

# Hong Kong UPR Coalition Joint Submission

## Legislative and institutional framework

### *Human rights legislation*

1. While the Bill of Rights incorporates the International Covenant on Civil and Political Rights (ICCPR) domestically, there is no ordinance incorporating other international human rights treaties. **Consistent with concluding observations of the Committee on Economic, Social and Cultural Rights (CESCR), Hong Kong Special Administrative Region (HKSAR) should adopt a comprehensive human rights ordinance to incorporate all international human rights treaties that apply to HKSAR in domestic legislation within two years.**<sup>1</sup>
2. The Equal Opportunities Commission (EOC) recommended the Government consider consolidating the existing four anti-discrimination ordinances into one to simplify and harmonise protections from discrimination.<sup>2</sup> The EOC also recommended consultation and research to introduce a public sector equality duty to promote equality and eliminate discrimination.<sup>3</sup> **Consistent with concluding observations of CESCR, HKSAR should adopt comprehensive anti-discrimination legislation within two years.**<sup>4</sup> Such legislation should establish a public sector duty to promote equality.

### *Human Rights Institution*

3. There is no independent statutory human rights institution to investigate and monitor violations of human rights. **Consistent with concluding observations of the Human Rights Committee (HRC), CESCR and the Committee on the Rights of the Child (CRC), HKSAR should establish a human rights institution within three years that has a broad mandate in line with the Paris Principles and is provided with adequate financial and human resources.**<sup>5</sup>

### *Equal Opportunities Commission*

4. While the EOC has the statutory power to conduct formal investigations<sup>6</sup>, it has only exercised this power twice.<sup>7</sup> **Consistent with HRC concluding observations, HKSAR should introduce policies to strengthen the provision of legal assistance and advocacy efforts of the EOC within one year.**<sup>8</sup>

### *Withdrawal of reservations*

5. **All treaty reservations should be withdrawn within four years and reports on the progress issued every year in the meantime. In particular, HKSAR should accept the HRC concluding observation and withdraw the reservation to Article 25(b) of ICCPR relating to universal suffrage.**<sup>9</sup>

### *Implementing recommendations*

6. There is no central monitoring and evaluation mechanism of treaty body and Universal Periodic Review (UPR) recommendations. **HKSAR should establish a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation mechanism for their implementation, following meaningful consultation with civil society, within one year.**

### *Legislative Council*

7. There is no panel in the Legislative Council to review policies or bills for their compliance with human rights. **HKSAR should recommend the Legislative Council establish a standalone human rights panel within one year.**

## Human rights defenders

### *Registration of political parties*

8. Political parties are registered as societies or companies; however, some, such as Hong Kong National Party or Demosisto, have been unable to do so.<sup>10</sup> Attempts to open bank accounts have been denied.<sup>11</sup> **HKSAR should immediately enable all political parties to register, ensuring their rights to take part in the conduct of public affairs are upheld.**
9. **HKSAR should amend the Electoral Affairs Commission Ordinance to formally recognise political parties, with administration handled by the Electoral Affairs Commission, within two years.**<sup>12</sup>

### *Registration of charities*

10. Human rights advocacy and campaigning are essential components of the work of civil society, which are registered as charities. Civil society work should not be conflated with political activities. **HKSAR should introduce a clear statutory definition of what constitutes a charitable purpose, protecting the work of human rights orientated civil society organisations, in accordance with recommendations from the Law Reform Commission, within two years.**<sup>13</sup>

### *Protection of human rights defenders*

11. Pro-democracy politicians and activists have been the subject of physical attacks and verbal threats, in person, via media and online. For example, attacks against Nathan Law at Hong Kong Airport in January 2017.<sup>14</sup> **HKSAR should investigate and prosecute all incidents involving physical assault and other threats towards human rights defenders (including local politicians and activists), especially physical altercations during protests.**
12. **HKSAR should ensure the personal protection of all persons striving for the realisation of human rights and fundamental freedoms, consistent with ICCPR and the Declaration on Human Rights Defenders.**

### *Civil society consultation*

13. Civil society are often not consulted for major legal and policy developments.<sup>15</sup> Consultation mechanisms lack accountability and transparency.<sup>16</sup> Meetings with government are difficult to obtain. Direct questions are often ignored. The Human Rights Forum,<sup>17</sup> cited by HKSAR,<sup>18</sup> is only held shortly before or after treaty body and UPR sessions. **HKSAR should adopt a policy of timely and fulsome public consultation for any policy and legislative development, with special regard to persons with disabilities, indigent and non-Chinese speaking communities, within six months.**

## Freedom from torture

### *Institutionalisation of persons with disabilities*

14. **HKSAR should take measures to ensure persons with disabilities are not arbitrarily deprived of their liberty through institutionalization and provide adequate resources for 24-hour community support and/or small group homes.**

### *Intersex and transgender*

15. Transgender persons should not be required to complete sex-reassignment surgery to obtain legal recognition of their gender identity. **Consistent with the Committee against Torture (CAT) concluding observations, HKSAR should take all necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons by removing preconditions for legal recognition of gender identity, such as sterilisation.**<sup>19</sup>

16. **Consistent with CAT concluding observations, HKSAR should immediately guarantee that non-urgent or unnecessary medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give full, free and informed consent.**<sup>20</sup>

### **Right to liberty and security**

#### ***Article 23 of Basic Law***

17. Civil society is concerned about national security laws that may be introduced under Article 23, which is feared will be used to suppress human rights and democratic development. Existing laws already fulfil the constitutional responsibility under Article 23. **HKSAR should only propose legislation on the basis of Article 23 after universal suffrage has been fully implemented, ensuring that any proposed legislation fully complies with ICCPR and the rule of law.**

#### ***Excessive use of force***

18. Police are increasingly using excessive force during political protests. During the Umbrella Movement in 2014, police resorted to violence against more than 1300 people, with 500 admitted to hospitals.<sup>21</sup> **Consistent with CAT concluding observations, HKSAR should immediately (i) conduct an independent investigation into excessive use of force by police during the Umbrella Movement; (ii) prosecute perpetrators, including police officers complicit in acts or who allowed their occurrence, with redress provided to victims and (iii) publicise the Police's guidelines to the use of force, ensuring they are in compliance with international standards.**<sup>22</sup>

#### ***Police Complaints***

19. The Independent Police Complaints Council remains an advisory body of the investigations of the Complaints Against Police Office, with no power to conduct own investigations.<sup>23</sup> **Consistent with HRC concluding observations, HKSAR should establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police.**<sup>24</sup>

#### ***Police and persons with disabilities***

20. Persons with disabilities have been sent to hospital or arrested without proper interpretation or investigation.<sup>25</sup> **HKSAR should provide mandatory periodic training for frontline police officers on catering to people with different expressive needs, including access to trained interpreters, within one year.**

#### ***Monitoring and inspection of detention***

21. HKSAR has no independent body that monitors detention facilities, despite dozens of cases of mistreatment by juveniles in detention.<sup>26</sup> **Consistent with CAT concluding observations, HKSAR should establish an independent body with the mandate to carry out unannounced visits at all places of detention within one year.**<sup>27</sup>

### **Freedom of movement**

#### ***Immigration***

22. An increasing number of human rights defenders and lawmakers are being denied entry to HKSAR, such as Benedict Rogers and Freddy Lim.<sup>28</sup> **HKSAR should ensure that human rights defenders can enter HKSAR and are not restricted through broad interpretations of "foreign affairs". If someone is denied entry, transparent and detailed reasons should be provided.**

## Freedom of expression

### *Press freedom*

23. Press freedom has decreased rapidly in recent years.<sup>29</sup> Journalists and other media workers, often supporters of democracy and expressing critical views, have been attacked<sup>30</sup> and threatened.<sup>31</sup> **HKSAR should thoroughly investigate attacks and threats against the media, ensuring that perpetrators are prosecuted.**

### *Self-censorship*

24. There is growing pressure on the media, print and electronic, in covering sensitive China issues or concerning the HKSAR Government.<sup>32</sup> **HKSAR should take all necessary efforts to ensure a safe and enabling environment for journalists to carry out their work independently and without undue interference.**

### *Causeway Bay Booksellers*

25. The abduction and detention of the five HKSAR booksellers, including Lee Bo who was abducted from HKSAR, contravened international law.<sup>33</sup> **HKSAR should immediately undertake an independent and public investigation into the circumstances regarding the detention and abduction of the Causeway Bay booksellers. HKSAR should take immediate actions to ensure the safety of Gui Minhui and call for his unconditional release.**

## Access to information

### *Freedom of Information*

26. Access to information is difficult, with responses for information taking extensive time, even if successful.<sup>34</sup> An official Code on Access to Information has been in place since 1995, but entails no legal requirement and limited coverage.<sup>35</sup> **HKSAR should adopt a Freedom of Information Ordinance that establishes maximum disclosure and minimal exemption requirements, within one year.**<sup>36</sup>

### *Archives law*

27. There is no legislation regulating Government records. The Government relies on administrative directives, guidelines and publications, with a small proportion of documents transferred to the Government Records Service.<sup>37</sup> **HKSAR should adopt an Archives Ordinance, incorporating mandatory public sector compliance and penalties for non-compliance, destruction of records and denial of access, within one year.**

### *Academic freedom*

28. Measures taken by politicians, university councils and pro-establishment academics have been in contrast to academic freedoms. This includes calling for the removal of academics, promoting academics with pro-establishment views and placing arbitrary limits on freedom of speech.<sup>38</sup> **HKSAR should immediately remove the Chief Executive as ex officio chancellor of tertiary institutions.**
29. **HKSAR should immediately grant university councils the right to appoint their own members.**

### *Persons with disabilities*

30. **HKSAR should recognise sign language as an official language within four years. Consistent with concluding observations of the Committee on the Rights of Persons with Disabilities (CRPD), HKSAR should provide training and support to sign interpreters and promote the use of sign language in healthcare, judicial and education systems.**<sup>39</sup>

31. **HKSAR should make all Government press conferences, broadcasts and Announcements of Public Interests in sign language, within two years. All domestic free television broadcasters should provide simultaneous sign interpretation for news within two years.**

#### **Ethnic minorities and non-Chinese speakers**

32. Many official documents and publications, including information on schools, are only available in Chinese, even though Chinese and English are official languages.<sup>40</sup> **HKSAR should provide all Government information in its two official languages, namely Chinese and English, immediately.**

#### **Human trafficking**

33. Civil society has established the prevalence of human trafficking and HKSAR is placed on Tier Two Watch List in United States Trafficking in Persons Report.<sup>41</sup> **Consistent with the concluding observations of CAT, China should extend the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol) to HKSAR, within one year.**<sup>42</sup>
34. **HKSAR should adopt a comprehensive law on prevention, prosecution, and protection to combat human trafficking and forced labour, within one year.**

#### **Rule of law**

##### ***Basic Law interpretations***

35. HKSAR courts can seek an interpretation of the Basic Law from the Standing Committee of the National People's Congress (NPCSC) through the Court of Final Appeal. However, the NPCSC is not a judicial body and is not independent. The fifth interpretation on oath-taking went beyond 'interpretation', undermining trust in the independence of the judiciary. This led to the disqualification of freely elected lawmakers, violating Article 25 of ICCPR. **China and HKSAR should ensure all interpretations of the Basic Law are exercised with restraint, comply with ICCPR, are consistent with the rule of law and do not impinge upon HKSAR's autonomy.**
36. **Following an NPCSC interpretation, HKSAR should, within six months, publish a report on whether the interpretation is procedurally and substantively compatible with human rights provisions of the Basic Law and HKSAR Bill of Rights. If the view is that the interpretation is not compatible, the report should state the effect of the interpretation and measures to ensure compatibility.**

##### ***Access to justice***

37. Access to legal assistance services is limited.<sup>43</sup> Regulatory barriers for non-government organisations limit pro bono legal representation. **HKSAR should establish independent, not-for-profit legal structures, including government funded community law centres to provide specialist, free legal advice and representation, within two years.**

#### **Right to privacy**

##### ***Transfer of data outside HKSAR***

38. Provisions in legislation relating to transfer of privacy information outside HKSAR are still not in operation, despite the ordinance passing in 1996.<sup>44</sup> **HKSAR should immediately take action to ensure that section 33 of the Personal Data (Privacy) Ordinance comes into operation.**

##### ***Accessing electronic devices***

39. Police have seized mobile phones from protestors without warrants.<sup>45</sup> **HKSAR should pass legislative amendments ensuring that searches of electronic devices can only take place with warrants within one year.**

## Freedom of thought, conscience and religion

40. HKSAR should ensure adequate space and time for students of different religions to pray in schools.

## Right of peaceful assembly

### *Public protests*

41. HKSAR is increasingly using the Public Order Ordinance to arrest and prosecute protestors, restricting assembly rights and human rights activism.<sup>46</sup> **HKSAR should abolish provisions in Part III of the Public Order Ordinance relating to notification of public meetings within one year.**
42. **HKSAR should amend the Public Order Ordinance, particularly s17B on ‘disorder in public places’ and s18 on ‘unlawful assembly’, ensuring consistency with ICCPR, within two years.**
43. Civic Square, a focus of the 2014 pro-democracy Occupy Central movement, was closed for more than three years, only reopening in December 2017. However, permits to demonstrate are only granted on Sundays or public holidays.<sup>47</sup> **HKSAR should immediately lift all limits on the time periods for public assemblies and processions in Civic Square.**

### *Prosecutions*

44. The decision to prosecute criminal offences is the responsibility of the Secretary for Justice, an appointed official. Rimsky Yuen, former Secretary for Justice, sought stronger sentences for pro-democracy activists, despite advice from the Department of Justice not to do so.<sup>48</sup> **HKSAR should remove the responsibilities of the Secretary of Justice to decide criminal prosecutions within one year.**

## Right to universal and equal suffrage

### *Universal suffrage*

45. Articles 45 and 68 of the Basic Law stipulate that the Chief Executive and all members of the Legislative Council should ultimately be elected by universal suffrage. However, there has been no progress since 2013. **HKSAR should outline clear and detailed plans, with a timetable on how universal and equal suffrage will be instituted and enjoyed by all citizens, within one year.**
46. **HKSAR should develop an election system that is democratic, fair, open and transparent, and in accordance with international human rights law.**

### *Functional constituencies*

47. Professional and special interest groups have a disproportionate role in determining the wellbeing of HKSAR people through functional constituencies, enabling corporations and legal entities to vote for candidates. **HKSAR should immediately abolish all functional constituencies in the Legislative Council, replacing all positions with directly elected candidates.**

### *Disqualification of candidates*

48. Candidates standing for election in HKSAR have been screened on the basis of their political beliefs.<sup>49</sup> More than a dozen have been disqualified, such as Agnes Chow Ting.<sup>50</sup> **HKSAR should legislate to protect the rights of all persons to stand for election, regardless of their political affiliation or political beliefs, within one year. HKSAR should ensure that decisions by returning officers are made in accordance with ICCPR, especially the right to participate in public affairs.**
49. **HKSAR should remove restrictions barring bankrupt persons from running for elections within one year.**

## **Right to work**

### **Persons with disabilities**

50. Persons with disabilities in sheltered workshops are considered to be trainees instead of employees.<sup>51</sup> They do not receive employee protections, including the minimum wage or mandatory provident fund schemes. **HKSAR should immediately reform the sheltered workshop model ensuring persons working therein are considered to be employees, have a reputable adult role, and enjoy rights afforded to employees.**
51. **HKSAR should introduce policies ensuring the autonomy of persons with disabilities in exercising their right to work within one year.**

## **Right to just and favourable conditions of work**

### ***Collective bargaining***

52. Legislation providing for collective bargaining rights was repealed by the Provisional Legislative Council in 1997, four months after it was passed by the Legislative Council before the handover.<sup>52</sup> **HKSAR should restore legislation providing for collective bargaining rights within one year.**

### ***Working hours and wages***

53. Workers in HKSAR have the longest hours in the world, normally more than 50 hours per week.<sup>53</sup> **HKSAR should adopt legislation to provide for maximum and standard working hours within two years.**
54. **HKSAR should review the minimum wage adjustment mechanism to ensure an adequate standard of living for all workers within two years.**

### ***Persons with disabilities***

55. The Productivity Assessment Mechanism allows an employee with a disability to be paid less than the minimum wage.<sup>54</sup> **HKSAR should immediately abolish the Productivity Assessment Mechanism and introduce wage supplements to ensure persons with disabilities have minimum wage protection.**

## **Right to social security**

### ***Elderly***

56. Elderly poverty rates are more than double the overall poverty rate,<sup>55</sup> with HKSAR facing an ageing population.<sup>56</sup> **HKSAR should introduce a universal pension scheme to support persons above 65 within three years. HKSAR should immediately increase contribution rates for employers to 10% for the Mandatory Provident Fund and remove offset arrangements.**

### ***Persons with disabilities***

57. The scale relating to occupational injury compensation determines the level of disability allowance and has been used since 1973. Persons with disabilities need to lose their earning capacity 100% to receive disability allowance, which is stigmatising.<sup>57</sup> **HKSAR should conduct a comprehensive review of the current classification of persons with disabilities, making reference to the International Classification of Functioning, Disability and Health, within one year.**

## **Right to an adequate standard of living**

### ***Persons with disabilities and elderly***

58. Regulations on residential housing for persons with disabilities are not responsive to the needs for the elderly or persons with disabilities and the personal assistance required. **HKSAR should immediately**

guarantee a minimum of 8 sq. m. for private space plus 8 sq. m. for public space per person for the elderly or persons with disabilities and provide funding to train in-house personnel to work in these residential settings.

59. HKSAR should adopt a policy of "ageing-in-place", providing comprehensive support for the elderly and persons with disabilities, to live in the community with dignity and choice, within one year.
60. Elderly persons have been rejected by care homes because they were HIV positive.<sup>58</sup> HKSAR should provide more training to care home staff to address HIV stigma within one year.

### ***Housing affordability***

61. HKSAR is one of the most expensive cities in the world for housing, with the average flat selling for over 18 times gross average income.<sup>59</sup> Rent control, abolished in 1998 following the Asian Financial Crisis, has not been reinstated, despite substantial rent increases.<sup>60</sup> HKSAR should introduce measures to restrict housing speculation and increase affordability, including but not limited to: mandating a proportion of units as 'affordable', real estate capital gains tax, increasing Special Stamp Duty rates and establishing Government backed first home saver accounts with interest incentives, within one year.
62. HKSAR should reintroduce rent control to increase rental affordability within one year.
63. HKSAR should take immediate measures to increase land supply for affordable housing, without impacting upon green belt land or country parks, including developing underutilised and unused land.<sup>61</sup>

### ***Public housing***

64. Persons with disabilities, especially single persons, have to wait for up to 16 years for public housing.<sup>62</sup> Within two years, HKSAR should shorten the average waiting time for public housing for non-elderly single persons with disabilities to two years.

### ***Small House Policy***

65. HKSAR allows each male indigenous villager to build one small house in the New Territories.<sup>63</sup> This allows purchase of land from the Government by paying discounted or zero premium.<sup>64</sup> HKSAR should immediately abolish the Small House Policy.

## **Right to health**

### ***Health care system***

66. Health policies in HKSAR focus narrowly on the healthcare system.<sup>65</sup> HKSAR should immediately adopt the World Health Organization's "Health in All Policies" framework in policymaking to incorporate health impact assessments across sectors and levels of government.
67. HKSAR should review the Disability Discrimination Ordinance Code of Practice on Education, ensuring that supported decision making is fully respected and children with special education needs are not forced to take medication, within two years.
68. HKSAR should establish a city-wide health strategy, with stepwise indicators and benchmarks to achieve better health for all in line with the 2030 Agenda for Sustainable Development, within two years.<sup>66</sup>

### ***Health data***

69. There is insufficient data on health inequalities in HKSAR, making it difficult for civil society to monitor and address concerns. HKSAR should commission an independent study to assess the state of health inequalities in HKSAR and set up a Commission on Social Determinants of Health, within one year.



### ***Access to healthcare***

70. Certain groups face structural barriers in accessing primary health care, such as opening hours, language barriers and discrimination. **HKSAR should ensure equal access to primary health care for low-income workers, local ethnic minorities, asylum seekers, refugees, migrant domestic workers and other vulnerable groups, taking into account their needs and characteristics in health services planning.**

### ***Health impact assessments***

71. **HKSAR should immediately conduct environmental and health impact assessments for all infrastructure, including playspaces for children.**

### ***Sexuality education***

72. It is not mandatory for schools to provide comprehensive sexuality education to students.<sup>67</sup> The number of sexually transmitted infections among youths is rising<sup>68</sup> and those living with HIV face stigma in HKSAR.<sup>69</sup> **HKSAR should introduce mandatory inclusive comprehensive sexuality education curriculum in schools, including LGBTI-specific content, to promote and protect the sexual health of students by the 2019/20 academic year.**

### ***HIV prevention***

73. Pre- and Post-Exposure Prophylaxis (PrEP and PEP) can effectively prevent HIV infections.<sup>70</sup> However in HKSAR, access to PEP at public hospitals is difficult and PrEP is not available in the public health system.<sup>71</sup>
74. **HKSAR should ensure access to PrEP and PEP in the public health system for all individuals at risk within one year.**

### ***Persons with disabilities***

75. The Mental Health Ordinance restricts the legal capacity of persons with disabilities, predicating on grounds of mental capacity.<sup>72</sup> **HKSAR should amend the Mental Health Ordinance to recognise that all persons have legal capacity, and to allow for third party advocates to assist, in accordance with the CRPD, within one year. HKSAR should introduce a clear statutory definition of ‘informed consent’, ensuring psychological treatment is only provided where necessary, based on free and informed consent, within one year.<sup>73</sup>**
76. **HKSAR should include sign language training in rehabilitation services for deaf children and allocate funds to supporting organizations to recruit trained deaf teachers within one year.**

## **Right to education**

### ***Human rights education***

77. Human rights education is insufficiently addressed in school curricula through the Moral, Civic and National Education module.<sup>74</sup> **HKSAR should establish a strategy to integrate human rights into school curricula; developing a standalone course, incorporating monitoring and evaluation, and providing sufficient funding, by the 2019/20 academic year.<sup>75</sup>**

### ***Persons with disabilities***

78. HKSAR has ‘mainstream schools’ and ‘special schools’ for children with special education needs.<sup>76</sup> **HKSAR should develop an inclusive school system. In particular, the Education Bureau should adopt and provide resources for a model for deaf and hearing students to study in the mainstream classroom in spoken and HKSAR Sign Language within four years.<sup>77</sup>**
79. There are no publicly-funded sign language classes in kindergartens, outside of special kindergartens.<sup>78</sup> In mainstream schools and post-secondary education, students have to pay for their own sign

interpreters.<sup>79</sup> HKSAR should provide publicly-funded sign classes as well as sign interpretation in all schools, especially Applied Learning classes, from pre-school to post-secondary education, by the 2019/20 academic year.

80. HKSAR should introduce guidelines to support access to post-secondary education, including personal support to persons with different intellectual abilities, deaf persons and persons with psychosocial disabilities, within three years.

### ***Bullying***

81. HKSAR ranks first in the percentage of students reporting being pushed or hit by other students in an Organisation for Economic Co-operation and Development study.<sup>80</sup> **Consistent with CRC and CRPD concluding observations, HKSAR should take holistic measures to address bullying in schools, including systematic training and guidelines for teachers and social workers, within one year.**<sup>81</sup>

### ***Ethnic minority students***

82. **Consistent with HRC, CESRC and CERD concluding observations, HKSAR should immediately intensify efforts to implement legislation and policies to improve the quality of Chinese language education for ethnic minority and non-Chinese speaking students, as well as efforts to promote ethnic minority students' access to mainstream schools.**<sup>82</sup>

## **Rights of the child**

### ***Children's Commission***

83. HKSAR will establish a Commission on Children that is unlikely to be independent or have investigative powers.<sup>83</sup> **HKSAR should establish an independent and statutory Children's Commission with investigative powers that comply with the Convention on the Rights of the Child (CRC) and the Paris Principles within three years. The Commission's mandate should relate to all children aged under 18. Children, especially the most vulnerable, should be consulted and encouraged to participate in policies involving children, with child-friendly platforms developed.**
84. **Consistent with CRC concluding observations, HKSAR should establish a central data bank with independently verifiable data and assess progress of the implementation of the CRC on the basis of such data, within one year.**<sup>84</sup>

### ***Applying the Convention on the Rights of the Child (CRC)***

85. **HKSAR should legislate to domestically implement the CRC, particularly Article 3 to consider the best interests of the child in all statutory and administrative decision-making, and Article 12 to ensure the views of children are expressed and heard, within three years.**

### ***Right to play***

86. **HKSAR should review Chapter 4 of Hong Kong Planning Standards and Guidelines on the provision of children's playgrounds, introducing a supplementary planning guidance on "Play and Informal Recreation", ensuring adequate provision of inclusive play space for all children, within one year.**

### ***Children of asylum seekers, refugees and migrant workers***

87. **Children of asylum seekers, refugees and workers who arrived in HKSAR through the Foreign Domestic Helper and Supplementary Labour Schemes have no right of abode, even if born in HKSAR.<sup>85</sup> HKSAR should amend legislation providing equal rights to access permanent residency for children of asylum seekers, refugees and all migrant workers, consistent with the children of other migrants under Article 24 of the Basic Law, within one year.**

88. **Consistent with CRC concluding observations, HKSAR should ensure that children of migrant workers, refugee and asylum-seeking children have equal access to basic services, including health, education and other social services.**<sup>86</sup>

#### ***Child abuse***

89. In 2017, 947 cases of child abuse were reported to the HKSAR Government.<sup>87</sup> **HKSAR should provide additional resources to secure care arrangement options for children, including but not limited to shelters and community centres, within one year.**

#### **Asylum seekers and refugees**

90. The Convention Relating to the Status of Refugees and its 1967 Protocol are not applicable to HKSAR.<sup>88</sup> The acceptance rate for non-refoulement claims is as low as 0.9%.<sup>89</sup> Non-refoulement claimants are considered as illegal immigrants, even if their non-refoulement claims are substantiated.<sup>90</sup> Substantiated claimants may only apply to work on a case-by-case basis.<sup>91</sup> Non-refoulement claimants and their children are only allowed to attend school after approval of the Immigration Department.
91. **China should extend the Convention Relating to the Status of Refugees and its 1967 Protocol to HKSAR within one year.**<sup>92</sup>
92. **HKSAR should not set an inappropriate high threshold for granting international protection and should grant asylum seekers and refugees the right to work immediately.**<sup>93</sup>
93. **Consistent with CESCR concluding observations, HKSAR should ensure that all children, including asylum-seeking and refugee children, have free access to compulsory education on an equal basis immediately. HKSAR should also provide scholarships and resource support for education for asylum seekers and refugees immediately.**<sup>94</sup>

#### **Equality and non-discrimination**

##### **Legislation against discrimination**

94. Despite concluding observations from HRC, CESCR and the Committee on the Elimination of Discrimination against Women (CEDAW) regarding measures to combat discrimination on grounds of sexual orientation and gender identity, especially through legislation,<sup>95</sup> HKSAR has not taken action. According to a 2016 survey commissioned by the EOC, the majority support legislating against discrimination.<sup>96</sup> **HKSAR should adopt legislation prohibiting discrimination on grounds of sexual orientation, gender identity, gender expression and sex characteristics in all public and private sectors and providing positive duties on the part of the Government to promote equality on these grounds within one year.**

##### **Reasonable accommodation**

95. The Disability Discrimination Ordinance does not require reasonable accommodation for persons with disabilities in all relevant fields. EOC recommended the inclusion of reasonable accommodation in its submission to the HKSAR Government on its Discrimination Law Review in March 2016.<sup>97</sup> **Consistent with CESCR general comment, HKSAR should include a distinct duty to make reasonable accommodation for persons with disabilities in all relevant fields in its legislation, including employment and education within one year.**<sup>98</sup>

##### **Right to live in the community**

96. There is no comprehensive support for persons with disabilities to live in the community. The Ombudsman has identified substantial problems with transportation services for persons with

disabilities.<sup>99</sup> **HKSAR should provide comprehensive support to ensure that persons with disabilities can fully exercise their right to live in the community within one year.**

97. **HKSAR should establish a comprehensive mainstream inclusive transportation policy and system, in line with the CRPD. HKSAR should immediately increase resources to ensure the availability and flexibility of transportation services for persons with disabilities, and improve the accessibility of public transport.**

### ***Racial equality***

98. Racial minorities and non-refoulement claimants report targeting by police and abuse of power.<sup>100</sup> The Race Discrimination Ordinance, unlike HKSAR's other anti-discrimination ordinances, exempts government powers and functions. **Consistent with HRC, CESCR and CERD concluding observations, HKSAR should amend the Race Discrimination Ordinance within one year so that it applies to Government functions and powers, and covers the grounds of nationality, citizenship, residence status, and language.**<sup>101</sup>

### **Women's rights**

#### ***Violence against women***

99. Legislation regarding violence against women remains outdated. For example, criminal law uses a definition of rape which only covers penile penetration, excluding genitals reconstructed after sex reassignment surgery.<sup>102</sup> **HKSAR should adopt proposals by the Law Reform Commission<sup>103</sup> revising sexual offences legislation, including those against transgender persons, children and persons with disabilities, in line with international best practices and standards, within two years.**<sup>104</sup>

#### ***Employment***

100. Maternity leave is limited to ten weeks and paternity leave three days, despite CEDAW Concluding Observations.<sup>105</sup> **HKSAR should increase maternity and paternity leave periods in line with International Labour Organization standards within one year.**

### **Migrant workers**

101. The 360,000 workers in HKSAR under the Foreign Domestic Worker and Supplementary Labour Schemes are not considered ordinarily resident in HKSAR.<sup>106</sup> Unlike other migrants, they do not have the right of abode even if they have worked in HKSAR for over seven years.<sup>107</sup>
102. Many migrant domestic workers from the Philippines have been charged more than 25 times the permitted maximum recruitment commission.<sup>108</sup> Migrant domestic workers with excessive debt are more likely to be in forced labour.<sup>109</sup> Their passports have often been confiscated by employers or employment agencies.<sup>110</sup>
103. Migrant domestic workers are excluded from the Minimum Wage Ordinance, retirement protection and do not enjoy maximum working hours.<sup>111</sup> They are required to live with their employers.<sup>112</sup> Migrant domestic workers have reported that the live-in requirement makes them vulnerable to abuse and exploitation.<sup>113</sup> Surveys have shown 43% of the migrant domestic workers are not provided a private room and 2% sleep in a kitchen, toilet or warehouse.<sup>114</sup> There are also reports that migrant domestic workers are forced or deceived into illegal work in Mainland China.<sup>115</sup>
104. **Consistent with concluding observations of HRC, CESCR, CERD, CEDAW and CAT, HKSAR should (i) repeal the 'two-week rule' and the live-in requirement, (ii) adopt a comprehensive law ensuring migrant domestic workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours,**

social security and maternity leave protection, (iii) increase resources for the Labour Department to establish an inspection mechanism for monitoring the implementation of the Standard Employment Contract and ensure, inter alia, a decent standard of living for migrant domestic workers and (iv) strengthen protection from abuse by recruitment agencies immediately.<sup>116</sup>

105. HKSAR should amend legislation providing equal rights to access permanent residency for all migrant workers, consistent with other migrants under Article 24 of the Basic Law, within one year.

## **Environmental rights**

### ***Air quality***

106. Air quality in HKSAR has never met WHO Air Quality Guidelines (WHO AQGs). Pollution has killed 11,858 people prematurely from 2013 to 2017.<sup>117</sup> Emission control measures are inadequate.<sup>118</sup> HKSAR should amend the Air Pollution Control Ordinance to set Air Quality Objectives (AQOs) that are no less stringent than those in the WHO AQGs and make all relevant bureaus accountable for non-compliance with AQOs within one year.
107. HKSAR should incorporate health impacts on all government policies, with particular reference to air quality, immediately. HKSAR should commission an independent study on the impact of air quality, with particular reference to health equality issues, in line with WHO recommendations, within one year.

### ***Sustainable Development Goals***

108. HKSAR lacks data on many Sustainable Development Goals (SDGs), such as marine pollution, policies to deal with climate change adaptation or deaths from air pollution.<sup>119</sup> HKSAR should immediately commence collecting data on all targets for the SDGs. HKSAR should immediately establish a target to reduce by two-thirds of the number of deaths and illnesses caused by pollution of air, soil, water by 2030.

## **Business and human rights**

109. There is no legal or policy framework guiding corporations on their responsibility to respect human rights. HKSAR should conduct a consultation towards developing an action plan on Business and Human Rights, based on the United Nations Guiding Principles on business & human rights and related frameworks, within one year. The process must be transparent, with meaningful and informed participation by disempowered and at-risk stakeholders.

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<sup>2</sup> Equal Opportunities Commission, 'Submissions to the Hong Kong Government on the EOC's Discrimination Law Review', March 2016, p.136, available at: <http://www.eoc.org.hk/eoc/upload/DLR/2016330179502227490.pdf>, accessed on 22 February 2018.

<sup>3</sup> *Ibid*, p.91. The four anti-discrimination ordinances in HKSAR are: (1) Sex Discrimination Ordinance, (2) Family Status Discrimination Ordinance, (3) Disability Discrimination Ordinance and (4) Race Discrimination Ordinance.

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<sup>5</sup> Human Rights Committee, Concluding observations on the third periodic report of Hong Kong, China, CCPR/C/CHN-HKG/CO/3, 29 April 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCHN-](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCHN-)

[HKG%2fCO%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en), Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/2, Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of China, CRC/C/CHN/CO/3-4, 29 October 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en), all accessed on 22 February 2018.

<sup>6</sup> Section 70, Sex Discrimination Ordinance, Cap 480, available at: [http://www.blis.gov.hk/blis\\_pdf.nsf/CurAllEngDoc/A15C32BE97DAFAA6482575EF000D6CA2?OpenDocument](http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/A15C32BE97DAFAA6482575EF000D6CA2?OpenDocument), accessed on 22 February 2018.

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<sup>8</sup> Human Rights Committee, Concluding observations on the third periodic report of Hong Kong, China, CCPR/C/CHN-HKG/CO/3.

<sup>9</sup> *Ibid.*

<sup>10</sup> Hermina Wong, 'Newly formed pro-independence Hong Kong National Party 'denied registration' by Companies Registry', *Hong Kong Free Press*, 29 March 2016, <https://www.hongkongfp.com/2016/03/29/hong-kong-national-party-denied-registration-to-companies-registry/>, accessed on 22 February 2018.

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<sup>23</sup> *Ibid.*

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