

U.S. Senate Committee on Foreign Relations

Hearing on "Democracy in Hong Kong"

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2:30 p.m., Thursday, March 4, 2004 - Dirksen 419

Presiding: Senator Lugar

1. Mr. Chairman and distinguished members of the Senate Committee on Foreign Relations, thank you for inviting me to testify on the status of Democracy in Hong Kong.
2. The Hong Kong Human Rights Monitor (The Monitor) is the largest indigenous membership-based human rights organisation in Hong Kong. We aim to promote better human rights protection in Hong Kong, both in terms of law and practical daily life, and to encourage greater human rights awareness.
3. Our submission will focus on two areas: (a) the demand for democracy by Hong Kong people; and (b) the recent developments which have threatened freedoms in Hong Kong.

Demand for Democracy

4. The International Covenant on Civil and Political Rights was extended to Hong Kong in 1976 by the United Kingdom while Hong Kong was under British rule. Article 25 of the Covenant provides,

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
- (c)*

5. In extending the Covenant to Hong Kong, the United Kingdom has made the following reservation:

The Government of the United Kingdom reserve the right not to apply sub-paragraph (b) of Article 25 in so far it may require the establishment of an elected Executive or Legislative Council in Hong Kong ...

6. The Sino-British Joint Declaration between China and the United Kingdom provides that the Covenant “as applied to Hong Kong”, i.e. as qualified by any declared reservations such as the above, “shall remain in force” in Hong Kong after 1997. The continued application of the Covenant “as applied to Hong Kong” was repeated in Article 39 of the Basic Law.

7. In the Letter of Notification of treaties applicable to Hong Kong after 1 July 1997, deposited by the Government of the People's Republic of China with the Secretary-General of the United Nations on 20 June 1997, China informed the United Nations that the Covenant “will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997,” although China was not yet a party to it.

8. Unfortunately, both the British and Chinese Governments have failed to ensure that the electoral system in Hong Kong conforms to their international obligations under the Covenant.

9. The United Nation Human Rights Committee, the treaty body responsible for monitoring the implementation of the Covenant by treaty parties, concluded in their concluding observations in 1995,

The Committee is aware of the reservation made by the United Kingdom that article 25 does not require establishment of an elected Executive or Legislative Council. It however takes the view that once an elected Legislative Council is established, its election must conform to article 25 of the Covenant. The Committee considers that the electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2 [on non-discrimination], 3 [on gender equality] and 26 [on equal protection of the law] of the Covenant. It underscores ... the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions. This clearly constitutes a violation of articles 2, paragraph 1, 25 (b) and 26. It is also concerned that laws depriving convicted persons of their voting rights for periods of up to 10 years may be a disproportionate restriction of the rights protected by article 25.

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The Committee recommends that immediate steps be taken to ensure that the electoral system be put in conformity with articles 21, 22 and 25 of the Covenant.

10. "Functional constituency elections" are an unfair system whereby business or professional groups elect a member or two to the Legislative Council to represent their interests on a special restricted franchise.

11. Unfortunately, the United Kingdom has done nothing to bring the electoral system in line with the international standards laid down in the Covenant.

12. Even worse, under Chinese rule, the Hong Kong SAR Government has abandoned the reforms initiated by the last Governor of Hong Kong. As a result, in the Legislative Council elections on 24 May 1998, the franchise in functional constituency elections in Hong Kong has been further reduced more than 90% by the Hong Kong SAR Government.

13. In November 1999, after hearing a report on Hong Kong by the Chinese Government, the UN Human Rights Committee again concluded,

The Committee reiterates its concern, expressed in paragraph 19 of its concluding observations, adopted at the end of the consideration of the [previous] periodic report, that the electoral system for the Legislative Council does not comply with articles 2, paragraphs 1, 25 and 26 of the Covenant.

The HKSAR should take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs.

14. In 2001 the UN Committee on Economic Social and Cultural Rights also stressed in its concluding observations after considering the Hong Kong report, that the "undemocratic features" of the Legislative Council made it difficult for the HKSAR to fully realize economic, social and cultural rights.

15. It is clear that the current electoral system for returning the Legislative Council continues to violate the Covenant. Most of the 800 persons who are given the power to elect the Chief Executive are themselves returned by a system similar to functional constituencies. Therefore the electoral system for returning the Chief Executive is in no way better. These electoral systems all fall foul of international standards and perpetuate the democracy deficit in Hong Kong.

16. Notwithstanding that there are provisions in the Basic Law which continue to deny universal and equal suffrage to Hong Kong people, the system continues to violate international standards.

Hong Kong People's Demand for Democracy

17. Two major events that took place in 2003 highlighted Hong Kong people's desire for democracy: the July 1st demonstration and the District Councils Election in 2003.

18. On July 1st, 2003, more than half a million Hong Kong people took to the streets to protest against the Government's proposed national security legislation under Article 23 of the Basic Law, the mini-constitution for Hong Kong, and to demand "power to the people." The way the Chief Executive and his supporters in the Legislative Council had attempted to push through the national security legislation has made a lot of Hong Kong people realize that without democracy, existing rights can easily be taken away by legislation. They have also been reminded that without democracy, it is very difficult for the people to have the required checks against abuses by the authorities in their enforcement of such laws. It has become very common knowledge that protection of freedoms and human rights requires democracy.

19. The repeated failures of the government in various livelihood areas, including health, housing, unemployment and education have indicated a lack of competency of the Hong Kong SAR Government and a lack of ability for it to take public opinions and people's interests seriously. These in turn have pointed to the fact that without democratic elections, we cannot create a government sensitive enough to the opinions and demands of the general public. Worst of all, many people have begun to lose hope and feel that, without democracy, there is no way to get rid of an incompetent and insensitive Chief Executive. The people feel that the Chief Executive, to a great extent, has to be held responsible for failing to address their livelihood issues thus far, and that he will continue to do so as long as he maintains support from Beijing. A lot of Hong Kong people have found that their livelihood difficulties are closely related to the lack of democracy, or they are demanding democracy because they want to remove leaders, by means of elections, whom they do not consider fit for such important political positions.

20. Hong Kong people have come to realize that when the Government does not listen to our demands, we are forced to take our destiny into our own hands. As a result, many Hong Kong people took to the streets to demand democratic changes.

21. Another key event which has highlighted the strong demand for democracy was the District Councils Elections which were held on November 23, 2003. Although the

District Councils are more of an advisory body, with very limited political power, people still chose to use their voting powers to support pro-democracy candidates. 1.07 million voters cast their ballots in the Election, which represents a turnout rate of 44%. Both the number of voters and the percentage who voted are the highest in Hong Kong's history of district elections. Many of the pro-Beijing candidates were voted out of office because of their political affiliation to the pro-Beijing faction.

22. Opinion polls also showed a high demand for universal suffrage. In December 2003, the Public Opinion Programme at the University of Hong Kong released survey results showing that 73% and 78% of the respondents supported general elections for the Chief Executive in 2007 and for all Legislative Councillors in 2008, respectively. Even after a series of public opinion attacks from the Central Government and pro-Beijing figures, the demand for general elections remained high. According to a more recent poll conducted in February 2004 by the Hong Kong Institute of Asia-Pacific Studies at the Chinese University of Hong Kong, 68.7% and 75.6% of the respondents agreed or strongly agreed to return the Chief Executive in 2007 and all of the Legislative Councillors in 2008, respectively.

23. As a result, since the Re-unification with China, the demands for universal and equal suffrage to elect the Chief Executive and all seats of the Legislative Council in Hong Kong have never been as high as they have recently been.

Freedoms in Hong Kong threatened by the recent developments

24. After the two key events mentioned above, the Chinese authorities seem to be very determined to tighten political control over Hong Kong, while assisting Hong Kong economically at the same time.

25. The Hong Kong SAR Government's plan to release a timetable for a consultation on constitutional review by the end of 2003 has been shelved after the Chinese Government approached the Chief Executive in December 2003. Instead, a Constitutional Development Task Force was set up by the Hong Kong authorities to clarify the concerns of Beijing.

26. The Chinese authorities have orchestrated a political campaign against pro-democracy politicians and activists in Hong Kong who opposed Article 23 legislation, criticized one-party dictatorship of the Chinese Communist Party, expressing their views and demanding universal and equal suffrage.

27. In particular, the Pro-Beijing media and figures have singled out a number of pro-democracy Legislators, including Martin Lee, for soliciting foreign “intervention” on internal matters of the HKSAR; Szeto Wah for being chairperson of the Hong Kong Alliance in Support of Patriotic Democratic Movement; Margaret Ng for speaking out against the legislation of Article 23; Emily Lau for supporting the rights of the people of Taiwan.

28. People have begun to compare the Hong Kong of today to China during the time of the Cultural Revolution. This campaign has taken up the theme of attacking political opposition to Beijing as being “unpatriotic” and characterizing it in the form of a “political movement.”

29. The Hong Kong Human Rights Monitor believes that the Chinese authorities have changed their policy towards Hong Kong. They have adopted and are testing a very hard line policy towards Hong Kong with the objective of intimidating pro-democracy politicians, activists and ordinary citizens, and of dampening the demand for democracy. Such an intolerant atmosphere is totally inconsistent with the promise of maintaining a free Hong Kong in line with the international obligations China must meet under the International Covenant on Civil and Political Rights.

30. We therefore believe that political freedoms are threatened by the current political campaign being taken up in Hong Kong by China.

31. Mr. Chairman, this concludes my formal testimony. Thank you.