

**Submission from the Hong Kong Labour Rights Monitor to
the Committee on Economic, Social and Cultural Rights on
the Implementation of
the International Covenant on Economic, Social and Cultural Rights in
the Hong Kong Special Administrative Region, China**

January 2023

Foreword

1. The Hong Kong Labour Rights Monitor (HKLRM) is a United Kingdom-based non-government organisation established in April 2022 by independent trade unionists, labour rights activists and researchers. The HKLRM aims to speak up for the workers in the Hong Kong Special Administrative Region, China (HKSAR) and amplify their voices around the world.
2. The HKLRM makes the following observations to the Committee on Economic, Social and Cultural Rights (Committee) on the implementation of the International Covenant on Economic, Social and Cultural Rights (Covenant) by the HKSAR Government. The submission will focus on issues that have a direct bearing on workers' rights and welfare in the HKSAR.

Article 2: Factors Impeding the Progressive Realisation of Economic, Social and Cultural Rights

National Security Law posed serious threat to human rights and fundamental freedoms

3. The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL) was promulgated on 30 June 2020. The United Nations Human Rights Committee (UNHRC), in its Concluding Observations on the Fourth Periodic Report of the HKSAR, expressed grave concerns of the new law's serious risks posed to the city's fundamental rights and freedoms.¹ The legal definitions of the crimes under the NSL, including secession, subversion, terrorist activities and collusion with foreign forces, are imprecise and overly board. While in practice, national security is often used as pretext to suppress the civil society and severely undermine individual's fulfilment of economic, social and cultural rights.
4. Since the promulgation of the NSL, a large number of civil society members, including human right activists, trade unions leaders and journalists, were arrested and prosecuted, many civil society organisations were forced to dissolve, suspend or withdraw from the city and several credible independent media outlets were forced to shut down. The HKSAR Government's enforcement of the NSL and other draconian laws enacted in the colonial era has already created a chilling effect, causing civil

¹ www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/CCPR_C_CHN-HKG_CO_4_49295_E.pdf, paras 12-13 [retrieved 4 January 2023]

society members holding various political opinions to shudder. The climate of fear that the civil society is facing can best be demonstrated by the HKSAR delegates' noncommittal as to whether the organisations that took part in the hearings of UN human right bodies would face legal consequences under the NSL despite repeated questioning.²

5. A political and legal environment that guarantees the genuine respect of civil liberties and the free functioning of civil society organisations is indispensable to people's full enjoyment of economic, social and cultural rights as enshrined in the Covenant. The deteriorating human right situations in the HKSAR since the promulgation of the NSL undoubtedly constitute a major hindrance to the effective application of the Covenant in the city. In this connection, the HKLRM invites the Committee to urge the People's Republic of China (PRC) and HKSAR Governments to (a) repeal the NSL and, in the meantime, refrain from applying the law; and (b) take all necessary steps to ensure that civil society organisations and their members can carry out their legitimate functions and exercise their rights under the Covenant and other international human right instruments in a climate free of fear and threats of any kind.

Electoral arrangements heavily skewed to business interests

6. Under the Basic Law of the HKSAR, the right to vote in the elections of the Chief Executive (CE) are restricted to a tiny proportion of citizens, a majority of whom come from big corporations and professional bodies. Functional Constituency seats in the legislature also give undue weight to the business elites and render the non-privileged commoners less considered and safeguarded in the political process. The HKSAR's electoral system not only discriminates among voters on the basis of property and functions, the absence of universal suffrage is also detrimental to the realisation of the rights under the Covenant and a government dominated by business interests is the single most important factor for the underdevelopment of the city's labour laws and social security policies.

7. Despite the ultimate aim of electing the CE and all members of the legislature by universal suffrage as promised under Articles 45 and 68 of the Basic Law, the HKSAR's electoral arrangements have gone exactly in the opposite direction amid the sweeping overhaul unilaterally imposed by the PRC Government in March 2021.³ The UNHRC has expressed its concerns about "(a) the significantly reduced number of seats directly elected by public voters for both the Election Committee and the Legislative Council; (b) the diminishing representativeness of the Election Committee following the changes made to the composition and membership of its sectors and sub-sectors; (c) the restricted candidate eligibility, which gives little or no chance for candidates of opposition parties to stand for election; (d) the absence of participation of public voters

² hongkongfp.com/2022/07/13/that-would-actually-depend-hong-kong-rebuffs-un-concerns-over-security-law-risks-for-groups-at-rights-hearing [retrieved 4 January 2023]

³ An overview of the HKSAR's electoral changes in 2021 can be found at en.wikipedia.org/wiki/2021_Hong_Kong_electoral_changes [retrieved 4 January 2023]

*in electing the Chief Executive and (e) the vague criteria and process of disqualification of candidates and elected officials”.*⁴

8. In view of the above, the HKLRM invites the Committee to urge the PRC and HKSAR Government to take all necessary steps to progress towards a truly democratic system of governance, including by ensuring that all citizens, regardless of social, economic or property status, have equal electoral rights in elections.

Conservative fiscal policy resulted in underutilisation of available resources

9. The HKSAR’s social spending is among the lowest in advanced economies. In the financial year ending March 2022, the city’s total public expenditure on education, health, housing and social welfare was HK\$363 billion or less than 13% of gross domestic product (GDP) in 2021, significantly lower than OECD countries’ average public social spending of about 20% of GDP in 2019.⁵

10. The HKSAR Government’s failure to spend where spending is due has resulted in chronic shortage in the provision of essential social services. For instance, the median waiting time for new case booking at most public Specialist Out-patient Clinics persistently exceeds one year, while the 90th percentile in 2021 for specialties of “ear, nose, throat”, “eye”, “medicine”, “orthopaedics and traumatology”, “psychiatry” and “surgery” ranged from 92 to 140 weeks.⁶ As at the end of September 2022, the average waiting time for general application for public rental housing in the past 12 months was 5.6 years, almost double the target average waiting time of three years; while 11,900 out of 18,700 (or nearly two-thirds of) general applicants housed between July 2021 and June 2022 had to wait for six years or above.⁷ Every year, over one out of six elderlies died while waiting for places in care homes.⁸

11. The budget austerity is by no means one compelled by economic necessity but is rather a deliberate policy choice of the PRC and HKSAR Governments. Article 108 of the Basic Law requires the HKSAR to take the low tax policy pursued in the colonial era as reference, while Article 107 obliges the HKSAR Government to follow the principle of keeping expenditure within the limits of revenues in drawing up its budget. This conservative approach to the city’s fiscal policy has resulted in the failure of the HKSAR Government to make use of its maximum available resources to achieve progressively

⁴ The UNHRC’s Concluding Observations on the Fourth Periodic Report of the HKSAR, para 51, note 1.

⁵ Census and Statistics Department (2022) *Hong Kong Annual Digest of Statistics 2022 Edition*, Table 10.5, available at www.censtatd.gov.hk/en/EIndexbySubject.html?scode=460&pcode=B1010003 & OECD (2020) “Social Expenditure (SOCX) Update 2020: Social spending makes up 20% of OECD GDP”, available at www.oecd.org/els/soc/OECD2020-Social-Expenditure-SOCX-Update.pdf [both retrieved 4 January 2023]

⁶ www.legco.gov.hk/yr2022/english/fc/fc/w_q/lwb-ww-e.pdf, pp. 49-55 [retrieved 4 January 2023]

⁷ www.housingauthority.gov.hk/en/about-us/publications-and-statistics/prh-applications-average-waiting-time & www.housingauthority.gov.hk/en/common/pdf/about-us/publications-and-statistics/prh-applications-average-waiting-time/WT-Distribution-2022.pdf [both retrieved 4 January 2023]

⁸ Former Secretary for Labour and Welfare Law Chi-kwong’s blog dated 28 March 2021 (in Chinese), available at www.lwb.gov.hk/tc/blog/post_28032021.html [retrieved 4 January 2023]

the full realisation of the economic, social and cultural rights, an obligation under Article 2 of the Covenant. In this connection, the HKLRM invites the Committee to urge the PRC and HKSAR Governments to amend Articles 107 and 108 of the Basic Law, with a view to ensuring that the city’s fiscal policy fully conforms with the Covenant, and particularly facilitates the utilisation of its maximum available resources to achieve progressively the full realisation of the rights under the Covenant.

Article 6: Right to Work

National Security Law posed threats to right to work

12. **Civil servant oath-taking:** Article 6 of the NSL requires all public officers to take an oath to uphold the Basic Law and swear allegiance to the HKSAR. The requirement was extended to 180,000 serving civil servants and government’s 23,000 non-civil service contract (NCSC) staffs in January and May 2021 respectively. Failure to do so could result in dismissal. Then Secretary for Civil Service Patrick Nip, explaining the oath-taking requirement, wrote on Facebook that government’s employees “*should not express discontent or sing a different tune publicly*”.⁹ The city’s civil servants and NCSC staffs were forced to choose between keeping their jobs and being able to speak and act freely outside the office. The oath-taking requirement is not compatible with Article 2 of the Covenant under which the HKSAR Government is obliged to guarantee that the right to work enunciated in Article 6 “will be exercised without discrimination of any kind as to ... political or other opinion”. A total of 129 civil servants had refused to take oath and left their posts by the end of 2021; while 149 full-time NCSC staffs and another 386 on part-time contracts had refused to take oath, all of them had either resigned or had their contracts terminated by August 2021.¹⁰ The government are considering extending the oath-taking requirement to other statutory bodies and subvented organisations.

13. **Disciplining teachers:** Young students had actively participated in the 2019 Anti-Extradition Law Amendment Bill (Anti-ELAB) Movement and teachers were alluded by the government for spreading radicalism in the classrooms, making them a target of retribution.¹¹ Six teachers have been de-registered, with another 185 disciplined with reprimand or warning letter, written advice or verbal reminder, after the Education Bureau received complaints about their involvement in the movement.¹² On the other hand, prospective public school teachers must pass a Basic Law test before officially taking the job starting school year 2022-23. The Bureau explained that teachers should have a “correct understanding” of the Basic Law to help

⁹ hongkongfp.com/2020/10/12/hong-kong-govt-to-demand-that-new-civil-servants-pledge-allegiance-to-the-city [retrieved 4 January 2023]

¹⁰ www.info.gov.hk/gia/general/202206/15/P2022061500289.htm [retrieved 4 January 2023]

¹¹ edition.cnn.com/2020/11/17/asia/hong-kong-education-security-law-intl-dst-hnk [retrieved 9 January 2023]

¹² www.legco.gov.hk/yr2022/english/fc/fc/w_q/edb-e.pdf pp. 131-4 [retrieved 4 January 2023]

students develop “positive attitudes” towards “one country, two systems”.¹³ This means that serving and prospective teachers must adhere to the official political line or they will be denied the job opportunities in the education sector. Their right to work is jeopardised because of their political opinions, a contravention to Articles 2 and 6 of the Covenant.

14. **Targeting social worker:** The HKSAR Government amended the Social Workers Registration Ordinance in May 2022, barring any person convicted of national security offence from “*being or continuing to be registered social workers*” for life.¹⁴ The HKSAR Government is also considering extending the oath-taking requirement to members of the Social Workers Registration Board, which is empowered to set and review the qualification standards for the registration of social workers as well as conduct inquiries in case of disciplinary offence.¹⁵ Some 20 social workers who volunteered their professional services during the 2019 Anti-ELAB Movement were arrested¹⁶ and would face disciplinary actions. Social workers’ codes of conduct specify that they should promote human rights and social justice in carrying out their profession. Their jobs could be at serious risk if they hold an opinion or stance which is critical of the government, as most of the city’s social welfare organisations, their employers, rely on public funding and tend to refrain from challenging the authorities. The inadequate protection for social workers against discrimination on grounds of political opinion is not in full conformity with Articles 2 and 6 of the Covenant.

15. In view of the above, the HKLRM invites the Committee to urge the HKSAR Government to take all necessary steps, including the revocation of the oath-taking requirement for civil servants and other public sector workers, and reviewing the mechanism of handling complaint against teachers and the regulation on social worker registration, to ensure that all civil servants, teachers, social workers and other public sector workers’ right to work are fully protected in accordance with the Covenant and particularly against discrimination on the basis of political or other opinion.

Mandatory COVID vaccination or testing at employee’s own expense

16. The CE announced on 2 August 2021 that all civil servants as well as workers at schools, caring homes and public hospitals must get vaccinated or else pay out of their own pockets for COVID testing every two weeks.¹⁷ Civil servants who fail to get vaccinated or COVID testing could face disciplinary action. The HKSAR Government

¹³ www.info.gov.hk/gia/general/202205/25/P2022052500380.htm [retrieved 4 January 2023]

¹⁴ www.legco.gov.hk/yr2022/english/brief/lwbc45204186_20220518-e.pdf [retrieved 4 January 2023]

¹⁵ www.scmp.com/news/hong-kong/society/article/3156865/national-security-law-hong-kong-labour-minister-says-social [retrieved 4 January 2023]

¹⁶ www.scmp.com/news/hong-kong/law-and-crime/article/3122767/hong-kong-protests-social-worker-who-obstructed-police [retrieved 4 January 2023]

¹⁷ www.info.gov.hk/gia/general/202108/02/P2021080200871.htm (in Chinese) [retrieved 4 January 2023]

also urged the private sector to follow suit,¹⁸ and several large corporations, such as Sino Group and Henderson Land, responded immediately.¹⁹

17. Requiring employee to get vaccinated or else face negative consequences is certainly a mandatory vaccination regime. Mandatory vaccination will inevitably interfere with worker's fundamental rights, such as right to private life; but under certain circumstances, this interference can be justified. In order to be justified, a mandatory vaccination regime needs to be an appropriate, necessary, proportionate and least restrictive means to pursue a legitimate aim, such as occupational safety and health (OSH) obligation or duty of care for others. While case laws suggest that mandatory vaccination is justified in the cases of hospitals and caring homes, requiring employees across the board or all civil servants to get vaccinated or regular testing remains questionable.²⁰

18. Even assuming that employers have legitimate grounds, whether they are OSH obligation, duty of care for others or operational needs, to direct employees to be vaccinated or regularly tested, it is grossly unreasonable for requiring the employees to pay for the testing at their own expense. Employers are under implied duty to reimburse employees to cover any expenses incurred while carrying out their duties; failure to do so is no different to unlawful deduction of wage.

19. The HKLRM contends that requiring employees across the board to get vaccinated or pay out of their own pockets for regular COVID testing without justifiable ground is a violation to their right to work and invites the Committee to urge the HKSAR Government to repeal the mandatory vaccination requirement on civil servants and, as far as reasonably practicable, reimburse the employees the cost of COVID testing.

Migrant domestic workers' rights denied

20. The Committee, in its Concluding Observations on the Third Periodic Report of the HKSAR, expressed the concerns about the "two-week rule", whereby migrant domestic workers (MDWs) have to leave Hong Kong 14 days after their employment contracts are terminated and the "live-in policy", whereby MDWs are required to live in the employing household, put MDWs at high risk of abuse and exploitation.²¹ The Committee regretted that the HKSAR Government had not taken any concrete measures to repeal these rules and reiterated its recommendations. The HKLRM is

¹⁸ www.info.gov.hk/gia/general/202108/24/P2021082400508.htm [retrieved 4 January 2023]

¹⁹ www.wenweipo.com/s/202108/07/AP610d9df5e4b08d3407d2a803.html (in Chinese) [retrieved 4 January 2023]

²⁰ Promoting public health, though a desirable goal, is not a legitimate ground for employers (including the government in the capacity of the employer of civil servants) to impose mandatory vaccination requirement on their employees.

²¹ www.cmab.gov.hk/doc/en/documents/policy_responsibilities/ICESCR_Concluding_Observation.pdf, para 43 [retrieved 4 January 2023]

disappointed to note that the HKSAR Government welcomed the Court of Appeal's ruling made on 21 September 2020 upholding the legality of the "live-in policy"²² and has never demonstrated any intention to repeal both the "two-week rule" and "live-in policy".

21. Under the Employment Ordinance (EO), employment agencies are prohibited from charging MDWs more than 10% of their first month's salary. A research conducted by the Indonesian Migrant Workers Union in 2020 however finds that MDWs were charged HK\$9,000 to 25,000, which is much higher than the stipulated fees²³ (the Minimum Allowable Wage for MDWs at the time of survey was HK\$4,630). The same study also reports cases that employment agencies confiscated MDWs' passports and other personal documents, and MDWs could retain their documents only when their debts were fully settled. As a result, many MDWs are forced to work under debt-bondage contracts, contributing to a modern form of slavery and human trafficking.

22. The Immigration Department (ImmD) turned down 2,833 visa applications from MDWs who had prematurely terminated their employment contract allegedly without a valid reason (commonly known as "job-hopping") in 2021, more than double the number of previous four years combined.²⁴ The ImmD explains that save for the exceptional circumstances deemed reasonable, such as the death or financial reasons of the original employer, or where there is evidence that the MDW has been abused or exploited, an application from a MDW for change of employer within the two-year contract period will normally not be approved. A MDW who wishes to have a new employer must leave the territory and submit a fresh employment visa application. For MDWs suspected of job-hopping, the ImmD will not only refuse their employment visa applications, but also keep their application records in assessing any future applications they may make.²⁵ Workers switching employers for better remunerations is a normal phenomenon in the operation of a market economy. It is also people's right to work of their own choosing as guaranteed by Article 6 of the Covenant. The HKSAR Government's detrimental treatments of those MDWs exercising their right to choose their employers freely amount to a modern form of slavery.

23. In view of the above, the HKLRM invites the Committee to (a) express its regret at the HKSAR Government's failure to take effective measures to implement the recommendations it made in previous Concluding Observations; (b) convey its concern about MDWs' right to choose their employers freely is jeopardised by the ImmD's normal practice; and (c) urge, once again, the HKSAR Government to take all necessary

²² www.info.gov.hk/gia/general/202009/21/P2020092100923.htm [retrieved 4 January 2023]

²³ apwld.org/wp-content/uploads/2022/01/IMWU-INDONESIA-final.pdf [retrieved 4 January 2023]

²⁴ www.info.gov.hk/gia/general/202201/19/P2022011900499.htm [retrieved 4 January 2023]

²⁵ www.scmp.com/news/hong-kong/society/article/3156503/hong-kong-domestic-workers-abusing-post-contract-grace [retrieved 4 January 2023]

steps to repeal the “two-week rule” and the “live-in policy” and implement other recommendations relating to the right of MDWs it previously made.

Article 7: Right to Just and Favourable Conditions of Work

Statutory minimum wage fails to lift workers out of poverty

24. The HKLRM regrets that the statutory minimum wage (SMW) has failed to lift low-paid workers and their families out of poverty. The HKSAR Government announced in February 2021 to freeze the SMW rate at HK\$ 37.5 per hour, citing recession amid the COVID-19 pandemic. The next adjustment is scheduled for 1 May 2023, which could mean a pay freeze for the most vulnerable workers for four consecutive years.²⁶ It is even more regrettable as many of the affected workers are government outsourced street cleaners and sanitation workers, who risk their health to help fight the virus.

25. From the start, the HKSAR Government has never intended to ensure all workers with decent remunerations and refuses to fix the SMW at a rate sufficient to meet workers and their families’ basic needs.²⁸ Assuming an 8-hour working day, the present SMW rate at HK\$37.5 translates into a monthly income of about HK\$7,800, an amount not sufficient even to meet the basic needs of a 2-person family, let alone a typical family of 4 (the official poverty lines for a 2-person and 4-person family in 2020 were HK\$9,500 and HK\$20,800 respectively).²⁹

26. The adjustment of the SMW has also failed to keep pace with rising prices and the territory’s economic growth. The purchasing power of the SMW at the end of 2022 was 3.6% less than that in May 2011 when the SMW was first introduced, while real GDP growth between 2011 and 2021 was over 17.5%. Partly attributable to the extremely low level of the SMW rate fixed, the in-work poverty rate (after recurrent cash benefit) climbed to 8.8% in 2020, an increase by 0.8 percentage point compared to that in 2018.³⁰

27. In light of the above, the HKLRM contends that the HKSAR Government has not fulfilled its obligation under Article 7(a)(ii) of the Covenant to ensure all workers with remuneration which provides them, as a minimum, with a decent living for

²⁶ Subject to the approval of the legislature, the SMW rate will rise to HK\$40 starting 1 May 2023 (www.info.gov.hk/gia/general/202301/10/P2023011000204.htm) [retrieved 13 January 2023]. Even with the increase of 6.7%, the SMW will certainly offer less purchasing power than it did in May 2019 (inflation between May 2019 and November 2022 is exactly 6.7%).

²⁸ See for example Legislative Council (2010) *Official Record of Proceedings* pp. 11,688 & 12,210

²⁹ www.censtatd.gov.hk/en/scode461.html [retrieved 4 January 2023]

³⁰ The SMW’s purchasing power is calculated by deflating the SMW by the underlying Consumer Price Index (A) (www.censtatd.gov.hk/en/data/stat_report/product/D5600003/att/D5600003B2022MM11B.xlsx); real GDP statistics is obtained from *Hong Kong Annual Digest of Statistics 2022 Edition*, Table 4.1(b); in-work poverty rate, www.censtatd.gov.hk/en/data/stat_report/product/B9XX0005/att/B9XX0005E2020AN20E01.xlsx [all retrieved 4 January 2023]

themselves and their families, and invites the Committee to urge the HKSAR Government to implement all effective measures, including amending the Minimum Wage Ordinance, to ensure that the SMW rate is fixed taking into full account of the needs of workers and their families and adjusted at least once a year to take account of changes in the cost of living and other economic conditions.

No regulations on working time, overtime pay and rest breaks

28. There are no statutory provisions in the HKSAR regulating working time. As a result, the city has the longest working hours in the world; in the third quarter of 2022, more than 1 million (or almost 29% of) employed persons had to work more than 50 hours a week.³¹ Worse still, more than 550,000 (or nearly 20%) of private sector employees had to work overtime without pay or compensation, the government-appointed Standard Working Hours Committee revealed in its report in 2017.³² In addition, there are no laws governing rest breaks; workers in some industries, container dispatchers or car park attendants for instance, have to work continuously for more than 10 hours without a rest break or meal break.³³

29. Working excessive long hours not only affects workers' family and social life, but also poses serious threats to their occupational health and safety. Despite repeated calls by the Committee and trade unions, the HKSAR Government has persistently refused to legislate for working time, overtime pay and rest breaks. The HKSAR Government instead established 11 working groups (comprising representatives from the government, employers and workers) in 2017 to draw up non-binding, sector-specific working hours guidelines with suggested "*working hours arrangements, overtime compensation arrangements and good working hours management measures for reference and adoption by employers and their employees*".³⁴

30. The HKLRM notes with regret that there is little progress on the development of working hours guidelines and there is not a single word on regulating working time in the CE's latest Policy Address or Policy Programmes. In this connection, the HKLRM invites the Committee to urge the HKSAR Government, as a matter of high priority, to make statutory provisions for regulating working time, overtime pay and rest breaks, with a view to ensuring that all workers can fully enjoy the rights stipulated in Article 7(d) of the Covenant.

³¹ Census and Statistics Department (2022) *Quarterly Report on General Household Survey: July to September 2022*, Table 4.7 available at www.censtatd.gov.hk/en/data/stat_report/product/B1050001/att/B10500012022QQ03B0100.pdf [retrieved 4 January 2023]

³² www.labour.gov.hk/eng/plan/pdf/whp/swhc_report.pdf, p. 50 [retrieved 4 January 2023]

³³ www.scmp.com/news/hong-kong/health-environment/article/3097733/workers-hong-kongs-busiest-port-sleep-converted [retrieved 4 January 2023]

³⁴ www.labour.gov.hk/eng/plan/whp.htm [retrieved 4 January 2023]

Insufficient protections for workers engaged under atypical work arrangements

31. Under the EO, only “continuous contract employees” (hereafter “4-18 employees”)³⁵ are entitled to such benefits as rest days, paid holidays and annual leave, maternity leave and pay, sickness allowance, severance and long service payments etc., subject to the satisfaction of the qualifying periods stipulated therein. A survey conducted by the Census and Statistics Department between October 2019 and January 2020 found that there were nearly 160,000 private sector employees who usually worked less than 18 hours per week, almost triple the 56,300 in 2009.³⁶ Moreover, another roughly 10,000 employees usually worked more than 18 hours per week but not every week. This means that those 170,000 part-time workers can never enjoy the benefits afforded to “4-18 employees”, no matter how long they have worked for the same employer.

32. As the statutory provisions now stand, it is open to employers to adopt odd patterns of working hours to evade their statutory responsibilities. For example, the Hong Kong Jockey Club had been accused of employing workers on a 17-hour week basis,³⁷ and a fast-food chain was found to arrange its employees to work for three consecutive 48-hour weeks followed by a 1-week break.³⁸ Employers may also avoid paying certain “4-18” benefits by way of a series of fixed-term contracts and a short break between each contract. It is pertinent to recall that in 2006, the Court of Appeal sounded its dismay that “[t]he situation is clearly unsatisfactory when employers are able to adopt devices which relieve them of their obligation towards their employees” and suggested that changes should be introduced to the EO “along the lines *The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 of the United Kingdom which implemented the European Union Directive on Fixed Term Work (1999/70/EC)*”.³⁹ Regrettably, more than 16 years after the Court of Appeal ruling, the HKSAR Government has failed to introduce any measures to plug the loopholes.

33. Access to employment rights depends to a large extent on whether an individual is employed as an employee. The traditional binary categorisation of “subordinate and dependent employee” vs “autonomous and independent self-employed” however gives rise to problems when the status of individuals is so unclear that they cannot be easily classified as being employees or self-employed. This problem becomes more acute as the existing classifications fail to reflect recent growth of certain flexible or non-standard forms of employment, in particular casual

³⁵ “Continuous contract employees” or “4-18 employees” are those who had been employed by the same employer for four weeks or more and had worked for 18 hours or more each week (the 4-18 requirement).

³⁶ www.censtatd.gov.hk/en/EIndexbySubject.html?scode=200&pcode=C0000016 [retrieved 4 January 2023]

³⁷ orientaldaily.on.cc/cnt/news/20140403/mobile/odn-20140403-0403_00176_053.html (in Chinese) [retrieved 9 January 2023]

³⁸ www.inmediahk.net/勞工/零散工權益狀況調查報告：返工零保障-四成受訪零散工工時與全職工無異 (in Chinese) [retrieved 9 January 2023]

³⁹ Reported in [2007] 1 HKC 365 paras 6 & 9

work, zero-hours contracts, fixed term and task work, agency work, platform work, freelancing and “dependent self-employment”. These non-standard forms of work arrangement are commonly found in the construction and transportation sectors as well as food delivery platform. They are among the principal groups whose employment status is currently in doubt, and are in need of some forms of protection, those relating to OSH in particular.

34. Depriving atypical workers of certain labour rights and benefits is in breach of Article 7 of the Covenant. The HKLRM invites the Committee to urge the HKSAR Government to review and amend the existing EO and the Employee Compensation Ordinance (ECO) with a view to extending their application, with adaptations where necessary, to all workers under non-standard forms of work arrangement, including casual workers, zero-hours contract workers, fixed term and task workers, agency workers, platform workers, freelancer and “dependent self-employed”, and take all necessary measures to ensure that all atypical workers can effectively enjoy the right to just and favourable conditions of work under Article 7 of the Covenant.

Article 8: Right to Freedom of Association

Arrest and persecution of trade union officers

35. Since the promulgation of the NSL, at least eleven trade union leaders have been arrested. As at the end of 2022, six have been sentenced to jail, three were remanded in custody, two were released on police bail and one was discharged by the police.⁴⁰ A list of the arrested trade unionists can be found at Annex 2.

36. Lee Cheuk-yan, former General Secretary of the Hong Kong Confederation of Trade Unions (HKCTU), was first arrested and charged on 28 February 2020 for organising an unauthorised rally on 31 August 2019. He was later charged with organising unauthorised assembly in another three incidents: the rallies on 18 August and 1 October and the June 4th Candlelight Vigil on 4 June 2020. He was convicted of all the charges in three separate District Court trials in 2021 and was sentenced to a total of 20 months in jail.⁴¹ He was arrested (while in prison) on 9 September 2021 and charged with inciting subversion of state power under the NSL. He has been remanded in custody since finished serving his jail terms on 30 September 2022. The High Court declined his application for bail on 2 December, citing the risk he could continue to commit acts endangering national security.⁴²

⁴⁰ One trade union leader had finished serving his jail terms and were remanded in custody over another charge under the NSL.

⁴¹ <https://www.thestandard.com.hk/breaking-news/section/4/184432/Eight-Hong-Kong-activists-jailed-for-up-to-a-year-and-two-months-over-June-4-vigil> [retrieved 4 January 2023]

⁴² hongkongfp.com/2022/12/06/ex-hong-kong-tiananmen-vigil-leader-denied-bail-as-court-cites-strong-evidence-in-national-security-case [retrieved 4 January 2023]

37. Carol Ng, former chair of the HKCTU, stood in an unofficial primary election organised by the pro-democracy camp in July 2020. She ran on the platform of striving for better protection of labour rights and strengthening the role of workers in the fight for the city's democracy through union organising. She was arrested on 6 January 2021 on suspicion of conspiracy to subversion over her participation in the primaries, and has been detained since 28 February. The High Court declined her appeal for bail on 20 December, citing her international influence as a result of her trade union work.⁴³

38. Winnie Yu, former chair of the Hospital Authority Employees Alliance (HAEA), won the democracy camp's primaries in the Health Services functional constituency. She was arrested on 6 January 2021 on suspicion of conspiracy to subversion and was denied bail after a four-day marathon trial starting 1 March. The High Court allowed her appeal for bail on 28 July, citing there was no evidence that she "*ever had an international connection*".⁴⁴ She was arrested again on suspicion of violating bail conditions on 7 March 2022 and her bail was revoked next day by a magistrate, seemingly because of posts she made to social media criticising the government's handling of the Omicron outbreak, which has left nearly 3,000 people dead (as of early March 2022) and hospitals overwhelmed.⁴⁵

39. Five leaders of the General Union of Hong Kong Speech Therapists (GUHKST) were charged in July and August 2021 respectively on suspicion of publishing and circulating seditious materials.⁴⁶ The publications in question were three children's picture books about sheep defending their village from invading wolves. The police accused the three books of intending to bring into hatred or contempt, or to excite disaffection against the government and the administration of justice. They were convicted by the District Court on 2 September 2022 and were sentenced to 19 months each in prison.⁴⁷ They were released after finished serving their jail terms on 10 October 2022.

40. The HKLRM contends that the above trade union leaders were arrested, prosecuted, convicted and/or sentenced solely for exercising their right to freedom of expression or right of peaceful assembly. In addition, the right to participation in peaceful political activities, including primary election, by trade union leaders with an aim to improve labour rights could never be a criminal offence in liberal democracies and it seems only in the HKSAR does trying to defeat the incumbent government in accordance with constitutional provisions amount to subversion. In this connection,

⁴³ Reported in [2022] HKCFI 1061

⁴⁴ www.scmp.com/news/hong-kong/law-and-crime/article/3148756/national-security-law-hong-kong-judge-rules-subversion [retrieved 4 January 2023]

⁴⁵ www.rfa.org/english/news/china/hongkong-unionist-03102022105118.html [retrieved 4 January 2023]

⁴⁶ www.scmp.com/news/hong-kong/law-and-crime/article/3146852/hong-kong-childrens-books-trio-charged-conspiracy [retrieved 4 January 2023]

⁴⁷ hongkongfp.com/2022/09/10/breaking-5-hong-kong-speech-therapists-jailed-for-19-months-each-for-sedition-over-childrens-books [retrieved 4 January 2023]

the HKLRM invites the Committee to urge the PRC and HKSAR Government to (a) repeal the NSL, the sedition provisions under the Crimes Ordinance and the unauthorised assemblies offences under the Public Order Ordinance, and, in the meantime, refrain from applying these laws; and (b) immediately discontinue all pending cases against individuals charged for exercising the right to freedom of expression, right of peaceful assembly and right to participation in public affairs, and provide them with adequate compensation.

Law enforcement actions against trade unions

41. The Trade Union Ordinance (TUO) prohibits the use of union fund for any political purpose. It also grants the Registrar of Trade Unions (RTU) extensive powers to cancel the registration of trade unions. Shortly after five leaders of the GUHKST were arrested over the publication of three children’s picture books, the RTU issued a “notice of intention to cancel the registration” to the union on 13 August 2021, alleging that it is being used for purposes inconsistent with its objects or rules. The GUHKST was officially de-registered two months later. The police had also frozen around HK\$160,000 of the union’s assets in accordance with the Implementation Rules made under Article 43 of the NSL.⁴⁸ Promoting justice, the purpose of publishing the three children’s books, is one of the founding objectives of the GUHKST and a legitimate union activity recognised by international labour conventions. Disregarding its international treaty obligations, the HKSAR Government hastily de-registered the GUHKST in a bid to warn other unions that the knife is hanging over their heads.

42. To the knowledge of the HKLRM, the RTU has sent enquiry letters to at least 11 trade unions since September 2021, requesting information on their activities that are suspected of being inconsistent with the TUO, or their objects or rules. The HAEA received RTU’s enquiry letters on 3 September 2021, which demanded the union to submit information on eight events it held, including the 5-day strike in relation to COVID-19 outbreak, former chair Winnie Yu’s participation in the democracy camp’s primaries, the screening and street stalls concerning the 1989 Tiananmen Democratic Movement and commentaries about the efficacy of Sinovac vaccine.⁴⁹ The Hong Kong Journalists Association (HKJA) also confirmed they had received an enquiry from the RTU in January 2022. The authorities asked the HKJA to provide information on their activities, such as movie screening, book launches, social media posts during the 2019 Anti-ELAB Movement and the annual report on press freedom.⁵⁰

43. Four former office-bearers of the HKCTU were questioned by the police’s national security department. They had allegedly failed to respond to a series of

⁴⁸ www.thestandard.com.hk/breaking-news/section/4/179110/Govt-to-revoke-registration-of-speech-therapists'-union [retrieved 4 January 2023]

⁴⁹ hongkongfp.com/2021/09/17/hong-kong-hospital-authority-union-denies-govt-allegation-it-broke-law [retrieved 4 January 2023]

⁵⁰ hongkongfp.com/2022/01/21/unions-registry-demands-answers-from-hong-kong-journalists-assoc-over-film-screenings-book-events-social-media-posts [retrieved 4 January 2023]

questions regarding the HKCTU's operations, past activities, financial sources and links to groups outside Hong Kong. Three of them were charged and found guilty under Article 16(2) of the Societies Ordinance for failing to cooperate with the police's request for information, and were fined HK\$8,000 each.⁵¹ The police also raided more than 10 locations across the city, seizing documents and electronic devices from the HKCTU's offices and warehouses.

44. The International Labour Organisation (ILO) has repeatedly stressed that a system of democracy is fundamental for the free exercise of rights to organise and that the absence of civil liberties removes all meaning from the concept of trade union rights. Trade unions fighting for democracy and fundamental freedoms should be considered within the scope of their legitimate activities. The TUO provisions imposing a general ban on the use of union funds for any political purpose, rendering unions impossible to engage in political activities to promote the interests of their members, are contrary to the principle of freedom of association. With these remarks, the HKLRM invites the Committee to urge the HKSAR Government to (a) amend the TUO and the Societies Ordinance with a view to ensuring that trade unions and labour organisations can freely carry out their legitimate functions and exercise their rights under the Covenant and other international human right instruments; and (b) immediately stop harassing, intimidating or interfering into trade unions and labour organisations' legitimate exercise of their right to freedom of association.

Dissolution of trade unions and labour organisations

45. Amid the fast-deteriorating political environments and the chilling effect imposed by the NSL and other draconian laws, many trade unions decided to disband or stopped operations. 62 trade unions cancelled their registration through dissolution or at their own request in 2021, compared with only seven over the period between 2018 and 2020.⁵² Some labour organisations not registered under the TUO also decided to disband or withdraw their operations in the city, for example the Asia Monitor Resource Centre.

46. The Union for New Civil Servants (UNCS) decided to disband a day after the government required all civil servants to take oath. Former chair Michael Ngan, who was demoted by the government in June 2020 without a reasonable ground, described the oath-taking requirement as an "*arrow on the string*" for his union and explained that "*officers of the union might not be able to remain in the government, meaning they will also not be qualified to be union members and officers*".⁵³ He believed that disbanding the union is a reluctant but necessary action to protect members'

⁵¹ www.inmediahk.net/node/社運/已解散職工盟被指無按例交資料-三人認罪各罰款8千元-鄧建華：良心驅使、人不能夠捲曲如蛆蟲 (in Chinese) [retrieved 4 January 2023]

⁵² www.labour.gov.hk/tc/public/pdf/rtu/ASR2021.pdf [retrieved 4 January 2023]

⁵³ www.scmp.com/news/hong-kong/politics/article/3118044/civil-service-union-formed-during-hong-kong-protests [retrieved 4 January 2023]

information. The UNCS had been critical of police's excessive use of force during the 2019 Anti-ELAB Movement and helped organise an unofficial poll collecting civil servant's opinion on the NSL in June 2020. The HKSAR Government was angered by UNCS's activities and warned civil servants of possible disciplinary actions if they violated the Civil Service Code or Regulations (CSRs). The CSRs prohibits civil servants, whether on duty or on leave, from engaging in public debate on government policies, organising or participating in public processions, distributing political publications and signing public petitions. The HKSAR Government repeatedly stresses that the restrictions apply equally to officers and members of trade unions, a stance which is not compatible with ILO's conventions on the principle of freedom of association.

47. The Professional Teachers' Union (PTU), the city's largest independent trade union with a membership of 95,000 representing 90% of the profession, announced its disbandment on 12 August 2021. The PTU's decision came less than two weeks after the People's Daily and Xinhua News Agency simultaneously published two commentaries accusing the union of "*encouraging anti-China activities that mess up Hong Kong*" and blasting it as a "*poisonous tumour*" that must be "*eradicated*".⁵⁴ Knowing that the PTU's assets could be frozen at any time under the Implementation Rules of the NSL, the union leadership decided it was better to speedily disband itself to protect their enormous financial reserves to pay for around 200 employees' wages and severance pay.⁵⁵

48. The HKCTU announced its decision to disband on 19 September 2021 amid repeated intimidation from Beijing's propaganda arm and warnings from the "middlemen", and passed a resolution at an extraordinary general meeting on 3 October to end the 31-year-old umbrella group of independent trade unions. Wen Wei Po and Tai Kung Pao, two pro-Beijing newspapers, blamed the HKCTU for receiving funding from foreign organisations, colluding with external forces and manipulating trade unions into participating in anti-China activities to disrupt the HKSAR. Prior to HKCTU's announcement to disband, former chief executive Mung Siu-tat resigned and fled the city because of "*imminent political risks and safety concerns*". Mung later revealed that he was interviewed by the "middlemen" three times within a month, and referral to the Police's national security department was mentioned in their last meeting.

49. In light of the above, the HKLRM invites the Committee to urge the PRC and HKSAR Government, (a) as a matter of utmost priority, to take all necessary measures, including immediately discontinuing all pending cases against trade union members charged for exercising their rights to freedom of association, to ensure that all trade unions and labour organisations can carry out their legitimate function in a climate

⁵⁴ hongkongfp.com/2021/08/10/breaking-hong-kongs-largest-teachers-union-to-disband-following-pressure-from-govt-and-chinese-state-media [retrieved 4 January 2023]

⁵⁵ www.scmp.com/news/hong-kong/politics/article/3157386/national-security-law-why-have-hong-kongs-activist-groups [retrieved 4 January 2023]

free of fear and threats of any kind; and (b) review and amend the CSRs with a view to ensuring that all civil servants not engaged in the administration of state will not risk disciplinary actions for forming or joining trade unions, or participating in legitimate trade union activities.

Weak protection against anti-union discrimination

50. Though anti-union discrimination is a criminal offence in the HKSAR, successful prosecutions are rare (only two cases since its enactment in 1974) because it is extremely difficult to prove employer's covert intent in criminal proceedings. While an employee dismissed on grounds of union membership or activity may make a claim for reinstatement/re-engagement or compensation under Part VIA of the EO, there is no provisions for civil remedies in respect of other forms of victimisation, such as being passed over for promotion, demoted or transferred to other work, or given less favourable remunerations, reduced working hours or unsocial shifts.

51. Provisions relating to unfair dismissal under Part VIA of the EO does not apply to cases of non-renewal of fixed-term contract. Benson Wong, former chair of the Hong Kong Baptist University Faculty and Staff Union, had to leave his job as he was not offered a contract extension, seemingly because of his involvement in trade union activities.⁵⁶ He is however not entitled under the EO to file a claim to the Labour Tribunal for reinstatement/re-engagement or compensation. It is also worth noting that there is no statutory protection against anti-union discrimination afforded to civil servants, as the EO does not bind the HKSAR Government.

52. With these remarks, HKLRM invites the Committee to urge the HKSAR Government to amend the EO to provide for (a) civil remedies in respect to all forms of anti-union victimisation, including being passed over for promotion, demoted or transferred to other work, or given less favourable remunerations, reduced working hours or unsocial shifts; (b) the right to make a claim for reinstatement/re-engagement or compensation in respect to non-renewal of fixed-term contract on ground of trade union membership or activity; and (c) statutory protection for all civil servants against all forms of anti-union discrimination, including provisions for civil remedies.

No statutory provisions for collective bargaining

53. The Right to Organise and Collective Bargaining Convention 1949 (ILO Convention 98) is applicable without modifications to the HKSAR, but the HKSAR Government has never demonstrated any serious efforts to encourage union participation and collective bargaining. Despite repeated calls by the ILO since 1998, the HKSAR Government has persistently refused to adopt legislative provisions laying down objective procedures for determining the representative status of trade unions

⁵⁶ hongkongfp.com/2018/02/27/i-troublemaker-hong-kong-baptist-university-denies-contract-extension-staff-union-chair [retrieved 4 January 2023]

for collective bargaining purposes. The HKSAR Government's active discouragement and refusal to provide legal frameworks for collective bargaining have resulted in the marginal representation of trade unions in the HKSAR with less than 1% of workers covered by collective agreements.

54. Without statutory provisions for collective bargaining, even those trade unions with a strong workplace presence suffered serious setback. For instance, Cathay Pacific Airways unilaterally withdraw from the union recognition agreement and stop negotiating over pay and conditions with the Hong Kong Aircrew Officers' Association and the Cathay Pacific Airways Flight Attendants Union, calling it an "outdated practice" no longer relevant to the modern world.⁵⁷ The airline also terminated the facilitating arrangements offered to the unions, including provision of office space and collection of union dues. The HKLRM notes with regret that the HKSAR Government just stood on the side-lines when Cathay Pacific unilaterally walked away from the negotiation table.

55. In this connection, the HKLRM invites the Committee to urge the HKSAR Government to take all necessary measures, including legislating for objective procedures for determining the representative status of trade unions for the purposes of collective bargaining, to encourage and promote the full development and utilisation of apparatus and mechanism for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Lack of job protection for striking workers

56. Though the right to strike is stipulated in Article 27 of the Basic Law, local labour laws provide little job protection for striking workers. A Court of Final Appeal ruling in 2012 confirms that taking part in a trade union-sponsored strike could rarely be a protected form of trade union activities under Part IVA of the EO, as strike could never be taken part outside the working hours or at a time within working hours with the employer's consent ("appropriate time").⁵⁸ The only statutory protection is that the EO prevents employer from summarily dismissing striking workers, but nothing in the laws prohibits employer from terminating the contract by notice.

57. Facing the potential public health risk due to the government's inaction to the COVID-19 outbreak, the HAEA in February of 2020 called for a strike demanding the assurance of sufficient supply of personal protective equipment and closure of all borders to contain the virus. The HAEA strike aimed to further its members' occupational interest including a safe and healthy working environment and was a legitimate union activity. However, the Hospital Authority had never recognised the collective action as strike but treated it as "absence from duty" subject to disciplinary

⁵⁷ www.scmp.com/news/hong-kong/transport/article/3111621/cathay-pacific-snubs-union-over-pay-talks-and-says-it-will [retrieved 4 January 2023]

⁵⁸ Reported in [2012] 15 HKCFAR 261

action.⁵⁹ The HKSAR Government even accused the strike as a politically motivated extremist action.

59. With these remarks, the HKLRM invites the Committee to urge the HKSAR Government to (a) legislate for strengthening protection for striking workers against unfair dismissal and other detrimental treatments; and (b) take all appropriate measures to protect workers taking part in strike or other industrial actions against harassment and intimidation.

Article 9: Right to Social Security

Refusal to introduce unemployment assistance scheme

60. Although Hong Kong's unemployment rate has hit a 17-year high amid the COVID-19 outbreak, the HKSAR Government has still refused to institute an unemployment insurance scheme. The authorities instead opted to temporarily relax applicants' asset limits under the Comprehensive Social Security Assistance (CSSA) Scheme, for which unemployed persons must apply together with their family members. Despite the HKSAR Government suggested otherwise, the CSSA had failed to provide the bulk of the unemployed with income security. While there were more than 260,000 persons losing their jobs in December 2020 to February 2021, less than 20,000 (or 7.6%) of them were on the dole. This is in stark contrast to the overwhelming response to the 100% Personal Loan Guarantee Scheme, which was launched in April 2021 to provide alternative financial assistance to those losing their employment income amid the pandemic. In less than two months, the participating banks of the Scheme received more than 46,000 applications, more than double the number of unemployed persons on CSSA.

61. Amid the fifth wave of the COVID-19 outbreak, the HKSAR Government introduced the Temporary Unemployment Relief Scheme in March 2022, providing a one-off subsidy of HK\$10,000 to low-to-middle income persons who have lost their jobs due to the pandemic. The Scheme attracted some 470,000 applications in three months and up to 350,000 applicants have been granted subsidies, which far exceed the original estimate of 300,000 beneficiaries.⁶⁰ The overwhelming response to Scheme demonstrates the substantial needs for a recurrent unemployment assistance programme, the HKSAR Government however remains noncommittal.

62. In this connection, the HKLRM invites the Committee to urge the HKSAR Government to introduce, as soon as reasonably practicable, an unemployment assistance scheme to relieve the financial hardship of the unemployed persons.

⁵⁹ hongkongfp.com/2020/02/27/coronavirus-hong-kongs-hospital-authority-targets-medics-went-strike-urge-border-closure [retrieved 4 January 2023]

⁶⁰ www.info.gov.hk/gia/general/202207/31/P2022073100298.htm [retrieved 4 January 2023]

Difficulties in claiming compensation for contracting COVID-19 at work

63. Trade unions have repeatedly urged the HKSAR Government to add COVID-19 as one of the statutory occupational diseases under the ECO in order to make it easier for those employees catching the virus at work to claim compensation. The HKSAR Government however refused to commit, citing insufficient evidence to support the existence of a causal relationship or a higher coincidence between COVID-19 and work. Although an employee contracted COVID-19 arising out of and in the course of work is entitled to claim work injury compensation under the ECO, it is extremely difficult to prove the infection is work-related. As of April 2021, the Labour Department (LD) received a total of 541 employees' compensation cases relating to COVID-19. Of which, 79 cases, or less than 15%, were confirmed to be work-related, and only 11 were settled after the employers had made full payments of compensation. Among the 462 unconfirmed cases, 110 were withdrawn and the rest were still being processed.⁶¹

64. The slow progress of handling COVID-19 work injury claims exposes the long-standing weaknesses of the city's employee compensation system. First, unlike most jurisdictions where work injury claims are adjudicated by the executive authorities or a statutory body, the LD has no statutory powers to determine compensation claims; any dispute can only be settled in court proceedings, which could be prohibitive for most employees. Second, the employer liability private insurance scheme adopted in the HKSAR, which involves four different interest parties – employee, employer, private insurance company and government – inevitably makes the claiming process more complicated.

65. In view of the above, the HKLRM invites the Committee to urge the HKSAR Government to reform the territory's employee compensation system, ensuring all work injury compensation claims are fairly and efficiently handled.

Lack of universal retirement protection

66. The HKLRM is concerned about the increasing poverty among older persons, the more so as the HKSAR population is projected to be ageing rapidly in the coming decades. In 2020, there were more than 415,000 older persons (aged 65 or above) living below the poverty line (after recurrent cash benefit), and the corresponding poverty rate stood at 32.0%, up by almost two percentage points compared to that in 2015.⁶²

67. The contribution rates of the Mandatory Provident Fund (MPF) Scheme (5% of monthly income each from employer and employee, subject to a cap of HK\$1,500) are too low that the accrued benefits will most probably be insufficient for supporting retirees a decent living, especially the HKSAR's life expectancy is among the highest

⁶¹ www.info.gov.hk/gia/general/202105/12/P2021051200251.htm [retrieved 4 January 2023]; the HKSAR Government has not provided further update on the statistics on COVID-19 related work injury claims.

⁶² Note 30.

around the globe. Moreover, homemakers and domestic workers, most of whom are women, are excluded from the coverage of the MPF Scheme, making them particularly vulnerable and financially dependent on their families when they grow old. The HKSAR Government introduced the Old Age Living Allowance in 2012 to provide, subject to income and assets assignment, a monthly allowance to supplement the living expenses of elderly people. The current monthly payment is HK\$3,915, an amount which is below the official poverty line. Moreover, the allowance is not a pre-funded programme, its fiscal sustainability is called into doubt given the HKSAR population is rapidly ageing.

68. In this connection, the HKLRM invites the Committee to urge the HKSAR Government to establish a partially pre-funded universal pension scheme for all elderly people, financed by contributions from government, employers and employees.

Summary of Recommendations

69. The HKLRM invites the Committee to:

Factors Impeding the Progressive Realisation of Economic, Social and Cultural Rights

- i. urge the PRC and HKSAR Governments to (a) repeal the NSL and, in the meantime, refrain from applying the law; and (b) take all necessary steps to ensure that civil society organisations and their members can carry out their legitimate functions and exercise their rights under the Covenant and other international human right instruments in a climate free of fear and threats of any kind (para 3-5);
- ii. urge the PRC and HKSAR Government to take all necessary steps to progress towards a truly democratic system of governance, including by ensuring that all citizens, regardless of social, economic or property status, have equal electoral rights in elections (para 6-8);
- iii. urge the PRC and HKSAR Governments to amend Articles 107 and 108 of the Basic Law, with a view to ensuring that the city's fiscal policy fully conforms with the Covenant, and particularly facilitates the utilisation of its maximum available resources to achieve progressively the full realisation of the rights under the Covenant (para 9-11);

Right to Work

- iv. urge the HKSAR Government to take all necessary steps, including the revocation of the oath-taking requirement for civil servants and other public sector workers, reviewing the mechanism of handling complaint against teachers and the regulation on social worker registration, to ensure that all civil servants, teachers, social workers and other public sector workers' right

- to work are fully protected in accordance with the Covenant and particularly against discrimination on the basis of political or other opinion (para 12-15);
- v. urge the HKSAR Government to repeal the mandatory vaccination requirement on civil servants and, as far as reasonably practicable, reimburse the employees the cost of COVID testing (para 16-19);
 - vi. (a) express its regret at the HKSAR Government's failure to take effective measures to implement the recommendations it made in previous Concluding Observations; (b) convey its concern about MDWs' right to choose their employers freely is jeopardised by the ImmD's normal practice; and (c) urge, once again, the HKSAR Government to take all necessary steps to repeal the "two-week rule" and the "live-in policy" and implement other recommendations relating to the right of MDWs it previously made (para 20-23);

Right to Just and Favourable Conditions of Work

- vii. urge the HKSAR Government to implement all effective measures, including amending the Minimum Wage Ordinance, to ensure that the SMW rate is fixed taking into full account of the needs of workers and their families and adjusted at least once a year to take account of changes in the cost of living and other economic conditions (para 24-27);
- viii. urge the HKSAR Government, as a matter of high priority, to make statutory provisions for regulating working time, overtime pay and rest breaks, with a view to ensuring that all workers can fully enjoy the rights stipulated in Article 7(d) of the Covenant (para 28-30);
- ix. urge the HKSAR Government to review and amend the existing EO and ECO with a view to extending their application, with adaptations where necessary, to all workers under non-standard forms of work arrangement, including casual workers, zero-hours contract workers, fixed term and task workers, agency workers, platform workers, freelancer and "dependent self-employed", and take all necessary measures to ensure that all atypical workers can effectively enjoy the right to just and favourable conditions of work under Article 7 of the Covenant (para 31-34);

Right to Freedom of Association

- x. urge the PRC and HKSAR Government to (a) repeal the NSL, the sedition provisions under the Crimes Ordinance and the unauthorised assemblies offences under the Public Order Ordinance, and, in the meantime, refrain from applying these laws; and (b) immediately discontinue all pending cases against individuals charged for exercising the right to freedom of expression, right of peaceful assembly and right to participation in public affairs, and provide them with adequate compensation (para 35-40);
- xi. urge the HKSAR Government to (a) amend the TUO and the Societies Ordinance with a view to ensuring that trade unions and labour organisations

can freely carry out their legitimate functions and exercise their rights under the Covenant and other international human right instruments; and (b) immediately stop harassing, intimidating or interfering into trade unions and labour organisations' legitimate exercise of their right to freedom of association (para 41-44);

- xii. urge the PRC and HKSAR Government, (a) as a matter of utmost priority, to take all necessary measures, including immediately discontinuing all pending cases against trade union members charged for exercising their rights to freedom of association, to ensure that all trade unions and labour organisations can carry out their legitimate function in a climate free of fear and threats of any kind; and (b) review and amend the CSRs with a view to ensuring that all civil servants not engaged in the administration of state will not risk disciplinary actions for forming or joining trade unions, or participating in legitimate trade union activities (para 45-49);
- xiii. urge the HKSAR Government to amend the EO to provide for (a) civil remedies in respect to all forms of anti-union victimisation, including being passed over for promotion, demoted or transferred to other work, or given less favourable remunerations, reduced working hours or unsocial shifts; (b) the right to make a claim for reinstatement/re-engagement or compensation in respect to non-renewal of fixed-term contract on ground of trade union membership or activities; and (c) statutory protection for all civil servants against anti-union discrimination (para 50-52);
- xiv. urge the HKSAR Government to take all necessary measures, including legislating for objective procedures for determining the representative status of trade unions for the purposes of collective bargaining, to encourage and promote the full development and utilisation of apparatus and mechanism for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements (para 53-55);
- xv. urge the HKSAR Government to (a) legislate for strengthening protection for striking workers against unfair dismissal and other detrimental treatments; and (b) take all appropriate measures to protect workers taking part in strike or other industrial actions against harassment and intimidation (para 56-59);

Right to Social Security

- xvi. urge the HKSAR Government to introduce, as soon as reasonably practicable, an unemployment assistance scheme to relieve the financial hardship of the unemployed persons (para 60-62);
- xvii. urge the HKSAR Government to reform the territory's employee compensation system, ensuring all work injury compensation claims are fairly and efficiently handled (para 63-65); and

- xviii. urge the HKSAR Government to establish a partially pre-funded universal pension scheme for all elderly people, financed by contributions from government, employers and employees (para 66-68).

Annex 1: List of Abbreviations

AHPNA	Allied Health Professionals and Nurses Association
Anti-ELAB	Anti-Extradition Law Amendment Bill
CE	Chief Executive of the Hong Kong Special Administrative Region, China
Committee	Committee on Economic, Social and Cultural Rights
Covenant	International Covenant on Economic, Social and Cultural Rights
COVID-19	Coronavirus disease 2019
CSRs	Civil Service Regulations
CSSA	Comprehensive Social Security Assistance
ECO	Employee Compensation Ordinance
EO	Employment Ordinance
GDP	Gross Domestic Product
GUHKST	General Union of Hong Kong Speech Therapists
HAEA	Hospital Authority Employees Alliance
HKCTU	Hong Kong Confederation of Trade Unions
HKJA	Hong Kong Journalists Association
HKLRM	Hong Kong Labour Rights Monitor
HKNS	Hong Kong Nursing Staff
HKSAR	Hong Kong Special Administrative Region, China
ILO	International Labour Organisation
ImmD	Immigration Department
LD	Labour Department
MDW	Migrant domestic worker
MPF	Mandatory Provident Fund
NCSC	Non-civil service contract
NSL	Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region
OECD	Organisation for Economic Co-operation and Development

OSH	Occupational safety and health
PRC	People's Republic of China
PTU	Professional Teachers' Union
RTU	Registrar of Trade Unions
SMW	Statutory minimum wage
TUO	Trade Union Ordinance
UN	United Nations
UNCS	Union for New Civil Servants
UNHRC	United Nations Human Rights Committee

Annex 2: List of Arrested Trade Union Leaders since the Promulgation of the National Security Law

Name	Trade union	Date of first arrest	Charges (reason of arrest if not charged)	Status
Lee Cheuk-yan	General secretary, HKCTU	28 Feb 2021	Unauthorised assemblies (18 & 31 Aug and 1 Oct 2019 and 4 Jun 2020)	Sentenced to a total of 20 months imprisonment; finished serving on 30 Sep 2022
		(Summon)	Obstructing a police officer	Sentenced to three weeks imprisonment (one week concurrent); finished serving on 30 Sep 2022
		9 Sep 2021	Inciting subversion	Denied bail on 2 Dec 2022; pending trial (High Court, not scheduled)
Carol Ng	Chair, HKCTU	6 Jan 2021	Conspiracy to commit subversion	Denied bail on 4 Mar 2021; pledged guilty on 3 Nov 2022, pending sentencing (High Court, not scheduled)
Winnie Yu	Chair, HAEA	6 Jan 2021	Conspiracy to commit subversion	Denied bail on 4 Mar 2021; granted bail on 28 Jul 2021; bail revoked on 8 Mar 2022; pledged not guilty on 9 Nov 2022; pending trial (High Court, scheduled Feb 2023)
Joseph Lee	Chair, AHKNS	6 Jan 2021	(Conspiracy to commit subversion)	Released on police bail
Cyrus Lau	ExCo member, AHPNA	6 Jan 2021		
Lai Man-ling	Chairperson, GUHKST	22 Jul 2021	Publishing and circulating seditious materials	Denied bail on 23 Jul 2021; sentenced to 19 months imprisonment on 10 Sep 2022; released on 10 Oct 2022
Melody Yeung	Deputy chairperson, GUHKST	22 Jul 2021		
Sidney Ng	Secretary, GUHKST	22 Jul 2021		
Samuel Chan	Treasurer, GUHKST	22 Jul 2021	Publishing and circulating seditious materials	Denied bail on 30 Aug 2021; sentenced to 19 months imprisonment on 10 Sep 2022; released on 10 Oct 2022
Marco Fong	ExCo member, GUHKST	22 Jul 2021		
Leo Tang	Vice-chair, HKCTU	6 Apr 2022	(Doing acts with seditious intention)	Discharged by police in Dec 2022