Submission by Human Rights Watch to the UN Human Rights Committee on the implementation of the ICCPR in the Hong Kong Special Administration Region, China

1.1 Introduction

1.2 Human Rights Watch welcomes the Hong Kong Special Administration Region’s (HKSAR) efforts in fulfilling its reporting obligations and working with the Committee to regularly address how civil and political rights are being implemented within HKSAR.

1.3 As the only region of the People’s Republic of China (PRC) that reports under the International Covenant on Civil and Political Rights (ICCPR), it is our hope that HKSAR will uphold the principles enshrined within the Covenant.

2.1 Universal Suffrage

2.2 The continued denial of the right of the Hong Kong people to have “universal and equal suffrage”\(^1\) and the right to be elected continues to be the among the most serious violations of human rights in Hong Kong.

2.3 Hong Kong’s electoral system contravenes Article 25 of the ICCPR, which stipulates “universal and equal suffrage.” General Comment 25 specifically states that, “the principle of one person, one vote must apply” and “the vote of one elector should be equal to the vote of another.” The current system, in which members of certain professions, business and political elites have additional weighted votes in the Legislative Council, and in which most registered voters are excluded from the selection of the Chief Executive, violates this principle.\(^2\) Since the initial report on HKSAR in 1999, the Committee has been of the view that the, “electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2, paragraph 1 and 26 of the Covenant.”\(^3\)

General Comment 25 also specifically states that “if a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy,” and that “The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.”\(^4\)

2.4 The Basic Law, which serves as the HKSAR’s constitution, stipulates that, "the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a

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\(^1\) International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966 http://www2.ohchr.org/english/law/ccpr.htm

\(^2\) General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 07/12/1996. CCPR/C/21/Rev.1/Add.7.

\(^3\) UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations, Hong Kong Special Administrative Region, 21 April 2006, CCPR/C/HKG/CO/2, available at: http://www.unhcr.org/refworld/docid/453777a70.html [accessed 6 February 2013]

\(^4\) General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 07/12/1996. CCPR/C/21/Rev.1/Add.7.
broadly representative nominating committee in accordance with democratic procedures.” Similarly, the Basic Law also states that, “the ultimate aim is the election of all the members of the Legislative Council by universal suffrage.” However, the PRC and HKSAR governments have continually delayed the implementation of universal suffrage in Chief Executive as well as Legislative Council elections.

2.5 According to the Basic Law, Hong Kong is led by the Chief Executive and the Executive Council, and that the governance structure includes a Legislative Council and an independent judiciary. The Chief Executive, aided by the Executive Council, is responsible for implementing the Basic Law, promulgating laws, signing bills and budgets, making decisions on government policies and issuing Executive Orders. The Legislative Council fulfills the law-making role of the government and debates policy and public interests issues. However the Chief Executive, Executive Council and the Legislative Council are not elected through direct representation. The Chief Executive appoints Executive Council members, while the Chief Executive is elected by a small group of selected individuals and the election method of the Legislative Council is designed in such a way that the weight of the votes of electors are unequal.

2.6 The Chief Executive, who serves a five-year term, is elected by a 1,200-member committee, which consists of individuals handpicked by the central government of the PRC. The Election Committee is intended to be “broadly representative,” yet it is comprised of only 0.02 percent of Hong Kong residents, most of them privileged elites.

2.7 The Legislative Council consists of 70 members, 35 members directly elected by “geographical constituency” members and 35 members chosen by “functional constituency” members. Geographical constituencies allow the general population, divided into geographical regions, to cast one vote. On top of that, people in certain professions can cast an additional vote to choose members of the functional constituencies. Also, as there are far fewer electors in functional constituencies, each of these votes can weigh far more heavily towards generating representatives in these functional constituencies. In 2012, the Hong Kong government introduced changes to the Legislative Council elections: 10 additional seats were added to the Legislative Council, five contested in geographical constituencies and five “super seats” for the

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6 ibid., Article 68.
8 Annex I: Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region
9 300 members from the Industrial, commercial and financial sectors; 300 members who are working professionals; 300 members from Labour, social services, religious and other sectors; 300 Members from the Legislative Council, representatives of members of the District Councils, representatives of the Heung Yee Kuk, Hong Kong deputies to the National People’s Congress, and representatives of Hong Kong members of the National Committee of the Chinese People’s Political Consultative Conference
10 The smallest functional constituency (financial services) has only 128 electors, whereas the smallest geographical constituency (Kowloon West) has over 440,000 electors.
general population to cast a second vote in the functional constituency. Yet, such changes do not alter the fundamental problem with the Legislative Council election system that “the vote of one elector should be equal to the vote of another.”

2.8 Although the central Chinese government has promised that there “may be” universal suffrage for Hong Kong’s next chief executive election in 2017, and legislative council in 2020, neither the Hong Kong nor Chinese governments have outlined clear plans on how universal suffrage might be instituted or details of the new electoral systems. The question of universal suffrage was conspicuously absent in Hong Kong’s new Chief Executive’s first policy address in January 2013. There are also concerns that unreasonably high threshold might be put in place for nominations of Chief Executive candidacy, or only candidates pre-approved by China’s ruling party or central government might be permitted to run in elections.

2.9 The Hong Kong government has stated in 2012 it will begin consultations over the electoral methods of the 2016 Legislative Council and 2017 Chief Executive elections. The government should, as per the Human Rights Committee’s recommendations in 2006, take “all necessary measures […] whereby the Legislative Council is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant.” Human Rights Watch urges the Committee to call on the Hong Kong government to ensure that the new electoral methods developed for 2016 and 2017 are in compliance with the Covenant, in particular, Articles 2 and 25.

3.1 Press freedom

3.2 Article 19 of the ICCPR stipulates that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” General Comment 34 of the Human Rights Committee further explains that “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.”

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11 General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 07/12/1996. CCPR/C/21/Rev.1/Add.7.
15 ibid.
3.3 Although Hong Kong generally enjoys a high level of press freedom, there have been increased reports of government interference and self-censorship in recent years since Hong Kong returned to PRC sovereignty. According to a press freedom survey conducted by the Hong Kong Journalist Association (HKJA), 79.2% of the media personnel believe that self-censorship in 2012 is more serious than in 2005. Out of 663 respondents, 92.7% cite the tightening control over release of information and obstruction by the Hong Kong government as a factor, 71% cited self-censorship as a factor and 67.5% cited interference by the Chinese Liaison Office as a factor.  

3.4 Human Rights Watch is concerned by persistent reports in the press and by civil society groups that the Chinese Liaison Office, an organ representing the central Chinese government in Hong Kong, interferes with editorial independence by calling on media owners or chief and mid-level editors to alter news reports to ensure coverage that is more complimentary of the central government or in accordance with the central government’s views on the subject. For example, the International Federation of Journalists (IFJ) has expressed concern, in response to complaints from journalists from several Hong Kong newspapers, that the Chinese Liaison Office had sought to influence their reporting of the election of the new Chief Executive. Sources told IFJ and HKJA that several Hong Kong newspapers had received phone calls from the Chinese Liaison Office criticizing them for negative reports on the PRC government’s favorite candidate and for reporting of allegations that the Office had sought to influence members of the Election Committee of the Chief Executive.  

3.5 Human Rights Watch is also alarmed by reports from journalists, the press, and other NGOs of self-censorship in Hong Kong media, especially from journalists covering human rights stories in China. Current and former journalists of Hong Kong’s influential English-language newspaper, *South China Morning Post* (SCMP), have accused the newspaper’s editor-in-chief, Wang Xiangwei, of censorship. In an open letter addressed to the Executive Director of SCMP, a group of 23 former SCMP journalists expressed concern over editorial decisions made by Wang Xiangwei and hiring decisions made by SCMP, which they believe indicate that the newspaper’s main priority has changed to “pleasing the authorities in Beijing.” The letter was issued after Wang decided to cut an important story about the suspicious death of a Chinese activist. After the decision became public Wang justified it by explaining that since the death was not covered by the PRC’s state-owned television station CCTV, it should not be covered by the SCMP.

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either. In another incident, award-winning journalist Paul Mooney, known for his hard-hitting China articles, was first unable to get his articles on China published by the newspaper and later was informed by Wang that his contract with the SCMP would not be renewed. In another example, Sing Pao, a Chinese-language newspaper, altered without the author’s consent a column written by the commentator Lau YuiSiu on the Chief Executive elections in 2012, changing the content from taking a neutral position on the two candidates to supporting the candidate of choice of the central Chinese government. Sing Pao later discontinued Lau YuiSiu’s column altogether after he wrote a piece commemorating a Chinese academic known for his support for the student protestors in the 1989 pro-democracy protests.

3.6 General Comment 34 of the Human Rights Committee discusses the role of the public broadcaster and stated that it should “operate in an independent manner” and that “States parties should guarantee their independence and editorial freedom. They should provide funding in a manner that does not undermine their independence.” Human Rights Watch is also concerned about recent the controversies over recent government decisions that might undermine the independence of Radio and Television Hong Kong (RTHK), which serves the role of a public service broadcaster and which has come several times under fire by HKSAR and PRC government officials for its programs that criticize the two governments. In 2009, the Hong Kong government ruled that the broadcaster will remain part of the government despite calls from the public and RTHK’s union that it should become independent. The RTHK currently receives all its funding from the HKSAR government, its director is appointed by the government and its staff are government employees. In 2010, the government unveiled a new charter for RTHK which promised “editorial independence” but at the same time, the charter also stipulate[d] that one of RTHK’s functions is “engendering a sense of…national identity,” which raises concerns about whether it will be able to maintain editorial independence, particularly on issues which are sensitive to China’s government such as China’s human rights situation. The charter also included the creation of a new advisory board to advise the head of RTHK on “editorial principles” and “programming standards.” Members of the board are also appointed by the HKSAR government and do not include any publicly elected representatives. The fact that all members are selected by the government raises concerns that the government is seeking to control both its editorial principles and content, and public confidence would be higher if there were another appointment and selection process that ensured persons of independence and high professional repute were able to serve without government endorsement.

3.7 The Hong Kong government is currently proposing revisions to a law that, if adopted, will restrict access to information about company directors. The HKSAR government argues that the revisions, which will restrict the public and journalists’ access to the directors’ home addresses, ID or passport numbers, aim to protect the directors’ privacy. But over 1,700 Hong Kong journalists, journalism professors, and students contend that the proposed revisions would infringe of press freedom, in a petition titled "Secrecy breeds corruption." That petition urges the Chief Executive to withdraw the proposed revisions. Hong Kong and international journalists have in recent years exposed a number of corruption scandals involving high-level government officials in HKSAR and the PRC by looking up information about owners of private companies. There is no Freedom of Information Act in Hong Kong, and the Code on Access to Information promulgated by the Government in 1995 to serve this purpose has been criticized as inadequate by the media and legislators. They criticize that the non-binding document is ineffective and lacks enforcement power when government departments arbitrarily refuse disclosure of information. 

3.8 Human Rights Watch calls on the Committee to urge the Hong Kong government to launch an investigation into reports of censorship as well as press interference by the China Liaison Office. Human Rights Watch also urges the Committee to call on the government to withdraw the proposed provisions in the law that would restrict journalists’ access to information about company directors as well as to draft and enact a Freedom of Information Act.

4.1 Freedom of assembly

4.2 Human Rights Watch is concerned about the freedom of assembly in Hong Kong. The right to peaceful assembly is recognized by Article 21 of the ICCPR, and individuals should not be required to obtain prior permission before exercising this right. Restrictions placed on the exercise of this right must be, “in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” Human Rights Watch urges the Committee to call on the Hong Kong government to revise the Public Order Ordinance to ensure that the Ordinance is in accordance with provisions of the Covenant and Hong Kong’s Bill of Rights Ordinance.

4.3 Demonstrations and protests in Hong Kong are governed by the Public Order Ordinance, which stipulates that organizers of public assemblies of more than 30 protestors have to notify the police seven days in advance and to receive a “notice of no objection” from the government before they can be held. In 1995 after the passage of Hong Kong’s Bill of

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23 “Hong Kong journalists publish press freedom petition,” Channel News Asia, 28 January 2013
Rights Ordinance, the Public Order Ordinance was revised to allow protests to take place without prior permission; organizers of assemblies of more than 50 protestors only need to notify the government a week in advance. However, immediately after Hong Kong returned to Chinese control, the Provisional Legislative Council established by the PRC government again revised the ordinance, and again instituted the regime of prior permission.26

4.4 Recent reports suggest an increasing number of arrests and prosecutions against protestors. According to the Hong Kong organization Civil Human Rights Front, in just one year in 2011, 444 protestors27 were arrested by the police, which surpassed the total number of protestors arrested since 1997 (314 protestors were arrested in this period). According to police figures, out of the 444 arrested, 45 were charged with “unlawful assembly” under the Ordinance. The police argued that this is due to increased violent incidents during protests, but protestors allege that the government is using a vaguely worded law to punish and deter protestors.28

4.5 Human Rights Watch is also concerned with the use of cameras and video-recording devices by the Hong Kong police to film demonstrations, with close-up shots of demonstrators, even when there is no criminal behavior during demonstrations and even when protestors have explicitly told the police that they do not wish to be filmed. Official surveillance is not only intrusive on privacy, but can inhibit exercise of the right to assemble and associate publicly, and should have to be justified on a case-by-case basis in law by some threat to public safety or public order, rather than imposed on every gathering. The Committee should question Hong Kong on police surveillance practices in light of the right to freedom of assembly and association.

5 Conclusion

5.1 Overall, Hong Kong continues to enjoy the rule of law and a high level of press freedom, but the lack of universal suffrage, reports of government interference and self-censorship of the press, increasing number of arrests and prosecutions against protestors as well as surveillance of protestors are issues that undermine Hong Kong citizens’ enjoyment of their civil and political rights.

5.2 We hope you find these comments useful and would welcome an opportunity to discuss them further. Thank you for your attention to our concerns, and with best wishes for a productive session.

26 香港教育專業人員協會, “公安惡法大解碼 – 從97 到狼鷹” 2012
http://www.hkptu.org/_academic/2012cp.pdf
Sincerely,

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