

**Joint Submission of NGOs for the  
Universal Periodic Review (3<sup>rd</sup> cycle)  
Hong Kong Special Administrative Region (HKSAR)  
CHINA**

**(March 2018)**

**This submission is coordinated by  
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## **Signatories**

1. Alliance for True Democracy
2. Asian Migrants' Coordinating Body (AMCB)
3. Be a Smart Voter
4. Bethune House Migrant Women's Refuge
5. Beyond the Boundary - Knowing and Concerns Intersex
6. Charter 617
7. Chinese Intersex Alliance
8. Chosen Power (People First Hong Kong)
9. Civic Act-up
10. Civic Party
11. Civil Human Rights Front
12. Civil Rights Observer
13. Community March
14. Covenant of the Rainbow - Campaign Towards a Truly Inclusive Church
15. Daly, Ho & Associates
16. Demosisto
17. Equality Caucus
18. Filipino Migrant Workers' Union (FMWU)
19. Friends of Conscience
20. Friends of Hong Kong in Vancouver, Canada
21. HK First
22. Hong Kong Christian Institute
23. Hong Kong Confederation of Trade Unions
24. Hong Kong Federation of Asian Domestic Workers Unions
25. Hong Kong Human Rights Monitor (HKHRM)
26. Hong Kong Subdivided Flats Concerning Platform
27. Hong Kong Unison
28. Indonesian Migrant Workers Union
29. Justice and Peace Commission of the HK Catholic Diocese
30. Labour Party
31. Law Lay Dream

32. League in Defense of Hong Kong's Freedoms
33. League of Indonesian Migrant Workers (LiPMI)
34. League of Social Democrats
35. Les Corner Empowerment Association
36. Mission For Migrant Workers
37. Overseas Nepali Workers Association - Hong Kong (ONWA-HK)
38. PathFinders Limited
39. Power for Democracy
40. Progressive Lawyers Group
41. Progressive Teachers' Alliance
42. Rainbow Action
43. Reclaiming Social Work Movement
44. Save Hong Kong with Universal Suffrage
45. Scholars' Alliance for Academic Freedom
46. Society for Community Organization (SoCO)
47. Stop Trafficking of People (STOP.)
48. Story Of the FronTiers (SOFT)
49. Thai Regional Alliance - Hong Kong (TRA-HK)
50. The Hong Kong Coalition for the Rights of Persons with Disabilities
51. The Professional Commons
52. United Filipinos in Hong Kong (UNIFIL-MIGRANTE-HK)
53. United Indonesians Against Overcharging (PILAR)

## **PART A: BACKGROUND: RAPID DETERIORATION OF RULE OF LAW IMPACTING LEGAL AND POLITICAL RIGHTS**

### **Serious Deterioration of the Rule of Law, One Country Two Systems and the general political situation in Hong Kong (HK)**

1. Since the Human Rights Council's last review of the China/HKSAR/Macau SAR report in October 2013, the political situation in HK has deteriorated, creating an environment in which rights guaranteed under the One-Country-Two-Systems (OCTS) arrangement and HK's international obligations under UN treaties are being persistently undermined.

### **One Country Two Systems Framework in Jeopardy**

#### **"Complete jurisdiction" asserted by China over HK despite guarantee of high degree of autonomy**

2. China has threatened the high degree of autonomy promised to HK under the OCTS framework set out in the Sino-British Joint Declaration (JD) through recent unilateral assertions of "complete jurisdiction over the HK Special Administrative Region (HKSAR)". China has increasingly intervened in HK affairs in areas reserved for the exclusive purview of HK under the Basic Law (BL) and the JD, including education, academic freedom, and local elections.

#### **Suspected kidnapping of HK residents in breach of OCTS; Violation of security of the person and protection against arbitrary arrest and torture, cruel, inhuman or degrading treatment**

3. The disappearance of HK resident Lee Bo<sup>1</sup> in late 2015 without corresponding immigration records sparked widespread concern that he was kidnapped and removed from HK to Mainland China without due process and held in custody without notification to the HKSAR government (HKSARG). The ramifications are extremely serious as the exercise of China's laws in HK, with the exception of those explicitly mentioned in the BL, is a direct violation of the JD and the BL.<sup>2</sup>
4. This failure to observe constitutionally-guaranteed boundaries risks exposing HK residents to Mainland laws without due process and strips them of human rights guarantees enjoyed under the BL and international treaties which are applicable to HK.
5. The Council is urged to call on the HKSARG to (a) conduct a thorough and objective investigation into the circumstances surrounding Lee Bo's disappearance and to make the findings public; and (b) reaffirm its commitment to the constitutional guarantees under the BL which preclude the application of Chinese law enforcement within the SAR.

### **Rule OF Law Replaced by Rule BY Law**

6. The Rule of Law is the lynchpin safeguarding the rights and freedoms of HK people. Increasingly, China and the HKSARG are imposing Rule *by Law*, as a means to achieve political and other objectives. The selective use and application of laws, distorted and preemptive interpretation of legal provisions and the targeting of political dissidents as a means to suppress opposition forces and human rights defenders, and others who question the authority of those in power is evidence of the deteriorating political

environment. These actions threaten judicial independence and undermine the public's confidence in the HKSARG's commitment to safeguarding fundamental rights and freedoms.

### **Co-location arrangement**

7. The joint immigration checkpoint, part of the HK station under construction in Kowloon for the Guangzhou-Shenzhen-HK Express Rail Link, would enable the enforcement of the full array of Mainland laws in designated parts of HK, including the "Mainland Port Area" of the railway network. This contravenes the BL which explicitly requires national laws applicable to HK to be listed in BL Annex III. The result is that HKSAR laws, including those implementing the HKSARG's obligations under the ICCPR (incorporated by the Hong Kong Bill of Rights Ordinance), CEDAW, CAT, and other relevant human rights treaties, and relevant criminal laws will be excluded from application in this area. Trains will constitute Chinese territory for the purpose of determining the law to be applied.
8. This co-location arrangement violates the stated guarantees in the JD/BL and is inconsistent with HK's international obligations under the ICCPR.<sup>3</sup> Co-location suggests further devolution of HK territory and is especially concerning in light of the Lee Bo incident and China's 2014 White Paper, which asserted China's "comprehensive jurisdiction" over HK and suggested that HK judges were merely "administrators".

### **Treatment of Political dissidents**

9. The timing of the arrangement adds to concerns about the purge of pan-democrat politicians, viewed as "anti-China", from political institutions, using China's power of final interpretation under BL Article 158(1). This has resulted in the disqualification of elected members of the Legislative Council (LegCo) on grounds of irregular oath-taking and the debarring of persons from standing for election, including in the most recent round of by-elections. This constitutes an unlawful vetting of electoral candidates in breach of Article 25 of the ICCPR and the BL and disenfranchisement of substantial proportions of the electorate.
10. Similarly, the targeted, preemptive interpretations of the BL have tied the HK Judiciary's hands when determining the outcomes of cases with a political element. The selective use of prosecutorial and review of sentencing powers is also troubling. Other concerns include (i) the invocation of archaic, previously unused legal provisions to construct charges against political opposition leaders and activists; (ii) the denial of parliamentary privilege to cover expressions of dissent in LegCo; (iii) the use of fabricated evidence against political protesters; (iv) the pursuit of uncharacteristically heavy sentences for human rights defenders (especially young democracy activists) and (v) the lack of disciplinary action against police for misuse of powers in the policing of protesters during the Occupy movement and the general impunity with which triads and thugs acting against Occupy demonstrators were able to operate without being caught or charged. Sixteen youths have been imprisoned for their participation in the Occupy Movement and the protest against the development plan of a rural area (North East New Territories). They are barred from running for electoral office for five years.
11. A persistent narrative suggesting that judicial review is being "misused" for personal enrichment aims to discredit human rights defenders - including lawyers - who assist in

important legal challenges. Calls to raise the threshold for leave to access the courts are not unconnected to the increasingly frequent statements by pro-China elements condemning “foreign” (i.e. non-ethnic Chinese) judges including the judge who convicted the police officers for assaulting a pro-democracy protestor Ken Tsang.

12. This narrowing of the political space for freedom of expression, including lawful dissent, appears to be a deliberate campaign by those in power to curb opposition and undermine any prospects for true democratic development. The spectre of implementation of national security legislation (Article 23 in the BL), looms large.
13. The Chinese Government has displayed a reckless disregard for its obligations under international law. Its officials have called the JD an ‘historical document’ which is no longer subject to international oversight or enforcement. In January 2016, then Chief Executive CY Leung stated that HK may need to withdraw from the CAT because of the so-called “bogus refugee” problem.
14. The Council is asked to urge both the Chinese and HKSAR Governments to respect the rule of law and their obligations under the JD/BL and specifically for the Chinese Government to (a) exercise restraint in the use of its powers of interpretation of the BL; (b) respect the principle of judicial independence; and (d) respect the delineation of responsibilities between the HKSARG and the Chinese Government enshrined under the BL.

## **PART B: LACK OF HUMAN RIGHTS COMMISSION COMPLIANT WITH PARIS PRINCIPLES & MANDATE WITH NECESSARY INVESTIGATIVE POWERS OVER DIVERSE HUMAN RIGHTS ISSUES**

### **Human Rights Commission & Mandate**

15. Despite numerous calls by various UN treaty bodies including the HRC and the CESCR, the HKSARG has yet to establish a human rights commission with investigative powers and a mandate that covers the full range of human rights protections enshrined in the BL and HK’s international human rights obligations under the ICCPR, CEDAW, CERD, CRPD, CRC, CAT and the ICESCR.

### **Legislation Imposing Liabilities for Human Rights Violations by Non-State Actors**

16. There is no general legislation prohibiting violations of human rights by non-government actors. Increasingly, cases involving migrant domestic workers (MDWs), victims of human trafficking and sex workers reveal the critical need for such legislation to ensure that private and government actors are held accountable for gross human rights violations.

### **Weak Equal Opportunities Commission Inconsistent with Paris Principles**

17. Although the Equal Opportunities Commission (EOC) implements anti-discrimination legislations on sex, disability, family status, and race, it lacks independence and does not satisfy the requirements of the Paris Principles. Its mandate is limited to the four anti-discrimination laws, which have glaring gaps identified by the EOC itself in its Discrimination Law Review that made 127 recommendations of amendments on the

laws to the HKSARG in 2015. The HKSARG has only prioritised to implement 9 of the recommendations.

18. Moreover, the EOC's track record since its establishment in 1995 highlights its limited ability to investigate and provide remedies for discriminatory conduct. Since its establishment, the EOC has only directly litigated two cases, one on sex discrimination and another on disability discrimination. Another clear example of the the EOC's lack of teeth is that in the ten years since the enactment of the Race Discrimination Ordinance (RDO) only one case, pursued privately by a minor against the police, has reached the courts. It failed because the RDO exempts government powers and functions from its purview.
19. The Council is urged to ask the HKSARG to (a) fulfil its international human rights obligations by enacting relevant implementing legislation; and (b) to set up a human rights institution that meets the requirements of the Paris Principles. In the meantime, the EOC's mandate should be expanded to ensure compliance with these principles and civil society recommendations and the relevant anti-discrimination legislation .

## **PART C: THREATS TO SPECIFIC HUMAN RIGHTS**

### **Politically motivated prosecutions against protestors and Legislative Councillors; the lack of prosecutorial independence**

20. The prosecutions of prominent human rights defenders, including young leaders in the Umbrella Movement of 2014 and pro-democracy LegCo Members and the Secretary for Justice's pursuit of heavy sentences raise serious questions as to prosecutorial independence from political considerations.
21. Prosecutorial independence in the pursuit of legal charges against protestors, and generally, is of utmost importance, in accordance with international best practice in the implementation and enforcement of public law. The administration of legal aid should also be made independent of the HKSARG.
22. In order for justice to be done and seen to be done, the Council is requested to urge the HKSARG (a) to delink the office of the Director of Public Prosecutions from the Secretary for Justice; and (b) to set up an independent legal aid authority to administer legal aid in HK.

### **Right to political participation, to vote and stand for electoral office**

23. Constitutional reform towards genuine universal suffrage for the election of the Chief Executive and the Legislative Council has been stalled for almost a decade.
24. The framework for electing the 2017 Chief Executive was introduced by the Chinese Government in August 2014 and subsequently used as the basis for the HKSARG's political reform package introduced in LegCo. It manifestly failed to meet the ICCPR's standards of universal and equal suffrage, and incorporated mechanisms and threshold requirements for the nomination process which imposed severe and intolerable restrictions on those intending to run for office before they were eligible to stand for election. The HK electorate would have been limited to voting only for those candidates

screened-in by this nomination process. While the electorate would finally be able to cast a direct vote, the candidates themselves would be subject to approval by the Central Government. The widespread discontent against this Decision triggered the Occupy/Umbrella Movement in 2014.

25. Candidates intending to run for the 2016 LegCo elections and the 2018 LegCo by-elections faced a new requirement to declare in writing their intention to uphold the BL. The authority of the District Electoral Officer, tasked to enforce this new requirement, has been questioned in light of the lack of procedural safeguards for due process. This has led to a “pre-screening” of candidates on the basis of their perceived sincerity and propensity to uphold or, conversely, to violate the BL. Six legislators elected in 2016 were later disqualified following judicial reviews of their fitness for office. The electorate’s right to participate in free and fair elections is, consequently, under threat from this use of mechanisms to disqualify elected members and screen potential candidates, supported by the NPCSC’s pre-emptive interpretation of the lawfulness of the measures adopted. These developments are contrary to the guarantee set forth in Article 25 of the ICCPR.
26. The Council is urged to insist that the HKSARG urgently implement the guarantee of universal suffrage in accordance with Article 25 of the ICCPR and remove measures designed to pre-screen eligible candidates from standing for election.

#### **Threats to academic freedom and freedom of the press**

27. Threats to media freedom have arisen in the face of increasing consolidation of ownership of HK media by Mainland or Mainland-backed entities (up to 35% of mainstream media); the downsizing and outsourcing of major media; and increased violence against journalists and self-censorship. HK’s press freedom ranking dropped by an alarming 55 places, from 18<sup>th</sup> in 2002 to 73<sup>rd</sup> in 2017.<sup>4</sup>
28. Additionally, academic freedom is under threat. In 2015 the Council of the University of HK - chaired by a pro-government loyalist who had been appointed over the objection of the vast majority of the university community - rejected the unanimous recommendation of an international search committee for the appointment of the former Dean of the Faculty of Law as the institution’s Pro-Vice Chancellor. This was widely seen as politically motivated given his core expertise in human rights law, his open criticism of the Chinese government and his perceived association with one of the Occupy Movement leaders, another member of the Law Faculty. The outgoing Vice Chancellor of HKU recently revealed that he had regularly met with and received the advice of officials from the Chinese Liaison office in HK which adds to concerns about academic freedom. Academics have increasingly felt that their political activism compromises their prospects for contract renewal, promotion and tenure and access to senior administrative positions.
29. The Council is asked to urge the HKSARG to ensure (a) due protection of academic freedom and freedom of the press; and (b) to put into place appropriate mechanisms to preclude interference with these freedoms. In particular, individuals should be free to engage in various forms of political participation without facing repercussions professionally as these activities entail the exercise of their civil and political rights.

### **Inadequate housing**

30. The Long Term Housing Strategy states that HK's "housing challenge is characterized by a serious supply-demand imbalance, housing prices and rents at a level beyond the affordability of the general public and out of line with our economic fundamentals, the proliferation of subdivided units, and long queues for public rental housing (PRH)."<sup>5</sup> A recent survey by Demographia suggests that the HKSAR remained the least affordable housing market for the eighth straight year, with a Median Multiple of 19.4 in 2017.<sup>6</sup> Academic research has suggested house prices are artificially maintained by restrictive land-use regulation, indicating that it is within the Government's ability, and responsibility to correct the present situation and provide sufficient adequate housing to residents. The current housing crisis leaves an overwhelming number of families and individuals unable to access adequate housing.
31. The Government should provide a broader variety of housing, including transitional housing and social housing with individual rooms as short-term relief measures, and speed up PRH projects for long-term relief.

### **Subdivided units**

32. According to the 2016 Population By-census, there were 92,700 Subdivided Units (SDUs) in HK,<sup>7</sup> accommodating some 91,800 households and 209,700 persons, most comprising low-income families. The median monthly household income was \$13,500 which was almost half of all domestic households (\$25,000). However, structural safety concerns caused by reconstruction, poor hygiene due to narrow living space (the median per capita floor area of the accommodation was 5.3m<sup>2</sup>), tenant evictions due to lack of rent control or protection of tenants' right against unreasonable and unaffordable rents (Platform Concerning Subdivided Flats and Issues in Hong Kong, 2016) have exacerbated these conditions.
33. We request the Council to urge the Government to incorporate the right to adequate housing (see General Comment 4 of CESCR) into the overall objectives of its housing policy, i.e. to set a minimal housing standard.

### **Poverty in an affluent society**

34. HK has a population of 1,352,500 poor persons and a poverty rate of 19.9%.<sup>8</sup> This is despite one of the highest rates of GDP per capita in the world (at over USD\$46,000 in 2017).
35. Income and wealth disparities have worsened reaching their peak in the past twenty years. HK's 7.3 million population has the world's third largest concentration of individuals worth more than \$30 million.<sup>9</sup> Its wealthiest 10% of households earned about 44 times more than the poorest 10%, which only earned an average of US\$326 (HK\$2,560) a month in 2016.<sup>10</sup> HK's Gini Coefficient, up from 0.525 in 2001 to 0.539 in 2016, is one of the highest in the world.
36. The Government should adopt a comprehensive anti-poverty strategy and strengthen mechanisms for wealth redistribution in order to narrow the income disparity between the rich and the poor. Moreover, special policies in relation to specific marginalized groups, such as women, elderly and children, should be introduced.

37. The Government should review its comprehensive social security system to ensure the basic standard of living of retired persons, the unemployed, and low-income families.

## **PART D: POPULATION GROUPS VULNERABLE TO SYSTEMIC HUMAN RIGHTS ABUSES AND LACK OF LEGAL PROTECTION**

### **Asylum Seekers and Refugees**

#### **Plans to fast-track & Provision of Legal Assistance**

38. Since 2017, the HKSARG has set a policy target of determining 5,000 or more non-refoulement claims annually.
39. In the past year, the HKSARG has launched a Pilot Scheme (“PS”) providing publicly-funded legal assistance to non-refoulement claimants under the Unified Screening Mechanism (“USM”) in parallel with the Duty Lawyer Service Scheme (“DLS”). The legal profession has heavily criticized the PS for its lack of independence; it is administered directly by the Security Bureau which gives rise to the perception that it will be used to clear the backlog of claimants without sufficient regard to procedural fairness.<sup>11</sup> The PS also potentially compromises the right to legal representation by its payment structure.<sup>12</sup> The PS suggests the Government’s policy is not aimed at ensuring that meritorious claims are recognised and at-risk persons protected from refoulement; instead it further supports a “culture of disbelief”, a pernicious feature of refugee screening throughout the world.<sup>13</sup>

#### **Pre-screening Policy & Attempts of Forced Removal / Torture and CIDTP of non-refoulement claimants in detention**

40. The Director of Immigration requires that in order to “make” a non-refoulement claim, a person must first submit a written signification to the Director. Only after the person’s claim is considered to be “made”, will the Director refer him/her to DLS (or PS). This practice puts claimants who are detained and who may be without access to a lawyer at particular risk.

#### **Denial of Legal Aid to non-refoulement applicants**

41. It is becoming increasingly difficult for claimants to obtain legal aid to challenge adverse decisions, which must be launched within 3 months of a rejection.<sup>14</sup> The lengthy Legal Aid process renders claimants at risk of being time-barred from challenging what may be a grossly unfair assessment of their claims. The Court of First Instance (CFI) has recently refused leave on the ground of delay alone.

#### **Lack of Transparency: Appeal Board Decisions Unpublished**

42. Decisions of the Director of Immigration and the Torture Claims Appeal Board (TCAB) are not published (even on a redacted basis). This opaqueness deprives the system of a check on quality and consistency and inserts an imbalance into the appeal process, given the Director is commonly present at appeal hearings and has access to all determinations of the TCAB. The HKSARG noted in its follow-up report (Nov 2016) that it is “assessing” the recommendation for publication of decisions. The Council is urged to press for implementation as soon as possible.

### **Denial of status & access to work & in-kind assistance: living below the poverty line**

43. Claimants under the USM have no lawful status in the SAR and no ability to apply for one. They are prohibited from work, and receive minimal “in-kind” support. There are palpable and lasting mental effects of living for an indefinite period in such conditions pending determination of their claims. These are particularly acute when families are involved.

### **Migrant domestic workers: Human Trafficking for Labour and Sex**

#### **Discriminatory Immigration Policies & Defective Anti-Human Trafficking Legislation**

44. Over 360,000 MDWs are working in HK with a “Foreign Domestic Worker Visa” (Visa). The conditions of this Visa are highly restrictive and any breach is regarded as constituting a criminal offence. This overhanging threat has led to abuse and maltreatment in many cases.
45. For example, the mandatory requirement that MDW live in the employer’s home forces MDW’s to live in often inadequate accommodation. The employer will sometimes represent to the Director that they will provide suitable space, but then force the helper to use toilets, kitchens, cupboards and even rooftops or other common areas outside the employer’s apartment.<sup>15</sup>
46. Change of employer is not permitted. MDWs must leave HK within 2 weeks of the end, or premature termination, of their contracts.
47. Employment agencies frequently charge more than the permitted 10% of the first month salary.<sup>16</sup>
48. These policies have facilitated the forced labour of MDWs but have never been seriously reviewed, despite clear evidence of exploitation, violence, debt bondage and trafficking.
49. The trafficking of persons for commercial sex exploitation is illegal under s.129 of the Crimes Ordinance. However, the law does not expressly cover the crime of human trafficking for the purpose of forced labour and Article 4 of the Bill of Rights (ICCPR Art.8) had not been implemented into specific legislation. The HKSARG is currently appealing against a recent CFI judgment which was sharply critical of the inadequacy of the law in this area.
50. Repeated calls for reform - including for abolition of the “two-week” and “mandatory live-in” rules - have largely gone unheeded. Cases such as Erwiana, an Indonesian MDW severely maltreated by her employer, represent extreme but not isolated examples of what can happen as a result of these policies.
51. The lack of a comprehensive and effective anti-human trafficking legal framework addressing multiple forms of exploitation including forced labour and victims of human trafficking represents a serious and glaring omission and one which requires urgent attention.
52. Furthermore, the HKSARG must establish a comprehensive monitoring and complaints mechanism to ensure MDWs are provided with suitable accommodation and protected

from agency abuse. The two-week rule and live in rule should both be abolished. These gaps disproportionately impact women, particularly ethnic minority women.

### **Treatment of Migrant Sex Workers**

53. Sex work in HK is not illegal, but those who are non-residents and who engage in such work face criminal sanction for breach of their conditions of entry. Coupled with the high level of stigma faced by sex workers in general, migrant sex workers are particularly vulnerable to systematic abuse as they are usually ignorant of their legal rights in HK.
54. The prosecution of prostitution is, commonly, based on either the migrant sex worker “establishing a business” without permission from the Immigration Department or “taking up unapproved employment”. In most cases such persons would plead guilty to one or other offence as the standard sentence is almost always less than the time they would spend on remand pending trial if they were to plead not guilty. This “backdoor” method of prosecuting and deterring sex workers has continued for years without any open review and reform.
55. Due to their irregular/illegal migration status, such sex workers are often arbitrarily arrested without having gone through any sort of screening process or interview, specifically as potential victims of human trafficking. Reports have emerged of police and correctional personnel maltreating migrant sex workers, including verbal abuse calculated to demean and oppress.
56. The Council is urged to call on the HKSAR to (a) enact comprehensive legislation to criminalise all human-trafficking including specific provisions relating to trafficking of labour and sex workers; (b) devise a system to protect the physical, psychological and mental well-being of human trafficking victims in HK; (c) train frontline law enforcement officers to identify victims in this regard, develop risk assessments and safe exit plans; (d) abolish the “two-week rule” and the “mandatory live-in policy” which create the vulnerabilities and enabling conditions for such trafficking and ensnarement of unsuspecting victims; and (e) raise public awareness about the conditions and prevalence of human trafficking and implement effective training, screening and prevention measures.

## **Children**

### **Establishment of a Children’s Commissioner**

57. Numerous stakeholders in HK, backed by the Committee on the Rights of the Child, have long called for the establishment of a Children’s Commissioner. It is essential that a Children’s Commissioner be independent, established by statute, and in accordance with the Paris Principles.
58. There are several incidents which highlight the need for a Children’s Commissioner. In 2016, 61 children, most of them pre-school age and victims of abuse, were hospitalised not because of any medical needs but because there was nowhere else to place them. The average period of such placement in medical wards was 42 days. The potential long-lasting impact is stark. One NGO reported that 6 very young children sent to hospital were tied to their beds and/or placed in restraint vests.

59. Beyond the most basic elements of care, there are no mechanisms to cater for children who remain with a parent in prison. The Prison Rules (Cap 234A, s21) must be urgently reviewed to ensure that the medical, social and educational needs of these children are properly provided for during this critical formative period in their lives.

### **Ethnic Minorities**

60. The Race Discrimination Ordinance exempts government powers and functions from its purview, rendering ethnic minorities (EMs) vulnerable to systemic discrimination in multiple respects, in defiance of recommendations from CERD(2009) and HRC(2013).
61. EM children face systemic discrimination in education. A recent study found that one in four kindergartens routinely reject applications from EM children.<sup>17</sup> Similarly, although the system of “designated schools” (separate public schools in which a majority of EM children were placed) was officially abolished in 2013, 17 public primary and secondary schools continue to have high concentrations of over 70% EM students, amounting to *de facto* racial segregation. The HKSARG has not addressed related concerns raised by the HRC(2013), the CRC(2013), or the CDESCR(2014).
62. Racial segregation of EM children in schools prevents their integration into HK society, perpetuating misunderstandings and negative stereotypes about EMs. These attitudes impact equal opportunities for EMs across various areas of life, including employment, income, and health.<sup>18</sup> The majority of EMs work in elementary occupations and a quarter of them live below the poverty line. Many lack access to basic amenities due to language barriers.

### **Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People**

63. The HKSARG has yet to take any active steps to enact an anti-discrimination law to protect persons from discrimination on the basis of their sexual orientation and gender identity. They have also not moved towards reform of laws that impact intersex and transgender persons to reflect the concerns previously raised by the CAT and CEDAW, including requirements that transgender people undergo sterilization surgery before they can change their gender marker on identity documents and the fact that intersex infants/children are forced to prematurely adopt a binary gender identity resulting in the issue of non-consensual cosmetic genitalia surgeries remaining unaddressed.
64. HK remains without a comprehensive and inclusive gender recognition scheme to guide its policies and laws allowing for the perpetuation of discrimination and maltreatment.
65. The HKSARG should be urged to enact comprehensive and inclusive gender recognition legislation, remove all preconditions which are inconsistent with such inclusivity and recognition and give specific recognition to an intersex gender.

## **PART E: POLICE POWERS & POLICING OF DEMONSTRATIONS**

### **Arbitrary and excessive force**

66. The use of arbitrary and excessive force by the HK police was on international display during the Occupy Central protest movement which began in October 2014, exposing a rising culture of impunity in the police force.<sup>19</sup>

67. The monitoring of the use of non-lethal weapons during public assemblies has been ineffective. The HK Police must make public the Police General Orders (PGOs) and the Force Procedures Manual, especially Chapter 29 of the PGOs concerning the use of force and firearms as well as other related guidelines and manuals on using non-lethal weapons.

### **CCTV**

68. A number of reports show that arrested persons face physical and verbal violence in police vehicles, but cannot succeed in holding the police officers responsible due to the dark environment in those vehicles and lack of witnesses. We urge the police to install video and audio recording devices on all police vehicles.<sup>20</sup> To detect any attempts by detainees to commit suicide or self-harm and to monitor any unlawful or improper treatment of prisoners, we also urge the police to install CCTV within detention facilities (exclusive of private areas such as toilets) in all police stations and custodial institutions.<sup>21</sup>

### **Free legal advice and police station visitation service**

69. Allegations are frequently raised that arrested persons are threatened by police during interviews in the absence of legal representation. Provision of free legal aid and legal advice should be extended to arrested persons.

### **Independent Police Complaints Council**

70. In the face of the rising magnitude of abuse of power by the police, the Independent Police Complaints Council (IPCC) has been heavily criticised for its lack of independence and its limited mandate and powers to investigate. It is urged that the IPCC be reformed or replaced by a Paris Principles-compliant body.<sup>22</sup>

### **Improving Awareness and Procedures for Handling Persons with Disabilities**

71. Following the police's serious mishandling of a man with autistic characteristics and moderate intellectual disability in a manslaughter case in 2015,<sup>23</sup> the Working Group to Review the Care of Mentally Incapacitated Persons was established to review procedures for handling cases involving people with disabilities in partnership with relevant stakeholders.<sup>24</sup> This partnership resulted in a series of important, timely actions and measures.<sup>25</sup>

## **PART F: PRISONERS MALTREATED**

### **54 victims documented proving systematic abuse**

72. In July and August 2017 a civil society organisation, Reclaiming Social Work Movement, interviewed 54 young former prisoners and found that young prisoners were frequently subjected to physical punishment and inhumane treatment by officers in correctional institutions. Many of those affected had attempted suicide and inflicted self-harm during imprisonment due to abuse and ill-treatment.
73. Similar experiences of physical abuse were documented in cases spanning over two decades and from different correctional institutions, indicating that these are not isolated incidents but a systematic practice by correctional service officers.

### **Police investigation**

74. Supported and assisted by the Reclaiming Social Work Movement, on 21 November 2017 five former inmates filed a formal complaint to the police, and concluded the statement giving process on 16 December 2017. It is understood that the Police will conduct formal investigations into four of the five cases, but no further progress has been communicated as of the date of this submission. The Administration also failed to acknowledge the severity of the problem or promise improvement.<sup>26</sup>
75. We call for an independent investigation into the allegations of abuse and ill-treatment of young prisoners by correctional services officers, an improved mechanism for the handling of such complaints, and enhanced training for all officials from correctional services department on the absolute prohibition of torture and the terms of the Istanbul Protocol.
76. In light of the potential for gross human rights violations and the lack of legal recourse experienced by such marginalised persons, the Council is urged to ask the HKSARG to set up effective oversight mechanisms that note these vulnerabilities and offer appropriate assistance and advice to mitigate the possibilities for abuse. Where such maltreatment has occurred, the government is urged to set up independent complaints mechanisms which are responsive and provide urgent redress to complainants in light of the unique risks they face if such complaints go uninvestigated.

## **PART G: ABUSE OF OLDER PERSONS AND PERSONS WITH DISABILITIES (PWDs) IN RESIDENTIAL CARE HOMES**

### **Documented abuse in residential care homes**

77. Cases of unnatural deaths, sexual assault or harassment, unsanitary living conditions, physical abuse, medical overdose, etc. in care homes persist and more cases on degrading treatment of residents in care homes have been made public.<sup>27</sup>

### **Long-term policy to ensure the eradication of the potential for such abuses**

78. Without a comprehensive policy to phase out institutions and ensure the quality of life of the residents in such settings, the physical and emotional distress and suffering of residents under institutional and residential care are likely to persist.
79. The Council should urge the HKSARG to review relevant legislation and ensure effective monitoring systems to oversee residential care institutions and the staff employed within them, and implement a long-term policy to shift the focus from institutional to community living (in line with CRPD Article 19) by providing options of accommodation and community support to PWDs and the elderly, ensuring a dignified living free from abuse and degrading treatment.

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<sup>1</sup> One of the operators of the Causeway Bay Bookstore, which is owned by Mighty Current.

<sup>2</sup> See articles 2 and 3 of the JD and the CAT's Concluding Observations 2015, CAT/C/CHN-HKG/CO/5, paras. 22-23.

<sup>3</sup> Including the non-denunciation clause; doctrine of protection devolves with the territory once protected, will be so protected irrespective the changes in sovereignty; and the CAT

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<sup>4</sup> Reporters Without Borders, *2017 World Press Freedom Index* accessible at <https://rsf.org/en/ranking>

<sup>5</sup> Transport and Housing Bureau *Long Term Housing Strategy* 2014: iii.

<sup>6</sup> This means people need to live without food or drink for 19.4 years in order to purchase a property in HK. Therefore, without enough adequate housing in the market, residents can only wait for PRHs for more than 4.7 years and rent a house with unaffordable price and indecent living conditions as a last resort.

<sup>7</sup> Subdivided units (SDUs), are formed by splitting a unit of quarters into two or more “internally connected” and “externally accessible” units commonly for rental purposes (Census & Statistics Department, 2018).

<sup>8</sup> HKSAR Government Press Release “Analysis of poverty situation in HK in 2016 announced” 17 November 2017, accessible at <http://www.info.gov.hk/gia/general/201711/17/P2017111700634.htm>

<sup>9</sup> Behind only New York and London, according to a global wealth report by real estate consultancy Knight Frank.

<sup>10</sup> “Hong Kong wealth gap at its widest in decades as handover anniversary nears” Reuters 27 June 2017, accessible at <https://www.reuters.com/article/us-hongkong-anniversary-wealth-gap/hong-kong-wealth-gap-at-its-widest-in-decades-as-handover-anniversary-nears-idUSKBN191E2>

<sup>11</sup> Also, the non-involvement of the DLS in an increasing number of claims will remove an effective monitoring element from the USM scheme. The DLS is a service operated under the auspices of the Law Society and the HK Bar Association

<sup>12</sup> Assignments under this PS are limited to a flat fee. The fee for representation at the appeal/petition stage (HKD7,500) is troubling and potentially compromises the representation before the Torture Claims Appeal Board (TCAB), in that it disincentivizes work beyond the bare minimum.

<sup>13</sup> The Director of Immigration has adopted an excessively high threshold for assessing USM claims leading to an extremely low acceptance rate for asylum seekers, far below the level in other countries. As noted, there is a palpable and endemic “culture of disbelief” running through the decisions reached by both Immigration and on Appeal, by the TCAB. Also see Sedley J in *Sasitharan* [1998] Imm AR 487.

<sup>14</sup> The success rate has dropped from 53.06% in 2014 to 6.25% in 2016, see Legal Aid Department “Measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases” July 2017, accessible at <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1386-3-e.pdf>

<sup>15</sup> According to Mission For Migrant Workers “PICTURES FROM THE INSIDE: Investigating Living Accommodation of Women Foreign Domestic Workers towards Advocacy and Action” May 2017, accessible at <http://www.migrants.net/press-statement-new-study-shows-mdws-woes-on-unsuitable-accommodation-lack-of-privacy-and-insufficient-amenities/>. A challenge to this policy recently failed in the HK High Court.

<sup>16</sup> As documented by numerous treaty bodies, migrant domestic workers (MDWs) working in HK are charged 7 months of their salaries as employment placement and related fees by agencies in HK and their counterparts in countries of origin (home jurisdictions of MDWs). A document of the Indonesia Ministry of Manpower and Transmigration in 2012 states, placement fees by Indonesia agencies for an Indonesian to HK are set to be HK\$13,436, more than three times the statutory minimum wage for MDWs .

<sup>17</sup> EOC Study on Kindergarten Admissions 2018.

<sup>18</sup> Puja Kapai, “The Status of Ethnic Minorities in Hong Kong 1997-2014 Report”, Centre for Comparative and Public Law, The University of Hong Kong, 2015, accessible at <http://www.law.hku.hk/ccpl/wp-content/uploads/2018/03/Research/Human%20Rights/StatusofEMComplete.zip>

<sup>19</sup> While multiple convictions were secured against officers who used excessive force, the signal that these convictions sent was considerably undermined by a statement by the Commissioner of Police Stephen Lo Wai-chung, who expressed sadness not at the behaviour of the force members responsible but at the fact that they had been convicted. His statement was notably silent on any commitment towards preventing recurrences.

<sup>20</sup> The United Kingdom has already implemented these measures.

<sup>21</sup> It is also in pursuant to the HKSAR Coroner’s recommendation.

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<sup>22</sup> Appointment of membership to the IPCC is under the sole control of the Chief Executive, which has repeatedly been criticised for actual or apparently biased investigations in relation to police misconduct, and not in compliance with the Paris Principles. Furthermore, the IPCC lacks sufficient mandate and power to receive and investigate complaints against all officials in the police force. In 2017, the IPCC endorsed 936 cases that required full investigation but found 399 cases to be unsubstantiated or not fully substantiated. The fact that 42.6% of the complaints were rejected indicates the ineffectiveness of the existing investigation mechanism, and the difficulties encountered by victims in proffering adequate evidence against a police officer.

<sup>23</sup> See HK NGOs, “Submission from NGOs coordinated by the Hong Kong Human Rights Monitor to the Committee Against Torture on the implementation of the CAT in the Hong Kong Special Administrative Region, China” October 2015, Section 15, accessible at [http://tbinternet.ohchr.org/Treaties/CAT/Shared Documents/HKG/INT\\_CAT\\_CSS\\_HKG\\_22163\\_E.docx](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/HKG/INT_CAT_CSS_HKG_22163_E.docx)): the man was wrongly accused of manslaughter and was detained by the Police for some 50 hours in May 2015. The man’s specific needs arising from his condition were ignored and he was mistreated during detention, including being denied his routine medication, and treated as having admitted to the crime despite the severely reduced ability to communicate. Upon verifying that the man’s alibi, the police dropped the charge and expressed regret over the mistaken arrest.

<sup>24</sup> The Social Welfare Department, the Hospital Authority, organizations serving people with disabilities, and parents’ organizations.

<sup>25</sup> Measures include staff training, the introduction of the “Care Card Scheme”, the “Behavioural Indicators Guide” and a “Notice to Appropriate Adult” to enhance awareness and professional sensitivity of the police force when interacting with people with disabilities.

<sup>26</sup> Between June and November, 2016, Legislative councillors from the pro-democracy camp sent 7 formal letters to CSD Commissioner, Secretary for Security and the Chief Executive of HK, to request their attention to the ill-treatment of prisoners in correctional institutions. However, there has been no response to date. On 18th January 2018, a debate was held in LegCo over the call for the CSD commissioner to attend a public hearing on the issue, with the proposal being defeated by the pro-government majority. The HKSARG continues to ignore the severe, inhumane treatment that prisoners in the correctional institutions of HK are subjected to.

<sup>27</sup> One incident documented how a female resident with intellectual disability had been stripped naked by staff members in her care home for a “bathing demonstration”. Further, several deaths in residential care homes were suspected to have been related to ill-treatment or negligence. These included the provision of food unsuitable for the residents’ physical conditions, leading to choking, and a 14-year-old boy falling from a window in the care home and not being taken to hospital until spotted by passers-by.