

香港兒童權利委員會
THE HONG KONG COMMITTEE ON CHILDREN'S RIGHTS

***Submission to the Panel on Administration of Justice and Legal Services
on Juvenile Justice System***

The Hong Kong Committee on Children's Rights takes this opportunity to submit our views and suggestions on the Juvenile Justice System as follows:

1. Raising the Minimum Age of Criminal Responsibility

- 1.1 Before 2003, the minimum age of criminal responsibility in Hong Kong was 7, one of the lowest in the world. While the minimum age of criminal responsibility was eventually raised from 7 to 10 in July 2003, it is still low by international standard. For Asian countries such as China, Taiwan, Macau and Japan, the minimum age of criminal responsibility is 14 – 16. In Scandinavian countries, the age of criminal responsibility is 15, and adolescent under 18 are subject to a system that is geared mostly towards social service, with incarceration as the last resort.
- 1.2 While the Convention on the Rights of the Child does not set a specific age, the UN Committee on the Rights of the Child has recommended that the age be guided by the best interests of the child and criticized jurisdictions in which the minimum age is 12 or less¹. **The UN Committee on the Rights of the Child expressed their concern in its Concluding observations made in 2005² that despite the raising of the minimum age of criminal responsibility in the HKSAR, the age of 10 years is too low.**
- 1.3 In obtaining the support of the members of the Bills Committee in raising the minimum age of criminal responsibility from 7 to 10 in July 2003, the Government undertook to propose raising the age further to 12 years of age after putting forward proposals to provide additional supportive measures for unruly children below the minimum age³. The Committee is very disappointed to note that in a recent response to a question

¹ For example: Report of the Committee on the Rights of the Child: Sixth to Eleventh Sessions UN New York 1996, in which the UN Committee criticized the UK's minimum age of 10 as too low and suggested that serious consideration be given to raising the age; Concluding observations of the Committee on the Rights of the Child: Australia, 10/10/97 in which the UN Committee expressed its deep concern at the minimum age of 7 to 10 years (depending on the State).

² The concluding observations and recommendations made by the United Nations Committee on the Rights of the Child in 2005, after consideration of the report submitted by China (including Hong Kong and Macau Special Administrative Regions).

³ In HKSAR Administration's Responses to Suggestions raised by the Bills Committee on Juvenile Offenders (Amendments) Bill 2001, the Security Bureau concluded that "We hope that Members of the Bills Committee will support raising the minimum age of criminal responsibility from seven to ten at this stage. We undertake to propose raising the age further from ten to 12 years of age when we put forward proposals to provide additional supportive measures for unruly children below the minimum age."

raised by Hon Audrey Eu in May 2006, the Secretary for Security expressed that the Administration did not plan to further raise the minimum age of criminal responsibility for the time being because of the existing protection provided by the Police Superintendents' Discretion Scheme and the presumption of *doli incapax*⁴.

- 1.4 Concerns have been raised as to whether the raising of the minimum age of criminal responsibility would send a wrong message to our children that they do not have to be held responsible for their act and therefore lead to a surge of crime rate. Research indicates that 'there are no negative consequences to be seen in terms of crime rate' from raising the age of criminal responsibility⁵. The crime statistics in Hong Kong also support the research findings. The reported cases in respect of children aged 15 or below has decreased by 8.2% from 5,335 in 2002 to 4,897 in 2004 with the number of persons aged 7 to 9 arrested for crime to be relatively small (29 arrested in the period between July and December 2003 and 111 arrested in 2004). Also, the number of children aged 10-13 (inclusive) arrested for crimes, the prosecuted rate and conviction remained quite steady from 2002 to 2005. Please refer to the following table⁶:

	2002	2003 (Age of criminal responsibility was raised from 7 –10)	2004	2005
No. of children between 10 and 13 arrested for offences	2,141	1,907	1,982	1,982
No. of children between 10 and 13 prosecuted for offence and the prosecution rate	385 (18%)	308 (16%)	293 (14.8%)	308 (15.5%)
No. of children between 10 and 13 convicted for offence and the conviction rate	205 (9.6%)	188 (9.9%)	178 (9%)	166 (8.4%)

We would also like to take this opportunity to ask the authorities concerned on what offenses these children had committed; and how these children were sentenced and treated.

- 1.5 Concerns have also been raised that should the minimum age of criminal responsibility be raised, children under the minimum age will very likely be used as pawn in criminal activities. However, the priority should be to protect them against further exploitation,

⁴ LCQ9: Criminal age of responsibility remains unchanged and enhanced support measures for unruly children, www.info.gov.hk/gia/general/200605/10/P200605100158

⁵ Dunkel, 1996, cited in Goldson, Barry and Peters, Eleanor, 2000, Tough Justice: Responding to Children in Trouble, The Children's Society, London.

⁶ LC Paper No. CB(2) 929/04-05, Minutes of meeting of the Panel on Security held on Monday, 24 January 2005

help them to rehabilitate and provide counseling to them rather than punishing them. Regarding this concern, the Commissioner of Police said at the Legislative Council Panel Meeting in January 2005⁷ that there was no sign of offenders deploying persons aged under 10 to commit crime after the raising of the minimum age of criminal responsibility to 10 in 2003.

- 1.6 A good juvenile justice system should protect society from criminal behaviour but also fully considers the moral culpability of children, protect, rehabilitate and reintegrate our children instead of labeling and marginalizing them. Accordingly, **it would be in the best interests of children to raise the minimum age of criminal responsibility to 14.** It would be wrong to criminalize them under the name of rehabilitation and protection.
- 1.7 For those children who may need special protection, a Care and Protection Order may be issued upon application by the Director of Social Welfare/person authorized by the Director or a police officer. The wide powers under the Care and Protection Order⁸ will be adequate to cope with a child in need of help, correction and rehabilitation, including the sending of the child to an institution for up to 3 years, and are available without reliance on criminal conviction. The raising of the minimum age of criminal responsibility should be accompanied by a strong and comprehensive supportive system to help the unruly children participate in the community and be responsible citizens.

2. Measures Alternative to Prosecution for Handling Unruly Children and Young Persons

- 2.1 The Committee supports the Government's move from shifting from disciplinary welfare approach to an emphasis on restorative and reintegrative practices in juvenile justice. Restorative approach is better suited for children as it emphasizes on the reparation of harm and reconciliation of conflicting parties.
- 2.2 In coming into contact with unruly children who committed wrongful acts, **police should continue to systematically assess if the cases are suitable for referral to Social Welfare Department ("SWD") for follow up or to the Juvenile Protection Section for supervision.** It is important not to send a misleading message to the unruly children or the public that nothing can be done and no services or support can be offered to the child if he/she has not reached the age of criminal responsibility.

⁷ LC Paper No. CB(2) 929/04-05, Minutes of meeting of the Panel on Security held on Monday, 24 January 2005

⁸ The C & P Order may be made by a juvenile court in relation to a child under 18 who is: (a) assaulted, ill-treated, neglected or sexually abused; (b) whose health, development or welfare has been or is being neglected or avoidably impaired; or (c) whose health, development or welfare appears likely to be neglected or avoidably impaired; or (d) who is beyond control, to the extent that harm may be caused to him or to others, and who requires care or protection." (section 34(1) of the Protection of Child and Juvenile Ordinance, Cap 213)

- 2.3 In view of the success of the pilot Family Conference Scheme (“FC”), **the Committee agrees with SWD and police to continue FC and extend the mechanism to children below the age of criminal responsibility.** We hope that the Government will invest more financial resources and manpower in further developing FC so that more cases could be dealt with in a timely and professional manner.
- 2.4 Nevertheless, we found the enhancement of referral mechanism, the extension of existing service by police and an introduction of a Pilot Scheme on Family Conferences, are not sufficient. We need to **develop a more extensive and comprehensive system of restorative practices for juveniles in Hong Kong⁹**, to ensure the unruly children would enter the system once their wrongful acts are come to the notice. More resources are needed to strengthen the system and foster the professionals so as not to frustrate the process. It is hoped that by raising the minimum age of responsibility to 14, it will translate a certain attitude in the society that criminalizing our children is not the sole response to child offending. It will also encourage all those involved in the system to systematically and strategically develop a juvenile justice system that truly appreciates the value of restorative justice in repairing the harm done and empowering all the parties involved including the offender, victim, their family and the society.
- 2.5 Last but not least, the juvenile justice system is targeted on children and youth. The system must be child friendly and developed with a strong child perspective, so as to ensure that the unruly children and young offenders are fully informed and aware of the nature, choices (such as legal representation), impacts and consequences on themselves and the community throughout the entire process.

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⁹ In response to a question raised by Fernando Cheung on the development of new juvenile justice system at the Legislative Council Meeting on 9 March 2005, the Secretary for Security said that “They also note that the introduction of even a limited form of restorative justice would have far-reaching implications for our juvenile justice system...The discussion (to develop a new juvenile justice system incorporating principles and practices of restorative justice in Hong Kong) are still continuing and no conclusion have been reached.” Legislative Council, Official Record of Proceedings, 9 March 2005