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U.S. Department of State

Hong Kong Report on Human Rights Practices for 1996

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1997.

HONG KONG

Hong Kong, a small, densely populated British dependency, is a free society with legally protected rights. Its constitutional arrangements are defined by the Letters Patent and Royal Instructions. Executive powers are vested in a British Crown-appointed Governor who holds extensive authority. The judiciary is an independent body adhering to English common law with certain variations. Fundamental rights ultimately rest on oversight by the British Parliament. In practice, however, Hong Kong largely controls its own internal affairs.

All 60 seats in the Hong Kong Legislative Council were open to direct or indirect balloting for the first time in September 1995, and the elections were widely considered to be fair and open.

The resulting Legislative Council has served as a forum for vigorous debate and planning for the period after July 1, 1997, when sovereignty over Hong Kong will revert from the United Kingdom to the People's Republic of China and it becomes the Hong Kong Special Administrative Region. However, China has stated its intention to dissolve the 1995 Legislative Council, district boards, and municipal councils in July 1997, noting that it did not agree to the electoral rules adopted by the Hong Kong Government in 1994 for election to these bodies.

On December 28, 1995, China appointed a Preparatory Committee, composed of 57 mainland Chinese and 93 Hong Kong residents, to establish the post-1997 Special Administrative Region Government. Democratic Party members of the Legislative Council responded on March 13, voting to condemn the

Preparatory Committee's "unrepresentative composition," particularly the lack of democracy advocates. In March the Preparatory Committee announced that a provisional legislature will be formed before July 1, 1997, to "examine and approve" laws and other measures that take effect at midnight June 30, 1997. In early November, the Preparatory Committee members established the Selection Committee, composed of 400 Hong Kong residents. The Selection Committee in turn, chose the Chief Executive and provisional legislature in December. Thirty-three of the current Legislative Council members were selected to join the provisional legislature. However, none of those chosen were Democratic Party members, who opposed and therefore chose not to seek seats on the provisional legislature even though their party that had drawn the most popular support in the Legislative Council elections in 1995. There has been public concern that the selection of the provisional legislature was unnecessary, lacked transparency, was not based on open elections, and excluded groups or individuals critical of China.

A well-organized police force maintains public order and is under the firm control of civilian authorities. There were reports that some members of the police used excessive force.

Hong Kong is a major regional and international trade and financial center. It is the principal gateway for trade and investment with China. The territory's free market economy operates on the basis of minimal government interference and a thriving private sector. Per capita gross domestic product surpassed \$23,200 in 1995 and continued to grow in 1996.

Human rights activists, journalists, and legislators continued to criticize the Government for opposing human rights initiatives such as the establishment of a human rights commission; laws against discrimination based on age, race, and sexual orientation; and freedom of information legislation. Human rights problems continued to include some instances of excessive use of force by the police, media self-censorship, limitations on citizens' ability to change their government, and violence and discrimination against women, and discrimination against the disabled.

The Government actively maintains a high degree of legal and judicial protection of fundamental rights and freedoms. The scrupulous protection of human rights, as pledged in Chinese commitments, is seen as a key element in the transition to Chinese sovereignty.

RESPECT FOR HUMAN RIGHTS

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings.

There were eight instances of death in police custody. The authorities determined that three were deaths by natural causes and four were suicides; the eighth remains under investigation.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law forbids torture and other extreme forms of abuse by the police and stipulates punishment for those who break the law. Disciplinary action can range from dismissal to warnings. Criminal

proceedings may be undertaken independently of the disciplinary process of the police force. Allegations of excessive use of force are investigated by the Complaints Against Police Office, whose work is in turn monitored and reviewed by the Police Complaints Council, a body composed of members of the public appointed by the Governor. The Government, however, continued to resist public calls for the creation of an independent body to investigate allegations of abuse by police.

Although excessive use of force by police is not widespread, there are occasional complaints of force being used to coerce information or confessions during police interrogations. Human rights monitors in Hong Kong are concerned that this may be a growing problem and have documented victims' complaints of beatings during interrogation. In 1995 government officials reported 1,581 complaints against police, of which only 1 was substantiated by the Police Complaints Council. From January to June, there were 704 complaints, all for "assault by police officers," but none were substantiated. Human rights groups contrast the relatively large number of complaints with the very small number of cases substantiated by the Government to argue the need for revamping a system where the review process appears to favor the police.

Although conditions vary among facilities, prison conditions generally conform to international standards. The Government permits prison visits by human rights monitors.

d. Arbitrary Arrest, Detention, or Exile

British legal protections and common law traditions govern the process of arrest and detention and ensure substantial and effective legal protections against arbitrary arrest or detention.

Exile is not practiced.

e. Denial of Fair Public Trial

The judicial and legal systems are organized according to principles of British constitutional law and legal precedent and provide for an independent judiciary, which the Government respects in practice. According to the agreement signed by the United Kingdom and China in June 1995, Hong Kong's Court of Final Appeal will be established formally on July 1, 1997. Incoming officials of the post-1997 Hong Kong Special Administrative Region are to be responsible for setting up the Court and selecting judges. The agreement thus grants a principal role in the Court's establishment and membership to the Hong Kong Special Administrative Region Government. After reversion, the Court of Final Appeal is to have power of final judgment over Hong Kong law. The Special Administrative Region courts, however, are to have "no jurisdiction over acts of State such as defense and foreign affairs." The Basic Law also vests the Standing Committee of China's National People's Congress with the power to interpret the Basic Law in matters that are the "responsibility of the Central People's Government or concern the relationship between the Central authorities and the Special Administrative Region." If broadly applied and loosely interpreted, these exceptions to the Court of Final Appeal's power of final jurisdiction could be used to limit the independence of the judiciary after 1997.

The law provides for the right to a fair public trial, and this is respected in practice. Trial is by jury.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law provides for the right of privacy, and the Government generally respects this right in practice.

The Independent Commission Against Corruption is vested with powers that are normally exercised only by a judicial officer. Amendments to ordinances governing the Independent Commission Against Corruption have deprived it of the independent authority to issue arrest or search warrants (it must now go to the courts), but it still operates on the assumption that any excessive, unexplainable assets held by civil servants are ill-gotten until proven otherwise.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Hong Kong has a tradition of free speech and free press. Political debate is vigorous. Numerous views and opinions, including those independent or critical of the British, Hong Kong, and Chinese governments, are aired in the mass media, in public forums, and by political groups. International media organizations operate freely. Several ordinances permit restrictions on the press, but they are rarely imposed. The Hong Kong Journalists Association has continued to criticize the Government for not taking swift action to repeal these ordinances before 1997, warning that the post-1997 Government might be more prone to invoke them.

Residents of the territory continue to speak freely to the press, and there are no taboo subjects in the media. Although there are reports of self-censorship, it is difficult to verify specific instances in which self-censorship has killed a story. However, according to poll results published in February 1995 by Hong Kong University's Social Science Research Center, most journalists believe that self-censorship remains a problem. The pressures on journalists are subtle--there are no direct orders to refrain from writing--but a need for special care toward topics of particular sensitivity in China, such as leadership dynamics, corruption, or military activity is nonetheless perceived. Journalists in the Chinese-language press report a pervasive if tacit understanding that editors expect those reporting on China to be especially certain of their facts and careful in their wording. A few newspaper articles have reported self-censorship among Hong Kong publishers on such sensitive issues as Taiwan and Tibet. Another source of pressure comes from the belief of some publishers and editors that their advertising revenues would suffer if they were perceived to be too antagonistic to China in their editorial judgments.

Hong Kong press coverage of China continues to be extensive and is frequently critical. For example, there was strong criticism in the press of Chinese Foreign Minister Qian Qichen in October after he indicated that in post-July 1997 Hong Kong reporting of "rumors or lies," personal criticism of Chinese leaders in the press, and any demonstrations to commemorate the Tiananmen Square events of June 4, 1989, would not be allowed. Although overall there has been neither a sharp increase nor decrease of critical coverage over the past year, Hong Kong journalists based in or traveling to China face certain risks. China requires journalists to apply for permission to do any reporting in China. Those who bypass official channels--which many feel they must do to get the stories they want--run a risk of violating regulations. For example, according to a press report three Hong Kong journalists were detained and then deported by China after being accused of illegally entering a military zone in Fujian province to collect information during the Chinese military exercises near Taiwan in March. The New China (Xinhua) News Agency reported that they were detained because they did not follow rules and regulations for Hong Kong journalists working on the mainland. Hong Kong reporters continue, however, to enter China to cover sensitive stories related to Hong Kong, Taiwan, or China itself.

Commemorations of journalist Xi Yang's imprisonment in 1994 continue to take place, with a massive march on the offices of the New China News Agency (Xinhua) this year. A PRC national, Xi Yang was working for Hong Kong's Ming Pao Daily when taken into custody for reporting economic data China considered to be state secrets. His arrest was widely cited as having had a chilling effect on Hong Kong media.

Xinhua's treatment of one commentary from a university journalism program suggests an insensitivity to press freedom, reinforcing concerns in Hong Kong about the prospects on this score following In a recent issue of a journalism magazine published at the Chinese University, the "Editor's Note" column reported on the Chinese authorities' method of dealing with the press, gleaned from an interview with the Xinhua Deputy Director in Hong Kong. Xinhua, which had been shown an advance copy of the issue, tried without success to change the story. After the story was published, Xinhua contacted the student who conducted the interview and hinted that it would be "hard for the reporter to stay in the journalism field in the future if that attitude did not change."

Early in the year, the Hong Kong media were still reacting to a newspaper price war set off when the Oriental Daily News, the most popular daily in Hong Kong for the past 20 years, lowered its retail price in an attempt to woo readers away from Apple Daily, a tabloid-style daily newspaper that has captured a larger share of the market from other papers. The price war led to closure of four daily newspapers, a weekly entertainment periodical, and a newspaper supplement magazine. Another casualty was Eastern Express, the English-language daily published by the Oriental Group, which closed during the summer. Some commentators fear that the closings might lead to less diversity of opinion in the media but there has been no visible affect on the range of opinions expressed.

Media and general public access to government information is strictly controlled. The Government opposed freedom of information legislation proposed by Legislative Council members in 1995 and decided instead to develop an administrative code of practice on access to government information. Under the code, civil servants are required to provide information held by the Government, unless there are valid reasons not to do so. A pilot scheme to test the legal, practical, and resource implications arising from the code began in March 1995. By December 23, the code had been extended to the entire Government. The Government's efficiency unit reports a rejection rate of five percent for information requests from the public.

The Government respects academic freedom. There are a wide range of opinions represented in lively debate on Hong Kong campuses, and the issue of academic freedom has not generally caused much public comment. In June the Hong Kong University vice-chancellor ordered the removal of Tiananmen-era slogans criticizing China from university pavement. This order sparked strong student protests, and the slogans were repainted.

b. Freedom of Peaceful Assembly and Association

Freedom of assembly is practiced without significant hindrance. Following a march by 3,000 people protesting the sentencing of Chinese dissident Wang Dan in November, police ordered protesters to remove banners from outside Xinhua News Agency headquarters. The police claimed that the banners were hazardous to motorists; demonstrators claimed that the order stemmed from pressure from People's Republic of China authorities.

Freedom of association is also practiced without significant hindrance, although the amended Societies Ordinance requires people to notify the Societies Officer of the formation of a society. The Societies Officer may recommend to the Secretary for Security prohibition of the operation or continued operation of a society if he reasonably believes that it may be prejudicial to the security of Hong Kong or to public safety or public order. The provision in the ordinance allowing the Government to refuse to register an organization "incompatible with peace, welfare, or good order," or affiliated with a political organization abroad was repealed in 1992. The Basic Law provides, however, that the Special Administrative Region "shall enact laws on its own" regarding subversion and overseas political affiliations of Hong Kong organizations. This could lead, after July 1, 1997, to reinstatement of certain restrictions on societies.

c. Freedom of Religion

The Hong Kong Bill of Rights includes a provision prohibiting discrimination on the basis of religion. Government policy and general practice ensure freedom of religion.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

There is freedom of movement within Hong Kong, and travel documents are freely and easily obtained. The number of applicants for British Dependent Territories travel documents was more than five times the total for all of 1995. The last day of eligibility was in March.

Two Democratic Party members were denied entry to China in November, raising questions in Hong Kong about the existence of a "blacklist" of Hong Kong politicians. The two had planned to submit petitions in Beijing against the Selection Committee and the provisional legislature.

Hong Kong has never refused first asylum to Vietnamese boat people. Prior to June 1988, refugee status was automatically accorded them. Since then asylum seekers have been screened to determine their status and held in prison-like detention centers awaiting resettlement in other countries or repatriation to Vietnam. From October 1995 to September 1996, 5,660 persons were voluntarily repatriated to Vietnam through the auspices of the United Nations High Commissioner for Refugees. On May 12, 1992, the Hong Kong Government reached agreement with Vietnamese authorities on mandatory (involuntary) repatriation (the "Orderly Return Program") of those who were determined not to be refugees. There were 4,267 people repatriated under the Orderly Return Program from October 1995 to September 1996. Under the program, people are randomly chosen from the nonrefugee camp population and moved to a separate location several days before a flight's scheduled departure. Government security officers then escort, forcibly if necessary, all those being involuntarily returned on to the airplane and accompany the flight to Vietnam.

A total of 12,815 Vietnamese remained in the Hong Kong camps as of October 18, of whom 1,335 were screened-in as refugees but who, mostly for reasons of health or criminal acts, have not been resettled.

Hong Kong authorities continue to encounter physical resistance in the camps when attempting to remove those chosen for the Orderly Return Program flights. In May during a transfer of northern Vietnamese from the Whitehead Detention Center to the High Island Detention Center, a massive riot occurred in which many buildings and vehicles and records were burned by Vietnamese detainees. Hong Kong authorities used tear gas to restore order. All but 28 of the 119 Vietnamese who escaped from detention during the riot were found and returned to camp.

Voluntary Repatriation and the involuntary Orderly Return Program were regularly returning about 1,400 people a month during calendar year 1996. If continued, this rate of return is expected to leave the Hong Kong camps empty by the July 1, 1997, reversion to China. However, as of October 18, approximately 6,000 Vietnamese in camps had not been cleared for return by the Vietnamese Government.

The number of illegal Chinese immigrants has been estimated by knowledgeable observers to be at least 15,000. During 1996 the Government returned illegal Chinese immigrants to China at the rate of 68 per day. Only in those rare instances in which a person qualifies as a refugee under the terms of the international agreement on the status of refugees is permission to remain in Hong Kong granted. There are currently 289 ex-China Vietnamese illegal immigrants in Hong Kong. The repatriation of these people, who fled from China to Hong Kong, was stayed in 1996 pending the outcome of litigation in the

Privy Council in London to free them from detention.

A well-known Chinese labor organizer and political dissident, Han Donfang, remains in Hong Kong. Chinese government authorities continued to refuse him entry into China as they have ever since his expulsion from China in August 1993.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

Hong Kong is a free society, with most individual freedoms and rights protected by law and custom. Although the Government has moved to democratize district and municipal boards and the Legislative Council, Hong Kong residents do not have the right to change the Government. The Governor is appointed by and serves at the pleasure of the Crown. He is advised on policy by the Executive Council, which he appoints.

The Legislative Council enacts and funds legislation and also debates policy and questions the administration. Although the Legislative Council's power to initiate legislation is limited (all bills with budgetary implications, for example, must be approved by the Government before introduction), it has become increasingly assertive. The Governor has ultimate control of the administration of Hong Kong but, by convention, rarely exercises his full powers. In practice, decisions are reached through consensus. Political parties and independent candidates are free to contest seats in free and fair elections. Representative government employing universal franchise exists at the local district board level.

All district and municipal board members were chosen by direct elections in 1994 and 1995, respectively. In 1995 the Government implemented legislation abolishing all appointed seats in the Legislative Council. In September 1995, 920,000 voters, by direct or indirect balloting, selected members to fill these seats in generally free and fair elections. Out of 60 seats, there were 20 geographic seats directly elected, 10 seats chosen by an election committee comprised of 283 locally elected officials, 9 seats selected by broad functional (occupational) constituencies, and 21 seats elected by more narrow functional groupings. Although the 1995 elections did not result in a fully representative, democratically elected government--a point on which they were criticized by the United Nations Human Rights Committee--they significantly increased voters' ability to influence government decisionmaking through a greater number of elected representatives.

China opposed the Hong Kong Government's election reforms. It stated that it does not recognize the validity of the 1995 legislative council elections, and that the present Legislative Council would have no mandate to serve past reversion and thus would "terminate" on June 30, 1997, along with elected district boards and municipal councils. China insisted that the crux of its disagreement was not the pace of democratization but Britain's failure to reach a mutually acceptable accord on the electoral changes before unilaterally announcing the reform package. Seventeen rounds of negotiations were held before the Hong Kong Government made its announcement. In March China's appointed Preparatory Committee announced that a provisional legislature would be formed to serve for not more than 1 year after reversion until the "first" Special Administrative Region legislature could be elected. According to the Preparatory Committee, a provisional legislature would "examine and approve" laws to take effect on July 1, 1997. One Preparatory Committee member who voted against the provisional legislature was initially declared by Beijing as disqualified to serve on the Selection Committee or the provisional legislature, but was later chosen for the provisional legislature.

The Preparatory Committee's Selection Committee panel held public consultations in April on forming a 400-member Selection Committee to choose the first Special Administrative Region chief executive and the provisional legislature. More than 1,000 people representing 362 organizations presented their

views. Participation was controlled through selective invitations, but some dissenting views on the provisional legislature were voiced by the Hong Kong Bar Association and prodemocracy political figures. The Preparatory Committee received over 5,000 nominees for the Selection Committee.

There is public concern that the process of selecting a provisional legislature lacked transparency, was not based on a free and fair election, and excluded groups, political parties, and individuals critical of China. There is also concern that the provisional legislature may begin functioning before June 30, and thereby undermine the authority of the present Hong Kong Government. Finally, many representative groups see the process of selecting a provisional legislature as unnecessary and unjustified. On December 11, the Selection Committee chose Hong Kong's first postreversion Chief Executive, C. H. Tung. On December 21, it selected the 60-member provisional legislature. Those selected included 33 of the 34 current legislative councilors who sought inclusion. In addition, 10 persons who had been defeated in the 1995 legislative council elections were chosen. The 19 Democratic Party members in the current Legislative Council regarded the disbanding of that body as illegitimate and chose not to seek seats on the provisional legislature.

The Government is continuing efforts to place Hong Kong Chinese in senior government positions and has publicly committed to fill all "principal official" posts with local officers before 1997. At present 22 of 23 existing posts equivalent to future principal officer posts (Chief Secretary, Financial Secretary, 15 Branch Secretaries, Commissioner of the Independent Commission Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration, and Commissioner of Customs and Excise) are filled by local officers. The remaining expatriate principal officer (Attorney General) is due to be replaced by a local officer before reversion to China. As of April, 70 percent of the Government's top directorate-level jobs and almost 85 percent of administrative and other senior management positions were filled by local staff.

Expatriates remain in key positions in the legal department and the judiciary; at the same time, 70 percent of the Crown counsel positions and 76 percent of police positions (