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From: **Paul Morris**
Date: 30 Dec 2007 23:06
Subject: Panel on Education
To: kmho@legco.gov.hk.

Dear Stanley,

I refer to your letter of 19 November 2007 relating to the *Research Report on Academic Freedom and Institutional Autonomy of Higher Education*. You have invited me to provide a written submission, which I now do under the headings in the *Executive Summary*.

Legal protection of academic freedom and institutional autonomy

The Report notes that whilst academic freedom and institutional autonomy in Hong Kong are protected by the Basic Law there is no definition as to their precise meanings nor any reference to an authoritative source of such definitions (e.g. the relevant UN statement) as is the case elsewhere. Consequently, the two major incidents in Hong Kong involving academic freedom (the Robert Chung/HKU and HKIED affairs) have had no common point of reference nor any clear definition of what was at issue. Whilst the HKU inquiry provided a clear working definition of academic freedom, the latter failed to do so.

Plainly, given the significance and the clear challenges to academic freedom in Hong Kong, both resulting from actions by government officials, a clear working definition (or an established source of such) is required to delineate what exactly is being referred to. In the case of the HKIED this lack of any clear definition allowed the Commission of Inquiry (COI) to obfuscate on two matters which they deemed to have occurred. Firstly, whether or not Mrs Law's request to Professor Mok to sack Mr Ip constituted a breach of academic freedom, and secondly, whether Professor Li's threat to 'rape' the IED if it did not merge constituted unacceptable interference in institutional autonomy.

Governing structure of higher education institutions

The Report shows that Hong Kong differs in two major ways from the UK and New Zealand with regard to the governance of HE institutions. In marked contrast to elsewhere, in Hong Kong the CE directly appoints all of the Chairmen of Councils and in most of the UGC funded institutions most of the external members are appointed directly by the Government. In the case of the HKIED all of its external members are appointed by the Government.

It also emerged from the COI that the SEM intended to ensure that future members of the HKIED Council would be drawn from the ranks of serving members of the CUHK Council. If implemented this could have effectively ensured a merger.

Consequently, the degree of independence of the systems of governance of HEs from the Government is minimal at best. This was evident in the failure of the HKIED Council to support the Management when they were put under pressure from the PSEM to dismiss staff, and to provide any support for its President and Vice-President during the COI. The same lack of independence was also evident in the HKU Council's failure to accept the Report on the Robert Chung affair that it had commissioned. This has been explained as a result of a combination of the close links between Govt. and Council members and pressure on Council

members from the Government (see J.Currie et al 'Academic Freedom in Hong Kong'). This scenario is being partly revisited given the failure of the current Government to accept the Report it had commissioned and to seek judicial review.

Essentially when critical incidents have arisen in the HE sector in Hong Kong, most notably the Robert Chung/HKU and the HKIEd affairs, the respective Councils of those institutions seem to have failed to act in a manner that would be expected from a truly independent governing body. The failure of the HKIEd Council to respond to the crisis in an appropriate manner necessitated the creation of the COI. An effective and independent Council would have addressed the issues long before a COI was necessary.

The only long term solution to this is to enact legislation to allow the Councils to choose their own Chairperson and to ensure that the total number of directly appointed Government members is reduced to a maximum of about three or four members.

Funding arrangement of higher education

With regard to the UGC, despite being required in its statutes to protect academic freedom and institutional autonomy there is no evidence of its actively performing this role.

It was evident from the COI that the UGC does not operate at arms length from Government and their respective roles are not clearly defined in legislation (as is the case in the UK and New Zealand). The resulting closeness between UGC and Government is reinforced by the fact that UGC staff members are civil servants, are ultimately responsible to the SEM, and the Chairman of the UGC members are all appointed by the Government.

In brief, Hong Kong recognizes the importance of academic freedom and institutional autonomy. Generally the day to day work of academics is free from improper interference. However, this is despite, not because of, the roles played by the UGC and the Councils of the respective institutions. In reality the system of governance of HE is loose, ill-defined, resembles an 'old boys' network', and lacks the key features that would ensure an appropriate degree of independence between the Universities and Government. Whilst the system generally works smoothly, the two crises that have affected HE in the last decade have demonstrated the lack of independence and the weakness of the governance system. Overall academic freedom in Hong Kong has been defended not by its systems of governance, but rather by individuals and by the active role of the media.

Conclusion

The only way to ensure that the HKIEd saga is not repeated is to put in place a stronger system of governance which ensures an appropriate degree of separation and independence between the Government and the Universities. This will require *inter alia* legislation to ensure that: limits are placed on the number of directly appointed Council members, Council Chairs are appointed by their Council, that the roles of the UGC and the Government be clearly demarcated and that a clear definition of academic freedom be adopted.

Yours sincerely

Paul Morris