

兒童事務委員會

香港兒童面對的危機廣而深（附錄一）。現有的機制千瘡百孔，專業人員往往束手無策，錯失了很多保護兒童和預防的機會。這個並非香港獨特的現象，海外各國也一樣面對！

無論是明顯或潛藏的危機，例如發生在家庭、學校、社區、醫院、院舍、網上的暴力、不良的親子關係和管教方式、婚姻破裂、網上危機、精神困擾、環境污染的禍害、食物安全、貧窮、毒品的禍害、社會的歧視、跨境的問題、專業失誤、不完善的社會政策、戰爭、天災等，都直接或間接影響兒童的最大利益，直接或間接影響社會的未來。

而要積極和徹底處理這些既廣且深的問題，不能倚靠單一的方法，更非一個家庭、一間學校、一個機構獨自所能夠應付。而現有的機制和運作力有不逮！要積極和徹底處理這些既廣且深的問題，必須有改革的決心、勇氣和視野，配合資源迅速建立一個高認受性、可持續發展、以法授權的平台。

聯合國建議締約國配合法律授權，成立專為兒童而獨立於政府的兒童事務委員會。在給香港的審議報告亦清楚建議：訂立一套整全的兒童政策及策略，一個中央的兒童資料庫，一個獨立、可持續的兒童事務委員會。

在 1989 年，於紐約城 **New York City** 世界各地的領導人齊集，見證兒童權利公約被採納！到目前為止公約已延伸遍地。各地的政府都表示關心兒童的全人成長，尋找進取的方法，落實維護兒童與生俱來的生存、發展、受保護和參與權，能不被踐踏，而充份獲得尊重。

澳洲在 1986 年已經成立人權委員會 (**Human Rights & Equal Opportunity Commission, and renamed as Human Rights Commission in 2008**)，在 2013 年於人權委員會下成立法定獨立於政府的兒童事務委員會。而近年更因應性侵犯的事件而委任皇家委員會 (**Royal Commission on Child Sexual Abuse**)，進行五年調查，並於 2017 年 12 月 18 日完成了報告。報告中提出 409 項的建議，包括就天主教教會的性侵犯事件作出使無前例的建

議。澳洲總理 (Malcolm Turnbull, PM) 表示將會正式在年尾的大會上，代表國家正式向各受害者公開道歉，並承諾建議的落實。而兒童事務委員會亦有監察落實的角色。

為兒童，為社會未來，這認真的態度和改革的決心，值得效法！

英國在 2000 年，因應女童 Victoria Climbié 被虐殺，而成立調查架構，調查顯示社會制度的失效和無能 (blinding incompetence)，有關的不同部門最少錯失了 12 個預防女孩被殺的機會。該調查報告並作出一連串的重大改革，包括全面檢討兒童相關的條例，成就了 2004 年的兒童法，亦引至兒童事務委員會以 Children's Act, 2004 成立。有代表兒童的平台，長線為兒童發聲。

被委任檢討兒童事務委員會的功能的 Sir John Dunford 在他的報告中顯示，一個專門為兒童的平台應該成為主流的政策。而要這平台真正發揮維護兒童的最大利益的最大功能，必須有法律的授權，使之能成為獨立於政府的架構，不單幫助落實政府的政策，並且監察政策維護兒童權利和福祉的進度，指出不足或缺失，作出政府政策以外的對策。

Sir John 在探訪尊重兒童權利的學校的時候，見到接受兒童權利教育的兒童，他們學習尊重別人的權利，他們的師生關係亦有正面的影響。

要建立一個強而有效的專注為兒童的平台，將成為國際主流的力量。目前已最少有七十九個國家，二百多個地方成立兒童事務的平台，而挪威早於 1981 年已經成立。

在香港，有聲音表示政府絕對不會建立一個以法授權的平台。希望政府別被人看扁！

優質的決策將有長遠的意義和價值，惠及的兒童和家庭更多。縱使利益未必在這屆政府充份發揮，但所開展的工程實在，長遠實屬功德無量！

我們呼籲在香港採取更進取的方案，開明地成立一個有法授權的獨立於政府的兒童事務委員會。並非取代社會現存的機制，而是提升社會維護兒童最大利益的力度！（附錄二）

如果這平台缺乏法律為基礎，並非以公約為框架，如果這平台並非獨立於政府的架構的話，它將如一隻鷹斷了翅膀，無法高飛，不能遠瞰。它是鷹，卻不能達到鷹所能發揮的功能。

這樣的一個兒童事務委員會，將不能作出政府政策以外的建議，不能指出政府政策的不足，未能充份監察政府維護兒童最大利益。這個平台將不能持續發展，這個平台將形同虛設，有失於民。

勞福局局長表示如果立法，一般要三至七年。

英國將相關的兒童法例，修訂成一套兒童法，用了四年多。

有法律界資深人士表示，兒童事務委員會的立法草擬相對複雜性為低，而因過往曾經兩度被各黨派的議員在立法會一致通過，爭議性相對地亦較低。所花的時間可能未必會太長。

無論如何，如果政府於 2007 年，當立法會一致通過議案促請政府成立兒童事務委員會後，立即採取果斷的行動立法的話，短的 2010 年，長的 2013 年已經完成立法，一個有力、有認授性、可持續發展的兒童事務委員會已運作 4 至 7 年。

立法的時間長短，不應當成為放棄的理由或拖延政策，更不應該是馬虎成立一個諮詢架構的藉口。在進行立法的時間，委員會仍然有運作的空間，將一些重要的項目馬上展開，例如成立兒童的中央資料庫、訂下兒童發展的指標、落實兒權教育、專業人員的培訓、進行相關的研調等，並積極諮詢並使兒童、市民、專業人士及倡議者參與。到法例完成後，即可全面運作。這樣不更能達到政府所謂的成本效益？！

雷張慎佳

香港兒童權利委員會主席

2018年2月27日

附錄一：香港近年廣泛報導的案例

- 自殺的少女和妹妹一直無出生註冊。
- 在濫藥家庭死亡的五歲男童，其體內冰毒含量是一般冰毒致死個案的 7 倍。
- 12 歲女兒被母親肢解，身首異處。
- 15 歲女童被網上尋模特兒拍照的男子虐殺並強姦。
- 無法忍受被長期網上欺凌的男孩自殺身亡。
- 失控的男士，粗暴搖晃拉扯幼童，母親未能制止。
- 小予恩手術後心臟停頓，被誤以為醫療儀器失誤。
- 4 歲女童被母親交托照顧的兩位裸姆虐待腦出血入急症室。
- #Me Too：性侵犯隱蔽的個案驚人，受害人難以啟齒。
- 男童被父親懲罰，要在繁忙的地鐵站出口跪著過馬路。
- 兒童之家 9 歲童，涉性侵 7 歲女。未滿 10 歲 警不起訴。
- 2 歲女驗出冰毒，滿身黑色污垢送院。
- 女遭父姦逾年，啞忍稱孝心。
- 5 歲女童臨臨懷疑被虐殺致死，個案進入司法程序。

附錄二：Hong Kong Committee on Children's Rights Position Paper on the establishment of a Children's Commission in Hong Kong

Proposals for the Preparatory Committee on the Commission on Children

1. PROPOSED STATUS

- 1.1 There are many ways of setting up a Children's Commission in Hong Kong. However, some functions could only be achieved when the Commission has the legal mandates and is independent from the government.
- 1.2 A statutory Children's Commission could also ensure that children's matters are handled free from being bound by the Government's stand points and policies on a long-term and sustainable basis. The commission would not be dissolved as a result of a change of the Chief Executive or key government officials.
- 1.3 There are comments that if the Children's Commission is a statutory one, it would cause disparity with other existing advisory committees such as women, youth, elderly...etc. However, children are the most vulnerable group and difficult to voice out their needs and to defend their rights from violation. Currently there is no institution which is mandated to investigate child rights violations. Equal Opportunities Commission only acts on the four anti-discrimination ordinances on sex, disability, family status, and race. Indeed, EOC has indicated several times that some of the cases of the children could not be handled by them because of a limitation of their mandates. We need to have a Children's Commission with legal mandates to be able to handle child rights violations.
- 1.4 Some people also worry that if the Children's Commission is a statutory one, it would take a much longer time because of the required legislative process. However the time spent would be worthwhile to ensure the commission is capable of defending the rights of children and to serve their best interests.

2. EXPECTED ROLES

- 2.1 Children's Commission should be a **champion** or an **advocate** for the best interests of the child. It should not be a service provider nor an agent to carry out government policies.
- 2.2 Children's Commission should actively **monitor the implementation of** the United Nations ***Convention on the Rights of the Child*** (CRC) in Hong Kong, and should use the CRC as the Commission's guiding principle.
- 2.3 Children's Commission should be a **facilitator** to ensure necessary stakeholders (both government and non-government) involved, to avoid duplication of roles or evasion of responsibility of certain stakeholders to protect the rights of children.

- 2.4 Children's Commission should **impact change of mind-set** in Hong Kong to ensure a cultivation of a child rights perspective, respect the voice of children, and creates a child friendly environment to uphold children's rights in Hong Kong.
- 2.5 Children's Commission should be a **guardian of children's holistic well-beings** including physical, psychological, social and economic well-being. Children's Commission should prevent and handle any violation of children's well-being that comes into its attention. Children's Commission should also set indicators to enable the community understand the current state of well-being of our children, and ensure systems and ways of ensuring the best interests of the child and measure progress accordingly.
- 2.6 Children's Commission should also be a **hub and generator of data and knowledge related to children** to give the community a better idea of situations and challenges that children are facing in Hong Kong.
- 2.7 Children's Commission should be able to **initiate investigation and investigate** upon receiving referrals of child rights violation.

3. STRUCTURE AND COMPOSITION

- 3.1 The Main Committee of the Children's Commission should be of a **multi-disciplinary** nature to allow experience and views from different disciplines working for and with children to be incorporated. They should include members who have abundant experience in children's rights, social policies, law, child health, child protection, promotional and networking strategies, and experts in working with children.
- 3.2 The Main Committee should set **clear targets** and develop a **comprehensive action plan** for the coming two years with civil participation.
- 3.3 The Children's Commission should present an **Annual Report** to the Chief Executive and to the Legislative Council to update the progress of the action plan. Non-governmental deputations should be invited to monitor and respond. The Annual Report should be made public.
- 3.4 Working Groups should be formed with experts and relevant stakeholders from the various fields to work on designated areas intensively. We propose the necessary working groups as below:
- a. Policy Formulation and Child Impact Assessment Working Group**
- This working group helps to develop the Child Policy and ensure all the existing policies and practices are in line with the Child Policy to uphold the rights of children.
 - This working group also helps to develop child impact assessment system to ensure that no children's rights and well-beings would be overlooked or violated in the proposed and existing policies and laws, and to avoid or mitigate the negative outcomes on children.

b. Children’s Central Data and Research Study Working Group

- This working group helps to develop a comprehensive bank of data needed for the well-being of children from the womb phase till the age of 18. It should serve as a base of evidence for all other related policy, service and program actions.
- This working group also helps to develop research areas when deem necessary.

c. Children’s Consultation and Public Engagement

- This working group helps to develop good and scientific system on how to hear the voice of children across Hong Kong. It also helps the Children’s Commission to develop child friendly channels on how to reach out and communicate with children effectively; as well as promote children’s right to participation. For this reason, staff resources are particularly needed.
- Bearing in mind the importance of partnership and communication between children and adults, this working group also helps to develop transparent system and means on how to hear the voice of public and various stakeholders clearly.

d. Children’s Rights Legal Framework

- This working group helps to set the legal framework for children’s rights, such as a Children’s Ordinance to uphold the rights of children. It needs to review the existing laws related to all areas of children as they grow up and find the gaps that need legal improvement.

e. Child Rights Education for Children, Parents and People Working with Children

- This working group helps to develop strategies on educating children, parents and all personnel working with children on the rights of children as a sustainable way to sensitize the community and impact change of mind-set in Hong Kong. Governmental and non-governmental organizations, child-related professionals and multidisciplinary personnel should be trained, supervised and supported on child rights training prior to entering a post and in-service as well. It is a significant moment to stress the importance of formal and informal child rights education and training through the life line to ensure sustainability and a total change of mind-set! Head-start supportive family visitations must be brought into the scene jointly with effective parent education and support programs.

4. TARGETS TO BE ACHIEVED IN THE FIRST TWO YEARS

- 4.1 The Children’s Commission needs to develop a **Two Year Action Plan**. It needs to present an **Annual Report** and a Two Year Final Report to outline the progress, and the next steps forward.
- 4.2 A **framework on Child Policy** to be put in place

- 4.3 A **Children’s Central Data Bank** to be put in place
- 4.4 A list of research areas for the first two years and **research reports** compiled and made publicly known; and a list of research areas for the next two years proposed.
- 4.5 A **Children’s Consultation System** set up to reach out children of different ages, abilities, backgrounds, races and circumstances across Hong Kong. Child friendly means and channels put in place to hear the voice of children in a regular manner.
- 4.6 A **Children’s Rights Legal Framework** to be tabled
- 4.7 A **Child Rights Education** strategic plan has put into place.
- 4.8 A list of **child rights issues identified** and prioritized. Below are some suggested areas that we hope the Children’s Commission would look into:
 - Child protection system
 - Children in “Hidden Harm” (i.e. parental drug/alcohol misuse, domestic violence, parental mental illness)
 - Children’s health and mental well-being
 - The rights and well-being of children in special circumstances (i.e. gender minorities, cross border issues, disabilities, ethnic minorities, children in detention... etc.)
 - Children in poverty and its elimination (i.e. Children’s Commission should use the child rights lens to scan the strategies developed by the Commission on Poverty to ensure the child rights and child perspectives have been considered and integrated.)
 - Child online safety issues, eg. Internet risks, bullying, child pornography and abuse, trafficking... etc. (i.e. Like the 2017 Policy Address’s vision to develop Hong Kong into a Smart City. Children’s Commission has a role to play in ensuring such government policy would not compromise the rights of children as a result.)

5. CLEAR BUDGET

The Children’s Commission needs to have clear resource allocations to ensure its work plan could be carried out with appropriate support in terms of budget, manpower and technical support.

6. COMMENTS ON THE PROPOSED TERMS OF REFERENCE BY THE GOVERNMENT (HIGHLIGHTED IN RED)

- With a vision of ensuring that Hong Kong is a place where children’s rights, interests and wellbeing are respected and safeguarded, their voices are heard, and where all children enjoy healthy growth and optimal development so as to achieve their fullest potentials, the Commission on Children is established to –

(a) ~~advise the Government on the development of strategies related to the development and advancement of children~~ **develop strategies with a rights-based approach for the holistic well being of children base on the guiding principle of the Convention on the Rights of the Child.**

(b) enhance integration and rationalisation of children-related policies and initiatives under different bureaux/departments and with advisory bodies;

(c) review children-related services by the Government and non-governmental organisations and identify areas for **integration and** improvement;

(d) promote children's rights as articulated in the United Nations Convention on the Rights of the Child, and **ensure children will be meaningfully consulted and can participate fully (by encouraging direct consultation with children)** on matters that affect them;

(e) **establish an independent Institute on Children** to initiate surveys and research studies on children's issues; **establish a freely accessible central databank to facilitate policy development, strategic planning and service development;**

(f) manage funding schemes for promotional and public educational projects, engage with stakeholders, **organise training for child workers and child-related professionals for cross-disciplinary collaboration,** and organise other promotional activities; and

(g) develop ~~a framework~~ **an Action Plan with child development/well-being indicators** to evaluate **and monitor** the extent to which the vision is achieved.

(h) formulate a Children's Policy and a Children's Ordinance to make provisions for the rights of children as stated in the Convention on the Rights of the Child.

- It is also proposed that children under the age of 14 be the primary target group of the Commission on Children, in order to minimise possible duplication with the work of the Commission on Youth (and the future Youth Development Commission upon re-organisation).

Hong Kong Committee on Children's Rights propose to raise the age cap of the Children's Commission to the age of 18 to keep in line with the Convention on the Rights of the Child – the best ratified treaty around the world. The Children's Commission and the future Youth Development Commission should interface and work together for better communication to avoid duplication. They should also work together in transitioning policy development and for continuity of policy and service development in a holistic way, in particular on issues that will cross age groups and for overlapping age groups. If the age cap of the Children's Commission is set at 14, it would be incomprehensive as well as falling short of the international standard.

7. COMMENTS ON THE PROPOSED FRAMEWORK FOR INITIAL WORK PLAN

It is proposed that the Children's Commission's initial work plan will focus on (a) issues that are more specific to children at different age groups. However, we do not see the logic why some of the items like 'Children's Right to Play' only being mentioned in the age groups of 3-5 and 6-11, when indeed secondary school students' right to play, leisure and rest are seriously being deprived.

There is no doubt that children should be protected from all forms of abuse, and there is proven evidence that the earliest that children are being taught about self-protection, the less likely that they would be exploited. In the table, however, we saw 'neglect' is only mentioned in the age group of 0-2, 'physical abuse' is only mentioned in the age group of 6-11, while 'sexual abuse' is focused at the age group of 12-14. It is far from satisfactory when in particular the Law Reform Commission is already trying to use legal framework in protecting children from potential harm of paedophiles and sex grooming. Children's right to be protected from all forms of abuse namely physical, sexual, psychological abuse and neglect should be highlighted from the womb stage till the age of 18. The same thing for 'Bullying', as this is not an issue only limited to the age group of 12-14. Children need to learn about respect, privacy and justice as early as possible to prevent bullying from happening.

For (c) issues that are specific to particular groups of children arising from their family backgrounds, biological characteristics or other individual circumstances, we wish to add the below as well:

- Asylum seeking children
- Gender minorities
- Children in conflict with the law

HONG KONG COMMITTEE ON CHILDREN'S RIGHTS

27 NOVEMBER 2017