

政府總部  
民政事務局



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12 April 2006

Clerk to the Legislative Council Panel on  
Home Affairs  
Legislative Council  
8 Jackson Road  
Hong Kong  
(Attn: Miss Flora Tai)

By fax: 2509 9055  
Total: 3 pages

Dear Miss Tai,

**Hearing of the initial report of the HKSAR under the  
Convention on the Rights of the Child (CRC):  
Home Affairs Panel Meeting on 10 February 2006**

In the course of the discussion on 10 February, the Panel asked us  
to –

“report on the development of its discussion with The Ombudsman as to whether the powers and remit of The Ombudsman should include handling complaints on whether the implementation of policies by any policy bureau/department had contravened CRC, before the end of the current legislative session.”

We have discussed this with The Ombudsman’s Office and are advised that The Ombudsman does not ‘promote’ human rights as such. But many services provided by the Government – such as housing, education, social welfare, medical and health care, and legal aid are human rights related. In striving to ensure reasonableness, fairness and legality in the provision of such public services, The Ombudsman in effect holds a watching brief and safeguards citizens’ rights to these services. When

investigating alleged acts of maladministration, The Ombudsman's Office inevitably has to take account of the laws and policies pertaining to the official acts being investigated. In the same way, if a complainant alleges breach of an international treaty applicable to Hong Kong, the Office must ascertain whether, in fact, the official actions that are the subject of complaint about accord with the Government's obligations under the relevant covenant or convention.

In this regard, the position of Hong Kong's Ombudsman is similar to that of the classical ombudsman elsewhere. Increasingly, ombudsmen worldwide are placing emphasis on human rights. For example, when investigating complaints, the Ombudsman in Norway tries to "verify that the public administration has taken due account of any international human rights obligations by which Norway might be bound". Finland has gone further by legislating for the Ombudsman's role in human rights protection.

Hong Kong has not gone as far. But The Ombudsman has indicated to the Legislative Council that, as part of her Office's jurisdictional review, she will consider whether The Ombudsman should assume a more active role in monitoring the actions of the Government in the implementation of the human rights treaties that apply to Hong Kong.

Turning to the question of children's rights, The Ombudsman's Office has advised – by way of illustration of how it promotes children's rights - that it is currently conducting a direct investigation into "*Government's arrangements for assessing children with specific learning difficulties ('SpLD')*". This arose from complaints received about the assessment of children with SpLD and the support services provided for them. The subject covers a broad spectrum of services too complex for a single inquiry. The current investigation focuses on assessment arrangements for kindergarten and primary school children; further investigation(s) into the arrangements for support services will follow.

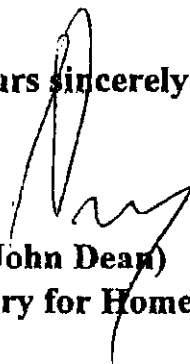
### **Legal position**

The obligations that the Convention on the Rights of the Child (CRC) imposes on Hong Kong are binding as a matter of international law. Unless a particular treaty is incorporated into domestic legislation, our courts have

held that it is not part of our domestic law. However it is possible that administrative decisions that are inconsistent with a treaty obligation may be quashed on the basis of a legitimate expectation. The question whether or not the administration has created a legitimate expectation that it will act in conformity with a particular international obligation is a matter for the courts to determine.

The Chinese translation of this response will follow shortly. Meanwhile, I will be grateful if you would draw this to the attention of the Panel. My thanks in advance.

**Yours sincerely,**



**(John Dean)**  
**for Secretary for Home Affairs**

**cc:** Ombudsman's Office (Mr YC Mok)  
D of J (Mr Robert Allcock, SG  
Ms Roxana Cheng)