



Six-monthly Report on Hong Kong

July - December 2004

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
March 2005*

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FOREWORD

This is the sixteenth in a series of six-monthly 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 2004.

The most significant event during the reporting period was the Legislative Council elections in September. We welcome the fact that the elections were generally well run and that all candidates were fairly treated. For the first time half of the 60 members of the Legislative Council were elected directly by the people. A record number of the electorate, more than 55%, exercised their right to vote. This demonstrates Hong Kong's political maturity and the enthusiasm of the people of Hong Kong for participation in the political process.

In our last Report we described the implications of the National People's Congress Standing Committee's intervention in April which set limits on the pace of Hong Kong's constitutional development. Over the coming months the Hong Kong Special Administrative Region (SAR) Government will continue the process of consulting the people of Hong Kong. The Government expects to produce definitive proposals later this year on the methods by which the Chief Executive and the Legislative Council are to be elected in 2007 and 2008.

HMG supports democracy throughout the world as the best means of creating stable, accountable and transparent government, of protecting rights and freedoms, and of upholding the rule of law. We note that in his annual policy address on 12 January 2005 the Chief Executive, Tung Chee-hwa, stated that "as long as we can maintain prosperity, stability and social harmony, our democratic constitutional system can develop at a faster pace. The ultimate aim of universal suffrage as set out in the Basic Law can be achieved at an early date." We favour early progress to this end. We hope that the Hong Kong SAR Government will take full account of the wishes of the people of Hong Kong.

The period was also important for UK-Hong Kong relations with a continuing exchange of high level visits in both directions. The Lord Chancellor and I were delighted to meet the Chief Secretary, Donald Tsang, during his visit to London in October. Bill Rammell (Foreign Office Parliamentary Under-Secretary of State), Elliot Morley, (Minister for the Environment) and Baroness Scotland (Home Office Minister of State) all enjoyed constructive visits during which they were able to exchange views on issues of importance to both governments, including constitutional reform and the criminal justice system. It is encouraging that our commercial relationship continues to prosper, with bilateral trade during the first eleven months of 2004 increasing by approximately 5% over the same period of 2003. Our strong relationship in bilateral investments also continues to flourish. I am confident that this strong relationship will develop further following the launch of the Hong Kong-UK Business Partnership in October 2004.

We will continue to follow developments in Hong Kong closely and take appropriate action to fulfil our obligations under the terms of the Joint Declaration, and to promote Hong Kong's continued prosperity and stability.

A handwritten signature in black ink, reading "Jack Straw". The signature is written in a cursive style with a horizontal line above the name.

Jack Straw
Secretary of State
for Foreign and Commonwealth Affairs

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

INTRODUCTION

1. This series of 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. As a party to this international treaty the British Government continues issuing these reports to Parliament which assess the success of those arrangements.

CONSTITUTIONAL DEVELOPMENT

2. In our last Report we covered significant developments which constrained progress in Hong Kong towards the Basic Law's ultimate aim of universal suffrage for the selection of the Chief Executive and for the formation of the Legislative Council. We described the Hong Kong Special Administrative Region (SAR) Government's establishment of the Task Force on Constitutional Development. We expressed our concern that the Standing Committee of the National People's Congress (NPC) "Decision" on 26 April, setting limits on the pace of constitutional developments in Hong Kong and ruling out the possibility of elections by universal suffrage in 2007 and 2008, seemed to us to erode the high degree of autonomy promised to Hong Kong in the Joint Declaration.
3. On 21 July, referring to this Report, Stephen Lam, Hong Kong Secretary for Constitutional Affairs said that foreign governments should respect the central authorities' and the Hong Kong SAR Government's authority to pursue the ultimate aim of universal suffrage in accordance with the Basic Law. China's Foreign Ministry spokesman on 22 July expressed "strong dissatisfaction and firm opposition to the British Government's improper comments on this issue" and said "there is no question of eroding the high degree of autonomy enjoyed by Hong Kong. We will build Hong Kong and make it even more prosperous and democratic in line with the 'One Country, Two Systems' principle."
4. **The British Government stands by its judgement and will continue to comment on these matters as it judges appropriate, in particular where it believes that the principles of the Joint Declaration might be eroded. This is in line with the United Kingdom's continuing obligations under the Joint Declaration.**
5. On the first day of the reporting period, 1 July, a large number of people marched peacefully through the streets of Hong Kong. Estimates vary of the

number of people who participated in the event. The Civil Human Rights Front, who organised the march, put participation at 530,000, whilst the Hong Kong Police estimate was 200,000. The single main theme for the protest was a call for early progress towards a more democratic and representative form of government. However marchers were also expressing their concerns about freedom of expression and their dissatisfaction with the SAR Government, carrying banners “Return Power to the People”, “Safeguard Freedom” and “Improve People’s Livelihood”.

6. The Chief Executive, Tung Chee-hwa, in his address marking the seventh anniversary of the Hong Kong SAR, said that he had heard the views of the demonstrators and understood their aspirations: “Taking forward constitutional development towards democracy in a gradual and orderly manner in accordance within the Basic Law, with the ultimate aim of universal suffrage, is our common goal. Despite the strong rebound of the economy, many have not benefited and livelihood has yet to improve.”
7. Xinhua, the official Chinese News Agency, reported on 2 July that a Chinese Central Government spokesman criticised slogans used in the march: “The slogans were inappropriate and they do not reflect the people of Hong Kong’s wish for stability, development and prosperity.” Li Gang, Deputy Director of the Central Government’s Liaison Office in Hong Kong, said on 3 July, that both the Central Government and the SAR Government were well aware of the demands made by the public on 1 July. He said, however, it was “unwise” for some people to demand direct elections in 2007 and 2008 when Beijing had already ruled out the possibility.
8. On 9 July the Legislative Council passed a motion urging the Government to promote talks between Beijing and the pro-democracy camp and help them obtain home return permits to visit mainland China. All parties, including the pro-government Democratic Alliance for Betterment of Hong Kong and Hong Kong Progressive Alliance, backed the motion, moved by the Liberal Party's Chairman James Tien. Mr Tien said mainstream opinion in Hong Kong was that the pro-democracy group should be allowed to consult with the Central Government. Democratic Party Chairman Yeung Sum said better communications between Beijing and the pro-democracy camp could help bridge the gap between political forces in Hong Kong and help resolve the city’s “political crisis”.
9. At a meeting with Legislators on 10 July the Chief Executive urged democrats to accept the NPC Standing Committee’s decision ruling out universal suffrage in 2007 and 2008 and to participate actively in the consultation on Hong Kong’s political reform. On 13 July, in his final question-and-answer session in the Legislative Council before the elections, the Chief Executive called on people to participate actively in the Constitutional Development Task Force’s consultation and reach a consensus that complied with the Basic Law. He noted that universal suffrage was the common goal but that the issue was one of timing.

10. The Ministry of Foreign Affairs Commissioner in Hong Kong, Yang Wenchang, said on 12 July that the process of issuing home return permits to democrats had started. A well-known activist and film-maker John Shum Kin-fun was given a 10-year home return permit, allowing him to visit the mainland for the first time since 1989. Mr Law Chi-kwong, a member of the Democratic Party's executive committee, was also given permission to take part in a visit of the Hong Kong Council of Social Services to Shanghai and Beijing. However, he was barred from entering Shanghai by airport officials. Central Government Liaison Office Deputy Director, Li Gang, said that a communication breakdown had led to Mr Law being barred from entering the mainland.
11. The Chief Secretary, Donald Tsang, speaking after a forum held by the Constitutional Development panel on 14 July, said that society remained divided on what reforms should take place and that a series of similar fora will be held before the end of the consultation period. He also said that the demands expressed by the public during the 1 July demonstration would be taken into account in the final proposals for constitutional reform.
12. The Democratic Alliance for Betterment of Hong Kong on 23 July pledged to fight for universal suffrage for the Chief Executive and the Legislative Council in 2011 and 2012. It also said that the election committee choosing the Chief Executive should be doubled in size for the 2007 elections and an additional 10 seats should be added to the 2008 Legislative Council. The party's chairman, Ma Lik, said the "proposal for full universal suffrage is our suggestion which is in accordance with the Central Government's ultimate goal."
13. On 18 October Fernando Cheung, an independent legislator representing the Social Welfare constituency, proposed an impromptu motion in the Legislative Council seeking a referendum on the electoral methods for the 2007 and 2008 elections. The Chief Secretary, Donald Tsang, said the following day that the proposal for holding a referendum was not practical, ran counter to the procedures set out in the Basic Law, and "would be a waste of time and a needless distraction". A statement issued by the Chinese official News Agency Xinhua on 24 October rejected any form of referendum, stating that "the Basic Law provided clear stipulations regarding Hong Kong's political development, and the room for modification, as well as the legal procedures if changes need to be made, had been clarified in April by the National People's Congress Standing Committee."
14. Asked by the local media on 25 October for his views, Foreign Office Minister Bill Rammell, who was in Hong Kong on an official visit, said **"there are many ways of consulting people and it would be wrong for me to speculate and specify what particular method of consultation the Hong Kong authorities and the Hong Kong people should pursue. That is a matter for the people of Hong Kong. Our position on the constitution has always been clear, that we want to see early moves towards the Basic Law's ultimate aim of election of the Chief Executive and the Legislative Council by**

universal suffrage at a pace in line with the wishes of the people of Hong Kong.”

15. The Chief Executive issued a detailed statement on 15 November reiterating the SAR Government’s position:

“The SAR Government is of the view that any suggested means to deal with the electoral methods in 2007 and 2008 which depart from the Basic Law and the NPCSC's decision, especially by way of a referendum as proposed in a motion by some Legislative Council members, is inappropriate, is inconsistent with the established legal procedures, is impractical and is misleading to the public. Proposing a referendum will seriously undermine the prevailing harmony in the community and will affect the cordial relationship between the central authorities and the HKSAR.”

On 29 November the Legislative Council rejected the motion by 31 votes to 24.

16. The Constitutional Development Task Force's fourth report was released on 15 December. The report set out the results of the consultation process that took place between May and mid-October. During the consultation period the Task Force received a total of 488 written submissions from various organisations and individuals.

17. The main issues addressed by the report related to the size and composition of the Chief Executive Election Committee and the number of nominations necessary to become a candidate for the position of Chief Executive. On the formation of the Legislative Council the main issue was the number of Geographical and Functional Constituencies and, in the case of the latter, their size and delineation. The report announced a further consultation period until the end of March 2005 after which a final report would then issue with definitive proposals to be considered by the Legislative Council. The proposals will require the support of 40 Legislators for them to become law.

18. In an address to the Legislative Council on 15 December the Chief Secretary and head of the Task Force, Donald Tsang, said that public opinion was still divided on how to amend the methods for electing the Chief Executive and the Legislative Council. He said it was clear from the consultation that the general public had expectations of an eventual move towards the goal of universal suffrage. He recognised that many people held the view that the election of the Chief Executive in 2007 and the Legislative Council in 2008 should be by universal suffrage. He said that whilst he understood these aspirations, they were impractical and would not be considered because the proposals were inconsistent with the “Decision” taken by the Standing Committee of the National People's Congress on 26 April.

- 19. The British Government will continue to follow this issue closely and we look forward to the Task Force's final proposals, which we hope will take full account of the wishes of the people of Hong Kong.**

LEGISLATIVE COUNCIL ELECTIONS: 12 SEPTEMBER

20. The September 2004 Legislative Council comprises 60 members. 30 members were returned from Geographical Constituencies through direct elections and 30 members returned from Functional Constituencies representing different sectors of the community. In the elections held on 12 September the Geographical Constituencies had a total electorate of 3.2 million registered voters, while the Functional Constituencies had a total of 200,000.
21. This was the third Legislative Council election since the handover in 1997. The three elections have seen a steady increase in the number of directly elected seats in the Legislative Council, with 50% directly elected in 2004, up from 40% (24 out of 60) in the 2000 elections and 33% (20 out of 60) in 1998.
22. Out of the 3.2 million registered voters, a total of more than 1.7 million exercised their right to vote in the 30 Geographical Constituencies, representing a turnout of 55.6%. This was the highest in terms of both numbers and percentage in Hong Kong's history. **We welcome the fact that an increasing number of the Hong Kong electorate have engaged directly in the political process.**
23. As noted above, approximately 200,000 people had an additional vote (in some cases more than one) to elect the 30 Functional Constituency members of the Legislative Council. There are significant disparities between the number of eligible voters in the different constituencies. For example, in the Financial Services constituency 547 voters participated, compared to more than 56,000 in the Education constituency. Eleven of the Functional Constituencies were uncontested.
24. The Democratic Alliance for Betterment of Hong Kong (DAB) emerged as the largest single party, winning 12 seats (9 from Geographical Constituencies), an increase of one from 2000. The Liberal Party won 10 seats (2 from Geographical Constituencies), a gain of two on the previous election. The Democratic Party, previously the largest party in the Legislative Council, won 9 seats (7 from Geographical Constituencies) - down from 12 in 2000. The Article 45 Concern Group doubled its number in the Legislative Council winning 4 seats (3 from Geographical Constituencies).
25. The pro-government parties will control 35 seats, leaving the balance of power in the Legislative Council essentially unchanged. Some commentators noted that the "pro-democracy" parties and independent legislators had received 62% of the votes cast but had only secured 25 seats in the 60 seat legislature.
26. In the run up to the election pro-government newspapers reported allegations against the integrity of some members of the Democratic Party. The two lead stories were the arrest in the mainland of Alex Ho, a Legislative Council candidate, for hiring a prostitute (see paragraph 54) and accusations that James To, also a Legislative Council candidate, had misused public funds to pay

above-market rates for a flat. The “pro-democracy” camp accused the Central Government of conducting a “smear campaign”. Li Gang, the Central Government Liaison Office Deputy Director, denied the allegations.

27. The Registration and Electoral Office received 3914 formal complaints, the largest number of which related to election advertising. This compares to 1627 complaints received in the 2000 Legislative Council elections. There was widespread media coverage of the problems of insufficient ballot boxes and reports that voters had been turned away from some voting stations. There were also reports of ballot boxes being opened before the polls had closed. At a press conference on 13 September the Chief Executive said there had been some flaws in the electoral arrangements but that the Chairman of the Electoral Affairs Commission (EAC) would be conducting a thorough and comprehensive review. The Chief Executive also said, “this was a good election result. It was held in a fair, open transparent manner and we are looking forward to working with the members of the new legislature” and “I look forward to discussing with them how we can work more closely together for the overall benefit of the community.”

28. On 13 September Foreign Office Minister Bill Rammell issued the following statement:

We welcome the fact that the Legislative Council elections were generally well run. Clearly there were a number of technical problems on the day in some locations and we understand that the Special Administrative Region Government and the Electoral Affairs Commission will be looking into these. That said, there appears to have been fair treatment for all candidates and we have no reason to question the validity of the outcome.

29. On 24 September Chinese Premier Wen Jiabao said: “The Legislative Council elections represented an advancement of democracy in Hong Kong because it saw a record voter turnout and half the seats in the Legislative Council were returned by direct election.” He said “the most crucial task of the new legislators was to observe the Basic Law faithfully, and represent the interests of all people in Hong Kong. There should be frequent dialogue between the Central Government and Hong Kong people, while the Hong Kong Government should also communicate constantly with legislators from different parties.”

30. The Chief Executive announced on 10 November that an Independent Committee of Experts would be formed to review election management, planning and conduct, and to make recommendations for improvement measures for future elections.

31. The EAC released its report on the Legislative Council elections on 15 December. The report expressed deep regret and apologised for the inconvenience caused during the election but concluded the integrity of the election had not been compromised.

HONG KONG SAR GOVERNMENT

32. On 5 July the Legislative Council released a report on **Severe Acute Respiratory Syndrome (SARS)** in 2003. The report criticised Dr E K Yeoh, the Secretary for Health, Welfare and Food, for mishandling the crisis. The report also criticised the then Director of Health, Margaret Chan, and the Chairman of the Hospital Authority, Leong Che-hung. Dr Yeoh apologised for a system that was unable to cope with the unprecedented SARS outbreak and accepted full responsibility as the Principal Official. He offered his deepest sincere apologies to the people of Hong Kong, the deceased, family members of the deceased, individuals who were infected and all health care workers for the inadequacies of the health care system in the battle against the unknown and ferocious disease in the early days of the epidemic, and for any misunderstandings that he might have caused in communicating with the public.
33. On 7 July the Chief Executive announced that after thorough consideration and “in accordance with the spirit of the Accountability System” he had accepted Dr Yeoh’s resignation. The Chief Executive said, “Dr Yeoh has done his job adequately and his achievement has been recognised by the World Health Organisation, accepting and implementing the majority of recommendations made by international experts and as a result we have managed to keep SARS at bay”. In his resignation letter Dr Yeoh said that he was resigning “in order to bring a closure to this painful episode.” Hospital Authority Chairman Leong Che-hung’s resignation was reluctantly accepted by the authority’s board, who concluded that none of the authority’s staff or management were guilty of dereliction of duty. On 8 October Dr York Chow was appointed as Dr Yeoh’s successor.
34. On 12 October the Chief Executive announced that he had appointed two new members (without portfolio) to his **Executive Council**: Bernard Chan and Laura Cha. Bernard Chan, from the new Alliance Group (which has replaced the “Breakfast Group”), represents the Insurance Functional Constituency in the Legislative Council and at 39 is the youngest member of both the Legislative Council and the Executive Council. Laura Cha was previously Deputy Director of the Chinese Central Government’s Securities and Regulatory Commission and the first person from outside the mainland to join the Chinese Government at Vice-Minister rank. No Democrats were appointed but the Chief Executive said, “We would want to work very closely with the Democrats to ensure Hong Kong’s long-term stability and prosperity.”
35. On 29 November the Court of Appeal ruled by a 2:1 majority that the law introduced by the SAR Government in July 2002 enabling them to cut **civil servants’ pay** was contrary to Article 100 of the Basic Law. Article 100 states that, following the handover in 1997, public servants’ conditions of service and pay should be no less favourable than before. The judges ruled that the existence of the July 2002 law created conditions which were less favourable than those before the handover when no such law existed. The Secretary for

Civil Service, Joseph Wong, said the Court of Appeal's judgement had been considered carefully and the Government would appeal to the Court of Final Appeal and seek an early hearing in view of the considerable public importance of the case. Mr Wong has not ruled out the possibility of seeking a NPC interpretation if the Court of Final Appeal upholds the original ruling. However, MFA Commissioner Yang Wenchang said that this was an issue for the SAR Government to resolve, not the NPC. **The British Government believes that the general power of the NPC Standing Committee, a political body, to interpret the Basic Law should not be used in a way which might undermine Hong Kong's separate legal system or confidence in the rule of law.**

36. The Government has faced public criticism over its decision to grant rights to develop the **West Kowloon Cultural Project** to a single consortium; for its handling of the listing of Hong Kong's first real estate investment trust, which was delayed by a legal challenge; and for selling off vacant but brand new Housing Authority flats on the Hunghom Peninsula to private developers. The developers in question (Sun Hung Kai and NewWorld) plan to replace the Housing Authority flats with luxury apartments "better attuned to market demand". Various political groups decided to organise marches on 1 January 2005 to demonstrate against the West Kowloon Cultural Project, political involvement in the funding of the legal case against the listing of the real estate investment trust and the Hunghom project.

"ONE COUNTRY, TWO SYSTEMS"

37. In our last report we commented on the arrest on 16 June by the Hong Kong Police of **two mainland Public Security officers** for suspected loitering and possession of an offensive weapon. The Hong Kong Security Bureau investigated the incident and wrote to the Legislative Council Security Panel on 25 June to inform them that the Guangdong Provincial Public Security Department had confirmed that the officers were serving public security officials and that the purpose of their visit was sightseeing and shopping. Police were making further inquiries with mainland security authorities and were still investigating the suspected offences of the arrested people. James To, the Panel's Chairman, said that he was not convinced and called on the Chief Executive to raise the issue with the Central Government.
38. Xinhua, the official Chinese News Agency, reported that more than 43,000 Hong Kong people visited the Chinese **People's Liberation Army (PLA)** garrison on 1 July to celebrate the seventh anniversary of the Hong Kong SAR. They attended the national flag raising ceremony, visited military ships, helicopters and other weapons and armament exhibitions.
39. A group of lawyers, including four local delegates to the Chinese People's Political Consultative Conference formed a new group called the **Hong Kong Legal Forum** on 3 July. The group's objectives are supporting "One Country,

Two Systems”, upholding the Basic Law and acting as a bridge between the Central Government and the people of Hong Kong to reflect their views to Beijing. A founding member, Senior Counsel Daniel Fung, in responding to assertions that the new group was aimed at countering the growing influence of the Article 45 Concern Group, said that questions confronting them were wider and more important than Article 45.

40. On 11 July the Secretary for Education, Arthur Li, signed an agreement on mutual recognition of **tertiary education** between China and Hong Kong. Under the agreement mainland students will be able to study for a Bachelor or Master degree in Hong Kong and vice versa.
41. On 1 August the PLA staged its first **military parade** in Hong Kong with a display by 3000 members of the army, navy and air force to mark its 77th anniversary. In what was seen by many commentators as a bid to ease political tensions, the parade also marked the first time that all legislators, including democrats, had been invited to an official mainland government function. Pro-democracy legislators expressed the hope that the invitation would lead to greater dialogue with Beijing. Former Chairman of the Democratic Party, Martin Lee, said, “I think this is a nice gesture on the part of the Central Government to have invited all legislators to this event. We consider it a first step towards establishing a direct dialogue with Beijing.”
42. The PLA military parade was part of a series of events, co-ordinated by Hong Kong with the mainland authorities, in the run up to the Legislative Council elections that encouraged Hong Kongers to “love China, and to love Hong Kong”. Other events included a visit by Liu Yandong (Head of the United Front Work Department), a visit by Yang Liwei, China’s astronaut, an exhibition of a finger of the Buddha from a monastery in China, a public exhibition to celebrate the 100th anniversary of the birth of Deng Xiaoping and a visit by all of China’s Olympic gold medallists.
43. It was reported on 23 September that 45 of the 60 newly elected legislators had been invited to Beijing to a National Day ceremony on 30 September, as part of a wider delegation. The invitees included the four members of the Article 45 Concern Group and six other “pro-democracy” legislators but, with the exception of Sin Chung-kai, members of the Democratic Party were not invited. Several of Hong Kong’s democratically elected legislators are still not permitted entry to the mainland. **We hope those legislators who have not been allowed to visit mainland China since 1989 will now be allowed to do so.**
44. The Chief Executive led a 200-strong delegation to attend the **National Day celebrations** in Beijing on 1 October. At a meeting with the delegation from Hong Kong and Macao the Chinese President, Hu Jintao, expressed full confidence in the future of the two SARs. He said that “we shall unswervingly implement the guiding principle of ‘One Country, Two Systems’, act in strict accordance with the Basic Law” and “ it is our sincere wish that all circles in

Hong Kong and Macao, including those holding dissenting views on some issues, will unite as one under the banner of loving the country and loving Hong Kong.”

45. On 20 December **President Hu Jintao** had two meetings with the Chief Executive and his principal officials in Macao following the Chief Executive of Macao's inauguration. Addressing the Chief Executive at a televised meeting President Hu Jintao called upon him and the Hong Kong SAR Government to “raise their level of administration and improve their quality of governance, the ultimate beneficiaries are Hong Kong and its residents. To do so, the Chief Executive must be more resolute in exercising effective administration according to law, while the government and residents must work together with one accord and support each other”. He went on to say “the Macao Special Administration Region is an example for the Hong Kong people and society to emulate.” The media gave wide and prominent coverage to the meeting, highlighting President Hu's call for the SAR Government to “identify inadequacies”, which some commentators saw as a public reprimand. Some legislators were of the view that the remarks were the most serious public criticism the Chief Executive had faced and sent a message that the central authorities were dissatisfied with his governance. On his return to Hong Kong the Chief Executive told journalists that “it was not a dressing down” and that “President Hu had reminded us to improve our governance and identify our inadequacies.” He said that there were many areas of his administration that warranted further improvement but he denied that there was a governance crisis.

ARTICLE 23 OF THE BASIC LAW

46. In our recent reports we have covered in detail the SAR Government's moves to introduce national security legislation to meet its obligations under Article 23 of the Basic Law. Draft legislation was withdrawn in September 2003 following the demonstrations on 1 July 2003.
47. The Chief Executive stated on 16 September that the SAR Government had no plans to restart the process for legislating on Article 23 of the Basic Law. He said, “We will consider legislation only after the economic recovery has been completed, constitutional reform has been settled and a broad consensus has been reached in the community. We will not consider it now.”

BASIC RIGHTS AND FREEDOMS

48. On 24 July the **Independent Commission Against Corruption (ICAC)** raided seven Hong Kong newspapers after the newspapers named a witness in a fraud investigation who was being held under the witness protection programme. In naming the witness, the ICAC said the newspapers had possibly violated the Witness Protection Ordinance. The Newspaper Society of Hong Kong voiced

strong dissatisfaction over the raids saying “the simultaneous search of the newspapers has set a very bad precedent and seriously affected the freedom of the press.” The Chief Secretary, Donald Tsang, defended the ICAC operation saying there was a need to strike a balance between upholding the law and safeguarding press freedom.

49. On 28 July the Sing Tao daily newspaper filed an application in the High Court to revoke the search warrant used by the ICAC. On 10 August the Court of First Instance ruled that the ICAC was “wrong in fact and law” in seeking search warrants against seven newspapers and several reporters and in seizing materials and ordered that the warrants be set aside and the materials returned. The judges emphasised the importance of protecting press freedom and set out guidelines – based on legal precedents – for future investigations.
50. The ICAC applied to the Court of Appeal on 11 October to restore the warrant it used to search the offices of the Sing Tao newspaper. The Appeal Court dismissed the application on grounds that it had no jurisdiction to hear the case, which should have been lodged with the Court of Final Appeal. However, the Court said that if it had the necessary jurisdiction, the appeal would have been allowed with costs. The Court was satisfied that the ICAC had acted lawfully in seeking the warrants.
51. Despite the fact that the appeal was unsuccessful some academics and members of the newspaper industry saw it as a victory for the ICAC. The Hong Kong Economic Journal said that the Appeal Court had reopened the door for the Commission to conduct searches on newspaper offices.
52. On 2 November the Hong Kong Journalists Association called for the law on search and seizure of reporters’ materials to be narrowed. Its Honorary Secretary, Mak Yin-ting, told legislators the recent seizure of materials by the ICAC from media organisations showed the legislation itself, as well as the way it is implemented, does not adequately protect press freedom. She said that, in granting a warrant, the court must be satisfied that the case is a very serious one, and that the disclosure of the relevant information outweighed the public interest of not disclosing it.
53. On 9 September Human Rights Watch released a report on the elections in Hong Kong, raising concerns about the **resignation of three radio chat show hosts** in May 2004 (mentioned in our last report to Parliament). The SAR Government criticised the Human Rights Watch report as painting a distorted picture of Hong Kong and that “any suspected unlawful activities that threaten our freedoms will be pursued by our law enforcement agencies vigorously.” (So far no charges have been made in connection with these cases.) Of the three chat show hosts, Albert Cheng was elected to the Legislative Council in September, and Allen Lee and Wong Yuk-man are back on the radio, although at off peak times. **We will continue to monitor any threat to freedom of expression in Hong Kong closely.**

54. The detention in Dongguan, in Guangdong Province, on 13 August of **Alex Ho**, for allegedly hiring a prostitute is referred to in paragraph 26 of this report. The case received widespread attention from the media and human rights organisations. Mr Ho, a District Councillor and Democratic Party candidate in the September Legislative Council elections, was given a six-month prison sentence without trial. Commentators noted that this was an unusually harsh sentence and contrasted it with the treatment of a Hong Kong policeman who was arrested for the same alleged offence in Shenzhen a few days later and was ordered by the mainland authorities to undergo 15 days of re-education through labour. Amnesty International described Mr Ho's arrest as "unacceptable" and said that his detention ran counter to the International Covenant on Civil and Political Rights which bans detention without trial. In its report on the September Legislative Council elections, Human Rights Watch said that "Ho's arrest raised serious due process concerns, and also raised the real possibility that the Chinese government was using his arrest - or at least his sentencing - to advance its political aims in Hong Kong."
55. In past reports we covered the appeal in September 2003 by sixteen members of **Falun Gong** who had been convicted in August 2002 of **public order offences** and the unusually long time to wait for an appeal verdict in Hong Kong. The group had been convicted for obstruction and assault arising from a protest outside the Central Government Liaison Office. On 10 November the Court of Appeal, in a unanimous decision, overturned the convictions for public obstruction. In making their decision the judges cited the Basic Law, the Bill of Rights and the International Covenant on Civil and Political Rights as protecting "fundamental freedoms" of assembly, demonstration and expression in Hong Kong. Appeals by nine of the protestors against charges of obstructing a police officer in the execution of his duty were dismissed. A Falun Gong spokesman, Kan Hung-Cheung, welcomed the judgement as a testament that the group had "successfully resisted the extension of the Jiang Zemin regime's persecution of the Falun Gong to Hong Kong". He said the group was considering appealing to the Court of Final Appeal to overturn the police obstruction and assault convictions.
56. We have previously commented on the SAR Government's failure to meet its obligations under the **International Covenant on the Elimination of Racial Discrimination (ICERD)**. We noted in our last report that the consultation paper on anti-racial discrimination legislation would be delayed until after the September Legislative Council elections. We are therefore pleased to note a Public Consultation Paper issued at the end of September requesting comments by 31 December 2004, later extended to 8 February 2005. **We hope that the views of all the community in Hong Kong will be taken into consideration and that legislation which fully meets Hong Kong's obligations under the ICERD will be implemented in 2005.**
57. The appointment of Raymond Tang on 15 December as the new Chairman of the **Equal Opportunities Commission (EOC)** was criticised by some human rights groups in Hong Kong because of his lack of experience in human rights

work. Mr Tang, who was most recently the Chairman of the Privacy Commission, said that he accepted the offer as a challenge and because he thought the EOC provided a very important service to the community. Patricia Chu, the outgoing Chairwoman, was reported to be disappointed and unhappy about the Government's last minute decision to end negotiations over extending her contract. She said that it would have been better if the Government had given her more notice of the termination of her services "so we could better prepare a transition". **Whatever the background to this change of Chairman we believe that the EOC is of fundamental importance in upholding Hong Kong's rights and freedoms and that the organisation needs the appropriate authority to both uphold and advocate human rights.**

COUNTER-TERRORISM

58. The United Nations (Anti-Terrorism Measures) Amendment Ordinance 2004 was passed by the Legislative Council on 3 July 2004 in line with UNSCR 1373 and the Financial Action Task Force's Recommendations. The legislation empowers the SAR Government to investigate, seize and detain suspected terrorist property, and enables law enforcement agencies to exchange information on transactions of suspected terrorist property with local counterparts and overseas authorities.

ECONOMY

59. The economy was largely unaffected by the rise in global oil prices and concerns over the possibility of a sharp slowdown in growth in mainland China in the second half of 2004. GDP for the third quarter grew by 7.2%; visible exports were up 15.3%; and exports of services also grew by 10.3%. The Government expects its revised full year growth forecast of 7.5% to be achieved. (All figures year on year in real terms.) Meanwhile unemployment continued to decline slowly, standing at 6.5% for the three months to December 2004 as compared with 6.9% at the end of June 2004. The Consumer Price Index also turned positive for the first time in more than five years in July 2004 and the Hang Seng Index benefited from increased confidence in the local economy, the weak US dollar, and continued speculation over a RMB revaluation. For the first eleven months of 2004 the World Federation of Exchanges ranked Hong Kong third in the world in terms of capital raised. Mainland enterprises currently account for 30% of total market capitalisation.
60. Hong Kong issued its first ever sovereign bonds (valued at HK\$20 billion) on 7 July 2004. However the planned 6 December listing of Hong Kong's first real estate investment trust - forecast to be the world's third largest IPO in 2004 - was postponed as a result of a last-minute legal challenge. The trust is expected to be re-launched in the first half of 2005. Meanwhile the Hong Kong SAR Government launched a three-month consultation on the possible privatisation

of the Airport Authority on 18 November 2004. Discussions on the merger of Hong Kong's two rail companies continues.

61. On 1 November, Hong Kong's Financial Secretary launched his pre-budget consultations with a presentation to the Legislative Council on the need to broaden the tax base. In particular he outlined the case for the introduction of a Goods and Services Tax (GST) in order to offset volatility associated with windfalls from land premiums. (October's land auction was Hong Kong's most lucrative ever netting HK\$2.1 billion more than the Government's forecast for total revenue from land sales for the whole of FY 2004-5.) The Financial Secretary later confirmed that a GST will not be introduced before 2009. Also in November the Government presented proposals to the Legislative Council to split the role of Chairman of the Securities and Futures Commission between a non-executive Chairman and a Chief Executive Officer.

ECONOMIC COOPERATION WITH THE MAINLAND

62. On 27 August, Hong Kong and mainland China agreed on the second round of goods and services to be covered by the Closer Economic Partnership Arrangement (CEPA). CEPA II covers an additional 713 product types from 1 January 2005; 529 of which were under production in Hong Kong at the time of agreement. It also broadens the liberalisation terms for 11 of the 18 services covered by the first round of CEPA, and introduces new liberalisation measures in 8 additional service sectors including information technology, patents and trade-marks. Rules of origin for CEPA II products were formally agreed on 27 October. According to the Trade & Industry Department 663 service supplier certificates had been issued as of the end of 2004 (46% for transport and logistics services and 31% for distribution services). 2,991 certificates of origin had also been issued involving goods with a total value of HK\$1,145 million. (40% of certificates of origin were issued for clothing and textiles and 23% for pharmaceutical products.) This equates to 0.9% of Hong Kong's total visible domestic exports and 0.13% of total goods (including re-exports) exported from Hong Kong to the mainland in 2004. In October 2004 the Central Government also simplified procedures for mainland companies seeking to establish offices in Hong Kong. (Mainland investment in Hong Kong stood at HK\$1.48 billion for the first nine months of 2004, up from HK\$108 million for the whole of 2003.)
63. The Hong Kong SAR Government continued to co-operate with the Mainland authorities on tackling environmental pollution. The Hong Kong Observatory noted an 18% occurrence of low-visibility days in 2004 as compared with 12.8% in 2003 and 9.5% in 2002. The Government's Air Pollution Index also recorded an all-time high hourly reading for pollution levels in September 2004 - more than double that at which individuals with existing heart and respiratory conditions are advised to stay indoors. On 22 December 2004 the Hong Kong SAR Government and the Guangdong Provincial Government met in Hong Kong for the fifth meeting of the Hong Kong Guangdong Joint Working Group

on Sustainable Development and Environmental Protection. The meeting established a new Special Panel with the remit of promoting energy saving measures and clean production within the Pearl River Delta. The two governments will start operating a regional monitoring network for the Pearl River Delta from the first quarter of 2005 and a manual for compiling inventories of emissions will be produced to enable both sides to measure emission levels consistently. The group also laid down a schedule for developing an emission trading pilot scheme for fuel-burning power plants in the Pearl River Delta.

EU ACTIVITY IN HONG KONG

64. Responding to the European Commission Report on Hong Kong for 2003, published in June, a Hong Kong SAR Government spokesman said the government had taken note of the report. "One Country, Two Systems" was being fully implemented in Hong Kong, and people's rights and freedoms continue to be upheld.

BILATERAL RELATIONS

Visits

65. Foreign and Commonwealth Office Minister Bill Rammell paid his third visit to Hong Kong on 25 October. He met the Chief Executive, Secretary for Constitutional Affairs and Secretary for Home Affairs. He had lunch with civil society groups and paid an informal visit to Wan Chai District Council.
66. Underlining the close links between Hong Kong and the City of London, the Lord Mayor, Alderman Robert Finch, accompanied by a high-level business delegation, visited from 24 to 25 October. During the visit the Lord Mayor officiated at the opening ceremony of the London Stock Exchange's Asia Pacific Office and made calls on senior members of the Government including the Financial Secretary and Financial Services Secretary.
67. Elliot Morley, Minister for the Environment, visited Hong Kong on 29 November. He called on Secretary for Environment, Transport and Works, Sarah Liao, and Director, Drainage Services Department, Raymond Cheung. He also had a working breakfast with representatives of UK water sector companies operating in Hong Kong.
68. Baroness Scotland, Home Office Minister for Criminal Justice and Law Reform, visited Hong Kong from 7 to 11 December. She called on Chief Justice Andrew Li, Secretary for Home Affairs Patrick Ho and Secretary for Justice Elsie Leung. Baroness Scotland delivered the keynote address at a Foreign Correspondents' Club lunch, attended by legislators and SAR Government officials, in which she outlined recent reforms in the areas of Criminal Justice

and the House of Lords. She also spoke more widely about constitutional reform and accountable government.

69. Sir Robin Young, Permanent Secretary at the Department of Trade and Industry, signed a Memorandum of Understanding on Information and Communication Technology (ICT) during his visit on 10 December. The renewal of the MOU on ICT sets the foundation for another five years of cooperation in this important technology sector.
70. In the other direction, Secretary for Security, Ambrose Lee, met Foreign Office Minister Bill Rammell during his visit to the UK from 15 to 19 September. The Chief Secretary for Administration, Donald Tsang, visited the UK from 25 to 27 October. During his visit he met the Lord Chancellor and the Foreign Secretary and attended the launch of the new HK-UK Business Partnership. He also shared a platform with the Deputy Prime Minister at the opening of the Hong Kong-Guandong Business Seminar and was the guest of honour at the Hong Kong Trade Development Council annual dinner. Raymond Wong, Commissioner for the Independent Commission Against Corruption met Foreign Office officials during his visit on 20 November.

Trade and Inward Investment

71. Over the reporting period bilateral trade has continued at an increasingly high level. UK exports to Hong Kong from January to November 2004 amounted to £2,364.3 million, an increase of 5.3% over the same period of 2003. UK imports from Hong Kong from January to November 2004 amounted to £5,392.7 million, an increase of 4.6% over the same period of 2003. Over the reporting period UK Trade and Investment (UKTI) has supported nine trade missions to Hong Kong, and two British groups at international trade fairs and worked with over 260 British companies looking to develop their business in Hong Kong. UKTI has also continued to work with existing Hong Kong investors in the UK and in promoting the UK to new potential investors.
72. The HK-UK Business Partnership was launched in October 2004 as a result of an initiative agreed between Patricia Hewitt, Secretary of State for Trade and Industry, and Peter Woo, Chairman of the Hong Kong Trade Development Council, earlier in the year. The Partnership aims to promote trade, investment and business co-operation and understanding between Hong Kong and the UK, focussing on priority sectors, particularly at the SME level. The Partnership will also play a role in helping UK SMEs to engage with the wider China mainland market through Hong Kong. In the first year the Partnership will focus primarily on links in the creative industries and ICT sectors.

Education

73. Educational links between the UK and Hong Kong remain very strong. There are currently around 18,500 students from Hong Kong studying in universities, schools and colleges in the UK.
74. The British Government's Chevening Scholarship Scheme has operated in Hong Kong since 1996. This year there are around 37 Chevening scholars from Hong Kong in the UK, studying a wide range of courses. The generosity of Dr Li Ka-Shing (Chairman of Cheung Kong Holdings and Hutchison Whampoa Ltd), and Cambridge University, matched by the Foreign & Commonwealth Office, has made this significant number of scholarships possible. In November 2003 Dr Li Ka-Shing pledged a further £2 million over three years, matched by the British Government under its Dorothy Hodgkin Postgraduate Awards scheme, to support mainland and Hong Kong scholars in doctoral studies in the UK.
75. Hong Kong remains a major centre of activity for the British Council. The Council's Teaching Centre in Hong Kong provides courses to over 25,000 students a year. It is the Council's largest English-language teaching operation in the world. During 2004 it also administered 33,000 examinations and attracted 53,000 visitors to its website each month. The British Consulate-General works closely with the British Council in promoting better awareness of the UK's educational and training credentials, its creativity, cultural diversity and recent achievements. Further information can be obtained from the British Council Hong Kong web site www.britishcouncil.org.hk.

Air Services

76. On 1 December, the main aspects of the new air services arrangements agreed between the UK and the Hong Kong Special Administrative Region came into force. These new arrangements end restrictions on passenger and cargo services between the two destinations, and will provide new rights for airlines to carry local traffic beyond London and Hong Kong. On 7 December, Virgin Atlantic operated its first service between Hong Kong and Sydney, taking advantage of the new rights. In accordance with European law, the European Commission, advised by a committee of Member States, is applying these arrangements provisionally, pending conclusion of their consideration.

BRITISH NATIONALS (OVERSEAS)

77. There are nearly 3.5 million British Nationals (Overseas), most of whom live in Hong Kong. The British Government remains fully committed to providing the highest standard of consular and passport services to the holders of the British National (Overseas) (BN(O)) passport. We continue to offer the same level of consular service to BN(O) passport holders in third countries as we do to other

British Nationals and regularly remind all our overseas missions of their obligations towards BN(O)s. The Passport Section of the British Consulate-General in Hong Kong remains the largest passport issuing operation outside the UK.

78. Following the introduction of the European Union Residence Permit in 2003 the British Government implemented the United Kingdom Residence Permit (UKRP) Scheme for non-visa nationals wishing to stay in the UK for more than six months. The Scheme has been running successfully in Hong Kong for over a year, where – uniquely – BN(O)s can apply for UKRPs directly from a dedicated UKRP Section at the British Consulate-General – free of charge. Nearly 5,000 gratis UKRPs have been issued to date, mainly to students.
79. As at 31 December the number of countries granting visa free access to BN(O) passport holders is 101. We continue to work hard with other European countries and the European Commission to ensure that BN(O) passport holders enjoy the same access within Europe as SAR passport holders and there are encouraging indications that progress is being made towards this objective.

CONCLUSION

- 80. In our last report to Parliament we expressed concern about the intervention of the central authorities regarding the pace and scope of constitutional development, which seemed inconsistent with the high degree of autonomy guaranteed to Hong Kong under the Joint Declaration. However, the period covered by this report saw no developments which might erode further the high degree of autonomy guaranteed to Hong Kong. During these six months, “One Country, Two Systems” generally worked well in practice. The record turn-out of the electorate at the Legislative Council elections and the large-scale peaceful demonstrations on 1 July were notable manifestations of Hong Kong people vigorously and responsibly exercising their political and civil rights.**
- 81. We shall continue to follow developments closely and to support the exercise by Hong Kong of its high degree of autonomy within the framework of the Joint Declaration.**



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