



Hong Kong Journalists Association

**Submission for the Universal Periodic Review of the People's Republic of China
(Hong Kong Special Administrative Region)
scheduled to be held in February 2009**

1. It is over 11 years since the People's Republic of China resumed sovereignty over Hong Kong in 1997. As the sole registered trade union of journalists in Hong Kong, the Hong Kong Journalists Association (HKJA)¹ upholds the right to freedom of expression enshrined in the Article 19 of the International Covenant of Civil and Political Rights (ICCPR). However, worrying signs have emerged and consolidated in the recent years. Surveys conducted by the HKJA show that many journalists think press freedom in Hong Kong has deteriorated since the handover, mainly as a result of self-censorship and the government's tighter grip on the flow of information.² This report provides a brief overview on the change of environment in relation to freedom of expression in general and press freedom in particular in the Hong Kong Special Administrative Region (HKSAR). We also urge the setting up of an independent Human Rights Commission and a fully democratic system to ensure better protection of and respect for human rights.

A). Unsatisfactory law on Interception of Communications

2. The HKSAR government tabled legislation to legalize the interception of communications in March 2006 and the bill was passed in August 6th the same year. The HKJA believes the hastily drafted bill failed to give adequate protection to journalists.
3. According to the legislation, a panel of specially chosen Court of First Instance judges will approve all applications for interception of communications and for more intrusive forms of covert surveillance. Senior law enforcement officers will give approval for less intrusive forms of covert surveillance. The law failed to exclude confidential journalistic information from its scope and the thresholds for interception are too low to protect journalistic materials. Moreover, there is no proper safeguard for the insulation of the tracing of journalist's sources of information through the obtained journalistic information. We are worried that the law will jeopardize the capacity of journalists to protect confidential sources of information, which is essential for investigative reporting.
4. The Commissioner on Interception of Communications and Surveillance reported in the 2006 annual report that he detected no deliberate breach of the ordinance by the authorities during the 4-month report period.³ There is no information of interception or surveillance on journalistic information provided in the report. However, due to the sensitivity of the confidential sources of information, the HKJA doubts very much that journalists would formally complain about being intercepted or of being put under surveillance. Such disclosure would only inhibit sources of information from coming forward. We therefore cannot evaluate the extent of the chilling effect of this legislation on the confidential sources of information.
5. The 2007 annual report is yet to be published at the writing time. The government promised to review the law in 2009.

The HKJA urges the Human Rights Council the HKSAR enhance the protection on confidential journalistic information and its sources of information so as to ensure that the revelation of malpractice in government and statutory institutions can be made by "whistleblowers".

¹ For reference of the HKJA, please visit our website at <http://www.hkja.org.hk>

² For details, please see the finding at <http://www.hkja.org.hk/portal/Site.aspx?id=A1-661&lang=en-US>

³ Full report can be viewed on the official website of the Commissioner at <http://www.sciocs.gov.hk>.

B) Threat of Revival of enactment of Article 23

6. According to Article 23 of the Basic Law, the mini Constitution of HKSAR, stipulated that the HKSAR has to enact laws to prohibit any act of treason, secession, sedition, subversion against the People's Republic of China and other security related offences. The government tabled a bill and shelved it in September 2003 after mass protests and demonstrations.
7. The HRC has expressed concern about the broad definition of the current offences of treason and sedition in the Crimes Ordinance.⁴ The HRC further urged the HKSAR to amend those offences to bring it into full conformity with the ICCPR. However, no such liberalisation of legislation has been made.
8. Both pro-Beijing scholars and politicians have urged the HKSAR to enact laws to implement Article 23 of the Basic Law and the HKSAR has never closed the door on the possibility of enactment laws in this regard. When asked, officials repeat what the HKSAR Chief Executive (CE), Donald Tsang, said: "It is not the top priority of the government." However, it is widely believed that the Tsang Administration will eventually enact the legislation.

The HKJA urges the HRC to call upon the HKSAR to postpone the enactment of the Article 23 legislations until there is a strong consensus in the community. We also suggest the HRC should call upon the HKSAR to liberalize those offences in relation to sedition and treason.

C) Public Service Broadcasting under Siege

9. The HKJA expressed grave concern over the future of the de facto public service broadcaster, Radio Television Hong Kong (RTHK). The RTHK is a government department that operates seven radio channels and the television programmes are broadcast in commercial television station under licence requirements. The RTHK's editorial independence is ensured by an administrative memorandum between the station and its policy branch. However, the RTHK has been criticised by pro-Beijing politicians for criticising government policies. To the contrary, they argued that the station should act as promoter of government policies.
10. The Chief Executive, Donald Tsang, told senior editors in mid-2005, shortly before he was sworn in that: "We need the assistance of RTHK in explaining our policies effectively to the public." He also expressed displeasure about some of RTHK's programming. The horse racing programme was dropped afterwards.
11. In January 2006, the government appointed a committee to review public service broadcasting (PSB) in Hong Kong. However, no representative from RTHK, the de facto Public Service Broadcaster, was appointed to the committee. The committee published its report in March 2007 which recommended a new statutory Public Service Broadcaster should be set up. Although it repeatedly stated that the issue of RTHK was not within its remit, the committee concluded in the report that it was inappropriate to turn RTHK into the new Public Service Broadcaster. Opponents of the move set up the Save RTHK Campaign⁵, of which the HKJA is a member, to register their discontent. It has described the recommendation as the death-knell for RTHK.
12. Convinced that a tamed RTHK would still not satisfy the government, the Save RTHK Campaign expressed its fears that the proposed new Public Service Broadcaster would only serve as a mouthpiece of the government. Therefore, the natural death of RTHK means the death of PSB in Hong Kong.
13. With fears of increasing self-censorship being practiced in Hong Kong, the diversification of media is of paramount importance. The existence of PSB is necessary to keeping the diversification of the media scene and serving as a solid base for freedom of expression as well as democracy.⁶

The HKJA urges the Council to ask the HKSAR to allow the transformation of the RTHK so that it can function as a genuine Public Services Broadcaster.

D) Closed Airwaves Dampen Freedom

⁴ See paragraph 14 of the Concluding Observation symbol as CCPR/C/HKG/CO/2.

⁵ For the campaign, please visit the blog at <http://www.saverthk.org/blog/>

⁶ See p.12 of "Public Service Broadcasting: A best practices sourcebook" at <http://unesdoc.unesco.org/images/0014/001415/141584e.pdf>

14. In Hong Kong, all television and radio stations operate under licences issued by the government under the Telecommunications Ordinance and the operators are either government or big businessmen. The HKSAR has neither public access television nor radio channels.
15. To our disappointment, the terms of reference of the PSB review committee make no reference to the possibility of opening up of the airwaves to the public access channels. The HKJA repeated the suggestions to the committee of the setting up of public access channels. It is especially viable after the digitalization of broadcasting which has resulted in an increase of airwaves. The committee rejected the call and remarked that the PSB would provide such platform for the public.
16. An unlicensed radio station called Citizens' Radio was set up in October 2005 by pan democratic activists, including legislator Leung Kwok Hung, with the declared intention of fighting for the opening up of airwaves. The station applied for a licence in September 2005 but the government rejected it 15 months later. During this time, the station was raided and some selected guests were prosecuted, including the Chairman of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China Szeto Wah. In January 2008, a magistrate issued a ruling, which declared sections of the Telecommunications Ordinance to be unconstitutional because they curbed freedom of expression provisions in the Basic Law and Bill of Rights. In his judgement, the magistrate argued that the existing radio licensing systems fails to provide legal certainty to applicants for radio licences and the discretionary power given to the Chief Executive in Council is unfettered. There is no mention in the law in relation to the scope of how the Chief Executive in Council to use the discretionary power. Not least to say whether there is mechanism to challenge the decision made by the Chief Executive in Council in this regard. He dismissed all the charges laid against the defendants. However, his decision was suspended following an appeal by the prosecution on public security grounds. The prosecution claimed that if the ruling was not suspended, the authorities would not be able to control the radio spectrum and lives would be endangered as the spectrum was also used by emergency services. Injunction was granted to the government and the Citizens' Radio launched an appeal. The hearing will be heard in late 2008. On the other hand, the government makes no effort to bring the related ordinance in line with the constitution.

The HKJA urges the Council to express grave concern over the inaction of the HKSAR to open up public access channels. More important, the Council must urge the HKSAR to honour its commitment to setting up public access channels as soon as possible.

E) Media self-censorship eroding freedom

17. As quoted at the beginning of the submission, an industry-wide survey conducted in early 2007 shows the deteriorating trend of press freedom and the two top reasons attributed to media's self-censorship and government's tighter grip on the flow of information. As a matter of fact, these two reasons are inter-related. Moreover, the mounting political pressure from the Beijing government behind the scene makes the problem more institutional.
18. According to the 2007⁷ and 2008⁸ annual report on freedom of expression in Hong Kong published by HKJA, more than half of media owners are either delegates of National People's Congress (NPC), the highest authority in China, and members of the CPPCC. Apart from them, some friends of the leaders in the Chinese government are also owners of media but cannot be appointed to the institution because of their nationality. Their desire to maintain a harmonious relationship with the Chinese government extends into the newsroom directly or indirectly. As a result, 30 percent of the respondents admitted that they practiced self-censorship and 40% know of colleagues or supervisors doing so. That explains why the aforesaid survey also found that the exacerbating self-censorship is more evidenced by the downplaying of either negative news of the Central Chinese government or the news which second guessed what the Central Chinese government would consider sensitive issues. Both categories have been mentioned by 20 percent of

⁷ For details, please see section 3 of the 2007 annual report titled as "Shrinking Margins, Freedom of Expression in Hong Kong Since 1997" at http://www.hkja.org.hk/Host/hkja/UserFiles/File/annualreport/e_annual_report_2007.pdf

⁸ An update of the media owners membership in Chinese institutions can be found in p.10 of the annual report titled as "Rising nationalism, A potential threat to Hong Kong's freedom of expression" at http://www.hkja.org.hk/Host/hkja/UserFiles/File/annualreport/e_annual_report_2008.pdf

respondents respectively. This trend is tracked by the self-censorship over media bosses and their related interests.

19. Apart from the internal pressure, journalists also face open verbal warnings from Chinese officials that certain areas are taboo for independent news reporting. These include independence of Taiwan and Tibet as well as the issue of the Falun Gong. The wrongful jailing of Hong Kong reporters, Ching Cheong in 2006 and Xi Yang in 1994, by the discretionary application of the ambiguous national security laws in mainland China have also had a chilling effect on media coverage of mainland news.
20. The HKJA has urged the HKSAR government to convey our message to the Chinese officials to refrain from putting pressure on Hong Kong media. No response was obtained from the government. The HKSAR government has turned a deaf ear to the HKJA's call to liberalise laws that may jeopardize freedom of expression if the administration exercises its statutory powers to the full. To the contrary, HKSAR government enacts laws that may endanger the media environment.
21. Governments of the world are the biggest information holders in respect of polity and the HKSAR government is no exception. It can practice leaking of information to co-opt media and deny access of information to the more critical media. Such a carrot-and-stick policy is easily be implemented through media briefings. Such briefings have been more frequently used after Donald Tsang took up the CE post in 2005.⁹ As indicated in the aforesaid survey, 30.3 percent of journalist respondents to the survey conducted in early 2007 thought that the current government was less open compared with the administration at the time of the handover in 1997 while 26.3 percent respondents thought the opposite.¹⁰ Moreover, the survey found that 46.2 percent journalists thought that the current government exerts greater influence over the media than its 1997 counterpart. Only 6.2 percent thought otherwise.¹¹ There is public concern over the manipulation of media by the government¹², too.
22. The HKSAR should take vigorous measures to prevent harassment of media personnel, and ensure that the media can operate independently and freely from government intervention. Regrettably, the HKSAR has not taken into full consideration the recommendations made previously by the HRC.

The HKJA urges the Council to call upon the HKSAR to adhere to the spirit and words of Article 19 of the ICCPR and create a free-from-government-intervention environment to ensure the independent operations of the media.

F) More Protective Environment for Rights Enjoyment needed

23. The HRC repeatedly urged in its concluding observations made in 1999 and 2006 that the HKSAR should set up a Human Rights Commission. Regrettably, this recommendation has been ignored by the Hong Kong government. The HKJA believes that the setting up of a human rights institution will better protect the human rights of Hong Kong people.

We urge the Council to call upon the HKSAR to set up an independent Human Rights Commission.

24. The widespread ignorance of the appeal from Non-Governmental Organisations, including the HKJA, in support of the Human Rights Committee reflects the urgent need to have a more democratic polity in place in Hong Kong. However, with the interpretation by the SCNPC on Article 45 and Article 68 of the Basic Law and its subsequent decision dated 26 April 2004, universal suffrage for the Chief Executive (CE) in 2007 and for all the seats of the Legislative Council (LegCo) in 2008 were ruled out. The enjoyment of the right to universal suffrage of Hong Kong people was further delayed in December 2007 when the SCNPC ruled out universal suffrage for electing the CE and the whole LegCo in 2012. The current electoral system of restricted franchise maintained by the interpretations and decisions has been repeatedly criticised by the Human Rights Committee.

⁹ For details, please see section 4 of the 2007 annual report, *ibid*.

¹⁰ *Ibid*, p.24

¹¹ *Ibid*, p.25 & 26.

¹² *Ibid*. P.26

The HKJA urges the Council to renew its call on the HKSAR government to take all necessary measures as soon as possible to ensure that the entire Legislative Council and the Chief Executive post are elected by universal and equal suffrage.