

The Rule of Law

The legal system

It has often been said that if Hong Kong people have a defining ideology, it is the rule of law. That is why, since 1997, the rule of law has been the focus of considerable attention in Hong Kong and for the international community.

Any perceived threats to the integrity of Hong Kong's legal system have been vigorously debated and analysed, as would be expected in a community that places so much trust and importance on the rule of law upheld by an independent judiciary.

Under 'One Country, Two Systems', Hong Kong has retained its common law system, which has continued to thrive and operate normally. The laws previously in force before the Handover in 1997 – the common law, rules of equity, ordinances, subordinate legislation and customary law – have been maintained in accordance with the Basic Law.

The rule of law is one of Hong Kong's greatest strengths. It is the cornerstone of Hong Kong's success as a leading international commercial and financial centre, providing a secure environment for individuals and organisations and a level playing field for business.

Everyone in Hong Kong is equal before the law. Everyone has access to the justice system.

The institutions and core values that underpinned the previous legal system, such as the presumption of innocence, freedoms of expression and association and the right to a fair trial have been retained.

The Secretary for Justice (previously known as the Attorney-General) is the government's chief legal adviser and a member



of the Executive Council. The Department of Justice controls criminal prosecutions in the Hong Kong Special Administrative Region free from any interference.

The previous judicial system has been maintained and this has been recognised in many international reports on Hong Kong since the Handover. Judges continue their same common law traditions and exercise judicial power independently, free from any interference.

Access to justice has also been improved: the power of final adjudication is vested in Hong Kong's Court of Final Appeal (CFA), replacing the former role of the Privy Council in London.

The Court of Final Appeal is headed by the Chief Justice, who also heads the judiciary. The Court of Final Appeal is a collegiate court of five judges, comprising the Chief Justice, three permanent judges and one non-permanent judge.

A pool of non-permanent Hong Kong judges and non-permanent judges from other common law jurisdictions may be invited to sit on the Court. This allows the CFA to tap the expertise of the judges and maintain close links with other common law jurisdictions. At present, nine highly-respected overseas judges may be called on to sit on the full bench of the CFA.

Hong Kong's legal profession includes more than 4 700 solicitors and 620 local law firms, more than 750 barristers, 520 registered foreign lawyers and about 45 foreign law firms.

Right of abode issue

Many of Hong Kong's first constitutional test cases have revolved around the question as to who has the right of abode (permanent residency) in Hong Kong under the Basic Law after reunification on July 1, 1997.

These cases resulted in two Court of Final Appeal (CFA) decisions delivered on January 29, 1999. These decisions set in motion a number of other legal challenges on the issue.

The January 1999 decisions gave the right of abode to two categories of people whose right of abode claims had not previously been recognised. Significantly, that CFA judgment also held that all claimants who arrived in Hong Kong after July 10, 1997, had to make their Right of Abode applications from the Mainland and could be removed from Hong Kong if they entered or remained before their applications had been processed and their status confirmed.

The government requested the State Council to seek an interpretation from the Standing Committee of the National People's Congress (NPCSC) on the true legislative intent of the Basic Law articles in question.

Under the Basic Law, the CFA has the power of final adjudication while the NPCSC has the power of final interpretation of the Basic Law. In keeping with common law tradition and Basic Law provisions, the government did not seek to overturn the effect of the January 29 ruling on the parties to that case.

On June 26, 1999, the NPCSC issued an interpretation of the relevant Basic Law provisions. This interpretation has since been followed by the courts in other cases dealing with the right of abode matter.

The NPCSC's interpretation stated that only children whose parents were Hong Kong permanent residents at the time of their birth



were entitled to the right of abode. This is in keeping with international practice. Few countries, if any, allow immigrants to pass on their right of abode to children born elsewhere before they themselves have acquired that right.

The government's decision to seek an interpretation was not without controversy, prompting some to comment that the CFA's authority had been undermined. But in a subsequent right of abode ruling in December 1999, the CFA confirmed that the NPCSC interpretation was both lawful and constitutional. The rule of law and the independence of the judiciary had not been undermined.

Understandably, the issue has generated considerable debate – often emotive – because most cases involve family reunion.

When asked in a recent newspaper article (*South China Morning Post*, June 14, 2002) whether the referral had humiliated the court or diminished its authority, the Chief Justice of the Court of Final Appeal, Mr Justice Li replied: "I did not feel any of those things."

Further cases may still be brought to the courts but these are now likely to focus on particular facts of each case rather than matters of basic principle which have so far been the focus of litigation.

The issue took a tragic turn in August 2000. Two people died – one of them a Senior Immigration Officer – and 48 were injured when right of abode claimants set fire to an office in the Immigration Tower. Of those injured, 25 were Immigration Department staff.

In the most recent test case in January 2002, involving some 5 000 claimants who were mostly ruled ineligible to claim the right of abode, the government was criticised in the media for lacking compassion or being callous.

However, it should be emphasised that the majority of claimants are not children but adults, ranging in age from 19 to 70. According to a sample survey conducted by the Immigration Department many, if not most, of the claimants themselves have spouses and children in the Mainland.

Throughout the appeal period the claimants were treated fairly and compassionately. All claimants were eligible to apply for legal aid. All were able to seek redress through the courts. All had access to heavily subsidised medical care through Hong Kong's public hospital system.

Of the 3 800 claimants now (mid-June 2002) remaining in Hong Kong after the January 2002 judgment, only about 300, or 7%, are aged under 18. In January this year, Mainland authorities announced that children under 18, with parents living in Hong Kong, should be able to enter Hong Kong within a year.

It should also be noted that Hong Kong's immigration policy, like that of many other jurisdictions, is based on controlled and orderly entry.

Every year, 54 000 Mainland migrants come to settle with their families in Hong Kong – the equivalent to 0.8% of our

population. Few other jurisdictions can claim such an intake and assimilation rate for migrants seeking family reunion.

The government stated clearly that there would not be an amnesty for those who lost the most recent court case and who were clearly not entitled to settle in Hong Kong permanently.

It would be unfair to allow claimants to 'jump the queue' ahead of others who have been waiting patiently and lawfully in the Mainland to come to join their families. This stance was supported by a vast majority of Hong Kong people.

In April 2002 the government started to deport claimants who had not returned voluntarily to the Mainland. The January 10, 2002, CFA ruling provided a firm legal basis for that action.

Regional Arbitration Centre

Hong Kong has established itself as a regional centre for arbitration.

The number of cases heard by the Hong Kong International Arbitration Centre (HKIAC) has risen substantially over the past decade because of the increased popularity of arbitration and mediation to resolve disputes, and the growth of the HKSAR as a regional dispute resolution centre.

Arbitration awards made in Hong Kong can be enforced in more than 120 jurisdictions that are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Disputes referred to the HKIAC rose from 94 in 1991, to 218 in 1997 and 307 in 2001. The HKIAC handles significantly more cases than similar arbitration centres in Japan, Singapore, Malaysia and Korea combined.

Law and order

Hong Kong remains one of the world's safest large cities. This is mainly due to a high visible police presence on around-the-clock foot patrols; strictly-enforced laws on the possession of guns and other lethal weapons; and, a law abiding community that respects the rule of law and the work of law enforcement officers.

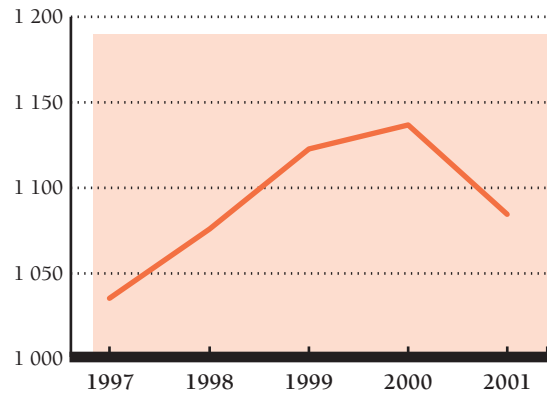


Hong Kong's Police Force – often referred to as 'Asia's Finest' – is well trained and equipped. The Police-to-population ratio of 417 officers for every 100 000 people is one of the highest in the world. It compares to about 339 in Tokyo and 205 in Singapore.

The Hong Kong Police Force has about 38 500 members, including 27 930 regular officers, 4 620 Auxiliary Police and 5 860 civilian support staff. Amongst others, it has specialised units to deal with organised crime, airport security, crowd management, vulnerable witnesses and VIP protection.

The Police Force has continued to maintain close liaison with international law enforcement agencies such as the FBI and the CIA, the Australian Federal Police, the Royal Canadian Mounted Police, Scotland Yard and Interpol. It has also developed close co-operation with law enforcement counterparts on the Mainland at policy and working levels.

Crime rate 1997 - 2001*



*Crimes per 100 000 population

Such close relationships with Mainland and law enforcement authorities abroad have helped Hong Kong in the ongoing fight against organised crime, illegal narcotics, currency and credit card fraud and money laundering.

Boundary integrity

Hong Kong has one of the world's busiest boundary crossings. In 2001, about 106 million people and 11.3 million vehicles crossed back and forth between Hong Kong and the Mainland.



Every day, an average of about 313 000 people and more than 31 300 vehicles cross back and forth between the Hong Kong SAR and the Mainland, with most people heading into neighbouring Guangdong Province.

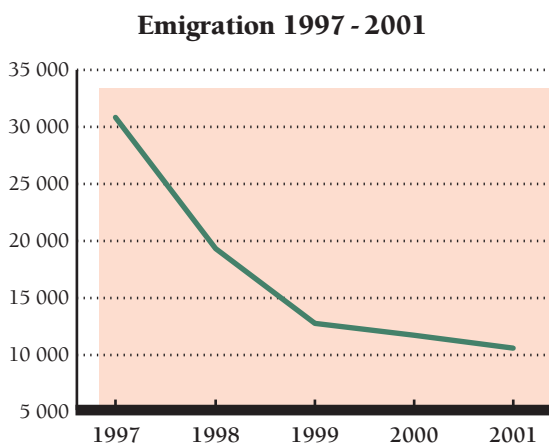
The Hong Kong SAR Government has remained responsible for law and order within Hong Kong, which includes maintaining the integrity of the sea and land boundaries with the Mainland as a separate customs and immigration territory.

Customs and Excise officers work closely with the Police and other international law enforcement agencies to combat the trafficking of illegal drugs. They are also responsible for preventing and detecting smuggling between Hong Kong and the Mainland and for protecting and enforcing intellectual property rights in Hong Kong.

Immigration officers are responsible for preventing, detecting and removing illegal workers. They also work with Police against illegal immigration, forged travel documents and foreign prostitutes.

The Immigration Department has regular dealings with locally-based foreign consulates to share intelligence and foster goodwill and co-operation on immigration control, facilitation of Hong Kong residents travelling overseas and the control of foreign nationals in Hong Kong.

Immigration

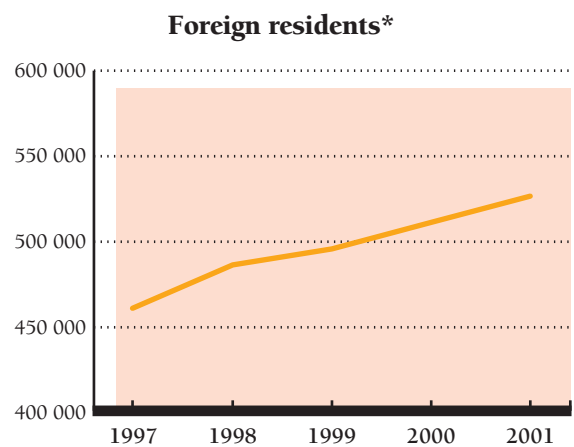


Emigration from Hong Kong has declined for seven consecutive years and is its lowest level

in more than 20 years. This is an indication of long-term confidence in the Hong Kong SAR.

In 2001, about 10 600 people emigrated – an 11% decrease over the 11 900 in 2000 and a 66% decrease since 1997.

In recent years, about 80-90% of all emigrants have gone to Canada, the United States or Australia.



*At 31 December each year

At the same time, there has been a steady increase in the number of expatriates calling Hong Kong home.

At the end of 2001, there were more than 525 000 expatriates living in Hong Kong, with sizeable groups from the USA, Canada, Australia, the United Kingdom and Japan. There were more than 235 000 expatriates from The Philippines, Indonesia, Thailand, India, Sri Lanka and Nepal who mainly work as domestic helpers.

Since July 1, 1997, more than 1.9 million HKSAR Passports had been issued by the Immigration Department. HKSAR Passport holders now enjoy visa-free access to 113 countries or territories, including the EU, compared to 47 countries in June 1998.

The greater acceptance of the HKSAR Passport as a travel document is evidence of international confidence in Hong Kong's immigration regime and the state-of-the-art

security features embedded into the passport to prevent forgery or tampering.

At present, Hong Kong offers visa-free access for periods ranging from one week to six months to more than 170 countries and territories.

Combating corruption

Corruption is not an accepted feature of Hong Kong. People do not like it and they have little tolerance for it. – ‘Corruption in Asia’, Political and Economic Risk Consultancy, March 6, 2002.

Pro-active and resolute action by the Independent Commission Against Corruption (ICAC) has continued to be a major force in providing a cherished level playing field for business in Hong Kong.

Concerns over the effectiveness of the ICAC after 1997 have long dissipated through continued and vigorous enforcement action. The public support rate hovers at 99%. There is no doubt that a culture of intolerance of corruption has firmly taken root in Hong Kong.



Established in 1974, the ICAC has evolved into one of the world's most effective anti-corruption agencies. It has been described as a 'model anti-corruption agency' in the *Transparency International Global Corruption Report* (October 2001).

The ICAC investigates corruption cases in both the public and private sectors. A 'zero tolerance' stance against corruption has rendered Hong Kong one of the world's cleanest administrations. Systemic corruption does not exist in the civil service.

The ICAC helps government departments and public bodies to rid their systems of corruption opportunities while assisting private companies to strengthen internal controls.

To maintain and enhance public support and vigilance against corruption, the ICAC produces educational and media programmes for all strata of the community. In addition, the Internet is also becoming a medium of choice for reaching the mass market.