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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 (the Basic Law), specify that Hong Kong will enjoy a high degree of autonomy except in matters of defense and foreign affairs. On March 25, a Chief Executive Election Committee composed of 1,193 members selected C.Y. Leung as Hong Kong's third chief executive (CE). The fifth-term Legislative Council (LegCo) was elected September 9 from a combination of directly elected seats and limited franchise or "small circle" functional constituencies. Security forces reported to civilian authorities.

The most important human rights problems reported were the limited ability of citizens to participate in and change their government, an increase in arbitrary arrest or detention and other aggressive police tactics hampering the freedom of assembly, and a legislature with limited powers in which certain sectors of society wield disproportionate political influence.

Other areas of reported concern include limitations on freedom of the press and self-censorship, denial of visas for political reasons, alleged election fraud, trafficking in persons, and societal prejudice against certain ethnic minorities.

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 or Unlawful Deprivation of Life

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

b. Disappearance

There were no reports of politically motivated disappearances.

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

The Basic Law prohibits torture and other forms of abuse, but there were some reports that government officials employed them. In the first half of the year, the police force's Complaints Against Police Office received 1,139 complaints – a 10-fold increase over the same period last year. Of those, four were substantiated as reported, one not fully substantiated, nine unsubstantiated, two false, 17 no fault, 134 not pursuable, 574 withdrawn, and 398 pending investigation and endorsement by the Independent Police Complaints Council (IPCC). There were 22 allegations of assault by police officers on persons not in custody, of which one was found unsubstantiated, five not pursuable, and three were withdrawn. Thirteen allegations were pending investigation as of June. There were also 141 allegations of assault by police officers against persons in custody. Of those, two were found to be false, four no fault, 26 not pursuable, and 66 pending investigation as of June.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards, and the Correctional Services Department (CSD) permitted visits by independent human rights observers. Nevertheless, the nongovernmental organization (NGO) Society for Community Organization (SoCO) called on the government to enact legislation to better protect prisoners. SoCO voiced its concerns to the LegCo's Public Complaints Office, alleging "widespread use of solitary confinement in prisons," and a "lack of labor-protection legislation for inmates who work."

Physical Conditions: During the year the CSD managed 24 penal institutions (comprising minimum, medium, and maximum security prisons; a psychiatric center; and training, detention, rehabilitation, and drug addiction treatment centers) with a certified accommodation capacity of 11,544 places. As of June 30, the total prison population was 9,436, of which 8,521 were adults 21 years old or older (6,854 males and 1,667 females). Of the 8,521 adults, 1,193 (including 997 males and 196 females) were remanded persons. As of June 30, a total of 61 (50 male and 11 female) young offenders under age 16 were admitted to penal institutions, including prison, training centers, detention centers, and drug addiction treatment centers. Among them, 26 (including 22 males and four females) were remanded persons.

The average occupancy rate for all penal institutions was 82 percent. The CSD admitted overcrowding was a problem in certain types of penal institutions, such as remand (pretrial detention) facilities and maximum-security institutions.

Prisoners generally had access to potable water.

There were no reports of any deaths in police custody in the first six months, but there were eight reported deaths of persons in custody of the CSD. Inquest results had not been reported by year's end.

The average length of pretrial incarceration (remand) of persons in CSD custody whose trial was concluded in the first half of the year was 93 days.

Administration: Prisoners and detainees were able to send and receive letters, receive regular visits, manifest their religious beliefs or practices, and attend available religious services in correctional institutions. According to the CSD, every prisoner has unrestricted access to internal and external complaint channels. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship, request investigation of credible allegations of inhumane conditions, and initiate legal action against any alleged inhuman conditions. Judicial authorities investigated credible allegations of inhuman conditions and documented the results of such investigations in a publicly accessible manner. The government investigated and monitored prison and detention center conditions, and there was an external Office of the Ombudsman. There were no reports of any problems regarding recordkeeping or the use of alternatives to sentencing for nonviolent offenders.

Monitoring: The government permitted human rights groups to conduct prison visits. In the first six months of the year, there were 19 media visits and 217 visits by justices of peace (all 217 of which were unannounced). Justices of the peace may make suggestions and comments on matters such as physical environment facilities, overcrowding, staff improvement, training and recreational programs and activities, and other matters affecting the welfare of inmates. There were no requests from any human rights organizations to visit any prison.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest or detention, but a number of incidents during the year resulted in an increased occurrence of arbitrary arrest and detention.

Role of the Police and Security Apparatus

Civilian authorities maintained effective control over the Hong Kong Police Force, and the government had effective mechanisms to investigate and punish abuse and corruption.

There were no reports of impunity involving the security forces during the year.

Human rights activists and some legislators expressed concern that all IPCC members were appointed by the CE and that the IPCC's lack of power to conduct independent investigations limited its oversight capacity. The IPCC cannot compel officers to participate in its investigations, and the media reported cases of police officers declining to do so.

The IPCC received six complaints against officers who handled the annual July 1 rally on the anniversary of Hong Kong's handover to the PRC and the visit of President Hu Jintao the previous day. IPCC Chairman Jat Sew-tong said the allegations involved neglect of duty, improper behavior, and offensive language. Police also detained a reporter for 15 minutes at the Kai Tak cruise terminal after the reporter shouted a question at President Hu about the 1989 Tiananmen Square massacre.

Arrest Procedures and Treatment While in Detention

Suspects generally were apprehended openly with warrants based on sufficient evidence and issued by a duly authorized official. They must be charged within 48 hours or released, and the government respected this right in practice. Interviews of suspects are required to be videotaped. The law provides accused persons with the right to a prompt judicial determination, and authorities respected this right effectively in practice. Detainees were informed promptly of charges against them. There was a functioning bail system, and authorities allowed detainees ready access to a lawyer of their choice, as well as to family members.

Arbitrary Arrest: In December the IPCC released a report investigating complaints arising from PRC Vice Premier Li Keqiang's August 2011 visit to Hong Kong, during which the police were criticized for detaining a number of students and their rough treatment of other individuals. The report recommended punishing 12 police officers through disciplinary hearings, verbal warnings, or advice. This led to further criticism because the IPCC chairman publicly stated that police officers had been told "to prevent any embarrassment" for Li and ensure events he attended were "conducted in a smooth and dignified manner." Observers viewed these comments as implicit instructions to prevent protesters from airing their views for the sake of a PRC official visitor's trip. Critics also claimed the punishments were too lenient and only indicated the police would continue giving way on human rights issues.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence in practice. The judiciary provided citizens with a fair and efficient judicial process.

The courts may interpret 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 touch on central government responsibilities or on the relationship between the central authorities and the SAR. However, before making final judgments on these matters, which are not subject to appeal, the courts must seek an interpretation of the relevant provisions from the Standing Committee of the PRC's National People's Congress (NPC/SC). The Basic Law requires that courts follow the NPC/SC's interpretations, although judgments previously rendered are not affected. As the final interpreter of the Basic Law, the NPC/SC also has the power to initiate interpretations of the Basic Law.

The NPC/SC's mechanism for interpretation is its Committee for the Basic Law, composed of six mainland and six Hong Kong members. The CE, LegCo president, and chief justice nominate the Hong Kong members. Human rights and lawyers' organizations expressed concern that this process, which can supersede the Court of Final Appeal's power of final adjudication, could be used to limit the independence of the judiciary or degrade the court's authority.

Trial Procedures

The law provides for the right to a fair public trial, and an independent judiciary generally enforced this right in practice. Trials were by jury except at the magistrate and district court level. An attorney is provided at the public's expense if defendants cannot afford counsel. Several activists complained that legal aid did not provide attorneys who were interested in committing significant attention to their pro bono clients. Otherwise, defendants have adequate time and facilities to prepare a defense. Defendants can confront and question witnesses testifying against them and present witnesses to testify on their behalf. Defendants and their attorneys have access to government-held evidence relevant to their cases. Defendants have the right of appeal.

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 guilty of an offense unless he can satisfactorily explain the discrepancy. In practice the courts upheld this ordinance. Court proceedings were conducted in either Chinese or English, the SAR's two official languages.

Political Prisoners and Detainees

There were very limited 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. However, activists regularly raised concerns about the independence of Hong Kong's courts, which are endowed with a high degree of autonomy under the Basic Law.

In October former secretary for justice and national people's congress standing committee basic law committee vice chair Elsie Leung Oi-sie criticized Hong Kong's legal profession, including judges, for lacking an understanding of the Beijing-Hong Kong relationship, leading to "mistaken rulings." The Bar Association and the Law Society in turn issued strong defenses of the city's independent judiciary and warned about repeatedly seeking Beijing's interpretations over Basic Law disputes.

In December Justice Secretary Rimsky Yuen set off another wave of criticism when he requested that the Court of Final Appeal ask the NPC Standing Committee to clarify the meaning of a 1999 interpretation of Article 24 of the Basic Law, which deals with permanent residency. Legal experts

and prodemocracy leaders immediately condemned his position, expressing fears for Hong Kong's judicial independence.

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

The law prohibits such actions, and the government generally respected these prohibitions in practice.

The law provides that no personal data may be used for a purpose other than that stated at the time of its collection without the data subject's consent. Specific exemptions allowed SAR authorities to transfer personal data to permit prevention, detection, or prosecution of a crime when certain conditions were met. Data may be transferred to a body outside of the SAR for purposes of safeguarding the security, defense, or international relations of the SAR or for the prevention, detection, or prosecution of a crime, provided conditions set out in the ordinance were met. The Office of the Privacy Commissioner for Personal Data worked to prevent the misuse, disclosure, or matching of personal data without the consent of the subject individual or the commissioner.

The use of covert surveillance and the interception of telecommunications and postal communications can be granted only to prevent or detect "serious crime" or protect "public security." The law establishes a two-tiered system for granting approval for surveillance activities, under which surveillance of a more intrusive nature requires the approval of a judge, and surveillance of a less intrusive nature requires the approval of a senior law enforcement official. Applications to intercept telecommunications must involve crimes with a penalty of at least seven years' imprisonment, while applications for covert surveillance must involve crimes with a penalty of at least three years' imprisonment or a fine of at least HK\$1 million (\$129,000).

In November the media reported that law enforcement's requests to Google for users' data increased sharply, citing a Google report that said law enforcement had made 192 requests to the company for users' data during the first half of the year, a jump of 56 percent when compared with the 123 requests in the same period in 2011. The yearly number surged 85 percent from 213 to 394 for the 12 months to June compared with the previous year. Law enforcement asked for the information to use in criminal investigations and said the increase was due to an increase in technology-related crime. A spokesman for the Office of the Privacy Commissioner said it had received more complaints on data access requests and had issued guidance on the procedures. Prodemocracy LegCo member James To called for a probe by the privacy commissioner into the rise and possible "abnormal surveillance," adding that exemptions from the Personal Data (Privacy) Ordinance for obtaining data for preventing or remedying serious improper conduct should be reviewed.

Between January 1 and August 31, the privacy commissioner investigated 1,168 complaints. Of these, five cases were found to have violated the law, one was successfully prosecuted leading to fines, 524 were resolved or rejected after preliminary inquiries, 38 resolved or rejected after formal investigations, and 262 withdrawn or found not pursuable. The remaining complaints were under consideration.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press, and the government generally respected these rights in practice. An independent press, an effective judiciary, and a generally supportive government combined to ensure freedom of speech and of the press. Nevertheless, throughout the year there were complaints lodged by free media groups about what they viewed as increasing challenges in this area.

Freedom of Press: A Hong Kong Journalists' Association survey published in June found that 87 percent of reporters, photographers, editors, and management surveyed said that media freedoms had deteriorated in the past several years. Approximately 36 percent said they or their supervisors practiced self-censorship, and 93 percent responded that government controls over the information flow hindered media coverage. More than 67 percent held that the Central Government Liaison Office interfered with press freedom.

Journalists and press freedom activists complained that the assignment of Wang Xiangyang, a mainlander and a Chinese People's Political Consultative Congress member, as editor in chief of the *South China Morning Post* was another sign that press freedom was deteriorating. Media watchers cited Wang's June 7 decision to reduce reports about the suspicious June 6 death of Tiananmen Square dissident Li Wangyang to a short blurb as evidence of pressure from Beijing's liaison office in Hong Kong, a troubling sign, they alleged, for press freedom.

In an October University of Hong Kong survey, 24 percent of those interviewed said they were dissatisfied with the state of Hong Kong's press freedom, the highest rate since the survey started in September 1997. Respondents were particularly concerned about the media's lack of confidence in criticizing the central and local governments.

Censorship or Content Restrictions: Reports of media self-censorship continued during the year. Most media outlets were owned by businesses with interests on the mainland, which led to claims that they were vulnerable to self-censorship with editors deferring to the perceived concerns of publishers regarding their business interests.

Free speech activists alleged that political pressure from Beijing forced the Digital Broadcasting Corporation (DBC), run by founder Albert Cheng King-hon, known for challenging the Central and Hong Kong governments, to close over an alleged "bookkeeping" issue. In late October organizers estimated 70,000 protesters gathered outside government headquarters to protest the Hong Kong government's refusal to keep the station open and to protest Beijing's political interference. Activists claimed the Central Government Liaison Office had pressured DBC's largest shareholder to shut the company to silence Cheng and his supporters for being "too provocative." Cheng criticized the Hong Kong government for refusing to intervene to keep the station running. Financially strapped and without a Hong Kong government bailout, DBC went off the air in late October.

Internet Freedom

There were no government restrictions on access to the Internet; there was some monitoring of the Internet. Democratic activists claimed central government authorities closely monitored their e-mails and Internet use. The Internet was widely available and used extensively.

Academic Freedom and Cultural Events

A proposed "moral and national education" curriculum set off street protests in July that continued into August and September. Opponents argued the plan would gloss over difficult periods in Chinese history, such as the Great Leap Forward, Cultural Revolution, and Tiananmen Square massacre, and "brainwash" schoolchildren to love the Chinese Communist Party. Protest organizers claimed that the public outcry was the largest student class boycott since 1989 and eventually gathered 120,000 demonstrators at government headquarters. Chief Executive C. Y. Leung announced on October 8 that the government would shelve the curriculum guide on national education. He pledged not to reintroduce the guide during his five-year tenure because the row had "divided society and hindered school operations."

In general there were no restrictions on academic freedom and cultural events. Some scholars suggested Hong Kong-based academics practiced some self-censorship in their China-related work to preserve good relations and research and lecturing opportunities in the mainland. Falun

Gong-affiliated cultural groups also reportedly encountered problems due to government pressure (see section 2.d.).

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The law provides for freedom of assembly and association, and the government generally respected these rights in practice. The government routinely issued the required "Letter of No Objection" for public meetings and demonstrations, and the overwhelming majority of protests occurred without serious incident. Government statistics indicated that an average of seven to eight "public events" occurred every day. However, activists and pandemocratic legislators expressed concern that the government took a more restrictive view of protests at the Central Government Liaison Office, which saw several clashes with protesters end in arrests. Activists alleged police acted under instructions from Beijing, which police denied.

From January to June 2011, the most recent period for which data was available, 3,817 public order events (public meetings and public processions) were held. Hong Kong's major gatherings are held in June and July and are, therefore, not counted in these statistics. The number of protesters arrested during the year increased from 57 in 2010 to 440 in 2011. Authorities claimed these figures reflected the growth in "radical protests."

Demonstrators continued to claim that their ability to protest had become increasingly difficult due to Hong Kong Police Commissioner Andy Tsang. According to organizers, 400,000 persons participated in the annual July 1 demonstration, denouncing Beijing's growing interference and the selection of C.Y. Leung as CE. Police estimates put the number at 63,000. Following complaints during the march, police admitted using pepper spray canisters with more powerful jets at close range against protesters and even some journalists during President Hu Jintao's July visit.

Activists and some lawmakers expressed concern about the lack of guidelines as to whether a person arrested on assault charges related to public demonstrations would be charged under the Police Force Ordinance (PFO) or the Offences Against the Person Ordinance (OAPO). Both criminalize assault on a police officer on duty, but while the PFO carries a maximum penalty of six months' imprisonment and a HK\$5,000 (\$644) fine, the OAPO carries a maximum penalty of two years' imprisonment. Some activists also alleged that police faced no penalty for making arrests that ultimately were not prosecuted or were dismissed by the courts, allowing them to use arrest to intimidate and discredit protesters. The Civil Human Rights Front NGO alliance reported that law enforcement charged an increasing number of protest participants under the tougher OAPO.

Freedom of Association

The law provides for this right, and the government generally respected it in practice. From January to June, 1,170 societies were newly registered, and no application was refused.

c. Freedom of Religion

See the Department of State's [International Religious Freedom Report](#).

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

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

Under the "one country, two systems" framework, the SAR continued to administer its own immigration and entry policies and make determinations regarding claims under the UN Convention Against Torture (CAT) independently. As of September 30, there were approximately 5,300 torture claims pending Immigration Department processing. Additionally, there were 132 individuals categorized as refugees and 657 pending asylum claims. Of all the torture claims processed in Hong Kong, the Immigration Department found only one claim as substantiated (in December 2009). Applicants were increasingly upset over the bureaucracy's slow processing of their cases and complained of very limited subsidies.

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

There continued to be cases in which persons traveling to the SAR for reasons that did not appear to contravene the law were refused entry by the Immigration Department. The Immigration Department, as a matter of policy, declined to comment on individual cases. Activists, some legislators, and others contended that the refusals, usually of persons holding views critical of the mainland, were made at the behest of the PRC authorities. The Security Bureau countered that, while the Immigration Department exchanges information with other immigration authorities including the mainland, it makes its decisions independently.

In March 2011 the High Court overturned the Immigration Department's 2010 decision to deny visas to six technicians of the Shen Yun Performing Arts company, a Falun Gong-affiliated music and dance troupe. Nevertheless, the local Falun Gong leadership claimed that Shen Yun has not performed in Hong Kong since the decision because the government has pressured performance venues to not allow Shen Yun the use of their spaces.

In September 2011, in a landmark decision on the controversial issue of the right of abode for foreign domestic workers, the Court of First Instance granted Filipina domestic helper Evangeline Banao Vallejos, who lived in Hong Kong for 26 years, the right to apply for permanent residency. On March 28, however, the Court of Appeal overturned the ruling, preventing foreign domestic workers from having the right to apply for permanent residency. Vallejos will appeal at the Court of Final Appeal in February 2013.

On March 30, approximately 300 activists protested to highlight the challenges refugees faced in Hong Kong. They urged reform of the legal system and denounced the practice of returning foreigners to their home countries, where possible torture awaited. The march followed the September suicide of a Pakistani who took his own life after the government rejected his application for protection. Of approximately 3,000 claims that have passed through Hong Kong's refugee screening system, the government has not recognized a single case with refugee status.

On November 27, the Court of Appeal ruled against five refugees, deciding they did not have the right to work in Hong Kong because they had no right to enter or remain. The two Pakistanis, two Sri Lankans, and one Burundian claimed they were unable to go anywhere else or to engage in any economic activity in Hong Kong or in other places. They launched their case to challenge what they said was an unlawful blanket immigration policy barring recognized refugees and torture claimants from working in the city. One of the Sri Lankans is the only torture claimant recognized by the Immigration Department and cannot be expelled, while the other four appellants are refugees validated by the United Nations High Commissioner for Refugees, but not recognized as such by the Hong Kong government.

Foreign Travel: Most residents easily obtained travel documents from the SAR government. However, PRC authorities did not permit some human rights activists and most prodemocracy

legislators to visit the mainland. Eleven legislators were denied "Home Return Permits" to visit the mainland.

Emigration and Repatriation: Government policy is to repatriate undocumented migrants who arrived from the mainland, and authorities did not consider them for refugee status. As of July 31, 2,551 immigration offenders and illegal immigrants were repatriated to the Mainland. The government did not recognize the Taiwan passport as valid for visa endorsement purposes, although convenient mechanisms existed for Taiwan passport holders to visit. Beginning in September Taiwan visitors were able to register online and stay for a month if they held a mainland travel permit.

Protection of Refugees

Access to Asylum: The SAR has a firm policy of not granting asylum or refugee status and has no temporary protection policy. The government's practice was to refer refugee and asylum claimants to a lawyer or the UNHCR.

The government recognizes a legal obligation to grant nonrefoulement protection under the CAT, as the CAT has applied to Hong Kong since 1992. In 2009 the Immigration Department introduced an "enhanced screening mechanism" for torture claims to meet the "high standards of fairness" for required by Hong Kong's courts. Claimants had access to legal counsel from the Duty Lawyer Service, whose lawyers received training in refugee and torture claims from the Hong Kong Academy of Law. There was also a system to appeal decisions by the Immigration Department, with reviews conducted by experienced magistrates. Several observers, including the Bar Association and the Law Society, suggested processing refugee and CAT claims simultaneously to avoid duplicate filings.

Access to Basic Services: The government, in collaboration with a local NGO, offered in-kind assistance, including temporary accommodation, food, clothing, appropriate transport allowance, counseling, medical services, and other basic necessities, to asylum seekers and torture claimants while their claims were being processed. As of August 31, 5,100 persons were receiving assistance.

Employment: The government defines CAT claimants and asylum seekers as illegal immigrants or overstayers in Hong Kong and, as such, have no legal right to work in the city. Those whose claims were pending have no legal right to work, and those granted either refugee status by the UNHCR or relief from removal under the CAT were permitted to work only with approval from the director of immigration. They were also ineligible for training by either the Employees Retraining Board or Vocational Training Council. Applications to attend school or university were considered on a case-by-case basis at the discretion of the director of immigration. Beginning in December, after commencement of the new Immigration (Amendment) Ordinance, a CAT claimant whose torture claim was accepted may apply to the director of immigration for securing permission to work in Hong Kong.

On September 4, four refugees and a successful torture claimant who were seeking authority to work brought suit in the Court of Appeal. Their action followed a 2011 Court of First Instance's ruling that the government was not obligated to permit them to work and that the director of immigration had full discretion in granting such permission on a case-by-case basis. The five complainants, who remained unemployed for between seven and 12 years, challenged what they claimed was the unlawful blanket policy of the Immigration Department in prohibiting recognized refugees and torture claimants from working. They also claimed that their right to work was provided for in the Basic Law, in the Hong Kong Bill of Rights, in the International Covenant on Civil and Political Rights, and in the International Covenant on Economic, Social, and Cultural Rights.

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

The Basic Law limits the right of residents to change their government peacefully. A portion of the LegCo was elected by a subset of voters representing "functional constituencies" (FCs) that speak for key economic and social sectors. Under this structure some individuals were able to control multiple votes for LegCo members. The constituencies that elected the 30 FC LegCo seats had fewer voters in total than the constituency for a single Geographical Constituency (GC) seat, of which there were 30 in LegCo. Beginning in September voters were able to elect five newly created FC seats in the District Council sector, known as "super seats." These five LegCo members were returned by voters who were not otherwise represented in any FC. The government stated that the current method of selecting FC legislators did not conform to principles of universal suffrage, but it took no steps to eliminate the FCs. In addition to the five new FC seats, five additional GC seats were added, bringing the previous 60-member legislative body to 70 seats.

The Basic Law prohibits LegCo members from introducing bills that affect public expenditure, political structure, or government policy. The SAR sends 36 deputies to the mainland's National People's Congress (NPC) and had 199 delegates in the Chinese People's Political Consultative Conference. The approval of the CE, two-thirds of LegCo, and two-thirds of the SAR's delegates to the NPC are required to place an amendment of the Basic Law on the agenda of the NPC, which has the sole power to amend the Basic Law.

The CE used his authority to appoint 68 of the 534 members of the District Councils, the SAR's most grassroots-level elected bodies, despite earlier promises to eliminate all appointed seats. The government stated that it would work on phasing out the nonelected seats in two tranches in 2016 and 2020, but pandemocrats complained that this was a violation of a previous understanding between the LegCo and the government to eliminate all appointed district councilors immediately.

Elections and Political Participation

Recent Elections: On March 25, in a process widely criticized as undemocratic, the 1,193-member CE Election Committee, dominated by pro-Beijing electors and their allies, selected former Executive Council Convenor C. Y. Leung to be Hong Kong's Chief Executive. The PRC's State Council formally appointed him, and President Hu Jintao swore in Leung on July 1.

The September 9 elections for a new 70-member LegCo were considered generally free and fair according to the standards established in the Basic Law. Of the 35 FC seats, 16 incumbents, all progovernment, returned uncontested. When combined with 35 GC seats, pro-Beijing and proestablishment candidates won 43 of 70 LegCo seats, while prodemocracy candidates won 27 seats.

In 2010 five legislators resigned to force a by-election they declared to be a "referendum" on political reform, particularly on achieving universal suffrage. Arguing that the pandemocrats used a loophole to abuse the electoral system and waste public money, in February the government presented draft legislation to eliminate by-elections. The bill passed on June 8 with 29 progovernment legislators voting in favor, and all pandemocrats boycotting the vote. Commencing from the fifth term of LegCo in October, a lawmaker who has voluntarily resigned from office is prohibited from standing in any by-elections in the same LegCo term within six months of resignation.

Between January and September 30, the Independent Commission Against Corruption (ICAC) received 1,732 reports concerning alleged breaches of provisions under the Elections (Corrupt and Illegal Conduct) Ordinance. Among these, examples included bribing voters, voting after giving false or misleading information to an elections officer, incurring election expenses by persons other than the candidate or his agent, publishing false or misleading statements about a candidate, publishing election advertisements that do not meet certain requirements, failure to lodge election

returns, and providing others with refreshments and entertainment at elections. As of September 30, 204 were under investigation, 30 were nonpursuable, and 1,498 were unsubstantiated after investigation. During the same period, 45 individuals in two election cases were prosecuted over issues relating to the November 2011 District Council elections for offenses relating to giving false or misleading information to an electoral officer. Of these individuals 28 were convicted, 13 were waiting trial, and four were acquitted.

Political Parties: Pandemocratic parties faced a number of institutional challenges preventing them from holding a majority of the seats in the LegCo or having one of their members become CE. The voting process ensures probusiness representatives and Beijing's allies control a majority. Additionally, the central government and its business supporters provided generous financial resources to parties that support Beijing's political agenda in Hong Kong, ensuring these organizations will control the levers of government and all senior positions.

Participation of Women and Minorities: Six of the 31 members of the Executive Council (cabinet-level secretaries and "nonofficial" councilors who advise the CE) were women. Nine of the 35 directly elected LegCo members were women, and women held two of the 35 FC seats. Thirteen of the 44 most senior government officials (secretaries, under secretaries, and permanent secretaries) were women.

Many Hong Kongers hailed the election of the city's first gay LegCo member in the September races as a sign of the public's greater acceptance of lesbian, gay, bisexual, and transgender (LGBT) persons.

There is no legal restriction against non-Chinese running for electoral office or participating in the civil service, although 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. The government regarded ethnic origin as irrelevant to civil service appointment and did not collect data on the number of nonethnic Chinese serving in the civil service, a practice that some observers criticized as preventing the government from monitoring hiring and promotion rates for nonethnic Chinese.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, and the government generally implemented it effectively. Hong Kong continues to be viewed as relatively uncorrupt. However, there were several major arrests during the year, and many observers held that corruption in general seemed to be on the rise. An ICAC spokesman said that some prominent corruption cases widely reported in the media might have affected perception of Hong Kong.

Between January 1 and September 30, there were 936 corruption reports involving government personnel concerning alleged breaches of provisions under the Prevention of Bribery Ordinance. Of the 936 reports received, as of September 30, 378 were under investigation, 315 were nonpursuable, and 243 were unsubstantiated after investigation. During the same period, nine government personnel in nine cases were prosecuted regarding reports received in 2010 and 2011. Five were convicted, three awaited trial, and one was acquitted. Overall, corruption complaints against government departments increased by 13 percent in the first 11 months of the year compared with the same period last year, according to the ICAC.

On March 29, the ICAC arrested former chief secretary for administration Rafael Hui on charges of misconduct in public office for accepting more than HK\$34 million (four million dollars) in bribes from property magnates Thomas and Raymond Kwok and two others in return for favors. At year's end the case was continued.

In July Secretary for Development Mak Chai-kwong, in office for less than two weeks, resigned shortly before his arrest by the ICAC for abuse of government rental allowance. The ICAC also

arrested Highways Department Assistant Director Tsang King-man, as well as Mak's and Tsang's wives for conspiracy to defraud the government of private tenancy allowances between 1985 and 1990. The two were alleged to have cheated the government of more than HK\$700,000 (\$90,000) by concealing their financial and proprietary interests in apartments they rented from each other's wives. Mak also faced two counts of acting as an agent using a document with intent to deceive his principal, contrary to the Prevention of Bribery Ordinance, while Tsang faced three similar charges.

The issue of unauthorized building works (UBWs) at private residences became an increasingly larger political issue during the year, with the media highlighting a number of senior government figures who had illegal structures added to their homes without going through the legal process. According to at least one newspaper, one-third of the Executive Council's members were involved in UBW scandals, including Laura Chan, Cheung Hok-ming, and Jeffrey Lam.

Many government ministers also had UBWs added to their homes. The media highlighted that Secretary for Food and Health Ko Wing-man knocked down an internal wall between two apartments he owned without prior permission, and his predecessor in the job, York Chow, had UBWs in his home at least until a month before leaving office in June. In another case the government's Buildings Department had allegedly given Secretary for Commerce and Economic Development Gregory So preferential treatment to carry out work to – ironically – remove illegal structures at his home. In August the wife of Secretary for Development Paul Chan received removal orders from the Buildings Department to eliminate UBWs in two subdivided apartments her company owned. On November 26, Permanent Secretary for Transport and Housing and Duncan Pescod removed a glass canopy and an awning from a house he owned after media reports said they could be unauthorized structures. Pescod was the most senior non-Chinese official and the 11th official accused of having an illegal structure at a home in the past two years.

CE Leung won the March 25 selection process after reports of chief rival Henry Tang's scandals over illegal structures at Tang's home. After Leung's victory, however, the media discovered illegal structures at Leung's home. The ensuing uproar prompted prodemocracy CE challenger Albert Ho to file an election petition to overturn the selection results. Ho was unsuccessful, but on November 23, Leung issued a 14-page statement explaining details of and blaming a memory lapse for confusion over the illegal structures at his home. By year's end the scandal had not ended with the most recent allegations claiming that Buildings Department staff was involved in a cover-up of Leung's UBW.

On November 4, in a separate case involving a public figure and a non-UBW housing issue, Executive Council member Franklin Lam requested a leave of absence under mounting pressure to step down since it emerged that he put two apartments for sale just weeks before the government announced new measures to cool residential property prices. At year's end the ICAC was investigating Lam's actions.

Former chief executive Donald Tsang was also mired in a series of scandals about an alleged close relationship with local tycoons and alleged acceptance of entertainment and travel benefits. In May an independent commission to review the situation determined that it was "totally inappropriate" for the chief executive to be above anticorruption laws and it should be made a criminal offence if Hong Kong's leader receives favors without approval.

During 2011 the ICAC received 4,010 corruption reports, an increase of 13 percent from 3,535 reports in 2010. Pursuable reports increased by 12 percent to 3,072. Of the reports, 2,664 concerned the private sector, 1,117 were related to government departments, and 229 involved public bodies. A total of 283 persons were prosecuted with convictions in 84 percent of the cases.

There are no legal protections for whistleblowers.

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 bureaux may impose additional reporting requirements for positions seen as having a greater risk of conflict of interest.

There is no freedom of information legislation. An administrative code on access to information serves as the framework for the provision of information by government bureaux and departments and the ICAC. However, they may refuse to disclose information if doing so would cause or risk causing harm or prejudice in several broad areas: national security and foreign affairs (which were reserved to the central government); immigration issues; judicial and law enforcement issues; direct risks to individuals; damage to the environment; improper gain or advantage; management of the economy; management and operation of the public service; internal discussion and advice; public employment and public appointments; research, statistics, and analysis; third-party information; business affairs; premature requests; and information on which legal restrictions apply. Political inconvenience or the potential for embarrassment were not a justifiable basis for withholding information.

Through September the Constitutional and Mainland Affairs Bureau received 1,372 requests for information under the administrative code, of which 76 requests were withdrawn by requestors, and 74 requests covered cases in which the government bureau or department concerned did not hold the requested information. Of the 1,222 remaining requests, at the end of June, 1,118 requests were met in full (1,094 requests) or in part (24 requests). Of the remaining cases, 74 requests were still being processed and 30 were refused.

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

A wide 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.

Government Human Rights Bodies: There is an Office of the Ombudsman and an Equal Opportunity Commission (EOC), both appointed by the government but independent in their operations. Both organizations operated without interference from the government and published critical findings in their areas of responsibility. EOC Commissioner Lam Woon-kwong continued to serve as a vocal public advocate on minority rights, access to public and commercial buildings for persons with disabilities, and other issues within the EOC's responsibility.

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

The law provides that all permanent residents are equal, and the government enforced this in practice. The EOC is responsible for enforcing the relevant laws.

Women

Rape and Domestic Violence: Rape, including spousal rape, is criminalized under the law, and police enforced the law effectively. Through August 83 rape cases and 942 indecent assault cases were reported to the police.

The government regarded domestic violence against women as a serious concern and took measures to prevent and prosecute offenses. It effectively enforced criminal statutes prohibiting domestic violence against women and prosecuted violators. From January to June, 961 cases of domestic violence were reported to the police. The law allows victims to seek a three-month injunction, extendable to six months, against an abuser. The ordinance does not criminalize

domestic violence directly, although abusers may be liable for criminal charges under other ordinances. The government enforced the law and prosecuted violators, but sentences typically consisted only of injunctions or restraining orders.

The law covers molestation between married couples and heterosexual cohabitants, former spouses or cohabitants, and immediate and extended family members. It protects victims under age 18, allowing them to apply for an injunction in their own right, with the assistance of an adult guardian, against molestation 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 authorization of arrest to an existing injunction, and both injunctions and authorizations for arrest can be extended to two years.

The government maintained programs that provided intervention and counseling to batterers. Eight integrated family service centers and family and child protective services units offered services to domestic violence victims and batterers. The government continued its public information campaign to strengthen families and combat violence, and increased public education on the prevention of domestic violence.

Sexual Harassment: The law prohibits sexual harassment or discrimination on the basis of sex, marital status, and pregnancy. The law applies to both males and females.

Reproductive Rights: Couples and individuals had the right to decide the number, spacing, and timing of children and had the information and means to do so free from discrimination, coercion, and violence. Access to information on contraception, skilled attendance at delivery, and prenatal and postpartum care were widely available.

Discrimination: Women enjoy the same legal status and rights as men. As of March 31, women filled 35.6 percent of the civil service at all ranks and 33.2 percent at the directorate level. Women made up 64 percent of the LegCo Secretariat workforce and 54 percent of its senior "directorate" ranks, including the secretary general and assistant secretary general. Twenty-three percent of judges and judicial officers were women, while women represented 70 percent of the nonjudges and judicial officer staff of the courts.

According to gender rights activists and public policy analysts, while the law treats men and women equally in terms of property rights in divorce settlements and inheritance matters, in practice women faced discrimination in employment, salary, welfare, inheritance, and promotion. Women reportedly formed the majority of the working poor and those who fall outside the protection of labor laws. Despite the fact that the law makes it illegal to discriminate against persons of both sexes, a study by the University of Hong Kong found that women were paid 24 percent less, even after adjusting for age, education, industry, and occupation, than men.

The law establishes the EOC to work towards the elimination of discrimination and harassment as well as to promote equal opportunity between men and women. There was a Women's Commission that served as an advisory body for policies related to women, and a number of NGOs were active in raising problems of societal attitudes and discrimination against women.

Children

Birth Registration: All Chinese nationals born in Hong Kong or abroad to parents, of whom at least one is a PRC-national Hong Kong permanent resident, acquire both PRC citizenship and Hong Kong permanent residence, the latter allowing right of abode in the SAR. Children born in Hong Kong to non-Chinese parents, at least one of whom is a permanent resident, acquire permanent residence and qualify to apply for naturalization as PRC citizens. Registration of all such statuses was routine.

Child Abuse: Through June 706 cases of crimes against children were reported to police: 296 involved physical abuse (referring to victims younger than 14 years old), and 410 involved sexual abuse (referring to victims younger than 17 years old). The law mandates protection for victims of child abuse such as 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 provides parent-education programs, including instruction on child abuse prevention, in all 50 of the Department of Health's maternal and child health centers. It also provided public education programs to raise awareness of child abuse and alert children about how to protect themselves. The Social Welfare Department provided clinical psychologists for its clinical psychology units and social workers for its family and child protective services units. The police maintained a child abuse investigation unit, and in collaboration with the Social Welfare Department, ran a child witness support program. A law on child-care centers helped prevent unsuitable persons from providing child-care services.

Sexual Exploitation of Children: The media reported on a growing number of boys engaged in "compensated dating," which was already a concern among minor girls. The majority of cases involved teenage girls, both above and below the age of consent, who advertised escort services that might include sex, either to support themselves or for extra pocket money. Some women and girls involved in the trade reported being beaten or abused by clients. In response to this trend, police continued monitoring Internet chat rooms and Web sites used by both individuals and syndicates to advertise services, with officers assigned to gather evidence against the operations and determine the techniques used by syndicates to recruit the girls.

The legal age of consent for heterosexuals is 16. Under the law a person having "unlawful sexual intercourse" with a victim under 16 is subject to five years' imprisonment, while having unlawful sexual intercourse with a victim under 13 results in imprisonment for life.

The law makes it an offense to possess, produce, copy, import, or export pornography involving a child under 18 years old, or to publish or cause to be published any advertisement that conveys or is likely to be understood as conveying the message that any person has published, publishes, or intends to publish any child pornography. 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 country-specific information at http://travel.state.gov/abduction/country/country_495.html.

Anti-Semitism

The Jewish community numbered approximately 5,000 to 6,000 persons and reported few acts of anti-Semitism during the year. There were concerns within the Jewish community about some religious sermons in the otherwise moderate Muslim community.

Trafficking in Persons

See the Department of State's [Trafficking in Persons Report](#).

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, access to health care, and the provision of other state services, and the government effectively enforced these provisions. The government generally

implemented laws and programs to ensure that persons with disabilities have access to buildings, information, and communications, although some restrictions were reported.

Further, although the central government has signed the UN Convention on the Rights of Persons with Disabilities, the SAR still adheres to its own Disability Discrimination Ordinance, which human rights groups argue is much narrower and does not oblige the government to promote equal opportunities.

The Social Welfare Department, directly or in coordination with NGOs and employers, provided training and vocational rehabilitation services to assist persons with disabilities. As of September a total of 16,774 persons were participating in these various programs.

As of March 31, the government employed 3,391 civil servants with disabilities in a total workforce of 159,195, or 2.13 percent of the government workforce. Persons with disabilities filled 2 percent of LegCo secretariat positions, 1 percent of judicial positions, and 2 percent of nonjudicial positions in the judiciary.

Instances of discrimination against persons with disabilities persisted in employment, education, and the provision of some public services. The law calls for improved building access and sanctions against those who discriminate.

Despite inspections and the occasional closure of noncompliant businesses, access to public buildings (including public schools) and transportation remained a serious problem for persons with disabilities. Persons with disabilities protested that the government discriminated against them. They claimed persons with severe disabilities who lived with their families could qualify for social security only by moving out of their families' homes and living alone or if every member of their families quit their jobs. The government firmly refuted this claim, noting the government instituted a disability allowance scheme for the severely disabled (those with "100 percent loss of earning capacity") to help persons with disabilities meet special needs arising from their condition. Additionally, as with all Hong Kongers facing financial hardship, persons with disabilities may apply for Comprehensive Social Security Assistance (CSSA).

From September 17 to 28, a group of NGOs attended UN Committee on Human Rights of Persons with Disabilities hearings and submitted a report accusing the government of failing to address limited education and employment opportunities, along with accessibility issues and limited legal protection for the disabled. According to the group, support for children with special needs in the education system is half-hearted, with schools not providing adequate guidance or support that special-needs students require to move into mainstream education. Further, only 20 percent of high school graduates with disabilities applied to university.

According to the EOC, Hong Kong trailed other developed economies in providing equal opportunities for students with disabilities, despite having operated an integrated education policy since 1997. Particularly lacking were adequate resources, training of educators, and government support, EOC Policy and Research Committee Convenor John Tse Wing-ling noted. A Hong Kong Institute of Education Center for Special Educational Needs and Inclusive Education study released in November showed that 43 percent of teachers were unwilling to accept students with special education needs, while two-thirds of teachers and more than half of principals did not see excluding such students as discriminatory.

National/Racial/Ethnic Minorities

Although 95 percent ethnic Chinese, the SAR is a multiethnic society with persons from a number of ethnic groups recognized as permanent residents with full rights under the law. Discrimination based on race is prohibited by law, and the EOC oversees implementation and enforcement of the law. The Race Relations Unit, which is subordinate to the Home Affairs Bureau, served as secretariat to the Committee on the Promotion of Racial Harmony and implemented the

committee's programs. The unit also maintained a hotline for inquiries and complaints concerning racial discrimination. The code of practice (along with selected other EOC materials) was available in Hindi, Thai, Urdu, Nepali, Indonesian, and Tagalog, in addition to Chinese and English.

The Race Relations Unit sponsored a cross-cultural learning program for non-Chinese speaking youth through grants to NGOs.

The government had a policy to integrate non-Chinese students into Hong Kong's schools. The government also provided a special grant for designated schools with a critical mass of non-Chinese students to develop their own programs, share best practices with other schools, develop supplementary curriculum materials, and set up the Chinese-language support centers to provide after-school programs. However, activists expressed concern that there was no formal government-provided course to prepare students for the General Certificate for Secondary Education exam in Chinese, a passing grade from which is required for most civil service employment. Activists also noted that government programs encouraging predominantly Chinese schools to welcome minority students backfired, turning whole schools into "segregated institutions." These schools did not teach Chinese to the nonethnically Chinese students. Students who did not learn Chinese had significant difficulty entering university and the labor market, leading to a cycle of problems including unemployment and poverty, according to reports from the government and NGOs.

The EOC established a working group on Education for Ethnic Minorities in 2010, which presented a set of recommendations to the Education Bureau in March and July 2011. According to activists and the EOC, the Education Bureau stressed that it was a parental decision to choose between mainstream and designated schools. It agreed that support measures in both types of schools should be strengthened to enhance non-Chinese students in learning Chinese, but it expressed reservation about the proposed development of an alternative Chinese curriculum on the grounds of low recognition by international universities. A number of high-profile South Asian professionals complained that while several Caucasian foreign-born residents were able to secure a SAR passport, the Immigration Department had prevented the South Asian professionals from doing so, and they alleged racial discrimination.

Minority group leaders and activists complained that government requirements that all job applicants speak Chinese kept nonnative Chinese speakers out of civil service and law enforcement positions. During the year police recruited the first nonethnic Chinese police constable since 1997. Despite the fact that both English and Chinese were official languages, reports indicated that little more than one-third of government departments regularly issued their press releases in both.

Activists and the government disputed whether new immigrants from the mainland should be considered as a population of concern under antidiscrimination legislation. While concerns were raised that new immigrants do not qualify to receive social welfare benefits until they have resided in the SAR for seven years, the courts upheld this legal standard. Such immigrants can apply on a case-specific basis for assistance.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

There are no laws criminalizing consensual same-sex sexual activity. In 2005 the Court of First Instance ruled that maintaining an age of consent for male-male relations at 21 years old rather than 16 years old violated the Bill of Rights Ordinance. There were no specific laws governing age of consent for female-female relations.

Gay rights groups continued to complain that the government's sponsoring of seminars on "homosexual conversion therapy" demonstrated the government's antigay rights views. According

to gay rights groups, the seminars' contents explained homosexuality as deriving from "unhealthy parent-children relationships," "experience of sexual abuse or same-sex sexual behavior," or "serious emotional harm caused by the opposite sex."

In May Secretary for Constitutional and Mainland Affairs Raymond Tam said that a law against sexual orientation discrimination "will only lead to arguments, divisions, and conflicts," and the time was not yet "ripe to take the legislative route." On November 7, the LegCo voted down a motion moved by prodemocracy lawmaker Cyd Ho, urging the government to launch a public consultation on enacting a law to safeguard equal opportunities for and the basic rights of persons of different sexual orientations. Every prodemocracy member except for one (who abstained) voted for the motion, while only five pro-Beijing members supported it.

The pro-Beijing Democratic Alliance for Betterment and Progress of Hong Kong (DAB) and members of the probusiness Liberal Party said they opposed the motion as "mainstream society does not accept gays." DAB's LegCo member, Starry Lee, held that legislations might "not help change the attitude of the public, and it may even lead to discrimination and narrow room for discussion."

Following the motion's defeat, and coinciding with "Pink Season," the largest LGBT festival in Asia, an estimated 4,000 persons marched from Victoria Park to Central November 10, up from 2,500 in 2011, according to organizers. Pink Season was supported by the Hong Kong Tourism Board, which was striving to make Hong Kong a "LGBT-friendly tourist destination."

While Hong Kong has legislation that bans discrimination on the grounds of race, sex, disability, and family status, there is no law that prohibits companies from discriminating on grounds of sexual orientation. A May survey of 1,002 persons by NGO Community Business found that 27 percent of respondents said LGBT persons should "keep their sexual orientation to themselves." Almost 80 percent said LGBT persons faced discrimination in the community and at work. LGBT professionals are permitted to bring partners to Hong Kong only on a "prolonged visitor visa." Successful applicants, however, cannot work, obtain an ID card, or qualify for permanent residency.

The government claimed public education was sufficient to protect the rights of the LGBT community, and legislation was not necessary. While acknowledging that same-sex partners did not enjoy the same rights as heterosexual married couples, the Society for Truth and Light – the bill's major opponent and which has long opposed any kind of legislation – said rather than introducing a law, government departments should "change their policies." The society claimed any bill could make it "illegal to disagree with homosexuality."

The Federation of Parent-Teacher Associations of Yau Tsim and Mong Kok districts claimed legislation might mean it would be illegal for schools, including religiously affiliated institutions, to "teach that homosexuality was wrong, as it would be seen as discriminatory."

Other Societal Violence or Discrimination

There were no reports of societal violence or discrimination against persons with HIV/AIDS or against other groups not covered above.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutory instruments, protects the right of workers to form and join independent unions without previous authorization or excessive requirements, and conduct legal strikes. However, the law does not provide for the right to collective bargaining. Trade unions must register with the government's Registry of Trade Unions and must have a

minimum membership of seven persons for registration. Unions could affiliate, and workers were not prevented from unionizing. In the first three quarters of the year, 11 new trade unions registered while one was deregistered at the union's request.

The law allows the use of union funds for political purposes provided a union has the authorization of the majority of its voting members at a general meeting.

The law provides for the right to strike, although there are some restrictions on this right for civil servants. According to the Employment Ordinance (EO), an employer cannot fire, penalize, or discriminate against an employee who exercises his union rights and cannot prevent or deter the employee from exercising his union rights. Additionally, under the EO an employee who is unreasonably and unlawfully dismissed (including on the grounds of the employee exercising his trade union rights) is entitled to remedy in the form of an order for reinstatement or reengagement but subject to mutual consent of the employer and the employee.

The law provides for reinstatement and or compensation not exceeding HK\$150,000 (\$19,230) for unreasonable and unlawful dismissal. In the first three quarters of the year, there was one strike recorded involving 150 workers.

The Workplace Consultation Promotion Division in the Labor Department facilitated communication, consultation, and voluntary negotiation between employers and employees. Tripartite committees for each of the nine sectors of the economy included representatives from some trade unions, employers, and the Labor Department. During a labor dispute, the Labor Relations Division in the Labor Department facilitates conciliation so that dispute could be settled with minimum friction and disruption.

Worker organizations were independent of the government and political parties. However, according to prodemocracy labor activists, only progovernment unions were able to participate substantively in the tripartite process, while the democratic Hong Kong Confederation of Trade Unions was consistently excluded. Antiunion discrimination did not occur in practice.

Although there was no legislative prohibition against strikes, and the right and freedom to strike are enshrined in article 27 of the Basic Law, in practice most workers had to sign employment contracts that typically stated that walking off the job was a breach of contract, which could lead to summary dismissal. Various sections of the EO prohibit firing an employee for striking and void any section of an employment contract that would punish a worker for striking. As in past years, thousands of workers participated in the annual May 1 Labor Day march calling for a raise in the minimum wage and better worker protections. According to the government, there were no reports of any workers being fired for participating in a strike during the year.

Firefighters staged a sit-in protest at the government headquarters in August to demand their working hours be cut from 54 hours to 48 per week. The government countered with an offer of 51 hours instead.

Local trade unions and NGOs escalated efforts to advocate for legislation that would provide for collective bargaining rights, but as of year's end there was no progress on a bill addressing this concern.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, and the government effectively enforced such laws. There were concerns that some migrant workers faced high levels of indebtedness assumed as part of the terms of employment, creating a risk they could fall victim to debt bondage. The SAR prohibits the collection of employment-related debt, but prosecution was hampered by looser restrictions in some countries that send workers. Some locally licensed employment agencies were suspected of colluding with Indonesian agencies 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 had been repaid. The government conveyed its concerns about these cases to a number of foreign missions. In January a local agency was fined HK\$5,000 (\$641) for overcharging a domestic worker and was also ordered to pay compensation of HK\$2,626 (\$337) to the job seeker concerned. In March its license was revoked.

There also were reports that some employers illegally forbade domestic workers from leaving the residence of work for nonwork-related reasons, effectively preventing them from reporting exploitation to authorities. SAR authorities claimed they encouraged aggrieved workers to lodge 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](#).

c. Prohibition of Child Labor and Minimum Age for Employment

There were laws to protect children from exploitation in the workplace. Regulations prohibit employment of children under the age of 15 in any industrial establishment. Other regulations limit workhours in the manufacturing sector for persons 15 to 17 years old to eight hours per day and 48 hours per week between 7 a.m. and 7 p.m. and prohibit overtime in industrial establishments with employment in dangerous trades for persons less than 18 years old.

Children 13 and 14 years old 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. In the first nine months of the year, the Labor Department conducted 100,231 inspections, in which no irregularities were detected.

d. Acceptable Conditions of Work

The SAR's first statutory minimum hourly wage, HK\$28 (\$3.60), came into force in May 2011. Approximately 760,000 Hong Kong residents live under the locally defined poverty line (annual income of about HK\$47,213 (\$6,053) for an individual, HK\$75,598 (\$9,692) for a two-person unit, HK\$100,168 (\$12,842) for a three-person family).

On November 9, the government announced the establishment of the Commission on Poverty, which is tasked with setting a poverty line as a tool for gauging the poverty situation and assessing the effectiveness of possible policies to address it.

In practice wages were often set by employers and employer associations. Additionally, some activists claimed that employers used employment contracts that defined workers as "self-employed" to avoid employer-provided benefits such as paid leave, sick leave, medical insurance, workers' compensation, or Mandatory Provident Fund payments. According to the Labor Department, there were cases in which employers faced heavy court fines for such behavior. The department held that it was seeking to promote public awareness, consultation, conciliation services, and tougher enforcement to safeguard employees' rights.

There is no law concerning working hours, paid weekly rest, rest breaks, or compulsory overtime for most employees. For certain groups and occupations, such as security guards and certain categories of drivers, there are regulations and guidelines on working hours and rest breaks. According to the General Household Survey conducted by the Census and Statistics Department during the year, approximately 17 percent of employees worked 60 hours or more per week. The

law stipulates that employees are entitled to 12 days of statutory holidays and employers must not make payment in lieu of granting holidays.

The minimum wage for foreign domestic workers was HK\$3,920 per month (\$506). The government's Standard Employment Contract requires employers to provide foreign domestic workers with housing, worker's compensation insurance, travel allowances, and food or a food allowance in addition to the minimum wage, which together provided a decent standard of living. Foreign domestic workers could be deported if dismissed. After leaving one employer, workers have two weeks to secure new employment before they must leave the SAR. Activists contended this restriction left workers vulnerable to a range of abuses from employers. Workers who pursued complaints through legal channels may be granted leave to remain; however, they were not able to work, leaving them either to live from savings or to depend on charitable assistance.

The government contended that the "two-week rule" was necessary to maintain effective immigration control and prevent migrant workers from overstaying and taking unauthorized work. Regarding maximum hours and rest periods, the government stated that the rules on these issues cover local and migrant workers. However, in its explanation of why live-in domestic helpers (both local and foreign) would not be covered by the statutory minimum wage, the government explained that "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."

Domestic workers were often required to live with their employers (who do not always provide separate accommodation for the worker), which made it difficult to enforce maximum working hours per day or overtime.

During the first nine months of the year, two employers were convicted for wage default and failure to pay the sum awarded by the Labor Tribunal relating to the employment of foreign domestic workers. From January to June, 83 foreign domestic workers filed criminal suits, 36 of which were against employers for maltreatment including rape (five), indecent assault (nine), and injury and serious assault (22).

Laws exist to ensure health and safety of workers in the workplace, and these laws were effectively enforced.

The Occupational Safety and Health Branch of the Labor Department is responsible for safety and health promotion, enforcement of safety management legislation, and policy formulation and implementation. In the first three quarters, Labor Department conducted 87,967 workplace inspections. In the first half of the year, there were 965 convicted summonses, resulting in fines totaling HK\$7.78 million (\$1 million). In addition to prosecuting offenses under the safety legislation, the Labor Department also issued 1,225 improvement notices requiring employers to remedy contraventions of safety laws within a specified period and 485 suspension notices directing removal of imminent risks to life and limb in workplaces.

In the first half of the year, the Labor Department recorded 19,433 occupational injuries, including 6,145 classified as industrial accidents. In the same period, there were seven fatal industrial accidents. Employers are required to report any injuries sustained by their employees in work-related accidents. Labor activists raised the issue of the increase in deadly industrial accidents, mainly due to construction and infrastructure projects in Hong Kong.

There are no laws restricting work during typhoon or rainstorm warning signals. Nevertheless, the Labor Department issues a Code of Practice on work arrangements in times of severe weather, including the recommendation that employers have only essential staff come to work during certain categories of typhoon or rainstorm warnings. Both pro-Beijing and pandemocratic unions

called for a review of protections for workers during inclement weather, including legal protections.

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