

Written submission from the Hong Kong UPR Coalition (HIA0009)

The Hong Kong UPR Coalition ('the Coalition'), is pleased to make a submission to the Human Rights Protections in International Agreements Inquiry ('the Inquiry') by the Joint Committee on Human Rights ('the JCHR').

About the Hong Kong UPR Coalition

The Coalition is an alliance of civil society groups, which seeks to advance human rights in the Hong Kong Special Administrative Region (HKSAR) through the United Nations Universal Periodic Review (UPR) process. Founded for the third cycle UPR of People's Republic of China (PRC), the Coalition comprises over 45 civil society organisations covering a wide range of human rights issues in the HKSAR.¹

The Coalition has undertaken the most comprehensive engagement ever by a civil society coalition in a United Nations process in the HKSAR. Activities have included:

- submissions to the United Nations Human Rights Council (HRC), HKSAR government, HKSAR Legislative Council;
- civil society workshops, submission drafting workshops and roundtable events;
- over 150 meetings with stakeholders, including foreign governments and parliamentarians;
- tailored fact sheets on 24 topics, and much more.

Application of the Sino-British Joint Declaration and the UPR process

The Coalition is concerned by comments from the PRC which suggest that the Sino-British Joint Declaration ('the Joint Declaration'), is "a historical document that no longer had any practical significance".² While the United Kingdom (UK) government responded that the Joint Declaration remained in force and was a legal binding treaty, it is concerning that such a clarification was required. The Joint Declaration is a valuable legal document in the protection and promotion of human rights in the HKSAR. As paragraph 3(5) of the Joint Declaration notes:

"Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region."

As such, the UK has a unique role to speak up where there are violations of the Joint Declaration.

The Coalition strongly disagrees with the assessment by the Chief Secretary for the Administration in his presentation at the UPR hearing on 6 November 2018 that concerns with the human rights situation in the HKSAR are "*unwarranted, unfounded and unsubstantiated*" as.³ The Coalition is deeply concerned with the deteriorating human rights environment in the HKSAR, evidenced by physical and verbal threats to pro-democracy politicians and activists, disqualification of candidates based on their political beliefs,

¹ Further information on the Coalition, including submissions, fact sheets and media releases can be found at: <http://www.justicecentre.org.hk/policy-advocacy/universal-periodic-review/>.

² Reuters, 'China says Sino-British Joint Declaration on Hong Kong no longer has meaning', 30 June 2017. Available at: <https://www.reuters.com/article/us-hongkong-anniversary-china/china-says-sino-british-joint-declaration-on-hong-kong-no-longer-has-meaning-idUSKBN19L1J1>.

³ Government of the Special Administration Region, Press Release, "Chief Secretary clears air on Hong Kong's human rights situation at UN Forum", 7 November 2018. Available at: <https://www.info.gov.hk/gia/general/201811/07/P2018110700063.htm>.

banning of the Hong Kong National Party, media self-censorship, refusal of entry of journalists, the abduction and detention of the Causeway Bay booksellers and more.

The Coalition's submission to the HRC outlines these concerns in more detail and provides a roadmap of specific, measurable and achievable recommendations for the HKSAR government to abide by its human rights commitments.⁴ The Coalition was pleased that in a first, 12 countries used the third cycle UPR hearing on 6 November 2018 to highlight concerns with the human rights environment in the HKSAR.⁵ This was achieved in large part due to the effective coordination of civil society organisations through the Coalition.

Engagement by the HKSAR government in human rights mechanisms

Commitment to a rules-based order is integral for the protection and maintenance of the international human rights architecture. At the centre, are the core human rights treaties, the majority of which apply in the HKSAR. This includes the International Covenant on Civil and Political Rights (ICCPR), which has only been signed, but not ratified by the PRC.

The HKSAR government regularly states that strong adherence to the rule of law is “a cornerstone of our legal system”.⁶ Adherence to the rule of law includes complying with international legal obligations created by human rights treaties. However, the HKSAR government is increasingly overlooking this principle of the rule of law in their public statements, in addition to access to justice, equality before the law or others. Instead there is trend towards a narrow interpretation that views rule of law solely from the lens of judicial independence.⁷ Of additional concern, the Coalition has also observed in recent years a declining use of human rights language in public statements.⁸

In another concerning trend, the HKSAR government has recently adopted the principle of

⁴ Hong Kong UPR Coalition, “Joint Civil Society Submission from the Hong Kong UPR Coalition”, March 2018. Available at:

http://www.justicecentre.org.hk/framework/uploads/2018/UPR/HKUPRC_Submission_MARCH2018.pdf.

⁵ Hong Kong UPR Coalition, “International Community Condemns Human Rights Situation in Hong Kong in Major UN UPR Review of China”, 7 November 2018. Available at:

<http://www.justicecentre.org.hk/framework/uploads/2018/11/Press-Release-Unprecedented-Attention-on-Hong-Kong-at-UN-Human-Rights-Review-ENG-1.pdf>.

⁶ See Secretary for Justice, Ms Teresa Cheng SC, “Secretary for Justice’s speech at Ceremonial Opening of the Legal Year 2018”, 8 January 2018. Available at:

https://www.doj.gov.hk/eng/public/pdf/2018/pr_20180108e1.pdf.

⁷ For example, see paragraph 12, Mrs Carrie Lam, Chief Executive, “Speech by the Chief Executive in delivering “The Chief Executive’s 2018 Policy Address” to the Legislative Council”, 10 October 2018. Available at: <https://www.policyaddress.gov.hk/2018/eng/speech.html> and

Brand Hong Kong, “The rule of law rules!”, date unknown. Available at:

<https://www.brandhk.gov.hk/html/en/StrategicFocus/ruleoflaw.html>.

⁸ Every year on 1 July, Civil Human Rights Front, a local civil society organisation, arranges a pro-democracy march in the HKSAR. For several years, see 2013, 2014, 2015, 2016 and 2017 as examples, the HKSAR government press releases attempted to address protestors concerns, even if in a truncated form. However, the 2018 press release was markedly different in tone, focusing heavily on economic reform and integration with the mainland. The press release also singled out slogans made by protestors that “disrespect ‘one country’ and disregard the constitutional order or which are sensational and misleading”. See, Government of the Special Administrative Region, Press Release, “Government responds to July 1 procession”, 1 July 2018. Available at:

<https://www.info.gov.hk/gia/general/201807/01/P2018070100546.htm>. Contrast that with the 2013 press release, where the HKSAR government stated “the Hong Kong Special Administrative Region Government fully respects people’s legal rights to take part in processions and their freedom of expression, and will listen to their views in a humble manner”. See, Government of the Special Administrative Region, Press Release, “Government responds to July 1 procession”, 1 July 2013. Available at: <https://www.info.gov.hk/gia/general/201307/01/P201307010607.htm>.

'non-interference in internal affairs' which is commonly used by the PRC government. It is regularly used now as a default response whenever a foreign government comments on human rights issues in Hong Kong. This includes the UK government through the six-monthly reports. In 2016, following the January to June 2016 six-monthly report, the HKSAR government issued a press calling upon foreign governments not interfering in the internal affairs of Hong Kong and has done so following every subsequent six-monthly report since.⁹

Civil society find it challenging to engage with the HKSAR government. Consultations are often framed as 'public consultation exercises', with no feedback provided, narrow terms of reference or submissions not made public. On the UPR for example, the HKSAR government refused to make available its draft section of the UPR national report for consultation with civil society, despite consistent calls from civil society organisations and lawmakers.¹⁰

Role of a human rights clause in a UK-HKSAR free trade agreement

Given the deteriorating human rights environment in the HKSAR, the views of the PRC on the Joint Declaration, the challenges in holding the government accountable to their international human rights commitments and the declining space for civil society and human rights defenders, the Coalition supports a human rights clause in a future UK-HKSAR free trade agreement (FTA).

With respect to the HKSAR, we urge the following is considered in the development of a human rights clause in a UK-HKSAR FTA:

- use of an essential elements clause,¹¹ which refers to the Universal Declaration on Human Rights, the rule of law, with the addition of a reference to:
 - "other relevant human rights instruments applicable in the HKSAR", to help future-proof the clause; and
 - the ICCPR is singled out, given its unique application to the HKSAR.
- reference to the role of the Joint Declaration as a legally binding document that remains in force; and
- human rights defenders are referred to, noting the Declaration on Human Rights Defenders.

To complement these proposals, we recommend space is created for the establishment of civil society groups to monitor the parties' obligations under any future UK-HKSAR FTA. Their mandate should cover the human rights clause. It is critical that measures are taken to ensure that the civil society groups are independent, and the mechanism is not used by the HKSAR government to minimise their accountability.

⁹ Government of the Special Administration Region, Press Release, "Response to UK Report on Hong Kong", 12 October 2016. Available at: <https://www.info.gov.hk/gia/general/201610/12/P2016101200795.htm>. This language was in similar press releases issued on 24 February 2017, 14 September 2017, 15 March 2018 and 7 September 2018 in response to the UK six-monthly reports.

¹⁰ Hong Kong UPR Coalition, "Hong Kong Government Shows Lack of Transparency in UPR Consultation Process", 31 July 2018. Available at: <http://www.justicecentre.org.hk/framework/uploads/2018/03/Press-Release-Refusal-to-Release-Draft-UPR-Report-ENG.pdf>.

¹¹ See, European Parliament, Directorate-General for External Policies, "The European Parliament's Role in Relation to Human Rights in Trade and Investment Agreements", 2014. Available at: <http://www.europarl.europa.eu/cmsdata/86031/Study.pdf>.

Implementing the above measures will assist in increasing the accountability of the HKSAR government to its commitments under international human rights law and support adherence with the rule of law.

Mechanisms for scrutinising human rights protections by the UK Parliament

The Coalition is of the view that there also other measures which the UK Parliament, including the JCHR, can take to assist in scrutinising international human rights protections contained in international agreements.

The Coalition recommends the following matters are undertaken as a priority:

- the development of a Parliamentary commission or committee which monitors the implementations of international agreements and has a specific mandate to report every six months on the Joint Declaration; and
- the establishment by the JCHR of an inquiry into breaches of the Joint Declaration.

The Coalition supports the similar recommendations of our Steering Committee member, Hong Kong Watch, from their submission. In addition the Joint Declaration, any inquiry or monitoring process with respect to the HKSAR should also pay attention to:

- HKSAR's compliance with international human rights law obligations, compliance with concluding observations of treaty bodies, UPR recommendations and engagement with special procedures of the HRC;
- interference with independent activities of the HKSAR judiciary by the PRC government, in particular the Standing Committee of the National People's Congress;
- activities by the People's Liberation Army Hong Kong Garrison which are not for national defence and undertaken without permission; and
- situations where PRC law is used in the HKSAR.

Additionally, the Coalition recommends the following:

- enhanced coordination between the JCHR and similar human rights committees internationally with respect to any inquiry or response to human rights concerns in the HKSAR, examples include the:
 - Parliamentary Joint Committee on Human Rights, Parliament of Australia;
 - Congressional-Executive Commission on China, United States Congress;
 - Committee on Human Rights and Humanitarian Aid, German Bundestag; and
 - other relevant human rights committees.
- the UK Parliament and the JCHR should ensure that the voices of civil society organisations and human rights defenders are given prominence, with their views specifically sought regarding scrutiny processes.

The Coalition appreciates the opportunity to provide this submission and is willing to expand on the above in a JCHR hearing.

14 January 2019