



RISING NATIONALISM

A potential threat to Hong Kong's freedom of expression

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Contributors: Cliff Bale and Mak Yin-ting

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Introduction and recommendations

As Hong Kong enters its second decade as a special administrative region of the People's Republic of China, nationalism is becoming an ever stronger political force in the country. Analysts have pointed to strong Chinese reaction to Western media coverage of protests in Tibet, and to disruption of the Olympic torch relay in Europe, the United States and some places in Asia. Indeed, pro-Beijing supporters were mobilised in some places, including Hong Kong, to counter critics of Chinese government policy.

The catastrophic earthquake in Sichuan has also galvanised nationalist sentiment. It brought together the nation in an effort to overcome the tragedy, and in an unprecedented move, the government declared three days of mourning for those who perished. Previously, only national leaders had been accorded such honours.

So has this force arrived in Hong Kong? A number of analysts point to a mood swing. Executive councillor Anthony Cheung—an academic and former vice-chairman of the Democratic Party—put it this way:

“Back in Hong Kong, despite criticisms from time to time that local people lack patriotism, the strong nationalistic reaction generated by the Olympic torch march and Sichuan earthquake has pointed to a new setting. Over the past few weeks, Hong Kong politics have been transformed by the saga surrounding newly appointed undersecretaries and political assistants holding foreign passports or right of abode... Public sentiment today is very different from that of a generation ago. Many Hong Kong Chinese are no longer shy about asserting their national allegiance and expecting their fellow compatriots to do the same.”

Of course, some would argue that many Hong Kong people showed their patriotism in May and June 1989—at the height of the pro-democracy movement in China and after its suppression in a hail of bullets. They were showing their concern for the future of the country, just as they are doing now.

It would appear that one of the differences now is that the government is actively encouraging patriotism, whether in the form of national education or trying to persuade the media to take a more active role in promoting understanding of the country. Indeed, the secretary for home affairs, who is responsible for civic education, is Tsang Tak-shing—a prominent pro-Beijing figure and former executive for a newspaper that is close to Beijing.

So can a case be built that rising nationalism is threatening freedom of expression and press freedom? This is a more difficult question, although past reports have pointed to a growing reluctance on the part of many media outlets to tackle issues that are sensitive to the government in Beijing. These include matters of national security, including dissident and separatist activities, as well as human rights issues, corruption and illegal land grabs.

There have been a number of incidents over the past year which have given rise to concerns about freedom of expression: the government refused entry to critics of China's human rights record ahead of the Olympic torch relay; the police forcefully removed some pro-Tibet protesters when they should have been more concerned about threats being made by pro-Beijing supporters; the editors of a legal journal refused to print an article by a human rights lawyer who argued that Tibet had a case for self-determination; and a former Democratic Party chairman came under severe attack over calls for the United States to press Beijing to improve its human rights record ahead of the Olympics.

Clearly, Hong Kong's freedoms are fragile. But they still exist. It is still possible to see Falun Gong devotees protesting in prominent tourist spots; it is still possible to read articles about protests in mainland China against a variety of abuses; and people like Martin Lee can still express their views—although maybe their words are not placed so prominently in newspapers and television and radio broadcasts as in the past.

Analysts who point to a swing towards patriotism are not so sure about its effect. Some argue that growing nationalism is a natural result of the return of Hong Kong to China in 1997 and Hong Kong's reintegration into the greater motherland—and that this will not affect freedom of expression. Others say that rising nationalism will lead to a dominant view that excludes opinions that are at variance with those propagated in Beijing. This would see Hong Kong developing a lack of tolerance that would marginalise dissenting voices and persuade people that it is in their best interests not to speak out, even though they know an injustice has been done. This would be to the detriment of the development of a healthy, pluralistic society.

Given the dangers inherent in any such development, the government should do far more to balance the promotion of patriotism with the encouragement of civil liberties and tolerance. It should, for example, consider creating such institutions as a human rights commission to promote and defend civil liberties, and take into account human rights obligations—as set out in the International Covenant on Civil and Political Rights and the Hong Kong Bill of Rights—in considering law reform.

One of those who feels uneasy about what is happening is Hong Kong journalist Ching Cheong, who was released from a mainland jail after serving about half of a five-year sentence for spying for Taiwan—a charge he strenuously denies. His release followed pressure from various concern groups, including the HKJA. In a speech to an awards ceremony organised by the Society of Publishers in Asia, Mr Ching made the following telling comment:

“Since the return to Chinese sovereignty, we all sense a gradual erosion of some of our treasured values. If the erosion of our basic values is allowed to continue, it is not only our loss, but also China's. Therefore, we have to face up to this threat squarely.”

We agree. We believe that the Hong Kong government can do far more to ensure that freedom of expression and press freedom are given the full respect they deserve. In particular, we call on the government to take the following action:

- 1) Ensure that protesters are allowed to express their views in public, without facing threats and intimidation. This is essential as the right to demonstrate is one of the most fundamental ways for an individual to express his or her views. Any attempt to limit this right—whether by law or police action—would have a detrimental effect on fundamental rights.
- 2) Show greater openness in presenting its policies. In particular, it should host proper news conferences to announce policy changes and new initiatives, instead of leaking them to select journalists.
- 3) Carry out a comprehensive review of broadcasting legislation, to ensure that the airwaves are open to those who wish to set up broadcasting operations. In particular, the government must set out application procedures to be completed within a reasonable timeframe and objective factors to determine whether or not to grant a licence. It must also provide for an appeal mechanism that is independent of the government.
- 4) Create a platform for public access television and radio services, to ensure a greater diversity of programming. This is crucial in an environment where

commercial broadcasters dominate.

5) Take concrete steps to hive off RTHK from the government, so it can become an independent public broadcaster free from government or political influence. In particular, RTHK should be re-constituted by legislation guaranteeing the broadcaster's independence in clear and unambiguous terms.

6) Ensure that any changes to privacy and obscenity laws give adequate protection to media freedoms, including the right of journalists to carry out investigative reporting. In particular, the government should reject Law Reform Commission calls for a statutory press council and the creation of new civil torts that—in the name of privacy—would severely limit the ability of journalists to carry out their work.

7) Urge the Beijing authorities to drop all administrative barriers to reporting in China, in particular by scrapping the regulation that requires journalists to seek prior approval for any reporting work. Further, the Beijing authorities should ease visa requirements for foreign journalists wishing to travel to mainland China for reporting purposes.

SECTION 1

Nationalism pressures free expression

The power of Chinese nationalism has for some time weighed heavily on the Hong Kong government and people. Efforts by Beijing to impose its line on Hong Kong have contributed to a definite trend towards conformity on sensitive issues, such as dissident activities in China and separatist causes. These have in turn led to pressure on freedom of expression, as the Beijing line becomes more dominant.

One of the most dramatic manifestations of this trend came in early 2004, when the so-called patriotism debate was launched. This was aimed at countering the effects of the massive July 1st 2003 march against national security legislation and the crushing defeat of pro-Beijing candidates in the November 2003 district council elections. The essence of the campaign was to assert that Hong Kong should be governed by Hong Kong people, with patriots forming the main body of this ruling elite. The campaign culminated in strong and sometimes personal attacks against leading members of the pro-democracy camp, including the founding chairman of the Democratic Party, Martin Lee. (This pressure has continued to this day for Mr Lee; see below.)

This pressure to present a patriotic united front was much in evidence over two events in the year under review—protests in Tibet and the run-up to the Beijing Olympic Games. For example, the government was accused of trying to squeeze out dissident voices during the Hong Kong leg of the Olympic torch relay—in early May 2008. Pro-Tibet and human rights activists were denied entry to Hong Kong, and those protesters who took to the streets on the day of the torch relay were drowned out by Beijing supporters.

Such trends raised questions about whether the government would move to enact legislation banning subversion and secession similar to Basic Law article 23 legislation that was put forward—and then withdrawn—in 2003 amid an outcry on its impact on freedom of expression and other rights. Indeed, a member of the Basic Law Committee under the National People's Congress, Lau Nai-keung, wrote: "Nowadays, no one in Hong Kong wants to mention national security legislation stipulated by article 23 of the Basic Law. Sooner, rather than later, it will come, and probably in a more stringent form."

The chief executive, Donald Tsang, has played down the prospect of enacting national security legislation, although he has never ruled it out completely before his five-year term ends in 2012. Indeed, analysts note that the Macau government is working on such legislation, which may become the basis for Hong Kong's own version. Macau's chief executive, Edmond Ho, says national security laws may be enacted in 2009.

Pressure is growing in other ways. A taskforce under the powerful Commission on Strategic Development is recommending that the media should do more to promote education about China. It wants the government to encourage the media "to have more promotion and in-depth discussion on issues relating to national education, and to produce and show relevant documentaries, films and TV dramas." It is also proposing that the state-controlled broadcaster, China Central Television, should be allowed to air its six channels in Hong Kong free of charge. They are at the moment available only on pay-TV services.

HEAVY HAND AHEAD OF THE TORCH RELAY

The Olympic torch relay was scheduled for May 2nd 2008. Various groups expressed an interest in staging protests during the relay. They included the Hong Kong Alliance in Support of Patriotic Democratic Movements of China,

which came into being during the 1989 pro-democracy movement in China. Overseas human rights and pro-Tibet groups also expressed an interest in staging protests.

At least ten activists were denied entry to Hong Kong or were barred from leaving mainland China in the week leading up to the torch relay. They consisted of Danish sculptor Jens Galschiot and his two sons, three members of pro-Tibet groups, three freedom of expression advocates and Chinese exile Gao Peiqi, who took part in the 1989 pro-democracy movement. However, two Darfur activists, including US actress Mia Farrow, were allowed into Hong Kong to mount their own protest, separate from the torch relay.

The most high-profile denial involved Mr Galschiot, who wanted to enter Hong Kong to take part in a protest and paint his pro-democracy sculpture, *The Pillar of Shame*, orange, as part of his “Colour Orange” project. The sculpture—which stands on campus at the University of Hong Kong – was inspired by the 1989 pro-democracy movement and its suppression on June 3rd and 4th. The “Colour Orange” project was inspired by the so-called Orange Revolution in Ukraine—and is aimed at highlighting human rights abuses in China.

On his return to Denmark, Mr Galschiot said he had been given no reason for being barred from Hong Kong. He said he and his two sons were escorted to a London-bound plane by about 10 armed policemen after being questioned for about six hours. He said they had refused to sign any Immigration Department papers. He also noted that he had been able to visit Hong Kong in 1997 and 2005—in the latter case during a World Trade Organisation ministerial conference that saw violent protests by South Korean farmers.

Mr Galschiot pledged to take up the issue with the Chinese embassy in Denmark and to write to the Hong Kong government and Immigration Department to express his anger. The Danish consul-general in Hong Kong also expressed concern about the incident. The chairman of the Hong Kong Alliance, Szeto Wah wrote to the chief executive, saying the denial of entry was shocking and harmful to Hong Kong’s image as a place that enjoyed freedom.

Others denied entry included three pro-Tibet activists from the United States and Britain. They were put on flights back home. Also denied entry was Zhang Yu—the general secretary of the writers’ group, Independent Chinese PEN Centre. Two other group members, Zhao Dagong and Wen Kejian, were not allowed to leave the mainland. Mr Zhao was stopped by Chinese immigration officers at a Shenzhen border point.

The three PEN Centre members had been scheduled to attend a conference co-organised by the Hong Kong Journalists Association to highlight freedom of expression deficiencies in China. Another participant, Zhao Yan, failed to turn up for the conference. The Beijing-based New York Times researcher had been jailed for three years in 2004 on fraud charges. He had initially been charged with leaking state secrets. The HKJA’s then general secretary, Mak Yin-ting, condemned the government’s decision to bar a number of activists.

The government would not give any reasons for denial of entry. However, a deputy secretary for security, Grace Lui, admitted the government had a “watch-list” of people whose entry “may not be conducive to the public good”. But she said that not everyone on the list would be barred from entry and individuals would not be turned away because of their political views. The government also indicated that people may be refused entry in the run-up to the Olympic equestrian events in Hong Kong in August 2008.

The courts have in the past upheld the government’s actions. In March 2007, the Court of First Instance dismissed an application for judicial review brought by four Falun Gong members from Taiwan, who were refused entry in February

2003. They wanted to attend a conference in Hong Kong. Mr Justice Hartmann noted that the government had the power to regulate who could and could not enter Hong Kong.

OPPOSITION VOICES DROWNED OUT DURING TORCH RELAY

Several demonstrations were held in Tsim Sha Tsui at the start of the torch relay on May 2nd 2008. They involved pro-Tibet and human rights activists, who called on Beijing to honour its promise to better protect human rights—a pledge made before China was granted the right to host the Olympics, but not carried out in any systematic manner. Both sets of protesters were surrounded by flag-waving Beijing supporters—a significant number of them from the mainland. The police then removed the protesters, ostensibly for their own safety.

The Hong Kong Alliance in Support of Patriotic Democratic Movements of China organised the human rights rally. Its organisers had planned to stage a parallel torch relay, but this was abandoned in the face of overwhelming numbers of Beijing supporters, who insulted and threatened to attack them. The police escorted the group to a nearby park, where they completed their torch relay—out of view of the official event.

The Alliance's vice-chairman, legislator Lee Cheuk-yan, said this was the most difficult protest he had been involved in. Another legislator and Alliance activist, Albert Ho, accused the police of suppressing the right to demonstrate, which is laid down in Hong Kong's Basic Law. He said: "If there is only a one-sided voice in Hong Kong, many people may wonder how the city looks today." However, a government spokesman insisted that Hong Kong was a free society and enjoyed freedom of expression and freedom of the press.

That claim was challenged by another group of protesters. They were organised by a University of Hong Kong student, Christina Chan, who mounted a pro-Tibet demonstration close to the start of the torch relay. She met the police to discuss her demonstration, but refused any further help, saying that she had the right to stage a protest. On the day of the torch relay, she wrapped herself in a Tibetan flag. But Beijing supporters started jeering her—and one man rushed towards her.

The police then tried to remove them, ostensibly for their own safety, but Ms Chan said they wanted to remain. Officers then forced them into a waiting police van. They were later released from a police station some distance from the torch route. Ms Chan staged another, smaller protest in Central when the torch relay passed that area.

The student said she thought the police were intent on preventing her from holding a pro-Tibet protest, and questioned whether they should have been taking action against her, and not those who were surrounding her group. Ms Chan later lodged a complaint with the Complaints Against Police Office, and is considering pursuing legal action.

Questions were raised in the run-up to the torch relay about whether the police had the power to remove a Tibetan flag or arrest someone carrying such a flag. One police officer gave a curious comment on the issue—that action would depend on the circumstances. But legal experts maintained that there was no law to bar someone from flying the Tibetan flag. However, they also noted that the situation might have been different if national security legislation—and its provisions banning secession—were in place.

LAW SOCIETY JOURNAL BANS TIBET ARTICLE

Tibet became a highly sensitive issue after violent protests broke out in Tibet and other Tibetan-populated areas in mid-March 2008. Western media, including the US broadcaster CNN, were accused of being biased in favour of Tibet, and anti-French protests broke out in several Chinese cities, following ugly scenes involving pro-Tibetan protesters during the Paris leg of the Olympic torch relay.

Tolerance towards those advocating a better deal for Tibet was put to the test in Hong Kong over an article written by human rights lawyer Paul Harris. The editor of the Law Society's magazine, *Hong Kong Lawyer*, invited Mr Harris to submit an article based on an earlier interview with him in the *South China Morning Post*, in which he argued for Hong Kong-style autonomy for Tibet.

His article for *Hong Kong Lawyer* examined the Tibetan question from a legal perspective. He said Tibet's links with China were not as strong as Beijing made out, and that in some cases the relationship was colonial in nature. He argued that Tibet's case for self-determination was "infinitely stronger" than that of Kosovo, which declared independence in February 2008. He argued that autonomy would be the best solution, although this seems unlikely under current circumstances. He noted: "Unless real autonomy is offered, self-determination in Tibet is bound to mean independence."

The article was slated for the May edition of the magazine. The editorial board initially approved the article, but later reversed the decision—unanimously—at an extraordinary meeting. The board's chairwoman, Cecilia Wong, declined to identify the reasons, saying only that there was no particular aspect that made the board decide against it.

Mr Harris was more direct. He said it was a case of self-censorship. He noted: "I think there is a growing atmosphere of unwillingness to allow activities, publications, publicity for points of view that the mainland disapproves of." Frontier legislator Emily Lau—a former HKJA chairperson—said: "They (the legal community) should be the ones defending our rights... initiating debates, not covering them up."

FORMER DEMOCRATIC PARTY CHAIRMAN FACES ATTACK

Pressure to conform to Beijing's thinking on issues was highlighted in a row over an article written by the founding chairman of the Democratic Party, Martin Lee, in the *Wall Street Journal* in October 2007. Mr Lee called on the US president, George W. Bush, to press Beijing to improve human rights ahead of the Beijing Olympics. In particular, he called on Mr Bush to press for significant improvements to press freedom, the right of assembly and religious freedoms.

Beijing supporters quickly launched a ferocious attack against Mr Lee. Leading Chinese-language newspapers including the *Oriental Daily News* and *Sing Tao Daily* took up the offensive. The *Oriental Daily News* headlined its story: "Martin Lee: A Crazy Traitor". His critics accused him of calling for a boycott of the Olympic Games, which he did not. They also twisted his words in Chinese translations of the original English. For example, the term "press for" became "pressurise". The chairman of the pro-Beijing DAB party called on Mr Lee to apologise. He refused.

In reply, 23 pro-democracy legislators issued a joint statement condemning Beijing loyalists for "distorting the truth" for electoral gain in district council elections in November 2007. They said: "We do not wish to see our community unknowingly condoning senseless attacks on people with different political inclinations as if we were back in the Cultural Revolution days." The current

chairman of the Democratic Party, Albert Ho, said the attacks gravely threatened freedom of speech.

The government took a very different approach. The chief secretary, Henry Tang, denied that freedom of speech was under threat. He said in Beijing: "Since the handover, the level of freedom of speech has not deteriorated; in fact, it has improved.... Otherwise a lot of (Martin) Lee's remarks couldn't be publicised." Mr Tang also said the Olympic Games should not be politicised.

Mr Tang's comments are at variance with what these annual reports have been reporting—that the room for free expression is becoming more limited, as Beijing lays down unwritten rules on what cannot be said in Hong Kong, in particular on issues which are sensitive to the Chinese leadership. This clearly includes any move to involve foreign governments in persuading China to take a more open attitude and to improve its human rights record. Mr Tang might be right in saying that people can read about Mr Lee's views, but critics point to the dwindling number of publications that will give him prominence.

CHING CHEONG RELEASED EARLY

There was some good news on the China front. In February 2008, Hong Kong journalist Ching Cheong was released on parole after serving half of a five-year sentence for allegedly spying for Taiwan. His release came just ahead of the Lunar New Year holiday—a time when families normally spend time together. Mr Ching's initial detention—in April 2005—and his trial and sentencing in August 2006—shocked Hong Kong and its media community and had a significant chilling effect on media coverage of China affairs.

Mr Ching was the China correspondent for the Singapore *Straits Times*. He was known to be a patriot, who worked for a pro-Beijing newspaper in Hong Kong, *Wen Wei Po*, until he resigned in the wake of the suppression of the 1989 pro-democracy movement in Beijing. He later founded *Contemporary*—a magazine focussing on China. It folded and he joined the Singapore *Straits Times*.

Xinhua news agency said that Mr Ching had confessed to passing on secret political, economic and military information to Taiwan in return for large sums of money—a charge Mr Ching has always denied. He was initially jailed in Beijing, and was later moved to a prison in Hong Kong's neighbour, Guangdong province.

The HKJA and other support organisations, including the Ching Cheong Concern Group, pressed hard for the journalist's release, believing him to be innocent. They later called for his release on medical grounds, as he was suffering from a number of ailments, including an irregular heartbeat, gastritis and a duodenal ulcer. In the end, he was released on parole, which normally means that he faces restrictions on his political rights in mainland China.

About two weeks after his release, Mr Ching met the media, to thank them for their support. He reiterated that he had never spied for Taiwan. He said: "I have not done anything that would endanger national security or harm national interests... I have never held any state secret, not to mention passing on state secrets to Taiwan." He also called for an amnesty for prisoners in the run-up to the Beijing Olympics—something that has not happened. However, he also alluded to parole conditions, noting that he may get into trouble again, if he behaves inappropriately.

Mr Ching has been in reasonable health, and he has since returned to work in Hong Kong with the Singapore *Straits Times*. He has also taken part in several open forums, where he has given his views on topical issues.

However, a mainland academic, who was linked to Mr Ching's case, is still serving a 20-year sentence for leaking state secrets. A pro-Beijing newspaper

reported that Chinese Academy of Social Sciences academic Lu Jianhua had written articles for Mr Ching that allegedly contained top state secrets. It said Mr Ching passed these articles to a foundation in Taiwan. Mr Lu's wife said she was happy that Mr Ching had been freed, but she was hesitant to talk about the condition of her husband.

Mr Ching's case highlights the dangers of working in mainland China – and the way that journalists may suddenly find themselves in trouble. However, Hong Kong journalists are normally treated leniently; mainland contacts—such as Mr Lu—face a far harsher fate.

MEDIA OWNERS CO-OPTED TO TOP ADVISORY BODY

The 2007 Annual Report noted that Beijing had co-opted many owners of Hong Kong media organisations. This was achieved in several ways—the most prominent of which was appointment to China's advisory body, the Chinese People's Political Consultative Conference (CPPCC). New appointments were made in early 2008—in readiness for the first meeting of the new-look body in March 2008. The CPPCC meets in tandem with the National People's Congress (NPC).

The 2008 CPPCC appointments showed that almost half of the owners of media outlets were named to the body. Many were re-appointed, while some of the newly appointed members were merely replacements for retiring representatives or reflected ownership changes. For example, Chan Man Hung (vice-chairman and president of Sino United Publishing, which owns the Hong Kong Commercial Daily) replaced the ageing Lee Cho-jat. In addition, Payson Cha was named to the CPPCC, after he bought a controlling stake in the TV broadcaster, ATV. Another significant shareholder, Chan Wing Kee, became a member of the advisory body, after serving on the National People's Congress.

Several owners or top executives of print media organisations remained CPPCC members. They include Charles Ho Tsu-kwok of the Sing Tao group, which owns three dailies; Ma Ching-kwan of the Oriental Press Group (which owns two dailies); Wang Guohua of Ta Kung Pao; and Zhang Guoliang of *Wen Wei Po*.

In the electronic media, the following retain their positions: Peter Woo of the Wheelock group (owner of Cable TV) and Victor Li Tzar-kuoi (eldest son of tycoon Li Ka-shing and vice-chairman of Cheung Kong and Hutchison Whampoa, which owns Metro Broadcast Corporation). In addition, the younger son of Li Ka-shing, Richard Li, was re-appointed to the Beijing committee of the CPPCC. Mr Li owns PCCW, which runs the pay-TV network NOW Broadband TV. He also owns a 50-percent stake in the *Hong Kong Economic Journal* through a trust.

SECTION 2

Beijing tightens grip on journalists ahead of Olympics

Beijing will stage the Olympic Games in August 2008. To secure the games, Beijing pledged in 2001 to improve conditions for journalists. In January 2007, new rules came into effect allowing accredited Hong Kong, Macau, Taiwan and foreign journalists to interview Chinese citizens without prior government approval, as long as interviewees gave consent. Reporters were also given permission to visit “places open to foreigners designated by the Chinese government.” The new rules are due to expire in October 2008—shortly after the close of the Olympic and Paralympic Games.

However, China’s record on this front has been mixed—despite some positive signals, including the release of several journalists, such as Hong Kong reporter Ching Cheong (See section 1). Official attitudes were hardened by the upheaval in Tibet in March 2008 and shortly afterwards by anti-China protests during the Olympic torch relay. Then, in June 2008, the Beijing Organising Committee for the Olympic Games (BOCOG) announced that certain types of foreigners would be barred from the country during the Olympics.

UNEVEN IMPLEMENTATION OF OLYMPIC RULES

Foreign correspondents welcomed the January 2007 rules, although questions were raised about whether the authorities would honour them. In some cases, they have. But the Foreign Correspondents Club of China (FCCC) has reported more than 240 cases of interference with journalists between January 2007 and early June 2008. These cases involved violence, harassment, intimidation, ignorance about the rules, and the mistaken claim that they apply only to Olympic-related news and nothing else.

The Chinese government did make some efforts to improve the environment for journalists. The Foreign Ministry stepped up promotional efforts, and some provinces adopted the rules into local regulations. Sichuan province was a case in point. Guangdong province did not follow this path, but it did allow greater freedom for media coverage.

However, interference continues to happen from time to time, especially when journalists are covering sensitive issues, such as social unrest and popular grievances. Some cases involved violence and harassment committed by local police or thugs with alleged links to local clans.

Examples include a reporter for a Swedish newspaper being barred from covering a protest in Shanghai opposing the extension of the maglev rail line into the town centre; Scandinavian television correspondents facing harassment while they tried to interview the wife of imprisoned human rights activist Hu Jia; and two journalists working for a Finnish public TV station being arrested in Henan province while preparing a feature report about a worker who was involved in Olympic construction projects. The journalists were released following intervention by the Finnish embassy.

More disturbing was a case involving the Foreign Ministry. In March 2008, alleged undercover police officers confiscated the tapes of a Czech television cameraman after he interviewed North Korean refugees in the northeastern city of Shenyang. He lodged a complaint with the Foreign Ministry and asked for the return of the tapes. But ministry officials accused the journalist of planning and funding the storming by refugees of foreign offices in Beijing. The journalist denied the accusation. Local authorities also later questioned his interviewees.

A HEAVY HAND IN TIBET

Protests and riots broke out in the Tibet autonomous region in mid-March. They later spread to other places with significant Tibetan populations, including parts of Sichuan and Gansu provinces. The protests were a major test of how the authorities would handle journalists, who travelled to the region to report on the events.

The authorities in Tibet were predictable in their response. They ordered almost all journalists to leave the region, and barred outside reporters from entering. At least fifty journalists were told to leave. They included 15 Hong Kong reporters from six electronic media outlets and two daily newspapers. The Hong Kong Journalists Association (HKJA) called the move “unacceptable”, adding that it was a breach of the 2007 rules. The HKJA further stated that human rights were usually more fragile in conflict situations and there was therefore even more reason for journalists to monitor conditions.

The Committee to Protect Journalists reported several cases of intimidation outside Tibet. It noted cases in which police detained a Finnish television crew outside the monastery town of Xiahe in Gansu province; the authorities twice turning back a reporter for the US broadcaster, National Public Radio, in the same province, and then following her car for more than 200 miles; and police blocking a crew from the US television network ABC from filming in a Tibetan neighbourhood in Chengdu.

The government later organised several trips to Tibet for handpicked journalists. Participants were from Hong Kong and foreign countries. However, the trips were highly restrictive in nature. The FCCC called on the government to open Tibet to all media. In late June, the Foreign Ministry announced that foreign journalists could again visit the region, but not without prior authorisation.

OPENNESS IN SICHUAN, THEN RESTRICTIONS

The authorities took a very different approach to the massive earthquake that struck Sichuan province in May 2008. Initially, it did not restrict journalists from covering the quake aftermath. Journalists were able to get to the most remote and hardest hit parts of the quake-stricken zone, sometimes by People’s Liberation Army helicopter—something that had never been allowed before. Reporters were also able to interview military personnel.

Analysts gave several possible reasons for the new openness. They pointed to an instruction from the central government in Beijing that the local authorities should not hinder journalists, the fact that the authorities had no manpower to monitor or interfere with reporters, lessons learned from the unrest in Tibet and the feeling that the government needed the media to put out reports on conditions in the affected areas, as a way to appeal to the Chinese public for their understanding and support. Although similar openness did occur in past disasters, such as severe flooding cases, the scope of the freedom allowed to cover the Sichuan earthquake was unprecedented.

However, the policy of “openness” lasted only about two weeks. This coincided with the time when parents of children who died in collapsed schools were becoming more assertive in alleging that construction standards were poor and corruption might have been involved. It was also a time when the government wanted to reimpose a more positive atmosphere—just two months before the start of the Olympic Games.

Journalists started to complain that they were facing obstacles in reporting on sensitive issues. The Shanghai bureau chief of Hong Kong’s Cable TV, Bruce Lui, revealed in a sharing session in Hong Kong that his team and a dozen

Japanese reporters were barred from reporting from Juyuan school in Dujiangyan, where 280 students died in the rubble of their collapsed building. Parents had protested there, demanding an explanation and compensation. An Australian Broadcasting Corporation (ABC) television crew was detained for several hours after attempting to report outside the same school.

There were similar cases in other towns. For example, two journalists reporting on a school collapse in Wufu town in Mianzhu county were forced to leave. The foreign affairs section of the Sichuan provincial government said they had crossed the cordon line and refused to go away.

Police also started denying that journalists had the right to carry out interviews without permission—despite the order given by the central government that reporters should not be hindered. And the local authorities insisted that journalists had to have a press card issued by the Chengdu Communist Party.

Mainland people faced even more problems. A blogger and founder of the banned China Democracy Party, Guo Quan, was arrested on May 18th after posting several articles criticizing the government's handling of the earthquake. He was detained for 10 days for posting "politically incorrect" articles on the internet. Reporters Without Borders commented that Mr Guo was merely exercising his right to free expression and urged the authorities to stop intimidating him.

The group also expressed concern about the detention of another cyber-dissident, Huang Qi—the founder of a website called 64tianwang. His wife said he had been accused of possessing state secrets, after he visited quake-stricken areas.

Mainland journalists also faced problems. A reporter with the *South China Morning Post*, Choi Chi-yuk, reported that some journalists based in Guangdong province were initially barred from travelling to Sichuan. They said they were later allowed to go after Hong Kong media reports became so widespread that the propaganda authorities in Beijing wanted mainland journalists to file their own reports. However, in another twist that reflects how policy changes can affect what mainland journalists are allowed to do, that instruction was apparently rescinded by the propaganda chief, Li Changchun, in late May or early June (See the website of the University of Hong Kong's China Media Project at <http://cmp.hku/hk/>).

PRISONER RELEASES AND JAILINGS

The official attitude towards journalists and freedom of expression remains contradictory. Analysts note positive developments which give rise to hope that conditions are improving. But these hopes are dashed some time later, with the harassment or jailing of prominent freedom of expression advocates. The authorities have also more recently taken a more hard line—apparently to ensure that nothing goes wrong during the Olympic Games. Reporters Without Borders noted: "Instead of an opening, these games are being used, more than ever, as a pretext to arrest, harass and censor."

The good news has focussed on the release of several journalists. For Hong Kong, the most prominent was the China correspondent for the Singapore *Straits Times*, Ching Cheong. (For details, see section 1.) Several mainland journalists were also released around the same time. They included Yu Huafeng of the *Southern Metropolis News*, who served four years in jail on dubious corruption charges, and Li Changqing, who was jailed for three years for "fabricating and spreading false information" about an outbreak of dengue fever.

At the same time, a number of dissidents have been jailed. Reporters Without

Borders recorded 24 cases of journalists, cyber-dissidents or free expression activists being arrested or sentenced to jail terms since the start of 2008. The most prominent was Hu Jia—an AIDS and environment activist who has also taken on human rights issues. In early April, a court in Beijing announced that Mr Hu had been sentenced to three and a half years in jail for “inciting subversion of state power”. The court’s verdict was based on five internet articles Mr Hu wrote and two interviews he gave to overseas media organisations. In one article composed with another dissident, he warned those coming to Beijing to attend the Olympics that they would not see “the whole truth” about China.

The HKJA called the sentence “totally unacceptable”. It joined the International Federation of Journalists in launching a campaign calling for Mr Hu’s early release. In less than two weeks, more than 1,500 individuals and 17 organisations signed the petition, which was submitted to the Chinese authorities. No response had been received by press time.

Mr Hu is reportedly facing difficulties in prison, including a deterioration in his health. The authorities are not allowing his wife, Zeng Jinyan, to make regular prison visits, and Mr Hu does not always receive the medicine sent by Ms Zeng.

NEW RULES POSE FRESH THREAT

In early June 2008, the Beijing Organising Committee for the Olympic Games (BOCOG) announced on its Chinese-language website a document named “Legal Guidelines for the Entry, Departure and Stay of Foreigners during the Beijing Olympic Games”.

Clause 8 lists six categories of foreigners who are not allowed into China. Four of them are not controversial, covering foreigners who are barred for law and order, hygiene and financial reasons. However, the barring of people who may take part in “subversive activities” (Clause 8.2) or “activities that may endanger national security and the interest of China” (Clause 8.6) are worrying, because the Chinese government often uses the ambiguous national security law to ban or penalize those holding dissenting views. The term “national interest” is also vague and open to abuse.

The worries are not without substance. Last year, media and human rights groups reported on a similar list consisting of eleven categories, including 43 categories of people who would be denied entry to China. They included journalists who may endanger the Olympic Games or maliciously defame the Chinese Communist Party, as well as demonstrators supporting independence for Tibet. The Chinese government has not confirmed or denied the existence of this list.

Although the published list appears to cover fewer categories, the new guidelines go beyond what is permitted under Article 19 of the International Covenant on Civil and Political Rights, which covers freedom of expression. The rules also depart significantly from the Johannesburg Principles, which were drawn up by a group of international lawyers and human rights advocates in 1995. The principles state that freedom of speech can only be limited for national security reasons if the expression is intended to incite imminent violence, it is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Another vague and far-reaching clause is 13.3, which bans all information devices, books, discs and films which endanger China’s political situation, economy, culture and morality. Another clause, 19.2, states that information devices carrying national secrets cannot be taken out of China. Critics argue that such a clause is open to abuse, given the wide range of state secrets in China.

Somewhat ironically, as the guidelines target foreigners, the document was not available on BOCOG's website in English. It prompted questions about whether the rules are aimed at overseas Chinese people, rather than non-Chinese citizens of foreign countries. Indeed, there is no definition of foreigners in the guidelines.

BOCOG has also issued a requirement that foreign media who employ Chinese interpreters and staff by themselves have to register with the authorities. Since 2007, the organising committee has asked foreign media to hire Chinese staff through a government-run agency. The Foreign Correspondents Club of China (FCCC) believes this allows the government to enhance monitoring of foreign journalists.

The FCCC's chairperson, Melinda Liu, cautions that it is too early to reach any proper conclusions about the success or otherwise of the January 2007 rules. She says this can only be done after the Olympic Games are over. She says conclusions should be based not only on the number of complaints from journalists, but also on the general reporting environment and what journalists can and cannot report on.

SECTION 3

Court deals blow to radio licensing system

In January 2008, the government's policy on radio broadcasting was thrown into disarray. A magistrate, Douglas Yau, issued a ruling which declared sections of the Telecommunications Ordinance to be unconstitutional because they curbed freedom of expression provisions in Hong Kong's Basic Law and Bill of Rights. The case was brought by five activists plus the company involved with Citizens' Radio, which is a pro-democracy community radio station.

The activists started broadcasting in October 2005, declaring that the move was a "first step in the fight to open up the airwaves". They broadcast intermittently and without authorisation on an FM channel reserved for a licensed broadcaster, Metro Broadcast. They applied for a radio licence under the Telecommunications Ordinance, but the Executive Council – upon the recommendation of the Broadcasting Authority—rejected the application in December 2006, arguing that the station's management, financial and technical capability was not sufficient to maintain a sound broadcasting service.

The government started mounting raids against the radio station in August 2006. These led to several activists being charged, including legislator Leung Kwok-hung and former legislator Tsang Kin-shing. They faced the charge of maintaining a system of telecommunications without a valid licence under the Telecommunications Ordinance. The defendants argued that they should not be convicted because the law violated Hong Kong's Bill of Rights Ordinance.

The activists brought a separate case to court, challenging the status of the Telecommunications Ordinance. It was this case that prompted Eastern Court magistrate Douglas Yau to declare the law unconstitutional.

In his judgement, Mr Yau argued that the existing radio licensing system fails to provide legal certainty to applicants for radio licences. He points to "the unfettered discretionary power" given to the Chief Executive in Council (Executive Council) under the Telecommunications Ordinance. In particular, he said the law was silent on a number of crucial issues:

"What the citizen should be able to know with certainty is the scope of his (the Chief Executive's) discretion, of how the Chief Executive in Council will exercise his discretion, what criteria will he base his decision upon, if the citizen complies with all the requirements set out in the "Information" and "Radio Code of Practice", will he then be granted a licence, if not then why not, will he receive any explanation from the Chief Executive in Council, and whether there is a way to challenge his decision. The law is silent on all these matters."

Mr Yau went on to argue that the only certainty in front of an applicant is that of certain defeat, given that the government says there are no more FM frequencies available in Hong Kong.

The magistrate concluded that a decision on radio licensing should be made by an independent body—and not by the Chief Executive in Council "alone and at his sole unfettered discretion." He ruled that the "lack of independence" of the deciding (Executive Council) and recommending body (Broadcasting Authority) "is not in accordance with the requirement that any restrictions on the freedom of expression and speech must be prescribed by law and (sic) therefore in breach of both the Basic Law and the Bill of Rights."

As a result of his ruling, Mr Yau dismissed all the charges against the

defendants. These are now on hold pending the outcome of an appeal by the government. The same is true for charges laid against several guests of the radio station, including former legislator and pro-democracy activist, Szeto Wah. However, some guests—including executive councillor Anthony Cheung—were not charged, even though they took part in Citizens' Radio programming.

FURTHER LEGAL TWISTS

The prosecution immediately applied for Mr Yau's ruling to be suspended. This included the dismissal of charges against the defendants. The magistrate accepted that his ruling should be suspended, based on an earlier Court of Final Appeal ruling in a separate case. He also accepted the government argument that if the ruling was not suspended, the authorities would not be able to control the radio spectrum and lives would be endangered as spectrum was also used by emergency services.

The decision prompted the Office of the Telecommunications Authority (OFTA), which oversees telecoms matters, to warn that any unauthorised broadcasts remained liable to criminal prosecution.

Two days later, a Court of First Instance judge, Mr Justice Fung, granted a temporary injunction aimed at preventing Citizens' Radio from going on air again. The application was made by the government, which expressed fear that failure to block further broadcasts might lead to interference with spectrum used by emergency and aviation services.

Two hours later, Citizens' Radio took to the air again for 45 minutes, with the participation of six legislators, including Leung Kwok-hung. Law enforcement officers stood by, but did not take any action. However, OFTA said it was investigating the case. (Summonses were issued to 11 participants in May 2008.)

Later in January 2008, another Court of First Instance judge, Mr Justice Hartmann, refused to extend the injunction, arguing that there was insufficient evidence that broadcasts by Citizens' Radio had interfered with emergency or aviation services or had prompted any copycat behaviour. But at the same time, he warned that anyone who had acted in contempt of the injunction—while it was in force—could still face prosecution.

Mr Justice Hartmann also spoke about the importance of speeding up the appeal process over the constitutional status of the Telecommunications Ordinance. He said: "It is important in the public interest that the constitutional issue which falls to be determined in the criminal proceedings against the defendants be determined without delay."

That does not appear to be the case. The government's appeal against the magistrate's ruling has been set down for three days in September 2008—despite calls for the matter to be resolved as soon as possible. In the meantime, the magistrate's suspension of his ruling remains in effect. Citizens' Radio also announced that it was suspending broadcasts for three months to allow the government time to amend the Telecommunications Ordinance.

However, the activists took to the airwaves again, because no progress had been made on the law reform front. There were several broadcasts – starting in April. Law enforcement officers took no action against participants, but OFTA again threatened to prosecute if there was sufficient evidence. Citizens' Radio organiser Tsang Kin-shing insisted: "We have the right to broadcast. It is a matter of freedom of speech."

In a further development, Citizens' Radio was given leave to appeal against the decision by magistrate Douglas Yau to suspend his constitutionality ruling. Mr Justice Hartmann said it was "reasonably arguable" that Mr Yau may have

exceeded his powers. The judge also said the appeal would be important because magistrates would undoubtedly be called upon to make constitutional rulings on a host of matters.

GOVERNMENT DECLINES TO CONSIDER LAW REFORM

The government has refused to consider calls for the Telecommunications Ordinance to be amended, preferring instead to appeal against the magistrate's ruling—doubtless in the hope that a favourable judgement would mean that law reform would no longer be necessary. But that has not prevented activists and human rights groups from calling for change.

The Hong Kong Human Rights Monitor called on the government to adopt urgent measures to amend the law to provide for a fair and rational licensing and regulatory regime for broadcasting, which should be set out in clear and precise language. In particular, it called for clear indicators of factors that the authorities should take into account in their decisions on whether to grant or refuse a licence application. The Human Rights Monitor also called for the creation of an independent mechanism to handle appeals.

It also called for the opening up of the airwaves when technical developments allow this to happen. This is a point that the HKJA has put forward on several occasions in submissions on broadcasting policy. It argued that the introduction of digital radio services—which the government has been reluctant to promote—would allow public access broadcasting, and that this would help promote media diversity.

This call was the focus of a debate in the Legislative Council held in late January 2008. Democratic Party legislator James To put forward a motion calling for changes to the Telecommunications Ordinance to open up the airwaves and provide digital television and radio broadcasting channels for public use. The motion was rejected—with the help of pro-government legislators and after the secretary for commerce and economic development, Frederick Ma, denied that the government used the licensing system to suppress free speech. Mr Ma handles telecoms and broadcasting matters.

TELECOMS RULING PUTS RTHK REVIEW ON HOLD

Magistrate Yau's ruling had an unexpected impact on another controversial issue—the future of government-owned Radio Television Hong Kong (RTHK). The administration had pledged to release a consultation document on the future of public service broadcasting—and this was widely expected in late January 2008. Twelve days before the scheduled release date, the chief executive, Donald Tsang, dropped a bombshell—the consultation exercise had been put on hold.

Mr Tsang's announcement was in stark contrast to comments made in October 2007 by the policy secretary responsible for RTHK, commerce secretary Frederick Ma. He told RTHK interviewers that he would launch a consultation exercise later that year, and it would last six months. He promised that RTHK's future would be on the agenda.

The broadcaster's future had been in doubt since a review panel proposed in March 2007 that a new independent statutory public broadcaster should be set up, but that RTHK was not fit to take on this role. The review panel had been tasked with considering the future of public service broadcasting, yet its terms of reference did not include the future of RTHK, which is Hong Kong's sole public broadcaster.

In its final report, the committee did make it clear that RTHK would have a diminished role in the broadcasting industry. It said the reduced role of RTHK

“could hardly justify the allocation of seven radio channels and TV airtime on the domestic free TV channels.” It also said that RTHK staff could apply to join the new public service broadcaster.

The report prompted a strong response from RTHK, which felt it should be transformed into the independent broadcaster. Calls were made for the government to include RTHK's future in its own consultation on the review committee's report.

All seemed to be going according to script before the chief executive took a well prepared question in the Legislative Council from Democratic Party member Cheung Man-kwong about whether the consultation document would be released at a Council meeting in late January. Mr Tsang said it was too early to release the document, because the issue was “sensitive and complex”. He added: “It has to be handled cautiously, and in fact, no one wants me to do it immediately.”

It emerged that the decision to put the consultation on hold had been made at a special policy meeting on the previous day. The commerce secretary, Frederick Ma, later outlined reasons for the delay. He pointed to the court ruling on the Telecommunications Ordinance. He said the ruling had thrown up fresh complexities in addition to existing sensitivities about RTHK's future. Pointing to calls for greater access to the public airwaves and the fact that RTHK runs seven channels, Mr Ma said: “We should consider all these in one go. To deal with this comprehensively, the government needs more time.”

However, at the same time, Mr Ma refused to say when the consultation document would be released. This gave rise to suggestions that the exercise might be dropped altogether. Indeed, one media report suggested that Beijing may be unhappy with developments, fearing that RTHK would reinvent itself as a new broadcaster. The *South China Morning Post* quoted a source close to the government as saying that Beijing hoped the future broadcaster would perform its “real” role as a broadcaster for the public. Critics took this to mean that RTHK should act more like a propaganda mouthpiece.

If the report is correct, this would not be the first time that China has intervened in RTHK's development. In 1992, it vetoed a British colonial attempt to transform RTHK into an independent broadcaster.

The RTHK Programme Staff Union and pro-democracy legislators condemned the decision to put the consultation exercise on hold, without any timetable for reviving it. A group called the Save RTHK Campaign—which has been pressing for the broadcaster to become independent—expressed concern that the decision would “deal another blow to RTHK's staff morale, and perhaps prompt even more self-censorship on the part of the broadcaster currently operating as a government department.” RTHK management was more circumspect in its reaction, reiterating that it remained ready to become the independent public service broadcaster.

CONTROVERSY OVER NEW RTHK HEAD

RTHK faced another serious problem in the year under review. In July 2007, RTHK's head, director of broadcasting Chu Pui-hing, resigned after he was photographed with a hostess outside a karaoke bar. Mr Chu had been scheduled to retire in May 2008. His deputy, Gracie Foo, took on Mr Chu's role in an acting capacity. The government administrator was brought in as the deputy director in August 2006, after the government determined that no-one in RTHK was ready to take up the number two position.

In September 2007, the government announced that it was launching a recruitment exercise for the top post. It said the exercise would be open to

senior government officers and those from outside with a degree and at least 15 years of experience at a senior level. Experience in broadcasting would be an advantage, but not essential. Officials hoped the right person would be in place by early 2008.

That was not to be the case. In February 2008, the government announced that it had failed to find a suitable candidate. Among those who applied was an assistant director of broadcasting, Tai Keen-man, who is seen as a high-flyer in the organisation. A fresh recruitment exercise was launched, with the same qualifications except that an applicant would no longer have to be a degree holder.

What followed was pure farce. Media reports suggested that the exercise was being tailor-made for one individual—RTHK talk-show host Robert Chow, who does not have a degree and who is considered to be friendly towards the government. Mr Chow did indeed submit an application. He then held a news conference at which—in emotional terms—he hit out at those who suggested that a non-degree holder could not do the job.

At press time, there had been no announcement on who would head RTHK. But whoever it is will head an organisation with severe morale problems. In addition to uncertainty over the broadcaster's future, staff are concerned about ongoing fraud cases and attempts to impose bureaucratic rigour on the station, following the release of several critical audit reports. Staff will be closely monitoring the performance of the new director to see how he or she handles these problems, although many feel that the only solution is to free RTHK from government shackles.

Two court cases further buffeted staff morale. In June 2007, a District Court judge imposed an 18-month suspended jail term on a former RTHK employee for 14 counts of fraud. The court was told that the ex-employee had claimed HK\$116,200 in expenses on behalf of his mother and brother. The presiding judge said he suspected RTHK managers had not properly regulated the use of claim forms. Judgement will be made in another, similar case in July 2008. The accused in that case named senior staff who had approved his claims. Neither of the accused in the two cases made financial gains. Rather they were making claims for expenses incurred in making RTHK programmes. All charges related to events before 2002, when RTHK introduced stricter mechanisms for claiming expenses.

GAY ACTIVIST WINS COURT BATTLE OVER RTHK PROGRAMME

In May 2008, the Court of First Instance ruled that the Broadcasting Authority (BA), which regulates television and radio programming, had curbed RTHK's freedom of expression, by handing out a reprimand over a programme dealing with gay relationships. Three people in gay relationships were interviewed about their problems and their attitude to gay marriage.

The case was brought by one of the interviewees on the programme, Joseph Cho. He was angry that the BA had ruled that the programme, called *Gay Lovers*, was "unfair, partial and biased towards homosexuality and having the effect of promoting the acceptance of homosexual marriage." The authority was also concerned that the programme featured only the views of homosexuals, and not those opposed to them.

The HKJA expressed the view that the BA had taken an overly narrow interpretation of the authority's code of practice on television programme standards. It noted that the code does not require "absolute neutrality" on every controversial issue, and that "it is not always necessary to ensure that in a single programme or programme segment all sides have an opportunity to speak."

The judge in the case, Mr Justice Hartmann, took a similar line. He said the finding arose out of a misunderstanding of the code of practice. This, he said, resulted in “an impermissible restriction on the freedom of speech, a restriction founded materially on a discriminatory factor; namely, that homosexuality, as a form of sexual orientation, may be offensive to certain viewers.” Mr Justice Hartmann therefore quashed the BA’s determination.

The judge said he was surprised that the authority considered the requirement of impartiality applied in all programmes that deal with “matters of public policy or controversial issues of public importance.” He asked how both sides could be put in programmes dealing, for example, with the fight against bird flu or child slavery.

Mr Justice Hartmann went on to say: “I am satisfied that the programme did not in any way promote homosexual marriage and that the Authority, in so far as it believed it did, was plainly wrong. RTHK did no more than faithfully record the fears, hopes, travails and aspirations of persons who happened to be gay. It did so faithfully, in an unprejudiced manner. In that sense, it is manifest, I think, that the presentation was ‘impartial’”.

However, the judge asserted that the BA was right in ruling that the programme should have been broadcast after family viewing hours. He also rejected the argument that the authority had no statutory power to monitor a government broadcaster.

In welcoming the ruling, Mr Cho called on the government to enact laws banning discrimination on the grounds of sexual orientation. RTHK also welcomed the ruling, saying that it would continue to produce programmes in a strictly professional manner.

The Broadcasting Authority declined to comment, saying it needed to study the ruling. However, the judgement brings into question whether the BA—as it is now constituted—can properly interpret the code of practice and reflect community standards on programming matters. The HKJA has called on the government to review the BA’s role and composition.

CONTROVERSIAL LEGISLATOR TO SET UP NEW RADIO STATION

While Citizens’ Radio has been battling to open up the airwaves, it appears that the government will not object to legislator Albert Cheng setting up his own radio station in the near future. The former talk show host announced that he was getting back into the radio business in January 2008—the same month that magistrate Douglas Yau issued his ruling on the legality of the Telecommunications Ordinance.

However, unlike Citizens’ Radio, which is decidedly pro-democracy, Mr Cheng’s station will be backed by several high-profile pro-government figures. They include executive councillor Ronald Arculli, legislator David Li, former education minister Arthur Li and Chinese People’s Political Consultative Conference delegate Alan Hoo. Mr Cheng is also thought to have close ties with the chief executive—although he was elected to the Legislative Council in 2004 as part of the pro-democracy camp. In December 2005, he voted with the camp against the modest political reform package put forward by the chief executive.

Prior to his election to the Legislative Council, Mr Cheng was a prominent radio talk show host with the commercial broadcaster, Commercial Radio. He hosted the programme *Teacup in a Storm*, which took a strong line against the administration of the former chief executive, Tung Chee-hwa. He suffered serious injuries in a chopper attack outside Commercial Radio’s office in August 1998—and was forced to leave his talk show programme in 2004, citing

unspecified death threats and intense political pressure to tone down his criticism of the government.

The new radio station is set to broadcast on one of two vacant AM frequencies. These are much weaker than FM frequencies, which would hinder the reach of Mr Cheng's station, which will provide 24-hour Chinese-language programming. This will focus on news, public affairs, music and 30 hours of programming under the theme of "harmonious society". This phrase is used by China's president Hu Jintao, and has been adopted by Hong Kong's chief executive, Donald Tsang, to denote the creation of an environment where political differences are minimised. Analysts say that in the mainland Chinese context, the concept implies suppression of dissenting views.

Citizens' Radio has not opposed Mr Cheng's plans. A legislator close to the station, Albert Chan, argued that greater media diversity is needed, and that should include Citizens' Radio. Mr Chan himself is trying to set up a station called New People's Radio, which could take the place of Citizens' Radio if that broadcaster is forced off the airwaves.

SECTION 4

Government targets privacy, obscenity laws

The HKJA has for several years reported that the government has taken little action to safeguard freedom of expression and press freedom. Indeed, at times it has appeared that it has wanted to rein in media freedoms in certain defined areas. This was the case with the aborted attempt to introduce national security laws in 2003. These would have outlawed treason, sedition, subversion and secession, and the theft of state secrets. (See section 1.)

Other areas that past reports have focussed on include privacy and obscenity. This has arisen from concern in certain quarters, including the government, that the media has at times trampled on the privacy of individuals. For example, the 2007 annual report noted that the publication of photos of a Canto pop singer taken without her permission in a concert backstage area had prompted calls for the government to tighten the Control of Obscene and Indecent Articles Ordinance and to enact new legislation aimed at giving greater protection to individual privacy.

NUDE SEX PHOTOS PROMPT CALLS FOR LAW REFORM

The controversy played out again following the publication on the internet of nude photographs of several singers and actresses engaged in sex acts with pop star Edison Chen, who later admitted that he had taken most of the pictures. The photos started appearing on the internet in January 2008.

Nine people were arrested in connection with the case, including a technician from a computer shop, who was accused of downloading photographs from Edison Chen's computer after the star took it to the shop for repair. The technician faces trial in October 2008 on a charge that he used a computer with dishonest intent on several occasions between January and June 2006.

However, controversy surrounded the arrest of another man, who was charged with publishing one obscene photograph after he allegedly uploaded a picture onto the internet. In an unusual move, he was sent to a detention centre after being denied bail. This prompted an outcry over harsh police treatment. Two weeks later, he was freed after the Obscene Articles Tribunal ruled that the photograph in question was indecent, and not obscene.

The detention of the man prompted an unusual protest. About 300 internet users marched to police headquarters in mid-February to protest against the detention. They were also concerned that the police were over-reacting. One protester complained that the police only took action because the photographs involved well-known actors and actresses, and not ordinary people.

The chief executive, Donald Tsang, entered the fray in mid-February. He wrote to legislative councillor Timothy Fok that the publication of the photographs was "a serious issue, which demanded further follow-up." Mr Tsang did not elaborate. But government officials pointed out that they were already reviewing the obscenity law. They expressed the hope that proposals could be put to the public by the end of 2008.

The government's original obscenity proposals involved tighter restrictions on the publication of obscene and indecent material, including the printing of a prominent red line across the page to warn off minors. The proposals were shelved in 2004 amid opposition from the media, including the HKJA, as well as some political parties. It was not known at press time what proposals the government might put forward. However, the government is likely to be grappling with ways to police the internet, especially when photographs might be uploaded on to sites which are based overseas.

Some academics and internet industry representatives have expressed concern about the way that any legal changes might affect freedom of expression on the internet. Kevin Pun from the University of Hong Kong's law faculty says that freedom of speech may suffer: "I can foresee that the internet service providers are going to be under great pressure. They will patrol the web more actively; this means more censorship."

The photos scandal also prompted calls for a rethink about the way that the Obscene Articles Tribunal classifies photographs that may be obscene or indecent. This came after the tribunal ruled that pictures published in two magazines—*Oriental Sunday* and *Next Magazine*—were neither obscene nor indecent. The photos came from the internet batch, but sensitive parts were obscured.

One adjudicator, Mervyn Cheung, said there was a need to refine the classification system. He questioned whether the photos should have been classified as neither obscene nor indecent, saying that they were published simply to boost the sales of the two publications.

Indeed, his view won out in May 2008, when an expanded hearing of the Obscene Articles Tribunal ruled that they were indecent. Magistrate Selwyn Au agreed that the publication of the photos was aimed at boosting sales. He said: "These photos arouse sexual fantasies and enable readers to vividly visualise the circumstances, which make them feel sexual, irritated and disgusted." Mr Cheung was one of the adjudicators in the case. The government said it would prosecute the two magazines.

The controversy also prompted calls for privacy legislation to be tightened. The privacy commissioner, Roderick Woo, proposed that the privacy law should include a new section making it an offence to obtain, disclose or sell personal data without consent. Referring to the nude photos controversy, Mr Woo said: "The incident demonstrates clearly ... that there is a pressing need to actively consider changing the law by the creation of a new offence for knowingly, without the consent of the data user, obtaining or disclosing personal data held or leaked by a data user or the selling of personal data so obtained."

Mr Woo said this could serve "as an effective deterrent in sanctioning irresponsible behaviour in handling personal data online." The privacy commissioner noted that he had first raised the issue in December 2007—before the nude photos scandal hit the headlines. He said it was one of 50 recommendations he submitted to the government in December 2007, in a bid to modernise a law that was first enacted in 1996. The government, for its part, said the public would be consulted if concrete proposals were to be put forward.

However, some were concerned that any law reform might tip the balance against freedom of expression. The chairman of the Internet Society of Hong Kong, Charles Mok, said any changes might turn out to be a two-edged sword. He said: "There is a fine line in the definition of privacy. We may overprotect it and sacrifice freedom of expression and freedom of the press, which are core values of Hong Kong."

The HKJA has for several years warned about the dangers of extending privacy legislation, as it may impinge on the rights of journalists to carry out investigative work. The HKJA was in particular concerned about a proposal by the Law Reform Commission to create two new civil torts—intrusion on the "solitude or seclusion" of others and the making of "seriously offensive or objectionable" publicity about others. Such torts—if they were in place—could have been used in the nude photo scandal.

UNIVERSITY DROPS ACTION OVER SEX COLUMNS

In March 2008, the Chinese University of Hong Kong dropped all disciplinary action against the editors of a student publication that dealt with sex issues. The publication, *Student Press*, came under fire after publishing details of a sex survey, which touched on controversial issues such as sex with siblings and animals. The Obscene Articles Tribunal ruled that the February and March editions of the magazine were indecent. The ruling was made following complaints from the Department of Justice and the Television and Entertainment Licensing Authority.

The university threatened disciplinary action against those involved with the publication. But a special panel decided against taking action against the then editor, Tong Sai-ho, largely because he had already left the institution. It also dropped all action against Thomas Tsang—the editor of the April issue, because the tribunal had ruled it to be neither indecent nor obscene.

Mr Tong is mounting a court challenge against the indecency ruling for the February and March issues. In February 2008, Mr Justice Hartmann gave the green light for a judicial review. He said the case was arguable that the Obscene Articles Tribunal should have explained publicly which parts of the articles were indecent. The *Ming Pao* newspaper is also involved in the case as it reproduced the articles in question.

Student activists had reacted angrily after the Obscene Articles Tribunal issued its indecency ruling in May 2007. One editor, Lau Ming-wai, said: “Many people here (the university) are angry because this is an attack on freedom of speech and freedom of publishing.”

SING PAO AVERTS WINDING-UP PROCEDURES

The financially troubled Chinese-language newspaper, *Sing Pao Daily News*, has a long history of failing to pay staff wages and contributions on time. In April 2008, it came very close to being wound up. The Mandatory Provident Fund Schemes Authority had given *Sing Pao* 21 days to pay outstanding provident fund contributions for staff. It eventually paid HK\$4.9 million in unpaid contributions.

The authority was clearly losing patience. It noted, for example, that *Sing Pao* had repeatedly breached undertakings to settle outstanding contributions, including in one case making out a dishonoured cheque. And it noted that the newspaper still owed contributions for January and February 2008, prompting a spokesman to say that a winding up application to the High Court was still a possibility.

The newspaper has also faced action over its failure to pay wages and benefits on time. For example, in August 2007, a magistrate fined it HK\$156,000 for offences involving the late payment of wages and annual leave pay. Then in March 2008, it was fined HK\$112,000 for similar offences.

Further salt was rubbed into the wound in June 2008, when the court of appeal sharply increased the fine imposed by a magistrate in January 2007 for *Sing Pao's* failure to pay wages and redundancy payments on time. The original fine was just HK\$4,200. The court of appeal raised the figure to HK\$39,000. The three judges noted that the magistrate had “underrated the importance of punctual payment of wages or termination payments.” The maximum penalty for late payment of wages is HK\$350,000 and three years in jail.

One magistrate who has dealt with *Sing Pao*, Chan Yan-tong, said the newspaper had “the worst company record”. He said very few firms repeatedly failed to make provident fund contributions. He also hit out at management for “talking nonsense” and being “full of tiring empty talk”. The newspaper

invariably argued that it was unable to pay because it was short of money.

The newspaper has faced financial problems since mid-2004—after mainland Chinese interests took over the publication. In April 2006, more than 20 journalists, including a senior editor, took sick leave in protest against non-payment of wages and provident fund contributions. And in October 2007, industrial action was averted after the newspaper pledged to settle back pay.

In early 2008, former staff arranged meetings with senior government officials, including the Labour Secretary Matthew Cheung, to press for action over unpaid wages and provident fund contributions. This may have prompted the Mandatory Provident Fund Schemes Authority to threaten to seek the closure of *Sing Pao*. It may also have prompted the government to threaten to introduce tougher legislation on the non-payment of wages and benefits.

There was however a glimmer of hope for *Sing Pao* staff. In April 2008, Hong Kong businessman Carson Yeung became involved in the publication. He purchased HK\$60 million worth of convertible bonds from the newspaper's owner, Hong Kong-listed SMI Publishing. If the bonds were converted to shares, Mr Yeung would become the major shareholder in the firm. He also announced plans to invest HK\$160 million in the newspaper. It remains to be seen whether the investment will ensure the timely payment of wages and benefits to newspaper staff.

PCCW MEDIA CLEARED OVER CROSS-MEDIA CONCERNS

In May 2008, the Broadcasting Authority ruled that a company called PCCW Media and Richard Li—who chairs holding company PCCW—had not breached cross-media ownership rules when they took a 50 percent stake in the newspaper, the *Hong Kong Economic Journal*. PCCW Media owns a pay TV company called NOW Broadband.

The purchase was made in August 2006 by a trust company owned by Mr Li. It set off alarm bells because the *Hong Kong Economic Journal* is one of just a few newspapers that is not owned by a big businessman with strong China links. It is considered to be one of the few independent voices in the Hong Kong media—although media analysts have questioned whether the newspaper's editorial stance is shifting—a position rejected by management.

In January 2007, the Broadcasting Authority ordered PCCW Media to provide information about its voting controllers, as well as Mr Li's involvement in the firm and the *Hong Kong Economic Journal*. If the authority had ruled that cross-media ownership rules had been breached, Mr Li would have to pull out of one of the media organisations or seek an exemption from the Executive Council.

The authority in the end came down on the side of PCCW Media and Mr Li. It ruled that neither PCCW nor PCCW Media had a relationship with Mr Li because he had transferred his PCCW interest to the trust company. A Broadcasting Authority spokesman noted that the trusts are totally separate and independent.

However, the authority put in place additional requirements to ensure that cross-media conflicts of interest do not happen in future. Mr Li and his trustees agreed to report any changes in trust arrangements and the disposition of trust assets relating to PCCW and PCCW Media. The spokesman said that PCCW and PCCW Media had to monitor all dealings with the newspaper "to ensure there is no influence by the Journal over the content of PCCW Media, and vice versa."

HONG KONG JOURNALISTS ASSOCIATION

The Hong Kong Journalists Association (HKJA) is the only industry-wide union of journalists in Hong Kong.

The HKJA promotes the right to freedom of expression and actively focuses on a range of press freedom and ethics concerns. As a trade union, the HKJA focuses on labour rights, pay issues, health and safety, and training.

Executive Committee (2008-09)

Kenny Coyle, Don Gasper, Ho Fu-yee, Ben Kwok, Stanley Leung, Poon Ki-chi, Jackie Sam, Tai Wai-land

General Secretary: Michelle Au Shuk Ling

Hong Kong Journalists Association

Flat A, 15/FI

Henfa Commercial Building

348-350 Lockhart Road

Wanchai

Hong Kong

tel +852 2591 0692

e-mail hkja@hk.super.net

fax +852 2572 7329

www.hkja.org.hk