VI. Developments in Hong Kong and Macau

Hong Kong

During its 2018 reporting year, the Commission observed a continued erosion of Hong Kong’s autonomy, as guaranteed under the “one country, two systems” policy enshrined in the Basic Law in accordance with the principles of the 1984 Sino-British Joint Declaration. Reports showed diminishing space for political action by pro-democracy groups and individuals in Hong Kong’s democratic institutions. Observers also expressed concerns regarding the erosion of universal human rights protected by international instruments applicable under the Hong Kong Basic Law.

CHINESE CENTRAL GOVERNMENT’S POLICY TOWARDS HONG KONG

At the 19th National Congress of the Chinese Communist Party in October 2017, Party General Secretary and Chinese President Xi Jinping reiterated that the central government must maintain “overall” or “comprehensive” jurisdiction over Hong Kong and Macau while ensuring a “high degree of autonomy.” Government officials emphasized the importance of Hong Kong’s economic integration with mainland China and joint cooperation through the Belt and Road Initiative. After a meeting with Party General Secretary Xi in December 2017, Hong Kong Chief Executive Carrie Lam Cheng Yuet-ngor said that it is the Hong Kong government’s responsibility to create a “suitable environment” for enacting a national security law as obligated by Article 23 of the Basic Law, emphasizing that every person who “loves [the] nation and loves Hong Kong” should protect national security. At the annual meetings of the National People’s Congress and Chinese People’s Political Consultative Conference in March 2018, top Party officials warned that the central government has “zero tolerance” for calls for Hong Kong independence. The University of Hong Kong surveyed 500 Hong Kong residents and found that 70.6 percent of young people (aged 18 to 35) in Hong Kong felt that “democracy is equally or more important than economic development.”

MARCH 2018 LEGISLATIVE COUNCIL BY-ELECTION SUBJECTED TO “POLITICAL SCREENING”

In March 2018, a Legislative Council (LegCo) by-election was held to replace legislative seats vacated by four out of six disqualified pro-democracy legislators. The Hong Kong High Court disqualified six legislators in 2016 and 2017, citing the interpretation on oath-taking issued by the National People’s Congress Standing Committee in November 2016 and deeming the legislators’ oaths invalid. Candidates from both the pro-democracy and pro-establishment camps won two seats each. The LegCo consists of 70 total seats—35 of which are elected by functional constituencies representing different professional sectors, while the other 35 are directly elected by Hong Kong geographical constituencies. After the March by-election, the pro-democracy camp held a total of 16 seats in geographical constituencies, which is not enough to veto bills, while the pro-establishment camp maintained a majority of 17 seats.
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During the nomination period preceding the March by-elections, the government of Hong Kong carried out what observers called “political screening” of prospective election candidates for the LegCo based on their political party or political beliefs. Government officials from the Electoral Affairs Commission (EAC) who review nomination applications (“returning officers”) rejected the nomination of several candidates, including Demosisto Party candidate Agnes Chow on grounds that her affiliated party’s platform promoting “self-determination” contradicts the Basic Law. The EAC also rejected the nominations of “localist” candidates Ventus Lau Wing-hong and James Chan Kwok-keung who previously voiced support for Hong Kong independence. Hong Kong’s Chief Executive Carrie Lam defended the rejection of Chow, saying that “self-determination,” similar to “Hong Kong independence” and “self-autonomy,” is not consistent with the Basic Law and “deviates from the important principle of ‘one country, two systems.’” In February 2018, the Hong Kong High Court ruled in the election petition of Andy Chan Ho-tin, an advocate of Hong Kong independence whose nomination for candidacy in the September 2016 LegCo General Election was rejected, that “returning officers” have the power to bar candidates based on the candidates’ political views.

The U.K. government and the European Union expressed concern that the rejection of Chow based on her political beliefs constituted a violation of the right to stand for election enshrined in Hong Kong’s Basic Law, Hong Kong’s Bill of Rights Ordinance, and the International Covenant on Civil and Political Rights (ICCPR). The Hong Kong Bar Association criticized the court ruling against Chan as “an introduction of a political screening process for any prospective candidate,” which lacks “fair, open, and clear procedure to regulate this process” and relies on a civil servant’s interpretation of the unspecified requirement of “upholding the Basic Law.”

GOVERNMENT LEGAL ACTION AGAINST POLITICAL OPPOSITION

This past year, the Hong Kong government continued to pursue cases against leaders and participants of the 2014 pro-democracy protests (Occupy Central) and activists from the political opposition. As of April 2018, the government reportedly brought a total of 40 court cases against 26 pro-democracy leaders since 2014, resulting in 13 convictions among 22 concluded cases. In October 2017, a Hong Kong court found 9 people guilty of criminal contempt for refusing to leave when a court ordered the clearance of protest sites in November 2014; 11 others who also had refused to leave the protest site pleaded guilty to contempt of court. As of February 2018, nine democracy protest leaders faced pending charges of “inciting people to incite others to create a public nuisance” and “inciting others to incite more people to create a public nuisance,” with Occupy Central protest leaders Benny Tai, Chan Kin-man, and Chu Yiu-ming facing an additional charge of “conspiring to create a public nuisance.” In June 2018, the Hong Kong High Court sentenced localist Edward Leung Tin-kei to six years in prison on the charges of “assaulting a police officer,” which he pleaded guilty to, and “rioting” for a February 2016 clash with the police sparked by a crackdown on unregistered local street food stands in Mong Kok. Foreign observers such as Chris Patten,
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former governor of Hong Kong under British colonial rule, criticized the charges under the Public Order Ordinance as “vague,” “open to abuse,” and used to “place extreme sentences on the pan-democrats and other activists.” International lawyers and Hong Kong judges reportedly expressed concerns about the impact of political pressure exerted by the central government on the judiciary.

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<th>Cases of Democracy Activists Joshua Wong, Nathan Law, and Alex Chow</th>
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| In October 2017, authorities released on bail democracy activists and Nobel Peace Prize nominees Joshua Wong Chi-fung, Nathan Law Kwun-chung, and Alex Chow Yong-kang, after their imprisonment in August 2017, allowing them to appeal their prison sentences of six to eight months ordered by the Court of Appeal on charges related to “unlawful assembly.” A lower court had previously sentenced Wong and Law to community service, which the two had completed, and had ordered Chow to serve a suspended sentence. In February 2018, the Court of Final Appeal overturned the sentences of imprisonment for Wong, Law, and Chow, holding that the original sentences imposed by the magistrate were “not manifestly inadequate,” while recognizing that the Court of Appeal appropriately issued sentence guidelines for future cases of unlawful assemblies involving violence. Wong criticized the judgment as endorsing “a very narrow definition of non-violent civil disobedience actions” for future cases.

“CO-LOCATION” OF HIGH-SPEED RAIL STATION IN WEST KOWLOON

This past year, Hong Kong and mainland Chinese officials continued negotiations and finalized “co-location” plans for the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link in West Kowloon. In November 2017, Guangdong provincial governor Ma Xingrui and Hong Kong’s Chief Executive Carrie Lam signed a cooperation agreement to allow the enforcement of mainland Chinese law by mainland officials in a designated “Mainland Port Area” within the West Kowloon railway station. The National People’s Congress Standing Committee (NPCSC) approved the “co-location” plan in December, which was projected for completion in the third quarter of 2018. In January 2018, the Hong Kong government introduced the co-location bill in LegCo, which passed in June despite opposition from pro-democracy LegCo members and supporters. The Hong Kong Bar Association (HKBA) criticized the NPCSC approval of the co-location plan as a serious violation of the Basic Law, asserting that it undermines the rule of law and the “one country, two systems” framework in Hong Kong. The HKBA argued that the arrangement constitutes “the most retrograde step to date in the implementation of the Basic Law” and that it “severely undermines public confidence in ‘one country, two systems.’”

FREEDOM OF EXPRESSION AND ASSOCIATION

This past year, the Commission observed reports of restrictions on the freedom of expression and association in Hong Kong against
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academics and politicians who hold views the government deems unfavorable. In a report released in January 2018, the human rights monitoring organization Hong Kong Watch highlighted the government’s political considerations in the removal from post and obstruction of promotions of several academic figures since 2015, including pro-democracy professors Chin Wan-kan, Johannes Chan, Benny Tai, and Cheng Chung-tai. The study noted that while academic freedom in Hong Kong remained relatively free compared to mainland China, “elements of academic control” in mainland China are “gradually being incorporated into the Hong Kong system.” Pro-democracy scholars and activists also said that the environment for academic freedom is deteriorating in Hong Kong. In March 2018, Benny Tai, one of the conveners of the pro-democracy protests in 2014, attended an academic forum in Taiwan, during which he hypothesized future political options for Hong Kong, including independence if the mainland were to become democratic. The Hong Kong government subsequently issued a statement that “strongly condemned” Tai’s remarks. Civil society groups and pro-democracy politicians condemned the government’s statement as breaching the right to freedom of expression. In July 2017, the government of Hong Kong began considering banning a political party that advocates for independence, and subsequently opposed an August event hosted by the Foreign Correspondents’ Club of Hong Kong featuring the party’s founder, Andy Chan. The U.K. government issued a statement of concern showing support for Hong Kong’s “rights and freedoms” under the Basic Law and Hong Kong Bill of Rights and “its way of life.” A Hong Kong Journalists Association survey from April 2018 cited pressure from the Chinese central government as a key obstruction to press freedom in Hong Kong in connection with self-censorship of criticisms of the central government. In advance of the UN Human Rights Council’s Universal Periodic Review of the Chinese government’s human rights record, including compliance with the ICCPR, 53 Hong Kong non-governmental organizations raised concerns about the narrowing space for lawful dissent and expression in Hong Kong and the future of democratic development.

Chinese authorities reportedly used intimidation tactics against members of a pro-democracy group and played a role in barring a foreign rights advocate’s entry into Hong Kong. In August 2018, pro-democracy group Demosisto reported that mainland officials detained and extensively questioned two of its members on their political associations and activities in Hong Kong when they attempted to return to Hong Kong from mainland China. In October 2017, Hong Kong authorities barred British human rights advocate Benedict Rogers from entering Hong Kong after the Chinese embassy in London reportedly warned against his visit.
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Hong Kong Bookseller Gui Minhai Detained Again

This past year, Chinese authorities first released and then detained Swedish citizen Gui Minhai, one of the five Hong Kong booksellers abducted and brought to mainland China in late 2015. In October 2017, authorities reportedly released Gui from custody after two years of detention for an alleged "traffic offense" and placed him under surveillance at a rented home in Ningbo municipality, Zhejiang province. In January 2018, Gui was forcibly detained by plainclothes Chinese authorities while he was traveling with two Swedish diplomats to Beijing municipality, reportedly to seek a medical examination for neurological symptoms. The Swedish foreign minister condemned the Chinese government's acts as a "brutal intervention" against a Swedish citizen, while the European Union condemned China's actions as violations of international rules on consular support and protections against deprivation of liberty. Chinese authorities confirmed that Gui was detained and facing additional criminal charges for "endangering state security," which included allegations of "illegally providing national secrets and intelligence to overseas groups."

On February 10, Gui appeared in an interview with the South China Morning Post (SCMP), among other news media outlets, reportedly arranged by the Ministry of Public Security, during which he said Sweden was "hyping up" his case for political reasons and using him as a "chess piece." Gui has appeared in at least three televised confessions in mainland and Hong Kong media outlets, which the international NGO Safeguard Defenders believes are typically extracted through threats and torture, and used for both domestic and overseas propaganda. Journalists and advocates—including Gui Minhai's daughter Angela Gui—questioned the journalistic integrity of SCMP, which Safeguard Defenders called "the first English-language, non-state media that collaborated with the Chinese police to circulate a televised confession."

Macau

Macau's Basic Law does not provide for elections by "universal suffrage," though its provisions ensure the applicability of the International Covenant on Civil and Political Rights (ICCPR) in Macau and guarantee Macau a "high degree of autonomy" within China. During its 2018 reporting year, the Commission did not observe progress in Macau toward "an electoral system based on universal and equal suffrage" in line with the ICCPR as recommended by the UN Human Rights Committee. In advance of the November 2018 session of the UN Human Rights Council's Universal Periodic Review (UPR) of China, pro-democracy group New Macau Association submitted a report calling for direct elections for the Chief Executive, Legislative Assembly, and members of a newly proposed municipal administration body that would replace the Civic and Municipal Affairs Bureau.

This past year, proposed legislative amendments raised concerns regarding Macau's autonomy and rule of law. In March 2018, the government completed a draft law amending Macau's Judicial Framework Law to bar foreign judges from hearing national security and defense cases. Portuguese lawyers were alarmed by the
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proposal and feared that it may violate Macau’s Basic Law and further erode the independence of the city’s judiciary. In December 2017, the government completed a draft cybersecurity law and released the draft for public comment. While the government reportedly stated that the draft law would not compromise freedom of expression, cyber analysts said that based on the low level of cyber attacks in Macau the legislation is not warranted, raising concerns from cyber industries about the interpretation and impact of the law.

In December 2017, Macau’s legislature suspended 26-year-old legislator Sulu Sou Ka Hou—one of four pro-democracy legislators elected in September 2017 to the Macau Legislative Assembly (AL), a body composed of 33 total seats, 14 of which are directly elected. The AL voted by secret ballot to suspend Sou 48 days after he took office, a move that lifted his immunity from being prosecuted in court under the charge of “aggravated disobedience” for his role in a 2016 protest and stripped him of his right to legislate. This marked the first time that a legislator has been suspended from his duties since Macau’s 1999 handover from Portugal to China. In May 2018, a Macau court found Sou guilty of organizing an unlawful protest and fined him 40,800 patacas (US$5,100); Sou appealed the sentence in June, which he later withdrew in order to have his suspension at the AL lifted.

Access and travel to Macau were reportedly limited for certain events and individuals this past year. In March 2018, the China Liaison Office in Macau reportedly warned organizers of a literary festival in Macau that the government could not guarantee entry to several book authors, including U.K.-based writer and Mao Zedong biographer Jung Chang. In a March 2018 statement, PEN Hong Kong, an international advocacy organization for freedom of expression, said that the lack of assurance for the entry of authors “infringes directly on the right of freedom of expression” in Macau. Immigration authorities denied pro-democracy and centrist Hong Kong politicians entry to Macau this past year, citing concerns over their participation in activities “which may jeopardize the public security . . . of the Macao SAR.” In response to an inquiry about the denial of Hong Kong politician Casper Wong Chun-long from entry, a Macau official cited the prevention of “chaos” for the city.
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