

# 立法會 *Legislative Council*

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## **Panel on Constitutional Affairs**

### **Background brief prepared by Legislative Council Secretariat for the meeting on 20 April 2009**

#### **Convention on the Rights of the Child**

#### **Purpose**

This paper gives an account of the past discussions of the Panel on Home Affairs on the reports submitted by the Hong Kong Special Administrative Region (HKSAR) to the United Nations (UN) under the Convention on the Rights of the Child (CRC).

#### **Background**

2. The United Kingdom (UK) Government extended CRC to Hong Kong in 1994. The People's Republic of China (PRC) is a State Party to CRC. The Government of PRC notified UN in June 1997 that CRC with certain reservations would apply to HKSAR with effect from 1 July 1997. The declarations and reservations applicable to HKSAR are set out in **Appendix I**.

3. The reporting cycle of CRC is every five years or such other time as the UN Committee on the Rights of the Child (the UN Committee) may determine. The first report of HKSAR under CRC was submitted to UN as part of the PRC's second report in June 2003. The UN Committee considered the HKSAR's report under CRC on 19 and 20 September 2005, and issued its concluding observations on 30 September 2005. A point-by-point response provided by the Administration to the concluding observations is in **Appendix II**.

#### **Panel discussions relating to the first report of HKSAR under CRC**

4. The Panel on Home Affairs discussed the first report of HKSAR under CRC, among other human rights reports, with the Administration and deputations at its meeting on 11 June 2004. The Panel further discussed the report with deputations and the Administration at its meeting on 20 July 2005. At its meetings on 8 November 2005 and 10 February 2006, the Panel discussed the concluding observations on the first report of HKSAR under CRC and the Administration's

response. Members in general expressed dissatisfaction that the Administration failed to address adequately the recommendations and concerns raised by the UN Committee in the concluding observations. Major issues raised by members at these meetings are summarised in the following paragraphs.

#### Setting up of a Commission on Children

5. Members noted that the UN Committee had recommended that an independent mechanism should be introduced to monitor the implementation of policy in relation to the rights of the child. Some members were of the view that a Commission on Children should be set up to monitor children's rights and implementation of CRC, and this Commission should be a high-level and central mechanism. They were concerned that there seemed to be a regression in many areas in the protection of children's rights, as reflected in the large numbers of child abuses and domestic violence cases involving children. These members considered that as CRC covered various areas which were the responsibility of several bureaux, the existing institutional arrangement, i.e. with each policy bureau being responsible for assessing the impact of its policy decisions on children, was not effective in fostering children's rights. There was also a lack of channels to collect systematically children's views on policies or programmes affecting them. They suggested that the Administration should demonstrate its determination to implement CRC by, at least, issuing a Plan of Action for the implementation of the Convention in HKSAR once a year or once every two years. It had also been suggested that the Administration should consider creating the post of Commissioner for Children, which should be pitched at the rank of a permanent secretary, responsible for formulating a green paper on policies and services for children.

6. On the need for setting up a monitoring mechanism for children's rights, the Administration explained that should there be any change in policies or launching of a new policy, it had first to be endorsed by the Policy Committee chaired by the Chief Secretary for Administration (CS), and by the Executive Council as well if legislation was considered necessary. This mechanism had ensured that policies were well coordinated to cater for children's needs and interests. The Administration further informed the Panel that there were calls for the Government to set up a Commission on Children modelled on the Women's Commission and the Commission on Youth (COY), and there were also calls for the Government to appoint a Commissioner for Children. The Administration might consider whether to set up a Commission on Children or to change COY into a Commission on Children and Youth, since there was some overlap in the defined ages of the youth and of the child. The Administration might also consider whether to assign a policy secretary to take up the new position of the Commissioner for Children, if created, in addition to his existing responsibilities, or to set up a new office, headed by a senior Government official, under the Office of the Chief Executive (CE), the Office of CS, the Home Affairs Bureau (HAB) or any other bureau. HAB was discussing with the chairman of COY, related organisations and other policy bureaux the course of action that should be taken to follow up the recommendation.

7. Members advocating for the establishment of a Commission on Children stressed that the independent monitoring mechanism as proposed by the UN Committee was one which should be given the power and responsibility of examining policies, funding allocations and legislation to assess their impact on the well-being of children. These members expressed strong objection to changing COY into a Commission on Children and Youth. They considered that the defined age of a child and that of an adolescent only overlapped between the ages of 15 to 18 and there was fundamental difference in their needs. These members reiterated that what UNCRC had recommended was the establishment of an independent human rights institution which included a clear mandate for the monitoring of children's rights and the implementation of CRC and it should be set up in accordance with the Paris Principles. Moreover, it should have a mandate to receive, investigate and address complaints from the public including individual children, and it could be a specialised branch of the Office of The Ombudsman.

8. The Administration advised the Panel that it was considering in collaboration with The Ombudsman whether the powers and remit of The Ombudsman should include handling complaints about whether the implementation of policies by any policy bureau/department had contravened CRC. The Administration subsequently informed the Panel that as advised by the Ombudsman's Office, The Ombudsman did not "promote" human rights as such. In striving to ensure reasonableness, fairness and legality in the provision of public services, The Ombudsman assumed a monitoring role and safeguarded citizens' rights including children's rights to these services. Its investigation into Government's arrangements for assessing children with specific learning difficulties was cited as an example.

9. On the availability of channels to collect systematically children's views on relevant policies and programmes, the Administration responded that in addition to COY which was targeted at persons aged between 15 and 24, the Administration had been sponsoring non-governmental organisations (NGOs) of children's rights to organise programmes, e.g. the Child Ambassadors scheme and Children's Council to gauge children's views on various issues relating to their rights. The recently established Children's Rights Forum also provided opportunities for exchanges of views between Government representatives and children's representatives.

10. Members may wish to note that the Administration provided in September 2007 a progress report on the Motion "Commission on Children" passed at the Council meeting on 8 June 2007 (paragraph 19 below refers). According to the Administration, CE announced in his 2006-2007 Policy Address the decision for the Government to conduct a study on whether to establish a Family Commission responsible for policies and initiatives relating to the family, including the mechanisms for handling issues concerning different gender and age groups (including youth and children). CE subsequently announced in his 2007-2008 Policy Address that a Family Council, to be chaired by CS, would be set up. CE added that the Government would strengthen the family by formulating social policy and

providing welfare services relating to the family that meet the needs of women, children, youngsters and the elderly. The Family Council was established in December 2007. Members may also wish to note that in his reply to an oral question on "Family Council" raised at the Council meeting on 5 December 2007, the Secretary for Home Affairs informed Members that the Family Council would consider effective ways to deal with child development policies and related issues. The Administration had no plan at that stage to set up additional independent commissions for individual age or sex groups.

### Children in poverty

11. Some members expressed concern about the substantial increase in the number of children on the Comprehensive Social Security Assistance (CSSA) Scheme. They pointed out that many parents relied on their children's CSSA payment, because these parents did not meet the seven years' residence requirement. These members considered that the Administration should review such requirement for social security benefits as it would create problems to families of CSSA children. They further urged the Administration to allocate adequate resources to tackle child poverty.

12. The Administration explained that the increase in the number of CSSA recipients aged below 15 could be attributed to an increase in family cases involving mostly adult recipients, as well as children aged below 15. The change in the number of CSSA recipients aged below 15 showed no significant departure from the trend of increase in the number of able-bodied recipients or in the total number of CSSA recipients. The Administration further informed the Panel that Government resources provided for programmes and services for the development of children and the youth had amounted to about \$60 billion for the financial year 2004-2005, of which about \$15 billion was specifically reserved for children and the youth from disadvantaged families. In addition, the Commission on Poverty had set up a Task Force on Children and Youth which focused on three major areas: studying the causes of intergenerational poverty, improving the interface between existing policies, and implementing projects to build social capital in the younger generation.

13. It had also been suggested that the Administration should devise a scientific method in collaboration with NGOs for calculating the number of children who were actually living below the poverty line, even though they were not on the CCSA Scheme, and should formulate a policy to assist the families concerned. According to the Administration, such calculations would inevitably involve subjective value judgement given the fact that there were no universally agreed definitions or measurements of poverty. The Administration was of the view that the absence of a poverty line had not affected its support for the needy. On top of a social security safety net, families in need were provided with a wide range of support services. Needy families not receiving CCSA could apply for other assistance, such as child care fee assistance, student travel subsidy, school textbook assistance, school fee remission and medical fee waiver.

### Legal protection of children and juveniles

14. Some members were of the view that the Administration should review the legislation in relation to protection of children, such as the Protection of Children and Juveniles Ordinance (Cap. 213) which was far behind relevant legislation in some overseas jurisdictions. They considered that the Administration should also review the trial arrangements for juveniles and representation of children in courts.

15. The Administration responded that a scheme to provide legal representation service for children and juveniles involved in care or protection proceedings had been introduced since October 2003.

### Provision of education

16. Some members expressed the view that access to education was a basic right of children. They considered that children should be provided with 12 years' free and compulsory education up to Secondary Six. For children who had no right to remain in Hong Kong, the Administration should give an undertaking that for children pending arrangements for their removal, they should be guaranteed access to education in Hong Kong irrespective of the duration of their stay. These members stressed that it was unacceptable that their access to education would be subject to the discretion of the Director of Immigration by giving an indication of no objection to the education authorities.

17. The Administration pointed out that many overseas places had adopted nine years as a benchmark for providing free and compulsory education. It was the fundamental Government policy that no student would be deprived of education for lack of financial means. As regards provision of education for children who had no right to remain in Hong Kong, it was the Administration's position that in accordance with the law, people, including children, who had no right to remain in Hong Kong were subject to removal. Therefore, the question of schooling of such children in Hong Kong did not normally arise. However, the Administration recognised that there might be exceptional circumstances in individual cases that justified special consideration, e.g. where it was foreseen that the removal of the child was unlikely to take place for an extended period of time.

18. In response to the queries as to whether the Administration's failure to provide basic protection for the refugee and asylum seeking children in HKSAR was in breach of CRC and the rationale for not extending the application of the 1951 Convention Relating to the Status of Refugees (the Convention) to HKSAR, the Administration pointed out that according to a reservation relating to refugees and asylum seeking children which was applicable to HKSAR, provisions of CRC would not apply to persons who did not have the right of abode. However, assistance had been offered to refugees and asylum seeking children as far as possible. The Administration further explained to the Panel that in view of the great impact of the past influxes of refugees on the territory, it was necessary for the Administration to carefully consider

the possible implications of extending the Convention into HKSAR. It was the Administration's view that HKSAR did not have the conditions for the extension of the Convention into the territory.

**Relevant motions and questions moved/raised at Council meetings**

19. Members passed a motion at the Council meeting on 9 January 2002 urging the Government to expeditiously harmonise legislation and policies with CRC. Members also passed a motion at the Council meeting on 8 June 2007 urging the Government to set up a Commission on Children.

20. Details of questions relating to CRC raised at Council meetings, since the first term of the Legislative Council, are in **Appendix III**.

Council Business Division 2  
Legislative Council Secretariat  
14 April 2009

## APPLICATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD TO HONG KONG

On 10 June 1997, the Government of the People's Republic of China issued a letter to the United Nations Secretary-General and a number of diplomatic notes stating that the reservations and declarations entered by the Government of the People's Republic of China on its ratification of the Convention in 1992 are also applicable to the Hong Kong Special Administrative Region with effect from 1 July 1997. These reservations and declarations are:

1. The Government of the People's Republic of China, on behalf of the Hong Kong Special Administrative Region, interprets the Convention as applicable only following a live birth.

2. The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the Hong Kong Special Administrative Region of those who do not have the right under the laws of the Hong Kong Special Administrative Region to enter and remain in the Hong Kong Special Administrative Region, and to the acquisition and possession of residency as it may deem necessary from time to time.

3. The Government of the People's Republic of China interprets, on behalf of the Hong Kong Special Administrative Region, the references in the Convention to "parents" to mean only those persons who, under the laws of the Hong Kong Special Administrative Region, are treated as parents. This includes cases where the laws regard a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent.

4. The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to apply Article 32(2)(b) of the Convention in so far as it might require regulation of the hours of employment of young persons who have attained the age of fifteen years in respect of work in non-industrial establishments.

5. The Government of the People's Republic of China, on behalf of the Hong Kong Special Administrative Region, seeks to apply the Convention to the fullest extent to children seeking asylum in the Hong Kong Special Administrative Region except in so far as conditions and resources make full implementation impracticable. In particular, in relation to Article 22 of the Convention, the Government of the People's Republic of China reserves the right to continue to apply legislation in the Hong Kong Special Administrative Region governing the detention of children seeking refugee status, the determination of their status and their entry into, stay in and departure from the Hong Kong Special Administrative Region. (Note)

6. Where at any time there is a lack of suitable detention facilities, or where the mixing of adults and children is deemed to be mutually beneficial, the Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to apply Article 37(c) of the Convention in so far as those provisions require children who are detained to be accommodated separately from adults.

### Note

The Permanent Representative of PRC to UN wrote on behalf of the Government of PRC to the Secretary-General of UN on 10 April 2003 informing him that the Government of PRC had decided to withdraw PRC's reservation with respect to article 22 of CRC as applied to HKSAR.

**Annex B**

**United Nations Committee on the Rights of the Child  
Comments and Recommendations  
on the Hong Kong Special Administrative Region**

**Measures of implementation**

*Committee's previous recommendations (paragraph 6)*

- 1. Observation:** Some of the Committee's previous concerns and recommendations have not been sufficiently addressed.

**Recommendation:** 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, such policy be actively coordinated and assessments be made regarding the potential impact of policy decisions on children.

**Response:**

We have carefully considered the proposal but remain of the view that a new approach is not necessary either to give effect to the Convention or as a practical response to its requirements. We also consider that no new arrangements – such as an accompanying assessment of the impact of policy proposals on children are necessary for the purpose of policy formulation. The best interests of the child are necessary considerations in all relevant decision-making in Hong Kong, including legislative proposals and policies, and are taken into account as a matter of course.

By way of illustration, we have a clear policy concerning children's welfare and comprehensive measures to address their needs. We believe that children are best protected and nurtured within a loving family and our policy is to preserve and strengthen the family as a unit, to develop caring interpersonal relationships, to enable individuals and family members to prevent personal and family problems, and to deal with them when they arise. To these ends, our policy is to provide services to meet needs that cannot be



adequately met from within the family.

***Reservations and declarations (paragraphs 8 and 9)***

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

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

**Response:**

Article 32(2)(b)

We consider it necessary to retain the current reservation in respect of Article 32(2)(b), that is, we retain the right not to apply Article 32(2)(b) of the Convention in so far as it might require regulation of the hours of employment of young persons who have attained the age of 15 years in respect of work in non-industrial establishments.

The nature of employment in non-industrial establishments is less strenuous than that in industrial undertakings. And the 1997 Occupational Safety and Health Ordinance and its regulations require employers – whether in the industrial sector or otherwise - to ensure the safety and health at work of all their employees, irrespective of age. Persons of all ages therefore enjoy adequate protection at work.

Because they lack work skills, experience, and academic qualifications, it is difficult for young persons to enter the labour market. Additional effort is therefore needed to generate opportunities to prepare them for work and to create employment for them. Restricting their hours of employment in non-industrial

establishments would discourage employers from hiring them. That would be inconsistent with our policy of improving their employment opportunities.

### Article 37(3)

In Hong Kong, young prisoners below the age of 21 are separated from those aged 21 and above. However, because of general overcrowding in our penal institutions, young offenders aged 14 to 17 may be held together with those aged 18 to 20. We are doing our best to alleviate prison overcrowding so that we can be better placed to fully separate young and adult offenders. As for now, the reservation remains necessary.

### *Coordination and National Plan of Action (Paragraphs 13 and 15)*

- 3. Observation:** The Committee is concerned at the lack of a comprehensive Plan of Action for the implementation of the Convention in HKSAR and that the coordination of existing programmes and policies is rather sectoral and fragmented.

**Recommendation:** The Committee reiterates its previous recommendation that in HKSAR, the State party improve the coordination of its activities on the implementation of the Convention by developing and implementing a Plan of Action for HKSAR.

### **Response:**

Our position is as explained in our response to (1) above.

### *Independent monitoring (Paragraphs 16 and 17)*

- 4. Observation:** The Committee... regrets the absence of an independent national human rights institution with a specific mandate on child rights... in the HKSAR.

**Recommendation:** The Committee recommends that the State party establish... in HKSAR... a national human rights institution which includes a clear mandate for the monitoring of children's rights and the implementation of the Convention... and in accordance with the Principles relating to the Status of National Institutions (The Paris Principles)...While 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 institution 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 HKSAR, such an institution could be a specialized branch of the existing Ombudsman's office.

**Response:**

We have specific laws dealing with different aspects of the Convention. The impact of legislation and the execution of policies are monitored by the Legislative Council, the Ombudsman and the press, and are reviewed by the bureaux concerned. The Convention covers areas of government that are the responsibility of several different policy bureaux. Advisory boards and committees and NGOs assist those bureaux in the planning and decision-making process. Where a particular area overlaps the responsibilities of more than one bureau, there are established arrangements for co-ordination between them.

These arrangements are conducive to flexibility and a swift response to changing circumstances and to the concerns of the public. We remain unconvinced that there would be any advantage in replacing them with some unified administrative system, a single children's ordinance, or a single monitoring system, such as a Children's Commission as some have proposed but see below in relation to the question of review).

## *Allocation of resources (Paragraphs 19 and 21)*

**5. Observation:** The Committee is concerned that in HKSAR 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 positively readjusted as the economy has regained its momentum.

**Recommendation:** The Committee recommends that in HKSAR, budget allocations are targeted towards reducing income disparities, including through increased funding for social safety nets. It also recommends that an adequate monitoring system be established in order to ensure that budgetary allocations benefit the most vulnerable populations.

### **Response:**

The Comprehensive Social Security Assistance (CSSA) Scheme (known as Public Assistance Scheme before July 1993) aims to provide financial assistance to bring the income of needy individual and families up to a prescribed level to meet their basic needs. We have initiated various measures in assisting unemployed CSSA recipients to take up employment, they include the Support for Self-reliance SFS Scheme to provide active employment assistance for unemployed recipients, and the extension of the provision of disregarded earnings (DE) which aims to encourage CSSA recipients to find and maintain employment (DE refers to the earnings from employment that are disregarded when assessing the amount of assistance payable to CSSA recipients).

Since 1973, the rates of CSSA have been adjusted in accordance with movement of the Social Security Assistance Index of Prices (SSAIP) (previously known as Public Assistance Index of Price before July 1993), which measures price changes in the goods and services consumed by CSSA households.

The rate adjustment in 1999 was implemented in response to growing public concern about the rapid growth in caseload and expenditure of the CSSA Scheme, the higher levels of CSSA benefits for larger families as compared with market wages, and the sharp increase in the number of able-bodied adults turning to CSSA.

The deflationary adjustment in 2003 was implemented against a backdrop of continuous deflation since 1999. (The Administration had not adjusted the CSSA rates downward in accordance with the SSAIP during the afore-mentioned period.) The sole purpose of the adjustment was to return the purchasing power of the benefits to their originally intended levels in accordance with the established mechanism. Furthermore, from 2005 onwards, the SSAIP is reviewed every December and the adjustments indicated by the findings – whether upwards or downwards – are put into effect the following February. The December 2005 review found that the SSAIP in October 2005 had increased by 0.4% over that of 2001-02, so the standard rates paid under the CSSA and the Disability Allowance have been increased by 0.4% with effect from 1 February 2006.

We will continue to closely monitor the movement of the SSAIP and adjust the rates of CSSA and Social Security Allowance with the changes of SSAIP. However, should other economic indicators point to persistent high inflation, consideration could be given to seeking approval for additional inflationary adjustments to the standard payment rates ahead of the new annual adjustment cycle.

### ***Data Collection (Paragraph 23)***

- 6. Recommendation:** (The Committee) further recommends that the State party explore the development of central databanks on children's statistics for the mainland and the SARs respectively, so as to ensure that statistical data is used for the development, implementation and monitoring of appropriate policies and programmes for children.

**Response:**

The Census & Statistics Department currently compiles numerous data sets on the circumstances of Hong Kong children (defined as persons aged under 18): see **Appendix I**. These will be combined with other relevant statistics<sup>1</sup> to form a central databank.

*Dissemination of the Convention (Paragraph 24 and 25)*

**7. Observation:** (The Committee)... 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 HKSAR...

**Recommendation:** 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.

**Response:**

We have uploaded the text of the Convention onto the website of the Home Affairs Bureau, together with all other relevant documents. Inter alia, the latter include our reports, responses to the Committee's

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<sup>1</sup>Such statistics are collated by the Home Affairs Bureau from data supplied by other bureaux and departments.

list of issues, and the present and previous concluding observations. Hard copies of the Convention and our reports have been made widely available, free of charge. In the course of the last decade, we have funded two television advertisements (known as Announcements in the Public Interest, or 'APIs') specifically promoting the Convention and its message, and published the Convention itself in child-friendly format for distribution to schools. Other major initiatives to raise awareness of the Convention have included an advertising campaign using buses, the Child Ambassadors Scheme, the Children's Council, and the recently established Children's Rights Forum.

Nevertheless, we agree that there is always scope for improvement and will explore ways of giving effect to the Committee's recommendations in the years between now and 2009, when our next report is due. The latter will inform the Committee of progress made in this respect.

## **General Principles**

### ***Non-discrimination (Paragraphs 31, 33 and 34)***

**8. Observation:** The Committee is concerned about the persistence of discrimination against refugee, asylum-seeking and undocumented migrant children in HKSAR, and the lack of legislation specifically prohibiting discrimination on the basis of race or sexual orientation.

**Recommendation:** The Committee recommends that in HKSAR 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 specific information be included in the next periodic report on the measures and programs 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 on the aims of education (2001).]

**Response:**

Racial discrimination

We are at an advanced stage of drafting the legislation against racial discrimination, and it remains our intention to introduce the Bill into the Legislative Council within the 2005-06 legislative session.

Sexual orientation discrimination

As we informed the Committee on Economic, Social and Cultural Rights during the hearing of our report in April 2004, this is a sensitive issue that impinges on deeply ingrained values and notions of morality. While we understand the concerns of the gay and lesbian community, it must be recognized that progress in this area will inevitably be gradual. It will take time to educate the general population and we can expect a strong reaction if we move too hastily. Meanwhile, we will persist with our efforts to raise public consciousness of the issues and - through continuing educational initiatives - to foster a culture of mutual understanding, respect and tolerance.

Refugee, asylum-seeking and undocumented migrant children

The 1951 United Nations Convention relating to the Status of Refugees does not apply to Hong Kong and we have a clear policy of not granting asylum. Persons seeking refugee status in Hong Kong are free to lodge their claim for refugee status with the United Nations High Commissioner for Refugees (UNHCR) Sub-office in Hong Kong. The Director of Immigration may exercise his discretion – on a case by case basis - to grant them recognizance so that they may continue their presence in Hong Kong whilst awaiting the outcome of the UNHCR's determinations.

***Respect for the views of the child (Paragraphs 38, 39 and 41)***

- 9. Observation:** The Committee notes with appreciation the efforts made by the State party in Hong Kong



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.

**Recommendation:** In the light of article 12 of the Convention, the Committee recommends that the State party strengthen its efforts in... Hong Kong... to ensure that children have the right to express their views freely in all matters affecting them and have those views be 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.

The Committee recommends that in HKSAR, the State party systematically ensure active participation of children's organizations when 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.

**Response:**

Children's right to express their views

Article 27 of the Basic Law provides that all Hong Kong residents shall have freedom of speech, of the press and of publication.

As mentioned above in response to observation 7, children now have a formal channel to discuss their views directly with the Government, in the form of the Children's Rights Forum.

Children's views be given due weight in schools and participation of children's organizations in development of policies or programmes

affecting them

Children are the focal point of the school system and their views are given due weight by both the Education and Manpower Bureau (EMB) and the schools. As a normal practice, the Secretary for Education and Manpower and Permanent Secretary for Education and Manpower often meet students to listen to their views during their school visits. Additionally, the EMB conducts surveys of students' views. One of these is the Stakeholder Monitoring Survey, which seeks stakeholders' views<sup>2</sup> on educational reform and other educational initiatives on a regular and longitudinal basis. During the consultations on the new senior secondary academic structure and the 'Review of Medium of Instruction and Secondary School Placement Allocation', views were collated from students (both as both individually and as groups), from individual schools, and from youth organizations. All views were thoroughly considered.

## **Civil rights and freedoms**

### ***Corporal punishment (Paragraphs 47 and 48)***

**10. Observation:** The Committee is concerned that corporal punishment within the family is not prohibited by law and continues to be practiced in the home in Hong Kong.

**Recommendation:** The Committee urges the State party, in all areas under its jurisdiction, to:

- (a) explicitly prohibit by law corporal punishment in the family... and,
- (b) 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.

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<sup>2</sup> 'Stakeholders' include students.

**Response:**

Legislation is in place to protect children from abuse and penalize abusers whose acts of child abuse involve assault or other criminal offences. And we have ongoing public education programmes to educate parents to avoid crossing the line from discipline to abuse. This requires a gradual and progressive change in mindset. The programmes target children, parents, and the public and are of high priority. In the course of their delivery, we –

- (a) alert children to the nature and danger of abuse, and how to protect themselves against it;
- (b) educate parents on child development and foster positive parent-child relationships that help to prevent child abuse. We put emphasis on the preventive element, including services such as parent education; and
- (c) educate the public to combat the problem, and encourage them to seek professional help as early as possible.

***Children deprived of family environment (Paragraphs 50)***

- 11. Observation:** The Committee is deeply concerned that existing quotas for persons entering HKSAR from the mainland and regulations regarding the right of abode in the HKSAR contribute to separation of children from their parents and hinder family reunification.

**Response:**

The One-way Permit (OWP) Scheme is predominantly a family reunion programme. Every year some 54,750 Mainland residents are admitted for settlement in Hong Kong. This represents an annual intake of about 0.8% of Hong Kong's population.

We will continue to facilitate family reunion in ways consistent with the capacity of our physical, social, and economic infrastructure and our ability to assimilate new entrants into our permanent population. From July 1997 to end-November 2005, more than 437,000 OWP

holders entered Hong Kong for settlement, including more than 163,000 persons with the right of abode in accordance with Article 24(2)(3) of the Basic Law. Persons in the latter category may obtain an OWP to settle in Hong Kong as soon as their status has been verified.

*Adoption (Paragraph 53)*

**12. Recommendation:** The Committee recommends that the State party:

- (a) extend the application of the 1993 Hague Convention No. 33 to Hong Kong... as soon as possible;
- (b) ensure incorporation of the legal provisions of the 1993 Hague Convention into domestic legislation in the... HKSAR.

**Response:**

Amendments to the principal legislation in the Adoption Ordinance were completed in July 2004 with a view to improving the local adoption arrangements and implementing the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in HKSAR. The Central People's Government ratified the Hague Convention on 16 September 2005, indicating that it would take effect in China (including the HKSAR). The necessary subsidiary legislation was introduced into the Legislative Council and has taken effect as from 25 January 2006.

*Abuse and neglect, maltreatment, violence (Paragraphs 55, 56, 58 and 59)*

**13. Observation:** While noting efforts made to increase the number of social workers in HKSAR, the Committee is concerned that policies and programmes to assist child victims of violence are not fully effective.

**Recommendation:** In all parts of the State party, the Committee recommends that efforts to combat abuse, neglect, violence and maltreatment be strengthened, 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.

With respect to 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, and;
- (c) ensure handling investigations without any discrimination as to whether the alleged perpetrators are from within or outside the family.

... the Committee acknowledges with appreciation... the participation of representatives from... HKSAR in the Regional Consultation for East Asia and the Pacific... The Committee recommends that the State party use the outcome of this regional consultation as a tool to take action, in partnership with civil society, to ensure the protection of every child from all forms of physical, sexual or mental violence, and to gain momentum for concrete and, where

appropriate, time bound actions to prevent and respond to such violence and abuse.

**Response:**

The Social Welfare Department's "Procedures for Handling Child Abuse Cases" (Procedures) provides guidance for professionals working with children on how to identify child abuse cases and to refer cases to child protection workers and police for investigation and follow-up after identification. We believe that, through improved training and co-ordination, frontline professionals will be better prepared to deal with suspected child abuse cases encountered in their daily work.

The Department's hotline service facilitates immediate counselling and referral services to victims of child abuse and families with child discipline problems.

We have strengthened services and training relating to the identification, handling and prevention of child abuse and family violence. And the Department is developing a three-level training package on the core subjects of family violence. The first level comprises training on basic awareness of family violence for related professionals (social workers, police officers, medical practitioners, teachers, and so forth) and district personnel, such as District Council Members. The second and third levels focus respectively on –

- risk assessment and intervention skills for social workers and other frontline practitioners; and
- advanced skills and refresher training on specialized issues in the area of family violence.

The Department operates six specialized Family and Child Protective Services Units that provide integrated services to victims of child abuse and their family members, no matter whether the alleged perpetrators are from within or outside the family. Services provided including outreaching, crisis intervention, casework and group work treatment, and the statutory protection of children. They address the needs of abused children and their families in a holistic manner and work closely with other professionals concerned in the investigation and intervention process.

## Basic health and welfare

### *Health and health services (Paragraph 63)*

- 14. Recommendation:** The Committee... urges the State party to... promote breastfeeding... through the promotion of Baby Friendly Hospitals in Hong Kong SAR.

#### **Response:**

The position is as explained in paragraph 248 of our report. That is, public hospitals in general comply with the Joint WHO/UNICEF Statement on ‘Ten Steps to Successful Breast-feeding’ and the Hospital Authority's policy is to encourage nursing mothers to breastfeed their babies. It proactively promotes breastfeeding through –

- (a) talks, exhibitions and seminars for pregnant women, nursing mothers, and parents in public hospitals;
- (b) training, seminars, and workshops for hospital staff; and
- (c) breastfeeding support services for nursing mothers in all public hospitals with obstetric services.

All qualified healthcare personnel in public hospitals are conversant with the recommendation of the World Health Organisation (WHO) and the United Nations Children’s Fund (UNICEF) on the optimum period of breastfeeding.

These initiatives have served steadily to increase the breast-feeding rate by nursing mothers at the time of discharge from public hospitals –

2000	49%
2001	53%
2002	54%
2003	58%
2004	59%

But relatively few mothers sustain breastfeeding beyond six months. And about a third stop breastfeeding when they return to work. To address these tendencies, the Maternal and Child Health Centres organize workshops for working mother just before they return to work. They also tell them how to express and store breast milk. Additionally, the Department of Health plans to introduce an education kit to stimulate public awareness of breastfeeding and to solicit community support for breastfeeding mothers. A leaflet "Especially for Employers" provides guidelines to employers on the creation of mother and baby-friendly workplaces.

#### 'Baby-friendly' hospitals

There are designated breastfeeding rooms in post-natal wards in most public hospitals and the Hospital Authority will continue to explore the feasibility of providing additional facilities for the purpose. To further promote the adoption of breastfeeding by nursing mothers, the Hospital Authority is considering the option of stopping the free supply of infant formulae from milk companies at public hospitals in the near future.

#### *Adolescent health (Paragraphs 64 and 65)*

**15. Observation:** The Committee is concerned at... the high incidence of teenage pregnancies and abortions in Hong Kong SAR.

**Recommendation:** The Committee recommends that in all areas of 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 sexual and reproductive health education in schools, and to introduce school health services, including youth-sensitive and confidential counselling and care.



## **Response:**

The Department of Health's Student Health Service provides a comprehensive range of promotive and preventive services to promote the physical and psychosocial health of school children. And the Adolescent Health Programme (AHP) – developed in 2001 – provides outreaching services to secondary schools through multi-disciplinary teams.

Adolescents can attend one of 12 Student Health Service Centres for health assessments appropriate to their age and development. Such assessment includes physical examination and screenings for underlying medical problems, including pubertal development. Psychosocial problems are identified through the use of specific questionnaires. Students receive counselling on the spot and those who need further management and assessment are referred to specialists, school guidance staff, school social workers, and other social welfare organizations as appropriate. Health education activities are also provided in the form of health talks, video shows, distribution of pamphlets and souvenirs.

The AHP promotes the psychosocial health of adolescents through interactive training and experiential learning activities delivered to secondary school students, their parents, and teachers in the school setting. There are two main types of programmes –

- (a) **Basic Life Skills Training:** designed for Secondary (S)1 to 3 students over three consecutive years to equip them with knowledge, attitudes and skills that can empower them to face the challenge of growing up;
- (b) **topical programmes:** are designed for S1 to 7 students, teachers, and parents. They focus mainly on sex education, substance abuse, pregnancy, and so forth. They also address emotional and stress management for parents and teachers.

Sex education covers pubertal changes and relationships with the opposite sex, including how to differentiate between love and friendship. There is also discussion of intimate relationships, casual sex and its consequences, and the concept of safe sex. The subjects of contraception, sexual harassment and pornography have

also included.

### Sex education in schools

Education on sexual and reproductive health is an integral part of the school curriculum. Issues such as sexual and reproductive health, (physical changes during puberty, maturation, reproductive systems, sexual maturity, the menstrual cycle, intercourse, pregnancy, and so forth) are included in such school subjects as General Studies at primary level; Social Studies, Liberal Studies, Ethics and Religious Studies, Science, Biology at secondary level.

### *Mental health (Paragraphs 66 and 67)*

**16. Observation:** The Committee appreciates the measures taken by the State party in Hong Kong SAR to address the high number of suicides by youth.

**Recommendation:** (The Committee) further recommends that in Hong Kong SAR, the State party continue to strengthen its efforts to prevent youth suicide.

#### **Response:**

We will continue to strengthen our efforts to prevent youth suicide.

### *Standard of living (paragraphs 72 and 74)*

**17. Observation:** ... despite the economic achievements of HKSAR, 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.

**Recommendation:** The Committee recommends that in HKSAR, the State party establish a poverty line and develop appropriate policies to combat child poverty which addresses widening income disparities while expanding access to social

welfare benefits to all vulnerable populations including new immigrants.

**Response:**

Poverty line

The question of an official poverty line was considered by the Commission on Poverty after its establishment in 2005. The Commission concluded that poverty could not be defined in terms of a single fixed figure or line. Rather, like other developed economies, Hong Kong should adopt a multi-dimensional perspective and pragmatically focus on the needs of disadvantaged groups. Accordingly, the Government Economist devised a range of indicators to monitor poverty in Hong Kong from the macro perspective. The indicators were released in November 2005 and the Legislative Council's Subcommittee to Study the Subject of Combating Poverty was briefed on them at its meeting on 25 January 2006.

Tackling child poverty

Essentially, our measures against child poverty comprise -

- (a) **financial support:** in 2004/05, government investment in programmes and services for the development of children and youth totalled around HK\$60 billion, of which about HK\$15 billion (roughly 25%) was specifically reserved for children and youth from disadvantaged families. The money was spent on the provision of childcare service and support, and various student financial assistance schemes. This provision was additional to that provided under the CSSA, which also takes account of the special needs of children with financial difficulties. Complementary measures were taken by relevant bureaux and departments, which redeployed resources to provide support at the central and district levels to children and youth from disadvantaged families; and
- (b) **the work of the Commission on Poverty:** since its inception in May 2005, the Commission's Task Force on Children and Youth has focused on three major areas –

- (i) studying the causes of intergenerational poverty;
- (ii) improving the interface between existing policies; and
- (iii) implementing projects to build social capital in the younger generation.

Policies to address widening income disparities: expanding access to social welfare

The CSSA Scheme provides a social safety net to help individuals and families – including, of course, their children - meet their basic needs. The Scheme addresses the special needs of children in various ways, including –

- **higher standard rates for children than for able-bodied adults:** these range from HK\$1,280 to \$1,930 per month per child: HK\$130 to \$320 higher than for able-bodied adults;
- **special grants to support children’s studies:** these cover such expenses as school fees, meal allowances, transport costs, public examination fees, selected items such as books, stationery, school uniforms, and miscellaneous and minor one-off expenses. For instance, a child attending lower secondary school may receive special grants of HK\$3,810 to meet the selected items of school-related expenses in a school year, i.e. books etc.;
- **exemption of children from any prior residence requirement for CSSA:** this enables children from newly arrived families to be eligible for CSSA, regardless of their families’ length of residence.
- **monthly supplement of HK\$225 for single parent families:** this is paid in recognition of the special difficulties that single parents face in raising their families.

All children in Hong Kong enjoy nine years of free education. Children from families receiving CSSA also enjoy free medical services. And those from non-CSSA families in financial difficulties may apply for their medical fees to be waived on a one-off basis or for a prescribed period.

Additionally, the ‘Life-wide Learning Fund’, initiated in 2002 with a

sum of about HK\$140 million from the Hong Kong Jockey Club Charities Trust, helps needy students to participate in school activities. Primary 4-6 or Secondary 1-3 students who are eligible for CSSA or full-rate grant from the Student Financial Assistance Agency are eligible to apply for the assistance from the Life-wide Learning Fund. Each year during the period 2002-2004, some 60,000 eligible students from more than 1,100 schools received assistance through the scheme.

Moreover, the Director of Social Welfare would exercise discretion under the CSSA Scheme to assist children in need, depending on the situation of their families. For example, children from CSSA families may each be granted a subsidy of up to HK\$500 to buy spectacles.

The Social Welfare Department's 'Integrated Family Service Centres' provide support services to meet the needs of children at different stages of their development. These range from developmental programmes to intensive counselling. The Centres' social workers proactively reach out to needy children in vulnerable circumstances, or who are new arrivals. They also establish networks with such bodies as social security field units, Maternal and Child Health Centres, Student Health Service, and the schools to ensure referrals of children in need to the IFSCs. This is conducive to the early identification of problems and timely intervention.

### **Education, leisure and cultural activities**

#### ***Education, including vocational training and guidance (Paragraphs 76 and 78)***

**18. Observation:** In HKSAR, the Committee is concerned about drop out rates in secondary schools, the competitive nature of the school system and bullying in schools.

**Recommendation:** In Hong Kong SAR, the Committee recommends that the State party:

- (a) develop programmes aimed at addressing the drop out 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.

## **Response:**

### Addressing drop out rates

In the last three school years, the dropout rates in our junior secondary schools have respectively been 0.37%, 0.41% and 0.37%. Several initiatives have been introduced to keep the rates low. Examples include –

- (a) **the development of school-based curricula:** to cater for the diverse learning needs of students and enhance their learning capacities;
- (b) **schools-based programmes to help sustain learning motivation:** these include, for example, ‘Quality Education Fund projects’ designed to create a harmonious learning environment in schools, develop positive teacher-student relationships, foster students' sense of belonging and enhance their self esteem and social skills; and
- (c) **awareness-raising seminars for schools:** these are run by the Education and Manpower Bureau to help schools to detect and help potential dropouts, establish a harmonious school environment, and to strengthen discipline and guidance work.

To help students who have already dropped-out, the Bureau’s ‘Non-attendance Cases Team’ provides individual counselling and works with social agencies to help dropouts to resume schooling as soon as possible. This is done through various on-going programmes, such as the Bureau’s “Re-entry Programme” and “Value-added Course”, the Hong Kong Playground Association’s

“Unusual Academy”, and the Hong Kong Christian Service’s “LET’s Walk Project”.

### Programmes to address school violence

There are several such programmes that attract active student participation. Examples include the ‘Understanding Adolescent Project (Primary)’, the ‘Smart Teen Challenge Project’, the ‘Uniformed Groups Enhancement Scheme’, and ‘Positive Adolescent Training through Holistic Social Programmes’ (P.A.T.H.S.). The Bureau will continue to organize and conduct school development activities focusing on preventive measures to develop teachers’ knowledge of the problems and strategies for addressing violence in schools.

### Reducing competitiveness and promoting active learning capacities

Among the aims of the ongoing educational reforms (initiated in 2000) is a quality learning environment conducive to the whole-person development of our students, where they can enjoy learning, develop their communication skills, and nurture their sense of commitment. The scope of the reform includes –

- (a) reforming the admission systems and public examinations;
- (b) reforming the curricula, which includes improving learning and teaching strategies;
- (c) improving the student assessment mechanism; and
- (d) providing more diverse opportunities for lifelong learning.

### Special protection measures

#### *Refugee and migrant children (Paragraphs 81 and 82)*

- 19. Observation:** With regard to the HKSAR, the Committee notes that refugee children and undocumented migrant children are not guaranteed access to

education.

**Recommendation:** The Committee recommends that the State party extend all human rights guarantees in its Constitution and in the Convention, with respect to both the mainland and Special Administrative Regions, to all children within its jurisdiction, including refugees and asylum-seekers and other undocumented migrants. In particular, the Committee recommends that the State party...amend legislation and regulations to ensure that all refugee, asylum-seeking or undocumented migrant children in the Hong Kong Special Administrative Region are able to attend school without undue delays.

**Response:**

Children with no right to remain in Hong Kong are subject to removal, so the question of their schooling in Hong Kong does not normally arise. Where removal is unlikely in the short term, requests to allow them to attend school are considered on a case-by-case basis. In appropriate cases, the Director of Immigration may give an indication of no objection, whereafter arrangements for schooling may be made by the education authorities in accordance with established rules.

The admission of a child on recognizance to a school does not imply any undertaking by the Director of Immigration that removal proceedings will not be instituted or continued.

***Sexual exploitation and trafficking (Paragraphs 87 and 88)***

**20. Observation:** The Committee regrets that the application of the Optional Protocol has not yet been extended to HKSAR.

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 or



reported cases of child prostitution in HKSAR.

**Recommendation:** In order to prevent and combat trafficking in children for sexual and other exploitative purposes, the Committee recommends that the State party in HKSAR:

- (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 actors 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).

## **Government's response:**

### Human trafficking

Hong Kong is not a destination for human trafficking or a place of origin for the export of illegal migrants.

The Immigration Department, Customs and Excise Department, and the Police have made concerted efforts to combat trafficking activities on all fronts. These include prevention, enforcement, and the protection of victims. They have and will continue to co-operate with their overseas counterparts to prevent and combat such activities.

Trafficking-in-person cases are rare. Almost all illegal immigrants and prostitutes arrested entered Hong Kong voluntarily to take advantage of the Region's economic prosperity. They are not trafficked into Hong Kong by criminals - whether operating individually or in syndicates - by means of threat, or use of force, or other forms of coercion or abduction.

Services funded by the Government and by NGOs are available to victims of trafficking, though these may not be specific services dedicated solely for them. These services include welfare and psychological assistance. Victims also have basic rights such as access to legal aid and medical services.

Child victims of trafficking may be admitted to places of refuge, which are gazetted under the Protection of Children and Juveniles Ordinance (Cap. 213). Illegal immigrants admitted into places of detention under the Immigration Ordinance (Cap. 115) receive the same treatment as local residents in need of care or protection.

Additionally, the Family Crisis Support Centre provides services for individuals and family members in crisis, including victims of trafficking or international child abduction and any accompanying adults. The services include short-term emergency intervention, accommodation, counselling, hotline services, a resources corner, self-learning facilities, and so forth.

## Sexual abuse against children

We are committed to preventing sexual violence, especially sexual abuse against children. The Police accord high priority to combating crimes related to sexual violence.

Several legislative provisions deal with sexual violence and abuse. The Crimes Ordinance (Cap. 200) covers offences including rape, indecent assault, incest and prostitution-related offences. The Offences Against the Person Ordinance (Cap. 212) provides legal protection to people from assault and injury. Other legislation pertaining to procedural safeguards includes the Domestic Violence Ordinance (Cap. 189), the Criminal Procedure Ordinance (Cap. 221), and the Evidence Ordinance (Cap. 8). See **Appendix II** for details.

The Prevention of Child Pornography Ordinance (Cap. 579) of December 2003 offers greater protection to children than was previously available against sexual exploitation. A person convicted of printing/making/producing/reproducing/copying/importing/exporting/publishing/possessing/advertising of child pornography is liable to imprisonment for eight years. The Ordinance has also introduced offences in regard to child sex tourism, giving extra-territorial effect to 24 sexual offences listed in a new Schedule 2 to the Crime Ordinance (Cap. 200). This makes illegal an act committed against a child outside Hong Kong if the defendant or the child has connections with Hong Kong. It is also an offence to make any arrangement relating to the commission of such acts against children and to advertise any such arrangement.

The number of child abuse cases reported to the Police has remained more or less stable in recent years. (See statistics at **Appendix III**)

Cases of trafficking where the victims have been forced into prostitution or other forms of exploitation by coercion, deception, or abusive actions of the traffickers, have rarely been detected in Hong Kong. And we are not aware of any instance where children have been trafficked into Hong Kong for sex exploitation.

### *Administration of juvenile justice (Paragraphs 90, 92 and 94)*

- 21. Observation:** While noting that the State party has raised the minimum age of criminal responsibility in

HKSAR, 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.

**Recommendation:** 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 the full implementation of juvenile justice standards 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.

Within 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 have committed offences while 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, and;

- (d) ensure that 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.

**Response:**

Implementation of and training on juvenile justice standards

The Administration will consider the Committee's recommendation.

Minimum age of criminal responsibility

The minimum age of criminal responsibility was raised from seven to ten years of age in mid-2003. This followed a recommendation in the Law Reform Commission's report on "The Age of Criminal Responsibility in Hong Kong". The Commission arrived at its recommendation after thorough consideration of responses to public consultations, the findings of the telephone survey as well as the minimum ages adopted in overseas jurisdictions. The current age of ten is not out of line with the practice of most common law jurisdictions.

In practice, children aged under 14 who are arrested on criminal charges are mostly dealt with under the Police Superintendent Discretion Scheme, rather than being subject to the full force of the criminal justice system. And the common law presumption of *doli incapax* for children aged from ten to below 14 provides adequate protection for children in that age range who do come before the courts, as the burden of proof of criminal intent is on the prosecution. The standard of proof that the prosecution must adduce in such cases is a high one. It must be proven beyond reasonable doubt that not only was there *actus reus* with *mens rea*, but also that the child knew that the particular act was not merely naughty or mischievous, but seriously wrong.

We will keep the implementation of the legislation under close review.

#### Abolition of life sentence

The Administration has noted the Committee's recommendation.

#### Special protection for children under 18

We will consider the Committee's recommendation that the juvenile courts' jurisdiction to hear and determine charges should be extended to cases brought against persons under the age of 18 (under the existing law, it is limited to persons aged under 16). We will formally respond to the recommendation in our next report.

At the same time, we will also invite the Judiciary to consider the Committee's recommendation that cases tried in juvenile courts be heard by magistrates who are "appropriately trained".

#### Alternative sentencing

Section 109A of the Criminal Procedure Ordinance (Cap 221) provides that no court shall sentence a person of or over 16 and under 21 years 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. We consider that this should suffice to address the Committee's concerns.

Section 15 of the Juvenile Offenders Ordinance (Cap 226) prescribes the sentencing options available to the court when dealing with a child or young person. The sentence imposed will depend on the seriousness of the offence and the background of the offender. There is also the Police Superintendent's Discretion Scheme and the discretion not to prosecute if a young offender commits a minor offence. The Security Bureau will keep under review the question as to whether the range of sentencing options that are currently available is wide enough to meet the needs of young offenders.

**Statistical items under C&SD's purview suggested for inclusion in the central data bank on children statistics<sup>1</sup>**

<b>Statistical item</b>	<b>Periodicity</b>	<b>Reference period of latest figures (as at Dec 2005)</b>
1. Population aged under 18 by age group and sex	Half-yearly (mid-year and year-end)	Mid-2005 (provisional)
2. Population aged under 18 <sup>2</sup> by age group and educational attainment (highest level attended)	Annually	2004
3. Population aged under 18 <sup>2</sup> by age group and District Council district	Annually	2004
4. Domestic households with persons aged under 18 by household size	Annually	2004
5. Domestic households with persons aged under 18 by monthly domestic household income	Annually	2004
6. Domestic households with persons aged under 18 by District Council district	Annually	2004
7. Domestic households with persons aged under 18 by number of persons aged under 18 in the households	Annually	2004
8. Persons aged under 18 <sup>2</sup> by economic activity status and age group	Annually	2004
9. Persons aged under 18 with disabilities	Ad-hoc	Jan – Dec 2000
10. Persons aged under 18 with chronic diseases	Ad-hoc	Jan – Dec 2000
11. Persons aged under 18 <sup>2</sup> who had personal computer at home by age group and sex	Annual	May – Aug 2005
12. Persons aged under 18 <sup>2</sup> who had personal computer at home connected to Internet service by age group and sex	Annual	May – Aug 2005

<b>Statistical item</b>	<b>Periodicity</b>	<b>Reference period of latest figures (as at Dec 2005)</b>
13. Persons aged under 18 <sup>2</sup> who had used personal computer during the 12 months before enumeration by age group and sex	Annual	May – Aug 2005
14. Persons aged under 18 <sup>2</sup> who had used Internet service during the 12 months before enumeration by age group and sex	Annual	May – Aug 2005

(1) In the years when population censuses/by-censuses were conducted (i.e. 1981, 1986, 1991, 1996 and 2001), the following data items were also collected:

- Place of birth
- Ethnicity (only collected in 2001 round)
- Nationality (collected since 1991 round)
- Duration of residence in Hong Kong (collected since 1991 round)
- Usual language (collected since 1991 round)
- Place of study (collected since 1996 round)
- Mode of transport to place of study (only collected in 2001 round)

Therefore, statistics of persons aged under 18 by the above data items can also be made available in the years concerned.

(2) Referring to land-based non-institutional population and thus inmates of institutions and persons living on board vessels are excluded.



**Appendix II to Annex B**

<b>Ordinance</b>	<b>Section</b>	<b>Offence</b>	<b>Maximum Penalty</b>
Crimes Ordinance (Cap. 200)	123	Sexual intercourse with girl under 13	Life imprisonment
	124	Sexual intercourse with girl under 16	5 years' imprisonment
	135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16	10 years' imprisonment
	138A(1)(a)	Use of persons under the age of 16 for making pornography or live pornographic performance; or Procurement of persons under the age of 16 for making pornography or live pornographic performance; or Offer of persons under the age of 16 for making pornography or live pornographic performance	Fine of \$3,000,000 and 10 years' imprisonment
	138A(1)(b)	Use of persons of the age of 16 and above but under 18 for making pornography or live pornographic performance; or Procurement of persons of the age of 16 and above but under 18 for making pornography or live pornographic performance; or Offer of persons of the age of 16 and above but under 18 for making pornography or live pornographic performance	Fine of \$1,000,000 and 5 years' imprisonment
	140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse	Life imprisonment
	146	Indecent conduct towards children under 16	10 years' imprisonment
	153Q(1)	Making arrangement relating to commission against a child of act outside Hong Kong that offends Schedule 2	Fine of \$3,000,000 and 10 years' imprisonment

Ordinance	Section	Offence	Maximum Penalty
	153Q(2)	<p>Publishing advertisement relating to commission against a child of act outside Hong Kong that offends Schedule 2; or</p> <p>Distributing advertisement relating to commission against a child of act outside Hong Kong that offends Schedule 2; or</p> <p>Displaying publicly advertisement relating to commission against a child of act outside Hong Kong that offends Schedule 2; or</p>	Fine of \$3,000,000 and 10 years' imprisonment
Offences Against the Persons Ordinance (Cap. 212)	27	Ill-treatment or neglect by those in charge of child or young person	10 years' imprisonment

**Appendix III to Annex B**

**Number of Crimes Against Children Cases 2001-2005**

	2001	2002	2003	2004	2005 (Jan-Oct)
No. of sexual crimes against children <sup>1</sup> <u>reported</u> to the Police	576	599	611	667	595
No. of physical crimes against children <sup>2</sup> <u>reported</u> to the Police	502	445	445	480	466

Note :-

- (1) **Sexual crimes against children** – The term refers to cases of sexual crimes, such as Rape, Indecent Assault, Unlawful Sexual Intercourse and Incest etc. committed against a victim who is under 17 years of age, irrespective of whether the victim gave consent and the nature of relationship between the victim and the offender, such as known or unknown to victim and with or without caring responsibility for victim.
- (2) **Physical crimes against children** – The term refers to cases of Murder and Manslaughter, Wounding, Serious Assault and Cruelty to Child committed against a victim who is under 14 years of age, irrespective of the nature of relationship between the victim and the offender, such as known or unknown to victim and with or without caring responsibility for victim. Cases where the victims suffered in the course of other crimes are not included.

**Questions relating to the Convention on the Rights of the Child  
raised by Members at Council meetings  
since the first term of the Legislative Council**

Meeting Date	Question
1.12.1999	Hon Fred LI raised a written question on segregation punishment for young offenders in reformatory schools.
4.4.2001	Hon Cyd HO raised a written question on reservations under international human rights treaties applicable to the Hong Kong Special Administrative Region.
6.6.2001	Hon James TO raised a written question on provision of education services for children in children's homes.
19.12.2001	Hon Margaret NG raised an oral question on education for children granted temporary stay in Hong Kong.
27.2.2002	Hon Albert HO raised an oral question on applications by newly widowed Mainlanders for extension of stay or settlement in Hong Kong to look after young children who were in Hong Kong.
29.11.2006	Hon Albert CHAN Wai-yip raised a written question on establishment of commission on children.
5.12.2007	Hon Frederick FUNG Kin-kee raised an oral question on family council.