

Panel on Constitutional Affairs
Meeting on Monday, 18 March 2013

Agenda item IV – Second Report of the Hong Kong Special Administrative Region
(HKSAR) under Convention on the Rights of the Child (CRC)

SUBMISSION BY AMNESTY INTERNATIONAL HONG KONG

A) *Human Rights Education (Article 29)*

The right to human rights education

1. Everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training.¹ The United Nations (UN) has set out comprehensive principles and guidelines in this respect, including Plans of Action and other documents pursuant to the UN World Programme for Human Rights Education.²
2. Article 29 of the Convention on the Rights of the Child ('CRC'), closely connected to Article 28 on the right of the child to education, concerns 'the individual and subjective right to a specific quality of education'.³ Focusing on the aims and processes of education, it attaches great importance to human rights education.
3. Human rights education is a 'comprehensive, life-long process' which starts with 'the reflection of human rights values in the daily life and experiences of children'.⁴ As reiterated by the Committee on the Rights of the Child ('the Committee'), it should go beyond 'provid[ing] information on the content of human rights treaties', to include 'learn[ing] about human rights by seeing human rights standards implemented in practice, whether at home, in school, or within the community'.⁵ It entails not only the incorporation of learning about human rights into the school curriculum at all stages,⁶ but also the promotion of values and policies conducive to human rights within the broader community.⁷

¹ Article 1(1), UN Declaration on Human Rights Education and Training. C.f. Preamble to Universal Declaration of Human Rights ('every individual and every organ of society [...] shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance [...]')

² UNGA Res 59/113 A (10 December 2004); Plan of Action for the first phase (2005-2009) of the World Programme for Human Rights Education (<http://www.ohchr.org/Documents/Publications/PActionEducationen.pdf>); Plan of Action for the second phase (2010-2014) of the World Programme for Human Rights Education – Joint OHCHR-UNESCO booklet (http://www.ohchr.org/Documents/Publications/WPHRE_Phase_2_en.pdf)

³ CRC, General Comment No. 1 (2001) "Article 29 (1): The Aims of Education", CRC/GC/2001/1(17 April 2001) ('General Comment No. 1'), ¶19.

⁴ *Ibid.* ¶15.

⁵ *Ibid.*

⁶ CRC, General Comment No. 5 (2003) "General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)", CRC/GC/2003/5 (27 November 2003) ('General Comment No. 5') ¶68.

⁷ CRC, General Comment No. 1, ¶19.

Human rights education in schools

4. The inadequacy and inefficacy of human rights education in Hong Kong has been a recurrent principle subject of concern to the Committee. In its 1996 Concluding Observations, the Committee considered that ‘insufficient attention’ had been given to the implementation of Article 29, and that human rights education was not given ‘the necessary status within school curricula’.⁸ In 2005, the Committee expressed its concern that children in Hong Kong had ‘limited awareness and understanding’ of human rights and the CRC.⁹
5. Indeed, although the HKSAR Government acknowledges the importance of “education in schools” in the promotion of children’s rights and human rights in general,¹⁰ little has been achieved in terms of integrating human rights into the school curriculum and across different subjects, and there seems to be no additional commitment in the near future.¹¹
6. Above all, contrary to the Government’s claim that human rights education is ‘integral to the school curriculum’ and ‘addressed in a wide range of subjects at different key stages of learning’,¹² actual curriculum coverage of human rights is extremely inadequate.
7. The curriculum focus is gradually shifted away from human rights and civic education, starting from the renaming of Civic Education to Moral and Civic Education in 2001, the disbandment of the Human Rights Education Working Group in 2007,¹³ the renaming of the Education Bureau’s Moral and Civic Education Section as Moral, Civic and National Education Section in 2010,¹⁴ and the proposed Moral and National Education as an independent subject.¹⁵
8. Far from implementing human rights education, the objective of the curriculum is to promote the values of perseverance (堅毅), responsibility (責任感), respect for others (尊重他人), national Identity (國民身份認同), commitment (承擔精神), care (關愛) and integrity (誠信).¹⁶ **Our position is that such reforms to the curriculum are plainly regressive and unjustified.**

⁸ CRC, Concluding observations: United Kingdom of Great Britain and Northern Ireland: Dependent Territories – Hong Kong, CRC/C/15/Add.63 (30 October 1996) (‘1996 Concluding Observations’), ¶17, 32.

⁹ CRC, Concluding observations: China (including Hong Kong and Macau Special Administrative Regions), CRC/C/CHN/CO/2 (24 November 2005) (‘2005 Concluding Observations’), ¶24. Cf. CRC, 1996 Concluding Observations, ¶123.

¹⁰ *Second Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child* (‘Second CRC Report’), ¶155. Cf. *Third Report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights* (‘Third ICCPR Report’) ¶2.16.

¹¹ *Policy Address 2013* ¶150-156.

¹² Second CRC Report, ¶55, 497.

¹³ *Ibid.*, ¶156.

¹⁴ Education Bureau, Moral, Civil and National Education (<http://www.edb.gov.hk/en/curriculum-development/4-key-tasks/moral-civic/index.html>)

¹⁵ *Policy Address 2010-2011* ¶161; Third ICCPR Report, ¶2.21.

¹⁶ Education Bureau, Civic and Moral Education Section (renamed as Moral, Civic and National Education Section since 1 July 2010), ‘The Revised Moral and Civic Education Curriculum Framework’ (April 2008) (<http://www.edb.gov.hk/attachment/tc/common/revised%20mce%20framework.pdf>)

9. In New Senior Secondary (NSS) Curriculum, references to human rights and related issues only form a very small part of one of the six Modules of Liberal Studies, a subject that is only implemented at senior secondary level.¹⁷ In its report, the Government also referred to Liberal Studies as ‘the main vehicle for promoting nationality identity’.¹⁸ These indications cast serious doubts on the Government’s claim that human rights education is ‘strengthened’ – rather than downplayed – in Liberal Studies.¹⁹
10. Furthermore, the perspectives from which human rights-related issues are taught and represented also warrant scrutiny. For example, there is a general lack of recognition of human rights as universal values and inherent entitlements of the individual. It is particularly worrying that the fulfillment of ‘responsibilities’ or ‘duties’ is sometimes misrepresented as a ‘condition’ for the enjoyment of rights.²⁰
- 11. We urge the Government to take immediate, concrete steps to review, renew and redevelop, if necessary, the existing curricula, and revise the relevant education policies, as part of a genuine, long-term commitment to promoting human rights education as a core subject at all stages of learning.**

Professional development programmes for teachers and professionals

12. In its 2005 Concluding Observations, the Committee pointed to the lack of awareness and understanding of human rights and the CRC displayed by professionals working with and for children in Hong Kong.²¹
13. It is unfortunate that the situation has barely improved since then. For example, a survey conducted in 2011 revealed an alarmingly poor understanding of basic human rights principles among senior Liberal Studies teachers in local secondary schools. These include the findings that almost half of the respondents agreed that citizens must first fulfil their responsibilities before enjoying their human rights, and that over one-third agreed that the use of secret tortures by the police in obtaining evidence was acceptable.²² We regret that the Government has failed to acknowledge the inadequacies of the existing training and programmes, nor has it indicated any plan to or enhance them in future.²³

¹⁷ This refers to the Theme ‘Rule of law and socio-political Participation’ under the Module ‘Hong Kong Today’.

¹⁸ Second CRC Report, ¶55, 499.

¹⁹ *Ibid.*, ¶55, 497.

²⁰ Curriculum Development Council & Hong Kong Examinations and Assessment Authority, “Liberal Studies – Curriculum and Assessment Guide” (Secondary 4 - 6) (http://www.edb.gov.hk/FileManager/EN/Content_5941/ls_e_070307.pdf)

²¹ CRC, 2005 Concluding Observations, ¶24. Cf. CRC, 1996 Concluding Observations, ¶23.

²² Hong Kong Institute of Education (HKIEd), ‘Study on Liberal Studies Teachers’ Attitudes towards Human Rights and the Rule of Law’ (2011) (http://www.ied.edu.hk/upload_main/manage/file/LS%20Survey%20Factsheet%20Eng_final%281%29.pdf)

²³ Second CRC Report, ¶501

14. **We request that the Government revise and strengthen all professional development programmes available for teachers and professionals in international human rights standards and human rights education.**

Human rights education in the community

15. The Government has pledged to promote human rights education in society in general, as part of civic education,²⁴ but has not demonstrated a genuine commitment in this respect.
16. We note that the Children’s Rights Education Funding Scheme (CREFS) was set up in 2006 to ‘encourage and enable community organisations to take up educational projects for raising public awareness and understanding of children’s rights’.²⁵ While acknowledging the merits of the CREFS, we are concerned that the focus appears to be on arranging activities and services for children, and much less on engaging other stakeholders and members of the wider public, who are also actors in the promoting and protection of children’s rights.²⁶
17. Similarly, the Community Participation Scheme (CPS) administered by the Committee on the Promotion of Civic Education (CPCE) sponsors community organisations to promote education on human rights on an annual basis.²⁷ However, the sponsoring priorities of the CPS seem to have shifted from human rights education onto areas such as national education, where sentiments, social harmony and national identity are given prevalence over universal rights, freedoms and the respect for diversity.
18. In the past, a vast majority of the projects sponsored did not have a clear human rights focus or objective.²⁸ In 2013 – 2014, The CPS prioritises applications for sponsorship to organise activities on the theme of “Cherish yourself and your family, Love Hong Kong and your country” – a theme of remote (if any) relevance to human rights, but rather in resonance with Moral and National Education, which was shelved in October 2012 amidst wide controversies.²⁹ Under the Guidelines for Applications

²⁴ HKSAR Common Core Document

(http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/iccr3/Core-document-e.pdf) ¶73.

²⁵ Constitutional and Mainland Affairs Bureau, ‘2013 Children’s Rights Education Funding Scheme Guide to Application’

(http://www.cmab.gov.hk/doc/en/documents/public_forms/CREFS_2013_Guide_e.pdf)

²⁶ ‘Applications invited for Children’s Rights Education Funding Scheme’

(<http://www.info.gov.hk/gia/general/201212/18/P201212180545.htm>); Constitutional and Mainland Affairs Bureau, ‘Children’s Rights Forum 2013 Children’s Rights Education Funding Scheme’ (Paper No. CRF 1/2013)

(http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/human/Paper_No_CRF_1_2013.pdf)

²⁷ Third ICCPR Report, ¶2.18.

²⁸ Committee on the Promotion of Civic Education, Community Participation Scheme – Successful Projects (<http://www.cpce.gov.hk/eng/cpscheme/project.htm>)

²⁹ ‘Curriculum Guide of Moral and National Education subject formally shelved’ (8 October 2012)

(<http://www.info.gov.hk/gia/general/201210/08/P201210080622.htm>)

to the Scheme, “Human Rights Education” is only included as one of the six subsidiary areas which may be sponsored.³⁰

19. **We believe that resource allocation ought to be revised for both Schemes to prioritise the sponsorships of genuine human rights education initiatives, and that additional initiatives should be set up, as part of a comprehensive strategy for children’s rights education in the community.**

³⁰ Committee on the Promotion of Civic Education, “Community Participation Scheme 2013-2014 – Guidelines for Applications” (http://www.cpce.gov.hk/common/doc/cps13_guideline_e.pdf) pp.2-3

B) The Right of the Child to be Heard (Article 12)

Respect for the views of the child as a core principle

20. Respect for the views of the child is one of the four core principles underpinning the CRC.³¹ Article 12 provides for the right of each child to be heard, which encompasses the right express his or her own views ‘freely in all matters affecting [them]’, and requires that such views be ‘seriously considered’³² and ‘given due weight’.³³ This also entails the right to effective participation in the ‘development of policies, programmes and measures in all relevant contexts of children’s lives.’³⁴
21. Regarding the implementation of Article 12, States parties have the obligation to ‘consult children at the local and national levels on all aspects of education policy’, including school curricula, teaching methods and other areas.³⁵
22. The Committee has made it clear that ‘consistent and ongoing arrangements’ are required, as opposed to ‘one-off or regular events’, and that Governments should develop a direct relationship with children’.³⁶ More specifically, it made it clear that ‘structures for formal representative participation’ such as youth parliaments, children’s councils and ad hoc consultations alone are insufficient, as they only facilitate participation of ‘a relatively small number of children’.³⁷
- 23. We are thus of the view that the functions and reach of the Children’s Rights Forum³⁸ and the Children’s Council³⁹ (both of which meet infrequently and only allow for very limited participation of selected children representatives) must be expanded, and demand the creation of additional, alternative opportunities for effective communication between children and the Government.⁴⁰**

Children’s participation in matters affecting them

24. Furthermore, we share the Committee’s concern that in Hong Kong, ‘children’s views are not sought systematically on all policies and programmes affecting them’.⁴¹ In its previous Concluding Observations, the Committee recommended that the HKSAR

³¹ The other three core principles are: non-discrimination; the best interests of the child; and the right to life, survival and development.

³² CRC, General Comment No. 12 (2009) “The right of the child to be heard”, CRC/C/GC/12 (20 July 2009) (‘General Comment No. 12’), ¶28, 22.

³³ Article 12(1) CRC; also CRC, General Comment No. 12, ¶22.

³⁴ CRC, General Comment No. 12, ¶13.

³⁵ *Ibid.*, ¶111.

³⁶ CRC, General Comment No. 5, ¶12.

³⁷ CRC, General Comment No. 12, ¶127.

³⁸ Constitutional and Mainland Affairs Bureau, Children’s Rights Forum (http://www.cmab.gov.hk/en/issues/child_forum.htm). Cf. *Second Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child*, ¶112-114.

³⁹ Constitutional and Mainland Affairs Bureau, The Rights of the Individual (<http://www.cmab.gov.hk/en/issues/human.htm>) Cf. *Second Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child*, ¶125.

⁴⁰ CRC, General Comment No. 12, ¶127.

⁴¹ CRC, 2005 Concluding Observations, ¶38.

'systematically ensure that children's organizations participate actively in developing policies or programmes affecting them, such as the current education reform'.⁴²

25. It is regrettable that despite these recommendations, the Government failed to respond promptly and effectively to the student-led public campaign against the proposed National Education curriculum, which reached its heights at a hunger strike and a 10-day peaceful occupation of the Central Government Offices last September. By being extremely slow and reluctant to address the strong views expressed by children on matters directly affecting them, the Government has failed to meet its obligations regarding the children's right to be heard under the CRC.
26. **We urge the Government to take all necessary measures to ensure that the right of the child to be heard is fully respected, protected and fulfilled, and to give due regard to the its obligations under Article 12.**

Independent commission on the rights of the child

27. We also share the Committee's regret at 'the absence of an independent national human rights institution with a specific mandate for child rights',⁴³ and cannot agree with the Government that there is 'no pressing need' to establish such a body.⁴⁴
28. It is clear that the existing mechanisms are inadequate: statutory bodies such as the Equal Opportunities Commission are only authorised to deal with certain human rights issues and to exercise limited powers within their respective mandates, none of which specifically relate to children.
29. **Hence, we request that positive steps be taken by the Government towards establishing an independent human rights institution with broad competence to monitor, promote and protect children's rights, in compliance with The Paris Principles.**⁴⁵

⁴² CRC, 2005 Concluding Observations, ¶41. Cf. CRC, 1996 Concluding Observations, ¶32.

⁴³ CRC, 2005 Concluding Observations, ¶16. Cf. CRC, 1996 Concluding Observations, ¶11.

⁴⁴ Second CRC Report, ¶117.

⁴⁵ Principles relating to the Status of National Institutions (The Paris Principles) GA Res 48/134 (20 December 1993)

C) Non-discrimination on grounds of Sexual Orientation (Article 2)

Non-discrimination as a core principle

30. Non-discrimination is another core principle of the CRC. As a party to the CRC, Hong Kong is under an international legal obligation to protect and fulfil the right of the child to equality and to prohibit discrimination on grounds such as sexual orientation.
31. The policy of 'self-regulation and education', which the Government promotes as 'the most appropriate means of addressing discrimination in this area',⁴⁶ has been proved insufficient and inadequate in eliminating discrimination and promoting equality. According to a survey released by the Public Opinion Programme of The University of Hong Kong in November 2012, 75.8% of the respondents believed that the people of Hong Kong generally discriminate, to varying extents, against people of different sexual orientations; 26.9% believed they themselves discriminated against people on grounds of sexual orientation; and 63.8% held the view that Hong Kong should legislate to protect people from such discrimination.⁴⁷
32. The Gender Identity and Sexual Orientation Unit under the Constitutional and Mainland Affairs Bureau has its functions impeded by its restrictive mandate, and without any comprehensive, enforceable follow-up mechanism, especially vis-à-vis individuals or private organisations.⁴⁸ The Sexual Minorities Forum has appeared inactive for over two years.⁴⁹

Legislation prohibiting discrimination

33. In its 2005 Concluding Observations, the Committee spelled out its concern about the 'lack of legislation specifically prohibiting discrimination [on grounds of sexual orientation]',⁵⁰ and recommended that the HKSAR 'expedite its efforts to draft and adopt' such legislation.⁵¹ It is regrettable that to date, the Government still has not taken concrete steps towards implementing this recommendation.⁵²

⁴⁶ Second CRC Report, ¶103; Third ICCPR Report, ¶26.10.

⁴⁷ Public Opinion Programme, The University of Hong Kong, "Survey on Hong Kong Public's Attitudes Towards Rights of People of Different Sexual Orientations" (Sponsored by Hon Cyd Ho Sau-lan), Legislative Councillor – Report (in Chinese) (http://hkupop.hku.hk/english/report/LGBT_CydHo/content/resources/report.pdf); cf. Second CRC Report, ¶102.

⁴⁸ Constitutional and Mainland Affairs Bureau, Gender Identity and Sexual Orientation Unit, "Enquiries and Complaints Hotline - Guide to Complaint Procedures" (http://www.cmab.gov.hk/doc/en/documents/public_forms/racedoc/Complaint_Form_guide_e.pdf) p. 2 Cf. Second CRC Report, ¶131.

⁴⁹ Constitutional and Mainland Affairs Bureau, Sexual Minorities Forum (http://www.cmab.gov.hk/en/issues/equal_forumdoc.htm) Cf. HKSAR Common Core Document (http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/iccpr3/Core-document-e.pdf) ¶85-86.

⁵⁰ CRC, 2005 Concluding Observations, ¶31.

⁵¹ CRC, 2005 Concluding Observations, ¶33.

⁵² Second CRC Report, ¶102-103.

34. The Government constantly attempts to justify its inaction regarding legislation, by maintaining that sexual orientation is a sensitive issue ‘that impinges on deeply ingrained values and notions of morality’ on which public opinion is divided.⁵³
35. Yet, divided public opinion does not prevent consultation on legislation. Rather, it reflects a real need for the Government to address this human rights issue in a progressive and systematic manner. To this end, a comprehensive public consultation exercise is a legitimate, constructive and practicable process towards establishing adequate legislative remedies for sexual orientation discrimination, in accordance with international human rights law. **We are of the view that the Government’s persistent refusal to conduct any form of consultation on legislation, and the absence of any plan to do so in the near future,⁵⁴ are wholly inconsistent with Hong Kong’s international human rights obligations.**
36. In this respect, we further regret that a motion “urging the Government to conduct public consultation on legislation to ban discrimination on the basis of sexual orientation” was negated by this Council under the split-voting system in November 2012.
37. **We hereby call upon the Government to take all necessary steps towards initiating the relevant legislative process to combat discrimination on grounds of sexual orientation in both public and private sectors. To this end, we reiterate that a comprehensive public consultation on legislation must be conducted at the earliest possible opportunity, to enable meaningful and inclusive participation from all members of the public and stakeholders.**

⁵³ Second CRC Report, ¶146; *Policy Address 2013* ¶131, 146.

⁵⁴ *Policy Address 2013* ¶131.