

**Extract from the draft minutes of meeting of the
Panel on Home Affairs held on 20 July 2005**

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**II. Report of the Hong Kong Special Administrative Region under the
Convention on the Rights of the Child**

[LC Paper Nos. CB(2)2313/04-05(02) & (03) and Report of the Hong
Kong Special Administrative Region under the Convention on the
Rights of the Child]

Meeting with deputations

Hong Kong Human Rights Commission

[LC Paper Nos. CB(2)2313/04-05(04) and CB(2)2347/04-05(04)]

45. Ms Annie LIN, community organiser of Hong Kong Human Rights Commission (HKHRC), presented the views of HKHRC as detailed in its submissions. She said that there were about 57 children who were refugees or children seeking asylum in Hong Kong, who did not get any assistance or support from the Administration. These children were not provided with shelter, food or education, and the Administration had just left it to the United Nations High Commissioner for Refugees (UNHCR) to support all refugees and asylum seekers in Hong Kong. Ms LIN further said that HKHRC urged the Administration to reconsider its position regarding the extension of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to its territorial jurisdiction. HKHRC also recommended that Hong Kong should cooperate with UNHCR to formulate a clear and coherent asylum policy based on the principle of non-discrimination. Other recommendations of HKHRC were set out in the last paragraph of its submission (LC Paper No. CB(2)2347/04-05(04)).

Society for Community Organisation

[LC Paper Nos. CB(2)2313/04-05(04) and CB(2)2347/04-05(04)]

46. Miss SZE Lai-shan, community organiser of Society for Community Organisation (SOCo), presented the views of SOCo as detailed in its submissions. Miss SZE said that the United Nations Committee on the Rights of the Child (UNCRC) encouraged State parties to define children as anyone under the age of 18. SOCo, however, noted that different child related ordinances only covered children under the age of 15. SOCo was of the view that the Administration should extend the legal protection in different areas to cover children of 15 to 17 years of age as well.

47. Miss SZE pointed out that according to information from the Census and Statistics Department, in 2004 there were about 378 000 children under the

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age of 18 living in poverty. She further said that the number of children on the Comprehensive Social Security Assistance (CSSA) Scheme had increased by about seven times from 1994 to 2004 and yet the Administration had cut CSSA payments in 1999 and 2003 instead of taking measures to tackle child poverty. She drew members' attention to the adverse impact on the psychological and physical development of children as a result of their poor living conditions and malnutrition.

48. Ms SZE said that SOCo urged the Administration to formulate a policy for children, and put in place an independent mechanism to monitor the implementation of policies in relation to the rights of the child and safeguard their interests. She urged the Administration to scrap the seven years' residence requirement as one of the criteria for eligibility to social security benefits, and accord high priority to applications for public housing submitted by families with children living in small partitioned rooms. Other recommendations put forward by SOCo were set out in the last paragraph of its submission [LC Paper No. CB(2)2313/04-05(04)].

Against Child Abuse

[LC Paper No. CB(2)2313/04-05(05)]

49. Mrs Priscilla LUI, director of Against Child Abuse, presented the views of Against Child Abuse as set out in its submission. She urged the Administration to devise objective indicators to measure progress made in the implementation of the provisions of the Convention on the Rights of the Child (CRC). She said that Against Child Abuse considered that the Administration should conduct a survey on the situation of children and how far their rights had been fulfilled. Against Child Abuse also urged the Administration to put in place a high-level, central body to monitor the implementation of policies to safeguard the rights of the child.

Hong Kong Committee on Children's Rights

[LC Paper No. CB(2)2279/04-05(01) and the NGO Report of Hong Kong under the Convention on the Rights of the Child]

50. Miss Billy WONG, executive secretary of Hong Kong Committee on Children's Rights (HKCCR), presented the views of HKCCR as detailed in its submission. She said that the report submitted by Hong Kong Special Administrative Region (HKSAR) under CRC lacked objective information and data to show any improvements had been made in safeguarding the rights of the child in different areas. Miss WONG said that HKCCR urged the Administration to set up a Child Commission, and provide a platform for collection of children's views on any policies or programmes which would impact on them. HKCCR suggested that the Administration should produce a children's version of the report to facilitate children's perusal of it.

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*Children's Council Working Committee
[LC Paper No. CB(2)2279/04-05(02) and Report on the Rights of Children in
Hong Kong submitted to the United Nations Committee]*

51. Miss Joanne NG and Mr Cheney CHENG, representatives of Children's Council Working Committee (CCWC), presented the views of CCWC as detailed in its submission. They pointed out that at the last hearing of the United Nations Committee on the Rights of the Child (UNCRC), representatives of CCWC had suggested that a Child Commission should be established in Hong Kong to monitor the implementation of policies which safeguarded the rights of the child and that UNCRC had positively responded to the suggestion. They expressed disappointment that the Administration, however, had not done anything about it despite the fact that people under the age of 18 constituted 20% of the Hong Kong population. They said that even for policies or programmes impacting on children, the Administration seldom conducted consultation to specifically collect children's views and the Education Reform was such an example. They added that a lot of the children in Hong Kong were not aware of CRC and its content.

Hong Kong Human Rights Monitor

52. Mr LAW Yuk-kai, director of Hong Kong Human Rights Monitor (HKHRM), expressed support for setting up a Child Commission and, if not, a statutory human rights commission with a broad mandate, including monitoring children's rights and the implementation of CRC. He said that HKHRM suggested that improvements should be made in the procedures of handling divorce and separation cases to enable children to voice out their views on any decisions affecting them.

53. Referring to paragraph 220 of the HKSAR's report under CRC, Ms Cyd HO, chairperson of HKHRM, pointed out that there was a need for the Administration to enhance parent education, which would be conducive to the prevention of child abuses and problems pertaining to children. She said that it was regrettable that the Administration had only made a one-off allocation of \$50 million on parent education in 1999, and existing initiatives in respect of parent education at the preventive level were very limited in scope. She called on members to urge the Administration to increase funding allocations on parent education in the coming budget. Referring to paragraph 373 of the same report, Ms HO pointed out that there was very inadequate support and assistance rendered to gifted children. She said that e.g. the Fung Hon Chu Gifted Education Centre in Tsuen Wan was going to be closed due to resources cut by the Administration.

The Hong Kong Council of Social Service

54. Mr Anthony WONG, Chief Officer (International and Regional

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Networking) of the Hong Kong Council of Social Service (HKCSS), said that in relation to the preparation of reports under CRC, the Administration should not have only invited certain non-governmental organisations (NGOs) or concern groups to give views during the consultation. He also considered that the Administration should produce a children's version of reports submitted under CRC in order to encourage children to read them. He said that NGOs and concern groups often found it very difficult to monitor the Administration's implementation of recommendations made by UNCRC, and they considered that the Administration should draw up a plan of action for the implementation.

55. Ms Angela NG, Chief Officer of Service Development (Children and Youth) of HKCSS, expressed support for the establishment of a Child Commission. She said that HKCSS agreed that there was a need for the Administration to provide more support and assistance to gifted children. In addition, the Administration should enhance provision of support services to assist juvenile offenders, and further raise the minimum age of criminal responsibility in order to better protect the interests of children.

Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)

56. Ms LIU Ngan-fung, chairperson of Hong Kong Association for the Survivors of Women Abuse (Kwan Fook), said that according to the Social Welfare Department, in 2004 there were some 3 000 cases of family violence but it had only recorded about 600 child abuses. She queried whether the actual number of child abuses might be even larger. She criticised the Administration for requiring single parents and other child carers on CSSA with the youngest child aged 12 to 14 to seek at least part-time employment, and deducting \$200 from their CSSA payment should they fail to meet their obligations under the mandatory employment assistance programme. Ms LIU said that under this policy, children would receive much less care and attention from their parents after they had taken up employment. She pointed out that children also were not receiving adequate allowances under the CSSA scheme to meet their needs for basic necessities, and the Administration should review the CSSA system and increase CSSA payment for children. She added that Kwan Fook also supported the establishment of a Child Commission to enhance protection of children's interests.

The Democratic Party

[LC Paper No. CB(2)2347/04-05(05)]

57. Mr Nelson WONG, spokesman of youth policy of the Democratic Party (DP), presented the views of DP as detailed in its submission. He pointed out that in 2004, children under the age of 18 had formed the largest age group of Hong Kong population and yet there was not a child policy. He urged the Administration to formulate such a policy and ensure that the interests of

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children were fully taken into account in the formulation of policies by bureaux. He urged the Administration to implement the provisions of CRC as applied to Hong Kong through legislation, and set up an independent monitoring body, such as a Child Commission, to protect children's interests. Mr WONG further said that DP was concerned about the inadequate care and protection rendered to children by policies and programmes in the following areas –

- (a) regulations regarding the right of abode had contributed to the separation of children from their parents and had hindered family reunification;
- (b) the Domestic Violence Ordinance (Cap. 189) should be reviewed to improve protection for children and safeguard them from being subjected to abuses;
- (c) the imposition of fees for maternity services at public hospitals for persons who were not Hong Kong residents and the recent fee increase for such services had prompted pregnant women from the Mainland to delay seeking hospitalisation in order to save money, and this had increased the risk of complications for the mothers and the newborns; and
- (d) the implementation of the seven-year residence requirement for social security benefits had rendered some members of CSSA households ineligible for CSSA and as a result, these family members had resorted to the CSSA payment for their children and this had made these children suffer.

Other submission received

58. Members noted that the Equal opportunities Commission (EOC) had also made a submission [LC Paper No. CB(2)2254/04-05(01)].

Discussion

Suggestion of setting up a Child Commission

59. Regarding the suggestion of setting up a Child Commission, Deputy Secretary for Home Affairs (1) (DSHA(1)) said that the Administration was of the view that existing arrangements for attaining the necessary institutional cooperation for the implementation of CRC had adequately served Hong Kong's needs. He explained that since CRC covered various policies under the purview of different bureaux, setting up a Child Commission under one policy bureau to oversee the implementation of initiatives, which straddled a wide spectrum of policy areas, would not be the most effective arrangement. He said that the Administration, rather, considered that the present arrangement

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that each policy bureau was responsible for ensuring that the interests of children were well taken into account in its formulation of policies was more effective. He said that nevertheless, the Administration would re-consider its position should changing circumstances so warranted. He pointed out that the Administration had to consider different interests and strike a balance between protection of these rights and the availability of resources. He added that Hong Kong actually had done a good job in terms of protection of children's rights as compared with many other countries.

60. Dr Fernando CHEUNG said that the greatest concern expressed by the deputations was that there seemed to be a regression in the fulfillment of children's rights, as reflected in the large numbers of child abuses and domestic violence cases. In addition, there seemed to be little improvements made to the plight of children in poverty, and the adoption of the seven years' residence requirement to be an eligibility criterion for social security benefits had even made the situation worse for new arrival children. Dr CHEUNG also drew attention to EOC's submission which had pointed out that inadequate support and assistance were being provided to children with a disability and ethnic minority children to resolve their learning problems and enable them to assimilate into the local education mainstream. Dr CHEUNG pointed out that the deputations considered that the Administration should demonstrate its determination to face these problems and improve children's situation by, like many other countries did, establishing a Child Commission which should be a high-level, central mechanism and adopt an interdisciplinary approach for tackling children's problems.

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61. DSHA(1) said that the Administration would take into full consideration the views expressed by deputations and members regarding the setting up of a Child Commission. He further said that the last time that the Administration had reviewed the need for such an institution was in 1996 and he undertook to review it again this time.

62. Ms Emily LAU asked whether the deputations expected that the proposed Child Commission should assume similar role and functions as those of the Women's Commission and the Commission on Youth (COY). Ms LAU pointed out that the women's commission as advocated by the relevant UN Committee was actually one with the power and responsibility of examining policies, funding allocations and legislation to assess their impact on women's interests and well-being. She asked the deputations whether they wanted the proposed Child Commission to be such a high-powered mechanism or one similar to the Women's Commission.

63. Miss SZE Lai-shan of SOCo responded that SOCo did not want to see that a Child Commission, if established, to be similar to the Women's Commission which was dispensable and not performing really effective functions. Mr LAW Yuk-kai of HKHRM and Ms LIU Ngan-fung of Kwan

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Fook said that the Women's Commission fell far short of their expectations. Mr LAW further said that HKHRM considered that the following three organisations were also needed to ensure effective implementation of CRC –

- (a) a Child Commission with powers and functions to be provided for by statute;
- (b) a children's council for collection of children's views and opinions; and
- (c) a human rights commission with a broad mandate to oversee the implementation of various international human rights treaties.

64. Mr LAW further said that there should be a corresponding Government organisation to implement recommendations made by the above organisations. Mr Nelson WONG of DP said that if the Administration could not set up a high-powered Child Commission similar to the kind mentioned by Ms Emily LAU, the Administration should at least establish a Child Commission and enhance its roles and functions later. He considered that the problem with the Women's Commission might lay with its membership, and the problem with COY was that the Administration had not actively followed up the recommendations made by COY.

65. Ms Audrey EU requested the Administration to explain why it had managed to set up various commissions, such as COY, the Elderly Commission and the Women's Commission, the Commission on Poverty and EOC, but had reservations about setting up a Child Commission.

66. DSHA(1) pointed out that issues relating to children straddled different policy bureaux, such as the Education and Manpower Bureau (EMB), the Security Bureau and the Health, Welfare and Food Bureau (HWFB). He reiterated that the Administration would be willing to review the need for setting up a Child Commission and consider under which bureau it should be put.

67. The Deputy Chairman expressed disappointment with the lack of progress made by the Administration ever since UNCRC had recommended HKSAR setting up an independent monitoring institution in 1996. She invited views from the deputations on any adverse effects caused due to the absence of such an institution in Hong Kong.

68. Mrs Priscilla LUI of Against Child Abuse said that there were already signs of children's rights to development and even to survival being threatened. She and Dr Patricia IP of HKCCR both considered that a Child Commission should be an independent central body and not to be put under a particular bureau. Ms LIU Ngan-fung of Kwan Fook and Miss SZE Lai-shan of SOCo

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also considered that if the proposed Child Commission was set up under a policy bureau, e.g. HWFB, this would give the impression that children affairs were confined to welfare issues. They said that the Administration should set up a central mechanism to examine Government policies from the angle of safeguarding children's interests and appoint a commissioner for children to speak for children's interests.

69. Mr James TO considered that the existing institutional arrangement not effective in fostering children's rights. He also noted that under the UN reporting mechanism, HAB checked with other bureaux their progress made in implementing the relevant recommendations of UNCRC only when HAB started preparation of HKSAR's reports under CRC, i.e. once about every five years. Mr TO suggested that consideration should be given to creating the post of Commissioner for Children which should be pitched at the rank of a permanent secretary, and assigning the Commissioner to draw up a green paper on policies and services for children. Mr TO further suggested that HAB should recommend to the Chief Executive to hold summit meetings on children's rights with a view to mapping out a comprehensive strategy for tackling problems pertaining to children. DSHA(1) agreed to take note of Mr TO's comments.

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Need for review of legislation in relation to protection of children and representation of children in courts

70. Mr Albert CHAN urged the Administration to review its legislation in relation to protection of children, such as the Protection of Children and Juveniles Ordinance (Cap. 213) which in his view was behind by at least 20 years as compared with the corresponding legislation of some overseas jurisdictions. He asked about the Administration's plan for conducting such a review as well as a review of arrangements on representation of children in courts.

71. Assistant Secretary for Health, Welfare & Food (Women) Special Duties (ASHWF(W)SD) responded that child welfare was the policy responsibility of HWFB, which had introduced a new scheme to provide legal representation service for children and juveniles involved in care or protection proceedings since October 2003 and had recently reviewed the scheme to seek further improvements. The Administration would keep in view developments and make continuous efforts to ensure the effectiveness of the legal framework for protection of children.

Children in divorce/separation cases and right of abode cases

72. Ms Audrey EU requested representatives of HKHRM to further explain its suggestion that improvements should be made in divorce proceedings to enable children to voice out their views on decisions affecting them. Mr LAW

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Yuk-kai responded that in divorce cases, very often children involved were not given a chance to directly express their views on arrangements affecting them, and it was not uncommon to find that children had been inadequately informed of what was happening and the rationales behind the decisions affecting them and their families. HKHRM suggested that social workers and family mediators should also assess the needs of the children involved and work out arrangements to allow the children to voice out their opinions on arrangements which would affect them. He added that as for right-of-abode cases, the views of the children involved should also be solicited and taken into full consideration by the court.

Education and support for children in poverty

73. Ms Emily LAU sought the views of the depositions on small class teaching and on the adequacy of the Administration's support for children living in poverty. Miss SZE Lai-shan of SOCo responded that she supported the implementation of small class teaching and starting it with children from poor families first, if resources did not allow the Administration to implement it across the board. She further said that the Administration had not worked out effective measures to assist children in poverty in their studies even though education was so important to these children and to tackling inter-generation poverty. Mrs Priscilla LUI of Against Child Abuse pointed out that in implementing small class teaching by first targeting it at children from poor families, the Administration should ensure that there would be no labelling effect of these children. Ms Cyd HO of HKHRM said that EMB should not use the experience of the United States (US) as an excuse to delay the implementation of small class teaching in Hong Kong. She pointed out that the marginal benefit of introducing small class teaching was understandably small in US where school class sizes were originally relatively small. Ms HO called on members to urge the Administration to allocate sufficient funds, in the next budget, for full implementation of small class teaching.

74. Dr Fernando CHEUNG asked whether there was a plan to extend free and compulsory education to the sixth year of secondary education. DSHA(1) said that he could not speak on behalf of EMB. He noted that, however, many overseas places had also adopted nine years as a benchmark for free and compulsory education. He added that for children who wished to proceed to senior forms of secondary education after completing Secondary 3, they could have the means since Hong Kong provided subsidised education and assistance for students in need.

75. Dr Fernando CHEUNG said that there were still some 20 000 children living in caged homes and small partitioned rooms. He asked whether the Administration had a plan for tackling the problem. DSHA(1) explained that actually the existing public housing policy had accorded priorities to these families if they submitted applications for public housing. However, very often

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these families had chosen not to move out from their caged homes or small partitioned rooms for various reasons.

The 1951 Convention Relating to the Status of Refugees

76. Dr Fernando CHEUNG asked why the 1951 Convention Relating to the Status of Refugees (the Convention) had not yet been extended into Hong Kong and whether the Administration would provide basic protection for the refugee and asylum seeking children.

77. DSHA(1) pointed out that according to a previous reservation relating to refugees and children seeking asylum which was applicable to Hong Kong, Hong Kong reserved the right not to apply provisions of CRC to persons who did not have the right of abode. He said that actually the Administration was offering assistance to refugees and asylum seeking children as far as possible. He explained that in view of the great impact of the past influxes of refugees on Hong Kong, it was necessary for the Administration to carefully consider the possible implications of extending the Convention into Hong Kong. He added that the Administration was of the view that Hong Kong did not have the prerequisites for the extension of the Convention to the territory.

Seven years' residence requirement to social security benefits

78. Dr Fernando CHEUNG asked whether the Administration had a timetable for reviewing the seven years' residence requirement to social security benefits in view of the many problems caused to CSSA children by this requirement. DSHA(1) clarified that Hong Kong residents under 18 years of age were not required to satisfy any prior residence requirements to be eligible for CSSA. Dr CHEUNG, however, pointed out that CSSA children still suffered from this requirement as some of their family members, failing to be eligible for CSSA due to this requirement, also resorted to the CSSA payment for the children.

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