



**PEN Hong Kong, PEN International, PEN Canada,
the University of Hong Kong Centre for Comparative and Public Law, and
the University of Toronto Faculty of Law International Human Rights Program**

2018 Universal Periodic Review Submission on the Special Administrative Region of Hong Kong Regarding Freedom of Expression

I. Overview

1. We welcome the opportunity provided by the Human Rights Council to comment on the climate for freedom of expression in the Special Administrative Region of Hong Kong (“**HKSAR**”).
2. In 2013, the Universal Periodic Review was conducted on the People’s Republic of China (“**PRC**”) — which includes HKSAR. While several member states urged the Chinese authorities to improve the situation for freedom of expression in the PRC and the Chinese state noted or accepted some of these recommendations, little emphasis was placed on HKSAR and no recommendations or comments on the territory’s human rights situation was made.
3. Since the 2013 Universal Periodic Review and the 2014 Umbrella Movement,¹ freedom of expression in Hong Kong has deteriorated rapidly. The need for the international community to understand and address human rights concerns is now greater than ever. These issues have taken on new urgency in light of a spate of recent incidents which, on the surface and viewed separately, may appear relatively minor, but when considered in the aggregate, paint a more troubling picture. Several developments are symptomatic of a government that, motivated by political interests and capitulating to pressure from the PRC government, has failed to uphold its commitments under domestic and international laws to defend freedom of expression and other fundamental human rights. In the process, the HKSAR government has become complicit in condoning violations of these rights or actively participating in them.
4. In this submission, we will focus on three issues: freedom to publish, attacks on journalists, and academic freedom.

¹ The Umbrella Movement was a civil disobedience movement in Hong Kong that took place in the autumn of 2014. It consisted of occupation of streets of Hong Kong, demonstrations, and peaceful protests demanding genuine universal suffrage for the election of the Chief Executive, the highest office in the territory.

II. Issues

(1) Freedom to Publish

5. Article 19(2) of the International Covenant on Civil and Political Rights (“**ICCPR**”)² and Articles 27 and 39 of the Basic Law³—Hong Kong’s mini-constitution—guarantee all citizens the right to freedom of expression. Despite these protections, the freedom to publish has come under intense strain in Hong Kong.

6. Set forth below are examples of the HKSAR government’s failure to protect the freedom to publish. These failures hamper citizens’ ability to receive impartial information; compromise the media’s watchdog role; weaken the capacity of other authorities to hold the government accountable, and undermine Hong Kong’s autonomy and its reputation as a global city:

a) Restrictions on Independent Publishing

7. The PRC government has used intimidation tactics designed to systematically block Hong Kong-based publications from entering mainland China.⁴

8. These measures include the notorious bookseller disappearances in 2015, in which the Chinese authorities abducted members of Mighty Current Media⁵ in order to stifle their publications. Hong Kong booksellers Gui Minhui, Lee Po, Cheung Chi-ping, Lam Wing-kee and Lui Por published and sold politically sensitive material that was banned on the mainland. They disappeared from Hong Kong, mainland China and Thailand, and were later revealed to have been detained by the Chinese authorities and prosecuted on various charges.⁶ Their abductions raised public concerns about the safety of those who publish material that is critical of the PRC government.

9. In response, the HKSAR government requested that the Chinese authorities disclose the whereabouts of the booksellers within the fourteen-day period in which the Hong Kong Police must be notified if a Hong Kong resident is detained across the border. When the Chinese authorities failed to do so, the HKSAR government took no further action.⁷

² Art. 19 of the ICCPR states “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.” This provision is domesticated and hence legally enforceable under Art. 16 of the Hong Kong Bill of Rights Ordinance (Cap. 383).

³ Art. 27 of the Basic Law states: “Hong Kong residents shall have freedom of speech, of the press and of publication...” Art. 39 of the Basic Law provides for the domestication of the ICCPR and other international treaties and covenants that are applicable to Hong Kong.

⁴ “The Southern Hill Project: A Special Report from PEN Hong Kong”, PEN Hong Kong, 29 January 2017, <http://www.penhongkong.org/the-southern-hill-project-chinas-campaign-against-hong-kongs-independent-publishing/>.

⁵ “Hong Kong booksellers disappearance”, a series of reports by *SCMP*, <http://www.scmp.com/topics/hong-kong-bookseller-disappearances>.

⁶ “Two men jailed in China for selling Hong Kong-published books”, *SCMP*, 11 February 2017, <http://www.scmp.com/news/china/article/2070086/two-men-jailed-china-selling-hong-kong-published-books-sources-say>.

⁷ “Hong Kong government still waiting for a reply on missing bookseller Lee Bo”, *Nikki Sun*, 20 January 2016, <http://www.scmp.com/news/hong-kong/politics/article/1901886/hong-kong-government-still-waiting-reply-missing-bookseller>.

b) *Censorship and self-censorship by Media Outlets*

10. Censorship and self-censorship have restricted the work of independent media outlets. Although some of this is due to market forces, it can also be linked to active interference from the mainland. Mainland Chinese companies now hold controlling interests in most Hong Kong media outlets, and since local businesses are known to withhold advertisements from publications that criticize the PRC government, self-censorship is on the rise.

11. Mainland businesses hold a controlling interest in TVB,⁸ the leading television broadcaster, which removed news footage of police officers using unlawful force against protesters in the Umbrella Movement.⁹ Instead, they ran the footage with no voice over commentary. Reporters who later signed a petition against TVB's self-censorship were pressured to withdraw from the petition or risk losing their year-end bonuses.¹⁰

12. In 2014, Edward Chin, a core member of the Umbrella Movement, was told to deemphasize his pro-democracy stance in his regular column in *The Hong Kong Economic Journal (HKEJ)*, one of Hong Kong's leading Chinese language newspapers. The publication subsequently removed the column altogether.¹¹

13. In 2016, political commentator Joseph Lian's column was also withdrawn from *HKEJ*, while *Ming Pao*, another leading Chinese language newspaper, terminated Keung Kwok-yuen as chief editor without offering any clear explanation. Keung's termination happened on the same day that the newspaper published a front-page story on the Panama Papers in which businessmen and politicians in Hong Kong and mainland China were to be named.¹²

14. In the same year, Alibaba, one of mainland China's largest and most powerful technology companies, acquired *The South China Morning Post (SCMP)*. Media watchdogs and activists have expressed concerns about the *SCMP*'s independence and its apparent collaboration with the Chinese authorities since the takeover, particularly with respect to "sensitive" matters.¹³

⁸ "TVB controlling stakeholder brings in mainland media veteran Li Ruigang as partner", *SCMP*, 22 April 2015, <http://www.scmp.com/news/hong-kong/education-community/article/1773793/tvb-controlling-stakeholder-brings-veteran-media>.

⁹ "Threatened Harbour: Encroachments on Press Freedom in Hong Kong", PEN American Centre, January 2015, at pp 19-20, <https://www.scribd.com/document/252876392/PEN-HK-Report-1-16-Lowres>.

¹⁰ "TVB punishes staff after anti-censorship petition: report", *Ejinsight.com*, 14 November 2014, <http://www.ejinsight.com/2014/11/14-tvb-punishes-some-staff-after-anti-censor-ship-petition/>.

¹¹ *2014 Annual Report*, Hong Kong Journalists Association, at p.10, https://www.hkja.org.hk/site/Host/hkja/UserFiles/file/annual_report_2014_Final.pdf.

¹² *The Invisible Hand on Hong Kong's Media*, Reporters Without Borders, at p.4, https://rsf.org/sites/default/files/rapport_hong-kong_gb_def_0.pdf.

¹³ "The Mea Culpa Machine: Is *The South China Morning Post* pushing Chinese political 'confessions'?", *Medium*, 15 July 2016, <https://medium.com/china-media-project/the-mea-culpa-machine-a40a12f65f98>; "Responsible media should not act as Beijing's pawns when reporting on staged, forced confessions", *HKFP*, 24 February 2018, <https://www.hongkongfp.com/2018/02/24/responsible-media-not-act-beijings-pawns-reporting-staged-forced-confessions/>.

15. In 2017, Radio Television Hong Kong (RTHK), the public broadcasting service in Hong Kong, removed the independent BBC Worldwide program and replaced it with China National Radio's Mandarin-language broadcast, which is under direct control of the Chinese regulatory agency as well as falling under China's state propaganda apparatus.¹⁴

16. We urge the HKSAR authorities to demand that their mainland counterparts stop all intimidation and censorship tactics that curtail the freedom to publish in Hong Kong and to negotiate the release of the booksellers and facilitate their return to Hong Kong or another destination of their choice.

(2) Attacks on Journalists

17. Verbal and written threats, sometimes even physical assaults, have been levelled against journalists with the intention to intimidate and silence them and limit the public's ability to receive impartial information.

18. In 2017, anonymous threatening letters were sent to Tom Grundy, co-founder and chief editor of *Hong Kong Free Press (HKFP)*, as well as former and current *HKFP* staff members and their families.¹⁵ *HKFP* is a non-profit, independent online media outlet known for its unbiased news reports and opinion columns by individuals who may have a more democratic political stance and which may not be in the favour of the Chinese authorities. In 2013, Kevin Lau, the former editor-in-chief of *Ming Pao* was seriously injured in a knife attack.¹⁶ Months later, Chen Ping, the publisher of *iSun Affairs*,¹⁷ were attacked by baton-wielding assailants.¹⁸ Prior to the attack, *iSun Affairs* published an interview concerning an election scandal of then-Chief Executive Leung Chun-ying. During the Chinese New Year riots in 2016, officers on duty attacked journalists covering the police standoff on location.¹⁹

¹⁴ "PEN HK's Response to RTHK's Replacing BBC World Service with China National Radio's Broadcast", PEN Hong Kong, 28 August 2017, <http://www.penhongkong.org/rthk/>.

¹⁵ "Police launch investigation after threatening letters sent to Hong Kong Free Press Staff", *HKFP*, 4 October 2017, <https://www.hongkongfp.com/2017/10/04/police-launch-investigation-threatening-letters-sent-hong-kong-free-press-staff/>.

¹⁶ "Former Hong Kong Paper Editor Stabbed", *Wall Street Journal*, 26 February 2014, <http://blogs.wsj.com/chinarealtime/2014/02/26/former-hong-kong-paper-editor-stabbed/>.

¹⁷ *iSun Affairs* is a weekly magazine that publishes stories on sensitive mainland issues and is banned on the mainland.

¹⁸ "*iSun Affairs* publisher Chen Ping beaten by baton-wielding thugs", *SCMP*, 4 June 2013, <http://www.scmp.com/news/hong-kong/article/1252904/isun-affairs-publisher-chen-ping-beaten-baton-wielding-thugs>.

¹⁹ "Hong Kong journalist claims police attacked him while he reported on Mong Kok riot", *SCMP*, 10 February 2016, <http://www.scmp.com/news/hong-kong/law-crime/article/1911477/hong-kong-journalist-claims-police-attacked-him-while-he>.

19. Although arrests were made in the Kevin Lau incident²⁰, and two individuals with ties to the triads—organised crime syndicates in Hong Kong—were sentenced to 19 years in prison,²¹ the public has yet to learn who ultimately ordered the attack on Lau. No arrests were made by the Hong Kong Police in connection with any of the other aforementioned cases of criminal violence.

20. We call for the HKSAR government to investigate all incidents of violence against journalists and to prosecute any perpetrators, including police officers. We also call for the Hong Kong Police to modify its protocols to facilitate the work of journalists instead of putting up additional hurdles that further hinder press freedom.

(3) Academic Freedom and Free Speech on Campus

21. Freedom of expression is guaranteed in Article 19 of the ICCPR.²² Academic freedom is expressly guaranteed in the Sino-British Joint Declaration²³ (the agreement between China and Britain over the governance of Hong Kong after the transfer of sovereignty in 1997) and is also a right enshrined in Basic Law Articles 34²⁴ and 137.²⁵

22. The PRC government has increasingly tried to rein in academic freedom in Hong Kong in response to recent pro-democracy movements, including the Umbrella Movement. It pressured the HKSAR government and members of the Legislative Council—Hong Kong’s legislative body—to restrict freedom of speech of student bodies, faculty members, and even of the curricula. For instance, university authorities have censored sensitive political speech by forcibly removing banners put up by students advocating independence for Hong Kong.²⁶ The Education Bureau has also issued guidelines to secondary schools prohibiting discussions on topics such as self-determination or independence.²⁷

²⁰ “Two fresh arrests in Kevin Lau case brings total held to 11”, *SCMP*, 13 March 2014, <http://www.scmp.com/news/hong-kong/article/1447145/least-one-suspect-arrested-former-ming-pao-chief-editor-kevin-laus?page=all>.

²¹ “Kevin Lau attackers sentenced to 19 years in jail”, *HKFP*, 21 August 2015, <https://www.hongkongfp.com/2015/08/21/kevin-lau-attackers-sentenced-to-19-years-in-jail/>.

²² Art. 19(1) of the ICCPR states: “Everyone shall have the right to hold opinions without interference. 2. 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.”

²³ Para. 3(5) of the Sino-British Joint Declaration states: “The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.”

²⁴ Art. 34 of the Basic Law states: “Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities.”

²⁵ Article 137 of the Basic Law states: “Educational institutions of all kinds may retain their autonomy and enjoy academic freedom.”

²⁶ “Hong Kong independence banners appear at Chinese University for new academic year”, *SCMP*, 6 September 2017, <http://www.scmp.com/news/hong-kong/politics/article/2109610/pro-independence-banners-greet-chinese-university-students>.

²⁷ “Anglican leader says Hong Kong schools should not discuss independence unless pupils are told of likely ‘civil war’”, *SCMP*, 16 September 2017, <http://www.scmp.com/news/hong-kong/politics/article/2111479/anglican-leader-says-hong-kong-schools-should-not-discuss>.

23. Similar interference extends to the appointment of university officials. Professor Johannes Chan, a respected legal scholar and former dean of the University of Hong Kong (HKU) law school, had been tapped to be HKU's next pro-vice-chancellor, a position equivalent to that of a university president in the West. Chan's liberal political views and his sympathy for the Umbrella Movement, elicited extensive and relentless personal attacks from government officials and pro-establishment lawmakers²⁸. The university council repeatedly delayed and ultimately declined Chan's appointment without proffering any reason for their decision, and without allowing Chan to respond to attacks on his credentials and qualifications. Meanwhile, pro-Beijing members of the Legislative Council continued to pressure HKU to dismiss Benny Tai,²⁹ an HKU associate law professor and one of the three initiators of Occupy Central, the precursor to the Umbrella Movement.

24. We urge the HKSAR authorities to end interference on all aspects of academic freedom in Hong Kong and to ensure overall academic freedom on every campus in Hong Kong. We also urge the HKSAR government to end the practice of appointing the Chief Executive—head of the HKSAR government—as the ex-officio chancellor of all tertiary education institutions in Hong Kong.

²⁸ "HKU academics rebut left-wing criticism of former dean", EJinsight.com, 13 February 2015, <http://www.ejinsight.com/20150213-hku-academics-rebut-left-wing-criticism-of-former-dean/>.

²⁹ "Petition to oust Occupy co-founder Benny Tai from university post attracts 80,000 signatures", *SCMP*, 6 September 2017, <http://www.scmp.com/news/hong-kong/politics/article/2110047/petition-oust-occupy-co-founder-benny-tai-university-post>.