

THE NEED FOR AN INDEPENDENT CHILDREN'S COMMISSIONER IN HONG KONG: A GOOD GOVERNANCE IMPERATIVE

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I. INTRODUCTION

Hong Kong children face numerous health, welfare and safety concerns. Almost twenty percent of all children in Hong Kong live below the poverty line without adequate nutrition.¹ Recent tragic child abuse cases highlight the urgent need for a more effective coordinated child protection system.² There are high rates of school bullying and parental corporal punishment.³ Students suffer mental health issues related to academic, familial and social pressures.⁴ These concerns highlight the need for a comprehensive and holistic approach to children's health, welfare and protection in Hong Kong.⁵ The United Nations Convention on the Rights of the Child ("UNCRC"), to which Hong Kong is a signatory, obliges the Government to implement proper measures to respect children's rights as enshrined in the Convention and to establish a national mechanism with a clear mandate to monitor children's rights.⁶ A

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¹ See OFFICE OF THE GOV'T ECONOMIST FIN. SECRETARY'S OFFICE, HONG KONG POVERTY SITUATION REPORT 2017 (2018), https://www.povertyrelief.gov.hk/eng/pdf/Hong_Kong_Poverty_Situation_Report_2017.

² See *Public News: 26% of Child Abuse Prevention Cases Involve Special Learning Needs Children*, CITIZEN NEWS (Feb. 8, 2018), https://www.aca.org.hk/media-report/20180208_hkc_news.pdf.

³ See OECD, PISA 2015 RESULTS (VOLUME III): STUDENTS' WELL-BEING 2017), <http://www.oecd.org/education/pisa-2015-results-volume-iii-9789264273856-en.htm>.

⁴ See discussion in Cissy So, *Alarming data on suicide*, <https://www.thestandard.com.hk/section-news/section/4/206277/Alarming-data-on-suicide>; Sylvia Kwok Lai Yuk Ching, *Positive Education Calls for Immediate Attention*, ACTA PSYCHOPATHOLOGICA, Vol 2 No 2:17, May 2016 ISSN 2469-6676.

⁵ See H.K. COMM. ON CHILDREN'S RIGHTS, WHY WE NEED TO HAVE A CHILD POLICY IN THE NEW HKSAR GOVERNMENT IN 2012?, http://www.childrenrights.org.hk/v2/archive/04concerns/ChildrenCommission_20120622.pdf.

⁶ See *Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION (NOV 20, 1989), https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter

multi-disciplinary group of stakeholders including medical, legal, social work and education professionals, NGOs and community groups have urged the Government to establish an independent “Children’s Ombudsman” or “Commissioner” to advocate for Hong Kong children, with power to investigate all complaints related to child rights and interests.⁷ There is also international pressure—the United Nations Committee on the Rights of the Child (“UN Committee”) has repeatedly encouraged the Hong Kong Government to establish an independent Children’s Commissioner.⁸

The Chief Executive has made “good governance” a top Government priority, stating in 2017: “Good governance is vital, whether in discharging the responsibilities of the Government as a ‘service provider’ or a ‘regulator,’ or in taking up the new roles of the Government as a ‘facilitator’ and ‘promoter’”⁹ Soon thereafter the Chief Executive announced the formal establishment of a new Hong Kong “Commission on Children” in May 2018, providing reason for cautious optimism.¹⁰ This article evaluates this new Commission and asks how the performance of the Commission as promoter of children’s rights and interests in Hong

=4&lang=en. (Hong Kong has been a party to the UNCRC since 1994 covering the needs of children (i.e. care and protection) but also a range of civil, political, economic, social and cultural rights.).

⁷ Including NGOs “Hong Kong Committee of Children’s Rights,” “Against Child Abuse and Kids’ Dream” and broad-based initiatives such as the “1.1 Million Campaign” launched in 2016. *See also* discussions on the need for a Children’s Commissioner at the three Children’s Issues Forums held in Hong Kong in 2009, 2012 and 2015.

⁸ *See* H.K. COMM. ON CHILDREN’S RIGHTS, RESPONSE TO THE REPORT OF THE HKSAR UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, LC PAPER NO. CB(2)923/13-14(08) (Feb. 17, 2014);). *See also* Anne Scully-Hill, *The Hong Kong Government, the UN Committee on the Rights of the Child and the Disagreement over the Need for a Children’s Commissioner for Hong Kong: Conflicting Perspectives on How Best to Implement Children’s Rights*, in 2 INTERNATIONAL PERSPECTIVES ON DISPUTES ABOUT CHILDREN AND CHILD PROTECTION: COLLECTED ESSAYS ON PREVENTING ABUSE, PARENTAL RESPONSIBILITIES AND EMPOWERING CHILDREN 212 (Katherine Lynch & Anne Scully-Hill eds., 2015).

⁹ *See* Press Release, New Philosophy for Strengthening Governance, HKSAR Gov’t of the H.K. Special Admin. Region (Oct. 11, 2017), <https://www.info.gov.hk/gia/general/201710/11/P2017101100455.htm>. The Chief Executive’s commitment to good governance was re-stated in her 2018 Policy Address, with particular emphasis on institutional safeguards and accountability. *See The Chief Executive’s 2018 Policy Address*, HKSAR GOV’T OF THE H.K. SPECIAL ADMIN. REGION ¶¶ 7, 21 (Oct. 10, 2018)), https://www.policyaddress.gov.hk/2018/eng/policy_ch02.html [hereinafter *2018 Policy Address*].

¹⁰ The Chief Executive stated in her campaign pledge that she would establish a “responsive and high-level body” working for the benefit of Hong Kong children. *See* Press Release, Government Establishes Commission on Children, Gov’t of the H.K. Special Admin. Region (May 31, 2018), <http://www.info.gov.hk/gia/general/201805/31/P2018053100340.htm>. The Commission’s first two meetings were held in June and October 2018.

Kong can be improved. A discussion of challenges facing Hong Kong children—one of the main stakeholders of the Commission—provides important context for this evaluation. Thereafter, the rationale for establishing a Children’s Commissioner or Ombudsman as an aspect of good governance is discussed, along with the attributes they need to be effective.¹¹ The Government’s historical approach to monitoring children’s rights and interests is then considered, along with comparative research on the approaches of Norway, the UK, and Australia relating to Children’s Commissioners. This provides a basis for analyzing the role and functions, composition and structure, policy and research focus, and financial resources of the new Commission on Children. The Government’s decision to establish this Commission, while important, does not go far enough. To be effective, this Commission must evolve into an independent statutory body, grounded in the UNCRC with enhanced powers of advocacy, investigation, monitoring, and reporting.¹² Swift reform is necessary to ensure the Commission adopts a rights-based systemic approach for improving advocacy and protection for children and develops the necessary credibility and high levels of public trust.¹³ This is an important human rights and good governance imperative for Hong Kong.

II. DISCUSSION

The scale and complexity of the problems facing Hong Kong children—child poverty, abuse and neglect, mental health issues, school bullying, corporal punishment and marginalization in society—highlights the need for improved advocacy for and protection of children’s rights and interests in Hong Kong.

¹¹ See discussion of the various factors influencing the Ombudsman’s degree of influence as promoter of good governance in Selma Danzic, *REPUBLIC OF SLOVAKIA. HUMAN RIGHTS OMBUDSMAN, OMBUDSMAN AS PROMOTOR OF GOOD GOVERNANCE*, (2006), <https://thesis.eur.nl/pub/3817/>.

¹² See UNICEF, *HK EXPECTS THE COMMISSION ON CHILDREN TO EVOLVE INTO AN INDEPENDENT STATUTORY BODY FOR CHILDREN*, (2018), <https://www.unicef.org/hk/en/unicef-hk-expects-the-commission-on-children-to-evolve-to-an-independent-statutory-body-for-children/> (last visited Apr. 5, 2019).

¹³ Just as reforming the Hong Kong Ombudsman by substantially increasing its investigative powers helped shape the Ombudsman into an independent watchdog institute dealing effectively with public grievances and enjoying a high level of credibility and public trust. See Johannes Chan & Vivian Wong, *The Politics of the Ombudsman: The Hong Kong Experience*, in *RESEARCH HANDBOOK ON THE OMBUDSMAN* 91, 111–112 (Marc Hertogh & Richard Kirkham eds., 2018).

A. *High Rates of Child Poverty—Malnourishment and Inadequate Housing*

Government statistics from the 2017 “Hong Kong Poverty Situation Report” are staggering—one-fifth of Hong Kong’s population lives below the poverty line and of these, approximately 300,000 are children.¹⁴ Sadly, nearly half of the children living in poverty do not get enough food to eat, and lack balanced nutrition.¹⁵ Although the Government formed a “Commission on Poverty” to help alleviate poverty, the number of children living in poverty is increasing (even after government policy intervention).¹⁶ This is alarming for a developed country enjoying strong economic growth; a 2018 Oxfam report revealed that income inequality in Hong Kong has worsened.¹⁷ Children from low-income families suffer the most from this widening disparity, which is exacerbated by the absence of a comprehensive child policy to protect children’s best interests and tackle intergenerational poverty.¹⁸

A 2017 Society for Community Organization (“SOCO”) study found almost 90% of Hong Kong children living in poverty are de-

¹⁴ The Report indicates that 1.377 million residents live below the poverty line, an increase of 25,000 from 2016. See OFFICE OF THE GOV’T ECONOMIST FIN. SECRETARY’S OFFICE, *supra* note 1.

¹⁵ Society for Community Organization (“SOCO”) research indicates that 25.8% of children living in poverty cannot afford three meals a day. See Soc’y for Cmty. Org., *Research Report on the Quality of Life of the Children Living in Poverty* and Soc’y for Cmty. Org., *Child Deprivation Research Report*, CHILD POVERTY RESEARCH SERIES 27 (Nov. 2018) [hereinafter *Child Deprivation Research Report*]. See also Sze Lai-shan, *The Current Situation of Child Poverty in Hong Kong*, REFORMING HONG KONG’S CHILD & FAMILY JUSTICE SYSTEM (Anne Scully-Hill et al. eds., 2016).

¹⁶ From 0.172 million children in 2016 to 0.177 million. SOCO’s Sze Lai-shan argues that the Government’s “Comprehensive Social Support Scheme” fails to address the needs of Hong Kong children in families living below the poverty line and needs reviewing as it uses 20-year-old adjustment criteria. See Peace Chiu, *Record 1.3 million People Living Below Poverty Line in Hong Kong as Government Blames Rise on Ageing Population and City’s Improving Economy*, SOUTH CHINA MORNING POST (Nov. 19, 2018), <https://www.scmp.com/news/hong-kong/society/article/2174006/record-13-million-people-living-below-poverty-line-hong-kong>.

¹⁷ See OXFAM, H.K., HONG KONG INEQUALITY REPORT, OXFAM HONG KONG, https://www.oxfam.org.hk/tc/f/news_and_publication/16372/Oxfam_inequality%20report_Eng_FINAL.pdf (last visited Apr. 5, 2019); H.K. COMM. ON CHILDREN’S RIGHTS, A CHILDREN’S COMMISSIONER FOR HONG KONG: SHAPING THE FUTURE, (2006), http://www.childrenrights.org.hk/v2/archive/06publications/20061200_ShapingTheFuture.pdf [hereinafter SHAPING THE FUTURE].

¹⁸ The study was conducted by Professor Chou Kee-lee at HKIED from December 2012 to May 2013 analyzing data collected during the Hong Kong 2011 Population Census. See SOC’Y FOR CMTY. ORG., NO TIME TABLE FOR DEMOCRACY OR ERADICATION OF POVERTY (2009), <https://www.legco.gov.hk/yr08-09/english/panels/ca/papers/ca0119cb2-693-1-e.pdf>.

prived of basic needs, residing in substandard housing conditions that are crowded, unhygienic, and polluted.¹⁹ Nearly 20,000 children live in cage homes, cubicles, or rooftop huts in Hong Kong, sharing toilets and kitchens with other tenants.²⁰ Unfortunately, the living conditions of children in poverty can also adversely impact their physical and psychological development.²¹ While education can help existing poverty, Hong Kong's education system requires not only formal schooling and textbooks, but also internet and technology access and participation in extracurricular activities.²² Nearly half of children living in poverty cannot afford to join extracurricular activities and almost 40% had failed to complete or submit their homework on time due to lack of required resources such as a computer.²³ Deprived and stressful living conditions also put children living in poverty at risk of domestic violence and child abuse.²⁴ Children who are trapped in a cycle of poverty cannot realize their potential and are deprived of their right to development, participation and survival.²⁵

¹⁹ Nine out of ten primary school children from families on welfare live in a state of deprivation—more than 200,000 children in Hong Kong. See *Child Deprivation Research Report*, *supra* note 17.

²⁰ See also SOCO, Soc'y for Cmty Org., *Research Report on the Relationship between Housing Conditions and Spine Health of Children in Poverty* (Mar. 2016); Sze Lai-shan, *supra* note 18. See also H.K. COMM. ON CHILDREN'S RIGHTS, NGO Report of the HKSAR HONG KONG SPECIAL ADMINISTRATIVE REGION UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD (2012) [hereinafter *NGO Report of the HKSAR*].

²¹ A Boys' and Girls' Association of Hong Kong survey showed nearly 20% of children from low income families suffered food poisoning, stomach and intestinal diseases compared with 14% of children from average families. SOCO research indicates 79.6% of children living in poverty had spinal problems from poor living conditions and reporting high levels of suicidal thoughts. See Soc'y for Cmty Org., *supra* note 22; Agnes Lam, *Group Seeks Improvement in Support for Poor Children*, SOUTH CHINA MORNING POST (Oct. 17, 2005). See also SHAPING THE FUTURE, *supra* note 19.

²² See Chenhong Peng & Paul Yip, *How to Break the Cycle of Child Poverty in Hong Kong, Where One in Five Children are Poor*, SOUTH CHINA MORNING POST (May 23, 2017, 5:42 PM), <https://www.scmp.com/comment/insight-opinion/article/2095321/how-break-cycle-child-poverty-hong-kong-where-one-five>.

²³ The amount of financial assistance provided to children living in poverty does not cover the costs of books with new editions being published frequently and costs rising each year. Although the Government's Child Development Fund and the Community Care Fund provide subsidies and support long-term development of children from poor families, these resources often only reach a small proportion of children living in poverty. See *Child Deprivation Research Report*, *supra* note 17; Sze Lai-shan, *supra* note 17.

²⁴ Overall, children living in poverty face many socio-economic disadvantages and material hardships early in life that greatly increase their risk of developing adjustment problems later. See Sze Lai-shan, *supra* note 17.

²⁵ See Kwai Yau Wong, *Poverty and Child Resilience*, SYMPOSIUM ON SOCIAL WORK PRACTICE AND POLICY: POVERTY AND POVERTY ALLEVIATION 2017; Grenville Cross, *News of a chil-*

B. *Rising Incidence of Child Abuse—Lack of Adequate Protection*

Hong Kong's Social Welfare Department statistics indicate increasing rates of reported child abuse from 947 cases in 2017 to 1,064 cases in 2018.²⁶ The most reported type of abuse is physical abuse (39.5%), followed by sexual abuse (33.3%), and neglect (24.2%).²⁷ Local NGO "Against Child Abuse" recorded a 20 percent increase in child sexual abuse cases in 2017, although many sexual abuse cases likely go unreported.²⁸ Hong Kong's present child protection system is inadequate, as it is essentially voluntary and non-legal, with tragic consequences.²⁹ Seven-year-old Suki Ling Yun-Lam died after suffering extreme long-term cruelty and abuse. She was admitted to the hospital in 2015 after going into cardiac arrest, and suffering severe malnutrition, with multiple injuries all over her body. Lack of investigation, reporting, and inter-

dren's commission will bring good Children's Commission Will Bring Good Cheer to Hong Kong, SOUTH CHINA MORNING POST (Dec. 23, 2013, 6:30 PM), <https://www.scmp.com/print/comment/insight-opinion/article/1668213/hong-kongs-children-need-better-protection-their-rights>.

²⁶ The Social Welfare Department's Child Protection Registry records show an overall increase in reported child abuse cases. See SOC. WELFARE DEP'T, PROCEDURAL GUIDE FOR HANDLING CHILD ABUSE CASES REVISED 2015 (2015); *Statistics on Child Abuse, Spouse / Cohabitant Battering and Sexual Violence Cases, Newly Reported Child Abuse Cases*, SOC. WELFARE DEP'T, <https://www.swd.gov.hk/vs/english/stat.html> (last updated Sept. 3, 2019).

²⁷ Sadly, the abusers in most child abuse cases are the parents or caregivers, with single parent, low income, new migrants and families of children with special needs most at risk for child abuse. A 2015 survey by NGO Against Child Abuse found that 54% of 1,562 children aged 6 to 13 years old had experienced corporal punishment by their parents, and although parents were aware of the adverse impact of corporal punishment on their parent-child relationship, they did not know other appropriate means of teaching. See Peace Chiu, *In Hong Kong, most child abuse victims Most Child Abuse Victims Suffer at Hands of Parents*, SOUTH CHINA MORNING POST (Jan. 15, 2018, 9:31 AM), <https://www.scmp.com/news/hong-kong/law-crime/article/2128210/when-care-turns-cruelty-hong-kong-most-child-abuse-victims>; Yupina Ng, *Violence is not Is Not Parenting, Hong Kong child advocate says amid Child Advocate Says Amid Rise in physical abuse Physical Abuse Cases*, SOUTH CHINA MORNING POST (Feb. 24, 2018, 6:03 PM) <https://www.scmp.com/news/hong-kong/community/article/2134163/violence-not-parenting-hong-kong-child-advocate-says-amid>. See also *Against Child Abuse*, *supra* note 9.

²⁸ *Child Sex Abuse Case s Jump by a Fifth*, AGAINST CHILD ABUSE (Nov. 16, 2017), https://www.aca.org.hk/media-report/20171116_RTHK_ENG.pdf. The End Child Sexual Abuse Foundation's counseling service received a total of 231 calls in 2017 and recorded 29% suspected child sexual abuse cases. See Annie Ho, *2016–2017 Statistics of Hugline*, END CHILD SEXUAL ABUSE FOUNDATION, http://www.ecsaf.org.hk/images/upload_images/file/Hugline%20Stat%202016-2017%20English.pdf (last visited Apr. 5, 2019).

²⁹ PRISCILLA LUI TSANG SUN KAI, H.K. Comm. on Children's Rights, *Update on Child Protection in Hong Kong* (2018), http://www.paediatrician.org.hk/index.php?option=com_docman&task=doc_view&gid=1540&Itemid=66.

vention to stop Suki's abuse resulted in her horrific death.³⁰ Five-year-old Chan Siu-lam stopped going to school in October 2017, and died from physical abuse in January 2018, despite the school documenting the extent of her injuries and abuse.³¹

These distressing child abuse cases illustrate the deficiencies in the existing child protection system, including the lack of comprehensive child protection legislation and the absence of mandatory child abuse reporting mechanisms for teachers, social workers, and medical professionals. A lack of child care workers and a shortage of experienced personnel and dedicated resources in schools and hospitals to assess, report, and handle child abuse cases or follow up with timely intervention also poses a huge problem.³² While Hong Kong has enacted legislation banning corporal punishment in schools, the use of corporal punishment is still widely accepted in the community.³³ A survey of young children between 8 to 13 years old found that 62.5% had experienced corporal punishment in the past year, with half of them reporting punishment categorized as physical abuse, including beating with a belt, a stick, or other hard object.³⁴ There have been repeated calls to ban paren-

³⁰ The Court described Suki's abuse as "a grotesquely shocking case of child neglect" and her mother was sentenced to 15 years imprisonment. *Hong Kong v. Wong Wing-Man, Mandy alias Wang Xuexin and another*, [2018] HKCFI 1484; HCCC 76/2017.

³¹ Sadly, under the current child protection regime, there was no duty to investigate or assess the risk Siu-lam faced, nor any mandatory duty to help her.

³² See Peace Chiu, *Number of child abuse Child Abuse Cases in Hong Kong Hits 14-year Year High, as activists urge Activists Urge Action from Commission on Children*, South China Morning Post (Feb. 24, 2019, 10:46 PM) <https://www.scmp.com/news/hong-kong/society/article/2187505/number-child-abuse-cases-hong-kong-hits-14-year-high>. See also JOINT STATEMENT TO PANEL ON WELFARE SERVICES, SPECIAL MEETING ON JANUARY 19, 2018, LC PAPER NO. CB(2)1123/17-18 (JAN. 19, 2018). A 2017 Government review of the "Multi-disciplinary Case Conference on Protection of Child with Suspected Abuse" is on-going.

³³ Many parents consider corporal punishment "good parenting" despite its detrimental impact on a child's physical health, mental well-being, and self-esteem. Parents may use physical punishment as discipline, but the deterrent effects are short-lived and physical punishment can escalate into child abuse. See Scully-Hill, *supra* note 10; Ng, *supra* note 29; *There are better ways to discipline children than using physical violence*, SOUTH CHINA MORNING POST (May 18, 2014, 3:35 PM), <https://www.scmp.com/comment/insight-opinion/article/1514394/there-are-better-ways-discipline-children-using-physical>.

³⁴ The study also found that more than 54% of parents surveyed used physical punishment on their children for reasons such as unsatisfactory academic performance and refusal to obey parents. See CARITAS YOUTH AND COMMUNITY SERVICE AND THE DEPARTMENT OF APPLIED SOCIAL STUDIES, CITY UNIVERSITY OF HONG, RESEARCH REPORT ON FACTORS OF CHILD ABUSE AND ITS IMPACT ON CHILD DEVELOPMENT (Feb. 2015), http://www6.cityu.edu.hk/ss_posed/ui/Publications/factors%20child%20abuse.pdf.

tal corporal punishment through legislation in Hong Kong, but to no avail.³⁵

C. *Mental Health Concerns—High Rates of Youth Suicide*

A growing number of Hong Kong children suffer mental health problems. A 2018 research study indicates a third of Hong Kong children between 10 to 14 years of age are a potential risk for suicide.³⁶ Youth suicides and self-harm are of heightened concern in Hong Kong following a spate of student suicides.³⁷ The Third Child Fatality Review Panel in 2017 noted multiple causes of suicide, including schoolwork problems, relationship and social problems, and concerns about the future.³⁸ Although the Review Panel made several recommendations on preventive strategies and system improvement for child fatality cases, these are non-binding and there is no statutory mechanism to monitor implementation of the recommendation.³⁹

³⁵ See Elizabeth Cheung, *Hong Kong Child Rights Group Calls for Total Ban on Corporal Corporal Punishment*, SOUTH CHINA MORNING POST (Apr. 28, 2015, 3:53 PM), <https://www.scmp.com/news/hong-kong/law-crime/article/1778175/hong-kong-child-rights-group-calls-total-ban-corporal>. Despite UN calls to ban corporal punishment, in July 2018 the Government re-affirmed that it would not ban corporal punishment but would “step up its publicity to remind parents not to use corporal punishment against children.” See LEGISLATIVE COUNCIL SUBCOMMITTEE ON CHILDREN’S RIGHTS, MINUTES OF THE SEVENTEENTH MEETING ON WEDNESDAY, 4 APRIL, AT 2:30PM, LC PAPER No CB(4)1414/17-18 (July 26, 2018).

³⁶ See Kwok, *supra* note 6; Karen Zhang, *Third of Hong Kong Pupils Aged 10-14 Identified as possible suicide Possible Suicide Risk*, SOUTH CHINA MORNING POST (Mar. 26, 2019, 7:30 AM) <https://www.scmp.com/news/hong-kong/society/article/3003206/third-hong-kong-pupils-aged-10-14-identified-potential>. See also H.K. SPECIAL ADMIN. REGION GOV’T, FOOD AND HEALTH BUREAU, MENTAL HEALTH REV. REPORT (2017).

³⁷ Between 2006–2013 a total of 105 children committed suicide. The Hong Kong Jockey Club, Caritas NGO and volunteer agency Samaritan Befrienders established three suicide prevention programs. See COMMITTEE PAUL YIP, SUI-FAI, COMM. ON PREVENTION OF STUDENT SUICIDES, FINAL REPORT (2016); Press Release Working Together to Prevent Suicide, UNIV. OF H.K. (Sept. 10, 2018), <https://www.hku.hk/press/press-releases/detail/18364.html>.

³⁸ Press Release, Third Report for child death cases in Hong Kong in 2012 and 2013., Child Fatality Review Panel. See Anne Scully-Hill, *The Latest Report on Child & Youth Suicide in Hong Kong and the Upcoming HKCCR Roundtable*, CHILDREN’S ISSUE FORUM (Sept. 20, 2017), <https://www.cifhk.org/cif-voices/the-latest-report-on-child-youth-suicide-in-hong-kong-and-the-upcoming-hkccr-roundtable>.

³⁹ See H.K. COMM. ON CHILDREN’S RIGHTS, *supra* note 10. The Review Panel reported that some children would express their suicidal intention but they were either not heard or their views were not given weight. See Scully-Hill, *supra* note 40; Paul Yip, *Preventing Suicide Among Hong Kong’s youth will Youth Will Take a Collective Effort, in School and Beyond*, SOUTH CHINA MORNING POST (Sept. 8, 2018, 3:03 PM) <https://www.scmp.com/comment/insight-opinion/hong-kong/article/2163087/preventing-suicide-among-hong-kongs-youth-will>.

D. *School Challenges—Academic Pressure and Bullying*

Hong Kong's education system tends to emphasize rote learning and academic achievement with the curriculum more focused on written examinations and acquiring examination skills than on enhancing personal growth and development.⁴⁰ Parents frequently regard academic excellence as a measure of a child's success and alarmingly, research indicates a spike in child abuse cases coinciding with school exams.⁴¹ LegCo's Subcommittee on Children's Rights urged the Government's Education Bureau to review and revise current school curriculum to embrace a more holistic balanced approach centered on students' well-being and mental health.⁴² School bullying is on the rise, as well. A 2015 OECD survey ranks Hong Kong first among 53 countries in terms of the percentage of children reporting school bullying at least a few times a month—the rate of 32.3% exceeds Singapore (25.1%), Britain (23.9%), and the US (18.9%).⁴³ A local survey in 2018 indicates that one in three students experienced school bullying in the past six months.⁴⁴

⁴⁰ The competitive environment creates great pressure for many Hong Kong students and the exam-oriented learning environment does not promote emphasis on students' mental wellness. See SHAPING THE FUTURE, *supra* note 19. See also Yip, *supra* note 41; *Children Need Preparation for a tough Tough World*, SOUTH CHINA MORNING POST (May 27, 2006) <https://www.scmp.com/comment/insight-opinion/article/2182859/tsunami-past-shows-need-prepare-future>.

⁴¹ Alan Yu, *Spike Child Abuse Cases in Hong Kong Coincides with Exam Time, Research Shows*, SOUTH CHINA MORNING POST (Aug. 8, 2016), <https://www.scmp.com/lifestyle/families/article/1999591/spike-child-abuse-cases-hong-kong-coincides-exam-time-research>.

⁴² Focused on student-centered assessment for learning, a "quality over quantity" homework policy and supporting students' mental health. See LEGISLATIVE COUNCIL HOUSE COMMITTEE SUBCOMMITTEE ON CHILDREN'S RIGHTS, RIGHTS OF CHILDREN AMID EXAMINATION AND SCHOOLWORK STRESS, LC PAPER No CB(4)248/17-18(01) (Nov. 25, 2017) and LEGISLATIVE COUNCIL SUBCOMMITTEE ON CHILDREN'S RIGHTS, RESPONSE TO MOTIONS OF THE MEETING ON 25 NOVEMBER 2017, LC PAPER No CB(4)548/17-18(01) (Jan. 2018).

⁴³ See OECD, *supra* note 5.

⁴⁴ An online survey reported similar figures with 37% of youth indicating that they have been bullied. Press Release, Jockey Club Online Youth Emotional Support "Open Up" Official Launch Ceremony and 2018 Hong Kong Youth Mental Health and Internet Usage Survey Press Announcement, Open Up (Oct. 7, 2018), https://csr.p.hku.hk/wp-content/uploads/2018/10/PressRelease_20181007_en.pdf.

E. *Children with Disabilities and Special Needs—Lack of Adequate Support*

Approximately 30% of Hong Kong children have special education needs but many of these children lack access to early intervention due to inadequate support services.⁴⁵ Some parents pay for private assistance but many families of special needs children cannot afford private healthcare and training.⁴⁶ The requirements of special needs children and those with disabilities are often not consulted nor given priority in policy formulation, although these children are at significant risk of bullying and abuse.⁴⁷ Unfortunately, the Government does not have a comprehensive data bank on special needs or disabled children, hampering adequate planning of support services and programs.⁴⁸

F. *Vulnerability of Children Born to Migrant Workers*

Foreign domestic workers are an integral part of Hong Kong, with increasing numbers expected to rise to 600,000 by 2049.⁴⁹ Local NGO PathFinders helps pregnant migrant women in distress, successfully documenting 226 children born to such mothers in 2016.⁵⁰ While migrant workers are covered by statutory employment protection, many of them are unlawfully fired, causing them to lose their visas, access to public healthcare, and social welfare

⁴⁵ See Stephanie Tsui, *A Third of Hong Kong Children Have Special Educational Needs—And the City is Failing Them*, SOUTH CHINA MORNING POST (Nov. 2, 2018, 10:15 AM), <https://www.scmp.com/news/hong-kong/education/article/2171293/lack-institutional-support-has-failed-hong-kongs-special>.

⁴⁶ See H.K. COMM. ON CHILDREN'S RIGHTS, *supra* note 10.

⁴⁷ Peace Chiu, *Hong Kong wants Bullies to Learn Their Lesson*, SOUTH CHINA MORNING POST (Nov. 13, 2018, 9:30 AM), <https://www.scmp.com/news/hong-kong/education/article/2172787/least-third-15-year-olds-falling-victim-it-time-anti>.

⁴⁸ In October 2018 the Government committed to increasing support for special needs and disabled children. See Press Release, Third Term Commission on Poverty Convenes Second Meeting, Gov't of the H.K. Special Admin. Region (Oct. 18, 2018), <https://www.info.gov.hk/gia/general/201810/18/P2018101800542.htm>.

⁴⁹ See also Press Release, Foreign Domestic Helpers and Evolving Care Duties in Hong Kong, Legislative Council Secretariat 2016 – 2017 (July 2017); Press Release, Speech by Secretary for Labour and Welfare at Annual General Meeting of International Social Service—Hong Kong Branch, Gov't of the H.K. Special Admin. Region (Dec. 5, 2017), <https://www.info.gov.hk/gia/general/201712/05/P2017120500410.htm>.

⁵⁰ See PATHFINDERS INT'L, GOING WHERE THE NEED IS GREATEST 2016 ANNUAL REPORT (2016); Luna Chan & Jenny McAlpine, *Improving Access to Justice for Children Born to Migrant Workers in Hong Kong*, in Scully-Hill, *supra* note 17.

support. Such women are left without any legal, social, or medical safety net. Many of their children are born in Hong Kong but unregistered, without birth certificates, passports, or access to healthcare and education.⁵¹ Hong Kong's inadequate child protection legislation often fails to protect and safeguard the best interests of these vulnerable children.⁵²

G. *Lack of Children's Voice and Participation in Society*

Children have little voice in Hong Kong's political processes and children's views are not often heard in policies directly affecting them (e.g. education and healthcare reforms).⁵³ Although the Government has committed to improving children's ability to voice their opinion on policy matters, they often lack power to follow up on and pursue complaints.⁵⁴ Also, the legal system does not provide adequate channels for consultation of and participation by children.⁵⁵ Although current judicial practice improved the ways that children's views can be expressed and heard (e.g. judicial interviews of children), these often lack statutory force.⁵⁶

III. RATIONALE FOR CHILDREN'S COMMISSIONERS: GOOD GOVERNANCE MECHANISM

The challenges facing Hong Kong children highlight the multiple cross-cutting reasons supporting appointment of a Children's Commissioner or Ombudsman to monitor and assist in the domes-

⁵¹ They are also at significant risk of abuse and neglect.

⁵² See Chan & McAlpine, *supra* note 52; *Written Submission to the HKSAR's Legislative Council's Subcommittee on Children's Rights in Advance of a Meeting on 4 November 2017 Regarding Human Rights of Children Under Poverty*, PATHFINDERS (Nov. 3, 2017), <http://www.pathfinders.org.hk/public/wp-content/uploads/PF-Submission-to-SubCm-Childrens-Rights-children-under-poverty-FINAL.pdf>.

⁵³ See SHAPING THE FUTURE, *supra* note 19.

⁵⁴ The Chief Executive has committed to encouraging more public participation by younger people in government policy development. See *2018 Policy Address*, *supra* note 11, and Chief Executive, *The Chief Executive's 2017 Policy Address* (Oct. 11, 2017) (transcript available at <https://www.policyaddress.gov.hk/2017/eng/speech.html>).

⁵⁵ For example, in family proceedings concerning divorce, custody, and childcare arrangements.

⁵⁶ Many children remain unaware of their right to express their views in proceedings. See Scully-Hill, *supra* note 17. See also *NGO Report of the HKSAR*, *supra* note 22.

tic implementation of children's rights under the UNCRC.⁵⁷ Good governance can encompass different qualities including: participation in decision-making; the rule of law; transparent and responsive institutions and processes; consensus orientation; equity, effectiveness and efficiency; and accountability and strategic vision.⁵⁸ The Children's Commissioner acts as an external accountability mechanism of good governance, ensuring that governments uphold children's rights under the UNCRC, investigate alleged breaches of children's rights, and recommend changes of law, policy and practice.⁵⁹

A. *Promote and Monitor Respect for Children's Human Rights*

The primary role for Children's Commissioner is promoting and monitoring respect for the broad range of children's rights under the UNCRC including: rights to education; healthcare; living standards, housing, and development; freedom of expression; freedom from cruel, inhumane or degrading treatment, or punishment; protection from violence, abuse, or neglect; protection from harm and exploitation; and protection from economic and sexual exploitation.⁶⁰ A Children's Commissioner can foster well-being of children within schools and the community, organize publicity, training, and workshops on children's rights, and monitor children in alternative care to ensure respect for their rights and that quality care is provided. Children's Commissioner can also promote children's rights on an international level. In 2011, the UN General Assembly adopted a third Optional Protocol to the UNCRC, al-

⁵⁷ This includes ensuring that governments meet their international obligations under the UNCRC and promoting awareness of the human rights of children within society. Article 4 of the UNCRC requires states to take all available measures to make sure children's rights are respected, protected, and fulfilled. The creation of a Children's Commissioner or other national human rights institution helps states in fulfilling Article 4 obligations, although this is not a mandatory provision. See LINDA C. REIF, *THE OMBUDSMAN, GOOD GOVERNANCE AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM* 295 (2004).

⁵⁸ A clear principle endorsed by the current Chief Executive. See UNITED NATIONS DEVELOPMENT PROGRAMME, *Governance for Sustainable Human Development* (1997).

⁵⁹ See VANESSA SEDLETZKI, UNICEF OFFICE OF RESEARCH *CHAMPIONING CHILDREN'S RIGHTS: A GLOBAL STUDY OF INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN* (2012), https://www.unicef-irc.org/publications/pdf/championing2_eng.pdf; REIF, *supra* note 59, at 330–31.

⁶⁰ This can be achieved by advocating state obligations to provide families with assistance and by advocating policies that support families' capacity to care for their children. See *id.*; SEDLETZKI, *supra* note 61.

lowing the UN Committee to receive and review cases alleging violation of children's rights.⁶¹

B. *Ensure Government Law and Policy Making Considers Impact on Children*

A Children's Commissioner can ensure that children and their best interests are visible in both law and government policy and decision-making.⁶² They can enhance legitimacy of government functions relating to children and assist in formulating and enacting law, policy, and practice on children. The Commissioner can initiate and improve child-related policies and initiatives across different bureaus and departments. For example, they can adopt a systematic approach using methodology for carrying out children's rights impact assessments of proposed policy.⁶³

C. *Provide Advocacy for all Children and Promote Fair Treatment of Marginalized Children*

A Children's Commissioner can act as an independent champion, watchdog, and spokesman for all children promoting equitable approaches for the most marginalized children. They can advocate policies to address exclusion and correct the disadvantages experienced by some children.⁶⁴ This can help address issues surrounding access to education, health and welfare in relation to children belonging to minority groups (e.g. migrant worker and refugee children), and can also help to ensure the accessibility of special needs children and children with disabilities to all service, support and inclusion in society.⁶⁵

⁶¹ Children's Commissioners can provide a domestic link for children and communities informing and supporting access to this international remedial procedure. *Id.* at 29.

⁶² A Commissioner may be involved in drafting legislation through their submission of advice to government, and they may participate in the drafting meeting and the taking of public positions.

⁶³ For example, Scotland's Commissioner for Children and Young People formalized a "children rights impact assessment" procedure. See further discussion below.

⁶⁴ See SEDLETZKI, *supra* note 61, at 11; *European Network of Ombudperson for Children list eleven common functions of Children Commissioners*, www.ombudsnet.org.

⁶⁵ SEDLETZKI, *supra* note 61, at 22.

D. Address Individual and Collective Complaints Regarding Children's Rights

A Children's Commissioner can operate as a complaint mechanism to remedy individual and collective children's rights violations. They can review children's access to and effectiveness of advocacy and complaint systems. A Commissioner should be able to receive individual complaints and petitions on specific children's rights violations and proactively respond to them in a timely manner.⁶⁶ Such a complaint mechanism not only furthers children's rights but is also an opportunity to strengthen the independence of a Children's Commissioner. Two groups of children are particularly vulnerable to rights violations: "those in contact with the justice system and those in alternative care, [which] require child-sensitive complaint mechanism."⁶⁷

E. Promote Broader Participation of Children Within Community and Society

A Children's Commissioner can promote child participation in society, through its different powers of advocacy, monitoring, handling complaints, carrying out investigations, conducting research, and advising.⁶⁸ They can support processes aimed at involving children in school life and promote expansion of children's political voice and more direct inclusion and participation in judicial and government policy and law-making processes.

IV. CHARACTERISTICS OF EFFECTIVE AND CREDIBLE CHILDREN'S COMMISSIONERS

Independent children's human rights institutions take many forms—Children's Ombudspersons or Commissioners, Human Rights Commissioners, or Children's Advocates—but they all share the unique role of facilitating governance processes for chil-

⁶⁶ A legislative mandate allowing anyone, particularly children and young adults, to file a complaint provides better protection. *Id.* at 23.

⁶⁷ As such, a Children's Commissioner must have access to children, especially to those most marginalized. *Id.* at 22.

⁶⁸ They can undertake research and collect and publish data on the situation of children and provide a channel for the expression of children's views. *Id.* at 12.

dren under important institutions for implementing the UNCRC.⁶⁹ Their degree of influence in part depends upon their surrounding socio-political environment.⁷⁰ The government's willingness to cooperate with the Children's Commissioner as an external control mechanism for good governance is key, whether or not the government respects and responds to its recommendations.⁷¹ Other variables impact the effectiveness of Children's Commissioners, including the institution's independence, jurisdiction and powers, financial resources, and accessibility. The UN Committee's Paris Principles ("Principles Relating to the Status of National Human Rights Institutions") also provide guidance on minimum standards required by Children's Commissioners as national human rights institutions to operate effectively and be considered credible. Six criteria are relevant: clearly defined broad human rights mandate, autonomy and independence from government legislatively guaranteed, pluralist and inclusive, sufficient resources, and adequate powers of investigation.⁷²

A. *Statutory Independence and Legal Mandate*

To be most effective, a Children's Commissioner must be an independent statutory body separate from the executive and administrative branches of government and free from government influence or interference.⁷³ It should have a clear legal mandate, preferably supported by authorizing statute rooted in the

⁶⁹ A range of children's commissioners/ombudsman/advocate for children have been established—some lack sufficient independence, some do not have any or would unrestricted power to investigate complaints, some do not have expressed direction to work in light of the UNCRC and most do not have the power to bring court actions. However, many of the Children Commissioners in Europe have relatively strong mandate and powers including express CRC rules and some of jurisdiction over both public and private sectors. See REIF, *supra* note 59, at 302–30 for review of different state approaches.

⁷⁰ See Chan & Wong, *supra* note 15 (discussing the development of the Hong Kong Ombudsman within the Hong Kong's socio-political context).

⁷¹ Governments must recognize and value the importance of such an external control mechanism for the legitimacy of the government. See Danzic, *supra* note 13.

⁷² Children's Commissioners should be established according to the Paris Principles. See discussion in Reif, *supra* note 59, at 295–302, 330–31. See *Paris Principles: 20 Years Guiding the Work of National Human Rights Institutions*, UNITED NATIONS HUM. RTS. OFFICE., OFF. OF THE HIGH COMMISSIONER (May 30, 2013), <https://www.ohchr.org/en/newsevents/pages/parisprinciples20yearsguidingtheworkofnhri.aspx>.

⁷³ "The degree of independence is pivotal in the Commissioner's success." See SEDLETZKI, *supra* note 61, at 16.

UNCRC.⁷⁴ Broad jurisdiction should be granted over both public and private spheres with powers of investigation, monitoring, review, and reporting to support its work. The independence of Children’s Commissioners will be influenced by politics and the strength of civil society—this will impact the appointment of Children’s Commissioners, strength of its mandate, and level of resourcing.⁷⁵ Those Commissioners with legal statutory status enjoy a high degree of legitimacy, and those with more independence and sustainability have greater impact on laws, policy law, and practices.⁷⁶

B. *Financial Autonomy and Accountability*

Financial autonomy for Children’s Commissioners is vital to independence. Commissioners need sufficient and sustainable funding, but at the same time such funding must respect the legitimacy and independence of the institution.⁷⁷ Financial dependence on the state may compromise independence where funds are restricted or unduly controlled, but state funding provides legitimacy to an institution as an important public and regulatory agency.⁷⁸ As with other public bodies, a Children’s Commissioner must be accountable for its actions and performance in a way that preserves independence and reinforces legitimacy.⁷⁹ Accountability mechanisms include providing regular written reports and bulletins to the public, increased use of websites and social media, and monitoring by NGOs and international monitoring bodies (e.g. UN Committees).⁸⁰

⁷⁴ Express mention “of independence in the founding legislation is an additional guarantee of actual independence. . . within the national governance system.” See SEDLETZKI, *supra* note 61, at 16.

⁷⁵ There is, of course, inherent tension relating to the institution’s independence and its existence as a public party.

⁷⁶ See REIF, *supra* note 59, at 330–31; SEDLETZKI, *supra* note 61, at 30; Danzic, *supra* note 13, at 331.

⁷⁷ The UN Committee frequently notes that state funding of child-related institutions is insufficient.

⁷⁸ See REIF, *supra* note 59 and SEDLETZKI, *supra* note 61.

⁷⁹ Preserving independence may be achieved by adopting an accountability mechanism providing ongoing feedback (e.g. annual reports) regarding the Commissioner institution.

⁸⁰ For example, the Australian NGO Coalition Report 2018 demonstrates how strategic engagement with international organizations, such as the Asia-Pacific Association of Children’s Commissioners and the European Network of Children’s Ombudsman, can help build capacity and enhance advocacy. See SEDLETZKI, *supra* note 61, at 26–27.

C. *Receive Complaints on Specific Child Rights Violations*

Ideally, Children's Commissioners will have the capacity to identify and directly investigate children rights violations and provide children with accessible complaint mechanisms, although this depends on the breadth of children's rights issues covered, and the limitations of the Commissioner's legislative mandate. Providing Commissioners with a broad mandate that makes express reference to the UNCRC and other international instruments, relies upon strong domestic legislation in line with international standards and children's rights.

D. *Direct Child Participation Required*

It is crucial for Children's Commissioners to provide permanent mechanisms and structures, allowing for them to have direct consultation and interaction with children, especially those most marginalized.⁸¹ Building links for child participation in the Commissioners' work and promotion of broader child participation in society are connected. Different strategies can be used to increase children's awareness of the existence of the Children's Commissioner (e.g. distributing material to children partnering with media and using Internet and social networks).⁸²

E. *International Best Practice: Children's Commissioner Institutions*

More than 200 Children's Commissioners have been established in 70 states around the world, including several countries in Asia (e.g., Pakistan, Japan and China), to facilitate domestic implementation of the UNCRC and to provide advocacy and protection for children.⁸³ Countries have adopted different models, catering

⁸¹ Requiring child participation is the work of the institution. This may also involve ad hoc consultations, hearings and interviews with children on specific topics. See SEDLETZKI, *supra* note 61, at 20.

⁸² See REIF, *supra* note 59.

⁸³ The European Network of Ombudspersons for Children (ENOC) established in 1997 links 42 independent offices for children from 34 countries in Europe aiming to: encourage the fullest possible implementation of the UNCRC; support collective lobbying for children's rights; share information, approaches and strategies; and promote the development of effective independent offices for children.

to their own particular socio-political needs in structure, relationship between the Commissioner and government, and provision of resources and funding.⁸⁴ What is notable is that many states have recently introduced reforms enhancing the independence and powers of their Children's Commissioners to provide more effective advocacy for children's issues and policies, timely intervention in relation to children's issues, and comprehensive research.⁸⁵ The approaches of three countries are particularly worth review: Norway, the UK and Australia.

1. Norway—Statutory Independence and Direct Appointment by Cabinet

Norway was the first country to establish an independent, non-partisan, and politically neutral Children's Commissioner, a "Children's Ombudsman" that possesses statutory rights to protect children within a progressive legal framework for children's protection.⁸⁶ The Ombudsman falls under the Ministry for Children and Family Affairs' jurisdiction, and neither the Norwegian Parliament nor the Government have any power to instruct the Ombudsman.⁸⁷ The duties of the Norwegian Ombudsman are to promote children's interests under the UNCRC with broad powers to investigate and review conditions under which children grow up.⁸⁸ The Ombudsman monitors the UNCRC implementation by submitting bills for legislative changes to the Government and promoting the application of the UNCRC in the work of government

⁸⁴ There are various forms of children's rights institutions reflecting national political and institutional context and financial and societal support for children's rights. See SEDLETZKI, *supra* note 61, at 29.

⁸⁵ H.K. COMM. ON CHILDREN'S RIGHTS, STATEMENT TO SUPPORT THE ESTABLISHMENT OF A COMMISSION FOR CHILDREN IN HONG KONG, http://www.childrenrights.org.hk/v2/archive/04concerns/ChildrenCommission_StatementToSupport_en.pdf (last visited July 26, 2018).

⁸⁶ The Nordic countries (i.e., Sweden, Finland, Norway and Denmark) were in the vanguard of promoting and protecting children's rights with the Norwegian "Children's Ombudsman" first established in 1981. The Norwegian Act establishes the Commissioner for Children (Barneombudet) (Act No.5 of March 1981), <https://www.childinthecity.org/2018/06/21/norway-tops-child-rights-ranking-index>.

⁸⁷ See Marian Adnanes, *Norway*, in *CHILD AND ADOLESCENT MENTAL HEALTH IN EUROPE: INFRASTRUCTURES, POLICY AND PROGRAMMES* 125, 129 (2009). The selection process of the Norwegian Ombudsman for Children first starts with open application. After screening the candidates, one is nominated and presented to the King (i.e. the Cabinet). The Cabinet then appoints the Ombudsman for a four-year period that can be renewed once.

⁸⁸ The Ombudsman office takes on the role of a politician on behalf of the children, the role of an activist when a special case needs attention from the authorities and the media, and the role of an adviser for children, parents, professionals and organizations regarding children's interests.

agencies, municipalities and county councils.⁸⁹ However, despite extensive powers, the Ombudsman cannot reverse or revoke administrative actions or decisions. Norway lacks an effective national complaints procedure for children, as its Parliament voted against ratifying the UNCRC's Third Optional Protocol on an individual complaints procedure.⁹⁰ This issue is currently under review with the Ombudsman advocating for a more accessible and child-friendly complaint mechanism at the national level given school bullying which, as in Hong Kong, is on the rise.⁹¹

2. United Kingdom—Reforms Provide Statutory Independence and Broader Powers

The Children's Commissioner in England was criticized for lacking statutory basis in monitoring, protecting, and promoting children's rights under the UNCRC, and for its limited mandate and powers under the 2004 legislation.⁹² In July 2010, the government commissioned an independent review (the Dunford Review) to consider: the Commissioner's powers, remit, and functions; its relationship with other government functions; and the value for money of the post of Children's Commissioner.⁹³ The Review emphasized the value of retaining the office of Children's Commissioner, but stressed that the legislative framework prevented the Commissioner from having sufficient impact on children's lives.⁹⁴ The reforms introduced in the Children and Families Act 2014

⁸⁹ See Målfrid Grude Flekkøy, *The Children's Ombudsman as an Implementer of Children's Rights*, 6 TRANSNATIONAL LAW AND CONTEMPORARY PROBLEMS 353, 356 (1996). In 2017 the Norwegian Ombudsman published its Supplementary Report on the Implementation of the UNCRC in Norway. OMBUDSMAN FOR CHILDREN IN NOR., THE UN CONVENTION ON THE RIGHTS OF THE CHILD: SUPPLEMENTARY REPORT—NORWAY (May 2017), <http://barneombudet.no/wp-content/uploads/2018/02/The-Ombudsman-for-Children-in-Norway-Supplementary-Report-to-UN-2017.pdf>.

⁹⁰ It does not supervise other government authorities, rather, the Ombudsman must refer legal cases to Norway's Parliamentary Ombudsman. See REIF, *supra* note 59, at 317.

⁹¹ See *supra* note 80.

⁹² JOHN DUNFORD, REVIEW OF THE OFFICE OF THE CHILDREN'S COMMISSIONER (ENGLAND) (Dec. 6, 2010), <https://www.gov.uk/government/publications/review-of-the-office-of-the-childrens-commissioner-england>.

⁹³ CHILDREN AND FAMILIES ACT 2014: EXPLANATORY NOTES (Mar. 13, 2014), <https://www.legislation.gov.uk/ukpga/2014/6/notes/data.xhtml?view=snippet&wrap=true>; CHILDREN AND FAMILIES BILL 2013: CONTEXTUAL INFORMATION AND RESPONSES TO PRE-LEGISLATIVE SCRUTINY (Feb. 2013), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/219658/Children_20and_20Families_20Bill_202013.pdf.

⁹⁴ HUMAN RIGHTS JOINT COMMITTEE – SIXTH REPORT, REFORM OF THE OFFICE OF THE CHILDREN'S COMMISSIONER: DRAFT LEGISLATION (Dec. 7, 2012), <https://publications.parliament.uk/pa/jt201213/jtselect/jtrights/83/8302.htm>.

strengthened the remit, powers, and independence of the Commissioner. In particular, it introduced reforms to give the Commissioner a statutory remit to “promote and protect children’s rights,” to compel the Commissioner to have regard to the UNCRC, and to increase the range of powers for the Children’s Commissioner, including the ability to carry out investigations and assess the impact of policy on children’s rights.⁹⁵

The reforms also grant future Commissioners a single, six-year term of office, and combine the functions of the existing Office of the Children’s Commissioner and the Office of the Children’s Rights Director (with a remit to advise on the rights and interests of children living away from home or receiving social care), within the Office of the Children’s Commissioner. Moreover, the reforms give the Commissioner extended power to enter premises where children are accommodated or cared for, to interview children.⁹⁶ To improve accountability, the Commissioner is required to produce an annual report on its activities and impact to be laid before both Houses of Parliament, rather than the Secretary of State, as previously directed.⁹⁷ These reforms make significant improvements to the independence and powers of the UK Children’s Commissioner.⁹⁸

3. Australia—Independent Statutory Power for Human Rights of Children

The Australian framework highlights how important the independence of Children’s Commissioners is for providing children with a representative body whose sole concern is to protect and promote children’s rights and interests without political influences. Each Australian state or territory has a Children’s Commissioner—known as a “Commissioner for Children and Young People”—working with an independent statutory body known as a Children’s

⁹⁵ OFFICE OF THE CHILDREN’S COMMISSIONER FOR ENGLAND, STANDARD NOTE: SN/SP/6347 (Mar. 27, 2014), researchbriefings.files.parliament.uk/documents/SN06347/SN06347.pdf.

⁹⁶ This power does not extend to private dwellings. The Act also creates a duty for people exercising public functions to provide information to the Commissioner as long as that request is lawful and reasonable.

⁹⁷ The U.K. government also imposed a new requirement on the Commissioner to appoint an advisory board to advise and assist the Commissioner and to consult on and publish a business plan.

⁹⁸ HUMAN RIGHTS JOINT COMMITTEE—EIGHTH REPORT, THE UK’S COMPLIANCE WITH THE UN CONVENTION ON THE RIGHTS OF THE CHILD (Mar. 24, 2015), <https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/14402.htm>.

Commission.⁹⁹ Their broad mandate is to advocate for children's rights and examine and review legislation, policy, and practices affecting health, welfare, care, protection, and development of children.¹⁰⁰ Commissioners also report and make recommendations to their state parliament or legislative assembly about issues that are of concern to children and young people. As of 2013, Australia also has a National Children's Commissioner appointed directly by the Governor General pursuant to governing legislation, an important outcome of the National Framework for Protecting Australia's Children from 2009 - 2020.¹⁰¹ The National Children's Commissioner sits within the Australian Human Rights Commission, an independent statutory body for human rights.¹⁰² This Commissioner complements the existing state and territory commissioners and plays a key role in promoting the rights of Australian children in government policy and practice.¹⁰³

V. ESTABLISHMENT OF HONG KONG'S NEW "COMMISSION ON CHILDREN"

Within Hong Kong's socio-political environment, children's issues have historically had low political priority as reflected in high rates of child poverty, inadequate policy and legislation for child protection, and lack of a comprehensive child health policy.¹⁰⁴ Moreover, Government efforts to protect children's rights are frag-

⁹⁹ See, for example, the New South Wales Advocate for Children and Young People appointed pursuant to the Advocate for Children and Young People Act 2014. The Advocate is an independent statutory office reporting directly to the New South Wales Parliament.

¹⁰⁰ See Australian Institute of Family Studies, available at <https://aifs.gov.au>.

¹⁰¹ See Council of Australian Government, 2009.

¹⁰² Australian Human Rights Commission Amendment (National Children's Commissioners) Act 2012.

¹⁰³ Twice a year, the national and state/territory commissioners meet together as the Australian Children's Commissioner and Guardians whose aim is to promote and protect children's rights, ensure children's voice in public policy and program development and drive systematic improvement in areas impacting children.

¹⁰⁴ Previously Hong Kong policymakers tended to focus more on economic development, with less attention paid to the rights of children as a vulnerable group in society. See Natalie Leung et al., *Rich city, Poor Children*, THE YOUNG REPORTER, May 5, 2014; see also The Hong Kong Committee on Children's Rights, *supra* note 7; Alice Wu, *Children's Rights Are Human Rights, and Hong Kong Needs to Enforce Them*, SOUTH CHINA MORNING POST (Nov. 19, 2017), <http://www.scmp.com/comment/insight-opinion/article/2120288/childrens-rights-are-human-rights-and-hong-kong-needs>.

mented across many different government departments and bureaus with limited inter-agency coordination.¹⁰⁵

A. *Government's Resistance to an Independent Statutory
"Children's Commissioner"*

The UN Committee repeatedly urged the Government to reform its policies regarding children's rights and establish an independent mechanism to monitor policy implementation on children's rights.¹⁰⁶ The Government resisted these recommendations referring to its Commission on Youth and two other platforms: the Children's Rights Forum and the Family Council.¹⁰⁷ None of these advisory platforms, however, have independent capacity to investigate or monitor Government action and policy formulation on children's affairs.¹⁰⁸ Established by the Constitutional and Mainland Affairs Bureau in 2005, the Children's Rights Forum is advisory only, merely providing for exchanges of views between Government representatives and children's representatives. The Family Council's main focus is applying family perspectives in pol-

¹⁰⁵ See Dr. Sandra Tsang's comments in DEMOCRATIC ALLIANCE FOR THE BETTERMENT AND PROGRESS OF HONG KONG, ROUNDTABLE MEETING ON CHILDREN'S RIGHTS (June 5, 2017), <http://www.eng.dab.org.hk/roundtable-meeting-on-childrens-rights>.

¹⁰⁶ In 2005 the UN Committee noted that it "regrets the absence of an independent national human rights institution with a specific mandate for child rights on the mainland and the Hong Kong and Macau SARs." See also THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD, CONCLUDING OBSERVATIONS ON THE COMBINED THIRD AND FOURTH PERIODIC REPORTS OF CHINA, ADOPTED BY THE COMMITTEE AT ITS SIXTY-FOURTH SESSION (16 SEPT.–4 OCT. 2013) (Oct. 29, 2013), [http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/Concluding\(eng\).pdf](http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/Concluding(eng).pdf).

¹⁰⁷ In 2012, the Government submitted its Second Periodic Report to the UNCRC, repeating its refusal to establish a Children's Commissioner because an existing high-level mechanism already coordinated between different bureaus, and noting the Children's Rights Forum and Family Council. THE HKSAR GOVERNMENT, SECOND REPORT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD, COMBINED THIRD AND FOURTH REPORTS OF THE PEOPLE'S REPUBLIC OF CHINA UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD – PART TWO: HONG KONG SPECIAL ADMINISTRATIVE REGION 23-28 (Legislative Council, 2012), <http://www.legco.gov.hk/yr11-12/english/panels/ca/papers/ca0618-rpt20120525-e.pdf> (last visited July 10, 2018).

¹⁰⁸ THE PROPOSED ESTABLISHMENT OF A CHILDREN'S COMMISSION IN HONG KONG BULLET-POINTS SUBMISSION, LC PAPER No. CB(4)872/16-17(02) 3323835; Scully-Hill, *supra* note 10 (these platforms cannot provide autonomous, proactive and independent oversight and investigation of government action and policy formulation).

icy formulation, however, not specifically on children's perspectives in policy discussions.¹⁰⁹

In 2006 a coalition of all major stakeholders in Hong Kong, including judges, lawyers, social workers, medical professionals, and NGOs, established a formal "Alliance for Children's Commission" to press the Government to appoint an independent "Children's Commissioner"—not simply another advisory "commission" focused on children—but an independent Ombudsman and Commissioner with statutory authority and legal mandate to advocate for and protect children.¹¹⁰ Thereafter, LegCo passed a 2007 motion urging the Government to set up an independent Children's Commissioner "to fulfill the obligations under the UNCRC, safeguard the well-being of children, and ensure that children's perspectives are fully taken into account into the process of formulating government policies."¹¹¹ The Constitutional & Affairs Panel also passed a 2009 motion criticizing the Government's refusal to set up a Children's Commissioner. In 2013 LegCo members repeated their dissatisfaction with the lack of action on establishing an independent Children's Commission.¹¹² That same year the UN Committee again critiqued the Government's allocation of resources to education and social welfare as inadequate and ineffective in targeting the most vulnerable groups such as children living in poverty and those with disabilities.¹¹³

Frustrated by the Government's lack of action, the "1.1 Million Children's Campaign"¹¹⁴ was launched by the Hong Kong

¹⁰⁹ The Family Council was reconstituted in April 2013 with a view to strengthening its advisory role on "collaborating with various sectors in the community to enhance the functions of families and create a pro-family environment." However, the Family Council cannot press the Government to act on and implement its views and recommendations on family related issues, let alone children's matters. See LEGISLATIVE COUNCIL PANEL ON WELFARE SERVICES, WORK PROGRESS OF THE FAMILY COUNCIL, LC PAPER No CB(2)1526/17-18(05) (June 11, 2018).

¹¹⁰ See ALLIANCE FOR CHILDREN'S COMMISSION, ABOUT THE ALLIANCE FOR CHILDREN'S COMMISSION, CHILD RIGHTS INTERNATIONAL NETWORK, (January 2010), http://www.crin.org/en/docs/FileManager/AboutAlliance_Jan2010.pdf.

¹¹¹ In view of the fractious relationship between the legislative branch and the executive branch, however, the motion had little impact on the Government.

¹¹² See LEGISLATIVE COUNCIL, PANEL ON CONSTITUTIONAL AFFAIRS, UPDATED BACKGROUND BRIEF PREPARED BY LEGISLATIVE COUNCIL SECRETARIAT FOR THE MEETING ON 18 NOVEMBER 2013, SECOND REPORT OF HONG KONG SPECIAL ADMINISTRATIVE REGION UNDER CONVENTION ON THE RIGHTS OF THE CHILD, LC PAPER No. CB(2)268/13-14(05) (Nov 14, 2013).

¹¹³ The UN Committee also found a lack of procedures to identify and support child victims of sexual exploitation and trafficking among others.

¹¹⁴ *1.1 Million Children's Campaign*, <http://1.1mchildren.hk/?page=sign&lang=en> (last visited 5 April 2019). The name of the campaign derives from the fact that there are 1.1 million children under the age of 18 not represented in policy discussions. The campaign aimed to gather com-

Committee on Children’s Rights to formally lobby for a Children’s Commissioner, especially in light of five-year-old Yeung Chi-wai with Down syndrome who died in 2013 after ingesting crystal methamphetamine found in his home. Chi-wai’s mother was acquitted of child neglect and his death ruled as a “misadventure.”¹¹⁵ This campaign stressed that an independent monitoring mechanism as proposed by the UN Committee—a “Children’s Commissioner”—should be established with independent statutory power and responsibility of examining policies, funding allocations, and enacting legislation to assess their impact on children’s well-being.¹¹⁶

B. *Establishment of “Commission on Children” Rather Than “Children’s Commissioner”*

The establishment of the “Commission on Children” while welcomed, was also disappointing. It was clear the Government still resisted setting up an independent statutory human rights commission for children. Instead the Government established a large 32-member advisory Commission, led by two senior Government ministers: the Chairman is Hong Kong’ top civil servant, the Chief Secretary of Government Administration, and the Vice-Chairman is the Secretary for Labour and Welfare.¹¹⁷ The new Commission’s Chairman stated:

munity support for setting up a Children’s Commission and consisted of two parts—a Web platform (www.limchildren.hk), and a Signature Campaign. *See also* THE HONG KONG COMMITTEE ON CHILDREN’S RIGHTS, SPECIAL MEETING OF LEGISLATIVE COUNCIL PANEL ON WELFARE SERVICES, DISCUSSIONS ON MECHANISM FOR HANDLING ABUSE CASES RELATING TO CHILDREN FROM HIGH RISK FAMILIES AND FOLLOW-UP TO THE CHILD FATALITY REVIEW REPORT (May 28, 2016), <http://library.legco.gov.hk:1080/articles/1189078.280832/1.PDF>.

¹¹⁵ *See* Jennifer Ngo, *Neglect of the neglected: Hong Kong boy’s death exposes a child protection system riddled with holes*, SOUTH CHINA MORNING POST (May 30, 2016).

¹¹⁶ In 2016 LegCo’s new Subcommittee on Children’s Rights also advocated for the urgent need to establish an independent Children’s Commissioner to champion children’s rights. The Subcommittee was set up “to study and review the existing child policy, including the respective services and policies for children with different disadvantages, encourage children to participate and express for themselves, analyze and study international policies, discuss relevant policies with the Administration and make timely recommendations.” *See* LEGISLATIVE COUNCIL OF THE HKSAR, SUBCOMMITTEE ON CHILDREN’S RIGHTS REPORT (May 2018), <https://www.legco.gov.hk/yr17-18/english/hc/papers/hc20180525cb4-1118-a-e.pdf> (last visited Apr. 5, 2019).

¹¹⁷ The Commission was established following a 3-month public engagement process. HKSAR GOVERNMENT, *supra* note 12.

children's growth and development is one of the priority policy areas of the current-term Government. The Commission will be **an ongoing, action-oriented, responsive and high-level body that will drive the work for the benefit of children through policy formulation as well as co-ordination and follow-up on the implementation of measures.** The Commission will listen to children's views, and will enhance its transparency by issuing information through its website and to the media.¹¹⁸ (Emphasis added)

The Commission appointed nine *ex officio* members and 21 non-official members for a term of two years, from June 1st, 2018 to May 31st, 2020.¹¹⁹ These members represent various community sectors, including: education, healthcare, academia, child concern groups, legal, arts and sports, community service, public relations/media, parents, non-Chinese speaking/ethnic minorities, and children/youths.¹²⁰ The Commission's broad "Terms of Reference" include: promoting and promulgating children's rights under the UNCRC and engaging with children on matters that affect them; developing and monitoring implementation of policies, strategies and priorities relating to the development and advancement of children; and enhancing and monitoring integration and rationalization of children-related policies and initiatives under different bureaus/departments and with advisory bodies.¹²¹

The Commission appears to be taking a soft approach in its first two-year term limiting itself to identifying the physical, emotional, cognitive, and social needs of children, and deriving collaborative and cross-sector plans and measures to meet children's needs.¹²² The Commission stated that it also would "review and monitor" a broad range of children's rights matters in Hong Kong, including: "population policy, child fatality, children's adoption,

¹¹⁸ HKSAR GOVERNMENT, *supra* note 12.

¹¹⁹ None of the members of the current Commission on Children are permanent. They are part-time appointments that may be sidetracked with other job responsibilities.

¹²⁰ HKSAR GOVERNMENT, *supra* note 12.

¹²¹ Other terms of reference include: review children-related services by the Government and NGOs, foster cross-sector collaboration, and identify areas for better integration and improvement; initiate surveys and research studies on children's issues; manage funding schemes for promotional and public educational projects which should have children's and stakeholders' participation, and organize other promotional activities; and develop a framework with indicators to monitor and evaluate achievement of the vision.

¹²² The following categories of issues were identified: (a) issues that are more specific to children at different age groups (say, infants and toddlers (0-2); kindergarten (3-5); primary school (6-11); and junior secondary school (12-14)); (b) issues that may straddle different stages of growth of children and should be dealt with holistically, and (c) issues that are specific to particular groups of children arising from their family backgrounds, biological characteristics or other individual circumstances.

children’s commission and children’s policy, children in hospital, and children in poverty, child pornography, Family Commission, guardianship and custody, inclusive education, and juvenile justice.”¹²³ The funding for the Commission is surprisingly low—only \$12 million has been allocated for the creation of three civil service posts: secretarial work, publicity and educational work, and research projects.¹²⁴ Beyond these statements, not much has been heard from the Commission since it was established last year.¹²⁵

VI. EVALUATION OF COMMISSION: SUBSTANTIVE REFORM NEEDED

Given its current framework and organizational structure, can the Commission act as an effective advocate for children’s rights under the UNCRC, and provide independent oversight and investigation of government action and policy formulation on children’s rights and interests? There is real danger that the Commission’s stated Terms of Reference may become rhetoric unless its structure is reformed and its jurisdiction and powers are sufficiently expanded.¹²⁶ Hong Kong needs to have a robust, high-level “Children’s Commissioner” institution—one that is truly action-oriented and focused on upholding children’s human rights pursuant to the UNCRC rather than a consultative body of limited term lacking

¹²³ The Commission’s immediate focus is indicated by the two working groups established. The Working Group on Research will conduct research on children-related issues and reviewing children-related policies and services. The Working Group on Public Engagement, Education and Publicity will manage funding schemes for publicity projects, promote children’s rights, and facilitate communication with children so the Government and Commission may understand their opinions and consider their views when making policy decisions.

¹²⁴ SECRETARY FOR LABOUR AND WELFARE, REPLIES TO INITIAL WRITTEN QUESTIONS RAISED BY FINANCE COMMITTEE MEMBERS IN EXAMINING THE ESTIMATES OF EXPENDITURE 2018-19 (LWB(WW)399, 2018). It is questionable whether current staffing levels are sufficient to support the Commission’s broad Terms of Reference.

¹²⁵ See Grenville Cross, *2019 is the Year the HK Commission on Children Must Show its Worth*, SOUTH CHINA MORNING POST (Dec. 22, 2018, 4:45 PM), <http://scmp.com/comment/insight-opinion/hong-kong/article/2179216/2019-year-hong-kongs-commission-children-must-show>.

¹²⁶ Executive secretary of the Hong Kong Committee on Children’s Rights, Billy Wong Wai-yuk, said she had been “waiting [for today] for some 20 years,” but that “it is not the commission that [we] expected.” See Danny Mok, *Hong Kong Gets a New Children’s Commission*, SOUTH CHINA MORNING POST (June 1, 2018, 9:00 AM), <http://www.scmp.com/news/hong-kong/community/article/2148725/hong-kong-gets-new-childrens-commission>.

independence, sufficient investigation, and review powers.¹²⁷ As the Commission is still quite new, its internal operations and future plans are still to emerge. However, its ability to effectively protect children's rights in Hong Kong is of concern. It is imperative that the Commission adopts a holistic, rights-based approach rather than a welfare-based approach to ensure full protection of children.¹²⁸

A. "Commission on Children" Should Evolve Into a "Children's Commissioner" Institution

The Commission's Terms of Reference expressly require the Commission to promote and promulgate children's rights in the UNCRC, but make no mention of monitoring and investigating alleged breaches of Convention. The Commission is required to "develop and monitor" implementation of children's policies, strategies, and priorities, but it is only a part-time body lacking statutory independence and led by senior government officials who, while committed and well-meaning, are inherently conflicted.¹²⁹ Given its current structure, it is doubtful the Commission has capacity to "drive the work for the benefit of children through policy formulation, as well as coordinate and follow-up on the implementation of measures." To be effective and credible, the existing Commission should evolve into a robust, full-time, independent "Children's Ombudsman" or "Commissioner."¹³⁰ This is particularly important given that Hong Kong lacks a human rights

¹²⁷ Including the Commission on Youth, Family Council and Children's Rights Forum. See The Hong Kong Committee on Children's Rights, *Why Hong Kong Needs a Child Commission?*, (Mar. 15, 2005), http://www.childrenrights.org.hk/v2/archive/04concerns/ChildrenCommission_200503_WhyHKNeeds.pdf. See Cross, *supra* note 27; Leung and Cheng, *supra* note 106.

¹²⁸ A vital term of reference for the Commission is monitoring Hong Kong's respect for children's rights enshrined in its international obligations under the UNCRC. The Commission has stated that issues need to be dealt with holistically but has not clarified a "systems rights based approach." See Scully-Hill, *supra* note 17, and Priscilla Lui, *New Hong Kong Children's Commission Must Engage All Sections of Society*, SOUTH CHINA MORNING POST (Nov. 13, 2014, 4:53 PM), <https://www.scmp.com/comment/letters/article/2119672/new-hong-kong-childrens-commission-must-engage-all-sections-society>.

¹²⁹ The Commission's Chairperson is the Chief Secretary for Administration and the Vice-Chairperson is the Secretary for Labour and nine ex officio members are heads of the Education, Food and Health, Home Affairs, Constitutional and Mainland Affairs, Social Welfare, Health, Family Council and Women's Commission. The Secretary is the Principal Assistant Secretary for Labour and Welfare.

¹³⁰ The Executive Secretary of the Hong Kong Committee on Children's Rights "noted that the commission was not independent from the government and had no legal mandate, which

institution—a separate body such as a Children’s Commissioner or Ombudsman—to advocate for and monitor children’s rights under the UNCRC.

Comparative experiences in the UK, Australia, and Norway show the necessary reform the Commission needs to undergo in order to become an effective external accounting mechanism for children’s human rights in Hong Kong.¹³¹ They are good models for the evolutionary path forward that the Government should follow. UK reforms consolidated the functions of both the existing Office of the Children’s Commissioner and the Office of the Children’s Rights Director within the Office of the Children’s Commissioner, who was then appointed for a single, six-year term of office.¹³² Alternatively, the Australian model may be followed: the current Commission would evolve into a human rights commission for children, and thereafter appoint an independent Children’s Commissioner to fulfill the obligations under the UNCRC. An independent Children’s Commissioner could also be directly appointed by the Chief Executive with a clear independent legal mandate, similar to the appointment of the Norwegian Ombudsman.

Sensitivity to Hong Kong’s political realities is relevant. While there is limited democracy under the One Country, Two System model that may not prioritize transparency and accountability of government, the Chief Executive has made a solid commitment to transparency and good governance over the past two years. One viable option is for the Chief Executive to create an independent statutory Children’s Commissioner institution in perpetuity, and thereafter appoint a Children’s Commissioner for a five-year term with direct accountability.¹³³ It is vital to have a full-time Children’s Commissioner providing proactive and independent oversight and investigation of government action and policy formulation on children’s rights and interests in Hong Kong.

meant that it could not monitor the administration on child-related issues and investigate violations.” See Mok, *supra* note 128.

¹³¹ Both the Australian National Children’s Commissioner and a former Norwegian Ombudsman have called upon Hong Kong to establish an independent Children’s Commissioner. See Jeffie Lam, *Hong Kong’s Children’s Commission Must Be Given a Mandate*, *Foreign Experts Say*, SOUTH CHINA MORNING POST (Sept. 24, 2017, 8:01 AM), <https://scmp.com/news/hong-Kong/education-community/article/2112557/hong-kongs-childrens-commission-must-be-given>.

¹³² Unlike other Children’s Commissioner appointees who often serve for 4 years or more, the current Chairperson and Commission members are only appointed for 2 years.

¹³³ The appointment process is crucial to the independence of Children’s Commissioner.

B. *Clear Legal Mandate Needed—Statutory Independence Required*

The Commission is currently embedded within the local government and led on a part-time basis by two of the government's top civil servants. This creates an apparent conflict of interest and compromises independence.¹³⁴ The Commission lacks a clear legal mandate based in statute and does not have sufficient investigation, monitoring, or reviewing powers. The Commission must evolve from merely promoting children's rights and interests to protecting those rights through independent monitoring and review of the UNCRC's implementation in Hong Kong and investigating of alleged infringements of children's human rights.¹³⁵ The independence of Hong Kong's Ombudsman, underpinned by the Ombudsman Ordinance, provides a good model: it creates a statutory body with perpetual succession.¹³⁶ The same development model can be used for the Children's Commissioner; its independence can be secured through foundational legislation, expressly providing that it is neither a servant nor an agent of the government, and monitoring obligations can be provided by conferring extensive investigation powers by local statute.¹³⁷

The importance of an independent statutory Children's Commissioner cannot be underscored—only a Commissioner with real statutory power can review and improve the existing legislation

¹³⁴ It is important to ensure no political influence or outside interference. The Chairman of the Law Society's Family Law Committee, Dennis Ho Chi-kuen, suggests that a Commission without independent powers "would be just another arm of government" and that it would not be what the UNCSC had asked for. See Jeffie Lam, *Long-Awaited Children's Rights Body for Hong Kong May End Up Toothless*, SOUTH CHINA MORNING POST (Oct. 10, 2017 8:00 AM), <http://www.scmp.com/news/hong-kong/community/article/2114604/long-awaited-childrens-rights-body-hong-kong-may-end>.

¹³⁵ With no clear legal mandate or independent powers to investigate individual cases of children abuse or other children-related issues, the current Commission is unfortunately another advisory consultative committee. Similar reform is needed as happened in the UK and Australia.

¹³⁶ See Anthony B. L. Cheung, *Evaluating the Ombudsman System of Hong Kong: Towards Good Governance and Citizenship Enhancement*, 17 ASIA PACIFIC L. REV. 73 (2016).

¹³⁷ Akin to the Hong Kong Ombudsman under the Ombudsman Ordinance or the Equal Opportunities Commission under the Sex Discrimination Ordinance. Barrister Azan Marwah stressed, "only an independent commission will be able to ask the necessary questions that a particular department might not want to ask." The Commission's target group is children under the age of 14 as stipulated in the UNCRC. See The HKSAR Government, Labour and Welfare Bureau, *The Establishment of a Commission on Children: Public Engagement* (Mar. 27, 2018), http://www.lwb.gov.hk/childrencommission_public_engagement/index_e.html#s3.

and policies on children’s welfare.¹³⁸ The Commissioner should work in partnership with the government and governmental bodies, but have independence so as to present honest, objective, and productive views, free from government influence or interference.¹³⁹ Moreover, the perception of independence, particularly by children, is important for Children’s Commissioners to carry out their mandate with legitimacy and high levels of public trust.¹⁴⁰

C. *Independent Review & Monitoring Powers*

Given its current structure, can the Commission “promote and promulgate children’s rights” under the UNCRC in a meaningful way? It is crucial for the Commission to have independent investigative powers with a legislative mandate; “the kind you need to really get to the heart of the issue,” noted Australia’s first National Children’s Commissioner.¹⁴¹ The Commission must be capable of independent monitoring and investigation of children’s rights violations, and be empowered to track and monitor compliance with recommendations made.¹⁴² The same barriers identified by the UK Dunford Review will occur in Hong Kong unless the framework and structure of the Commission are reformed. The Commission must be empowered to receive individual complaints and investigate suspected breaches of children’s rights. Ideally, a Children’s Commissioner should have the ability to inquire into complaints from the public and allegations of abuse from children,¹⁴³ question witnesses, take cases to court, and make sure that those

¹³⁸ Only a commission that is statutorily vested with the interests of children in Hong Kong, not with any third-party interests, can ensure that its work in policy formulation can be done without undue influence. See Hong Kong Family Law Association, *The Establishment of a Commission on Children* (Apr. 8, 2017), http://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/papers/hs10120170420cb4-850-3-e.pdf.

¹³⁹ For example, in providing advice to government on policies and programmes and drafting legislation. See SEDLETZKI, *supra* note 65.

¹⁴⁰ This influences the willingness of members of the public to file complaints, ability to engage with children and vulnerable groups, the trust of political groups, and the ability to collaborate with NGOs. See SEDLETZKI, *supra* note 61, at 16.

¹⁴¹ See *supra* note 84; Lam, *supra* note 133.

¹⁴² Does the Commission have sufficient powers to monitor the implementation of UNCRC obligations and to advise, collaborate, and liaise with the government?

¹⁴³ Kay McArdle, *Proposal for Establishing a Commission on Children*, LC Paper No. CB(4) 850/16-17(03), PATHFINDERS (Apr. 19, 2017), http://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/papers/hs10120170420cb4-884-2-e.pdf.

children receive remedies for any breaches of their rights.¹⁴⁴ Thus, an accessible children's complaints mechanism is important, as are direct investigations providing an important means to address systemic issues that could not be addressed in a single individual complaint.¹⁴⁵ The Commissioner should also undertake supervision in compliance with the UNCRC, and submit regular reports to the United Nations on the latest progress of children's rights in Hong Kong.¹⁴⁶

D. *Mandate for Coordination & Implementation of Child Policies*

Enhancing inter-agency cooperation to coordinate work between the many different bureaus and departments dealing with child-related matters is important.¹⁴⁷ An independent Children's Commissioner can help provide overall coordination and implementation of child-related law and policies in Hong Kong, as well as a comprehensive assessment of the impact of these laws and policies to ensure the best interests of all children.¹⁴⁸ Certainly comparative experience from other Children's Commissioners indicates they can be effective in streamlining fragmented policies concerning children.¹⁴⁹

¹⁴⁴ The Hong Kong Committee on Children's Rights, *Wish List for Children's Commission in Hong Kong*, CHILDREN'S RIGHTS (July 1, 2017), http://www.childrenrights.org.hk/v2/archive/04concerns/ChildrenCommission_20170701_WishList_en.pdf.

¹⁴⁵ Just as the Hong Kong Ombudsman is empowered to receive direct complaints and make investigations. Admittedly, this type of reform must consider Hong Kong's political sensitivities to government transparency and accountability and human rights. See discussion in Chan and Wong, *supra* note 15, at 111.

¹⁴⁶ This can help enhance the legitimacy of government functions and actions and promote good governance.

¹⁴⁷ Including the following: Constitutional and Mainland Affairs Bureau, Home Affairs Bureau (implementing the UNCRC), Education and Manpower Bureau (education and career development), Development Bureau (public infrastructure and facilities related to children), Food, Environment and Health Bureau (medical, health and welfare policies for children), Transport and Housing Bureau (housing policy and road safety of children), and Security Bureau (child refugees, migrant children). Previously the Government claimed high-level coordination between bureaus, but it is unclear how the "high-level mechanism" operates.

¹⁴⁸ See *2018 Policy Address*, *supra* note 11, ¶ 26 (committing to enhancing Inter-departmental collaboration and efficiency). The Commission's Term of Reference is to enhance and monitor integration and rationalization of children-related policies and initiatives under different bureaus/departments and with advisory bodies.

¹⁴⁹ See Legislative Council Subcommittee on Children's Rights meeting April 20, 2017 and comments of Hercules Lai, Chairman of the 1.1 Million Campaign, *supra* note 116.

The new Commission stated it will take on this role—which is good—but can it do this? Does it have sufficient legal mandate and the necessary powers to “enhance and monitor integration and rationalization” of children-related policies and initiatives under different bureaus/departments and with advisory bodies?¹⁵⁰ The Commission must be a high level and central mechanism to monitor the implementation of the UNCRC—particularly since the UNCRC covers various areas that are the responsibility of several departments and bureaus.¹⁵¹ A “Children Rights Impact Assessment” initiative has been developed by child rights advocates and NGOs in Hong Kong for child-related assessments in government law, policy-making, and implementation.¹⁵² A Children’s Commissioner can undertake such Children’s Rights Assessments, although this should not be a substitute to the government carrying out such assessments on its own across all departments, particularly for policies or decisions that are cross-departmental.

E. *Identify Clear Policy and Research Priorities—Central Database for Children*

The Commission must conduct research to assist the Government in engaging in evidence-based decision-making and policy-formulation for children’s rights and interests.¹⁵³ Despite the Com-

¹⁵⁰ Does it have powers of “review” over children-related services by the Government and NGOs; can it “foster cross-sector collaboration,” and identify areas for better integration and improvement?

¹⁵¹ *Supra* note 149. The existing institutional arrangement, with each policy bureau being responsible for assessing the impact of its policy decisions on children, is not effective in fostering children’s rights.

¹⁵² A Children’s Commissioner may have to rely on policymakers to inform them of a policy initiative early enough so that it can have the opportunity to influence its outcome, e.g., by application of Children’s Rights Impact Assessment. See Puja Kapai, *Applying Article 3 of the UNCRC in Practice: Child Rights Impact Assessment (CRIA) and Lessons from International Best Practice*, THE UNIVERSITY OF HONG KONG, [https://www.law.hku.hk/ccpl/childrens-rights-impact-conference/wp-content/uploads/2018/12/Plenary%20Presentation%202_Applying%20Article%203%20of%20the%20UNCRC%20in%20Practice_%20Child%20Rights%20Impact%20Assessment%20\(CRIA\)%20and%20Lessons%20from%20International%20Best%20Practice.pdf](https://www.law.hku.hk/ccpl/childrens-rights-impact-conference/wp-content/uploads/2018/12/Plenary%20Presentation%202_Applying%20Article%203%20of%20the%20UNCRC%20in%20Practice_%20Child%20Rights%20Impact%20Assessment%20(CRIA)%20and%20Lessons%20from%20International%20Best%20Practice.pdf) (last visited Oct. 15, 2019) (which developed a Children’s Rights Impact Assessment Framework).

¹⁵³ The Commission stated on February 22, 2019 that it set out the “discussion priority and time frame for a number of issues concerning children” but disclosed no further public information. See *Commission on Children convenes third meeting*, THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (Feb. 22, 2019), <https://www.info.gov.hk/gia/general/201902/22/P2019022200679.htm>.

mission's best intentions, it has not provided any more detailed information (other than providing a list of issues affecting children), nor has it identified any specific detailed research plan or priorities or provided any identifiable work targets or timetable. This needs the Commission's immediate attention. In addition, various Government bureaus/departments collect data relating to children with regard to their respective policy and service areas, as well as legislation provisions.¹⁵⁴ There is no central data bank for children and no central and independent body analyzing and disseminating such information.¹⁵⁵ This is a problem. Hong Kong needs evidence-based children's rights studies and a coherent and regularly updated children's central data system to incorporate children's perspectives in laws, policies, practices, and programs.¹⁵⁶ At its first June 2018 meeting, the Commission discussed the need to develop a central children's database, but no separate working group has yet been established to consider data collection and coordination.¹⁵⁷ This is urgently needed. There should be multi-sector participation developing this central data bank for children ensuring that it is well coordinated and comprehensive.¹⁵⁸ If reformed, the Commission could help coordinate and be a central mechanism for

¹⁵⁴ In Hong Kong, no specific government department is currently responsible for handling child data. Child data is scattered among government departments and some data is not open for public use. See Legislative Council Subcommittee on Children's Rights, *Opinions Concerning a Central Data Bank for Children*, LC Paper No. CB(4)830/17-18(02), LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (Apr. 4, 2018).

¹⁵⁵ In February 2019 the Commission announced a consultancy study for developing centralized children's data collection, something advocated for more than 20 years. It is only with verifiable data that long-term planning for the best interests of Hong Kong children, as stipulated in Article 3 of the UNCRC, can be completed. See Hong Kong Committee on Children's Rights, *Central Data Bank for Children*, LC Paper No CB (4)855/17-18 (01), LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (Mar. 28, 2018), and concluding observations of the UN Committee in October 2005 and 2015. There are multiple UN Committee reports in October 2005 and 2015, could not discern which specific ones were cited. Here is a link to a database: <https://www.refworld.org/type,CONCOBSERVATIONS,CRC,,,0.html>.

¹⁵⁶ See Maggie Lau, Submission to the Subcommittee on Children's Rights of the Legislative Council, Proposal for establishing a central database for children, LC Paper No CB(4)855/17-18(02), LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (Mar. 2018).

¹⁵⁷ The Chief Executive's 2017 Policy Address announced the government plans for establishing a central database for children. *Commission on Children convenes first meeting*, LABOUR AND WELFARE BUREAU THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (June 28, 2018), <http://www.lwb.gov.hk/eng/press/28062018.htm>.

¹⁵⁸ Having a central data bank for children will serve as the foundation for the development of child impact assessment systems and child consultation systems, as both need the clear data for a thorough and genuine consultation on children's views.

data collection in conjunction with the Census and Statistics Department.¹⁵⁹

F. *Adequate Financing and Resources Required for Commission*

It is important that the Commission be independent of government intervention and adhere to the Paris Principles.¹⁶⁰ The Commission requires adequate funding, its own staff and premises, and should not be restricted by any financial control affecting its independence. Inadequate finances and manpower resources and an unnecessarily restricted two-year time frame will limit the Commission's ability to deal with the broad range of complex issues affecting children and achieve lasting impact and outcomes.¹⁶¹ The sum of \$12 million has been allocated to support the Commission, but this is miniscule compared to Hong Kong's HK\$92 billion dollar budget surplus and projected fiscal surplus reserves of HK\$1161 billion dollars.¹⁶² Financial dependence on the government may compromise independence where funds are restricted or unduly controlled, but adequate government funding provides credibility to an institution as an important public and regulatory agency.¹⁶³

To have legitimacy and build high levels of public trust, a Children's Commissioner must assert and display independence from the government, e.g., the Commissioner should establish a non-governmental website and locate their office outside government premises (rather than having their quarterly meetings within Government offices). Preserving independence may also be achieved by adopting an accountability mechanism providing ongoing feedback on the strengths and weaknesses of the Commission institution. Such feedback may come in the form of written reports of activities and impact to government, informing the general public,

¹⁵⁹ The Commission can also help develop an annual publication of a "Thematic Report on Children" as provided in the UNCRC.

¹⁶⁰ See *supra* note 74.

¹⁶¹ The Commission needs to increase its budget and resources to ensure its sustainability and productivity.

¹⁶² See Paul Chan, Financial Secretary, Presentation by the Financial Secretary on the 2019-20 Hong Kong Budget Feb. 27, 2019, reprinted in *THE 2019-20 BUDGET*, https://www.budget.gov.hk/2019/eng/pdf/e_budget_speech_2019-20.pdf.

¹⁶³ Diversification of funding sources may help. Funding from private and foreign donors might solve resource shortages but may affect long-term independence. See REIF, *supra* note 59; Dzanic, *supra* note 13.

and monitoring by civil society and NGOs.¹⁶⁴ It is important for the Commission to be transparent in its work and reporting.¹⁶⁵ We are already one quarter of the way through the Commission's term of office and very little public information is available about its work. Better transparency, openness, and accountability would enhance its credibility and increase public trust.¹⁶⁶

G. *Commission Needs to Ensure Direct Child Participation*

The Government's establishment of a Working Group to facilitate communication with children to understand their opinions and consider their views when making policy decisions is a positive step.¹⁶⁷ To be influential and develop legitimacy and public trust, however, the Commission needs to develop a child-friendly consultation system, facilitating meaningful, direct participation by children within the Commission.¹⁶⁸ It must also ensure pluralistic multi-disciplinary representation on the Commission and its two Working Groups, with children's voices and opinions heard, considered, and incorporated in government decision-making and policy formulation.¹⁶⁹ It is important that the marginalized and the most vulnerable groups of children in Hong Kong be involved in these discussions. It is important that these voices be expressed, otherwise the Commission will not be able to adequately list its priorities.¹⁷⁰ Children should also directly participate in the selection of the Children's Commissioner—just as children interview

¹⁶⁴ See SEDLETZKI, *supra* note 83; HUMAN RIGHTS JOINT COMM.—EIGHT REPORT, *supra* note 100. The Commission should provide annual reports to Government and Supplementary Reports to the UN Committee. See OFF. OF STANDARDS IN EDUC., CHILD'S SERVICES AND SKILLS, ANN. REPORT AND ACCTS. 2017-18 (2018).

¹⁶⁵ Actions and decisions of the Children's Commissioner must be transparent to maintain credibility and community respect.

¹⁶⁶ Particularly as transparency is a key goal of the current Government. See *2018 Policy Address*, *supra* note 11, ¶ 19.

¹⁶⁷ See *supra* note 125.

¹⁶⁸ Ideally providing a legal basis for cultivating child participation in the work of Children's Commissioner. See SEDLETZKI, *supra* note 70; SEDLETZKI, *supra* note 83.

¹⁶⁹ Children should be given information needed to contribute and express themselves and express their views. The consultation process must be structured and permanent for the Commission's work to be effective.

¹⁷⁰ The Commission should draw on overseas experiences in children's commission in developing guidelines and training programs to ensure children's genuine participation in the work of children's commissions.

short-listed candidates for the children's ombudsman position in Norway and Australia.¹⁷¹

VII. CONCLUSION

Hong Kong's Commission on Children will face similar barriers experienced in the UK and Australia unless reforms to the Commission's mandate, structure, jurisdiction, and powers are introduced. Independence is the defining feature of children's human rights institutions; it is their main strength and their source of legitimacy and authority.¹⁷² The Commission must evolve into an independent statutory body with a legal mandate to review and improve the existing laws and policies on children's matters, and ensure that children's human rights, as enshrined within the UNCRC, are upheld.¹⁷³ In the absence of a human rights commission, it is desirable and practical for the Commission to evolve into a Children's Ombudsman or Commissioner to fill this gap in relation to children's human rights.¹⁷⁴ To do so effectively requires the Commissioner to act independently of government, free from outside interference or undue influence. It must be endowed with adequate resources and sufficient investigation and review powers to effectively monitor government actions and decisions impacting children's rights and interests and help develop child-centered laws and policies.¹⁷⁵

Serious complex issues face Hong Kong children. While a Children's Commissioner cannot solve all these problems, they can actively cooperate with Government to develop and implement a comprehensive child poverty reduction plan and address issues related to proper nutrition, affordable housing, and accessible education for children.¹⁷⁶ The Commissioner could help the Government set targets of 50% reduction in child poverty within 5

¹⁷¹ See Adnanes, *supra* note 89.

¹⁷² See SEDLETZKI, *supra* note 61, at 16.

¹⁷³ The Commission must be empowered to investigate complaints about possible breaches of children's rights and monitor implementation of the UNCRC in Hong Kong.

¹⁷⁴ Just as the Hong Kong Ombudsman has evolved within Hong Kong's shifting political landscape. See Chan & Wong, *supra* note 15.

¹⁷⁵ This can only happen with the willingness and cooperation of the Government. They have shown this willingness with the Hong Kong Ombudsman so there is a model to follow for the evolution of a truly independent Children's Commissioner.

¹⁷⁶ Child poverty and social exclusion should be addressed from a child rights perspective in line with the UNCRC and include integrated strategies and the participation of all stakeholders.

years, lifting 150,000 Hong Kong children out of poverty with better nutrition, safer housing, and improved education.¹⁷⁷ If established as an independent statutory institution, the Commissioner can be a catalyst for reform of Hong Kong's inadequate child protection legislation (e.g. establish a mandatory reporting system) and help alleviate child abuse and neglect.¹⁷⁸ A Children's Commissioner could also help develop and implement policies to reduce school bullying and ban corporal punishment¹⁷⁹ and work with the Government to formulate a comprehensive child-health policy for the physical and mental wellbeing of children.¹⁸⁰ While recognizing the challenges of Hong Kong's political system, reform is required for the Commission to evolve into a truly independent statutory Children's Commissioner that is viewed as credible with high levels of public trust. This can serve as a vital external accountability mechanism supporting the Chief Executive's on-going commitment to transparency and good governance in Hong Kong.¹⁸¹

¹⁷⁷ See Hong Kong Institute of Education, *Multi-pronged approach needed to address child poverty*, SOUTH CHINA MORNING POST (Dec. 13, 2012); Gonzalo Fanjul, UNICEF, *Child. of the Recession: The Impact of the Economic Crisis on Child Well-Being in Rich Countries* (2014), <https://www.unicef-irc.org/publications/733-children-of-the-recession-the-impact-of-the-economic-crisis-on-child-well-being-in.html>. Such measures include guaranteeing basic incomes for families and protecting vulnerable children from financial and social exclusion.

¹⁷⁸ Hong Kong is not alone in needing to reform its child protection system. See Manitoba Advocate for Child. & Youth, *A Place Where it Feels Like Home: The Story of Tina Fontaine* (Mar. 2019) (demanding action for reform of the government's child and social welfare system); *Children are going to die*, VANCOUVER SUN, (Mar. 12, 2019).

¹⁷⁹ The Commission could advise the government on enacting legislation banning corporal punishment following the 32 states that have legally banned all forms of corporal punishment. The Commission could also help with parental education ensuring that parents are better informed about good parenting skills.

¹⁸⁰ "Children Wellbeing Indicators" can track the development of Hong Kong children. See STEERING GROUP FOR CHILD HEALTH POL'Y IN HONG KONG, *Child Health in Hong Kong: A Pol'y Dev. Brief* (Apr. 2013).

¹⁸¹ This depends on the willingness of the Government to cooperate with the Children's Commissioner and to be responsive to its recommendations. See DZANIC, *supra* note 13; Alice Wu, *Children's rights are human rights, and Hong Kong needs to enforce them*, SOUTH CHINA MORNING POST, (Nov. 19, 2017).

