



**Response to the Legislative Council Panel on Constitutional Affairs’
paper on the formal adoption by the United Nations Human Rights
Council of the report by its Working Group on the Universal
Periodic Review on the third review of the Hong Kong Special
Administrative Region**

May 2019

Introduction

This supplementary submission is a response to the Legislative Council Panel on Constitutional Affairs’ paper (“the paper”) issued for discussion at the panel’s meeting on 15th April 2019.¹ This submission has been written following an invitation made by Chairman Cheung Kwok-kwan during the meeting to respond to the Administration’s paper.

The Hong Kong UPR Coalition (“the Coalition”) is concerned with the Administration’s responses to the UPR recommendations set out in Annex F of the paper as well as additional issues hindering effective civil society engagement with the government. Our primary concerns are:

- insufficient consultation and engagement with civil society organisations by Constitutional and Mainland Affairs Bureau (CMAB) and continuing to revert to ‘established practice’ despite the demonstrated problems of such an approach;
- use of “already implemented” and “already implementing” language by CMAB in response to the recommendations, which shows a lack of interest in engaging with civil society and the international community to the concerns highlighted;
- the failure to identify any new measures or substantively respond to the proposals raised by civil society, including the Hong Kong UPR Coalition, in response to the recommendations; and
- the omission of references to the statements or questions in advance raised during the UPR hearing.

These concerns are set out in further detail below.

The Coalition has sought throughout to engage in a constructive manner and reiterates our proposals in response to the UPR recommendations. They are:

- a cross-sector UPR advisory group to monitor and implement the recommendations;

¹ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), 9 April 2019, available at:
<https://www.legco.gov.hk/yr18-19/english/panels/ca/papers/ca20190415cb2-1179-3-e.pdf>



- a database of treaty body and UPR recommendations, following meaningful consultation with civil society;
- reforms to the treaty body and UPR consultation processes, including:
 - all draft reports should be provided in advance for civil society consultation;
 - development of an institutionally separate mechanism in government for coordination, report writing and consultation; and
 - reforms to the range of consultation options and increasing access to persons with a disability.

In the coming months, the Coalition will further coordinate with civil society organisations to identify specific measures in response to each of the individual recommendations. We urge CMAB and other relevant bureaus will be involved in this process, working constructively with civil society to act in protecting and promoting human rights in Hong Kong in response to the views put forward by the international community during the third cycle review.

Issues preventing effective civil society engagement

The Coalition has in earlier submissions called for improved engagement between the government and Hong Kong NGOs.² Effective civil society engagement through public consultation, correspondence, meetings and partnerships is necessary to maintain a system of good governance.³ However, despite centering her successful campaign to be Chief Executive on the theme of ‘inclusive governance’ and “reuniting the divided society”, going so far as naming her campaign slogan “WeConnect”, representatives from the Administration continue to remain reluctant to engage in considered consultation with civil society.⁴

² *Submission to the Hong Kong Constitutional and Mainland Affairs Bureau in response to consultation*, Hong Kong UPR Coalition, 7 May 2018, available at: <http://www.justicecentre.org.hk/framework/uploads/2018/03/Hong-Kong-UPR-Coalition-Submission-to-CMAB-for-UPR-Consultation.pdf> ; *Submission to the Panel on Constitutional Affairs for The Third Review of the Hong Kong Special Administrative Region by the Working Group on the Universal Periodic Review of the United Nations Human Rights Council*, Hong Kong UPR Coalition, April 2019, available at: <http://www.justicecentre.org.hk/framework/uploads/2019/04/2019-04-09-Hong-Kong-UPR-Coalition-Panel-on-Constitutional-Affairs-UPR.pdf>

³ Irvin RA, Stansbury J., *Citizen participation in decision-making: is it worth the effort?*, Public Administration Review 64(1), pp.55-65, 2004; Bingham LB, Nabatchi T, O’Leary R, *The new governance: practices and processes for stakeholder and citizen participation in the work of government*, Public Administration Review 65(5), pp.547-558, 2005

⁴ *WeConnect – for a more inclusive Hong Kong*, Chief Executive Hong Kong Special Administrative Region, 3 February 2017, available at: <https://www.ceo.gov.hk/eng/press20170203.html> ; Henderson, Simon, *Carrie Lam promised to ‘connect,’ yet engagement with NGOs is deteriorating on her watch*, Hong Kong Free Press, 11 October 2017, available at: <https://www.hongkongfp.com/2017/10/11/carrie-lam-promised-connect-yet-engagement-ngos->



This is evidenced by the process and timings employed by CMAB in the lead up to the Panel on Constitutional Affairs's meeting on 15 April 2019. By only making its responses publically available on 9 April 2019, civil society could not directly respond to CMAB's comments contained in Annex F of the paper in their submissions to the Panel, which were due on 4 April 2019. Unfortunately, this appears to be the practice adopted by many government bureaus.⁵

Such an approach limits the effectiveness of the panel process and the productivity of the Legislative Council as a whole. At a time when the Chief Executive is calling for greater cooperation in Legislative Council and committing to good governance, there is more that the Administration can do, including CMAB. Preparing timely reports for the public to provide input on would be a positive step forward.

Issues relating to the language used in the Administration's response

An underlying issue throughout the paper is the restrictive use of language. The continued assertion that the recommendations made as part of the UPR process have "already been" or are "being implemented" in Hong Kong not only undermines the country review mechanism but also limits the opportunity for civil society engagement.⁶

Furthermore, this implication that no action is required indicates a lack of interest to develop policy and legislative initiatives through "innovative", "interactive" and "collaborative" means, an approach Chief Executive Lam called for in her 2018 Policy Address, and further calls into question the legitimacy of her "WeConnect" manifesto slogan.⁷

The Coalition urges the Administration to both respect the UPR process and the consultative approach it professes to support by amending the language used in this submission and future publications regarding the UPR. Failure to do so, will substantively set back civil society and government engagement over the coming five years, leading up to the mid-cycle review process.

[deteriorating-watch/](#)

⁵ For example, as set out in Justice Centre Hong Kong's submission to the 2019/20 Budget Consultation, there is a distinct lack of information provided by the administration with regards to deadlines for feedback. Without details provided surrounding the timeframes of decision processes, engagement opportunities are limited. See *Submissions for the 2019-20 Budget Consultation*, Justice Centre Hong Kong, February 2019, available at: <http://www.justicecentre.org.hk/framework/uploads/2019/02/Justice-Centre-Hong-Kong-Submission-to-Budget-Consultation-2019-20.pdf>

⁶ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F, 9 April 2019, pp.2, 4-5

⁷ *Speech by the Chief Executive in delivering "The Chief Executive's 2018 Policy Address" to the Legislative Council*, Hong Kong Special Administrative Region of the People's Republic of China, 2018, available at: <https://www.policyaddress.gov.hk/2018/eng/speech.html>



Responses to the Recommendations

Indonesia

The Coalition is concerned with the Administration's response to Indonesia's recommendation, in particular the justifications given for the lack of adequate rights protection provided to migrant workers in Hong Kong and the overall lack of respect shown to a group that should be considered integral to the city's prosperity.

The primary objective of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is not to create special provisions for migrant workers but to foster respect for their human rights by guaranteeing equality of treatment and the same working conditions for both migrants and nationals.⁸ The initial reason given in the paper for not acceding to ICRMW is disappointing and creates a clear division between foreign domestic helpers (FDHs) (or migrant domestic workers (MDWs)) and Hong Kong nationals entirely at odds with the ICRMW's original purpose.

The Administration's belief that ratifying the treaty would lead to "significant policy and resource implications on the provision of various public services in overcrowded Hong Kong" does not justify the marginalisation of a demographic that makes up 10 percent of the working population and contributed USD 12.6 billion to the region's economy in the past year.⁹ Such a statement neglects policy or resource implications would also affect the 385,000 MDWs living in the city today.

⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, available at:

<https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>

⁹ These statistics are the result of a research project undertaken by Enrich HK: *The Value of Care - Key Contributions of Migrant Domestic Workers to Economic Growth and Family Well-being in Asia*, 2019, Enrich HK, available at:

http://www.enrichhk.org/wp-content/uploads/2019/02/Final_The-Value-of-Care_Full-Report.pdf;

The project and its results have been cited in various well-known media sources including *Time*, the *Asia Times* and the *South China Morning Post*: *Here's How Much Migrant Domestic Workers Contribute to Hong Kong's Economy*, *Time*, 6 March 2019, available at:

<http://time.com/5543633/migrant-domestic-workers-hong-kong-economy/>; \$12.6 billion

windfall from imported maids, *Asia Times*, 7 March 2019, available at:

<https://www.asiatimes.com/2019/03/article/12-6-billion-windfall-from-imported-maids/>; *Migrant Domestic workers prop up Hong Kong's economy, so why are they excluded?*, *South China Morning Post*, available at:

<https://www.scmp.com/week-asia/economics/article/2188754/migrant-domestic-workers-prop-hong-kongs-economy-so-why-are-they>



It is also unclear within the paper what “significant policy and resource implications” are being referred to.¹⁰ The absence of this key ingredient to the government’s line of argument renders its justification arbitrary and closed to public dissemination. The Coalition urges the Administration to present and introduce the specific implications that ratification of ICRMW would lead to, including whether such conversations have taken place with other government bureaux.

While China and HKSAR are not signatories to ICRMW, the justifications given for several gaps in the protections afforded to migrant workers use this treaty fail to use the appropriate yardstick for Hong Kong’s international human rights responsibilities. Instead, the Administration should hold itself accountable to international covenants such as ICCPR and ICESCR which, in line with Article 39 of the Basic Law, must be incorporated into HKSAR law.¹¹ These gaps are addressed below.

Firstly, as stated in the paper, MDWs are required to live at their employers’ residence under what is known as the ‘live-in requirement’.¹² This causes concern over the protection of the right to privacy under Article 17 of ICCPR as well as concern over abuse, in a manner inconsistent with Articles 7 and 8 of ICCPR and Article 2 of the Convention Against Torture (CAT).¹³ Research conducted by Mission for Migrant Workers found that 45 percent of MDWs surveyed reported the live-in rule contributed to abuse.¹⁴

Secondly, the government’s statement that “FDHs already enjoy the same employment rights and protection as local workers” is untrue. In fact, unlike other workers, MDWs have no access to the right of abode, minimum wage or retirement protection, breaching Articles 8 and 9 of ICESCR. They are not considered ordinarily residents in HKSAR and therefore have no access to the right of abode under Article 24 of the Basic Law. Furthermore, MDWs are entitled to a ‘minimum allowable wage’, which is less than the statutory minimum wage.¹⁵

¹⁰ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F, 9 April 2019, p.1

¹¹ International Convention on Civil and Political Rights, 1976, available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; International Convention on Economic, Social and Cultural Rights, 1976, available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹² *Judge quashes domestic helper’s bid for change to ‘live in’ rule in Hong Kong*, South China Morning Post, 14 February 2018, available at: <https://www.scmp.com/news/hong-kong/economy/article/2133296/judge-quashes-domestic-workers-bid-change-live-out-rule-hong>

¹³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987, available at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

¹⁴ *Migrant Domestic Workers*, Hong Kong UPR Coalition, available at: <http://www.justicecentre.org.hk/framework/uploads/2018/12/HKUPR-Coalition-Fact-Sheet-Migrant-Domestic-Workers.pdf>

¹⁵ *Minimum Allowable Wage and food allowance for foreign domestic helpers to increase*, The



Thirdly and finally, MDWs have limited opportunity to change employers, violating Article 26 of ICCPR and Articles 7 and 8 of ICESCR. They are required to leave HKSAR within two weeks after their contracts end under the “two-weeks rule”, a situation that creates stress and further opportunities for abuse.¹⁶ MDWs are also prohibited from changing employers and from working when staying in HKSAR for the purpose of seeking legal redress which serves to inhibit the access to legal aid the Administration claims to provide.

All three of the gaps in Hong Kong’s human rights obligations stated above are addressed in the most recent United Nations Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW), and the Human Rights Committee with regard to the ICCPR.

CERD has recommended that Hong Kong repeal both the “two-week rule” and live-in requirement in addition to encouraging the Hong Kong administration to consider ratifying ICRMW.¹⁷ In CEDAW’s most recent Concluding Observations on China, it was recommended that Hong Kong consider extending the “two-weeks rule” and revise the live-in requirement. In addition, the Committee comments on “unfavourable working conditions, such as lower wages few holidays and longer working hours than what is prescribed by law” before urging the Administration to strengthen its mechanisms designed to protect MDWs.¹⁸ Finally, when commenting on Hong Kong’s obligations under the ICCPR, the Human Rights Committee recommended that both the “two-weeks rule” and live-in requirement are repealed and that measures are adopted to ensure “all workers” enjoy their basic rights.¹⁹

The Coalition believes that the justifications given by the Hong Kong government for not accepting Indonesia’s recommendation serve to create a

Government of the Hong Kong Special Administrative Region, 28 September 2018, available at: <https://www.info.gov.hk/gia/general/201809/28/P2018092800357.htm>

¹⁶ *Helping Hands: The Two-Week Rule*, South China Morning Post, 30 July 2015, available at: <https://www.scmp.com/magazines/hk-magazine/article/2037255/helping-hands-two-week-rule>; *Scrap The 2-Week Rule*, HK Helpers Campaign, available at: <http://hkhelppercampaign.com/en/scrap-the-2-week-rule/>

¹⁷ *Concluding Observations (2018) CERD/C/CHN/CO/14-17*, Committee on the Elimination of Racial Discrimination, 2018, pp.8-9, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CHN/CO/14-17&Lang=En

¹⁸ *Concluding Observations (2014) CEDAW/C/CHN/CO/7-8*, Committee on the Elimination of Discrimination against Women, 2014, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En

¹⁹ *Concluding Observations (2013) CCPR/C/CHN-HKG/CO/3*, United Nations Human Rights Council, 2013, available at: https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/Advance_Version_2013_ICCPR_e.pdf



division between MDWs and local workers in the city. In addition, there are several gaps in HKSAR legislation that do not adhere to the city's international human rights obligations, and negate to fulfill the recommendations set out by numerous United Nations Concluding Observations. Continued lack of action in the face of these recommendations threatens to diminish Hong Kong's international reputation.

In line with Indonesia's recommendation and the aforementioned Concluding Observations, the Coalition urges the government to repeal the 'two-week rule' and 'live-in requirement' as well as adopting a comprehensive law enabling MDWs to enjoy the same rights as other workers in the city.²⁰

France

The Coalition is pleased that France's recommendation has been accepted. However, we are disappointed in the language used in response.

Firstly, the government has explicitly stated in the paper that the recommendation has "already been implemented" in Hong Kong.²¹ If this were the case, there would be no need for foreign governments such as France (and the other states who have made recommendations) to submit this request and equally no need for civil society organisations to advocate for these recommendations to be made.

Secondly, while the Basic Law and the Hong Kong Bill of Rights do set out provisions to protect freedom of speech and of the press, the actions taken by the government are not in accordance with this regulation.²² One such example is the refusal to issue a work visa to Victor Mallet, a British journalist and Asia editor of the Financial Times and his subsequent barring from entering the city.²³ This decision along with Mallet's position as Vice-President

²⁰ *Joint Civil Society Submission from the Hong Kong UPR Coalition*, Hong Kong UPR Coalition, March 2018, p.12 available at:

http://www.justicecentre.org.hk/framework/uploads/2018/UPR/HKUPRC_Submission_MARC_H2018.pdf

²¹ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F, 9 April 2019, p.2

²² Specifically Article 15, freedom of thought, conscience and religion, and Article 16, freedom of opinion and expression, of the Hong Kong Bill of Rights, available at:

<https://www.elegislation.gov.hk/hk/cap383>; and Article 27 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, available at: https://www.basiclaw.gov.hk/en/basiclawtext/chapter_3.html

²³ *Why the World Should Be Alarmed at Hong Kong's Expulsion of a Foreign Journalist*, Time, 16 October 2018, available at:

<http://time.com/5425653/victor-mallet-hong-kong-china-ft-media-freedom-fcc/>; *British journalist Victor Mallet denied entry to Hong Kong as tourist*, South China Morning Post, 9 November 2018, available at: <https://www.scmp.com/news/hong-kong/politics/article/2172383/british-journalist-victor-mallet-denied-entry-hong-kong>



of the Foreign Correspondents' Club represents a direct limit on the freedom of the press the Administration claims to uphold.

No reasons for the immigration department's decision were given despite international calls for the government to do so.²⁴ When pressed by journalists, Chief Executive Lam stated: "As a rule – not only locally, but internationally – we [the immigration department] will never disclose the individual circumstances of the case or the considerations of his decision."²⁵ This implication of international common practice is incorrect with countries such as the UK, US and New Zealand requiring authorities give reasons when turning down visa applications.²⁶

Furthermore, the response given to France's recommendation includes claims that the freedoms of association, assembly, procession and demonstration are also protected within Hong Kong. However, in the past year the government has made the decision to ban the Hong Kong National Party (HKNP), a small pro-independence organisation, on the grounds of national security, public safety, public order, protection of freedom and the rights of others and, by doing so, is in direct conflict with the freedoms of speech and association the Administration claims to already support.²⁷ This places further pressure on Hong Kong's existing politicians and political parties to restrain their actions for fear of reprimand.

²⁴ A spokesperson for the UK's Foreign & Commonwealth Office voiced the UK government's concerns stating: "We have asked the Hong Kong government for an urgent explanation. Hong Kong's high degree of autonomy and its press freedoms are central to its way of life, and be fully respected."; *US says Hong Kong bid to expel Financial Times journalist 'deeply troubling', as activists stage protest*, Hong Kong Free Press, 6 October 2018, available at: <https://www.hongkongfp.com/2018/10/06/us-says-hong-kong-bid-expel-financial-times-journalist-deeply-troubling-activists-stage-protest/>; *British gov't urges Hong Kong to reconsider 'politically motivated' expulsion of journalist*, Hong Kong Free Press, 24 October 2018, available at:

<https://www.hongkongfp.com/2018/10/24/british-govt-urges-hong-kong-reconsider-politically-motivated-expulsion-journalist/>

²⁵ *Video: 'Pure speculation' – Chief Exec. Lam refuses to explain expulsion of FT journalist but says press freedom intact*, Hong Kong Free Press, 9 October 2018, available at:

<https://www.hongkongfp.com/2018/10/09/pure-speculation-chief-exec-carrie-lam-refuses-explain-expulsion-ft-journalist-says-press-freedom-intact/>

²⁶ *Reason for Financial Times journalist Victor Mallet's Hong Kong visa denial to stay secret after Legco motion calling for explanation fails*, South China Morning Post, 1 November 2018, available at:

<https://www.scmp.com/news/hong-kong/politics/article/2171264/reason-financial-times-journalists-hong-kong-visa-denial>

²⁷ *What is the Hong Kong National Party?*, The Economist, 19 September 2018, available at:

<https://www.economist.com/the-economist-explains/2018/09/19/what-is-the-hong-kong-national-party>; *Ban on Hong Kong National Party over 'armed revolution' call met with both cheers and fear*, South China Morning Post, 24 September 2018, available at:

<https://www.scmp.com/news/hong-kong/politics/article/2165439/hong-kong-issues-unprecedented-ban-separatist-party>



This step, taken under section 8 of the Societies Ordinance (Cap. 151), is excessive due to the lack of evidence that the HKNP represent the genuine threat of force needed to impose such a restriction, as defined by international human rights principles and legislation.²⁸ Political parties should be free to advocate for changes in government structure, including secession and independence, as long as they do not reject democratic principles.²⁹

Once again, the Administration has submitted that France's recommendation has "already been implemented" despite a number of examples indicating the contrary.

Australia

The Coalition is pleased that Australia's recommendation has been accepted, but is disappointed in the response outlined in the paper. The statement that the recommendation has "already, in fact, been implemented", if true, would once again negate the need for Australia to use the UPR process to call attention to the issue in the first place.³⁰ There are several issues with this representation of the rule of law and the response. Firstly, is the failure to clearly outline what the Administration means by the rule of law.

As defined by the Rule of Law Institute of Australia, a country that adheres to the rule of law must ensure that:

- all persons and organisations including the government are subject to and accountable to the law;
- the law is clear, known, and enforced;
- the Court system is independent and resolves disputes in a fair and public manner;
- all persons are presumed innocent until proven otherwise by a Court;
- no person shall be arbitrarily arrested, imprisoned, or deprived of their property; and
- punishment must be determined by a Court and be proportionate to the offence.³¹

²⁸ Article 19, ICCPR, 1976; Principles 2, 6 and 7, The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39, 1996, available at: <http://hrlibrary.umn.edu/institute/johannesburg.html>; Principle 29, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1985, available at: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

²⁹ Article 25, ICCPR, Principle 7, Johannesburg Principles, United Macedonian Organization Ilinden-Pirin and Others v Bulgaria

³⁰ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F, 9 April 2019, p.2

³¹ *What is the rule of law?*, Rule of Law Institute of Australia, available at:

These contributing ingredients to ensure observance of the rule of law are reiterated in the Law Council of Australia's Policy Statement on the rule of law.³² With regards to Australia's recommendation, principle five, that the judiciary should be independent of the Executive and the Legislature, is particularly relevant. This distinction is supported by the Hong Kong Department of Justice's (DoJ) own definition of the rule of law in which its "principal meaning" is derived from the judicial decisions made by "independent courts". This is further emphasised by the DoJ's statement that "the rule of law requires that the courts are independent of the executive", to ensure impartial rulings.³³

These specific distinctions alluding to the separation of powers are especially important in Hong Kong. The Basic Law importantly sets out the "high degree of autonomy" under which the HKSAR can exist and the "independent judicial power" it has been authorised to enjoy.³⁴ A system that follows these qualifications and is based on checks and balances will ensure fair and equitable interpretation of the law by maintaining the judiciary's independence from both the executive (the National People's Congress) and legislative.³⁵ This belief is supported by the Administration's statement that "the independence of the judiciary is the key firmly underpinning our rule of law".³⁶

However, the Coalition is concerned that this independence does not exist. The power given to the Standing Committee of the National People's Congress (NPCSC), a non-independent legislative body of the People's Republic of China, to interpret the Hong Kong Basic Law goes beyond what can be expected of a government that upholds a model based on the separation of powers and the rule of law. By way of example, the fifth and most recent interpretation of the Basic Law by the NPCSC on the issue of oath-taking went beyond 'interpretation' serving to undermine the trust and independence of the judiciary.³⁷ Furthermore, the resultant disqualification of freely elected

<https://www.ruleoflaw.org.au/what-is-the-rule-of-law/>

³² *Policy Statement – Rule of Law Principles*, Law Council of Australia, March 2011, available at: <https://www.lawcouncil.asn.au/resources/policies-and-guidelines>

³³ *Legal System in Hong Kong – the rule of Law*, Department of Justice, The Government of the Hong Kong Special Administrative Region, available at: <https://www.doj.gov.hk/eng/legal/>

³⁴ Articles 2, 12, and 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, available at:

<https://www.basiclaw.gov.hk/en/basiclawtext/index.html>

³⁵ *The Separation of Powers – Why Is It Necessary?*, Republic of Austria Parliament, available at: <https://www.parlament.gv.at/ENGL/PERK/PARL/POL/ParluGewaltenteilung/index.shtml> ;

The Separation of Powers, Rule of Law Institute Australia, available at:

<https://www.ruleoflaw.org.au/wp-content/uploads/2013/07/Poster-Separation-of-Powers-July-2013-Printers-Copy1.pdf>

³⁶ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F , 9 April 2019, p.3

³⁷ *Beijing's constitutional ruling on Hong Kong oath-taking was 'strongly political,' says ex-justice sec. Wong Yan-Lung*, Hong Kong Free Press, 27 October 2017, available at:



lawmakers amounted to a violation of Article 25 of the ICCPR.³⁸

While the Administration states that the NPCSC's powers "reflect the uniqueness of 'one country, two systems'", this 'uniqueness' does not validate violations of international human rights treaties. The Coalition hopes that both China and HKSAR will ensure that all interpretations are compliant with human rights law and as a result, uphold the rule of law the Administration has stated is "the paramount core value of Hong Kong".

Furthermore, the Coalition is concerned by the paper's statement with regards to legal aid. One key issue has been omitted from which serves to limit access to justice to those that need it and as a result, diminish Hong Kong's rule of law. There exist stringent regulatory barriers for non-government organisations (NGOs) limiting pro bono legal representation.³⁹ NGOs often have extensive contact with individuals who are in need of legal aid but, due to these regulations, are denied it. To uphold the rule of law, these regulations should be amended, and Hong Kong should establish independent, not-for-profit legal structures providing free legal advice and representation to further enhance access to justice.⁴⁰

Additionally, the Administration has not attempted to cover other aspects of the rule of law in response. For example, no mention has been made of attempts to ensure that laws provide sufficient clarity. This has been especially problematic in the recent conviction of the leaders of the 2014 Occupy movement.⁴¹ Charged under common law rather than statutory offences, and considered guilty of conspiracy to cause "public nuisance", the lack of objective definition and clarity is a failure to abide by accepted rule of law principles. In addition, failure to clearly define "public nuisance" and the resulting punishments meted out could have a "chilling effect" and further infringe on the rights of the Hong Kong people to association and expression.⁴²

<https://www.hongkongfp.com/2017/10/27/beijings-constitutional-ruling-hong-kong-oath-taking-strongly-political-says-ex-justice-sec-wong-yan-lung/>

³⁸ For further explanation see: *Universal Suffrage Fact Sheet*, Hong Kong UPR Coalition, available at:

<http://www.justicecentre.org.hk/framework/uploads/2018/03/HKUPR-Coalition-Fact-Sheet-Universal-Suffrage.pdf>

³⁹ *This Way: Finding Community Legal Assistance in Hong Kong*, DLA Piper and PILnet, May 2017, available at:

https://www.dlapiper.com/~media/Files/News/2017/05/REPORT_THIS_WAY_31%20May%202017.pdf

⁴⁰ National Association of Community Legal Centres, available at: <http://www.naclc.org.au/>

⁴¹ *Four Hong Kong 'Occupy' leaders jailed for 2014 democracy protests*, Reuters, 24 April 2019, available at:

<https://www.reuters.com/article/us-hongkong-politics/four-hong-kong-occupy-leaders-jailed-for-2014-democracy-protests-idUSKCN1S004R>

⁴² *Harsh charges used against Occupy leaders could have 'chilling effect' on future of social movement in Hong Kong, legal experts warn*, South China Morning Post, 11 April 2019, available at:



Philippines

With regards to the recommendation of the Philippines, that the Hong Kong government enhances monitoring and implementation of the Standard Employment Contract (SEC), the Coalition is once again concerned with the government's response.

While the Coalition is pleased to read that the government accepts the recommendation, it is unclear of how it has been accepted and on what terms. The statement that “the HKSAR Government has all along been closely monitoring the implementation of the SEC and will review and enhance our efforts from time to time as necessary” is troubling for several reasons.⁴³

Firstly, this statement does not indicate how the government will review its monitoring efforts. Civil society organisations have, in their previous submissions, called for collaboration between government, NGOs, MDW origin countries and the broader community to ensure the right administrative, policy and legislative measures to best enhance the implementation of the SEC are put in place. It is hoped that the government intends to open the review process to public consultation and include these aforementioned organisations especially as the qualifier “as necessary” could be deemed unilateral.

Secondly, research conducted by Justice Centre Hong Kong, the facilitator of the Coalition, in partnership with other civil society organisations has highlighted the risk of exploitation suffered by migrant domestic workers (MDWs) in Hong Kong. It was found in *Coming Clean* that 17 percent of MDWs were in a situation of forced labour and 14 percent had been trafficked for this purpose.⁴⁴ An adequate monitoring system as called for in the Philippines recommendation and by numerous United Nations human rights treaty bodies would be able to prevent this type of human rights abuse from occurring. If the government had indeed “all along been closely monitoring the implementation of the SEC”, as it claims, reports such as *Coming Clean* would not produce these findings.

Finally, the commitment to reviewing and enhancing the government's efforts “from time to time” is again unclear and open to interpretation.⁴⁵ Echoing the previous reasoning, civil society hopes the review process will be transparent

<https://www.scmp.com/news/hong-kong/politics/article/3005625/harsh-charges-used-against-occupy-group-could-have-chilling>

⁴³ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F, 9 April 2019, p.4

⁴⁴ *Coming Clean*, Justice Centre Hong Kong, 2016, available at: <http://www.justicecentre.org.hk/comingclean/>

⁴⁵ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F, 9 April 2019, p.4



and inclusive with a well-defined review process and set time parameters. In the face of member state UPR recommendations and UN treaty body advice, “time to time” is a non-committal response and unbefitting the seriousness of an issue that is affecting the lives of the MDWs that the government has stated it “highly values”.

Canada

While the Coalition is pleased that this recommendation has been accepted, we are again disappointed with the response to Canada’s recommendation outlined in the paper. The assertion that “this is being implemented in Hong Kong” is particularly troubling.⁴⁶

There are no examples of how the recommendation is being implemented in the Administration’s response but rather vague comments referring to the provisions of the Hong Kong Basic Law. Importantly, there is no indication of how the “ultimate aim of universal suffrage” will be achieved, an aim that has been afforded two of the three total paragraphs that make up the government’s limited response. In addition, there are several examples that serve to counter the Administration’s statement that this recommendation has already been satisfied.⁴⁷

Firstly, in the 2016 Legislative Council election, the Administration introduced a new “Confirmation Form”, whereby all potential candidates were required to “uphold the Basic Law” by agreeing, inter alia, that “[t]he Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China.”⁴⁸ This resulted in the invalidation of the nominations of six localist candidates, one of which most notably had signed the confirmation form, but was then ruled by the Returning Officer to not have “genuinely changed his previous stance for independence.”⁴⁹

Secondly, following the LegCo election, the Administration launched judicial reviews which disqualified six democrat members-elect who had “improperly” sworn their respective oaths of office. In the by-elections resulting from such disqualifications, a potential candidate was further banned from running for LegCo because of her calling for “self-determination.”⁵⁰

⁴⁶ Ibid., p.4

⁴⁷ *Joint Civil Society Submission from the Hong Kong UPR Coalition*, Hong Kong UPR Coalition, March 2018

⁴⁸ ‘Accept Hong Kong is part of China or you can’t run in Legco elections’, South China Morning Post, 14 July 2016, available at:

<https://www.scmp.com/news/hong-kong/politics/article/1989910/accept-hong-kong-part-china-or-you-cant-run-legco-elections>

⁴⁹ *HKSAR Government responds to media enquiries regarding 2016 Legislative Council election*, The Government of the Hong Kong Special Administrative Region, 30 July 2016, available at: <https://www.info.gov.hk/gia/general/201607/30/P2016073000700.htm>

⁵⁰ *Court ruling disqualifying Hong Kong lawmakers over oath-taking controversy ‘a declaration*



Finally, Article 21(1) of the Universal Declaration of Human Rights states that everyone has the right to take part in government.⁵¹ The Coalition considers the Administration's acts of "political screening", during which the right to take part in public affairs and vote are impinged upon, and the free expression of voters set out in Article 25 of the ICCPR is limited, to be a clear infringement of such a right.⁵² As the Coalition has urged in its submission to the Human Rights Council, HKSAR must have legislation in place to protect the rights of all those standing for election, regardless of political affiliation or beliefs.⁵³

Croatia

While the Coalition is pleased that Croatia's recommendation calling for HKSAR to introduce internal legislation to implement the Convention on the Rights of the Child (CRC) has been accepted, the Coalition is disappointed by the government's response. Once again, the Administration's assertion that the recommendation is "being implemented" in Hong Kong is not adequately supported by its accompanying evidence.⁵⁴

In its submission to the Human Rights Council as part of the UPR process, the Coalition referred to legislative gaps in domestic legislation in violation of the CRC.⁵⁵ Specific Articles that are neglected include Article 3, to ensure that the best interests of the child in all statutory and administrative decision-making is maintained, and Article 12, to ensure that the view of children are expressed and heard. The government's statements in Annex F do not make any commitment to introducing new laws that would adequately respect address these gaps and satisfy Croatia's recommendation and HKSAR's CRC obligations.

In its most recent concluding observations submitted in October 2013, the UN Committee on the Rights of the Child recommended that Hong Kong establish a "comprehensive policy on children" as well as a strategy with "clear objectives".⁵⁶ In addition, the Committee called for a "centralized data

of war', South China Morning Post, 14 July 2017, available at:
<https://www.scmp.com/news/hong-kong/politics/article/2102609/four-more-hong-kong-lawmakers-disqualified-over-oath-taking>

⁵¹ Universal Declaration of Human Rights, 1948, available at:
https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

⁵² *Universal Suffrage Fact Sheet*, Hong Kong UPR Coalition

⁵³ *Joint Civil Society Submission from the Hong Kong UPR Coalition*, Hong Kong UPR Coalition, March 2018, p.6

⁵⁴ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F, 9 April 2019, p.5

⁵⁵ *Joint Civil Society Submission from the Hong Kong UPR Coalition*, Hong Kong UPR Coalition, March 2018

⁵⁶ *Concluding observations on the combined third and fourth periodic reports of China (including Hong Kong and Macau Special Administrative Regions)*, adopted by the Committee at its sixty-fourth session (16 September – 4 October 2013), United Nations Committee on the



collection system” to be set up to ensure the “progress achieved in the realization of children’s rights” can be assessed. While a Commission on Children has recently been established, it does not provide an adequate answer to these aforementioned Committee concerns and has not outlined any legislation where those protections are already in place. In particular, the Commission is not independent nor is it a statutory body, two aspects identified in the Coalition’s previous submission and, when absent, severely diminish the investigative powers the Commission should possess.⁵⁷ It is hard then to see where the government has already implemented Croatia’s recommendations.

Finally, while the government may state that it is “firmly committed to promoting the rights of children and honouring its obligations under the UNCRC”, continued inaction when faced with calls by civil society organisation, UPR recommendations and UN treaty body observers to enact new legislation will only harm Hong Kong’s international image.⁵⁸

Further Concerns

The Coalition has, in its previous submission to the Panel on Constitutional Affairs, raised concerns that statements made by the United Kingdom and Ireland during the UPR hearing have remained unanswered by the Administration.⁵⁹ In addition, for the first time four questions were raised in advance by foreign governments.⁶⁰ At the 6 November 2018 hearing and the

Rights of the Child, 2013, pp.3-4, available at:

<https://www.legco.gov.hk/yr13-14/english/panels/ca/papers/cacb2-48-1-e.pdf>

⁵⁷ *Joint Civil Society Submission from the Hong Kong UPR Coalition*, Hong Kong UPR Coalition, March 2018, p.10

⁵⁸ Legislative Council Panel on Constitutional Affairs, LC Paper No. CB(2)1179/18-19(03), Annex F, 9 April 2019, p.5

⁵⁹ The statements were as follows:

- **Ireland:** Ireland continues to urge China, including Hong Kong and Macao, to establish a comprehensive anti-discrimination law to protect all marginalised groups, including LGBTI persons.
- **United Kingdom:** We urge China to respect the rights and freedoms guaranteed by the Sino-British Joint Declaration in Hong Kong.

⁶⁰ The questions were as follows:

- **Germany:** How do the interpretations of the Hong Kong laws by the NPCSC ensure that freedom of press and opinion are upheld in consistence with the provisions under the Basic Law and the HKSAR Bill of Rights?
- **Switzerland:** Former High Commissioner expressed his concerns regarding the disappearance of booksellers in Hong Kong, including Swedish citizen Gui Minhai. What is his current status and will there be a public and independent investigation into the circumstances regarding the disappearance of booksellers?
- **The Netherlands:** To the government of the Hong Kong Special Administrative Region: which steps does Hong Kong intend to take to address international concerns about press freedom in Hong Kong and to ensure a safe and enabling environment for journalists to carry out their work independently and without undue interference?
- **United States of America:** What is China’s response to growing international concern about Beijing’s continued encroachment on Hong Kong’s autonomy, the abduction of individuals from Hong Kong, and growing restrictions on the freedoms of expression, association, and political



15 March 2019 plenary session, the Chief Secretary had an opportunity to address each question individually but negated to do so failing to outline which of his comments were in response to which question.

This was, and still is, an opportunity for the Hong Kong government to respond to human rights concerns raised by other United Nations member states, respect the UPR mechanism, and back-up its support for an open, inclusive and diverse city as the Chief Secretary cited in his 6 November 2018 speech.⁶¹

Summary

Overall, the Coalition is deeply concerned with the responses provided by the Hong Kong Legislative Council Panel on Constitutional Affairs to the six listed recommendations.

A common and underlying theme is the statement that the majority of the recommendations have “already, in fact, been implemented” in HKSAR. This devalues the six recommendations submitted by UN member states, the NGOs and civil society organisations that have attempted to engage with the Administration, and the UPR process as a whole. Further, a refusal to take note of the foreign government comments and criticisms will only hurt Hong Kong’s reputation, serve to shut the door on any engagement with civil society and, most importantly, harm those who are most affected by the gaps in its human rights protections.

In addition, there are a number of inaccurate descriptions, fallacies and neglected details which further diminish the responses given in the paper. Existing Hong Kong legislation is still in violation of several major international human rights conventions such as the ICCPR and ICESCR in spite of numerous UN treaty body concluding observations. Changes should be made to ensure Hong Kong’s most vulnerable are protected in a manner consistent with the international human rights law which applies in the HKSAR.

For the first time the People’s Republic of China has received six UPR recommendations directly related to the human rights situation in HKSAR, alongside two statements and four questions in advance. This represents an opportunity for the Hong Kong government to not only improve its human rights environment and the protection it offers to its people, but also protect and enhance its reputation internationally as an open, modern and inclusive society. However, upon reading the paper, the Coalition fears this may not happen. Nevertheless, the Coalition, along with the rest of Hong Kong civil society, will continue to seek engagement with the government through

participation in Hong Kong?

⁶¹ *Response by CS at UNHRC Universal Periodic Review meeting*, The Government of the Hong Kong Special Administrative Region, Press Release, 6 November 2018, available at: <https://www.info.gov.hk/gia/general/201811/06/P2018110600982.htm>



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

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constructive proposals.

As stated in this submission's introduction, the Coalition presents the following proposals in response to the UPR recommendations. They are:

- a cross-sector UPR advisory group to monitor and implement the recommendations;
- a database of treaty body and UPR recommendations, following meaningful consultation with civil society;
- reforms to the treaty body and UPR consultation processes, including:
 - all draft reports should be provided in advance for civil society consultation;
 - development of an institutionally separate mechanism in government for coordination, report writing and consultation; and
 - reforms to the range of consultation options and increasing access to persons with a disability.

The Coalition will continue to look to the Administration for opportunities to engage on the issues raised in this UPR process and the proposals outlined above. We hope that the government, by working constructively with civil society and properly considering the views introduced by the international community during the third cycle review, will act to protect and promote human rights in Hong Kong and make the city an example for others to follow around the world.

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