



Six-monthly Report on Hong Kong

1 July – 31 December 2009



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by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 2010*

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FOREWORD

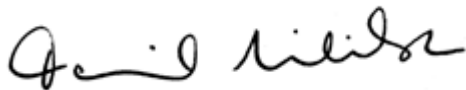
This is the twenty-sixth in a series of reports to Parliament on the implementation of the Sino-British Joint Declaration on the Question of Hong Kong. It covers the period from 1 July to 31 December 2009.

This period has seen the 25th anniversary of the Sino-British Joint Declaration on the Question of Hong Kong. This international treaty, which set out Hong Kong's rights and freedoms and established the basis for the large measure of autonomy which Hong Kong enjoys, has stood the test of time. The principle of 'One Country Two Systems' embodied within it, has worked well in practice.

The period under review has also seen the launch of the Hong Kong Government's public consultation on arrangements for the 2012 elections. We continue to take a close interest in the debate. Apart from our responsibilities to Hong Kong as a party to the Sino-British Joint Declaration, the UK, in common with other members of the international community, maintains a key stake in Hong Kong's stability and prosperity. This stability and prosperity is underpinned by its rights and freedoms which we believe can best be guaranteed by Hong Kong moving to a system of universal suffrage, in accordance with the Basic Law and as set out by the National People's Congress Standing Committee decision of 2007.

It is important therefore that all parties engage fully in the current consultation process, and that following its conclusion, the Hong Kong Government introduce a final set of proposals that are sufficiently progressive for the required number of legislators to support them.

The UK and the international community will continue to take a close interest in political developments in the lead up to the 2012 elections and beyond. It will be of great importance that arrangements for 2017 and 2020 meet accepted international standards of universal suffrage.



David Miliband
Secretary of State
For Foreign & Commonwealth Affairs

SIX-MONTHLY REPORT ON THE IMPLEMENTATION OF THE JOINT DECLARATION ON HONG KONG

INTRODUCTION

This series of six-monthly reports reflects the British Government's continuing interest in developments in Hong Kong and our commitment to the faithful implementation of the Sino-British Joint Declaration on Hong Kong. In this, the Chinese Government undertook that the Hong Kong Special Administrative Region (SAR) would enjoy a high degree of autonomy except in foreign and defence affairs, and that the continuation of Hong Kong's social and economic systems, lifestyles, rights and freedoms would be guaranteed.

CONSTITUTIONAL ARRANGEMENTS

1. As Hong Kong looks towards potential changes to electoral arrangements for 2012, democratic development again became a prominent subject of debate during this reporting period. Secretary for Constitutional and Mainland Affairs Stephen Lam had previously referred to the 2012 elections as a "mid-way point" to attaining universal suffrage for the Chief Executive and the Legislative Council (LegCo).
2. We noted in the last report that the Hong Kong SAR Government had postponed to the fourth quarter of 2009 the public consultation on changes to electoral arrangements for the 2012 elections. On 18 November, Chief Secretary for the Administration Henry Tang announced the start of this consultation with a statement in the LegCo. The SAR Government's consultation document sets out "directions which may be considered" for the 2012 elections.
3. For the election of the SAR Government's Chief Executive, key elements amongst these "directions" include increasing the size of the Election Committee¹ from 800 to "not more than" 1200 by adding 100 members to each of the four sectors (with most of the 100 seats in the fourth sector to be elected by elected District Council members²). The nomination threshold within the Election Committee would be maintained at one-eighth of the total membership (that is, 150 votes out of the increased membership of 1200).
4. For the election of the LegCo, the key elements include increasing the number of LegCo seats from 60 to 70; five to be allocated to geographical constituencies and five to functional (i.e. trade, professional) constituencies. The five new functional constituency seats would be returned by election among elected District Council members.

¹ The role of the Election Committee is to elect the Chief Executive of the Hong Kong SAR. The Election Committee was established by Annex 1 of the Basic Law (see www.basiclaw.gov.hk/en/basiclawtext/annex_1.html). The four sectors consist of individuals from the business sector, "the professions", groups working in Hong Kong society and political representatives.

² The District Councils are the local councils for the 18 districts of Hong Kong. Full details on the District Councils can be found on the SAR Government's District Councils website at www.districtcouncils.gov.hk.

5. Some commentators expressed concerns that if agreement could not be reached on the reform package for the 2012 elections, this might affect the prospects for the introduction of full universal suffrage for the 2017 and 2020 elections. In his comments in the LegCo at the launch of the consultation, Henry Tang said, "The decision (by the Standing Committee of the National People's Congress in December 2007 allowing for the introduction of universal suffrage for the election of the Chief Executive in 2017 and for the Legislative Council in 2020) sets no precondition that democratic progress must be made for the 2012 elections before universal suffrage for the Chief Executive and the LegCo could be implemented."

6. A major focus of public debate on the package during this period was the position of the functional constituencies. Some pan-democratic legislators expressed concern that functional constituencies might be retained in some form beyond 2020. On 15 October during a question and answer session in the LegCo, the SAR Government Chief Executive said, "Functional constituencies in their present form are not totally compatible with the principles of equal and universal suffrage... They cannot be kept in their present form under the electoral system for LegCo in 2020."

7. Speaking on a radio phone-in programme on 19 November, in response to a question on whether functional constituencies could comply with the principles of universal and equal suffrage, Henry Tang said, "If it was one man, one vote, or one man, two votes, so long as everyone had two votes, that would still be a fair and equal principle." On 7 December, local media reported Secretary for Constitutional and Mainland Affairs Stephen Lam as saying that, "At this time and at this moment, the 3rd term of the Hong Kong SAR Government won't make a conclusion on the existence of functional constituencies."

8. In a statement on 20 November, a spokesperson from the British Consulate-General said,

"Concerning the future of functional constituencies, this is a matter for the Hong Kong Government and people to decide. The Chief Executive himself has said that functional constituencies in their present form are not compatible with principles of universal suffrage. If functional constituencies were to be preserved beyond 2020, it would be up to their supporters to explain how they were compatible with accepted international standards of universal suffrage."

9. On 28 December, the Chief Executive met Chinese President Hu Jintao and Premier Wen Jiabao in Beijing. According to media reports, President Hu asked Tsang to "handle the issue of constitutional development in an appropriate manner." In a subsequent press meeting, the Chief Executive said, "The state leaders said that the Central Government genuinely hoped to promote democratic development in Hong Kong."

10. The public consultation period is to close on 19 February 2010. The SAR Government is expected to present its proposals for changes to the 2012 electoral arrangements to the LegCo in the summer of 2010. The LegCo will then vote on the Government's packages for changes to arrangements for the LegCo and Chief Executive elections separately. A two-thirds majority of legislative councillors must vote in favour of each package for it to be passed.

THE LEGISLATIVE COUNCIL

11. During the reporting period, a significant challenge was made to the LegCo's investigative powers. This involved an application for judicial review sought by the Chairman and Managing Director of New World China, Cheng Kar-shun, and the Executive Director of New World China, Leung Chi-kin, to challenge certain orders relating to their appearance before a LegCo Select Committee hearing enquiry into New World China's attempt to employ former senior civil servant, Leung Chin-man³. The review application was dismissed on 24 September by High Court Judge, Mr. Justice Andrew Cheung⁴.

12. The Secretary for Justice, Wong Yan-lung, played a prominent role in the hearing in support of the LegCo Select Committee's position. In his ruling, Mr. Justice Cheung said, "[The Secretary for Justice] submits that the members of the Select Committee are not just defending their own conduct against the criticisms that have been made of them; they are also properly acting as guardians of public interests in claiming the rights and powers that they need as serving members of the legislature. The Secretary for Justice agrees...that it is important that elected legislators should have the powers they need properly to inform themselves upon all those matters that attract their attention when performing their public duty of monitoring the executive authorities, scrutinising their activities and the Government's use of public resources."

13. Mr. Cheng and Mr. Leung announced on 22 October that they were lodging an appeal against the High Court's ruling.

14. Twelve elected legislators in Hong Kong continue to be prevented from travelling freely to Mainland China. Between 24 and 26 September, 14 legislators visited Sichuan Province to inspect Hong Kong-funded construction work following last year's earthquake. Pan-democratic legislator, James To, who does not have a home return permit, joined the visit.

15. We welcome the fact that Mr. To, who has previously been denied a home-return permit, was able to join this visit to Sichuan Province. We hope that such developments will contribute to a more open and direct dialogue between the Legislature and Mainland authorities. We hope that the Chinese Government will allow all legislators who wish to travel to the Mainland to do so to further develop dialogue and understanding. The continued inability of some legislators to travel to the Mainland remains a barrier to open dialogue.

³ The announcement of the appointment and the subsequent controversy was reported in the Six-Monthly Report covering 1 July-31 December 2008.

⁴ The full judgement can be found at:

http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=67710&QS=%2B&TP=JU.

THE SAR GOVERNMENT

Political Appointment System

16. The SAR Government introduced the Political Appointment Scheme in 2002, which it further expanded in 2008 with the creation of two additional layers of political appointees - undersecretaries and political assistants.

17. On 17 July, the Chief Executive announced the appointment of Undersecretary for Constitutional and Mainland Affairs, Raymond Tam, as the Director of the Chief Executive's Office from 1 August, replacing Norman Chan. Mr. Tam, a career civil servant, first joined the team of political appointees on 1 June 2008.

18. On 1 October, Norman Chan became the new Chief Executive of the Hong Kong Monetary Authority, taking over from Joseph Yam.

19. On 22 October, the Chief Executive announced two new political appointees: Adeline Wong, formerly the Deputy Director of Home Affairs took up the position of Undersecretary for Constitutional and Mainland Affairs; and former Director of Immigration, Mr. Lai Tung-kwok was appointed Undersecretary for Security.

LEGAL AND JUDICIAL

20. On 2 September, Chief Justice Andrew Li announced that he would take early retirement from 1 September 2010. In a public statement, Chief Justice Li explained that the reason for his retirement was to enable his successor to appoint the successors of a number of senior judges who are set to retire over the next five years. In response to his announcement, senior figures from across Hong Kong's political, legal and diplomatic community praised the role that Chief Justice Li has played in Hong Kong's development since the Handover. In a statement made on the day of Li's announcement, British Consul General Andrew Seaton said,

"Through his support for the rule of law, judicial independence and the highest standards of justice, the Chief Justice has made an enormous contribution to Hong Kong's success."

21. The procedure for appointing a successor to the Chief Justice is that the Judicial Officers Recommendation Commission will recommend a candidate to the Chief Executive, who will appoint him or her following approval from the LegCo.

22. Article 85 of the Basic Law states that, "The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference." The reaction in Hong Kong to any comments that are perceived to threaten or undermine this principle are a demonstration of how crucial a role an independent Judiciary is seen to play in Hong Kong's continued success. On 10 November, speaking in Beijing at an event marking the 10th anniversary of the establishment of the Macao SAR, Deputy Director of the State Council's Hong Kong and Macao Affairs Office, Zhang Xiaoming, noted that Macao had implemented the principle of 'One Country, Two Systems' differently to Hong Kong in substantial ways. He went on to praise the co-ordination between Macao's Executive, Legislature and Judiciary. In a press statement issued the following day, the Hong Kong Bar Association said, "In Hong Kong, the legality of Executive action, as well as the

constitutionality of legislation passed by the Legislature, is subject to supervision by an independent Judiciary, which is free from pressure and interference from the Executive and Legislature. Judicial independence is and has been one of the most important factors contributing to the unique success of Hong Kong in this region."

23. In his response to a media question regarding Zhang Xiaoming's comments, Secretary for Constitutional and Mainland Affairs, Stephen Lam, was reported as saying on 12 November, "Regarding the administration and legislature, we have a role of mutual co-operation and mutual check and balance... In the process, they are both mutually co-operative and provide checks and balances on each other... We will definitely maintain judicial independence, protect Hong Kong peoples' human rights and maintain the constitutional structure of the judicial system."

BASIC RIGHTS AND FREEDOMS

24. On 12 October, Democratic Party Chairman and local barrister, Albert Ho, held a press conference with Zhang Yuewei regarding her partner Zhou Yongjun, a dissident who had been living in the United States. Zhang alleged that Zhou, in an attempt to visit his family in the Mainland, had bought a fake Malaysian passport and arrived in Hong Kong via Macao earlier in the year. She said that when entering Hong Kong, Zhou was stopped on the grounds that the name on his passport matched that of someone wanted by police for involvement in a fraud case. Zhang said, "Zhou Yongjun went missing in Hong Kong and it was the Hong Kong Government which sent him back to the Mainland, leading to him being detained until now." We understand that Zhou is still in custody in the Mainland⁵. The SAR Government declined to comment on the alleged incident, saying that it did not discuss individual cases. However, a SAR Government spokesperson was quoted as saying on 12 October, "In general, a passenger whose travel document does not meet the entry requirements will be repatriated to his or her place of embarkation or origin."

Hong Kong's international obligations

25. Several academics, non-governmental organisations, legal professionals and others from Hong Kong and elsewhere have argued for some time that the Hong Kong SAR Government should extend to Hong Kong the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol⁶.

⁵ There were subsequent reports in local media that the Shehong County People's Court in Sichuan province of Mainland China sentenced Zhou on 15 January 2010 to a nine year prison term and fined him RMB 80,000 on charges of attempted financial fraud against the Hong Kong-based Hang Seng Bank. On 3 February 2010, in his response to questions regarding Zhou Yongjun by Legislative Councillor James To, Secretary for Security Ambrose Lee said, "There is no question of interventions from other authorities or political considerations. President... during the course of making the repatriation decisions and arrangements, Immigration Department will clearly inform the persons who have been refused landing the places they will be repatriated. The persons concerned can object to the arrangements, make requests regarding the destinations or even lodge appeals."

⁶ As this is not extended to Hong Kong, asylum claims lodged in the Hong Kong SAR are administered not by the Hong Kong authorities but by the United Nations High Commissioner for Refugees (UNHCR) directly. However, since the *Prakabar vs Secretary for Security* case of 2004, the Hong Kong authorities have been required to process claims under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

26. On 28 August, the United Nations Committee on the Elimination of Racial Discrimination (UN CERD) issued its concluding observations on the 10th to 13th periodic reports of China, including Hong Kong and Macao. Regarding refugee law in Hong Kong, the Committee concluded that, "While noting the planned legislative framework for torture claimants in Hong Kong SAR, the Committee is concerned that the State party has not adopted a refugee law as such, including a screening procedure for asylum claims." And the Committee recommended "...the adoption of a law on refugees, with a view to establishing a comprehensive procedure for the screening of individual asylum claims... The Committee also encourages the renewed consideration of the ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol."

27. In a press release in response to these observations, the SAR Government said, "We would like to point out that asylum claims lodged in Hong Kong are being administered by the UNHCR directly (via the Hong Kong Sub-office), which makes decision (sic) on the screening of genuine refugees and their resettlement afterwards. We will continue to support the work of the UNHCR and provide humanitarian assistance to all refugee claimants pending the UNHCR's decision on their applications."

28. During the reporting period, under the continued suspension of the procedure for assessing claims under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) since a December 2008 Court ruling, there were reports that the backlog of CAT claims had increased significantly. At the time of writing, the SAR Government was expected to introduce imminently amended mechanisms for addressing torture claims to address the shortcomings identified in the December 2008 ruling. During the reporting period, the UK Border Agency assisted in training Hong Kong Immigration Department staff to assess claims under CAT applications. The Ministry of Justice in the UK also supplied information to assist the training of immigration judges who will deal with the appeal process.

Race Discrimination Legislation

29. In our report covering the period 1 July-31 December 2008, we welcomed the passage of race discrimination legislation on 10 July 2008. However, we also noted some of the concerns expressed by legislators, non-governmental organisations and other groups in Hong Kong about certain aspects of the legislation. Several of these concerns were addressed to some degree before the LegCo passed this legislation. In this reporting period, the UN CERD commented on the Race Discrimination Ordinance in its concluding observations on Hong Kong on 28 August (see section on Immigration). The Committee stated that it "expresses its concern about the definition of racial discrimination given in the Hong Kong SAR Race Discrimination Ordinance, which is not completely consistent with Article 1 of the Convention as it does not clearly define indirect discrimination with regard to language, and it does not include immigration status and nationality among the prohibited grounds of discrimination."

Public Service Broadcasting

30. Radio Television Hong Kong (RTHK) is a public broadcasting organisation in Hong Kong, operating as a government department but with editorial independence. Following a review of RTHK's status the SAR Government announced on 22 September that it had decided that RTHK would continue to operate as a government department but that "measures will be put in place to ensure greater public accountability and oversight of its programming." These measures include the appointment by the SAR Government Chief Executive of a Board of Advisers, and a new charter that would "set out the relationship between the Government and the new RTHK and entrench the editorial independence arrangements."

31. Reaction to the announcement was mixed. Some legislators commented that they thought that the new Board of Advisers would have a positive impact on programme production, while others expressed concern that the Board could affect the independence of RTHK. In a press release of 23 September, the International Federation of Journalists (IFJ) expressed regret at the SAR Government's decision not to change RTHK into an independent media outlet. It said, "The IFJ calls on the Commerce and Economic Development Bureau to reconsider its decision in favour of encouraging a more open and democratic space for independent journalism in Hong Kong."

Celebrations, Marches and Demonstrations

32. On 1 July, the annual march to mark the 12th anniversary of the Handover took place. Police estimated that 28,000 people took part; organisers put the figure at around 76,000. Amongst the broad range of issues that marchers were highlighting were universal suffrage, labour rights, minimum wage protection and resolution to the minibond incident. (The minibonds were investments sold to the public and backed by the companies Lehman Brothers and AIG. The values plummeted and many investors lost their life savings.)

33. On 1 October, a delegation of 212 from Hong Kong attended the celebrations in Beijing to commemorate the 60th anniversary of the founding of the People's Republic of China. The delegation included officials, athletes, business people and 23 members of the LegCo. Only two legislators from the pan-democratic camp - Joseph Lee and Frederick Fung - were invited. Several senior pan-democrats commented that the absence of invitations to other pan-democratic legislators was a missed opportunity for dialogue.

34. On 27 December, a group staged a protest at the Lo Wu border in support of Mainland activist Liu Xiaobo, who had been involved in the Charter 08 movement and was sentenced on 25 December by a Mainland court to an 11-year prison term and a further two-year suspension of political rights. During the protest, Mainland police detained four protestors and two journalists from Hong Kong. It was later alleged that they had been taken from the Hong Kong side of the border by plainclothes Mainland police. At the time of writing, it was understood that Hong Kong Police and the LegCo Security Panel were investigating the incident.

ECONOMY AND CLIMATE CHANGE

Economy

35. On 13 November, the SAR Government released data showing that the economy grew by 0.4% in the third quarter 2009, compared to the second quarter. The Government reported that Hong Kong's third quarter growth was driven mainly by domestic demand; merchandise exports remained weak with a decline of 13.2% year on year. During the reporting period, the seasonally adjusted unemployment rate peaked at 5.4% and inflation remained below zero until December when it rose to 0.3%.

36. In November, the SAR Government revised up its 2009 GDP forecast, predicting a contraction of 3.3% in real terms. The International Monetary Fund, in its staff report (issued in December), predicted a GDP contraction of 2% in real terms. Following the report, the Financial Secretary, John Tsang said, "The global economic outlook remains subject to considerable uncertainties. We are mindful of the prevailing risks in the external environment and will continue to adopt necessary measures to sustain economic growth."

37. Hong Kong participated in the G20 Pittsburgh Summit on 25-26 September and the G20 Finance Ministers' meetings in St. Andrews on 7 November, as part of the Chinese delegation.

Economic and Financial Co-operation with the Mainland

38. HSBC launched its first fixed rate RMB bond totalling RMB 1.7 billion to retail investors on 17 August, following its launch to institutional investors in June. On 28 September, the Mainland Ministry of Finance issued its first RMB-denominated sovereign bonds in Hong Kong, totalling RMB6 billion.

Energy and Climate Change

39. In his comments following the UNFCCC COP-15 negotiations in Copenhagen between 7-18 December, Secretary for the Environment, Edward Yau, who attended the conference as part of the Chinese delegation defended the approach that China had taken during the conference. He also said, "Even if it [the Copenhagen Accord] is not an accord that everyone is satisfied with, this is not something that makes perfect the enemy of the good."

UK-HONG KONG BILATERAL RELATIONS

Visits

40. The Rt. Hon. Lord Adonis, Secretary of State for Transport visited Hong Kong on 24 August. During his visit, Lord Adonis met acting Hong Kong Secretary for Transport, Yau Shing-mu, and the Secretary for the Environment, Edward Yau, to discuss transport infrastructure and low emission transport. He also visited the Chief Executive Officer of Mass Transit Rail (MTR), Sir. CK Chow, members of the Hong Kong Shipowners' Association and representatives of Alexander Dennis buses, a leading UK supplier in the Hong Kong market.

41. In the other direction, Hong Kong Chief Secretary for the Administration, Henry Tang, visited London from 3-5 November. During his visit, Mr. Tang held meetings with the Minister for Culture and Tourism, the Rt. Hon. Margaret Hodge MP, and the Rt. Hon. Lord Mandelson, First Secretary of State and Secretary of State for Business, Innovation and Skills. Whilst in London, the Hong Kong Trade and Development Council held a dinner in honour of Mr. Tang at which the Rt. Hon Bill Rammell MP, Minister of State for the Armed Forces, gave a speech which was widely reported in the Hong Kong media.

Education

42. Demand for UK education has increased, with student visa applications up 4% to 6,213 for the academic year starting in 2009. Over 17,000 Hong Kong students are studying in UK schools, colleges and universities.

43. Hong Kong remains an important centre of activity for the British Council. The Teaching Centre in Hong Kong is the largest in the British Council's worldwide network with over 48,000 registrations a year, complemented by an extensive community-based programme of English language teaching, which involves many thousands more.

Trade and Inward Investment

44. Bilateral trade between the UK and Hong Kong amounted to over £14 billion in 2008. UK exports of goods to Hong Kong between January and November 2009 were valued at £3.15 billion, down by 0.7% over the same period of 2008. Imports from Hong Kong fell 7.2% in the same period. Hong Kong is currently the UK's second largest export market for goods in the Asia Pacific region, after Mainland China.

45. During the reporting period, UK Trade & Investment (UKTI) supported eight Trade Missions to Hong Kong and UK participation at three international trade fairs in Hong Kong. UKTI also works to support around 200 Hong Kong investors in the UK and to promote the UK to new potential investors. UKTI also assisted one confirmed new successful investment into the UK (with two further investment projects pending confirmation of success).

CONCLUSION

46. The Foreign Secretary's six-monthly reports to Parliament reflect the UK Government's commitment to the faithful implementation of the Sino-British Joint Declaration on Hong Kong, an international treaty to which the UK is a party. We are fully committed to Hong Kong's continuing prosperity and stability and we will continue to comment on matters relating to this treaty as and when we judge it appropriate to do so. As part of this we will continue to issue reports to Parliament.

47. At the end of the six-month reporting period covered by this report we conclude that the 'One Country, Two Systems' principle of the Joint Declaration has worked well and that the rights and freedoms guaranteed in the Joint Declaration have been respected.



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