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**THE CHATER GARDEN INCIDENT: UNWARRANTED POLICE ACTION
- A position paper on the handcuffing of journalists**

The April 25th Chater Garden incident, as it has become known, sent shock waves through the journalistic community. Reporters sometimes have to scrutinize the treatment of weak and less fortunate minorities. Doing this should not make journalists heroes or outcasts. They are ordinary people trying to do a job no different from a bus driver or a banker. When someone peacefully going about his or her business is suddenly prevented from doing so by unjustified police action, and when he or she is physically attacked, treated like a criminal and then just as abruptly released without even half an apology, something is very wrong. That sums up, in simple terms, the basic issues arising from the Chater Garden incident.

The Hong Kong Journalists Association (HKJA) believes the incident raises serious questions about the use of handcuffs and the setting up and enforcement of designated zones. There is a clear need for the government and the police to adopt a new, more enlightened approach towards these issues. With this in mind, the HKJA makes the following points:

1) We consider the general use of designated zones to be unacceptable except in very special circumstances, such as during visits by high-risk dignitaries or when an event takes place inside a closed area, such as the airport. The police should not have total discretion to decide when a designated zone is justifiable. Transparent rules governing the use of such zones should be created after consultation with the media, and justification should be made in public whenever such a zone is created. Each time the police seek to create a designated zone, they must provide Justification in writing. In rare cases where space is limited, pool arrangements should be made, to ensure that at least some photographers have a clear view of the police operation.

2) With regard to the handcuffing incident, we believe that the force

employed by the police was totally inappropriate given that there was neither a life-threatening emergency nor a crime underway. We note that an internal review is now underway. We call on the police to ensure that it is conducted in a fair and impartial manner, that the review's findings are published in full, and that any officer found to have conducted himself in an inappropriate manner should receive appropriate punishment. Furthermore, the police should review existing guidelines on the use of handcuffs to ensure that no room is left for abuse or intimidation.

THE HANDCUFFING INCIDENT

In the afternoon of April 25th, police closed off Chater Garden before taking action to remove right of abode claimants in the park. Reporters who were already in the park were forced into a designated zone within the garden, or excluded altogether from the area. At the far end of the park, the police formed a human wall to contain the demonstrators, who were acting in a peaceful manner. All the journalists could see was a distant view of the back of the human wall. Police photographers, on the other hand, moved about freely, causing further obstruction to journalists.

When journalists refused to enter the designated zone, they were treated roughly. Several officers pushed at least one to the ground. They forced his face down and handcuffed his hands behind his back. Another cameraman was handcuffed, while a third was detained without being handcuffed.

Evidence made available to the HKJA showed that the three journalists made attempts to identify themselves as media workers. Witnesses said they did not act violently or emotionally - contrary to allegations made later by the police, in an effort to justify their actions.

UNREASONABLE MEDIA RESTRICTIONS

The handcuffing incident is the tip of a larger issue - restrictions on legitimate news-gathering during police operations. The Force Procedures Manual allows for the establishment of restricted zones to facilitate operations. Once a restricted zone is set up, ordinary citizens are not allowed in. Designated zones are presented by the police as an accommodation to journalists, in that they are meant to allow journalists to cover police operations.

However, practical reality is often different. During a Falun Gong protest held outside Beijing's Liaison Office earlier, journalists were confined to a designated zone, and did not realise that protesters had been manhandled by police until they saw the action on videos taken by the protesters. The Chater Garden incident is another vivid example of this trend. It is little wonder that the journalists present in the park were reluctant to enter the designated zone, given that they knew their ability to carry out their work would be seriously compromised.

Further, the HKJA has strong grounds for believing that the police failed to adhere to their own guidelines in handling journalists. According to provisions in Police General Orders 39-06, all officers at the scene of an incident shall:

- a) accord media representatives consideration and courtesy;
- b) allocate a dedicated area for media representatives to observe the incident;
- c) not block camera lenses. The police clearly failed on several of these counts during the Chater Garden incident.

The issue also prompts questions about the arbitrary way in which an individual officer may decide to create cordoned-off areas. No guideline is given in this regard. According to Force Procedures Manual 39-06, it is up to the officer-in-charge to consider whether to set up an outer-cordon which restricts the general public and an inner-cordon for journalists and photographers.

UNLAWFUL MEDIA RESTRICTIONS

Although the administration has maintained that the setting up of designated zones is not unlawful, we hold a different view. Article 27 of the Basic Law stipulates that Hong Kong residents shall have freedom of the press and freedom of assembly. Although Article 27 of the Basic Law does not specifically mention the right to gather news, the HKJA considers this to be an integral component of freedom of expression, as laid down in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which is recognised in Article 39 of the Basic Law. Further, articles 28 and 31 of the Basic Law respectively guarantee freedom of the person and freedom of movement within the Special Administrative Region. These rights

can only be restricted where it is necessary to do so, and any restrictions must be proportionate to need. These important benchmarks have been laid down in Hong Kong jurisprudence (*HKSAR v Ng Kung Siu [2000] 1 HKC 117*).

Moreover, international standards set strict limits on what the authorities may do to restrict the rights of journalists. In 1996, the United Nations Special Rapporteur on Freedom of Opinion and Expression endorsed "The Johannesburg Principles on National Security, Freedom of Expression and Access to Information" as an authoritative interpretation of Article 19 of the ICCPR.

Principle 19 of the Johannesburg Principles deals with access to restricted areas in the following terms: "Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed."

Human rights experts are in agreement on the fact that public scrutiny of conflict situations is essential to controlling abuse of rights and promoting accountability. They argue that any move to prevent media workers from gaining access to and reporting on conflict situations is a severe restriction on freedom of expression, as well as the public's right to know. In the light of Principle 19, neither the setting up of exclusion zones to prevent journalists from entering nor the setting up of designated zones to confine movement and newsgathering activities can be regarded as justified restrictions on the right to freedom of expression.

Set against local jurisprudence and international standards, the HKJA strongly believes that any action restricting entry of journalists into an area is a severe restriction of freedom of expression and must be exercised only on a minimal scale and in a restrained manner. Such action must be necessary and a proportionate response to the problem being addressed by the police. Given these criteria, the police action against journalists in Chater Garden would appear to be totally without justification and therefore unlawful.

In handcuffing the journalists for refusing to enter a designated zone, the HKJA believes that the police used excessive force going beyond the permissible limits set in their own internal guidelines. There was no

indication that the journalists had any desire to escape or cause harm to themselves and others - the conditions set down for the use of handcuffs. Indeed, the United Nations Human Rights Committee might consider such action to be of very serious concern, when it next considers Hong Kong's record in implementing the ICCPR, and in particular Article 19.

COMPENSATION FOR UNJUSTIFIED ACTION

Overseas experience shows that infringement of rights may lead to highly embarrassing claims for compensation against the police. For example, in an out-of-court settlement in 2001, the police agreed to pay three British journalists 18,000 pounds in compensation after officers handcuffed them during an animal rights demonstration in the United Kingdom.

One of the plaintiffs, Roddy Mansfield, said the case was a victory for the principle that journalists carrying press accreditation should be free to operate without restraint at marches, protests and other events which represent a potential threat to public order. Clearly, the police felt that there may have been difficulties in convincing a court that they were acting within their lawful power in arresting and detaining these working journalists.

In the United States, the Los Angeles Police Department reached a settlement in late 2001 with seven journalists who were assaulted and arrested at a Democratic Convention. They agreed to pay the journalists US\$60,000. The settlement conditions also required the police to institute a policy that recognised the right of the media to cover public assemblies, even if the police had declared them to be unlawful (*Crespo v. City of Los Angeles*).

All these cases took place during incidents in which many more demonstrators were involved and much more radical action was being used than in Chater Garden. This gives the HKJA further grounds for believing that the police action on April 25th was unjustified. The government and the police clearly need to re-think their procedures in a radical way, and thereby give far greater recognition to the rights of journalists.

Hong Kong Journalists Association
July 12th, 2002