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**HONG KONG WATCH SUBMISSION TO THE CONSERVATIVE  
PARTY HUMAN RIGHTS COMMISSION****INQUIRY INTO THE HUMAN RIGHTS SITUATION IN CHINA  
(JUNE 2020)**

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***EXECUTIVE SUMMARY***

Hong Kong Watch is pleased to participate in the Conservative Party Human Rights Commission's inquiry into the human rights situation in China, focused on the period since 2016 until the present day.

Since Hong Kong Watch's founding in December 2017 and the last Conservative Party Human Rights Commission inquiry into the human rights situation in China in, we have witnessed increasing erosion of the rule of law and the freedoms that Hong Kong enjoys under the 'One Country, Two Systems' model which is underpinned by the Sino-British Joint Declaration. This includes:

- The unilateral introduction in May 2020 by the National People's Congress of national security legislation, which directly breaches the Sino-British Joint Declaration and undermines the One Country, Two Systems Model;
- The abduction of five book sellers from Causeway Bay Books in 2015 from Hong Kong to the mainland by Chinese agents, which led to the sentencing this year of Gui Minhai to ten years in prison for allegedly 'illegally providing intelligence overseas';
- The disqualification and political screening of candidates for Legislative and District Council elections in Hong Kong in 2016, 2018, and 2019, and continued threats from the Hong Kong and Macau Office of further disqualifications ahead of September's Legislative Council elections;
- The introduction by the Hong Kong Government of an Extradition Bill in 2019. This would have allowed Hong Kong citizens to be extradited to mainland China without providing proper safeguards to stop them facing unjust trials;
- Police conduct during the large-scale anti-extradition bill protests. The Hong Kong Police Force have faced sustained international criticism for policing tactics that have been criticised by human rights groups as disproportionate and in breach of international human rights law;
- The increased use of the Public Order Ordinance and other antiquated common law legislation to prosecute prominent activists and protestors since the Umbrella Movement in 2014 and the recent Extradition Bill protests, which has been repeatedly criticised by the

United Nations Human Rights Committee because of its vague charges and potentially disproportionate sentencing guidelines;

- The passing of a National Anthem law, which makes it a criminal offence found guilty liable to a fine of up to HK\$50,000 and three-year custodial sentence to mock the Chinese national anthem.
- A growing number of statements from Beijing's Liaison Office declaring that it is no longer bound by Article 22 of Hong Kong Basic Law and is free to interfere in the affairs of Hong Kong.
- The restriction of entry into Hong Kong for human rights activists;
- And attacks on the freedom of the press, including in specific cases the expulsion of journalists from Hong Kong.

## ***RECOMMENDATIONS***

Hong Kong Watch believes the Conservative Human Rights Committee should consider issuing the following recommendations to the British Government regarding human rights in Hong Kong:

1. The Government should honour its commitment to expand the rights of British National Overseas passport holders, legislating its promise and offering clearer details on how the policy would work, whether it would include dependents, and whether the Government will consider restoring the right of abode.
2. The Government should organise an International Contact Group on Hong Kong with likeminded partners to monitor the situation and coordinate joined up action.
3. The Government should support the creation of a United Nations Special Envoy for Hong Kong, to investigate human rights abuses in the city.
4. The Government should work with likeminded partners to create an international life-boat policy for Hong Kongers who will need a lifeline in the face of a further crackdown.
5. The Government should consider the case for Magnitsky sanctions being used against the perpetrators of human rights abuses in Hong Kong and China under the National Security Law in coordination with international partners.
6. The Government alongside other partners should send election monitors to observe the upcoming Legislative Council elections in Hong Kong in September.

## i. The abduction and prosecution of the Hong Kong booksellers

- One of the most egregious and shocking abuses of human rights remains the abduction of Hong Kong booksellers in 2015. Five book sellers from Causeway Bay Books were abducted by Chinese agents and taken to the mainland to face charges related to selling banned books.
- Two of the booksellers reappeared in 2016. Holding a press conference in July, the manager of Causeway Bay Books Mr Lam Wing Kee described how 'he and the other booksellers had been held against their will by mainland agents, denied due process, interrogated, required to sign non-disclosure documents, and forced to make false statements.'
- Mr Lam went on to say that he had decided to risk his own and his family's safety by speaking out because 'this isn't just something which involves me, but implicates the whole of Hong Kong society.'
- Mr Lam's account of the kidnapping was subsequently backed up by the defection of self-declared Chinese spy Wang 'William' Liqiang in November 2019 to Australia. Mr Wang in his statement to the Australian Security Intelligence Organisation claimed that he was 'personally involved in the kidnapping and detention of one of the five Hong Kong book sellers'.
- The Chinese Government continues to hold Gui Minhai, the last of the Hong Kong booksellers kidnapped in 2015. Gui, a dual Swedish citizen, was abducted from his holiday apartment in Thailand.
- Despite petitions from the Swedish Government and European Union, Gui was sentenced to ten years in a Chinese prison for 'illegally providing intelligence overseas' in February 2020.
- Gui's sentence and the Chinese Government's rejection of petitions from the Swedish Government is further evidence of Beijing's continued encroachment into Hong Kong and its increasingly assertive foreign policy.
- **The kidnapping of the booksellers in 2015 was in clear violation of Article 2 of the International Convention of Protection of All Persons from Enforced Disappearance, which is defined as 'arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge**

the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.’

- The abduction of the booksellers also reveals a substantial breach of their right to individual security and liberty. As further codified in Article 9 of ICCPR, anyone deprived of his or her liberty by arrest or detention shall be entitled to proceedings before a court which, without delay, will determine the lawfulness of detention.
- The incident represents a serious attack on China’s commitment to Hong Kong’s autonomy under the ‘one country, two systems’ configuration. Under such framework, Hong Kong citizens are supposedly to be protected by the Basic Law under which Chinese law enforcement officials have no capacity to exercise any legal authority, let alone the transfer of individuals back to the mainland.
- Responding to the initial abduction of the booksellers, the Foreign Secretary Rt. Hon Philip Hammond MP in the UK Foreign Office’s six-monthly report on the Sino-British Joint Declaration said:

***‘This constitutes a serious breach of the Sino-British Joint Declaration on Hong Kong and undermines the principle of ‘One Country, Two Systems’ which assures Hong Kong residents of the protection of the Hong Kong legal system. We urge the Chinese and Hong Kong SAR governments to reassure the people of Hong Kong that law enforcement in the Hong Kong SAR is exclusively the responsibility of the Hong Kong SAR authorities, and that the fundamental rights and freedoms of Hong Kong residents will continue to be fully protected, and respected by all, in accordance with the Joint Declaration and Basic Law.’<sup>1</sup>***

- Aside from this initial response to the abduction of the booksellers in 2015-2016, the UK Foreign Office’s response to the sentencing of Gui Minhai has been comparably muted. In response to a written parliamentary question on the sentencing of Gui Minhai in February 2020, Foreign Office Minister Lord Ahmad said that he had ‘expressed deep concern about the sentencing’ urging ‘China to respect fundamental rights and freedoms, including the freedom of expression’ and ‘called upon Chinese authorities to grant consular access to Mr Gui’.<sup>2</sup>
- Gui’s case is part of a wider policy shift from the Chinese Government on the detention of foreign nationals. Until recently China adhered to its obligation under international law to

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/500119/Six\\_Monthly\\_Report\\_on\\_Hong\\_Kong\\_-\\_1\\_July\\_to\\_31\\_December\\_2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/500119/Six_Monthly_Report_on_Hong_Kong_-_1_July_to_31_December_2015.pdf)

<sup>2</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-03-02/HL2029>

notify other states when foreign nationals are arrested and to allow them to receive visits from diplomatic representatives. But Beijing's failure to respect Gui's rights of consular notification and visitation are part of a wider trend. In several cases in the past few years, all of them involving politically 'sensitive' detainees, Beijing has kept foreign nationals locked away, often denying any knowledge of their whereabouts.<sup>3</sup>

## ii. The disqualification and political screening of candidates

- Since 2016 a large number of candidates and lawmakers have been disqualified from standing for election on the basis of their political perspectives, undermining the credibility of the political system and the right that Hong Kong's citizens have to political representation.
- The disqualification of candidates in Legislative Council elections was unprecedented before 2016. The rise of localism, and particularly the unexpected success of Edward Leung Tin-Kei's by-election campaign in February 2016, was deemed threatening and unacceptable by the Hong Kong government and Beijing. Rather than using constitutional means of persuasion to counter localists or those advocating 'self-determination' after 2047, the Returning Officers of the Electoral Affairs Commission were given the power to conduct unaccountable political screening. This resulted in the disqualification of six candidates in 2016 and a further three in 2018.<sup>4</sup>
- The first round of disqualifications took place in July 2016. The six disqualified candidates were Yeung Ke-cheong of the Democratic Progressive Party; Andy Chan Ho-tin, the convenor of the Hong Kong National Party; Nakade Hitsujiko, a Nationalist Hong Kong candidate; Conservative Party candidate, Alice Lai Yee-Man; Hong Kong Indigenous leader, Edward Leung Tin-Kei; and James Chan Kwok-keung, who was standing as an Independent. They were disqualified by the Returning Officer of the Electoral Affairs Commission who claimed that none of the candidates could comply with Article 1 of the Basic Law because the candidates did not believe that Hong Kong was an inalienable part of China.<sup>5</sup>
- In 2018, a similar justification was given for the disqualification of candidates but this time they targeted those representing more moderate positions. While it was only pro-independence politicians who were denied the right to stand in the 2016 elections, Agnes Chow was banned in 2018 because the Returning Officer ruled that Demosisto's belief that

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<sup>3</sup> <https://thediplomat.com/2018/02/the-strange-and-sad-case-of-gui-minhai/>

<sup>4</sup> <https://www.hongkongwatch.org/all-posts/2018/3/7/political-screening-in-hong-kong-a-report-on-the-disqualification-of-candidates-and-lawmakers>

<sup>5</sup> <https://www.hongkongwatch.org/all-posts/2018/3/7/political-screening-in-hong-kong-a-report-on-the-disqualification-of-candidates-and-lawmakers>

- Hong Kong should have ‘self-determination’ after 2047 ‘cannot possibly comply with electoral laws’. Ms Chow had the backing of the entire pro-democracy movement and her disqualification was widely condemned internationally. Ventus Lau was also denied the right to stand despite publicly disavowing his support for ‘Hong Kong Independence.’<sup>6</sup>
- In September 2019 the high court overruled the Returning Officer’s decision to ban Agnes Chow because the Electoral Affairs Commission had failed to give her an opportunity to respond to its decision.
  - **The actions of the Returning Officer breach various fundamental human rights guaranteed by Hong Kong’s constitution and the ICCPR. The actions of the Returning Officers in 2016 and 2018 are in violation of the right to stand in elections and freedom of speech, rights that are enshrined in Articles 26, 27 and 39 of Hong Kong’s Basic Law as well as Articles 1, 15, 16, 21 and 22 of Hong Kong’s Bill of Rights Ordinance (BORO), and various rights enshrined in the ICCPR.**
  - **Hong Kong’s constitutional and international commitments prohibit political screening. The comment by the Human Rights Committee underlines that all permanent residents of the Hong Kong Special Administrative Region have the fundamental right to stand for election in accordance with law under Articles 26 and 27 of the Basic Law, as well as the fundamental right to free speech.**
  - In November 2016, the Standing Committee of the National People’s Congress (NPCSC) also issued a controversial ‘Interpretation’ of Basic Law Article 104. This provided the legal basis for the disqualification of six elected legislators on the basis that they failed to properly take their legislative council oaths.
  - Since 2004, some pro-democracy legislators have used the oath-taking session as an opportunity to protest. Leung Kwok-hung protested in every session since that date, and his oaths were generally accepted. In 2012, People Power legislator Wong Yuk-Man was asked to retake the oath after omitting certain phrases. He subsequently retook the oath and was accepted into the Legislative Council. Given this precedent, a number of lawmakers adapted their oaths in the 2016 oath-taking session.<sup>7</sup>
  - Two lawmakers from Youngspiration, Baggio Leung Chung-hang and Yau Wai-Ching, referred to China as ‘Chee-na’ which is widely considered to be offensive. Yau Wai-Ching

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<sup>6</sup> <https://www.hongkongwatch.org/all-posts/2018/3/7/political-screening-in-hong-kong-a-report-on-the-disqualification-of-candidates-and-lawmakers>

<sup>7</sup> <https://www.hongkongwatch.org/all-posts/2018/3/7/political-screening-in-hong-kong-a-report-on-the-disqualification-of-candidates-and-lawmakers>

- also referred to China with a swearword. The Legislative Council Secretariat rejected their oaths.
- Four other lawmakers, Nathan Law, Professor Edward Yiu, Leung Kwok-hung and Dr Lau Siu Lai, also adapted their oaths. Their oaths were more innocuous; Professor Yiu merely added the words: 'I will protect the justice system in Hong Kong, fight for true democracy, and serve Hong Kong for its sustainable development.' The oaths of Nathan Law and Leung Kwok-hung were accepted by the president of the Legislative Council, while the other two were asked to retake their oaths.<sup>8</sup>
  - Following outrage at the oaths of Baggio Leung and Yau Wai Ching, the Hong Kong government took the unprecedented step of trying to stop the pair from being allowed to retake their oaths and mounted a legal challenge to disqualify them.
  - The High Court began hearing the judicial review on 3 November 2016. In a shock move, the Standing Committee of the National People's Congress (NPCSC) issued an 'Interpretation' of Basic Law Article 104 on 7 November which stated that oaths must be taken 'sincerely'. This was supposed to be an interpretation which applied retroactively, since 1997. Hong Kong's lawyers held a silent march in protest of the decision on 8 November, but this did not stop the government from winning the judicial review. Yau Wai-Ching and Baggio Leung were promptly disqualified. The Court of Final Appeal rejected the pair's application for an appeal in September 2017 on the basis that the case, 'as the lower courts had found, would have led to the same conclusion to unseat the pair even without Beijing's interpretation.'
  - The judge, Mr Justice Thomas Au, insisted that 'the Interpretation' did not change his decision on this case, although he did factor it into his decision-making process. However, subsequently the Interpretation opened the way for the four other lawmakers to be disqualified. Their disqualification was justified primarily based on the Interpretation made by the NPCSC.
  - **The justification given for these disqualifications is profoundly problematic as the Interpretation of Basic Law Article 104 by the Standing Committee of the National People's Congress is a reinterpretation of Basic Law which breaches the spirit of Basic Law and human rights guaranteed by the Basic Law and the Sino-British Joint Declaration.**

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<sup>8</sup> <https://www.hongkongwatch.org/all-posts/2018/3/7/political-screening-in-hong-kong-a-report-on-the-disqualification-of-candidates-and-lawmakers>

- **'The Interpretation' also violates rights enshrined in Hong Kong's constitution, including freedom of speech and the right to stand in election enshrined in Article 26 and Article 27 of the Basic Law.**
- **The requirements on oath-taking following the 'Interpretation' constitute unreasonable restrictions on the right to stand for election and take part in the conduct of public affairs under Articles 26 and 39(2) of the Basic Law, as well as Article 21 of the Hong Kong Bill of Rights. Taken together the candidates received nearly 200,000 votes. The disqualifications deny these voters their democratic rights.<sup>20</sup> They also violate freedom of opinion and expression under Article 27 of the Basic Law, and Article 16 of the Hong Kong Bill of Rights.**
- The UK Foreign Office's response to the NPCSC's interpretation was balanced. On the one hand the FCO statement on 6 November 2016 recognised the NPCSC's authority to interpret the Basic Law but it cautioned against any movement towards using this power to undermine confidence in the 'One Country, Two Systems'.<sup>9</sup>
- In the UK Foreign Office's bi-annual report on Hong Kong in 2018, the British Government offered far stronger language over the rejection of Agnes Chow's nomination for the forthcoming Legislative Council by-election. Stating that '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.'<sup>10</sup>
- The NPCSC's power to interpret the Basic Law is set out clearly in Article 158 of the Basic Law. However, this power is used sparingly having been only used five times since the 1997 handover as each time it has been exercised it has quite rightly provoked debate.
- Disqualification of candidates for election in Hong Kong continues to be a common occurrence. On 2 December 2018, potential candidate Eddie Chu Hoi-dick was disqualified from participating in the Rural Ordinary Elections, due to take place in January 2019, because the Returning Office said that Chu 'can be understood as implicitly confirming that he supports that independence could be an option for Hong Kong people, in the pretext of exercising the alleged right to advocate independence in a peaceful manner'. It is the first

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<sup>9</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594542/1Six-monthly-report-on-Hong-Kong-January-to-June-2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594542/1Six-monthly-report-on-Hong-Kong-January-to-June-2016.pdf)

<sup>10</sup> <https://www.gov.uk/government/publications/six-monthly-report-on-hong-kong-january-to-june-2018>



- time that an incumbent Hong Kong legislator has been disqualified from running for another election owing to their political beliefs.<sup>11</sup>
- In October 2019, pro-democracy activist and Demosisto candidate Joshua Wong was barred from standing for District Council elections by the Returning Officer who claimed that Wong had tried to mislead the public his stance on Hong Kong independence.<sup>12</sup>
  - Tiffany Yuen Ka-wai, a former party colleague of Wong's at Demosisto, had her candidacy validated without any inquiry from the election officer. This has led some legal scholars to argue that 'the red line, which was regarded as self-determination and independence, is now blurred.'<sup>13</sup>
  - Legal scholars have also stated that Wong's disqualification reaffirms that returning officers' power to bar candidates is broad and appears to be unchecked, given that the activist had made it clear he and his party Demosisto did not support Hong Kong independence.<sup>14</sup>
  - **On April 13<sup>th</sup> the Hong Kong and Macau Affairs Office of the Chinese Government issued a statement suggesting that Hong Kong lawmakers in the Legislative Council could be barred from office for filibustering government legislation and 'violating their oaths'.**
  - **Pan-democrat lawmakers have said the offices' missives were in breach of "one country, two systems" as Basic Law Article 22 states that: "No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law".<sup>15</sup>**
  - **The Hong Kong Bar Association also criticised the statement on these grounds, saying that the comments, which touch on affairs administered by Hong Kong Basic Law "could easily**

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<sup>11</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/789904/190327\\_Six\\_Monthly\\_Report\\_on\\_Hong\\_Kong\\_July\\_-\\_December\\_2018\\_FINAL270319.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789904/190327_Six_Monthly_Report_on_Hong_Kong_July_-_December_2018_FINAL270319.pdf)

<sup>12</sup> <https://www.hongkongfp.com/2019/10/29/breaking-hong-kong-bans-activist-joshua-wong-standing-district-election-race/>

<sup>13</sup> <https://www.scmp.com/news/hong-kong/politics/article/3035421/banning-joshua-wong-hong-kong-district-council-elections>

<sup>14</sup> <https://www.scmp.com/news/hong-kong/politics/article/3035421/banning-joshua-wong-hong-kong-district-council-elections>

<sup>15</sup> <https://www.scmp.com/news/hong-kong/politics/article/3079802/beijing-free-speak-out-about-hong-kong-legislature-say-pro>

**be perceived as interference in contravention of the principle of one country, two systems.”<sup>16</sup>**

- Tam Yiu-chung, Hong Kong’s sole representative on the National People’s Congress Standing Committee defended the statement and suggested it was a sign of things to come if pan-democrats do well in the upcoming Legco elections. “If (the opposition) wins half of the seats, the legislature would be over”, he said.<sup>17</sup>

### **iii. The Extradition Bill and the policing of protests**

- The most tumultuous development in Hong Kong since the last review in 2016 has been the attempt by the Hong Kong Government to introduce an extradition bill, which would have made it easier to extradite Hong Kongers to stand trial in the mainland. The introduction of this bill led to mass demonstrations for six months from June 2019 to the end of the year, with these city-wide protests only being paused in the face of the spread of COVID-19.
- **The Hong Kong government’s proposed amendments to existing extradition legislation would have allowed for the first time since the handover, the city to enter into one-off case-by-case extradition arrangements with mainland China. The amendments also have reduced the level of scrutiny required for the government to extradite someone by giving the Chief Executive of Hong Kong the power to sign off on these arrangements without consulting the city’s Legislative Council.**<sup>18</sup>
- These changes were justified by the Hong Kong government as correcting a loophole in existing legislation. Pointing to the Hong Kong government’s inability to surrender a fugitive criminal from Taiwan currently residing in Hong Kong, the Hong Kong Chief Executive Carrie Lam has argued that the amendments are necessary to rationalise existing legislation and plug a ‘gap in the law’.<sup>19</sup>
- **Carrie Lam’s description of the exemption of mainland China from the 1997 Fugitive Offenders Ordinance as a ‘loophole’ is misleading. The Hong Kong legislature in 1997 consciously chose not to apply case by-case extradition arrangements with the rest of the**

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<sup>16</sup> <https://af.reuters.com/article/worldNews/idAFKCN21W1L3>

<sup>17</sup> <https://www.scmp.com/news/hong-kong/politics/article/3079802/beijing-free-speak-out-about-hong-kong-legislature-say-pro>

<sup>18</sup> <https://www.hongkongwatch.org/all-posts/2019/5/1/new-hong-kong-watch-report-exposes-widespread-business-fears-about-the-extradition-law>

<sup>19</sup> [https://www.news.gov.hk/eng/2019/04/20190403/20190403\\_114343\\_518.html](https://www.news.gov.hk/eng/2019/04/20190403/20190403_114343_518.html)

**People's Republic of China. This decision was made in view of the human rights record and the legal system in China.<sup>20</sup>**

- **Pro-democracy leaders were rightly concerned that if the law was adopted it could be used as a tool to silence Beijing's critics. Not only would it allow Mainland China to extradite its opponents, political activists fear this new power would have a 'chilling effect' on future political protest by generating fears of potential extradition. Business leaders also expressed concern that the law jeopardised their safety in Hong Kong, and the integrity of the city's rule of law, which is the cornerstone of Hong Kong's status as an international financial hub.<sup>21</sup>**
- Despite the Hong Kong Government withdrawing the Extradition Bill in October 2019, first large-scale, and after the spread of COVID-19, small scale protests have continued in opposition to the tactics of the Hong Kong police force.
- Since the start of protests in early June 2019, the excessive use of force by the police has been regularly cited as a serious issue of concern by the international community and a driving force behind the continued protests in Hong Kong.
- Throughout this period of large-scale protests there were routinely scenes of children and young people being severely beaten, and of rubber bullets being fired into people's faces. These are acts which any ballistics expert would confirm presents a serious risk of injury or death, and which therefore is a serious violation of international standards.
- The Hong Kong Journalist's Association and Foreign Correspondent's Club regularly raised concerns throughout this period about the arrest of journalists and intimidation of journalists – including Hong Kong Police firing tear gas or pepper spray directly at journalists.<sup>22</sup>
- There have also been reports in the last year of the Hong Kong Police deliberately targeting medics who are on the scene to treat the injuries of the protestors and police officers.<sup>23</sup>

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<sup>20</sup> <https://www.hongkongwatch.org/all-posts/2019/5/1/new-hong-kong-watch-report-exposes-widespread-business-fears-about-the-extradition-law>

<sup>21</sup> <https://www.hongkongwatch.org/all-posts/2019/5/1/new-hong-kong-watch-report-exposes-widespread-business-fears-about-the-extradition-law>

<sup>22</sup> <https://www.fcchk.org/fccpresident-jodi-schneiders-op-ed-on-pressfreedom-is-published-in-the-latimes/>

<sup>23</sup> [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32938-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32938-1/fulltext)

- Police officers have been documented pointing loaded guns at protestors and in some cases discharged their weapons without probable cause. Most notably, in November an unarmed protestor Andrew Chow was shot at point blank range by a Hong Kong police officer.<sup>24</sup>
- Over 7,000 Hong Kongers have been arrested since June 2019, including 750 children<sup>25</sup>. The youngest was just twelve years old. There have been regular reports of detainees being mistreated, including subjected to sexual violence and allegations of torture by the Hong Kong Police.<sup>26</sup>
- The Hong Kong Police has come to be viewed as a law unto themselves.<sup>27</sup> Despite, regular reports of human rights abuses by from Amnesty International, Human Rights Watch, and Hong Kong Watch, no police officer has faced any disciplinary action for the disproportionate use of force against unarmed protestors or the allegations of torture or other cruel, inhuman, and degrading treatment of detainees.<sup>28</sup>
- The Chief Executive of Hong Kong continues to ignore calls from the international community for an independent inquiry into the policing of the protests and erosion of the rule of law in Hong Kong.<sup>29</sup>
- Ahead of the Extradition Bill's formal introduction into the Hong Kong Legislative Council, the British and Canadian Foreign Ministers issued a joint statement raising concerns over its impact on the city's autonomy, the large number of British and Canadian expats in Hong Kong, and on international business confidence.<sup>30</sup>

<sup>24</sup> <https://edition.cnn.com/2019/11/23/asia/hong-kong-protester-shot-intv-intl-hnk/index.html>

<sup>25</sup> Hong Kong Watch database on the detention of protestors:

<https://www.hongkongwatch.org/protest-prosecution>

<sup>26</sup> <https://www.amnesty.org/en/latest/news/2019/12/sexual-violenceagainst-hong-kongprotesters/> & <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-inpolicedetention-revealed/>

<sup>27</sup> <https://www.hongkongfp.com/2020/03/15/law-unto-hong-kong-police-officers-giving-force-bad-name/> & <https://www.hrw.org/news/2020/01/07/hong-kong-create-independent-investigation-police>

<sup>28</sup> <https://www.hongkongwatch.org/all-posts/2019/7/10/drop-outdated-rioting-charges-and-call-independent-inquiry-new-report>, <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>, & <https://www.hrw.org/news/2019/12/06/numbers-tell-story-hong-kongs-human-rights>

<sup>29</sup> <https://www.nytimes.com/2019/12/11/world/asia/foreign-experts-hong-kong-police-protests.html>

<sup>30</sup> <https://www.reuters.com/article/us-hongkong-politics-extradition-britain/uk-canada-express-concern-over-proposed-hong-kong-extradition-changes-idUSKCN1T01GZ>

- In June 2019, the UK Government banned the sale of crowd control equipment to Hong Kong, including teargas.<sup>31</sup> However, the UK has not gone as far as the USA Congress which introduced the Hong Kong Human Rights and Democracy Act in 2019<sup>32</sup>. The Act requires the US State Department to impose sanctions on Chinese and Hong Kong officials who violated human rights.
- In May 2020 the Independent Police Complaints Council published its report into the policing of anti-Extradition Bill protests. The report found the police force's response to the city's protests 'to be justified and within regulations.'<sup>33</sup>
- One of the international panel members who quit the IPCC study, Professor Clifford Stott, said the report had gaps in where it drew evidence from, and was missing some key stakeholders.<sup>34</sup>
- The Chief Executive, the Director of Amnesty International Hong Kong, Man-Kei Tam, also responding to the report's publication:

"This misleading report makes no attempt to establish accountability for the gross police misconduct seen on the streets since last summer. It also demonstrates the Hong Kong government's effective refusal to address the widespread and systemic human rights violations that have taken place during protests since last June."<sup>35</sup>

- The UK Foreign Office has published several statements on the Hong Kong protests since June 2019, expressing concern over the rising levels of police violence, calling on the Hong Kong Government to make efforts to open a dialogue to break the political deadlock in Hong Kong, and backing international calls for an independent inquiry into policing and the erosion of the rule of law in Hong Kong. This includes a joint-statement with the Canadian Government on 30<sup>th</sup> May when the bill was first published, which stated that 'there is a risk that the proposals could impact negatively on the rights and freedoms set down in the Sino-British Joint Declaration. It is vital that extradition arrangements in Hong Kong are in line with 'One Country, Two Systems' and fully respect Hong Kong's high degree of autonomy.'<sup>36</sup>

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<sup>31</sup> <https://www.theguardian.com/world/2019/jun/25/uk-halts-sales-of-teargas-to-hong-kong-amid-police-brutality-claims>

<sup>32</sup> <https://www.congress.gov/bill/116th-congress/house-bill/3289>

<sup>33</sup> <https://www.bbc.co.uk/news/world-asia-china-52680094>

<sup>34</sup> <https://www.theguardian.com/world/2020/may/15/hong-kong-police-watchdog-clears-force-protest-response>

<sup>35</sup> <https://www.amnesty.org/en/latest/news/2020/05/hong-kong-impotent-and-biased-ipcc-report-into-protests-fails-to-bring-justice-any-closer/>

<sup>36</sup> <https://www.gov.uk/government/news/foreign-office-statement-on-hong-kong-18-november-2019> & [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856991/Hong\\_Kong\\_Six-monthly\\_Report\\_Jan-Jun19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856991/Hong_Kong_Six-monthly_Report_Jan-Jun19.pdf)

- **In the recent UK Foreign Office biannual report on Hong Kong, the Foreign Secretary Dominic Raab MP reiterated in his foreword the UK's continued calls over the protests:**

**'The police response must be proportionate in their handling of protesters and safeguard the right to peaceful protest. And there must be a meaningful dialogue between all parties, with a credible political track to protect the rights and freedoms set out in Hong Kong's Basic Law and the Sino-British Joint Declaration, which reflects and respects China's avowed 'One Country, Two Systems'.<sup>37</sup>**

#### **iv. The abuse of the Public Order Ordinance**

- Between the Umbrella Movement and the start of the recent protests around the Extradition Bill, more than 100 democracy activists and protestors were prosecuted under the Public Order Ordinance, a law which has been repeatedly criticised by the United Nations Human Rights Committee for curtailing freedom of assembly.<sup>38</sup> Many of those arrested during the extradition bill protests will face prosecution under this legislation.
- Following pressure from the Hong Kong Government to increase the 'deterrence effect' of the legislation in 2017, judges have interpreted offences in recent verdicts using the Public Order Ordinance following a simple approach: maximise the probability of conviction and minimise leniency. This not only further raises the costs of protest and has detrimental effects on civil liberties and political freedoms, it also sets a dangerous precedent for the rule of law.<sup>39</sup>
- **The constitutionality and compliance of the Public Order Ordinance with these international standards has been a subject of fierce debate. The Public Order Ordinance has come under sustained criticism over decades for being draconian from United Nations bodies, human rights groups, local legislators and activists.<sup>40</sup>**
- **There are two reasons for this. Firstly, the vague terminology, and stringent notification requirements, in the legislation are onerous. In addition, the increasingly severe**

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<sup>37</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856991/Hong\\_Kong\\_Six-monthly\\_Report\\_Jan-Jun19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856991/Hong_Kong_Six-monthly_Report_Jan-Jun19.pdf)

<sup>38</sup> <https://www.hongkongwatch.org/all-posts/2019/5/24/draconian-public-order-legislation-the-reason-for-germany-asylum-cases-says-new-hong-kong-watch-report>

<sup>39</sup> <https://www.hongkongwatch.org/all-posts/2019/5/24/draconian-public-order-legislation-the-reason-for-germany-asylum-cases-says-new-hong-kong-watch-report>

<sup>40</sup> <https://www.hongkongwatch.org/all-posts/2019/5/24/draconian-public-order-legislation-the-reason-for-germany-asylum-cases-says-new-hong-kong-watch-report>

**sentencing in the legislation is already having a chilling effect on protest and political participation, as the cost of protest has increased.<sup>41</sup>**

- On 9 April 2019, three founders and six prominent activists of the Occupy Central movement were found guilty of conspiracy to commit public nuisance, incitement to commit public nuisance, and incitement to incite public nuisance.
- Professor Benny Tai Yiu-ting, Dr Chan Kin-man and Rev Chu Yiu-ming were sentenced to 16 months for conspiracy to commit public nuisance, with the latter's sentence suspended for two years due to ill health. Tai and Chan were also convicted for incitement to commit public nuisance. Legislator Shiu Ka-chun and activist Raphael Wong Ho-ming were sentenced to eight months for incitement to commit public nuisance and incitement to incite public nuisance; Shiu Ka-chun was also barred from running for election for five years.<sup>42</sup>
- Former legislator Lee Wing-tat and activist Eason Chung Yiu-wa received sentences of eight months, suspended for two years, for incitement to commit public nuisance, with Chung also convicted for incitement to incite public nuisance. Activist Tommy Cheung Sau-yin received two hundred hours of community service for the same offence as Chung, Wong and Shiu received. On 10 June Civic Party legislator Tanya Chan Suk-chong received a suspended sentence of eight months for incitement to commit public nuisance and incitement to incite public nuisance.<sup>43</sup>
- Responding to the sentencing of the Umbrella Movement activists, the Foreign Secretary stated in his biannual Hong Kong report that 'freedom of speech and freedom of assembly are both guaranteed by the Joint Declaration. It is essential that these, and all other rights and freedoms, which are guaranteed under the Joint Declaration, are fully respected. It would be deeply concerning if the outcome for these individuals were to deter the people of Hong Kong from participating in peaceful and lawful protest in the future.'<sup>44</sup>
- Commenting on the increased use of public ordinance laws, former Governor of Hong Kong Christopher Patten has said that 'the Hong Kong government, doubtless once more under

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<sup>41</sup> <https://www.hongkongwatch.org/all-posts/2019/5/24/draconian-public-order-legislation-the-reason-for-germany-asylum-cases-says-new-hong-kong-watch-report>

<sup>42</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856991/Hong\\_Kong\\_Six-monthly\\_Report\\_Jan-Jun19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856991/Hong_Kong_Six-monthly_Report_Jan-Jun19.pdf)

<sup>43</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856991/Hong\\_Kong\\_Six-monthly\\_Report\\_Jan-Jun19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856991/Hong_Kong_Six-monthly_Report_Jan-Jun19.pdf)

<sup>44</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856991/Hong\\_Kong\\_Six-monthly\\_Report\\_Jan-Jun19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856991/Hong_Kong_Six-monthly_Report_Jan-Jun19.pdf)

- instruction from the Communist regime in Beijing, appears to be twisting the law to attempt to frighten the community into accepting the Communist Party's attempts to bully Hong Kong to give up its belief in, and support for, the rule of law and the principle of 'one country, two systems'.<sup>45</sup>
- **The UN Human Rights Committee has repeatedly expressed concern that the application of 'unlawful assembly' against Hong Kong protesters risks violating their human rights. According to police figures, from June to December 2019 the Hong Kong police banned 47 out of 537 applications for public processions or meetings.**<sup>46</sup>
  - The most notable use of these archaic public ordinance laws in the last few months includes the arrest of the most prominent pro-democracy newspaper owner and activist Jimmy Lai in March 2020, as well as former lawmakers Lee Cheuk-yan and Yeung Sam on political motivated charges relating to 'illegal assembly' for their participation in largely peaceful mass protests on 31st August last year.<sup>47</sup>
  - At the end of March 2020, the Hong Kong Police also took the unprecedented step to arrest pro-democracy politician Cheng Lai-King on charges of 'seditious intent' for calling for a police officer who blinded a journalist in the protests to be investigated and brought to justice.<sup>48</sup>
  - **Cheng's case underlines that it is not only the Public Order Ordinance which can be deployed in the Hong Kong government's campaign of lawfare to pursue political vendetta's against Hong Kong's democracy movement. The use of sedition charges which have not been used since 1952 is a sign of the willingness of the Hong Kong government to use a wide range of antiquated and draconian common law charges for this end.**<sup>49</sup>
  - **On April 18th the Hong Kong Police Force arrested 15 high-profile democracy activists under Public Order Ordinance on charges of illegal assembly, including Martin Lee Chu-**

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<sup>45</sup> <https://www.hongkongfp.com/2020/02/29/beijing-throttling-freedom-hong-kong-says-ex-governor-chris-patten-following-arrest-pro-democracy-figures/>

<sup>46</sup> [https://www.amnesty.org/en/latest/news/2020/02/hong-kong-arrest-of-prodemocracy-activists-is-fresh-attempt-to-crush-](https://www.amnesty.org/en/latest/news/2020/02/hong-kong-arrest-of-prodemocracy-activists-is-fresh-attempt-to-crush-dissent/?fbclid=IwAR2jWAlKcTFRwSNZGM2gE7UIPyqPMuagS_PPLVpn58WqPAwMibt80PUY_Q)

[dissent/?fbclid=IwAR2jWAlKcTFRwSNZGM2gE7UIPyqPMuagS\\_PPLVpn58WqPAwMibt80PUY\\_Q](https://www.amnesty.org/en/latest/news/2020/02/hong-kong-arrest-of-prodemocracy-activists-is-fresh-attempt-to-crush-dissent/?fbclid=IwAR2jWAlKcTFRwSNZGM2gE7UIPyqPMuagS_PPLVpn58WqPAwMibt80PUY_Q)

<sup>47</sup> <https://www.theguardian.com/world/2020/feb/28/hong-kong-media-tycoon-jimmy-lai-arrested-on-charges-of-illegal-assembly> & <https://www.bbc.com/news/world-asia-china-51669453>

<sup>48</sup> <https://www.wsj.com/articles/hong-kong-police-arrest-opposition-politician-under-colonial-era-law-11585226921>

<sup>49</sup> <https://www.ft.com/content/1f2b82e4-742a-11ea-90ce-5fb6c07a27f2>



**Ming, the grandfather of Hong Kong's democracy and the prominent barrister Margaret Ng.**

- **The alleged crimes, of which they stand accused, include organising a march against the Government's extradition bill on 18th August last year which 1.7 million people attended.**
- In a statement on the arrests, the former Foreign Secretary and Hong Kong Watch Patron Rt. Hon Malcolm Rifkind said:

"The arrest of Martin Lee, the grandfather of Hong Kong's democracy, barrister Margaret Ng and other prominent mainstream pro-democracy politicians in Hong Kong today is a truly appalling attack on the very heart of Hong Kong's freedoms, the rule of law and autonomy guaranteed to the people of Hong Kong under the Joint Declaration and the Basic Law."<sup>50</sup>

- Lord Christopher Patten, the last British Governor of Hong Kong also criticised the arrests:

"With the world's attention focused on the appalling covid-19 epidemic, Beijing and its subservient government in Hong Kong have taken yet another step towards burying one-country, two-systems. The arrest of some of the most distinguished leaders over decades of the campaign for democracy and the rule of law in Hong Kong is an unprecedented assault on the values which have underpinned Hong Kong's way of life for years. It is extraordinary that 15 distinguished Hong Kong citizens have been singled out by the police for taking part in demonstrations, the first of which was attended by 1.7 million of Hong Kong's citizens. This is not the rule of law. This is what authoritarian governments do. It becomes ever more clear, week by week and day by day, that Beijing is determined to throttle Hong Kong. The world should make clear how this further undermines any residual trust that we still have in the Chinese Communist dictatorship."<sup>51</sup>

- The arrests have received international condemnation with statements released from the US State Department, the Canadian Government, the European Commission, the Chair of ASEAN parliamentarians for human rights, the co-Chairs of the Hong Kong Parliamentary Party Group.<sup>52</sup>

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<sup>50</sup><https://www.hongkongwatch.org/all-posts/2020/4/18/patten-rifkind-other-politicians-and-hong-kong-watch-condemn-mass-arrests-of-democracy-activists>

<sup>51</sup> <https://www.hongkongwatch.org/all-posts/2020/4/18/patten-rifkind-other-politicians-and-hong-kong-watch-condemn-mass-arrests-of-democracy-activists> & <https://news.rthk.hk/rthk/en/component/k2/1521395-20200418.htm>

<sup>52</sup> <https://www.hongkongwatch.org/all-posts/2020/4/18/patten-rifkind-other-politicians-and-hong-kong-watch-condemn-mass-arrests-of-democracy-activists>

- The Hong Kong Government has also faced criticism from the international legal community, with the International Bar Association, the International Bar Association's Human Rights Institute, the Bar Human Rights Committee of England and Wales, and the International Commission of Jurists stating that:

*'The right to peaceful protest is protected under the Joint Declaration and the Basic Law. As part of the 'One Country, Two Systems' policy, the Hong Kong Basic Law guarantees freedoms that are not available to those in mainland China until 2047. Hong Kong residents are guaranteed the rights to 'freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration'. Article 21 of the International Covenant on Civil and Political Rights ("ICCPR") provides that "[t]he right of peaceful assembly shall be recognised." The Basic Law expressly preserves the ICCPR as applicable to the Hong Kong Special Administrative Region. The State has a duty to protect and facilitate such protest, and the Public Order Ordinance must be implemented in conformity with Hong Kong's obligations under the ICCPR.'*<sup>53</sup>

- The British Government, a co-signatory and guarantor of the Sino-British Joint Declaration, commenting on the arrests has said "the right to peaceful protest is fundamental to Hong Kong's way of life and as such is protected in both the Joint Declaration and the Basic Law." The UK Foreign Office also called for the authorities in Hong Kong to "focus on rebuilding trust through a process of meaningful political dialogue."<sup>54</sup>
- Commenting on the use of public order laws to prosecute protestors, the UK Foreign Office in its recent bi-annual report on Hong Kong said:
- *'Freedom of speech and freedom of assembly are both guaranteed by the Joint Declaration. It is essential that these, and all other rights and freedoms, which are guaranteed under the Joint Declaration, are fully respected. It would be deeply concerning if the outcome for these individuals were to deter the people of Hong Kong from participating in peaceful and lawful protest in the future.'*<sup>55</sup>

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<sup>53</sup> <https://www.barhumanrights.org.uk/hong-kong-arrests-of-pro-democracy-figures-condemned-by-international-legal-community/>

<sup>54</sup> <https://www.gov.uk/government/news/hong-kong-protests-foreign-office-statement-18-april-2020>

<sup>55</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856991/Hong\\_Kong\\_Six-monthly\\_Report\\_Jan-Jun19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856991/Hong_Kong_Six-monthly_Report_Jan-Jun19.pdf)

- **The arrests took place just hours after China’s top representative office in the semi-autonomous city declared it is not bound by Hong Kong’s constitutional restrictions that bar Chinese government from interfering in local affairs.**<sup>56</sup>
- Article 22 of Hong Kong’s Basic Law, ensures that no Chinese Government department can interfere in the affairs of the Hong Kong Special Administrative Region. Beijing’s Liaison Office has self-declared, which has subsequently been supported by the Hong Kong Government, that this provision does not apply as it is not a department of the Chinese Government.
- One prominent Hong Kong democracy activist commenting on this claim has said, “if the Liaison Office isn’t a government department then what is it and why is it there?”
- **Lord Patten has also criticised the Liaison Office’s statement:**

*“This assault on Hong Kong’s freedoms comes hard on the heels of ludicrous attempts in the last few days by Beijing’s officials to argue that the Hong Kong and Macao Affairs Office, and the Liaison Office in Hong Kong, are not the same as the rest of the Beijing Government and can interfere in Hong Kong’s affairs without breaching the Joint Declaration and the Basic Law. This is a reckless argument which shows that Xi Jinping is determined to abandon the policies pursued by his predecessors, even at the cost of destroying Hong Kong’s way of life. It should be rejected immediately by all those governments and parliaments around the world who know the importance of safeguarding the high degree of autonomy which is guaranteed by the Basic Law.”*<sup>57</sup>

## **v. The Introduction of a National Anthem Law**

- Since the Occupy protests in late 2014, the people of Hong Kong have employed a variety of novel modes of protest to voice dissatisfaction with Beijing’s ever tightening grip on the city. Undoubtedly one of the most controversial modes of protest has been the booning of the national anthem of the People’s Republic of China, which first emerged during football matches in 2015.
- In late 2017, the National People’s Congress of the People’s Republic of China passed a National Anthem Law, dictating strict punishment for anyone who insulted ‘The March of the Volunteers’ in the Mainland. Almost immediately thereafter, Beijing introduced the

<sup>56</sup> <https://www.scmp.com/news/hong-kong/politics/article/3080506/beijings-liaison-office-says-it-has-right-handle-hong-kong>

<sup>57</sup> <https://www.hongkongwatch.org/all-posts/2020/4/18/patten-rifkind-other-politicians-and-hong-kong-watch-condemn-mass-arrests-of-democracy-activists> & <https://news.rthk.hk/rthk/en/component/k2/1521395-20200418.htm>

- law, clearly drafted with Hong Kong in mind, into Annex III of the Basic Law, meaning that Hong Kong is required to legislate a similar law for implementation in the city. This intervention, which goes beyond Beijing's legally approved authority in matters of defence and diplomacy, highlights the central government's ability to indirectly legislate for Hong Kong via Annex III: a troubling prospect as Beijing continues to tighten its grip on the city.<sup>58</sup>
- After a year of work, the National Anthem Ordinance was presented to the Legislative Council for a first and second reading in January of 2019 and was passed in May 2020.
  - The law bans the use of the anthem for commercial purposes, parodies, or significant alterations of its words and score. Authorities would have two years to investigate an offence, with those found guilty liable to a fine of up to HK\$50,000 and three-year custodial sentence. Prodemocracy legislators, the Hong Kong Bar Association and the Hong Kong Law Society have criticised the subjective nature of the offence and the significant length of the investigation period (by way of comparison, summary offences in Hong Kong have a statute of limitation of six months).<sup>59</sup>
  - **The amendment of Annex III of the Basic Law to force through the legislation of the National Anthem Ordinance is an unprecedented intervention against freedom of speech in the city, as it uses Annex III as a legislative backdoor for matters beyond Beijing's purview in defence and diplomacy, thereby shifting the status quo and critically undermining the city's promised 'high degree of autonomy'.<sup>60</sup>**
  - **The law curtails basic rights of free speech, expression, and demonstration guaranteed in the Basic Law and the International Covenant on Civil and Political Rights.<sup>61</sup>**
  - **The law is unlikely to bring an end to these protests against the PRC national anthem, but will likely only provoke further protests, intensifying tensions. The recent protests over the Extradition Bill in 2019 offered further evidence of this point, with protestors continuing to boo the Chinese national anthem.<sup>62</sup>**

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<sup>58</sup> <https://www.hongkongwatch.org/all-posts/2019/3/27/new-report-says-hong-kong-national-anthem-law-is-legal-malware>

<sup>59</sup><https://www.hongkongwatch.org/all-posts/2019/3/27/new-report-says-hong-kong-national-anthem-law-is-legal-malware>

<sup>60</sup> <https://www.hongkongwatch.org/all-posts/2019/3/27/new-report-says-hong-kong-national-anthem-law-is-legal-malware>

<sup>61</sup> <https://www.hongkongwatch.org/all-posts/2019/3/27/new-report-says-hong-kong-national-anthem-law-is-legal-malware>

<sup>62</sup> <https://www.hongkongwatch.org/all-posts/2019/3/27/new-report-says-hong-kong-national-anthem-law-is-legal-malware> & <https://www.bbc.co.uk/news/world-asia-china-41870206>

- **The national anthem law also incorporates untenably vague definitions of insult, while at the same time giving the authorities unreasonably extended time periods in which to pursue prosecution, along with excessive prison terms of up to three years for thought and speech crimes: this undermines the rule of law. It is not only open to potential politicized abuse, but indeed seems almost designed for politicized prosecution, constituting a type of legal malware that will weaken Hong Kong’s respected rule of law system.**<sup>63</sup>
- UK Foreign Office Minister Lord Ahmad of Wimbledon in response to a written question on the subject said, ‘we believe that it is fitting to show respect to any National Anthem. Whether it is necessary to enforce such respect with legislation is a matter for the Chinese and Hong Kong SAR Governments to decide. In Hong Kong freedom of speech is guaranteed under the Sino-British Joint Declaration, and it is vital that such freedoms are fully respected.’<sup>64</sup>

## **vi. The unilateral imposition of national security legislation**

- National security legislation - tied to Article 23 of Hong Kong’s Basic Law - has historically been one of the controversial issues in Hong Kong politics. On 1 July 2003, at least 500,000 people marched from Victoria Park to the Government of Hong Kong’s Central Offices. The catalyst was national security legislation, under Article 23, which contained certain draconian provisions and could have been used by the government to curtail freedom of speech and other civil liberties.<sup>65</sup>
- The protest led to the legislation being shelved in 2003, but the National People’s Congress has announced that national security legislation is set to be introduced to Hong Kong via Annex III of the Basic Law.
- The unilateral imposition of national security law by Beijing in Hong Kong is a flagrant breach of the Sino-British Joint Declaration and will only add to the deteriorating human rights situation in Hong Kong.
- **This law will introduce a range of vague and draconian charges to Hong Kong law including ‘subversion’, ‘secession’, and ‘colluding with foreign political forces’. Of course, all**

<sup>63</sup> <https://www.hongkongwatch.org/all-posts/2019/3/27/new-report-says-hong-kong-national-anthem-law-is-legal-malware>

<sup>64</sup> <https://www.theyworkforyou.com/wrans/?id=2019-04-09.HL15137.h&s=national+anthem#gHL15137.q0>

<sup>65</sup> <https://www.hongkongwatch.org/all-posts/2018/11/1/new-report-balancing-national-security-and-the-rule-of-law-article-23-of-the-basic-law>

**countries have a duty to protect their own national security, but not at the expense of fundamental rights and freedoms. This law flies in the face of the human rights commitments Hong Kong has made as a signatory of the ICCPR and comes at a time when UN Human Rights Experts are already calling for the Hong Kong Government to reform its anti-sedition and anti-terror laws to meet international standards.”**

- The implications of this legislation are potentially profound. Will NGOs and charities like Amnesty International and Hong Kong Watch become illegal? Will Chris Patten and foreign journalists speaking at the FCC become a crime? Will the political opposition be accused of subversion, and imprisoned like the former Nobel-peace prize winner Liu Xiaobo?
- The Sino-British Joint Declaration states that the Hong Kong government is to be granted a “high degree of autonomy” on all matters aside from defence and diplomacy. The Hong Kong Basic Law states that national security legislation of this type will be enacted by the Hong Kong government 'on its own'.
- **The decision to use Annex III of the Hong Kong Basic Law for Beijing to directly legislate national security legislation is therefore an unprecedented and highly controversial intervention.**
- **Beijing’s decision to unilaterally impose legislation is an unprecedented assault on Hong Kong’s autonomy. The Chinese authorities know that this is the most controversial law in Hong Kong’s history. Their decision shows a total disregard for the spirit and the terms of the original treaty.**
- One of the most concerning elements of the proposed national security law, is that it will enable China’s national security organs to establish “agencies” in Hong Kong “when needed” for the first time ever. This would come in the form of security forces, secret police, intelligence agencies, or a separate court established to hear related cases.
- In mainland China, national security agents regularly harass and intimidate dissidents, journalists and residents who voice criticism against their government or otherwise are accused of undermining public order by “picking quarrels”. The national security laws and stationing of mainland agents in Hong Kong raise questions over how involved these agents will be in the efforts to “prevent, stop and punish” security threats.
- Former Governor of Hong Kong, Lord Patten, has pointed out that with a well-earned reputation for coercion and torture, Chinese national security agents will not be operating in Hong Kong to sell dim sum.
- **Contrary to what some commentators have claimed, Hong Kong already has a significant body of laws protecting national security. In fact, as recently as April, UN Human Rights**

experts have asked the Hong Kong Government to bring its anti-terror and anti-sedition laws into line with international standards.<sup>66</sup>

- **The Hong Kong Bar Association has pointed out that the NPCSC has no power to add the Hong Kong National Security Law under Annex III of the Basic Law via the mechanism provided under Article 18 of the Basic Law.2 It has also questioned how the operation of Chinese security officials in Hong Kong would comply with Article 22 of the Basic Law, which provides that “No department of the Central People’s Government ... may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law”.<sup>67</sup>**
- In its response to the publication of the draft national security law, the Hong Kong Bar Association also raised concerns over how the law would impact on the independence of the judiciary. Article 3 of the Draft Decision provides that “the HKSAR’s administrative, legislative and judicial organs must, in accordance with relevant laws and regulations, effectively prevent, stop and punish acts endangering national security”.<sup>68</sup>
- The reference to “judicial organs” gives rise to perceptions that the Judiciary of the HKSAR is being or will be instructed to act in a particular way. Reuters has also reported that foreign judges who sit on Hong Kong’s Court of Final Appeal will be barred from handling national security cases under the new legislation.<sup>69</sup>
- **The Bar Human Rights Committee for England and Wales has raised its alarm at that the Draft Decision contains no assurances as to compliance with the International Covenant on Civil and Political Rights (ICCPR) and the international human rights obligations to which Hong Kong is committed. There are well-grounded reasons to fear that the new law will be used to suppress the fundamental rights of a very wide range of individuals and society, and in particular those who are connected, even loosely, with the pro-democracy movement.<sup>70</sup>**

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<sup>66</sup> <https://www.hongkongwatch.org/all-posts/2018/11/1/new-report-balancing-national-security-and-the-rule-of-law-article-23-of-the-basic-law>

<sup>67</sup> <https://www.hkba.org/sites/default/files/20200525%20%20Proposal%20of%20National%20People%27s%20Congress%20to%20enact%20National%20Security%20Law%20in%20Hong%20Kong%20%28E%29.pdf>

<sup>68</sup> <https://www.hkba.org/sites/default/files/20200525%20%20Proposal%20of%20National%20People%27s%20Congress%20to%20enact%20National%20Security%20Law%20in%20Hong%20Kong%20%28E%29.pdf>

<sup>69</sup> <https://uk.reuters.com/article/uk-china-parliament-hongkong-security/chinas-hong-kong-law-set-to-bar-foreign-judges-from-national-security-cases-sources-idUKKBN2321DR>

<sup>70</sup> <https://www.barhumanrights.org.uk/hong-kong-chinas-proposed-national-security-laws-should-be-withdrawn-with-immediate-effect/>

- **A cross-party international coalition of 850 parliamentarians and policymakers from 40 countries led by former Governor Lord Patten and former Foreign Secretary Sir Malcolm Rifkind issued a statement decrying Beijing’s ‘unilateral introduction of national security legislation in Hong Kong,’ and calling for sympathetic governments to unite against this ‘flagrant breach of the Sino-British Joint Declaration’.**<sup>71</sup>
- The UK Foreign Secretary joined with his US, Australian, and Canadian counterparts to issue a joint-statement responding to the national security law, which said:
 

“China’s decision to impose the new national security law on Hong Kong lies in direct conflict with its international obligations under the principles of the legally-binding, UN-registered Sino-British Joint Declaration. The proposed law would undermine the One Country, Two Systems framework. It also raises the prospect of prosecution in Hong Kong for political crimes, and undermines existing commitments to protect the rights of Hong Kong people – including those set out in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.”<sup>72</sup>
- 27 EU Member State Foreign Ministers also released a joint-statement, which said:
 

“The EU expresses its grave concern at the steps taken by China on 28 May, which are not in conformity with its international commitments (Sino-British Joint Declaration of 1984) and the Hong Kong Basic Law. This risks to seriously undermine the 'One Country Two Systems' principle and the high degree of autonomy of the Special Administrative Region of Hong Kong.”<sup>73</sup>
- Seven UK former foreign ministers including, Jeremy Hunt MP, Lord William Hague, David Miliband, Margaret Beckett MP, Jack Straw, Sir Malcolm Rifkind, and Lord David Owen, have written to the Prime Minister calling for him to raise Hong Kong at the G7 and lead the creation for a formal international Contact Group on Hong Kong.<sup>74</sup>
- In response to the national security law, the US Secretary of State Mike Pompeo refused to certify Hong Kong as ‘autonomous’ and President Trump announced that the US would suspend the city’s special trade status and rip up the US-HK Extradition Bill.<sup>75</sup>

<sup>71</sup> <https://www.hongkongwatch.org/all-posts/2020/5/23/patten-led-group-of-198-parliamentarians-from-23-countries-decry-flagrant-breach-of-the-sino-british-joint-declaration>

<sup>72</sup> <https://www.gov.uk/government/news/joint-statement-from-the-uk-australia-canada-and-united-states-on-hong-kong>

<sup>73</sup> <https://www.consilium.europa.eu/en/press/press-releases/2020/05/29/declaration-of-the-high-representative-on-behalf-of-the-european-union-on-hong-kong/>

<sup>74</sup> <https://www.theguardian.com/world/2020/jun/01/seven-former-foreign-secretaries-urge-uk-to-take-lead-on-hong-kong>

<sup>75</sup> <https://edition.cnn.com/2020/05/27/politics/hong-kong-pompeo-certification/index.html> & <https://edition.cnn.com/2020/05/29/politics/trump-china-announcement/index.html>



- There are several bills currently being debate in the US Congress related to the national security law, two focus on the introduction of Magnitsky style sanctions targeted at the perpetrators of human rights abuses in Hong Kong and those financial institutions that break the Sino-British Joint Declaration and one would make it easier for Hong Kongers to claim asylum in the US.
- The Prime Minister Boris Johnson also responded directly to the people of Hong Kong by publishing an article in the South China Morning Post making it clear that if Beijing pushes ahead with the law the UK Government would extend the rights of BNO passport holders and their dependents, ensuring a path to citizenship.<sup>76</sup>
- The Chinese Communist Party should urgently reconsider the National Security Law before it dismantles the One Country, Two System Model, and leads to the end of Hong Kong as we know it.
- We urge countries to join together to form an International Contact Group on Hong Kong to monitor the situation on the ground and coordinate joined up action, including an international lifeboat policy for Hong Kong refugees if necessary.

## **vii. Attacks on the freedom of the press**

- In recent years the freedom of the press in Hong Kong as guaranteed under the Sino-British Joint Declaration has increasingly come under attack. In October 2018, Victor Mallet the Financial Times Asia Editor had his work visa extension rejected, the perceived reason for this decision by the Hong Kong Government was his chairing of an event at the Foreign Correspondents' Club where a localist politician was invited to speak.<sup>77</sup>
- As previously stated, a worrying number of journalists have been targeted by the Hong Kong Police throughout the large-scale protests around the Extradition Bill last year. The Hong Kong Journalists Association has stated that press freedom in the city 'has fallen to its lowest level'. The association said last year it had received 29 cases of complaints from the media against police officers over the alleged use of excessive force while covering anti-bill protests.<sup>78</sup>

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<sup>76</sup> <https://www.scmp.com/comment/opinion/article/3087252/hongkongers-fearing-their-way-life-britain-will-provide-alternative>

<sup>77</sup> <https://www.scmp.com/news/hong-kong/politics/article/2168219/financial-times-journalist-victor-mallet-about-leave-hong>

<sup>78</sup> <https://www.scmp.com/news/hong-kong/society/article/3017600/press-freedom-hong-kong-its-worst-journalists-attacked-and>

- **The 2019 annual report of the Foreign Correspondents Club of China found that Chinese authorities are using visas as weapons against the foreign press like never before, expanding their deployment of a long-time intimidation tactic as working conditions for foreign journalists in China markedly deteriorated in 2019.<sup>79</sup>**
- **More than 80% of correspondents surveyed for the report say that they had experienced ‘interference, harassment or violence’ while reporting. The three most sensitive coverage areas have been the Hong Kong protests, the situation in Xinjiang and any criticism of President Xi Jinping.<sup>80</sup>**
- In March 2020 the Chinese Government announced the expulsion of American journalists working for the Washington Post, the Wall Street Journal, and the New York Times, from mainland China, Macau, and Hong Kong. While the wording of the Chinese Foreign Ministry’s statement does not cover US journalists currently working in Hong Kong for those particular publications, the announcement has added to wider concerns around the erosion of press freedom in Hong Kong, and the possibility of future expulsions of journalists once their current multi-year work visas expire.<sup>81</sup>
- **Responding to a letter from the patrons of Hong Kong Watch and the former Governor of Hong Kong Lord Patten, the Foreign Secretary said:**

***‘The suggestion by the Chinese MFA that this measure may apply in Hong Kong is a cause of particular concern. The Sino-British Declaration is clear. It sets out that immigration decisions are the sole responsibility of the Hong Kong Special Administrative Government, and freedom of the press is guaranteed. It is imperative that these rights and freedoms are fully respected.’<sup>82</sup>***

### **viii. Restriction of entry into Hong Kong**

- Since 2016, the Hong Kong Government under the direction of the Chinese state, has barred entry to a number of human rights activists, including the Chair and co-founder of

<sup>79</sup> <https://www.fcchk.org/marked-deterioration-in-conditions-for-foreign-media-in-china-fccc-annual-report/>

<sup>80</sup> <https://www.fcchk.org/marked-deterioration-in-conditions-for-foreign-media-in-china-fccc-annual-report/>

<sup>81</sup> <https://www.scmp.com/news/china/diplomacy/article/3075647/china-revokes-press-credentials-american-journalists-3-us>

<sup>82</sup> Letter from Foreign Secretary Rt. Hon Dominic Raab MP to Hong Kong Chair and Co-founder Benedict Rogers, 2<sup>nd</sup> April 2020, available:

[https://twitter.com/hk\\_watch/status/1245633643797602304?s=20](https://twitter.com/hk_watch/status/1245633643797602304?s=20)

Hong Kong Watch Benedict Rogers in October 2017 (who, for the purposes of full disclosure, also serves as Deputy Chair of the Conservative Party Human Rights Commission) and more recently the global head of Human Rights Watch, Kenneth Roth in January 2020.<sup>83</sup>

- The UK Foreign Office summoned the Chinese Ambassador in response to the decision to bar Mr Rogers entry into Hong Kong and wrote to the Chief Executive Carrie Lam to raise the UK's concerns over the impact of the restrictions on entry of UK citizens would have on Hong Kong's autonomous status under the 'One Country, Two Systems' model.<sup>84</sup>

## ix. Co-location at the Kowloon West rail terminus and the case of Simon Cheng

- The opening of a new high-speed rail terminus in October 2018 which connects the Kowloon West Terminus in Hong Kong with mainland China has added to fears of the growing encroachment of Beijing on the autonomy of Hong Kong. Under the co-location arrangements between the Hong Kong Government and the Chinese Government, mainland police officers are able to operate and enforce national laws in parts of the station.<sup>85</sup>
- In December 2017 the Standing Committee of the National People's Congress (NPCSC) issued a decision approving the co-location arrangements in the West Kowloon terminus. This was in response to a legal challenge that the arrangements in the West Kowloon terminus contravened the Basic Law. A case challenging the decision is currently with the Court of Final Appeal.
- **The Basic Law states that no mainland Chinese law shall apply on Hong Kong soil, except for those relating to defence, foreign affairs and 'other matters outside the limits' of the city's autonomy.**
- **The Hong Kong Bar Association has criticised the co-location arrangement as 'the most retrograde step to date in the implementation of the Basic Law and severely undermines**

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<sup>83</sup> <https://www.theguardian.com/world/2017/oct/11/british-conservative-party-activist-benedict-rogers-hong-kong> & <https://www.nytimes.com/2020/01/12/world/asia/kenneth-roth-hong-kong.html>

<sup>84</sup> <https://www.theguardian.com/uk-news/2017/oct/18/uk-summons-chinese-ambassador-after-british-activist-barred-benedict-rogers-barred-hong-kong>

<sup>85</sup> <https://www.theguardian.com/cities/2018/oct/04/high-speed-train-brings-chinese-border-into-heart-of-hong-kong>

**public confidence in ‘one country, two systems’ and the rule of law in the Hong Kong Special Administrative Region.’<sup>86</sup>**

- The Hong Kong Government has attempted to mute opposition to the new terminus and assure the populace that the co-location arrangements will not impact on Hong Kong’s autonomy. However, in January 2019 it came to light that a local traveller was arrested by mainland police officers at the West Kowloon terminus without Hong Kong officials being notified.<sup>87</sup>
- Civic Party lawmaker Tanya Chan castigated officials for being irresponsible and not notifying the Hong Kong Government, as well as the lack of clarity under the co-location arrangements as to who from the mainland could come and exercise their powers at the terminus. Meanwhile Democratic Party lawmaker James To Kun-sun argued that the existing mechanism did not cover detention arising from civil proceedings.<sup>88</sup>
- Separately, a female employee, working in the West Kowloon terminus, claimed that she was indecently assaulted in both the Hong Kong SAR and mainland China port areas of the terminus. A man was arrested after the employee reported the incidents to the Hong Kong police, but only for the offence that allegedly occurred in the Hong Kong SAR port area. The employee was told to report the other incident to the mainland Chinese police.<sup>89</sup>
- The UK Foreign Office in its recent bi-annual report on Hong Kong has stated that this incident highlights ‘the complexity of the West Kowloon terminus, which is effectively one building, coming under two separate jurisdictions.’<sup>90</sup>
- In August 2019, Simon Cheng, an employee of the British Consulate-General in Hong Kong, was abducted from the West Kowloon terminus after returning from a business trip in

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<sup>86</sup> <https://www.scmp.com/news/hong-kong/law-crime/article/2126061/hong-kong-bar-association-appalled-approval-joint>

<sup>87</sup> <https://www.scmp.com/news/hong-kong/politics/article/2180855/chinese-court-officers-did-not-have-tell-hong-kong>

<sup>88</sup> <https://www.scmp.com/news/hong-kong/politics/article/2180855/chinese-court-officers-did-not-have-tell-hong-kong>

<sup>89</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856991/Hong\\_Kong\\_Six-monthly\\_Report\\_Jan-Jun19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856991/Hong_Kong_Six-monthly_Report_Jan-Jun19.pdf)

<sup>90</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856991/Hong\\_Kong\\_Six-monthly\\_Report\\_Jan-Jun19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856991/Hong_Kong_Six-monthly_Report_Jan-Jun19.pdf)

Shenzhen for fifteen days<sup>91</sup>. Cheng describes being tortured while he was detained in the mainland, with officials questioning him over ‘the UK’s role in the “riots”’.<sup>92</sup>

- Following Cheng’s detention, Canada’s consulate in Hong Kong suspended trips for Canadian staff to mainland China.<sup>93</sup>
- The Foreign Secretary Dominic Raab MP commenting on Cheng’s detention said, ‘Simon Cheng was a valued member of our team. We were shocked and appalled by the mistreatment he suffered while in Chinese detention, which amounts to torture. I summoned the Chinese Ambassador to express our outrage at the brutal and disgraceful treatment of Simon in violation of China’s international obligations. I have made clear we expect the Chinese authorities to investigate and hold those responsible to account.’<sup>94</sup>

## Recommendations

Hong Kong Watch believes the Conservative Human Rights Committee should consider issuing the following recommendations to the British Government regarding human rights in Hong Kong:

7. The Government should honour its commitment to expand the rights of British National Overseas passport holders, legislating its promise and offering clearer details on how the policy would work, whether it would include dependents, and whether the Government will consider restoring the right of abode.
8. The Government should organise an International Contact Group on Hong Kong with likeminded partners to monitor the situation and coordinate joined up action.
9. The Government should support the creation of a United Nations Special Envoy for Hong Kong, to investigate human rights abuses in the city.
10. The Government should work with likeminded partners to create an international life-boat policy for Hong Kongers who will need a lifeline in the face of a further crackdown.


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<sup>91</sup> <https://www.bbc.co.uk/news/world-asia-china-50457262>

<sup>92</sup> <https://www.facebook.com/notes/cheng-man-kit/for-the-record-an-enemy-of-the-state/2490959950941845/>

<sup>93</sup> <https://www.scmp.com/news/china/diplomacy/article/3024015/canadian-consulate-hong-kong-halts-mainland-china-visits-after>

<sup>94</sup> <https://www.gov.uk/government/news/foreign-secretary-statement-on-simon-cheng-20-november-2019>

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11. The Government should consider the case for Magnitsky sanctions being used against the perpetrators of human rights abuses in Hong Kong and China under the National Security Law in coordination with international partners.
  12. The Government alongside other partners should send election monitors to observe the upcoming Legislative Council elections in Hong Kong in September.