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## Country Report on Human Rights Practices 2013 - China - Hong Kong

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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 the SAR will enjoy a high degree of autonomy except in matters of defense and foreign affairs. In March 2012 a Chief Executive Election Committee composed of 1,193 members selected C.Y. Leung as the SAR's third chief executive (CE). The fifth-term Legislative Council (LegCo) was elected in September 2012 from a combination of directly elected seats and limited franchise or "small circle" functional constituencies. Authorities maintained effective control over the security forces. Security forces generally did not commit human rights abuses, but there were some reports of assault by police officers.

The most important human rights problems reported were the limited ability of citizens to participate in and change their government, reports of 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 wielded disproportionate political influence.

Other areas of reported concern include limitations on freedom of the press and self-censorship, incidents of violence against the media, 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 1,068 complaints. Of those, six were substantiated as reported, six substantiated other than reported, one was not fully substantiated, seven were unsubstantiated, six were false, eight did not involve fault, 114 were not pursuable, 446 were withdrawn, and 383 were pending investigation and endorsement by the Independent Police Complaints Council (IPCC). There were 21 allegations of assault by police officers on persons not in custody, of which 11 were not pursuable and two were withdrawn. Eight allegations were pending investigation as of June. There were also 114 allegations of assault by police officers against persons in custody in the first half of the year. Of those, one was found to be false, 14 were not pursuable, and 43 were withdrawn 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. In the past, nongovernmental organizations (NGOs) voiced 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 11,528 persons. As of June 30, the total prison population was 9,189, of which 8,245 were adults 21 years old or older (6,668 males and 1,577 females). As of June 30, a total of 63 (54 male and nine female) young offenders under the age of 16 were admitted to penal institutions, including prison, training centers, detention centers, and drug addiction treatment centers. Authorities did not hold male and female prisoners together, nor were juveniles held with adults.

The average occupancy rate for all penal institutions was 79.7 percent. The CSD acknowledged 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.

In the first half of the year, there were 11 reports of deaths of prisoners in CSD custody. Inquest results had not been reported by year's end.

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 had 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 condition. 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. Penal and judicial authorities used community service and/or fines as an alternative to incarceration for nonviolent offenders.

Independent Monitoring: The government permitted human rights groups to conduct prison visits. In the first six months of the year, there were 14 media visits and 222 visits by justices of peace (all of which were unannounced). Justices of the peace 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. 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 some incidents of arbitrary arrest and detention occurred during the year.

## Role of the Police and Security Apparatus

The Hong Kong Police Force maintained internal security and reported to the Security Bureau. The PRC's People's Liberation Army is responsible for external security. 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.

In August police complained that the IPCC failed to maintain impartiality after IPCC secretary general Ricky Chu described a pro-police rally on August 4 as a political event, which prohibited police officers from taking part. IPCC chairman Jat Sew-tong tried to play down the incident by calling on police to urgently review the force's guidelines on which events police officers can and cannot participate.

## Arrest Procedures and Treatment of Detainees

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. 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. 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: Prodemocracy activists claimed that incidents of arbitrary arrest targeted them and were politically motivated.

Police arrested two prodemocracy lawmakers, Albert Chan and Leung Kwok-hung, at a New Year's Day protest. The two accused police of making politically motivated arrests because the protesters had already dispersed when they were detained. They were later released on bail.

## e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence. 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. 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, the LegCo president, and the 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. 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 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 public trial without undue delay, and defendants could confront and question witnesses testifying against them and present witnesses to testify on their behalf. Defendants and their attorneys had access to government-held evidence relevant to their cases. Defendants have the right of appeal and the right not to be compelled to testify or confess guilt.

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. 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 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. Activists regularly raised concerns about the independence of the SAR's courts, which are endowed with a high degree of autonomy under the Basic Law.

In March the Court of Final Appeal declined the government's request to seek clarification from the NPC/SC on the meaning of a 1999 interpretation of Article 24 of the Basic Law, which deals with permanent residency. The bar association welcomed the judgment and urged the government "to exercise extreme caution" in seeking the NPC/SC's interpretation of the Basic Law, as any attempt "is likely to have a detrimental impact on the rule of law in Hong Kong."

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

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

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 allow 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, while 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 August the Privacy Commission for Personal Data stopped the supply of personal data from litigation and bankruptcy records through a smartphone application that provided users with details on litigants without their consent. All the data was already available in the public domain. Privacy Commissioner Allan Chiang Yam-wang stated this highlighted a common misconception that data in the public domain was open to unrestricted use. His specific concerns were the possibility of widening the risk of accidental breach of privacy and the indefinite storage of data.

Between January 1 and August 31, the privacy commissioner received 1,299 complaints. Of these, 21 cases were found to have violated the law, 629 were resolved or rejected after preliminary inquiries, 74 resolved or rejected after formal investigations, and 433 withdrawn or found not pursuable. The remaining complaints remained 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. An independent press, an effective judiciary, and a generally supportive government combined to promote 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.

Press Freedoms: In August the antigraft body, the Independent Commission against Corruption (ICAC), sought a court order compelling Commercial Radio Hong Kong and the *iSun Affairs* weekly magazine to surrender

records of interviews with former Chinese People's Political Consultative Conference delegate Lew Mon-hung, a move criticized by the media as an attempt to restrict press freedom. Lew accused CE Leung of lying over his handling of illegal structures at his home. He also railed at Leung for breaking a promise to appoint him to the Executive Council as a reward for his support during the 2012 CE selection. In September the High Court dismissed the ICAC's request on Commercial Radio Hong Kong, and in October the ICAC withdrew its application to the court regarding *iSun Affairs*. The court subsequently ordered the ICAC to pay the legal costs involved in the case.

Violence and Harassment: A number of violent attacks on media-related personalities took place during the year. In both cases, pan-democrats claimed that the incidents represented an increasing effort of the central government to restrict criticism of its policies in the SAR.

In June a series of attacks targeted the prodemocracy Next Media group. First, a stolen car rammed the gate of the home of the group's chairman, Jimmy Lai. The perpetrators left an axe and a knife behind before fleeing the scene. A week later two men burned copies of Next Media's prodemocracy newspaper *Apple Daily* inside a delivery truck. A similar event took place four days later, when three masked men burned about 26,000 copies of *Apple Daily*.

Also in June, Chen Ping, owner of *iSun Affairs*, a magazine that reported sensitive issues in China and the SAR, was assaulted by two young men armed with clubs. He was hospitalized without severe injuries. Police continued investigating these cases, and no arrests had been made at year's end.

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.

In September observers criticized the *HK Economic Journal* for allegedly withdrawing a commentary accusing TVB News of biased reporting surrounding CE Leung's September 15 district visit. The paper's deputy chief editor, Yuen Yiu-ching, who was against the withdrawal decision, said the commentary was fair in criticizing TVB for imbalanced reporting. He accused the paper of imposing self-censorship under its newly appointed chief editor, Alice Kwok. Prodemocracy Civic Party lawmaker Claudia Mo accused TVB of contravening the Communications Authority's General Code of Practice on Television Program Standards by carrying biased reports which might have misled the public.

In November free press activists criticized Commercial Radio Hong Kong's (CRHK) decision to move outspoken radio host Siring Li from a popular morning show to an evening program as politically motivated and yet another example of media self-censorship. Li was a vocal critic of the government and supporter of public demonstration on several social issues and has angered many progovernment supporters. CRHK CEO Stephen Chan claimed that Li's removal was a programming decision and had nothing to do with the fact that the station's extension of its license would be up for renewal by the government before 2016.

## Internet Freedom

There were no government restrictions on access to the internet; there was some monitoring of the internet. Prodemocracy 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

In general there were some 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.

Following large-scale protests in August 2012, the government announced it would suspend a controversial "moral and national education curriculum," which critics argued would gloss over difficult periods in China's history, such as the Cultural Revolution and Tiananmen Square massacre. During the year, however, the government adopted a policy allowing individual schools to adopt the plan. In a July press briefing, Secretary for Education Eddie Ng told the media that a standardized curriculum should include moral and national education as a component.

Throughout the year, critics claimed that the government's December 2012 decision to transfer a HK\$20 million Hong Kong dollars (HK\$) (\$2.6 million) budget from the independent Research Grants Council to a public policy research fund chaired by an academic from the Central Policy Unit, a government body led by an alleged progovernment policy thinker, continued to threaten academic freedom.

In July Lam Wai-sze, a teacher, walked past a Falun Gong group being harassed by progovernment Hong Kong Youth Care Association members, while police reportedly stood by and did not intervene. When

bystanders tried to defend the practitioners, police formed a human barricade to separate the opposing sides. On witnessing this, Lam scolded police for their behavior in protecting those harassing Falun Gong practitioners. She subsequently crossed the human barricade and exchanged heated words with the officers. A pro-establishment local publication taped the incident and posted an edited version online in a bid to present the teacher as the aggressor. As a result Lam and the primary school where she taught were forced to apologize publicly, and CE Leung requested a report on Lam from Secretary for Education Eddie Ng. LegCo member Ip Kin-yuen accused the CE of being “seriously biased” on the case, and it was unclear whether Ng compiled a report.

In October the local arts community criticized the Hong Kong Ballet’s removal of a 12-minute segment on the Cultural Revolution during a performance piece. According to several arts and culture representatives, the production team cut the segment following the attendance of Central Government Liaison Office director Zhang Xiaoming and Hong Kong chief secretary Carrie Lam at the play. Hong Kong Ballet artistic director Madeleine Onne told the media the section was cut for “artistic reasons” but would be restored.

## **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. 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. Activists and pan-democratic legislators, however, expressed concern that the government took a more restrictive view of protests when protests occurred at the Central Government Liaison Office, which saw several clashes with protesters end in arrests. Activists alleged that police acted under instructions from the mainland government, which police denied.

Demonstrators continued to claim that their ability to protest had become increasingly difficult due to Hong Kong Police commissioner Andy Tsang’s opposition to prodemocracy organized protests. According to organizers, 430,000 persons participated in the annual July 1 demonstration, and they focused on denouncing the PRC’s growing interference and the selection of C.Y. Leung as CE. Police estimated there were 66,000 protesters.

In May police arrested Melody Chan, a female trainee lawyer and volunteer for the Occupy Central campaign--a civil disobedience effort to press for universal suffrage in Hong Kong’s elections--for unauthorized assembly in a rally two years previous. She was sentenced to a one-year bond in July, implying that she would be liable to a fine of HK\$2,000 (\$256) and six months’ imprisonment if she broke the law in the next 12 months. Chan told the media after the judgment that she accepted the bond because she did not want the case to affect her work.

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 Offenses against the Person Ordinance (OAPO). Although both ordinances criminalize assault on a police officer on duty, the PFO carries a maximum penalty of six months’ imprisonment and a HK\$5,000 (\$645) fine, while 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 the first half of the year, authorities registered 1,317 societies and did not refuse any applications.

## **c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt/](http://www.state.gov/j/drl/irf/rpt/).

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

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights, 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. There were 3,637 torture claims pending Immigration Department processing. The Immigration Department determined only eight of 1,079 torture claims it processed were substantiated. Applicants and activists continue to complain over the slow processing of claims and limited government subsidies available to applicants.

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 claims that persons traveling to the SAR for reasons that did not appear to contravene the law were refused entry by the Immigration Department. Local Falun Gong leaders claimed that the Immigration Department denied entry into the SAR to a number of their practitioners from Taiwan without providing an explanation. 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 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.

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.

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 September, 2,645 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.

Refoulement: 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" required by the SAR'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.

Employment: The government defines CAT claimants and asylum seekers as illegal immigrants or "overstayers" in the SAR, and, as such, they have no legal right to work in the city. Individuals 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 the Vocational Training Council. A CAT claimant whose torture claim was accepted could apply to the director of immigration for permission to work in the SAR. In April a Sri Lankan torture claimant received a temporary work permit from the Immigration Department just a day before he was to file a legal challenge against the department in the Court of Final Appeal. This was the first case of a torture claimant allowed to work in the city.

Access to Basic Services: The government, in collaboration with NGO International Social Service Hong Kong Branch, 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, 4,821 persons were receiving assistance.

The Hospital Authority provided waivers of medical expense at public clinics or hospitals to service users on a case-by-case basis, and the Education Bureau accepted schooling applications for minor claimants who were not expected to be removed from the SAR within a short period. Applications to attend school or university were then authorized on a case-by-case basis at the discretion of the director of immigration.

In September UN refugee officials stated their concern for the welfare of nearly 1,000 asylum seekers living in squalor in the SAR's New Territories. They warned the government that it was failing to ensure the asylum seekers' right to an adequate standard of living.



## 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 the LegCo. Beginning in September 2012, voters were able to elect five newly created FC seats in the district council sector, known as “super seats.” These five LegCo members were elected 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 the principle 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 in 2012, 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.

In 2012 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--with the exception of 27 ex-officio seats reserved for indigenous Chinese rural council representatives--but pan-democrats complained that this violated a previous understanding between the LegCo and the government to eliminate all appointed district councilors immediately.

### Elections and Political Participation

Recent Elections: In March 2012, in a process widely criticized as undemocratic, the 1,193-member CE Election Committee, dominated by progovernment electors and their allies, selected former Executive Council Convenor C.Y. Leung to be the SAR’s chief executive. The PRC’s State Council formally appointed him, and President Hu Jintao swore in Leung in July 2012.

The September 2012 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-PRC and pro-establishment candidates won 43 of 70 LegCo seats, while prodemocracy candidates won 27 seats.

Between January and August, the Independent Commission against Corruption (ICAC) received 553 complaints concerning alleged breaches of provisions under the Elections (Corrupt and Illegal Conduct) Ordinance. The complaints included allegations of 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 file election returns, and providing others with refreshments and entertainment at elections. As of September, 490 complaints were under investigation, one was deemed nonpursuable, and 62 were unsubstantiated after investigation. During the same period, five persons were prosecuted in two election cases from prior years. Of these, one person was convicted and four were awaiting trial.

Political Parties: Pan-democratic parties faced a number of institutional challenges, which prevented them from securing a majority of the seats in the LegCo or having one of their members become CE. The voting process ensured probusiness representatives and government allies controlled a majority. In addition, 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.

Participation of Women and Minorities: Six of the 29 members of the ExCo (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, undersecretaries, and permanent secretaries) were women.

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 non-ethnic 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. The SAR continued 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 stated that some prominent corruption cases widely reported in the media might have affected perception of the SAR.

In October organizers claimed 120,000 people (police estimated 36,000) gathered at government headquarters to protest the government's decision to deny a free-to-air television broadcast license to Hong Kong Television Network (HKTV). Activists claimed that the decision to award licenses to two HKTV competitors while denying HKTV's application was nontransparent and politically motivated. CE Leung denied the claims, calling the license application process fair and legal.

Corruption: The ICAC, which is charged with the investigation and prosecution of cases, prevention, and policy development, was responsible for combating corruption. The ICAC generally operated effectively and independently, actively collaborated with civil society, and had sufficient resources. Between January and September 30, the ICAC received 529 corruption reports involving government personnel concerning alleged breaches of provisions under the Prevention of Bribery Ordinance. Of these reports, as of September, the ICAC had 240 under investigation, deemed 242 to be nonpursuable, and deemed 47 unsubstantiated after investigation. During the same period, authorities prosecuted 13 government personnel in 13 cases based on reports received prior to 2013. Of these, four were convicted, eight were awaiting trial, and one was acquitted.

In September former ICAC commissioner Timothy Tong was suspected of lying and making false statements under oath due to discrepancies between his testimonies in the legislature and the contents of a report released in early September by the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts, and Visits. Tong was accused of lavish spending on meals with officials and academics on overseas visits. The LegCo summoned him to explain the discrepancies on September 25 and 26.

In August former secretary for development Mak Chai-kwong and Highways Department assistant director Tsang King-man and their wives were sentenced to eight months' imprisonment and suspended for two years for defrauding the government of private tenancy allowances between 1985 and 1990.

In the first six months of the year, the ICAC received 1,256 corruption reports, of which 774 concerned the private sector, 393 were related to government departments, and 89 involved public bodies.

Whistleblower Protection: There are no legal protections for whistleblowers.

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.

In July allegations arose that Secretary for Development Paul Chan had a conflict of interest related to farmland belonging to a company that his wife and brother-in-law owned in an area which the government planned to develop. In October the progovernment majority opposed a pan-democratic motion in LegCo to investigate Chan's involvement in this issue.

Public Access to Information: There is no freedom of information law. An administrative Code on Access to Information serves as the framework for the provision of information by government bureaus and departments and the ICAC. Under the code, authorities 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. Between January and June, the Office of the Ombudsman received 41 complaints relating to the Code on Access to Information.

Through September the Constitutional and Mainland Affairs Bureau received 1,090 requests for information under the 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 had been 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). The government appointed both the ombudsman and the EOC commissioners, who were independent in their operations. Both organizations operated without interference from the government and published critical findings in their areas of responsibility. EOC commissioner York Chow Yat-ngok served 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. The EOC is responsible for enforcing the relevant laws.

### Women

Rape and Domestic Violence: The law criminalizes rape, including spousal rape, and police enforced the law effectively. Through June police received allegations of 59 rape and 759 indecent assault, of which police identified 53 cases as rape and 505 cases as indecent assault.

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, police investigated 946 domestic violence-related cases. 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, homosexual 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 the court can extend both injunctions and authorizations for arrest to two years.

The government maintained programs that provided intervention and counseling to batterers. Sixty-five integrated family service centers and 11 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 men and women, and police enforced the law effectively.

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 was widely available.

**Discrimination:** Women enjoy the same legal status and rights as men. As of April women filled 35.8 percent of the civil service at all ranks and 33.7 percent at the directorate level. Women made up 59.8 percent of the LegCo Secretariat workforce and 46.7 percent of its directorate ranks. Twenty-four percent of judges and judicial officers were women, while women constituted 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, 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.

The law authorizes the EOC to work towards the elimination of discrimination and harassment as well as to promote equal opportunity between men and women. A Women's Commission 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 the SAR 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 the SAR 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:** From January through June, there were 608 cases of child abuse: 246 involved physical abuse (referring to victims younger than 14) and 362 involved sexual abuse (referring to victims younger than 17). 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. Police maintained a child abuse investigation unit and in collaboration with the Social Welfare Department ran a child witness support program. A law on childcare centers helped prevent unsuitable persons from providing childcare services.

**Forced and Early Marriage:** The legal minimum age of marriage is 16 and written consent is required for marriage before the age of 21. There was no evidence of early or forced marriage in the SAR.

**Sexual Exploitation of Children:** There were reports of girls under the age of 18 from some countries in Asia being subjected to sex trafficking in the SAR.

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/](http://www.state.gov/j/tip/).

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 carries a sentence of imprisonment for life.

The law makes it an offense to possess, produce, copy, import, or export pornography involving a child under the age of 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. 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](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* at [www.state.gov/j/tip/](http://www.state.gov/j/tip/).

## 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 generally enforced these provisions. The government generally implemented laws and programs to ensure that persons with disabilities have access to buildings, information, and communications, although there were reports of some restrictions.

The Disability Discrimination Ordinance states that children with special education needs must have equal opportunity in accessing education. It is against the law for a school to discriminate against a student with a disability. According to the government, students with severe or multiple disabilities are placed in special schools with parental consent, while students with less severe disabilities are enrolled in ordinary schools. There were occasional media reports about alleged abuses in education and mental health facilities; the most recent court case involving such abuses was in 2011.

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

The Social Welfare Department (SWD), directly or in coordination with NGOs and employers, provided training and vocational rehabilitation services to assist persons with disabilities. As of June a total of 16,938 persons were participating in these various programs. As of June the SWD offered 12,232 places for subsidized resident -care services for persons unable to live independently. As of June, the SWD provided 6,230 places for preschool services to children with disabilities with the goal of improving their opportunity to participate in regular schools and extracurricular activities.

As of April the government employed 3,391 civil servants with disabilities. 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 that 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 family member quit their jobs. The government firmly refuted this claim, noting that the government instituted a disability allowance program for the severely disabled (those with "100 percent loss of earning capacity") to help persons with disabilities meet special needs arising from their condition. In addition, as with all citizens of the SAR facing financial hardship, persons with disabilities may apply for comprehensive social security assistance.

According to the EOC, the SAR lagged in providing equal opportunities for students with disabilities, despite having operated an integrated education policy since 1997.

## National/Racial/Ethnic Minorities

Although 94 percent ethnic Chinese, 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 based on the 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 EOC maintained a hotline for inquiries and complaints concerning racial discrimination. The EOC's 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.

In September Commissioner Chow called on the government to recognize minority languages in its job requirements. He stated that ethnic minorities had difficulties meeting the Chinese language requirement for jobs in the civil service. As ethnic minorities accounted for about 6 percent of the SAR's population, Chow expressed hope the government would revise its policy. The government had not commented on Chow's remarks.

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 the SAR's schools. The government also provided a special grant for 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 Chinese-language support centers to provide after-school programs. According to the press, of 852 government schools, 31 enrolled mostly ethnic minorities and taught limited Chinese. The government claimed that it had ceased referring to these schools as "designated schools."

Activists expressed concern that there was no formal government-provided course to prepare students for the General Certificate for Secondary Education examination 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 non-ethnic 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.

In 2010 the EOC established a working group on education for ethnic minorities, which presented a set of recommendations to the Education Bureau in 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 assist 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.

In October the UN Committee on the Rights of the Child called the existence of schools where many students came from an ethnic minority, "de facto discrimination." The committee called on the government to "urgently abolish" the schools and promote minority children's access to mainstream institutions.

Minority group leaders and activists complained that government requirements for all job applicants to speak Chinese kept nonnative Chinese speakers out of civil service and law enforcement positions. The Hong Kong Police Force reportedly employed 10 nonethnic Chinese constables during the year.

Activists and the government disputed whether new immigrants from the mainland should be considered as a population of concern under antidiscrimination laws. 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**

No laws criminalize consensual same-sex sexual activity. In 2005 the Court of First Instance ruled that maintaining the age of consent for male-male relations at 21 rather than 16 violated the Bill of Rights Ordinance. No specific laws govern age of consent for female-female relations.

In November a transgender woman from South America told the media that immigration and customs officers behaved "like animals" during a body search and mocked her during a nine-hour episode and body search--conducted by male staff despite her plea for female officers--at the airport in September. She began the process for applying for asylum in the SAR based on fears she would be killed if she returned to the country in which she was born. Officials denied the allegations and insisted proper procedures were followed amid initial suspicion about her identity and her reason for arriving in the SAR. Following the episode at the airport, she told the media that staff at one of the city's largest public hospitals diagnosed her as a psychiatric patient and put her in restraints. The hospital claimed the action was necessary because she was suicidal.

While the SAR has laws that ban discrimination on the grounds of race, sex, disability, and family status, no law prohibits companies from discriminating on grounds of sexual orientation. Lesbian, gay, bisexual, and transgender (LGBT) professionals are permitted to bring partners to the SAR only on a "prolonged visitor visa." Successful applicants, however, cannot work, obtain an identification card, or qualify for permanent residency. The government claimed public education was sufficient to protect the rights of the LGBT community and that legislation was not necessary.

The SAR elected its first openly gay member to LegCo in September 2012.

## **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, provides for the right of workers to form and join independent unions without previous authorization or excessive requirements and conduct legal strikes, but 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. Through September authorities registered seven new trade unions, while three were deregistered at the unions' request. At the beginning of the year, there were approximately 3,427,800 salaried employees and wage earners, of whom 813,897, or approximately 23.7 percent of the working population, belonged to unions.

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. In addition, under the EO, an employee 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, subject to mutual consent of the employer and the employee. The government reported that, as of September, four strikes involving 774 workers had occurred. Activists claimed that many more strikes took place but that the government did not want to tarnish the SAR's business-friendly image by acknowledging them.

The law provides for reinstatement and or compensation not exceeding HK\$150,000 (\$19,300) for unreasonable and unlawful dismissal.

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 of the Labor Department facilitates conciliation so that the dispute can be settled with minimum friction and disruption.

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

Although there was no legislative prohibition against strikes and the right and freedom to strike are enshrined in Article 27 of the Basic Law, most workers had to sign employment contracts, which typically stated that walking off the job was a breach of contract and 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 that employers fired workers for participating in a strike during the year.

In May more than 300 dockworkers returned to work at the Kwai Tsing Container Terminals after a 40-day strike ended upon the contractors' assurance of a 9.8 percent pay increase. The strike was the longest since the SAR's 1997 handover to the PRC. Secretary for Labor and Welfare Matthew Cheung told the LegCo that the action was estimated to have cost striking workers more than HK\$10 million (\$1.29 million) in wages. Dock workers and unions maintained that, without the right to collective bargaining, they could only force bosses to negotiate through strikes and public pressure. The situation of the dock workers was further complicated by the common business practice of appointing contractors to act as middlemen between the corporation and the workers.

In August a strike by 200 workers at an Express Rail Link stop ended after 14 hours when the contractor gave in to demands related to unreasonable pay deductions and working conditions.

### 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.

There also were reports that 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 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* at [www.state.gov/j/tip/](http://www.state.gov/j/tip/).

### **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 work hours in the manufacturing sector for persons who are 15 to 17 years of age to eight hours per day and 48 hours per week between 7 a.m. and 7 p.m. Overtime in industrial establishments with employment in dangerous trades is prohibited for persons under the age of 18.

Children who are 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 eight months of the year, the Labor Department conducted 107,447 inspections. It detected two breaches of child labor regulations, with prosecution to be subject to the results of investigations related to these breaches.

### **d. Acceptable Conditions of Work**

The SAR's first statutory minimum hourly wage, HK\$28 (\$3.61), came into force in 2011. It was adjusted to HK\$30 (\$3.87) in May. In September the government's Commission on Poverty set the official poverty line at 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\$3,600 (\$465), for a two-person household HK\$7,700 (\$993), for a three-person household HK\$11,500 (\$1,483), and so on. According to this definition, more than 1.31 million people (out of a population of approximately 7.18 million) were living in poverty. A study released in November by a group of Hong Kong and British academics claimed that there were 160,000 more Hong Kongers ( a total of 1.47 million) living in poverty than shown in government estimates.

Employers and employer associations often set wages. In addition, 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.

In September the government raised the wages for foreign domestic workers (FDWs) from HK\$3,920 (\$506) per month to HK\$4,010 (\$517) per month for all new contracts signed after October 1. The government also increased the mandatory food allowance for FDWs working in homes where their employers did not provide meals. Activists representing FDWs continued raising concerns about the treatment of domestic workers and noted their disappointment and anger over the 2.3 percent wage increase.

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 employers. Workers who pursued complaints through legal channels could be granted leave to remain in the SAR but could not work, leaving them either to live from savings or 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. 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 did not always provide separate accommodation for the worker), which made it difficult to enforce maximum working hours or overtime regulations. They could also be subject to physical and verbal abuse, poor living and working conditions, and limitations on freedom of movement.

During the first eight months of the year, the Labor Tribunal convicted three employers on 13 counts of wage default, annual leave default, and failure to pay awards in cases relating to the employment of foreign domestic workers. From January to August, 96 foreign domestic workers filed criminal suits, 42 of which were against employers, for mistreatment including rape (four), indecent assault (24), and wounding and serious assault (68).

In September a judge accused a couple of being “cruel” and “vicious” as he sentenced them for subjecting their Indonesian domestic helper to two years of abuse. The judge found the couple guilty of eight charges, including wounding and assault causing bodily harm. He sentenced the man to three years and three months in prison and his wife to five and one-half years, as she had taken a greater role in the assaults.

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 eight months of the year, the Labor Department conducted 80,581 workplace inspections and served 1,449 suspension/improvement notices. During the same period, authorities levied fines totaling HK\$10.3 million (\$1.33 million) for 1,386 infractions identified through workplace inspections.

In the first quarter of year, the Labor Department recorded 8,506 occupational injuries, including 2,607 classified as industrial accidents. In the same period, there was one fatal industrial accident. 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 the SAR.

No laws restrict work during typhoon or rainstorm warnings. Nevertheless, 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. Both progovernment and pan-democratic unions called for a review of protections for workers during inclement weather, including legal protections.

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