

Submission to Panel on Education, Legislative Council  
Special Meeting on 13 April 2007  
**Academic Freedom and Institutional Autonomy in HK**

YK Chong

International Laws

**United Nations (UN) Committee on Economic, Social and Cultural Rights** interpreted article 13 of the Covenant at its General Comment No. 13 in 1999 that “the **right to education can only be enjoyed if accompanied by the academic freedom** of staff and students...in the Committee’s experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom. The Committee wishes to emphasize, however, that staff and students throughout the education sector are entitled to academic freedom.”

The **International Covenant on Civil and Political Rights (ICCPR)** does not expressly mention academic freedom but many of its articles such as freedom of expression, assembly and association **imply the right to academic freedom**. Mr. Abid Hussain, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression at its report noted actions taken by governments in relation to academic freedom, such as suppression of research.<sup>1</sup>

Domestic Laws

**Article 34** of the **Basic Law** stipulates:

“Hong Kong residents shall have **freedom to engage in academic research**, literary and artistic creation, and other cultural activities.”

**Article 39** of the **Basic Law** states:

**“The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.**

---

<sup>1</sup> “Freedom of opinion and expression - Report of the Special Rapporteur” (E/CN.4/2000/63, 5 April 2000) Visited the web-page of UN High Commissioner for Human Rights at [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

**Article 137** of the **Basic Law** provides:

**“Educational institutions of all kinds may retain their autonomy and enjoy academic freedom.”**<sup>2</sup>

The Hong Kong Bill of Rights Ordinance (Cap. 383) was modeled on the ICCPR so restriction on academic freedom can be challenged in court.<sup>3</sup> I shared the view of Professor Carole Petersen that the Hong Kong courts would enforce the relevant legal provisions in case of a blatant violation of academic freedom.

### Importance of academic freedom and institutional autonomy

“Academic freedom is not for the benefit of the academic, or even of the institution, it is for the benefit of society at large, and society’s failure to provide the environment in which this freedom can flourish will result in the loss of a valuable asset” (Rochford 2003)

Academic freedom is a human right of special importance to the higher education institutions to fulfill their proper functions. They must be protected from the state and business interests.<sup>4</sup>

**“Academic freedom** is a component part as well as an indicator of the level of democracy in a society. A muzzled or intimidated professoriate would not be free to explore all avenues in the search for truth. If academic freedom was perceived to be restricted in a post-97 Hong Kong, international recruitment of new faculty, **essential to maintaining Hong Kong’s international status**, would be greatly hampered. And a faculty of lesser ability would impact negatively on **educating Hong Kong’s next generation**, and on **maintaining and increasing Hong Kong’s competitiveness in the global market.**”<sup>5</sup> (Uldis Kruze 1997)

Professor Uldis Kruze revealed in the survey that academic freedom is a very sensitive issue in Hong Kong’s universities. Half of interviewees requested anonymity and confidentiality and very few responded to the questionnaire survey, arguably due to the

---

<sup>2</sup> The Basic Law contains stronger message than the corresponding provision in the Sino-British Joint Declaration (Annex I, article 10): “Institutions of all kinds, including those run by religious and community organizations, may retain their autonomy.”

<sup>3</sup> Carole Petersen, “Preserving institutions of autonomy in HK: the impact of 1997 on academia and the legal profession” in *Southern Illinois University Law Journal* Vol. 22 1998, 337, 346

<sup>4</sup> Preface to the “Lima Declaration on academic freedom and autonomy of institutions of higher education”

<sup>5</sup> Uldis Kruze, “Academic freedom in Hong Kong, Past, Present, and Future” in a Conference on “Greater China and the return of Hong Kong” held at Centre for the Pacific Rim University of San Francisco on 17-18 April 1997, p4

sensitive nature of the questions or other reasons like time constraints. All the respondents commented that there was a sea change in the dominant paradigm within the academic community. Self censorship had taken place and some respondents were disgusted by opportunists who embraced the new regime in order to become power holders.<sup>6</sup>

After the Robert Chung incident, a Senate of the University of Hong Kong (HKU) set up the Task Force on Academic Freedom in September 2000. The primary question asked by the Task Force is whether individuals had suffered any infringement of academic freedom at HKU. The Task Force found that there was a great deal worry over such matters, and the report confirmed the existence of a perception of some problems with the system. In its conclusion, it stated, “Regretfully, there is evidence to suggest that a number of members of this university have felt that their academic freedoms have been infringed in a variety of ways.”<sup>7</sup>

The “Lima Declaration on academic freedom and autonomy of institutions of higher education” (Lima Declaration)<sup>8</sup>, at its clause 15, states that “All institutions of higher education shall address themselves to the contemporary problems facing society. To this end, the curricula of these institutions, as well as their activities shall respond to the needs of society at large. **Institutions of higher education should be critical of conditions of political repression and violations of human rights within their own society.**”

### Academic Freedom

The UN Committee on Economic, Social and Cultural Rights interpreted “**Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction.**” “Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing.”<sup>9</sup>

In the Lima Declaration, it defined academic freedom as “the freedom of members of the academic community, individually or collectively, in the pursuit, development and

---

<sup>6</sup> See note 5, pp3, 11

<sup>7</sup> Jan Currie, Carole Petersen, Ka Ho Mok (eds.) (2006), *Academic Freedom in Hong Kong*, Oxford: Lexington Books, p83

<sup>8</sup> After September 1986, World University Service requested Manfred Nowak to draft a declaration on academic freedom and higher education institutions’ autonomy. In 1988, at the General Assembly of the World University Service, it adopted this Declaration in September 1988. You may find the text of the Lima Declaration in many books that include: John Daniel (ed.) (1993) *Academic Freedom 2 : a human rights report*, London: Zed Books, Annex 1.

<sup>9</sup> General Comment No. 13 of the UN Committee on Economic, Social and Cultural Rights (1999), paragraph 39. Visited the web-page of the UN Committee on 11 April 2007 at <http://www.ohchr.org/english/bodies/cescr/comments.htm>

transmission of knowledge, through research, study discussion, documentation, production, creation, teaching, lecturing and writing.”<sup>10</sup>

At clause 3 of the Lima Declaration states that “**academic freedom** is an essential pre-condition for those education, research, administrative and service functions with which universities and other institutions of higher education are entrusted. All members of the academic community have the right to fulfil their functions without discrimination of all kinds and **without fear of interference or repression from the State and other source.**”

At clause 6, “All members of the academic community with research functions have the **right to carry out research work without any interference**, subject to the universal principles and methods of scientific enquiry.” At clause 7, “All members of the academic community with teaching functions have the **right to teach without any interference**, subject to accepted principles, standards and methods of teaching.”

In 2000, HKU Council appointed an Independent Investigation Panel to investigate and ascertain the facts surrounding the allegations of interference with academic freedom. The Panel, for the purpose of the investigation, defined **academic freedom**. It included “the unhindered freedom to explore a given subject to the extent that our rational powers of investigation are capable; and the freedom to do so **without influence or pressures external to the process.**”<sup>11</sup>

After the Robert Chung Incident, the HKU Task Force on Academic Freedom adopted a working definition of academic freedom in the form of an institutional declaration as: “**Academic freedom** refers to the **freedom of academic institutions, structures and individuals to study, teach, research and publish without being subject to undue interference**, free of any authority or standard other than the rational methods by which truth is established. The notion of academic freedom reflects the belief that it enhances the pursuit, transmission and application of knowledge, and as such may be supported by society through the funding of academics and their institutions. Academic freedom embodies an acceptance of the need to encourage openness and flexibility in academic work, and of the accountability of academics to each other and to the norms of cooperative pursuit of knowledge.”<sup>12</sup>

### Institutional Autonomy

The UN Committee on Economic, Social and Cultural Rights interpreted institutional autonomy as follows: “The enjoyment of academic freedom requires the autonomy of institutions of higher education. **Autonomy** is that **degree of self-governance necessary**

---

<sup>10</sup> Clause 1 of the Lima Declaration, see note 8.

<sup>11</sup> This definition was put to all of the principal witnesses and none opposed it. See paragraph 11 of the Report dated 26 August 2000 which is available at HKU website. Visited the web-page on 11 April 2007 at <http://www.hku.hk/reportip>

<sup>12</sup> See the Academic Freedom Policy -Report from the Senate Task Force on Academic Freedom. Visited the HKU website on 11 April 2007 at [http://www.hku.hk/acad\\_freedom/](http://www.hku.hk/acad_freedom/)

**for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities.”<sup>13</sup>**

The Lima Declaration states that “**autonomy**” means “**the independence of institutions of higher education from the State and other forces of society**, to make decisions regarding internal government, finance, administration, and to establish its policies of education, research, extension work and other related activities.”<sup>14</sup>

Clause 18 of the Lima Declaration provides that “The proper **enjoyment of academic freedom** and the compliance with responsibilities mentioned in the foregoing articles **demand a high degree of autonomy** of institutions of higher education. States are under an obligation not to interfere with the autonomy of institutions of higher education as well as to prevent interference by other forces of society.”

Clause 19 of the Lima Declaration provides that “The autonomy of institutions of higher education shall be exercised by democratic means of self-government, which includes active participation of all members of respective academic communities. All members of the academic communities shall have the right and opportunity, without discrimination of any kind, to take part in the conduct of academic and administrative affairs. All governing bodies of institutions of higher education shall be freely elected and shall comprise members of different sectors of the academic community. The autonomy should compass decisions regarding administration and determination of policies of education, research, extension work, allocation of resources or other related activities.”

### Principal Concerns: core value and human rights under threat

There are **too many links between the Government and the universities** and it would be difficult for individual academics to assert their rights under the Basic Law.<sup>15</sup>

There is **increased centralization in universities** giving more power to central administrators and less autonomy to individual faculties and academics.<sup>16</sup> “What is most worrying is that Hong Kong’s universities clearly have become more centralized and less democratic since the handover.”<sup>17</sup> Professor Gerber opined that faculty is more likely to defend academic integrity than administrators or governing bodies.<sup>18</sup>

A recent survey result indicated that those respondents who perceived a decrease in academic freedom are primarily concerned about the growing culture of self-censorship. More and more academia avoid or treat very carefully sensitive topics like Falun Gong, China’s treatment of Tibet and the question of Taiwan independence.

---

<sup>13</sup> See note 9, paragraph 39.

<sup>14</sup> Clause 1 of the Lima Declaration, see note 8.

<sup>15</sup> Carole Petersen, (2000) “Preserving Academic freedom in Hong Kong: lessons from the Robert Chung Affair” in 30 *HKLJ* 165

<sup>16</sup> See also Note 15 footnote 5.

<sup>17</sup> See note 7, p153

<sup>18</sup> See note 7, p19

## Recommendations: protect academic freedom and institutional autonomy

### Government

1. **Linkages between universities and the Hong Kong Government should be reduced** and the Chief Executive should not be the universities' Chancellor.<sup>19</sup>
2. The Administration should draft a law to **implement articles 34, 39 and 137 of the Basic Law** in order to protect academic freedom and institutional autonomy.<sup>20</sup>
3. The Government should set up a **specific fund for research** in academic freedom and institutional autonomy outside the UGC/RGC budgets.
4. The Government should set up a **task force to hold a comprehensive review** on ways to protect and enhance academic freedom and institutional autonomy. After genuine and wide public consultation, the task force should make recommendations and formulate a policy on such protection.
5. A **Human Rights Commission should be established** according to the Paris principles (1991) and the General Comment No. 10 of the UN Committee on Economic, Social and Cultural Rights.<sup>21</sup> Such a commission should have powers to investigate infringement of academic freedom and institutional autonomy.
6. Enhance and increase **human rights education** and promotion both in formal education and public education.

### Legislative Council

7. Since the scope of terms of reference of the Commission of Inquiry is very narrow, the Legislature should **set up a Select Committee** for comprehensive investigation on the alleged infringement by the EMB on academic freedom and institutional autonomy regarding The Hong Kong Institute of Education (HKIE) including the following allegations: forced a merger between HKIE and The Chinese University of Hong Kong (CUHK), the Education and Manpower Bureau's (EMB's) repression on those criticized the education reform or policy, repression on Professional Trade Union regarding its protest for surplus teachers and the EMB funding to institutions of higher education must observe its educational policy.

---

<sup>19</sup> See also note 15, p175

<sup>20</sup> In the Netherlands, the National Act on Higher Education introduced in 1986 required that academic freedom is to be respected at each institution. See Note 7, p24

<sup>21</sup> See the paragraph 32 of the Concluding observation of UN Committee on Economic, Social and Cultural Rights on HKSAR Report dated 11 May 2001 (E/C.12/1/Add.58). Visited the HAB website on 11 April 2007 at [http://www.hab.gov.hk/en/publications\\_and\\_press\\_releases/reports.htm](http://www.hab.gov.hk/en/publications_and_press_releases/reports.htm)

8. Legislative Council Members should scrutinize the draft laws with an academic freedom and institutional autonomy impact assessment in order to **mainstream human rights in university governance**.
9. This Penal should request the Research and Library Services Division to **study** academic freedom and institutional autonomy on overseas experience, its obstacles and ways to enhance academic freedom and institutional autonomy in Hong Kong.

#### Institutions of higher education

10. Institutions of higher education should review their governance with the guiding principle that “**institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.**”<sup>22</sup>
11. Institutions of higher education should formally **adopt the Lima Declaration**<sup>23</sup> and establish their own policy statements on academic freedom and institutional autonomy.
12. Institutions of higher education should set up their commissions to monitor the situation by conducting an academic freedom impact assessment on its policy and practice on a regular basis, advise their governing bodies and Senate on matters affecting academic freedom and institutional autonomy and launch regular promotion programs in the campus and to the public. A proper mechanism of a **general grievance procedure** to deal with complaints on infringement of academic freedom should be in place in all the higher education institutions.<sup>24</sup>

#### Final Remarks: our society must remember this, otherwise, we'll pay!

It is rare in the world to expressly mention academic freedom and research freedom in a constitution. However, it seems that our Government is not really serious about this. Very little effort was paid by our Government to implement and promote the relevant provisions in the Basic Law. Even worse, the Government policy on higher education creates and develops an academic freedom hostile environment. **The Government pays \$90,000,000 for the 10<sup>th</sup> anniversary of the establishment of the HKSAR. How much did and will the Government pay on academic freedom to consolidate the foundation of the HKSAR?**

Should the press is the 4<sup>th</sup> estate, the academia should be the 5<sup>th</sup>. Together with the Executive, Legislature and Judiciary, the Press and the Academia are the corner stones of

---

<sup>22</sup> See Note 9, paragraph 40.

<sup>23</sup> See note 15, p174. In 1994, the HKU University Senate considered the Lima Declaration and noted that it was consistent with the university's mission and goals. Professor Carole Petersen considered formal adoption of the Lima Declaration is necessary. See Carole Petersen, (2000) “Preserving Academic freedom in Hong Kong: lessons from the Robert Chung Affair” in 30 HKLJ 165, endnote 34.

<sup>24</sup> One of the recommendations of the HKU Report from the Senate Task Force on Academic Freedom is to set up such a complaint handling mechanism in HKU. See note 12.

a democratic society. **The international community is very concerned with the human rights situation in Hong Kong after the handover.** The 2000 Robert Chung incident was widely quoted in the international human rights reports. Various threats to the press freedom have been drawn serious concerns. The HKIE incident will again greatly impede Hong Kong's image as an international civilized city.

In the early days of the HKSAR, two big incidents of infringement on academic freedom and institutional autonomy suggest that they are not isolated. Rather, they confirm that the human rights situation deteriorates after the handover. There are underlying problems in our systems (both the structures of our polity and the higher education institutions) and culture that enable such kind of incidents comes up time and again. We should prevent the recurrence of similar infringements. Nevertheless, the first question is whether our Government recognizes the existence of the problems and the vulnerability of academic freedom in our society.

**The Chief Executive stated that academic freedom is the core value in our society. If he does not pay lip-service, he should formulate his policy in his next Policy Address. If he forgets this, our society will pay.**

Chong Yiu Kwong, LLM(human rights), solicitor  
Part-time lecturer (CUHK), Guest Lecturer (HKIE)  
12 April 2007