

SUBMISSIONS TO THE PANEL ON CONSTITUTIONAL AFFAIRS OF THE LEGISLATIVE COUNCIL

On the third report of the Hong Kong Special Administrative Region
under the International Convention on the Elimination of All Forms of Racial Discrimination

July 2018

Justice Centre Hong Kong ('Justice Centre') submits the following information to the Panel on Constitutional Affairs ('the Panel') of the Legislative Council of the Hong Kong Special Administrative Region, China ('Hong Kong') on the third report of Hong Kong as part of the fourteenth to seventeenth reports of China under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ahead of the Panel's meeting on 16 July 2018. Justice Centre is concerned about the rights of asylum seekers and refugees, the issue of human trafficking and the challenges civil society faces in engaging in policy discussions.

Due to the lack of capacity to prepare a separate full submission to the Panel specifically for the above-mentioned meeting, Justice Centre would like to draw the attention of the Panel to the following submissions we made previously to this Panel, the Panel on Administration of Justice and Legal Services, the Panel on Security and the Subcommittee to Follow up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims:

On the rights of asylum seekers and refugees

- Submission to the Subcommittee to Follow up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims on the screening of non-refoulement claims and appeal procedures for its meeting on 21 May 2018;¹
- Submission to the Panel on Security on the comprehensive review of the strategy of handling non-refoulement claims for its meeting on 6 June 2017;²
- Submission to the Subcommittee on Children's Rights on the establishment of a data bank for its meeting on 4 April 2018;³

¹ Justice Centre Hong Kong, "Submission to the Subcommittee to Follow up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims on the Screening of Non-Refoulement Claims and Appeal Procedures", LC Paper No. CB(2)1432/17-18(01), May 2018, available at: https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420180521cb2-1432-1-e.pdf

² Justice Centre Hong Kong, "Submission to the Panel on Security: Comprehensive Review of Strategy of Handling Non-Refoulement Claims", LC Paper No. CB(2)1432/17-18(01), June 2017, available at: https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420180521cb2-1432-1-e.pdf

³ Justice Centre Hong Kong, "Speech Delivered by Annie Li, Research and Policy Officer, in the Meeting of the Subcommittee on Children's Rights of the Legislative Council on Establishing a Central Data Bank for Children", 4 April 2018, available at: **PROTECTING FORCED MIGRANTS' RIGHTS**

- Submission to the Subcommittee on Children's Rights on refugee children's rights for its meeting on 14 July 2017;⁴ and
- Submission to the Panel on Administration of Justice and Legal Services on legal aid for its meeting on 21 July 2017.⁵

On the issue of human trafficking

- Submission to the Panel on Security on the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers as well as the private members' bill of Dennis Kwok and Kenneth Leung for its meeting on 5 June 2018.⁶

On engagement with civil society, the Steering Committee of the Hong Kong UPR Coalition, a coalition of NGOs that Justice Centre facilitates, made a submission to the Panel on Hong Kong's third report for the United Nations Universal Periodic Review ('UPR') (Attachment).⁷ In the submission, the Steering Committee made recommendations for the Legislative Council to play a stronger role in the protection and promotion of human rights, including:

- Advocating for a central database of treaty body and UPR recommendations in Hong Kong; and
- Establishing a standalone human rights panel.

In the same submission, the Steering Committee also gave examples of problematic consultation methods in Hong Kong and recommendations for the Legislative Council to improve consultation with civil society and the general public. Moreover, the Steering Committee responded to the questionnaire of the Office of the High Commissioner for Human Rights (OHCHR) on the role of parliaments in the Human Rights Council and the UPR (see Attachment), in which the Steering Committee notes that there is no standalone human rights committee in the Legislative Council.

http://www.justicecentre.org.hk/framework/uploads/2014/03/20180404-LegCo-Subcommittee-on-Children-Speech_Final.pdf

⁴ Justice Centre Hong Kong, "Submissions to the Subcommittee on Children's Rights of the Legislative Council", LC Paper No. CB(4)1432/16-17(03), July 2017, available at: <http://www.justicecentre.org.hk/framework/uploads/2014/03/Justice-Centre-Hong-Kong-submissions-to-Subcommittee-on-Childrens-Rights.pdf>

⁵ Justice Centre Hong Kong, "Submission to the Panel on Administration of Justice and Legal Services: Legal aid for non-refoulement claimants", 17 July 2017, LC Paper No. CB(4)1427/16-17(01), available at: <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1427-1-e.pdf>

⁶ Justice Centre Hong Kong, "Submission to the Panel on Security of the Legislative Council on the Administration's Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong and the Proposed Members' Bill Entitled 'Modern Slavery Bill' to Criminalize All Forms of Human Trafficking in Hong Kong", LC Paper No. CB(2)1515/17-18(01), 5 June 2018, available at: <https://www.legco.gov.hk/yr17-18/english/panels/se/papers/se20180605cb2-1515-1-e.pdf>

⁷ Hong Kong UPR Coalition Steering Committee, "3rd report of the Hong Kong Special Administrative Region for the United Nations Human Rights Council Universal Periodic Review: Panel on Constitutional Affairs Consultation", 20 April 2018, LC Paper No. CB(2)1266/17-18(03), available at: <https://www.legco.gov.hk/yr17-18/chinese/panels/ca/papers/ca20180430cb2-1266-3-ec.pdf>

While the above-mentioned submission made to the Panel related specifically to the UPR, the points raised therein apply to the reporting exercise and recommendations of the Committee on the Elimination of Racial Discrimination (CERD) and other treaty bodies, too.

Recommendations

Justice Centre recommends the Panel and all members of the Legislative Council:

- Express public and private support for meaningful and considered engagement by the Constitutional and Mainland Affairs Bureau, as well as all other relevant departments and bureaus responsible for laws and policies covered by ICERD, including calls for:
 - regular meetings with civil society representatives;
 - prompt responses to emails, letters and other correspondence; and
 - consultation consistent with the principles and rights contained in the United Nations Declaration on Human Rights Defenders.
- Attend the CERD hearing in August 2018 as part of the official delegation of the Hong Kong government;
- Establish a standalone human rights panel in the Legislative Council within one year.

Justice Centre also makes the following recommendations for the administration:

- Hong Kong should establish a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation mechanism for their implementation, following meaningful consultation with civil society, within one year;
- Hong Kong should adopt a policy of timely and fulsome public consultation for any policy and legislative development, with special regard to persons with disabilities, indigent and non-Chinese speaking communities, within six months;
- China should extend the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol) to Hong Kong within one year, consistent with the recommendations of the Committee against Torture;⁸
- Hong Kong should adopt a comprehensive law on prevention, prosecution, and protection to combat human trafficking and forced labour within one year;
- Hong Kong should amend legislation providing equal rights to access permanent residency for children of asylum seekers, refugees and all migrant workers, consistent with the children of other migrants under Article 24 of the Basic Law within one year;

⁸ Committee against Torture, 'Concluding observations on the fifth periodic report of China with respect to Hong Kong, China', CAT/C/CHN-HKG/CO/5, 3 February 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/38/PDF/G1601738.pdf?OpenElement>

- Consistent with the concluding observations of the Committee against Torture,⁹ Hong Kong should ensure that children of migrant workers, refugee and asylum-seeking children have equal access to basic services, including health, education and other social services;
- China should extend the Convention Relating to the Status of Refugees and its 1967 Protocol to Hong Kong within one year;
- Hong Kong should not set an inappropriate high threshold for granting international protection and should grant asylum seekers and refugees the right to work immediately;
- Consistent with the concluding observations of the Committee on Economic, Social and Cultural Rights (CESCR),¹⁰ Hong Kong should ensure that all children, including asylum-seeking and refugee children, have free access to compulsory education on an equal basis immediately. Hong Kong should also provide scholarships and resource support for education for asylum seekers and refugees immediately; and
- Consistent with the concluding observations of the Human Rights Committee, CESCR and CERD,¹¹ Hong Kong should amend the Race Discrimination Ordinance within one year so that it applies to government functions and powers, and covers the grounds of nationality, citizenship, residence status, and language.

The third to the last recommendations were also raised in the joint civil society UPR submission of the Hong Kong UPR Coalition. The submission was wholly or partly endorsed by 45 civil society organisations in Hong Kong (see Attachment).¹²

Justice Centre welcomes the opportunity to provide further information to members of the Panel in writing or in person.

⁹ *Ibid.*

¹⁰ Committee on Economic, Social and Cultural Rights, "Concluding observations on the second periodic report of China, including Hong Kong, China and Macao, China", E/C.12/CHN/CO/2, 13 June 2014, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/CHN/CO/2&Lang=En

¹¹ Human Rights Committee, "Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013)", CCPR/C/CHN-HKG/CO/3, 29 April 2013, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CHN-HKG/CO/3&Lang=En;

Committee on Economic, Social and Cultural Rights, "Concluding observations on the second periodic report of China, including Hong Kong, China and Macao, China"; and Committee on the Elimination of Racial Discrimination, "Concluding observations of the Committee on the Elimination of Racial Discrimination: China (including Hong Kong and Macau Special Administrative Regions)", CERD/C/CHN/CO/10-13, 15 September 2009, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CHN/CO/10-13&Lang=En

¹² Hong Kong UPR Coalition, "Joint civil society submission", March 2018, available at: <http://www.justicecentre.org.hk/policy-advocacy/universal-periodic-review/>

Attachment – Submission made by the Hong Kong UPR Coalition Steering Committee to the Panel on Constitutional Affairs on 20 April 2018

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About Justice Centre Hong Kong

Justice Centre Hong Kong is a non-profit human rights organisation working to protect the rights of Hong Kong's most vulnerable forced migrants: refugees, other people seeking protection, and survivors of torture, human trafficking and forced labour.

For more information please visit: www.justicecentre.org.hk



透過聯合國普遍定期審議機制於香港推動人權
Advancing human rights in Hong Kong through
the UN Universal Periodic Review process

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20 April 2018

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3rd report of the Hong Kong Special Administrative Region for the United Nations Human Rights Council Universal Periodic Review: Panel on Constitutional Affairs Consultation

Introduction

The Hong Kong Universal Periodic Review Coalition (the Coalition) greatly appreciates the opportunity to provide a submission for the Panel on Constitutional Affairs (the **Panel**) discussion on the Outline of the Third Report of the Hong Kong Special Administrative Region for the United Nations Human Rights Council Universal Periodic Review (the **UPR**).

The Coalition's work is facilitated by Justice Centre Hong Kong and guided by the Coalition's Steering Committee (the **Steering Committee**). Members of the Steering Committee include; Civil Human Rights Front, Disabilities CV, The Hong Kong Society for Asylum-Seekers and Refugees, Hong Kong Watch, Justice Centre Hong Kong, Les Corner Empowerment Association, PEN Hong Kong, Pink Alliance and Planet Ally. This submission has been endorsed by the Steering Committee.

The Steering Committee considers that the Panel process provides a valuable opportunity for Legislative Council members and the Hong Kong Special Administrative Region (**HKSAR**) government to consider the views of civil society. Additionally, the UPR as a whole provides an opportunity for the HKSAR government to show to the people of HKSAR and the international community that they are truly committed to their 'core values', including respect for human rights and adherence to the rule of law.¹

The comments in this submission will focus on; the work of the Coalition, the role of the Legislative Council in the UPR and identify concerns with consultation methods. This submission does not outline the Coalition's substantive position on human rights concerns in HKSAR, which are contained in the Coalition's Joint Submission for the UPR (the **Joint Submission**) (**Attachment A**).²

¹ Mrs Carrie Lam, GBM, GBS, Chief Executive, 'Speech by the Chief Executive in delivering "The Chief Executive's 2017 Policy Address" to the Legislative Council', 11 October 2017, available at: <https://www.policyaddress.gov.hk/2017/eng/speech.html>. Accessed on 19 April 2018.

² Hong Kong UPR Coalition, Joint Civil Society Submission from the Hong Kong UPR Coalition, March 2018, available at: http://www.justicecentre.org.hk/framework/uploads/2018/UPR/HKUPRC_Submission_MARCH2018.pdf. Accessed on 16 March 2018.



Overview of the Hong Kong Universal Periodic Review Coalition's work

The Coalition has been an active participant in the Third Cycle UPR process, engaging with a wide variety of civil society organisations, HKSAR government, Legislative Council members and the international community. With specific reference to civil society, the Coalition has held dozens of meetings and five open workshops, including one on the mechanics of the UPR itself and four on developing the Joint Submission. Workshops have been made open to all civil society organisations in HKSAR, with extensive consultation undertaken to ensure that the expressed views are representative.

In January 2018, the Steering Committee of the Coalition made a submission to the Office of the High Commissioner for Human Rights (OHCHR) on the role of parliaments in the Human Rights Council and its UPR (**Attachment B**).³ The submission responds to a questionnaire by the OHCHR and notes that the Legislative Council does not have a specialised committee that deals solely with human rights.

In March 2018, the Coalition lodged the Joint Submission to the United Nations Human Rights Council for the UPR.⁴ Forty-five civil society organisations endorsed the submission, either in whole or in part. These organisations represent different interests and advocacy focuses, such as refugee rights, freedom of speech, rights of persons with disabilities, LGBTI rights, political rights, and much more. The submission speaks to the aspirations of civil society to build a more inclusive and equitable HKSAR.

Role of Legislative Council in Universal Periodic Review

The Legislative Council plays a crucial role in translating international commitments into policies and laws. This includes recommendations generated by the international human rights mechanisms and those supported by the State in the UPR. The Legislative Council stands to gain from exploring synergies to ensure that the UPR has the greatest impact in the HKSAR. In particular, the Steering Committee recalls Human Rights Council resolutions 22/15 of 21 March 2013, 26/29 of 27 June 2014, 30/14 of 1 October 2015 and 35/29 of 23 June 2017, on the contribution of parliaments to the work of the Council and its UPR, as well as work from the Inter-Parliamentary Union and the Commonwealth Secretariat.⁵

The Coalition stands ready to assist the Legislative Council throughout the UPR. We welcome opportunities to brief members and provide a civil society perspective on human rights concerns in HKSAR. Outlined below are several suggestions on how members can actively participate in the Third Cycle UPR, contributing to the increased transparency and accountability of the HKSAR government's handling of human rights issues.

³ Hong Kong UPR Coalition, Submissions to the Office of the High Commissioner for Human Rights: The Role of the Hong Kong Legislative Council in the Human Rights Council and its Universal Periodic Review, January 2018, available at: <http://www.justicecentre.org.hk/policy-advocacy/universal-periodic-review/>. Accessed on 19 April 2018.

⁴ Ibid, n2.

⁵ Inter-Parliamentary Union and Commonwealth Secretariat, 'Strengthening the Role of Parliamentarians in the Implementation of Universal Periodic Review Recommendations: Conclusions', 12 and 13 November 2012. Available at: <http://archive.ipu.org/splz-e/hr12/conclusions.pdf>. Accessed on 20 April 2018.

Monitoring and evaluation

During the Second Cycle UPR there were no recommendations which directly referenced the HKSAR. However, the Steering Committee anticipates that the Third Cycle UPR will lead to recommendations on HKSAR. Legislative Council will be critical in:

- ensuring that those recommendations are translated into law and policy;
- supporting the allocation of sufficient resources to facilitate implementation of programs linked to those recommendations;
- tasking specific committees concerned by the recommendations to reflect on them in depth and formulate concrete proposals;
- establishing a regular timetable for follow-up to the implementation of recommendations and encouraging respect for recommendation deadlines;
- organising periodic debates with voters with a view to gauging the measures' impact.⁶

The above actions show how the Legislative Council can play a role in effective monitoring and evaluation, especially after recommendations are issued. However, much can also be achieved by members in the coming months to increase scrutiny.

One valuable mechanism members can advocate for is the development of a central database for treaty body and UPR recommendations. The current position of placing human rights reports on the Constitutional and Mainland Affairs Bureau (CMAB) website is insufficient, lacking oversight and accountability, with no detail on what actions have been taken to implement recommendations. There are many useful examples which HKSAR can utilise, such as that from New Zealand.⁷ The Coalition in the Joint Submission has called on:

“HKSAR [to] establish a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation mechanism for their implementation, following meaningful consultation with civil society, within one year.”⁸

Another monitoring and evaluation gap lies within committee structures. There is currently no specialised committee in the Legislative Council operating on a continuous basis to monitor and examine government policy relating to human rights. A standalone human rights panel could assist throughout the UPR, increasing scrutiny on the HKSAR section of the national report, participation in the Human Rights Council and implementation of recommendations. The Joint Submission calls on:

“HKSAR [to] recommend the Legislative Council establish a standalone human rights panel within one year.”⁹

⁶ Ibid.

⁷ Further details can be found in New Zealand's National Plan of Action, which lists all UPR recommendations and identifies government actions. See: <http://npa.hrc.co.nz/#/>.

⁸ Ibid n2, para 6.

⁹ Ibid, para 7. According to Rule 77 of the Rule of Procedures, the Legislative Council could establish a specialised Panel/Committee that deals solely with human rights.



Participation in the Universal Periodic Review

The Panel discussion on 30 April is welcome as a mechanism to give greater public attention and scrutiny for the UPR. It helps to engage the Legislative Council, providing members with a broad range of views through deputations. However, members can and should seek a more active role.

Firstly, members can call for greater oversight of the HKSAR section of the national report. The Steering Committee is disappointed that CMAB, based upon information received at a Human Rights Forum meeting on 18 April 2018, decided not to provide a draft version of the HKSAR section of the national report for either the Legislative Council or civil society to review before presenting. Although the section would not be ready for the Panel discussion on 30 April 2018, given that submissions to CMAB are due by 7 May 2018, there is still an opportunity for to do so afterwards. This could be done through a separate Panel discussion and follow up consultation process with civil society. All could take place prior to final approval of the national report by the People's Republic of China (PRC) government, even if limited time was available.

Secondly, members can call to be active participants as part of the HKSAR government delegation for the UPR hearing on 6 November 2018. The Steering Committee is disappointed that CMAB, based upon information received at a Human Rights Forum meeting on 18 April 2018, has decided not to include Legislative Council members in the HKSAR government delegation for the hearing. Human Rights Council resolution 35/29 encourages the practice of including parliamentarians in delegations participating in the UPR. Representatives from the Legislative Council, incorporating majority and minority members, could participate. There are a number of useful examples, which can be drawn upon. During the Second Cycle, Australia sent a member of majority party, the Hon Philip Ruddock MP, and a member of the minority party, Senator Anne McEwen.¹⁰

Thirdly, members can seek briefings from the Steering Committee. We have detailed technical experience on the UPR process, including understanding of the requirements for the national report's preparation and can provide suggestions mechanisms to enhance engagement with the UPR. Additionally, Steering Committee members, and the Coalition as a whole, represent a broad cross section of civil society, with expertise on issues affecting a substantial proportion of the HKSAR population.

Methodology and process of consultations

The Coalition is concerned in general with consultation methods adopted by the HKSAR government and bemoans the increasingly narrow space for civil society. While the pledge

¹⁰ Parliament of Australia, 44th Parliament – Outgoing delegations and visits, 2016, available at: https://www.aph.gov.au/About_Parliament/International_Program/44th_Parliament_-_Outgoing_delegations_and_visits. Accessed on 19 April 2018.



by Chief Executive Lam to 'connect' is appreciated,¹¹ the Steering Committee does not believe that there has been a discernible difference in engagement with civil society since the Chief Executive took to office.

The Coalition noted in the Joint Submission that:

*"Civil society are often not consulted for major legal and policy developments. Consultation mechanisms lack accountability and transparency. Meetings with government are difficult to obtain. Direct questions are often ignored. The Human Rights Forum, cited by HKSAR, is only held shortly before or after treaty body and UPR sessions. HKSAR should adopt a policy of timely and fulsome public consultation for any policy and legislative development, with special regard to persons with disabilities, indigent and non-Chinese speaking communities, within six months."*¹²

As outlined in Human Rights Council resolution 5/1, the basis of the UPR includes; the Charter of the United Nations, Universal Declaration of Human Rights, human rights instruments to which a State is a party, voluntary pledges and commitments as well as applicable international humanitarian law. Law and policy covered under those grounds, includes the work of most HKSAR departments and bureaus, such as; Department of Justice, Education Bureau, Environment Bureau, Food and Health Bureau, Home Affairs Bureau, Labour and Welfare Bureau, Security Bureau, and Transport and Housing Bureau.

Consultation for the UPR should involve more than holding the Human Rights Forum, public feedback on the HKSAR of the national report and the Panel discussion. Consultation needs to be broad, inclusive and recognise the special needs of persons with disabilities, indigent and non-Chinese speaking communities. The decision by CMAB to make the outline document available in six ethnic minority languages has been welcomed by the Coalition, as noted in the press release of 4 April 2018.¹³

However, there is much that can be done to improve the dialogue with civil society. Legislative Council can play an important role in bridging that gap. Measures which members can undertake, include:

- preparing a submission to CMAB's consultation on the HKSAR section of the national report which expresses support for engagement with civil society;
- calling upon CMAB, as well as all other relevant departments and bureaus, to have considered and meaningful dialogue with civil society;

¹¹ Chief Executive Carrie Lam, 'The Chief Executive's 2017 Policy Address: We Connect for Hope and Happiness', October 2017, available at: <https://www.policyaddress.gov.hk/2017/eng/pdf/PA2017.pdf>. Accessed on 16 April 2018.

¹² Ibid n2, para 13.

¹³ Hong Kong UPR Coalition, 'Civil Society Welcomes Dialogue with Government on Human Rights', 4 April 2018, available at: <http://www.justicecentre.org.hk/policy-advocacy/universal-periodic-review/>. Accessed on 19 April 2018.



- asking CMAB, as well as all other relevant departments and bureaus, to meet regularly with civil society and respond promptly to correspondence;
- supporting engagement that aligns with the principles and rights contained in the United Nations Declaration on Human Rights Defenders; and
- raising views on the UPR with the international community, including visiting parliamentary delegations and foreign government representatives.

Examples of problematic UPR consultation methods

The Coalition has from its formation attempted to work constructively with government. Unfortunately, there has been some concern in the preparatory stages for the Third Cycle in terms of the HKSAR government's engagement with civil society.

Firstly, the facilitator for the Coalition, Justice Centre Hong Kong, reached out to CMAB in August 2017 to hold a face to face meeting. Several attempts via email and phone seeking a meeting were refused. Responses from CMAB noted that there would be a consultation on the HKSAR section of the national report, but rebuffed attempts to meet, stating that CMAB 'was not able to arrange a meeting at this stage'. CMAB ended up agreeing to a meeting two months later.¹⁴ However, the process of attempting to obtain a meeting involved substantial resources and should not have been such a challenge to secure.

Secondly, and more recently, the Human Rights Forum, one of the primary means by which consultation will be reported on in the HKSAR section of the national report,¹⁵ was held on 18 April 2018. While the Forum was welcomed, only one week's notice was provided. This limited the number of representatives who could have otherwise participated. Another challenge with the Forum is that there is no feedback mechanism for the input. Verbal comments can be given, alongside written comment for the submissions by 7 May 2018, but there is no way to verify that they have been incorporated into the HKSAR section of the national report. The lack of a feedback for civil society on contributions to consultations has long been a common cause of concern.¹⁶

Conclusion

A willingness to view consultation outside of 'established practice' is critical to developing positive relations between civil society, Legislative Council, HKSAR government and the international community throughout the UPR and beyond. Legislative Council has an

¹⁴ The meeting was held on 27 November 2017, 94 days after the initial meeting request.

¹⁵ See at para 99, China, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/17/CHN/1*, 5 August 2013.

¹⁶ For example, submissions to the Budget 2018-19 were forwarded onto the relevant department when pertinent issues were raised. However, there were no requirements for departments to respond, including to the organisation which lodged the submission. Justice Centre Hong Kong lodged a submission to Budget 2018-19 on seeking funding to support civil society participation in treaty body processes and the UPR, but never received a response. See, Justice Centre Hong Kong, 'Submissions for the 2018-19 Budget Consultation', January 2018, available at: <http://www.justicecentre.org.hk/framework/uploads/2013/08/Justice-Centre-Hong-Kong-Budget-2018-19-Consultation-Submission.pdf>. Accessed on 20 April 2018.



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important role to play in supporting innovative engagement in the UPR, scrutinising HKSAR government actions and working to implement UPR recommendations. The Coalition looks forward to constructive dialogue with all parties in the coming months, increasing the accountability and transparency of human rights issues in HKSAR through the UPR.

Recommendations

With reference to the operations of the Legislative Council and the work of members, the Steering Committee of the Coalition recommends:

- members call for the HKSAR section of the UPR national report to be accessible for review by the Legislative Council, in addition to civil society, in advance of being submitted to the PRC government;
- members express public and private support for meaningful and considered engagement by CMAB, as well as all other relevant departments and bureaus working on law and policy covered by the UPR, including calls for:
 - o regular meetings with civil society representatives;
 - o prompt responses to emails, letters and other correspondence; and
 - o consultation consistent with the principles and rights contained in the United Nations Declaration on Human Rights Defenders.
- incorporating Legislative Council members in the official delegation of the HKSAR government for the UPR hearing on 6 November 2018;
- establishing a standalone human rights panel in the Legislative Council; and
- establishing a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation mechanism for their implementation, following meaningful consultation with civil society.

I trust that this information is of assistance. Please contact Simon Henderson, Spokesperson, Hong Kong UPR Coalition and Senior Policy Advisor, Justice Centre Hong Kong, at simon@justicecentre.org.hk or +852 3109 7359 with any questions.

Attachment A – Hong Kong UPR Coalition, Joint Civil Society Submission from the Hong Kong UPR Coalition, March 2018

Attachment B – Hong Kong UPR Coalition, Submissions to the Office of the High Commissioner for Human Rights: The Role of the Hong Kong Legislative Council in the Human Rights Council and its Universal Periodic Review, January 2018



Joint Civil Society Submission from the Hong Kong UPR Coalition

March 2018

The joint Hong Kong UPR Coalition submission has involved substantial contributions of civil society organisations (CSOs) working on human rights issues in the Hong Kong Special Administrative Region (HKSAR). It has been endorsed, either in part or in whole, by 45 CSOs.

The Hong Kong UPR Coalition was founded in 2017 to assist in facilitating civil society engagement in the Third Cycle Universal Periodic Review for China, as it applies to the HKSAR. The Coalition is facilitated by Justice Centre Hong Kong and guided by a Steering Committee, which includes: Civil Human Rights Front (民間人權陣線), Disabilities CV (殘疾資歷生活館), Hong Kong Watch, Justice Centre Hong Kong, Les Corner Empowerment Association (女角平權協作組), PEN Hong Kong (香港筆會), Pink Alliance (粉紅同盟), Planet Ally and The Hong Kong Society for Asylum-Seekers and Refugees (香港尋求庇護者及難民協會).

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Hong Kong UPR Coalition Joint Submission

Legislative and institutional framework

Human rights legislation

1. While the Bill of Rights incorporates the International Covenant on Civil and Political Rights (ICCPR) domestically, there is no ordinance incorporating other international human rights treaties. **Consistent with concluding observations of the Committee on Economic, Social and Cultural Rights (CESCR), Hong Kong Special Administrative Region (HKSAR) should adopt a comprehensive human rights ordinance to incorporate all international human rights treaties that apply to HKSAR in domestic legislation within two years.**¹
2. The Equal Opportunities Commission (EOC) recommended the Government consider consolidating the existing four anti-discrimination ordinances into one to simplify and harmonise protections from discrimination.² The EOC also recommended consultation and research to introduce a public sector equality duty to promote equality and eliminate discrimination.³ **Consistent with concluding observations of CESCR, HKSAR should adopt comprehensive anti-discrimination legislation within two years.**⁴ Such legislation should establish a public sector duty to promote equality.

Human Rights Institution

3. There is no independent statutory human rights institution to investigate and monitor violations of human rights. **Consistent with concluding observations of the Human Rights Committee (HRC), CESCR and the Committee on the Rights of the Child (CRC), HKSAR should establish a human rights institution within three years that has a broad mandate in line with the Paris Principles and is provided with adequate financial and human resources.**⁵

Equal Opportunities Commission

4. While the EOC has the statutory power to conduct formal investigations⁶, it has only exercised this power twice.⁷ **Consistent with HRC concluding observations, HKSAR should introduce policies to strengthen the provision of legal assistance and advocacy efforts of the EOC within one year.**⁸

Withdrawal of reservations

5. **All treaty reservations should be withdrawn within four years and reports on the progress issued every year in the meantime. In particular, HKSAR should accept the HRC concluding observation and withdraw the reservation to Article 25(b) of ICCPR relating to universal suffrage.**⁹

Implementing recommendations

6. There is no central monitoring and evaluation mechanism of treaty body and Universal Periodic Review (UPR) recommendations. **HKSAR should establish a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation mechanism for their implementation, following meaningful consultation with civil society, within one year.**

Legislative Council

7. There is no panel in the Legislative Council to review policies or bills for their compliance with human rights. **HKSAR should recommend the Legislative Council establish a standalone human rights panel within one year.**

Human rights defenders

Registration of political parties

8. Political parties are registered as societies or companies; however, some, such as Hong Kong National Party or Demosisto, have been unable to do so.¹⁰ Attempts to open bank accounts have been denied.¹¹ **HKSAR should immediately enable all political parties to register, ensuring their rights to take part in the conduct of public affairs are upheld.**
9. **HKSAR should amend the Electoral Affairs Commission Ordinance to formally recognise political parties, with administration handled by the Electoral Affairs Commission, within two years.**¹²

Registration of charities

10. Human rights advocacy and campaigning are essential components of the work of civil society, which are registered as charities. Civil society work should not be conflated with political activities. **HKSAR should introduce a clear statutory definition of what constitutes a charitable purpose, protecting the work of human rights orientated civil society organisations, in accordance with recommendations from the Law Reform Commission, within two years.**¹³

Protection of human rights defenders

11. Pro-democracy politicians and activists have been the subject of physical attacks and verbal threats, in person, via media and online. For example, attacks against Nathan Law at Hong Kong Airport in January 2017.¹⁴ **HKSAR should investigate and prosecute all incidents involving physical assault and other threats towards human rights defenders (including local politicians and activists), especially physical altercations during protests.**
12. **HKSAR should ensure the personal protection of all persons striving for the realisation of human rights and fundamental freedoms, consistent with ICCPR and the Declaration on Human Rights Defenders.**

Civil society consultation

13. Civil society are often not consulted for major legal and policy developments.¹⁵ Consultation mechanisms lack accountability and transparency.¹⁶ Meetings with government are difficult to obtain. Direct questions are often ignored. The Human Rights Forum,¹⁷ cited by HKSAR,¹⁸ is only held shortly before or after treaty body and UPR sessions. **HKSAR should adopt a policy of timely and fulsome public consultation for any policy and legislative development, with special regard to persons with disabilities, indigent and non-Chinese speaking communities, within six months.**

Freedom from torture

Institutionalisation of persons with disabilities

14. **HKSAR should take measures to ensure persons with disabilities are not arbitrarily deprived of their liberty through institutionalization and provide adequate resources for 24-hour community support and/or small group homes.**

Intersex and transgender

15. Transgender persons should not be required to complete sex-reassignment surgery to obtain legal recognition of their gender identity. **Consistent with the Committee against Torture (CAT) concluding observations, HKSAR should take all necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons by removing preconditions for legal recognition of gender identity, such as sterilisation.**¹⁹

16. **Consistent with CAT concluding observations, HKSAR should immediately guarantee that non-urgent or unnecessary medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give full, free and informed consent.**²⁰

Right to liberty and security

Article 23 of Basic Law

17. Civil society is concerned about national security laws that may be introduced under Article 23, which is feared will be used to suppress human rights and democratic development. Existing laws already fulfil the constitutional responsibility under Article 23. **HKSAR should only propose legislation on the basis of Article 23 after universal suffrage has been fully implemented, ensuring that any proposed legislation fully complies with ICCPR and the rule of law.**

Excessive use of force

18. Police are increasingly using excessive force during political protests. During the Umbrella Movement in 2014, police resorted to violence against more than 1300 people, with 500 admitted to hospitals.²¹ **Consistent with CAT concluding observations, HKSAR should immediately (i) conduct an independent investigation into excessive use of force by police during the Umbrella Movement; (ii) prosecute perpetrators, including police officers complicit in acts or who allowed their occurrence, with redress provided to victims and (iii) publicise the Police's guidelines to the use of force, ensuring they are in compliance with international standards.**²²

Police complaints

19. The Independent Police Complaints Council remains an advisory body of the investigations of the Complaints Against Police Office, with no power to conduct own investigations.²³ **Consistent with HRC concluding observations, HKSAR should establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police.**²⁴

Police and persons with disabilities

20. Persons with disabilities have been sent to hospital or arrested without proper interpretation or investigation.²⁵ **HKSAR should provide mandatory periodic training for frontline police officers on catering to people with different expressive needs, including access to trained interpreters, within one year.**

Monitoring and inspection of detention

21. HKSAR has no independent body that monitors detention facilities, despite dozens of cases of mistreatment by juveniles in detention.²⁶ **Consistent with CAT concluding observations, HKSAR should establish an independent body with the mandate to carry out unannounced visits at all places of detention within one year.**²⁷

Freedom of movement

Immigration

22. An increasing number of human rights defenders and lawmakers are being denied entry to HKSAR, such as Benedict Rogers and Freddy Lim.²⁸ **HKSAR should ensure that human rights defenders can enter HKSAR and are not restricted through broad interpretations of "foreign affairs". If someone is denied entry, transparent and detailed reasons should be provided.**

Freedom of expression

Press freedom

23. Press freedom has decreased rapidly in recent years.²⁹ Journalists and other media workers, often supporters of democracy and expressing critical views, have been attacked³⁰ and threatened.³¹ **HKSAR should thoroughly investigate attacks and threats against the media, ensuring that perpetrators are prosecuted.**

Self-censorship

24. There is growing pressure on the media, print and electronic, in covering sensitive China issues or concerning the HKSAR Government.³² **HKSAR should take all necessary efforts to ensure a safe and enabling environment for journalists to carry out their work independently and without undue interference.**

Causeway Bay booksellers

25. The abduction and detention of the five HKSAR booksellers, including Lee Bo who was abducted from HKSAR, contravened international law.³³ **HKSAR should immediately undertake an independent and public investigation into the circumstances regarding the detention and abduction of the Causeway Bay booksellers. HKSAR should take immediate actions to ensure the safety of Gui Minhui and call for his unconditional release.**

Access to information

Freedom of information

26. Access to information is difficult, with responses for information taking extensive time, even if successful.³⁴ An official Code on Access to Information has been in place since 1995, but entails no legal requirement and limited coverage.³⁵ **HKSAR should adopt a Freedom of Information Ordinance that establishes maximum disclosure and minimal exemption requirements, within one year.**³⁶

Archives law

27. There is no legislation regulating Government records. The Government relies on administrative directives, guidelines and publications, with a small proportion of documents transferred to the Government Records Service.³⁷ **HKSAR should adopt an Archives Ordinance, incorporating mandatory public sector compliance and penalties for non-compliance, destruction of records and denial of access, within one year.**

Academic freedom

28. Measures taken by politicians, university councils and pro-establishment academics have been in contrast to academic freedoms. This includes calling for the removal of academics, promoting academics with pro-establishment views and placing arbitrary limits on freedom of speech.³⁸ **HKSAR should immediately remove the Chief Executive as ex officio chancellor of tertiary institutions.**
29. **HKSAR should immediately grant university councils the right to appoint their own members.**

Persons with disabilities

30. **HKSAR should recognise sign language as an official language within four years. Consistent with concluding observations of the Committee on the Rights of Persons with Disabilities (CRPD), HKSAR should provide training and support to sign interpreters and promote the use of sign language in healthcare, judicial and education systems.**³⁹

31. **HKSAR should make all Government press conferences, broadcasts and Announcements of Public Interests in sign language, within two years. All domestic free television broadcasters should provide simultaneous sign interpretation for news within two years.**

Ethnic minorities and non-Chinese speakers

32. Many official documents and publications, including information on schools, are only available in Chinese, even though Chinese and English are official languages.⁴⁰ **HKSAR should provide all Government information in its two official languages, namely Chinese and English, immediately.**

Human trafficking

33. Civil society has established the prevalence of human trafficking and HKSAR is placed on Tier Two Watch List in United States Trafficking in Persons Report.⁴¹ **Consistent with the concluding observations of CAT, China should extend the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol) to HKSAR, within one year.**⁴²
34. **HKSAR should adopt a comprehensive law on prevention, prosecution, and protection to combat human trafficking and forced labour, within one year.**

Rule of law

Basic Law interpretations

35. HKSAR courts can seek an interpretation of the Basic Law from the Standing Committee of the National People's Congress (NPCSC) through the Court of Final Appeal. However, the NPCSC is not a judicial body and is not independent. The fifth interpretation on oath-taking went beyond 'interpretation', undermining trust in the independence of the judiciary. This led to the disqualification of freely elected lawmakers, violating Article 25 of ICCPR. **China and HKSAR should ensure all interpretations of the Basic Law are exercised with restraint, comply with ICCPR, are consistent with the rule of law and do not impinge upon HKSAR's autonomy.**
36. **Following an NPCSC interpretation, HKSAR should, within six months, publish a report on whether the interpretation is procedurally and substantively compatible with human rights provisions of the Basic Law and HKSAR Bill of Rights. If the view is that the interpretation is not compatible, the report should state the effect of the interpretation and measures to ensure compatibility.**

Access to justice

37. Access to legal assistance services is limited.⁴³ Regulatory barriers for non-government organisations limit pro bono legal representation. **HKSAR should establish independent, not-for-profit legal structures, including government funded community law centres to provide specialist, free legal advice and representation, within two years.**

Right to privacy

Transfer of data outside HKSAR

38. Provisions in legislation relating to transfer of privacy information outside HKSAR are still not in operation, despite the ordinance passing in 1996.⁴⁴ **HKSAR should immediately take action to ensure that section 33 of the Personal Data (Privacy) Ordinance comes into operation.**

Accessing electronic devices

39. Police have seized mobile phones from protestors without warrants.⁴⁵ **HKSAR should pass legislative amendments ensuring that searches of electronic devices can only take place with warrants within one year.**

Freedom of thought, conscience and religion

40. HKSAR should ensure adequate space and time for students of different religions to pray in schools.

Right of peaceful assembly

Public protests

41. HKSAR is increasingly using the Public Order Ordinance to arrest and prosecute protestors, restricting assembly rights and human rights activism.⁴⁶ **HKSAR should abolish provisions in Part III of the Public Order Ordinance relating to notification of public meetings within one year.**
42. **HKSAR should amend the Public Order Ordinance, particularly s17B on ‘disorder in public places’ and s18 on ‘unlawful assembly’, ensuring consistency with ICCPR, within two years.**
43. Civic Square, a focus of the 2014 pro-democracy Occupy Central movement, was closed for more than three years, only reopening in December 2017. However, permits to demonstrate are only granted on Sundays or public holidays.⁴⁷ **HKSAR should immediately lift all limits on the time periods for public assemblies and processions in Civic Square.**

Prosecutions

44. The decision to prosecute criminal offences is the responsibility of the Secretary for Justice, an appointed official. Rimsky Yuen, former Secretary for Justice, sought stronger sentences for pro-democracy activists, despite advice from the Department of Justice not to do so.⁴⁸ **HKSAR should remove the responsibilities of the Secretary of Justice to decide criminal prosecutions within one year.**

Right to universal and equal suffrage

Universal suffrage

45. Articles 45 and 68 of the Basic Law stipulate that the Chief Executive and all members of the Legislative Council should ultimately be elected by universal suffrage. However, there has been no progress since 2013. **HKSAR should outline clear and detailed plans, with a timetable on how universal and equal suffrage will be instituted and enjoyed by all citizens, within one year.**
46. **HKSAR should develop an election system that is democratic, fair, open and transparent, and in accordance with international human rights law.**

Functional constituencies

47. Professional and special interest groups have a disproportionate role in determining the wellbeing of HKSAR people through functional constituencies, enabling corporations and legal entities to vote for candidates. **HKSAR should immediately abolish all functional constituencies in the Legislative Council, replacing all positions with directly elected candidates.**

Disqualification of candidates

48. Candidates standing for election in HKSAR have been screened on the basis of their political beliefs.⁴⁹ More than a dozen have been disqualified, such as Agnes Chow Ting.⁵⁰ **HKSAR should legislate to protect the rights of all persons to stand for election, regardless of their political affiliation or political beliefs, within one year. HKSAR should ensure that decisions by returning officers are made in accordance with ICCPR, especially the right to participate in public affairs.**
49. **HKSAR should remove restrictions barring bankrupt persons from running for elections within one year.**

Right to work

Persons with disabilities

50. Persons with disabilities in sheltered workshops are considered to be trainees instead of employees.⁵¹ They do not receive employee protections, including the minimum wage or mandatory provident fund schemes. **HKSAR should immediately reform the sheltered workshop model ensuring persons working therein are considered to be employees, have a reputable adult role, and enjoy rights afforded to employees.**
51. **HKSAR should introduce policies ensuring the autonomy of persons with disabilities in exercising their right to work within one year.**

Right to just and favourable conditions of work

Collective bargaining

52. Legislation providing for collective bargaining rights was repealed by the Provisional Legislative Council in 1997, four months after it was passed by the Legislative Council before the handover.⁵² **HKSAR should restore legislation providing for collective bargaining rights within one year.**

Working hours and wages

53. Workers in HKSAR have the longest hours in the world, normally more than 50 hours per week.⁵³ **HKSAR should adopt legislation to provide for maximum and standard working hours within two years.**
54. **HKSAR should review the minimum wage adjustment mechanism to ensure an adequate standard of living for all workers within two years.**

Persons with disabilities

55. The Productivity Assessment Mechanism allows an employee with a disability to be paid less than the minimum wage.⁵⁴ **HKSAR should immediately abolish the Productivity Assessment Mechanism and introduce wage supplements to ensure persons with disabilities have minimum wage protection.**

Right to social security

Elderly

56. Elderly poverty rates are more than double the overall poverty rate,⁵⁵ with HKSAR facing an ageing population.⁵⁶ **HKSAR should introduce a universal pension scheme to support persons above 65 within three years. HKSAR should immediately increase contribution rates for employers to 10% for the Mandatory Provident Fund and remove offset arrangements.**

Persons with disabilities

57. The scale relating to occupational injury compensation determines the level of disability allowance and has been used since 1973. Persons with disabilities need to lose their earning capacity 100% to receive disability allowance, which is stigmatising.⁵⁷ **HKSAR should conduct a comprehensive review of the current classification of persons with disabilities, making reference to the International Classification of Functioning, Disability and Health, within one year.**

Right to an adequate standard of living

Persons with disabilities and elderly

58. Regulations on residential housing for persons with disabilities are not responsive to the needs for the elderly or persons with disabilities and the personal assistance required. **HKSAR should immediately**

guarantee a minimum of 8 sq. m. for private space plus 8 sq. m. for public space per person for the elderly or persons with disabilities and provide funding to train in-house personnel to work in these residential settings.

59. HKSAR should adopt a policy of "ageing-in-place", providing comprehensive support for the elderly and persons with disabilities, to live in the community with dignity and choice, within one year.
60. Elderly persons have been rejected by care homes because they were HIV positive.⁵⁸ **HKSAR should provide more training to care home staff to address HIV stigma within one year.**

Housing affordability

61. HKSAR is one of the most expensive cities in the world for housing, with the average flat selling for over 18 times gross average income.⁵⁹ Rent control, abolished in 1998 following the Asian Financial Crisis, has not been reinstated, despite substantial rent increases.⁶⁰ **HKSAR should introduce measures to restrict housing speculation and increase affordability, including but not limited to: mandating a proportion of units as 'affordable', real estate capital gains tax, increasing Special Stamp Duty rates and establishing Government backed first home saver accounts with interest incentives, within one year.**
62. **HKSAR should reintroduce rent control to increase rental affordability within one year.**
63. **HKSAR should take immediate measures to increase land supply for affordable housing, without impacting upon green belt land or country parks, including developing underutilised and unused land.⁶¹**

Public housing

64. Persons with disabilities, especially single persons, have to wait for up to 16 years for public housing.⁶² **Within two years, HKSAR should shorten the average waiting time for public housing for non-elderly single persons with disabilities to two years.**

Small House Policy

65. HKSAR allows each male indigenous villager to build one small house in the New Territories.⁶³ This allows purchase of land from the Government by paying discounted or zero premium.⁶⁴ **HKSAR should immediately abolish the Small House Policy.**

Right to health

Health care system

66. Health policies in HKSAR focus narrowly on the healthcare system.⁶⁵ **HKSAR should immediately adopt the World Health Organization's "Health in All Policies" framework in policymaking to incorporate health impact assessments across sectors and levels of government.**
67. **HKSAR should review the Disability Discrimination Ordinance Code of Practice on Education, ensuring that supported decision making is fully respected and children with special education needs are not forced to take medication, within two years.**
68. **HKSAR should establish a city-wide health strategy, with stepwise indicators and benchmarks to achieve better health for all in line with the 2030 Agenda for Sustainable Development, within two years.⁶⁶**

Health data

69. There is insufficient data on health inequalities in HKSAR, making it difficult for civil society to monitor and address concerns. **HKSAR should commission an independent study to assess the state of health inequalities in HKSAR and set up a Commission on Social Determinants of Health, within one year.**

Access to healthcare

70. Certain groups face structural barriers in accessing primary health care, such as opening hours, language barriers and discrimination. **HKSAR should ensure equal access to primary health care for low-income workers, local ethnic minorities, asylum seekers, refugees, migrant domestic workers and other vulnerable groups, taking into account their needs and characteristics in health services planning.**

Health impact assessments

71. **HKSAR should immediately conduct environmental and health impact assessments for all infrastructure, including playspaces for children.**

Sexuality education

72. It is not mandatory for schools to provide comprehensive sexuality education to students.⁶⁷ The number of sexually transmitted infections among youths is rising⁶⁸ and those living with HIV face stigma in HKSAR.⁶⁹ **HKSAR should introduce mandatory inclusive comprehensive sexuality education curriculum in schools, including LGBTI-specific content, to promote and protect the sexual health of students by the 2019/20 academic year.**

HIV prevention

73. Pre- and Post-Exposure Prophylaxis (PrEP and PEP) can effectively prevent HIV infections.⁷⁰ However in HKSAR, access to PEP at public hospitals is difficult and PrEP is not available in the public health system.⁷¹
74. **HKSAR should ensure access to PrEP and PEP in the public health system for all individuals at risk within one year.**

Persons with disabilities

75. The Mental Health Ordinance restricts the legal capacity of persons with disabilities, predicated on grounds of mental capacity.⁷² **HKSAR should amend the Mental Health Ordinance to recognise that all persons have legal capacity, and to allow for third party advocates to assist, in accordance with the CRPD, within one year. HKSAR should introduce a clear statutory definition of ‘informed consent’, ensuring psychological treatment is only provided where necessary, based on free and informed consent, within one year.⁷³**
76. **HKSAR should include sign language training in rehabilitation services for deaf children and allocate funds to supporting organizations to recruit trained deaf teachers within one year.**

Right to education

Human rights education

77. Human rights education is insufficiently addressed in school curricula through the Moral, Civic and National Education module.⁷⁴ **HKSAR should establish a strategy to integrate human rights into school curricula; developing a standalone course, incorporating monitoring and evaluation, and providing sufficient funding, by the 2019/20 academic year.⁷⁵**

Persons with disabilities

78. HKSAR has ‘mainstream schools’ and ‘special schools’ for children with special education needs.⁷⁶ **HKSAR should develop an inclusive school system. In particular, the Education Bureau should adopt and provide resources for a model for deaf and hearing students to study in the mainstream classroom in spoken and HKSAR Sign Language within four years.⁷⁷**
79. There are no publicly-funded sign language classes in kindergartens, outside of special kindergartens.⁷⁸ In mainstream schools and post-secondary education, students have to pay for their own sign

interpreters.⁷⁹ HKSAR should provide publicly-funded sign classes as well as sign interpretation in all schools, especially Applied Learning classes, from pre-school to post-secondary education, by the 2019/20 academic year.

80. HKSAR should introduce guidelines to support access to post-secondary education, including personal support to persons with different intellectual abilities, deaf persons and persons with psychosocial disabilities, within three years.

Bullying

81. HKSAR ranks first in the percentage of students reporting being pushed or hit by other students in an Organisation for Economic Co-operation and Development study.⁸⁰ **Consistent with CRC and CRPD concluding observations, HKSAR should take holistic measures to address bullying in schools, including systematic training and guidelines for teachers and social workers, within one year.**⁸¹

Ethnic minority students

82. **Consistent with HRC, CESRC and CERD concluding observations, HKSAR should immediately intensify efforts to implement legislation and policies to improve the quality of Chinese language education for ethnic minority and non-Chinese speaking students, as well as efforts to promote ethnic minority students' access to mainstream schools.**⁸²

Rights of the child

Children's Commission

83. HKSAR will establish a Commission on Children that is unlikely to be independent or have investigative powers.⁸³ **HKSAR should establish an independent and statutory Children's Commission with investigative powers that comply with the Convention on the Rights of the Child (CRC) and the Paris Principles within three years. The Commission's mandate should relate to all children aged under 18. Children, especially the most vulnerable, should be consulted and encouraged to participate in policies involving children, with child-friendly platforms developed.**
84. **Consistent with CRC concluding observations, HKSAR should establish a central data bank with independently verifiable data and assess progress of the implementation of the CRC on the basis of such data, within one year.**⁸⁴

Applying the Convention on the Rights of the Child (CRC)

85. **HKSAR should legislate to domestically implement the CRC, particularly Article 3 to consider the best interests of the child in all statutory and administrative decision-making, and Article 12 to ensure the views of children are expressed and heard, within three years.**

Right to play

86. **HKSAR should review Chapter 4 of Hong Kong Planning Standards and Guidelines on the provision of children's playgrounds, introducing a supplementary planning guidance on "Play and Informal Recreation", ensuring adequate provision of inclusive play space for all children, within one year.**

Children of asylum seekers, refugees and migrant workers

87. **Children of asylum seekers, refugees and workers who arrived in HKSAR through the Foreign Domestic Helper and Supplementary Labour Schemes have no right of abode, even if born in HKSAR.⁸⁵ HKSAR should amend legislation providing equal rights to access permanent residency for children of asylum seekers, refugees and all migrant workers, consistent with the children of other migrants under Article 24 of the Basic Law, within one year.**

88. **Consistent with CRC concluding observations, HKSAR should ensure that children of migrant workers, refugee and asylum-seeking children have equal access to basic services, including health, education and other social services.**⁸⁶

Child abuse

89. In 2017, 947 cases of child abuse were reported to the HKSAR Government.⁸⁷ **HKSAR should provide additional resources to secure care arrangement options for children, including but not limited to shelters and community centres, within one year.**

Asylum seekers and refugees

90. The Convention Relating to the Status of Refugees and its 1967 Protocol are not applicable to HKSAR.⁸⁸ The acceptance rate for non-refoulement claims is as low as 0.9%.⁸⁹ Non-refoulement claimants are considered as illegal immigrants, even if their non-refoulement claims are substantiated.⁹⁰ Substantiated claimants may only apply to work on a case-by-case basis.⁹¹ Non-refoulement claimants and their children are only allowed to attend school after approval of the Immigration Department.
91. **China should extend the Convention Relating to the Status of Refugees and its 1967 Protocol to HKSAR within one year.**⁹²
92. **HKSAR should not set an inappropriate high threshold for granting international protection and should grant asylum seekers and refugees the right to work immediately.**⁹³
93. **Consistent with CESCR concluding observations, HKSAR should ensure that all children, including asylum-seeking and refugee children, have free access to compulsory education on an equal basis immediately. HKSAR should also provide scholarships and resource support for education for asylum seekers and refugees immediately.**⁹⁴

Equality and non-discrimination

Legislation against discrimination

94. Despite concluding observations from HRC, CESCR and the Committee on the Elimination of Discrimination against Women (CEDAW) regarding measures to combat discrimination on grounds of sexual orientation and gender identity, especially through legislation,⁹⁵ HKSAR has not taken action. According to a 2016 survey commissioned by the EOC, the majority support legislating against discrimination.⁹⁶ **HKSAR should adopt legislation prohibiting discrimination on grounds of sexual orientation, gender identity, gender expression and sex characteristics in all public and private sectors and providing positive duties on the part of the Government to promote equality on these grounds within one year.**

Reasonable accommodation

95. The Disability Discrimination Ordinance does not require reasonable accommodation for persons with disabilities in all relevant fields. EOC recommended the inclusion of reasonable accommodation in its submission to the HKSAR Government on its Discrimination Law Review in March 2016.⁹⁷ **Consistent with CESCR general comment, HKSAR should include a distinct duty to make reasonable accommodation for persons with disabilities in all relevant fields in its legislation, including employment and education within one year.**⁹⁸

Right to live in the community

96. There is no comprehensive support for persons with disabilities to live in the community. The Ombudsman has identified substantial problems with transportation services for persons with

disabilities.⁹⁹ **HKSAR should provide comprehensive support to ensure that persons with disabilities can fully exercise their right to live in the community within one year.**

97. **HKSAR should establish a comprehensive mainstream inclusive transportation policy and system, in line with the CRPD. HKSAR should immediately increase resources to ensure the availability and flexibility of transportation services for persons with disabilities, and improve the accessibility of public transport.**

Racial equality

98. Racial minorities and non-refoulement claimants report targeting by police and abuse of power.¹⁰⁰ The Race Discrimination Ordinance, unlike HKSAR's other anti-discrimination ordinances, exempts government powers and functions. **Consistent with HRC, CESCR and CERD concluding observations, HKSAR should amend the Race Discrimination Ordinance within one year so that it applies to Government functions and powers, and covers the grounds of nationality, citizenship, residence status, and language.**¹⁰¹

Women's rights

Violence against women

99. Legislation regarding violence against women remains outdated. For example, criminal law uses a definition of rape which only covers penile penetration, excluding genitals reconstructed after sex reassignment surgery.¹⁰² **HKSAR should adopt proposals by the Law Reform Commission¹⁰³ revising sexual offences legislation, including those against transgender persons, children and persons with disabilities, in line with international best practices and standards, within two years.**¹⁰⁴

Employment

100. Maternity leave is limited to ten weeks and paternity leave three days, despite CEDAW Concluding Observations.¹⁰⁵ **HKSAR should increase maternity and paternity leave periods in line with International Labour Organization standards within one year.**

Migrant workers

101. The 360,000 workers in HKSAR under the Foreign Domestic Worker and Supplementary Labour Schemes are not considered ordinarily resident in HKSAR.¹⁰⁶ Unlike other migrants, they do not have the right of abode even if they have worked in HKSAR for over seven years.¹⁰⁷
102. Many migrant domestic workers from the Philippines have been charged more than 25 times the permitted maximum recruitment commission.¹⁰⁸ Migrant domestic workers with excessive debt are more likely to be in forced labour.¹⁰⁹ Their passports have often been confiscated by employers or employment agencies.¹¹⁰
103. Migrant domestic workers are excluded from the Minimum Wage Ordinance, retirement protection and do not enjoy maximum working hours.¹¹¹ They are required to live with their employers.¹¹² Migrant domestic workers have reported that the live-in requirement makes them vulnerable to abuse and exploitation.¹¹³ Surveys have shown 43% of the migrant domestic workers are not provided a private room and 2% sleep in a kitchen, toilet or warehouse.¹¹⁴ There are also reports that migrant domestic workers are forced or deceived into illegal work in Mainland China.¹¹⁵
104. **Consistent with concluding observations of HRC, CESCR, CERD, CEDAW and CAT, HKSAR should (i) repeal the 'two-week rule' and the live-in requirement, (ii) adopt a comprehensive law ensuring migrant domestic workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours,**

social security and maternity leave protection, (iii) increase resources for the Labour Department to establish an inspection mechanism for monitoring the implementation of the Standard Employment Contract and ensure, inter alia, a decent standard of living for migrant domestic workers and (iv) strengthen protection from abuse by recruitment agencies immediately.¹¹⁶

105. **HKSAR should amend legislation providing equal rights to access permanent residency for all migrant workers, consistent with other migrants under Article 24 of the Basic Law, within one year.**

Environmental rights

Air quality

106. Air quality in HKSAR has never met WHO Air Quality Guidelines (WHO AQGs). Pollution has killed 11,858 people prematurely from 2013 to 2017.¹¹⁷ Emission control measures are inadequate.¹¹⁸ **HKSAR should amend the Air Pollution Control Ordinance to set Air Quality Objectives (AQOs) that are no less stringent than those in the WHO AQGs and make all relevant bureaus accountable for non-compliance with AQOs within one year.**
107. **HKSAR should incorporate health impacts on all government policies, with particular reference to air quality, immediately. HKSAR should commission an independent study on the impact of air quality, with particular reference to health equality issues, in line with WHO recommendations, within one year.**

Sustainable Development Goals

108. HKSAR lacks data on many Sustainable Development Goals (SDGs), such as marine pollution, policies to deal with climate change adaptation or deaths from air pollution.¹¹⁹ **HKSAR should immediately commence collecting data on all targets for the SDGs. HKSAR should immediately establish a target to reduce by two-thirds of the number of deaths and illnesses caused by pollution of air, soil, water by 2030.**

Business and human rights

109. There is no legal or policy framework guiding corporations on their responsibility to respect human rights. **HKSAR should conduct a consultation towards developing an action plan on Business and Human Rights, based on the United Nations Guiding Principles on business & human rights and related frameworks, within one year. The process must be transparent, with meaningful and informed participation by disempowered and at-risk stakeholders.**

¹ Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/2, 13 June 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCHN%2fCO%2f2&Lang=en, accessed on 22 February 2018.

² Equal Opportunities Commission, 'Submissions to the Hong Kong Government on the EOC's Discrimination Law Review', March 2016, p.136, available at: <http://www.eoc.org.hk/eoc/upload/DLR/2016330179502227490.pdf>, accessed on 22 February 2018.

³ *Ibid*, p.91. The four anti-discrimination ordinances in HKSAR are: (1) Sex Discrimination Ordinance, (2) Family Status Discrimination Ordinance, (3) Disability Discrimination Ordinance and (4) Race Discrimination Ordinance.

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⁸⁴ According to the Committee on the Rights of the Child, the data should be disaggregated by age, sex, geographical location, ethnicity and socioeconomic background, with particular attention to female children, ethnic minority children, children with disabilities, LGBTI children, documented or undocumented asylum-seeking and refugee children. See Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of China, CRC/C/CHN/CO/3-4, 29 October 2013.

⁸⁵ Article 24, Basic Law, available at: http://www.basiclaw.gov.hk/en/basiclawtext/chapter_3.html, and Section 2(4), Immigration Ordinance, Cap 115, available at: [http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf), both accessed on 23 February 2018.

⁸⁶ Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of China, CRC/C/CHN/CO/3-4, 29 October 2013.

⁸⁷ Ernest Kao and Peace Chiu, 'Hong Kong welfare minister pledges action on child abuse after shocking death of girl, 5', *South China Morning Post*, 14 January 2018, available at: <http://www.scmp.com/news/hong-kong/community/article/2128209/hong-kong-welfare-minister-pledges-action-child-abuse-after>, accessed on 22 February 2018. Social Welfare Department, 'Statistics on Child Abuse, Spouse/Cohabitant Battering and Sexual Violence Cases', available at: <https://www.swd.gov.hk/vs/english/stat.html>, accessed on 28 February 2018.

⁸⁸ United Nations Treaty Collection, 'Convention Relating to the Status of Refugees', available at: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en#EndDec, accessed on 23 February 2018.

⁸⁹ Acceptance rate of 2017. See Immigration Department, 'Statistics on Non-Refoulement Claim', 18 January 2018, <https://www.immd.gov.hk/eng/facts/enforcement.html>, accessed on 23 February 2018.

⁹⁰ Secretary for Security, Reply to Joint Letter from HON Leung Che-cheung, Dr HON Elizabeth Quat and Dr HON Chiang Lai-wan in the Panel on Security of the Legislative Council, LegCo Paper No. CB(2)623/17-18(01), 29 December 2017, available at: https://www.legco.gov.hk/yr19-20/english/panels/se/papers/se_n.htm, accessed on 22 January 2018.

⁹¹ Section 37ZX, Immigration Ordinance, Cap. 115, available at: [http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf), accessed on 23 February 2018.

⁹² Committee against Torture, Concluding observations on the fifth periodic report of China with respect to Hong Kong, China, CAT/C/CHN-HKG/CO/5 and Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/2

⁹³ *Ibid.*

⁹⁴ Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/2, 13 June 2014.

⁹⁵ Human Rights Committee, Concluding observations on the third periodic report of Hong Kong, China, CCPR/C/CHN-HKG/CO/3, Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/2, and Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of China, CEDAW/C/CHN/CO/7-8, 14 November 2014, available on http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8, accessed on 2 March 2018.

⁹⁶ Equal Opportunities Commission, 'The EOC Announces Findings of the Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status', Press Release, available at: <http://www.eoc.org.hk/eoc/graphicsfolder/ShowContent.aspx?ItemID=13531>, accessed on 23 February 2018.

⁹⁷ Equal Opportunities Commission, Submissions to the HKSAR Government on the EOC's Discrimination Law Review, March 2016, p.32.

⁹⁸ Committee on Economic, Social and Cultural Rights, General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, available at: <http://www.refworld.org/docid/4a60961f2.html>, accessed on 1 March 2018.

⁹⁹ See Office of the Ombudsman Hong Kong, 'Executive Summary, Direct Investigation into Government Regulation of Special Transport Services for Persons with Mobility Difficulties', 9 March 2017, available at: http://ofomb.ombudsman.hk/abc/files/OmbudsNews_E-9_3_2017.pdf, accessed on 23 February 2018.

¹⁰⁰ Ellie Ng, 'Asia's world city? Hong Kong ethnic minorities feel targeted by police stop and search actions', *Hong Kong Free Press*, 8 October 2017, available at: <https://www.hongkongfp.com/2017/10/08/asias-world-city-hong-kong-ethnic-minorities-feel-targeted-police-stop-search-actions/>, accessed on 22 February 2018.

¹⁰¹ Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/2 and Committee on the Elimination of Racial

Discrimination, Concluding observations, Consideration of reports submitted by China (including Hong Kong and Macau Special Administrative Regions) under Article 9 of the Convention, CERD/C/CHN/CO/10-13.

¹⁰² s118(3), Crimes Ordinance (Cap 200).

¹⁰³ Law Reform Commission of Hong Kong, 'Rape and other Non-Consensual Sexual Offences', Consultation Paper, September 2012, available at: http://www.hkreform.gov.hk/en/docs/rape_e.pdf, accessed on 23 February 2018.

¹⁰⁴ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of China, CEDAW/C/CHN/CO/7-8.

¹⁰⁵ *Ibid.*

¹⁰⁶ Section 2(4), Immigration Ordinance, Cap 115, available at: [http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf), and *Lubiano Nancy Almorin v The Director of Immigration*, [2018] HKCFI 331, available at: <http://www.hkii.hk/eng/hk/cases/hkcfi/2018/331.html>, and Labour Department, 'Importation of Labour', <http://www.labour.gov.hk/eng/plan/iw.htm>, all accessed on 23 February 2018.

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¹⁰⁸ Hong Kong Federation of Asian Domestic Workers and Progressive Labour Union of Domestic Workers in Hong Kong, 'Between a rock and a hard place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong', October 2016, available at: <http://www.idwfed.org/en/resources/between-a-rock-and-a-hard-place>, accessed on 23 February 2018.

¹⁰⁹ Justice Centre Hong Kong, 'Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong', March 2016.

¹¹⁰ *Ibid* and Hong Kong Federation of Asian Domestic Workers and Progressive Labour Union of Domestic Workers in Hong Kong, 'Between a rock and a hard place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong'.

¹¹¹ Section 7(3), Minimum Wage Ordinance, Cap. 608, available at: <https://www.elegislation.gov.hk/hk/cap608>, and Mandatory Provident Fund Schemes Authority, 'MPF Employer', available at: http://www.mpfa.org.hk/engm/information_centre/faq/employer/mpf_employer/index.jsp, accessed on 2 March 2018.

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¹¹³ Mission for Migrant Workers, *Live-In Policy increases female FDWs' vulnerability to various types of abuse*, May 2013, available at: <http://www.migrants.net/live-in-policy-primer-is-online-now/>, accessed on 27 March 2018.

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¹¹⁵ Apple Daily, 「《蘋果》深圳直擊 港外傭被迫淪黑工 有人跳樓 有人橫死」, available at: <https://hk.news.appledaily.com/local/daily/article/20171001/20169567>, accessed on 20 December 2017 and 脫芷晴, 「菲查港 4 中介公司 涉將外傭賣豬仔騙往俄羅斯做黑工」, Sky Post, 14 November 2017, available at: <https://skypost.ulifestyle.com.hk/article/1946785/%E8%8F%B2%E6%9F%A5%E6%B8%AF4%E4%B8%AD%E4%BB%8B%E5%85%AC%E5%8F%B8%20%E6%B6%89%E5%B0%87%E5%A4%96%E5%82%AD%E8%B3%A3%E8%B1%AC%E4%BB%94>, accessed on 20 December 2017.

¹¹⁶ Human Rights Committee, Concluding observations on the third periodic report of Hong Kong, China, CCPR/C/CHN-HKG/CO/3, Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/2, Committee on the Elimination of Racial Discrimination, Concluding observations, Consideration of reports submitted by China (including Hong Kong and Macau Special Administrative Regions) under Article 9 of the Convention, CERD/C/CHN/CO/10-13, and Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of China, CEDAW/C/CHN/CO/7-8 and Committee against Torture, Concluding observations on the fifth periodic report of China with respect to HKSAR, China, CAT/C/CHN-HKG/CO/5.

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¹¹⁸ Clean Air Network, 'How can Hong Kong reduce roadside emission', 10 January 2017, available at: <http://www.hongkongcan.org/hk/article/how-can-hong-kong-reduce-roadside-emission/>, accessed on 23 February 2018.

¹¹⁹ United Nations Economic and Social Commission for Asia and the Pacific, Hong Kong, China data sheet, *Statistical Yearbook for Asia and the Pacific 2017*, February 2018, available at: http://www.unescap.org/sites/default/files/Hong_Kong_SYB2017.pdf, accessed on 22 February 2018.

Annex – List of Endorsing Organisations

This submission is endorsed, either in part or in whole, by the following organisations:

AIDS Concern 關懷愛滋

Asia Pacific Refugee Rights Network

Association Concerning Sexual Violence Against Women 關注婦女性暴力協會

Association for Transgender Rights 跨性別權益會

Beyond the Boundary-Knowing and Concerns Intersex 藩籬以外-認識及關愛雙性人

Chosen Power (People First Hong Kong) 卓新力量

Civil Human Rights Front 民間人權陣線

Disabilities CV 殘疾資歷生活館

Dompot Dhuafa Hong Kong

Gay Harmony 大同 Gay Harmony

Health In Action 醫護行者

HELP for Domestic Workers 家傭匡扶中心

Hong Kong Association of Woman Social Workers 香港女社工協會

Hong Kong Coalition for Rights of Persons with Disabilities 香港殘疾人權利聯盟

Hong Kong Committee on Children's Rights 香港兒童權利委員會

Hong Kong Deaf Empowerment 聾人力量

Hong Kong Federation of Asian Domestic Workers Unions 香港亞洲家務工工會聯會

Hong Kong Green Drinks

Hong Kong Islamic Youth Association 香港伊斯蘭青年協會

Hong Kong Journalists Association 香港記者協會

Hong Kong Unison 香港融樂會

Hong Kong Watch

International Domestic Workers Federation 國際家庭傭工聯盟

Justice Centre Hong Kong

Keyboard Frontline 鍵盤戰線

Les Corner Empowerment Association 女角平權協作組

Liberty Asia

Living Islands Movement 島嶼活力行動

Living Seas Hong Kong 勃勃海洋

Made in Gender 性別製造

Network for Women in Politics 婦女參政網絡

Open Data Hong Kong 香港開放數據

PEN Hong Kong 香港筆會

Pink Alliance 粉紅同盟

Planet Ally

Playright Children's Play Association 智樂兒童遊樂協會

Pride Lab

Progressive Lawyers Group 法政匯思

Rainbow Action 彩虹行動

The Foreign Correspondents' Club, Hong Kong 香港外國記者會

The Green Earth 綠惜地球

The Hong Kong Society for Asylum-Seekers and Refugees 香港尋求庇護者及難民協會

The Nesbitt Centre 思拔中心

The Zubin Foundation 小彬紀念基金會

Transgender Resource Center 跨性別資源中心



SUBMISSIONS TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

THE ROLE OF THE HONG KONG LEGISLATIVE COUNCIL IN THE HUMAN RIGHTS COUNCIL AND ITS UNIVERSAL PERIODIC REVIEW

January 2018

Introduction

This submission sets out the response of the Hong Kong UPR Coalition Steering Committee to the questionnaire of the Office of the High Commissioner for Human Rights (OHCHR) on the role of parliaments in the Human Rights Council and its Universal Periodic Review (UPR). The questionnaire is set by OHCHR for a study on the matter that it will present to the Human Rights Council at its thirty-eighth session, in June 2018, pursuant to Human Rights Council resolution 35/29 of 23 June 2017.¹

Responses of the Hong Kong UPR Coalition Steering Committee to the questionnaire are as follows:

Question 1 – Does your Parliament have a specialised committee that deals solely with human rights? Is the committee human rights-specific or does it also cover other related questions (gender, legal, constitutional affairs, etc)?

No, the Hong Kong Legislative Council does not have a specialised committee that deals solely with human rights.

According to Rule 77(1) of the Rule of Procedures, the Hong Kong Legislative Council could establish a specialised Panel/Committee that deals solely with human rights. However, such a specialised committee does not exist.

The terms of reference for the Panel on Constitutional Affairs cover a wide range of issues, one of which is human rights. The terms of reference include:

*“To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People’s Government and other Mainland authorities, electoral matters, district organizations, **human rights**, personal data protection and press freedom.” [emphasis added]²*

The Subcommittee on Children’s Rights³ and the Subcommittee on Rights of Ethnic Minorities⁴ under the House Committee deal with the rights of children and ethnic minorities respectively. However,

¹ Available at: <https://drive.google.com/file/d/1Mg3KzQWa5f2n-oYqD7kJIbSojNELysyL/view>, accessed on 12 January 2018.

² See Legislative Council, “Panel on Constitutional Affairs”, available at: <http://www.legco.gov.hk/general/english/panels/yr16-20/ca.htm>, accessed on 12 January 2018.

³ The terms of reference of the Subcommittee on Children’s Rights is as follows: “To study and review the existing child policy, including the respective services and policies for children with different disadvantages, encourage children to participate and express for themselves, analyze and study international policies, discuss relevant policies with the Administration and make timely recommendations.” See Legislative Council, “Subcommittee on Children’s Rights”, available at: https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/general/hs101.htm, accessed on 12 January 2018.

⁴ The terms of reference of the Subcommittee on Rights of Ethnic Minorities is as follows: “To study and follow up policies and measures relating to ethnic minority issues in Hong Kong and make timely recommendations.”



they only operate for 12 months with the possibility of extension for another 12 months. They are not standing committees that operate on a continuous basis to monitor and examine Government policy relating to human rights.⁵

Questions 2 – 6

No, see response to question 1.

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Hong Kong UPR Coalition Steering Committee
15 January 2018

About the Hong Kong UPR Coalition Steering Committee

The Hong Kong UPR Coalition Steering Committee guides civil society engagement in the Third Cycle UPR on Hong Kong. It consists of eight civil society organisations, namely Civil Human Rights Front, Disabilities CV, Justice Centre Hong Kong, Les Corner, PEN Hong Kong, Pink Alliance, Planet Ally and The Hong Kong Society for Asylum-Seekers and Refugees.

See Legislative Council, “Subcommittee on Rights of Ethnic Minorities”, available at: https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs52/general/hs52.htm, accessed on 12 January 2018.

⁵ Rule 26(c) of the House Rules, available at: http://www.legco.gov.hk/general/english/hc/yr16-20/hc_rules.htm, accessed on 12 January 2018.