

Human Rights Watch

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Annual reports

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Human Rights Watch World Report 1998

HONG KONG

The transfer of sovereignty over Hong Kong from Britain to China on July 1 and the installation of the new Special Administrative Region (S.A.R.) government were arguably the most important events in the territory's history, but the political changes produced no dramatic crackdowns, no arrests, and no bans on demonstrations by late October. Journalists pointed to many instances of self-censorship on the part of their editors, but the S.A.R. government itself did not censor the print or broadcast media. The worrisome changes were almost all on the legal front, where China's concerns about security and stability took precedence over civil rights protections. Tung Chee-hwa, a businessman appointed S.A.R. chief executive in December 1996, showed himself to be a proponent of the "Asian values" school of thought and in August, he endorsed Malaysian Prime Minister Mahathir's suggestion that the Universal Declaration of Human Rights be reviewed.

Human Rights Developments

Assaults on the legal foundation of civil liberties proceeded steadily throughout the year. In December 1996, the Preparatory Committee, a body handpicked by China to handle transition matters, authorized the appointment of a provisional legislature that was to remain in place for one year. The appointed body replaced the elected Legislative Council (Legco) on July 1, but it in fact began meeting in China long before then.

In early 1997, the Preparatory Committee submitted proposals to China's National People's Congress (NPC) to repeal or amend twenty-four Hong Kong laws, on the grounds that they had been passed after the 1984 Sino-British Joint Declaration had been signed and were therefore in violation of the Basic Law, the document that has become the S.A.R. constitution. Among the laws affected were several provisions of Hong Kong's Bill of Rights, adopted in 1991, and two British colonial laws, the Societies Ordinance and the Public Order Ordinance, that had been amended after 1991 to bring them into conformity with the Bill of Rights. The Bill of Rights had been adopted in an attempt to ensure that the provisions of the International Covenant on Civil and Political Rights (ICCPR) were implemented in Hong Kong; the repealed section, arguably the most important part of the bill, gave the bill's guarantees of rights precedence over past and future Hong Kong laws that might be in conflict with them.

The proposed changes generated strong opposition in Hong Kong. On February 19, a Legislative Council motion, endorsed by both the Democratic and Liberal parties, urged the NPC not to accept the proposals. On February 26, however, the NPC approved them.

The proposed amendments of the Societies and Public Order Ordinances would have made it possible for the S.A.R. to ban demonstrations or dissolve associations on broadly defined political grounds in the interests of "national security." After a much-publicized "consultation" process through which Tung Chee-hwa invited public comment on the laws, some of the most egregious provisions in the draft were dropped. But even in their final form as passed by the provisional legislature on June 14, the laws have disturbing elements.

Whereas, before, groups organizing protests had merely to notify the police of their plans, they now must receive permission from the police, which may be denied in the interests of national security. On July 18, the commissioner of police issued a document titled "Guidelines on 'National Security' in the Public Order Ordinance" in which he cited "advocacy of independence for Taiwan or Tibet" as grounds for refusing permission to demonstrate.

Likewise, in the final version of the Societies Ordinance, the government can deny registration to a society; before it was passed, societies simply had to notify the government of their formation to have a legal existence. "National security" is again grounds for denying registration, and societies deemed to be "political organizations" are barred from receiving funds from abroad. The consultation process did result in narrowing some of the definitions used. "Political organization," for example, was defined to mean only those organizations which put up candidates for election to public office.

In the final days of the elected legislature, the British administration pushed a heavily opposed Official Secrets Ordinance through the Legislative Council on June 4, 1997, a day when most members of the pro-democracy parties were absent commemorating the anniversary of the Tiananmen crackdown. The government argued that such a law was needed to "localize" colonial legislation into domestic law and to satisfy the requirements of key provisions of the Basic Law. The resulting act, modeled on much-criticized British legislation, criminalizes a broad range of activity, such as being "in the neighborhood of...a prohibited place" for "a purpose prejudicial to the safety or interests" of Hong Kong. It is not even necessary to show that the act did in fact jeopardize Hong Kong's interests if the "known character" of the accused would indicate that such was his or her intention. The law does not allow certain common defenses for the disclosure of official information, such as prior publication of the information.

On July 16, the provisional legislature suspended four labor laws passed by the elected legislature in the days leading up to the handover. The laws would have brought Hong Kong into compliance with standards set by the International Labour Organisation. They explicitly guaranteed the right to union representation and collective bargaining, the right to conduct union activity on an employer's premises, and the right to be compensated for union work done during the course of the normal work day. The laws had also altered previous legislation restrictive of union sovereignty and would have allowed unions to act without governmental approval on certain internal issues. Three and a half months later, in late October, the Provisional Legislative Council would move to dismiss much of the legislation entirely, voting to remove the suspended legislation on collective bargaining and anti-union discrimination.

The continued independence of the courts remained cause for concern, although that concern was somewhat eased by the appointment in late May of Andrew Li, a widely respected barrister, as head of the Court of Final Appeal, the S.A.R.'s highest court.

But in mid-July, in the case of *Ma Wai Kwan*, the Hong Kong Court of Appeals made a landmark decision on the legality of the provisional legislature that seemed to give license to China's legislature to violate Hong Kong's Basic Law at will. A criminal defendant had argued that laws and indictments in force prior to the transfer no longer existed, because the provisional legislature had provided for their continuation and the legislature itself was in violation of the Basic Law. In ruling against the defendant, the court acknowledged that the provisional legislature was nowhere described by the Basic Law but opined that Hong Kong courts could not judge it illegal because it was established by a body authorized by the NPC. S.A.R. courts, the court said, had no power to examine either the decisions or institutions created by the NPC.

Finally, under the terms of new voting laws presented to the public on August 15, two-thirds of the legislature's sixty seats are to be filled by "functional constituencies," many with a heavy business and corporate focus. The remainder are to be elected not through the "one person, one vote" system that allowed pro-democracy candidates to sweep the polls in the 1995 elections, but in one of two possible systems, variations on proportional representation, that would reduce the number of seats held by the most popular pro-democracy groups.

In early September, Andrew Li and Lord Irvine, Britain's lord Chancellor, met to discuss possible British assistance to the Hong Kong judiciary, and it was announced on September 8 that two British judges would be made available to the Court of Final Appeal.

In April, the outgoing government allowed Human Rights Watch and the Hong Kong Human Rights Monitor to conduct the first-ever international investigation of the territory's prison system. The investigation was undertaken as a way of establishing benchmarks against which to measure changes that might take place after the transition. (Given China's notoriously poor prison conditions and its frequent use of capital punishment, some of Hong Kong's 12,000 prisoners expressed grave apprehensions regarding their treatment under Chinese rule.) In light of these concerns, the investigation was also meant to establish a precedent of independent monitoring of the territory's prisons, to encourage future monitoring. In general, the delegation found the prisons to be administered by an extremely competent and professional staff, the physical infrastructure to be in very good shape, and the prisons themselves to be relatively safe and secure. On the negative side, the delegation found that many of the prisons were seriously overcrowded and the controls on contact with the outside world were unnecessarily stringent.

Human rights groups had raised concerns during the year about two particularly vulnerable groups, Chinese dissidents who had fled to Hong Kong, and Vietnamese asylum-seekers who remained in detention camps in Hong Kong. All of the dissidents at risk who wished to leave Hong Kong were successfully resettled in third countries before the reversion. In the case of the Vietnamese, the determination of both the Hong Kong government and the United Nations High Commissioner for Refugees (UNHCR) to respond to Chinese pressure to get all of the boat-people home before July 1 led to a single-minded focus on repatriation efforts and an effort to "push" the Vietnamese out by making conditions in the camps increasingly intolerable.

Some 525 stateless ethnic Chinese formerly resident in Vietnam, whom the Vietnamese government refused to take back on the grounds that they were not Vietnamese citizens, remained in Hong Kong as of October. All either had fled Vietnam in the late 1970s during an anti-Chinese campaign-their family members had Taiwanese passports after 1949-or had fled to mainland China at various times and had been refused entry.

The Right to Monitor

No human rights organizations based in Hong Kong, domestic or international, reported significant hindrance of their activities, either before or after the handover. A policy institute linked to Paul Yip, a close adviser of Tung Chee-hwa, did conduct a survey of nongovernmental (NGOs) early in the year, however, asking for information on legal status and sources of funding. It was not clear how the results of the survey were going to be used.

In September, two NGOs, the Hong Kong Human Rights Monitor and Human Rights in China, were denied accreditation to the World Bank annual meeting in Hong Kong at China's request. China had argued that the organizations' work had no relevance to the meeting.

The Role of the International Community

So much concern was expressed internationally about the transition that there was little for the international community to say or do in the immediate aftermath of July 1. The U.S. government repeatedly criticized the rollback of civil liberties in strong terms and said it would not consider "legitimate" any laws passed by the provisional legislature. In March, the U.S. House of Representatives adopted the 1997 Hong Kong Reversion Act, augmenting the U.S.-Hong Kong Policy Act of 1992, spelling out additional benchmarks and reporting requirements to determine whether the S.A.R. is "sufficiently autonomous" to justify separate treatment by the U.S. As of October the Senate had not taken up the bill.

In June, leaders of eight major industrialized nations meeting in Denver, Colorado, included an appeal to China in their final communique, urging it to meet its commitments to protect Hong Kong's "fundamental freedoms and the rule of law."

In a final pre-handover report, the British government repeated its position that replacing the elected legislature was entirely unnecessary and reaffirmed the need for continued monitoring of the situation.

The transition was watched closely around the world. Most countries sent high-level officials to observe the ceremonies surrounding the July handover, but both U.S. Secretary of State Madeleine Albright and British Prime Minister Tony Blair refused to attend the swearing-in ceremony of the provisional legislature, in protest of the dissolution of the elected Legco.

Tung Chee-hwa visited the U.S. in September. President Clinton, following a brief meeting with Tung on September 12, expressed his "disappointment" at the decision to reverse Hong Kong's legislative electoral reforms. Earlier in the year, Clinton had also met with Martin Lee, head of the Democratic Party in Hong Kong. Many members of Congress and senior State Department officials who saw Tung remained unconvinced that the changes in the electoral laws were warranted or necessary.

Japan generally refrained from public criticism of the changes in civil liberties laws or the abolition of the elected legislature. It did state firmly that it would not tolerate a severe crackdown in Hong Kong along the lines of the Tiananmen Square killings of 1989, although such a crackdown was generally considered unlikely in the immediate future.

Relevant Human Rights Watch reports:

Hong Kong: Prison Conditions in 1997, 6/97

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