

SUBMISSION TO INTERNATIONAL TRADE COMMITTEE OF THE PARLIAMENT OF THE UNITED KINGDOM FOR THE UK TRADE WITH CHINA INQUIRY

Introduction

Justice Centre Hong Kong makes this submission to the International Trade Committee in response to its inquiry on the trade and investment relationship of the United Kingdom (UK) with China. It is submitted that the protection of human rights and the rule of law in Hong Kong is essential for business. We call for increased engagement of business in the UK and the UK Government with international human rights mechanisms as they relate to Hong Kong. We recommend compliance with and the promotion of the Sino-British Joint Declaration and other human rights instruments and principles in the UK's trade policy.

The importance of the economy of Hong Kong to the UK

Hong Kong is the UK's second largest market for goods in Asia Pacific (after Mainland China), and the 11th largest worldwide. About 120 British companies have regional headquarters in Hong Kong. Another 200 have regional offices.¹

Impact of human rights violations on business in Hong Kong

As stated in the UK National Action Plan on Business and Human Rights, the safeguards for human rights, including the rule of law, democratic freedoms, good governance, transparency, and civil society, are beneficial to business².

The Hong Kong Government's handling of the protests in Hong Kong have adversely impacted upon these safeguards for human rights, and, therefore, upon business. The police has been criticized for using force against protestors disproportionately and accountability mechanisms have been challenged. Amnesty International has criticized the Hong Kong Police Force for their indiscriminate and reckless tactics, torture and other ill-treatment in detention³. Police identification numbers are no longer printed on

¹ UK Department for International Trade. (2015). *Guidance: Doing business in Hong Kong: Hong Kong trade and export guide*. Retrieved from: <https://www.gov.uk/government/publications/exporting-to-hong-kong/exporting-to-hong-kong>.

² UK Government. (2016). *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*. Retrieved from: <https://bit.ly/2M9rfVX>.

³ Amnesty International. (2019). *Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed*. Retrieved from: <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>.

the uniform of some police officers⁴. It has been reported that police shut the gates of certain police stations after an indiscriminate assault of a group of men on citizens inside a Mass Transit Railway (MTR) station and that citizens were asked to hang up when they called the emergency hotline 999 to report the assault⁵. The Public Order Ordinance, which application has been criticized by the Human Rights Committee for possibly facilitating excessive restriction of the rights enshrined in the International Covenant on Civil and Political Rights⁶, has reportedly been used to prosecute protestors⁷ and has been used by the Police to object to rallies and processions⁸.

Moreover, the Hong Kong Police Force has used tear gas inside MTR stations and near food markets at the time of protests⁹. There are concerns that such tear gas might be expired at the time of use, because such canisters and canisters with the expiry date scratched away have been discovered at various protest sites in Hong Kong¹⁰. This has made it challenging for companies to ensure employee and customer safety.

⁴ Lau, C. (2019). Trio launch court action against Hong Kong police over failure to display identification numbers during anti-government protests. *South China Morning Post*. Retrieved from: <https://www.scmp.com/news/hong-kong/law-and-crime/article/3027510/trio-launch-court-action-against-hong-kong-police-over>.

⁵ Ling, Y. (2019). 【元朗黑夜】傳元朗再掀打鬥 元朗分區指揮官：希望大家信任警隊 [Dark night in Yuen Long: There are rumours that there will be fighting in Yuen Long again. Yuen Long District Commander: I hope people will trust the Police. HK01. Retrieved from: <https://bit.ly/2m7fMxl>; and Radio Television Hong Kong. (23 July 2019). One more arrested over Yuen Long attacks. Retrieved from: <https://news.rthk.hk/rthk/en/component/k2/1470006-20190723.htm>.

⁶ Human Rights Committee. (2012). Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013), paragraph 10. CCPR/C/CHN-HKG/CO/3. Retrieved from: <https://bit.ly/2lbQtun>.

⁷ Ming Pao. (2019). 【逃犯條例】眾志黃之鋒周庭保釋須守宵禁令 林朗彥離港缺席聆訊 [Extradition bill: Demosistō's Joshua Wong and Agnes Chow are released on bail with curfews. Ivan Lam left Hong Kong and did not attend the hearing.] Retrieved from:

<https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20190830/s00001/1567153548908/%E3%80%90%E9%80%83%E7%8A%AF%E6%A2%9D%E4%BE%8B%E3%80%91%E7%9C%BE%E5%B F%97%E9%BB%83%E4%B9%8B%E9%8B%92%E5%91%A8%E5%BA%AD%E4%BF%9D%E9%87%8 B%E9%A0%88%E5%AE%88%E5%AE%B5%E7%A6%81%E4%BB%A4-%E6%9E%97%E6%9C%97%E5%BD%A5%E9%9B%A2%E6%B8%AF%E7%BC%BA%E5%B8%AD%E 8%81%86%E8%A8%8A>.

⁸ Pao J. (2019). Defying ban, tens of thousands rally in Hong Kong. *Asia Times*. Retrieved from: <https://www.asiatimes.com/2019/09/article/defying-ban-tens-of-thousands-rally-in-hong-kong/>.

⁹ Radio Television Hong Kong. (12 August 2019). *Commuters wary of tear gas residue in MTR station*. Retrieved from: <https://news.rthk.hk/rthk/en/component/k2/1474135-20190812.htm>; and Ming Pao. (27 August 2019). *Stalls in the Yeuk Uk Road Wet Market: The number of customers dropped by half due to worry over tear gas residue*. (Article in Chinese). Retrieved from: <https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20190827/s00001/1566844175592/%E6%A5%8A%E5%B1%8B%E9%81%93%E8%A1%97%E5%B8%82%E5%95%86%E6%88%B6-%E6%80%95%E5%82%AC%E6%B7%9A%E7%85%99%E6%AE%98%E7%95%99-%E4%BA%BA%E6%B5%81%E6%B8%9B%E5%8D%8A>.

¹⁰ Cheng, K. (5 August 2019). Hong Kong police made 420 arrests since June 9; 1,000 tear gas rounds, 160 rubber bullets fired during protests. *Hong Kong Free Press*. Retrieved from: <https://bit.ly/2lji006>.

Besides, the MTR shut certain stations during peaceful, lawful protests with short notice¹¹, making it difficult for passengers to travel to those areas for work or business.

The Hong Kong Government has used the Emergency Regulations Ordinance to ban face covering in certain circumstances in response of the protests¹². The Secretary for Commerce and Economic Development Edward Yau has previously claimed that the international community will “understand” and that there will be no negative impact on the trade status of Hong Kong if the Hong Kong Government uses this ordinance¹³. This shows the importance for the business community to speak and raise concern publicly over government policies and the impact on human rights and business.

Various actors have recently raised concern over the situation in Hong Kong and/or called for concrete actions to protect human rights. For example, the Australian Chamber of Commerce has issued a statement calling for the appointment of an Independent Commission of Inquiry into the recent unrest¹⁴. The European Union also raised concerns and recalled its stake in the continued stability and prosperity in Hong Kong in the latest Human Rights Council session¹⁵. The British Chamber of Commerce call for the upholding of the rule of law, rights and freedoms in Hong Kong¹⁶. It is important for the UK Government as well as the business community in the UK to demonstrate its commitment to protecting human rights in Hong Kong.

Protection against human rights violations of UK companies operating in Hong Kong

United Social Press. (24 August 2019). 【8.24 九龍東觀塘大遊行——燃點香港·全民】[March in Kwun Tong Eastern Kowloon on 24 August.] Facebook Post. Retrieved from: <https://bit.ly/2mgHubw>.

¹¹ Hong Kong Free Press. (24 August 2019). *Hong Kong MTR shuts 4 stations around legal protest in Kwun Tong following China pressure*. Retrieved from: <https://www.hongkongfp.com/2019/08/24/hong-kong-mtr-shuts-5-stations-around-legal-protest-kwun-tong-following-china-pressure/>.

¹² Hong Kong Government. (4 October 2019). Prohibition on Face Covering Regulation gazetted. *Press Release*. Retrieved from:

<https://www.info.gov.hk/gia/general/201910/04/P2019100400613.htm?fontSize=1>.

¹³ Now News. (27 August 2019). Edward Yau: It is believed that the international community will understand if Hong Kong uses the emergency law. (Article in Chinese). Retrieved from:

<https://news.now.com/home/local/player?newsId=360665>; and Cheng, K. (28 August 2019). Hong Kong democrat says emergency legislation would be akin to martial law, as trade minister offers reassurances. *Hong Kong Free Press*. Retrieved from <https://www.hongkongfp.com/2019/08/28/hong-kong-democrat-says-emergency-legislation-akin-martial-law-trade-minister-offers-reassurances/>.

¹⁴ The Australian Chamber of Commerce Hong Kong. (14 August 2019). *Statement by The Australian Chamber of Commerce Hong Kong*. Retrieved from: <https://www.austcham.com.hk/pressrelease/36>.

¹⁵ Delegation of the European Union to the UN and other international organisations in Geneva. (10 September 2019). *HRC 42 - EU Statement: Item 2 - General Debate on HC oral update*. Retrieved from: https://eeas.europa.eu/delegations/un-geneva/67161/hrc-42-eu-statement-item-2-general-debate-hc-oral-update_en.

¹⁶ British Chamber of Commerce. (19 July 2019). 2019 Policy Address Submission. Retrieved from: <https://www.britcham.com/common/Uploaded%20files/News/ChamberNewsPolicyWork/2019/20190719%20Policy%20Address%20Submission%20Final%20Draft%20with%20Cover%20Letter.pdf>.

There have been concerns over companies, which are owned by companies domiciled overseas, causing or contributing to human rights violations in Hong Kong, for example by terminating the employment of staff members who have allegedly participated in or supported the protests¹⁷.

As set out in the United Nations Guiding Principles on Business and Human Rights, States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations¹⁸. In relation to this, human rights treaty bodies have recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction¹⁹. For example, the Committee on Economic, Social and Cultural Rights have recommended that the UK: (a) adopt appropriate legislative and administrative measures to ensure the legal liability of companies domiciled in the UK for violations of rights in their projects abroad committed directly by these companies or resulting from the activities of their subsidiaries; and (b) conduct thorough risk assessments prior to granting licences for arms exports and refuse or suspend such licences when there is a risk that arms could be used to violate human rights²⁰.

Moreover, the OECD Guidelines for Multinational Enterprises stipulate that multinational enterprises should avoid causing or contributing to adverse human rights impacts and address such impacts when they occur within the context of their own activities²¹. UK enterprises should avoid causing or contributing to human rights violations in their

¹⁷ For example, Cathay Pacific terminated the employment of staff who had allegedly participated or supported the protests in Hong Kong. See, for example, Lee, D. (2019). Cathay Pacific sacks two pilots over Hong Kong protest-related incidents. *South China Morning Post*. Retrieved from: <https://www.scmp.com/news/hong-kong/transport/article/3022750/cathay-pacific-says-55000-passengers-stranded-hong-kong>.

¹⁸ Principle 2. United Nations Office of the High Commissioner for Human Rights. (2011). *Guiding Principles on Business and Human Rights*. Retrieved from: https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf.

¹⁹ *Guiding Principles on Business and Human Rights*, p.4. For example, the Human Rights Committee has recommended that Canada enhance the effectiveness of existing mechanisms to ensure that all Canadian corporations under its jurisdiction respect human rights standards when operating abroad; consider establishing an independent investigative mechanisms into relevant human rights violations; and develop a legal framework that affords legal remedies to victims. Human Rights Committee. (2015). *Concluding Observations on the Sixth Periodic Report of Canada*. CCPR/C/CAN/CO/6. Retrieved from: <https://bit.ly/2kOgEHx>.

²⁰ Committee on Economic, Social and Cultural Rights. (2016). *Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*. E/C.12/GBR/CO/6. Retrieved from: <https://bit.ly/2mqgne4>.

²¹ OECD. (2011). *OECD Guidelines for Multinational Enterprises*, p.31. Retrieved from: <http://dx.doi.org/10.1787/9789264115415-en>.

activities as they relate to Hong Kong²². A complaint to the UK's National Contact Point could be made against breach of the OECD guidelines²³.

Recommendations

Encouraging compliance with the Sino-British Joint Declaration, international human rights treaties, the UN Guiding Principles on Business and Human Rights and the UK National Action Plan on Business and Human Rights in the UK's trade policy

It should be ensured that the UK trade policy, export credit and public procurement policy would encourage compliance with the Sino-British Joint Declaration on the question of Hong Kong²⁴, which has been registered with the United Nations since June 1985²⁵, particularly with the clauses on rights and freedoms, as well as international human rights treaties, the UN Guiding Principles on Business and Human Rights and the UK National Action Plan on Business and Human Rights in the UK's trade policy.

We note that the Foreign and Commonwealth Office has explored using free trade agreements to pursue international objectives in the context of Hong Kong, including the option of incorporating relevant human rights provisions in future trade and investment agreements²⁶. We recommend the incorporation of human rights provisions in future trade and investment agreements with the Hong Kong Special Administrative Region, pursuant to Principle 9 of the UN Guiding Principles on Business and Human Rights.

Increasing engagement with the Universal Periodic Review process on Hong Kong

In the Third Cycle United Nations Universal Periodic Review of China, including Hong Kong, in November 2018, the UK urged China to respect the rights and freedoms guaranteed by the Sino-British Joint Declaration in Hong Kong²⁷. However, the UK did not make an official recommendation. Australia, Canada and France made official recommendations on the rule of law and the "One Country, Two Systems" model, the

²² For example, the OECD Guidelines for Multinational Enterprises would apply to Swire, a company incorporated in the UK and owns Cathay Pacific partially. See Deva, S. (2019). China business or human rights? Hong Kong protests leave Cathay facing a tough balancing act. *South China Morning Post*. Retrieved from: <https://bit.ly/2mG4Lnm>

²³ *Ibid.*

²⁴ *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong*. Retrieved from: <https://www.elegislation.gov.hk/hk/capA301>.

²⁵ United Nations Treaty Collection. Retrieved from: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d4d6e&clang=_en.

²⁶ <https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/human-rights-protections-in-international-agreements/written/96107.html>.

²⁷ UN Web TV. (6 November 2018). *China Review - 31st Session of Universal Periodic Review*. Retrieved from: <http://webtv.un.org/search/china-review-31st-session-of-universal-periodic-review/5858293845001/?term=&lan=english&cat=UPR%2031st&sort=date&page=3>.

right to take part in government and the freedom of assembly, association and expression respectively²⁸, which would benefit business as well. These recommendations have all been officially accepted by the Chinese Government²⁹. This shows that engaging with the Chinese Government in United Nations human rights mechanisms can lead to a positive outcome for business.

We recommend the UK Parliament to urge the UK Government to make official recommendations for human rights in Hong Kong in the Fourth Cycle Universal Periodic Review of China, which is expected to take place in 2023.

Increasing engagement with the Human Rights Council on Hong Kong

We recommend the UK Parliament to urge the UK Government to make oral statements on the human rights situation in Hong Kong Human Rights Council sessions.

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²⁸ *Report of the Working Group on the Universal Periodic Review: China*. A/HRC/40/6. (26 December 2018). Retrieved from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/59/PDF/G1844659.pdf?OpenElement>.

²⁹ *Ibid and Addendum, Report of the Working Group on the Universal Periodic Review: China*, A/HRC/40/6/Add.1. (15 February 2019). Retrieved from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/041/01/PDF/G1904101.pdf?OpenElement>.