

**THE SIX-MONTHLY REPORT ON HONG KONG**

**1 JANUARY TO 30 JUNE 2018**

Deposited in Parliament by the Secretary of State for Foreign and Commonwealth Affairs

**[September 2018]**

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# FOREWORD

This is the 43rd in a series of reports to Parliament on the implementation of the 1984 Sino-British Joint Declaration on the Question of Hong Kong. It covers the period from 1 January to 30 June 2018.

Twenty-one years after the handover to China, Hong Kong continues to be a prosperous and vibrant city, a global financial centre, a bridge between mainland China and the rest of the world, and an important trading partner in its own right. Hong Kong’s ability to fulfil these roles is underpinned by the essential elements of the ‘One Country, Two Systems’ framework, provided for in the Sino-British Joint Declaration and enshrined in the Basic Law: its common law system and rule of law, its capitalist economy and its rights and freedoms.

The Sino-British Joint Declaration remains as relevant today as when it was signed by the governments of the UK and China more than 30 years ago. It continues to be a legally binding treaty, registered with the UN, and the UK Government remains committed to monitoring its implementation.

Hong Kong continues to be an important feature of the UK’s bilateral relationship with China. The Prime Minister underlined the importance of faithful implementation of ‘One Country, Two Systems’ in her meeting with President Xi Jinping during her visit to Beijing in January. In my first visit to China as Foreign Secretary in July, I raised the matter of Hong Kong with my counterpart, State Councillor Wang Yi. I recognised the successes of ‘One Country, Two Systems’, but also underlined concerns about a range of incidents documented in this series of reports to Parliament in recent years.

The UK Government is also committed to continuing to build on its close links with Hong Kong to create an even deeper and more prosperous partnership. The formal launch of the UK–Hong Kong Strategic Dialogue on Trade Partnership during the GREAT Festival of Innovation in March laid the ground for an ambitious joint programme to enhance collaboration on a number of priority areas, including promotion of global free trade, innovation and the creative industries.

I judge that most provisions of the Joint Declaration are being implemented faithfully, and that ‘One Country, Two Systems’ generally continues to function well. I am concerned, however, about continued pressure on Hong Kong’s high degree of autonomy and on the rights and freedoms guaranteed by the Joint Declaration and enshrined in the Basic Law.

In January, the UK Government expressed concern about the rejection of Agnes Chow’s nomination for the Legislative Council by-election, noting that the right to stand for election is a fundamental right enshrined in Article 26 of the Basic Law. This came shortly after the High Court ruled that Returning Officers have a substantive power to determine whether prospective candidates are sincere in their pledge to uphold the Basic Law, a power first used to prevent prospective candidates from standing for election. These events were followed by the imposition of a custodial sentence on two former pro-democracy legislators, bringing the number to face prosecution since the 2016 elections to 12.

This reporting period also saw growing concern about the extent of freedom of speech in Hong Kong, particularly in the context of discussion of independence. The UK Government’s view on independence is well known – we believe that it is neither a realistic nor a desirable option for Hong Kong. However, the right of freedom of expression, freedom of speech and academic freedom are guaranteed by the Joint Declaration and enshrined in the Basic Law.

Taken together, I assess that these developments give cause for concern about respect for rights and freedoms, and contribute to a reduction of political plurality in Hong Kong.

Hong Kong has benefited from having a Legislative Council that represents a wide spectrum of political opinion, and from open and uncensored debate about the full range of issues facing Hong Kong. I believe that both are essential features of ‘One Country, Two Systems’ and have contributed in no small measure to Hong Kong’s success. In recognition of this, I hope that the government of the Hong Kong Special Administrative Region (SAR) will continue to strive to create an environment that supports open debate and enables people representing the full range of political opinion to play a role in the governance of Hong Kong.

The UK Government will continue to support and monitor implementation of the provisions of the Joint Declaration. In meetings with the Chinese and Hong Kong authorities we continue to stress the importance of Hong Kong’s high degree of autonomy, and that its rights and freedoms should be fully respected.

I believe that ‘One Country, Two Systems’ continues to be the best arrangement for Hong Kong’s long-term stability and prosperity, and for the city’s reputation as a global financial centre and leading advocate of free trade. As Foreign Secretary, I look forward to championing the flourishing links between the UK and the Hong Kong SAR Government, businesses and people in support of these goals.

**The Rt Hon. Jeremy Hunt MP**

**Secretary of State for Foreign & Commonwealth Affairs**

# INTRODUCTION

This series of six-monthly reports reflects the UK Government’s continuing interest in developments in Hong Kong and our commitment to the faithful implementation of the 1984 Sino-British Joint Declaration. In that Declaration, the Chinese Government undertook that the Hong Kong SAR would enjoy a high degree of autonomy, except in foreign and defence affairs, and that it would be “vested with executive, legislative and independent judicial power”. The continuation of Hong Kong’s social and economic systems, lifestyles, rights and freedoms were guaranteed under the framework popularly referred to as ‘One Country, Two Systems’.

# CONSTITUTION AND ‘ONE COUNTRY, TWO SYSTEMS’

## Changes to the constitution of the People’s Republic of China

In March, the National People’s Congress (NPC) agreed revisions to the constitution of the People’s Republic of China (PRC), including the addition of new language declaring the Communist Party’s leadership as the “most fundamental feature of socialism with Chinese characteristics”. Some pro-establishment figures suggested that this change could make any challenge to the party’s rule unconstitutional. NPC Hong Kong Deputy Maggie Chan said, “The constitution holds supreme legal power. Hong Kong is not exempted from this.” Tam Yiu-chung, Hong Kong’s only representative of the Standing Committee of the National People’s Congress (NPCSC), stated his “personal view” that criticism of the Communist Party of China by candidates of the Hong Kong Legislative Council “may not be in line with the constitution.”

## Annual plenary sessions of the NPC and CPPCC

At the annual “two sessions” or “Liang Hui” in Beijing in March, the Hong Kong-based media paid close attention to the omission in the written report of the Chinese People’s Political Consultative Conference (CPPCC) of the phrase “upholding the ‘One Country, Two Systems’ principle”. The media also noted the omission in Premier Li Keqiang’s Government Work Report of the phrases “Hong Kong people administering Hong Kong” and “high degree of autonomy”. Commenting on concerns that this marked a departure from existing practice, Hong Kong and Macao Affairs Office Director Zhang Xiaoming stated there had been no change in policy towards Hong Kong by the Chinese Central Government.

In his closing speech of the NPC congress, President Xi vowed to strengthen the national identity and patriotism of the people of Hong Kong by implementing ‘One Country, Two Systems’ “comprehensively and accurately”:

“*We will strictly follow the constitution and the Basic Law, and support the SAR Government and Chief Executive in proactive governance in accordance with the law. We will support Hong Kong in integrating into the country’s development strategies, strengthen national identity and patriotism of compatriots, and maintain the long-term prosperity and stability of Hong Kong*.”

## Chief Executive’s remarks on ‘One Country, Two Systems’

In early June at a speech at the Urban Land Institute Asia Pacific Summit, Chief Executive Carrie Lam noted that there had been “quite a bit of misunderstanding or prejudiced comments” about ‘One Country, Two Systems’. She called on people, especially those overseas, to “look deeper into Hong Kong’s situation and read more broadly about different commentaries about Hong Kong instead of just taking on face value that this high degree of autonomy has been eroded”.

## Role of the People’s Liberation Army in Hong Kong

In an interview on 28 May, Central Government Liaison Office (CGLO) Director Wang Zhimin said that the People’s Liberation Army (PLA) troops in Hong Kong had played a crucial role in safeguarding sovereignty and the stability of the SAR. He called on the PLA to do more to promote patriotism among the people of Hong Kong, something not foreseen by the Joint Declaration or Basic Law. PLA Hong Kong Garrison Commander General Tan Benhong noted that the PLA planned to put more effort into teaching young people about the importance of the military in the SAR.

## Appointment of Han Zheng

In April, First Vice-Premier Han Zheng was reported to have replaced Zhang Dejiang as leader of the Central Coordination Group for Hong Kong and Macao Affairs. Vice-Premier Han also holds responsibility for implementing the Greater Bay Area Initiative. Hong Kong Chief Executive Carrie Lam and Vice-Premier Han held their first formal meeting in Beijing on 26 June.

## Anniversary of the establishment of the Hong Kong SAR

On 1 July, in a speech marking the 21st anniversary of the establishment of the Hong Kong SAR, Chief Executive Carrie Lam said that public trust in the government had been rebuilt and rational discussion had been restored in the Legislative Council. Lam said that her government had:

“*upheld the principle of One Country by maintaining an absolutely clear stance when it comes to black and white issues and showing no tolerance for any act that would hit our country’s bottom line … Meanwhile, we made good use of the advantage of Two Systems*.”

During a speech to mark the anniversary, CGLO Director Wang Zhimin was reported to have said that Carrie Lam’s administration had “earned its stripes by adopting a firm and clear stance on issues concerning ‘One Country, Two Systems’”. He went on to say that the Hong Kong SAR Government had:

“*shown zero tolerance for any act that would infringe on the nation’s sovereignty and national security, challenge the Central Government’s overall jurisdiction and the Basic Law’s authority in the SAR, or use Hong Kong to infiltrate and sabotage the mainland*.”

## 

## **Legislative Council** by**-elections**

In January, Hong Kong election officials barred three prospective candidates from competing in by-elections scheduled for March to fill four of the six seats vacated by legislators elected in 2016 and subsequently disqualified. Their prospective candidacies were declared invalid on the basis that their political views called into question their intention to uphold the Basic Law.

On 27 January, Hong Kong’s Electoral Affairs Commission declared Agnes Chow’s candidacy invalid (Chow is a member of the pro-democracy party, Demosisto). Chow had planned to contest the seat that her party colleague, Nathan Law, was disqualified from in July 2017. On 31 January, Ventus Lauwas barred for his previous advocacy of Hong Kong independence. James Chan was barred the following day. Ventus Lau launched an appeal against his ban, funded through legal aid, on 15 May.

In a written explanation of Chow’s disqualification, the Returning Officer noted that Demosisto’s “doctrine of democratic self-determination” was inconsistent with the principle of ‘One Country, Two Systems’. Chow had signed the mandatory declaration pledging to uphold the Basic Law and the principle of ‘One Country, Two Systems’. She also completed a confirmation form verifying that she understood the relevant articles of the Basic Law. Despite this, the Returning Officer deemed her political affiliation with Demosisto a clear indicator that she did not genuinely and truly intend to uphold the Basic Law.

The decision to bar Chow was criticised by pan-democrats as “political vetting” and sparked a debate about the powers of Returning Officers. Dennis Kwok, legislator for the Legal Functional Constituency and barrister, said Returning Officers were effectively being given the power to decide who stood for election to the Legislative Council, “a power unknown to the Hong Kong people”. Commenting on the decision, Chief Executive Carrie Lam said, *“any suggestion of Hong Kong independence, self-determination, independence as a choice or self-autonomy is not in line with Basic Law requirements, and deviated from the important principle of ‘One Country, Two Systems’”*. The Hong Kong SAR Government was criticised for refusing to disclose the nature of its legal advice to the Returning Officers. Around 2,000 people gathered at short notice on 28 January to protest Chow’s disqualification.

In a statement on 31 January, the Foreign and Commonwealth Office (FCO) commented on the case:

“*We are concerned by the rejection of Agnes Chow’s nomination for the forthcoming Legislative Council by-election. The right to stand for election is a fundamental right enshrined in Article 26 of the Basic Law of the Hong Kong Special Administrative Region and the Hong Kong Bill of Rights. Hong Kong’s high degree of autonomy, and its rights and freedoms, are central to its way of life, and it is important that they should be fully respected*.”

On 8 May, Agnes Chow launched an appeal to have the ban overturned on Bill of Rights grounds. The FCO will monitor her appeal closely.

## Legislative Council by-election results

On 11 March, elections took place peacefully, with the four seats split evenly between the pro-establishment and pro-democracy camps. Vincent Cheng’s victory in Kowloon West marked the first for a pro-establishment politician in a by-election for a directly elected Geographical Constituency.

## **Outcome of the** judicial **review on powers of Returning Officers**

On 13 February, shortly after the decision to bar Agnes Chow, the Court of First Instance (CFI) issued its written judgment in the election petition brought by Andy Chan Hoi-tin of the Hong Kong National Party against the decision to bar him from standing in the 2016 Legislative Council elections. Chan’s petition concerned the powers of Returning Officers to make decisions about an individual’s eligibility for election based on his or her political beliefs, and specifically whether they were empowered to determine if a candidate who has pledged to uphold the Basic Law in the mandatory declaration is genuine in their intent.

In his judgment, Justice Thomas Au Hing-cheung concluded that the requirement to sign the declaration was substantive. To meet this requirement, prospective candidates have to display genuine intent to comply with the declaration. Justice Au went on to say that the requirement should generally be considered met when prospective candidates sign the declaration, unless there are “cogent, clear and compelling materials which would demonstrate to an objective reasonable person that the candidate plainly cannot have the intention at the time of nomination”. The Returning Officer should give a reasonable opportunity to the candidate to respond to any materials that the Returning Officer says are contrary to an intention to comply with the declaration.

Pan-democrats and many in the legal sector criticised the judgment, arguing that it effectively established a system of political censorship. Hong Kong SAR Government Secretary for Constitutional and Mainland Affairs Patrick Nip, however, welcomed the ruling, noting that the SAR Government would review electoral laws to see if they needed to be tightened in light of the judgment and Beijing’s 2016 interpretation of the Basic Law concerning legislators’ oaths of office.

On 14 February, the Hong Kong Bar Association issued a statement on the rejection of Agnes Chow’s candidacy. Citing Justice Au’s judgment in the Chan Hoi-tin case, it expressed concern that the Returning Officer had made a decision on the validity of Agnes Chow’s candidacy without giving her the opportunity to be heard. The statement went on to say:

“*This regrettably is equivalent to the introduction of a political screening process for any prospective candidate, and there is no fair, open, certain and clear procedure to regulate this process; nor any timely remedy against an adverse decision of the Returning Officer, resulting in an indefinite duration of disqualification of the persons concerned*.”

# LEGAL SYSTEM

## Opening of the legal year

On 8 January, at the ceremonial opening of the legal year, Teresa Cheng, the newly appointed Secretary for Justice, addressed criticism of the Hong Kong SAR Government’s approach to prosecuting pro-democracy legislators and activists:

“*In Hong Kong, the rule of law is the cornerstone of our legal system, which in turn is the cornerstone of our society* […]. *Decisions to prosecute or not, as the case may be, must be based on an objective and professional assessment of the available evidence and the law … Politics can have no role to play in such decisions*.”

Cheng also addressed concerns that Hong Kong’s rule of law was under threat:

“*Some suggest that the rule of law in Hong Kong is under threat. If it means that it is being tested, I have no qualms with such suggestions. But, with respect, I cannot agree with suggestions that our rule of law is in anyway compromised*.”

Chief Justice of the Court of Final Appeal (CFA) Geoffrey Ma addressed the transparency of the operation of the law in Hong Kong’s courts:

“*Providing reasoned judgments ensures that the courts do decide cases strictly according to law and nothing else. It is important for everyone to see that applying the law is key and that there are no extraneous factors in arriving at the determination of a legal dispute*.”

## Co-location of mainland officials at West Kowloon rail terminus

As noted in the last six-monthly report, in December 2017 the NPCSC approved plans to establish a joint Hong Kong–mainland checkpoint in the new High-speed Rail Link (XRL) terminus in Hong Kong. On 31 January, the Hong Kong SAR Government introduced the Guangzhou–Shenzhen–Hong Kong Express Rail Link (Co-location) Bill to the Legislative Council against a backdrop of continuing controversy over the legal base for the planned arrangement.

In a submission to the Bills Committee in March, the Hong Kong Bar Association said that there was no constitutional foundation for the planned arrangement, and that the Bill was not compliant with the Basic Law.

On 14 June, the Bill was passed amid controversy over the decision of Legislative Council President Andrew Leung to set a time limit for the second reading debate, denying 11 legislators the chance to speak. Pan-democrats also criticised Leung’s decision to eject five pan-democratic legislators from the Legislative Council Chamber for standing and shouting during the speech of the Hong Kong SAR Government’s Secretary for Housing and Transport. Leung refused to allow them to re-enter for the final day of debate, leaving them unable to vote. Around 200 people attended a rally led by the pro-democracy lawmakers who were [evicted from the legislative chamber](https://www.hongkongfp.com/2018/06/13/five-democrats-kicked-express-rail-joint-checkpoint-debate-bill-reaches-endgame-legislature/). A pro-Beijing counter-protest was attended by about 20 people.

Chief Executive Carrie Lam welcomed the passage of the Bill, confirming that the Hong Kong SAR Government and MTR Corporation Limited were undertaking preparatory work to enable the commissioning of the Hong Kong section of the XRL in September. At the time of writing, five applications for a judicial review of the legality of the legislation had been lodged. The legal arguments put forward centre on whether the ordinance contravenes Article 18 of the Basic Law, which states that national laws shall not be applied in Hong Kong, except those listed in Annex III. The judicial reviews will be heard together on 30 and 31 October.

## National Anthem Law

In the last six-monthly report we reported the Hong Kong SAR Government’s intention to introduce legislation on the mainland’s National Anthem law. On 16 March, the Hong Kong SAR Government put an outline legislative proposal to the Legislative Council’s Panel on Constitutional Affairs. The proposal set out a requirement for all citizens and organisations to respect and preserve the dignity of the national anthem; for news media to publicise actively and promote public understanding of the etiquette for the performance and singing of the anthem; and for all primary and secondary schools to teach students the national anthem. The proposal’s stated “intention” would be key to determining whether an insult to the anthem deserved a jail term and did not provide a clear definition of “disrespectful conduct”.

Responding to calls for a public consultation on the proposals, Chief Executive Carrie Lam said there was no need for a formal consultation since the law would target only those deemed to have deliberately insulted the anthem. On 8 May, the Hong Kong Law Society said in a statement:

“*Failing to provide clear definitions in the national anthem legislation would leave the courts to develop the law based on common law principles on a piece of legislation derived from a civil law jurisdiction. This is undesirable, because it would result in the Judiciary being responsible for interpreting issues of constitutional importance in a politically charged social environment*.”

The statement also noted with concern the proposal to incorporate into the Bill wording that would cultivate and encourage the practice of the core values of socialism, which it described as inconsistent with the Basic Law.

On 20 June, the Hong Kong Journalists Association submitted a paper on the draft Bill to the Legislative Council’s Panel on Constitutional Affairs, stating that the proposal did not clearly stipulate the legal responsibilities for media outlets when assessing whether to publish acts that could be considered insulting to the anthem. The paper argued that without such detail, media outlets would be unable to assess whether reports were breaking the law, creating a risk of self-censorship.

The Hong Kong SAR Government is expected to introduce a draft Bill in the next session of the Legislative Council.

# JUDICIAL SYSTEM

Hong Kong’s judiciary continues to enjoy a reputation as independent and of high quality. The World Justice Project again ranked Hong Kong 16 out of 113 countries on rule of law in its 2017–18 Rule of Law Index.

On 15 March, a Reuters article reported that some of Hong Kong’s judges were privately concerned that interpretations and amendments from the NPCSC could limit their authority on key political and security issues and force them to curb freedoms. The same article quoted a number of corporate lawyers seeing anecdotal evidence of clients questioning Hong Kong’s legal future and the role of Beijing.

## Judicial appointments

In February, in line with the provisions of the Joint Declaration and Basic Law allowing judges to be recruited from other common law jurisdictions, the terms of three non-permanent Court of Final Appeal judges were extended for a further three years. These included UK Supreme Court judges Lord Neuberger of Abbotsbury and Lord Walker of Gestingthorpe.

On 30 May, the Legislative Council approved the appointment of two more non-permanent judges to the Court of Final Appeal: the President of the Supreme Court of the United Kingdom, Baroness Hale, and former Chief Justice of Canada, Beverly McLachlin. Speaking about the appointments, Hong Kong Chief Executive Carrie Lam said:

“*With the appointment of the two eminent judges, the panel of non-permanent judges from other common law jurisdictions will consist of fourteen eminent judges from the United Kingdom, Australia and Canada. The presence of these non-permanent judges manifests the judicial independence of Hong Kong*.”

A number of pro-establishment legislators expressed concern about the ability of foreign judges to adjudicate in certain cases. Pro-establishment legislator Priscilla Leung raised concerns about a conflict of interests, urging the judiciary to consider “national interest” when handing certain court cases over to foreign judges. Starry Lee questioned the judges’ ability to adjudicate in cases related to Hong Kong independence, noting that “some citizens may be worried that the verdict would be affected by judges who are known for embracing a federal system”. In response, Legislator for the Legal Functional Constituency Dennis Kwok said, “The long-term cost to politicising the judiciary will be much higher than any short-term political benefit that may be accrued from an underhanded political manoeuvre.”

On 9 June, Chief Justice Geoffrey Ma addressed the new Senior Counsel at a ceremony marking their admission, urging them to play a “critical part” in promoting the rule of law in a society laden with controversial events. On appointments, Ma said “only two qualities are stated in the Basic Law for the appointment of judges – judicial and professional qualities. Their views, political or otherwise, or any other aspect, do not enter it.”

On 28 June, the Hong Kong Law Society issued a statement defending the judiciary, stating that there was no evidence to suggest that judges were “prejudiced by any political persuasion” and warning against attempts to “introduce political or ideological screening” in judicial appointments. “Such attempts will cause the public to query the impartiality and integrity of judges and will undermine public confidence in the rule of law.” The statement was issued following an opinion piece by the former head of the Hong Kong SAR Government’s Central Policy Unit, Shiu Sin-por, in which he suggested that it was inevitable for judges in the highest court to use political judgment when applying and explaining laws.

## High-profile legal proceedings in Hong Kong

The first half of 2018 saw the courts hand down judgments in a number of high-profile cases against pro-democracy legislators and activists.

### Sentencing appeal of Joshua Wong, Nathan Law and Alex Chow

On 6 February, Hong Kong’s highest court, the Court of Final Appeal, unanimously overturned the Court of Appeal’s decision in August 2017 to increase the sentences handed down to the 2014 Occupy protest leaders Joshua Wong, Nathan Law and Alex Chow for their role in storming Civic Square. This event had led to the 2014 Occupy protests and, as noted in the last six-monthly report, the three had been given jail time, having already served their community service sentences given by the Magistrates Court.

The Court of Final Appeal agreed with the Court of Appeal’s decision to issue new sentencing guidelines for future cases, noting:

“*in the circumstances prevailing in Hong Kong, including increasing incidents of unrest and rising number of large-scale public protests, it is [now] necessary to emphasise deterrence and punishment in large-scale unlawful assembly cases involving violence*.”

The Court of Final Appeal disagreed, however, with the Court of Appeal’s judgment that the magistrate who imposed the original sentence had “erred in principle”, concluding instead that the Court of Appeal was wrong to have applied the new sentencing guidelines retrospectively.

Wong, still on bail pending the appeal of separate protest-related charges, said the decision was “a harsh judgment wrapped in a sugar coating”. Ex-legislator Nathan Law expressed concern that the Court of Final Appeal’s decision meant that the Court of Appeal’s much harsher sentencing guidelines would be used in future cases, meaning that even first-time offenders, who previously would have faced community service sentences, could now face six months in jail.

On 16 May, Nathan Law stepped down as chairman of Demosisto, announcing he would step back from frontline politics altogether. On 22 May, Demosisto Party Chair Ivan Lam announced that the party would stop nominating candidates for election and would instead take a new direction, focusing on reaching out to young people to raise awareness of forthcoming issues such as Article 23 legislation.

Making the announcement alongside Lam, Nathan Law said, “The path was clear in the past. For example, you could run to become a lawmaker. But now, it seems that such things are blocked.”

### Mong Kok riots

On 2 May, a group of nine protesters were found guilty of rioting over the 2016 Mong Kok unrest. Sentences with jail terms ranging from 28 to 51 months were handed down on 31 May.

On 18 May, a further group of protestors, including Edward Leung, were found guilty of rioting in Mong Kong. Leung was found guilty of one count of rioting and cleared of one count of inciting other people to riot. He had earlier pleaded guilty to assaulting a police officer. No majority verdict was reached for the second count of rioting. Leung was sentenced to six years in prison on 11 June and will face a retrial of the second count of rioting, along with Lee Nok-man and Lam Ngo-hin, with pre-trial hearings scheduled for 13 July.

Leung’s co-defendant, Lo Kin-man, was sentenced to seven years. This is the longest sentence handed down for a public order offence since the Public Order Ordinance came into force in 1967, prompting renewed debate about the ordinance. The implementation of this ordinance has been criticised by the UN Human Rights Committee in relation to international human rights standards for laws on the right to peaceful assembly, as defined in the International Covenant on Civil and Political Rights (ICCPR). Hong Kong is a party to the ICCPR under Article 39 of the Basic Law.

### **Prosecution of** the former **legislators of the Legislative Council**

Following the disqualifications of six former legislators because of their oath-taking in November 2016, two of the six, Sixtus ‘Baggio’ Leung and Yau Wai-ching, and their three former assistants were found guilty on 11 May of illegal assembly. They had “stormed” a Legislative Council meeting in an attempt to retake their oaths on 2 November 2016, a day before the judicial review brought by the Hong Kong SAR Government was due to begin.

The judgment noted that the group had committed “acts of violence” and showed no remorse, prompting the court to send a clear message to deter such future acts. Each of the five was sentenced to four weeks in jail on 4 June. Leung and his former assistant were immediately released pending an appeal.

On 29 May, a third disqualified lawmaker, Lau Siu-lai, announced that she had dropped her legal challenge against her disqualification from the Legislative Council for improper oath-taking. The decision to end her legal case paves the way for a new by-election in Kowloon West, scheduled for 25 November. “Long Hair” Leung Kwok-hung continues to appeal his disqualification.

### Prosecution of Occupy founders

Three founders of the Occupy movement, Rev. Chu Yiu-ming, Prof. Benny Tai and Prof. Chan Kin-man, and six activists, Tanya Chan, Shiu Ka-chun, Tommy Cheung, Eason Chung, Raphael Wong and Lee Wing-tat, will be tried on 19 November, following their attempt to have the charge of incitement to public nuisance dismissed. The ruling District Court judge found in favour of the prosecutors, judging the charge constitutional within common law. The judge concluded that there was neither repetition of charges nor a need to split the nine defendants for separate trials.

# EDUCATION

The reporting period saw heated debate relating to educational materials. In April, Education Secretary Kevin Yeung said that a committee had concluded that textbooks should not refer to China as “taking back” Hong Kong as it had always been a part of China. Responding to claims that the Hong Kong SAR Government was trying to rewrite history, Chief Executive Carrie Lam noted that there was no harm in being more precise and accurate and that she was content for Hong Kong’s textbooks to reflect the Chinese view of the handover. The SAR Government’s protocol office also removed all references to “handover of sovereignty” from their website.

# BASIC RIGHTS AND FREEDOMS

## Freedom of expression

Widespread concern about freedom of speech was sparked by the response to comments made by Hong Kong University Associate Professor and Occupy Central Founder Benny Tai. At a seminar in Taiwan in March, Tai said people should engage in a thought experiment about the constitutional future of China’s regions should authoritarian rule collapse, and included independence as one possible option.

On 30 March, the Hong Kong SAR Government released a statement expressing shock at the suggestion that Hong Kong could become independent. On 6 April, Chief Executive Carrie Lam said that the advocacy of Hong Kong’s independence was *“unacceptable as it violates the constitution and Basic Law, and goes against ‘One Country, Two Systems’ and Hong Kong’s prosperity and stability”.*

Lam added that the SAR Government and society had a responsibility to safeguard national security and territorial integrity, noting that the government *“must seriously consider when to enact Basic Law Article 23 legislation”.* The Chief Executive added that the Hong Kong SAR Government had no intention of suppressing freedom of speech or academic freedom, stating that the case “did not involve academic freedom”.

Benny Tai said he feared for his personal safety as he suspected he was being followed by officers from “powerful” mainland agencies who might be posing as journalists. Amid widespread criticism in PRC state-owned newspapers, including calls for Tai to be sacked and stripped of his passport, Tai expressed shock, noting that he had already made similar comments in articles published in Hong Kong.

More than 40 pro-democracy organisations and individuals called for the Hong Kong SAR Government to apologise to Tai. Legislative Council member Claudia Mo said,

*“The idea is to stifle free speech in Hong Kong and to send a chilling effect against the population that [says] ‘Beware of what you say, or you will be taken to the court’*.”

## 

## Press freedom

In early 2018, Reporters Without Borders ranked Hong Kong 70th in the world for press freedom, up from 73rd in 2017 but down from 51st in 2008 and 18th in 2002.

The report noted that journalists found it increasingly difficult to cover subjects involving governance in Hong Kong and mainland China, citing growing interference by Chinese authorities. A survey of journalists conducted by the Hong Kong Journalist Association published on 11 April showed a slight increase in the Press Freedom index for journalists, attributed to an improvement in the rating on extra-legal intimidation or physical violence at work. However, the survey also showed 70% of the journalists were of the view that press freedom in Hong Kong had become worse compared to a year ago.

The same survey also examined public perceptions of press freedom, which showed a further decline since the survey’s launch in 2013. The Hong Kong public believes it has become increasingly common for local news media to doubt and hesitate when criticising the Chinese Central Government or major businesses. A major finding of the survey suggests that both journalists and the public see pressure from the Central Government as a major factor threatening press freedom in Hong Kong.

In May, Hong Kong media outlets confirmed that the CGLO in Hong Kong was the indirect owner of a local publishing conglomerate running more than 50% of the local bookshops.

To mark World Press Freedom Day on 3 May, the British Consulate-General in Hong Kong issued the following statement:

“*World Press Freedom Day is an opportunity to remember the benefits of a free media. A free media is vital to supporting an active, informed, creative, innovative and engaged population. Freedom of the press and freedom of expression are at the heart of ‘One Country, Two Systems’ and are guaranteed in the Basic Law. We remain concerned about reports of threats to both. We believe journalists, writers, academics and all of those involved in civil society and the arts should be able to express themselves freely without fear of repercussion on the grounds of political beliefs. In this vein, we welcome the HKSARG’s recent recognition of independent online media outlets, enabling them to make an important contribution to public access to information in Hong Kong.*”

## Attacks on journalists

On 12 May, Chan Ho-fai, a Hong Kong i-Cable News journalist, in Sichuan as part of the Chief Executive’s official media pack, was kicked and beaten whilst covering an event to mark the 10th anniversary of the earthquake. Later that day, officials from the local propaganda office arranged a public apology by two men before assembled members of the Hong Kong media. The pair claimed to be bereaved locals acting out of sadness at the earthquake anniversary. Local residents said they were local government officials.

Speaking on her return from Sichuan, Chief Executive Carrie Lam said “we expressed our concern to the Hong Kong and Macao Affairs Office of the State Council and to Sichuan province officials, demanding they investigate thoroughly.”

Four days later, Chui Chun-ming, a Beijing-based Now TV news cameraman from Hong Kong, was arrested whilst reporting on the hearing of human rights lawyer Xie Yanyi. Several officers manhandled Chui to the ground before detaining him on unknown charges for several hours. Chui claimed that he was coerced into signing a letter of repentance after officers threatened to revoke his press credentials.

On 19 May, the Hong Kong Journalists Association issued a statement condemning the acts of violence saying, “Press freedom is a cornerstone of any civil society and journalists’ personal safety and their legitimate right to report should be protected.”

## Booksellers

On 20 January, Hong Kong bookseller and Swedish citizen Gui Minhai was seized on board a train by plainclothes agents at Jinan West station in Shandong province. Gui, who central authorities claimed had been released from detention in October 2017, was travelling to Beijing with the Swedish Consul-General to Shanghai for medical treatment. The EU issued a statement on 24 January calling for Gui’s immediate release.

In a statement on 6 February, China’s Foreign Ministry said “Gui Minhai broke Chinese law and has already been subjected to criminal coercive measures in accordance with the law by relevant Chinese authorities.” This was followed by a Ministry of Public Security statement saying that Gui had been detained on suspicion of leaking state secrets abroad. In an interview with Hong Kong, Taiwanese and mainland media outlets, in which Gui was widely believed to have been coerced, he said he might consider renouncing his Swedish citizenship.

Following Mr Gui’s latest detention in January 2018, our ambassador in Beijing raised the case with the Chinese Central Government. UK officials continue to liaise closely with Swedish and other EU counterparts.

## Universal Periodic Review

On 3 April, the Hong Kong SAR Government launched a public consultation ahead of China’s third review under the United Nation’s Universal Periodic Review process. For the first time its consultation documents were published in six ethnic minority languages spoken in Hong Kong, which is a welcome development. As part of the public consultation, the EU delegation office in Hong Kong submitted a short paper on member state concerns, focusing on freedom of expression, free exercise of political rights, lack of protection for foreign domestic workers, weak anti-discrimination legislation, and human trafficking. The review will take place in November.

## Equality

On 1 June, the Court of Appeal overturned the 2017 landmark decision by the Court of First Instance in the case of Hong Kong civil servant Angus Leung, which required the Hong Kong SAR Government to treat employees in same-sex marriages in the same way as their heterosexual colleagues when granting spousal benefits.

In its judgment, the Court of Appeal ruled that the Hong Kong SAR Government, “as a custodian of Hong Kong’s prevailing socio-moral values”, had a legitimate aim to serve, namely to protect, the institution of traditional marriage. The three presiding appeal judges also cited the Basic Law as a source of constitutional backing for the protection of traditional marriage. Mr Leung will take his case to the Court of Final Appeal.

## Marches and protests

The annual 4 June Tiananmen vigil took place peacefully in Victoria Park. Organisers estimated a turnout of 115,000, an increase on 2017 figures (police turnout figures suggested 17,000). Outside the park, dozens of counter-protesters denounced the vigil and claimed there had never been a “massacre” in Tiananmen Square. University student unions again boycotted the event, saying it was not the city’s responsibility to advance democracy on the mainland. They marked the event by handing out leaflets, repainting pro-democracy slogans and cleaning the Pillar of Shame sculpture at Hong Kong University marking the 4 June crackdown.

The annual 1 July march passed peacefully, with organisers estimating attendance of 50,000 and police figures quoting a much lower figure of 9,800. Attendees expressed discontent with the city’s governance, defying police warnings by cutting away from the procession’s official starting point and chanting “end to one-party dictatorship”. In a statement, the Hong Kong SAR Government spokesperson is reported to have said:

“*chanting slogans which disrespect ‘one country’ and disregard the constitutional order or which are sensational and misleading is not in line with Hong Kong’s overall interests and will undermine its development*.”

## Modern slavery and human trafficking

On 21 March, the Hong Kong SAR Government introduced an ‘Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong’. The plan includes enhanced prosecution, victim identification and protection, and prevention and engagement with civil society. However, it contains no detail on accountability and no time frame is given. The Hong Kong SAR Government has said it is under no obligation to introduce a specific offence criminalising forced labour.

Legislators Dennis Kwok and Kenneth Leung introduced a Private Members Bill modelled on the UK’s Modern Slavery Act to the Legislative Council on 5 June. The draft legislation seeks to criminalise human trafficking in all its forms and to freeze assets that arise from such crimes.

# INTERNATIONAL REPORTS

A number of reports on Hong Kong were published during the reporting period. In 2018, Freedom House continued to rate Hong Kong as only “partly free” for political rights and civil liberties. The US-based Heritage Foundation rated Hong Kong the world’s freest economy for the 24th year running, but warned of political interference from the mainland in recent years.

The report said:

“*the ‘One Country, Two Systems’ policy has been strained by PRC political interference in recent years, but Hong Kong’s open and market-driven economy continues to flourish, increasingly integrated with the mainland through trade, tourism, and financial links.*

*The judiciary is independent, but Beijing reserves the right to make final constitutional interpretations, effectively limiting the power of Hong Kong’s Court of Final Appeal*.”

The US State Department Hong Kong Policy Act Report was published on 29 May. It concluded that certain actions by the Chinese Central Government during the period covered by their report were inconsistent with China’s commitment in the Basic Law to allow Hong Kong to exercise a high degree of autonomy. Overall, it found that Hong Kong still generally maintained a high degree of autonomy under ‘One Country, Two Systems’ in most areas.

The report also said that the Hong Kong SAR Chief Executive had rejected a US fugitive surrender request made in October 2017 at the behest of the Chinese Central Government and had subsequently released the detainee into Central Government custody on the basis it was pursuing a separate criminal action. The report noted this was the first such instance since the establishment of the SAR. The Chief Executive’s office refuted the claim, noting that in the absence of any extradition agreement between the Hong Kong SAR and the mainland, no surrender of any fugitive had ever been made to the mainland.

# UK/HONG KONG BILATERAL RELATIONS

The UK and Hong Kong SAR stepped up bilateral co-operation on trade and investment during the reporting period. The UK held its GREAT Festival of Innovation in Hong Kong from 21 to 24 March, the largest event of its kind in 2018. The Secretary of State for International Trade, the Rt. Hon. Dr Liam Fox MP, led a high-level delegation of Ministers from across the UK Government, including the Secretary of State for Wales, the Rt. Hon. Alun Cairns MP; Parliamentary Under Secretary at the Department for Culture, Media and Sport, Lord Ashton; Minister of State for Trade and Export Promotion, Baroness Fairhead; and the Minister for the Northern Power House, Jake Berry. The Lord Mayor of London, senior public officials and policy makers, and UK business leaders also participated in the event.

At the festival, the Secretary of State for International Trade and the Hong Kong Chief Executive agreed a joint statement to enhance the long-standing economic and trade relationship between the UK and Hong Kong.

Building on the Strategic Dialogue on Trade Partnership launched in September 2017, the statement identified three areas where the two governments committed to work closely together: innovation, creative industries, and the Belt and Road Initiative. The statement also announced the two governments’ intention to work together to promote the values of global free trade.

During the festival, the Hong Kong Design Centre, Hong Kong Trade Development Council, and the Department for International Trade signed a Letter of Intent to mark their partnership by holding Business of Design Week 2019 in Hong Kong in late 2019. This is a world-class annual event which celebrates design and innovation, on which the UK and Hong Kong will collaborate closely over the next 18 months.

The Secretary of State for Scotland, the Rt Hon. David Mundell MP, and Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani MP, also visited Hong Kong in the reporting period, while Justice Secretary Teresa Cheng and Food and Health Secretary Professor Sophia Chan visited the UK. Also in the reporting period, Baroness Fairhead spoke at the Hong Kong Trade Development Council’s third annual Belt and Road Summit in June, and the China All-Party Parliamentary Group, and First Minister of Scotland, Nicola Sturgeon MSP, visited Hong Kong.

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# CONCLUSION

The Foreign Secretary’s six-monthly reports to Parliament reflect the UK Government’s continued commitment to the faithful implementation of the Sino-British Joint Declaration on Hong Kong, an international treaty to which the UK is a party.

We assess that ‘One Country, Two Systems’ generally continues to function well. However, the continued pressure on Hong Kong’s high degree of autonomy and on rights and freedoms enshrined in the Basic Law gives cause for concern.

During this reporting period, developments which demonstrate this continuing pressure (set out in detail above) included: the barring of certain individuals from running for election on the basis of their political beliefs; the prosecution of pro-democracy legislators and protesters; and further controversy over the legal base for the establishment of a joint control point and the co-location of mainland officials on SAR territory.

It is vital that confidence in ‘One Country, Two Systems’ and in the Hong Kong SAR is safeguarded. To achieve this, Hong Kong must be allowed to enjoy the full measure of autonomy and rights and freedoms which have been central to its continued success, stability and prosperity, and which underpin its international standing.

# LIST OF ABBREVIATIONS

CFA Court of Final Appeal

CFI Court of First Instance

CGLO Central Government Liaison Office

CPG Central People’s Government

CPPCC Chinese People’s Political Consultative Conference

FCO Foreign and Commonwealth Office

HKSARG Hong Kong Special Administrative Region Government

ICCPR International Covenant on Civil and Political Rights

LegCo Legislative Council

MFA Ministry of Foreign Affairs

NPC National People’s Congress

NPCSC Standing Committee of the National People’s Congress

PLA People’s Liberation Army

PRC People’s Republic of China

SAR Special Administrative Region

XRL Express Rail Link