Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**480**
Land:	Kina
Kilde:	Freedom House
Titel:	Freedom in the World 2018 – Hong Kong
Udgivet:	24. januar 2018
Optaget på baggrundsmaterialet:	31. august 2018

Freedom House

FREEDOM IN THE WORLD 2018 - HONG KONG

Year:
2018
Freedom Status:
Partly Free
Political Rights:
5
Civil Liberties:
2
Aggregate Score:
59
Freedom Rating:
3.5

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.

Trend Arrow:
Hong Kong received a downward trend arrow due to the expulsion of four prodemocracy lawmakers from the legislature, jail sentences against protest leaders, and other apparent efforts by pro-Beijing authorities to stamp out a movement calling for local self-determination.

KEY DEVELOPMENTS IN 2017:

- A July ruling by the High Court removed four prodemocracy and localist members of the Legislative Council (Legco) from their posts on the grounds that they had improperly altered their oaths of office after winning election in 2016. In August, the Court of Final Appeal upheld the earlier disqualification of two other would-be lawmakers for similar reasons.
- In an unusual move in August, an appellate court granted prosecutors' request to revisit the 2016 convictions of three student leaders of the 2014 Umbrella Movement protests, increasing their sentences from community service to six to eight months in prison.
- Space for academic freedom continued to shrink as Hong Kong universities issued a joint statement in September to condemn student expressions of support for Hong Kong's political independence from the mainland.

Political Rights and Civil Liberties:

POLITICAL RIGHTS: 15 / 40 (−1)

A. ELECTORAL PROCESS: 2 / 12 (−1)

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

Under 2010 electoral reforms, 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 March 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 (−1)

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.

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 in 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 scheduled for March 2018.

Score Change: The score declined from 2 to 1 due to the expulsion of four opposition members from the legislature and the confirmation of two earlier disqualifications as part of an effort by the authorities to stamp out a movement calling for local self-determination.

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

While universal suffrage is the "ultimate aim" under the Basic Law, 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. Prior to the 2016 Legco elections, the Electoral Affairs Commission (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 November 2016 Basic Law interpretation concerning "sincerity" and "solemnity" in oath-taking appears to bolster the EAC's authority to block future candidates on similar grounds.

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 Hong Kong National Party on the grounds that its proindependence platform constituted illegal activity.

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, and the subsequent ouster of six other prodemocracy candidates who won seats—including two who were not associated with the localist movement—demonstrated 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 raised the possibility of further disqualifications and a broader chilling effect on opposition politics.

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 restrictions on women or ethnic minorities voting or running for office, just 12 women and no ethnic minority candidates were 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.

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) has been criticized for failing to appoint a permanent head of operations since 2016; the last official in that post was dismissed in the middle of an investigation into then chief executive Leung, stirring discontent among the ICAC staff.

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

Hong Kong has no freedom of information (FOI) 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, but it had yet to issue any reports as of 2017.

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 (−1)

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. Journalists have also faced physical assaults in the course of or in retaliation for their work, and 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.

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.

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. For example, a controversy in 2016 centered on the chief executive's appointment of a pro-Beijing official to lead the governing council of the University of Hong Kong. Separately, in September 2017, student posters and signs calling for Hong Kong's independence from mainland China appeared across university campuses, causing an uproar among mainland and pro-China students and scholars. In response, the heads of all 10 Hong Kong universities issued a joint statement condemning the signs and posters as "abuses" of the Basic Law and declaring that "freedom of expression is not absolute." At least some of the universities ordered the removal of the displays.

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, 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 August 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. Wong, Law, and Chow were later released on bail pending a review by the Court of Final Appeal, with a hearing scheduled for 2018. Also in August, 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. Other cases related to the events of 2014 were still making their way through the legal system.

While a number of assemblies, including an annual vigil marking the 1989 Tiananmen Square massacre in June, proceeded without incident during 2017, others encountered obstacles. In July, a small group of demonstrators protesting the 1997 handover of Hong Kong from Britain to China was attacked by a pro-Beijing mob and forcibly removed by police.

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 (−1)

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 (−1)

The courts generally adjudicate civil and criminal matters fairly and efficiently. However, the Court of Appeal's August 2017 decisions to reconsider and substantially increase the penalties handed down to 2014 protesters in response to unusual government requests raised serious concerns about political motivation and due process protections. In seeking jail terms in the cases, Justice Secretary Rimsky Yuen had reportedly overruled the recommendations of several senior prosecutors in his department.

In another questionable case, police filed charges in March 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. A preliminary decision on the matter was pending at year's end.

Score Change: The score declined from 4 to 3 due to multiple cases against protest leaders in which the timing, nature, or severity of the charges and penalties sought by authorities apparently violated legal norms and raised suspicions of political motivation.

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. For example, in February 2017, seven police officers were sentenced to two years in prison for beating a protester in an incident that was captured on video in 2014.

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 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 2017. Separately, in January 2017, Chinese billionaire Xiao Jianhua was apparently abducted by Chinese officials from a Hong Kong hotel and escorted across the border to the mainland.

In December, 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.

Roughly 9,000 asylum seekers were thought to be in Hong Kong as of 2017, 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. 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

Hong Kong's roughly 330,000 foreign household workers are vulnerable to abuse and exploitation. Since they may face deportation if dismissed, many are reluctant to bring complaints against employers. There have been reports of abuses against sex workers by law enforcement officers.