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THERE IS NO FUTURE FOR REFUGEES IN CHINESE HONG KONG

Kathleen Marie Whitney*

INTRODUCTION

In mass migration movements, there usually at the end is a small, untidy mess.1

There are over six million people in Hong Kong, three-quarters of whom are refugees from Communist governments; one half of whom are from China.2 The most prominent group of refugees in recent times is boat people from Vietnam, over 214,000 of whom fled to Hong Kong from 1975 to 1997.3 Of that number, 143,000 have resettled in other countries, such as Australia, Canada, the United Kingdom, and the United States, and 69,000 have been sent back to Vietnam.4

On July 1, 1997, Hong Kong became the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China (PRC). The PRC is taking action to remove the remaining refugees from Hong Kong and to prevent future asylum seekers from obtaining refugee status.5 In October 1997, 800 rejected Vietnamese asylum seek-

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1 Brian Bresnihan, Hong Kong government coordinator for Vietnamese refugees, quoted in Marcus W. Brauchli, Dissidents Uneasy as Colony’s Clock Ticks, ASIAN WALL ST. J., July 30, 1996, at 1.

2 See John Hughes, U.S. Must Convince China of Its Concern for Hong Kong; Beijing’s Bright Promises Regarding ’97 Takeover Are Wearing Thin, CHRISTIAN SCI. MONITOR, July 31, 1996, at 19; Colina MacDougall, Hong Kong 2; Mood of Gloom Intensifies, FIN. TIMES, June 23, 1988, at II.


ers and 1,300 UN-mandated refugees remained in Hong Kong. Hong Kong is repatriating them as quickly as it can get cooperation and assistance from the Vietnamese government and the detainees. However, boat people and Chinese refugees continue to flee to Hong Kong; 1,600 arrived in the first nine months of 1997. In addition, the region is not politically stable. Therefore, Hong Kong could be a once and future refuge.

The question is what will happen to refugees in Hong Kong. Although the PRC has ratified the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention), it has not implemented procedures for determining refugee status. Historically, refugees in the PRC have been ignored, repatriated, or assimilated into China’s population without determination of refugee status. Chinese Hong Kong withdrew its status as a country of first asylum—those states that provide temporary refuge—for Vietnamese boat people. It is unknown whether the PRC will extend the Refugee Convention to Hong Kong or whether Hong Kong local law or Chinese national law will prevail on the issue of refugees.

Part I of this paper examines the history of Vietnamese and Chinese refugees in Hong Kong up to the present time, in light of relevant international and domestic laws related to refugees. Part II discusses the laws under which Hong Kong is now governed under Chinese authority, and concludes that none of the laws in effect in the HKSAR clearly establish whether the PRC or the HKSAR will be responsible for refugees.

Part III chronicles the PRC’s past treatment of refugees in China and its human rights record relative to the enumerated categories that

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6 See Glenn Schloss & Cliff Buddle, Blair to Be Tackled on Stranded Boat People, S. CHINA MORNING POST, Oct. 11, 1997, at 8; UNHCR, REFWORK, supra note 3.
7 Repatriation entails returning asylum seekers and refugees to their country of origin.
12 See Ann C. Barcher, First Asylum in Southeast Asia: Customary Norm or Ephemeral Concept?
create refugee status: race, religion, nationality, membership in a particular social group, and political opinion. Part IV examines evidence that the PRC will not allow the HKSAR to be autonomous in its governance. Tibet is also an autonomous region of China, and the PRC has not honored Tibet's autonomy. The PRC removed the Dalai Lama's authority and has persecuted Tibetans for no-independence movements. In the HKSAR, the PRC is showing an inclination to take control of the legal system, contrary to provisions of an international agreement and national law. Therefore, the PRC will not allow the HKSAR to be autonomous in its handling of refugees. Part V identifies restrictive immigration standards the new PRC-dominated Hong Kong government has implemented since July 1, 1997, and its plans to abolish policies and agreements developed during the past twenty years. This section concludes that the future for refugees in the HKSAR is bleak.

I. HISTORY OF REFUGEES IN HONG KONG

Twenty years after all this began, those remaining in the camps are not one of our concerns any longer.13

The Hong Kong refugee population has been dominated by two major groups: Vietnamese and Chinese.

A. Vietnamese Refugees

After the Communist takeover of South Vietnam in 1975, over one million people fled the country because they suffered suppression of human rights, and ethnic, religious, and political persecution by the new government.14 Subsequently, Hong Kong established and operated a policy of providing first asylum to all Vietnamese boat people and automatically gave them refugee status.15 This was based on an under-

15 See U.S. DEP’T OF STATE, HONG KONG HUMAN RIGHTS PRACTICES, 1993, DEP’T ST. Dis-
standing reached at the 1979 United Nations Conference on Vietnamese boat people.

Refugees are protected internationally under the Refugee Convention. Article I(A)(2), as modified by and incorporated into the Protocol Relating to the Status of Refugees, defines “refugee” as any person who

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country . . . ."16

As a territory of the United Kingdom, Hong Kong did not have legal status to ratify the Refugee Convention. Hong Kong had been a British Crown Colony from the time China ceded the area in perpetuity to Britain under the Treaty of Nanking, which was signed in 1842 at the end of the Opium War.17 Subsequently, China ceded in perpetuity the southern portion of the Kowloon peninsula and Stonecutters Island.18 Finally, China leased the New Territories, the area around Kowloon, to Britain for ninety-nine years.19 The lease expired on June 30, 1997.20

The United Kingdom, fearful that Chinese immigrants would flee to Hong Kong, did not extend ratification of the Refugee Convention and Protocol to Hong Kong. According to Lord Trefgarne, Parliamentary Under-Secretary of State for the Armed Services, the Refugee Convention was not applied to Hong Kong “because of the territory’s small size and geographical vulnerability to mass, illegal immigration.”21

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20 See Granahan, supra note 17, at 83 n.6.
21 House of Lords Debates, 460 PARL. DEB., H.L. (5th ser.) 996, 968 (1985), cited in Nihal
Under British rule, Hong Kong did have an immigration ordinance that was based on English law. It provided that “[a] person may not land in Hong Kong without permission of an immigration officer” unless that person had the right of abode in Hong Kong or had the right to land by virtue of being a British citizen.

A 1981 amendment to the ordinance added Part IIIA which addressed Vietnamese refugees. Section 13A(1) of Part IIIA enabled immigration officers to permit Vietnamese to remain in Hong Kong as refugees pending resettlement in another country. In 1982, Section 13A(1) was amended to allow immigration officers the authority to detain in refugee centers certain Vietnamese who arrived in Hong Kong after July 2, 1982, and who were accorded refugee status automatically.

The 1982 amendment added Section 13D, which provided that those persons who were not automatically categorized as refugees could be detained pending decisions to grant or refuse them permission to remain in Hong Kong as refugees, or after being refused refugee status, would be detained pending removal from Hong Kong. Immigration officers could restrict Vietnamese refugees from taking employment; establishing a business or going to school; and could, by notice, vary or cancel conditions of stay.

From 1979 to 1987, 104,241 Vietnamese boat people overwhelmed Hong Kong’s resources, causing the government to implement a new refugee policy in 1988. Because the government was not able to resettle the refugees in third countries, it adopted the view that new arrivals were illegal migrants who fled Vietnam because of economic difficulties, “unless they [were] determined, by a screening procedure,....


23 Id. art. 7(1) (amended 1980).

24 See id. art. 7(1)(aa) (amended 1987).

25 See id. art. 7(1)(a) (amended 1982).

26 See id.


28 See id.

29 See id. art. 130(1).

30 See id.

to be refugees as defined by the 1951 UN Convention."\textsuperscript{32} Under the new policy, which was in accordance with the United Nations High Commission for Refugees (UNHCR) Handbook,\textsuperscript{33} boat people determined to be illegal migrants were to be returned to Vietnam, either voluntarily or under the "Orderly Repatriation Programme."\textsuperscript{34} All Vietnamese boat people arriving in Hong Kong or intercepted in Hong Kong waters after June 16, 1988, were given notice that they were illegally entering Hong Kong\textsuperscript{35} and were to be detained pending return.\textsuperscript{36}

The new policy was formalized in June 1989, when Hong Kong, Indonesia, Japan, Malaysia, the Philippines, and Thailand implemented the Comprehensive Plan of Action (CPA), which covered areas of temporary asylum, refugee status determination, resettlement, and repatriation for all Vietnamese asylum seekers in the region.\textsuperscript{37} The criteria for determining status was based on the Refugee Convention and its 1967 Protocol, "bearing in mind . . . the 1948 Universal Declaration of Human Rights and other relevant international instruments concerning refugees."\textsuperscript{38}

Under the CPA, people classified as refugees, except for those wishing to return to Vietnam, were to be resettled in third countries.\textsuperscript{39} The CPA contained provisions for "long-stayers" and "newly-determined" refugees, calling on the international community to respond to the need for resettlement.\textsuperscript{40} The CPA provided for detention in "camps."\textsuperscript{41} All others were to be placed in regional holding centers\textsuperscript{42} and were to receive "humane care and assistance by UNHCR and international agencies . . . includ[ing] educational and orientation program[s]."\textsuperscript{43}

\textsuperscript{32} See VIETNAMESE MIGRANTS, supra note 31.  
\textsuperscript{34} See VIETNAMESE REFUGEES AND MIGRANTS, supra note 31. The Orderly Repatriation Programme was agreed to with the Vietnamese Government in October 1991. See id.  
\textsuperscript{35} See id.  
\textsuperscript{36} See Re Chung Tu Quan & ORS, 1995–1 HKC 566, 1995 HKC LEXIS 561, at *19.  
\textsuperscript{39} See id. Annex § E(1)(9)(b).  
\textsuperscript{40} See id. Annex § E(1)(9),(10).  
\textsuperscript{41} See id. Annex § E(a)(10).  
\textsuperscript{42} See CPA, supra note 37, Annex § F(14).  
\textsuperscript{43} Id. Annex § F(15).
The long-stayers resettlement program included the requirement that refugees did not have the option of refusing offers of resettlement "as this would exclude them from further resettlement consideration."44 Between 1979 (ten years before implementation of the CPA) and 1987, 107,000 Vietnamese refugees were resettled in third countries.45 Thirty thousand people were resettled from June 1988 to July 1996, the ending date of the CPA.46

The CPA required that when the Hong Kong government determined that a person was not a refugee, those persons "should return to their country of origin in accordance with international practices reflecting the responsibilities of States towards their own citizens."47 Furthermore, "[i]f after the passage of a reasonable time, it becomes clear that voluntary repatriation is not making sufficient progress . . . alternatives recognized as being acceptable under international practices would be examined."48

If the person did not agree to return to the home country, he or she would be forcibly returned,49 after "[w]idely publicized assurances by the country of origin that returnees [would] be allowed to return in conditions of safety and dignity and [would] not be subject to persecution."50 The CPA attempted to get asylum seekers to return to Vietnam by giving them a $240 "integration grant" and $50 in pocket money from the UNHCR.51

The UNHCR and government of Vietnam signed a Memorandum of Understanding in 1988, under which Vietnam waived prosecution and punitive measures against voluntary returnees.52 However, the Vietnamese government publicly stated it would punish those who did not voluntarily repatriate, but rather, had to be forcibly returned, as well as those who originally fled Vietnam with the intention of oppos-

44 Id. Annex § E(9) (b).
45 See Arrivals and Departures, supra note 4.
46 See id.
47 CPA, supra note 37, Annex § F(12)(A).
48 Id. Annex § F(14).
49 See id.
50 Id. Annex § F(13)(a).
ing the government.\textsuperscript{53} Indeed, Article 85 of the Vietnamese (SRV) Criminal Code stated that anyone who fled to a foreign country with the intention of opposing the government would be sentenced to three to twelve years in prison, and anyone who organized and incited others to commit such a crime would be sentenced to prison for five to fifteen years.\textsuperscript{54} Article 88 provided that anyone who organized or forced others to flee to a foreign country would be sentenced to prison for three to twenty years.\textsuperscript{55}

The processing and repatriation were not accomplished as originally planned. The UNHCR had intended to complete processing all cases by March 1996, but this deadline was later extended to June 30, 1996.\textsuperscript{56} The deadline was not met because the Vietnamese government did not take in refugees quickly enough,\textsuperscript{57} because the U.S. House of Representatives introduced a new immigration bill that affected Vietnamese refugees, and because detainees resisted being returned.\textsuperscript{58}

There was a single forced repatriation to Vietnam in 1989, which resulted in protests by Vietnamese in detention camps, marches on the British Embassy in Washington, D.C., and censure by the U.S. government.\textsuperscript{59} As a result, Vietnam refused to take back more returnees. Finally, in 1991 Vietnam agreed to accept forced repatriation of thousands of boat people,\textsuperscript{60} and in 1996 alone, 6,722 people were forcibly repatriated.\textsuperscript{61}

\textsuperscript{53} See Le Xuan Khoa, \textit{Forced Repatriation of Asylum Seekers: The Case of Hong Kong}, 2 \textit{Int'l. J. Refug. L.} 137, 141 (1990). Bui Dinh Dinh, Deputy Head of the Consular Department at the Ministry of Foreign Affairs in Vietnam, confirmed that Vietnam would take action against people who committed serious crimes before fleeing Vietnam: "We will do our best to reintegrate the returnees and we will not take action against them for illegal departure, but there are other people, very serious criminals, that we must put in jail." Greg Torode & Scott McKenzie, \textit{Hanoi Warning to Criminals}, S. China Morning Post, Apr. 15, 1995, at 5.

\textsuperscript{54} See Khoa, supra note 53, at 140–41 n.7 (quoting the Criminal Code of the Socialist Republic of Vietnam, Art. 85 (1985)).

\textsuperscript{55} See id. (quoting the Criminal Code of the Socialist Republic of Vietnam, Art. 88 (1985)).


\textsuperscript{57} See Dizon, supra note 13, at A1.


\textsuperscript{59} See Callcott, supra note 52. Lawrence S. Eagleburger, Deputy Secretary of State, stated that the United States "remain[ed] unilaterally opposed to the forced repatriation of Vietnamese asylum-seekers." \textit{Id}.


Although Vietnamese-speaking expatriate employees of the UNHCR visited returnees throughout Vietnam and reported that returnees had not been prosecuted by the Vietnamese government,\(^62\) Asia Watch reported that those who had not returned voluntarily were harassed and threatened by the Vietnamese government.\(^63\) Returnees were reportedly subjected to interrogations, surveillance, job discrimination, fines, and extortion by Vietnamese authorities.\(^64\) Returned Vietnamese who joined anti-Communist groups in Hong Kong camps (sur place refugees) and those with military backgrounds who had been questioned while they were in detention in Hong Kong by U.S. intelligence officers about missing U.S. servicemen and the working of the military in Vietnam, were regarded as subversive by the Vietnamese government.\(^65\)

In addition, "members of the Nung minority,\(^66\) some of whom fought for anti-communist forces under the colonial French and later the United States," were in danger of prosecution if they were returned to Vietnam.\(^67\) However, the Hong Kong government said, "The particular history of the Nung was taken into consideration in evaluating their claims, and they were found not to be refugees."\(^68\) Therefore, there were boat people, found by Hong Kong not to be refugees protected from repatriation under the Refugee Convention, and, who therefore, were returned to Vietnam under the CPA, although there was a reasonable likelihood they would be persecuted by the Vietnamese government.\(^69\)

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\(^62\) See World Refugee Survey 1996, supra note 56, at 91. One report stated that the Vietnamese government prevented Britain and Hong Kong from determining if returnees were being discriminated against. See Jeremy Grant, Boat People Checks Blocked, Fin. Times, May 21, 1997, at 8.


\(^66\) The Nung were originally from China's Guangxi province. See Keith B. Richburg, Overlooked "Boat People" Due in U.S., Wash. Post, June 9, 1997, at A1 [hereinafter Richburg, Overlooked "Boat People"]).

\(^67\) Human Rights Groups, supra note 65.


\(^69\) Refugee Concern, a volunteer legal services organization, assisted some Nung families to
The screening processes limited the asylum seekers' opportunities for fair assessments of their claims. Asylum seekers did not have access to legal counsel before being interviewed, and at their appeals the interpreters often did not translate correctly. Some immigration officers conducting interviews did not have information about human rights or political situations in Vietnam, and some did not allow asylum seekers to fully explain their cases. Claimants reported that they were shouted at and intimidated by immigration officers. The Lawyers Committee for Human Rights, after visiting Hong Kong, concluded that screening processes were "hostile to genuine refugees . . . . Hundreds, perhaps thousands, of Vietnamese refugees have been wrongly rejected" and returned to Vietnam.

Not only did the Hong Kong government repatriate those who had been screened out—rejected for refugee status—but in early 1995, with 22,000 boat people detained in its camps, the Hong Kong government stated that it planned to seek the repatriation to Vietnam of any boat person who had been given refugee status but who was not resettled by 1996, contrary to the CPA.

As part of their commitment to grant temporary refuge to asylum seekers, signatories to the CPA incorporated the refugee criteria articulated in the Refugee Convention. Article 32 of the Refugee Convention prohibits states from expelling a refugee lawfully in their territory save on grounds of national security or public order. The expulsion of such a refugee shall be . . . reached in accordance with due process of law . . . . The Contracting States shall allow such a refugee a

be approved to resettle in the United States. See Richburg, Overlooked "Boat People," supra note 66, at A1.

70 See Khoa, supra note 53, at 139.

71 See id.

72 See id. at 140. In February 1991, a Hong Kong court found that several aspects of the Hong Kong procedure combined to deny a claimant a fair opportunity to present his claim. "The court specifically noted the lack of legal counseling, the failure of the immigration officer to elicit complete and accurate information, and the inherent difficulties of 'double interpretation' (from Vietnamese to Cantonese to English and back)." Arthur Helton, How Not To Screen Southeast Asia's Refugees, ASIAN WALL ST. J., Oct. 16, 1991, at 10 (discussing R v. Director of Immigration and the Refugee Status Review Bd. ex p Do Giau, [1992] 1 HKLR 287).


reasonable period within which to seek legal admission into another country.\textsuperscript{75}

The Refugee Convention does not provide for the repatriation of refugees if they do not resettle in another country. In addition, Article 33 prohibits contracting states from expelling or returning \textit{(refouler)} refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership to a particular social group, or political opinion.\textsuperscript{76} Refoulement is "independent of any formal determination of refugee status by a state . . . . \textit{Non-refoulement} is applicable as soon as certain objective conditions occur."\textsuperscript{77} In addition, \textit{refoulement} is a concept recognized in customary international law.\textsuperscript{78} Current practice forbids states from sending refugees to any country from which the refugees risk being expelled to \textit{another} state where they would be persecuted.\textsuperscript{79} Therefore, the return of boat people screened in as refugees would violate the CPA.

An additional wrinkle in Hong Kong’s plans to return the boat people was an amendment to a U.S. bill that would have provided $30

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\textsuperscript{75} Refugee Convention, \textit{supra} note 11, art. 32.

\textsuperscript{76} See id. art. 33(1). Article 33 is binding upon the signatories. See Protocol Relating to the Status of Refugees, \textit{supra} note 16, art. 7, para. 1.


Guy Goodwin-Gill, legal advisor in the Office of the United Nations High Commissioner for Refugees, argues:

\textit{It may be affirmed that the prohibition on the return of refugees to countries of persecution has established itself as a general principle of international law, binding on States automatically and independently of any specific assent. Earlier State practice supports the contention that . . . Article 33 . . . reflected or crystallized a rule of customary international law at the time of [its] formulation, and practice since that date reaffirms this conclusion.} \textit{Guy S. Goodwin-Gill, \textit{International Law and the Movement of Persons Between States} 141 (1978) (citing North Sea Continental Shelf Cases, 3 I.C.J. Rep. 37–38 (1969)).}

million to resettle Vietnamese boat people in the United States. H.R. 1561, the American Overseas Interest Act of 1995, was introduced on May 3, 1995, for the resettlement of Vietnamese boat people who were at any time residents of refugee camps in Hong Kong. None of the funds were authorized to repatriate any persons to Vietnam unless those persons had been offered resettlement or were nationals of Vietnam who were refugees as of July 1, 1995, and had access to refugee determination process. Detainees learned about the bill, and those who had agreed to be repatriated refused to leave. Flights to Vietnam were canceled. The bill passed the House and Senate, but President Clinton vetoed it on April 12, 1996.

Some boat people were detained in camps awaiting resettlement or repatriation since 1988, but could not get refugee status. When camps filled, Hong Kong placed new arrivals on outlying islands, harbor ferries, and the landing strip of a military airfield.

In 1990, the High Court of Hong Kong addressed a detention case in which 113 Vietnamese landed temporarily in Hong Kong on May 1, 1989—after the change in refugee policy—on their way to Japan to seek refuge. The Hong Kong government would not repair their boat and detained them under Section 13D of the Immigration Ordinance. The court held that while Section 13D applied to refugees who arrived in Hong Kong seeking asylum, the applicants had not landed in Hong Kong for that purpose, and Section 13D did not permit detention for other purposes.

The court also held that the ordinance must be construed strictly inasmuch as it deprived persons of liberty, because “every imprisonment is prima facie unlawful and it is for the person directing imprisonment to justify it.” The court said detention must be for “a reasonable period of time” and that detention for eighteen months was not justified. The court concluded that the Hong Kong government

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83 See U.S. H.B. 1561 (summary of legislative history), available in WESTLAW, Billtrack-old Database.
87 See id.
88 Id.
89 Id.
breached Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), which provides “everyone has the right to liberty and security of person and no one should be subjected to arbitrary arrest and detention except in accordance with law.”

As a result of this decision, the Legislative Council amended Section 13D (1) and added Sections 13D (1A) and 13D (1B). Section 13D (1) was revised to allow the Hong Kong government to detain Vietnamese, who: (1) arrived in Hong Kong without having requested permission to remain; (2) arrived in Hong Kong having requested permission to remain; (3) were in Hong Kong awaiting a pending decision; or (4) were in Hong Kong pending removal after having been refused permission to remain. New Section 13D (1A) provided that detention would not be unlawful if it was reasonable in regard to the circumstances of the detention, which included the speed of processing within the Vietnamese government. The Immigration Ordinance effectively imprisoned all boat people who landed in Hong Kong to prevent their integration into the community and ensured their continued imprisonment by giving control over the release process to the very government from which the boat people had fled.

Courts continued to address the reasonableness of detention in light of the restrictive immigration ordinance. In *Re Chung Tu Quan & ORS*, the High Court heard an application for writs of habeas corpus and for the release of detained Vietnamese migrants. The detainees argued that although Section 13D (1) was discretionary, in fact, all migrants from Vietnam were detained automatically. The court held that automatic orders for detention under 13D (1) were legal. This case left no avenue for release, for when it is read with Section 13D (1A), all boat people could be detained immediately upon arrival in Hong Kong and could be detained indefinitely until returned to Vietnam.

92 *See id.* at *22.
93 *See id.* at *23.
95 *See id.* As can be seen in *Re Chung Tu Quan*, courts refer to boat people as “migrants” rather than “refugees” or “asylum seekers.” *See id.* at *8.
96 *See id.* at *61.
97 Note that the Privy Council found that detention was unreasonable for ethnic Chinese refugees who would not be repatriated to Vietnam. *See Nguyen Tuan Cuong & ORS v. Director of Immigration*, 1995–3 HKC 373, 1995 HKC LEXIS 724.
In *Cong Siu Lay & ORS v. Superintendent of Whitehead Detention Centre*, however, the court required the release of detainees who had voluntarily surrendered pending their return to Vietnam. Vietnam did not act to accept them, and they were held indefinitely, ultimately for a period of six weeks. The court ordered their releases, with the condition that they agree to surrender to the Director of Immigration with 48 hours' notice.

Vietnamese authorities refused to accept some returnees. In October 1995, a group of returnees who had been dragged off of an airplane returning them were not accepted. Vietnam also refused to take back boat people who had sailed from Vietnam to Hong Kong, by way of China, and sent them back to China.

Subsequently, the Privy Council in London held that it was illegal for Hong Kong to detain anyone who fit into a general category of immigrant Vietnam refused to take back. The court reasoned that "[w]hen coupled with the length of their detention pending screening, the time which these applicants have been in detention is truly shocking. They are, at first blush, an affront to the standards of the civilized society which Hong Kong aspires to be." The court said the boat people could not be detained if they established they were not Vietnamese nationals, even if Vietnam had not formally rejected them.

In response, in May 1996, the Hong Kong Legislative Council narrowly voted in favor of an immigration law requiring that individuals be specifically refused re-entry by Vietnam before being released from mandatory detention. The Legislative Council said that thou-

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99 See id. at *1. The High Court later held that detention was unreasonable if the Immigration Department did not take all reasonable steps to ensure that the detainees' removal from Hong Kong would be accomplished within a reasonable time. See Chieng A Lac & ORS v. Director of Immigration & ORS (No. 2), 1997–7 HKPLR 243, 1997 HKPLR LEXIS 12, at *86.
100 See *Cong Sui Lay*, 1995 HKC LEXIS 683, at *5.
103 See *Tan Te Lam & ORS v. Superintendent of Tai A Chau Detention Centre*, 1996–6 HKPLR 13, 1996 HKPLR LEXIS 3. Three of the applicants who had refused to apply for repatriation, had been in custody for 25, 10, and 24 months, respectively, before being refused refugee status, and 20, 25, and 44 months, respectively, pending removal. See id. The fourth claimant, who had volunteered to be repatriated, had been in custody for 22 months before being rejected for refugee status, and 40 months pending removal. See id.
104 See id. (citing lower court Judge Keith).
105 See id.; Catherine Ng, *Go-ahead for Immigration Bill*, S. CHINA MORNING POST, May 10, 1996, at 5.
sands more boat people might have been released without the new law. However, Vietnam does not typically issue rejections. Rather, people on the repatriation list are left in a "pending" category.

Despite restrictive policies under the Immigration Ordinance, detained boat people resisted being sent back to Vietnam. In April 1994, Hong Kong security officials used tear gas to remove 1,500 screened-out asylum seekers who protested the selection of individuals for forcible repatriation. In April 1994, more than 200 Vietnamese in camps in Hong Kong were injured by police after they refused to move to another camp in preparation for their return; and, in March 1995, hundreds of Vietnamese announced suicide pacts. There have been scores of cases of self-mutilation by Vietnamese who have insisted that they would rather die than go home. On May 10, 1996, more than 3,000 Vietnamese detainees at Whitehead Detention Centre protested by setting fire to buildings and vehicles. Two hundred tried to escape from High Island Detention Centre on June 11, 1996, by making themselves sick so they would have to be taken to the hospital. Hundreds have been put onto airplanes to Hanoi screaming, many of them strapped in straitjackets, fearful of their treatment by the Vietnamese government upon their return.

B. Refugees from Mainland China

Ethnic Chinese who had left Vietnam for China began fleeing to Hong Kong in the 1950s. The numbers increased in the 1970s, and

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109 HONG KONG HUMAN RIGHTS PRACTICES, 1994, supra note 60.
111 See id.
in the late 1980s they arrived from China at the rate of 500 a day.\textsuperscript{116} They reported that they had been persecuted, had not been allowed to work, and their houses had been bulldozed.\textsuperscript{117} The PRC said that these people were not refugees because

\begin{quote}
[b]oth Hong Kong and Macao are China's territories. There has always been an interflow of Chinese between Hong Kong-Macao and other parts of China. The Chinese living in Hong Kong and Macao are by no means “refugees” and the so-called “question of Chinese refugees” simply does not exist.\textsuperscript{118}
\end{quote}

However, during the time of the Republic of Vietnam, 1954–1975, the PRC considered the people of Chinese origin in Vietnam to be Chinese.\textsuperscript{119} The Vietnamese government contended they took Vietnamese citizenship and were Vietnamese of Chinese origin.\textsuperscript{120} An unnamed Hong Kong newspaper alleged Chinese officials were encouraging the exodus of settlers and was giving them advice on how to get refugee status in Hong Kong.\textsuperscript{121}

The British government in Hong Kong was also reluctant to classify the asylum seekers from the PRC as refugees. Chinese immigrants were arrested daily in Hong Kong and returned to China.\textsuperscript{122} Hong Kong also refused to take the Vietnamese refugees who had stopped
for short or extended periods in China before moving on to Hong Kong.\(^{123}\)

To regulate the flow of asylum seekers from mainland China, Hong Kong implemented the 1989 Immigration (Unauthorized Entrants) Order. Under this order, any Vietnamese or Macao residents, former residents, or any citizens of the PRC who left or sought to leave the PRC to enter Hong Kong without special documents, were considered unauthorized entrants to Hong Kong.\(^{124}\) A one-way exit permit was required for a PRC citizen to enter and permanently remain in Hong Kong.\(^{125}\) The amendment did provide for refugee screening by the immigration authorities.\(^{126}\) However, immigration authorities considered the claims as though the immigrants had fled from Vietnam and rejected them.\(^{127}\) As noted above, Vietnamese authorities refuse to take back ethnic Chinese.

This group also has been detained in camps, under Section 13(D)(1) of the Immigration Ordinance, despite a ruling by the Privy Council in London.\(^{128}\) In October 1997, the Hong Kong government initially refused to release 275 Vietnamese asylum seekers who fled via China to the territory almost ten years before, despite the ruling which said that their continued detention would be unlawful.\(^{129}\) They were released from High Island Detention Centre in November 1997, but the Court of Appeals later held they should not have been freed.\(^{130}\)

II. LAWS THAT GOVERN HONG KONG UNDER CHINESE AUTHORITY

*The Chinese government is serious in repeatedly announcing that no burdens or troubles should be left behind.*\(^{131}\)

To understand China’s role in Hong Kong beginning in 1997, one must review the Joint Declaration on the Question of Hong Kong, the Basic Law, the Hong Kong Bill of Rights, and the laws of the PRC.

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\(^{123}\) See *Hong Kong Sends Vietnamese to China*, *supra* note 102.


\(^{125}\) See id.

\(^{126}\) See id.

\(^{127}\) See Nguyen Tuan Cuong & ORS v. Director of Immigration, 1995–3 HKC 373, 1995 HKC LEXIS 724, at *7.

\(^{128}\) See id.


A. Joint Declaration on the Question of Hong Kong

The Joint Declaration on the Question of Hong Kong\(^{132}\) was signed and ratified by Great Britain and China in 1984. It called for the transfer of control over Hong Kong to China in 1997. Both Britain and China considered the Joint Declaration a binding international agreement.\(^{133}\) Under the Joint Declaration, the government of the PRC established and supervised a Hong Kong Special Administrative Region (HKSAR).\(^{134}\) Hong Kong is to have "a high degree of autonomy" and is vested with executive, legislative, and independent judicial power.\(^{135}\) However, the Joint Declaration provides that the chief executive would be appointed by China by election or through consultations held locally.\(^{136}\)

The Declaration addresses aliens and immigration, but not refugees. Certain categories of persons have the right of abode in the HKSAR: (1) Chinese nationals who were born in Hong Kong or who lived there continuously for at least seven years or were born outside Hong Kong to Chinese nationals; (2) all non-Chinese nationals who have lived in Hong Kong continuously for at least seven years and who have taken it as their place of permanent residence; and (3) any others who had the right of abode only in Hong Kong before July 1, 1997.\(^{137}\) Non-Chinese nationals born in Hong Kong to parents who have the right of abode there also have the right of abode but will retain it after the age of twenty-one only if they have resided in Hong Kong for seven years and have taken Hong Kong as their place of permanent residence.\(^{138}\)

The Joint Declaration guarantees the application of human rights and requires that the provisions of the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR)\(^{139}\) "as applied to Hong Kong shall remain in force."\(^{140}\) The PRC is not a party to the Covenants,\(^{141}\) but the Chinese government assumed the obliga-


\(^{133}\) See Granahan, \textit{supra} note 17, at 84.

\(^{134}\) See Joint Declaration, \textit{supra} note 132, para. 3(1), (2).

\(^{135}\) See id.

\(^{136}\) See id. para. 3(4).

\(^{137}\) See id. Annex I, § XIV.

\(^{138}\) See id. Explanatory Notes, No. 49.


\(^{140}\) Joint Declaration, \textit{supra} note 132, Annex I, § XIII.

\(^{141}\) See U.N. Charte, \textit{reprinted in} Multilateral Treaties Deposited With the Secre-
tion to implement fully the international covenants under the Joint Declaration.142 The ICCPR provides that each State Party "undertakes to respect and to ensure to all individuals within its territory and subjects to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."143 Individuals are protected from torture, cruel, inhuman or degrading treatment or punishment,144 arbitrary arrest or detention,145 and have the right to proceedings before a court.146 "[P]ersons deprived of their liberty shall be treated with humanity and with respect."147 Although the ICCPR requires China to file human rights reports,148 in 1997, China said it would stop filing the reports.149 In addition, the Letters Patent, which provided for direct application of the international covenants on a constitutional level in Hong Kong, expired on July 1, 1997.150

B. Basic Law of the HKSAR

The Joint Declaration does not provide the governing law for Hong Kong. This is found in the Basic Law, which will be Hong Kong's constitution from 1997 to 2047.151 The Basic Law was drafted and enacted by the National People's Congress (NPC) of the PRC,152 the highest organ of state power in China,153 under authority of the Chinese Constitution.154 Similar to the Joint Declaration, under the Basic

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142 See Joint Declaration, supra note 132, Annex I, § XI.
143 ICCPR, supra note 90, art. 2.
144 See id. pt. II, art. 7.
145 See id. pt. III, art. 9.
146 See id. pt. III, art. 9.
147 Id. pt. III, art. 10.
148 See ICCPR, supra note 90, pt. III, art. 40.
150 See Davis, A Framework for Analysis, supra note 150, at 308 n.19.
151 See Davis, A Framework for Analysis, supra note 150, at 308 n.19.
152 See Davis, A Framework for Analysis, supra note 150, at 308 n.19.
154 See id. art. 31.
Law, the NPC authorizes the HKSAR to exercise a “high degree of autonomy” (which is not defined), and “executive, legislative, and independent judicial power.” The laws for the HKSAR shall be the Basic Law, the laws previously in force in Hong Kong, except for those which the Standing Committee of the NPC declares to be in contravention of the Basic Law, and the laws enacted by the legislature of the region. This could include the Immigration Ordinance, but not the CPA, which terminated in 1996.

Numerous references in the Basic Law reinforce the significance of the NPC to the governance of the HKSAR. The NPC will have the responsibility of governing Hong Kong. The NPC elects the Standing Committee, which will interpret the Basic Law. The Basic Law provides that one-third of the seats of the sixty-member Legislative Council will be directly elected, but the NPC and its Standing Committee exercise the legislative power of the state. The NPC has the power to amend the Constitution, enact and amend basic statutes, and decide on the establishment of “systems to be instituted” in special administrative regions (SARs). This authority extends to the Basic Law, which is secondary to the Constitution. Under the Basic Law, China’s national laws shall not be applied in the HKSAR except for those related to defense and foreign affairs, as well as “other matters outside the limits of the autonomy of the Region.” Moreover, no laws may contravene the Constitution of the PRC.

The HKSAR shall be vested with executive power. The Chief Executive shall be selected by election or appointed by the Congress of People's Government (CPG). In addition, the Decision of the

155 Basic Law, supra note 151, arts. 2, 12.
156 Id. art. 2.
157 See id. arts. 8, 11, 160.
158 See id. art. 18.
159 See id. arts. 17, 18, 21, 158–60.
161 See Basic Law, supra note 151, art. 158.
163 See Basic Law, supra note 151, art. 58.
164 See id. arts. 31, 62.
165 See id. art. 5.
166 Id. arts. 18, 14, 18.
168 See Basic Law, supra note 151, arts. 13, 14, 18.
169 See id. art. 45.
National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR, provided that in 1996, the NPC would establish a Preparatory Committee for the HKSAR.170 The Preparatory Committee determined the method for forming the First Government and the First Legislative Council.171 In addition, the Preparatory Committee established the Selection Committee for the First Government.172 The Selection Committee recommended the candidate for the first Chief Executive, who appointed the Executive Council.173 The Chief Executive is responsible for other branches of the SAR and is under the control of Beijing.174

While the Basic Law does not address refugees, it does include a section on “residents” of Hong Kong. Residents are defined the same as they are in the Joint Declaration, but also include “persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the [HKSAR],” and “[p]ersons under 21 . . . born in Hong Kong to persons who are not Chinese.”175 “[P]eople from other parts of China must apply for approval” from the CPG for entry into, and settlement in, the HKSAR.176 The HKSAR government may apply immigration control on entry into, stay in, and departure from the region.177

Hong Kong residents and “other” persons have freedoms under a system of constitutional judicial review in local courts,178 which can interpret provisions of the Basic Law within “the limits of the autonomy of the Region.”179 However, the NPC Standing Committee retained for itself the power to interpret matters of central responsibility and local or central relations.180 In addition, an agreement on the court of final

170 See Decision of the NPC, supra note 162, Annexes I, II.
171 See id.
172 See id. para. 3.
173 See Basic Law, supra note 151, art. 55. For a summary of the creation of the Selection Committee, see generally Senior Non-Expatriate Officers’ Ass’n. & ORS v. Secretary for the Civil Service, 1996 HKPLR 91, 1996 HKPLR LEXIS 27.
174 See Basic Law, supra note 151, art. 43.
175 Id. art. 24.
176 Id. art. 22.
177 See id. art. 154.
178 See id. art. 39. The HKSAR is vested with independent judicial power. See Basic Law, supra note 151, art. 19. Courts shall exercise judicial power independently from any interference. See id. art. 85. Judges may only be removed for inability to discharge their duties or for “misbehavior.” See id. art. 89.
179 Basic Law. supra note 151, art. 158.
180 See id. art. 158
appeal provides that the court will have no jurisdiction over "acts of state' relating to defense, foreign affairs, etc. . . . "181 This provision conflicts with the Joint Declaration that requires independence and finality in the local courts.182

In addition to the Joint Declaration, the Basic Law states that "provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the [HKSAR]."183 However, the Basic Law does not provide mechanisms for enforcement of the enumerated rights. Consequently, Hong Kong scholars and members of the bar petitioned the local legislature for an enforceable bill of rights.184

C. The Hong Kong Bill of Rights

The Hong Kong Bill of Rights (Bill of Rights),185 implemented in 1991, adopted the human rights provisions of the ICCPR.186 Rights—race, religion, political or other opinion, national or social origin—are enjoyed without distinction.187 No provision is made particularly for Hong Kong nationals. All persons have the right to recognition before the law.188 No one shall be subject to torture, or cruel, inhumane or degrading treatment or punishment.189 No one shall be subjected to arbitrary detention.190 All persons deprived of their liberty shall be treated with humanity.191

The Bill of Rights, with specific exceptions, does not affect immigration legislation. "[P]erson[s] who [do] not have the right of abode

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181 Davis, A Framework for Analysis, supra note 150, at 317 (citing Zhong Yuan Yi jue Zhong Fang Shuo Li Hao Guan Xi ("The Chinese Side Says the Court of Final Appeal Agreement is Beneficial to Relations"), MING BAO, June 10, 1995, at A1.)
182 See Joint Declaration, supra note 132, art. 3(3).
183 Basic Law, supra note 151, art. 39.
186 See id. pt. I, para. 2(3).
187 See id. pt. I, para. 8, art. 1(1).
188 See id. pt. II, para. 8, art. 13.
189 See id. pt. II, para. 8, art. 3.
190 See Bill of Rights, supra note 185, pt. II, para. 8, art. 5(1).
191 See id. pt. II, para. 8, art. 6(1).
in Hong Kong but who [are] lawfully in Hong Kong may be expelled therefrom only in pursuance of a decision reached in accordance with law . . . .”192 However, the Bill of Rights makes exceptions for “times of public emergency which [threaten] the life of the nation and the existence of which is officially proclaimed,” and states that “measures may be taken derogating from the Bill of Rights to the extent strictly required by the exigencies of the situation . . . in accordance with law.”193

D. Laws of the PRC

1. Constitution of the PRC

The Constitution of the PRC provides that the PRC protects the lawful rights and interests of foreigners within Chinese territory. It also provides that the PRC may grant asylum to foreigners for political reasons.194 Foreigners must abide by the law of the PRC.195 Aliens or stateless persons “who are willing to abide by China’s Constitution and laws” may acquire Chinese nationality, if they are close relatives of Chinese nationals, have settled in China, or have “other legitimate reasons.”196

2. Nationality Law of the PRC

Nationality in China has traditionally been based on the principle of *jus sanguinis*: a person is a Chinese national if he descended from a Chinese national regardless of his place of birth.197 Under the 1980 Nationality Law of the PRC, a person will not acquire Chinese nationality solely by virtue of having been born in China.198

*Jus soli* (place of birth) applies only where the parents are stateless or are of uncertain nationality and have settled in China.199 Any person

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192 Id. pt. II, art. 9.  
193 Id. pt. I, para. 5(1).  
195 See id.  
198 See generally Nationality Law, supra note 196. The Nationality Law “shall be applied locally” by the HKSAR. Basic Law, supra note 151, Annex III.  
199 See Nationality Law, supra note 196, art. 6; Wang Keju, *Basic Principles of the Nationality*
born abroad with one parent who is a Chinese national has Chinese nationality. However, a person whose Chinese national parent has settled abroad and acquired foreign nationality does not have Chinese nationality. In addition, a Chinese national who settles in another country and becomes naturalized loses Chinese nationality, but may apply for restoration for "legitimate reasons."

3. Criminal Code

Before 1986, entry and exit of aliens was included in the Criminal Code of 1980, which provided: "Whoever violates the laws and regulations that control leaving and entering the country . . . when the circumstances are serious, is to be sentenced to not more than one year of fixed-term imprisonment, criminal detention or control."

4. Law on the Control of Foreigners Entering and Leaving the Country

The PRC implemented a law related to foreigners entering and leaving the country on February 1, 1986. Foreigners must obtain the permission of the appropriate authorities of the Chinese government to enter, transit, or reside in China. Foreigners who enter or leave China illegally, reside or stay in China illegally, or who travel without valid travel permits, may be punished with a warning, fine, detention up to ten days or criminal prosecution. Aliens who are considered a possible threat to China's state security and public order are prohibited from entering China. The Chinese government shall protect the lawful rights and interests of aliens on Chinese territory.

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200 See Nationality Law, _supra_ note 196, art. 5.
201 See _id._ art. 5.
202 See _id._ art. 9.
203 See _id._ art. 13.
206 See _id._ ch. I, art. 2.
207 See _id._ ch. VII, art. 29.
208 See _id._ ch. II, art. 12.
209 See _id._ ch. I, art. 4.
who seek asylum for political reasons will, upon approval by the govern­ment, be allowed to reside in the PRC.\textsuperscript{210}

5. Refugee Convention

China ratified the Refugee Convention on September 24, 1982,\textsuperscript{211} but has not established refugee status determination procedures.\textsuperscript{212} Chinese authorities have explained that it is unnecessary to enact such procedures. One possible explanation for their stance is their belief that “accession . . . is sufficient to bring [requirements of the Refugee Convention] into force at the local level.”\textsuperscript{213} However, China has not granted refugee status to individual asylum seekers, and it did not sign the CPA.\textsuperscript{214}

III. CHINA’S HUMAN RIGHTS PRACTICES

The Americans attach a great deal of importance to their rights . . . for us Chinese, obligations are more important.\textsuperscript{215}

A review of China’s past treatment of refugees and its human rights record is helpful in predicting the future for refugees in Hong Kong.

A. China’s Treatment of Refugees

China has been inconsistent in its treatment of refugees, sometimes allowing them to remain in the country, other times repatriating them to countries where they may be punished. After World War I, 100,000 White Russians sought refugee status in China.\textsuperscript{216} In the 1930s, German Jews fled to China.\textsuperscript{217} In 1978 and 1979, China received 300,000 ethnic Chinese refugees from Vietnam.\textsuperscript{218} In the 1980s, China also received an influx of refugees from Uruguay, Poland, and Ugan-

\textsuperscript{210} See Law on Foreigners Entering and Leaving, supra note 205, art. 15.
\textsuperscript{212} See Fernando Chang-Muy, International Refugee Law in Asia, 24 N.Y.U. J. Int’l L. \\
\textsuperscript{213} Muntarbhorn, supra note 118, at 61.
\textsuperscript{214} See WORLD REFUGEE SURVEY 1994, supra note 122, at 80; see generally CPA, supra note 37.
\textsuperscript{215} Tung-Chee-hwa, first post-colonial Chief Executive of Hong Kong, quoted in Andrew Higgins, China Anoints Paradox as Powerbroker and Pawn, GUARDIAN (London), Dec. 11, 1996, at 12.
\textsuperscript{216} See Muntarbhorn, supra note 118, at 58–59.
\textsuperscript{217} See id. at 59.
\textsuperscript{218} See id.
In 1993, 10,000 Burmese Kachin refugees lived in the Yunan province. There were 287,000 Indo-Chinese refugees in China in 1997.

China generally has allowed those of Chinese origin to stay in China, but has not been as receptive toward refugees of other nationalities. Although a signatory to the Refugee Convention, it does not appear that China's actions have been motivated by its responsibility under the Convention to protect refugees from persecution. Rather, China seems to be motivated by antagonism towards the governments from which the refugees fled. For example, in 1991, China and Laos signed a bilateral agreement to repatriate 4,500 Laotian refugees living in China, but at the end of 1992, 2,500 refugees still had not been repatriated. As of 1993, the Chinese government allowed a total of 12,500 refugees from Laos and Burma to remain in China. China did not give the Burmese formal recognition, and they remain in China without legal status. In the same year, China deported 160 Afghans to Pakistan, despite the fact that the UNHCR had interviewed them and considered them to be "persons of concern."

China agreed to take back some Vietnamese refugees and has repatriated others to Vietnam. One group of 600 Vietnamese refugees who had settled in China, fled to Japan in 1989, but were not permitted to stay. In December 1990, China and Japan agreed on a voluntary repatriation plan to China.

On the other hand, in 1995, authorities in southern China's Guangxi Zhuang Autonomous Region repatriated 30,000 Vietnamese, who had illegally entered and stayed in China, to Vietnam. Guangxi shares a border with northern Vietnam, and Qinzhou and Beihai became havens for illegal Vietnamese migrants. In Beihai, local authorities have destroyed Vietnamese refugees' public housing.
Refugees have been granted Chinese nationality, while others who were returned to China were fined, temporarily detained, beaten, or sent to labor camps.232

B. China's Human Rights Record

An examination of China's human rights practices may be a predictor of how Chinese officials would evaluate claims by asylum seekers based on the UNHCR criteria for refugee status: race, nationality, religion, political opinion, and membership in a particular group.

China has signed and ratified the UN Charter,233 but has refused to participate in the Commission on Human Rights.234 Chinese leaders declared that China would interpret human rights principles.235 China has not signed any of the major UN human rights documents—the Universal Declaration of Human Rights, Covenants of Civil and Political Rights and Economic, Social and Cultural Rights—or other treaties on human rights.236

In the Socialist Chinese view, an individual's rights are dependent on the performance of imposed duties.237 Rights are not inherent; they are created by the state.238 The Constitution provides that "the exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens."239 Socialist tradition emphasizes welfare rights and de-emphasizes political rights.240

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233 See U.N. Charter, supra note 141. China signed the Charter on June 26, 1945, and ratified it on September 28 of that same year. See id.
235 See id. at 16.
236 See id.
237 See XIANFA [Constitution] art. 33 (1982). "Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law." Id.
238 See id. art. 51.
239 Id.
240 See Michael C. Davis, Adopting International Standards of Human Rights in Hong Kong, in Human Rights and Chinese Values: Legal, Philosophical, and Political Perspectives 175 (Michael C. Davis ed., 1995).
1. Race/Nationality

China’s treatment of ethnic minorities has been inconsistent. Article 4 of the PRC Constitution provides that all nationalities are equal and “discrimination against and oppression of any nationality” is prohibited.\textsuperscript{241} There are fifty-five designated ethnic minorities, which constitute nine percent of the total population.\textsuperscript{242} Many minorities occupy local leadership positions. Generally, however, ethnic minorities are shut out of political and decision-making power.\textsuperscript{243} They have preferential treatment in marriage, family planning, university admissions, and employment.\textsuperscript{244} Ethnic minorities are allowed to have more than one child per couple.\textsuperscript{245} The official government position does not tolerate opposition to the Communist Party rule in minority regions.\textsuperscript{246} Religious ethnic minorities, customs and traditions “which prove harmful to production or the physical and mental health of the masses” are reformed.\textsuperscript{247}

China has suppressed independence campaigns by the Muslim Uighur minority in the territory of Xinjiang.\textsuperscript{248} The Uighur have become a minority in the area—which they have occupied for hundreds of years—with the migration of Han settlers.\textsuperscript{249} China’s resistance to the Uighur’s separatist efforts has resulted in rebellion: the Chinese authorities have arrested, imprisoned, and executed the Uighur after rioting and fatal bombings.\textsuperscript{250}

\textsuperscript{241} XIANFA [Constitution] art. 4 (1982).
\textsuperscript{243} See id.
\textsuperscript{244} See id.
\textsuperscript{246} See CHINA'S HUMAN RIGHTS REPORT 1996, supra note 242.
\textsuperscript{248} See John McCarthy, Uighurs Smoulder Under China’s Yoke, GUARDIAN (London), Sept. 4, 1997, at 12.
\textsuperscript{249} See No End in Sight to Struggle Against Xinjiang Separatism, AGENCE FR.-PRESSE, Mar. 31, 1997, available in 1997 WI, 2087232.
2. Religion

China has controlled religions since the 1950s. Article 36 of the Constitution of the PRC provides that citizens enjoy "freedom of religious belief." No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state "protects normal religious activities." Article 147 of the Criminal Code provides that any person who unlawfully deprives citizens of their "legitimate" freedom of religious belief can be sentenced to two years of imprisonment or detention.

While the Basic Viewpoint, Policy on the Religious Question During Our Country's Socialist Period, known as Document 19, states that "religion will eventually disappear from human history," it declares that the Chinese Communist Party (CCP) has respect for and protection of freedom of religion. CCP members cannot believe in a religion and cannot take part in religious activities. However, CCP membership is required for high-level positions in the government and state-owned businesses.

There are no bans on particular religious groups, but treatment of religious organizations varies widely. The five permitted religions—Buddhism, Catholicism, Protestantism, Islam, and Daoism—are tightly controlled. The government enforces regulations that require religious groups to register with government religious affairs bureaus. Government regulations restrict religious practice to sanctioned religious organizations and registered places of worship. Religious affairs bureaus provide "guidance and supervision" over implementation of government regulations on religion.

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251 See Britsch, supra note 247, at 348.
253 Id. (emphasis added).
254 Id. (emphasis added).
255 See Criminal Law of the People's Republic of China, supra note 204, art. 147.
257 Id. at 369.
258 See CHINA'S HUMAN RIGHTS REPORT 1996, supra note 242; Britsch, supra note 247, at 377.
260 See id.; Britsch, supra note 247, app. 1, at 371.
261 See id.; Britsch, supra note 247, app. 1, at 371.
262 See id.; Britsch, supra note 247, app. 1, at 371.
There are numerous reports of punitive actions taken against religious activities. Christians have been arrested without charges, detained, removed from chapels and meeting places, and intimidated by officials to discourage activity. In 1996, police closed mosques, temples, and Protestant groups were closed. Religious leaders have been detained, and there have been reports that people were beaten to death. In Tibet, the Chinese Red Guard destroyed more than 6,000 temples and lamaseries.

3. Political Opinion

Government officials deny that there are any political prisoners, saying that persons are not held for political or religious views, but because they have violated the criminal law. However, political dissidents are often detained, tried, and sentenced for having committed "crimes of counterrevolution" under Articles 90–104 of the Criminal Law. Released political prisoners are subject to "deprivation of political rights," which limits their rights of free speech, association, and travel, and hampers their ability to find employment. Significantly, the PRC bars "overseas-based pro-democracy and human rights activists from returning to China."

Dissent against the "one child" policy has been viewed by asylum countries as fitting in the category of political opinion. China began a "one couple, one child" policy in 1979. Family planning has been codified in the 1980 Marriage Act and the PRC Constitution.
tions for violating the policy at the regional level include fines, job demotions, and withholding of social services. Enforcement includes forced abortions and sterilizations.

Chinese authorities have imprisoned and tortured pro-independence protestors in Tibet, including monks and nuns, who remain in detention. Amnesty International issued a report that noted a pattern of "gross human rights abuses," including "torture and ill-treatment of political detainees" by Chinese authorities in Tibet.

The events that culminated in Tianamen Square, in which there were as many as 20,000 casualties, reflect the PRC’s willingness and ability to preempt individual rights for state supremacy. After Tianamen Square, more than 300 Chinese dissidents sought shelter in Hong Kong. In July 1996, as Canada worked on asylum requests for some of them, China said, "The British Hong Kong government should seriously stick to its promise of not intending to turn Hong Kong into a base of subversion." A member of the Preparatory Committee said that if the Chinese dissidents were still in Hong Kong on July 1, 1997, the government of the HKSAR would have to return them to China at the PRC’s demand. After the July 1997 takeover, Chinese authorities have actively tried to locate dissidents in Hong Kong.

4. Membership in a Particular Group

The Constitution of the PRC provides freedom of assembly, association, speech and demonstration, as long as they do not “infringe upon the interests of the State, of society . . . or upon the lawful freedoms and rights of other citizens.”

The CCP organizes and controls most professional and social associations. Regulations prevent formation of unauthorized politi-

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276 See Zhang, supra note 245, at 563.
277 See id. at 569.
278 CHINA’ s HUMAN RIGHTS REPORT 1996, supra note 242.
279 WORLD REFUGEE SURVEY 1993, supra note 68, at 80.
280 See Jill Smolowe, Deng’s Big Lie; The Hard-Liners Rewrite History to Justify Arrests and Buy Democracy, Time, June 26, 1989, at 32.
282 See id.
285 Id. art. 51.
cal, religious, and labor organizations.\textsuperscript{287} All organizations must be officially registered and approved.\textsuperscript{288} The Law on the Registration and Management of Social Organizations requires people to apply and get approval from a civil department before one can organize a social group.\textsuperscript{289} The CCP controls the only officially recognized workers' organization, the All-China Federation of Trade Unions (ACFTU).\textsuperscript{290} Independent trade unions are illegal, and group leaders are harassed and imprisoned for initiating unauthorized activities.\textsuperscript{291}

IV. LIMITATIONS IMPOSED ON HKSAR’S AUTONOMY

Although things seem on the surface to be fine, underneath we note a move toward a potentially more repressive system . . . \textsuperscript{292}

There are three perspectives regarding Hong Kong-China reunification: (1) China is so dependent on Hong Kong economically it will adhere to the Joint Declaration and allow Hong Kong to be autonomous; (2) China will not disavow the agreement, but will construe political and social freedoms strictly; and (3) China’s willingness to grant Hong Kong autonomy is pure rhetoric.\textsuperscript{293}

Although China entered into an agreement with Tibet promising Tibet autonomy, China has not complied with that agreement. China’s failure to honor Tibet’s autonomy and evidence that the PRC is already controlling the Hong Kong government in the few months since Hong Kong was turned over to China may presage Hong Kong’s future.

A. China’s Treatment of Tibet

Tibet declared independence from China in 1913. The Chinese government contended that Tibet remained under the republic of China and that Tibetans, and other non-Chinese ethnic groups, were included in the Chinese nation-state because it was formerly part of the Chinese empire.\textsuperscript{294} However, Tibet was de facto independent until

\textsuperscript{287} See id.
\textsuperscript{288} See id.
\textsuperscript{291} See Haocheng, supra note 289, at 109.
\textsuperscript{293} See Granahan, supra note 17, at 93–94.
\textsuperscript{294} See Michael, supra note 262, at 270–71.
1951 when Chinese Communist troops invaded it. On May 28, 1951, the PRC and Tibet, as a National Autonomous Region of the PRC under Article 30(1) of the PRC Constitution, entered into an agreement promising Tibet autonomy and a separate system of government.

China did not respect Tibet's autonomy nor meet its obligations under the agreement. In 1954, the PRC created the Unified Preparatory Committee for the Autonomous Region of Tibet, which removed the Dalai Lama's authority. The Chinese military confiscated estates, and assaulted and executed lamas. Reports state that Chinese authorities have committed human rights abuses such as: deaths in detention, torture, arbitrary arrest, detention without public trial, control of religion, freedom of speech and the press, and detention for peaceful expression of religious and political views. The PRC murdered one and a quarter million Tibetans.

The PRC has taken repressive actions against independence movements in Tibet. Arbitrary arrests have been made during small demonstrations. Political prisoners have been held without the filing of formal charges, have been sentenced to long prison terms, and have been tortured. A large number of prisoners of conscience have been Tibetan monks and nuns. Some have been arrested before participating in protests, given prison terms with hard labor, beaten, shot or killed for displaying pictures of or communicating with the Dalai Lama.

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295 See id.
297 See id.
298 See Michael, supra note 262, at 277–78.
299 See id. at 279.
300 See CHINA'S HUMAN RIGHTS REPORT 1996, supra note 242.
301 See id. at 280.
304 See id.
B. Current Control Over Hong Kong

The Basic Law provides that a socialist system and policies shall not be practiced in Hong Kong, but, rather, the previous capitalist system and way of life shall remain unchanged for fifty years.307 However, the Preamble to the PRC Constitution provides that “Chinese people of all nationalities” will “follow the socialist road.”308 After reunification, all citizens of Hong Kong will be Chinese nationals,309 and, therefore, presumably subject to the Constitution of the PRC, under which the NPC is identified as the primary “organ[] through which the people exercise state power.”310

Contrary to provisions of the Joint Declaration and the Basic Law, the NPC passed a resolution disbanding all three levels of government in Hong Kong.311 Thereafter, the Chinese Government’s Preparatory Committee, which oversaw the transition,312 chose Tung Chee-hwa, a Shanghai-born refugee from the 1949 Communist revolution, as Hong Kong’s Chief Executive to succeed Governor Chris Patten on July 1, 1997.313 Tung’s appointment as Chief Executive was approved by China’s State Council and ratified by Chinese Premier Li Peng.314 However, the appointment was protested by Hong Kong’s Democratic Party, which was shut out of the Preparatory Committee.315 The Hong Kong Democratic Party was the biggest winner in the 1995 election to the Legislative Council (Legco), winning nineteen of the sixty seats.316

Tung and the Preparatory Committee, voting 149 to 1, openly backed Beijing’s plan to replace Legco, which had been elected in 1995

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307 See Basic Law, supra note 151, ch. I, art. 5.
309 See Joint Declaration, supra note 132, Exchange of Memoranda § (B).
312 See Anthony Spaeth, One Year and Counting; Twelve Months Before Handover, Hong Kong Is Bracing for the Worst and Hoping for the Best, Time (International), July 1, 1996, at 20.
313 See Maggie Farley, China Imposes New Legislature on Hong Kong, L.A. TIMES, Dec. 22, 1996, at A1; Hong Kong: Waiting for the Man, ECONOMIST, Aug. 17, 1996, at 30. Tung has said anyone advocating independence for Tibet or Taiwan would not be allowed to remain in Hong Kong. See Keith B. Richburg, Pro-China Tycoon Chosen for Top Hong Kong Post, WASH. POST, Dec. 12, 1996, at A33 [hereinafter Richburg, Pro-China Tycoon Chosen].
316 See id.
to a four-year term, with an appointed panel.\textsuperscript{517} The member who voted "against" was stripped of his rights as a member of the Preparatory Committee.\textsuperscript{518} Eight members of the United Front Against the Provisional Legislature, including five members of Legco, went to Beijing to protest creation of the Provisional Legislature.\textsuperscript{519} They were detained at the airport in Beijing before having their home visit permits confiscated and being forced to return to Hong Kong.\textsuperscript{520}

Although there is no provision for a provisional legislature in the Joint Declaration or Basic Law, members of the Selection Committee voted themselves into the Provisional Legislative Council, taking fifty-one of the sixty seats.\textsuperscript{521} The remaining nine were taken up by pro-Chinese members.\textsuperscript{522} The Provisional Legislature met in Shenzhen until July 1, 1997, while Legco continued to function in Hong Kong.\textsuperscript{523} The Chinese news agency identified areas of responsibility for the council including: implementing laws and revising and abrogating existing laws, as necessary; examining and approving the Hong Kong budget; approving taxation and public expenditure; and approving appointment of judges—basically, the same functions as for the Legislative Council.\textsuperscript{524} Laws approved by the Provisional Legislative Council before July 1, 1997, went into effect on July 1.\textsuperscript{525} One of the first acts of the Provisional Legislative Council was to suspend four laws enacted by Legco regarding labor rights.\textsuperscript{526}

In two recent cases, the Hong Kong court declined to exercise jurisdiction over acts of the Provisional Legislature. In the first case, the court said it was not its function, nor did it have permission, to

\textsuperscript{517} See Andrew Higgins, China Demands HK Loyalty Test, GUARDIAN (London), Mar. 28, 1996, at 15; Richburg, Pro-China Tycoon Chosen, supra note 313, at A33.


\textsuperscript{519} See Catherine Ng et al., Activists Claim China Blacklist, S. CHINA MORNING POST, July 2, 1996, at 1.

\textsuperscript{520} See id.

\textsuperscript{521} See Kevin Platt, Hong Kong Enters a Legal Quagmire, CHRISTIAN SCI. MONITOR, Dec. 23, 1996, at 7.

\textsuperscript{522} See id.

\textsuperscript{523} See China’s Hong Kong’s Assembly To Operate in China Before July 1, AGENCE FR.-PRESSE, Dec. 23, 1996, available in LEXIS, News Library, Curnws File.


\textsuperscript{525} See id.

question the establishment of the Provisional Legislature. In a second case involving the president of the Provisional Legislature, the High Court heard an ex parte application for leave to apply for judicial review of actions taken by the Provisional Legislature before July 1, 1997, on the grounds they usurped the office of Legco. The court refused the application, saying its jurisdiction did not go to China, and, therefore, it could not evaluate whether the operation of the Provisional Legislature was lawful. It said that it was not unlawful for a group to call themselves “whatever name they choose sitting in China passing what are said to be bills.”

Although the elections for First Legislative Council have been scheduled for May 24, 1998, the number of eligible voters has been reduced from 2.7 million to 180,000. In September 1997, the Provisional Legislature passed an election law under which twenty of the legislative seats will be elected by the voters under a system of proportional representation. Thirty seats will be elected by functional constituencies, each seat representing a business, industry or profession. Only corporations, not individuals, will vote for these seats. Ten seats will be elected by an electoral committee, consisting of business people and pro-China groups. A motion for universal suffrage was ruled inadmissible.

In addition to heavily influencing legislation, the PRC is also having an adverse effect on Hong Kong’s basic rights. Under Article 160 of the Basic Law, China can—and has threatened to—repeal the Bill of Rights. The Provisional Legislative Council has already endorsed the government’s motion to suspend a bill passed by Legco

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327 See Senior Non-Expatriate Officers’ Ass’n & ORS v. Secretary for the Civil Serv., 1997–7 HKPLR 91, 1996 HKPLR LEXIS 27, at *20–21.
328 See Ng King Luen v. Fan, 1997 HKPLR 281, 1996 HKPLR LEXIS 27, at *20–21.
329 See id.
330 Id.
332 See Gargan, supra note 331, at A3.
333 See id.
334 See id.
335 See id.
336 See id.
337 See Basic Law, supra note 151, ch. VIII, art. 160; Davis, A Framework for Analysis, supra note 150, at 318–19; see also Hearing of the East Asian and Pacific Affairs Subcommittee of the Senate Foreign Relations Committee, 104th Cong. (1996) (testimony of Andrew Au, Chairman, Alliance of Hong Kong Chinese in the United States), available in LEXIS, Legis Library, Fednews File [hereinafter Hearing].
shortly before the turnover which extended liability under the Bill of Rights to private citizens.\textsuperscript{338} Also, in a case involving the deportation of children who had entered Hong Kong without permission (see Part V, \textit{infra}), the government lawyer argued that a breach of the Hong Kong Bill of Rights would not matter if new legislation was consistent with the Basic Law.\textsuperscript{339}

While the Basic Law provides freedom of the press and publication,\textsuperscript{340} Chinese officials have said freedom of the press will not extend to criticism of the Chinese government or to sensitive policy issues.\textsuperscript{341} The Chinese information minister suggested that after 1997, local journalists in Hong Kong should ask the Chinese press what to report.\textsuperscript{342} Some Hong Kong newspapers are now censoring their stories to avoid upsetting Chinese leaders.\textsuperscript{343} A Hong Kong-based journalist was arrested in his Beijing hotel and charged with leaking state secrets for reporting that the interest rates in China had changed.\textsuperscript{344} He was sentenced to twelve years in prison.\textsuperscript{345}

V. THE FUTURE FOR REFUGEES IN HONG KONG

\textit{Stand up and say something so that people will stop coming.}\textsuperscript{346}

As a Crown Colony, Hong Kong was influenced in its treatment of refugees by Britain, which initially adopted benevolent practices toward ethnic Chinese and Vietnamese refugees from Vietnam until it became overwhelmed by the number of boat people. Under a policy created in June 1988, and formalized under the CPA, Hong Kong instituted procedures based on the UNHCR, including the screening


\textsuperscript{340} See Basic Law, supra note 151, ch. 3, art. 27.


\textsuperscript{342} See Hearing, supra note 337 (testimony of Sidney Jones, Executive Director, Human Rights Watch/Asia).


\textsuperscript{344} See Hearing, supra note 337 (testimony of Sidney Jones, Executive Director, Human Rights Watch/Asia).

\textsuperscript{345} See id.

\textsuperscript{346} Peter Stein, \textit{Problem Children: Immigration Debate Tests Hong Kong's Constitution}, ASIAN WALL ST. J., July 16, 1997, at 1 (quoting the sister-in-law of Gary Cheng Kai-nam, a senior member of Hong Kong's largest pro-China party and member of the Provisional Legislature in 1997).
of boat people. The percentage of boat people screened-in as refugees was low and appears to have been affected by the treatment the claimants received when they went through the interview process and by the skill of the immigration officers.

When claimants were refused refugee status, they were supposed to voluntarily agree to be repatriated to Vietnam, but many of them feared repercussions from the Vietnamese government, either for activities in which they engaged before leaving Vietnam or since arriving in Hong Kong. Therefore, Hong Kong began a program of forced repatriation. Asylum seekers were detained in camps while awaiting decisions on their refugee status claims and pending return to Vietnam. The policies for detention became more restrictive as the numbers of boat people increased, and Vietnam failed to expeditiously take back the rejected asylum seekers.

Situations related to refugees, such as large influxes of boat people, could rise to the level of a state of emergency and, invite action by the PRC. The Standing Committee has the power to decide “by reason of turmoil within the [HKSAR] which endangers national unity or security and is beyond the control of the government of the Region . . . that the Region is in a state of emergency,” in which case the Central Government “may issue an order applying the relevant national laws in the Region.”347 In January 1995, a foreign affairs spokesman for Hong Kong said, “These boat people from Vietnam have indeed created problems for public order in Hong Kong.”348 How and to what extent the HKSAR will be able to act regarding refugees will depend on how the Standing Committee of the PRC interprets the Basic Law in light of the PRC Constitution. Although the PRC-HKSAR will be “one country, two systems,” and the PRC is going to allow the HKSAR to have a capitalist economic system,349 China considers the Hong Kong issue a domestic matter.350 The PRC unilaterally enacted the Basic Law and will not be violating an international agreement if it amends, overturns, or nullifies it.351

347 Basic Law, supra note 151, ch. 1, art. 18.
349 Basic Law, supra note 151, preamble.
The PRC says it will protect rights and freedoms in Hong Kong after 1997. However, historically the PRC has made many promises to the people of China, but has fulfilled few of them. The U.S. Department of State has stated that although China agrees to abide by the Universal Declaration of Human Rights and other international human rights documents.... Chinese officials accept only in theory the universality of human rights. They argue instead that a nation’s political, economic, and social system and its unique historical, religious, and cultural background determine its concept of human rights. 

The PRC and Hong Kong might be motivated to protect refugees’ rights because of a desire for a leading role in the global economy, which is politicized by human rights issues. At his initial statement to the Provisional Legislature in October 1997, Tung said that his policies were based on “one practical and profound truth: Hong Kong’s prosperity and stability are closely linked with those of the mainland.”

Hong Kong’s economy is based on trade, a large portion of which is with mainland China. If China controls refugee issues in the HKSAR, based on its poor human rights record for its own citizens, it is unlikely to treat refugees in Hong Kong in conformance with the UNHCR.

If China is economically motivated, such as by the United States putting pressure on China to institute internationally-recognized norms through Most Favored Nation (MFN) trade status, China might consider incorporating internationally-accepted standards for dealing with refugees. When President Clinton announced his decision to “delink” China’s MFN trade status from its human rights record, he set forth initiatives aimed at promoting human rights in China. If the

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553 CHINA’S HUMAN RIGHTS PRACTICES, 1994, supra note 263.

554 Id., supra note 331, at 8.

555 See Albright on China MFN (statement of Madeleine K. Albright, Secretary of State, before the Senate Finance Committee, June 10, 1997) (visited Feb. 11, 1998) <http://secretary.state.gov/www/statements>. The U.S. State Department argues that revocation of MFN would hurt Hong Kong’s economy, which is based on trade, a significant amount of which is with China. See DEP’T OF STATE, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, Hong Kong and Normal Trading Status for China (visited June 20, 1997) <http://www.state.gov/www/regions/eap/fs-hk_trade_China_970620.html>.
United States' economic relationship with China indirectly causes China to re-evaluate its human rights practices, treatment of refugees could be positively affected.

However, there are currently several issues related to immigration, in general, and refugees, in particular, that the PRC has weighed in on which do not reflect a positive future for refugees: (1) revised standards for nationality of Hong Kong residents; (2) planned abolition of first asylum policy; (3) continued illegal detention of asylum seekers; and (4) proposed immediate return of all remaining boat people to Vietnam.

The NPC Preparatory Committee has rendered opinions regarding permanent HKSAR residents, which affect refugees. The Preparatory Committee adopted a proposal to "clarify" the implementation of the Nationality Law in Hong Kong, stating that "[a]ll Hong Kong residents of Chinese blood born on Chinese territory (including Hong Kong) are all Chinese nationals." However, Chinese citizens do not include children of illegal immigrants, overstayers, or temporary dwellers during their presence in Hong Kong. "Regular residence" in Hong Kong does not include illegal entry or stay in Hong Kong with the permission of the Immigration Department; stay in Hong Kong beyond the time limit, or in the capacity of refugee; lawful detention sentenced by courts in Hong Kong; or authorized stay in Hong Kong according to special government policies. The residence requirements apparently do not exclude children of Vietnamese boat people; however, the PRC "clarifications" do indeed refuse nationality to them. Chief Executive Tung sent a new bill to the Provisional Legislative Council which passed a Beijing-endorsed law on July 10, 1997. The new law required the deportation of over 1,000 children in Hong Kong and hampered the efforts of 66,000 others who were waiting on the mainland to join their parents in Hong Kong.

Article 24 of the Basic Law provides that children born outside of Hong Kong to Hong Kong born Chinese citizens, and other Chinese

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358 See id.
360 See Stein, supra note 346, at 1.
citizens who have resided in Hong Kong for at least several years, are residents of Hong Kong.\footnote{561} However, under the new law, which is being applied retroactively, mainland-born children of Hong Kong parents now have to show that they have a certificate of entitlement before they can claim a right of abode in Hong Kong.\footnote{562} Only the Hong Kong Immigration Department can issue certificates after consultation with Chinese authorities. Anyone who entered Hong Kong illegally cannot get the certificate without first returning to the mainland.\footnote{563}

On July 1, 1997, Hong Kong parents, believing that their right of abode had become effective upon Hong Kong’s reversion to China, surrendered their children to the government. Some children, although born in China, had lived most of their lives with their parents in Hong Kong.\footnote{564} Subsequently, in the fall of 1997, the Court of First Instance rejected a challenge to the new law.\footnote{565} The court acknowledged that the amendment “may be an example of the derogation from Hong Kong’s high degree of autonomy,” but blamed Article 22 of the Basic Law.\footnote{566} Article 22 requires approval to enter the HKSAR from other parts of China.\footnote{567} The court reasoned that the language of the Immigration Ordinance that “made the exercise of the right of abode in Hong Kong by descent depend on the obtaining of a one-way exist permit [did] no more than implement the requirements of art. 22(4).”\footnote{568} Legislation that implements provisions of the Basic Law are not, therefore, incompatible.\footnote{569} The court said that Article 22 encompasses children waiting in mainland China to join their parents in Hong Kong and the government would not be violating the Basic Law by sending the children.

back to the mainland.\textsuperscript{370} As a note, the court did strike out the new amendment, which prevented children born out of wedlock of a father who has the right of abode from claiming the right of abode.\textsuperscript{371}

The PRC and Provisional Legislature are planning to undo policies set in place for refugees over twenty years ago. They are abolished of Hong Kong’s first asylum policy, which allows boat people to stay in Hong Kong pending processing of refugee claims.\textsuperscript{372} In August 1997, the Provisional Legislative Council moved that the government repatriate all remaining Vietnamese refugees.\textsuperscript{373} The Hong Kong Department of Justice is trying to have the status of one refugee—the only person granted refugee status by a court—revoked, which would allow the government to lock him up again and repatriate him to Vietnam.\textsuperscript{374}

There are still over 2,000 Vietnamese in camps waiting to be returned to Vietnam,\textsuperscript{375} and there are 450 stateless ethnic Chinese who have been screened out as non-refugees living in Pillar Point refugee camp.\textsuperscript{376} There seems to be no solution between Hong Kong and the UNHCR over repatriation of the boat people. In 1996, Vietnam again reached an agreement with Britain and Hong Kong to take both voluntary and involuntary returnees,\textsuperscript{377} but repatriations are accomplished slowly, if at all. The hopelessly optimistic, or hopelessly persecuted, continue to take to the seas in boats, headed for Hong Kong.

Based on China’s inconsistent treatment of refugees in the past and its abuse of human rights of its own nationals, it seems unlikely that Chinese immigration officials will appreciate the claims made by

\textsuperscript{370} See id. at *44—45; Hutchings, supra note 365, at 19.

\textsuperscript{371} See Cheung Lai Wah, 1997 HKC LEXIS 132, at *59; Cliff Buddle, Ruling Means 1,000 Face Expulsion To Join Queue for One-Way Permits, S. CHINA MORNING POST, Oct. 10, 1997, at 1.

\textsuperscript{372} See Hong Kong Officials To Urge Hanoi To Speed up Return of Boatpeople, AGENCE FR.-PRESSE, Sept. 19, 1997, available in 1997 WL 13397419. China’s Foreign Affairs Chief for Hong Kong said Britain imposed the port of first asylum policy on Hong Kong. See China Hints at Support for Overturning Hong Kong Refugee Rights, AGENCE FR.-PRESSE, July 30, 1997, available in 1997 WL 2161288.


\textsuperscript{375} See UNHCR, REF WORLD, supra note 3; Schloss & Buddle, supra note 6, at 8.


asylum seekers of government persecution in their home countries. Also, considering the treatment the PRC gives to its own political dissidents who have been returned to China, it is not going to be sympathetic to people who, because of their ethnicity, religion, or political involvement, are antagonistic to their governments.

Refugees and other Vietnamese boat people remaining in Hong Kong will be forced to return to Vietnam if they cannot be resettled in other countries. New refugees will probably be processed by the PRC without consideration for protections afforded under the Refugee Convention.

Hong Kong, built by refugees, now rejects them.