



*Children doing homework on the bed within the 40 square feet sub-divided unit with a monthly rent of HK\$1,400 (US\$150) for a 4-person low income household living at Sham Shui Po, Hong Kong, China [Photographer: Benny Lam (2012) ]*

## **Hong Kong Human Rights Commission Society for Community Organization**

### **REPORT**

**To the United Nations Committee on Economic, Social and  
Cultural Rights**

**On the Third Periodic Report in respect of Hong Kong Special  
Administrative Region of the People's Republic of China under  
Articles 2 to 11 of the International Covenant on Economic,  
Social and Cultural Rights**

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## **Chapter 1. Ignored Suggestions and Recommendations from previous Concluding Observations**

The Committee included a list of comprehensive and clear recommendations in the last two Concluding Observations. However, given the time of nearly a decade, the HKSAR Government still has not implemented most of the suggestions raised. The following is a list of suggestions, from the last Concluding Observations<sup>1</sup>, that have not been taken into action.

1. The Committee strongly urges HKSAR to extend the protection afforded by the proposed racial discrimination law to internal migrants from the Mainland, and to put a stop to the widespread discriminatory practices against them on the basis of their origin. The Committee further recommends that the relevant provisions of the existing immigration legislation governing entry into, period of stay, and departure from, HKSAR are amended to ensure full conformity and consistency with the new racial discrimination legislation.
2. The Committee recommends that HKSAR reconsider its position regarding the extension of the Convention relating to the Status of Refugees and its Protocol to its territorial jurisdiction, and that it strengthens its cooperation with UNHCR, in particular in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination.
3. The Committee requests that HKSAR provide, in its next periodic report, the results of the Equal Opportunities Commission Study on Gender-based Pay Inequalities and the measures to follow up the findings of the study.
4. The Committee recommends that HKSAR consider extending its social security system to cover unemployed workers through the payment of an unemployment benefit based on contributions from employers and employees.
5. The Committee urges the State party to review the existing “two-week rule”, with a view to eliminating discriminatory practices and abuse arising from it, and to improving the legal protection and benefits for foreign domestic workers so that they are in line with those afforded to local workers, particularly with regard to wages and retirement benefits. The Committee recommends that HKSAR enable domestic helpers to acquire pension rights through their inclusion in the Mandatory Provident Fund.
6. The Committee urges HKSAR to review the eligibility criteria for the CSSA so as to ensure that all those in need, including low-income persons and families, older persons and new migrants are adequately covered by the scheme to enable them to enjoy a decent standard of living.
7. The Committee requests that the State party provide, in its next periodic report, detailed information on the problem of trafficking and commercial sexual exploitation of persons in the State party and on measures taken to effectively address these problems. The Committee urges the State party to ensure respect for the necessary procedural safeguards when deporting victims of trafficking in persons, particularly when such victims are minors, and to provide them with the necessary medical, psychological and legal support. The Committee requests HKSAR to report back to the Committee in its next periodic report on the result of the study by the Commission on Women on domestic violence.

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<sup>1</sup> E/C. 12/1/Add.107, dated 13 May 2005

8. The Committee urges HKSAR to strengthen its efforts to combat poverty and social exclusion, in particular with regard to disadvantaged and marginalized groups and older persons.
9. The Committee urges the State party to continue its efforts to improve its health services, inter alia, through the allocation of adequate and increased resources. The Committee recommends HKSAR to consider revising the current list of subsidized drugs to meet the needs of the chronically and mentally ill. The Committee encourages the State party to submit in its next periodic report annually collected comparative data, disaggregated by sex, age and urban/rural residence, paying particular attention to disadvantaged and marginalized groups.
10. The Committee urges HKSAR to amend its legislation to provide for the right to education of all school-age children in its jurisdiction, including children of migrants without the legal right to remain in HKSAR.
11. The Committee encourages HKSAR to ensure that human rights education is provided in schools at all levels and to raise awareness of human rights, in particular economic, social and cultural rights, among State officials and the judiciary.

## **Chapter 2. General Legal Protection Framework**

Throughout the past years, the Government has not formulated a comprehensive plan to ensure domestic legislation and policies are in compliance with Hong Kong's international treaty obligations. Disappointingly, no significant progress in incorporating and implementing the ICESCR could be observed.

### **2.1 Government's reluctance regarding incorporation of the ICESCR into domestic legislation**

Article 2(1) of the ICESCR provides that each State Party is obliged to undertake steps to the maximum of available resources by all appropriate means, particularly the adoption of legislative measures. Article 39 of the Basic Law states that both the ICCPR and ICESCR shall remain in force and be implemented through the laws of Hong Kong. In 1991 the Government introduced the Bill of Rights, which was a local replica of most provisions of the ICCPR<sup>2</sup>. Even though the ICESCR is widely recognized as the most significant and supreme international covenant together with the ICCPR, it has not been given the same or similar legal status as the ICCPR, as its domestic legislation is yet to be introduced.

In paragraph 77 of the previous Concluding Observations, the Committee noted the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in HKSAR. In various cases<sup>3</sup>, the ICESCR was considered to be promotional and aspirational in nature. It was also held that the rights embodied in it could not be enforced before the Hong Kong courts. The Constitutional and Mainland Affairs Bureau even reckoned the ICESCR does not require the comprehensive incorporation of the Covenant into domestic law<sup>4</sup>. In spite of repeated concerns raised by the Committee, the Government cannot recognize the difference in whether an international treaty is domesticated into local legislation. It is clear that the Government is content with the ICESCR being integrated into the local law through the provisions in over 50 ordinances<sup>5</sup> as a fragmented covenant. It has demonstrated no intention to provide a time frame to review and withdraw its previous reservations to domesticating the Covenant.

### **2.2 Human Rights Education**

Unlike the rights embodied in the ICCPR, those in ICESCR are not widely recognized by the general public as basic human rights. Therefore they have low awareness of the principles of interdependence between these two sets of rights. This may be due to the lack of human rights education focusing on economic, social and cultural rights.

### **2.3 Recommendations**

1. To urge the Government to translate the provisions of the ICESCR into domestic law.
2. To urge the Government to carry out human rights education to promote economic, social and cultural rights as enshrined under the ICESCR.

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<sup>2</sup> Chong Yiu Kwong, *Implementation of International Human Rights Conventions – the Hong Kong Experience*, 19 January 2011 (<http://libir1.ied.edu.hk/pubdata/ir/link/pub/HK%20experience%20implement%20HR%20Jan%202011.pdf>)

<sup>3</sup> *Chan Mei Yee v Director of Immigration, Mok Chi Hung v Director of Immigration* [2001] 1 HKC 281, *Chan To Foon v Director of Immigration* [2001] 3 HKLRD 109,

<sup>4</sup> LCQ 2: Implementation of the International Covenant on Economic, Social and Cultural Rights in Hong Kong, April 2005, ([http://www.cmab.gov.hk/en/upload/20050406humanq02\\_e.pdf](http://www.cmab.gov.hk/en/upload/20050406humanq02_e.pdf))

<sup>5</sup> *Ibid.*

## **Chapter 3. Democracy and Political Participation (Article 1)**

### **3.1 Absence of Universal suffrage of the Chief Executive and Legislative Council**

Since the handover of Hong Kong, people have been fighting for universal suffrage, which is promised in Article 45 of the Basic Law. While constructive suggestions and proposals have been brought forward by lawmakers and political parties, the Government still has not drawn up a clear and comprehensive timetable for universal suffrage.

A few months ago, reports and rumours about a pre-election before the 2017 universal suffrage emerged, meaning a committee will sift through candidates and select several of them before the public can cast their votes. In light of the news, people have shown worries about the possibility of the committee being controlled by the PRC government, due to the notorious re-interpretation of the Basic Law by the Standing Committee of the National People's Congress which denied Hong Kong's 2007 universal suffrage. Recently, mainland officials also said that the Chief Executive must be "patriotic to China and Hong Kong". But according to Professor Johannes Chan Man-mun, Dean of the Faculty of Law of the University of Hong Kong, such prerequisites and pre-election already breach the Basic Law<sup>6</sup>. Apart from the provisions of the ICCPR, the Hong Kong Basic Law also promises people of Hong Kong the right to universal suffrage without any pre-selection. People of Hong Kong "shall be equal before the law", as provided in Article 25 of the Basic Law, whereas Article 26 states that permanent residents "shall have the right to vote and the right to stand for election in accordance with law". Such preconditions given by mainland officials remove some people's rights to stand for election, hence violating the Basic Law. Professor Chan also pointed out that Nomination Committee could not be the existing Election Committee, as it neither complies with the requirement of being "broadly representative" stated in Article 45 of the Basic Law, nor "in accordance with democratic procedures, for it is merely a 1,200-member committee elected by about 8% of the entire population of voters in the Legislative Council election.

Similarly, for the Legislative Council universal suffrage, although the Government has been repeatedly urged to abolish the functional constituency, which is not directly elected under the principle of "one person one vote", the recent passed political reform only proposed adding five district council functional constituency seats. It is clear that the Government shows no sincerity in introducing universal suffrage of the Chief Executive and the Legislative Council.

### **3.2 Public consultation excluding the possibility of civil nomination**

The Government has published the Consultation Document on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016 (the "Consultation Document") in December 2013 to formally commence a five-month public consultation to collect views from various sectors of the community on major issues and related questions on the two electoral methods. The Consultation Document sets out the background and principles of constitutional development in Hong Kong, as well as certain key issues relating to the method of selection / formation under the framework of the Basic Law and the relevant Interpretation and Decisions of the Standing Committee of the National People Congress to consult the public.<sup>7</sup>

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<sup>6</sup> Hong Kong Economic Journal, *Professor Johannes Chan: Setting "Patriotic to China and Hong Kong" as Requirement Breaches Basic Law*, 2 May 2013

<sup>7</sup> The Hong Kong SAG Government (December 2013) *Methods for Selecting the Chief Executive in 2017 and for forming the Legislative Council in 2016 Public Consultation* <http://www.2017.gov.hk/en/consult/document.html>

Although the Government openly declared that it does not have any pre-arranged views during the consultation period, the consultation document was widely criticized by the general public for its incompleteness and partial discussion on the alternatives for the implementation of universal suffrage.<sup>8</sup> For example, as for the nomination of the candidate for the Chief Executive, the Governmental officials strictly follow the views from the Central Authority that only the Nomination Committee has the authority of nomination, while civil nomination or other forms of nominations are prohibited. Worse still, the Government does not have any plans to abolish the functional constituency and the company votes in the election process.

### **3.3 Recommendations**

1. To urge the mainland authority to respect the “One Country, Two Systems” principle and the high autonomy of HKSAR, and avoid re-interpretation and further interference in the local legislative process.
2. To urge the Government respect the rights to vote as enshrined by the International Covenant and abolish the functional constituency and company votes in the election of the Chief Executive and the Legislature.
3. To urge the Government to abide by the Basic Law and introduce universal suffrage in the next term for the Chief Executive in 2017 and Legislative Council in 2020.

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<sup>8</sup> Civil Party and the Hong Kong 2020 (January 2014) [http://www.2017.hk/main\\_eng.html](http://www.2017.hk/main_eng.html)

## **Chapter 4. Non-discrimination (Article 2)**

### **4.1 Questionable credibility of the equalities watchdog**

The importance of the presence of an effective mechanism in monitoring and implementing anti-discrimination legislation is highlighted in aforementioned article 2(1). Despite repeated concerns from the Committee about the absence of a human rights institution with a broad mandate, disappointingly the Government has refused to address this issue. The Government held that there was no obvious need for another human rights institution and have no plans or timetable for the establishment of such an institution in the immediate future<sup>9</sup>.

Being the most recognized human rights institution, the legitimacy of the Equal Opportunities Commission (EOC) has been undermined by recent controversies. The EOC, as the statutory body tasked to enforce existing anti-discrimination ordinances and promote equal opportunities, has sparked a debate about its reliability due to recent appointments of chairmen. Former chairman LAM Woon-kwong was appointed to be the Convenor of the Executive Council while he was still the chairman of the EOC, provoking massive public outcry over the apparent conflicts of interest. According to the Paris Principles, in order to uphold the independence and pluralism of the human rights institution, there should be an inclusive and transparent selection and appointment process, so that the institution is free from the influence of the Government. It is apparent that the dual role of Mr. WK Lam is against the Paris Principles.

Worse still, after Mr. Lam's departure, the appointment of the new chairman is once again criticized, as former Secretary for Food and Health, Dr. York Chow Yat-Ngok, was named head of the commission. His long service as a high-ranking government official rendered him an inappropriate choice for the role, which is supposed to be impartial. Furthermore, his lack of experience in human rights advocacy also undermines his reliability as the new chairman.

These recent incidents, leading to public criticism about the lack of independence and a transparent selection process, demonstrate the Government's failure in complying with international covenant of maintaining an impartial and reliable institution to fight discrimination and promote equality.

### **4.2 The rise of populism and nativism among the public in Hong Kong**

The rise of populism and nativism among the public leads social discrimination in Hong Kong. Due to the anger and dissatisfaction on current social development from local Hong Kong people, new immigrants and visitors from the Mainland China are scapegoats of social problems. In the latest debate on population policy in 2013, for example, people ignore the inapt immigration policy by former administration but point the finger at the head of new immigrants, who are mainly spouse of local Hong Kong people coming from Mainland China. Some nativists and legislators even organized campaign to limit the entry of the new immigrants to Hong Kong and ignoring the right of family reunion, which is the basic human right that they have been hungering for decades.

In addition, in view of the insufficient capacity of hotel rooms to afford the tourists, the Government planned to increase room supply, while it brings a criticism on allowing too many visitors from Mainland China coming Hong Kong. Some radical views even

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<sup>9</sup> HKSAR, *Initial response to the Concluding Observations of the United Nations Human Rights Committee on the Second Report of the Hong Kong Special Administrative Region (HKSAR) in the light of the International Covenant on Civil and Political Rights*, May 2006 (Paper No. 5/2006, Human Rights Forum)



proposed to stop allowing mainlanders visited Hong Kong. Such exclusionary view did draw some support from local people. In the eye of the opposition, it may be a good idea to attack the Government no matter if it dampens the Hong Kong's economy.

### **4.3 Lack of plans for a single equality act and legislation on other forms of discrimination**

The drafting and public consultation of the existing four Discrimination Ordinances were carried out separately. Due to the differences in application, implementation and scope of protection of the four Ordinances, there have been constant demands from the public and NGOs for a single equality legislation. A single equality act ensures the delivery of consistent legal treatment and procedures concerning various grounds of discrimination<sup>10</sup>, such as age and sexual orientation. Not only will more grounds of discrimination be covered under the single statute, but also this single piece of legislation can provide for equal treatment of complainants across different strands. Even though such a single statute can close the inconsistencies of the Ordinances and help develop a coherent and comprehensive legal framework, the Government has been avoiding the demands of legislation amendments.

In addition to the Government's unwillingness to address the call for a single equality act, the Committee's concerns about the absence of anti-discrimination legislation covering discrimination on the basis of sexual orientation and age were ignored as well. Despite the on-going discussion about discrimination based on sexual orientation that has lasted for more than a decade, the Government has dismissed suggestions and calls for legislation that covers such discrimination, and has chosen to tackle the problem only by administrative means and public education. No significant progress in the discussion can be seen.

For age discrimination, commonly related to employment, the Government has published "Practical Guidelines for Employers on Eliminating Age Discrimination in Employment", which, however, merely remain as guidelines. They hold no legal position or authority, hence the EOC is not granted with power to deal with complaints about age discrimination, which amount to 200 to 300 each year. The Labour Department usually reminds employers of possible violation of the guidelines, providing only minimum protection for victims.

### **4.3 Criticism regarding Race Discrimination Ordinance (RDO)**

After years of debate and consultation of a disappointing bill, the RDO was enacted but still it comes with serious shortcomings that have remained as reasons of public dissatisfaction and doubts about the effectiveness of the Ordinance.

#### **4.3.1 Exclusion of new immigrants from Mainland China**

The fundamental rights protections under international covenants apply universally to citizens and to all migrants, regardless of their immigration status. This is made clear in the CERD General Recommendation No. 30 on Discrimination against Non-citizens, which states that the government should ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation does not have a discriminatory effect on non-citizens. However, sections 8(2) and 8(3) of the RDO explicitly exclude new immigrants from Mainland China from the Ordinance and hence deny them protection from discrimination. The Government refused to recognize them as a separate ethnic group or consider immigration status as a basis of race discrimination. Despite the Government's argument that new immigrants are

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<sup>10</sup> Hong Kong Human Rights Monitor, *A Project on the Establishment of a Human Rights Commission in Hong Kong*, 2006 (<http://www.legco.gov.hk/yr06-07/english/panels/ha/papers/ha0209cb2-1069-1-e.pdf>)

no different from the local Chinese, ironically the Government has been acting otherwise, as under various policies new immigrants are treated differently from the local permanent residents. New immigrants are generally less privileged for they do not enjoy the rights to political participation and welfare.

More than 20,000 female new immigrants come to Hong Kong every year. According to a survey done by Society for Community Organization in 2012, 83% of the interviewed female new immigrants claimed that they have experienced discrimination due to their new immigrant identity. Another survey done in 2009 yielded similar results. 44.7% of the new immigrants were denied jobs, and 86.6% received fewer privileges or heavier workload than other local workers. The new immigrants' protection is further undermined by the EOC's reluctance in accepting cases of discrimination of new immigrants and the lack of a sound complaint mechanism.

Many have criticized the Government's refusal in assessing the differences between the national and social origins of new immigrants and the local Chinese, regarding the cultural and linguistic aspects. The meaning of ethnic origin is broadly defined with respect to social and cultural perspectives, demonstrated in *Commission for Racial Equality v Dutton [1989]* and *King-Ansell v Police [1979]* 2 NZLR 531. It is also important to recognize the self-identification of the new immigrants and how they are perceived by the local Chinese. The Government's lack of response demonstrates how it neglects the discrimination the new immigrants suffer.

#### **4.3.2 Ethnic minorities: exclusion of language and religion as grounds of protection**

Besides new immigrants from Mainland China, ethnic minorities in Hong Kong also face discrimination but are not entitled to sufficient protection under the RDO. In Section 8 of the RDO, "race" means the race, color, descent or national or ethnic origin of a person. However, ethnic minorities also suffer from discrimination based on language or religion, which is not included in the RDO.

Language remains as one of the biggest barriers that hinder ethnic minorities from successfully integrating into the society. The most common types of discriminatory behavior based on language they face are related to education and employment. The Government has been criticized for neglecting the Chinese Language education of ethnic minorities. Not more than 20 out of 500 ethnic minority students can go to F.6 every year. The number of students who can enter the government subvention program in university is even less.<sup>11</sup> Their limited speaking and writing skills in Chinese have greatly reduced their chances in not only tertiary education but also employment. Many ethnic minorities have experienced difficulties in job seeking, e.g. they were told a certain level of Chinese skills was a requirement for even jobs of lower skills or manual labour.

#### **4.3.3 Government acts not covered in the RDO**

In spite of the heavy criticism regarding the RDO not covering all government actions, the Government has been neglecting recommendations of the Committee and urges from NGOs to close the gap between the RDO and other Discrimination Ordinances. Unlike the other ordinances, the RDO only covers government actions similar to those of private persons. The RDO has yet to apply specifically to the Government in the exercise of its exercise of power and performance of its functions such as the operations of the police and the Correctional Services Department. Such reform was proposed by the EOC, however the reform on the RDO is still pending despite the concerns of the Committee.

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<sup>11</sup> HKSKH Lady MacLehose Centre, *Submission to the Bills Committee on Race Discrimination Bill*, LC Paper No. CB(2)1202/06-07(02), 2007, (<http://www.legco.gov.hk/yr06-07/english/bc/bc52/papers/bc520303cb2-1202-2-e.pdf>)

#### **4.4 Ignored amendment proposals related to other Discrimination Ordinances**

Throughout the past years there were multiple legislative amendment proposals related to the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FDO).

For instance, the SDO only protects female customers against sexual harassment by providers of goods, services or facilities, but not also the other way round, i.e. the SDO does not protect service providers against sexual harassment by customers. The EOC mentioned such an amendment in a proposal submitted in 1999. In the proposal the EOC also mentioned other amendments, such as amending section 2(6) so that section 2(5)(b) on “sexual harassment in hostile environment” also applies to the field of education; and amending the definition of direct discrimination under the DDO in order to avoid confusion. Yet the Home Affairs Bureau still has not taken actions after the Administration agreed in principle to some of the proposed amendments.

#### **4.5 Indirect discrimination**

In the existing anti-discrimination legislation, indirect discrimination is defined as the discriminator applying to another person a requirement or condition which the discriminator would apply to persons not of the same group<sup>12</sup>. Although the definition of indirect discrimination has been amended in laws abroad, and various concerns about the narrow interpretation of the current definition have been raised, the Government has no intention to adopt a wider definition from the Race Directive adopted in European countries – “neutral provision, criterion or practice” which requires an objective justification test<sup>13</sup>.

#### **4.6 Recommendations**

1. To urge the Government to strengthen the existing human rights institutions, and establish a National Human Rights Institution.
2. To urge the Government to set up a transparent mechanism in compliance with the Paris Principles for appointing chairpersons and members of the EOC and other human rights institutions.
3. To urge the Government to have a single all round equality statute to eliminate all forms of discrimination, including language, religion, social origin, age, sexual orientation and other status.
4. To urge the Government to include new immigrants from Mainland China as a protected group under the RDO.
5. To urge the Government to extend the application of the RDO to government acts and initiate the amendment of legislation proposed.
6. To urge the Government to adopt a wider definition of indirect discrimination based on the new definitions from the European Directives.

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<sup>12</sup> Section 4(1)(b) of the Race Discrimination Ordinance:

The discriminator applies to that other person a requirement or condition which the discriminator applies or would apply equally to persons not of the same racial group as that other person but—

- (i) which is such that the proportion of persons of the same racial group as that other person who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it;
- (ii) which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied; and
- (iii) which is to the detriment of the other person because that person cannot comply with it.

<sup>13</sup> It must be shown that the provision, criterion or practice can be objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

## **Chapter 5. Right to Work (Article 6)**

### **5.1 Poor employment conditions and problem of the working poor**

Following the worldwide financial tsunami in 2008, the Hong Kong economy has undergone a lengthy revival, with increasing economic activity. Although the median income has risen gradually, the number of the employed population living on a monthly income below \$5,000 still remains high, constituting about 12.5% of the entire working population. (Table 1) This indicates the problem of the working poor.

**Table 1. Employed Persons by Monthly Employment Earnings (2009-2012)**

Monthly employment income (HK\$)	2009	2010	2011	2012
	'000 persons	'000 persons	'000 persons	'000 persons
< 3,000	133.4	113.3	101.5	99.4
< 4,000	408.6	386.1	383.1	390.5
< 5,000	500.1	467.1	451.2	459.2
< 6,000	632.3	583.0	536.0	521.0
< 7,000	852.2	785.7	701.3	633.6
< 8,000	1,083.1	1,017.4	923.4	811.6
< 9,000	1,359.7	1,289.0	1,212.6	989.6
< 10,000	1,573.8	1,499.0	1,425.3	1,097.5
10,000 – 15,999	856.7	910.9	972.4	1,031.1
16,000 – 19,999	181.6	182.4	199.5	218.6
20,000 – 29,999	404.3	400.6	447.0	469.8
≥ 30,000	451.4	481.2	532.2	587.0
Total no. of working population	3,467.6	3,474.1	3,576.4	3,660.7
Median income	10,500	11,000	11,300	12,000

Source: *Employed persons by monthly employment earnings (Table 2.17) Hong Kong Annual Digest of Statistics 2013, Census and Statistics Department, HKSAR Government*

According to official statistics, the lowest-income group's median monthly income (at constant prices) drastically dropped 9% from \$3,940 (2001) to \$3,580 (2011) in ten years<sup>14</sup>. In contrary, the highest-income group's median monthly income (at constant prices) rose 8.6% from \$50,630 (2001) to \$55,000 (2011). It indicated that the low-income workers cannot share the fruit of economic success even if the economic bloom.

In addition, the long working hour is another challenge for the Hong Kong workforce. In 2011, the average and median weekly working hours for full time employees were 49.0 and 48.0 respectively<sup>15</sup>. As revealed in the Price and Earnings Report published by UBS in September 2012<sup>16</sup>, the global average annual working hours was 1,915 hours, whereas Hong Kong people worked 2,296 hours per year, the fifth longest among the 72 countries included in the study.

<sup>14</sup> Census and Statistics Department, *2011 Census – Thematic Report Household Income Distribution in HK*, June 2012

<sup>15</sup> Labour Department, *Report of the Policy Study on Standard Working Hours*, June 2012

([http://www.labour.gov.hk/eng/plan/pdf/swh/swh\\_report.pdf](http://www.labour.gov.hk/eng/plan/pdf/swh/swh_report.pdf))

<sup>16</sup> [http://www.static-](http://www.static-ubs.com/global/en/wealth_management/wealth_management_research/prices_earnings/_jcr_content/par/columncontrol/col1/linklist/link_0.1393999310.file/bGluay9wYXRoPS9jb250ZW50L2RhbS91YnMvZ2xvYmFsL3dlYWx0aF9tYW5hZ2VtZW50L3dlYWx0aF9tYW5hZ2VtZW50X3Jlc2VhemNoL1BtTF8yMDEyX2VuLnBkZg==/P_L_2012_en.pdf)

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## 5.2 Serious age discrimination in labour market

As mentioned in Chapter 4, age discrimination is apparent in employment and it poses enormous obstacles for middle-aged workers in job seeking. A survey done by the EOC reported that over 40% of the general public considered the existing situation of age discrimination was serious<sup>17</sup>. Over 60% of the general public viewed the importance of introducing legislation against age discrimination.

A job-seeking website conducted interviews with 180 enterprises, and over 80% of them admitted the existence of a certain upper age limit of employees. In average the age limits of employees of low, medium and high level were 34, 44 and 49 respectively.

It is clear that age discrimination exists in the Hong Kong society and has denied many middle-aged workers' chances of landing a job. Nonetheless, the Government has not proposed any concrete plans of introducing legislation against age discrimination.

## 5.3 Inadequate employment support services for ex-offenders

One of the marginal groups that face grave difficulty in employment is ex-offenders. In general, the obstacles for ex-offenders in job seeking include discrimination based on their criminal record, their lack of skills and qualifications, and the Government's failure to provide adequate support to assist ex-offenders in social integration.

According to a study done by Society for Community Organization in 2009, 86.3% of ex-offenders interviewed claimed that their savings were not enough to support their daily living. Almost half of them applied for Comprehensive Social Security Assistance (CSSA), but the procedures normally last for more than a month, hence the scheme cannot offer them immediate assistance. Nearly one quarter of them were forced to be street sleepers, as they did not receive sufficient emergency financial support and family support.

### 5.3.1 Discrimination against status of ex-offenders

Currently there is no legislation that protects ex-offenders from discrimination although 70.5% of the respondents have experienced discrimination due to their criminal records, and the situation was even more serious with employment as 85% of them felt that they were discriminated against by employers.

Article 2(2) of the ICESCR clearly states that State Parties undertake to guarantee the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Ex-offenders' status<sup>18</sup> should be covered under protection of the ICESCR as a type of "other status"<sup>19</sup>. In Australia, ex-offenders are protected under the "Human Rights and Equal Opportunity Commission Act 1986" from discrimination made in employment based on their criminal records.

More than 90% of the respondents agreed that the Government should set up anti-discrimination law and review the employment policy of ex-offenders. It was common for employers about their criminal records even though such a requirement was not related to the job nature. 95% thought employers should not be allowed to do so and the Government should protect their right to privacy.

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<sup>17</sup> Equal Opportunities Commission, *Equal Opportunities Awareness Survey 2012* ([http://www.eoc.org.hk/EOC/Upload/UserFiles/File/EO2012\\_eExecutive%20Summary.pdf](http://www.eoc.org.hk/EOC/Upload/UserFiles/File/EO2012_eExecutive%20Summary.pdf))

<sup>18</sup> *Chan Kin Sum and others v Secretary for Justice and another* HCAL79/2008

<sup>19</sup> *Thlimmenos v Greece*, 6 April 2000, Application No 34369/97

Ex-offenders should be protected under Article 6(1) of the ICESCR, which the right to work, including the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.

### **5.3.2 Lack of training in institutions**

Another challenge ex-offenders face in job seeking is their lack of useful skills and qualifications. However, 92.3% of respondents did not receive any vocational training. Although offenders worked when they were institutionalized, they were mainly required to do the laundry, cleaning and tailoring. 95.3% of them found the working experience did not help them in finding jobs and integrating into the society, since the skills did not match the general requirement of the labour market.

The Government is under the obligation stated in Article 6(2) of the Covenant, i.e. steps to be taken shall include technical and vocational guidance and training programmes. Therefore, the Government is obliged to offer useful vocational training to offenders to prepare them in the labour market once they are released.

### **5.4 Employment of ethnic minority residents**

Besides ex-offenders, ethnic minorities face a lot of obstacles in employment as well. Although the unemployment rate of ethnic minorities gradually decreased throughout the years, their employment conditions are still relatively poor as compared to local Chinese. As reported in the “Thematic Report: Ethnic Minorities”<sup>20</sup>, 75.8% of the working ethnic minority population were engaged in “elementary occupations”, notably more than that for the entire working population of Hong Kong. As a result, about two-thirds of working ethnic minorities had a monthly income of below HK\$4,000 (USD 513), and their median monthly income was only HK\$3,600 (USD 462).

This problem is due to the inadequate support provided for ethnic minorities. Due to language barriers and lack of promotion, more than 80% of respondents had not used the services of job centres of Labour Department, according to a survey conducted by the Hong Kong Catholic Commission For Labour Rights. Furthermore, such services do not suit the needs of ethnic minorities who cannot speak Chinese, rendering it even more difficult for them to find jobs.

### **5.5 Recommendations**

1. To urge the Government to initiate the legislation of standard working hours to safeguard workers’ wellbeing.
2. To urge the Government to revise the set of economic indicators used to adjust the minimum wage rate, so that the minimum wage no longer remains as reactionary.
3. To urge the Government to shorten the period of review of the minimum wage rate from once every two years to once a year.
4. To urge the Government to propose plans to introduce legislation against age discrimination.
5. To urge the Government to extend the anti-discrimination legislation to protect ex-offenders from discrimination based on their criminal records.

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<sup>20</sup> Census and Statistics Department, *2011 Thematic Report: Ethnic Minorities*, December 2012 ([www.census2011.gov.hk/pdf/EM.pdf](http://www.census2011.gov.hk/pdf/EM.pdf))

6. To urge the Government to increase the number of places available in training courses and offer try-out opportunities to ex-offenders.
7. To urge the Government to offer training allowance to ex-offenders as a basic immediate financial support after they are released.
8. To urge the Government to review laws protecting privacy, concerning whether criminal record should be included as personal information.
9. To urge the Government to put in more resources in job seeking services and vocational training (e.g. language courses) provided for ethnic minorities.

## **Chapter 6. Right to Just and Favourable Conditions of Work (Article 7)**

### **6.1 Lack of progress in the legislation of maximum working hours**

Trade unions have spent years urging the Government to introduce statutory minimum wage and standard working hours. While the former was enforced in 2011, the latter is yet to be brought forward by the Government.

A survey conducted by the Public Opinion Study Group of the University of Hong Kong revealed that 89% of the respondents reckoned that the problem of overtime work is “severe”<sup>21</sup>, while 69% supported the legislation on maximum working hours. In response to the public demand, the Standard Working Hours Committee was formed. However, disappointingly, the committee planned to devote three years’ time to the discussion of whether legislation should be introduced. Currently there are over 130 countries with statutory standard working hours. Hong Kong is already far behind in the protection of workers as compared to other countries, yet the Government fails to identify the urgency in initiating such a bill to protect workers’ wellbeing. Motions for urging legislation on standard working hours in Legislative Council were repeatedly put forward by lawmakers, but they were often shot down by member of the business sectors and the conservative camp. The Government’s passiveness in tackling the problem only further slows the progress down and forces workers to face the potential hazards of excessively long working hours.

### **6.2 Major weaknesses of the minimum wage in force**

The statutory minimum wage of HK\$28 (USD 3.6) per hour has come into force since 1 May 2011, and was revised to HK\$30 (USD 3.85) per hour from 1 May 2013. However, there are still wide criticism from trade unions and lawmakers.

When the Minimum Wage Commission reviews the minimum wage rate, it will take into account a basket of relevant data including social, economic and employment indicators in the past year<sup>22</sup>. This means changes made to the wage rate may be determined with reference to economic data a few years ago. This arrangement renders the statutory minimum wage merely reactionary, as it will constantly lag behind the actual economic performance. There has been inflation in the Hong Kong economy in recent years. If the minimum wage rate is adjusted based on data of previous years, the increase in workers’ income will inevitably be unable to catch up with the current inflation, ultimately rendering them unable to provide for themselves. Such a passive response to changing economic situation provides insufficient protection for workers.

Another reason for the general public’s disapproval of the statutory minimum wage is that the period of its review is once every two years. The wage rate already lags behind actual inflation, and the long interval between reviews only worsens the problem. In the aforementioned survey, 79% of respondents agreed that the minimum wage level should be reviewed annually<sup>23</sup>. For countries like the UK, France, Australia and Japan, the wage rate

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<sup>21</sup> Oxfam Hong Kong, *Research on the Living Condition of Tenant Households Who Have Been on the Waiting List for Public Rental Housing for Over 3 Years*

([http://www.oxfam.org.hk/filemgr/2040/OHKstandpointsonhousing\\_editedeng\\_final.pdf](http://www.oxfam.org.hk/filemgr/2040/OHKstandpointsonhousing_editedeng_final.pdf))

<sup>22</sup> LCQ5: Statutory minimum wage, 24 October 2012

(<http://www.info.gov.hk/gia/general/201210/24/P201210240424.htm>)

<sup>23</sup> Oxfam Hong Kong, *Research on the Living Condition of Tenant Households Who Have Been on the Waiting List for Public Rental Housing for Over 3 Years*

([http://www.oxfam.org.hk/filemgr/2040/OHKstandpointsonhousing\\_editedeng\\_final.pdf](http://www.oxfam.org.hk/filemgr/2040/OHKstandpointsonhousing_editedeng_final.pdf))



is reviewed once a year. Still, the Government has turned a deaf ear to requests of shortening the period of review.

### **6.3 Exclusion of foreign domestic helpers from protection under minimum wage**

Another point of controversy of the minimum wage is that foreign domestic helpers (FDH) have been left out. The Government claimed that there was no need for them to be covered under the minimum wage, because FDH were entitled to their own separate minimum wage, which is currently HK\$3920 (USD 503) per month. However, these FDH live in Hong Kong and are subject to the high prices here. After deducting general expenses, their actual monthly income is probably only about HK\$1,000 (USD 128). In contrary, other local domestic helpers are protected under the Minimum Wage Ordinance.

Under Article 7 of the Covenant, not only should FDH receive a minimum remuneration in order to make a decent living for themselves and their families, they are also entitled to fair wages and equal remuneration for work of equal value. Other local domestic helpers who are paid on hourly wages are protected under the Minimum Wage Ordinance, but FDH who provide similar services have their rights to similar remuneration and protection stripped away.

### **6.4 Underpayment and exploitation by agencies**

Last year, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) expressed concerns over the exploitation, violence and abuse faced by Indonesian domestic helpers. The Indonesian Migrant Workers Union conducted a survey in April 2013, which revealed that agencies often illegally demand excessively high fees from FDH, sometimes amounting to their income for six to seven months. Over 70% of respondents' passports were taken by the agencies, to make sure they pay the required fees. About one-third of respondents' monthly earnings were below the minimum wage of FDH.

In the last Concluding Observations (paragraph 78(c)), the Committee mentioned the "two-week rule" and the lack of effective protection of FDH. This requirement forces those FDH who are laid off to leave Hong Kong within two weeks. If they find a job again in a foreign country, they will have to pay the fees of the agencies of that country again. This imposes a heavy financial burden on them.

### **6.5 Recommendations**

1. To urge the Government to review the minimum wage of FDH and match it with the current economy situation and inflation.
2. To urge the Government to review the existing employment policy of FDH and identify loopholes.
3. To urge the Government to actively monitor the practices of agencies and check for underpayment and exploitation.
4. To urge the Government to review the "two-week rule" and consider waiving it.

## **Chapter 7. Right to Social Security (Article 9)**

### **7.1 Poverty in an affluent city**

Widely recognized as an international metropolis with prosperity, Hong Kong is one of the wealthiest societies with respect to per capita GDP, which was HK\$285,403 (USD 36,590) in 2012. However, before all that glamour, people are living in poverty and are denied the benefits of economic revival. Worst still, the Government has been passive in taking measures to alleviate poverty.

### **7.2 Increasing poor population in Hong Kong**

According to the latest official statistics release by the Commission on Poverty in 2013, since the change of sovereignty in 1997, the number of poor population jumps to 1.31 million (2012) and more than 541,000 households living under poverty, which is the highest since year 2000.<sup>24</sup>

The corresponding percentage of poor population in the entire population remains at about 19.6%, meaning one in five people is living in poverty. The number of households with a median monthly income below HK\$6,000 (USD 769) increased from 256,441 in 2001 to 309,620 in 2011, while the number of households with a median monthly income above HK\$60,000 (USD 7,692) increased 60% from 179,483 in 2001 to 287,583 in 2011. It is apparent that the income inequality has worsened.

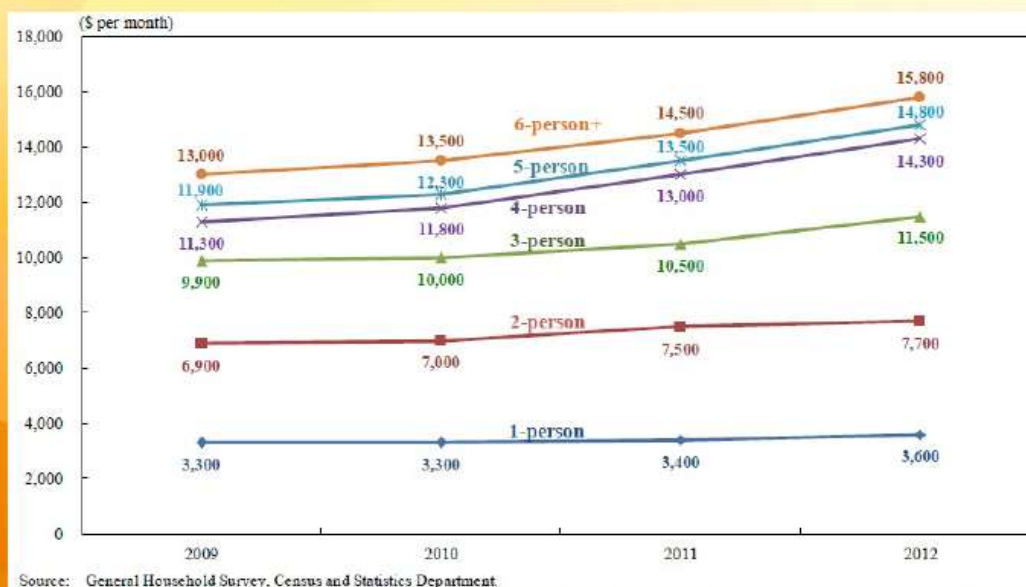
### **7.3 Absence of anti-poverty strategies to tackle poverty**

Although the Commission on Poverty has been looking into the feasibility of setting up a poverty line, the Government does not introduce any anti-poverty strategies and time schedule to alleviate poverty. It does not have any goal to measure the effectiveness and impact of the anti-poverty policy.

	<b>Pre-Intervention</b>	<b>Post-Intervention</b>	<b>Difference</b>
Poor households	0.54 million	0.4 million	0.14 million
Poor population	1.31 million	1.02 million	0.29 million
Poverty rate	19.6%	15.2%	4.4 percentage points
Annual total poverty gap	\$28.8 billion	\$14.8 billion	\$14 billion
Average monthly poverty gap per household	\$4,400	\$3,100	\$1,400

<sup>24</sup> The Hong Kong SAR Government (September 2013) Hong Kong Poverty Situation Report 2012  
[http://www.povertyrelief.gov.hk/pdf/2012\\_Poverty\\_Situation\\_Eng.pdf](http://www.povertyrelief.gov.hk/pdf/2012_Poverty_Situation_Eng.pdf)

**The Poverty Line by Household Size, 2009-2012:**  
**As a result of economic upturns, sturdy labour market and  
 implementation of the statutory minimum wage,  
 poverty thresholds moved upwards**



Not only has the poverty problem worsened, but the income gap has widened as well. In the second quarter of 2012, the median monthly income of the wealthiest 10% was 26.1 times of that of the poorest 10%<sup>25</sup>. This gap in 2003 was 23.3 times. As the growth in poor population has been faster than that of the wealthy population, the wealth gap has not narrowed at all. The median monthly income of the poorest 20% dropped from HK\$3,860 (USD 495) in 2001 to HK\$3,700 (USD 474) in 2011, whereas that of the wealthiest 20% increased from HK\$30,000 (USD 3,846) in 2001 to HK\$36,250 (USD 4,647) in 2011<sup>26</sup> (Table 1).

**Table 1. Working Population by Income Groups, 2001, 2006 and 2011**

Income Group	2001	2006	2011
<b>1<sup>st</sup> – 2<sup>nd</sup> Decile Groups</b>			
• Range of monthly income from main employment (HK\$)	≤ 6,000	≤ 5,500	≤ 6,500
• Median monthly income from main employment (HK\$)	3,860	3,500	3,700
• Number of working population	645 814	668 993	706 568
<b>3<sup>rd</sup> – 8<sup>th</sup> Decile Groups</b>			
• Range of monthly income from main employment (HK\$)	6,000 – ≤ 20,000	5,500 – ≤ 20,000	6,500 – ≤ 23,750
• Median monthly income from main employment (HK\$)	10,000	10,000	11,000
• Number of working population	1 937 468	2 006 991	2 119 688
<b>9<sup>th</sup> – 10<sup>th</sup> Decile Groups</b>			
• Range of monthly income from main employment (HK\$)	≥ 20,000	≥ 20,000	≥ 23,750
• Median monthly income from main employment (HK\$)	30,000	30,000	36,250
• Number of working population	645 825	669 002	669 002

<sup>25</sup> Ibid.

<sup>26</sup> Census and Statistics Department, *2011 Thematic Report: Household Income Distribution in Hong Kong*, June 2012

Source: 2011 Thematic Report: Household Income Distribution in Hong Kong, Census and Statistics Department, June 2012

As a household level, the income gap is also ridiculously wide. The median monthly household income of the wealthiest 10% households was 42.1 times of that of the poorest 10% (Table 2). The monthly income of the highest income 10% household increased 21.4% in five years, while the lowest income 10% households found themselves in worsening situations, as their monthly income dropped 5% from HK\$2,400 to HK\$2,290.

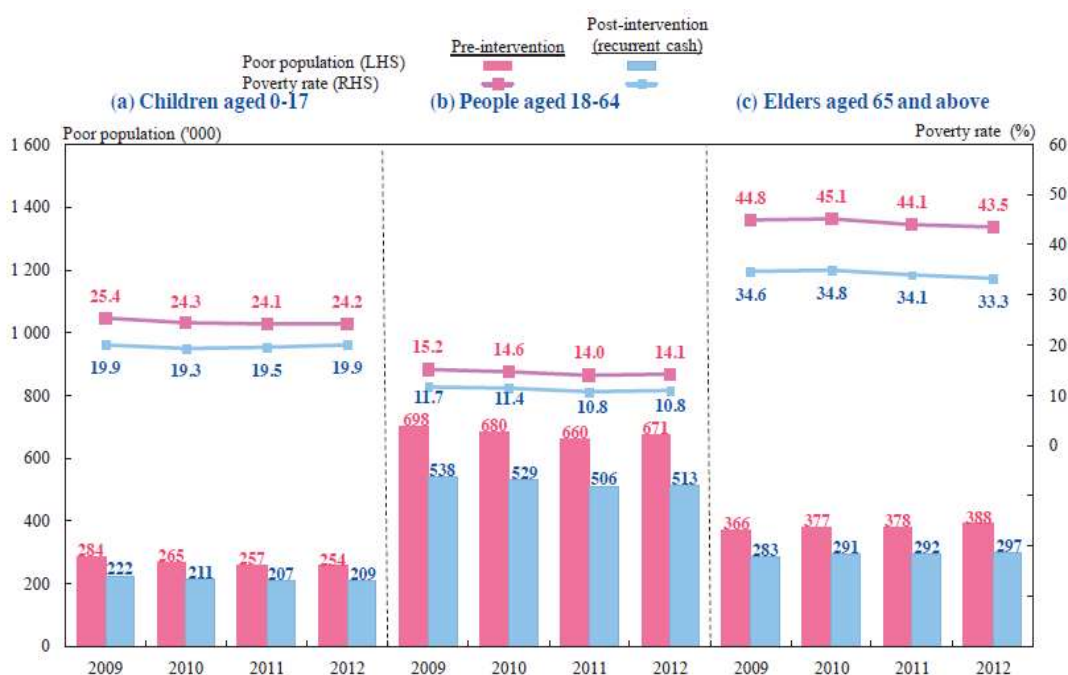
**Table 2. Median Household Monthly Income by Decile Groups (HK\$)**

Households in Decile Groups	2006	2011
Lowest Income 10%	2,400	2,290
2 <sup>nd</sup> 10%	6,000	6,610
3 <sup>rd</sup> 10%	9,000	10,000
4 <sup>th</sup> 10%	12,000	14,010
5 <sup>th</sup> 10%	15,300	18,500
6 <sup>th</sup> 10%	19,500	23,110
7 <sup>th</sup> 10%	24,250	29,700
8 <sup>th</sup> 10%	31,000	38,000
9 <sup>th</sup> 10%	42,900	52,480
Highest Income 10%	78,000	94,680
Overall	17,250	20,500

Source: 2011 Thematic Report: Household Income Distribution in Hong Kong, Census and Statistics Department, June 2012

Poverty is especially serious among the elderly and children, who are the two age groups with the highest poverty rates (Table 3).

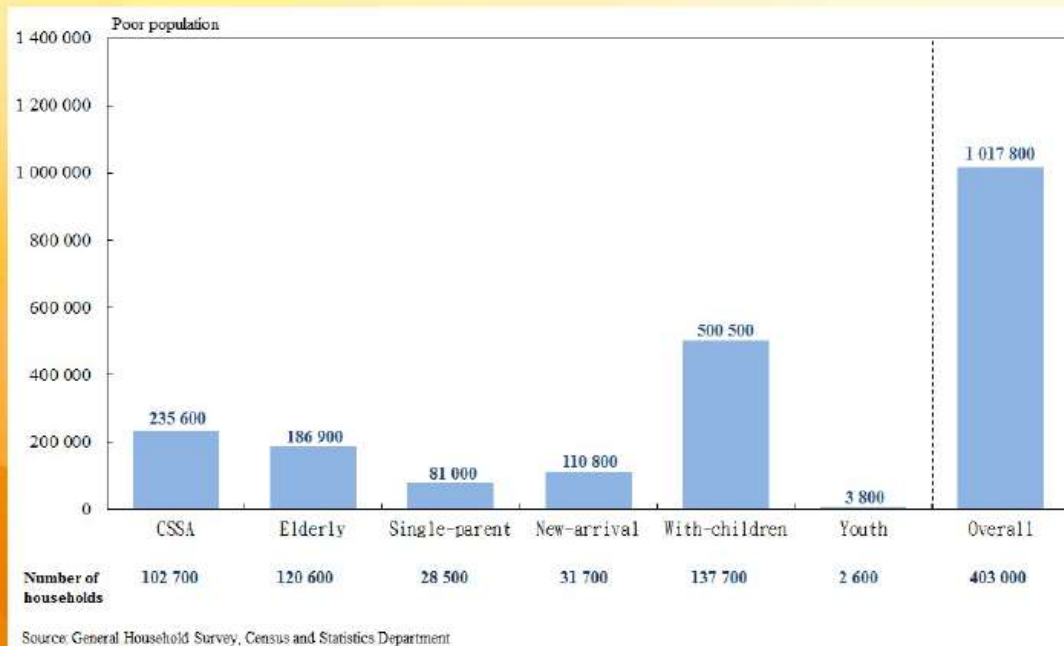
**Table 3. Poor population and Poverty rate by age (2009-2012)**



Source: General Household Survey, Census and Statistics Department.

Source: Poverty situation in Hong Kong 2012, Hong Kong SAR Government (September 2013)

## 2012 Poor Population by Social Group



### 7.4 Absence of long term economic policy for grassroots employment

The unification of global economy since 1980s led to the global economic restructuring and altered the production process of the economy. It resulted to the polarization of division of labor between the developed countries and the developing countries. Hong Kong, which is one of the classic examples of developed regions, shifted its production from secondary industry to tertiary industry. For example, there is a significant decline of workers in the “Manufacturing” industry, with its share decreasing from 19% in 1996 to 4% in 2011, while the workers in tertiary industry from 60.6% in 1996 to 76.2% in 2011.<sup>27</sup>

The shift of economic production not only leads to the shift of labour force, but also the changing of remuneration among different industries. As for occupation of the work force, there are 690,908 people (2011) work in the elementary occupations, which composed 19.5% of the total workforce, its median monthly income decreased \$5,300 in 2001 to \$5,000 in 2011. For the workforce who involved in managers and professionals, the median monthly income rapidly increased \$26,000 in 2001 to \$36,250 in 2011.<sup>28</sup>

The education level of the workforce also directly affects the income level of the working population. For example, the median monthly income of the working population with primary education attainment received only \$8,000 in 2011 while that of degree course \$25,000 in 2011. Moreover, the increasing rate of working population with primary education is lowered than of the degree course, which the former increase only 5.3% (from \$7,600 in 2001 to \$8,000 in 2011), while the latter increase over 17.6% (from \$21,250 in

<sup>27</sup> In 2011, the “Wholesale, retail and import/export trades, restaurants and hotels” became the largest sector. Its share in employment increased from 25% in 1996 to 30.1% in 2011. “Community, social and personal services”, which was the second largest sector, employing nearly 28.6% of the working population in 2011, while that of “Financing, insurance, real estate and business services” sector also increased to 17.5% in 2011. For further information, please refer to Census and Statistics Department, Hong Kong Special Administrative Region Government, 2006 Population By-census: Summary Results and 2011 Population Census: Thematic Report: Household Income Distribution in Hong Kong

<sup>28</sup> Census and Statistics Department, Hong Kong Special Administrative Region Government (2012), 2011 Population Census: Thematic Report: Household Income Distribution in Hong Kong

2001 to \$25,000 in 2011).<sup>29</sup> In addition, the provision of cheap and competitive labors in the Mainland China also makes the local grassroots laborers difficult to have low-skilled job opportunities and improve their standard of living.

As for the employment policy, the Hong Kong Government has the myth which strongly believed that under the laissez-faire philosophy, the free market is the inevitable hand that freely adjust and provide job opportunities to all walks of life. The principle of “big market, small government” is firmly stuck that no proactive economic planning or employment policy could be formulated to tackle the economic restructuring and employment difficulties of the grassroots laborers. The Government only focuses on the developing four main industries, including banking and financial services, real estate, tourism and logistics services, which only provide a few job opportunities of high-skilled laborers, but not ample job vacancies for the low-skilled workers.

According to the manpower demand and supply, the total manpower requirements were 3.28 million in 2010 and are projected to increase at an average annual rate of 1.1% to 3.60 million in 2018. The three economic sectors anticipated to grow the fastest in terms of manpower requirements during the period from 2010 to 2018 are “financial services” (at an average annual rate of 2.5%), “construction” (1.9%) and “information and communications” (1.9%). The sectors projected to diminish in employment size during the same period include “manufacturing” (at an average annual rate of -3.1%) and “agriculture, fishing and quarrying” (-2.6%).<sup>30</sup>

The Government mainly focus on the development of the so-called four “pillar industries (The “four pillar industries” are “financial services”, “trading and logistics”, “professional services” and “tourism”.) and the overall manpower requirements of the four pillar industries increased 311,800 during the projection period from 2010 to 2018, while the overall manpower requirements of the “six industries” (The “six industries” are “education services”, “medical services”, “testing and certification”, “environmental industries”, “innovation and technology”, and “cultural and creative industries”.) increased to 70,600 people from 2009 to 2015.<sup>31</sup> In view of the surplus of manpower resources of working population (8,900 workers in 2018) with lower secondary and below, the Government did not formulate any economic policy to facilitate the employment of the low-educated workers. The Government only stressed on training and re-training as the key of tackling the issue while did not create employment opportunities for low-skilled laborers.

Although the Government established the Economic Development Commission since 2013 to review and formulate the economic policy, it only focus on the development of four pillar industries (including 4 working groups on Shipping industry (including sea and air), Convention and Exhibition Industries and Tourism, Manufacturing, high technology, and cultural and creative industries and Professional Services respectively.) while it does not formulate any economic policy for grassroots’ employment.

The Government has been criticized by the economic scholar for the absence of strategy to develop optimized dual economy. As for the dual economy, the Government should have an economic policy and allocate more resources enhancing the development of low-skilled, high labour intensive industry to benefit the grassroots labourers.<sup>32</sup>

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<sup>29</sup> *Ibid.*

<sup>30</sup> Hong Kong SAR Government (2012), Steering Committee on Population Policy Progress Report 2012 (May 2012) Table 3.1 The manpower requirements by economic sector.

<sup>31</sup> *Ibid.*, Table 3.2 to table 3.4.

<sup>32</sup> Prof. Tsang Shu Ki, Senior Research Fellow, Institute for Enterprise Development, School of Business, Hong Kong Baptist University <http://www.sktsang.com/online.html>

## 7.5 Absence of effective wealth distribution mechanism to tackle income polarization

As discussed earlier, since the local industry focuses on capital-raising and market services, which required a high knowledge and skills labours, while the industrial production was moved to the mainland China. This leads the low-skilled workers cannot meet the needs of the market and become over-supply that resulting in income-polarization.

Since the change of sovereignty in 1997, the number of poor population jumps to 1.31 million (2012) and more than 541,000 households living under poverty, which is the highest since year 2000. The income polarization becomes worse and worse, which can be reflected from the increasing trend of Gini-coefficient (from 0.518 in 1996 to 0.537 in 2011). According to the Human Development Report (2011), Hong Kong's income disparity situation ranks number 1 among 27 the highly developed economic region and rank number 3 among 47 very high human development countries/regions.<sup>33</sup>

The Gini Coefficient of Hong Kong has sustained at an alarmingly high level, and has even risen throughout the decade (Table 4). The latest Gini Coefficient in 2011 was 0.537, which was significantly higher than the Gini Coefficient of five other selected developed economies (Table 5). The income re-distributive effective of the current government policy intervention is less significant than that of the other countries. For example, the change of Gini-coefficient (based on post-tax post social transfer monthly household income) of Hong Kong just slightly decreased 0.055(2001), 0.058(2006) and 0.062(2011) while that of Canada decreased 0.121(2001), 0.141(2006) and 0.121(2011).<sup>34</sup>

**Table 4. Gini Coefficient in Hong Kong based on all domestic households (1996 to 2011)**

	1996	2001	2006	2011
Gini Coefficient	0.518	0.525	0.533	0.537

Source: 2011 Thematic Report: Household Income Distribution, Census and Statistics Department, June 2012

**Table 5. Comparison of Gini Coefficient of Selected Economies (2001 to 2011)**

Economies	Year	Gini Coefficient
Hong Kong	2001	0.525
	2006	0.533
	2011	0.537
Canada	2001	0.513
	2006	0.506
	2009	0.515
United Kingdom	2000/01	0.513
	2005/06	0.518
	2009/10	0.520
Singapore	2001	0.456
	2006	0.476
	2011	0.482
United States of America	2001	0.466
	2006	0.470
	2010	0.469
Australia	2000/01	0.426

<sup>33</sup> United Nations Development Project (2011 Human Development Report) <http://hdr.undp.org/en/reports/global/hdr2011> Table3 (Inequality-adjusted Human Development Index)

<sup>34</sup> Census and Statistics Department, Hong Kong Special Administrative Region Government (2012), Table 8.2 of 2011 Population Census: Thematic Report: Household Income Distribution in Hong Kong

	2005/06	0.425
	2009/10	0.428

Source: 2011 Thematic Report: Household Income Distribution, Census and Statistics Department, June 2012

After recurrent cash intervention, the number of poor households and persons living therein decreased to 403,000 and 1,017,800 in 2012 respectively. It reflected that the poverty alleviating effect is meagre to tackle the entire population living in poverty.<sup>35</sup>

Worse still, the number of household whose median domestic household income of household below \$6,000 increased from 256,441 (2001) to 309,620 (2011), while the number of household whose median domestic household income of household over \$60,000 increased from 179,483 (2001) to 287,583 (2011), which indicated the worsening of income disparity in the community.

In view of the deteriorating situation, the Government should introduce an effective wealth distribution mechanism. Social policy of different policy areas, including housing, health, education as well as welfare, should be allocated more public resources in order to assist the underprivileged population. However, as predominant by the idea of low-taxation and the myth that poverty can be alleviated when the upper class can permeate their wealth to the lower, bottom class (trickle-down theory), no effective wealth re-distributive mechanism is established that the disadvantaged remain living under the poverty line.

In view of the plight of the poor population, the SAR Government turned its blind eye to help the poor people. Although the Hong Kong SAR Government re-established a Commission on Poverty in 2013 and introduced an official poverty line in September 2013, it still lacks a long-term comprehensive poverty alleviation strategy and time schedule to reduce poor population and eradicate poverty. As a result, the poor are inevitably suffering from the cancellation of various welfare grants. In the absence of any long-term policy, the day for eradicating poverty for the deprived children is unclear.<sup>36</sup>

## 7.6 Inept policies to assist different groups of the poor

The Government was merely able to recognize the existence of severe poverty in the society, but it has failed to address the needs of different groups of the poor. It has been adopting an over-simplified logic and expects simply stimulating economic activities will benefit the entire society even without corresponding improvements in policies of social security. This ultimately leads to the continuously large poverty population and increasing income inequality illustrated above.

### 7.6.1 Working elderly

As mentioned above, the elderly are the group with the highest poverty rate, which equals to one in three old persons is living in poverty. Yet, due to the lack of a comprehensive pension scheme, more elderly have to rely on social welfare to sustain their daily living. Since the Social Welfare Department denied the elderly living with their families the right to apply for the CSSA in 1999, such elderly have been forced to move out (e.g. stay in elderly homes) if they want to apply for CSSA on their own.

<sup>35</sup> Government of the Hong Kong Special Administrative Region, [Hong Kong Poverty Situation 2012 \(September 2012\)](#)

<sup>36</sup> In his Policy Address 2014, the Chief Executive decided to introduce the low-income working family allowance which provides monthly allowance to low-income families and children who are living under the official poverty line (i.e. income below half of the median household income) which costs around \$3 billion in each year. If all eligible applicants applied the scheme, it is estimated that more than 200,000 low-income families with 710,000 members, including 180,000 eligible children and young people, will benefit from the allowance.



Some elderly have to work to be self-supported. The number of working elderly increased from 52,911 in 2001 to 63,791 in 2011<sup>37</sup>. Still, they are excluded from the Mandatory Provident Fund (MPF) scheme and are left without sufficient retirement protection.

### 7.6.2 New immigrants from Mainland China

Social exclusion and discrimination have posed difficulties for new immigrants in employment. And even if they are able to find jobs, they generally earn a lower median income than that of the entire working population. About a quarter of new immigrants earn less than half of the median monthly income of the whole population in 2011 (Table 7). The median monthly income of new immigrants was only about 60% of that for the whole population in both 2006 and 2011.

**Table 7. Proportion of working new immigrants (NIs) aged 15 and over by monthly income from main employment**

Monthly income (HK\$)	Proportion of working population (%)					
	2001		2006		2011	
	NIs	Whole	NIs	Whole	NIs	Whole
< 2,000	2.4	1.9	3.2	2.1	3.5	1.9
2,000 – < 4,000	11.3	2.0	11.5	4.7	9.4	3.4
4,000 – < 6,000	29.6	8.0	28.9	10.1	12.8	4.9
6,000 – < 8,000	27.9	13.0	26.9	14.6	26.9	11.1
8,000 – < 10,000	12.3	13.0	12.0	13.2	22.3	13.9
10,000 – < 15,000	10.8	24.2	9.4	22.0	14.5	23.0
15,000 – < 20,000	2.4	12.2	3.6	11.2	3.4	12.6
20,000 – < 30,000	1.6	11.9	2.4	10.7	2.9	13.0
≥ 30,000	1.7	11.7	2.1	11.5	4.4	16.4
Median monthly income from main employment (HK\$)	6,000	11,000	6,000	10,000	7,500	12,000

Source: 2011 Thematic Report: Persons from the Mainland having resided in Hong Kong for less than 7 Years, Census and Statistics Department, December 2012

### 7.6.3 Housewives and single-parent families

Similar to the working elderly, housewives are excluded from the MPF scheme. Divorced or separated women have to either accept low paid work or rely on CSSA. A new CSSA policy was introduced in 1998, which stipulated that single parents having CSSA have to work when their children reach the age of 15.

### 7.6.4 “N have-nots”

In recent years, a new group of people has gained wide attention. “N have-nots” refer to those low-income persons who do not own any properties, live in public rental housing or receive CSSA. They are living without help from any governmental support systems due to ineligibility or other reasons. They are unable to benefit from many governmental policies that aim to alleviate poverty, e.g. rent-free periods for public housing residents, rates-free periods, additional CSSA allowance etc. In the 2013-14 Budget, the Government proposed a set of one-off relief measures, but none of them can directly offer immediate assistance to the “N have-nots”.

The Community Care Fund was established in 2011, aimed at providing support and relief to those who are not benefited under regular social welfare policies, e.g. the “N have-nots”.

<sup>37</sup> Census and Statistics Department, 2011 Thematic Report: Older Persons, February 2013 (<http://www.statistics.gov.hk/pub/B11200642013XXXXB0100.pdf>)

However, out of the 18 Assistance Programmes, only two of them can possibly offer help to the “N have-nots”. Not only is the coverage of such programmes very narrow, the public awareness of the Fund is so low that a lot of “N have-nots” have no knowledge as to what to apply for and how to apply. As a result, measures proposed by the Government have little effectiveness in helping those in need.

## **7.7 Criticisms about CSSA and the secondary safety net**

After slashing the amount of CSSA allowance in 2003, the Government still has not revised the amount of allowance to match the rising prices and rent in the society nowadays. In February 2013, the CSSA allowance was revised according to price indices for the previous 12 months. Lawmakers criticized such arrangements made the adjustments in the amount of allowance lag behind the actual changes in economic indicators. They have urged the Government to switch back to the old practice adopted before 2000, i.e. adjust allowance amount in accordance with anticipated inflation.

### **7.7.1 Inadequate Rent Allowance for CSSA recipients living on private rental housing**

Besides the lagging behind of the CSSA allowance, the rent allowance under the scheme was also heavily criticized. According to the current policy, CSSA recipients who live in private housing can apply for Rent Allowance, the amount depending on the size of the family. For example, a one-person family is entitled to a maximum amount of HK\$1440 (USD 185) per month. Such an allowance was designed to pay the rent of these households on a reasonable level. However, up till December 2012, the number of CSSA cases living in private housing was 35,888<sup>38</sup>. Among these cases, 20,487 (57.1%) of them had to pay rent which was higher than the maximum rent allowance<sup>39</sup>.

Since the deduction of CSSA in 2003, the rent of private housing (under 400 sq. ft.) has skyrocketed for 92%. Notwithstanding such a drastic increase in rent, the Rent Allowance was not adjusted for 9 years, until it was slightly increased by 5.5% and 7.8% in 2012 and 2013 respectively. Still, there was a serious mismatch between the tiny revisions and the excessively high rent. More than half of the Rent Allowance recipients have to pay rent by a portion of their CSSA allowance. They have to further cut expenses on food and clothing. It is clear the insufficient rent allowance has denied them adequate social security.

### **7.7.2 Weaknesses of Old Age Living Allowance (OALA) and Old Age Allowance (OAA)**

The OALA is a new scheme designed for elderly above the age of 70. It has been in force since October 2012, and the current amount is HK\$2,200 (USD 282) per month. Recipients cannot receive OALA and OAA or Disability Allowance at the same time. But this scheme has been controversial since its proposal. Eligible applicants are required to fulfill income and assets requirements, which is a maximum value of HK\$193,000 (USD 24,744). In general, it is normal for the elderly to have savings and assets of a similar worth, among which may include MPF they received after retirement. Setting a bar like this will render this scheme ineffective, as a lot of older persons in need may not be eligible to apply for it. Moreover, according to scholastic studies, each old person needs at least HK\$3,100 (USD 397) per month to support their daily living. The HK\$2,200 OALA is not enough to ensure a decent standard of living for the elderly in need.

The OAA has been implemented for about 40 years, but recently it has attracted new criticisms. Currently, not only must OAA applicants satisfy income and assets requirements,

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<sup>38</sup> [http://www.soco.org.hk/publication/press\\_release/crec/2013/pr\\_2013\\_7\\_2.pdf](http://www.soco.org.hk/publication/press_release/crec/2013/pr_2013_7_2.pdf)

<sup>39</sup> Ibid.

but they also have to be permanent residents for at least 7 years and stay in Hong Kong for at least 309 days in the year before the date of application, meaning they cannot leave Hong Kong for more than 56 days a year. This proves to be a hindrance to the elderly residing in Mainland China. The Thematic Household Survey Report No. 38<sup>40</sup> published by the Census and Statistics Department revealed that the number of persons above 65 who resided in the mainland rose from 12,900 in 2005 to 23,800 in 2007/08. They chose the mainland as the place for residence possibly for lower medical fees and better living conditions etc. This criterion has prevented these old persons from receiving the OAA.

In February 2012, the Court of Appeal ruled that a similar requirement of CSSA scheme was against the Basic Law<sup>41</sup>. Regarding this judgment, the requirement of at least 309 days of residence under the OAA scheme should also be considered as a violation of the Basic Law.

## **7.8 Lack of universal retirement protection**

The aging problem of in Hong Kong is worsening. According to the Census and Statistics Department, there were about 920,000 persons above the age of 65 in 2012, and this number is expected to rise in the future. In 2039, it will amount to 2,490,000, constituting 28% of the entire population. The elderly dependency ratio will increase to 454, meaning every two working persons will have to support one older person. In order to plan ahead and tackle this pressing problem, lawmakers have been urging the Government to establish a comprehensive universal retirement protection, so as to solve the troubles with existing policies like MPF and CSSA. Not only will a universal retirement protection scheme help the elderly support their daily living with dignity, but it can also lessen the burden on the children of the elderly. The Democratic Alliance for the Betterment and Progress of Hong Kong conducted a survey in March 2013<sup>42</sup>, and it reveals that the general public (73%) is supportive of setting up a universal retirement protection. Nevertheless, the Government still hasn't introduced any plans after years of discussion.

## **7.9 Recommendations**

1. To urge the Government to introduce the employment policy to improve the working conditions and social mobility of the grassroots workers.
2. To urge the Government to formulate the anti-poverty strategies and time table for eradicating poverty in Hong Kong in accordance with the official poverty line.
3. To urge the Government to extend the scope of Mandatory Provident Fund (MPF) to cover working elderly.
4. To urge the Government to allow new immigrants and newly arrived ethnic minorities equal access to social welfare by lifting the 1-year hurdle.
5. To urge the Government to review the Rent Allowance scheme to ensure recipients do not have to pay rent by CSSA allowance.
6. To urge the Government to adjust the rent allowance amount to the level before the deduction in 2003.

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<sup>40</sup> Census and Statistics Department, *Thematic Household Survey Report No. 38 – Hong Kong Residents' Experience of and Aspiration for Taking Up Residence in the Mainland of China*, April 2009 (<http://www.statistics.gov.hk/pub/B11302382008XXXXB0100.pdf>)

<sup>41</sup> *Yao Man Fai George v The Director of Social Welfare* CACV 153/2010

<sup>42</sup> [http://www.dab.org.hk/jm/images/news/doc/2013/Jul/130713\\_%E5%85%A8%E6%B0%91%E9%80%80%E4%BF%9D%E6%84%8F%E8%A6%8B%E8%AA%BF%E6%9F%A5%E6%96%B0%E8%81%9E%E7%A8%BF.pdf](http://www.dab.org.hk/jm/images/news/doc/2013/Jul/130713_%E5%85%A8%E6%B0%91%E9%80%80%E4%BF%9D%E6%84%8F%E8%A6%8B%E8%AA%BF%E6%9F%A5%E6%96%B0%E8%81%9E%E7%A8%BF.pdf)

7. To urge the Government to reconsider imposing rent control to monitor rent private housing.
8. To urge the Government to review the need of the income and assets requirement of the OALA.
9. To urge the Government to waive the requirement of residence under the OAA scheme.
10. To urge the Government to review the possibility of establishing a universal retirement protection scheme.

## **Chapter 8. Right to Protection of the Family (Article 10)**

### **8.1 Split families between Hong Kong and the Mainland China**

After the Court of Appeal's ruling concerning the right of abode of mainland children in 1999, the Government asked the Standing Committee of the National People's Congress to interpret Articles 24(2) and 24(3) of the Basic Law. This interpretation denied the right of abode of mainland-born children born before at least one parent had become a Hong Kong permanent resident. It also required these children to obtain documents issued by the Hong Kong Government and the PRC Government before they can officially be entitled to right of abode. Mainland-born children were forced to travel across the border to apply for residency in Hong Kong.

Currently there are approximately 7,000 children (born in Hong Kong or obtained a one-way permit to stay in Hong Kong) whose mothers are Mainland residents and their fathers, who are Hong Kong citizens, died or have abandoned them. These children are not registered in the mainland and courts have ruled that they cannot live outside of Hong Kong. They have to wait for their mothers to apply for One-way Entry Permits from the PRC Government before they are allowed to come to Hong Kong and stay with their children. However, these mothers' applications have been denied due to their divorce or the death of their husbands. As a result, their children are left in Hong Kong without their mothers looking after them.

These mothers are only allowed to apply for Two-way Permits, and the children have to return to the mainland with their mothers every three months to extend the permits. Their studies have been seriously affected. The scheme allowing parents to apply for Two-way Permits multiple times in a year does not cover single-parent families, so they are forced to continue with the mentioned practice of travelling back and forth between Hong Kong and the mainland.

The average queuing time for One-way Permits of these families is 6.5 years. The longest waiting time of the cases is 16 years, which is excessively longer than the 4-year queuing time for normal families. Some of them were once issued One-way Permits, but the permits were taken back by mainland authority based on the death of the husbands of these mothers waiting to unite with their children.

The Hong Kong government offers a quota of 150 permits to be issued every day. These permits are divided into five categories: reunion of couples, underage children seeking reunion with parents in Hong Kong, old parents seeking reunion with adult children in Hong Kong, adult children coming to Hong Kong to take care of their old parents, and other special circumstances. None of the categories fit the situation of these mothers, as they cannot apply for reunion with their husbands. As a matter of fact, only 125 permits are issued every day. The rest of the places can be used to cater for the needs of these mothers.

The children in such cases once requested an appointment with the Immigration Department and the Security Bureau, but their requests were denied. The Security Bureau and the former Chief Executive claimed that the decisions concerning the One-way Permit system were made by mainland authorities and that the Hong Kong Government could not offer help. The mainland Public Security Bureau said that they were waiting for the Hong Kong Government to make requests, yet the HK Security Bureau still has not mentioned such problem to them.

The lack of workable and reasonable mechanism for the mothers has posed detrimental effects of long-term separation on the affected families. The children's growth and

development are adversely affected due to deprivation of parental care and nurture and the frequent travels across the border. Mothers often have a sense of guilt that they cannot fulfill their roles as mothers and provide a decent environment for their children to grow.

## **8.2 Split families of ethnic minorities**

Split families are common among ethnic minorities as well. Besides the ethnic groups like Indonesian, Filipino and Thai (residents of these ethnicities are mainly foreign domestic helpers), there are more males than females for other ethnicities. In general, men come to Hong Kong to work but they cannot afford to bring their families to join them in Hong Kong.

The immigration policy in Hong Kong is strict in the sense that there is only a policy of applying for visas based on dependence, meaning the sponsor has to support the dependent's living at a certain level, which is higher than the subsistence level. However, as illustrated in Chapter 5, ethnic minorities generally engage in elementary occupations, rendering it difficult for them to prove that they can support a decent living for the dependents, thus lowering the chance of family reunification.

## **8.3 Recommendations**

1. To urge the Government to carefully review the One-way Permit system and strengthen the cooperation with mainland authorities to allow reunion of mothers (divorced or whose husbands are dead) with their children in Hong Kong.
2. To urge the Government to increase the flexibility of the issuing of One-way Permits.
3. To urge to Government to utilize their power of discretion to issue permits to such split families as special cases.
4. To urge the Government to extend the policy of allowing multiple applications for Two-way Permits in a year to single parents whose children are Hong Kong permanent residents.
5. To urge the Government to set up a transparent mechanism and system to process the applications of family reunion, in order to systematically coordinate and monitor the approval process and handle complaints.
6. To urge the Government to revise the immigration policy and look into the possibility of introducing immigration policies and visas for family reunion.

## **Chapter 9. Right to an Adequate Standard of Living (Article 11)**

The right of everyone to an adequate standard of living, including adequate housing, and to the continuous improvement of living conditions is protected under Article 11 of the ICESCR. However, the Government has not brought forward any effective policies to address the housing problems of under-privileged groups. In recent years, housing prices and rent level have catapulted. According to statistics compiled by the Rating and Valuation Department, the price index for the property market rose from about 70 in 2004 to almost 250 in April 2013<sup>43</sup>. At the same time, the rental index also increased from 75 in 2005 to about 150 in 2013<sup>44</sup>. Continuously rising property prices and rent, together with the Government's incompetence in tackling the problem, have caused hardships of many low-income persons, whose standards of living have deteriorated despite the economic recovery.

### **9.1 Shortage of public housing and long waiting time**

Since 2006, the number of applications for public housing has increased significantly from less than 100,000 to over 243,300. The number has already increased by half in 2 years since 2011. The supply of public housing in the past was not enough to satisfy the growing demand for housing of grass-roots citizens.

In the 2013 Policy Address, the Government planned to supply 20,000 public rental housing units each year. But it is apparent that this amount is no match for the quickly increasing number of cases in waiting list. This insufficiency is not due to the lack of land, but it is only because of the Government's misplaced focus in housing policies. Facing a pressing demand for public housing units, the Government opted for putting up pieces of land for auction for developers to build high-end private housing. For instance, in March 2013, a piece of land, which was supposed to be reserved for public housing, was changed into private use and was auctioned off. It was expected to be used for building private housing units with prices up to HK\$20,000 (USD 2,564) per square foot. Such moves made by the Government have detrimental effects on the current deprivation of public housing and are absolutely no help in solving the undersupply of housing units.

According to the Hong Kong Property Review 2013<sup>45</sup> published by the Rating and Valuation Department, there was a one-fold increase in the number of large private housing units (saleable area of more than 1,077 sq. ft.) built in 2012 than in 2011. While the construction of public housing cannot catch up with the growing demand, 9,140 large private housing units are left vacant, constituting 10.7% of the stock. It is unreasonable for the Government to assign additional land for private housing of which there is no shortage in the property market, and turn a blind eye to the harsh living conditions of those endlessly waiting for a public housing unit.

The shortage of public housing leads to long waiting time as well. Oxfam Hong Kong conducted a survey in late 2012, which reveals that more than 70% of applicants have already waited for an average of 4.4 years (52.6 months)<sup>46</sup>. For the remaining 26% who

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<sup>43</sup> Rating and Valuation Department, *Price Indices For Hong Kong Property Market* (<http://www.rvd.gov.hk/doc/en/statistics/graph2.pdf>)

<sup>44</sup> Rating and Valuation Department, *Rental Indices For Hong Kong Property Market* (<http://www.rvd.gov.hk/doc/en/statistics/graph1.pdf>)

<sup>45</sup> Rating and Valuation Department, *Hong Kong Property Review 2013*, ([http://www.rvd.gov.hk/doc/en/hkpr13/PR2013\\_full.pdf](http://www.rvd.gov.hk/doc/en/hkpr13/PR2013_full.pdf))

<sup>46</sup> Oxfam Hong Kong, *Research on the Living Condition of Tenant Households Who Have Been on the Waiting List for Public Rental Housing for Over 3 Years* ([http://www.oxfam.org.hk/filemgr/2040/OHKstandpointsonhousing\\_editedeng\\_final.pdf](http://www.oxfam.org.hk/filemgr/2040/OHKstandpointsonhousing_editedeng_final.pdf))

received the first offer of public rental housing, they too waited for an average of 4.5 years (54 months). Ironically, the Government had promised to limit the waiting time to 3 years, but it is obvious that it has failed to fulfill its promise, as it is normal for applicants on the waiting list to spend more than 4 years in the queue.

## 9.2 Discriminatory public housing policy against new immigrants

Existing policies for public rental housing application require that half of the household members in the application must have lived in Hong Kong for at least 7 years<sup>47</sup>. This again is another governmental policy that discriminates against new arrivals such as new immigrants from Mainland China and newly arrived ethnic minorities. This criterion has caused many families to stay on the Waiting List for more than 7 years in order to be eligible for application. As at March 2010, there were still 8,400 cases on hold because they failed to satisfy this requirement, involving around 3,900 children. New arrivals are forced to seek alternative types of housing units during the waiting time. They may not even be offered a public housing unit once they fulfill the requirement after 7 years, and it is probable that they have to wait for more than 7 years before they can have a decent shelter.

## 9.3 Discriminatory housing policy against singletons

Statistics from the Census and Statistics Department show that the number of one-person households rose from 238,462 in 1991 to 404,088 in 2011, which is a 69.5% increase. The proportion of one-person households in all household sizes also increased from 15% in 1991 to 17% in 2011. This demonstrates the trend of a rising number of one-person households and highlights the importance of catering for their housing needs. Currently, on the waiting list, over half of the cases (50.2%) in the queue are non-elderly singletons, and this percentage has increased throughout recent years (Table 8).

**Table 8. Number of Non-elderly Singletons on Waiting List and Corresponding Percentage in all cases**

Year	All cases	Non-elderly Singletons	Percentage
2008/09	114,400	42,700	37.3%
2009/10	129,100	51,300	39.7%
2010/11	152,400	63,400	41.6%
2011/12	189,500	87,800	46.3%
2012/13	222,000	106,900	48.2%
Dec 2013	243,300	122,200	50.2%

Source: Letter of Reply from the Housing Authority to Society for Community Organization, 2013

It is urgent for the Government to take care of these non-elderly singletons, since they constitute a large portion in the cases on the waiting list. However, the existing housing policy is discriminatory against them. The aforementioned “average waiting time” target of 3 years is not applicable to them<sup>48</sup>. Worst still, the “Quota and Points System”, introduced in September 2005 to “rationalize and to re-prioritize the allocation of public housing to non-elderly one-person applicants”<sup>49</sup> is also a factor contributing to the lengthening waiting time of singletons. The yearly allocation quota for these applicants is set at 8% of the number of housing units allocated to all Waiting List applicants, at a maximum of 2,000

<sup>47</sup> Housing Authority, Flat Application Guide for New Arrivals (<http://www.housingauthority.gov.hk/en/flat-application/application-guide/new-arrivals/>)

<sup>48</sup> Legislative Council Panel on Housing, Subcommittee on the Long Term Housing Strategy, *The Housing Authority's Quota and Points System for Non-elderly One-person Applicants for Public Rental Housing*, CB(1)919/12-13(02), April 2013

<sup>49</sup> Ibid.



flats<sup>50</sup>. Comparing this quota with the current number of non-elderly one-person applicants stated above, it is easy to see that this annual quota is far from enough to offer accommodation to them in the near future.

Applicants are assigned points based on their age (at the time of submitting applications), whether they are public rental housing tenants, and their waiting time. Under this system, the older and the longer the waiting time, the more points an applicant will get. This proves to be extremely difficult for younger singletons to receive offers of housing units. Among the non-elderly singletons on the Waiting List, a majority of them were below the age of 30 (Table 9).

**Table 9. Number of Non-elderly One-person Applicants by age groups**

	<b>Below 30</b>	<b>30-39</b>	<b>40-49</b>	<b>Above 50</b>
2011	29,100 (46%)	14,700 (23%)	11,700 (18%)	7,900 (13%)
March 2012	45,600 (52%)	18,400 (21%)	14,100 (16%)	9,700 (11%)

Source: Letter of Reply from the Housing Authority to Society for Community Organization, 2012

Despite being the majority in the group, these younger applicants had received no offers from the Housing Authority (Table 10). They were forced to wait for years longer in order to accumulate more points. They often had to wait for 5 years or more before they were allocated a housing unit.

**Table 10. Number of Non-elderly One-person Applicants who received offers by age groups**

	<b>Below 30</b>	<b>30-39</b>	<b>40-49</b>	<b>Above 50</b>
2006/07	0	10	170	1,150
2007/08	0	10	390	1,190
2008/09	0	20	580	1,390
2009/10	0	10	430	1,500
2010/11	0	40	680	1,030
2011/12	0	40	550	1,260

Source: Letter of Reply from the Housing Authority to Society for Community Organization, 2012

The Long Term Housing Strategy Steering Committee has been looking into the possibility of a new points system for non-elderly singletons. Under this new system, the older an applicant, the more points will be assigned to him every year. The Steering Committee attempts to shorten the waiting time of applicants above the age of 35. However, this means the younger applicants are sacrificed and they will have to stay in the queue for an even longer time. Unfortunately, in its report to the Government in February 2014, the Steering Committee did not provide any concrete solution to alleviate the housing problem encountered by the singletons queuing on the waiting list.

Everyone should enjoy the right to adequate housing, but younger singletons have been receiving discriminatory treatment under the allocation mechanism. It seems that the Government treats age as the sole factor to be considered in allocating housing units, for it aims at accommodating older singletons first. It is reasonable for the Government to take care of older applicants more, as they often have lower working abilities and earn a lower income than the younger ones. But it is obviously preferential arrangements have deprived younger applicants of their share of the available flats. Age should not be the only criterion in assessing one’s housing needs and financial abilities, and it is unacceptable for the

<sup>50</sup> Ibid.

Government to deny young applicants housing units that they are entitled to just because they are not “old enough”.

This longer-than-promised waiting time of both household cases and non-elderly singletons not only violates housing rights, but it also lowers the living standards of those on the waiting list, for they are forced to find accommodation in other forms of unpleasant housing options, bringing up the acute problem of cage homes and cubicle apartments etc.

#### 9.4 Improper and indecent accommodation

The undesirable living conditions of caged homes have always been a common concern for the past years. In recent years, due to the skyrocketing property prices, caged homes have attracted even more attention because of the emergence and prevalence of subdivided units and cubicle apartments. These forms of housing have become a common choice among low-income persons, since these flats are all that they can afford before they are offered a public rental housing unit. The “Report on Survey on Subdivided Units in Hong Kong”<sup>51</sup> submitted by Policy 21 Limited compiled statistics about the current situation of subdivided units (SDU). Up till early 2013, there is an estimated number of 66,900 SDU in Hong Kong. The number of SDU residents rose from about 65,000 in 2011 to 171,300 this year<sup>52</sup>, which is a shocking 164% increase. This survey did not cover the SDU in industrial buildings and residential buildings aged less than 25 years, hence it is reasonable to believe that the numbers of SDU and SDU residents are much higher in reality.

The living environment of these SDU is below par, as 46% of the SDU lack essential facilities, for instance kitchen facilities, water supply and independent toilets<sup>53</sup>. About half of the SDU households claimed to have encountered problems with the buildings, e.g. concrete cracking, exposed reinforcement, messy electrical wiring and water seepage.

Each subdivided flat was found to be subdivided to 3.6 units on average, rendering the environment extremely crowded. The report by Oxfam Hong Kong mentioned under subsection 9.2 also noted the insufficient living space of SDU. The media living space per person was approximately 4.2 square metres (45 square feet)<sup>54</sup>. The minimum living space allocation standard of public rental housing is 5.5 square metres per person<sup>55</sup>. Public rental housing households with a living area of less than 5.5 square metres per person are categorized as “overcrowded” households. Comparing the results from the Oxfam report with this definition, about 61.8% of SDU residents can be categorized as “overcrowded” households. This illustrates the poor environment of SDU and the Government’s incompetence in offering assistance to SDU residents in terms of providing them with rental allowances or reducing their waiting time for public rental housing.

Although SDU are small in size, their rents are definitely not cheap and still take up a relatively large proportion in occupants’ income. The report submitted by Policy 21 Limited cited that the average monthly rental of SDU was about HK\$3,790 (USD 486), and the average rent per square foot amounted to HK\$29.1 (USD 3.8)<sup>56</sup>. It was shocking due to

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<sup>51</sup> Policy 21 Limited, *Report on Survey on Subdivided Units in Hong Kong*, June 2013 ([http://www.legco.gov.hk/yr12-13/english/panels/hg/hg\\_lths/papers/hg\\_lths0626cb1-1371-3-e.pdf](http://www.legco.gov.hk/yr12-13/english/panels/hg/hg_lths/papers/hg_lths0626cb1-1371-3-e.pdf))

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Oxfam Hong Kong, *Research on the Living Condition of Tenant Households Who Have Been on the Waiting List for Public Rental Housing for Over 3 Years* ([http://www.oxfam.org.hk/filemgr/2040/OHKstandpointsonhousing\\_editedeng\\_final.pdf](http://www.oxfam.org.hk/filemgr/2040/OHKstandpointsonhousing_editedeng_final.pdf))

<sup>55</sup> Legislative Council, Panel on Housing, Meeting on 3 June 2013, *Background brief on “Overcrowding relief in public rental housing”*, LC Paper No. CB(1)1153/12-13(06) (<http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/hg0603cb1-1153-6-e.pdf>)

<sup>56</sup> Policy 21 Limited, *Report on Survey on Subdivided Units in Hong Kong*, June 2013 ([http://www.legco.gov.hk/yr12-13/english/panels/hg/hg\\_lths/papers/hg\\_lths0626cb1-1371-3-e.pdf](http://www.legco.gov.hk/yr12-13/english/panels/hg/hg_lths/papers/hg_lths0626cb1-1371-3-e.pdf))

the fact that it was even higher than that of the luxury residential property in West Kowloon. Around 40% of SDU households claimed that the rent was raised in the past year, with an average increase of HK\$542 (USD 69). The high rent places heavy financial burden on SDU residents, indicated by their median rent-to-income ratio of 29.2%, which was significantly higher than that of all households living in private housing units (25.7%<sup>57</sup>).

Besides SDU and cubicle apartments, flats in industrial buildings have become a new option for households desperate for shelter. According to a survey done by Society for Community Organization in October 2012, 40% of the residents lived in industrial building apartments with areas smaller than 40 square feet<sup>58</sup>. The median area was about 40 square feet and the smallest flat only had an area of 20 square feet. The median living space per capita was 36 square feet. The median monthly rental per square foot was HK\$32.5 (USD 4.2), while more than 30% of residents were charged a monthly rental per square foot of HK\$40 (USD 5.1). One of the main concerns of industrial building residents was the poor fire prevention facilities.

The Government's inept public housing policies and failure to improve the living environment of aforementioned forms of accommodation or regulate the construction of them has posed not only great discomfort on low-income households, but has also forced them to live under high risks.

### **9.5 Absence of Rent Control**

After the abandonment of Tenancy Control in 1998, tenants' bargaining power has reduced. As cited above, the rental level has almost doubled in 8 years. The average monthly rental of SDU also experienced an increase of close to 15%. Tenants, especially the grass roots, are often exploited in terms of rental. They are forced to pay 30% of their income as rent, leaving little money for their other expenses like electricity charges and water bills. Still, no review was carried out in more than a decade.

Before 2004, a rule stated that unless the tenants did not pay rent for three months or engaged in illegal activities, the owners could not terminate the contract. Following the rule was waived in 2004, without rental control or any form of tenant protection, the owners of the housing units can evict tenants as long as they give one month's notice. The increase in rental is entirely based on the owners' discretion regardless of inflation and no ceiling was imposed. This means if a tenant is unable to pay the increased rent, he may be thrown out after one month and be put in a dire predicament, for it may be difficult for him to find another affordable housing unit. According to Society for Community Organization's (SoCO) survey on non-elderly singletons in 2013, 18.6% of tenants was demanded to leave by property owners in the past 2 year<sup>59</sup>. Tenants have to face the risks of increase in rental and eviction, thus they have a low sense of security, which also contributes to an inadequate standard of living.

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<sup>57</sup> Census and Statistics Department, *2011 Population Census Main Report: Volume 1*, November 2012

<sup>58</sup> Society for Community Organization, *2012 Report on Industrial Building Residents' Living Conditions and Needs*, October 2012

([http://www.soco.org.hk/publication/private\\_housing/survey\\_industrial%20subdivided%20units\\_2012\\_10.doc](http://www.soco.org.hk/publication/private_housing/survey_industrial%20subdivided%20units_2012_10.doc))

<sup>59</sup> Society for Community Organization, *Report on Non-elderly Singletons*, June 2013

([http://www.soco.org.hk/publication/private\\_housing/non%20elderly%20singletons%20research\\_2013\\_6\\_16.pdf](http://www.soco.org.hk/publication/private_housing/non%20elderly%20singletons%20research_2013_6_16.pdf))

## 9.6 Difficulties faced by most deprived groups

Another report on industrial building residents published by SoCO mentioned above also cited that more than 30% of the tenants are chronically ill<sup>60</sup>, mostly with respiratory diseases, arthritis and mental illness. There were no windows in the housing units and the air was stuffy, and this may pose a graver danger to their health.

On the other hand almost 20% were rehabilitative groups, such as ex-offenders, former street sleepers and former mental patients. Some of them were introduced by social workers to stay in industrial buildings. Despite the hygiene problem and low level of security, they were forced to stay as these unpleasant housing units were already their last refuge.

## 9.7 Forced displacement without corresponding rehousing policies

Last year, the Buildings Department announced plans to ban SDU in industrial buildings, and subsequently amended the Buildings Ordinance. Following this announcement, the Department has started a series of actions, including issuing removal orders to property owners of SDU in industrial buildings that did not comply with the Buildings Ordinance. Although the apartments in industrial buildings and those SDU in normal residential buildings share similar living environment, i.e. similar hygiene and crowdedness, these removal actions were only directed at industrial buildings used as residential buildings. Residents of industrial building flats should not be forced to bear the consequences of poor housing policies and be driven out from what could be their last resort.

63 households were affected after the Buildings Department closed three flats in March 2012. Some of them had to borrow money in order to move to SDU of very high rent, and found it difficult to keep up with the rent payment. Some lived in temporary shelters, and they had to stay there for three months before they can prove that they were homeless so that they were eligible for applying for interim housing.

The Government has begun this series of actions without any comprehensive plans of re-housing the affected households. As banning residential use of industrial buildings was a thoroughly thought out plan, thus it would be possible for the Government to formulate corresponding re-housing strategies before taking actions.

The Community Care Fund offered “Relocation Allowance for Eligible Residents of Sub-divided Units in Industrial Buildings Who Would Have to Move Out As A Result of the Buildings Department's Enforcement Action”. This allowance aimed at providing one-off assistance to “N have-nots” households. Disappointingly, households living in industrial buildings were excluded from this relief measure, because the flats they lived were illegally built. The Government failed to recognize the residents’ lack of options, for it was against their preference, but they had to stay as they had nowhere else to go. It is unfair for the Care Fund to present preferential treatment, because industrial building residents are in need of and deserve this allowance as much as those living in SDU in normal residential buildings.

Even if they were included in the scheme, the allowance was so small in amount that it could only offer minimal help to those affected by enforcement action<sup>61</sup>. An allowance of

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<sup>60</sup> Society for Community Organization, *2012 Report on Industrial Building Residents' Living Conditions and Needs*, October 2012

([http://www.soco.org.hk/publication/private\\_housing/survey\\_industrial%20subdivided%20units\\_2012\\_10.doc](http://www.soco.org.hk/publication/private_housing/survey_industrial%20subdivided%20units_2012_10.doc))

<sup>61</sup> Community Care Fund, “*Relocation Allowance for Eligible Residents of Sub-divided Units in Industrial Buildings Who Would Have to Move Out As A Result of the Buildings Department's Enforcement Action*” *Notes to Applicants*, September 2012 ([http://www.bd.gov.hk/english/services/doc/RAS\\_gn.pdf](http://www.bd.gov.hk/english/services/doc/RAS_gn.pdf))

approximately HK\$2,000 (USD 256) per person is absolutely nothing compared to the monthly rent, deposit of rent, deposit for water and electricity bills etc. Even with the allowance, these households can only afford SDU or caged homes. The relief measures can provide little substantial assistance, since grass-root households are merely able to stay in the worst form of accommodation. The Government violates Article 11 by failing to offer “continuous improvement of living conditions”.

## 9.8 Recommendations

1. To urge the Government to re-evaluate the long-term housing policies, increase the land supply and public housing units’ supply to 35,000 per year.
2. To urge the Government to review the restrictions and requirements for public rental housing application.
  - a. Remove the Quota and Points System for non-elderly one-person applicants.
  - b. Increase the number of housing units assigned to non-elderly singletons.
  - c. Remove the 7-year restriction.
  - d. Assess the waiting time calculation in order to fulfill the “average waiting time” promise.
3. To urge the Government to re-adopt the rent control and tenant protection regulations.
4. To urge the Government to formulate re-housing policies for residents affected in the future.
  - a. Directly offer affected households’ interim housing instead of temporary shelters.
  - b. Include industrial building residents under the relocation allowance under the Care Fund.
  - c. Increase the amount of relocation allowance and reduce the application restrictions.

No. of Occupants	Allowance (HK\$)
1 person	2,100
2 -3 persons	4,600
4 persons or above	6,100

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