

香 港 人 權 監 察
HONG KONG HUMAN RIGHTS MONITOR

香港上環文咸西街 44-46 號 南北行商業中心 602 室
Rm 602, Bonham Commercial Centre, 44 Bonham Strand West, Sheung Wan, HK.

電話 Phone: (852) 2811-4488 傳真 Fax: (852) 2802-6012

**Submission to the LegCo Panel on Constitutional Affairs on the Second Report
of the HKSAR under Convention on the Rights of the Child (Adaption of the
Monitor's submission on the Convention of the Rights of the Child
to country taskforce on list of issues for the HKSAR,
the People's Republic of China)
March 2013**

Contents

Articles	Paras	Issues
2, 28, 29	1-7	A. Education of ethnic minority children
2, 23, 28, 29	8-16	B. Children with disabilities -- Early identification and individualized support in education
2	17-19	C. Discrimination against students with different sexual orientation
4	20-24	D. Equal right of adopted ethnic minority children to nationality
7, 8	25-32	E. Human rights protection mechanisms
10	33-35	F. Split families – across the Mainland China and the HKSAR border
12	36-38	G. Children's rights to participate in public policy making
12, 16	39-41	H. Privacy and other legal rights of students affected by voluntary drug test in schools
13	42-45	I. Review of the Control of Obscene and Indecent Articles Ordinance
16	46-48	J. Amendments to the Personal Data (Privacy) Ordinance and the right of children to privacy
16	49-51	K. CCTV and privacy in schools
22	52-54	L. Child asylum seekers, refugees and torture claimants
29	55-62	M. "National Education" vs. Civic Education
37, 39, 40	63-75	N. Innocent and offender children in the correctional cum residential institution TMCJH

A. Education of ethnic minority children (Arts. 2, 28 and 29)

1. Non-Chinese speaking students have been suffering from unsatisfactory Chinese proficiency levels under the current curriculum on the Chinese language. To take care of the special needs of ethnic minority children, the government should implement a “Chinese as a second language” curriculum and a corresponding assessment mechanism to allow non-Chinese speaking students to attain an alternative Chinese proficiency level. Corresponding reforms in assessment, examination and qualification recognition should also be introduced. Otherwise, the public education, examination, university entrance and civil service system cannot effectively cater to the special situation and needs of non-Chinese speaking students in their studies. The opportunities for non-Chinese speaking students to tertiary education and their chances to enter into the civil service would be seriously compromised.
2. About 60% of ethnic minority students are studying in the 30 government-subsidized “designated schools,” which admit a large number of ethnic minority students and receive extra funding from the Education Bureau. As a result, most designated schools are primarily comprised of ethnic minority students and thus creating de facto racial segregation in the public school system.
3. On the other hand, in spite of claims by the HKSAR government in providing assistance of various kinds, ethnic minority students studying in mainstream schools generally suffer from a lack of proper and adequate special individualised attention to assist them in their Chinese language and other subjects, and in their school life, undermining their incentive and achievements in their studies. Indeed, the Race Discrimination Ordinance explicitly stipulates that the provision prohibiting racial discrimination in education cannot be “construed as requiring the responsible body for an educational establishment” “to make different arrangements regarding holidays or medium of instruction for persons of any racial group.”¹

Proposed questions

4. Please provide information if the government is planning to implement a “Chinese as a second language” curriculum and a corresponding assessment mechanism. If yes, what is the timetable for implementation? If no, why?

¹ Section 26(2), the Race Discrimination Ordinance (Cap. 602). A similar exception in vocational training can also be found in section 20(2) of the same Ordinance.

5. Please provide information on the policy of “designated schools”, including the number of schools and number of students admitted. Please also explain if the government has concrete plans to end any de facto racial segregation in the public school systems.
6. Please provide information on any plan by the government to ensure that ethnic minority students studying in mainstream schools generally suffer from the lack of proper and adequate special individual attention to assist them in their Chinese language and other subjects, and in their school life.

Recommendations

7. We urge the government to implement a “Chinese as a second language” curriculum and a corresponding assessment mechanism, to come up with concrete plans to combat effectively de facto racial segregation in the public school system, and to offer proper and adequate special individual attention to assist ethnic minority students in their study and school life.

B. Children with disabilities -- Early identification and individualized support in education (Arts. 2, 23, 28 and 29)

8. Parents and children often suffer from a much belated identification of disabilities or special needs (especially in respect of newer types of disabilities such as autism and specific learning difficulties) and hence timely treatments and remedies. Failure in a timely provision of essential and appropriate assistive devices such as hearing aids, FM system and readable, audible and communicable learning materials make it unjustifiably ineffective to address the needs of children with disabilities in the early days.
9. Supports to children with needs are only half-hearted in both mainstream and special schools. Children in special schools are not provided with adequate individualised guidance or support for them to move into mainstream education. Students studying in special schools are not entitled to an inclusive curriculum and thus not always supported with equitable teaching resources. On the other hand, teachers in mainstream or “inclusive” schools are not always provided with adequate and relevant training, or the time to identify and find individualised solutions for the "included" children with disabilities.

10. A study by the Equal Opportunities Commission released in November 2012 found that "About 20% of the principals, teachers and professionals disagreed to adopt necessary changes in physical facilities and pedagogic adaptation to cater for the needs of students with [Special Education Needs]. About 20% to 43% of the teachers were not willing to accept students with Intellectual Disability (ID), Attention Deficit and Hyperactivity Disorders (ADHD), Autistic Spectrum Disorders (ASD) in regular classes." "Only 26% of the principals had attended special education training courses. 49% of the teachers had not received any training in inclusive education. Only 1-2% of the principals and teachers possessed a professional diploma or degree in special education." We understand that most of such training courses are short, say of 30 hours, and of the basic level.
11. In spite of the claim by the government of various policy and measures, these do not translate into real support to the students. Most children with disabilities and their families simply do not get the support, especially individualised one, they need from their teachers or schools. These show that the government does not have a concrete plan and policy to move towards more inclusive education.
12. Each child with disability should be assigned a case manager specialised in disabilities to take care of the special situation of the child with disabilities and to offer individualised advice to the child, her/his family, teachers and school at all stages of schooling. The child's school and teachers could then provide reasonable accommodation of her/his special individualised situations and needs, use suitable teaching methods and deploy proper resources to assist her/him on an individualised basis

Proposed questions

13. Please provide information on quantity and quality of the early identification of persons with disabilities (PWDs) disaggregated by type of disabilities. Please provide information on any plans by the government to enhance the early identification services, to ensure both the quality and quantity of assistive devices, and to guarantee individualized support to each and every PWD.
14. Please provide information on the effectiveness of the special education training courses for teachers and principals in Hong Kong.

15. How are PWDs ensured to have individualised reasonable accommodation and support of the special needs of each of them, especially with respect to the curricula and facilities for effective learning in a genuinely inclusive education system in primary, secondary and tertiary level? Is the government willing to enable schools to make reasonable accommodation and deploy resources to support each student with disability on an individualised basis through the provision and assignment of a case manager to take care of each student with disability by designing individualised education plans and offering advice tailored to the individual situations and needs of each of the students to assist the students in their learning, and their teachers and schools in their teaching and other supports, including the more targeted use of the subsidies for students provided by the government to their schools, at all stages during their whole school life?

Recommendations

16. We urge the government to provide adequate and effective special education training to all teachers and principals and allocate adequate resources to support students with disabilities and of ethnic minority origin. The government should also strengthen the quantity and quality of the early identification for children with disabilities, to ensure timely provision of essential and appropriate assistive devices and strengthen the individualised support in both special and mainstream schools so that students in special schools are able to move towards genuinely inclusive education. A system of case managers to offer individualised education plans as well as individualised advice to teachers and school on how to make individualised reasonable accommodation for the special individual situations of each student with disabilities and on how to tailor to their teaching and other supports for them at all stages of their education or vocational/special training. The school should also be held accountable for the use of the subsidy provided by the government to it for the intake of each student with disabilities to ensure that it is employed mostly for the direct benefit of that student.

C. Discrimination against students with different sexual orientation (Art. 2)

17. There are no laws outlawing discriminations on other grounds on the basis of age, sexual orientation and other gender identity, etc., in the private sector. Public education, publicity measures and self-regulation are simply inadequate.² The

² The government reported in ICESCR third report that they promote equal opportunities on

survey conducted by Touch Project of The Boys' and Girls' Clubs Association of the HKSAR in 2009 revealed that more than half of the homosexual secondary students had experienced various discriminatory and bullying behaviours, and the support from schools were far from enough.

Proposed questions

18. Does the government plan to introduce legislations against discrimination on the grounds of sexual orientation? If so, when will the government introduce such legislations? If not, what are the reasons and what other measures will the government take to ensure the equal rights in the HKSAR and to provide remedies to those victims of discrimination on the grounds of sexual orientation?

Recommendations

19. We urge the government to take immediate measures to introduce comprehensive anti-discrimination ordinances on sexual orientation, and to provide statutory Code of Practices to schools and teachers on education issues under such a Sexual Orientation discrimination Ordinance.

D. Human rights protection mechanisms (Art. 4)

20. Currently there are a number of human rights protection bodies with limited mandate such as Equal Opportunities Commission (EOC) to promote anti-discrimination and to handle discrimination cases on the grounds of sex, family status, race and disability. However, even though there are repeated calls by various UN treaty bodies; there is still no statutory body to comprehensively monitor the human rights situation and to handle cases of human rights violations. Victims suffered from human rights violations which did not fall within the mandate of current human rights protection bodies have to rely on civil litigation for remedies.
21. The government has not implemented the UN Committee on the Rights of the Child's recommendations on setting up an independent human rights institution with a mandate on child rights (Para 17). It has also refused to set up a

grounds of sexual orientation through public education and publicity measures, and by setting up Sexual Minorities Forum and Gender Identity and Sexual Orientation Unit. However, the Forum and the Unit is hardly functioning. The Forum even has cease holding meetings since December 2010. The Unit has set up a system for receiving discrimination complaints on the basis of sexual orientation, but has so far refused to acknowledge any discrimination cases.

Commission on the Right of the Child in spite of repeated calls by NGOs and the Legislative Council for establishing one.³

Proposed Questions

22. Please provide supporting documents to show whether there is any need to establish a statutory independent human rights commission. Please compare the mandates of the existing mechanisms and rights enshrined in the Convention on the Rights of the Child to identify any gaps not already covered by such mandates taken together? Please also provide information including research and review reports assessing the effectiveness of the existing human rights mechanisms in the HKSAR within their respective jurisdiction.

23. Please explain the government's position on establishing a Commission on the Right of the Child for the HKSAR. How does the government ensure that the principle of "best interest of child" is properly respected and implemented in all public policies and measures in the HKSAR without such a Children's Commission?

Recommendations

24. We urge the government to set up a statutory independent Children's Commission in line with the Paris Principles to promote and protect children's rights in the HKSAR. The Children's Commission may be separated from or form part of a statutory independent Human Rights Commission to be established in the HKSAR in line with the Paris Principles to promote and protect human rights in the territory.

E. Equal right of adopted ethnic minority children to nationality (Arts. 7 and 8)

25. Article 2 of the Nationality Law of the People's Republic of China states, "... persons belonging to any of the nationalities in China shall have Chinese nationality." Article 4 provides, "Any person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality." Article 6 stipulates, "Any person born in China whose

³ The Legislative Council passed a motion on 8 June 2007 urging for the establishment of a Children's Commission. The Panel on Constitutional Affairs passed a motion on 18 May 2009 to condemn the Government for not setting up a Children's Commission and to urge for the establishment of such institution.

parents are stateless or of uncertain nationality and have settled in China shall have Chinese nationality."

26. NGOs specialized in ethnic minority issues complain that they have received a growing number of complaints from ethnic minority residents born in Hong Kong, including minors, that their applications to become Chinese nationals have been delayed and refused. The HKSAR government is criticized for delaying processing such naturalisation applications and for its reluctance in approving naturalization by ethnic minorities. People who are stateless or adopted seem to suffer from such reluctance as well.
27. These NGOs have also criticized that the readiness in accepting persons with Chinese blood as Chinese nationals under Article 4 has been taken by the Immigration Department as reluctance in approving persons with no Chinese blood to become Chinese nationals.

Proposed questions

28. Please provide information on statistics on naturalization application and the respective numbers of approved, rejected and pending applications? How many rejected cases have been subsequently approved on appeal or review? How many of the rejected cases have been given reasons for the rejection? How many of the rejected cases with reasons for rejection provided have been subsequently approved? How many of the rejected cases with no reasons for rejection provided have been subsequently approved? Is the HKSAR government reluctant in approving naturalization applications by ethnic minorities, adopted children or stateless persons?
29. What is the average processing time for the naturalization process for applications in the past 5 years? How many of these applications are still pending for decision and their average waiting time?
30. Why does Hong Kong law provide that no reasons need to be given for refusal of applications for naturalisation and the decision in such application by the Director of Immigration on this is final and not appealable to a court of law?
31. Is an ethnic minority minor or stateless minor, born in Hong Kong and adopted by Chinese parents in Hong Kong and brought up and settled there all their life, taken to be in the same position as a "person born in China whose parents are

both Chinese nationals or one of whose parents is a Chinese national” and be recognized as having Chinese nationality under Article 4 or 6 of the Chinese Nationality Law?

Recommendations

32. We urge the HKSAR government to approve applications for naturalisation from ethnic minority children readily in line with Article 2 of the Nationality Law of the People’s Republic of China and the Convention. The HKSAR Government should also ensure that ethnic minority children, stateless children and adopted children, are not discriminated against in their naturalisation application.

F. Split families – across the Mainland China and the HKSAR border (Art. 10)

33. A child born in the Mainland, especially those who born outside wedlock, with only one of his or her parents being a Hong Kong permanent resident, are in theory, recognized as Hong Kong permanent residents under the Basic Law. However, in practical, they have to go through a procedure triggered and sponsored throughout the process by the parent who is a Hong Kong permanent resident. If that parent passes away, has mental problems, seriously ill, disappears or is jailed, or unwilling to initiate or carry through the whole procedure, making it impossible to go through the rigid application system, the child is quite unlikely to acquire the status of a permanent resident in the HKSAR. Also, even when the child in such special cases finally settles in the HKSAR and even if the child’s parent who is a Mainlander managed to travel to the HKSAR from time to time to take care of the child, the parent can only rely on social security provided by the HKSAR Social Welfare Department to the child, which is definitely not enough for the family of two to live in the HKSAR.

Proposed questions

34. Please provide information on how the one-way permit procedure is consistent with the Convention especially in such special circumstances?

Recommendations

35. We urge the government to review and improve the procedures and the provisions of welfare to children in such special cases.

G. Children's rights to participate in public policy making (Art. 12)

36. There are different aspects of children's rights, including protection, provision and participation. The government focuses on protection and provision but relatively ignores participation in its policy making and implementation. For instance, the government does not hold consultations specifically for children on the formulation of its Moral and National Education curriculum, which have triggered thousands of students taking to the streets to oppose its adoption and enforcement.

Proposed questions

37. Please provide information on assessment of the effectiveness of implementation of child participation rights on government policies and measures, especially on school education and drug testing.

Recommendations

38. We urge the government to respect and implement child participation rights in formulation and implementation of policy including dissemination of child friendly information, and setting up an effective consultation platform which is tailored to the need of all children including minorities and consultations on every policy and measures affecting child rights.

H. Privacy and other legal rights of students affected by voluntary drug test in schools (Arts. 12 and 16)

39. The government introduced voluntary school drug test trial scheme in certain districts in 2009 and 2010. Although the scheme affected the rights of affected students, it had not consulted their views particularly those in the districts before finalizing and implementing the scheme. The scheme failed to provide legal exemption to the data subject students from revealing the drug test results legally in future by way of, say, Rehabilitation of Offenders Ordinance. It may lead to self-incrimination as the scheme only promises students found to have positive drug test results, or admitted of drug abuses, would not be prosecuted for consumption of drugs, but not for offences like possession of drug, drug trafficking, and abetting and assisting others to take drugs.

Proposed Questions

40. Please provide information on whether the implementation of school drug test scheme complies with Convention rights particularly under articles 12 and 16.

Recommendations

41. We urge the government to ensure voluntary drug test in schools to be consistent with Convention rights. We also urge the government to genuinely consult child views in matters affecting children's rights by holding proper consultations and providing child-friendly information to facilitate understanding and discussion.

I. Review of the Control of Obscene and Indecent Articles Ordinance (COIAO) (Art. 13)

42. The government held the second round of public consultation on the review of the COIAO in July 2012. The consultation focuses on improving the mechanisms including proposal of appointment of a statutory and independent classification board and proposal of abolishing the administrative classification function. However, it fails to clarify the vague definition of obscene and indecent which currently leads to infringement of freedom of expression such as circulation of information and discussion of arts, literature, academic, sex and sexuality. For instance, the newspaper photo of Michelangelo's David statue and National Geographic showing Ancient Indian history with computer visual image of naked ancient bodies were considered indecent in the HKSAR. It improperly hinders a child to access to information facilitating understanding and discussion on sex, sexuality, sexual autonomy, sex equality, diversity of relationships and sexual orientations in an open manner.

Proposed Questions

43. Please provide information on the review of the definition of obscene and indecency. Please explain how it is consistent with Convention rights particularly those under Article 13.
44. Please provide information including effectiveness of sex education implemented in school and plan to incorporate sex education into mandated curriculum.

Recommendations

45. We urge the government to review the vague definitions of obscene and indecency and to ensure it comply with Convention rights particularly those

under article 13. We also urge the government to incorporate sex education into mandated curriculum which facilitates discussion on sex and sexuality in open manner.

J. Amendments to the Personal Data (Privacy) Ordinance and the right of children to privacy (Art. 16)

46. The amended Personal Data (Privacy) Ordinance is in effect since October 2012. The amendments allow an exemption from the provisions of Data Protection Principles 3 (on transference or disclosure by law enforcement agencies to the parents or guardians of the minor) for personal data of minor under certain conditions.⁴ The amendment relies on the subjective judgment of law enforcement officials based on “the best interest of the minor” without a proper clear and unambiguous set of guidelines which is subject to abuse by law enforcement officials. Moreover, the government has rejected the recommendation of the Privacy Commissioner to limit parents’ right to access personal data of minors. As a result even the child expresses to the data user his/her disagreement to the disclosure of his/her personal data to his/her parent(s), he cannot effectively prevent such disclosure.

Proposed questions

47. Please provide information on the review of the Personal Data (Privacy) Ordinance with special impacts on children. Has the principle of best interest of child and the rights of the child to express their opinions and to participate in decisions affecting them been taken into account in the review? Does the government have any concrete plans to protect the privacy of the child?

Recommendations

48. We urge the government to amend the Personal Data (Privacy) Ordinance to concretely fulfil the requirement of best interests of the child, and respect the right of child who is capable of forming his or her own views to express views freely, and the views of the child should be given due weight in accordance with the age and maturity of the child.

⁴ Principle 3 is about the use of personal data. Exemptions are allowed during the following conditions: (a) the transfer or disclosure of the data to the parents or guardians of the minor is to facilitate the latter to better discharge their responsibility to exercise proper care and guardianship, and is in the best interests of the minor; and (b) the data are held by law enforcement agencies and are to be transferred or disclosed by law enforcement agencies to the parents or guardians of the minor.

K. CCTV and privacy in schools (Art. 16)

49. It is reported that CCTV are widely installed in 3 secondary schools, including classrooms, corridors and even areas outside toilets. The management of the schools excused the setting up of CCTV by security reasons, but the students complained that their behaviours were monitored by CCTV. In one of the schools there are both video and audio recording on students' behaviour.

Proposed questions

50. Please explain if the installation of CCTV at schools is regulated by the existing Personal Data (Privacy) Ordinance. Please provide information on measures taken by the government to protect of privacy at schools.

Recommendations

51. We urge the government to provide detailed guidelines to schools to protect the privacy of students and teachers.

L. Child asylum seekers, refugees and torture claimants (Art. 22)

52. The HKSAR government has failed to fulfil its commitments to child refugees under Article 22 of the Convention. Child refugees do not have access to an adequate refugee status determination system, have no legal status in the HKSAR and do not receive the required protection and humanitarian assistance.

Proposed Questions

53. Please explain why child refugees have no legal right to seek asylum in the HKSAR and there is no refugee status determination system for them? Is it true that most child asylum seekers in the HKSAR have no legal status except "overstayer" or "illegal immigrant"? If so, why? Please provide details on the humanitarian assistance the government gives to each child asylum seeker and recognised child refugee and child torture claimant respectively in contrast to those to the adult ones. Please provide statistics as to how many child asylum seekers/torture claimants have been recorded in the HKSAR in the past 5 years and how many of them have been detained in institutions for detaining convicted child offenders like Tuen Mun Children and Juvenile Home?

Recommendations

54. We call on the government to establish a fair and effective mechanism to determine who is a child refugee in need of protection and ensure the full range of their economic, social, cultural and civil and political rights.

M. "National Education" vs. Civic Education (Art. 29)

55. After the resumption of the administration of Hong Kong by China, the HKSAR has been depoliticising civic education in the HKSAR and diluting and moralizing the subject with moral education emphasizing disproportionately on private sphere morality. In doing so, the government has been marginalising civic education while shifting its efforts and resources to promoting dubious "national education" out of a proper civic education context in the HKSAR. In schools, the government attempted to boost narrow nationalism by presenting a positive image of China, emphasized obedience but not rights, required the students to recognize the emotional expression of national identity at the expense of critical thinking. Increasing resources have been deployed to support production of biased or even indoctrination materials and trips to portray basically a positive image of Mainland China. In the community, the government decided to re-establish the human rights education working group under the Committee for the Promotion of Civic Education in 2005 but the government disbanded it after its policy bureau re-structuring in 2007.
56. Echoing China President HU Jin-tao's call in 2007 for "national education", the HKSAR government released the amended Moral and National Education Curriculum Guide in May 2012 to replace civic education and formally made the subject compulsory in primary and junior secondary schools. The curriculum guide was a clear rollback as it displaced proper civic education, which emphasized universal human rights, democratic and accountable institutions, and modern critical multi-level participatory citizenship. Facing strong oppositions from parents and civic society through continued public assemblies, protests, hunger strikes and strikes in university, the government finally shelved the curriculum guide in Oct 2012.

Proposed Questions

57. Please explain the reasons for replacing the subject of civic education with that of moral and civic education in 2001, and then moral and national education

recently, and if such national education complies with the universal human rights values. After the shelving of the Moral and National Education Curriculum Guide in May 2012, what education objectives and standards are there for guiding the primary and secondary schools in their civic education, especially human rights education, in the HKSAR?

58. Please provide information including plan and timetable on the implementation of human rights education according to the Plan of Action of World Programme for Human Rights Education.
59. Please provide information including a review on the effectiveness of human rights education including the civil and political rights of the child in school.
60. Please provide information including measures taken to ensure the hidden curriculum like school atmosphere and arrangement to be consistent with human rights enshrined in the Convention.

Recommendations

61. We urge the government to stop using public expenditures and organising activities for the de facto promotion of the dubious "national education" even in the absence of the curriculum guide.
62. We urge the government to reinstate and improve the emasculated civic education in the HKSAR with strong emphasis on elements of human rights education including civil and political rights and critical participatory citizenship in the light of the development of universal suffrage in the HKSAR. So that students should be able to learn and understand the world, the region, Mainland China and the HKSAR and their neighbourhood in such curricular context in a pluralistic and critical approach for nurturing in the next generation modern citizenship with a strong emphasis on human rights knowledge, attitude and values, skills and actions for preparing them to build a just and righteous society. Such education should comply with the rights enshrined in the Convention particularly those under Articles 13, 14 & 29. We also urge the government to properly plan and implement human rights education in an improved civic education framework according to the Plan of Action of World Programme for Human Rights Education.

N. Innocent and offender children in the correctional cum residential institution TMCJH (Arts. 37, 39 and 40)

63. In 2007, the Social Welfare Department co-located all the then existing six correctional and residential homes run by it to a single newly built Tuen Mun Children and Juvenile Home (TMCJH). It thus merged the functions of a place of refuge (for innocent wards of the Director of Social Service, e.g. minors under his care due to family problems like those unattended by both of their divorced, deceased, disappeared or imprisoned parents), a remand home (for children pending trial), a place of detention (for illegal immigrants), an approved institution (probation home for convicted children) and a reformatory school (for convicted children) for minors. These minor inmates, offenders or not, have been sent to TMCJH under various Ordinances.⁵
64. The labour union of social work assistants complained to the press that the government has breached its promise to provide adequate spaces to adequately separate the boys from the girls, and children with criminal liabilities from those without. Inmates of different categories might run into others during meals, classes or outdoor activities. For instance, different categories of inmates might have classes together. While the canteen was divided into sections, there were no physical partitions in between, resulting in provocational behaviours and fights. For example, a fight was reported in March 2012 resulting in police arrest of a 16-year old Mali illegal immigrant who fought with a local child under probation in TMCJH.
65. There were also complaints that TMCJH was seriously understaffed and other incidents. There were no overnight nurse services. About 100 social work assistants and workers had no desks in the institution and their morale was extremely low. There were also news reports of attacks of workers by inmates, and of indecent assaults on inmates by other inmates.
66. It was reported that, after the union's meeting with the Department management, a working group has been set up for improvements of TMCJH.

⁵ These Ordinances include:
- Immigration Ordinance (Chapter 115) ;
- Protection of Children and Juveniles Ordinance (Chapter 213);
- Reformatory Schools Ordinance (Chapter 225);
- Juvenile Offenders Ordinance (Chapter 226); and
- Probation of Offenders Ordinance (Chapter 298).

Proposed questions

67. Please provide general information on the TMCJH, including approved capacity for different categories of children, and establishment and actual size of staff of different positions. What actually are these categories of children placed in TMCJH? Why are different categories of children placed in TMCJH? Why are non-offenders placed in TMCJH, not elsewhere? Are there alternative facilities, governmental or otherwise, to hold one or more categories of such children?
68. How is separation, carried out in terms of policy, facilities, activities, etc., between children of different genders, between children who are offenders and those who are not, and between children of different age, personality, and special needs (e.g. disabilities, languages and cultural needs) in TMCJH? Are there opportunities for children of different categories to meet or even associate with, one another, e.g. for meals, classes, outdoor and other activities, sleep, rest, etc.?
69. Please provide the annual number and nature of incidents of fights, of other physical clashes, and of cases of confrontations, between any child(ren) with any other person(s), including any member(s) of staff, and the age, gender, race, disability and reasons for placement in TMCJH of the children involved, and of the follow-up measures and actions taken, including punishment and legal actions, since the establishment of TMCJH.
70. Please also provide information on the complaints by the union or staff on the inadequate service and facilities, shortage of staff, and low morale in TMCJH, and the government's efforts to address such complaints or problems. What problems in TMCJH have been identified by the working group and what measures have been introduced to improve the institution?
71. What special measures have been taken to address the special needs and situations of ethnic minority children, and children with disabilities, under the custody or in the care of the correctional or residential institutions, especially TMCJH, run by the Social Welfare Department?
72. Whether human right organisations with expertise in criminal justice and children's rights are welcomed by the Social Welfare Department to conduct independent inspection of correctional and residential institutions like TMCJH? Please provide names of such organisations, the number and nature of their

inspection and their inspection reports.

Recommendations

73. We urge the government to review the situation of TMCJH especially placement of non-offenders in TMCJH and the lack of effective separation of various categories of children. The government should take immediate measures to identify other problems and improve the nature, facility, management and services of the institution, such as to ensure the proper and effective separation, as well as the care, protection and education, of different categories of children in line with international standards.
74. Special attention and care should be given to the special and varying needs of children requiring extra care and protection on grounds of gender, age, disability, race, language, religion, culture, personality, etc. All children in TMCJH with special needs should be treated fairly and should by no means receive less care, protection, assistance, treatment and training than those of other categories.
75. The government should welcome and invite human right organisations with expertise in criminal justice and children's rights to conduct independent inspection of correctional and residential institutions like TMCJH