

Hong Kong Human Rights Commission

No real promise for democracy or eradication of poverty

**Submission to the United Nations Human Rights Council for the
Universal Periodic Review (Second Cycle)
of Hong Kong Special Administrative Region, China**

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Hong Kong Human Rights Commission

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Introduction to the Hong Kong Human Rights Commission

The Hong Kong Human Rights Commission is a coalition of eleven non-governmental organizations including religious, women, community organizations and students groups. It was founded in March 1988. Although coming from different backgrounds, we share in the belief of the dignity and respect of each person and that every man and woman has inherent rights. As the "Human race is one", the Commission member organizations consider that mutual respect, equality and freedom form the foundation on which a just, peaceful, and humane society is built.

Over the years, the Commission has endeavored to promote and protect the human rights of the community. Not only does Hong Kong lack a democratic political system, its legislation also allows the government substantial power so as to maintain social control. Civilians are forced to submit to this power and therefore justice often fails to prevail. The Commission has been gathering resources in order to consolidate civil power. By doing so we hope to arouse public concern to the level where the people will push the government to reform.

Since it was founded, in addition to lobbying for the Bill of Rights and subsequent amendments to the law at local level, the Commission has also submitted reports to UN treaty bodies, attended hearings and lobbying at international level. Recognizing that public awareness and participation are vital to the development of human rights, the Commission has promoted human rights education through exhibitions, gatherings in schools and community centers. Although the Commission recognizes that its work has benefited many, there is the lingering feeling that much more can be done.

Members of the Hong Kong Human Rights Commission:

Christians for Hong Kong Society
Hong Kong Catholic Youth Council
Hong Kong Christian Industrial Committee
Hong Kong Christian Institute
Hong Kong Federation of Catholic Students
Hong Kong Social Workers' General Union
Hong Kong Storehouse and Transportation Staff Association
Hong Kong Women Christian Council
Justice and Peace Commission of the Hong Kong Catholic Diocese
Society for Community Organization
Student Christian Movement of Hong Kong

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

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

1.1 An unjust electoral system

The Chief Executive is the head of the Hong Kong Special Administrative Region (SAR). However, the citizens of Hong Kong are deprived of the right to choose their top leader by universal and equal suffrage. In 2012, the Chief Executive was only elected by a 1200-member Election Committee, which is comprised of 38 subsectors. Election Committee members of 35 of these subsectors are elected by geographical constituencies.

Serious retrogression occurred concerning the right of Hong Kong people to elect their representatives after the handover. Of the 70 members of the Legislative Council, only half are elected by geographical constituencies through direct elections. The other half is elected by functional constituencies, which grants more voting rights to people of the professional and business sectors. This is **far from the standard of universal suffrage**.

1.2 An “executive-dominated” political system

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

Firstly, the **voting procedures greatly handicap the members of the Legislative Council** in supervising the government and making it accountable to the public. The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council requires a simple majority vote of *each* of the two groups of members present, that is the functional constituencies and the geographical constituencies¹. In contrast, the passage of bills introduced by the

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

government only requires a simple majority vote of the members of the Legislative Council present. As a result, it becomes far more **difficult to pass motions, bills or amendments to government bills** introduced by individual members, which needs only a quarter of the members present in one of the groups to vote them down, than the passage of bills introduced by the government. Since the functional constituencies are dominated by business and sectoral interests that support the government, the passing of government bills becomes much easier than passing individual members bills.

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

1.3 The political intervention by the Central People's Government

In response to public pressure for universal suffrage, which is in fact already stated in the Basic Law³, the Chief Executive commenced public consultations by establishing the Constitutional Development Task Force in early 2004 to consult both the central authorities and the local public. However, without considering the views of the majority, the Standing Committee of the National People's Congress (NPCSC) reached a decision on the re-interpretation of the relevant provisions in Annexes I and II to the Basic Law on 6 April 2004, which was the second re-interpretation of the Basic Law after the re-interpretation concerning the right of abode case in 1999.⁴ In

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

³ Article 45 and 68 of the Basic Law concern the methods for selecting the Chief Executive and for forming the Legislative Council. In the articles it is specified that the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with the democratic procedures.

⁴ Since the change of sovereignty, there are three interpretations in Hong Kong. For more information, please visit the following links:

(1) The Interpretation by the Standing Committee of the National People's Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

http://www.info.gov.hk/basic_law/fulltext/index.htm

(2) Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex 1 and Article III of Annex 2 to the Basic Law of the Hong Kong Special Administrative Region of the Peoples' Republic of China

http://www.info.gov.hk/basic_law/fulltext/0406npcsc_e.pdf

(3) Decision of the Standing Committee of the National People's Congress on issues relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in the year

addition, the NPCSC promulgated on 26 April 2004 the decision, which **outlawed the possibilities for introducing universal suffrage** of the Chief Executive in 2007 and the Legislative Council in 2008.

The re-interpretation by the NPCSC seriously violates the **judicial independence** of the Judiciary in Hong Kong. Both the Central People's Government and Hong Kong SAR Government employed the interpretation to eliminate political conflict, which deteriorates the rule of law in Hong Kong and destroys the development of the entire society. However, the Government did not promise to stop re-interpreting the Basic Law anymore and the development of Hong Kong would be further destroyed.

After that, the Constitutional Development Task Force has released its Fifth Report on 19 October 2007, putting forward a set of proposals on the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008. The package allegedly increased the level of "democratic representation". However it did not make any significant improvement for democracy. Although the number of members of the Election Committee was to be increased from 800 to 1,600, it remains a "small-circle" election. Moreover, the proposed new electoral methods enhanced over a hundred of appointed District Board members to vote on the Chief Executive and it increased the number of seats of the functional constituency of the Legislature, which is an obvious **stepping backward in the fight for universal suffrage** and the equal participation.

It was first in 2007 that Beijing allowed for universal suffrage. However, this does not necessarily indicate that the universal suffrage will put in place. According to its decision, the NPCSC decision stipulates clearly that universal suffrage "**may be implemented**" for electing the Chief Executive in 2017 and after that, universal suffrage "**may be implemented**" for electing all the members of the LegCo. Moreover, appropriate amendments conforming to the principle of gradual and orderly progress may be made to the two electoral methods for 2012 in accordance

2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2008

http://www.info.gov.hk/basic_law/fulltext/0426npcsc_e.pdf

(4) Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress http://www.info.gov.hk/basic_law/fulltext/article1.pdf

(5) Explanations on the Draft Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress http://www.info.gov.hk/basic_law/fulltext/article2.pdf

with the relevant provisions of the Basic Law. This means that universal suffrage **shall not be implemented** as stated in the timetable, which provides a lot of room for alternation in view of the political arena. The lack of a clear promise on universal suffrage severely breaches the right to political participation of Hong Kong citizens and is harmful to the accountability of the government and the legislature in Hong Kong.

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

1.4. Limited powers of human rights institutions

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

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

The first step would be to strengthen the existing institutions. But even more important is that Hong Kong sets up a NHRI. Hong Kong Government must be up to international standards and establish a NHRC. This will constitute an important statement by and to the people of Hong Kong. It will demonstrate that Hong Kong recognizes and seeks to achieve the values of fairness, equal opportunity and tolerance.

C. Poverty in an affluent city

Hong Kong has long been regarded as an international and prosperous city and one of the wealthiest societies in the world in terms of per capita GDP, which was HK\$ 273,657⁵ (USD\$35,084) in 3rd quarter 2012. In reality, beyond the prosperity image, the **poverty problem in Hong Kong is deteriorating in both relative and**

⁵ Census and Statistics Department, 2012, Hong Kong Special Administrative Government. (http://www.censtatd.gov.hk/hong_kong_statistics/statistical_tables/index.jsp?subjectID=12&tableID=030)

absolute sense. The general public cannot share the fruits of the economic growth and the economic re-structuring has led more unemployed and under-employed people to live in poverty. Worst still, the government has denied its responsibility and has not taken any active measures to ameliorate the widening income disparity and poverty.

1.5 Number of poor people increased

According to official statistics, more than 1,206,000 **people lived below the poverty line in 2010** and they included low-income families, working elderly and the new immigrants from Mainland China. The population living in poverty made up 17.9% of the total population in 2010⁶.

Also, the Gini Coefficient of Hong Kong increased from 0.525 in 2001 to 0.532 in 2006 and 0.537 in 2011 (higher Gini Coefficient denotes higher income inequality). It is very ironic that this figure ranked top five among the developing countries although Hong Kong is one of the wealthiest societies in the world.

1.6 Lack of Anti-poverty policy and poverty alleviation monitoring mechanism

The SAR Government turned a blind eye to helping the poor. It rejected to establish a poverty line to monitor the situation. Although the Hong Kong SAR Government established a Commission on Poverty in 2005, the Commission only lasted for two years and the Government dissolved the Commission before formulating any effective policy to eradicate poverty. As a result, the poor are inevitably suffering from the cancellation of various welfare grants. In the absence of any long-term policy, the day for eradicating poverty is not clear. Although the new Government decided to re-establish the Commission of Poverty in 2012, there are still no short-term measures or long-term policies to tackle the poverty problem.

1.7 Introduction of a 7-year hurdle for welfare application

Comprehensive Social Security Assistance (CSSA) is the only safety net to help Hong Kong residents that encounter financial difficulties. Currently, about 3-5% of CSSA cases are new immigrants of less than seven years residence. Most of them are single-parent families or families with chronic illness patients. They applied for CSSA,

⁶ Until now, there is no any official poverty line to define the population living in poverty. The number of population living poverty was defined in accordance with the definition of International Labour Organization (ILO) i.e. No. of persons in the households whose income are below half of the median household income.

as they could not find other resources. Without assistance from the CSSA system, new immigrants with financial difficulties cannot survive in Hong Kong.

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

1.8 Children

Children suffer the most with the widening **disparity between rich and poor in Hong Kong**. The child poverty rate in 2011 was 26.3%⁷ in Hong Kong. Living standards and development opportunities for these children are sadly compromised. There are 281,900⁸ children age under 18 living in poverty. They have to do their homework on their beds and earn their living at night collecting discarded paper, cartons and tins, in the center of an affluent Hong Kong. According to the recent research conducted by Society for Community Organization, it was found that one-fourth (25.2%) of the respondents of poor children have experienced starvation due to poverty and over one-fifth (20.9%) of the respondents expressed that they did not have three meals regularly every day⁹.

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

⁷ Figure for children under 18, from the Census and Statistics Department, 2011.

⁸ Figure from the Census and Statistics Department 2011. The poverty line is the half of the household monthly median income.

⁹ Society for Community Organization (SoCO) *Research report on the Quality of Life of the Children living in poverty* (July 2011)

http://www.soco.org.hk/publication/private_housing/children_research_2011_7_24.doc

D. Refugee Convention not signed by HKSAR

There are currently around 835 people in Hong Kong who seek asylum under the International Convention Relating to the Status of Refugees (Refugee Convention). Currently there are 117 people who have been granted refugee status. In addition to the Refugee Convention, people who escape their countries and seek refuge in Hong Kong may also seek protection under the Convention Against Torture (CAT). The screening of these cases is made by the Hong Kong Immigration Department. There are currently more than 7000 claimants under the Convention Against Torture.

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

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

E. Right to mental health

The number of people with mental illness (PMI) in Hong Kong has kept on increasing in the past few these years. According to official statistics,¹⁰ the number of public psychiatric patients increased by 26% from 147,557 in 2007/08 to 186,900 in 2011/12. In the past 10 years, the number of new psychiatric cases is ever increasing, and the figure is 31,900 in 2011/12. The figures show that mental health problems in Hong Kong are getting more serious.

1.9 Lack of resources and policy

The rising number of PMI demands more medical and social rehabilitation services in order to realize the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (ICESCR, article 12). However, the HKSAR fails to meet the service needs of the people with mental illness. The budget

¹⁰ Hospital Authority's reply to statistical request

for mental health services is only 0.24% of GDP. This is in contrast to 0.8-1% of GDP in most developed countries. According to the WHO Mental Health Atlas 2011, governments from all responding countries usually spend 2.86% of government expenditure in mental health services. However, the HKSAR Government only spends 1.6% of her expenditure in providing psychiatric rehabilitation services. On average, HK people only share USD 74 per capita in mental health resources, while the figure is USD 244 per capita for developed countries like UK and Australia.

In its 2001 concluding observations the Committee on Economic Social and Cultural Rights recommended: “the HKSAR undertake a comprehensive review of mental health policy and adopt effective measures to ensure that PMI enjoy the right to adequate and affordable health care”¹¹. In fact, the Equal Opportunities Commission (EOC) in Hong Kong also suggested the HKSAR to introduce an independent Mental Health Council to supervise the mental health services provided. However, the **HKSAR turned down the recommendations from the Committee** and the EOC. Rather, the HKSAR regards the existing structure to be working well enough¹².

The worsening mental health situation in Hong Kong and a number of bloody tragedies which happened to families with members suffering from mental illness, obviously rebut the claim of HKSAR that “the system has worked well”.¹³ In January 2007, the Legislative Council passed a motion to urge the HKSAR review the existing psychiatric rehabilitation policy and services, and to establish a “Mental Health Policy” as well as a “Mental Health Council” to co-ordinate relevant policy measures and rehabilitation services. The HKSAR however simply ignored the request. The lack of a comprehensive policy review and the establishment of a new structure to handle the relevant issues clearly show that the HKSAR has failed to fully realize the citizens’ right to mental health. Though the HKSAR is going to establish a committee to review the psychiatric rehabilitation services, it has to be seen whether such review will bring the realization of right to mental health into higher political agenda.

¹¹ Concluding Observations of the Committee on Economic, Social and Cultural Rights (2001), p. 6, para 45.

¹² HKSAR (2003) Second Report of the HKSAR of the People’s Republic of China in the light of the International Covenant on Economic, Social and Cultural Rights, p. 140.

¹³ HKSAR Response to the List of Issues presented by the Committee on Economic, Social and Cultural Rights on 21 May 2004.

F. Strong police power brings serious police brutality

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

1.10 Ineffective complaints mechanism

Unfortunately, this unfavorable condition has not been resolved by the current complaint mechanism. The complaints about abusive use of power by the police remain common and an independent complaint mechanism to investigate the complaints has been urged by various sectors of the community. Indeed, the Complaints against Police Office (CAPO) has long been criticized for **lack of credibility** because it is a part of the police system. The independence and fairness of officers working in CAPO is questionable, as they come from the police force and will return to their posts in future. In fact, many complaints have been dropped due to the lack of evidence. For instance, in 2011 only 2.9% of the cases were substantiated.

The number of allegations against police officers has increased significantly after 2008. However, there has been no significant increase in the percentage of cases that have been found substantiated. From 2005-2011, the substantiation rate has been around 3%. Also, at the same time during this period, the withdrawal rate has been slightly increasing from 47.8% in 2005 to 55.6% in 2011 (table 1).

Table 1. Allegations endorsed 2005-11 and substantiation and withdrawal rates.

Year	2005	2006	2007	2008	2009¹⁴	2010¹⁵	2011¹⁶
Total number allegations	4,695	3,518	4,341	4,523	6,497	7,182	6,239
Substantiated/Substantiated other than reported	145	100	100	123	221	226	178
Substantiation rate	3.1%	2.8%	2.3%	2.7%	3.4%	3.1%	2.9%
Number of cases withdrawn/not pursuable	2,246	1,719	2,232	2,413	3,533	3,772	3,471
Withdrawal rate	47.8%	48.9%	51.4%	53.3%	54.4%	52.5%	55.6%

¹⁴ 1 April 2009-31 March 2010

¹⁵ 1 April 2010-31 March 2011

¹⁶ 1 April 2011-31 March 2012

1.11 No investigative power of the IPCC

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

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

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

G. Recommendations

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

4.

4. To ensure the basic standard of living of retired persons, low-income families and

unemployed persons, the Government should review its comprehensive social security system. The Government should resume the special grants to the welfare recipients.

~~6.5.~~ The government should abolish the 7-year hurdle for welfare application and the 1-year residence in Hong Kong rule.

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~~7.6.~~ The government should establish an independent monitoring body on the rights of the child and pursue an integrated and holistic approach to the adoption of legislation on the rights of the child.

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~~8.7.~~ The Government to should review the existing policy and service related to people with mental illness. The Government should also formulate a mental health policy and appropriate establishment to carry out such policy.

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~~9.8.~~ The government should establish an independent police complaint mechanism, which is not only embedded with the power of observation, but also the power of investigation of every allegation to handle those complaints. The recommendations of the monitoring body should be legally binding on the law enforcement agency so as to increase the protection on complainants.

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~~10.9.~~ The Hong Kong government should immediately sign the Convention Relating to the Status of Refugees and set up a fair screening procedure to meet its obligations under the Convention Relating to the Status of Refugees.

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