

SUBMISSIONS TO THE PANEL ON SECURITY OF THE LEGISLATIVE COUNCIL

On the Administration's combatting of illegal activities relating to sex work

July 2018

Justice Centre Hong Kong ('Justice Centre') submits the following information to the Panel on Security ('the Panel') of the Legislative Council of the Hong Kong Special Administrative Region, China ('Hong Kong') about the agenda item 'Combating illegal prostitution activities' of its meeting on 10 July 2018.

Justice Centre is concerned about the issue of human trafficking, particularly the adequacy of victim identification and protection, investigation and prosecution as well as prevention of human trafficking for the purpose of forced sex work. It is regrettable that the Administration does not refer to or discuss the issue of human trafficking or its newly launched Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers ('Action Plan') in its paper for this meeting.¹ This raises concern over the implementation of the Action Plan in the context of sex trafficking.

Due to the lack of capacity to prepare a separate submission to the Panel specifically for the above-mentioned meeting, Justice Centre would like to draw the attention of the Panel to the submission we made previously to the Panel for its meeting on 5 June 2018 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 (Attachment A).²

Moreover, the Hong Kong UPR Coalition ('the Coalition'), a coalition of NGOs that Justice Centre facilitates, made a joint civil society Universal Periodic Review (UPR) submission to the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the Third Cycle UPR on China, including Hong Kong (Attachment B).³

¹ Security Bureau and Hong Kong Police Force, "Combating illegal prostitution activities", LC Paper No. CB(2)1751/17-18(05), June 2018, available at: <https://www.legco.gov.hk/yr17-18/english/panels/se/papers/se20180710cb2-1751-5-e.pdf>

² 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), June 2018, available at: <https://www.legco.gov.hk/yr17-18/english/panels/se/papers/se20180605cb2-1515-1-e.pdf>

³ Hong Kong UPR Coalition, "Joint civil society submission", March 2018, available at: http://www.justicecentre.org.hk/framework/uploads/2018/UPR/HKUPRC_Submission_MARCH2018.pdf

Recommendations for the Hong Kong Government on the issue of human trafficking were raised in the submission, which is wholly or partly endorsed by 45 civil society organisations.

Recommendations

Justice Centre makes the following recommendations, which have also been raised in the joint civil society submission of the Hong Kong UPR Coalition:

- 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,⁴ and
- Hong Kong should adopt a comprehensive law on prevention, prosecution, and protection to combat human trafficking and forced labour within one year.

Attachment A – Submissions of Justice Centre to the Panel for its meeting on 5 June 2018 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

Attachment B – Joint civil society UPR submission of the Hong Kong UPR Coalition

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

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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

⁴ 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://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/HKG/CAT_C_CHN-HKG_CO_5_22478_E.docx

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

June 2018

Justice Centre Hong Kong ('Justice Centre') makes the following submissions to the Panel on Security of the Legislative Council of the Hong Kong Special Administrative Region ('Hong Kong') for the agenda items 'Action plan to tackle trafficking in persons and to enhance protection of foreign domestic helpers in Hong Kong' and "Proposed Members' Bill entitled 'Modern Slavery Bill' to criminalize all forms of human trafficking in Hong Kong", ahead of its meeting on 5 June 2018.

Justice Centre welcomes the Government's introduction of the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong ('Action Plan') in March 2018 as the first step towards combatting human trafficking. The pledge to work closely with civil society in the Action Plan is particularly welcome. However, Justice Centre has concerns that the Action Plan's effectiveness is limited by:

- the absence of a definition or offence of human trafficking or forced labour;
- inadequate prosecution;
- inadequate victim identification and protection;
- the absence of time frames for new actions;
- the absence of human trafficking screening at the Labour Tribunal; and
- the limited publication of data.

These concerns are elaborated below.

Moreover, the Administration, in adopting the Action Plan, made no reference to the Government's commitments under international human rights treaties or even mentioned the words 'human rights' once. Given that respect for human rights is reportedly a core value of the Administration,¹ it is a notable omission in a document that is

¹ Mrs Carrie Lam, 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 30 May 2018.

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designed to deal with violations of human rights and acts which are prohibited under international human rights law. It is particularly noteworthy that there are no references to recommendations made for Hong Kong from the:

- United Nations Human Rights Committee;
- United Nations Committee on the Elimination of All Forms of Discrimination against Women; and
- United Nations Committee against Torture.²

This approach is of concern in light of the upcoming Universal Periodic Review (UPR) session on China, including Hong Kong, in November this year. The Hong Kong UPR Coalition, a coalition of civil society organisations that Justice Centre facilitates together with other non-governmental organisation members of a Steering Committee, has lodged a joint civil society Universal Periodic Review (UPR) submission with the United Nations High Commissioner for Human Rights covering the issue of human trafficking in Hong Kong.³ The Hong Kong UPR Coalition has met with many foreign governments regarding the UPR as it relates to Hong Kong. Several have shown interest in the issue of human trafficking in Hong Kong. It is likely that there will be UPR recommendations specifically relating to Hong Kong's laws and policies to combat human trafficking. As recommended in the Hong Kong UPR Coalition's submission, Hong Kong should establish a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation for their implementation, following meaningful consultation with civil society, within one year. Civil society will monitor the implementation of any UPR recommendations, including those relating to human trafficking, made for Hong Kong.

Additionally, Hong Kong has been placed on Tier Two Watch List since 2016 in the United States Trafficking in Persons Report.⁴ If Hong Kong is ranked Tier Two Watch List for three consecutive years, it may be downgraded to Tier Three,⁵ impacting adversely on Hong Kong's international reputation.

² 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: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr2bAznTlrkyo4FUNHETCQ0Y7P%2fow040gd8LZ9d1NQukCEhx4dNtgXsWJSk7fStTBMEzKOWsqHv9SIKqzjoKxDQTLMy%2fCcDkaXOwTD%2feb8avpf8ty9DnWVTylSVEmRoVg%3d%3d>, 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>, and Committee on the Elimination of All Forms 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 at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En, all accessed on 30 May 2018.

³ Hong Kong UPR Coalition, 'Joint Civil Society Submission from the Hong Kong UPR Coalition', March 2018, available at: <http://www.justicecentre.org.hk/policy-advocacy/universal-periodic-review/>, accessed on 16 May 2018.

⁴ Department of State, United States, *2017 Trafficking in Persons Report*, June 2017, available at: <https://www.state.gov/documents/organization/271339.pdf>, and Department of State, United States, *2016 Trafficking in*

Actions by the Legislative Council and the Administration to improve laws and policies to ensure consistency with international human rights obligations relating to human trafficking are long overdue.

Prevalence of human trafficking and exploitation in Hong Kong

Based on our primary research *Coming Clean: the Prevalence of Forced Labour and Human Trafficking for the Purpose of Forced Labour amongst Migrant Domestic Workers in Hong Kong*, Justice Centre estimates that 17% of migrant domestic workers in Hong Kong are working in conditions of forced labour. Of these 14%, or about 8,000 individuals, have been trafficked into the situation.⁶ *Coming Clean* also showed that migrant domestic workers with excessive debt were six times more likely than those with lower debt levels to be in forced labour; migrant domestic workers from Indonesia were 70.5% more likely to be in a situation of forced labour; migrant domestic workers on their first contract were 2.7 times more likely to be in a situation of forced labour than those who had had working experience in Hong Kong; and migrant domestic workers aged below 24 were the most likely to be in a situation of forced labour.⁷ *Coming Clean* was cited in the United States Trafficking in Persons Report 2016, the year Hong Kong was downgraded to Tier Two Watch List.⁸

Although the domestic work sector is significant in Hong Kong, it is not the only sector in which trafficking is occurring. Civil society has reported cases of human trafficking or potential human trafficking for forced labour among sex workers in Hong Kong and for forced marriage.⁹

Former Director of Public Prosecutions, Mr I Grenville Cross, SC argued in 2008 that Hong Kong was a transit and destination point for illegal immigrants, some of whom were subject to debt bondage, sexual exploitation and forced labour on arrival in a destination country.¹⁰ Although he made this statement ten years ago, there has been no substantive improvement in the Administration's anti-human trafficking or anti-exploitation policies, raising concern that the situation that Mr Cross, SC described remains the same today.

Persons Report, June 2016, available at: <https://www.state.gov/documents/organization/258876.pdf>, both accessed on 30 May 2018.

⁵ Department of State, United States, *2017 Trafficking in Persons Report*.

⁶ 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, available at: www.justicecentre.org.hk/comingclean and Hong Kong UPR Coalition, "Joint Civil Society Submission from the Hong Kong UPR Coalition", accessed on 30 May 2018.

⁷ *Ibid.*

⁸ Department of State, United States, *2016 Trafficking in Persons Report*.

⁹ See, for example, *100 Stories Hong Kong*, <http://100storieshk.org/?lang=en>, accessed on 28 May 2018.

¹⁰ Speech by Director of Public Prosecutions at Trafficking in Persons Research and Data Forum, 3 November 2008, Available at: <https://www.doj.gov.hk/eng/public/pdf/2008/dpp20081103e.pdf>, accessed on 28 May 2018.

The absence of a definition of and an offence against human trafficking

Comprehensive legislation on prosecution, protection and prevention with a clear definition of 'human trafficking', 'forced labour', 'exploitation' and other relevant concepts should be introduced. Without legislation for prosecution, victim identification or protection, Hong Kong remains an outlier among common law jurisdictions, such as Australia, Singapore, the United Kingdom and the United States.¹¹

Currently, there is no comprehensive definition of 'human trafficking' in domestic legislation although this has been recommended by the Committee against Torture in its concluding observations on Hong Kong in February 2016, by Justice Centre in *Coming Clean* and by the Hong Kong UPR Coalition.¹² The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ('Palermo Protocol') introduces a widely agreed upon definition of human trafficking in international law. Although China is a signatory to the Protocol and it is applicable to Macau, it is not applicable to Hong Kong.¹³ The Human Rights Committee and the Committee on the Elimination of All Forms of Discrimination against Women have recommended Hong Kong consider taking steps that could lead to its extension to Hong Kong.¹⁴

Also, although the Forced Labour Convention, 1930 applies to Hong Kong,¹⁵ there is no definition of 'forced labour' in domestic legislation. There is no offence against human trafficking or forced labour either. The Court of First Instance of the High Court has held that the reliance on other provisions of the criminal law does not adequately, if at all, address the need for the criminalisation of forced or compulsory labour and, in the absence of an offence against forced or compulsory labour, the Hong Kong Government has not fulfilled its obligation under Article 4 of the Hong Kong Bill of Rights Ordinance.¹⁶

¹¹ These pieces of legislation include the Commonwealth Criminal Code Act 1995 of Australia, the Prevention of Human Trafficking Act 2015 of Singapore, the Human Trafficking and Exploitation (Scotland) Act 2015, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, the Modern Slavery Act of England and Wales and Victims of Trafficking and Violence Protection Act of 2000 of the United States.

¹² Committee against Torture, 'Concluding observations on the fifth periodic report of China with respect to Hong Kong, China' and Justice Centre Hong Kong, *Coming Clean*.

¹³ Declaration of China, United Nations Treaty Series, vol. 2652, annex A, p.51, available at:

https://treaties.un.org/Pages/showActionDetails.aspx?objid=080000028027643a&clang=_en, accessed on 30 May 2018.

¹⁴ 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)' and Committee on the Elimination of All Forms of Discrimination against Women, 'Concluding observations on the combined seventh and eighth periodic reports of China'.

¹⁵ Department of Justice, Hong Kong, 'List of Treaties in Force and Applicable to the Hong Kong Special Administrative Region (as at 14.05.2018)', available at: <https://www.doj.gov.hk/eng/laws/interlaw.html>, accessed on 30 May 2018.

¹⁶ *ZN v Secretary for Justice* HCAL 15/2015, available at: http://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=107415&QS=%24%28ZN%29&TP=JU, accessed on 30 May 2018.

In the absence of such definitions and offences, it is unclear on what basis prosecution as set out in the Action Plan will be carried out. It is noted in the Action Plan that “[a]lthough the Palermo Protocol has not been applied to Hong Kong, reference is drawn to Article 3 of the Protocol on the meaning of TIP in this Action Plan”. However, there is no information on whether the Administration will adapt the definition of human trafficking in the Palermo Protocol in its operation or whether the same definition will be used across all activities listed in the Action Plan.

Moreover, law enforcement will remain restricted to enforcing laws against the constituent elements of human trafficking rather than the overarching result. For example, according to media reports, a case of potential human trafficking of a migrant domestic worker to mainland China was handled by the Police as potential commission of the offence of conspiracy of defraud.¹⁷

The number of prosecutions for human trafficking cases appears to be small, which may be a consequence of the absence of an offence against human trafficking or forced labour and also raises concern over the adequacy of the investigations carried out by law enforcement authorities. For example, the International Organisation for Migration identified three out of the about 100 Madagascan women as being victims of human trafficking.¹⁸ According to the Hong Kong Police, six cases in which women reported that their passports were withheld and forged documents were used to apply for loans under their names were investigated, but all were dropped due to a lack of evidence.¹⁹

The issue of migrant domestic workers travelling to Mainland China to work via Hong Kong has drawn the attention of the Indonesian Consulate General in Hong Kong, which decided to investigate suspected cases of migrant domestic workers being brought by their employers to work in Mainland China. The Consulate General analysed travel records of workers who applied for the renewal of passports and found 47 workers travelled to Mainland China at least once a month.²⁰ From 1 January to 27 November 2017, the Police has received 42 potential cases of the trafficking of migrant domestic workers, but only four were confirmed to be related to criminal offences as of 27 November 2017.²¹

¹⁷ 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.

¹⁸ Raquel Carvalho, “How Hong Kong Failed Madagascar’s Domestic Helpers”, South China Morning Post, 17 December 2017, available at: <http://www.scmp.com/week-asia/society/article/2124556/how-hong-kong-failed-madagascars-domestic-helpers>, accessed on 20 December 2017.

¹⁹ *Ibid.*

²⁰ Cable TV, “出國打工，再「被出境」打工”， 27 November 2017, available at: https://www.facebook.com/news.lancet/videos/841552966017746/?hc_ref=ARTfLbdud-6NachUSaA0caMC1yifliVEuc3nhIE53F8Zz0qUbdsvjFuKAnWWBN73Vk, accessed on 22 December 2017.

²¹ *Ibid.*

Inadequate victim identification and protection

The lack of definitions of human trafficking, exploitation, and forced labour also raises questions about the basis victim identification on which is carried out. There is a lack of transparency about the Government's screening procedures. Neither the Guideline on Inter-departmental Cooperation for the Handling of Suspected Cases of Trafficking in Persons, which was issued to provide guidance for the Inter-departmental Trafficking in Persons Working Group departments/bureaux, nor the screening form used by the Administration, both referenced in the Action Plan, is publicly available, despite requests made by civil society. Similar screening forms are published in many comparable jurisdictions such as the United Kingdom and the United States.²²

The lack of information about the introduction of immunity for human trafficking victims in the Action Plan is particularly concerning. When civil society enquired about this in a recent meeting with the Government on 28 May 2018, none of the attending officials from the Security Bureau, the Police Force, the Immigration Department or the Labour Department could give further information about the granting of immunity. A recent case highlighted in the media involved the prosecution and conviction of a migrant domestic worker who reported to the Immigration Department that her employer was asking her to clean her employer's office (illegal deployment) for conspiring to contravene the conditions of stay.²³ There has also been concern that children may have been arrested for making false representations about their identities or using forged passports while they were in fact trafficked to Hong Kong as migrant domestic workers by agents.²⁴ Although there is provision in the Prosecution Code that, if a credible claim that a defendant or intended defendant is a victim of human trafficking is found, a prosecutor should appropriately deal with the case with that in mind, making reference to international standards and practices,²⁵ the Government has failed to provide data about the number of established credible claims that a defendant or intended defendant is a victim of human trafficking on the basis that such data is not maintained.²⁶

²² United Kingdom Government, 'Modern slavery victims: referral and assessment forms', <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms> and, for example, Human Trafficking Task Force, Ohio, United States, *Human Trafficking Screening Tool*, January 2013, available at <http://humantrafficking.ohio.gov/links/Screening-Tool.pdf>, both accessed on 30 May 2018.

²³ Cable TV, '等候發落的外傭', 18 March 2018, available at https://www.facebook.com/news.lancet/videos/841552966017746/?hc_ref=ARTflbdud-6NachUSaA0caMC1yifliVEuc3nhIE53F8Zz0qUbdsvjFuKAnWWBN73Vk, accessed on 30 May 2018.

²⁴ Sylvia Yu, "Fake passports fuel child trafficking to Hong Kong, Singapore", Thomson Reuters Foundation, 20 April 2017, available at: <https://www.reuters.com/article/us-hongkong-trafficking-children/fake-passports-fuel-child-trafficking-to-hong-kong-singapore-idUSKBN17M047>, accessed on 30 May 2018.

²⁵ Department of Justice, Hong Kong, *Prosecution Code*, 2013, p. 35-36, available at <https://www.doj.gov.hk/eng/public/pdf/2014/pdcode1314e.pdf>, accessed on 30 May 2018.

²⁶ Director of Administration and Development, Department of Justice, Hong Kong, reply to initial written questions raised by Finance Committee Member Dennis Kwok in examining the Estimates of Expenditure 2018-19, reply serial no. SJ033, available at: https://www.legco.gov.hk/yr17-18/english/fc/fc/w_q/sj-e.pdf, accessed on 30 May 2018.

The risk of prosecution for offences committed as a result of being exploited and/or trafficked is likely to deter victims and potential victims of trafficking from reporting offences, negating the efforts outlined in the Action Plan. This is exacerbated by the fact that the Action Plan entails no legal accountability on the part of the Administration, as it relates to victim protection or other matters.

Absence of a time frame for human trafficking screening

The Action Plan does not include time frames for the various activities listed therein. When civil society organisations asked for further information about the time frames in the above-mentioned meeting with the Government on 28 May 2018, the only new activity for which there was a set time frame was the extension of human trafficking screening to all police districts. The screening to be conducted by the Labour Department will follow that in the 'foreseeable future'.

Absence of screening at the Labour Tribunal

The Action Plan does not apply to the Labour Tribunal as far as human trafficking screening is concerned.²⁷ This is problematic because, in many instances, victims of human trafficking do not identify themselves as victims and therefore may not come forward as victims of trafficking. Instead, they may seek assistance for matters related to their trafficking experiences.²⁸ It is likely, therefore, that victims of human trafficking in Hong Kong will seek redress through the Labour Tribunal since the Labour Department promotes the Labour Tribunal as one of the principal mechanisms for redress. One of Justice Centre's clients, who was probably trafficked to Hong Kong to work as a migrant domestic worker, brought a claim at the Labour Tribunal, but was not asked any questions about human trafficking, exploitation or forced labour there. She did not tell the Labour Tribunal officer about how her informal broker may have abused her position of vulnerability when she recruited her to Hong Kong (the act and means elements of human trafficking) because she had never learnt about the concept of human trafficking and did not think it was relevant to the underpayment of wages or the excessive working hours she had in Hong Kong. She was awarded a very small proportion of what she was owed by the employer at the Labour Tribunal. She then overstayed and was detained. Had there been human trafficking screening, she would have likely been identified as a victim of human trafficking and offered relevant protection.

Inadequate data

The Hong Kong Government does not regularly publish data about victim identification and protection or trainings officials receive. This makes it difficult for civil society to accurately assess the impact of the Hong Kong Government's efforts to combat human trafficking. A disconnect remains between the public proclamations of the Hong Kong Government and the information obtained by civil society organisations on the ground.

²⁷ Statement made by Ms Queenie Wong, Assistant Commissioner for Labour (Policy Support), in a meeting with civil society organisations on 28 May 2018

²⁸ Brunovski and Surtees, *Vulnerability and exploitation along the Balkan route: identifying victims of human trafficking in Serbia*, Fafo, 2017. p. 21.

For example, it is unclear whether the Hong Kong Government conducts human trafficking screening on all vulnerable persons in Hong Kong. There is no publicly available information on whether individuals arrested for drug trafficking at the Hong Kong Airport or cultivating cannabis in local plants are considered to be 'vulnerable persons', on whom human trafficking screening is conducted.²⁹

Another area where a data gap exists is with respect to suspicious matter transaction reports. Suspicious transaction report forms in Hong Kong are unique, in that they include a category for bank, insurance company, money service operator or other sectors, to report a suspected crime of 'trafficking in human beings and migrant smuggling'.³⁰ A request for data held by the Hong Kong Police Force Joint Financial Intelligence Unit for suspicious transaction report human trafficking data by Justice Centre Hong Kong was refused on the grounds that the information was confidential.³¹ However, when a member of the public pursued the same data, it was instead refused on the grounds that it fell under a category where the disclosure 'could be misleading or deprive the department or any other person of priority of publication or commercial value'.³² Why two separate reasons were given by the Hong Kong Police Force has not been provided, much to the concern of civil society. The Hong Kong Police Force Joint Financial Intelligence Unit still refuses to release this information. This is one example of the challenges civil society faces when accessing information. As noted in the Hong Kong UPR Coalition's submission, responses for information take extensive time. The Code on Access to Information has been in place since 1995, but entails no legal requirement and limited coverage.³³ As recommended by the Hong Kong UPR Coalition, Hong Kong should adopt a Freedom of Information Ordinance that establishes maximum disclosure and minimal exemption requirements, within one year.³⁴

²⁹ Danny Mok, 'Woman from Peru arrested at Hong Kong airport carrying 2.5kg of cocaine in her body', South China Morning Post, 20 November 2017, available at: <http://www.scmp.com/news/hong-kong/law-crime/article/2120630/woman-peru-arrested-hong-kong-airport-carrying-hk23-million>, accessed on 20 December 2017 and Clifford Lo, 'Hong Kong police make biggest seizure of cannabis plants since at least 1990', South China Morning Post, 17 May 2017, available at: <http://www.scmp.com/news/hong-kong/law-crime/article/2094662/hong-kong-police-make-biggest-seizure-cannabis-plants-1997>, accessed on 20 December 2017.

³⁰ The pro forma for reporting suspicious transaction reports can be accessed at: <https://www.jfiu.gov.hk/en/str.html#download>.

³¹ The Joint Financial Intelligence Unit manages the suspicious transaction reports regime and financial intelligence in relation to money laundering and terrorist financing. They are responsible for receiving, analysing and disseminating suspicious transaction reports submitted pursuant to section 25A(1) of Organized and Serious Crimes Ordinance, Cap. 455 and Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405 as well as section 12(1) of the United Nations (Anti-terrorism Measures) Ordinance Cap. 575.

³² Hong Kong Police Force Crime Wing, response to information request 'Suspicious transaction report human trafficking data' made by Scott Edmunds, 26 October 2017, available at: https://accessinfo.hk/en/request/suspicious_transaction_report_hu, accessed on 20 December 2017.

³³ Hong Kong UPR Coalition, 'Joint Civil Society Submission from the Hong Kong UPR Coalition'.

³⁴ *Ibid.*

Other measures to combat the trafficking of migrant domestic workers, asylum seekers and refugees

While comprehensive legislation against human trafficking is essential, various existing policy measures or practices that may heighten the risk of human trafficking should also be repealed or changed. These include the live-in requirement, the 'two-week rule', forbidding the change of employers, the lack of inspection for the enforcement of the Standard Employment Contract for migrant domestic workers and the denial of the right to work to asylum seekers and refugees.³⁵

As recommended by the Hong Kong UPR Coalition, Hong Kong 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, consistent with concluding observations of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of All Forms of Discrimination against Women and the Committee against Torture. Hong Kong should also grant asylum seekers and refugees the right to work immediately.³⁶

Recommendations

Justice Centre recommends that the Panel request the Administration to:

- Accept and implement the recommendations of the United Nations Human Rights Committee, the Committee on the Elimination of All Forms of Discrimination against Women and the Committee against Torture relating to human trafficking;
- Request the extension of the Palermo Protocol to Hong Kong within a year;

³⁵ For more information about policies and practices relating to migrant domestic workers, see, for example, Hong Kong UPR Coalition, 'Joint Civil Society Submission from the Hong Kong UPR Coalition', paragraphs 90 to 93 and 101 to 105, Justice Centre Hong Kong, *Coming Clean*, Mission for Migrant Workers, "[Press Statement] New Study Shows MDWs Woes On Unsuitable Accommodation, Lack Of Privacy And Insufficient Amenities", 10 May 2017, available at <http://www.migrants.net/press-statement-new-study-shows-mdws-woes-on-unsuitable-accommodation-lack-of-privacy-and-insufficient-amenities/>, Mission for Migrant Workers, 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/> 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*, October 2016, available at: <https://view.publitas.com/rights-exposure/betweena-rock-and-a-hard-place-en/page/1>, all accessed on 1 June 2018.

³⁶ Hong Kong UPR Coalition, 'Joint Civil Society Submission from the Hong Kong UPR Coalition'.

- Introduce a comprehensive bill to combat human trafficking and forced labour that covers prosecution, protection and prevention and includes clear definitions of human trafficking, exploitation, forced labour and relevant concepts within a year;
- Introduce time frames for all activities listed in the Action Plan;
- Publish the human trafficking screening tool used by the Administration;
- Extend human trafficking screening to the Labour Tribunal;
- Publish a clear policy for granting immunity from prosecution to human trafficking victims;
- Strengthen investigations and prosecutions for human trafficking cases;
- Regularly publish data about the implementation of the Action Plan, including the number of human trafficking victims identified, the protection offered, the training Government officials receive and the number of suspicious transaction reports received;
- Provide more details about its screening policy, including in which situations screening is conducted on arrested persons;
- Repeal or change policies and practices that may increase individuals' vulnerability to human trafficking, including those relating to migrant domestic workers, asylum seekers and refugees;
- Repeal the 'two-week rule' and the live-in requirement for migrant domestic workers, 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, 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 strengthen protection from abuse by recruitment agencies immediately;
- Establish a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation for their implementation, following meaningful consultation with civil society, within one year; and
- Propose a freedom of information bill that establishes maximum disclosure and minimal exemption requirements, within one year.

Questions for the Administration

- How many suspicious transaction reports with the tick box 'human trafficking' ticked did the Hong Kong Police Force Joint Financial Intelligence Unit receive in 2017 and 2018? In how many of these cases have the Police initiated investigations based on these reports? What were the outcomes of the investigations?
- What is the Administration's position on the extension of the Palermo Protocol to the territory? Has a target date been set for its extension to Hong Kong?
- What are the time frames for the new activities introduced with the Action Plan?
- Will the Administration extend human trafficking screening to the Labour Tribunal? If not, what are the reasons?

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

Please contact Annie Li, Research and Policy Officer ([REDACTED] annie@justicecentre.org.hk), for any enquiries.

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



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 (WHOAQGs). 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 WHOAQGs 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.

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

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