



Thursday 4th June, 2009

To: **UN Committee on the Rights of the Child** (by email)
Attn: National Institutions Unit: niu@ohchr.org
NGO Liaison Officer: civilsocietyunit@ohchr.org

Re: **Outline of the topics in the second report (2009) on the Hong Kong Special Administrative Region under the United Nations Convention on the Rights of the Child**

Response to request for comment from Constitutional & Mainland Affairs Bureau, HKSAR Government

Dear Sir/ Madam

Please find attached Civic Exchange's comments in respect of the captioned consultation.

We would be happy to respond to any questions you might have.

Kind regards,

Mike Kilburn
Environmental Programme Manager
Civic Exchange

cc. (by email)

HKSARG Constitutional & Mainland Affairs Bureau
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HKSARG Legislative Council Panel on Constitutional Affairs
panel_ca@legco.gov.hk

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

Response to Constitutional & Mainland Affairs Bureau request for comment

Hong Kong's air pollution is unusually high and harmful to its citizens' health for an economically mature service-based economy with high GDP, relatively sound governance structures, universal health care provision, and abundant financial reserves. Reference to the Hedley Environmental Index¹, demonstrates that Hong Kong's daily emissions consistently exceed the World Health Organisation's Air Quality Guidelines, often by huge margins.

The negative impacts of air pollution both on the health of the general public, and by extension on the health of children and pregnant mothers in Hong Kong has been the subject of several peer-reviewed studies² and is beyond dispute. Yet despite being fully aware of this, the Hong Kong SAR Government (HKSARG) has displayed a persistent and marked reluctance to address the issue of air pollution with any degree of urgency.

Indeed HKSARG has already been subject to one judicial review - *Clean Air Foundation Limited & Anor v Government of the HKSAR (2007)*. While this suit did not succeed on technical grounds, specific reference was made in the judgment to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which couches the right to health in remarkably similar terms to the Convention on the Rights of the Child (CRC). Indeed, Hartmann J commented in respect of Article 12 that "it is at least prima facie arguable that the constitutional right to life may apply in the circumstances advocated by the applicants; that is, by imposing some sort of duty on the Government to combat air pollution".

Looking beyond its responsibilities under international law, a number of serious shortcomings are apparent in the HKSARG's approach to protecting the public (including children) from the harmful effects of air pollution.

1. It has so far resisted reviewing and correcting deep flaws in Hong Kong's own air pollution control legislation (Air Pollution Control Ordinance). These flaws include a nuisance-based, rather than a health-based approach to

¹ The Hedley Environmental Index publishes real-time information on emissions of criteria pollutants and the health-related impacts using a peer-reviewed methodology www.hedley.index.sph.hku.hk

² For a full list of relevant articles to the paper by Dr Helen Tinsley and Professor Anthony Hedley, Department of Community Medicine, School of Public Health, University of Hong Kong, which was submitted to the LegCo Panel on Constitutional Affairs on 18th May, 2009

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enforcement, and the absence of a regular health-based review mechanism for air quality management, both of which are atypical for states with comparable levels of socio-economic development.

The current, rather long-running review of the air quality objectives is the first since the creation of Hong Kong's first air quality objectives (AQOs) in 1987, with the exception of a review which began in 1995/6, but was scrapped without explanation.

2. The Environmental Protection Department (EPD), which is responsible for managing air quality and the APCO, has so far been reluctant to set air quality standards that prioritise the protection of public health.

During the current consultation, especially in its proposal of new AQOs, EPD has appeared more concerned that setting tight standards will draw attention to how bad Hong Kong's air quality really is, and that tighter standards may make it difficult to approve new infrastructure projects. Indeed, the proposed AQO for sulphur dioxide permits higher emissions than those we currently experience – which is contrary to the terms of both the CRC and ICESCR for progressive achievement. Regrettably, there does not appear to be recognition that tight standards can be used as a policy tool to drive improvements in air quality.

3. Even when allocated substantial funding to reduce air pollution (in particular, the allocation of HK\$3.2 billion to accelerate the retirement of aging diesel vehicles) EPD has so far not set a date to ban polluting old engines.
4. The Department of Health plays no part in setting air quality standards, monitoring the health impacts of air pollution or in executing the air quality management strategy. Nor does it play an advisory role in any of the above.

EPD has no medical expertise and lacks the competence to determine appropriate standards and strategies to protect public health. This is especially troubling given that the health impacts of air pollution are widely understood.

5. The HKSARG makes no provision for siting schools away from busy roads, nor for protecting children in their homes from roadside air pollution (the locally-emitted source which represents the greatest threat to health).

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The HKSARG is failing to meet its obligations under Articles 24 and 27 of the CRC for States to provide an environment that does not prejudice health, prevent healthy development or obstruct the combat of disease. Hong Kong is also failing in its obligations to protect the right to health of its children, which constitutes a breach of Article 2 and arguably Article 6 of the CRC.

We note with concern that the negative impact of air pollution on children's health has not been raised or addressed in the draft submission of the Constitutional and Mainland Affairs Bureau of the HKSARG. We also note that the UN Committee on the Rights of the Child has previously cited air pollution as a cause for concern³. Given this concern, and that Articles 24 and 27 specifically provide for States to address these impacts, it is hard to understand why the HKSARG would not address this issue in its submission.

It is very much hoped that this omission will be corrected in the final draft and more important, that the HKSARG addresses the shortcomings outline above. In particular, we urge the HKSARG to make specific reference and provision for protecting children's health in the wording and execution of its policies and legislation.

Civic Exchange
29 June, 2009

³ In reviewing submissions from Slovakia & South Africa (both in 2000), Jamaica (2003), and the Philippines (2008), the Committee expressed concerns about the effects of air pollution on children's health, and urged remedial action.

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