

Society for Community Organization

No time table for democracy or eradication of poverty

**Submission to the Legislative Council Panel on Constitutional Affairs
concerning the Report of the Hong Kong Special Administrative Region for the
United Nations Human Rights Council Universal Periodic Review**

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A. Regression of democratic development and deterioration of rule of law

In Hong Kong, the right to political participation is still seriously violated by an unfair electoral system and an “executive-dominated” political system. The Central People’s Government (Chinese Government) is like an invisible hand, which exerts enormous political pressure to the democratic development in Hong Kong.

1.1 An unjust electoral system

The Chief Executive (CE) is the head of the Hong Kong Special Administrative Region (HKSAR). However, the citizens of Hong Kong are deprived of the right to choose their top leader by universal and equal suffrage. In 2007, the Chief Executive was only elected by an 800-member Election Committee which was largely dominated by business and professional sectors.

Serious retrogressions occurred concerning the right of Hong Kong people to elect their representatives after the handover. Of the 60 members of the Legislative Council (LegCo), only half are elected by geographical constituencies through direct elections. The other half are elected by functional constituencies, which grants more voting rights to people of the professional and business sectors. This is **far from the standard of universal suffrage**.

The United Nations Human Rights Committee which oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR) has made comments that “the electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2, paragraph 1 and 26 of the Covenant” (CCPR/C/HKG/CO/2, 21 April 2006)

Paragraph 12 of the Report of the HKSAR to the United Nations Human Rights Council mentions that “the NPCSC decided that the election of the CE may be implemented by universal suffrage in 2017, and that after the CE is elected by universal suffrage, the election of the LegCo of the HKSAR may be implemented by the method of electing all the members by universal suffrage”. However, it is submitted that the Standing Committee of the National People’s Congress of China (NPCSC) decision has not promised a definite timetable for universal suffrage. The only effect of the decision was to defer the implementation of universal suffrage for the Chief Executive (CE) and all members of the LegCo in 2012 which attracted majority support from the people of Hong Kong.

1.2 An “executive-dominated” political system

The Basic Law grants enormous power to the Chief Executive, but seriously restricts the members of the Legislative Council from carrying out their responsibilities to supervise the executive and take policy initiatives. This results in the formation of an “executive-dominated” political system where **the executive disregards the will and the participation of Hong Kong people** in policy making and implementation.

Firstly, the **voting procedures greatly handicap the members of the Legislative Council** in supervising the government and making it accountable to the public. The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council requires a simple majority vote of *each* of the two groups of members present, that is the functional constituencies and the geographical constituencies¹. In contrast the passage of bills introduced by the government only requires a simple majority vote of the members of the Legislative Council present. As a result, it becomes far more **difficult to pass motions, bills or amendments to government bills** introduced by individual members, which needs only a quarter of the members present in one of the group to vote them down, than the passage of bills introduced by the government. Since the functional constituencies are dominated by business and sectoral interests that support the government, the passing of government bills becomes much easier than passing individual members bills.

Secondly, Article 74 of the Basic Law prevents the members of the Legislative Council from taking policy initiatives. The article stipulates that the members are required to get the consent of the Chief Executive in introducing member’s bills, which relate to public expenditure, political structure or operation of the government. In other words, the Chief Executive is empowered to **block the introduction of members’ bills**, which have implications on all government policies².

1.3 The political intervention by the Central People’s Government

Since the handover in 1997, the NPCSC has on three occasions resolved to re-interpret (and *de facto* amend) several provisions of the Basic Law. The re-interpretations by the NPCSC seriously violate the **judicial independence** of the Judiciary in Hong Kong. Both the Chinese Government and HKSAR Government employed the interpretations to eliminate political conflict, which has contributed to

¹ Annex II of the Basic Law on the “Method for the Formation of the Legislative Council of the HKSAR and Its Voting Procedures”

² The worst is that the Hong Kong government interprets that Article 74 should also apply to amendments introduced by the members to government bills. The government is pushing the Legislative Council to follow such an interpretation. If the government succeeds to do so, the Legislative Council will become a rubber stamp of government policies.

the deterioration of the rule of law in Hong Kong and destroying the development of the entire society. However, neither the Chinese Government nor the HKSAR Government has promised to stop re-interpreting the Basic Law, so the development of Hong Kong could be further destroyed.

B. The lack of National Human Rights Institution (NHRI)

1.4. Limited powers of human rights institutions

Although Hong Kong has already established many human rights related mechanisms, such as the Equal Opportunities Commission, the Ombudsman, Privacy (Personal Data) Commissioner etc., they have specific problems reflecting the need for a National Human Rights Institution (NHRI).

For instance the Equal Opportunities Commission (EOC), Privacy (Personal Data) Commissioner as well as other human rights monitoring institutions should be able to issue an enforcement notice in a general investigation. EOC is further limited by the fact that there is no guarantee that an application for legal assistance will be granted, given its limited budget. Regarding the Privacy Commissioner's Office it is limited by the fact that it does not have any conciliation measures, does not provide legal advice or legal aid. Nor does it have powers to bring legal proceedings.

HKSAR Government claimed that “[s]ince the HKSAR existing framework is operating well, the HKSAR Government does not see the need to establish a separate human rights institution to supersede or duplicate existing institutions” (see para. 21 of the Report of the HKSAR to the United Nations Human Rights Council). We strongly oppose that.

The United Nations Human Rights Committee has expressed their concern “regarding the limited mandate and powers of the Ombudsman, including its lack of oversight function of the police, and the Equal Opportunities Commission” and concluded that “[t]he HKSAR should consider the establishment of an independent human rights institution compliant with the Paris Principles”. (CCPR/C/HKG/CO/2, 21 April 2006)

Hong Kong Government must be up to international standards and establish a NHRI. This will constitute an important statement by and to the people of Hong Kong. It will demonstrate that Hong Kong recognizes and seeks to achieve the values of fairness, equal opportunities and tolerance.

C. Poverty in an affluent city

Hong Kong has long been regarded as an international and prosperous city and one of the wealthiest societies in the world in terms of per capita GDP, which was HK\$ 233,358³ (USD\$2,918) in 2007. In reality, beyond the prosperity image, the **poverty problem in Hong Kong is deteriorating in both relative and absolute sense**. The general public cannot share the fruits of the economic growth and the economic re-structuring has led more unemployed and under-employed people to live in poverty. Worst still, the government has denied its responsibility and has not taken any active measures to ameliorate the widening income disparity and poverty.

1.5 Number of poor people increased

According to statistics of non-governmental organizations, more than **1,336,873 people lived below the poverty line in 2006** and they included low-income families, working elderly and the new immigrants from Mainland China. The poverty population share is 20.1% of the total population in 2006, which is higher than that of year 2001(18.5%)⁴.

Also, the Gini Coefficient of Hong Kong increased from 0.476 in 1991, 0.525 in 2001 to 0.533 in 2006 (higher Gini Coefficient denotes higher income inequality). It is very ironic that this figure ranked top five among the developing countries and the worst in Asia, although Hong Kong is one of the wealthiest societies in the world.

1.6 Lack of Anti-poverty policy and the death of the Commission of Poverty

The HKSAR Government turned its blind eye to help the poor. It rejected to establish a poverty line to monitor the situation. Although the HKSAR Government established a Commission on Poverty in 2005, the Commission only lasted for two years and the Government dissolved the Commission before formulating any effective policy to eradicate poverty. As a result, the poor are inevitably suffering from the cancellation of various welfare grants. In the absence of any long-term policy, the day for eradicating poverty is not clear.

³ Census and Statistics Department, 2007.

⁴ Until now, there is no any official poverty line to define the population living in poverty. The number of population was provided by the Hong Kong Council of Social Service (September 2007) The General Introduction of the low-income families in Hong Kong

1.7 Introduction of a 7-year hurdle for welfare application

Comprehensive Social Security Assistance (CSSA) is the only safety net to help Hong Kong residents that encounters financial difficulty. Currently, about 3-5% of CSSA cases are new immigrants of less than seven years residence. Most of them are single-parent families or families with chronic illness patients. They applied for CSSA, as they could not find other helping resources. Without assistance from the CSSA system, new immigrants with financial difficulties cannot survive in Hong Kong.

However, the Government adopted a stricter welfare policy for the new immigrants in order to screen out the poor new immigrants in its new population policy in 2003. The criteria of application for CSSA have **changed from one-year of residence to seven years residence**. In addition, at the time of application, they must have lived in Hong Kong continuously for one year. The policy took effect on 1st January 2004. Although children are waived, their parent cannot receive CSSA. Most of them are mothers. The policy hinders the mother to take care of the children as the mother doesn't have resources to help the children but also to share the children's CSSA.

1.8 Children

Children suffer the most with the widening **disparity between rich and poor in Hong Kong**. Children hit the highest poverty rate 27.4%⁵ in Hong Kong. Living standards and development opportunities for their children are sadly compromised. There are 320,000⁶ children under 18 living in poverty. They have to do their homework on their beds and earn their living at night collecting discarded paper, cartons and tins, in the center of affluent Hong Kong. It was found that poor children are mal-nutrition in Hong Kong.

There is no comprehensive child policy or any mechanism to implement the Convention on the Rights of Child since it was applicable to Hong Kong in 1994. The right of poor child is severely undermined. The general principles of non-discrimination, the best interests of the child, right to survival and development as well as participation from the Convention are not adopted in the policy formulation of the HKSAR Government.

⁵ Figure for children under 15, from the Hong Kong Census and Statistics Department, 2007

⁶ Figure from the Census and Statistics Department 2007. The poverty line is the half of the household monthly median income.

D. Refugee Convention not signed by HKSAR

There are currently 1,777 persons in Hong Kong who seek asylum under the International Convention Relating to the Status of Refugees (Refugee Convention) ⁷. Of these 16% are women, and 3% are children. The UNHCR has granted 112 people refugee status. In addition to the Refugee Convention, people who escape their countries and seek refuge in Hong Kong may also seek protection under the Convention Against Torture (CAT). The screening of these cases is made by the Hong Kong Immigration Department. There are currently 1,583 claimants under the Convention Against Torture.

In the concluding observations of the Committee on Economic Social and Cultural Rights (E/C.12/1/Add.107) May 2005, the Committee expressed concern “that HKSAR lacks a clear asylum policy and that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which China is a party, are not extended to HKSAR”. In particular, the Committee regrets the position of the HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction”.

Recently, in the concluding observations of the Committee Against Torture, the Committee also expressed concern “that there is no legal regime governing asylum and establishing a fair and efficient refugee status determination procedure”. The Committee was also concerned that “there are no plans to extend to HKSAR the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol”. In particular, the Committee recommended that the HKSAR should “consider the extension of the 1951 Refugee Convention and 1967 Protocol to Hong Kong”.

However, the HKSAR Government has no plans of signing the Refugee Convention. While China and Macao have already ratified the Convention Relating to the Status of Refugees, which now already have 145 States Parties, the Convention has not yet been extended to Hong Kong. The **lack of any refugee law** means that the government does not feel it has any obligation to screen the cases of asylum seekers, using the excuse that signing the convention would mean that a flood of refugees would enter Hong Kong’s borders.

⁷ Figure provided by UNHCR Hong Kong office March 2008.

E. Right to mental health

The number of people with mental illness (PMI) in Hong Kong has kept on increasing in the past few these years. According to official statistics⁸ the number of psychiatric clinic attendances increased by one tenth from 539,105 in 2003 to over 605,955 in 2006. Since 2002, the number of new psychiatric cases is over 25,000. In 2005 the figure was 26,661. These soaring figures are alarming indeed. In other words, Hong Kong is facing a serious mental health problem.

1.9 Lack of mental health services

The rising number of PMI demands more medical and social rehabilitation services in order to realize the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (ICESCR, article 12). However, the HKSAR fails to meet the service needs of the people with mental illness. The budget for mental health services is only 0.24% of GDP. This is in contrast to 0.8-1% of GDP in most developed countries.

In its 2001 concluding observations the Committee on Economic Social and Cultural Rights recommended: “the HKSAR undertake a comprehensive review of mental health policy and adopt effective measures to ensure that PMI enjoy the right to adequate and affordable health care”⁹. In fact, the Equal Opportunities Commission (EOC) in Hong Kong also suggested the HKSAR to introduce an independent Mental Health Council to supervise the mental health services provided. However, the **HKSAR turned down the recommendations from the Committee** and the EOC. Rather, the HKSAR regards the existing structure to be working well enough.¹⁰

The worsening mental health situation in Hong Kong and a number of bloody tragedies, which happened to families with members suffering from mental illness, obviously rebut the claim of HKSAR that “the system has worked well”.¹¹ In January 2007, the Legislative Council passed a motion to urge the HKSAR review the existing psychiatric rehabilitation policy and services, and to establish a “Mental Health Policy” as well as a “Mental Health Council” to co-ordinate relevant policy measures and rehabilitation services. The HKSAR however simply ignored the request. The lack of a comprehensive policy review and the establishment of a new

⁸ Hospital Authority (2006) Annual Statistical Report 2005/06

⁹ Concluding Observations of the Committee on Economic, Social and Cultural Rights (2001), p. 6, para 45.

¹⁰ HKSAR (2003) Second Report of the HKSAR of the People’s Republic of China in the light of the International Covenant on Economic, Social and Cultural Rights, p. 140.

¹¹ HKSAR Response to the List of Issues presented by the Committee on Economic, Social and Cultural Rights on 21 May 2004.

structure to handle the relevant issues clearly show that the HKSAR has failed to fully realize the citizens' right to mental health.

F. Strong police power brings serious police brutality

Although a huge sum has been spent on advertisements to boost the image of the Hong Kong Police Force, the problem of police brutality and its abusive use of power remains serious in the entire society. As mentioned earlier, in the past years there have been many cases, where the Hong Kong Police Force has brutally and barbarically interfered into peaceful public processions and meetings.

1.10 Ineffective complaints mechanism

Unfortunately, this unfavorable condition has not been resolved by the current complaint mechanism. The complaints about abusive use of power by the police remain common and an independent complaint mechanism to investigate the complaints has been urged by various sectors of the community. Indeed, the Complaints against Police Office (CAPO) has long been criticized for **lack of credibility** because it is a part of the police system. The independence and fairness of officers working in CAPO is questionable, as they come from the police force and will return to their posts in future. In fact, many complaints have been dropped due to the lack of evidence. For instance, in 2006 only 2.8% of the cases were substantiated.

The number of allegations against police officers has decreased in the past two years, which the Police Force may explain by improvements in police conduct and behavior. However, a more plausible explanation might be that the general public distrusts the complaint mechanism and has given up lodging complaints even though the Police Force continues its malpractices and misconduct.

In fact, a further analysis of the results of the investigations is discouraging. For example, between year 2000 and 2006, the percentage of allegations which were found to be substantiated / substantiated other than reported decreased from 4.0% in 2002 to 2.8% in 2006. In addition, in view of the defect of the complaint investigation mechanism, the withdrawal rate kept on increasing. In 2000, the percentage of cases which was finally withdrawn was 38.3%. This jumped to 43.7% in 2003 and reached the peak at 48.9% in 2006. The figures reveal that the general public is reluctant to use the present complaint system and that institutional reform is necessary to create legitimacy and enhance public confidence.

The decreasing trend in the number of allegations can be explained by the ineffective complaint investigation mechanism. Thus the institutional defects of the

current police complaint monitoring mechanism remain serious.

1.11 No investigative power of the IPCC

Until now, all cases investigated by CAPO have to be scrutinized and recorded by the Independent Police Complaints Council (IPCC). The IPCC has commented that police employed excessive power in the above mentioned cases, and it has raised a number of suggestions, such as asking the police “to avoid tactics which may reasonably give rise to the perception that the rights of freedom of expression and of assembly and demonstration are being unnecessarily curtailed”.

However, the IPCC has **does not have any investigative powers for complaints**. As a result, the monitoring function of the IPCC is not substantial, which makes the mechanism ineffective.

Lastly, the implementation of the recommendations of the IPCC to the police force cannot be guaranteed as they are still not legally binding. Thus it is not compulsory for the Police Force to comply with the recommendations. Thus, even though the IPCC is a statutory body, in the absence of the power of investigation, the monitoring mechanism is still handicapped.

G. Recommendations

1. It is urged that the Government should comply with the concluding observation of the United Nations Human Rights Committee and provide a clear time schedule for universal suffrage for the election of the Chief Executive and the Legislative Council.
2. The Government should avoid seeking the Central People’s Government to re-interpret the Basic Law, while the Central People’s Government should avoid interpreting the Basic Law by itself in order to safeguard the high self-autonomy of the Hong Kong Special Administrative Region and the “One country, two systems” principle.
3. It is urged that the Government should set up a National Human Rights Institution. Such a body should have the powers to receive complaints, investigate proactively, conciliate, adjudicate, provide legal advice, legal aid, bring legal proceedings and issue enforcement notices, court orders and have the power to review all government policies and make binding recommendations.

4. The Government should re-establish the Commission on Poverty in collaboration with the NGOs, the academics and different stakeholders. A poverty line should be drawn and indicators of poverty should be prepared to formulate a policy against poverty.
5. To ensure the basic standard of living of retired persons, low-income families and the unemployed persons, the Government should review its comprehensive social security system. The Government should resume the special grants to the welfare recipients.
6. The Government should abolish the 7-year hurdle for welfare application and the 1-year residence in Hong Kong rule.
7. The Government should establish an independent monitoring body on the rights of the child and pursuing an integrated and holistic approach to the adoption of legislation on the rights of the child.
8. The Government should review the existing policy and service related to people with mental illness. The Government should also formulate mental health policy and appropriate establishment to carry out such policy.
9. The Government should establish an independent police complaint mechanism, which is not only embedded with the power of observation, but also the power of investigation of every allegation to handle those complaints. The recommendations of the monitoring body should be legally binding on the law enforcement agency so as to increase the protection on citizens.
10. The Convention Relating to the Status of Refugees should be extended to Hong Kong and the Government should set up a fair screening procedure to meet its obligations under the Convention relating to the Status of Refugees.