

Tom Lantos Human Rights Commission

Hearing
on
The State of Civil and Political Rights in Hong Kong

October 14, 2021- 2:00 p.m.
2172 RHOB and Virtual, via WebEx

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I want to thank the Tom Lantos Human Rights Commission for the opportunity to testify today. The Commission plays an important role in highlighting human rights abuses throughout the world. I particularly want to thank the Commission's co-chairmen, Representative James McGovern and Representative Chris Smith. Both Chairman McGovern and Chairman Smith have displayed a deep and longstanding concern for human rights in Hong Kong and I want to thank them for this, as I'm sure that many of Hong Kong's 7.5 million people also would, were they free to do so. Sadly, in the new Hong Kong, a simple "thank you" to these two distinguished Congressmen is the sort of remark that could be construed as "collusion" with a foreign power and put the speaker at risk of being charged under Hong Kong's National Security Law.

Introduction

Freedom of the press is guaranteed in Hong Kong's Basic Law, the document promulgated by the People's Republic of China in preparation for the establishment of the Hong Kong Special Administrative Region (SAR) in 1997. The Basic Law was designed to reassure Hong Kongers, who were nervous about the takeover by a Communist government, that their territory would continue to enjoy a "high degree of autonomy" for 50 years.

Those promises have now been shredded. The clampdown on media freedom, and the destruction of the pro-democracy *Apple Daily* newspaper, show in microcosm how civil and political rights in Hong Kong are being dismantled.

Since the implementation on July 1, 2020 of a vague and sweeping National Security Law (NSL) decreed by the PRC's National People's Congress, a climate of fear envelops the territory's journalists and others involved in civil society. The city's way of life, which was also supposed to be protected, has been shattered by the imposition of Chinese Communist Party controls and demands for political orthodoxy.

My remarks will focus on the government's deliberate destruction of one of Hong Kong's most important media companies, Next Digital Ltd., publisher of the *Apple Daily* newspaper.

From May 2018 until September 2021 I was an independent non-executive director of Next Digital Ltd., a publicly listed company whose shares traded on the Stock Exchange of Hong Kong; I also served on the company's Audit Committee.

I lived in Hong Kong from 1992 to 2020 and held a variety of journalism positions, as well as serving as the executive director of the Asia Business Council. I was the editor-in-chief of both English language newspapers (the *Standard* and the *South China Morning Post*). I was the Asia Regional Editor at *BusinessWeek* and Business Editor at the *Far Eastern Economic Review*; I also served on the board of governors at the Hong Kong Foreign Correspondents' Club.

I witnessed the sharp end of Chinese power as *Apple Daily* was forced to close. This was done by lawfare – the use of legal methods not in the pursuit of justice but to accomplish political goals. *Apple Daily*, Hong Kong's most important and popular pro-democracy newspaper, had long been a thorn in the side of Beijing and its Hong Kong allies.

The aim was to silence a newspaper that reflected the aspirations of the six of ten Hong Kong people who have consistently voted in favor of more democracy in the three decades since elections began. This end was accomplished by sending hundreds of armed police into the newsroom, jailing senior journalists along with the company's founder and controlling shareholder, Jimmy Lai, and, critically, freezing bank accounts on the say-so of the Secretary for Security. Even after the forced collapse of the company, the company and its directors continue to be the subject of multiple investigations by Hong Kong authorities, including the Securities and Futures Commission, the Stock Exchange of Hong Kong, the Office of the Inspector of Next Digital Ltd. and the Financial Reporting Council.

The attacks on *Apple* show the lengths to which the Hong Kong government is prepared to go – and the depths to which it will sink – in order to enforce a mainland Chinese Communist Party-style of political control in Hong Kong.

Hong Kong is on the front lines of China's plan to reshape the global order. We have not in modern times seen the destruction of one of the freest and most prosperous cities in the world as a result of a takeover by a totalitarian state before this. The willful destruction of *Apple Daily* is emblematic of the pillaging of Hong Kong and the end of Hong Kong's special status. These actions have been taken in violation of the Basic Law and the 1984 Sino-British Joint Declaration, an international treaty, and they call into question China's trustworthiness as an international partner.

Background

Hong Kong previously enjoyed a high degree of media freedom. When Reporters Without Borders started its annual survey of press freedom in 2002, Hong Kong ranked eighteenth in the world. By 2021 it had sunk to eightieth. (China is ranked 177th out of 180 territories.)

The fifteen months since the introduction of the NSL have seen the crippling of independent media voices. The government has systematically tried to destroy the media as an independent, critical voice.

To take only one of the many examples of media outlets that have closed, moved out of Hong Kong, or changed their editorial stance, government-owned broadcaster RTHK is perhaps the most notable. Long viewed as a model of independent public broadcasting, RTHK has replaced top management; well-regarded journalists and executives have left or been forced out; and the broadcaster has become a government mouthpiece, with chief executive Carrie Lam hosting daily programs. Prize-winning RTHK producer Bao Choy, who investigated a 2019 attack on pro-democracy demonstrators (and innocent passengers leaving an MTR station), was prosecuted for the work she did in tracking down the perpetrators of the attack.

The government has indicated that it will continue to pursue journalists exercising their legitimate rights in carrying out their professional duties. In March 2021, Hong Kong and Macau Affairs Office Director Xia Baolong (previously best-known for leading church-wrecking campaigns in Zhejiang province) stated that the principle of “patriots governing Hong Kong” also extends to the media. This phrase of “patriots governing Hong Kong” is interpreted to mean that only those who follow Chinese Communist Party orders can have positions of power.

Hong Kong Chief Executive Carrie Lam has vowed to stamp out “fake news.” Describing “fake news” as a matter of national security, Hong Kong Police Commissioner Chris Tang affirmed in April of 2021 that the police would enforce the law and prosecute journalists should evidence of violations be found. In practice, this means harassing, hounding and prosecuting government critics.

The Hong Kong Journalists Association, one of the last remaining significant civil society organizations, is currently under attack from officials and other pro-Beijing voices. Moves are afoot to force journalists to register, restrict access to internet sites, and take legal actions against journalists who release private information (while allowing pro-Beijing figures who do the same to continue unhindered).

Next Digital Ltd. and *Apple Daily*

■ On May 14, 2021, the National Security Department sent a notice from the Secretary for Security (John Lee, now the SAR’s Chief Secretary) to Cheung Kim-hung, the company’s CEO, informing him that the shares of founder Jimmy Lai (who owned 71 percent of the company) were frozen, as were three bank accounts.

■ On June 16 the Secretary for Security issued three notices under the NSL to the three main operating subsidiaries of the company (Apple Daily Ltd., Apple Daily Printing Ltd., and AD Internet Ltd.) The effect of the notice was to make it impossible for these companies to pay bills due (including June staff salaries for some 600 journalists) or to receive subscription payments from customers.

- This action was accomplished with the Secretary for Security acting as judge, jury, and executioner. His letter simply stated “I, the Secretary for Security, have reasonable grounds to suspect” that Apple Daily, Apple Daily Printing and AD Internet are “offence-related properties” under the NSL. No evidence was provided.
- The Secretary for Security threatened that anyone (such as other company executives or bankers) who violated the account-freezing order could be subject to be 7 years imprisonment.

- He warned that if the company used other accounts to pay bills or take payments on behalf of the three companies they would be deemed contaminated and in turn frozen.
- On June 17, two executive directors and three editors were arrested under the NSL. This was part of an operation that saw five hundred police search the company offices, interrogating journalists and seizing materials.
- The company unsuccessfully applied to the Secretary of Security for a license to pay operating expenses.
 - This resulted in the company being brought before the Labour Tribunal because of its failure to pay wages.
- On June 24, *Apple Daily* published its last edition, quickly selling out a record one million copies. Thousands of supporters gathered outside the company's headquarters to show support for the company and its journalists.
- The company was unable to finalize its accounts because the auditor (Tandem (HK) CPA) also had records taken by police and itself is under investigation (as are the company's two previous auditors, according to official statements).
- Seven Next Digital employees are currently in jail awaiting their NSL trials.

Authorities succeeded in creating a climate of fear, making employees afraid of carrying out their legitimate duties (such as making payments) and prompting some to quit the company. After the police raid, shaken employees quizzed the board about how we could protect them. We could not. Some of those who questioned us were jailed. During one board meeting, rumors that police were on the way to the building prompted an entire department of staff to flee the premises.

Apple Daily's founder and controlling shareholder Jimmy Lai has been in jail for almost one year. He is ritually manacled for his court appearances – this for a 73-year-old man who has always preached non-violence, whose only crime has been the thousands of articles he has written in defense of freedom and democracy – and running a successful media business promoting those ideals. He bears his imprisonment with grace and dignity, having accepted that it is his fate to be held captive for his beliefs.

Notwithstanding the government's wrecking of the company, regulatory authorities, a special investigator, and pro-Beijing media and individuals are pursuing the company and its former directors. The government-owned Hong Kong Science and Technology Parks corporation echoed the Secretary for Security's claim that the company might have committed NSL violations and began legal action to force the company to vacate a building that it had constructed; this would mark the first case of a company asset being seized in Hong Kong as a result of the NSL.

Targets of investigations in Hong Kong are themselves in many instances prohibited even from disclosing the existence of investigations. I would refer members of the Commission to public statements of Hong Kong Financial Secretary Paul Chan in relation to the appointment of an Investigator as well as to his statements about a Securities and Futures Commission investigation into the company and its former directors.

For the purposes of this hearing, it is worth noting that the Stock Exchange of Hong Kong has made a number of inquiries of the company and its directors. In the guise of protecting shareholders of a publicly traded company, it has pretended that the government campaign to destroy the company did not occur.

Shareholders in Hong Kong listed companies, whether resident in Hong Kong or globally, will lose confidence in the legal and financial system of Hong Kong and in the status of the Stock Exchange of Hong Kong as a trusted entity for their investments if the Secretary for Security is allowed, with no court order, simply to put a publicly listed company out of business because he doesn't like what it writes.

Today it is *Apple Daily* and Jimmy Lai – tomorrow it could be...any company, or any person. Even those cheering the destruction of Next Digital and the manacling of Jimmy Lai know, deep down, that today in Hong Kong no one is safe from the casual, whimsical brutality of Chinese Communist power.

Conclusion

The Norwegian Nobel Committee, in awarding the Peace Prize earlier this month to journalists Maria Ressa and Dmitry Muratov, noted: "Free, independent and fact-based journalism serves to protect against abuse of power, lies and war propaganda." The Committee added that "freedom of expression and freedom of information help to ensure an informed public. These rights are crucial prerequisites for democracy and protect against war and conflict." With the destruction of *Apple Daily*, Hong Kong no longer enjoys these protections. The Committee for Freedom in Hong Kong will work to restore these freedoms and hold those who perpetrated these crimes to account.