helping animals throughout the Asia Pacific region who are victims of cruelty and neglect. She also assisted with the 2010 review that was submitted to the Hong Kong government on reform of animal welfare laws in Hong Kong.

With your personal and legal background, why have you chosen to focus on animal welfare and not, for example, human welfare?

Animals, at the moment, are the most under-represented group in society. There are many underprivileged groups in Hong Kong who are represented by charitable and welfare organisations in Hong Kong, but animals are largely unrepresented. There are no legislators who are primarily working on behalf of animals in the Legislative Council. The International Covenant on Civil and Political Rights (ICCPR) and the Bill of Rights Ordinance (Cap 383) provide a legal framework to protect rights for humans but we do not have a similar framework in place for the welfare of animals.

My personal background and my involvement with the right of abode case convinced me that the law is a very powerful tool against injustice. Through the legal system we can make changes that have a fundamental impact on both humans and animals. This is the reason

《香港律師》今期訪問善待動物組織的動物虐待個案及法務主任談雅然，訪問中她暢談自己對動物的惻隱之心，以及香港動物福利法律的狀況

2001年7月，在 *Tam Nga Yin (an infant suing by her mother and next friend Man Yuet Kwai) and others v Director of Immigration* (2001) 4 HKCFAR 251一案中，終審法院認為《基本法》第24(2)(3)條只適用於香港永久性居民的親生子女而非領養子女，裁定談雅然的居港權申請敗訴。談雅然案裁決後，在社會上引來極大迴響，談雅然更得到公眾、議員和傳媒等社會各界人士支持。2001年10月25日，中國政府基於人道立場向談雅然發出單程證，容許她在香港永久居留。

談雅然現職善待動物組織 (PETA) 動物虐待個案及法務主任。該組織致力給亞太區受虐待和受忽視的動物提供協助。她亦就已提交給政府的2010年香港動物福利法律改革檢討報告提供協助。

基於您的個人經歷和法律背景，您為何專注於動物福利而非人類福利？

動物是目前社會上最缺乏關注的一群。雖然香港有慈善及社會福利機構代表許多弱勢社群，但代表動物權益和福利的團體則明顯不足。立法會並無專責動物福利工作的議員。《公民權利和政治權利國際公約》及《香港人權法案條例》(第383章)提供的法律框架可保障人類的權益，但我們沒有同類框架去維護動物的福利。

我的個人背景和爭取居港權案的經歷，讓我深信法律是對抗社會不公義的有效途徑。通過法律制度，我們為人類及動物帶來根本性的影響和改變。這是我修讀法律課程的原因，並期望透過法律為香港社會作出貢獻。我從不覺得人權並不重要，只不

why I went to law school, and I hope to use the law as a means to make a positive contribution to Hong Kong society. I would never say human rights are not important, but I have a passion for animals and I think it is a good fit for me to specialise in animal welfare for now.

Can you tell us about the main causes of animal abuse and neglect?

If you are talking about domestic abuses like beating, stabbing or poisoning dogs and cats, the basic cause is people's lack of compassion and empathy. Some people think that animals do not suffer, and there are of course other people who have psychological issues and problems, although these cases are not as common. But there are other types of animal abuses and these are institutionalised. They happen on farms, in animal laboratories, at zoos and circuses, and these abuses stem from ignorance and arrogance. Many people cannot relate to the meat that they eat and they won't give a second thought to how these animals were treated before they were slaughtered. For some, it is simply ignorance; others may be aware of what is happening but think that animals are there to be exploited and for us to use as commodities. We need to change this mindset and how animals are perceived through education.

What are the major animal welfare issues in Hong Kong and China right now? Are the same issues present elsewhere in Asia?

Hong Kong and mainland China are quite different when it comes to animal welfare standards and issues – Hong Kong, Singapore and Taiwan fare pretty well by Asian standards. In China, for example, there is cock fighting and dog fighting, and even the most graphic form of animal cruelty can still be legal because anti-cruelty laws are not in place. PETA and many local animal groups have been pushing for years for legislation. Last year a bill was submitted to the National People's Congress but it may take three to five years before the law is passed. The bill is general and consolidates all the policies and guidelines in one uniform piece of legislation; if enacted, it would give basic protection in some categories, for example, wanton abuse of domestic animals. The objective is to have a broad-based law because the public still have not grasped the idea of animal welfare and it is thought that penalising people for eating dogs or cats would be unfair. However, it is a good step in the right direction.

There are also guidelines, for example, in relation to animals used in laboratories that promote the three 'Rs' of animal experimentation



過我對動物有一份很深的感情，對我來說現在專注於動物福利是最佳的選擇。

您可以告訴我們動物遭受虐待和忽視的主因是什麼？

如果你指的是發生在寵物身上的虐待，我會說是因為那些施虐者缺乏惻隱之心和同理心，他們會虐打、刺傷或毒殺貓狗。有些人覺得動物不會感痛楚，當然也有些人本身有心理障礙和問題（但這些個案並不常見）。但是，虐待動物的行徑遠不止於此，很多已經變得制度化了。這些虐待行徑經常在農場、動物實驗室、動物園和馬戲團等地方發生，而這都是出於人們的無知和傲慢。很多人吃肉時不曾聯想到肉背後的生產過程，更不會再三思量這些動物在宰殺前受過什麼虐待。有些人可能只是純粹無知。而有些則可能了解殘酷的事實，卻認為動物可以被我們剝削，被我們當作商品看待。我們必須通過教育改變這一思維，告訴他們如何善待動物。

目前，香港和中國兩地遇過哪些主要的動物福利問題？這些問題在亞洲其他地區有出現嗎？

在動物福利的標準和問題上，香港和內地有很大差異—以亞洲標準而言，香港、新加坡和台灣到目前為止都做得不錯。相反，在中國，鬥雞、鬥狗，以致林林總總的殘酷對待動物行為仍然是合法的，原因是當局並沒有防止虐待動物法例。善待動物組織及許多當地動物組織多年來一直提倡立法。去年，有關反虐待動物建議稿已被提交到全國人民代表大會審議，但可能要待三至五年時間才可望獲得通過。該份草案的內容廣泛，將各種政策和指引合併成為一套單一法例。如獲通過，該法例將會給部分動物類別提供基本保障，例如不得肆意虐待家養寵物。內地法律專家指出，因為公眾仍未能掌握動物福利的概念，並認為懲處吃貓狗的人是不公平的，所以，他們制訂一套涵意廣泛的法律。無論如何，這個反虐待動物法案是朝著正確的方向邁進的第一大步。

舉例說，關於動物在實驗室的使用也有一套相關指引，即提倡動物實驗的三個「R」—減少(reduction)、替代(replacement)和改善(refinement)，

– reduction, replacement and refinement – but this is only lip service because there is no one to enforce these guidelines when they have been violated.

In Hong Kong, we do not see as many domestic abuses. People do genuinely care for animals and the abuse cases sometimes reported in the newspapers are not really that rampant. We also have an anti-cruelty law and that is something, whereas in China there are rules or policies which do not carry any penalties. There is not a lot we can do except use moral opinion to highlight particular abuse cases and keep asking the government to take action. The police are very dismissive when complaints about cruelty to animals are made. Officers arriving at the scene tend to think it is a trivial matter and perhaps that the caller should have called the Society for Prevention of Cruelty to Animals (SPCA) instead. If a stabbed or poisoned animal is found, police lack the knowledge of how to preserve the crime scene and collect evidence; this is part of the reason why many cruelty cases are difficult to prosecute.

For farmed animals, Hong Kong only has the Code of Practice for the Welfare of Food Animals. Poultry and cattle are to be farmed, kept and slaughtered in accordance with the code of practice. The standards are specific but there are no legal repercussions if they are breached, and the most serious abuses still happen on farms. Hong Kong need not be singled out in this because even in the United States animal cruelty legislation excludes farmed animals. This category of animals is invisible before the law.

For animals used in laboratories, Hong Kong is self-regulating, as are Japan and some states in the US. However, in Europe and some forward-looking states in the US, animal laboratories are not self-regulated and the government is able to step in and scrutinise the experimentation and procedures, via an ethics committee, and ban certain experiments on animals. There is no one in Hong Kong who monitors or even questions experiments conducted at schools; students are not given the option to say no to conducting dissections and vivisections on animals. In some states in the US, schools give such options to students.

Can you highlight the key problems with the animal cruelty legislation currently in place in Hong Kong?

They main problems are the lack of comprehensiveness of the



but this is only paper talk, no one really would execute these guidelines, even if they violate them, it would not be a big deal.

據我們所知，香港家養寵物的虐待個案不多。港人愛護動物，而報章偶有報道的虐待個案，但實情並非那樣嚴峻。香港亦有防止虐待動物法例，對人們起阻嚇作用，相反中國的規則或政策不設任何罰則。因此，我們可以做的實在有限，唯有利用道德輿論的力量，譴責個別虐待動物個案，不斷要求政府作出相應行動。警方接獲虐畜投訴時採取不以為然的態度。警員到場後往往認為這不過是小事一樁，認為求助者應致電愛護動物協會求助。如發現動物被刺傷或被毒死，警方在維持案發現場原貌和搜證方面均缺乏相關知識；而這正是對許多虐待動物個案難以提出檢控的部分原因。

至於農場動物，香港只有一套《保障食用動物福利守則》。家禽和家畜可按照守則飼養、畜牧和屠宰，這些標準的內容具體明確，但違反規定也不需承擔任何法律責任或後果，而最嚴重的虐畜行為往往就在在農場裏頻生。對農場動物保護不足的問題，不限於香港，就連美國的防止虐待動物法律也不包括農場動物在內。這類動物在法律面前，如同隱形。

至於用於實驗的動物，一如日本和美國部分州，香港只有一個自行監管的制度。反觀，在歐洲和美國部分州，動物實驗並非自行監管，政府可通過道德委員會介入，對實驗和程序進行審查，並禁止對動物進行部分實驗。香港並沒人監察甚或質疑在學校進行的實驗，很多時候，學生對解剖和活體解剖也無權說不。相反，在美國部分州，學校給學生選擇權。

您能指出香港目前在虐待動物法律方面遇到什麼主要問題？

最主要的問題是法例有欠全面，執法力度不足。舉例說，《狂犬病條例》（第421章）訂明遺棄動物是違法的，但《防止殘酷對待動物條例》（第169章）則無視遺棄問題。在執法方面，警方沒有執法或拯救遇險動物的專業知識。許多案件因證據不足或被認為不符合公眾利益，而未能提出檢控。這情況令檢控工作難上加難，因為缺乏先例可循。即使個案被提交裁判法院進行聆訊，往往只是罰款了事，裁判官極少施與最高罰款額一港幣二十萬元。根據《防止殘酷對待動物條例》第3條，最高刑罰可判處監禁三年，但即使遇上嚴重的虐待動物個案，法院也不曾判以監禁刑期。

法律的基本理念本身出現問題，因為它旨在防止動物虐待，而非促進動物福利。這是一個反應性模式，而非預防性/積極性模式。只有當動物受虐待，當局才可介入。如果動物監護人只是不帶動物

laws and their inadequate enforcement. For example, the Rabies Ordinance (Cap 421) provides that it is illegal to abandon animals, but abandonment is ignored by the Prevention of Cruelty to Animals Ordinance (Cap 169) (PCAO). In terms of enforcement, the police do not have the expertise to enforce the law or save an animal in distress. Very few cases are prosecuted because of insufficient evidence and it's argued that the public interest is not served by pursuing these cases. This perpetuates difficulties with prosecutions because there is a lack of precedents. When matters do appear in the Magistrates' Court, only fines are handed out, and the maximum penalty of HK\$200,000 is rarely approached. Under s 3 of the PCAO, there is also a maximum term of imprisonment of three years, but no court has handed out a custodial term even where there has been a serious case of animal abuse.

The underlying philosophy of the legislation is itself a problem because it focuses on cruelty rather than welfare. It is a reactive model rather than a preventative/pro-active model. It is only when animals have suffered then the authorities can intervene. If an animal guardian simply does not take the animal to the vet or give it adequate shelter, food or water, the authorities are unable to step in. In contrast, the UK Animal Welfare Act 2006 imposes a duty of care on animal guardians, and if any of the standards are violated then an 'improvement notice' can be issued under s 10. The notice states that provisions of the Act have not been followed and specifies the steps that need to be taken in order to comply within a specified period of time. If there is non-compliance with the improvement notice, then the authorities can use it to prosecute the animal guardian. The experience with this system has been that in the vast majority of cases, there is compliance. This is better for the animal because the problem is rectified within a short period of time, compared with a lengthy prosecution process which generally comes too late to remedy the animal's situation.

Hong Kong's PCAO is based on the UK Protection of Animals Act 1911. There have been some amendments over the years to raise penalties, but no substantive revision to improve the welfare of animals.

What are some of the major actions that need to be taken in order for animal welfare concerns to be adequately addressed in Hong Kong?

I think it will take a two-pronged approach. First, we need to improve the law and the enforcement of the law. Second, we need to educate the public, government officials and enforcers of the law. Public opinion is always an impetus for change. If the public is not aware of the importance of animal welfare and has no knowledge of the suffering of animals, then even when there is an adequate law in place it will be hard to enforce it. Indonesia, India and the Philippines are examples of places where animal welfare laws have been passed but they are routinely violated because the public has not been educated about animal welfare or corporations do not have the resources to meet the proper standards. It is pointless to have a law if the public is not ready for it, but the law is also a tool that can be used to educate the public. In China, public demand is growing for an animal cruelty law, and I am quite optimistic that within five years there will be such a law in place.

看獸醫或給動物適當的居所、食物或水，當局很難干預養飼者。相反，英國的《2006年動物福利法》向動物監護人施加謹慎責任，如違反任何標準，則可根據該法例第10條發出「敦促改善通知書」。該通知書說明該監護人未有遵從有關規定，並說需要採取步驟，以期在指定時間內遵從相關規定。如不遵從敦促改善通知書的內容，當局可據此檢控動物監護人。在絕大部分個案中引用這個制度所得出的結果都是正面的，動物監護人均遵從法律規定。由於問題能在短期內得到糾正，這樣做較能改善動物待遇，相較之下，如要通過曠日持久的檢控程序去改善動物待遇，一般都來得太遲。

香港的《防止殘酷對待動物條例》是以英國的《1911年保護動物法》為藍本。多年來，本條例作出了若干修訂以提高罰則，但沒有作出實質修訂去改善動物福利。

我們該做什麼，才可充分解決香港動物福利的問題？

我想這可從兩方面入手。一方面，我們需要完善法律和執法，另一方面，我們需要教育公眾、政府官員和執法人員。社會輿論一直是推動改革的力量。如果公眾並不意識到動物福利的重要性，也不瞭解動物所受的苦楚，即使有適當的法律，仍難以落實執行。印尼、印度和菲律賓等國家都通過了動物福利法例，但公眾遵法的情況比比皆是，因為當局沒有教育公眾什麼是動物福利，機構也沒有資源去達到合適的標準。如公眾還未作好準備，即使有法可依也是無補於事的。縱然如此，法律仍是教育公眾的途徑。在中國，公眾對反虐待動物法例的需求漸增，我有信心當局五年內會制訂有關動物福利法例。

您認為海洋公園和動植物公園對本港動物的狀況有作出貢獻嗎？

這些地方向人們發放一個信息，就是將動物遷離自然棲息處，困在細小的空間，是可以接受的。如果人們想瞭解動物生態，他們大可從書本、互聯網或電視上找相關資料，實無必要到海洋公園或植物公園學習相關知識。動物長期困在細小空間，很常會患上精神病。被囚禁的動物往往情緒低落，由於環境過於簡陋，沒有精神刺激而感到極度沉悶，繼而出現搖晃、重覆行為及自咬等癥狀，久而久之便會發狂。動物園很多時辯駁，以教育、科學或生物研究為由囚禁動物，讓人可近距離觀察動物。但這個論點根本站不住腳。被囚禁的動物並不是棲身在他們的自然棲息地，你可以觀察到的只是他們困在一個密封空間內的行為，不是他們的自然行為，沒有生態價值。如果動物園給受傷動物提供保護區，並

Do you believe that Ocean Park and the Zoological and Botanical Gardens make any positive contribution to the situation of animals in Hong Kong?

These places demonstrate to people that it is acceptable to confine animals in small places and remove them from their natural habitat. If people want to learn about an animal's biology then they can find the information in books, on the internet or on television. There is not really a need to visit places like Ocean Park or the Botanical Gardens to learn about these things. Animals often suffer from psychosis, a mental illness developed after being confined in small spaces for long periods of time. Symptoms like swaying, repetitive behaviour and self-biting demonstrate that animals are literally going insane due to the distress of being confined in enclosures and boredom from not being mentally stimulated. When parks and zoos argue that they are acting in the interests of education or scientific or biological research, for which they need to observe the animals at close proximity, this argument does not stand; the animals are not in their natural environment and the behaviour being observed is that of an animal in a confined space. If the park or zoo offers a sanctuary for animals that have been injured, for example, then that is a different matter. However it is expected that there would be a programme in place for rehabilitation of those animals and, if possible, releasing them back into the wild.

How does PETA help protect animals?

PETA Asia-Pacific engages in public education seminars, cruelty investigations, research, animal rescue, lobbying for better animal legislation, special events, celebrity involvement and protest campaigns. We run campaigns against fashion brands like Burberry that use fur in their clothing products, and celebrities like Gong Li who still like to wear fur. Recently, we successfully urged China Southern Airlines to cancel a shipment of chimpanzees being sent to an animal lab in Los Angeles for experimentation. In June, we successfully fought for a complete overhaul of welfare conditions for animals in zoos in Malaysia and we also worked with local Taiwan groups to pass a law that bans the manufacture, sale and use of steel jaw traps.

What kind of activities can legal professionals get involved in to help improve animal welfare in Hong Kong?

Animal law experts can help the government and private prosecutors to handle cases, as this is a niche area of the law which requires expert guidance. Legal professionals can provide pro bono advice to the SPCA and other animal welfare organisations on their campaigns. On the more commercial side, animal trust cases are increasing. This is where animal guardians leave their assets to their animals and it is an area that legal professionals can incorporate into their wills and estates practice.

If animals had a voice, what do you think they would be saying to us? Help!

Wilda Fong



加以一套復康計劃，待適當的時候把動物們放歸自然，則另作別論。

善待動物組織如何協助保護動物？

亞洲善待動物組織主要通過舉辦公眾教育研討會、虐待動物的個案調查研究、動物救助、促請當局立法保障動物福利、特別活動、名人效應、發起抗議行動等方式去保護動物權益。就Burberry等時裝品牌在服裝上使用動物毛皮，以及許多名人（如鞏利）仍愛穿皮草出席活動，我們曾發起抗議行動。最近，我們成功勸喻中國南方航空取消運送黑猩猩到洛杉磯的動物實驗室作實驗用途。另外，我們在六月成功爭取全面改善一個馬來西亞的動物園的養殖環境。我們更與台灣當地組織攜手合作，成功通過法例禁止生產、出售和使用捕獸夾。

法律專業人員可參與什麼活動，以協助改善香港的動物福利狀況？

動物法律專家可幫助政府和私人檢控官處理個案，因為這屬於一門專門領域，須獲得專業法律指引。法律專業人員可以向愛護動物協會及其他動物福利機構處理的動物個案或活動，提供公益法律意見。在商業層面，動物信託個案正在增加，動物監護人會將資產留給動物，而法律專業人員可把這方面的工作納入遺囑和遺產實務內。

如果動物會說話，您覺得牠們會說什麼？

請救救我！

方時慧