

Hong Kong Watch Submission to the Joint Standing Committee on Treaties on Inquiry into the Australia-Hong Kong Free Trade Agreement

About Hong Kong Watch: Hong Kong Watch is a UK-based non-governmental organisation which researches and monitors threats to Hong Kong's basic freedoms, the rule of law and human rights as promised under the Sino-British Joint Declaration. We work closely with parliamentarians in the UK and abroad to raise awareness about developments in Hong Kong.¹

Executive Summary

1. Hong Kong's freedoms and autonomy play a central role in allowing the city to function as East Asia's financial hub. Safeguarding the rule of law, the fundamental freedoms and the city's autonomy is not only in the interests of the people of Hong Kong, but it is in the interests of foreign businesses and international governments which consider it their Asian hub.
2. Australia and Hong Kong are closely connected through their trade, economic relationships and the exchange of talents. As Hong Kong's freedoms and autonomy are increasingly under threat, with China reneging its promise under the international treaty Sino-British Joint Declaration to respect the city's high degree of autonomy, it is in Australia's best interests to consider the inclusion of human rights clauses in its Free Trade Agreement with Hong Kong to protect not only Hong Kong people's enjoyment of fundamental rights, but to protect the many Australian businesses and people that share the core values of Hong Kong.

Recommendations

3. The Committee should include human rights protection clauses in the Australia-Hong Kong Free Trade Agreement, including but not withstanding suspension clauses to suspend an agreement if core human rights standards are not met.
4. The Australian Government should ensure putting in place an effective enforcement mechanism of the trade agreement through Parliamentary scrutiny and monitoring of human rights compliance by both parties to the trade agreement.
5. The Australian Government and the Parliament should apply pressure on China and Hong Kong government to respect human rights, freedoms and the rule of law.

Hong Kong's Importance to Australia

6. Hong Kong's freedoms and its rule of law are the cornerstone of its success as the leading international commercial and financial centre in East Asia. The transparency of its judiciary and economic system provides a level playing field for local and foreign businesses, which has enabled Hong Kong to play a significant role as a gateway between the East and the West. No other city in China has the necessary safeguards to function as a comparable commercial and financial hub. Fundamental freedoms and the rule of law upheld in Hong Kong has cemented the city's position as a highly-regarded international financial centre and consequently establish the case for the need to defend the its rule of law by policy-makers in Hong Kong and around the world, civil society and the international business community.

¹ Hong Kong Watch, 'About Us', <https://www.hongkongwatch.org/what-we-do>

7. Australia has extensive and enduring interests in Hong Kong with strong bilateral trade and economic relationship and people-to-people connection. Australian business is drawn to Hong Kong because of the transparency and efficiency of its regulatory environment, the integrity of Hong Kong's financial markets and the rule of law, supported by an independent judiciary and the freedoms of an open civil society. Hong Kong also provides an important strategic base for Australian companies to reach its customers and investors in China and neighbouring countries in North and Southeast Asia. Protecting the integrity of Hong Kong's legal and political system is therefore vital for the successes of Australian businesses. Hong Kong has one of the largest Australian communities abroad with around 100,000 Australians living in Hong Kong, and more than 600 Australian businesses have a presence in Hong Kong.² Australia and Hong Kong share many common values and it is in the interests of Australia businesses and government to protect these including respect for individual freedoms, human rights, democracy, the rule of law and good governance.

Deteriorating Human Rights Situation in Hong Kong

8. Basic freedoms and the rule of law in Hong Kong are under unprecedented pressure. Mass demonstrations sparked by the extradition bill that would authorise sending criminals to China have lasted so far almost three months. Protestors in Hong Kong have seen unprecedented use of force by the police. In most clashes there have been hundreds hospitalised as a result of police use of batons, firearms, pepper spray and tear gas.³ A crackdown since the Umbrella Movement protests of 2014 has resulted in restrictions of freedom of expression, freedom of the press and an erosion of basic democratic rights, with candidates and parties now being routinely politically screened⁴. Beijing has interfered in Hong Kong's courts on multiple occasions. Booksellers have been abducted and disappeared in mainland China. Pro-democracy candidates and lawmakers have been disqualified from office. Academic and press freedom have come under increasing pressure. Lawmakers have introduced a bill that would criminalise "insults" to China's national anthem. Pro-democracy protesters have been sentenced to long prison terms.
9. All these draw into question whether the city will retain the "high degree of autonomy" and whether China will continue to observe the principle of "one country, two systems" which are promised under the Sino-British Joint Declaration. The Sino-British Joint Declaration, a legally binding treaty lodged at the United Nations, places a legal and moral responsibility on the United Kingdom and China to protect these rights and freedoms. However, China in recent years has repeatedly dismissed the treaty as a "historical document" and disregarded the right of the United Kingdom as

² Australian Consulate-General Hong Kong, Australia-Hong Kong Relations, <https://hongkong.china.embassy.gov.au/hkng/australia-hong-kong-relations.html>

³ Hong Kong Watch, "Briefing: Police Brutality and Political Prosecution in Hong Kong Extradition Bill Protests", 16 August 2019, <https://www.hongkongwatch.org/all-posts/2019/8/16/police-brutality-and-political-prosecution-together-are-a-toxic-combination-says-new-hong-kong-watch-report>

⁴ Hong Kong Watch, "Political Screening in Hong Kong: A report on the disqualification of candidates and lawmakers", 8 March 2018, <https://www.hongkongwatch.org/all-posts/2018/3/7/political-screening-in-hong-kong-a-report-on-the-disqualification-of-candidates-and-lawmakers>

a co-signatory to the treaty to monitor and express concerns of the deteriorating freedoms in Hong Kong.⁵

Inclusion of a Human Rights Clause in Australia-Hong Kong Free Trade Agreement

10. Australia and Hong Kong have a long-standing trade relationship. In light of the erosion of freedoms and the rule of law in Hong Kong which are important pillars for Australian businesses, it is therefore imperative for the Australian government to take action to ensure adequate consideration of human rights issues during future trade agreement negotiations and to include human rights protection clauses in the Australia-Hong Kong Free Trade Agreement, including suspension clauses to suspend an agreement if core human rights standards are not met and backed by an effective enforcement mechanism through Parliamentary scrutiny and monitoring of human rights compliance by both parties to the trade agreement.

⁵ Reuters, "China says Sino-British Joint Declaration on Hong Kong no longer has meaning", 30 June 2017, <https://www.reuters.com/article/us-hongkong-anniversary-china/china-says-sino-british-joint-declaration-on-hong-kong-no-longer-has-meaning-idUSKBN19L1J1>