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## U.S. Department of State

### Hong Kong Country Report on Human Rights Practices for 1998

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#### HONG KONG

Hong Kong reverted from British to Chinese sovereignty on July 1, 1997. As a Special Administrative Region of the People's Republic of China, it enjoys a high degree of autonomy except in defense and foreign affairs and remains a free society with legally protected rights. The Basic Law, approved in 1990 by China's National People's Congress, provides for fundamental rights and serves as a "mini-constitution." A chief executive, selected by a 400-person selection committee chosen by a China-appointed preparatory committee, wields executive power. A legislature composed of directly and indirectly elected members was sworn in on July 1. Upon reversion, China, which had objected to the electoral rules instituted by the British colonial government, dissolved Hong Kong's first fully elected Legislative Council. A 60-member Provisional Legislature, chosen by the selection committee that named the Chief Executive, took office on July 1, 1997. Critics contended that the selection of the Provisional Legislature had no basis in law and was designed to exclude groups or individuals critical of China. On July 1, a Legislative Council elected on May 24 replaced the Provisional Legislature. Twenty seats were elected on a geographic basis through universal suffrage, 30 seats through functional (occupational) constituencies, and 10 seats through indirect election. Despite complaints that the election laws favored pro-China candidates in the geographical constituencies and severely limited the franchise in the functional constituencies (the number of voters in the functional constituencies was reduced from 2.5 million to 147,000), no parties boycotted the elections. The 53 percent voter turnout was the highest in Hong Kong's history. The parties and independents in the prodemocracy camp won 14 of the 20 seats elected on a geographic basis. The power of the legislature and of individual legislators is substantially curtailed by restrictions on the legislation that members may introduce and by a requirement for majorities among members elected from both geographic and functional constituencies. The judiciary is independent.

A well-organized police force maintains public order under the firm control of civilian authorities. The 4,000 Chinese troops sent to Hong Kong to replace the British military garrison have maintained a low profile and did not perform police functions. There were reports that some members of the police committed human rights abuses.

Hong Kong is a major regional and international trade and finance center. It is a principal gateway for trade and investment with China. A thriving free market economy operates with little government interference (a system provided for by the Basic Law for 50 years). The global economic crisis had a significant impact on the economy; per capita gross domestic product dropped from \$26,000 in 1997 to just over \$25,000 in 1998. Despite this, the Government has resisted calls for a change in the territory's free market system.

The Government generally respected the human rights of its citizens, however, human rights problems that existed both before and after the reversion to China included: Some degree of media self-censorship; limitations on citizens' ability to change their government and limitations on the power of the legislature to affect government policies; some limits on freedom of movement; violence and discrimination against women; and discrimination against the disabled and ethnic minorities. Human rights groups' concerns that revisions to the Public Order and the Societies Ordinances would undermine fundamental human rights thus far have proved unfounded.

## **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 four instances of death of detainees in police custody in the first 9 months of the year. The police coroner's office is investigating these deaths.

#### **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 abuse by the police, however, there were reports that police at times used excessive force against persons in custody. The law stipulates punishment for those who break these prohibitions, and disciplinary action can range from warnings to dismissal. Criminal proceedings may be undertaken independently of the disciplinary process. Allegations of excessive use of force are investigated by the Complaints against Police Office, whose work is monitored and reviewed by the independent Police Complaints Council, a body composed of public members appointed by the Chief Executive.

Although excessive use of force by police is not widespread, there are occasional complaints of force being used during interrogations to coerce information or confessions. In April four police officers were found guilty of assaulting a suspect to force a confession and sentenced to prison terms of between 4 and 6 months. They beat a suspected drug dealer and poured water in his ears and nose. In the first 9 months of the year, the Complaints Council received 647 complaints of assault. Of the 154 cases examined by

the Council, 118 were withdrawn by the complainants, and 31 were deemed "not pursuable." Only five complaints were investigated, of which three were found to be false and two unsubstantiated. Human rights groups have called repeatedly for a more independent monitoring body noting long delays in hearing some allegations, the contrast between the relatively large number of complaints and the few that are substantiated, and the unwillingness of witnesses to substantiate complaints to the police due to fear of retribution.

Although conditions vary among facilities, prisons conform to international standards.

The Government permits prison visits by human rights monitors. Local justices of the peace regularly inspect prisons, but these visits rarely are unannounced and justices of the peace speak with prisoners in the presence of Correctional Service Department staff. The Correctional Services Department's August ruling that prison officers' use of force in breaking up fighting between inmates in July was justified prompted widespread criticism and calls for the establishment of an independent board to monitor prison conditions.

#### d. Arbitrary Arrest, Detention, or Exile

Common law, precedents previously in force, and the Basic Law (which incorporates the International Convention on Civil and Political Rights) provide substantial and effective legal protections against arbitrary arrest or detention. Suspects must be charged within 48 hours or released. The average length of preconviction incarceration does not exceed 80 days.

Exile is not practiced.

#### e. Denial of Fair Public Trial

Hong Kong's independent judiciary has endured since the handover, underpinned by the Basic Law's provision that Hong Kong's common law tradition be maintained. According to the Basic Law, the courts may rule on matters that are the "responsibility of the Central People's Government or concern the relationship between the central authorities and the (Special Administrative) Region," but before making their final judgments (which are not appealable), the courts must seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress. When the Standing Committee makes an interpretation of the provisions concerned, the courts, in applying those provisions, "shall follow the interpretation of the Standing Committee." The National People's Congress vehicle for interpretation is its Committee for the Basic Law, composed of six mainland and six Hong Kong members. The Hong Kong members are nominated by the Chief Executive, the President of the Legislative Council and the Chief Justice. Human rights and lawyers' organizations have expressed concern that, 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. However, no such limitations have occurred and no issues thus far have been referred to the Basic Law Committee.

The Court of Final Appeal is Hong Kong's supreme judicial body. An independent commission nominates judges; the Chief Executive is required to appoint those nominated, subject to endorsement by the legislature. Nomination procedures ensure that commission members nominated by the private bar have a virtual veto on the nominations. The Basic Law provides that, with the exception of the Chief Justice and the Chief Judge of the High Court who may not have right of abode outside of Hong Kong, foreigners may serve on Hong Kong's courts. More than 40 percent of Hong Kong's judges come from other Commonwealth countries. Judges have security of tenure until retirement age (either 60 or 65, depending on date of appointment).

Beneath the Court of Final Appeal is the High Court, composed of the Court of Appeal and the Court of First Instance. Lower judicial bodies include the District Court (which has limited jurisdiction in civil and criminal matters), the Magistracy (exercising jurisdiction over a wide range of criminal offenses), the Coroner's Court, the Juvenile Court, the Lands Tribunal, the Labor Tribunal, the Small Claims Tribunal, and the Obscene Articles Tribunal.

The law provides for the right to a fair public trial, and this is respected in practice. Criticism followed the revelation in March that some juvenile courts did not allow public access, but the courts clarified that courts should only be closed in exceptional circumstances when it was necessary to protect the identity of juvenile defendants. Trials are by jury, and the judiciary provides citizens with a fair and efficient judicial process.

Although the judiciary remains independent, human rights activists are concerned that the legal system may favor those closely aligned with China or powerful local institutions. These concerns were heightened when the Government decided not to prosecute the New China News Agency for alleged violations of the Privacy Ordinance (see Section 1.f.) and in March declined to prosecute a prominent newspaper editor accused of fraud. In April there was much controversy after the Provisional Legislature hastily passed the Adaptation of Laws (Interpretive Provisions) Ordinance, which replaced the word "crown" in Hong Kong legislation with the word "state" in hundreds of existing laws. The Government reviewed 17 laws, primarily antidiscrimination and environmental protection ordinances passed before the handover and determined that 16 should be amended specifically to encompass the State. However, the Government has not yet made a determination on the most controversial of these laws, the Privacy Ordinance.

Critics are concerned that the change would place Chinese government organs, particularly the New China News Agency, above the law, since laws that previously did not apply to the Crown now do not apply to the (Chinese) State.

In December the prosecution and execution in China of a Hong Kong gangster who had committed crimes in both Hong Kong and the mainland sparked controversy. International legal scholars concur that China had jurisdiction in the case. However, a number of human rights groups and lawyers expressed concern that the Hong Kong Government did not vigorously assert its jurisdiction or attempt to protect the rights of its residents arrested in the mainland. China's assertion of extraterritorial jurisdiction in the arrest of a mainland citizen in China for murders committed in Hong Kong also has been controversial. Talks on a rendition agreement between Hong Kong and China, which may help alleviate some of these jurisdictional problems, are ongoing. Since 1992 128 fugitives have been returned to Hong Kong from China through an administrative arrangement; none have been returned to China from Hong Kong.

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 Interception of Telecommunications Ordinance, passed by the Legislative Council in June 1997, requires the security forces to obtain a warrant from the High Court for a wiretap or mail interception. However, because the law specifies that the Government must name an effective date for the change, it has never been implemented. Responding to Legislative Council questioning on September 30, the Secretary for Security refused to reveal the number of government wiretaps.

For more than 20 years, the Independent Commission Against Corruption was vested with powers, including the right to authorize searches and detain suspects, that are normally exercised only by a judicial officer. Amendments to ordinances governing the Commission took effect in June 1997, depriving the Commission of the independent authority to issue arrest or search warrants. However, the Commission still does not apply the presumption of innocence in corruption cases, and criminal convictions are obtained by regarding any excessive, unexplained assets held by civil servants as ill-gotten until proven otherwise.

In 1996 the Government established the Office of the Privacy Commissioner for Personal Data (PCO) under the Personal Data (Privacy) Ordinance to prevent misuse and disclosure of data such as medical and credit records. The ordinance also prohibits matching sets of personal data without the consent of the subject individual or the commissioner, although some government departments were exempted in order to combat social welfare abuse and tax evasion. In the first 8 months of the year, the PCO received 225 complaints. In 1997 the PCO investigated 162 complaints; 8 were found to be in contravention of data protection principles and 7 were found to be in contravention of provisions in the Privacy Ordinance. The PCO issued 17 warning notices and 2 enforcement notices. In June a code of practice on the use of personal identity numbers and identity card copies went into effect.

There was public criticism in February when the Government decided not to prosecute the New China New Agency for failing to respond within the ordinance-specified time frame to a legislator's request for information about her in the Agency's files. The legislator filed a civil suit to obtain the information (see Section 1.e.). In June an intern who revealed the medical records of the Secretary for Justice to the press was convicted of violating the Privacy Ordinance.

## **Section 2 Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The Basic Law provides for freedom of speech, of the press, and of publication, and there was no apparent change in the tradition of respect for these freedoms after reversion; however, some journalists continued to practice a degree of self-censorship. Overall, the media has been outspoken in defending civil liberties. Reporting on the May elections generally was regarded as fair and balanced. However, the Basic Law also directs Hong Kong to pass laws prohibiting "treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets" (see Section 2.b.). The Interception of Communications Ordinance, passed by the Legislative Council in June 1997, nullified Section 33 of the Telecommunications Ordinance, which granted the Government wide-ranging powers to ban messages. However, this provision was never implemented, because the Government has not named a date for the changes to take effect. The Public Order Ordinance enables the Government to ban a demonstration on national security grounds, including as a factor whether it advocates independence for Tibet or Taiwan. In practice, this situation has not arisen and no applications for permits to demonstrate have been denied (see Section 2.b.).

Newspapers publish a wide variety of opinions. After July 1, 1997, there was neither a sharp increase nor decrease in coverage critical of China, but there were many more reports critical of the Hong Kong Government than there were before the reversion. People speak freely to the media. Political debate is vigorous, and numerous viewpoints, including stories and opinions critical of the Hong Kong and Chinese Governments and statements by leading Chinese dissidents, are provided in the mass media, in public forums, and by political groups. International media organizations operate freely. Sixteen major daily newspapers, 2 commercial television stations, and 2 commercial radio stations function with virtually no government control. The media were heavily affected by the Asian financial economic crisis and 400 journalists lost their jobs during the year.

Foreign reporters need no special visas or government-issued press cards. Many local reporters continue to enter China to cover sensitive stories related to Hong Kong, Taiwan, or the mainland. China still requires journalists--both foreign and local--to apply for permission to make reporting trips to the mainland. Those who bypass official channels--which many feel they must do to get the stories they want--risk violating Chinese regulations. At least one publication whose owner offended China's leadership several years ago subsequently has been unable to get official permission for its reporters to cover events on the mainland.

There is a widespread impression among both journalists and the public that it is prudent to engage in a degree of self-censorship. The pressures on journalists are subtle--there are no direct orders to refrain from writing, but there is a wide perception of a need for special care toward topics of particular sensitivity to China: Leadership dynamics, military activity, or Taiwanese or Tibetan independence, although numerous articles on these topics continue to appear. Chinese-language journalists report a pervasive, if tacit, understanding that editors expect those reporting on China to be particularly certain of their facts and careful in their wording. Another source of pressure comes from the belief by some publishers and editors that advertising revenues or their business interests in China could suffer if they were seen to be too antagonistic to China or powerful local interests. For example, journalists have been told by their boards of directors not to publish stories about a prominent local businessman's property development project in Beijing. Journalists' associations also cite the Chinese Television Network's refusal to broadcast a documentary ("Cry Wolf") dealing with Xinjiang separatist movements as an example of self-censorship.

In March a Hong Kong member of the Chinese People's Political Consultative Conference, speaking in Beijing, attacked the government-owned Radio Television Hong Kong (RTHK) for producing programs critical of the Hong Kong and Chinese Governments. When asked by journalists for a comment, the Chief Executive's impromptu response was to suggest that a review of the station's role might be necessary, saying, "while freedom of speech is important, it is also important for government policies to be positively presented." However, the Chief Executive and the Chief Secretary, as well as senior Chinese leaders, later reiterated their support for Hong Kong's freedom of the press. There was also a groundswell of support for RTHK'S editorial independence. In April a Chinese diplomat in France warned a Hong Kong journalist to stop asking sensitive questions of visiting Chinese Premier Zhu Rongji. The warning sparked protests in Hong Kong, and Zhu later publicly reprimanded the diplomat. September RTHK issued guidelines, which stressed that its editorial policy should be independent.

In May two persons were convicted under the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance of defacing the Hong Kong and Chinese flags during a peaceful protest in January. The ordinances were passed by the Provisional Legislature before reversion and enacted in July 1997.

In June the High Court found the editor-in-chief of a Chinese-language newspaper guilty of contempt of court for "scurrilous and racial" attacks against top judges and for ordering a 3-day "paparazzi-style" surveillance of a judge. Most observers, including the Hong Kong Journalists' Association, commented that the paper had breached professional ethics.

Although former Governor Christopher Patten's account of the prehandover negotiations and reforms was widely available throughout Hong Kong, the refusal of some bookstores to carry the book was cited by human rights groups as an example of commercial self-censorship. Films critical of China, such as "Kundun" and "Red Corner," were released.

In 1996 a code on access to information governing the provision of information by government agencies was extended to the entire Government. The code requires government departments to release

information to the public unless there is a valid reason to withhold it. A department may withhold "sensitive" information in such areas as defense, security, external affairs, or law enforcement. Guidelines for access to information are provided to the public on an Internet web page.

The Government respects academic freedom. There is a wide range of opinions in lively debate on campuses. The issue of academic freedom generally has not caused much public comment, but there has been some debate over university management issues.

#### b. Freedom of Peaceful Assembly and Association

Freedom of assembly is practiced without significant hindrance. Article 23 of the Basic Law provides that Hong Kong shall enact laws to prohibit subversion, secession, treason, and sedition against the Chinese Government. The process of developing this legislation continues at a very deliberate pace, with no indication of when such laws may be enacted. Amendments to the Crime Ordinance, passed by the Legislative Council in June 1997, narrowed the definition of treason and sedition to include a "proven intention of causing violence or creating public disorder or a public disturbance." However, since the amendments stipulate that the Government must name the date when the change is to take effect, the Government has chosen not to enact the amendments until comprehensive legislation dealing with all the "Article 23 crimes" is developed. In the interim, preexisting provisions in the Crime Ordinance dealing with treason and sedition continue to apply.

A revised Public Order Ordinance, passed by the Provisional Legislature that took effect on July 1, 1997, reintroduced licensing for demonstrations (applications must be made at least 48 hours prior to a demonstration) and empowered the police to raise objections on national security grounds. In practice, however, the police have not denied any applications for demonstrations (see Section 2.a.). There is an average of four demonstrations per day, a rate slightly higher than the prereversion rate. However, demonstrators, particularly labor activists, complain that demonstrations often are limited to "designated areas" where they receive little public attention, and that police sometimes outnumber demonstrators. In March two Confederation of Trade Union demonstrators were prosecuted for using a megaphone during a strike. They were acquitted in May. A police order issued in September, while underlining that it is police "policy to facilitate as far as possible, all peaceful public order events," also stipulates that certain "internationally protected persons" are in addition to security entitled to "protection of their dignity." Human rights activists are concerned that the order may lead to the use of police tactics such as those employed during the September 1997 visit of Li Peng, when the police played classical music over loudspeakers to drown out the shouts of demonstrators. The independent Police Complaints Council ruled in March that those tactics were inappropriate.

Freedom of association is practiced without significant hindrance. In the first 9 months after reversion, 626 societies were registered and no applications for registration denied. Nevertheless, human rights groups also have expressed concern that the Amended Societies Ordinance, which like the Public Order Ordinance was passed by the Provisional Legislature, could be used to restrict political activity. The Societies Ordinance requires that new societies must apply for registration within 1 month of establishment. The Government may refuse registration if it believes that the refusal is necessary in the interests of national security, public safety, public order, or the protection of the rights and freedom of others. The Government also may refuse to register a political body that receives support from a foreign political organization or a Taiwan-based political organization.

#### c. Freedom of Religion

The Basic Law provides that the Government respect religious freedom and activities, the Bill of Rights

Ordinance prohibits religious discrimination, and the Government respects these provisions in practice. Government policy and general practice ensure freedom of religion.

Some religious leaders noted that the Basic Law, which calls for ties between Hong Kong and mainland religious organizations to be based on "nonsubordination, noninterference and mutual respect," could be used to limit such contacts. However, there were no reports of any limits being applied or proposed.

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

There is freedom of movement within Hong Kong, and travel documents are obtained freely and easily. However, there are some limits on travel to the mainland imposed by the Chinese Central Government.

As was the case before the reversion, the Taiwan passport is not recognized as valid for visa endorsement purposes. During the year, regulations were changed to allow residents of Taiwan in transit to the mainland to remain in Hong Kong for up to 7 days without a visa. After protests from Taiwanese visitors, on July 20, the Hong Kong Government stopped stamping the passports of such visitors with warnings not to display Taiwanese symbols or emblems, fly flags, or "engage in behavior embarrassing to the Special Administrative Region."

Chinese authorities do not permit a number of Hong Kong human rights activists to visit the mainland. In August well-known Chinese labor organizer and political dissident Han Dongfang received a 3-year Hong Kong work permit. As it has since his expulsion from China in 1993, the Chinese Government continued to refuse him entry into China.

In July 1997, the Provisional Legislature passed amendments to the Immigration Ordinance requiring mainland-born children claiming the right of abode through their parents to obtain prior endorsement means of a certificate of entitlement) from the Chinese Government. The Government claimed that such a requirement was necessary to keep the estimated 66,000 children with the right of abode from overwhelming Hong Kong's social welfare and education systems. From July 1997 until March 1998, more than 17,000 such children were admitted to Hong Kong. However, more than 1,500 minors in this category who entered Hong Kong without the required certificate of entitlement are subjec