



The State Department web site below is a permanent electro information released prior to January 20, 2001. Please see [y](#) material released since President George W. Bush took office. This site is not updated so external links may no longer func [us](#) with any questions about finding information.

NOTE: External links to other Internet sites should not be c endorsement of the views contained therein.



1999 Country Reports on Human Rights Practices

Released by the Bureau of Democracy, Human Rights, and Labor
U.S. Department of State, February 25, 2000

HONG KONG

Hong Kong reverted from British to Chinese sovereignty on July 1, 1997 (the handover). As a Special Administrative Region (SAR) of the People's Republic of China, Hong Kong 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. The legislature (known as the Legislative Council) is composed of directly and indirectly elected members. 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, 1998, a Legislative Council elected earlier that year 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. There were 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 189,000; however, no parties boycotted the elections. Human rights groups contend that the functional constituencies are undemocratic. Nonetheless, the 58 percent voter turnout was the highest in Hong Kong's history, and the parties and independents in the prodemocracy parties won 14 of the 20 seats elected on a geographic basis. The power of the legislature is curtailed substantially by voting procedures that require separate majorities among both geographically and functionally elected legislators for bills introduced by individual legislators and by Basic Law prohibitions against the legislature's initiating legislation affecting public expenditures, political structure, or government operations. In addition, the Basic Law stipulates that legislators only may initiate legislation affecting government

policy with the prior approval of the Chief Executive. The Government's successful attempts in January to block private member bills on collective bargaining and antiunion discrimination revealed that "government policy" is defined very broadly. By law and tradition, the judiciary is independent; however, in May the Government decided to seek interpretation of the Basic Law in the "right of abode" case from the Chinese National People's Congress (NPC). The NPC's interpretation of the law in this case effectively overturned a ruling by the Court of Final Appeal, Hong Kong's highest court, and raised questions about the continued independence of Hong Kong's judiciary.

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 the 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 \$23,000 in 1999.

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: Limitations on citizens' ability to change their government and limitations on the power of the legislature to affect government policies; reports of police use of excessive force; some degree of media self-censorship; violence and discrimination against women; discrimination against the disabled and ethnic minorities; instances of intimidation of foreign domestic servants; and trafficking in persons for the purposes of forced labor and forced prostitution. Despite the ban on the Falun Gong in mainland China, the Hong Kong Government noted publicly that Falun Gong was a legally registered organization and would be allowed to continue its activities without interference.

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 Coroner's Court (appointed by the Chief Executive under the Coroner's Ordinance) determined that one of the cases was a suicide. In another case, the cause of death was determined to be heroin intoxication, but the Coroner's Court returned an open verdict because the source of the heroin could not be established. The third and fourth cases are 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 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 violate 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 the first 9 months of the year, the Complaints Against Police Office received 783 complaints of assault by the police, but of the 246 cases that were investigated, all were withdrawn or deemed "not pursuable," false, or unsubstantiated. The remainder are pending investigation. 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 for fear of retribution. In November the U.N. Human Rights Committee expressed concern that police responsibility for investigation of police misconduct undermines the credibility of these investigations.

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

An August 1998 ruling by the Correctional Services Department that the use of force in breaking up fighting between inmates earlier in the year was justified prompted widespread criticism and calls for the establishment of an independent board to monitor prison conditions.

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 Services Department staff.

d. Arbitrary Arrest, Detention, or Exile

Common law, precedents previously in force, and the Basic Law provide substantial and effective legal protection 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

The judiciary has remained independent 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 for some time 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. In May the Government decided to seek interpretation of the Basic Law in the "right of abode" case from the Chinese National People's Congress (NPC). The NPC's interpretation of the law in this case effectively overturned a ruling by the Court of Final Appeal, Hong Kong's highest court, and raised questions about the continued independence of Hong Kong's judiciary.

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 are prohibited from residing outside of Hong Kong, foreigners may serve on Hong Kong's courts. More than 35 percent of Hong Kong's judges come from 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. 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 by the Government's 1998 decisions not to prosecute the New China News Agency for alleged violations of the Privacy Ordinance (see Section 1.f.) and to decline to prosecute a prominent newspaper editor accused of fraud. In February the Secretary for Justice explained the Government's March 1998 decision not to prosecute newspaper editor Sally Aw, who, though accused of fraud, had close ties to Beijing. The explanation was given after Aw's three co-conspirators were convicted of fraud in January, and a videotape of Aw's confession was leaked to the press. In addition to citing a lack of sufficient evidence to prosecute, the Secretary noted that she had taken the "public interest" into account in making the decision because the case could have bankrupted the newspaper, thus damaging free speech and putting residents out of work.

In March anger over the explanation, as well as the Government's handling of the right of abode ruling, prompted a legislative motion of no confidence in the Secretary for Justice which was defeated after heavy lobbying from the Government. In 1998 the Provisional Legislature passed the controversial Adaptation of Laws (Interpretive Provisions) Ordinance, which replaced the word "Crown" in Hong Kong legislation with the word "State" in hundreds of existing laws. Since that time the Government has reviewed 17 laws and determined that these laws should be amended to encompass the State specifically. Critics are concerned that this change would place Chinese government organs above the law, since laws that previously did not apply to the Crown now do not apply to the (Chinese) state.

On January 29, the Court of Final Appeal issued rulings in three cases, known collectively as "the right of abode ruling." At the handover, the Basic Law for the first time conferred the right of abode in Hong Kong on mainland-born children of Hong Kong residents. To limit the possibility of a large influx of persons under this provision, the Provisional Legislature soon after reversion enacted regulations that required mainland-born children of Hong Kong residents to possess a certificate of entitlement from Hong Kong immigration authorities attached to a valid travel document issued by the Government of China in order to exercise the right of abode. For many persons entitled to the right of abode, this requirement led to long delays in the ability to exercise the right. Would-be migrants challenged the legitimacy of the Provisional Legislature and the regulations it issued regarding the right of abode. In the cases heard before the Court of Final Appeal, the Government also challenged a lower court ruling that illegitimate children of Hong Kong resident parents enjoyed the same right of abode as those born in wedlock. The Court of Final Appeal ruled that the Provisional Legislature was "legally authorized," that administrative restrictions limiting the right of abode of mainland-born children of Hong Kong parents was in violation of the Basic Law, and that all children, born in wedlock or not, were entitled to the same right of abode as long as one parent had resided legally in Hong Kong for at least 7 years at the time the application was made, rather than at the birth of the child. The ruling also asserted the Court of Final Appeal's right of judicial review over not only the Basic Law, but also over acts of the NPC as they affected Hong Kong. In addition, the judgment defined tests and means by which the Hong Kong court should seek interpretation of the Basic Law by the National People's Congress.

On February 8, a Chinese State Council spokesman termed the Court's decision a "mistake" that "should be changed." On February 26, in response to criticism from mainland legal scholars and officials, the Hong Kong Government requested an unprecedented "clarification" of the Court's assertion of the right of judicial review from the Court of Final Appeal, citing "public interest" and constitutional concerns. The Court responded with a brief statement stressing that it did not question the power of China's NPC to interpret the Basic Law but reserved its power to test acts of the NPC against the Basic Law. Human rights activists and some legislators expressed concern that the clarification set a "dangerous precedent."

The Government of Hong Kong did not implement the right of abode ruling immediately. After the ruling was issued, immigration officials only processed applications on the mainland for certificates of entitlement to Hong Kong residency that were accompanied by applications for one-way entry permits to Hong Kong (to be granted by granted by Chinese authorities). According to a government study released on April 29, the January ruling increased the number of persons eligible to apply for residency in Hong Kong on

the basis of parental residency from an estimated 66,000 persons to an estimated 1.67 million persons (approximately one-quarter of Hong Kong's current population) within 7 years, leading to general fears of serious overcrowding. However, some critics claimed that the Government's figures were too high.

On May 18, Chief Executive C.H. Tung announced the Government's intention to ask the Standing Committee of the NPC to interpret two sections of the Basic Law relevant to the Court of Final Appeal's right of abode ruling. The Government submitted its request to the Standing Committee after giving the legislature only 24 hours to consider a motion endorsing the Chief Executive's decision to seek interpretation. On May 19, the Legislative Council voted to support the decision to seek interpretation of the Basic Law. Legislators from the democratic parties boycotted the vote and wore black to mourn the "death of justice." Hundreds of lawyers, who viewed the request as a postjudicial remedy that undermined the authority and independence of the judiciary, marched in protest.

The NPC interpretation, issued on June 26, implied that the Court of Final Appeal erred in not seeking NPC interpretation before it issued its ruling because the Basic Law clauses on which its ruling was based involved "matters involving the relations between the Central Government and the SAR." The NPC declared that the original legislative intent of one of the Basic Law articles, as expressed in a 1996 Preparatory Committee Document, was that at least one parent had to have had right of abode at the time of the child's birth (rather than at the time of application) in order to confer that right upon the child. The NPC also declared that these children must apply for approval for entry into Hong Kong. The NPC interpretation effectively overturned the ruling of the Court of Final Appeal, which led many legislators and human rights activists to express concern about how final the judgments of the Hong Kong Court of Final Appeal actually were. Although the status of the litigants in the original case(s) was unchanged, the effect of the interpretation was to reduce the number of persons eligible for right of abode in Hong Kong from an estimated 1.67 million to 160,000. Following the interpretation, the Government issued immigration regulations that gave the interpretation retroactive effect from July 1, 1997.

Two additional right of abode cases, one dealing with the rights of adopted children and the other with mainlanders who sought to exercise their right of abode without mainland-issued documents permitting them to remain in Hong Kong were heard by the Court of Final Appeal in October. On December 3, the Court of Final Appeal issued its judgment regarding the mainlanders who sought to invoke the right of abode in Hong Kong without the required documentation. The Court ruled that the NPC had the authority to interpret the Basic Law, that the NPC's June interpretation of the Basic Law therefore was binding, and that the interpretation upheld the Government's previous documentation and time of birth requirement. The Court gave the interpretation effect from July 1, 1997, and stated that the would-be immigrants who had not completed the proper procedures could be returned to China. Nine persons were injured in protests which followed the Court of Final Appeal's December ruling. Police arrested three protestors. By year's end, no ruling had been issued in the case dealing with the rights of adopted children.

In a March case involving the desecration of the Chinese and Hong Kong flags, the High Court ruled unanimously that the PRC and Hong Kong flag ordinances were inconsistent with the Basic Law because they violated the International Covenant on Civil and Political Rights, which is subsumed in the Basic Law. However, in December the Court of

Final Appeal overturned the ruling.

According to the Basic Law, English may be used as an official language by the executive, legislative, and judicial branches. For historical reasons and because of the courts' reliance on common law precedents, almost all civil cases and most criminal cases are heard in English. To help remedy this, the Government has increased the number of officers in the Legal Aid Department proficient in Chinese. A 1996 pilot scheme for simultaneous interpretation in some court proceedings failed, but the Government extended the use of bilingual prosecution documents and indictments. All laws are available in Chinese and in 1997 the High Court heard the first jury trial ever conducted in Cantonese.

Some human rights groups have expressed concern that the Government has not protected the interests of Hong Kong residents arrested in mainland China vigorously enough. The issue is complicated by the absence of an agreement allowing Hong Kong officials access to Hong Kong citizens arrested or detained in mainland China.

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 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. As a result, wiretaps are approved by the Chief Executive's office; a court issued warrant is not required. Responding to Legislative Council questioning in September 1998, 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, which normally are exercised only by a judicial officer. Amendments to ordinances governing the Commission took effect in 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, unexplainable 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 (PDPO) 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. Some violations of the PDPO constitute criminal offenses, although there have been no prosecutions under the PDPO. In other cases, an injured party may seek compensation through civil proceedings. If the PCO believes that violations may continue or be repeated, he may issue an enforcement notice. From the end of 1996 when the PDPO took effect through the end of September, the PCO had received 1,018 complaints, 325 of them in the first 9 months of the year. Since 1996, of the 903

completed investigations, 325 completed during the year, the PCO found violations of the PDPO in 72 cases, resulting in the issuance of 16 enforcement notices and 44 warning notices.

The Government determined that under the Adaptation of Laws (Interpretive Provisions) Ordinance, passed by the Provisional Legislature (a nonelected body that performed the legislative function from July 1, 1997 to June 30, 1998) in 1998, the Personal Data Privacy Ordinance is not applicable to the central People's Government organs in Hong Kong. The Adaptations of Laws Ordinance replaced the word "Crown" in Hong Kong legislation with the word "State" in hundreds of existing laws. Government officials say that the change is a technical fix, necessary for the continued implementation of prehandover laws, that does not offer a wholesale exemption from laws. However, critics are concerned that the change places Chinese government organs, particularly the New China News Agency, above the law.

In June the High Court dismissed a legislator's civil suit over the failure of the New China News Agency to respond within the Ordinance-specified time frame to the legislator's request for information about her in the Agency's files, because the NCNA Director named in the suit was not in Hong Kong at the time the incident occurred.

In November the Office of the Telecommunications Authority (OFTA) requested an explanation from a major local paging company, China Motion Telecom International (CM Telecom), which allegedly failed to relay messages referring to the Falun Gong (which was banned on the mainland in July)(see Section 2.c.). The OFTA stressed that the company, which provides both Hong Kong-only and China-wide service to Hong Kong customers, would be monitored closely to ensure that its operations complied with Hong Kong license requirements under which paging companies may refuse to relay only messages that are obscene or that could lead to activities that are unlawful under local laws. However, the OFTA also agreed that it could not ask the paging company to act in violation of Chinese laws. In a compromise, the company agreed to relay messages concerning Falun Gong to its Hong Kong-only subscribers, but was allowed to use its discretion in forwarding such messages to its China-wide subscribers. CM Telecom declined to relay messages concerning Falun Gong to customers whose service is China-wide. Thus, the ability of CM Telecom's Hong Kong customers to receive messages concerning Falun Gong depends upon what type of paging service they have purchased.

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 November District Council 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 only one application for a permit to demonstrate was 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 handover. Persons 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, 1 cable television station, and 2 commercial radio stations function with virtually no government control.

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 those from Hong Kong--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; however, there were fewer reports of self-censorship than in the recent past. 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.

In August mainland leaders and local deputies to the NPC criticized the government-owned Radio Television Hong Kong (RTHK) for producing a program in which a prominent but unofficial Taiwan representative endorsed Taiwan President Lee Teng-hui's controversial "two-states" policy. In response to the criticism, the Chief Executive and other senior officials reiterated the importance of freedom of speech, but expressed dissatisfaction with the representative's remarks. In November the representative returned to Taiwan to take a senior position, amid reports that the Government refused to extend his visa. In response to the criticism, RTHK reiterated its editorial guidelines stressing its independent editorial line. Nonetheless, journalists and human rights groups are concerned that the criticisms may have a "chilling" effect on the press. In October the Government abruptly announced that the head of RTHK, Cheung Man-ye, was to be promoted to Economic and Trade Representative to Japan. Cheung is known as an

outspoken defender of press freedom and of RTHK's editorial independence, and under her 13-year leadership RTHK was often critical of the Government. Many legislators and human rights groups expressed concern that press freedom would be affected by Cheung's transfer. Cheung denied that the transfer was politically motivated, but acknowledged that she had experienced political pressures in the past. Senior government officials, including the Chief Executive and the Chief Secretary, denied that the transfer was anything but routine and once again reiterated their support for freedom of the press. The appointment in November of Cheung's deputy, an individual widely perceived to be an ardent supporter of a free press, to succeed her helped to allay public fears; he reiterated RTHK's commitment to editorial independence. One of the by-products of the controversy was renewed debate over the desirability of privatizing RTHK.

In August, in response to a growing number of complaints about tabloid-style journalism, which encouraged intrusive reporting by the press, the Law Reform Commission (an independent commission appointed by the Government in the 1980's) issued a consultation paper on privacy issues and the media. The paper suggested that a Press Council with the power to reprimand or fine a publication found to be "in serious breach of the Privacy Code" should be appointed by the Government. Public reaction was mixed, but journalists, legal experts, and human rights groups were concerned that such a body could be used to restrict press freedom. In October the Chief Executive expressed the hope that the press could regulate itself.

In November in a case in which a news group sued RTHK for defamation, the Court of Final Appeal upheld the constitutional protection of free speech and ruled in favor of RTHK, noting that "no narrow approach should be taken to the scope of fair comment on a matter of public interest."

On March 23, the High Court overturned the convictions of two persons convicted of desecrating Chinese and Hong Kong flags during a peaceful 1998 demonstration. The court ruled that both the Hong Kong and Chinese flag desecration laws were inconsistent with the Basic Law. The Government appealed. Many legal experts, legislators, and human rights activists were concerned that if the Court of Final Appeal upheld the lower court's decision, the Government would seek an interpretation of the laws from the National People's Congress, as it had in the right of abode case (see Section 1.e.). In December the Court of Final Appeal ruled unanimously that the flag desecration laws did not violate the Basic Law and reinstated the convictions of the two persons accused of desecrating the Hong Kong and Chinese flags, thereby avoiding another confrontation over the Basic Law. In October the police, citing the Land Ordinance's prohibition on the erection of unlicensed structures, removed a Taiwan flag erected on public property on the anniversary of the founding of the Republic of China.

Falun Gong publications were displayed prominently at the Hong Kong International Book Fair. However, some Hong Kong publishing houses owned by mainland Chinese interests declined to continue publishing Falun Gong materials after the movement was banned on the mainland in July (see Section 2.c.), and some bookstores run by Chinese enterprises removed Falun Gong books from their shelves.

In July the publisher of Taiwan President Lee Teng-hui's recently published book complained that an advertisement it had paid to run for 2 weeks in a Hong Kong subway station was taken down after 1 week, with no explanation. A spokesperson for the subway

system stated that it was an "administrative error" rather than a political decision.

In November the founder of the Information Center for Democracy and Human Rights Movements in China, which issues press releases on strikes, demonstrations, and arrests in China, complained that he was receiving almost 1,000 harassing phone calls and faxes each day from security agents in China. The police are investigating the complaint.

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 and lively debate on campuses.

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 with no indication of when such laws may be enacted. Amendments to the Crime Ordinance, passed by the Legislative Council in 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 "Article 23 crimes" is developed. In the interim, preexisting provisions in the Crime Ordinance dealing with treason and sedition continue to apply. In November the U.N. Human Rights Committee expressed concern that the offenses of treason and sedition under the Crimes Ordinance are defined in overly broad terms, thus endangering freedom of expression.

A revised Public Order Ordinance passed by the Provisional Legislature, which took effect on July 1, 1997, reintroduced licensing for demonstrations. Demonstration organizers must notify the police of their intention to demonstrate 1 week in advance (shorter notice is accepted when the Commissioner of Police is satisfied that earlier notice could not have been given). The police must give a clear reply within 48 hours and may object on national security grounds. However, in practice, the police have denied only one application to demonstrate; in that case, environmental groups wanted to block traffic with garbage trucks to urge the Government to open more recycling centers. There is an average of four demonstrations per day, a rate slightly higher than the prehandover 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. On May 30, up to 4,000 persons marched through central Hong Kong to commemorate the 10th anniversary of the June 4, 1989 massacre in Tiananmen Square. On June 4, nearly 70,000 demonstrators attended a candlelight vigil to commemorate the anniversary. However, there were reports in October that Chief Executive C.H. Tung urged Hong Kong Alliance for the Promotion of Democratic

Movements in China leaders earlier in the year to stop holding annual commemorations of the Tiananmen Square crackdown; the Chief Executive denied making any such requests. A police order issued in September 1998, 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 policy 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 later ruled that such tactics were inappropriate. In October the police arrested (but immediately released) protesters conducting noisy demonstrations near the official flag raising ceremony marking the 50th Anniversary of the founding of the PRC.

Freedom of association is practiced without significant hindrance. In the first 9 months after the handover, 626 societies were registered and no applications for registration were denied. However, the "Never Forget June 4 Organization," whose constitution calls for the end of one party rule in China, claims that the police have delayed the group's registration. Human rights groups also have expressed concern that the amended Societies Ordinance, which like the amended 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. Religious groups are not required to register with the Government, and are exempted specifically from the Societies Ordinance, which requires the registration of nongovernmental organizations.

Following the ban on the Falun Gong in China on July 22, Falun Gong practitioners continued to be allowed to practice and to protest the arrests of Falun Gong practitioners on the mainland. Senior government officials issued statements in October confirming that the local Falun Gong chapter was registered legally under the Societies Ordinance and would be allowed to continue its activities without interference. Security officials in Hong Kong stated that the ban on the Falun Gong effective in China did not apply to Hong Kong. Some bookstores run by Chinese enterprises have removed Falun Gong works from their shelves (see Section 2.a.). From December 11-13, up to 1000 persons attended a Falun Gong conference held in Hong Kong that attracted practitioners from several countries. The conference occurred without incident, despite stern warnings from Chief Executive C.H. Tung not to violate mainland law. In November a major paging company was required to explain to telecommunication authorities why it was not relaying messages concerning Falun Gong to its Hong Kong customers; in a compromise, it was required to forward such messages to its Hong Kong-only service customers, but

was allowed to decline to relay such messages to its China-wide service customers because doing so would violate Chinese law (see Section 1.f.).

Some religious leaders have expressed concern 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, however, of any limits being applied or proposed.

In June China, which has responsibility for Hong Kong's defense and foreign affairs, blocked a proposed visit by the Pope to Hong Kong. The Government of the People's Republic of China reportedly insisted on treating the visit as one of a head of state rather than as one of a religious leader. Many religious, political and human rights leaders publicly expressed disappointment that the visit was cancelled.

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 handover, the Taiwan passport is not recognized as valid for visa endorsement purposes.

In April, Wang Dan and several other prominent dissidents were denied visas to enter Hong Kong; they had hoped to attend a conference on democracy in China on May 1 and a candlelight vigil to commemorate the events at Tiananmen Square in 1989. However, exiled Chinese dissident Xiang Xiaoji, a foreign citizen, was allowed to attend the conference. Chinese authorities do not permit a number of Hong Kong activists and legislators to visit the mainland. On June 10, two legislators, James To and Cyd Ho, were denied permission to board a flight to Beijing; when they attempted to board another flight, they reportedly were told that the Chinese authorities would not admit them to the mainland. The two had intended to lobby Chinese government officials against interpretation of the Basic Law by the NPC in the right of abode case (see Section 1.e.). In September the Chinese Government cancelled the visa of prominent Hong Kong legislator Margaret Ng, who had protested the Government's request for an NPC interpretation of the Basic Law, and had moved for a motion of no confidence against the Secretary for Justice. The cancellation provoked widespread anger. Political and human rights activists stated that the restriction on travel to the mainland by those who disagree with Beijing's policies may have a chilling effect on political debate, particularly among those with business interests on the mainland. Many democratic party legislators are not allowed to travel to the mainland; many other democratic party legislators, however, are allowed to go to China.

In July 1997, the Provisional Legislature passed legislation regarding the right of abode of mainland children of Hong Kong parents. On January 29, the Court of Final Appeal ruled that all children of parents with Hong Kong residency at the time application were eligible for the right of abode, and that the administrative restrictions on this right were inconsistent with the Basic Law. In May the Hong Kong Government requested that the

NPC interpret the Basic Law provisions relevant to the case, and in June the NPC issued an interpretation that overturned the decision of the Court of Final Appeal, restricting the right of abode to children whose parents had Hong Kong residency at the time of their birth and endorsing the administrative restrictions on the exercise of the right (see Section 1.e.).

The 1951 U.N. Convention Relating to the Status of Refugees was not extended to Hong Kong. On a case-by-case basis, the Director of Immigration has discretion to grant refugee status or asylum in cases of exceptional humanitarian or compassionate need.

Hong Kong no longer has a first asylum policy. Forty-eight Vietnamese not considered refugees were repatriated to Vietnam in 1998. Approximately 968 Vietnamese refugees remain, among them 320 Vietnamese formerly in China. The latter group's appeal against the Government's attempt to return them to the mainland still is pending. These refugees either live in camps where they are free to come and go, or in the community. They are allowed to seek employment and to enroll their children in local schools. In 1998 1,536 Vietnamese refugees were repatriated under the (involuntary) Orderly Repatriation Program; 837 were repatriated in the first 10 months of 1999. Approximately 12 families from other countries have been admitted as refugees and receive a subsistence allowance from the U.N. High Commissioner for Refugees, but are allowed neither to seek employment nor enroll their children in local schools.

In two separate cases in September and October 1997 courts ruled that the detention of 288 Vietnamese illegal migrants who were formerly in China was illegal. The Vietnamese migrants' suit seeking to prevent the Government from returning them to the mainland still is pending. Meanwhile, they remain free on bail and live in the Pillar Point Camp.

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

Residents' right to change their government is limited by voting regulations that provide for the election of the Chief Executive by an appointed selection committee of 400, the direct election of only a limited number of Legislative Council members, and the addition of appointed members to the elected district boards and municipal councils. In addition, while the approval of the Chief Executive, two-thirds of the legislature, and two-thirds of Hong Kong's National People's Congress delegates is required to place an amendment to the Basic Law on the agenda of China's National People's Congress, it is the National People's Congress that has the power to actually amend the Basic Law.

The government structure is three-tiered, and consists of the Legislative Council, the provisional municipal councils, and the provisional district boards. C.H. Tung is Chief Executive.

The Chief Executive was chosen by a 400-member selection committee chosen by the 150-member preparatory committee, itself appointed by the Chinese Government. The Basic Law provides for elections for Chief Executive in 2002 and 2007, by a "broadly representative election committee" of 800 local residents appointed by China. The Basic Law also permits amendment of the Chief Executive selection process after 2007 by a two-thirds majority of the Legislative Council, with the consent of the Chief Executive and the Standing Committee of the National People's Congress, with universal suffrage and direct elections as the ultimate goal.

A provisional legislature, appointed by the same 400-member committee that appointed the Chief Executive, served from July 1, 1997 until June 30, 1998. Although the Provisional Legislature included 33 of 34 legislators from the 1995 Legislative Council who sought inclusion, the Democratic Party and several independents declined to seek seats in what they deemed an illegitimate body, which they claimed lacked a legal foundation and transparency, and excluded groups, parties, and individuals critical of China. The Provisional Legislature repealed several laws that had been enacted by the elected Legislative Council to enhance civil and political rights, including: Amendments to the Bill of Rights Ordinance; the Employee Right to Representation, Consultation, and Collective Bargaining Ordinance; the 1997 Employment (Amendment) Ordinance, and the 1997 Trade Unions (Amendment) Ordinance (see Section 6.a.). A lawsuit challenging the constitutionality of the Provisional Legislative Council was unsuccessful, and the repeal remains controversial.

Elections for Hong Kong's first post-reversion Legislative Council were held in May 1998. Twenty members were elected directly from geographic districts through universal suffrage, 30 from functional (occupational) constituencies, and 10 by votes of a committee of local elected officials. The functional constituencies were drawn more narrowly than the nine broad functional constituencies of the 1995 Legislative Council, and the total number of potential voters in functional constituencies was cut from 1.15 million to 189,000 (a figure close to that used in elections through 1991). Human rights groups contend that the election of functional constituency representatives by only 189,000 persons representing various sectors is fundamentally undemocratic. There was general acceptance of the electoral districts proposed in October 1997 by the Electoral Affairs Commission. A bill calling for an accelerated time line for direct elections was defeated in the Legislative Council in 1998.

The ability of the legislature to influence policy is limited substantially by Basic Law provisions that require separate majorities among members elected from geographical and functional constituencies in order to pass a bill introduced by an individual member. The Basic Law also prohibits the Legislative Council from putting forward bills that affect public expenditure, political structure, or government operations. The Chief Executive's approval is required before bills affecting government policy may be submitted. Controversy erupted in January when the Government attempted to block two private member bills on collective bargaining and antiunion discrimination by applying a very broad definition of "government policy." In July the President of the Legislative Council upheld the Government's position and ruled that the bills were outside of the scope allowed for private member bills because they would affect government expenditure.

The November elections for Hong Kong's District Councils (the sole remaining local government body after the abolition of the Municipal Councils (see below) were free and fair. However, democratic legislators and human rights activists complained that the appointment of nearly one-quarter of District Councilors by the Chief Executive was undemocratic. According to the District Councils Ordinance enacted in March, the District Councils are responsible for advising the government on matters affecting: 1) the well-being of district residents; 2) the provision and use of public facilities; and 3) the use of public funds allocated for local public works and community activities.

A motion in the Legislative Council calling for a referendum on the Government's proposal to abolish the Urban and Regional Councils, Hong Kong's mid-tier local

government organs known collectively as the Municipal Councils, was defeated in October. The Councils had been the subject of widespread public criticism for their poor handling of the Avian Flu, the Red Tide, and other public health problems for which they were responsible. In December the Legislative Council passed a controversial bill abolishing the Municipal Councils when their terms expired at the end of the year. Legislators from the democratic parties and human rights activists protested the abolition of the councils, arguing that they were important to party and democratic politics. The UN Human Rights Committee also expressed concern over the abolition of the municipal councils in its November report.

Hong Kong sends 36 delegates to China's National People's Congress (NPC). This is an important group since placing proposed amendments to the Basic Law on the agenda of the NPC requires the approval of two-thirds of Hong Kong's NPC delegates. Hong Kong's NPC delegates also are entitled to sit on the Election Committee that chooses 10 of the Legislature's 60 members. Hong Kong's NPC delegates were selected by the same committee that appointed the Chief Executive and the Provisional Legislature. Politicians and human rights activists criticized the selection process as undemocratic and lacking transparency and noted that New China News Agency Director Jiang Enzhu, who is not a Hong Kong permanent resident, is one of Hong Kong's 36 delegates. Local NPC delegates were increasingly vocal during the year, particularly with regard to rule of law issues and the right of abode case (see Section 1.e.).

Women are underrepresented in elective offices, but larger numbers are running for public office than ever before. Women hold 10 of the 60 Legislative Council seats. The President of the Legislative Council is a woman, as is the head of the civil service. Minorities are represented in senior civil service positions.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Dozens of domestic and international nongovernmental organizations (NGO's) operate freely, despite concerns about possible restrictions under the revised Societies Ordinance. These organizations have thriving contacts with the local community and with groups overseas. Government officials are cooperative and responsive to their views.

The 1988 Ombudsman Ordinance established the Office of the Ombudsman, which has wide powers to investigate and report on grievances from members of the public as a result of administrative actions of the executive branch and other designated public bodies. However, the Ombudsman does not have any oversight authority over the police, the Independent Commission against Corruption, the Equal Opportunities Commission, or the Office of the Privacy Commissioner for Personal Data. The Ombudsman may investigate complaints of noncompliance with the code on access to information by the government departments, including the police and Independent Commission against Corruption. With regard to election-related complaints, the Ombudsman only is empowered to investigate complaints made against the Registration and Electoral Office, but not the Electoral Affairs Commission. Thus, the Ombudsman's human rights role regarding liberty of persons, freedom from arbitrary and unlawful arrest and detention, equality, and related matters is limited considerably.

The Ombudsman may publish investigation reports in which the identity of the

complainant has been disguised. In addition to responding to public complaints, the Ombudsman may initiate investigations on his own. The Ombudsman may report to the Chief Executive if he believes that his recommendations to the organizations under his jurisdiction have not been acted upon or if there are serious violations; the Chief Executive is bound by law to present such reports to the legislature.

According to the Basic Law, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights apply, with certain restrictions, to Hong Kong. In January the Chinese Government transmitted Hong Kong's 1998 reports under these Covenants, without editing, to the United Nations. These reports were prepared without interference from the Chinese Government, but local NGO's complained that they were not consulted fully enough on the contents of the reports. In October the Government and several domestic NGO's testified before the U.N. Human Rights Committee in Geneva. The Committee expressed "serious concern" about the Government's decision to seek an NPC interpretation of the Basic Law in the right of abode case and the planned abolition of the two municipal councils (see Sections 1.e. and 3). Government statements to the press emphasized that the interpretation did not affect the litigants in the Court of Final Appeal's original ruling (or those in similar circumstances). The hearings received widespread and balanced press coverage. In November the U.N. Human Rights Committee issued its first report on Hong Kong since the handover. The report cited concerns about the erosion of Hong Kong's autonomy, particularly with respect to the independence of the judiciary.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

There are no laws prohibiting discrimination on the basis of age or race. After the passage of laws in 1995 banning discrimination on the basis of sex and disability, an Equal Opportunities Commission was established. The Commission began its oversight of nonemployment- and employment-related provisions in 1996. Women's groups and others have criticized the Commission for passivity in combating discrimination and for emphasizing conciliation instead of acting as a watchdog or pursuing court cases. However, the Government has begun to bring cases against discriminatory employment advertisements. In the first 6 months of the year, the Equal Opportunities Commission received 115 complaints of sex discrimination, 89 of which involved sexual harassment. In the first 9 months of the year, three cases under the Sex Discrimination Ordinance and five cases under the Disability Discrimination Ordinance were brought to court. Two have been decided, both in favor of the plaintiffs. Damages were awarded in the amounts of \$11,250 (HK\$87,500) and \$3,000 (HK\$23,000). However, fines against newspapers for carrying discriminatory advertisements tend to be very light. In the first 9 months of the year, 12 cases alleging discriminatory advertising were brought to court; all were decided against the defendants, who were fined a total of \$2,350 (HK\$18,260).

In 1997 the Legislative Council enacted the Family Status Discrimination Ordinance, which protects persons whose marital status changes, who have children, or who are responsible for caring for another family member, such as a child or elderly person.

The government "Code of Practice for Employers" designed to prevent discrimination states that race, among other factors, should not be considered when hiring employees. However, it "accepts" that special circumstances exist, such as when the employee works

or lives in the employer's home. The Government has undertaken a public education and awareness campaign to combat race with only limited effect.

Women

Violence against women remains a significant problem, particularly among new immigrants from China. The only law to protect battered women is the 1987 Domestic Violence Ordinance, which allows a woman to seek a 3-month injunction against her husband (extendable to 6 months). Domestic violence also may be prosecuted as common assault. The Government enforces the laws and prosecutes violators, but sentences generally are lenient; of the 344 charges of "family violence" from April to September 1997, only 33 resulted in convictions. Half of those convicted were fined and only four were imprisoned. Of the 60 spousal abuse cases in the first 9 months of 1998 that resulted in legal action, 41 were awaiting trial, 1 received a 6-month sentence and fine, 1 received a 2-month sentence, 4 were fined between \$200 and \$450, 3 received a suspended sentence, 1 received a police warning, and 1 was acquitted as of late 1998. The Government changed its statistical reporting on domestic violence during the year; in the first 9 months of the year there were 7 homicides, 233 woundings (serious assaults) and 35 common assaults involving current or former partners. Women tend not to seek help when subject to violence; cultural factors and inadequate information about available assistance and resources result in many cases of spousal abuse going unreported. To address this problem, in 1995 the Government set up a working group on battered spouses. In 1996 it crafted multidisciplinary procedural guidelines on handling battered spouse cases. The Government also funds programs such as family life education counseling, a hot line service, temporary housing, legal aid, and child protective services; it also has initiated public education and media programs.

The general incidence of rape is low. There were 90 reported cases of rape in 1998 and 72 in the first 9 months of the year.

Prostitution is illegal.

Women face significant discrimination in employment, salary, welfare, inheritance, and promotion (see Section 6.e.). Official unemployment figures are 7.2 percent for men and 4.7 percent for women. However, human rights organizations and unions assert that the statistics inaccurately count many unemployed women as housewives, and thus the unemployment rate for women is actually higher than the unemployment rate for men. Women are entering professional fields, incl