Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**614**
Land:	Kina
Kilde:	USDOS. US Department of State
Titel:	2020. Country Reports on Human Rights Practices: China (Hong Kong)
Udgivet:	30. marts 2021
Optaget på baggrundsmaterialet:	12. april 2021

Document #2048113
USDOS – US Department of State

2020 Country Report on Human Rights Practices: China (Hong Kong)

EXECUTIVE SUMMARY

ANNOUNCEMENT: The Department of State will release an addendum to this report in mid 2021 that expands the subsection on Women in Section 6 to include a broader range of issues related to reproductive rights.

Hong Kong is a Special Administrative Region of the People’s Republic of China. The 1984 Sino-British Joint Declaration and the Basic Law of the special administrative region specified that except in matters of defense and foreign affairs, Hong Kong would have a high degree of autonomy under the “one country, two systems” framework, but the Chinese Communist Party has systematically dismantled Hong Kong’s political freedoms and autonomy in violation of its international commitments. During the most recent elections, widely regarded by most nonpartisan local and international election observers as free and fair, in November 2019, pandemocratic candidates won control of 17 of 18 District Councils, although the government barred one opposition figure’s candidacy. The turnout, 71 percent of all registered voters, was a record for Hong Kong. In 2017 the 1,194-member Chief Executive Election Committee, dominated by proestablishment electors, selected Carrie Lam to be Hong Kong’s chief executive. In 2016 Hong Kong residents elected the 70 representatives who comprise Hong Kong’s Legislative Council. Voters directly elected 40 representatives, while limited-franchise constituencies elected the remaining 30. Legislative Council elections were scheduled to take place in September 2020, but Hong Kong authorities postponed them to September 2021, citing COVID-19 concerns. The National People’s Congress Standing Committee passed a resolution on November 11 disqualifying four standing pandemocratic Legislative Council members with immediate effect and no legal recourse. The 15 remaining pandemocratic members resigned in solidarity, leaving only two members not affiliated with the progovernment camp in the Legislative Council.

The Hong Kong Police Force maintains internal security and reports to the Security Bureau. The Security Bureau and police continue to report to the chief executive in theory, but to implement the National Security Law (see below) imposed by the National People’s Congress Standing Committee in Beijing on June 30, the Hong Kong government established an Office of Safeguarding National Security, a National Security Committee, and a National Security Branch of the Hong Kong police. Because these organs ultimately report to the Chinese central government, and mainland security personnel are reportedly embedded in some of these bodies, the ability of Hong Kong’s civilian authorities to maintain effective control over the security office was no longer clear. Security forces are suspected to have committed some abuses and, after the imposition of the National Security Law, have devoted increasing attention to political cases, including those involving nonviolent protesters, opposition politicians, and activists.

From June 2019 to January 2020, Hong Kong experienced protests, initially drawing more than one million participants, against proposed changes to Hong Kong’s extradition law with mainland China. Participation in the protests dwindled sharply early in the year and remained low due to the COVID-19 pandemic, police denial of demonstration permits, more aggressive police enforcement tactics, and concern about the National Security Law. China undermined Hong Kong’s autonomy through an escalating erosion of civil liberties and democratic institutions throughout the year. In June, with the support of the Hong Kong chief executive, the Chinese National People’s Congress unilaterally imposed the National Security Law on Hong Kong. The National Security Law created four categories of offenses–secession, subversion, terrorist activities, and collusion with a foreign country or external elements to endanger national security–and corresponding penalties. The law has extraterritorial reach. The Office for Safeguarding National Security, which does not fall under the Hong Kong government’s jurisdiction, allows mainland China security elements to operate openly and without accountability to Hong Kong authorities, in contradiction of the spirit and practice of the Sino-British Joint Declaration and the “one country, two systems” framework.

Significant human rights issues included: the establishment of national security organs with sweeping powers and negligible public oversight; allegations of police brutality against protesters and persons in custody; arbitrary arrests; politically motivated reprisals against individuals located outside of Hong Kong; serious restrictions on free expression, the press, and the internet; substantial interference with the rights of peaceful assembly and freedom of association; use of politically motivated arrests and prosecutions to impose restrictions on departing Hong Kong; the inability of citizens to change their government peacefully through free and fair elections; restrictions on political participation; and trafficking in persons.

The government took limited steps to prosecute and punish officials who committed human rights abuses, but refused widespread calls by a large segment of Hong Kong society and others to establish an independent commission to examine allegations of police brutality during the 2019 demonstrations.

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

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no credible reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

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

The law prohibits such practices, but there were several reports police physically abused or degraded detainees. In March, Amnesty International reported interviews with multiple alleged victims of police brutality. Police denied these allegations. Protests associated with the lead-up to the implementation of the National Security Law featured multiple clashes between police and protesters, some of which involved physical violence.

In the week of May 25, police arrested approximately 400 protesters, including some 100 minors. During their arrest and detention, officials made no effort to address health concerns created by the COVID-19 pandemic. In a September case demonstrating the more aggressive tactics adopted by police, police were recorded tackling a 12-year-old girl, who fled after police stopped her for questioning.

Prison and Detention Center Conditions

There were reports of prison or detention center conditions that raised human rights concerns.

Physical Conditions: According to activists, detained protesters were held at the Castle Peak Immigration Center under unacceptable hygienic conditions and subjected to verbal and mental abuse. In response to a 2019 police brutality allegation and after the September 2019 closure of the San Uk Ling Holding Center, in May the Hong Kong Police Force border commissioner convened a task force to investigate the accusations made by protesters.

Administration: The government investigated allegations of problematic conditions and documented the results in a publicly accessible manner. There was an external Office of the Ombudsman. Activists and legislators, however, urged the government to establish an independent prisoner complaint and monitoring mechanism for prisons and detention centers.

Independent Monitoring: The government generally permitted legislators and justices of the peace to conduct prison visits. Justices of the peace may make suggestions and comments on matters, such as physical conditions, overcrowding, staff improvement, training and recreational programs and activities, and other matters affecting the welfare of inmates.

The Independent Police Complaints Council is the police watchdog, responsible for investigating alleged corruption or abuses. In a November 19 ruling, a court of first instance (trial court) declared the complaints council incapable of effective investigation, as it lacked necessary investigative powers and was insufficient to fulfill the Special Administrative Region (SAR) government's obligations under the Basic Law to provide an independent mechanism to investigate complaints against police. The SAR government was appealing the ruling.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court. Several claims of arbitrary arrest were made in connection with the protests and alleged National Security Law (NSL) violations.

At the time of its passage, the Hong Kong SAR and the People's Republic of China (PRC) claimed the NSL was not retroactive.

On July 1, within hours of the NSL's passage, police detained individuals based on their attire, searched their belongings, and arrested them for violating the NSL if the items in their possession were deemed to be against the PRC or the local government.

On August 10, police arrested 16 more individuals, including Agnes Chow, one of the cofounders of the former opposition party Demosisto, although Chow and the other two cofounders, Nathan Law and Joshua Wong, disbanded Demosisto the day before the NSL became effective. Chow refrained from political activity after the law was passed. She and human rights activist concluded that her arrest meant that the national security forces were retroactively applying the NSL.

During a protest on October 1, Chinese National Day, police reportedly indiscriminately rounded up persons in a popular shopping district, despite having no evidence that those individuals participated in the protest.

The Hong Kong Police Force maintains internal security and reports to the SAR’s security bureau. The People’s Liberation Army is responsible for foreign defense. The immigration department of the security bureau controls passage of persons into and out of the SAR as well as the documentation of local residents. All Hong Kong security services, in theory, ultimately report to the chief executive, but following the implementation of the NSL imposed by Beijing, the SAR established an Office of Safeguarding National Security, a National Security Committee, and a National Security branch of the Hong Kong police. Because these organs ultimately report to the Chinese central government and mainland security personnel are present in some or all of these bodies, the ability of SAR civilian authorities to maintain effective control over the security force was no longer clear.

Multiple sources reported suspected members of the Chinese central government security services in the SAR monitoring political activists, nongovernmental organizations (NGOs), and academics who criticized the Chinese central government’s policies.

Although the Independent Police Complaints Council is supposed to be an independent investigatory body responsible for addressing accusations of police corruption or abuses, activists expressed concern that the chief executive appointed all council members and noted that its lack of power to conduct independent investigations limited its oversight capacity. There was wide public support for the establishment of a commission of inquiry into alleged police abuses in handling the protests. In May the council released its report on the police response to the 2019 protests and claimed that while there was room for improvement, and acknowledging some specific flaws in police operations, such as excessive and indiscriminate use of tear gas, there were no systematic abuses and the police force acted in accordance with the law. The report did not address any specific cases of alleged abuse; the council chose to address police actions “thematically” by looking at major incidents during the period of protest.

Arrest Procedures and Treatment of Detainees

Police generally apprehended suspects openly when they observed suspects committing a crime or with warrants based on sufficient evidence and issued by a duly authorized official. Police must promptly charge arrested suspects. The government respected this right and generally brought arrested persons before a judicial officer within 48 hours. Detainees were generally informed promptly of charges against them. There was a functioning bail system that allowed persons not charged to put up bail to be released from detention pending the filing of charges. Activists argued that the bail system left the arrested in purgatory–not officially charged but with a monthly check-in requirement and no defined period under the law within which the government is required to file charges. During routine check-ins, activists and protesters have been rearrested, often having new charges brought against them.

For example, in August 2019, Joshua Wong was arrested, charged with organizing an illegal assembly, and released on bail. Following his release, during a routine bail check-in held in September, Wong was rearrested and charged for a nearly one-year-old violation of the 2019 antimask emergency regulation. Wong was convicted of the initial charge of organizing an illegal assembly and sentenced to 13.5 months’ imprisonment on December 2.

Democracy activists were increasingly denied bail. In December during a routine bail check-in, media owner and democracy activist Jimmy Lai was arrested on fraud charges related to the use of office space and denied bail. Legal scholars noted bail denial is unusual in civil suits; Lai was subsequently charged on December 11 under the NSL. The NSL sets a higher standard for bail than do other laws, and in one case, activists alleged that this higher standard violated the presumption of innocence. The court, however, found that the defendant in that case would have been denied bail even under the pre-existing standards of Hong Kong law.

Authorities allowed detainees access to a lawyer of their choice, although the Hong Kong Bar Association reported that lawyers experienced obstruction at police stations and delays in seeing clients arrested during protests. Suspects were not detained incommunicado or held under house arrest. Interviews of suspects are required to be videotaped.

e. Denial of Fair Public Trial

Although the law generally provides for an independent judiciary, there were indications that this independence was being challenged. As it did for the police force, the Department of Justice set up a separate office that deals with NSL prosecutions. There were media reports that this office also managed certain prosecutions against opposition activists not charged under the NSL. Activists voiced concern that those charged under the NSL may be denied a fair and public trial, as the NSL allows extradition to the mainland for trial. Chinese Communist Party mouthpieces in Hong Kong put pressure on the judiciary to accept more “guidance” from the government and called for extradition to the mainland in at least one high-profile case; they also criticized sentences deemed too lenient. Arrests made by police and the prosecutions pursued by the Justice Department appeared to be increasingly politically motivated in nature.

Trial Procedures

The law provides for the right to a fair and public trial, and an independent judiciary largely enforced this right. Defendants have the right to be informed promptly and in detail of the charges against them and the right to a trial without undue delay.

Defendants are presumed innocent, except in official corruption cases: Under the law a sitting or former government official who maintains a standard of living above that commensurate with an official income or who controls monies or property disproportionate to an official income is considered guilty of an offense unless the official can satisfactorily explain the discrepancy. The courts upheld this ordinance. Trials are by jury except at the magistrate and district court level. An attorney is provided at public expense if defendants cannot afford counsel. Defendants have adequate time and facilities to prepare a defense. The government conducted court proceedings in either Cantonese or English, the SAR's two official languages. The government provided interpretation service to those not conversant in Cantonese or English during all criminal court proceedings. Defendants could confront and question witnesses testifying against them and present witnesses to testify on their own behalf. Defendants have the right not to be compelled to testify or confess guilt, the right to be present at their trial, and the right of appeal.

The SAR's courts are charged with interpreting those provisions of the Basic Law that address matters within the limits of the SAR's autonomy. SAR courts also interpret provisions of the Basic Law that relate to central government responsibilities or the relationship between the central authorities and the SAR. The Court of Final Appeal may seek an interpretation of relevant provisions from the PRC central government's Standing Committee of the National People's Congress (NPC). SAR courts must by law follow the standing committee's interpretations in cases involving central government jurisdiction, although judgments previously rendered are not affected. The standing committee has issued five interpretations of the Basic Law since 1997. The most recent, issued in 2016, requires lawmakers "to accurately, completely, and solemnly" swear an oath to uphold the Basic Law and recognize the Hong Kong SAR as a part of China before taking office. This ruling was the basis, in 2017, for disqualifying six opposition figures from taking their Legislative Council seats.

Under the NSL the chief executive provides a list of judges eligible to hear NSL cases. The NPC Standing Committee determines how the NSL is interpreted, not a SAR-based judiciary or elected body. The standing committee has the power in certain cases to extradite the accused to the mainland and hold trials behind closed doors. As of November, no cases have come to trial to validate or negate apprehensions about the NSL trial mechanisms.

Political Prisoners and Detainees

Activists claimed the SAR increasingly used legal tools, such as denial of bail and pursuing minor charges, to detain prodemocracy figures. In one such case, the courts denied Jimmy Lai bail for fraud charges, which is a civil offense. While in custody, security forces charged Lai with "foreign collusion" under the NSL, a provision that is not well defined.

Politically Motivated Reprisal against Individuals Located Outside the Country

The NSL is not restricted to the SAR or its residents, but instead claims jurisdiction over any individual, regardless of location, deemed to be engaged in one of the four criminal activities under the NSL: secession, subversion, terrorist activities, or collusion with a foreign country or external elements to endanger national security. In August the national security forces purportedly issued arrest warrants for six individuals, all residing abroad, and one of whom had foreign citizenship and had resided outside the SAR and mainland China for more than 20 years. Although reported in state-controlled media, the government refused to acknowledge the existence of the warrants.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary for civil matters and access to a court to bring lawsuits seeking damages for human rights violations by SAR agencies or persons, with the possible exception of employees of the National Security division, as well as Central Government Liaison Office, depending on interpretations of the law.

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

The law prohibits such actions, but there were reports the SAR government failed to respect these prohibitions, including credible reports that Chinese central government security services and the Beijing-mandated Office for Safeguarding National Security monitored prodemocracy and human rights activists and journalists in the SAR. In October the national security police force arrested Tony Chung near a foreign diplomatic office and charged him with violating the NSL. Media reports claimed Chung intended to request asylum but was arrested before making his request. In a June statement to the *South China Morning Post*, SAR security chief John Lee stated that PRC security services would operate in Hong Kong "as needed." There were also reports central government security services detained, questioned, and intimidated Hong Kong-based activists visiting the mainland. Hong Kong authorities also reportedly froze bank accounts for former lawmakers, civil society groups, and other political targets. Media reports indicated that thousands of persons, primarily police officers, protesters, and protest movement leaders, had their personal information publicly revealed online.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, but the government regularly encroached upon this right. Although an independent press, an impartial judiciary, and unfettered internet combined to permit freedom of expression, including for the press, on most matters, human rights advocates claimed that those rights were increasingly jeopardized or already being eroded. Some SAR and Chinese central government actions restricted or sought to restrict the right to express or report on dissenting political views, particularly support for Hong Kong independence or self-determination.

Freedom of Speech: There were legal restrictions on the ability of individuals to criticize the government publicly without reprisal. In July some of the initial NSL arrests included individuals carrying stickers and signs with slogans critical of the government. In September the government charged an activist for chanting antigovernment slogans under a colonial-era sedition statute that had not been used since the SAR’s handover to Chinese sovereignty in 1997. Hong Kong activists and legal scholars raised concerns that the sedition statute is incompatible with the freedoms listed in Hong Kong’s Bill of Rights.

Requirements for electoral candidacy and for taking the oath of office also limited free speech in the political arena. For example, since 2016 the Electoral Affairs Commission requires all Legislative Council candidates, in order to run for office, to sign a pledge stating the SAR is an “inalienable part” of China. In July the commission disqualified several candidates for speech made before passage of the NSL. In November the NPC Standing Committee in Beijing issued a decision that any public or elected officials found to be engaged in “unpatriotic” behavior, including speech, would immediately be disqualified for the positions they held. The decision was applied to four sitting Legislative Council members earlier disqualified for running for re-election. The SAR government subsequently announced the four members were immediately disqualified for the remainder of the Legislative Council session. There was no judicial recourse.

In November the government announced plans to require all civil servants to swear oaths of loyalty to the SAR government and the Basic Law. Government officials began to conduct the oaths in December. According to media reports, civil servants may lose their jobs if they refuse to swear the oath and may face criminal charges, including under the NSL, if they later engage in behavior, including speech, deemed to violate the oaths. Hong Kong authorities and Beijing officials insinuated that interactions with foreign diplomats could be considered “collusion” under the NSL.

Any speech critical of the central or local government or its policies may be construed as prosecession, subversive, or inciting hate against the government. On November 8, when a crowd of protesters chanted protest slogans as they gathered to mark the one-year anniversary of the death of student Chow Tsz-lok, whose cause of death remained unknown but occurred in the proximity of protests, police warned protesters that their actions could violate both the NSL and COVID-19 restrictions.

Freedom of Press and Media, Including Online Media: Independent media were active and expressed a wide variety of views, although they were increasingly constrained. In August, Hong Kong immigration authorities denied a visa to Hong Kong-based Irish journalist Aaron McNicholas, the newly selected editor of the *Hong Kong Free Press* news website. In September, SAR police told media organizations that journalists would henceforth have to be credentialed by and registered with police to cover public events, such as demonstrations or conferences. Police claimed this was required to deter “fake” reporters at protests, while media advocates stated that the SAR’s real objective was to control access to information. The Foreign Correspondents’ Club stated that the change disregards the vetting and membership processes of Hong Kong’s independent journalist associations.

SAR police in November arrested a producer of a documentary on a violent incident in 2019, when rod-wielding men attacked protesters at the Yuen Long subway station. Activists and protesters claimed that police were deliberately slow to respond to the incident; many accused police of colluding with the mob. Police arrested the producer for violating a traffic ordinance by using license plate information from a publicly available government website to identify owners of vehicles, including police, near the subway station. Media outlets reported that for years many journalists routinely used the website to inform their reporting. While the law exists, authorities did not enforce it until after reportedly changing the website to remove the option of stating such research was for journalistic purposes.

Violence and Harassment: On August 10, Jimmy Lai, owner of the independent newspaper *Apple Daily*, as well as his two sons and four senior executives, were arrested on suspicion of fraud. All were subsequently released on bail. That same day, police raided the *Apple Daily* offices, permitting only progovernment journalists to cover their search. A court later found the search and seizure of reporting material illegal and required it be returned. In 2019 the personal information of 132 members of *Apple Daily’s* staff was published online anonymously; the newspaper reported that its investigation traced the leak to PRC national security agencies. Several journalists from other outlets alleged that police detained, assaulted, or harassed them, a claim supported by the NGO Committee to Protect Journalists.

Censorship or Content Restrictions: Reports of media self-censorship and suspected content control continued. Some media outlets, bookstores, and publishers were owned by companies with business interests on the mainland or by companies directly controlled by the Chinese central government, a situation that led to claims they were vulnerable to self-censorship. In August staff at i-Cable Communications Limited, a television and internet broadcaster, protested management’s decision to replace several executives and the news director with persons perceived as more progovernment. Former i-Cable staff reported that the coverage and editing of stories were increasingly designed to reduce the presence of pro-opposition themes and personalities. In May the public broadcasting service Radio

Television Hong Kong suspended a satirical television program after the Communications Authority issued it a warning for "denigration of and insult to police," reportedly after pressure from the police commissioner. In September, Radio Television Hong Kong extended the employment probation of a reporter following complaints from progovernment groups about her tough questioning of SAR officials. In December there were media reports that a Hong Kong bookstore chain refused to stock a book on Hong Kong history because of concerns about the NSL.

Internet Freedom

The SAR government did not restrict or disrupt access to the internet or censor online content, although activists claimed central government authorities monitored their email and internet use. Messages posted on Facebook, Telegram, and LIHKG (a local website) led to arrests under the NSL, causing concern and self-censorship. In December police cited *Apple Daily* owner Jimmy Lai's use of Facebook and Twitter as circumstantial evidence in the decision to charge Lai with collusion under the NSL. NGOs and some media outlets reported focusing on digital security to protect their privacy, partners, and sources.

When handling issues related to national security violations, the national security divisions of the police force may require a person who published information or the relevant service provider to remove the content or assist the national security divisions. Facebook, WhatsApp, Google, and Twitter reported denying the SAR government access to individuals' data.

Academic Freedom and Cultural Events

There were some restrictions on academic freedom and cultural events.

Universities allowed contracts to lapse or fired prodemocracy professors. In July the University of Hong Kong fired Benny Tai, a tenured law professor and prodemocracy activist. The decision was made by a board appointed by the chief executive.

Academics and prodemocracy advocates reported NSL-related changes to secondary education texts. In August some textbook publishers agreed to a government-initiated voluntary review of liberal arts textbooks and subsequently, removed the phrase "separation of powers," images related to Hong Kong's protests, and some criticism of the Chinese political system, according to media reports.

SAR officials encouraged teachers to avoid voicing political opinions in academic settings. In October officials revoked the registration of a primary school teacher who allegedly used materials related to Hong Kong independence in a classroom discussion of freedom of speech, effectively banning the teacher from working in Hong Kong's education sector for the rest of his life. In November officials revoked the registration of a second teacher for alleged factual misrepresentation in a history lesson. In July officials announced they had begun nearly 200 investigations of teachers for participation in the 2019 protest movement.

COVID-19 precautions limited cultural events. In September a museum dedicated to memorializing the 1989 Tiananmen Square massacre opened in a new, permanent location after several years of temporary locations and difficulties maintaining a lease due to alleged landlord pressure.

b. Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association. The government, however, restricted public gatherings, claiming COVID-19 concerns.

Freedom of Peaceful Assembly

While the law provides for freedom of peaceful assembly, the government cited COVID-19 restrictions to ban peaceful assembly, although civil rights organizations stated the denial was based more on political than public-health considerations. Before 2019 police routinely issued the required "letter of no objection" for public meetings and demonstrations, including those critical of the SAR and central government. After violence occurred during some of the 2019 protests, police issued letters of objection against several gatherings, including large protest marches.

In April police arrested 15 high-profile prodemocracy leaders, including former chairs of the Democratic and Labor parties, for "organizing and participating in unlawful assembly" in 2019.

Because of the strict limits on any public gathering due to health restrictions, police have not issued any "letters of no objection" for public demonstrations since the start of the COVID-19 pandemic. For the first time since 1990, police denied a permit for a June 4 Tiananmen Square vigil, citing social distancing concerns. Police also refused to allow the Chinese National Day prodemocracy protest in October, although official gatherings did take place. Protesters marched in defiance of the ban, flanked by a heavy police presence; there were dozens of arrests.

Freedom of Association

SAR law provides for freedom of association, but the government did not always respect it if the group was deemed a national security concern. Several proindependence political parties and activist groups disbanded in June after the NSL was announced, due to fear their freedom of association would no longer be respected.

Under the law any person claiming to be an officer of a banned group may be sentenced to a maximum of three years in prison and fined. Those convicted of providing meeting space or other aid to a banned group may also be sentenced to fines and jail time.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at https://www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, but the government sometimes confiscated travel documents and enforced travel bans for democracy activists and opposition politicians facing charges. Activists reported that the Hong Kong Police Force monitored a group of 12 activists seeking to travel from Hong Kong to Taiwan by speedboat and shared information on the group with mainland Chinese authorities, leading to their detention by the Chinese Coast Guard. Since the group's detention, Shenzhen authorities have prevented the activists from hiring lawyers of their choice and from communicating with their family members, contrary to PRC regulations regarding the treatment of detainees. The youngest of the group are minors. COVID-19 health precautions also limited immediate foreign travel, emigration, and repatriation.

In January immigration officials denied entry to Human Rights Watch executive director Kenneth Roth, stating the department did not comment on individual cases, but that it would "fully consider all relevant factors and circumstances of a case before deciding whether the entry should be allowed or not." Chinese central government authorities "sanctioned" democracy-focused NGO employees and others for their advocacy and work in Hong Kong, blocking them from traveling to Hong Kong. Neither the Hong Kong government nor central government would provide information on what the 'sanctions' entail.

Foreign Travel: Most residents easily obtained travel documents from the SAR government. Hong Kong authorities blocked some human rights activists, student protesters, and prodemocracy legislators from visiting the mainland.

e. Internally Displaced Persons

Not applicable.

f. Protection of Refugees

The government cooperated with the Office of the United Nations High Commissioner for Refugees (UNHCR) and humanitarian organizations in providing protection and assistance to refugees, asylum seekers, stateless persons, or other persons of concern.

Abuse of Migrants, Refugees, and Stateless Persons: Activists indicated that persons seeking refugee status faced discrimination and were the frequent target of negative commentary by some political parties and media organizations.

Access to Asylum: The law does not provide for granting asylum or refugee status, but the SAR government has established a system for providing limited protection to persons who would be subject to torture or other abuses in their home country.

The SAR government uses the term "nonrefoulement claim" to refer to a claim for protection against deportation. Persons subject to deportation could file a nonrefoulement claim if they either arrived in the SAR without proper authorization or had overstayed the terms of their admittance. Filing such a claim typically resulted in a period of detention followed by release on recognizance. Activists and refugee rights groups expressed concerns about the quality of adjudications and the very low rate of approved claims, fewer than 1 percent. Denied claimants may appeal to the Torture Claims Appeal Board. The government did not publish the board's decisions, a practice that the Hong Kong Bar Association previously noted created concerns about the consistency and transparency of decisions. Persons whose claims were pending were required to appear periodically before the Immigration Department.

Employment: "Nonrefoulement claimants" have no right to work in the SAR while their claims are under review, and they must rely on social welfare stipends and charities. An NGO reported the government's process for evaluating claims, which did not allow claimants to work legally in the SAR, made some refugees vulnerable to trafficking. The SAR government, however, frequently granted exceptions to this rule for persons granted nondeportation status and awaiting UNHCR resettlement.

Access to Basic Services: Persons who made "nonrefoulement" claims were eligible to receive publicly funded legal assistance, including translation services, as well as small living subsidies. The children of such claimants could attend SAR public schools.

Temporary Protection: Persons whose claims for "nonrefoulement" are substantiated do not obtain permanent resident status in the SAR. Instead the SAR government refers them to UNHCR for possible recognition as refugees and resettlement in a third country. In some cases, individuals waited years in the SAR before being resettled.

Section 3. Freedom to Participate in the Political Process

The Basic Law limits the ability of residents to change their government. Hong Kong voters do not enjoy universal

suffrage in elections for the chief executive or equal suffrage in Legislative Council elections.

The chief executive is elected by an election committee of approximately 1,200 members (1,194 members in 2017). The election committee consists of the 70 members of the Legislative Council and a mix of professional, business, and trade elites.

Voters directly elect 40 of the Legislative Council’s 70 seats by secret ballot. Of the seats, 35 are designated as “geographic constituencies” and 35 as “functional constituencies” (FCs). All 35 geographic constituencies are directly elected by all voters in a geographic area. Thirty FC seats are selected by a set of voters representing various economic and social sectors, most of whom are probusiness and generally support the Chinese central government policies. In 2016 the constituencies that elected these 30 FC Legislative Council seats consisted of 239,724 registered individual and institutional voters, of whom approximately 172,820 voted, according to statistics published by the SAR’s Election Affairs Office. The remaining five FC seats must be filled by district councilors (the so-called district council sector, known as “super seats,”) directly elected by the approximately five million registered voters not represented in another FC, and therefore representing larger constituencies than any other seats in the Legislative Council. In July citing COVID-19 concerns, Chief Executive Carrie Lam postponed the September 6 Legislative Council election for a year, despite significantly fewer per capita cases of COVID-19 than in other countries and cities that have allowed their elections to proceed.

Under the Basic Law, only the SAR government, not members of the legislature, may introduce bills that affect public expenditure, the political structure, or government policy.

The SAR sends 36 deputies to the NPC and had approximately 200 delegates in the Chinese People’s Political Consultative Conference–bodies that operate under the direction of the Chinese Communist Party and do not exercise legislative independence. The approval of the chief executive, two-thirds of the Legislative Council, and two-thirds of the SAR’s delegates to the NPC are required to place an amendment to the Basic Law on the agenda of the NPC, which has the sole power to amend the Basic Law.

Elections and Political Participation

Recent Elections: An unofficial pandemocratic primary was held in early July, in which more than 500,000 voters participated, to consolidate the pandemocratic vote and candidates ahead of the Legislative Council election scheduled for September, but since delayed to September 2021. Several pandemocratic candidates selected in the primary were later disqualified by the Electoral Affairs Commission. On July 31, the SAR chief executive postponed the election for a year, citing COVID-19 concerns. Human rights and democracy advocates maintained the SAR government’s actual motive was to avoid a proestablishment defeat.

In November 2019, registered voters elected district councilors in the SAR’s 18 districts. These elections are open to all voters on a one-person, one-vote basis. Turnout for the poll was a record 71 percent of registered voters. The election was considered generally peaceful, free, and fair, although the Hong Kong government barred one prodemocracy advocate, Joshua Wong, from running. Proestablishment candidates reported that attacks on party offices and candidates also negatively affected campaign activities. Voters broadly endorsed prodemocracy and other nonestablishment candidates, who took control of 17 of the 18 councils and won 388 of the 452 contested seats (out of 479 total).

In 2017 the 1,194-member Chief Executive Election Committee, dominated by proestablishment electors, selected Carrie Lam to be the SAR’s chief executive. Residents expressed concern that the elections for the great majority of committee seats were open only to 239,724 of the SAR’s 7.5 million residents. Moreover, although the vote for the election committee (in 2016) saw a historically high voter turnout of 46 percent and a record number of contested seats across industrial, professional, grassroots, and political sectors, local political observers noted that 300 members–approximately 25 percent of the committee–were elected without a poll or other transparent election process to represent 12 uncontested subsectors and one sub-subsector.

Political Parties and Political Participation: In 2018 the SAR government banned the proindependence Hong Kong National Party. This was the first ban of a political party since the establishment of the SAR.

All Legislative Council candidates must sign a confirmation form pledging their allegiance to the SAR and intent to uphold the Basic Law, including provisions stating that Hong Kong is an inalienable part of China. Since that requirement was instituted, the government barred several potential candidates from running for office.

The NSL made illegal actions that “incite hatred” against the PRC or SAR governments and “collusion” with foreign governments–terms that have yet to be clearly defined. In July the SAR disqualified at least 12 politicians and activists from running in the Legislative Council election originally scheduled for September. Four of those disqualified were sitting members of the council. The returning officer, a civil servant assigned to oversee elections, stated the provision about “collusion with foreign governments” applied to the July Legislative Council election disqualifications because the members had met with foreign leaders to discuss Hong Kong’s human rights situation. Civic Party members described the disqualification as a near ban of their party. When the Legislative Council elections were subsequently delayed by a year, all sitting legislators, despite the disqualifications, were initially permitted to retain their seats. In November the NPC Standing Committee passed a “patriotism” resolution and immediately disqualified four sitting lawmakers, including the three from the Civic Party, who had been banned from running in the postponed elections. The 15 remaining pandemocratic lawmakers resigned, arguing that the legislature no longer had legitimacy.

In November police arrested eight opposition politicians, including five then sitting lawmakers, for contempt of and interference with a May 8 Legislative Council meeting, a move widely criticized by opposition voices as politically motivated.

Participation of Women and Members of Minority Groups: No law limits participation of women in the political process, and they did participate. In September there were nine female legislative council members. After the expulsion or exodus of pandemocratic legislators, only six (all proestablishment) women legislators remained. In 2017 Carrie Lam was selected to be the SAR's first female chief executive.

There is no legal restriction against ethnic minorities running for electoral office, serving as electoral monitors, or participating in the civil service. There were, however, no members of ethnic minorities in the Legislative Council, and members of ethnic minorities reported they considered themselves unrepresented.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented the law effectively. Although the SAR continued to be relatively law-abiding, there were isolated reports of government corruption.

Financial Disclosure: The SAR requires the most senior civil service and elected officials to declare their financial investments annually and senior working-level officials to do so biennially. Policy bureaus may impose additional reporting requirements for positions seen as having a greater risk of conflict of interest. The Civil Service Bureau monitors and verifies disclosures, which are available to the public. There are criminal and administrative sanctions for noncompliance.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

Until midyear a variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. The promulgation of the NSL caused organizations to self-censor, with some leaving Hong Kong and others slowly resuming operations. SAR officials were somewhat cooperative and responsive to their views, but PRC officials began to voice their own responses to organizations reporting on the SAR. Some prominent human rights activists and organizations critical of the central government also operated in the SAR.

Government Human Rights Bodies: There is an Office of the Ombudsman and an Equal Opportunities Commission. The government recruits commissioners to represent both offices through a professional search committee, which solicits applications and vets candidates. Commissioners were independent. Both organizations operated without interference from the SAR government and published critical findings in their areas of responsibility. NGOs pointed out that the commission had limited ability to conduct investigations and that its mandate was too narrow.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape against women, including spousal rape. The Hong Kong Federation of Women Centers stated that in the first quarter of the year, the number of survivors seeking support was more than double the number who sought help in the first quarter of 2019, most likely due to the COVID-19 pandemic and related lockdown measures lowering the visibility of potential victims and increasing their stress. Activists expressed concern that rape was underreported, especially within ethnic minority communities.

The law does not directly criminalize domestic violence, but the government regarded domestic violence against women as a serious concern. Abusers may be liable for criminal charges under offenses against the person, sexual assault, and child mistreatment laws, depending on which act constituted the domestic violence. The government effectively prosecuted violators under existing criminal violations.

The law allows survivors to seek a three-month injunction, extendable to six months, against an abuser. The ordinance covers abuse between spouses, heterosexual and homosexual cohabitants, former spouses or cohabitants, and immediate and extended family members. It protects victims younger than 18, allowing them to apply for an injunction in their own right, with the assistance of an adult guardian, against abuse by parents, siblings, and specified immediate and extended family members. The law also empowers courts to require that an abuser attend an antiviolence program. In cases in which the abuser caused bodily harm, the court may attach an arrest warrant to an existing injunction and extend the validity of both injunctions and arrest warrants to two years.

The government maintained programs that provided intervention, counseling, and assistance to domestic violence victims and abusers.

Sexual Harassment: The law prohibits sexual harassment or discrimination based on sex, marital status, and pregnancy. The law applies to both men and women, and police generally enforced the law effectively. There were multiple reports, however, of sexual harassment in housing, the workplace, and in universities.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

Discrimination: Women enjoy the same legal status and rights as men. The SAR's sexual discrimination ordinance prohibits discrimination based on sex or pregnancy status, and the law authorizes the Equal Opportunities Commission to work towards the elimination of discrimination and harassment as well as to promote equal opportunity for men and women. Although the government generally enforced these laws, women reportedly faced some discrimination in employment, salary, welfare, inheritance, and promotion.

Children

Birth Registration: All Chinese nationals born in the SAR, on the mainland, or abroad to parents, of whom at least one is a Chinese national and Hong Kong permanent resident, acquire both Chinese citizenship and Hong Kong permanent residence. Children born in the SAR to non-Chinese parents, at least one of whom is a Hong Kong permanent resident, acquire SAR permanent residence and qualify to apply for naturalization as Chinese citizens. Authorities routinely registered all such statuses.

Child Abuse: The law mandates protection for victims of child abuse (battery, assault, neglect, abandonment, and sexual exploitation), and the SAR government enforced the law. The law allows for the prosecution of certain sexual offenses, including against minors, committed outside the territory of the SAR.

The government provided parent education programs through its maternal and child-health centers, public education programs, clinical psychologists, and social workers. Police maintained a child abuse investigation unit and, in collaboration with the Social Welfare Department, operated a child witness support program.

Child, Early, and Forced Marriage: The legal minimum age of marriage is 16 for both girls and boys; however, parents' written consent is required for marriage before age 21.

Sexual Exploitation of Children: The age of consent is effectively 16. Under the law a person having "unlawful sexual intercourse" with a person younger than 16 is subject to five years' imprisonment, while unlawful sexual intercourse with a victim younger than 13 carries a sentence of life imprisonment. The law prohibits the commercial sexual exploitation of children and procuring children for prostitution. The law makes it an offense to possess, produce, copy, import, or export pornography involving a child or to publish or cause to be published any advertisement that conveys, or is likely to be understood as conveying, the message that a person has published, publishes, or intends to publish any child pornography. Authorities enforced the law. The penalty for creation, publication, or advertisement of child pornography is eight years' imprisonment, while possession carries a penalty of five years' imprisonment.

International Child Abductions: The SAR is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html.

Anti-Semitism

The Jewish community numbered approximately 2,500 persons. There were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at https://www.state.gov/trafficking-in-persons-report/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities, and the government generally enforced these provisions. The government took action to investigate and punish those responsible for violence or abuses against persons with disabilities. The government generally implemented laws and programs to provide persons with disabilities access to education, employment, the judicial system, and health services. The law on disabilities states that children with separate educational needs must have equal opportunity in accessing education. Some human rights groups reported the SAR's disability law was too limited and that its implementation did not promote equal opportunities. The Social Welfare Department provided training and vocational rehabilitation services to assist persons with disabilities, offered subsidized resident-care services for persons deemed unable to live independently, offered preschool services to children with disabilities, and provided community support services for persons with mental disabilities, their families, and other local residents.

The government generally implemented laws and programs to provide persons with disabilities access to information, communications, and buildings, although there were reports of some restrictions. The law calls for improved building access and provides for sanctions against those who discriminate.

Members of National/Racial/Ethnic Minority Groups

Although ethnic Chinese account for most of the population, the SAR is a multiethnic society, with persons from a number of ethnic groups recognized as permanent residents with full rights under the law. The law prohibits discrimination, and the Equal Opportunities Commission oversees implementation and enforcement of the law. The

commission maintained a hotline for inquiries and complaints concerning racial discrimination. Although the SAR government took steps to reduce discrimination, there were frequent reports of discrimination against ethnic minorities; the law does not clearly cover racial discrimination occurring during law enforcement activity.

Advocates stated there were indications of racism in COVID-19 testing and quarantine measures. Returning South and Southeast Asian SAR minority residents complained of poor quarantine facilities, wait times, and diet, and accused the SAR of discrimination.

Persons born in mainland China also experienced frequent discrimination. Nonpermanent residents did not receive SAR cash subsidies to help with the COVID-19-related economic downturn until eight months after the pandemic began in the SAR.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity

No laws criminalize consensual same-sex sexual conduct between adults. While the SAR has laws that ban discrimination on the grounds of race, sex, disability, and family status, no law prohibits companies or individuals from discriminating on grounds of sexual orientation or gender identity. There are also no laws that specifically aid in the prosecution of bias-motivated crimes against members of the lesbian, gay, bisexual, transgender, or intersex community. In March the high court ruled in favor of a gay man who sued the government for disqualifying his and his same-sex partner’s public housing application.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers to form and join independent unions without previous authorization or excessive requirements and to conduct legal strikes, but it does not protect the right to collective bargaining or obligate employers to bargain. Trade unions claimed the lack of collective bargaining rights and divisions in the labor movement weakened workers’ leverage in negotiations. The law explicitly prohibits civil servants from bargaining collectively.

The law prohibits firing an employee for striking and voids any section of an employment contract that punishes a worker for striking. The commissioner of police has broad authority to control and direct public gatherings, including strikes, in the interest of national security or public safety.

By law an employer may not fire, penalize, or discriminate against an employee who exercises his or her union rights and may not prevent or deter the employee from exercising such rights. Penalties for violations of laws protecting union and related worker rights include fines as well as legal damages paid to workers. Penalties were commensurate with those under other laws involving the denial of civil rights. The law was not effectively enforced due to the increasingly politicized environment. Dismissed employees had difficulty proving antiunion discrimination. In January more than 3,000 members of a health-care trade union held a strike to pressure the SAR to close the border with mainland China to prevent further spread of COVID-19. After the strike concluded, the SAR sent letters to medical workers demanding that they account for absences during the strike period to determine whether the salaries earned were commensurate to the work provided. The union stated that those letters constituted veiled threats not only to identify the members who participated but also to financially penalize them.

On November 2, SAR police denied the petition submitted by the Cathay Pacific airline union to protest the airline’s firing of thousands of workers and then offering the remaining workers unfair contracts. The denial cited COVID-19 health precautions and noted that the 2019 protests disrupted the airport’s operations. Labor unions and prodemocratic lawmakers stated that proposed protest site was located away from the airport and the denial was a clear indication that COVID-19 precautions were used to silence opposition opinions further.

b. Prohibition of Forced or Compulsory Labor

The law does not prohibit all forms of forced or compulsory labor, nor do laws specifically criminalize forced labor. Instead, the SAR uses its Employment and Theft Ordinances to prosecute labor violations and related offenses. Because labor violations are typically civil offenses with monetary fines, penalties for these offenses were not commensurate with those for analogous serious crimes, such as kidnapping, which violate the crimes ordinance and carry prison terms.

NGOs expressed concerns that some migrant workers, especially domestic workers in private homes, faced high levels of indebtedness assumed as part of the recruitment process, creating a risk they could fall victim to debt bondage. Domestic workers in Hong Kong were mostly women and mainly came from the Philippines, Indonesia, and other Southeast Asian countries. The SAR allows for the collection of maximum placement fees of 10 percent of the first month’s wages, but some recruitment firms required large up-front fees in the country of origin that workers struggled to repay. Some locally licensed employment agencies were suspected of colluding with agencies overseas to profit from debt schemes, and some local agencies illegally confiscated the passports and employment contracts of domestic workers and withheld them until they repaid the debt. In August officials concluded a year-long investigation, arresting and jailing three SAR residents for participating in a predatory loan syndicate involving local Philippine employment agencies.

SAR authorities stated they encouraged aggrieved workers to file complaints and make use of government

conciliation services and that they actively pursued reports of any labor violations.

See also the Department of State's *Trafficking in Persons Report* at https://www.state.gov/trafficking-in-persons-report/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the worst forms of child labor. Regulations prohibit employment of children younger than 15 in any industrial establishment. Children younger than 13 are prohibited from taking up employment in all economic sectors. Children who are 13 or older may be employed in nonindustrial establishments, subject to certain requirements, such as parental written consent and proof the child has completed the required schooling.

The Labor Department effectively enforced these laws and regularly inspected workplaces to enforce compliance with the regulations. Penalties for child labor law violations include fines and legal damages and were not commensurate with those for analogous serious crimes, such as kidnapping, that violate the crimes ordinance and carry prison terms.

d. Discrimination with Respect to Employment and Occupation

The law and regulations prohibit employment discrimination based on race or ethnicity, disability, family status (marital status or pregnancy), or sex. The law stipulates employers must prove that proficiency in a particular language is a justifiable job requirement if they reject a candidate on those grounds. Regulations do not prohibit employment discrimination on the grounds of color, religion, political opinion, national origin or citizenship, sexual orientation or gender identity, HIV or other communicable disease status, or social status.

The government generally enforced these laws and regulations. In cases in which employment discrimination occurred, the SAR's courts had broad powers to levy penalties on those violating these laws and regulations.

Human rights activists and local scholars continued to raise concerns about job prospects for minority students, who were more likely to hold low-paying, low-skilled jobs and earn below-average wages. Experts assessed that a lack of Chinese-language skills was the greatest barrier to employment.

e. Acceptable Conditions of Work

The statutory minimum wage was below the poverty line for an average-sized household. There were many press reports regarding poor conditions faced by and underpayment of wages to domestic workers. The Labor Tribunal adjudicated disputes involving nonpayment or underpayment of wages and wrongful dismissal.

The law does not regulate working hours, paid weekly rest, rest breaks, or compulsory overtime for most employees. Several labor groups reported that employers expected extremely long hours and called for legislation to address that concern.

Workplace health and safety laws allow workers to remove themselves from situations that endanger health or safety without jeopardy to their employment. Employers are required to report any injuries sustained by their employees in work-related accidents.

The number of inspectors was sufficient to enforce compliance. The government effectively enforced the law, and the number of labor inspectors was sufficient to deter violations except in the cases of nonpayment or underpayment of wages to, and working conditions of, domestic workers. Penalties for violations of the minimum wage or occupational safety and health violations include fines, damages, and worker's compensation payments. These penalties were commensurate with those for similar crimes.

The Occupational Safety and Health Branch of the Labor Department is responsible for safety and health promotion, identification of unsafe conditions, enforcement of safety management legislation, and policy formulation and implementation. Inspectors have the authority to make unannounced inspections and initiate investigations and prosecutions. For the first six months of the year, the Labor Department reported 3,278 cases of occupational accidents, including nine fatalities, with 1,102 accidents in the construction sector and 1,508 in the food and beverage services sector. The department reported 12,502 cases of occupational injuries, including 113 deaths.

https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/china/hong-kong/

Document type:
Periodical Report

Language:
English

Published:
30 March 2021

Document ID:
2048113

Austrian Red Cross
Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD)

Wiedner Hauptstraße 32, 1041 Wien
T (Telefon) +43 1 589 00 583
F (Fax) +43 1 589 00 589
info@ecoi.net

Contact
Imprint & Disclaimer
F.A.Q.
Data Protection Notice

ecoi.net is run by the Austrian Red Cross (department ACCORD) in cooperation with Informationsverbund Asyl & Migration. ecoi.net is funded by the Asylum, Migration and Integration Fund, the Austrian Ministry of the Interior and Caritas Austria. ecoi.net is supported by ECRE & UNHCR.