

Legislative Council Panel on Constitutional Affairs

**Outline of the topics in the second report on the
Hong Kong Special Administrative Region under the
Convention on the Rights of the Child**

Purpose

This paper seeks Members' comments on the proposed outline of the topics to be included in the second report on the Hong Kong Special Administrative Region (HKSAR) under the Convention on the Rights of the Child (CRC).

Application of the CRC

2. The application of the CRC was extended to Hong Kong in 1994. Its provisions continue to apply to Hong Kong after the establishment of the Hong Kong Special Administrative Region on 1 July 1997.

Reporting Obligation under the CRC

3. Under Article 44 of the CRC, State Parties have obligation to make periodic reports on measures they have adopted which give effect to the rights recognized in the CRC and on the progress made on the enjoyment of the rights. The HKSAR's initial report was submitted as part of China's second periodic report to the United Nations (UN) in June 2003. It was considered by the UN Committee on the Rights of the Child (the Committee) on 19 and 20 September 2005.

4. The Central People's Government (CPG) has commenced the preparation of China's combined third and fourth report under the CRC. In this connection, the HKSAR Government will submit to the CPG a report on the implementation of the CRC in the HKSAR for incorporation into China's report.

Public Consultation

5. In line with our past practice, we have prepared for public consultation an outline of the topics for inclusion in the report. It covers developments in the HKSAR since the Committee last examined the report on the HKSAR in 2005. The purpose of the consultation is to invite members of the public to submit views on the implementation of the CRC in the HKSAR in respect of those topics and to suggest any additional topics that should be included in the report.

6. The public consultation on the report outline will start on 14 April 2009. We will issue the outline to relevant non-governmental organisations and other concerned groups to invite their views. The outline will also be distributed to all Public Enquiry Service Centres of District Offices, and uploaded to the website of the Constitutional and Mainland Affairs Bureau at <http://www.cmab.gov.hk>.

7. The public consultation will close on 29 May 2009. We will consider the comments received in drafting the Hong Kong report. The comments will be made available to members of the public on request, unless the contributor has specifically asked us to keep their views confidential.

The Outline

8. The proposed outline is at Appendix. As required by the Committee, the report will group articles in specified clusters to reflect the holistic perspective on children's rights. The key topics to be covered in the report (with relevant article numbers in the CRC quoted in brackets) are as follows:

- (i) general measures of implementation (Articles 4, 42, and 44);
- (ii) definition of "the child" (Article 1);

- (iii) general principles (Articles 2, 3, 6 and 12);
- (iv) civil rights and freedoms (Articles 7, 8, 13-17 and 37(a));
- (v) family environment and alternative care (Articles 5, 9-11, 18(1) and 18(2); 19-21, 25, 27(4) and 39);
- (vi) basic health and welfare (Articles 6, 18(3), 23, 24, 26 and 27(1)-(3));
- (vii) education, leisure and cultural activities (Articles 28, 29 and 31);
- (viii) special protection measures (Articles 22, 30, 32-36, 37(b)-(d), 38, 39 and 40); and
- (ix) reservations and declarations.

Comments sought

9. Members are invited to comment on the proposed outline. We will carefully take into consideration views and suggestions received, including those of the Members, in drafting the Hong Kong Report. The report will be published for dissemination to the public and copies will be sent to Members.

Constitutional and Mainland Affairs Bureau
April 2009

**An outline of the topics to be covered in the second report on the
Hong Kong Special Administrative Region under
the United Nations Convention on the Rights of the Child**

Introduction

The Administration is preparing for the submission of the second report of the Hong Kong Special Administrative Region (HKSAR) under the United Nations Convention on the Rights of the Child (the Convention). It will form part of the combined third and fourth report of People's Republic of China under the UNCRC.

2. In accordance with our past practice, we have prepared an outline of the report. It sets out the broad subject headings and individual topics that we envisage covering in the report. It also serves as an invitation to all members of the public to submit their views on the implementation of the Convention in respect of those topics, and to suggest any additional topics that they consider we ought to include.

3. We will carefully consider all the comments we receive. Any persons or organisations wishing to offer views are invited to send them to the Constitutional and Mainland Affairs Bureau (CMAB) on or before 29 May 2009:

by post: Constitutional and Mainland Affairs Bureau
Central Government Offices
3/F., East Wing
Lower Albert Road, Hong Kong
by fax: 2840-0657
by e-mail: cmabenq@cmab.gov.hk

Contributors whose submissions are written in Chinese may wish to consider providing their own English translations. Submissions will normally be made available to the general public upon request, unless the contributors specifically ask us to keep their views confidential.

4. The text of the Convention is available at the CMAB website:
http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/crc.doc

5. References to “the previous report” are to the report on the HKSAR submitted by the Central People’s Government in June 2003 and heard by the United Nations (UN) Committee on the Rights of the Child (the Committee) in September 2005. A copy of the previous report is also available on the CMAB website:
http://www.cmab.gov.hk/en/issues/child_report.htm

6. The previous report contained detailed information on the laws, policies and practices that are in place to ensure Hong Kong’s compliance with the Convention. Many of them are long-standing and, by nature, tend to remain unchanged – or change very little – over time. In accordance with Article 44(3) of the Convention, which states that “a State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1(b) of the present article repeat basic information previously provided”, we do not propose to repeat descriptions or explanations of such in the second report. Instead, we will state that “there have been no significant developments in regard to [the topic in question] and the situation remains essentially as explained in paragraphs [x to y] of the initial report”.

7. The report will mainly consist of –

(a) information/explanations about any significant developments since the hearing of the previous report. Our preliminary views as to the areas in which there may have been developments that qualify as “significant” are indicated in the topic headings below. As mentioned in paragraph 2 above, respondents are welcome to propose additional topics which they consider to be qualified. In proposing additional topics, respondents should indicate why they consider the issue to be significant and relevant to the application of the Convention in Hong Kong, and to set out the views on the Government’s performance in handling the issue;

- (b) updates of any developments that were ongoing since the 2005 hearing and in respect of which we undertook to inform the Committee of future progress or outcomes; and
- (c) responses to the concerns and recommendations raised in the Committee's Concluding Observations of the previous report (reproduced at **Annex**).

Part I: General profile of the HKSAR

8. The "general profile" follows a standard format, form and content being prescribed in the UN "Manual on Human Rights Reporting". Part I of the present report will update the information in the corresponding part of our second report under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which is the latest report submitted to the UN on human rights issues.

Part II: Main Report

9. This report will revisit and update topics contained in the previous report, as well as addressing new developments. Reports under the Convention do not follow a "straight line", article-by-article sequence. Rather, they follow a thematic approach – articles are grouped in nine broad headings which are referred to as "clusters" and each cluster deals with articles that the Committee considers contiguous, irrespective of their sequence in the Convention. The clusters follow the sequence prescribed in the "General Guidelines Regarding the Form and Content of Periodic Reports to be Submitted by States Parties" (the Guidelines) issued by the Committee.

I. General measures of implementation (Articles 4, 42 and 44(6))

10. Paragraphs 9 to 11 of the Guidelines require States Parties to

report on measures they have taken in respect of Articles 4 (legislative and administrative measures), 42 (undertaking to make the principles and provisions of the Convention widely known) and 44(6) (reporting). In substance, this cluster of our report will cover –

A. Article 4: Implementation of rights

11. We will provide updated information on the child policy and provide responses to paragraphs 13, 15-17, 19, 21 and 23 of the Concluding Observations. We will also revisit paragraphs 3 to 10 of the previous report.

B. Article 42: Dissemination of the Convention

12. We will advise the Committee on our improvement and effort in disseminating the Convention to parents, children and professional groups working with and for children. We will provide a response to paragraphs 24 and 25 of the Concluding Observations.

C. Article 44(6): Making the report available

13. We will advise the Committee that the position is broadly as explained in paragraphs 17 and 18 of the previous report. In essence, we will continue to seek information from internal and outside sources and the views of Members of the Legislative Council, NGOs and concerned individuals on the state of implementation of the Convention and ensure that the report is widely available for public inspection.

II. Definition of “the child” (Article 1)

14. In this cluster, the Guidelines require States Parties to provide information pursuant to Article 1 of the Convention, which defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”.

15. The age of majority and legal minimum age with respect to the following headings will be discussed –

- Legal and medical counselling
- Compulsory education
- Employment
- Sexual act
- Conclusion of marriage
- Competence to give evidence in court
- Criminal liability
- Deprivation of liberty
 - Imprisonment; and
 - detention
- Consumption and purchase of controlled substances
 - alcohol;
 - tobacco; and
 - other controlled substances
- Access to indecent material
- Entry into controlled premises, such as amusement centres and mahjong parlours

Most of these topics will however be addressed in greater detail in the appropriate clusters of the report. For instance, education will be discussed in the cluster “VII. Education, leisure and cultural activities”.

III. General Principles (Articles 2, 3, 6 and 12)

16. We will inform the Committee of developments regarding measures taken or contemplated in relation to Articles 2 (non-discrimination), 3 (best interests of the child), 6 (right to life, survival and development) and 12 (respect for the views of the child) since September 2005.

A. Article 2: Non-discrimination

17. We will advise the Committee that the protection and guarantees afforded in law are essentially the same as described in paragraphs 34 to 37 and 39 to 51 of the previous report. We will address

the issue raised by the Committee in paragraph 33 of the Concluding Observations. We will update the Committee on the passage of the Race Discrimination Ordinance and the progress on the implementation work. We will also provide the information requested by the Committee in paragraph 34 of the Concluding Observations.

B. Article 3: Best interests of the child

18. We will advise the Committee of any developments since the position reported in paragraphs 53 to 59 and 61 of the previous report, which include –

- Court orders in relation to child protection and protection for child victims of domestic violence
- Representation of children in courts
- Law Reform Commission Review of guardianship and custody
- Welfare services

C. Article 6: The right to life, survival and development

19. We will continue to highlight in the present report that the right to life is guaranteed under Article 6 of the ICCPR, which is entrenched at the constitutional level by virtue of Article 39 of the Basic Law. Article 6 of the ICCPR also has impact on domestic law through Article 2 of the Bills of Rights Ordinance. Matters relating to the survival and development of the child (Article 6(2)) will be dealt with in detail in the cluster “VI. Basic health and welfare”.

D. Article 12: Respect for the views of the child

20. We will update the information pertaining to the right of expression of views by the child, in particular the areas in custody and guardianship; child care placements; and child abuse multi-disciplinary case conference. We will also provide updates on children as bearers of rights.

21. In paragraphs 38, 39 and 41 of the Concluding Observations, while the Committee notes with appreciation the efforts made by Hong Kong to support organisations representing children such as Children's Council Working Committee, it remains concerned that children's views are not sought systematically on all policies and programmes. The Committee recommended that Hong Kong should ensure that children have the right to express their views freely in all matters affecting them and should have those views given due weight in policy-making, administrative proceedings, schools and the home. The Committee also recommended that Hong Kong systematically ensure active participation of children's organisations when developing policies or programmes affecting them, and consider establishing a standing body to represent children's views in the political process.

22. We consider that children's right to express their views is protected under the Basic Law as Article 27 of the Basic Law provides that all Hong Kong residents shall have freedom of speech, of the press and of publication. We will also inform the Committee that non-governmental organisations have various channels to communicate with the Government and children can exchange views with the Government in the Children's Rights Forum. We will provide information on how children's views are given due weight in schools and children's organisations can contribute to development of relevant policies and programmes.

IV. Civil rights and freedoms (Articles 7, 8, 13-17 and 37(a))

23. In this cluster, we will provide information on measures taken or contemplated in regard to Articles 7 (name and nationality), 8 (preservation of identity), 13 (freedom of expression), 14 (freedom of thought, conscience and religion), 15 (freedom of association and of peaceful assembly), and 16 (protection of privacy), 17 (access to appropriate information), which are prescribed in paragraph 25 of the Guidelines.

A. Article 7: Name and nationality, Article 8: Preservation of identity and Article 13: freedom of expression

24. We will inform that Committee that the relevant laws which provide registration of births, protection for the preservation of children identity and freedom of expression, as well as our position in these headings remains as explained in paragraphs 79 to 94 of the previous report.

B. Article 14: Freedom of thought, conscience and religion

25. We will inform the Committee that our position is largely described in the previous report in paragraphs 115 to 116.

C. Article 15: Freedom of association and of peaceful assembly

26. Our status regarding freedom of association and of peaceful assembly for children is essentially explained in paragraphs 117 to 122 of the previous report. The rights are prescribed in the Basic Law, Bills of Rights Ordinance, Public Order Ordinance, Societies Ordinance, and Trade Unions Ordinance.

D. Article 16: Protection of privacy

27. We will update the Committee on the measures to protect children's privacy. These include:

- Article 30 of the Basic Law and Article 14 of the Bill of Rights Ordinance
- Personal Data (Privacy) Ordinance (Cap 486) and the work of the Privacy Commissioner for Personal Data
- Privacy of children confined in facilities
- Maintaining confidentiality in social welfare
- Protection against slander and libel

E. Article 17: Access to appropriate information

28. We will continue to report on the latest efforts made to enable children's access to appropriate information, which includes –

- Television for children
- International cooperation (such as cultural programmes for children by the Leisure and Cultural Services Department etc.)
- Promotion of children's leisure reading
- Library services for children
- Access to the Internet
- Protection of children from injurious materials (such as regulation of radio and television programme, family viewing hours, film censorship and film classification system, and control of obscene and indecent articles, etc.).

29. We will also inform the Committee of the latest requirements for programmes for children under the domestic free television programmes service licenses.

F. Article 37(a): The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

30. We will provide information regarding the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Crimes (Torture) Ordinance, life imprisonment and abolition of the death penalty and prohibition of corporal punishment.

31. We will provide a response to paragraphs 47 and 48 of the Concluding Observations regarding the prohibition of corporal punishment within family by law in Hong Kong.

V. Family environment and alternative care (Articles 5, 9-11, 18(1) and 18(2); 19-21, 25, 27(4) and 39)

A. Article 5: Parental guidance

32. We fully recognize the importance of strengthening the family by formulating social policy and providing welfare services relating to the family that meet people's needs, including children. We will provide up-to-date information regarding family life education, health care and children in care.

B. Article 18(1) and (2): Parental responsibilities

33. We will update the information concerning the family life education, parent education, child care assistance to families and other services related to family care.

C. Article 9: Separation from parents

34. We will inform the Committee of the protection of children's interests in cases of separation necessitated by divorce and separation, the view of all parties concerned being ascertained during investigation, intervention, and in the preparation of reports to the courts, and the representation of children in care and protection cases. We will also update the Committee on the arrangement of child care when their parents are detained in prison.

D. Article 10: Family reunification

35. We will provide a response to paragraph 50 of the Concluding Observations. We will also provide updated information on the services to the newly arrived children, including sponsoring non-governmental organisations to organise activities and programmes at district level to facilitate their integration, and publish handbook on services available.

E. Article 27(4): Recovery of maintenance for the child

36. We will inform the Committee that the measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child are essentially as described in paragraphs 181 to 186 of the previous report. Moreover, we will update the Committee on the implementation of the recommendations regarding the law and administrative measures affecting persons eligible for maintenance.

F. Article 20: Children deprived of a family environment

37. Regarding the measures and facilities for the care of children who are temporarily or permanently deprived of their family environment, we will report to the Committee that the position is broadly as explained in paragraphs 187 to 199 of the previous report, and we will update the number of children receiving the relevant services.

G. Article 21: Adoption

38. We will update the Committee on our position and measures in the light of the Adoption Ordinance (Cap 290). In particular, we will provide an update on the review of the Adoption Ordinance, as mentioned in paragraph 206 of the previous report. We will also provide a response to paragraph 53 of the Concluding Observations concerning the implementation of the Hague Convention on the Protection of Children and Co-operation.

H. Article 11: Illicit transfer and on-return

39. We will report to the Committee that the position is broadly covered in paragraph 213 of the previous report, viz. the Hague Convention on the Civil Aspects of International Child Abduction has been extended to Hong Kong and this Convention has force in domestic law via the Child Abduction and Custody Ordinance (Cap 512).

I. Article 19: Abuse and neglect

40. In response to paragraphs 55, 56 and 58 of the Concluding Observations, we will provide the Committee with details on the measures and facilities which protect children from all forms of abuse, train child-related professionals, and assist child victims and their families. We will update the statistics on child abuse. We will also update the previous report where necessary, which will include –

- education measures: educating the children, parent education, public education and staff training
- legislative measures: the Protection of children and Juveniles Ordinance (Cap 213), the Child Care Services Ordinance (Cap 243), the Domestic Violence Ordinance (Cap 189), the Offences Against the Person Ordinance (Cap 212), the Criminal Procedures Ordinance (Cap 221), the Crimes Ordinance (Cap 200) and the Evidence Ordinance (Cap 8)
- Administrative measures: Family and Child Protective Services Unit, procedures for handling cases of child abuse, criminal investigation of child abuse, resources for dealing with child abuse, and the pilot project on child fatality review.

J. Article 39: Physical and psychological recovery and social reintegration of child abuse victims

41. We will revisit paragraphs 232 to 237 of the previous report, and provide updates, in particular the rehabilitative treatment and social integration of child victims. Details of the recovery and reintegration of victims of sexual abuse will be discussed in the cluster “VIII. Special protection measures”.

K. Article 25: Periodic review of placement

42. The conditions and welfare planning of children in care are closely monitored through case conferences and reviews. The position is essentially described in paragraphs 239 and 240 of the previous report.

VI. Basic health and welfare (Articles 6(2), 18(3), 23, 24, 26, 27(1)-(3))

43. In this cluster, we will update the Committee on the measures, institutional infrastructure, factors and difficulties encountered and progress achieved in implementing Articles 6(2) (survival and development), 23 (children with disabilities), 24 (health and health services), 26 and 18(3) (social security and childcare services and facilities), and 27(1) to (3) (standard of living).

A. Article 6(2): Survival and Development

44. We will provide updated figures on the infant mortality rate and maternal mortality rate. The maternity benefits and protection are generally described in paragraphs 244 and 245 of the previous report.

45. As regards breastfeeding, the Committee recommended in paragraph 63 of the Concluding Observations that the State party should promote breastfeeding through the promotion of Baby Friendly Hospitals in Hong Kong. In this respect, we will brief the Committee on the latest statistics on breastfeeding and measures to encourage breastfeeding in the community.

B. Article 23: Children with disabilities

46. We will inform the Committee that the services for the children with disabilities, including prevention, identification, assessment, medical services, education, vocational rehabilitation and employment, transport, access to buildings, welfare, cultural and recreational activities, are generally described in the previous report. We will provide updates on any strengthened or new services, as well as public education and international cooperation in this regard.

C. Article 24: Health and health services

47. We will update the Committee on health care services and medical assistance to children, including immunization programmes, vaccination programmes and preventive health programmes, etc. Information on combating communicable diseases and malnutrition will also be updated.

48. Regarding the mental health of children, the Committee in paragraphs 66 and 67 of the Concluding Observations appreciated the measures taken by Hong Kong to address the high number of youth suicide and recommended that Hong Kong should continue to strengthen its efforts in this regard. We will report updated information to the Committee.

49. We will inform the Committee that the prevention of child accidents is essentially described in paragraphs 276 to 279 of the previous report. We will update the information regarding the measures to ensure the road safety of children, including legislation on the design of seats for student service vehicles, as well as education and publicity initiatives.

50. In paragraphs 64 and 65 of the Concluding Observations, the Committee was concerned about the high incidence of teenage pregnancies and abortions in Hong Kong. The Committee recommended that Hong Kong should pay close attention to adolescent health and provision of appropriate adolescent health services and strengthen its efforts to promote adolescent health, including sexual and reproductive health education in schools, and to introduce school health services, including youth-sensitive and confidential counselling and care. We will report to the Committee on the range of promotion and preventive services to promote the physical and psychosocial health of school children, as well as arrangement of sex education. We will also revisit paragraphs 283 to 287 of the previous report on education and information on AIDS as required in paragraph 32 of the Guidelines.

**D. Article 18(3): Childcare services for working parents and
Article 26: The child's right to social security benefit**

51. The relevant measures on childcare services for working parents will be covered under part B of the cluster "V. Family environment and alternative care". Paragraphs 307 to 314 of the previous report have essentially covered our social security policy to the disadvantaged people in Hong Kong, including children. We will provide updated information and statistics regarding the various programmes and schemes to the Committee.

E. Article 27(1)-(3): Standard of living

52. We will update the Committee on the average standard of living of Hong Kong by the following three indicators, namely per capita GDP, median monthly household income and median monthly employment earnings. We will also update the Committee on the economic conditions of Hong Kong to provide the Committee with a general picture of different aspects of life of Hong Kong children.

53. In paragraphs 72 and 74 of the Concluding Observations, the Committee raised concerns about the existence of child poverty among vulnerable population such as unemployed, immigrants and single parent families, and at the lack of an established poverty line which hinders the formulation of appropriate policies to combat poverty. The Committee thus recommended that the HKSAR should establish a poverty line and develop appropriate policies to combat child poverty.

54. In response, we will advise the Committee of deliberations of the Government on the proposal of establishing an official poverty line. We will also inform the Committee on the measures to fight against child poverty and address the problem of widening income disparities.

VII. Education, leisure and cultural activities (Articles 28, 29 and 31)

55. In this cluster, up-to-date information about the measures to implement Articles 28 (education, including vocational training and guidance), 29 (aims of education) and 31 (rest, leisure, recreation and cultural and artistic activities) will be provided to the Committee. We will also include information about cooperation with non-governmental organisations concerning the implementation of this area of the Convention.

A. Article 28: Right to education

56. Paragraph 333 of the previous report has essentially covered the right to education as stipulated in the Basic Law. Education remains the largest spending area of the HKSAR Government. We will advise the Committee on our latest statistics on the Government's expenditure on education.

57. We will also provide the updated information on pre-primary, primary, secondary, post-secondary education including vocational training, education facilities for children with special needs including disabled and gifted children, counselling and guidance services. In particular, we will include information on the New Academic Structure for Senior Secondary Education and Higher Education – “334”, the 12-year free education, small-class teaching.

58. Furthermore, we will include information regarding education for newly arrived children from the Mainland and for children from non-Chinese speaking ethnic minorities, as well as information regarding regional/international cooperation, such as teachers' associations as required in paragraph 36 of the Guidelines.

59. We will also provide a response to the comments of the Committee in paragraphs 76 and 78 of the Concluding Observations which concern the drop out rates in secondary schools, the competitive nature of the school system and bullying in schools.

B. Article 29: Aims of education

60. As described in paragraph 365 of the previous report, the education policy in Hong Kong is to enable everyone to attain all-round development in the domains of ethics, intellect, physique, social skills and aesthetics according to their own attributes. We will report the updated position of various curriculum and measures on enhancing the development of child's personality, talents and mental and physical abilities, the development of respect for human rights and fundamental freedoms, the development of respect for child's parents, cultural identity and national values and natural environment, as well as preparing the child for responsible life in a free society. In this regard, we will revisit paragraphs 366 to 383 of the previous report and will include relevant parts of the new senior secondary curriculum.

C. Article 31: Rest, leisure, recreation and cultural and artistic activities

61. We will report to the Committee that the facilities, measures and programmes are broadly elucidated in paragraphs 384 to 396 of the previous report. We will provide updated data where necessary.

VIII. Special protection measures (Articles 22, 30, 32-36, 37(b)-(d), 38, 39 and 40)

62. Paragraph 38 of the Guidelines requires States Parties to report relevant information on Articles 22 (refugee children), 38 (children in armed conflicts, including physical and psychological recovery and social reintegration (Article 39)), 40 (administration of juvenile justice), 37(b) to (d) (children deprived of their liberty), 37(a) (sentencing of juveniles), 39 (physical and psychological recovery and social reintegration), 32 (economic exploitation), 33 (drug abuse), 34 (sexual exploitation and sexual abuse), 36 (other forms of exploitation), 35 (sale, trafficking and abduction), and 30 (children belonging to minority or indigenous group). In this regard, this cluster of the report will cover –

(a) Children in situations of emergency (Articles 22, 38 and 39)

A. Article 22: Refugee and illegal immigrant children

63. As mentioned in the previous report, all refugee camps in Hong Kong have been closed. We will update the Committee on the position of children refugees/illegal immigrants from Vietnam. We will also provide the Committee with information on the services provided to the refugee and illegal immigrant children from other countries.

64. In paragraphs 81 and 82 of the Concluding Observations, the Committee commented that the refugee children and undocumented migrant children are not guaranteed access to education. We will provide a response in this regard.

B. Article 38: Children in armed conflicts and Article 39: Physical and psychological recovery and social reintegration of such children

65. As mentioned in paragraph 405 of the previous report, we will continue to inform the Committee that Hong Kong has not been involved in armed conflicts for a long time and the question of children being involved in such a conflict does not arise.

(b) Children in conflict with the law (Articles 37(a)-(d), 39 and 40)

C. Article 40: The administration of juvenile justice

66. We will inform the Committee that the administrative arrangement of juvenile justice is essentially covered in paragraphs 406 to 416 of the previous report, which include presumption of innocence, prompt and direct information of charges, no compulsion to give testimony or confess guilt, legal representation or legal aid, free assistance of interpreters, respect for privacy at all stages of proceedings, and alternatives to judicial proceedings and to institutional care.

67. We will respond to paragraphs 90 and 94 of the Concluding Observations in regard to the minimum age of criminal responsibility. Besides, the Committee recommended that Hong Kong should ensure that all children under the age of 18 are consistently accorded special protection when coming into conflict with the law, and that their cases are heard in specialised juvenile courts by appropriately trained magistrates. We will update the Committee of our latest position.

68. We will also provide a response to paragraph 92 of the Concluding Observations in regard to the implementation of and training on juvenile justice standards.

D. Article 37 (b)-(d): Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings

69. In response to paragraph 94(d) of the Concluding Observations, we will advise the Committee that under section 109A of the Criminal Procedure Ordinance (Cap 221), no court shall sentence a person of or over 16 and under 21 of age to imprisonment unless the court is of opinion that no other method of dealing with such person is appropriate, except for an excepted offence. Furthermore, as mentioned in paragraph 437 of the previous report, section 11(1) of the Juvenile Offenders Ordinance (Chapter 226) provides that no child under the age of 14 may be sentenced to imprisonment or committed to prison in default of payment of a fine, damages or costs; and section 4(1) of the Community Service Orders Ordinance (Cap 378) provides that persons aged 14 or over may be required to perform unpaid work for up to 240 hours. These are in line with the Committee's recommendation that the deprivation of liberty is always used as a last resort, and strengthen and expand possibilities for alternative sentencing, such as mediation, probation, community service or suspended sentences.

70. Various measures to ensure that children deprived of liberty are treated with humanity and respect for the inherent dignity of the human person, are separated from adults, have the right to receive family

visits, have the right to promote access to legal and other appropriate assistance and to challenge the legality of detention are broadly as explained in 417 to 433 of the previous report. We will provide the Committee with updated information in this regard.

E. Article 37(a): The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment

71. Paragraphs 434 to 436 of the previous report have essentially described the arrangement of life imprisonment and capital punishment, as well as facilities for young offenders including facilities run by the Social Welfare Department and institutions operated by the Correctional Services Department. We will report updated information to the Committee.

F. Article 39: Physical and psychological recovery and social reintegration

72. We will report to the Committee that the position regarding the rehabilitation of juvenile offenders is generally explained in paragraph 438 of the previous report. We will also provide updated information on the implementation of the Rehabilitation Centres Ordinance (Cap 567).

(c) Children in situations of exploitation, including physical and psychological recovery and social reintegration (Articles 32-36 and 39)

G. Article 32: Economic exploitation, including child labour

73. We will advise the Committee on the latest developments of the issues set out in paragraphs 440 to 449 of the previous report.

H. Article 33: Drug Abuse

74. We will update the Committee on the statistics of drug abuse among children, reasons for drug abuse and the pattern of drug abuse, and our programmes to tackle the drug abuse problem among children based

on the five-pronged approach, i.e. legislation and law enforcement, preventive education and publicity, treatment and rehabilitation, research and external cooperation. Furthermore, we will provide information about the strategies and initiatives recommended by the Task Force on Youth Drug Abuse led by the Secretary for Justice in its report published in November 2008.

I. Article 34: Sexual exploitation and sexual abuse and Article 35: Sale, trafficking and abduction

75. We will revisit paragraphs 471 to 480 of the previous report regarding sexual exploitation, sexual abuse, sale, trafficking and abduction of children and update the relevant figures. In regards the recommendations of the Committee raised in paragraphs 88 and 96 of the Concluding Observations, we will provide our response and updated position.

J. Article 39: Physical and psychological recovery and social reintegration

76. The measures to promote physical and psychological recovery and social reintegration of juvenile offenders will be included under part F of the cluster “VIII. Special protection measures” while those measures for child victims of any form of neglect, abuse and exploitation will be covered in the cluster “V. Family environment and alternative care”.

(d) Children belonging to minority or indigenous group (Article 30) and children living or working on the street

77. We will inform the Committee that the position of the right to religious freedom is essentially explained in paragraphs 115, 116 and 481 of the previous report. As requested under paragraph 38 of the Guidelines, we will also provide information, where available, on children living or working on the street.

IX. Reservations and declarations

78. We will update the Committee that the reservation to Article 22 has been withdrawn. We will update the Committee on our latest position on the reservations with respect to Articles 32 and 37(c) to address the concerns of the Committee raised in paragraphs 8 and 9 of the Concluding Observations.

**Constitutional and Mainland Affairs Bureau
April 2009**

**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

Fortieth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION****Concluding observations: China (including Hong Kong and Macau
Special Administrative Regions)**

1. The Committee considered the second periodic of China (CRC/C/83/Add.9, Parts I and II), submitted on 27 June 2003, at its 1062nd to 1065th meetings (see CRC/C/SR.1062-1065), held on 19 and 20 September 2005, and adopted, at the 1080th meeting (CRC/C/SR.1080), held on 30 September 2005, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's comprehensive and informative periodic report which consisted of three parts covering the mainland and Hong Kong and Macau Special Administrative Regions (SARs), as well as the detailed written replies to its list of issues (CRC/C/Q/CHN/2 and Parts I and II), which gave a clearer understanding of the situation of children in the State party. It further notes with appreciation the large high-level, multisectoral delegation from the mainland, Hong Kong and Macau Special Administrative Regions.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee notes with appreciation the impressive achievements made in reducing poverty, which enabled it to attain some of the key Millennium Development Goals ahead of schedule.

4. The Committee welcomes the ratification of the International Covenant on Economic, Social and Cultural Rights in 2001.

5. The Committee welcomes the State party's ratification of the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (No. 33) on 16 September 2005.

C. Principal subjects of concern and recommendations

1. General measures of implementation

Committee's previous recommendations

6. The Committee notes with appreciation that various concerns and recommendations (see CRC/C/15/Add.56 and CRC/C/15/Add.63 with respect to Hong Kong) made upon the consideration of the State party's initial reports (CRC/C/11/Add.7 and CRC/C/11/Add.9 with regard to Hong Kong as a Dependent Territory of the United Kingdom) have been addressed through legislative measures and policies. However, some of the concerns it expressed and the recommendations made have not been sufficiently addressed. For instance:

(a) With respect to the mainland, the Committee is concerned that there has been limited progress related to recommendations concerning the establishment of a national human rights institution (CRC/C/15/Add.56, para. 26) and non-discrimination (*ibid.*, paras. 34 and 35);

(b) With respect to the Hong Kong SAR, the Committee takes note of the State party's explanation that the Committee's previous recommendations on coordination and assessment (CRC/C/15/Add.63, para. 20) were not considered practical. Nevertheless, the Committee remains of the opinion that national legislation and policy must take a holistic and comprehensive approach to the implementation of the Convention, which requires that priority be given to children's issues, that such policy be actively coordinated and that assessments be made regarding the potential impact of policy decisions on children.

7. The Committee urges the State party to make every effort to address the recommendations contained in the concluding observations on the initial reports that have not yet been implemented, and to address the list of concerns contained in the present concluding observations on the second periodic report.

Reservations and declarations

8. The Committee welcomes the withdrawal of the State party's reservation to article 22 as applied to the Hong Kong SAR. However, it regrets the fact that reservations remain with regard to article 6 and are applied to the entire State party, and that for the Hong Kong and Macau SARs reservations with respect to articles 32 and 37 (c) remain in force.

9. The Committee recommends that the State party review and withdraw all reservations to the Convention for all areas under its jurisdiction.

Legislation

10. While welcoming the significant progress made with respect to legislative reform in mainland China, the Committee is concerned that not all laws applicable to children fully conform to the Convention.

11. **The Committee recommends that with respect to the mainland, the State party continue to review legislation to ensure that it conforms fully with the principles and provisions of the Convention, as highlighted in paragraphs 33, 40, 45, 48, 53, 82, 93 and 94 of the present concluding observations, and paragraphs 11 and 13 of the Committee's concluding observations on the initial report under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (CRC/OPSA/CO/2).**

Coordination and National Plan of Action

12. The Committee notes with appreciation the elaboration of a second National Plan of Action, the National Children's Development Programme (2001-2010), for the mainland, and also takes note of the growing number of committees and working groups at the State, regional and provincial levels to monitor and implement child rights. However, it is concerned that coordination is fragmented and that the Programme is not implemented uniformly across all regions and localities on the mainland and that coordination of implementation at local and regional levels is sometimes insufficient.

13. As noted above in paragraph 6 (b), the Committee is concerned at the lack of a comprehensive plan of action for the implementation of the Convention in the Hong Kong SAR and that the coordination of existing programmes and policies is rather sectoral and fragmented. The Committee notes the information provided by the delegates from the Macau SAR that a comprehensive plan of action is under discussion.

14. **The Committee recommends that on the mainland, the State party further strengthen coordination between the bodies and institutions working on the implementation of the National Children's Development Programme (2001-2010) at all levels in order to ensure uniform implementation in all regions and provinces.**

15. **The Committee reiterates its previous recommendation that in the Hong Kong SAR, the State party should improve coordination of its activities on the implementation of the Convention by developing and implementing a plan of action for the Hong Kong SAR. The Committee recommends that in the Macau SAR, the State party expedite its discussions in this regard and elaborate and implement a comprehensive plan of action for the Macau SAR.**

Independent monitoring

16. The Committee notes the information that various ministries on the mainland may receive complaints from the public, but it is concerned at the lack of an independent national human rights institution with a clear mandate to monitor the implementation of the Convention. It similarly 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.

17. **The Committee recommends that the State party establish, on the mainland and the Hong Kong and Macau SARs, national human rights institutions with a clear mandate to monitor children's rights and implement the Convention at national, regional and local levels in accordance with the Principles relating to the status of national institutions**

for the promotion and protection of human rights (the Paris Principles) annexed to General Assembly resolution 48/134 of 20 December 1993. Drawing the State party's attention to the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions, the Committee notes that such institutions should have a mandate to receive, investigate and address complaints from the public, including individual children, and be provided with adequate financial, human and material resources. In the case of the Hong Kong SAR, such an institution could be a specialized branch of the existing Ombudsman's Office.

Allocation of resources

18. The Committee commends the State party for the significant increases in budgetary resources allocated, on the mainland, to compulsory education, maternal and child health care, social relief and to anti-trafficking programmes in recent years, but remains concerned that some crucial areas, such as education, continue to be underfunded. While it notes the significant resources allocated to the development of poorer regions, it remains concerned that those resources do not adequately target the most vulnerable groups.

19. The Committee is concerned that in the Hong Kong SAR insufficient resources are allocated to reduce poverty and that income disparities are increasing within the population. It is concerned that social welfare schemes, which were reduced as a result of the economic hardship of the 1997 Asian financial crisis, have not been readjusted as the economy has regained its momentum.

20. The Committee recommends that on the mainland, the State party ensure that its budgetary allocations to key areas for children, in particular health and education, keep pace with increases in government revenue. It further recommends that the State party develop an adequate monitoring system to ensure that budgetary allocations effectively reach the most vulnerable groups and reduce regional disparities, in particular between rural and urban areas and eastern and western provinces.

21. The Committee recommends that in the Hong Kong SAR, budgetary allocations be targeted towards reducing income disparities, including through increased funding for social safety nets. It also recommends that an adequate monitoring system be established to ensure that budgetary allocations benefit the most vulnerable populations.

Data collection

22. The Committee welcomes the State party's efforts to improve its collection of statistical data in all parts of the State party, and notes with appreciation the information provided by the delegation that a new mechanism for the collection of disaggregated data will soon be established on the mainland. However, the Committee remains concerned about the limited public accessibility to reliable and comprehensive statistical data on the mainland on all areas covered by the Convention.

23. The Committee recommends that the State party further strengthen its efforts to collect reliable and comprehensive statistical data on all areas covered by the Convention and ensure that such data are systematically made available to the public in a timely

manner in all parts of the State party. It further recommends that the State party explore the possibility of developing central databanks for statistics on children for the mainland and the SARs, so as to ensure that statistical data are used for the development, implementation and monitoring of appropriate policies and programmes for children.

Dissemination of the Convention

24. The Committee notes that the Convention has been translated into the main minority languages used in the State party. However, it is concerned that professionals working with and for children, as well as children and parents themselves, have limited awareness and understanding of the Convention in the Hong Kong SAR and on the mainland.

25. The Committee recommends that the State party, in all areas under its jurisdiction:

(a) Further strengthen its efforts to disseminate the Convention in all languages, and also through the use of child-friendly materials and school curricula;

(b) Expand its programmes to sensitize parents and children about the Convention; and

(c) Increase its efforts to provide adequate and systematic training on children's rights for professional groups working with and for children.

Cooperation with civil society

26. The Committee notes the information that non-governmental organizations are becoming increasingly active in mainland China, but it is concerned that the space in which they may operate and the scope of their activities remain very limited.

27. The Committee recommends that in mainland China, the State party facilitate and encourage the independence and expansion of activities by non-governmental organizations, in particular those working for the promotion and protection of child rights, inter alia by ensuring their free and active involvement in the implementation of the Convention, including in the preparation of reports and the implementation of the Committee's concluding observations and recommendations.

2. General principles

Right to life

28. The Committee notes with satisfaction the legal measures enacted to prohibit selective abortions and infanticide in mainland China. Nevertheless it remains concerned that selective abortions and infanticide as well as the abandonment of children, in particular girls and children with disabilities, continue as negative consequences of existing family planning policies and societal attitudes.

29. The Committee urges the State party to continue and strengthen its efforts to guarantee the right to life, survival and development of all children in its territory. It recommends that the State party strengthen its implementation of existing laws against

selective abortions and infanticide and take all necessary measures to eliminate any negative consequences arising from family planning policies, including abandonment and non-registration of children and unbalanced sex ratios at birth.

Non-discrimination

30. While noting efforts by the State party to address the Committee's previous concerns related to discrimination, it remains concerned about discrimination against certain groups on the mainland, such as girls; children infected with or affected by HIV/AIDS; children with disabilities; ethnic and religious minorities, such as Tibetan, Uighur and Hui children; and internal migrant children.

31. The Committee is concerned about the persistence of discrimination against refugee, asylum-seeking and undocumented migrant children in the Hong Kong SAR, and the lack of legislation specifically prohibiting discrimination on the basis of race or sexual orientation. The Committee regrets the lack of available information on the practical implementation of article 2 of the Convention in the Macau SAR.

32. **The Committee recommends that on the mainland the State party strengthen efforts to eliminate discrimination against girls; children infected with or affected by HIV/AIDS; children with disabilities; Tibetan, Uighur and Hui children and children belonging to other ethnic and religious minorities; internal migrant children and other vulnerable groups by:**

(a) **Ensuring that these children have equal access to basic services, including health, education and other social services, and that services used by these children are allocated sufficient financial and human resources;**

(b) **Enhancing monitoring of programmes and services implemented by local authorities with a view to identifying and eliminating disparities.**

33. **The Committee recommends that in the Hong Kong SAR the State party expedite its efforts to draft and adopt legislation prohibiting discrimination on the basis of race or sexual orientation. The Committee requests that in its next periodic report specific information be included on the practical implementation of article 2 in the Macau SAR.**

34. **The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and taking account of Committee's general comment No. 1 (2001) on the aims of education.**

Best interests of the child

35. The Committee is concerned about the limited information provided by the State party for all areas under its jurisdiction on how the principle of the best interests of the child is used as a primary consideration in all actions concerning children.

36. **The Committee urges the State party to include in its next periodic report more detailed information on the implementation of article 3 and on how it ensures that the best interests of the child is a primary consideration in all actions concerning children.**

Respect for the views of the child

37. The Committee notes with concern that in mainland China children are not able to file complaints in court or be consulted directly by the courts without parental consent, except in the case of children 16 years or older who earn their own livelihood. It regrets the limited amount of information provided on the representation of students in schools and how their views are taken into account.

38. The Committee notes with appreciation the efforts made by the State party in the Hong Kong SAR to support organizations representing children, such as the Children's Council Working Committee. However, it remains concerned that children's views are not sought systematically on all policies and programmes affecting them. The Committee regrets the lack of information on how the views of the child are taken into account in all settings in the Macau SAR.

39. **In the light of article 12 of the Convention, the Committee recommends that the State party strengthen its efforts on the mainland and in the Hong Kong and Macau SARs to ensure that children have the right to express their views freely on all matters affecting them and to have those views given due weight in policy-making, administrative proceedings, schools and the home. It encourages the State party to provide more detailed information on this issue, with respect to all areas under its jurisdiction, in the next periodic report.**

40. Furthermore, the Committee recommends that on the mainland the State party review legislation affecting children with a view to ensuring that they are given the opportunity to be heard in any judicial and administrative proceeding affecting them, and that due weight is given to their views in accordance with the age and maturity of the child.

41. **The Committee recommends that in the Hong Kong SAR, the State party systematically ensure that children's organizations participate actively in developing policies or programmes affecting them, such as the current education reform. It further encourages the State party to consider establishing a standing body to represent children's views in the political process.**

3. Civil rights and freedoms

Birth registration

42. The Committee notes with appreciation the significant efforts made by the State party to address the Committee's previous concerns regarding the non-registration of children at birth. However, it continues to be concerned that, in part because of existing family planning policies, all children are not systematically registered immediately after birth in mainland China, and that this disproportionately affects girls, children with disabilities and children born in some rural areas.

43. **The Committee recommends that the State party continue to strengthen its efforts to ensure that all children, in particular girls and children with disabilities, are registered immediately after birth and to provide flexible measures to allow older children who have not been registered to do so throughout mainland China, with a particular emphasis on rural areas. It further suggests that the State party consider revising the Hukou system of registration in order to reinforce such initiatives.**

Freedom of religion

44. While noting the adoption of the Regional Ethnic Autonomy Act in 2001, which guarantees freedom of religion for ethnic minorities in mainland China, the Committee is concerned about reports that children, in particular Tibetan Buddhist, Uighur and Hui children, have been restricted in studying and practising their religion, and some cases have been detained for participating in religious activities. It is also concerned at reports that children of families practising their religion, notably the Falun Gong, are subject to harassment, threats and other negative actions, including re-education through labour. The Committee notes the information provided about the Gedhun Choekyi Nyima, but remains concerned that it has not yet been possible to have this information confirmed by an independent expert.

45. **The Committee recommends that the State party take all necessary measures to ensure the full implementation of the Regional Ethnic Autonomy Act. In particular, the Committee recommends that the State party:**

(a) **Enact legislation explicitly guaranteeing freedom of religion for those under 18 that is not tied to a limited number of recognized faiths, and which respects the rights and duties of parents to give guidance to their children in the exercise of their rights in this regard in a manner consistent with the evolving capacities of the child;**

(b) **Repeal any ban instituted by local authorities on children of any age from participating in Tibetan religious festivals or receiving religious education;**

(c) **Repeal any ban instituted by local authorities on children of any age from attending mosques or receiving religious education throughout the mainland;**

(d) **Take all necessary measures to ensure that children may choose whether to participate in classes on religion or atheism;**

(e) **Allow an independent expert to visit and confirm the well-being of Gedhun Choekyi Nyima while respecting his right to privacy, and that of his parents.**

Corporal punishment

46. The Committee is concerned that in mainland China the existing regulations banning corporal punishment in schools are unevenly implemented. It is also concerned that corporal punishment in the home is not banned and continues to be socially acceptable.

47. The Committee is concerned that corporal punishment within the family is not prohibited by law and continues to be practised in the home in the Hong Kong and Macau SARs.

48. The Committee urges the State party, in all areas under its jurisdiction:

(a) To explicitly prohibit by law corporal punishment in the family, schools, institutions and all other settings, including penal institutions;

(b) To expand public education and awareness-raising campaigns, with the involvement of children, on alternative non-violent forms of discipline in order to change public attitudes about corporal punishment.

4. Family environment and alternative care

Children deprived of family environment

49. The Committee welcomes efforts made by the State party, in particular the adoption of the Standards for Social Welfare Institutions for Children in 2001, for the mainland. However, it remains concerned at the significant number of children abandoned on the mainland and the large number of children living in institutions. It regrets the lack of precise statistical data on the number of children entering and leaving such institutions.

50. The Committee is deeply concerned that existing quotas for persons entering the Hong Kong and Macau SARs from the mainland and regulations regarding the right of abode in the SARs contribute to the separation of children from their parents and hinder family reunification.

51. The Committee recommends that in mainland China, the State party:

(a) Continue its efforts to improve alternative care for children deprived of a family by replicating and expanding successful models such as foster care and domestic adoption throughout the mainland;

(b) Develop effective strategies to prevent the abandonment of children, which include early identification of families and children at risk and the possibility for social workers to intervene and help families directly;

(c) Ensure that children, if transferred to an institution, are integrated into small groups and individually cared for in a family-like environment;

(d) Ensure that all forms of alternative care meet quality standards in conformity with the Convention by establishing an effective monitoring mechanism which includes a periodic review of each placement in accordance with article 25 and a complaints mechanism accessible to children, and by ensuring that all institutions, programmes and services have properly trained and accredited staff;

(e) Ensure that all deaths of children in alternative care are properly documented and investigated, and that appropriate follow-up actions are taken when necessary.

Adoption

52. As noted in paragraph 5 above, the Committee notes with appreciation the ratification of the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (No. 33). However, the Committee regrets the inadequate information available on the number of international adoptions and the number of agencies facilitating such adoptions on the mainland. It is further concerned about the lack of explicit guarantees that children without birth certificates maintain their right to an identity throughout the adoption process.

53. **The Committee recommends that the State party:**

(a) Extend the application of the 1993 Hague Convention to the Hong Kong and Macau SARs as soon as possible;

(b) Ensure that the legal provisions of the 1993 Hague Convention are incorporated into domestic legislation on the mainland and in the Hong Kong and Macau SARs;

(c) Further strengthen the monitoring of agencies facilitating international adoptions, in particular with regard to possible trafficking of children and the use of fees and donations paid by adopting parents;

(d) Enact legislative and administrative measures to ensure that all children without birth certificates are guaranteed their right to an identity throughout the adoption process;

(e) Inform government officials and other professionals working with children without parental care that adoptions, in particular international adoptions, are an exceptional alternative care option and that the principles of non-discrimination and the best interests of the child must be taken into account when making such decisions.

Abuse and neglect, maltreatment, violence

54. The Committee is concerned about the limited information available with regard to abuse, neglect and maltreatment of children in mainland China as well as the limited number of programmes available to combat violence and provide assistance to victims.

55. While noting efforts made to increase the number of social workers in the Hong Kong SAR, the Committee is concerned that policies and programmes to assist child victims of violence are not fully effective.

56. **The Committee recommends that efforts to combat abuse, neglect, violence and maltreatment be strengthened in all parts of the State party, including through mandatory reporting requirements for staff working with children, such as doctors, teachers and social workers, and the establishment of specific helplines accessible and available to children.**

57. With respect to the mainland, the Committee recommends that the State party conduct further research into different forms of violence against children in the home, schools and institutions and use the findings:

- (a) To strengthen existing legislation on protection of children from all forms of violence;
- (b) To develop strategies and interventions to prevent and combat violence, including through school-based education programmes aimed at raising awareness and skills among children to address different forms of violence;
- (c) To develop programmes to ensure that all child victims of violence receive appropriate assistance relating to care and recovery.

58. With respect to the Hong Kong SAR, the Committee recommends that the State party:

- (a) Define in a more explicit manner the forms of sexual abuse and increase education and training for professionals working with and for children on the identification, handling and prevention of all forms of abuse;
- (b) Strengthen coordination and follow-up of individual cases of abuse, neglect and maltreatment and ensure that all victims of any form of abuse, and their families, have access to social services and assistance;
- (c) Ensure that investigations are handled without discrimination on the basis of whether the alleged perpetrators are within or outside the family.

59. In the context of the Secretary-General's in-depth study on the question of violence against children and the related questionnaire to Governments, the Committee acknowledges with appreciation the written replies of the State party and the participation of representatives from mainland China and the Hong Kong SAR in the Regional Consultation for East Asia and the Pacific held in Thailand from 14 to 16 June 2005. It further appreciates the organization of national-level consultations in Beijing on 16 and 17 May 2005. The Committee recommends that the State party use the outcome of this regional consultation as a tool for taking action, in partnership with civil society, to ensure that every child is protected from all forms of physical, sexual or mental violence, and for generating momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse.

5. Basic health and welfare

Children with disabilities

60. With respect to mainland China, the Committee is concerned about:

- (a) The lack of specific disaggregated data on children with disabilities;

- (b) The narrow definition of disability;
- (c) The significant discrepancy in the number of children with disabilities in urban and rural areas;
- (d) The exception made to the one-child policy whereby families who have a child with disabilities are allowed to have a second child, which promotes de facto discrimination against children with disabilities.

61. **The Committee recommends that the State party take into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee on its day of general discussion on the rights of children with disabilities (see CRC/C/69) to ensure the implementation of all the principles and provisions of the Convention for children with disabilities within its jurisdiction. It further recommends that in mainland China, the State party:**

- (a) **Strengthen its system of data collection to ensure the availability of precise data on children with disabilities, disaggregated by sex, age, rural or urban area, living arrangements and type of disability;**
- (b) **Establish a definition that adheres to internationally accepted standards;**
- (c) **Take all necessary measures to eliminate de facto discrimination against children with disabilities, in particular the abandonment of such children.**

Health and health services

62. While noting the marked improvement in health-care indicators, the Committee reiterates its previous concern with regard to existing disparities on the mainland between rural and urban areas, eastern and western provinces, and Han and ethnic minorities relating to infant and child mortality, nutrition, and other child health indicators. It is also concerned at the persistence of malnutrition as well as the emergence of child obesity and inadequate breastfeeding policies throughout the State party.

63. **The Committee recommends that the State party take all necessary measures to provide universal access to maternal and child health services for all children in its jurisdiction, including non-registered children. It further urges the State party to develop policies and programmes to adequately address the problems of malnutrition and obesity in children and to promote breastfeeding through strengthening the implementation of the International Code of Marketing of Breastmilk Substitutes in all parts of the State party, including the China Code for Marketing of Breast Milk Substitutes, and through the promotion of baby friendly hospitals in the Hong Kong SAR.**

Adolescent health

64. The Committee is concerned at the lack of information on adolescent health services available in mainland China and the Macau SAR, as well as the high incidence of teenage pregnancies and abortions in the Hong Kong SAR.

65. The Committee recommends that in all areas under its jurisdiction, the State party pay close attention to adolescent health and the provision of appropriate adolescent health services, taking into account its general comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, and strengthen its efforts to promote adolescent health, including by providing sexual and reproductive health education in schools, and to introduce school health services, including youth-sensitive and confidential counselling and care.

Mental health

66. The Committee appreciates the measures taken by the State party in the Hong Kong SAR to address the high number of suicides among the youth. It remains concerned about the lack of data and information on mental health services available for children on the mainland and the Macau SAR, and on tobacco, alcohol and drug abuse.

67. The Committee recommends that in all areas under its jurisdiction, the State party expand preventive and therapeutic mental health services for adolescents and develop programmes to decrease tobacco smoking, alcohol consumption and drug abuse among adolescents, in particular through the development of campaigns specifically designed for adolescents on health-behavioural choices and life skills. It further recommends that in the Hong Kong SAR, the State party continue to strengthen its efforts to prevent suicide among the youth.

HIV/AIDS

68. The Committee welcomes the development of policies and programmes for children infected with and affected by HIV/AIDS in mainland China. Yet, the Committee is concerned that the implementation of these policies and programmes is insufficient.

69. The Committee recommends that the State party strengthen its implementation of policies and programmes for children infected with and affected by HIV/AIDS on the mainland by:

- (a) Increasing the financial resources allocated to these programmes;
- (b) Strengthening cooperation with local authorities to ensure that they are adequately trained and equipped to implement programmes and policies in conformity with the best interest principle of the Convention (art. 3);
- (c) Strengthening public information campaigns to raise awareness about the disease and eliminate discrimination against children with HIV/AIDS, as mentioned in paragraph 32 of these concluding observations.

70. In the light of the Committee's general comment No. 3 (2003) on HIV/AIDS and the rights of the child and the International Guidelines on HIV/AIDS and Human Rights, the Committee recommends that the State party strengthen its efforts to prevent the spread of HIV/AIDS both on the mainland and in the SARs and continue to raise awareness about HIV/AIDS among adolescents, particularly among those belonging to vulnerable groups.

Standard of living

71. The Committee commends the State party for impressive economic achievements in mainland China and increased resource allocations for people living in poverty in recent years, including through the provision of scholarships to disadvantaged children. However, it is concerned that poverty, in particular with regard to certain regions and specific populations, such as the migrant or “floating” population, as well as growing disparities remain serious concerns.

72. Similarly, despite the economic achievements of the Hong Kong SAR, the Committee remains concerned at the existence of child poverty among vulnerable populations such as the unemployed, immigrants and single-parent families and at the lack of an established poverty line, which hinders the formulation of appropriate policies to combat poverty.

73. **The Committee recommends that in mainland China, the State party continue to strengthen its efforts to achieve balanced economic development, including through adjustments in budgetary allocations mentioned in paragraph 20 of this document, and through the consolidation of the database on child poverty. It further urges the State party to expand benefits such as scholarships for disadvantaged children, including those from vulnerable populations such as the “floating” population and from poor regions in western China.**

74. **The Committee recommends that in the Hong Kong SAR, the State party establish a poverty line and develop appropriate policies to combat child poverty that address widening income disparities while expanding access to social welfare benefits to all vulnerable populations, including new immigrants.**

6. Education, leisure and cultural activities

Education, including vocational training and guidance

75. While noting efforts made by the State party in mainland China, the Committee is concerned about remaining disparities in access to and availability of education, which negatively affect girls, children with learning difficulties, ethnic minority children, children living in rural areas and western provinces, and migrant children. The Committee is also specifically concerned about the existence of miscellaneous fees for compulsory education, high student-teacher ratios, high dropout rates in middle and secondary school and the quality of education throughout the mainland.

76. In the Hong Kong SAR, the Committee is concerned about dropout rates in secondary schools, the competitive nature of the school system and bullying in schools. The Committee regrets the limited amount of information available on these issues in the Macau SAR.

77. **The Committee recommends that in mainland China, the State party:**

(a) Eliminate all miscellaneous and other “hidden” fees for primary education in order to ensure that it is truly free;

(b) Increase the allocation of resources to education in step with increases in GDP, as directed by the Education Law, and target those resources towards ensuring that all children, in particular girls, children with learning difficulties, and ethnic minority and migrant children, complete nine years of compulsory education and have equal access to early childhood education and development programmes;

(c) Promote the development of flexible learning systems so that children who have dropped out of school, in particular because of poverty or migration, are able to complete compulsory education and earn appropriate accreditation through non-formal channels, and also ensure the availability and accessibility of suitable technical and vocational education and training;

(d) Ensure that all teaching and learning materials for the primary and secondary level are also available in ethnic minority languages and with culturally sensitive content;

(e) Further strengthen efforts to improve the quality of education, including through teacher training and the improvement of teacher-student ratios;

(f) Strengthen the implementation of its policy of “all-round development”, in particular through the development of a curriculum promoting children’s active learning capacities and which also includes a focus on a child’s right to play and leisure;

(g) Seek technical assistance in this regard from, inter alia, UNICEF and relevant national agencies.

78. In the Hong Kong SAR, the Committee recommends that the State party:

(a) Develop programmes aimed at addressing the dropout rates in secondary education;

(b) Further strengthen existing programmes aimed at addressing violence in schools, including with the participation of students themselves;

(c) Enhance the quality of education in a manner that seeks to reduce the competitiveness of the education system and promotes active learning capacities and the right of a child to play and leisure.

79. In the Macau SAR, the Committee encourages the State party to expedite its plans to expand free compulsory education to 12 years’ duration. The Committee requests further information on the quality of education and programmes aimed at reducing violence in schools in the next periodic report.

7. Special protection measures

Refugee and migrant children

80. The Committee notes the efforts made by the State party to allow the approximately 300,000 Indochinese refugees to settle permanently in mainland China. However, it is

concerned that the children born in China of these former refugees are not granted Chinese citizenship. It is further concerned that children entering mainland China from the Democratic People's Republic of Korea are categorically considered as economic migrants and returned to the Democratic People's Republic of Korea without consideration of whether there are risks of irreparable harm to the child upon return.

81. With regard to the Hong Kong SAR, the Committee notes that refugee children and undocumented migrant children are not guaranteed access to education.

82. **The Committee recommends that the State party extend all human rights guarantees in its Constitution and in the Convention to all children within its jurisdiction on both the mainland and the SARs, including refugees, asylum-seekers and other undocumented migrants. In particular, the Committee recommends that the State party:**

(a) **Amend legislation to allow children born in China of former Indochinese refugees in mainland China to obtain Chinese citizenship;**

(b) **Ensure that no unaccompanied child, including those from the Democratic People's Republic of Korea, is returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, for instance through disproportionate punishment for violating immigration laws, in accordance with the Committee's general comment No. 6 (2005) on unaccompanied minors;**

(c) **Amend legislation and regulations to ensure that all refugee, asylum-seeking or undocumented migrant children in the Hong Kong SAR are able to attend school without undue delay.**

Economic exploitation

83. The Committee welcomes the ratification of ILO Conventions Nos. 138 and 182 in 1998 and 2002, respectively. However, it is concerned about the absence of specific data on child labour on the mainland, while reports indicate that it is widespread. It is also concerned about the lack of legislation and specific administrative regulations defining and protecting children from exploitation in hazardous work. The Committee is further concerned about the widespread practice of re-education through labour.

84. **The Committee recommends that the State party further strengthen its implementation of ILO Conventions Nos. 138 and 182, in particular by:**

(a) **Gathering specific disaggregated data on child labour and using them to develop, in cooperation with working children, effective measures to prevent and eliminate all forms of child labour;**

(b) **Developing detailed regulations on the forms of hazardous and dangerous work in which all persons under 18 should not be engaged, in consultation with the affected children;**

(c) Ensuring that re-education through labour does not result in children working in violation of the principles and provisions of ILO Conventions Nos. 138 and 182.

Street children

85. While noting with appreciation the efforts of the State party in mainland China, the Committee is concerned at the significant numbers of children living and working in the streets.

86. **The Committee recommends that in mainland China, the State party strengthen its efforts related to street children, in particular by:**

(a) Undertaking further research into the situation of children living and working in the streets, and using such research to develop appropriate programmes and policies to reduce the number of street children and provide them with appropriate assistance;

(b) Prioritizing family- and community-based interventions aimed at reintegrating these children successfully into their families;

(c) Increasing the resources provided to local authorities providing services to street children and their families.

Sexual exploitation and trafficking

87. With respect to mainland China and the Macau SAR, the Committee notes with appreciation the submission of the initial report under the Optional Protocol on the sale of children, child prostitution and child pornography, and refers the State party to the relevant recommendations contained in its concluding observations thereon (CRC/C/OPSA/CO/2). The Committee regrets that the application of the Optional Protocol has not yet been extended to the Hong Kong SAR. While welcoming the amendments to the Crimes Ordinance aimed at strengthening the protection of children from pornography, it is concerned at the absence of any data on or reported cases of child prostitution in the Hong Kong SAR.

88. **In order to prevent and combat trafficking in children for sexual and other exploitative purposes, the Committee recommends that the State party in the Hong Kong SAR:**

(a) Further develop and enhance systems of early prevention of sexual exploitation and trafficking;

(b) Further strengthen its efforts to identify and investigate trafficking cases, to improve understanding of the issues of trafficking and ensure that perpetrators are prosecuted;

(c) Develop and adopt a comprehensive policy to prevent and combat sexual exploitation and trafficking in children, including the root causes and factors that place children at risk of such exploitation;

(d) Provide adequate programmes of assistance and reintegration for sexually exploited and/or trafficked children in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;

(e) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).

Administration of juvenile justice

89. The Committee welcomes the State party's abolition of the death penalty in mainland China for persons who have committed an offence when under the age of 18. However, it is concerned that life imprisonment continues to be possible for those under 18, even if that sentence is not often applied. While noting efforts to reform laws relating to juvenile justice, such as the Law on the Protection of Minors, the Committee remains concerned that existing legislation, regulations and administrative procedures do not adequately set out the detailed obligations of the authorities and the judiciary for the protection of children in conflict with the law at all stages.

90. While noting that the State party has raised the minimum age of criminal responsibility in the Hong Kong SAR, the Committee remains concerned that the age of 10 years is too low. The Committee is further concerned that children between the ages of 16 and 18 are not consistently accorded special protection when coming into conflict with the law.

91. The Committee shares the concerns of the delegates from the Macau SAR about the lack of restorative justice for children in conflict with the law and welcomes the information they provided about plans to reform the juvenile justice system.

92. **In light of the recommendations adopted by the Committee on its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238), the Committee recommends that in all areas under its jurisdiction, the State party ensure that juvenile justice standards are fully implemented, in particular articles 37, 40 and 39 of the Convention and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System. It further recommends that in all jurisdictions the State party provide training on relevant international standards to those responsible for administering juvenile justice.**

93. **Within mainland China, the Committee further recommends that the State party:**

(a) Abolish life sentences for persons who have committed offences when under the age of 18;

(b) Amend legislation so as to ensure that all children deprived of their liberty, including in work study schools, have the right to prompt access to legal and other appropriate assistance and the right to challenge the legality of their deprivation of liberty before a court or other competent, independent and impartial authority in a timely manner;

(c) Ensure that deprivation of liberty is always used as a last resort, and strengthen and expand possibilities for alternative sentences such as mediation, probation, community service or suspended sentences;

(d) Ensure that both sentenced and released persons under 18 are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development;

(e) Seek technical cooperation and assistance from, inter alia, OHCHR, the United Nations Office on Drugs and Crime Prevention (UNODC) and UNICEF.

94. Within the Hong Kong SAR, the Committee further recommends that the State party:

(a) Raise the minimum age of criminal responsibility to an internationally acceptable level;

(b) Abolish life sentences for persons who committed offences when they were under the age of 18;

(c) Ensure that all children under the age of 18 are consistently accorded special protection when coming into conflict with the law, and that their cases are heard in specialized juvenile courts by appropriately trained magistrates;

(d) Ensure that deprivation of liberty is always used as a last resort, and strengthen and expand possibilities for alternative sentences, such as mediation, probation, community service or suspended sentences.

95. In the Macau SAR, the Committee recommends that the State party expedite its plans for reform of the juvenile justice system and ensure that such reforms include:

(a) Measures to ensure that detention is used only as a last resort and expanded the possibilities for alternative sentences such as probation, community service or suspended sentences;

(b) Possibilities for restorative justice, such as family group conferencing;

(c) An expansion of services to assist juvenile offenders with social reintegration in an environment which fosters the health, self-respect and dignity of the child.

8. Optional Protocols to the Convention on the Rights of the Child

96. The Committee recommends that the State party extend the application of the Optional Protocol on the sale of children, child prostitution and child pornography to the Hong Kong SAR. It further recommends that the State party ratify the Optional Protocol on the involvement of children in armed conflict, which it signed on 15 March 2001, and extend its application to the Hong Kong and Macau SARs.

9. Follow-up and dissemination

Follow-up

97. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented, *inter alia* by transmitting them to the members of the National People's Congress and the State Council on the mainland, the Executive and Legislative Councils in the Hong Kong SAR and the Executive Council and Legislative Assembly in the Macau SAR, and to relevant provincial or local authorities, when applicable, for appropriate consideration and further action.

Dissemination

98. The Committee further recommends that the second periodic report and the written replies submitted by the State party and the related recommendations (concluding observations) adopted by the Committee be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Convention, its implementation and monitoring.

10. Next report

99. In light of the recommendation on reporting periodicity adopted by the Committee and described in the report on its twenty-ninth session (CRC/C/114), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States parties' responsibilities to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by States parties is crucial. The Committee recognizes that some States parties experience difficulties in reporting in a timely and regular manner. As an exceptional measure, in order to help the State party catch up with its reporting obligations so as to be in full compliance with the Convention, the Committee invites the State party to submit its third and fourth periodic reports in one consolidated report by 31 March 2009, the due date for the submission of the fourth report. The report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.
