SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE 
ON THE HONG KONG SPECIAL ADMINISTRATIVE REGION'S THIRD 
REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL 
COVENANT ON CIVIL AND POLITICAL RIGHTS

1.1 The Hong Kong Journalists Association (HKJA) notes that in April 2011, the People's Republic of China submitted to the United Nations the Hong Kong Special Administrative Region's (HKSAR) third report in the light of the International Covenant on Civil and Political Rights (ICCPR).

1.2 The HKJA has for long been concerned about the objectivity of the reports that the Hong Kong government has compiled for submission to the United Nations. This is equally true for the third report, which omits several important issues with a crucial bearing on freedom of expression.

1.3 The report states that the government "is firmly committed to protecting the freedom of speech and of the press, and maintaining an environment in which a free and active press can operate under minimum regulation." Yet despite this broad statement, the report fails to highlight calls for the enactment of an access to information law - a long-held HKJA demand aimed at bringing Hong Kong's laws into full compliance with the ICCPR. It also brushes aside calls for the enactment of an archive law to regulate government records - again maintaining that the existing administrative arrangements work well.

1.4 The report also fails to mention moves to limit access to government information through off-the-record briefings and the government itself providing news material, in the absence of independent journalists, as during the visit to Hong Kong by vice-premier Li Keqiang in August 2011. It also fails to mention the growing hostility of the police towards the media and the chilling effect this has on media activities.

1.5 It also fails to mention attempts to silence a pro-democracy radio station, Citizens Radio, which has had to broadcast without a licence after failing in its bid to obtain government approval for its broadcasts. It does mention the decision to maintain Radio Television Hong Kong (RTHK) as a government
department, but brushes aside fears that this will threaten the broadcaster's editorial independence. It also fails to note the appointment of a government administrative officer as RTHK's new director – in contravention of the tradition of internal promotion.

1.6 We now consider these various issues in depth, with particular focus on how the HKSAR government has implemented article 19 of the ICCPR, which relates to freedom of expression. For reference, we note paragraph numbers in the HKSAR government report where issues of concern are mentioned.

A FLAWED INFORMATION ACCESS SYSTEM (Paragraphs 19.25 to 19.28)

2.1 The government maintains that its administrative code on access to information - introduced in March 1995 - "continues to provide an effective framework to provide access for members of the public to a wide range of information held by the Government."

2.2 However, even the government's ombudsman - in a January 2010 report - criticised the code, noting that certain government departments displayed "considerable misunderstanding of the provisions and unfamiliarity with the procedural requirements of the Code after well over a decade of implementation." The ombudsman also noted that some departments had failed to give reasons for not releasing information or given reasons that were not cited in the code, and others had misused reasons specified in the code.

2.3 The government's insistence on maintaining the code also flies in the face of worldwide trends to enact laws to guarantee public access to government information and documents. Such laws have been implemented since the 1997 handover in Hong Kong's former colonial master, Britain, as well as to a limited extent in the People's Republic of China. It is clearly time for the Hong Kong government to bring its access to information regime up to international standards, and thereby implement the resolution passed by the UN Human Rights Committee in July 2011 requiring governments to establish easy access to public information.

2.4 We would therefore urge the UN Human Rights Committee to press the Hong Kong government to enact as a matter of urgency freedom of information legislation to ensure access to government information and documents. The legislation should be based on the principles of maximum disclosure, limited and narrowly drawn exemptions and an effective and independent appeal
2.5 A related issue is the need for a law to ensure the preservation of government archives, without which an access to information law would be useless. This issue came to the fore in October 2011, when the government revealed that 3.5 million sheets of records had been destroyed in a six-month period leading up to the government moving its policy-making units from the old Central Government Offices in Central to a nearby site at Tamar.

2.6 It is not good enough for the Hong Kong government to argue, as it does in paragraph 19.28, that it will keep "the current administrative arrangements under review and will continue to improve on them where appropriate." A proper archives law is clearly needed as a matter of urgency to regulate the proper management of government records.

LIMITS ON ACCESS TO GOVERNMENT INFORMATION

3.1 While refusing to enhance government transparency by enacting freedom of information legislation, the government - over the past two to three years - has imposed tighter control over the dissemination of official information, thus bringing into question whether it is in full compliance with article 19(2) of the ICCPR. This has involved the increasing use of government production teams to cover the news - in the absence of independent journalists - and the abuse of the system of background briefings.

3.2 The government set up a video team under the supervision of the Information Services Department (ISD) in 2002. This team was expanded rapidly in 2010. The result was that the media received fewer invitations to cover events, and the ISD issued more footage after events took place.

3.3 According to HKJA research, the government released 233 press releases, videos and photographs of such events in 2011, including three releases from the Legislative Council. Further, there were 15 exclusive government interviews with senior officials, including the labour secretary Matthew Cheung on the minimum wage; the former immigration director Simon Peh on his retirement; and the home affairs secretary Tsang Tak-sing on the Asian Games. It should be noted that journalists submitted interview requests with some of these officials before the official footage was released, but these requests were turned down.
3.4 The Hong Kong government also abused the system of background briefings, in which government officials ask that their names and titles not be used or that their comments not be directly quoted in news reports. In the three-month period from March to May 2010, there were 2,784 reports quoting "sources" in Chinese-language newspapers. This dipped to 2,716 in the same three-month period in 2011 - and 2,476 in 2012. The average number of "sources" quoted in three English-language newspapers showed greater variance - 452 in the three-month period in 2010, then 434 in 2011 and 440 in 2012.

3.5 It appears that the government is using this tool to test public reaction to new policies or escape from facing the public directly through the media. This is particularly important given the significance of some of the content covered in off-the-record briefings, including the release in May 2012 of a major report on population policy.

3.6 This continued policy flies in the face of a pledge made by the Director of Information Services, Michael Wong, in 2010, when he met with HKJA representatives to discuss off-the-record briefings. He agreed then that press conferences would usually be held to announce policies and to explain them to the public in a comprehensive manner.

3.7 Sometimes the government covers up events that would in the past have been routinely disclosed to the public. In July 2012, the government did not inform the media that the newly-appointed education secretary, Eddie Ng, had made a brief visit to Beijing for discussions with Chinese Education Ministry officials. The visit came to light after the ministry mentioned the visit on its website. Hong Kong's chief secretary Carrie Lam blamed the incident on "internal communications problems" - although critics felt the government was deliberately covering up the visit in a bid to deny the public vital information at a time of controversy over the introduction of national education in schools.

3.8 The HKJA urges the UN Human Rights Committee to impress upon the HKSAR government the need to ensure that all major policies are announced through open press conferences, and not through off-the-record briefings, as has become more common in recent years. The HKSAR government should also allow full media access to all government events, instead of excluding journalist and then issuing its own press releases and official footage. Further, government reporting teams should not replace the independent media in reporting on matters of public interest.
POLICE INCREASE PRESSURE ON MEDIA

4.1 The police have also contributed to greater restrictions on the media, whether through a tougher approach towards journalists covering marches and other protests, or by restricting the information they release about spot news events. This suppression has led to confrontation with the media and a reduction in the people's right to know.

4.2 These problems become particularly acute when a mainland Chinese leader visits Hong Kong. One such example involved the detention for a brief period of time of a reporter from the Apple Daily newspaper for shouting out a question to the visiting Chinese president, Hu Jintao, on June 30th 2012. He was released after about 15 minutes, but this was long enough to prevent him from carrying out his legitimate journalistic duties.

4.3 Another incident involved an attempt to prevent a cameraman from filming during a visit to Hong Kong by vice-premier Li Keqiang in August 2011. Two police officers covered the lens of a television cameraman. The police commissioner, Andy Tsang, later claimed that the officers were reacting to a black shadow - an explanation that was derided even by the chairman of the Independent Police Complaints Council, Jat Sew-tong.

4.4 Journalists who attended events during Mr Li's visit complained about the restrictions placed on them - ostensibly for security reasons. They included restricted media areas far from events, stringent security checks and the obstruction of photo-taking. The HKJA's chairperson, Mak Yin-ting, said the police had failed to strike a balance between press freedom and public security. And the Asia-Pacific project manager for the International Federation of Journalists, Serenade Woo, said the way police treated journalists was becoming similar to tactics used by public security officers in mainland China.

4.5 One area of concern referred to above is the designation by the police of what they call "designated press areas" during public events, in particular in sensitive areas such as Beijing's Liaison Office on Hong Kong Island, the Legislative Council building and the nearby government headquarters complex. Journalists are forced to operate and conduct interviews within these areas, even though some are public areas.

4.6 Another incident giving rise to concern among media workers was the
arrest - in the early hours of July 2nd 2011 - of a journalist as she covered a protest in the central business district. She was Kiri Choy – an intern reporter with New Tang Dynasty Television. She was detained for more than 10 hours after being unable to produce a press card. Ms Choy was eventually released after her employer confirmed to police that she was working as a journalist. The HKJA also complained that at least 19 journalists were affected by pepper spray during the police operation to remove protesters there.

POLICE, FIRE SERVICES RESTRICT RELEASE OF INFORMATION

5.1 Both the police and the Fire Services Department have implemented a new system for releasing information about spot news incidents following the digitalisation of their communication systems. The police introduced their new system in 2004, while the Fire Services Department did so in February 2012.

5.2 Prior to the introduction of the digital systems, the media could listen in to police communications. That has now changed, and journalists must rely on short announcements released through the Information Services Department that highlight the nature, place and time of a case, without giving any meaningful details.

5.3 However, only 10 to 20 percent of cases received by law enforcement teams were released to the media, albeit in a delayed manner, and the force refused to explain their criteria for releasing details. This arbitrary practice prompted serious criticism in October 2011, when the media revealed that details of two serious cases had not been released. They involved three chopping cases and three indecent assaults.

5.4 The HKJA believes that worries over the system can be diminished if the authorities disseminate the information to the media in real time, after the deletion of personal information. However, the police and the Fire Services Department use privacy as a shield to ward off openness. But the excuse is not tenable. The Office of the Privacy Commissioner for Personal Data insists that the nature, time and location of any case involving a resident calling for help do not constitute personal data. Therefore, the release of such information does not violate the Personal Data (Privacy) Ordinance. Furthermore, the media have never asked for the personal data of callers.

5.5 The HKJA urges the UN Human Rights Committee to impress upon the police, the Fire Services Department and other law enforcement agencies the
need to release full details of crimes and other incidents of public interest in real time, with only personal information omitted. The police should also allow journalists to carry out their duties at protests without hindrance, by lifting unnecessary restrictions on reporting through - for example – the creation of designated press areas.

THE OFFENCES OF TREASON AND SEDITION (Paragraph 19.3)

6.1 The UN Human Rights Committee has previously expressed concern about the existing offences of treason and sedition in Hong Kong's Crimes Ordinance. The Hong Kong government notes that this issue should preferably be dealt with "in the context of the legislative exercise for Article 23 of the Basic Law."

6.2 This exercise is a matter of grave concern for the HKJA, given that it will see five offences set out in law - including two new ones. They are treason, sedition, theft of state secrets - and the new ones – subversion and secession. A previous attempt to enact such legislation failed in 2003, after one in ten of Hong Kong's population took to the streets to express concern about the effect of the new offences on freedoms in Hong Kong, including freedom of expression.

6.3 The HKJA notes that Hong Kong's new chief executive, Leung Chun-ying, has been coy about whether he would enact such laws, which the government considers to be a constitutional duty under the Basic Law. Mr Leung said on the day that he was elected that he would strive for the "biggest consensus" on the legislation. But he said later that he would not "take the initiative" to legislate Article 23 offences because he had more pressing issues to resolve, including improving people's livelihood. However, analysts question whether he would act on this front if Beijing told him to do so.

6.4 We would urge the UN Human Rights Committee to impress upon the Hong Kong government the need to resist pressure to enact such legislation, since there is no pressing need for it and existing laws suffice to prohibit offences contained in Article 23 of the Basic Law. If the government does decide to proceed with such legislation, we would urge the Committee to press the Hong Kong government to enact the law in such a way that it contains safeguards that are robust enough to protect freedom of expression and press freedom. The minimum standards are the adoption of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as well as proper public interest and prior publication defences.
NEED FOR EDITORIAL INDEPENDENCE FOR RADIO TELEVISION HONG KONG
(Paragraphs 19.18 to 19.21)

7.1 The government notes that it decided in September 2009 that Radio Television Hong Kong (RTHK) should be maintained as a government department, albeit as a public service broadcaster. It also stated that the government "attaches great importance to safeguarding the editorial independence of RTHK." It cites the promulgation of a new RTHK Charter which sets out the functions and roles of the broadcaster.

7.2 But this fails to allay concern that without true independence, RTHK can never properly enjoy editorial independence. Several incidents have prompted the HKJA to doubt whether the station enjoys real independence. These include the appointment of a government administrative officer, Roy Tang, as the station's new director. The other involved the sacking of two outspoken talk-show hosts from the station's most popular Cantonese-language talk show programmes. They were Robert Chow and Ng Chi-sum.

7.3 The HKJA expressed deep worries over the replacement of the two hosts with government staff, saying this might weaken the platform for diversified discussion. It said that such a trend is contrary to the responsibilities of a public service broadcaster and might consolidate RTHK as a government mouthpiece.

7.4 The HKJA would urge the UN Human Rights Committee to press the Hong Kong government to reverse its decision to retain RTHK as a government department. The decision runs counter to international trends and UNESCO's call for state-controlled media to be turned into independent public service broadcasters. The government should - as a matter of urgency - launch plans to separate RTHK from the government, and to relaunch the broadcaster through legislation guaranteeing its independence in clear and unambiguous terms.

SUPPRESSION OF INDEPENDENT RADIO STATION (Paragraphs 19.12 to 19.17)

8.1 The Hong Kong government notes in paragraph 19.14 that it does not set a ceiling for the number of sound broadcasting licences to be issued in Hong Kong. It notes that all applications will be considered in a fair and transparent basis according to licensing criteria set down in the Telecommunications Ordinance. What it does not mention is the fact that it has turned down an
application from a station called Citizens Radio, which has therefore been forced to broadcast illegally. This station is not an establishment station; rather it takes a pan-democrat slant in its coverage.

8.2 The HKJA is concerned that the government is taking a political approach towards determining whether this station should be licensed, contrary to the impression it gives that it adopts a fair approach towards all applicants. The government has been hounding this station since it started broadcasting in October 2005. Several prosecutions have been brought against its operators - and in one case against guests who were invited to appear on a programme. The guests - including five pan-democrat legislators – were convicted and each fined HK$1,000 for appearing on the show. The guests have since been allowed to take their case to Hong Kong's highest court.

8.3 The HKJA also notes with concern that the government has so far failed to award additional free-to-air licences to television broadcasters, more than a year after the then Broadcasting Authority recommended that this should be done. (See paragraph 19.16.) There have been suggestions that the government might trim down or even shelve its plans to open up the free-to-air market, which would have a serious effect on media diversity. The free-to-air market is now dominated by two broadcasters - TVB and ATV.

8.4 The HKJA would urge the UN Human Rights Committee to impress upon the government the need to ensure that the radio and television markets are properly opened up, and that all opinions are given a chance to present their views, and not just those of an establishment disposition. In this respect, we would doubt that government broadcaster RTHK's community broadcasting project (paragraph 19.18) would be able to satisfy such demands.

PRIVACY AND THE ANTI-STALKING LAW (Paragraphs 17.14 and 17.15)

9.1 The government notes that it will tackle the question of whether anti-stalking legislation should be enacted before considering more controversial issues raised by the Law Reform Commission (LRC). In December 2011, the government published a consultation document proposing that stalking should be made a criminal offence. The crime is defined as "a series of acts" directed at specific persons that cause them to feel "harassed, alarmed or distressed".

9.2 The government said there should be a defence, whereby a defendant
could argue that the course of conduct he or she followed was "reasonable" in the particular circumstances. The consultation document also asked for views on whether the pursuit of news-gathering activities should become a separate defence under the law.

9.3 The HKJA opposes the proposal. It is deeply concerned that the proposal will further erode the already shrinking press freedom in Hong Kong and jeopardise disclosure by journalists of government or private sector malpractice. While the association holds that innocent people should be protected from harassment in the form of stalking, it is worried about the implications for legitimate journalistic activities and the way any new law could be abused to block genuine investigative activities by journalists.

9.4 In 2006 and 2007, several Hong Kong women's groups suggested to the government that anti-stalking provisions should be included in the Domestic and Cohabitation Relationship Ordinance, which deals with domestic violence issues, instead of enacting a completely new law. The HKJA supports this approach. We argue that the government should focus on inserting narrowly defined anti-stalking clauses in existing ordinances to guard against different scenarios, rather than creating a vaguely defined all-embracing new law.

INTERCEPTION OF COMMUNICATIONS LEGISLATION (Paragraphs 17.1 TO 17.5)

10.1 The government notes that the Interception of Communications and Surveillance Ordinance was enacted in August 2006, to regulate the way that law enforcement agencies are allowed to carry out wiretaps and other forms of surveillance. The HKJA at the time was not happy with the level of protection given to journalistic material. Indeed, it notes that there have been two cases in which journalistic material was involved in 2009.

10.2 The government is now reviewing the law. In August 2011, the HKJA wrote to the government's Security Bureau laying out its concerns. In particular, it called on the government to exclude confidential journalistic material from any intercepts, or at the very least to impose higher thresholds before such intercepts can be permitted - for example if there is a grave threat to Hong Kong's security, or where there is an imminent threat to lives.

10.3 The letter also called on the government to set out safeguards for journalistic material, so that the law could not in any way - directly or indirectly
be used to obtain information that may enable the authorities to determine a journalist's source of information, since this would have a chilling effect on the willingness of individuals to provide information to journalists.

10.4 The HKJA also noted that information subject to legal professional privilege must remain privileged, even if it has been obtained through an intercept. It called for similar protection for confidential journalistic material.

10.5 The HKJA would urge the UN Human Rights Committee to impress upon the Hong Kong government the need to give full and proper protection to journalistic material which may be subject to intercepts or surveillance.

PRESS FREEDOM AND SELF-CENSORSHIP (Paragraph 19.17)

11.1 The Hong Kong government makes brief reference to concerns over self-censorship at the two free-to-air TV broadcasters, TVB and ATV. This is a concern, but it is an issue that is far more widespread in the media, as shown in a survey conducted by the HKJA in April 2012.

11.2 The survey shows that journalists remain worried about the problem. Almost 80 percent of 663 respondents thought that self-censorship had become more serious than when the outgoing chief executive, Donald Tsang, took office in 2005. Less than three percent thought it was less serious.

11.3 Indeed, 35.9 percent of respondents reported that they or their supervisors had practised self-censorship in the past 12 months. This is similar to the findings of an HKJA survey conducted in 2007. The HKJA wonders whether the real situation may be worse, given that many journalists are probably not willing to admit involvement in the practice.

11.4 One incident in early 2012 highlighted the problem of self-censorship. Veteran China watcher Lau Yui-siu - a former HKJA executive committee member- complained that the Sing Pao newspaper had twisted an opinion piece he wrote on the chief executive election so badly that its message was almost the opposite of what he intended. Mr Lau said his opinion article was meant to be a rejection of both leading chief executive candidates, Leung Chun-ying and Henry Tang. But it ran under the headline: "Out of the two, I would rather choose Leung Chun-ying."

11.5 Mr Lau said in an open letter to the media that he felt the influence of "an
invisible hand", prompting local media to engage in self-censorship. Mr Lau's column was dropped completely shortly afterwards - after he wrote a piece marking the death in the United States of astrophysicist and mainland dissident Fang Lizhi.

11.6 A related problem is pressure exerted by Beijing's Liaison Office in Hong Kong on media organisations. During the campaign for the post of chief executive in early 2012, one of the candidates, Albert Ho from the Democratic Party, alleged that Beijing had accused a newspaper of "smearing" it and the Liaison Office in its election coverage. Mr Ho said mainland representatives had complained directly to a top manager. The HKJA later confirmed that the newspaper in question was the Hong Kong Economic Journal. It was also reported that the phone call was made to the secretary of the newspaper's majority shareholder, Richard Li.

11.7 The incident came amid fears that Beijing and its Liaison Office were extending their influence over Hong Kong - and interfering more directly in affairs that should lie within Hong Kong's high degree of autonomy. Observers say this trend has been evident since half a million people marched in the streets of Hong Kong on July 1st 2003, to call for the scrapping of plans to enact national security legislation.

11.8 The HKJA calls on the UN Human Rights Committee to highlight the continuing and serious problem of self-censorship, and to urge the Chinese and Hong Kong governments not to take any action or encourage any statements that threaten or impinge on freedom of expression in Hong Kong.

OTHER ISSUES OF CONCERN

12.1 THE DEMOCRATIC DEFICIT: The HKJA notes the comments that the Hong Kong government has made about the development of democracy in Hong Kong, and in particular moves towards full democracy - as set out in a December 2007 National People's Congress Standing Committee decision - for the election of the chief executive in 2017 and the Legislative Council in 2020. The widest possible democracy - based on the principle of equal and universal suffrage - is in our view the best guarantor of protection for freedom of expression and press freedom.

12.2 However, there are serious doubts about whether Hong Kong will ever achieve true democracy, as it appears to set barriers towards achieving this aim.
The government - in its report on implementation of the ICCPR - highlights the need for "gradual and orderly progress" towards universal suffrage. It also highlights the need for progress to be "appropriate to the actual situation in the HKSAR". (See paragraph 1.30.)

12.3 On the chief executive election, there are concerns - which we share - that a nomination committee will become a bar to the selection of candidates to be voted on by the people. This could be achieved by setting the nomination threshold excessively high, thereby eliminating candidates that are not to Beijing's liking.

12.4 On the election of the Legislative Council, there are concerns that existing functional constituencies may be retained in a modified form, for example through an expanded electoral base. Indeed, the Hong Kong government admits, in paragraph 1.32, that "different sectors of the community, as well as various political parties/groups of the LegCo still have extremely diverse views on the issue of how the (functional constituencies) should be dealt with when universal suffrage for the LegCo is implemented." It also points to the possibility that a one-person two-votes system could be maintained, to ensure that functional constituencies can survive the introduction of "universal suffrage".

12.5 Given these fears, the HKJA calls on the UN Human Rights Committee to impress upon the Chinese and Hong Kong governments the need for article 25 of the ICCPR to be fully implemented in Hong Kong, with the implication that real democracy must be introduced, including the abolition of all functional constituencies, which are at heart undemocratic in nature.

12.6 THE NEED FOR AN INDEPENDENT HUMAN RIGHTS INSTITUTION: The HKJA continues to share the concern of the UN Human Rights Committee that the Hong Kong government is refusing to set up an independent human rights commission, to investigate and monitor human rights violations in Hong Kong and to ensure the implementation of rights set down in the ICCPR.

12.7 The Hong Kong government argues that an additional independent monitoring mechanism is not necessary to give effect to the ICCPR or its requirements, basically because the existing mechanism works well and "human rights are fully protected by law". (See paragraphs 2.3 and 2.4). This is a gross distortion of the real situation. Indeed, as mentioned above in this paper, the Hong Kong government is taking action that limits freedom of
expression as set out in article 19 of the ICCPR.

12.8 The HKJA would therefore call on the UN Human Rights Committee to urge the Hong Kong government to move as quickly as possible towards creating an independent human rights commission, which would provide considerable strength to rights protection in the Special Administrative Region.

HKJA Executive Committee
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