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Freedom House

Freedom in the World 2019 - Hong Kong

Partly Free

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Overview:

The people of Hong Kong, a special administrative region of China, have traditionally enjoyed substantial civil liberties and the rule of law under their local constitution, the Basic Law. However, the chief executive and half of the Legislative Council are chosen through indirect electoral systems that favor pro-Beijing interests, and the territory's freedoms and autonomy have come under threat in recent years due to growing political and economic pressure from the mainland.

Key Developments:

Key Developments in 2018:

- In September, the government officially banned the proindependence Hong Kong National Party (HKNP), marking the first blanket prohibition of a political party in Hong Kong since the territory's handover from Britain to China in 1997.
- In October, the government refused a visa renewal for a veteran foreign journalist, effectively expelling him from Hong Kong. The move was widely understood as a reprisal for the journalist's role in hosting an event that featured HKNP leader Andy Chan.
- Following the 2017 removal of democratically elected prodemocracy and localist Legislative Council (Legco) members from their posts on the grounds that they had improperly altered their oaths of office, the government in November 2018 further moved to invalidate the nomination of one of those individuals—Lau Siu-lai—to stand in a by-election to fill a vacant seat, citing her previous support for self-determination for Hong Kong.

Political Rights and Civil Liberties:

POLITICAL RIGHTS: 15 / 40

A. ELECTORAL PROCESS: 2 / 12

A1. Was the current head of government or other chief national authority elected through free and fair elections? 0 / 4

The chief executive, who serves a five-year term, is chosen by a 1,200-member election committee. Some 200,000 "functional constituency" voters—representatives of elite business and social sectors, many with close Beijing ties—elect 900 of the committee's members, and the remaining 300 consist of Legco members, Hong Kong delegates to China's National People's Congress (NPC), religious representatives, and Hong Kong members of the Chinese People's Political Consultative Conference (CPPCC), a Chinese government advisory body.

In 2017, Carrie Lam, a former deputy to outgoing chief executive Leung Chun-ying and Beijing's favored candidate, was chosen as Hong Kong's fourth—and first female—chief executive, with 777 election committee votes. Her main opponent, former financial secretary John Tsang, received just 365 votes despite drawing far more support than Lam in public opinion polls. As in the past, the selection process featured reports of heavy lobbying by central government representatives.

A2. Were the current national legislative representatives elected through free and fair elections? 1 / 4

Of the Legco's 70 seats, 30 are elected by functional constituency voters, 35 are chosen through direct elections in five geographical constituencies, and the remaining five are directly elected after nominations by Hong Kong's 18 district councils from among their own members. Members serve four-year terms.

In the September 2016 elections, a growing movement emphasizing localism and self-determination emerged to compete with existing pro-Beijing and prodemocracy camps. Candidates from this movement, which grew out of the 2014 Umbrella Movement, captured six seats. Other prodemocracy parties took 23 seats, while pro-Beijing parties won 40; an independent took the remaining seat.

Authorities have responded to the new opposition dynamic by tightening qualification rules, forcing out some lawmakers, and making it increasingly difficult for localist and prodemocracy candidates to win office. In October 2016, after several localist and prodemocracy Legco members altered their oaths of office as a form of protest, the oaths of two newly elected localists—*Sixtus Baggio Leung* Chung-hang and *Yau Wai-ching*—were rejected. The NPC in Beijing issued an unusual Basic Law interpretation that November, requiring oaths to be taken "sincerely and solemnly," and the High Court then affirmed the two representatives' disqualifications. In August 2017, Hong Kong's Court of Final Appeal upheld the decision.

In July 2017, a court granted the government's request to remove four other Legco members who made political statements during their 2016 swearing-in ceremonies—localist-affiliated Nathan Law Kwun-chung and Lau Siu-lai, along with the prodemocracy politicians Edward Yiu Chung-yim and Leung Kwok-hung—even though their oaths had been accepted by the Legco at the time. In September 2017, Lau and Leung indicated their intent to appeal the decision, meaning by-elections to fill their seats would be postponed. By-elections for the remaining four seats left vacant by oath-related disqualifications were held in March 2018, and prodemocracy candidates recaptured only two of these seats.

In May 2018, Lau withdrew her appeal, citing the financial and psychological toll of the lengthy proceedings. In October, Lau submitted her nomination to run in a November by-election to fill the now-vacated seat. However, later that month the Electoral Affairs Commission (EAC) invalidated her nomination, citing her past advocacy in favor of self-determination for Hong Kong. A candidate aligned with the pro-Beijing establishment ultimately won the seat. Meanwhile, Leung's appeal of his disqualification was scheduled for an April 2019 hearing.

A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 1 / 4

Universal suffrage, meaning direct elections, is the "ultimate aim" under the Basic Law, but only incremental changes to the electoral system have been permitted to date. Moreover, the system, which already favored pro-Beijing interests and prevented direct elections for many offices, has grown more hostile to dissenting views in recent years. Ahead of the 2016 Legco elections, the EAC required all candidates to attest in writing to their belief that Hong Kong is unquestionably a part of China, based on certain Basic Law provisions. The EAC invalidated the nominations of six localist candidates for failure to comply, preventing them from running. The NPC's 2016 Basic Law interpretation concerning "sincerity" and "solemnity" in oath-taking bolstered the EAC's authority to block future candidates on similar grounds.

In December 2018, Legco member Eddie Chu, who had announced his candidacy for a local village representative position, was disqualified by the local returning officer due to Chu's past support for "democratic self-determination," marking the first time that a village-level candidate had been disqualified from running in an election due to his or her political stance.

B. POLITICAL PLURALISM AND PARTICIPATION: 7 / 16

B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 2 / 4

Hong Kong residents' political choices are limited by the semidemocratic electoral system, which ensures the dominance of pro-Beijing parties and candidates. Some 18 political parties are currently represented in the Legco. The largest pro-Beijing party is the Democratic Alliance for the Betterment and Progress of Hong Kong. The main parties in the prodemocracy camp are the Civic Party and the Democratic Party, and key localist groupings include Youngspiration and Civic Passion. The Chinese Communist Party (CCP) is not formally registered in Hong Kong but exercises considerable influence.

In 2016, the Hong Kong Companies Registry refused to register the new HKNP on the grounds that its proindependence platform constituted illegal activity. In September 2018, Hong Kong's secretary for security announced that the HKNP was officially banned, citing party statements likely to "cause violence and public disorder" and

invoking interests of national security, public safety, and public order. The move, based on a law previously used to combat organized crime, marked the first blanket prohibition of a political party in Hong Kong since the territory's 1997 handover from Britain to China. An October appeal of the decision by HKNP leaders was set to be heard by the Executive Council, effectively the chief executive's cabinet, in January 2019.

B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 1 / 4

Prodemocracy legislators have historically enjoyed substantial minority representation alongside their pro-Beijing counterparts. However, the EAC's disqualification of some localist candidates for the 2016 Legco elections, the subsequent ouster of six other prodemocracy candidates who won seats—including two who were not associated with the localist movement—and the October 2018 invalidation of Lau Siu-lai's by-election nomination demonstrate the limits of Beijing's tolerance for movements that threaten its influence. The subjective nature of the NPC's "sincere" and "solemn" standard for oath-taking raises substantial concern that further disqualifications will prevent opposition forces from regaining their former share of seats in the Legco and continue to erode their position.

B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 1 / 4

The CCP leadership in Beijing exerts a powerful influence on politics in Hong Kong through a variety of channels, including the NPC's ability to issue interpretations of the Basic Law, the cooptation of Hong Kong business leaders through their mainland assets and membership in the NPC or CPPCC, and lobbying or harassment of election committee members and other political figures to ensure favorable electoral outcomes.

B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 3 / 4

While there are no formal restrictions preventing women or ethnic minorities from voting or running for office, their participation is somewhat limited in practice, with just 12 women and no ethnic minority candidates elected to the Legco in 2016. Hong Kong's first and only openly gay Legco member, initially elected in 2012, was reelected in 2016.

C. FUNCTIONING OF GOVERNMENT: 6 / 12

C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 1 / 4

Directly elected officials have little ability to set and implement government policies under the territory's political system, and mainland authorities are highly influential. The Basic Law restricts the Legco's lawmaking powers, prohibiting legislators from introducing bills that would affect Hong Kong's public spending, governmental operations, or political structure.

As a result of the 2017 removal of some prodemocracy lawmakers and the outcome of 2018 by-elections, the prodemocracy camp lost an important legislative veto power that requires control over a majority of geographical constituency seats. However, it would still be able to block Basic Law amendments, which require a two-thirds majority of all Legco members.

C2. Are safeguards against official corruption strong and effective? 3 / 4

Hong Kong is regarded as having generally low corruption rates, and some high-ranking officials have been successfully prosecuted for graft-related offenses in the past. However, residents perceive the government to be lagging in the fight against corruption. The Independent Commission Against Corruption (ICAC) was criticized for failing to appoint a permanent head of operations after the last official in that post was dismissed in 2016, in the middle of an investigation into then chief executive Leung. Ricky Yau Shu-chun, who had been serving as acting head of operations, was finally confirmed in office in August 2018.

C3. Does the government operate with openness and transparency? 2 / 4

Hong Kong has no freedom of information law. Although an administrative code—the Code of Access to Information—is intended to ensure open access to government records, it includes broad exemptions, and official adherence is inconsistent, prompting local journalists and watchdog groups to urge the government to give freedom of information requirements the force of law. The Law Reform Commission has been studying the subject since 2013. In December 2018, a subcommittee issued a consultation paper asking for public input on the issue of access to government information.

Consultations between Hong Kong officials and the Beijing government, represented by a Liaison Office in the territory, are largely opaque, leaving the extent of Beijing's influence on the local government's decisions unclear to the public.

CIVIL LIBERTIES: 44 / 60

D. FREEDOM OF EXPRESSION AND BELIEF: 12 / 16

D1. Are there free and independent media? 2 / 4

The Basic Law protects press freedom. Residents have access to a variety of print, broadcast, and digital news sources, and foreign media generally operate without interference. The mainland's internet censorship regime does not apply in Hong Kong.

However, in recent years the Hong Kong and Chinese governments, alongside businesses with close Beijing ties, have increased political and economic pressure on media independence, resulting in self-censorship among journalists. Some local news outlets have been acquired by mainland businesses or carried dubious "confessions" by mainland political detainees. The detention of five Hong Kong booksellers by mainland authorities in late 2015 has had a chilling effect on the territory's previously freewheeling book-publishing business.

In October 2018, the Hong Kong government refused an employment visa renewal for Victor Mallet, a veteran journalist for the *Financial Times* and vice president of Hong Kong's Foreign Correspondents' Club (FCC). While no official reason was given, it is widely believed that the expulsion was a reprisal for an August FCC event at which Mallet chaired a talk with HKNP leader Andy Chan. The visa denial, which was roundly condemned by rights monitors, was described as the first expulsion of a foreign journalist since the 1997 handover of Hong Kong from Britain to China. Journalists have also faced physical assaults in the course of or in retaliation for their work.

D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 4 / 4

Religious freedom is generally respected in Hong Kong. Adherents of the Falun Gong spiritual movement, which is persecuted in mainland China, are free to practice in public. However, they have complained of counterdemonstrations and harassment by members of the Hong Kong Youth Care Association (HKYCA), which has ties to the CCP.

D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 2 / 4

University professors can generally write and lecture freely, and political debate on campuses is lively. However, a series of incidents in recent years have stoked concerns about growing interference by the Hong Kong government and mainland authorities with Hong Kong's colleges and universities. In September 2018, for example, the new pro-Beijing president and vice chancellor of the University of Hong Kong responded to on-campus proindependence activities by warning that senior management of the university was opposed to independence and that the school should not be "a platform for political advocacy." He further stated that the staff and students were expected to obey the Basic Law and be mindful of the consequences of their actions and their responsibilities.

Government-led revisions of history curriculums and textbooks, and attempts to instill Chinese patriotism over the past decade, have stirred accusations of a pro-Beijing agenda in primary and secondary education, but such efforts typically face resistance from educators and the public.

D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 4 / 4

Private discussion is open and free, though mainland security agencies are suspected of

monitoring the communications of prodemocracy activists.

E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 8 / 12

E1. Is there freedom of assembly? 2 / 4

The Basic Law guarantees freedom of assembly. The Public Order Ordinance requires organizers to give police seven days' notice before protests and to obtain official assent, which is rarely denied. However, developments surrounding the 2014 Umbrella Movement protests have raised concerns that the government is growing less tolerant of political demonstrations, particularly by groups calling for greater democracy, self-determination, or independence for Hong Kong. Increased use of baton charges, pepper spray, and arrests by police as they attempted to break up that year's protest camps drew criticism, and the encampments also faced assaults by counterdemonstrators, many of whom were later found to have links with criminal gangs.

While most of the hundreds of protesters arrested in 2014 were quickly released, dozens were officially charged with unlawful assembly and related offenses. In 2016, student leaders Joshua Wong, Nathan Law Kwun-chung, and Alex Chow were found guilty of charges including "taking part in an unlawful assembly" and "inciting others to take part in an unlawful assembly" and sentenced to penalties ranging from community service to a suspended three-week jail term.

In 2017, following a rare government appeal seeking harsher punishments, the three received sentences of six to eight months in jail, with the Court of Appeal instructing lower courts to give greater weight to the need for deterrence when considering similar cases in the future. The Court of Appeal also imposed five-year bans from public office on the defendants. Although the Court of Final Appeal eventually overturned the jail sentences for Wong, Law, and Chow in February 2018, it nonetheless upheld the Court of Appeal's sentencing guidance for future cases of unlawful assembly.

Also in 2017, in a case related to a separate 2014 protest, the Court of Appeal similarly increased the penalties against 13 defendants from community service to between eight and 13 months in jail following an appeal by prosecutors. In September 2018, the Court of Final Appeal reduced those sentences to time already served and ordered the defendants released.

An annual vigil marking the 1989 Tiananmen Square massacre in June 2018 drew over 100,000 participants and proceeded without major incident, as did a July demonstration on the anniversary of Hong Kong's handover to China, with about 50,000 participants.

E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work? 4 / 4

Hong Kong hosts a vibrant and largely unfettered nongovernmental organization (NGO) sector, including a number of groups that focus on human rights in mainland China.

E3. Is there freedom for trade unions and similar professional or labor organizations? 2 / 4

Trade unions are independent, but collective-bargaining rights are not recognized, and protections against antiunion discrimination are weak.

F. RULE OF LAW: 11 / 16

F1. Is there an independent judiciary? 2 / 4

The judiciary is largely independent, but the NPC reserves the right to make final interpretations of the Basic Law, limiting the independence of the Court of Final Appeal. The NPC's 2016 interpretation regarding oaths of office was unusual in a number of respects, particularly the fact that it was issued without a request from the Hong Kong government and before the local courts had ruled on the matter in question. It was therefore seen as a blow to the autonomy of the territory's legal system. Critics also noted that the interpretation introduced subjective concepts like "sincerity" and "solemnity" that could lead to politicized enforcement.

F2. Does due process prevail in civil and criminal matters? 3 / 4

The courts generally adjudicate civil and criminal matters fairly and efficiently. The Court of Appeal's 2017 decisions—in response to unusual government requests—to reconsider and substantially increase penalties handed down to protesters raised serious concerns about political motivation and due process protections, despite the Court of Final Appeal's more lenient 2018 rulings in those cases.

In another questionable case, police filed charges in 2017 against nine organizers of the 2014 protest movement, including the three regarded as its founders: academics Benny Tai Yiu-ting and Chan Kin-man, and Baptist minister Chu Yiu-ming. The charges, which carried penalties of up to seven years in prison, came immediately after Lam was elected as chief executive, leading observers to speculate that the case had been delayed to avoid harming her candidacy. Defense lawyers challenged the constitutionality of the charges, which included claims that the defendants had "incited others to incite public nuisance," meaning they were twice removed from the core offense. Their trial ended in December 2018, with a ruling expected in April 2019.

F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 3 / 4

Police are forbidden by law to employ torture, disappearance, and other forms of abuse. They generally respect this ban in practice, and complaints of abuse are investigated.

However, the 2015 disappearances of five Hong Kong booksellers into police custody on the mainland continue to cast doubt on the local government's capacity to protect residents from abuses by Chinese authorities. One of the five, Lee Bo, was allegedly seized extralegally in Hong Kong and smuggled across the border to the mainland. He

and three others were eventually released, but they reportedly faced surveillance and harassment; the fifth, Swedish citizen Gui Minhai, remained in some form of detention on the mainland in 2018. Meanwhile, Chinese billionaire Xiao Jianhua, who in 2017 was apparently abducted by Chinese officials from a Hong Kong hotel and escorted across the border to the mainland, remained in custody and was awaiting trial in 2018.

In 2017, Hong Kong and mainland officials reached agreement on an improved reciprocal notification system for detentions of their respective residents, pledging to inform each other within seven working days when a resident is arrested, detained, or prosecuted on minor charges, or when residents suffer unnatural deaths. Notification periods of 14 days and 30 days would apply to more serious criminal cases and cases involving terrorism or national security, respectively.

F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 3 / 4

Citizens are generally treated equally under the law, though South Asian minorities face language barriers and de facto discrimination in education and employment. Women are also subject to some employment discrimination in practice. Antidiscrimination laws do not specifically protect LGBT (lesbian, gay, bisexual, and transgender) people.

Over 7,000 asylum seekers were thought to be in Hong Kong as of 2018, mostly from South or Southeast Asia. While the government does not accept refugees for settlement, it does offer protection from refoulement, and those deemed eligible can be referred to UN officials for third-country resettlement. As of July 2018, up to 3,000 individuals still had not had their cases screened by the Hong Kong government. Some applicants reportedly wait as long as 10 years for resolution of their cases, and only a tiny percentage of claims are approved. Asylum seekers are not permitted to work and receive small cash allowances.

G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 13 / 16

G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 3 / 4

Hong Kong residents generally enjoy freedom of movement, though authorities periodically deny entry to visiting political activists and Falun Gong practitioners, raising suspicions of Beijing-imposed restrictions. Some Hong Kong activists and politicians have also faced difficulty traveling to the mainland.

G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 3 / 4

While property rights are largely respected, collusion among powerful business entities with political connections is perceived as an impediment to fair competition.

G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 4 / 4

Hong Kong residents are legally protected from rape and domestic abuse, and police generally respond appropriately to reports of such crimes. Men and women enjoy equal rights in personal status matters such as marriage and divorce.

G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 3 / 4

While most Hong Kong residents enjoy equality of opportunity and freedom from economic exploitation, certain vulnerable and marginalized communities face substantial risks of exploitation and abuse. For instance, Hong Kong's roughly 380,000 foreign household workers are vulnerable to a wide range of exploitative practices. Since they may face deportation if dismissed, many are reluctant to bring complaints against employers. While Chief Executive Lam vowed to increase government support for household workers' rights in an October 2018 speech, activists are concerned over a lack of specificity on steps for implementation. In addition, Hong Kong's more than 7,000 asylum seekers have virtually no means of legal economic subsistence, which further increases their vulnerability to exploitation and abuse.

Explanatory Note:

**** Indicates a territory as opposed to an independent country.***

ecoi.net summary:

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