

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	487
Land:	Kina
Kilde:	US Department of State
Titel:	Country Report on Human Rights Practices 2017 – Hong Kong
Udgivet:	20. april 2018
Optaget på baggrundsmaterialet:	31. august 2018

USDOS – US Department of State

COUNTRY REPORT ON HUMAN RIGHTS PRACTICES 2017 - CHINA (HONG KONG)

EXECUTIVE SUMMARY

Hong Kong is a special administrative region (SAR) of the People's Republic of China (PRC). The 1984 Sino-British Joint Declaration on the Question of Hong Kong and the SAR's charter, the Basic Law of the SAR (also known as the Basic Law), specify that the SAR enjoys a high degree of autonomy under the "one country, two systems" framework except in matters of defense and foreign affairs. In March the 1,194-member Chief Executive Election Committee, dominated by proestablishment electors, selected Carrie Lam to be the SAR's chief executive. In September 2016 Hong Kong residents elected the 70 representatives who comprise the SAR's Legislative Council (LegCo). Voters directly elected 40 representatives, while limited-franchise constituencies that generally supported the government in Beijing elected the remaining 30.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included: the central PRC government's encroachment on the SAR's autonomy, and government actions that had a chilling effect on political protest and the exercise of free speech (e.g., prosecutions against protesters, lawsuits to disqualify opposition lawmakers, and statements by central and SAR government officials); and trafficking in persons.

The government took steps to prosecute and punish officials who committed abuses.

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 reports the government or its agents committed arbitrary or unlawful killings.

B. DISAPPEARANCE

On January 27, individuals suspected of being central Chinese government security service officers escorted businessman Xiao Jianhua, one of the country's richest persons, out of a hotel in the SAR and then transported him to the mainland, according to media reports. Xiao's family reported him missing on January 28 but withdrew the report the next day. Xiao's company published a front-page advertisement in a local newspaper stating he had not been abducted but rather was "recuperating abroad." As of June central government authorities had not

responded to the SAR government's request for information about the case, according to the *South China Morning Post*. Xiao's abduction renewed fears that mainland security services did not respect the SAR's high degree of autonomy specified under the "one country, two systems" framework.

C. TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

The law prohibits such practices, but there were isolated reports of degrading treatment in prisons. There were also some reports police used excessive force.

There were no reports of death in custody due to excessive police force.

In February a court sentenced seven police officers to two years in prison for assaulting Ken Tsang, a prodemocracy activist, in 2014. The officers were suspended from duty. All were later released on bail, pending their appeals. Video footage taken during 2014 protests showed plainclothes police officers abusing Tsang. Prosecutors separately charged Tsang with assaulting and obstructing police officers, and in May 2016 Tsang was found guilty of assaulting a police officer and resisting arrest and was sentenced to five weeks in prison.

PRISON AND DETENTION CENTER CONDITIONS

There were some isolated reports regarding prison or detention center conditions that raised human rights concerns.

Physical Conditions: There were no major concerns in prisons and detention centers regarding physical conditions.

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. Several activists and former inmates claimed prisoners suffered abuses. For example, prodemocracy activist Joshua Wong publicly claimed that prisoners were forced to squat naked while answering questions and that five prison staff members pressured him to retract complaints while he was in juvenile detention. Activists urged the government to establish an independent prisoner complaint mechanism in order to protect inmates from retaliation for complaints.

Independent Monitoring: The government permitted media outlets, legislators, and human rights groups to conduct prison visits. Justices of the peace visited prisons and may make suggestions and comments on matters, such as the physical environment of facilities, overcrowding, staff improvement, training and recreational programs and activities, and other matters affecting the welfare of inmates.

Improvements: In January the partial redevelopment of Tai Lam Center for Women added space for 128 women inmates, alleviating the overcrowding problem for women in high-security prisons.

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/her arrest or detention in court, and the government generally observed these requirements.

Role of the Police and Security Apparatus

The Hong Kong Police Force maintains internal security and reports to the SAR's Security Bureau. The People's Liberation Army is responsible for external security. The Immigration Department controls the entry of persons into and out of the SAR as well as the documentation of local residents. Civilian authorities maintained effective control over the police force, and the government had effective mechanisms to investigate and punish abuse and corruption.

Multiple sources reported that mainland operatives in the SAR monitored some prodemocracy movement figures, political activists, lawyers, nongovernmental organizations (NGOs), and academics who expressed criticism of the central government's policies. Media also reported that police intimidated, arrested, and assaulted activists and protesters during President Xi Jinping's July visit to the SAR. During the visit, some activists said they were assaulted by pro-Beijing groups. There were no reports of impunity involving the security forces during the year.

Members of focus groups expressed concern that the chief executive appointed all Independent Police Complaints Committee members, according to a *South China Morning Post* report. Activists previously noted the committee's lack of power to conduct independent investigations limited its oversight capacity.

Arrest Procedures and Treatment of Detainees

Police generally apprehended suspects openly with warrants based on sufficient evidence and issued by a duly authorized official. Arrested persons must be charged within 48 hours or released, and the government respected this right. Interviews of suspects are required to be videotaped. The law provides accused persons with the right to a prompt judicial determination, and authorities effectively respected this right.

Detainees were generally informed promptly of charges against them. There was a functioning bail system, and authorities allowed detainees access to a lawyer of their choice. Suspects were not detained incommunicado or held under house arrest.

E. DENIAL OF FAIR PUBLIC TRIAL

The law provides for an independent judiciary, and the SAR government generally respected judicial independence and impartiality.

Trial Procedures

The law provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. Trials were by jury except at the magistrate and district court level. An attorney is provided at public expense if defendants cannot afford counsel. Defendants had adequate time and facilities to prepare a defense. 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, and defendants could confront and question witnesses testifying against them and present witnesses to testify on their own behalf. Defendants have the right of appeal, the right not to be compelled to testify or confess guilt, and the right to be present at their trial.

Defendants enjoy a presumption of innocence except in official corruption cases. Under the law a current or former government official who maintained a standard of living above that commensurate with his or her official income, or who controls monies or property disproportionate to his official income, is considered guilty of an offense unless he can satisfactorily explain the discrepancy. The courts upheld this ordinance. The government conducted court proceedings in either Chinese 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.

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. The courts also interpret provisions of the Basic Law that relate to central government responsibilities or on the relationship between the central authorities and the SAR. Before making its final judgments on these matters, which are not subject to appeal, the Court of Final Appeal may seek an interpretation of the relevant provisions from the central government's Standing Committee of the National People's Congress (NPCSC). The Basic Law requires that courts follow the NPCSC's interpretations where cases

intersect with central government jurisdiction, although judgments previously rendered are not affected. On five occasions in the past, the NPCSC issued interpretations of the Basic Law. The most recent interpretation was issued without any request for interpretation from a SAR court. Activists and other observers expressed concerns that the central government had encroached on the judiciary's independence through the NPCSC's interpretations of the Basic Law.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

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, or the cessation of, human rights violations.

F. ARBITRARY OR UNLAWFUL INTERFERENCE WITH PRIVACY, FAMILY, HOME, OR CORRESPONDENCE

The law prohibits such actions, and there were no reports the SAR government failed to respect these prohibitions. There were reports mainland security services monitored prodemocracy and human rights activists.

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, and the government generally respected this right. An independent press, an effective judiciary, and an unfettered internet combined to permit freedom of expression, including for the press, on most matters. During the year, however, SAR and central government actions and statements raised the perceived risks associated with expressing dissenting political views.

Freedom of Expression: There were some legal restrictions on the ability of individuals to criticize the government publicly without reprisal. A new national law passed by the central government in September criminalizes any action mocking the Chinese national anthem and requires persons attending public events to stand at attention and sing the anthem in a solemn manner when it is played. The central government's National People's Congress voted to add the law to the Basic Law's Annex III, which obliges the SAR government to adopt local legislation. SAR officials said the law would be implemented after the LegCo passes local implementing legislation. In September a court found LegCo member Cheng Chung Tai guilty of desecrating both the national and Hong Kong SAR flags after he turned several Chinese and Hong Kong SAR flags upside down on the desks of other LegCo members. The court ordered Cheng to pay a fine of 5,000 Hong Kong dollars (HK\$) (\$640).

The SAR and central government called for restrictions on discussion of Hong Kong independence. Before Chinese president Xi Jinping's July visit to the SAR, police told the proindependence Hong Kong National Party it would not be permitted to hold any public event, according to a *Hong Kong Free Press* article. In September students at several universities in the SAR hung banners in support of Hong Kong independence. In response

Mathew Cheung, the SAR's chief secretary for administration (the second-most senior executive official), stated "there is no room for discussion" of Hong Kong independence. A mainland government-controlled media outlet called on SAR authorities to take legal action to forbid persons from advocating for independence. On September 19, at a rally calling for the dismissal of Benny Tai, a coorganizer of the large-scale 2014 "Occupy" protests from Hong Kong University, LegCo member Junius Ho supported another protester's call to "kill" independence advocates by saying "with no mercy" into his microphone.

Observers feared that requirements for electoral candidacy and for taking the oath of office limited free speech in the political arena. In July 2016 the Electoral Affairs Commission instituted a new requirement that all LegCo candidates sign a pledge stating that the SAR is an "inalienable part" of China in order to run for office.

The NPCSC's November 2016 interpretation of Basic Law Article 104 barred legislators-elect from taking office if they refused to take the oath, altered the wording of the oath, or failed to demonstrate sufficient "sincerity" or "solemnity" when taking the oath. As of year's end, the government had used the NPCSC's interpretation to disqualify six legislators for making oaths that did not conform to the NPCSC's interpretation. On August 25, the Court of Final Appeal dismissed the appeal bids of two of the six lawmakers. Two additional lawmakers appealed their cases on September 11; their appeals were pending at year's end. The final two lawmakers declined to appeal their disqualification.

Press and Media Freedom: Independent media were active and expressed a wide variety of views; however, some journalists expressed concerns about increasing self-censorship.

Violence and Harassment: In February the home of a senior staff member at *Sing Pao Daily News* was splashed with red paint after staff members spotted suspicious persons following the newspaper's managers, according to the Hong Kong Journalists Association's annual report.

Censorship or Content Restrictions: Reports of media self-censorship continued during the year. Many media outlets were owned by companies with business interests on the mainland, which led to claims they were vulnerable to self-censorship, with editors deferring to perceived concerns of publishers regarding their business interests. Mainland interests reportedly owned most bookstores in the SAR and restricted the sale of politically sensitive books.

Libel/Slander Laws: In March then chief executive C. Y. Leung sued LegCo member Kenneth Leung for defamation over remarks Kenneth Leung made about a HK\$50 million (\$6.4 million) payment the former chief executive received from an Australian engineering firm.

Actions to Expand Freedom of Expression, Including for the Media: In September the SAR lifted its ban on online-only media attending government press conferences.

Internet Freedom

The SAR government did not restrict or disrupt access to the internet or censor online content, although activists claimed central government authorities closely monitored their email and internet use. The internet was widely available and used extensively.

There were reports of politically motivated cyberattacks against private persons and organizations. In September hackers replaced the regular content on the prodemocracy political party Demosisto's website with pro-mainland government messages and images mocking Demosisto's secretary general, Joshua Wong.

Academic Freedom and Cultural Events

Some suggested Hong Kong-based academics and cultural figures practiced self-censorship to preserve opportunities in the mainland.

In 2016 Hong Kong's Tiananmen Museum closed after two years of operation. The museum had been the only museum in the country commemorating the 1989 Tiananmen Square massacre. According to CNN and *Time*, the Hong Kong Alliance, a prodemocracy group that operated the museum, stated the closure was due to pressure from the owners' committee of the building, which made it difficult for the museum to operate by restricting visitor numbers, filing a lawsuit disputing the usage of the space as a museum, and forcing visitors to provide their names and personal information--a requirement that discouraged visitors from the mainland. The museum

operators also cited high rent and other fundraising challenges but kept the museum's exhibits and said they hoped to move to a new and bigger location in the future. They temporarily reopened the museum from April to June but still did not have a new permanent location.

Hong Kong-based international NGOs expressed concern about pro-Beijing media outlets' sustained criticism of their activities, which the newspapers characterized as interference by "foreign forces." NGO staff members reported that these efforts to discredit their work in the SAR made it difficult for the groups to continue their existing partnerships with academic institutions and their public outreach. NGOs also expressed concern about the mainland's Foreign NGO Management Law, which went into effect on January 1, noting the law imposed onerous restrictions on their ability to operate and implement social services delivery, advocacy work, and aid services in the mainland. The law specifically defines Hong Kong-based organizations as covered by the law's requirements.

B. FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION

The law provides for the freedoms of peaceful assembly and association, but government actions, including prosecutions of activists, increased the perceived risks associated with participating in political protest.

Freedom of Peaceful Assembly

The law provides for freedom of peaceful assembly, and the government generally respected this right. Police routinely issued the required "letter of no objection" for public meetings and demonstrations--including those critical of the SAR and central governments--and most protests occurred without serious incident.

On June 4, tens of thousands of persons peacefully gathered without incident in Victoria Park to commemorate the 28th anniversary of the Tiananmen Square crackdown. The annual vigil and a smaller annual event in Macau were reportedly the only sanctioned events in China to commemorate the Tiananmen Square anniversary. Figures varied for participation in the annual July 1 prodemocracy demonstration, held on the anniversary of the 1997 transfer of sovereignty over Hong Kong to China. Police estimated 14,500 protesters; an independent polling organization estimated 27,000, and organizers claimed 60,000. Police did not interfere with the legally permitted rally.

Several government prosecutions of protesters and attempts to seek harsher penalties against protesters raised the perceived cost of protesting government policies, which could have a chilling effect on political protest in the SAR. For example, in 2016 authorities found prodemocracy activists Joshua Wong and Alex Chow guilty of participating in an illegal assembly. The charge arose after they led a group of persons over a fence into a closed SAR government complex where protests had traditionally been held at the start of the 2014 Occupy protests. In connection with the same event, prodemocracy activist Nathan Law was found guilty of inciting others to participate in an illegal assembly. Wong and Law were originally sentenced to perform 80 and 120 hours of community service, respectively, while Chow was given a suspended sentence of three weeks' imprisonment. The government filed a timely appeal of the sentences, and Wong and Law completed their community service sentences while the appeal was pending.

On August 17, the Court of Appeal overturned the lower court's sentences and ordered Wong, Law, and Chow to serve six, eight, and seven months in prison, respectively. The Court of Appeal argued the lower court's sentences were inadequate and stiffer sentences were required to deter such acts in the future, which the court characterized as violent. Wong and Law were imprisoned from August through October, when they were released on bail, pending the outcome of their appeal. Chow was imprisoned in August and released on bail in November, also pending the outcome of his appeal. On August 20, tens of thousands of persons protested the prison sentences, which would bar the three from running in local elections for five years, according to SAR law. Some commentators claimed the SAR government sought stiffer penalties against the trio in order to stifle dissent and prevent the three defendants from running for office. Two UN special rapporteurs and prominent international lawyers expressed public concern the prison sentences were inconsistent with freedoms of expression and assembly. The SAR government denied any political motivation for seeking stiffer penalties against the trio and argued the cases were handled in accordance with the law. Wong, Law, and Chow appealed their sentences.

Freedom of Association

SAR law provides for freedom of association, and the government generally respected it. Nonetheless, officials did not approve prodemocracy political party Demosisto's application to register as a legal entity, even though the application had been pending for more than one year. The mainland Foreign NGO Management Law, which came into effect on January 1 and also applies to NGOs based in the SAR, imposes onerous restrictions on NGOs' ability to operate in the mainland.

C. FREEDOM OF RELIGION

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

D. FREEDOM OF MOVEMENT

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights, with some prominent exceptions.

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

There continued to be claims the Immigration Department refused entry to a small number of persons traveling to the SAR for political reasons. In June, shortly before Chinese president Xi Jinping's visit to the SAR, two Macau-based prodemocracy activists reported they were denied entry. In October Benedict Rogers, deputy chairman of the British Conservative Party's Human Rights Commission, was refused entry to the SAR. The Immigration Department, as a matter of policy, declined to comment on individual cases. Activists and other observers contended that the refusals, usually of persons holding views critical of the central government, were made at the behest of mainland authorities.

Foreign Travel: Most residents easily obtained travel documents from the SAR government, although central government authorities in the past have not permitted some human rights activists, student protesters, and prodemocracy legislators to visit the mainland. Some students who participated in the 2014 protest movement previously alleged the central government's security agencies surveilled the protests and blacklisted them.

Protection of Refugees

Refoulement: Under the "one country, two systems" framework, the SAR continued to administer its own immigration and entry policies and make determinations regarding "nonrefoulement" claims independently. The government's Unified Screening Mechanism (USM) consolidated the processing of claims based on risk of return to persecution, torture, or cruel, inhuman, or degrading treatment or punishment. From 2009 to the end of December, 110 of the more than 15,000 nonrefoulement claims adjudicated were substantiated, according to government statistics. Also according to government statistics, at year's end there were 5,899 nonrefoulement claims pending adjudication.

Persons wishing to file a nonrefoulement claim cannot do so while they have legally entered the SAR and must instead wait until they overstay the terms of their entry before they can file such a claim, which typically results in a period of detention followed by release on recognizance. Persons whose claims are pending are required to appear periodically before the Immigration Department.

Applicants and activists continued to complain about the slow processing of claims, which can take several years, a shortage of government-provided interpretation services, and limited government subsidies available to applicants. Activists and refugee rights groups also expressed concerns about the very low rate of approved claims, suggesting the government's threshold for approving claims was far higher than other developed jurisdictions.

Access to Asylum: The SAR is not a signatory to the 1951 UN Refugee Convention or its 1967 protocol. Under the “one country, two systems” framework, these international agreements are not extended to Hong Kong even though the central government is a signatory. Persons whose nonrefoulement claims are substantiated through the USM do not obtain a status that allows them to permanently live and work in the SAR. Instead, they are referred to UNHCR for possible recognition as refugees and resettlement to a third country. Some nonrefoulement claimants had waited in the SAR for resettlement for years.

Employment: The government defines nonrefoulement claimants as illegal immigrants or “overstayers” in the SAR, and as such they have no legal right to work in the SAR while claims are under review.

Access to Basic Services: Persons with nonrefoulement claims under the USM were eligible to receive publicly funded legal assistance, including translation services, as well as small living subsidies. The children of nonrefoulement claimants could usually attend SAR public schools.

Section 3. Freedom to Participate in the Political Process

The Basic Law limits the ability of residents to change their government through free and fair elections. Article 45 of the Basic Law establishes as the “ultimate aim” direct election of the chief executive through “universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.” The residents of Hong Kong, the SAR government, and the PRC central government have vigorously debated the nature, scope, and pace of democratic and electoral reforms.

Voters directly elect 40 of LegCo’s 70 seats by secret ballot. Thirty-five seats are designated as “geographic constituencies” (GCs) and 35 as “functional constituencies” (FCs). All 35 GCs are directly elected, while only five of the FCs are directly elected. The remaining 30 FC seats are selected by a subset of voters from FCs representing various economic and social sectors, most of whom are supportive of the central government. Under this structure a limited number of individuals and institutions were able to control multiple votes for LegCo members. In 2016 the constituencies that elected these 30 FC LegCo seats consisted of 232,498 registered individual and institutional voters, of whom approximately 172,820 voted, according to the SAR’s election affairs office’s statistics. The five FC seats in the district council sector, known as “super seats,” were directly elected by the approximately five million registered voters who were not otherwise represented in another FC and therefore represented larger constituencies than any other seats in LegCo. The government has previously acknowledged the method of selecting FC legislators did not conform to the principle of universal suffrage, but it took no steps to eliminate the FCs during the year.

Under the Basic Law, LegCo members may not introduce bills that affect public expenditure, the political structure, or government policy; only the government may introduce these types of bills. The SAR sends 36 deputies to the mainland’s National People’s Congress (NPC) and had approximately 250 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 LegCo, 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.

Voters directly elected all 431 of the SAR’s district council seats in 2015 following the government’s elimination of appointed district council seats. Previously the chief executive used his authority to appoint 68 of the 534 members of the district councils, the SAR’s most grassroots-level elected bodies.

ELECTIONS AND POLITICAL PARTICIPATION

Recent Elections: In March the 1,194-member Chief Executive Election Committee, dominated by proestablishment electors, selected Carrie Lam to be the SAR’s chief executive. Lam received 777 of 1,163 valid

votes. The central government's State Council formally appointed her, and on July 1, President Xi Jinping administered Lam's oath of office.

In December 2016 representatives of various commercial sectors, professions, religious organizations, and social service providers as well as political representatives elected the 1,194 electors who cast ballots in the chief executive election. Residents expressed concern these small-circle elections were open to participation by a very small number (230,000) of the SAR's 7.5 million residents. Moreover, although the 2016 Election Committee election saw an 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.

In September 2016 SAR residents elected representatives to the 70-member LegCo. The election, which saw a record high turnout of 2.2 million voters, was considered generally free and fair according to the standards established in the Basic Law. The government acknowledged that election observers and other residents filed approximately 1,200 petitions concerning election misconduct with the Elections Affairs Committee following the conclusion of the LegCo election. Pro-mainland and pro-establishment candidates won 40 of 70 LegCo seats, while pro-democracy candidates won 30, an increase over the 27 the opposition camp held from 2012 to 2016.

Political Parties and Political Participation: In July 2016 the government announced for the first time that all LegCo candidates must sign a confirmation form pledging their allegiance to the SAR and their intent to uphold the Basic Law, including three provisions stating that Hong Kong is an inalienable part of the PRC. Legal scholars and pro-democracy activists criticized the government's use of the confirmation form, noting the LegCo had not approved changes to election procedures or the qualifications needed to run for legislative office. In August 2016 the government disqualified pro-independence LegCo candidate Edward Leung, of the Hong Kong Indigenous party, from running in the election in the New Territories East District. An elections officer refused Leung's candidacy even though Leung had signed the confirmation form and said he would drop his pro-independence stance. Leung and another candidate filed judicial review applications charging that the use of the confirmation form was not in accordance with the SAR's laws. Leung also filed an election petition in September 2016 alleging his disqualification from the race was unlawful.

In August the Court of Final Appeal upheld a November 2016 court ruling that disqualified Yau Wai-ching and Sixtus Leung, two opposition legislators-elect who used their oath-swearing ceremonies to make pro-independence gestures, from serving as LegCo members because they improperly took their oath of office. The November 2016 ruling came after the NPCSC earlier that month issued an unsolicited interpretation of the Basic Law that preempted the ability of the SAR's independent judiciary to rule on the matter. It marked the first time that the NPCSC issued such an interpretation while a SAR judge was still deliberating the case in question and the second time it had done so in the absence of a request from SAR authorities.

In December 2016 then chief executive Leung and then secretary for justice Yuen filed a legal challenge to the legitimacy of four other opposition legislators--veteran activist "Long Hair" Leung Kwok-hung, former Occupy protest student leader Nathan Law, university lecturer Lau Siu-lai, and university professor Edward Yiu--over the manner in which they took their oaths. In July the court granted the government's request to disqualify the four legislators. Two of them filed appeals against their disqualification.

Asymmetric systemic obstacles make it harder for pandemocratic parties to secure a majority of seats in the LegCo or have one of their members become chief executive. Of the LegCo's 70 members, 30 were elected by functional constituencies, most of which were supportive of the central government; representatives from 12 of these constituencies ran unopposed. Moreover, the central government and its business supporters provided generous financial resources to parties that supported the central government's political agenda in the SAR, ensuring that these organizations would control the levers of government and senior positions. According to local press reports, several political groups expressed concern that the Central Government Liaison Office (CGLO) interfered with legislative campaigns, lobbying for pro-Beijing candidates and threatening or harassing others. In August 2016 Liberal Party candidate Ken Chow suspended his campaign for a LegCo seat, alleging CGLO affiliates had harassed him and threatened the safety of his family. The Independent Commission Against Corruption, the Liberal Party, and the SAR government undertook investigations into Chow's allegations.

Participation of Women and Minorities: No laws limit participation of women in the political process, and they did participate. In March, Carrie Lam was elected 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. Most elected or senior appointed positions require that the officeholder have a legal right of abode only in the SAR. There were no members of ethnic minorities in the LegCo, and members of ethnic minorities reported they considered themselves unrepresented. The government made efforts to increase the hiring of ethnic minorities by reducing the level of Chinese-language ability needed to qualify for some jobs.

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 viewed as relatively uncorrupt, there were isolated reports of government corruption during the year.

Corruption: In February former chief executive Donald Tsang was sentenced to 20 months in jail for misconduct while in public office in connection with a below-market lease. Tsang appealed the sentence.

Financial Disclosure: The SAR requires the 27 most senior civil service officials to declare their financial investments annually and the approximately 3,100 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

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views. Prominent human rights activists critical of the central government also operated freely and maintained permanent resident status in the SAR. Nonetheless, in October the SAR refused entry to a British human rights activist who had criticized the SAR's human rights record.

Government Human Rights Bodies: There is an Office of the Ombudsman and an Equal Opportunities Commission (EOC). The government recruits commissioners to represent both offices through a professional search committee, which solicits applications and vets candidates. Commissioners were independent in their operations. Both organizations operated without interference from the government and published critical findings in their areas of responsibility. In March the EOC urged the government to enact legislation against discrimination on the grounds of sexual orientation, gender identity, and intersex status.

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

WOMEN

Rape and Domestic Violence: The law criminalizes rape, including spousal rape. Activists expressed concerns that rape was underreported, especially within the ethnic minority community, and that conviction rates were low, according to a *South China Morning Post* report.

The law does not directly criminalize domestic violence, but the government regarded domestic violence against women as a serious concern and took measures to prevent and prosecute offenses. The law allows survivors to seek a three-month injunction, extendable to six months, against an abuser. Abusers may be liable for criminal charges, depending on what acts constituted the domestic violence. The government effectively enforced the law regarding domestic crimes and prosecuted violators.

The law covers abuse between married couples, 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 their parents, siblings, and specified immediate and extended family members. The law also empowers the court to require that the 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 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 on the basis of sex, marital status, and pregnancy. The law applies to both men and women, and police generally enforced the law effectively, though the EOC reported it saw signs that sexual harassment was underreported in the social services sector.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: Women enjoy the same legal status and rights as men. The SAR's sexual discrimination ordinance prohibits discrimination on the grounds of sex or pregnancy status, and the law authorizes the EOC to work towards the elimination of discrimination and harassment as well as to promote equal opportunity for men and women. While the government generally enforced these laws, women faced 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 PRC national and Hong Kong permanent resident, acquire both PRC citizenship and Hong Kong permanent residence, the latter allowing the right of abode in the SAR. 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 PRC citizens. Registration of all such statuses was routine.

Child Abuse: The law mandates protection for victims of child abuse (battery, assault, neglect, abandonment, and sexual exploitation), and the 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 for its clinical psychology units, and social workers for its family and child protective services units. Police maintained a child abuse investigation unit and, in collaboration with the Social Welfare Department, ran a child witness support program.

Early and Forced Marriage: The legal minimum age of marriage is 16; parents' written consent is required for marriage before the age of 21.

Sexual Exploitation of Children: There were reports girls younger than 18 from some countries in Asia were subjected to sex trafficking in the SAR.

The legal age of consensual sex is 16. Under the law, a person having "unlawful sexual intercourse" with a victim younger than 16 is subject to five years' imprisonment, while having unlawful sexual intercourse with a victim younger than 13 carries a sentence of life imprisonment.

The law makes it an offense to possess, produce, copy, import, or export pornography involving a child younger than 18 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 generally 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 travel.state.gov/content/childabduction/en/legal/compliance.html.

ANTI-SEMITISM

The Jewish community numbered 5,000 to 6,000 persons. There were no reports of anti-Semitic acts.

TRAFFICKING IN PERSONS

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

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 generally implemented laws and programs to provide persons with disabilities access to buildings, information, and communications, although there were reports of some restrictions.

The law on disabilities states that children with separate educational needs must have equal opportunity in accessing education. Some human rights groups reported that the SAR's disability law was too limited and its implementation did not promote equal opportunities. Activists said that ethnic minority students with disabilities had a particularly high dropout rate. There were occasional media reports about alleged abuses in educational, correctional, and mental health facilities.

The Social Welfare Department provided training and vocational rehabilitation services to assist persons with disabilities, offered subsidized resident-care services for persons considered unable to live independently, offered places for preschool services to children with disabilities, and provided community support services for persons with mental disabilities, their families, and other local residents.

The law calls for improved building access and sanctions against those who discriminate. Access to public buildings (including public schools) and transportation remained a serious problem for persons with disabilities.

NATIONAL/RACIAL/ETHNIC MINORITIES

Although ethnic Chinese made up 94 percent of the population, the SAR is a multi-ethnic 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 EOC oversees implementation and enforcement of the law. The EOC maintained a hotline for inquiries and complaints concerning racial discrimination. Although the government took steps to reduce discrimination, there were frequent reports of discrimination against ethnic minorities.

The government has a policy to integrate non-Chinese students into SAR schools. Nonetheless, the EOC reported it continued to receive complaints from ethnic minority parents who found it difficult to enroll their children in kindergarten because school information and admissions interviews at some schools were provided only in Cantonese. Students who did not learn Chinese had significant difficulty entering university and the labor market, according to government and NGO reports.

ACTS OF VIOLENCE, DISCRIMINATION, 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 LGBTI community.

In April a court ruled that a gay civil servant's husband, whom he had married in a foreign country, was entitled to the same benefits as a heterosexual spouse. In May the government appealed that decision, and the appeal was pending.

LGBTI professionals are permitted to bring foreign partners to the SAR only on a "prolonged visitor visa." Successful applicants, however, cannot work, obtain an identification card, or qualify for permanent residency.

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 allows employers simply to refuse to bargain. The law explicitly prohibits civil servants from bargaining collectively.

Trade unions must register with the government's Registry of Trade Unions and must have a minimum membership of seven persons for registration. Workers were not prevented from unionizing; however, the law restricts members and officers of unions to those who are "ordinarily resident" in the SAR and have been employed or engaged with an industry or occupation related to the union.

The law provides for the right to strike, although there are some restrictions on this right for civil servants. The law prohibits firing an employee for striking and voids any section of an employment contract that would punish a

worker for striking. The commissioner of police has broad authority to control and direct public gatherings in the interest of national security or public safety. According to the law, an employer cannot fire, penalize, or discriminate against an employee who exercises his or her union rights and cannot prevent or deter the employee from exercising such rights.

The government effectively enforced the law. Penalties for violations of antiunion laws included fines as well as legal damages paid to workers, and penalties were sufficient to deter violations. An employee who is unreasonably and unlawfully dismissed (including on the grounds of the employee exercising trade union rights) is entitled to reinstatement or re-engagement, subject to mutual consent of the employer and the employee, or monetary compensation for unreasonable and unlawful dismissal.

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. Penalties for these offenses were not sufficient to deter violations.

NGOs expressed concerns some migrant workers faced high levels of indebtedness assumed as part of the recruitment process, creating a risk they could fall victim to debt bondage. The SAR allows for the collection of placement fees of up to 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 in the Philippines and Indonesia to profit from a debt scheme, and some local agencies illegally confiscated the passports, employment contracts, and automatic teller machine cards of domestic workers and withheld them until their debt was repaid.

There also were reports some employers illegally forbade domestic workers from leaving the residence of work for non-work-related reasons, effectively preventing them from reporting exploitation to authorities. SAR authorities said they encouraged aggrieved workers to file complaints and make use of government conciliation services as well as actively pursued reports of any labor violations.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

C. PROHIBITION OF CHILD LABOR AND MINIMUM AGE FOR EMPLOYMENT

Regulations prohibit employment of children younger than 15 in any industrial establishment. The law prohibits overtime in industrial establishments with employment in dangerous trades for persons younger than 18. Children 13-14 years of age may work in certain nonindustrial establishments, subject to conditions aimed at ensuring a minimum of nine years of education and protection of their safety, health, and welfare.

The Labor Department effectively enforced these laws and regularly inspected workplaces to enforce compliance with the regulations. Penalties for violations of child labor laws include fines and legal damages and were sufficient to deter violations.

There were reports that girls from some countries in Asia were subjected to commercial sexual exploitation (see section 6, Children).

D. DISCRIMINATION WITH RESPECT TO EMPLOYMENT AND OCCUPATION

The law and regulations prohibit employment discrimination on the grounds of race or ethnicity, disability, family status (marital status and/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 these grounds. Regulations do not prohibit employment discrimination on the grounds of color, religion, political opinion, national origin or citizenship, sexual orientation and/or gender identity, HIV-positive status or other communicable diseases, 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 who violated 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. Academics assessed that a lack of Chinese language skills was the greatest barrier to employment. Minority group leaders and activists reported that government Chinese-language requirements for many job applicants excluded nonnative Chinese speakers from civil service and law enforcement positions.

E. ACCEPTABLE CONDITIONS OF WORK

On May 1, the statutory minimum hourly wage was readjusted to HK\$34.50 (\$4.41). In September the SAR increased domestic workers' minimum monthly wage from HK\$4,310 (\$552) to HK\$4,410 (\$564) and increased their minimum monthly food allowance from HK\$1,037 (\$133) to HK\$1,053 (\$135). The government requires employers to provide foreign domestic workers with housing, worker's compensation insurance, and a travel allowance. In its explanation of why live-in domestic workers (both local and foreign) would not be covered by the statutory minimum wage, the government explained "the distinctive working pattern--round-the-clock presence, provision of service-on-demand, and the multifarious domestic duties expected of live-in domestic workers--made it impossible to ascertain the actual hours worked so as to determine the wages to be paid."

The official poverty line was half of the median monthly household income before tax and welfare transfers, based on household size. For a one-person household, the poverty line was set at HK\$3,800 (\$486), for a two-person household HK\$8,800 (\$1,126), for a three-person household HK\$14,000 (\$1,791), and so on.

There is no law concerning working hours, paid weekly rest, rest breaks, or compulsory overtime for most employees. In the absence of such legislation, labor rights groups previously reported most SAR residents worked approximately 56 hours per week. An online survey of foreign domestic workers showed that 76 percent worked more than 12 hours per day and 17 percent worked more than 16 hours per day.

Laws exist to provide for health and safety of workers in the workplace. Workers may remove themselves from situations that endanger health or safety without jeopardy to their employment. No laws restrict work during typhoon or rainstorm warnings. The Labor Department issued a "code of practice" on work arrangements in times of severe weather, which includes a recommendation that employers require only essential staff to come to work during certain categories of typhoon or rainstorm warnings. Many businesses closed during extreme weather. Employers are required to report any injuries sustained by their employees in work-related accidents.

The government generally enforced the law, and the Labor Tribunal adjudicated disputes involving nonpayment or underpayment of wages and wrongful dismissal. Penalties for violations of minimum wage or occupational safety and health violations include fines, payments of damages, and worker's compensation payments. These penalties were sufficient to deter violations.

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; it enforced occupational safety and health laws effectively.

In December 2016 a High Court judge ruled the government failed to protect adequately the human rights and safety of a Pakistani man trafficked to the SAR and forced into unpaid labor for several years. The government's appeal of the case was pending at year's end.

In 2016 the Labor Department recorded 35,768 occupational injuries and 203 workplace fatalities. In March the chief executive of the Association for the Rights of Industrial Accident Victims claimed the Highways Department had disregarded worker safety on the Hong Kong-Zhuhai-Macau bridge construction project. According to the organization, as of March, 10 workers had died and more than 600 were injured while working on the bridge since 2010.