

## **Petition to the Parliament of the United Kingdom Regarding the Implementation and Enforcement of the 1984 Sino-British Joint Declaration**

### **A. Introduction – Hong Kong’ struggle**

1. The *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*, commonly known as the Sino-British Joint Declaration (the “Joint Declaration”), was signed between the People’s Republic of China (“PRC”) Government and the United Kingdom (“UK”) Government on 19 December 1984. In the declaration, it is stipulated that the PRC Government has an obligation to maintain a high degree of autonomy in Hong Kong (except in foreign and defence affairs). It is also stipulated that the fundamental human rights of Hong Kong citizens shall continue to be protected. However, what has been happening in Hong Kong since the handover in 1997 is a completely different story.
2. In the past 17 years, the PRC government has been exercising an increasing degree of interference with Hong Kong’s internal administrations. Hong Kong’s autonomy and degree of freedom have continuously deteriorated. Recently, the proposed introduction of a PRC-controlled “universal suffrage” in Hong Kong by 2017 has sparked widespread discontent. The proposal involves a flagrant breach of the Joint Declaration on part of the PRC government as the proposed election mechanism clearly violates the legally protected civil rights of Hong Kong citizens. The Umbrella Movement, a peaceful democratic campaign mainly spearheaded by students, was hence conceived to protest against the proposal and the Hong Kong Government’s failure to fulfill its obligation to introduce genuine democratic elections under the Basic Law, Hong Kong’s constitutional document.
3. During the Movement, Hong Kong citizens have witnessed the darkest chapter in history since the establishment of the city’s rule of law back in colonial times. The Hong Kong Police Force used tear gas and batons against unarmed protesters to suppress the Movement, and the use of disproportionate and excessive force resulted in high number of injuries. Yet, despite the citywide demonstrations and clear indications of human rights violations, the HKSAR Government led by Mr. Chun-Ying Leung still turned a blind eye to its citizens’ demands, and even instigated further use of forces against protestors.
4. As a signatory to the Joint Declaration, the UK Government bears the legal and moral responsibilities to monitor the implementation of the instrument. In light of the deviation on part of the PRC Government from the Joint Declaration, it is the humble wish of Hong Kong citizens that the UK Government could fulfill its obligation to ensure that the Joint Declaration is in fact fully respected and duly enforced.

## **B. Background of the petition**

5. This petition is started by the Occupy British Consulate-General Hong Kong Action Group (the "Action Group"), which is formed by a group of Hong Kong students during the Umbrella Movement. On 3rd October 2014, the Action Group's founder, Mr. Daniel Ma, together with a dozen of his classmates, arrived at the British Consulate-General Hong Kong for a protest to urge the UK Government to fulfill its obligation under the Joint Declaration. However, the British Consulate did not welcome the act, and the Action Group was asked to leave the Consulate's area. Currently, the protest is continuing outside the Consulate.
6. Through correspondences with Dr. Ariella Huff and other members of the Parliament between 8th and 10th December 2014, a meeting was arranged between the Foreign Affairs Committee of the UK Parliament and the Action Group, regarding the issue of implementation and enforcement of the Joint Declaration after the handover. This petition shall serve as a written submission to the Committee on the meeting.

## **C. The Framework of the Joint Declaration and the Basic Law in Hong Kong**

7. The Joint Declaration has the force of an international treaty according to the definition in *Article 2(1)(a) of the Vienna Convention on the Law of Treaties*. Both China and the United Kingdom as parties to the treaty are therefore bound as a matter of international law to perform and uphold the instrument in good faith. Indeed, the Foreign Affairs Committee of the UK Parliament has recognized the same at paragraph 144 of its Tenth Report (HC 1999-2000, 574-I).
8. The Joint Declaration provides for, amongst other things, the basic policy of "One Country, Two Systems" to be applied in the post-1997 relationship between Hong Kong and China. It also provides for the retention of the city's existing social, economic and legal systems and human rights protections after the handover. *Paragraph 3(12) of the Joint Declaration* provides that the above arrangements shall be stipulated in the Basic Law of HKSAR ("the Basic Law"), which was adopted on April 4 1990 by the Seventh National People's Congress of the PRC. The structure, content and wording of the Basic Law follow Annex I of the Joint Declaration.
9. Accordingly, the Basic Law reflects and substantiates the requirements of the Joint Declaration, and serves as Hong Kong's constitutional document that safeguards the city's high degree of autonomy and human rights standard. Any substantive non-compliance of the Basic Law by the Chinese Government is potentially a violation of China's international law obligation under the Joint Declaration.
10. The below sets out the relevant provisions in the Joint Declaration and the Basic Law:

The Joint Declaration, Paragraph 3

The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:

...

(2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

(3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.

(4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.

(5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. 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. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.

...

(12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

Articles in The Basic Law

**Article 2**

The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.

**Article 4**

The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of the Hong Kong Special Administrative Region and of other persons in the Region in accordance with law.

**Article 16**

The Hong Kong Special Administrative Region shall be vested with executive power. It shall, on its own, conduct the administrative affairs of the Region in accordance with the relevant provisions of this Law.

**Article 22**

*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.*

*If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government.*

*All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region.*

**Article 26**

*Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.*

**Article 27**

*Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.*

**Article 39**

*The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.*

*The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.*

**Article 45**

*The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.*

*The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.*

*The specific method for selecting the Chief Executive is prescribed in Annex I "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region".*

**Article 68**

*The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.*

*The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.*

*The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures".*

**Article 158**

*The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.*

*The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region.*

*The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.*

*The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.*

**Article 159**

*The power of amendment of this Law shall be vested in the National People's Congress.*

*The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People's Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region.*

*Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views.*

*No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong.*

## D. Violations of the Joint Declaration

### (a) Infringement of Hong Kong citizen's fundamental civil and political rights

11. The recent controversy regarding Hong Kong's universal suffrage mechanism in 2017 is likely to involve a violation of the Joint Declaration on the part of the PRC Government. Paragraph 3(4) of the Joint Declaration stipulates that the Chief Executive of Hong Kong shall be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Part I of Annex I to the Joint Declaration sets out the identical requirement.
12. Part XIII of Annex I to the Joint Declaration provides that the provisions of the International Covenant on Civil and Political Rights ("ICCPR") as applied in Hong Kong shall remain in force. This provision is mirrored in Article 39 of the Basic Law. By virtue of this, the protection on the right to vote and the right to be elected via universal suffrage as provided in Article 25(b) of the ICCPR are entrenched through both instruments.
13. Reading the above provisions together, it is clear that the standard of "election" as envisaged in paragraph 3(4) of the Joint Declaration must be one which complies with the requirements of the ICCPR - i.e., an election that is fair and equal, and gives effect to the free expression of the will of the electors. Although the Government of the United Kingdom had inserted the following reservation when it ratified the ICCPR in 1976,

*"The Government of the United Kingdom reserves the right not to apply sub-paragraph (b) of article 25 in so far as it may require the establishment of an elected executive and legislative Council in Hong Kong..."*

it is firmly established by the *United Nations Human Rights Committee* and the Hong Kong court in *Lee Miu Ling v Attorney General (No 2)* (1995) 5 HKPLR 181 that such reservation does not prevent the standards laid down by Article 25(b) of the ICCPR from applying to the elections in Hong Kong, once elections are introduced in the special administrative region<sup>1</sup>.

14. Article 31(1) of the Vienna Convention on the Law of Treaties provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". The provision applies to the interpretation of both the Joint Declaration and ICCPR. There exists in the treaties an ordinary meaning for both "election" and "universal and equal suffrage", from which a deviation on the part of China through imposing restrictions on Hong Kong's democratic elections would be a violation of the Joint Declaration.

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<sup>1</sup> Retrieved from:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsl5dp%2bfTK%2fnQ1XhTTdGMrBbOSzC29DxEjEwh8GRuziWe93oRva500Js5WvalGdJTn4MmQWWWhJgiqkh5pyoGmHXsEKqKa56irilG%2fx7weUFCw>

15. Nonetheless, the NPCSC issued a decision on 31 August 2014<sup>2</sup> (the “NPCSC’s decision”) imposing unreasonable restrictions on the proposed suffrage mechanism. The decision stipulates that (i) all Chief Executive candidates must first be pre-selected by a “small circle” nomination committee; (ii) the composition of such committee shall refer to the current “small-circle” arrangement, which mainly consists of pro-Beijing individuals and involves less than 7% of Hong Kong’s electorate, and (iii) the maximum number of selected candidates is capped at three. The mechanism effectively gives Beijing the power to filter the choices of candidates before citizens can vote on them. It also implies that the candidates are susceptible to discrimination based on political views.
16. As such, the mechanism as stipulated by the NPCSC’s decision clearly falls short of the standard required under ICCPR. Despite the citywide protest in the past two months, the NPCSC showed no intention to amend or recall its decision. It is submitted that the current situation constitutes an apparent breach of the aforementioned provisions in the Joint Declaration, and the fundamental civil and political rights of Hong Kong citizens are at risk.

#### **(b) China’s general disrespect of its obligation under the Joint Declaration**

17. Even if we put aside obligations under ICCPR that were enshrined in the Joint Declaration and its annexes, there are still numerous examples, as well as clear, substantial and imminent risks of China breaching its obligations under the Joint Declaration. In both attitude and action, the PRC Government has displayed a general disregard, if not contempt, towards its obligations under the Joint Declaration.

#### Beijing’s interference with “High Degree of Autonomy” in Hong Kong

18. China has undertaken in *paragraph 3(2) of the Joint Declaration* that the Hong Kong Special Administrative Region will enjoy a “high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People’s Government”. However, Beijing authorities have been increasingly flagrant in interfering with the internal affairs of Hong Kong which fall outside the realm of “foreign and defence affairs”.
19. Most representative is the recent episode in which **China refused a delegation of British MPs from the Foreign Affairs Committee entry into Hong Kong**. In doing so, the Beijing authorities have in the name of “sovereignty” explicitly supplanted Hong Kong’s immigration powers. In fact, this is hardly the first time that Hong Kong’s immigration powers were exercised in worrisome ways that are suggestive of Beijing interference. For example, around 80 practitioners of Falun Gong, a spiritual group strictly banned in Mainland China but tolerated in Hong Kong, were denied entry into Hong Kong for a

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<sup>2</sup> Decision on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016, adopted at the Tenth Session of the Standing Committee of the Twelfth National People’s Congress on 31 August 2014

conference in 2003, with the Hong Kong immigration authorities citing “security reasons” and no more<sup>3</sup>.

20. In response to the British MPs being refused entry, the Chinese Ministry of Foreign Affairs claimed that since Beijing had responsibility for Hong Kong’s foreign affairs, it could refuse anyone entry into Hong Kong<sup>4</sup>. In other words, the Ministry of Foreign Affairs claimed that immigration powers were part of its powers under “foreign affairs”. However, *Part XIV* (titled “Right of Abode, Travel, Immigration”) *of Annex I to the Joint Declaration* provided that the Hong Kong SAR shall have the power over immigration controls in Hong Kong SAR. Indeed the highest court of Hong Kong has recently confirmed that the “constitutional responsibility for immigration control” rests upon the Hong Kong SAR Government (*Vallejos v Commissioner of Registration (2013) 16 HKCFAR 45 at para 86*). This is a separate power from those related to “foreign affairs”, which were independently elaborated in *Part XI* (titled “Foreign Affairs”) of the same annex. The statement from the Ministry of Foreign Affairs is one clear example of China’s disrespect towards, or even twisting of, what was stated in the Joint Declaration.
21. Short of such blatant interference, there is still a general perception among the public that Chinese authorities have interfered with many other domestic issues in Hong Kong. This is reflected in the saying of “Sai Wan Ruling Hong Kong”, which has gained currency among political commentators and the public (Sai Wan refers to the district where China’s Liaison Office in Hong Kong is situated)<sup>5</sup>.
22. For example, in 2012, the Hong Kong government pushed forward a highly controversial proposal to implement compulsory patriotic “Moral and National Education” curriculum in schools. Some of the teaching materials that were subsidized by Hong Kong’s Education Bureau described the Chinese Communist Party as an “advanced, selfless and united ruling group”, while denouncing democracy in the United States as leading to “fierce inter-party rivalry that make the people suffer”. It has also been reported that a notable Communist Party member was also involved in the design of other teaching materials for the curriculum. The curriculum sparked intense debates and worries that it is trying to brainwash the younger generation into loyalty to the Chinese Communist Party. After numerous pressure groups throughout the city voiced out against it, major school groups refused to implement it, and hundred thousands of protesters went on streets to oppose it, the Hong Kong government finally backed down and turned the patriotic curriculum optional. Nonetheless, the Hong Kong government’s hard attempt to implement the compulsory patriotic curriculum despite huge public outcry was seen as a result of pressure or even a “political mission” from Beijing authorities<sup>6</sup>.

<sup>3</sup> Some of those who were refused entry into Hong Kong went for a judicial review against the decisions to refuse entry (*Chu Woan-Chyi and others v Director of Immigration [2009] HKCA 316*).

<sup>4</sup> Retrieved from: <http://www.bloomberg.com/news/2014-12-01/u-k-lawmakers-say-china-has-banned-them-from-hong-kong.html>

<sup>5</sup> The whole phrase meaning that it is the Chinese authorities rather than the Hong Kong government that is actually ruling Hong Kong directly

<sup>6</sup> See <http://www.bbc.com/news/world-asia-china-19529867>; <http://www.bbc.com/news/world-asia-china-19407425>

23. Many more examples exist. In 2013, the Hong Kong Government refused to issue free-to-air TV licences to a candidate (HKTV) that was seen as relatively independent from Beijing, leading again to hundred thousands of protesters going on streets to demand for accountability for that decision. In 2012, during the “elections” (by a 1200-member Election Committee) of the Chief Executive of Hong Kong, Mainland Chinese officials met with members of the Election Committee, sparking criticism that Beijing was attempting to interfere with the elections. The current Chief Executive, Leung Chun-ying, was finally elected with 689 out of 1200 votes, and the first thing he did after he became the Chief Executive-elect was to visit China’s Liaison Office in Sai Wan - a move that was described by some as “saying thank you for helping with the votes”.
24. While it is often difficult to pinpoint the exact evidence for such interference from Beijing, and the Hong Kong Government often operates with very low transparency such as to make accountability difficult, the general perception among the public remains that there is increasing interference from Beijing authorities in what is supposed to be Hong Kong’s domestic issues. **In other words, “Hong Kong People Ruling Hong Kong”, which the Chinese Government promised when it entered into the Joint Declaration, is becoming “Sai Wan Ruling Hong Kong”.**

#### Basic rights and freedoms undermined and past lifestyle disrespected

25. China has also undertaken that the lifestyle of the people of Hong Kong will remain unchanged after the handover, and that the basic rights and freedoms, such as those of the speech, of the press and of assembly, will be ensured by law in Hong Kong (*Paragraph 3(5) of the Joint Declaration*). Various aspects of those basic rights and freedoms, however, have been under threat.
26. Gravest of all is the **decline in freedom of the press**, one of the most critical safeguards against autocracy. Since 2009, Freedom House has lowered its rating of freedom of the press in Hong Kong from “Free” to “Partially Free”. In the Press Freedom Index compiled by Reporters without Borders, Hong Kong’s ranking has fallen from 18th to 61st in the past 12 years.
27. Deterioration in press freedom has become more rapid and visible in the past year or so. Reporters without Borders have described 2014 as “seeing the gravest threats to press freedom since Hong Kong was returned to China”, citing information control and indirect censorship, violence and intimidation against journalists, as well as self-censorship and Chinese influence as some of the factors behind such an assessment<sup>7</sup>. This also echos the Hong Kong Journalists’ Association, which in its latest report, aptly named “Press Freedom Under Siege”, has also called 2014 “the darkest year for press freedom for several decades” (referring to the situation in Hong Kong)<sup>8</sup>.

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<sup>7</sup> See: [http://en.rsf.org/hongkong-occupy-central-and-the-fight-for-10-10-2014\\_47086.html](http://en.rsf.org/hongkong-occupy-central-and-the-fight-for-10-10-2014_47086.html)

<sup>8</sup> See: <http://www.hkja.org.hk/site/portal/Site.aspx?id=A1-1250&lang=en-US>

28. A survey of journalists earlier this year revealed that “self-censorship” from critical coverage of the Beijing government is common and is a serious threat to press freedom<sup>9</sup>. One of the most vibrant pro-democracy online media platform, The House News, was suddenly closed in July 2014, with one of the owners citing various factors including fear for his own safety and political pressures<sup>10</sup>. Last year, the Hong Kong Government refused, without satisfactory reasons, to grant a free-to-air TV licence to a candidate (HKTV) that has earned itself huge popularity among the public, demonstrating how the Hong Kong government is unashamed of exercising a free reign of control over media licences<sup>11</sup>.
29. More appallingly, even though Hong Kong enjoys a reputation of being relatively free of violent crimes, we have seen **increasingly violent assaults against journalists** and the media. Victims were mostly known for critical news coverage of the Hong Kong and/or Mainland Chinese Government. It is unclear how many of these assaults were related to attempted silencing of critical news coverage, but most of the crimes targeted at the press have, curiously, remained unresolved at the hands of the Hong Kong government. One can hardly suggest coincidence or personal hatred as motivation for all the attacks, if one looks at the string of cases of violence targeted at various media outlets in the past 2 years:

Date	Journalist / Outlet attacked	Details of Attack
3 Jun 2013	Ping Chen, founder of iSun Affairs.	Chen was attacked in the streets by two masked men using wooden batons. iSun Affairs is an outspoken magazine that tackles sensitive political issues and is banned in China.
19 Jun 2013	Jimmy Lai, owner of Apple Daily.	A car crashed into the gate of Jimmy Lai’s house and an axe was left at his door front. Apple Daily is one of the most widely circulated newspapers in Hong Kong and known for its pro-democracy stance.
30 Jun 2013	Apple Daily	Fire was set on 26,000 copies of Apple Daily that were waiting to be distributed in the early morning in Hong Kong’s central business district.

<sup>9</sup> See: <http://www.scmp.com/news/hong-kong/article/1495138/press-freedom-hong-kong-low-level-journalists-study-finds?page=all>

<sup>10</sup> See: <http://www.scmp.com/news/hong-kong/article/1560104/pro-democracy-website-house-news-closes-citing-political-pressure-low?page=all>

<sup>11</sup> See: <http://www.theatlantic.com/china/archive/2013/11/why-people-in-hong-kong-protest-over-bad-television/281210/>

26 Feb 2014	Kevin Lau, former Editor-in-Chief of Mingpao	In a clearly premeditated attack in broad daylight and on the streets, a man stabbed Lau several times in the back and leg. Lau was rushed to a hospital in critical condition. At the time of the attack, Lau was newly removed from his position as Editor-in-Chief of Mingpao, a widely circulated newspaper known for critical investigative coverage against Hong Kong and Mainland Chinese authorities.
18 Jun 2014	Apple Daily and Popvote.	The website of Apple Daily, which has a significant online presence, were hit by a massive cyberattack. This followed a series of similar attacks on an online, citywide, unofficial pro-democracy referendum platform, Popvote. Cloudflare, which Apple Daily and Popvote hired to protect themselves from cyberattacks, described those attacks as “the largest in history”.
3 Oct 2014	Tom Grundy, independent journalist, and 2 journalists of Radio Television Hong Kong (RTHK) <sup>12</sup>	Anti-Occupy protesters attacked the occupiers in Mong Kok; journalists were also assaulted when they took photos of the anti-Occupy protesters.
17 Oct 2014	Paula Bronstein, an American photojournalist, and a journalist of the Oriental Daily <sup>13</sup>	During the confrontation between occupiers and the police in Mong Kok, Paula Bronstein was arrested for “criminal damage”, upon her taking photos on a private vehicle. A journalist of the Oriental Daily was pepper-sprayed by the police.
25 Oct 2014	4 journalists – 1 from RTHK and 3 from Television Broadcasts (TVB) <sup>14</sup>	Anti-Occupy protesters assaulted during their assembly in Tsim Sha Tsui several journalists who interviewed and took photos of them.

<sup>12</sup> See: <https://www.youtube.com/watch?v=wLY4eH4lhqY>;  
<http://rthk.hk/rthk/news/englishnews/news.htm?all&20141004&56&1042844>

<sup>13</sup> See: <http://www.scmp.com/news/hong-kong/article/1619354/journalist-pepper-sprayed-face-considers-filing-complaint-against?page=all>

<sup>14</sup> See: <http://www.hkja.org.hk/site/portal/Site.aspx?id=A1-1290&lang=en-US>

30. As ordinary citizens, we can feel the chill on the media from what we read on newspapers, see on television or browse on the Internet. We fear that one day, critical reporting of the Hong Kong or the Chinese government would come with even more serious or violent retributions. The ability of the people to check against government abuses, including further derogation from its obligations under the Joint Declaration, is being seriously threatened. We respectfully second the comment from Madam Ann Clwyd, The Right Honourable Member of Parliament for Cynon Valley:

*“I would describe the situation for press and broadcasting freedom in Hong Kong as dire.” (HC Deb, 2 December 2014, c167).*

31. Apart from press freedom, we have also seen improper use of tear gas and other forms of excessive violence unleashed against peaceful protesters during the pro-democracy Umbrella Movement. Images of Hong Kong being enveloped in tear gas have shocked the world, as well as our hearts. This clearly signals an attitude of disregard for the freedom of assembly of the people of Hong Kong, as well as the fundamental rights to vote underlying the protests.

#### “White Paper on ‘One Country, Two Systems’” and the Rule of Law

32. Nothing better encapsulates China’s contempt for its obligations under Joint Declaration than the “White Paper on the Practice of ‘One Country, Two Systems’ Policy in the Hong Kong Special Administrative Region”, which the State Council of the People’s Republic of China published on 10 June 2014<sup>15</sup>.

33. The White Paper caused huge controversy both locally and overseas for many reasons. For instance, the White Paper stated that Beijing has “comprehensive jurisdiction” over Hong Kong; It also emphasised the power of the National People’s Congress, which is China’s legislature, to interpret the Basic Law at any time, while downplaying the autonomous power of Hong Kong courts to interpret the Basic Law on its own and with common law traditions; The White Paper included judges as “those who administrate Hong Kong” and stated that these people should have a “basic political requirement” of “loving the country” - a phrase often understood in China to be equivalent to loving the ruling Communist Party.

34. Many of the above were ideas that were foreign to the common law traditions of rule of law that were being practised in Hong Kong. They invited serious worries from the public that the words of the White Paper foreshadow Beijing’s intent to introduce its own version of “Ruling According to the Law” and “Patriotism Above All” to Hong Kong. **This would run in contradiction with numerous promises in the Joint Declaration**, including of preserving the way of life of the people of Hong Kong and the rule of law and judicial independence in Hong Kong. As the *Hong Kong Bar Association* responded, in an extraordinarily emphatic way, to the White Paper:

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<sup>15</sup> Full English text of the White Paper can be found at: <http://www.fmcojpc.gov.hk/eng/xwdt/gsxw/t1164057.htm>

*“... RESPECT FOR THE RULE OF LAW (AS UNDERSTOOD IN HONG KONG AND THE COMMUNITY OF CIVILIZED NATIONS) MEANS FAR FAR MORE THAN MERELY “DOING THINGS ACCORDING TO LAW” OR “GOVERNING ACCORDING TO LAW”. IT INCLUDES PROPER SELF-RESTRAINT IN THE EXERCISE OF POWER IN A MANNER WHICH GIVES PROPER WEIGHT AND REGARD TO THE IMPORTANCE OF THE INDEPENDENCE OF THE JUDICIARY” (Paragraph 4, Response of the Hong Kong Bar Association to the White Paper on the Practice of “One Country, Two Systems” Policy in the Hong Kong Special Administrative Region, 11 June 2014<sup>16</sup>)*

35. The greatest fear is that **China now attempts to impose its own understanding of the “rule of law” in Hong Kong**. This would fundamentally change how the Hong Kong society has led itself for the past decades. Even more worrying is the Hong Kong Government’s complete approval of the White Paper and dismissal of the people’s legitimate worries about rule of law, judicial independence and our current ways of life in Hong Kong. These core values of the Joint Declaration are under threat and **the people of Hong Kong are left with no remedy**.

#### China’s unconstrained “interpretative” power on the Basic Law

36. Unfortunately, one of the most convenient mechanisms in which China could impose its own version of “rule of law” on and undermine judicial independence in Hong Kong is provided in the Basic Law itself. That is, **the freestanding power** of the National People’s Congress (NPC) Standing Committee in China to **“interpret” the Basic Law** under Article 158 of the instrument. Contrary to ordinary understandings of the word “interpretation” in the common law traditions in Hong Kong, NPC Standing Committee’s “interpretations” in the past have operated in ways that amount to amendments or even additions of pages of novel provisions to the Basic Law. **The line between “amendment” and “interpretation” of the constitutional document is blurred. China’s unconstrained exercise of that power leaves the integrity of the Basic Law, the very instrument that is supposed to implement the Joint Declaration in Hong Kong, at the mercy of a Beijing authority that is unaccountable to the people of Hong Kong.**
37. Under Article 158, the National People’s Congress has the power to interpret of the Basic Law. This power should be exercised when the court of Hong Kong seeks interpretation of Articles concerning affairs which are the responsibility of the PRC Government, or concerning the relationship between the PRC and Hong Kong. On the other hand, Article 159 of the Basic Law provides a mechanism for amending the Basic Law where amendment bills from the Hong Kong shall be submitted to the NPC after obtaining the consent of the Chief Executive and two-thirds of all the members of the Legislative Council (“Legco”). **The threshold of amending the law is much higher than that of interpretation** - amending the Basic Law under Article 159 should only be done with the consent of the elected Legco to ensure the voice of the Hong Kong people is always

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<sup>16</sup> Retrieved from: [http://www.hkba.org/whatsnew/misc/White\\_Paper\\_Response\\_eng.pdf](http://www.hkba.org/whatsnew/misc/White_Paper_Response_eng.pdf)

heard. Any amendment bypassing such mechanism should be viewed as a violation of the Basic Law itself.

38. For example, the NPCSC has exercised such “interpretative” power to effectively “amend” the Basic Law in relation to the introduction of universal suffrage in Hong Kong. It shall be noted that the detailed blueprint of when and how universal suffrage should be implemented is not provided for in the Basic Law. Instead, it provides a mechanism for the Hong Kong Government and the Legco to introduce universal suffrage with consent of the Hong Kong people.

39. Article 7 of Annex I of the Basic Law provides:

*“If there is a need to amend the method for selecting the chief executive for terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of the Legco and the consent of the chief executive, and they shall be reported to the NPC Standing Committee for approval.”*

40. Article 3 of Annex II provides:

*“With regard to the method for forming the Legislative Council and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this annex, such amendments must be made with the endorsement of a two-thirds majority of the council and the consent of the chief executive, and they shall be reported to the NPC Standing Committee for the record.”*

41. However, in 2004, the NPCSC decided that, after reviewing the report submitted by the Hong Kong Government instead of by the invitation of the Court of Hong Kong, an interpretation shall be issued to “add” another two steps on top of those stated in the Basic Law. **In effect, such “interpretation” amounts to an amendment to the Basic Law bypassing the procedure contained in Article 159**, and took away the Legco’s power to put forward a proposal for constitutional reform without prior approval of the NPCSC. Also, it effectively changed the PRC Government’s role in the reform process, by introducing a “veto power” to the NPCSC. As such, the unrestrained “interpretative” power under Article 158 has been exercised by the NPC to manipulate the constitutional document. The PRC Government can in effect amend the Basic Law as it wishes.

42. It must be recognized that, according to the standard set out by the *United Nations Human Rights Committee*, “a mechanism of binding constitutional interpretation by a non-judicial body may weaken and undermine the rule of law and the independence of judiciary”<sup>17</sup>. **Such unconstrained power of the NPCSC to manipulate the constitution of Hong Kong clearly contradicts the principle underlying paragraph 3(3) of the Joint Declaration, which guarantees Hong Kong to have “independent judicial power, including that of final adjudication”.**

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<sup>17</sup> United Nations Human Rights Committee, 'Concluding observations on the third periodic report of Hong Kong, China' (29 April 2013) UN Doc CCPR/C/CHN-HKG/CO/3 para 5

43. Another example of the exercise of such power is the interpretation issued by the NPC in 2007 regarding Article 45 of the Basic Law, which decides that the nominating committee of the Chief Executive election may be formed "with reference" to the Election Committee which composed of 1,200 members in 2012. Such interpretation left small and if not no room for Hong Kong to enjoy a genuine universal suffrage without control from China. Hence, **such power of "interpretation" could pose serious human rights issues in Hong Kong.**

## **E. Conclusion**

44. We have explained that China's refusal to allow genuine universal suffrage, as demonstrated in the Decision of the NPCSC on 31 August 2014, itself amounted to a breach of the Joint Declaration through the ICCPR obligations enshrined in it.
45. We have further sought to show that there are clear, significant and imminent risks for breaches, on the part of China, of other promises under the Joint Declaration. Basic rights and freedom, the past lifestyle of the people of Hong Kong, rule of law (as understood in Hong Kong and the community of civilized nations), judicial independence, and even the integrity of the Basic Law itself that implements the Joint Declaration in Hong Kong, are all under serious threats from Beijing authorities.
46. Hence, the message that China conveyed to the Foreign Affairs Committee - that China views the Joint Declaration as void after 1997 - is indeed accompanied by actions of breach described above. All the above show that the Joint Declaration is either already breached by China, or is at least facing serious risks of such.

## **F. Petitions**

47. As the UK Government is a signatory of the Joint Declaration, it is humbly submitted that the UK Government has both the legal and moral obligation to ensure Hong Kong citizens enjoy the rights that they are entitled to as set out in the treaty, especially the guarantee of "a high degree of autonomy except in foreign and defence affairs" to be enjoyed by the Hong Kong Special Administrative Region for 50 years after the handover in 1997.
48. We therefore urge the Parliament of the United Kingdom to:
- (i) Assume and step up on its role on supervising the UK Government in relation to her obligations on the implementation and enforcement of the Joint Declaration
  - (ii) Conduct active investigations on the potential breaches to the Joint Declaration committed by the PRC government and publish the results

- (iii) Request the UK Government to enforce the Joint Declaration by requiring the Chinese Government to respect the 'One Country, Two Systems' principle in Hong Kong and to allow Hong Kong universal suffrage of the Chief Executive and the Legislative Council in accordance with her promise under the Joint Declaration
  
- (iv) Pass a motion to denounce the PRC Government's breaches to, and disrespect of, the Joint Declaration, and to support introduction of a genuine universal suffrage in Hong Kong in accordance with the declaration