

**Learning the Importance of Archives Law
through the Tragic Loss of 39 Lives:
an Interview with William Waung (王式英),
Chairman and Founding Member of
the Archives Action Group**

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Introduction

*"Good Governance is to a large extent effectuated by the documentation of decision processes and actions, and making the resulting documentation accessible to the citizens, i.e., the creation, management and dissemination of trustworthy records, which will further be referred to as recordkeeping. Recordkeeping is among the most important means of power and control, and an indispensable part of bureaucratic systems."*¹

The "Archive Law" of the People's Republic of China (PRC) was promulgated on 1st January, 1988². According to the Chinese archives law's general provisions, "any document deemed to have historical value to the state and society, no matter whether created by government action or by private action, is "archival" and must be protected in the public interest."³ The general provisions also assert "unified leadership and decentralized administration" as means to this end. These general provisions reflect the Leninist notion of a "national archival fond."⁴

¹Anneli, Sundqvist. (2008) "Access and Accountability: Democratization of Information in Post-Conflict Societies." *International Council on Archives, KLCC Kuala Lumpur*, pp. 1. Available at: <http://www.ica.org/download.php?id=1806>

² Moss, William M. (Spring, 1991) "The Archives Law of the People's Republic of China: a Summary and Commentary." *American Archivist*, Vol. 54, pp. 217. Available at: <http://archivists.metapress.com/content/p177643t46t36715/fulltext.pdf>

³ Ibid., pp. 217.

⁴ See Grimsted, Patricia Kennedy. (Fall, 1982) "Lenin's Archival Decree of 1918: The Bolshevik Legacy for Soviet Archival Theory and Practice," *American Archivist*, Vol. 45, pp. 429-443, especially 430-431. Available at: <http://www.jstor.org/stable/40292533?seq=6>

The formation and execution of the People's Republic of China (PRC)'s archives law was carried out via the central authority's 'top-down approach'. Such 'top-down policy' is also referred as the 'mandatory approach'. Although the execution of the archives law in PRC is viewed as paternalistic by many, it has effectively eliminated a large group of people (including government officials) from voicing their opinions, as well as successfully ensuring that all bureaus and departments involved put this archives law into immediate practice.

For the PRC, government records serve as an important and yet effective tool for political control, giving the PRC Central Government strict control over their resources, technologies, flow of and access to information, as well as their citizens. According to Simon Chu, Chairman of the Hong Kong Archive Society, "The PRC will try to control everything, and they want to control all access and flows of information. They want to make sure that all the municipal and provincial governments will agree to create the records, so that they can control them. Of course, for them, the archives law also serves some other purposes . . ."

With reference to the Government archives situation in Hong Kong, by contrast, Hong Kong has never been independent politically in the first place. For the local Hong Kong Government, regardless of whether it was during the British colonial period or after the handover to the PRC in 1997, the City has never enjoyed full independence under either ruler. Unlike other former British colonies, such as India, Malaysia or Singapore, Hong Kong lacks a self-reliant government that is willing to take up the responsibility of forming and executing archives legislation, although it has always been in great demand. It was only recently that a group of activists and experts, including legislators, academics, historians, archivists and lawyers, having witnessed the poor state of the Hong Kong Government Archive, decided to collaborate and found the Hong Kong Archive Society (HKAS) and the Archives Action Group (AAG) with the hope of identifying immediate solutions for tackling the 'archives situation', which has been rapidly deteriorating since 1997. One of the major actions carried out by the AAG was drafting the "Public Records Bill", with which to persuade and pressure the Hong Kong Government to take action to implement the archives legislation, as well as to put a stop to the massive destruction of government records.

In contrast to PRC, this kind of 'bottom-up approach' to pressure the government to take action is dependent on the active participation of its people, taken as they saw the urgent need of pushing the local government to take immediate action for protecting and preserving their own documentary heritage; guaranteeing people's rights to

information; as well as for ensuring the transparency, accountability, and good governance of the local Hong Kong Government.

In the following interview with William Waung, the authors will try to explore the true reasons behind the 'lack-of-archives-law' situation in Hong Kong, as well as attempt to explain the opposition in implementing the archives legislation amongst the Hong Kong Government officials. Most importantly, William Waung will also explain how people in Hong Kong could learn the importance of archives law through the 2012 Lamma Island ferry collision disaster, as one of the most unfortunate results of not having a proper public records management system.

The following interview with William Waung (王式英) was conducted via Skype on 14th May, 2013.

PL: Could you please begin this interview by first introducing yourself and your profession before your retirement? In addition, could you please also describe your involvement with the Archives Action Group in Hong Kong?

William Waung (WW): After legal studies and pupillage (barrister professional training) in London, I qualified as a UK Barrister in 1971. I returned to Hong Kong and was admitted as a Hong Kong Barrister in February 1972, and I was in continuous private practice as member of Temple Chambers from 1972 to 1994, specializing in commercial and shipping law. I was appointed as a Justice of the High Court of Hong Kong in 1994. I was the Commercial Judge of the High Court from 1994 to 1997 and the Admiralty Judge of the High Court from 1997 to 2008. I retired from the Hong Kong High Court in 2008.

It was shortly before my retirement that I first learnt about the poor state of the Government Archive in Hong Kong. It was at a dinner party where I met Nelly Fung⁵ [another founding member of the Archive Action Group]—it was she who told me that there was no archives law in Hong Kong. I was absolutely astonished! Nelly Fung proposed that we all needed to do something together. I suggested that we should form a small action group, in order to find out the actual state of the Hong Kong Government Archive; and [present the case for] why we should follow other

⁵ Nelly Fung - Founder of Chinese International School and ISF Academy; and historian by avocation.

countries to establish a similar legislation for saving our government records. That is how the Archives Action Group (AAG)⁶ was first established in Hong Kong in 2008. When we first established the AAG, there were myself, Nelly Fung, Simon Chu⁷ and Don Brech⁸. Don is the former Government Records Service Director in Hong Kong. Don Brech is from Australia; and he used to work for the National Archives of Australia.⁹ In fact, Don Brech was the second professional archivist who joined the AAG. The first professional archivist who joined was Simon Chu. The third professional archivist was Stacy Gould from the USA. She is currently serving as the Archivist for University of Hong Kong.¹⁰ Then, Chua Fi-Lan who is a retired District Court Judge. So these were the core members who set up the AAG in Hong Kong about five years ago. These AAG archivist members were educating the lawyer members of AAG what the government archive situations were like in Hong Kong, in comparison with other overseas countries. We reached the conclusion that the Hong Kong archives system is unacceptable. I said to the AAG members that it was imperative for us to draft a "Public Records Bill", in order to persuade and pressure the Hong Kong Government to take action. It took us over eighteen months to draft the Bill, and it was not finalized until March 2010.

In summary, the first phase of the AAG's action plans was basically to study the local Government's records services and their archival system, and to investigate the archives laws in other overseas jurisdictions in order to use them as reference when drafting our own archives bill for Hong Kong.

PL: When you were practicing as a High Court judge in Hong Kong, did you realize that there was a lack of such archives law in Hong Kong?

WW: No, I did not know. When I first learnt about the 'lack-of-archives-law' situation in Hong Kong, I was absolutely shocked! Given the rather mature legal

⁶ [Hong Kong] Archives Action Group - further information available at: <http://archivesactiongroup.org/main/>

⁷ Simon Chu - President of the Hong Kong Archives Society; Adjunct Associate Professor, History Department, Chinese University of Hong Kong; Special Advisor, Memory of the World Committee for Asia/Pacific Region (MOWCAP), UNESCO; Secretary General of the East Asian Regional Branch of the International Council on Archives (EASTICA); and former Government Records Service Director.

⁸ Don Brech - Consultant of Archives and Records Management; and former Government Records Service Director.

⁹ National Archives of Australia – Homepage. Available at: <http://www.naa.gov.au/>

¹⁰ University Archives – University of Hong Kong- Homepage. Available at: http://www4.hku.hk/hkumcd/index.php/eng/unit/112_University_Archives

jurisdiction in Hong Kong, I assumed that there would already be a proper archives law in place to govern our public records. Unfortunately, in reality it is not the case at all.

PL: With your expertise and your professional knowledge, why did you choose to take part in advocating archives law, instead of doing other things that would tend more towards commercial law, which you practiced for a long time before your retirement?

WW: Because I regard it as vitally important for Hong Kong. There are two principal activities that I have undertaken after my retirement. One of them is to serve as a Board Director and Endowment Trustee of the Hong Kong Maritime Museum (HKMM),¹¹ and in that work the HKMM has recently opened its beautiful new Museum at Pier 8. The other work is to become an AAG member and to advocate for archives law for Hong Kong. The archives law for me is far more important than the HKMM. In my opinion, the HKMM would no doubt benefit people in Hong Kong, but not every single person. On the other hand, the archives law would definitely affect every single one of our citizen in Hong Kong, and also our future generations because the archives law governs the Hong Kong Government's creation, preservation, archiving, and giving access to public records. These public records are the most important aspects of the documentary heritage of any civilized culture or nation. That is why I have invested a lot of my time and energy in advocating for archives law for Hong Kong.

PL: How do your professional knowledge and your expertise contribute to your current work for the AAG?

WW: First of all, drafting the archives bill was a very technical exercise indeed. A law basically has to do with a legislative creation of a proper system in relation to a particular area of Hong Kong activity. A law is to set out in legal terms the vision of what that system is, whether it is a law relating to the archives, or a law in relation to the sale of goods. Ultimately, it is all about governing what should be the standards that everyone must abide by in that system of governance, and the detailed provisions of the law are only there to achieve that goal. So my knowledge in the law helped considerably in putting together this draft bill. During this exercise, we studied the archives law from England, Australia, and New Zealand in order to take the best parts from each jurisdiction and put together for Hong Kong our "Draft Public Records

¹¹ Hong Kong Maritime Museum – Homepage. Available at: www.hkmaritimemuseum.org/

Bill”¹².

PL: For places like India, Singapore, Malaysia - they were all British colonies at one time – but all these countries have archives laws developed. In fact, their governments are all practicing such a law. On the other hand, Hong Kong is the only exception in this regard, so I find it very strange. Could you tell me the reasons behind this lack-of-archives-law situation in Hong Kong?

WW: Yes, it is very strange indeed. I think during the British colonial period, there was already an absence of an archives law in Hong Kong; however, there was an archives law in the UK. And the British were doing not too poorly in terms of archival management in Hong Kong. Before 1997, they [British Hong Kong Colonial Government] were actively creating, collecting, keeping, and archiving the government records. Because of the democratic system in England, the archives management in Hong Kong had to be subject to questions in the Parliament of the United Kingdom. For that reason, although there was not archives legislation during the British colonial period, Hong Kong was not doing too badly in terms of public records management within the Government. However, after 1997 [the transfer of sovereignty over Hong Kong], things started to go downhill. With other former British colonies like India, Malaysia, and Singapore, when they became eventually independent, they simply accepted the necessity for archives law.

Unfortunately, Hong Kong, being not independent, was in a very unusual situation. China, our motherland, ruled by the Chinese Communist Party, has a good system of archives legislation. Whereas Hong Kong, where we could enjoy a much greater degree of political expression, ironically does not have an archives law. . . . I think it is the result of a combination of different political and social factors. It is my pure speculation that the major reason for the Hong Kong public records services to decline after 1997 was because our Hong Kong SAR Government¹³ became increasingly dominated by weak civil services and powerful property tycoon lobby. Which I think is very unfortunate for Hong Kong. Whether this is the real reason behind such resistance in implementing the archives law amongst the local Government officials, I have never been able to understand. I can only speculate.

PL: Is there anything we can learn from Mainland China in terms of the

¹² Archives Action Group - Draft Public Records Bills. Available at: http://archivesactiongroup.org/main/?page_id=4

¹³ Hong Kong SAR - Hong Kong Special Administrative Region Government

treatments of government archives or from their public archives systems?

WW: For a country, having an archives jurisdiction basically means that it is very proud of its history, proud of its own culture and civilization. China has always been extremely proud of its country and cultural heritage. And that is why during imperial China, all the emperors would have large collections of historic records, not just from their own dynasties, but also historic records of the past dynasties. All jurisdictions which care about their history would normally have a good and mature archival system readily developed and an effective archives law in place to ensure that public records offices are doing their job properly.

Because of the way history developed, Hong Kong has never put any emphasis on its own local history, and everything is both seen and treated as temporary. Hong Kong has always neglected civic education. That is why we have not been able to energize Hong Kong people to care more about their own history, their own cultural heritage, and to care about the Government Archive. With that as the background, the Hong Kong Government's reaction to archives law is: "What is the rush? We are doing okay! It really is not our high priority."

PL: For us teachers, librarians working in Hong Kong and overseas, and for academics like me and Dr. Lu Yang - is there anything we could do on our side to contribute our parts in terms of advocating for archives law for Hong Kong?

WW: Yes, the first thing you should do is to write about it. But more importantly, the AAG has been courting the local political parties to persuade them to push the Hong Kong Government to take immediate action.

In fact, the AAG went to see Leung Chun-ying¹⁴ 2 years ago [in 2011] - to ask for his support and his response was very positive at that time. As soon as he was elected, and became the Chief Executive of Hong Kong in 2012, I went to see him again personally, and we had a one-on-one meeting in June 2012 about implementing archives law for Hong Kong. He said to me that he would study it with his new team, but eventually, as it came out, they are not going to implement it.

In order to push the Hong Kong Government to move forward, the Government needs to be pushed by the people of Hong Kong. For the people of Hong Kong to move,

¹⁴ Chun-ying Leung – The Chief Executive of Hong Kong (SAR). Available at: <http://www.ceo.gov.hk/eng>

they have to understand the importance of proper government records management. In fact the 2012 Lamma Island ferry collision disaster¹⁵, (discussed later) became a very good lesson for all of us—what Hong Kong has become and suffered, by not having a proper system of public records management. As you can see, the reason that we do not have archives law is the development and result of our own unfortunate history.

I have been studying the Marine Report and I have done an Addendum to the AAG submission to the Ombudsman. My Addendum to this Marine Report implicates public records management in Hong Kong. Basically, what I want to highlight in our AAG Addendum submission is that the Marine Report shows huge shortcomings by the Hong Kong Marine Department¹⁶--there were no lifejackets for children, the passenger seats were not properly secured, a watertight bulkhead door was lacking—which led to the very fast sinking (90 seconds) of the ferry and resulted in the tragic and unforgivable loss of 39 lives, including many children.

So the Report reflected very negatively on the Hong Kong Marine Department. There was a legal requirement for a ferry to have on board lifejackets for children. The Marine Department deliberately did not apply the law. During the public hearing, the Maritime Department was asked why lifejackets for children were not on the ferry and the Marine Department failed to apply the law, and their explanation was that the Marine Department has a policy of not enforcing the law for ships or vessels built before the coming into effect of this law. When the Hong Kong Marine Department was asked to show their policy, they said they did not have any written documents. Such information was only meant to be passed verbally from officers to officers, based on memories.

What I am trying to highlight is obviously very serious and damning against the whole government system. What is not understood by outside people is that the archives law is not just about archiving documents by the HK Government or merely filing for record-keeping reasons. This archives law will affect every single one of us in Hong Kong. I wrote in an article for *The Hong Kong Lawyer* regarding the first and foremost relevance and importance of a “Public Records Bill”:

The driving force for proper records management (keeping, destruction or transfer) derives from the identification and analysis of the business of the particular government agency, taking into account not only the legal and

¹⁵ Lamma Island Ferry collision - further information available at:

http://en.wikipedia.org/wiki/2012_Lamma_Island_ferry_collision and www.coi-lamma.gov.hk/eng

¹⁶ Hong Kong Marine Department – Homepage. Available at: <http://www.mardep.gov.hk/en/home.html>

organizational record keeping requirements, but also the interests of all stakeholders...¹⁷

Archivists, first of all, must understand the nature of the business of a particular government department, that is, what are its core businesses, its core functions, its core services, and what it is supposed to do. You have to understand all that before you can even begin to say what are the necessary documents you must create as a records manager, in order to have an efficient records management system to operate to carry out the basic functions of that particular government agency.

As a result, records management systems will and should vary from one government department to another, and there is no one single system that could fit all departments. The Marine Department's records manager is different from the Hospital Authority's records manager; and should also be different from the Financial Secretary's records manager. It is because each government department performs totally different functions, so the proper archives legislation will entail the following two things. First, you have a central records authority, and it would have officers to work with each government departments' records managers. In other words, each individual government department would have its own records managers. And the central archive authority people would work with the records managers. The records managers should have access to the very top of that department, and it is only in that way that you could have efficient creation of records. That is the very first step. You have to create records, and the proper managing of records, proper preservation of records and proper archival of records come much later down the chain.

Secondly, you have to create the right records before you can even talk about the preservation and the management of records. It has all to do with efficiency. We all know that in order for us to work properly, we all need to have a proper record filing system. If we do not have a proper record filing system, we will not be able to find our documents efficiently if at all. So what is it all about? It is all about efficiency. Memories may not be adequate and especially with the Hong Kong Government, civil servants tend to change jobs all the time due to the job rotation system. Government officials simply come and go. More importantly, you cannot rely on memories to pass information from person to person. The only reliable way to do it is via proper and professionally created records—the fuller the record, the better the other person will then be able to carry on doing that work. That is the essence of the vital necessity for record legislation.

¹⁷ Waung, William. (7.2011) "Good Governance & Preserving History: Why Hong Kong Needs an Archives Law." *Hong Kong Lawyer*, pp. 22. Available at: <http://archivesactiongroup.org/main/wp-content/uploads/2012/04/Articles2.pdf>

PL: For us academics, teachers and librarians, would you agree that our job is to educate the next generation, to help promote the importance of the archives law for Hong Kong?

WW: Your job now is to educate the Hong Kong people the importance of what government archive records can do, and what these records are about. In fact, it is very simple! It is about how our government should create their own records, so that our government can operate more effectively and efficiently.

PL: Do you know if there have been any surveys carried out amongst the local universities or the general public to ask about their understanding about the archives law and whether they think there is a need for such a law in Hong Kong? Have there been any such surveys carried out in Hong Kong in the past?

WW: No, I don't think so.

PL: Do you think there is such a need in Hong Kong?

WW: Yes, but a survey takes money. What you should promote is to say to all the academics, and to all the people involved in archival work, to organize the students to do such questionnaire surveys, and to broadcast the result. Students are indeed the most powerful force. If you can organize or inspire the students, or even young people, they will push their government to take action. I am trying to organize an exhibition at the Hong Kong Maritime Museum about the importance of archives. I am also trying to organize an exhibition about maritime safety based on this [Lamma Island ferry] Marine Report. As I would like to have the Hong Kong people, especially the children to understand in a small way what the creation of government records means. After seeing this exhibition, they will go back to ask their parents and teachers, "Hey! How come we don't have an archives law in Hong Kong?"

PL: As I understand the current situation I don't think the archives law could be implemented in the next five years because it will simply take a long time. In that case, what kind of impact would it have on Hong Kong society, especially on the Hong Kong Government's operations as a whole? What kinds of actions will the AAG take for tackling the situation?

WW: At our next AAG board meeting, we will discuss our future strategies. Part of our future strategies are, in terms of short-term actions, to make people learn from

this Marine Report and its serious implications. We want to push some of the government departments to start adopting proper records creation, and that would be the very first step. I think the Marine Department is already saying that they need to have complete review of their governance and control system. The AAG has offered to help the Marine Department, as well as informing the general public what needs to be done.

When it comes to other long-term action plans, the government is trying to stall the archives law process by appointing a law reform sub-committee, which normally means that it will take about ten years for the law to be enacted. We need to continue to push the government to enact the law much faster, at least part of the law. For example, they could pass the law, maybe not in relation to [public] access, but they could at least pass the law up to an earlier stage before access. If you look at our Bill, it is divided into different Sections: creation, preservation, archival, access, and sanction. They can leave the access part of the law until much later because they might not be happy with the idea of public access. We need to first concentrate on the creation of archive records. We also have to stop the massive destruction of government documents. You probably know that over the last twelve months, the local government has been destroying a huge number of documents. Their excuse was that they needed to relocate their central government offices from the Government Hill to the Central Government Complex at Tamar. As you can see, there are many different directions that the AAG has been pursuing at the same time.

PL: Are you saying that during the British colonial period, the local government was keeping the records as a routine rather than relying on the archives law to collect the documents, because the archives law never existed in Hong Kong even during the British colonial period? Is that what you meant?

WW: Yes, under the British Colonial Government, they were doing the necessary routine archival work, that is, record creation, record preservation even without the archives law at that time. Unfortunately, after 1997, everything has gone downhill, therefore we need the archives law to stop the situation from deteriorating further.

PL: During the British colonial period, did the individual bureaus and the government departments in Hong Kong have a choice to submit or not to submit their records to the Government Archive? Or they could choose to submit their records in a selective fashion? Or it was mandatory for every single department to submit all the records to the Archive, since there has never an archives law in

place?

WW: You see this is the key to the necessity of the archives law for Hong Kong. The selection should not be done by the individual government departments. The selection should be done by an independent authority. Of course, both parties do need to work together, but the final authority must be an independent authority, that is the archives law authority. That is why it requires the creation of the legislation, so that the power is in the hands of the archivists—the government archivists—and not in the hands of governmental departments.

PL: Yes, I agree, but during the colonial period, who got to decide what kinds of records or documents should be submitted to the Government Archive?

WW: I think it was up to the individual government departments. I do not know what the situation was like then, but there were no complaints at that time about the massive destructions of government documents. And I think the civil servants [during the British Colonial Hong Kong Government] were much better civil servants if I may say that.

PL: Another question I want to ask about is the motion on the archive law. It went to Legislative Council and there were not enough votes for the motion to pass. Is this correct?

WW: You have to understand under the Basic Law¹⁸, and under a very strange political structure, in order to pass a motion in the Legislative Council, you need both the geographical constituencies, which means “one man, one vote” or democratic constituencies, as well as the functional constituencies which means largely non-democratic pro-government constituencies, and you need to have a majority from both. Although the majority in total numbers was in support, when it comes to the functional constituencies, all they need to do is to abstain; they don’t even need to vote against it. If you have, let’s say, twenty functional, you need at least ten positive votes. All you need is eleven of them to abstain, and that is enough. That is our version of legislative democracy and that is where the problem lies. It is because we do not have universal suffrage, and we therefore do not have democracy in Hong Kong— all the more reason we must have the archives law implemented.

¹⁸ The Basic Law of the Hong Kong Special Administrative Region of the Peoples Republic of China. further information available at: <http://www.basiclaw.gov.hk/en/index/index.html>

Unfortunately, most Hong Kong people do not understand this. Most Hong Kong people are blind to the ridiculous situation in Hong Kong, both in terms of our political system, as well as the Government Archive. And our legislators are useless in explaining it to the people. All they did was negative criticism. They could at least educate the people of Hong Kong on how the system works, because people in Hong Kong are not stupid. But most people don't understand why they need to vote. They never understand, why, when the majority in the Legislative Council was in support of a measure, it could still be defeated. It was defeated because of the defective political system which is slowly killing Hong Kong. That is why a former judge, someone who knows about the system, who studies the law, who studies the details, can understand why we are in this appalling situation, and that is why I am devoting so much of my time in the pushing for archives law in Hong Kong.

Lu Yang (LY): Have you ever studied the national archives laws of China?

WW: Not only have I studied the national archives law¹⁹, I have also studied the²⁰ provincial laws of the different provinces in Mainland China. I also studied the city archives laws of Qingdao.²¹ Not long ago, I went with the AAG to Qingdao with TVB [Television Broadcasts Ltd. of Hong Kong]²² for the shooting of a documentary on archives law. We visited the Qingdao Municipal Archives²³ and talked to the archive people in Qingdao. During our visit, they produced, at our request, a massive amount of land documents (the very important documents are always land documents), which are usually archived within twelve months of their creation. The Qindao Chinese officials even showed us a land transaction approved by the City Hall of Qingdao.²⁴ From approval, document creation, document checked [appraised], to final arrival at the archive took about twelve months. They have wonderful archives systems in Mainland China and they are always fully used by the locals.

¹⁹ Archives law of the Peoples Republic of China. Further information available at: <http://baike.baidu.com/view/102861.htm>

²⁰ *Pearl Report on Public Records: Mainland versus Hong Kong*. [Online video] Available at: http://archivesactiongroup.org/main/?page_id=400

²¹ Archives management regulations of Qingdao, available at: http://www.34law.com/lawfg/law/1797/3388/law_892534383489.shtml

²² TVB-Television Broadcasts Limited of Hong Kong – Homepage. Available at: <http://www.tvb.com/>

²³ Qingdao Municipal Archives – Homepage. Available at: <http://www.qdda.gov.cn/>

²⁴ Qingdao Government Affairs Online – Homepage. Available at: <http://english.qingdao.gov.cn/n2043295/index.html>

In addition, I know from good sources that the Mainland Chinese authority is not against archives legislation and that there is no opposition from China to Hong Kong's proposed archives law. The opposition is only found in Hong Kong, by the combination of the Hong Kong Government and the "big boys" in the business communities. I think they are probably the property tycoons.

LY: What do you think of the archives law in Mainland China? In addition to ensuring that the individual government bureaus and departments are creating and archiving their records, do you think the archives law in China is doing well in terms of guaranteeing people's rights to information or I should say rights to governmental information?

WW: When I was in Qingdao, [China], we saw heavy usage of the local government archives amongst the general public. The local public in Qingdao was using the archives to find out about the past employment or to find information about their parents or grandparents or other ancestors. Based on what I have seen, there have been no problems about access at all in that particular part of China.

In our Bill, the final Part is about access. Now, access has two aspects: one is access given; the other is denial of access or the refusal of access. In Hong Kong, people can try to have access, but the government has actual right to say, "NO!" The draft bill provides for an appeal mechanism like an appeal to a court. So in cases of denied access, there is a central body to act as an appeal court to decide whether the denial or refusal is reasonable or not. But in Hong Kong, we have created this bill to deal with the creation, preservation, archival and access [aspects]. And there is also the penal sanction, which means that anyone who disobeys the law will be punished. Previously, our concentration has always been more on the whole bill from creation to access. But recently with the massive destruction of the public records in Hong Kong, we are very concerned about preserving them. Even more recently, with the Marine disaster Report, the need for creating proper records has become even more urgent. As you can see, it is necessary for the draft Bill to cover all aspects. But if the Hong Kong Government is willing to discuss with the AAG, and we are happy to say, "Let's do Parts 1, 2 and 3 first, and leave the access until later."

LY: What is the current situation in Hong Kong regarding access to government information?

WW: The Hong Kong Government has now created two Law Reform Subcommittees:

one is on archives; the other is on access to information. Now access to information is a very difficult area, and the AAG deliberately does not want to go into this, because there is also the element of privacy.

In Hong Kong, we have something called the Privacy Law, which makes it so you cannot easily reveal the Hong Kong ID card details of the people, because they say they contain personal information. Your hospital records also contain private and personal information! So access to information is often associated with privacy or personal information. The AAG is mainly concerned with the creation and preservation of government documents. Access to the documents through archives would eventually take place of course, but much later. Only after the records have been transferred to the Archive can you begin to talk and ask about access.

Whereas access to information is totally different and is contemporary, for example the media may say we need to know about this and that. You have the documents, but I don't necessarily need to see the documents. You just need to give me the information, which is a very different aspect. It has more to do with the immediate transparency of government operations; and is about people's right to know about good governance. The transparency of government operations is a very important feature of democratic society. As the Marine Report says what the Marine Department has done is totally not transparent. They have an oral policy about not enforcing the law, but no one outside the Marine Department knows about this policy. No one from the Marine Department said to the public, "Oh, there would be no lifejackets for children!" Only the Marine Department knew that. If there had been a law to guarantee your right to information, everything would have been much different. If there had been an archives law, they must tell you everything about their policy which must be documented.

PL: Anything else would you like to add to close this interview?

WW: I think we should have as many local and international archives conferences as possible so that the media will have a chance to cover and to educate more people about the current [archive] situation in Hong Kong. Tell all your friends and tell your friends to tell their friends, but don't give them a technical document like the bill. Don't give them my article, because it is a very technical document. But give them concrete examples, example like the Lamma Island ferry collision disaster that people could easily understand. For example, tell them that the Hong Kong Government does not have a proper public records system, and this led to the loss of 39 lives.

That is something the general public in Hong Kong can easily and must understand. In time, the Hong Kong Government will eventually be forced to change due to public pressure.

Conclusion

Based on the above interview with William Waung, we might never be able to identify the true reasons for the lack-of-archives-law situation in Hong Kong, and the opposition to implementing the archives legislation amongst the Hong Kong government officials might always remain a mystery; but the unavoidable truth remains that the public records service performed by the local government archive continues to decline. Meanwhile, no one has been able to put a stop to the massive destruction of public office records, all due to the absence of an archives law in Hong Kong.

Advocating for the archives law is only a small, and yet important, chapter of Hong Kong's democratic development as a whole. The former 150 years of British colonization and the political separation from mainland China have enabled people in Hong Kong to enjoy a much greater degree of political expression. At the same time, the actions carried out by the AAG have explicitly highlighted to us that there is still a great demand for a much more transparent government, a strong desire for a democratic society, and the hope that the local government will assume a leadership role in preserving and educating about our documentary heritage that is unparalleled elsewhere in the world. These give us all the more reason for the people to come together to voice their concerns and to pressure the Hong Kong Government to take effective action to implement the archives law. To conclude this article, I want the Hong Kong Government and the people of Hong Kong to ask themselves this very important question, "How many more of such Lamma Island ferry collision disasters we would have to endure, before everyone of us in Hong Kong could truly understand the importance of Archives Law?"

References

Anneli, Sundqvist. (2008) "Access and Accountability: Democratization of Information in Post-Conflict Societies." *International Council on Archives, KLCC Kuala Lumpur*, pp. 1-6. Available at: <http://www.ica.org/download.php?id=1806>

Archives Action Group. (2012) *Draft Public Record Bills*. Available at: [http://archivesactiongroup.org/main/wp-content/uploads/2012/04/Draft Public Records Bill 12.03-2.pdf](http://archivesactiongroup.org/main/wp-content/uploads/2012/04/Draft-Public-Records-Bill-12.03-2.pdf)

Frisch, Nickolas. *Hong Kong's Blind Spot: the Territory Lacks a Law to Ensure the Government Preserves its Records*. Available at: <http://archivesactiongroup.org/main/wp-content/uploads/2012/05/Hong-Kong's-Blind-Spot.pdf>

Grimsted, Patricia Kennedy. (Fall, 1982) "Lenin's Archival Decree of 1918: The Bolshevik Legacy for Soviet Archival Theory and Practice," *American Archivist*, Vol. 45, pp. 429-443. Available at: <http://www.jstor.org/stable/40292533?seq=6>

Moss, William M. (Spring, 1991) "The Archives Law of the People's Republic of China: a Summary and Commentary." *American Archivist*, Vol. 54, pp. 217-219. Available at: <http://archivists.metapress.com/content/p177643t46t36715/fulltext.pdf>

The Pulse: Why Hong Kong Needs an Archive Law. (25th November, 2011) [YouTube video] Available at: <https://www.youtube.com/watch?v=cOHTfpyeB6Q>

Pearl Report on Public Records: Mainland versus Hong Kong. [Online video] Available at: http://archivesactiongroup.org/main/?page_id=400

Report of the Commission of Inquiry into the Collision of Vessels near Lammar Island on 1st October 2012. Available at: www.gov.hk/en/theme/coi-lamma/pdf/coi_report_e.pdf

The Tragedy of Hong Kong Archive Preservation Status: Simon Chu at TEDxKowloon. (16th February, 2013). [YouTube video] Available at: <http://www.youtube.com/watch?v=7J1LLdKg6xA>

Waung, William. (7.2011) "Good Governance & Preserving History: Why Hong Kong

Needs an Archives Law." *Hong Kong Lawyer*, pp. 16-29. Available at: <http://archivesactiongroup.org/main/wp-content/uploads/2012/04/Articles2.pdf>