

Legislative Council Panel on Home Affairs

**Initial Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child:
Response to the Concluding Observations
of the Committee on the Rights of the Child**

At the Panel meeting on 8 November 2005, Members requested details of our initial response to the concluding observations of the United Nations Committee on the Rights of the Child at its September hearing of China's second report under the Convention of the Rights of the Child (of which the HKSAR's initial report formed a part). This paper is submitted in response to Members' request. The concluding observations covered the Mainland, Hong Kong and Macau. This response deals only with the concerns and recommendations relating to Hong Kong.

2. A copy of the concluding observations is at **Annex A**. A point-by-point response is at **Annex B**.

**Home Affairs Bureau
February 2006**

COMMITTEE ON THE RIGHTS OF THE CHILD

Fortieth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION**

Concluding observations:

China (including Hong Kong and Macau Special Administrative Regions)

1. The Committee considered the second periodic of China (CRC/C/83/Add.9, Parts I and II), submitted on 27 June 2003, at its 1062nd to 1065th meetings (see CRC/C/SR.1062-1065) held on 19 and 20 September 2005, and adopted at the 1080th meeting (CRC/C/SR.1080), held on 30 September 2005, the following concluding observations:

A. Introduction

2. The Committee welcomes the submission of the State party's comprehensive and informative periodic report which consisted of three parts covering the mainland and Hong Kong and Macau Special Administrative Regions, as well as the detailed written replies to its list of issues (CRC/C/Q/CHN/2 and Parts I and II), which gave a clearer understanding of the situation of children in the State party. It further notes with appreciation the large high-level, multi-sectoral delegation from the mainland, Hong Kong and Macau Special Administrative Regions (SARs).

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee notes with appreciation the impressive achievements made in reducing poverty which enabled it to attain some of the key Millennium Development Goals ahead of schedule.

4. The Committee welcomes the ratification of the Covenant on Economic, Social and Cultural Rights in 2001.

5. The Committee welcomes the State party's ratification of the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption on 16 September 2005.

C. Principal subjects of concern and recommendations

1. General measures of implementation (arts. 4, 42 and 44, paragraph 6 of the Convention)

Committee's previous recommendations

6. The Committee notes with appreciation that various concerns and recommendations (CRC/C/15/Add.56 and CRC/C/15/Add.63 with respect to Hong Kong) made upon the consideration of the State party's initial reports (CRC/C/11/Add.7 and CRC/C/11/Add.9 with regard to Hong Kong as a Dependent Territory of the United Kingdom) have been addressed through legislative measures and policies. However, some of the concerns it expressed and recommendations it had made have not been sufficiently addressed. For instance:

- a) with respect to the mainland, the Committee is concerned that there has been limited progress related to recommendations on the establishment of a national human rights institution (CRC/C/15/Add. 56, para. 26) and non-discrimination (CRC/C/15/Add. 56, paras. 34 and 35);
- b) with respect to Hong Kong SAR, the Committee takes note of the State party's explanation that the Committee's previous recommendations on coordination and assessment (CRC/C/15/Add.63, para. 20) were not considered practical. Nevertheless the Committee remains of the opinion that 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.

7. The Committee urges the State party to make every effort to address the recommendations issued in the concluding observations on the initial reports that have not yet been implemented, and to address the list of concerns contained in the present concluding observations on the second periodic report.

Reservations and declarations

8. 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.

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

Legislation

10. While welcoming the significant progress made with respect to legislative reform in mainland China, the Committee is concerned that not all laws applicable to children fully conform to the Convention.

11. The Committee recommends that in the mainland, the State party continue to review legislation to ensure full conformity with the principles and provisions of the Convention, as highlighted in paragraphs 33, 40, 45, 48, 53, 82, 93-94 of these concluding observations, and paragraphs 11 and 13 of the Committee's concluding observations on the initial report under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/OPSA/CO/2).

Coordination and a National Plan of Action

12. The Committee notes with appreciation the elaboration of a second National Plan of Action, the National Children's Development Programme (2001-2010) for the mainland, and also takes note of the growing number of committees and working groups at the state, regional and county levels to monitor and implement child rights. However, it is concerned that coordination is fragmented and implementation of the Programme is not uniform across all regions and localities in the mainland and that coordination of implementation at local and regional levels is sometimes insufficient.

13. As noted in above in para. 6 (b), the Committee is concerned at the lack of a comprehensive Plan of Action for the implementation of the Convention in Hong Kong SAR and that the coordination of existing programmes and policies is rather sectoral and fragmented. The Committee notes the information provided by the delegates of Macau SAR that a comprehensive Plan of Action is under discussion.

14. The Committee recommends that in the mainland, the State party further strengthen the coordination between the bodies and institutions working on the implementation of the National Children's Development Programme (2001-2010) at all levels in order to ensure uniform implementation in all regions and provinces.

15. The Committee reiterates its previous recommendation that in Hong Kong SAR, the State party improve the coordination of its activities on the implementation of the Convention by developing and implementing a Plan of Action for Hong Kong SAR. The Committee recommends that in Macau SAR, the State party expedite its discussions in this regard and elaborate and implement a comprehensive Plan of Action for Macau SAR.

Independent monitoring

16. The Committee notes the information that various ministries in the mainland may receive complaints from the public, but it is concerned at the lack of an independent national human rights institution with a clear mandate to monitor the implementation of the Convention. It similarly regrets the absence of an independent national human rights institution with a specific mandate on child rights in the mainland and Hong Kong and Macau SARs.

17. The Committee recommends that the State party establish, in the mainland, Hong Kong and Macau SARs respectively, a national human rights institution which includes a clear mandate for the monitoring of children's rights and the implementation of the Convention at national, regional and local levels and in accordance with the Principles relating to the Status of National Institutions (The Paris Principles) contained in General Assembly resolution 48/134 of 20 December 1993. 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 institutions 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 Hong Kong SAR, such an institution could be a specialized branch of the existing Ombudsman's office.

Allocation of resources

18. The Committee commends the State party for the significant increases in budgetary resources allocated, in the mainland, to compulsory education, maternal and child health care, social relief and to anti-trafficking programmes in recent years, but remains concerned that some crucial areas, such as education, continue to be under-funded. While it notes the significant resources allocated to the development of poorer regions, it remains concerned that those resources still need to adequately target the most vulnerable groups.

19. The Committee is concerned that in Hong Kong SAR 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.

20. The Committee recommends that in the mainland, the State party ensure that its budgetary allocations to key areas for children, in particular health and education, keep pace with increases in Government revenue. It further recommends that the State party develop an adequate monitoring system to ensure that budgetary allocations are effectively reaching the most vulnerable groups and reducing regional disparities, in particular between rural and urban areas and eastern and western provinces.

21. The Committee recommends that in Hong Kong SAR, 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.

Data collection

22. The Committee welcomes the State party's efforts to improve its collection of statistical data in all parts of the State party and notes with appreciation the information provided by the delegation that a new mechanism for the collection of disaggregated data will soon be established in the mainland. However, the Committee remains concerned about the limited public accessibility to reliable and comprehensive statistical data in the mainland on all areas covered by the Convention.

23. The Committee recommends that the State party further strengthen its efforts to collect reliable and comprehensive statistical data on all areas covered by the Convention and ensure that such data is systematically made available to the public in a timely manner in all parts of the State party. It further recommends that the State party explore the development of central databanks on children's statistics for the mainland and the Special Administrative Regions respectively, so as to ensure that statistical data is used for the development, implementation and monitoring of appropriate policies and programmes for children.

Dissemination of the Convention

24. The Committee notes that the Convention has been translated into the main minority languages used within the State party. However it 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 Hong Kong SAR and the mainland.

25. 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.

Cooperation with civil society

26. The Committee notes the information that in mainland China, non-governmental organizations are becoming increasingly active, but it is concerned that the space given to them and the scope of their activities remain very limited.

27. The Committee recommends that in mainland China, the State party facilitate and encourage the independence and expansion of activities by non-governmental organizations, in particular those working for the promotion and protection of child rights inter alia by ensuring their free and active involvement in

the implementation of the Convention, including in the preparation of reports and the implementation of the Committee's concluding observations and recommendations.

2. General principles (arts. 2, 3, 6 and 12 of the Convention)

Right to life

28. The Committee notes with satisfaction the legal measures enacted to prohibit selective abortions and infanticide in mainland China. Nevertheless it remains concerned that selective abortions and infanticide as well as the abandonment of children, in particular girls and children with disabilities, continue to be a negative consequence of existing family planning policies and societal attitudes.

29. The Committee urges the State party to continue and strengthen its efforts to guarantee the right to life, survival and development of all children in its territory. It recommends that the State party strengthen its implementation of existing laws against selective abortions and infanticide, and to take all necessary measures to eliminate any negative consequences arising from family planning policies, including abandonment and non-registration of children and imbalanced sex ratios at birth.

Non-discrimination

30. While noting efforts by the State party to address the Committee's previous concerns related to discrimination, it remains concerned about discrimination against certain groups in the mainland, such as girls; children infected with or affected by HIV/AIDs; children with disabilities; ethnic and religious minorities, such as Tibetan, Uighur and Hui children; and internal migrant children.

31. The Committee is concerned about the persistence of discrimination against refugee, asylum-seeking and undocumented migrant children in Hong Kong SAR, and the lack of legislation specifically prohibiting discrimination on the basis of race or sexual orientation. The Committee regrets the lack of available information on the practical implementation of art. 2 of the Convention in Macau SAR.

32. The Committee recommends that in the mainland the State party

strengthen efforts to eliminate discrimination against girls, children infected with or affected by HIV/AIDs, children with disabilities, Tibetan, Uighur and Hui children and other ethnic and religious minority children, internal migrant children and other vulnerable groups by:

- a) ensuring equal access to basic services for these children, including health, education and other social services, and that services used by these children are allocated sufficient financial and human resources;
- b) enhance monitoring of programmes and services implemented by local authorities with a view to identifying and eliminating disparities.

33. The Committee recommends that in Hong Kong SAR 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 in its next periodic report specific information be included on the practical implementation of art. 2 in Macau SAR.

34. 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).

Best interests of the child

35. The Committee is concerned about the limited information provided by the State party in all areas under its jurisdiction on how the principle of the best interests of the child is taken as a primary consideration in all actions concerning children.

36. The Committee urges the State party to include in its next periodic report more detailed information on the implementation of article 3 and on how it ensures that the best interests of the child is taken as a primary consideration in all actions concerning children.

Respect for the views of the child

37. The Committee notes with concern that in mainland China children are not able to file complaints in court or be consulted directly by the courts without parental consent, except in the case of children 16 years or older who earn their own

livelihood. It regrets the limited amount of information provided on the representation of students in schools and how their views are taken into account.

38. 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. The Committee regrets the lack of information on the how the views of the child are taken into account in all settings in Macau SAR.

39. In the light of article 12 of the Convention, the Committee recommends that the State party strengthen its efforts in the mainland, Hong Kong and Macau SARs, 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.

40. Furthermore, the Committee recommends that in the mainland the State party review legislation affecting children with a view to ensuring that they be provided the opportunity to be heard in any judicial and administrative proceeding affecting them, and that due weight be given to those views in accordance with the age and maturity of the child.

41. The Committee recommends that in Hong Kong SAR, 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.

3. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37(a) of the Convention)

Birth registration

42. The Committee notes with appreciation the significant efforts taken by the State party to address the Committee's previous concerns regarding the non-registration of children. However, it continues to be concerned that, in part because of existing family planning policies, all children are not systematically registered immediately after birth in mainland China, and that this disproportionately

affects girls, children with disabilities and children born in some rural areas.

43. The Committee recommends that the State party continue to strengthen its efforts to ensure that all children, in particular girls and children with disabilities, are registered immediately after birth and to continue to provide flexible measures to allow older children, who have not been registered to do so throughout mainland China with a particular emphasis on rural areas. It further suggests that the State party consider revising the Hukou system of registration in order to reinforce such initiatives.

Freedom of religion

44. While noting the adoption of the Regional Ethnic Autonomy Act in 2001 which guarantees freedom of religion for ethnic minorities in mainland China, the Committee is concerned about reports that children, in particular Tibetan Buddhist, Uighur and Hui children have had restrictions placed on their ability to study and practice their religion and some cases have been detained for participating in religious activities. It is also concerned at reports that children of families practicing their religion, notably the Falun Gong, are subject to harassment, threats and other negative actions including re-education through labour. The Committee notes the information provided about the Gedhun Choekyi Nyima, but remains concerned that it has not yet been possible to have this information confirmed by an independent expert.

45. The Committee recommends that the State party take all necessary measures to ensure the full implementation of the Regional Ethnic Autonomy Act. In particular, the Committee recommends that the State party:

- a) Enact explicit legislation guaranteeing freedom of religion for those under 18, that is not tied to a limited number of recognized faiths, and which respects the rights and duties of parents to give guidance to the child in the exercise of his or her rights in this regard in a manner consistent with the evolving capacities of the child;
- b) Repeal any ban instituted by local authorities on children of any age from participating in Tibetan religious festival or receiving religious education;
- c) Repeal any ban instituted by local authorities on children of any age from attending mosques or receiving religious education throughout the mainland;
- d) Take all necessary measures to ensure that children may choose

- whether to participate in classes on religion or atheism;
- e) allow an independent expert to visit and confirm the well-being of Gedhun Choekyi Nyima while respecting his right to privacy, and that of his parents.

Corporal punishment

46. The Committee is concerned that in mainland China the existing regulations banning corporal punishment in schools are unevenly implemented. It is also concerned that corporal punishment is not banned in the home and continues to be socially acceptable.

47. 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 and Macau SARs.

48. The Committee urges the State party, in all areas under its jurisdiction, to:

- a) explicitly prohibit by law corporal punishment in the family, schools, institutions and all other settings, including penal institutions; 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.

4. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Children deprived of family environment

49. The Committee welcomes efforts made by the State party, in particular the adoption of the Standards for Social Welfare Institutions for Children in 2001, for the mainland. However, it remains concerned at the significant number of children abandoned within the mainland and the large number of children living in institutions. It regrets the lack of precise statistical data on the number of children entering and leaving such institutions.

50. The Committee is deeply concerned that existing quotas for persons entering Hong Kong and Macau SARs from the mainland and regulations regarding the right of abode in the Special Administrative Regions contribute to separation of children from their parents and hinder family reunification.

51. The Committee recommends that in mainland China, the State party:
- a) continue its efforts to improve alternative care for children deprived of a family by replicating and expanding successful models such as foster care and domestic adoption throughout the mainland;
 - b) develop effective strategies to prevent child abandonment, which include early identification of families and children at risk and the possibility for social workers to intervene and help families directly;
 - c) Ensure that children, if transferred to an institution, are integrated into small groups and individually cared for in a family-like environment;
 - d) Ensure that all forms of alternative care meet quality standards in conformity with the Convention by establishing an effective monitoring mechanism which includes a periodic review of each placement in accordance with art. 25 and a complaints mechanism accessible to children, and by ensuring that all institutions, programmes and services have properly trained and accredited staff, and;
 - e) Ensure that all deaths of children in alternative care are properly documented and investigated, and that appropriate follow-up actions are taken when necessary.

Adoption

52. As noted in para. 5 above, the Committee notes with appreciation the ratification of the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption. However, the Committee regrets the inadequate information available on the number of international adoptions and the number of agencies facilitating such adoptions in the mainland. It is further concerned about the lack of explicit guarantees that children without birth certificates maintain their right to identity throughout the adoption process.

53. The Committee recommends that the State party:
- a) extend the application of the 1993 Hague Convention No. 33 to Hong Kong and Macau SARs as soon as possible;
 - b) ensure incorporation of the legal provisions of the 1993 Hague Convention into domestic legislation in the mainland and Hong Kong and Macau SARs;
 - c) further strengthen the monitoring of agencies facilitating international

- adoptions, in particular with regard to possible trafficking of children and the use of fees and donations paid by adopting parents,
- d) enact legislative and administrative measures to guarantee that all children without birth certificates are guaranteed their right to identity throughout the adoption process, and;
 - e) educate government officials and other professionals working with children without parental care that adoptions, in particular international adoptions are an exceptional option for alternative care, and that the principles of non-discrimination and the best interests of the child must be taken into account when making such decisions.

Abuse and neglect, maltreatment, violence

54. The Committee is concerned about the limited information available with regard to abuse, neglect and maltreatment of children in mainland China as well as the limited number of programmes available to combat violence and provide assistance to victims.

55. While noting efforts made to increase the number of social workers in Hong Kong SAR, the Committee is concerned that policies and programmes to assist child victims of violence are not fully effective.

56. 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.

57. With respect to the mainland, the Committee recommends that the State party conduct further research into different forms of violence against children in the home, schools and institutions and use the findings to:

- a) strengthen existing legislation on protection of children from all forms of violence ;
- b) develop strategies and interventions to prevent and combat violence, including through school-based education programmes aimed at raising awareness and skills among children to address different forms of violence, and;
- c) develop programmes to ensure that all child victims of violence receive appropriate assistance relating to care and recovery.

58. 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.

59. In the context of the Secretary-General's ongoing in-depth study on the question of violence against children (A/RES/56/138) and the related questionnaire to Governments, the Committee acknowledges with appreciation the written replies of the State party and the participation of representatives from mainland China and Hong Kong SAR in the Regional Consultation for East Asia and the Pacific held in Thailand from 14 to 16 June 2005. It further appreciates the organization of national level consultations in Beijing from 16 to 17 May 2005. 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.

5. Basic health and welfare
(arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Children with disabilities

60. With respect to mainland China, the Committee is concerned about:

- a) the lack of specific disaggregated data on children with disabilities;
- b) the narrow definition of disability;
- c) the significant discrepancy in the number of children with disabilities between urban and rural areas, and;

- d) the exception made to the one-child policy, allowing families who have a child with disabilities to have a second child, which promotes de facto discrimination against children with disabilities.

61. The Committee recommends that the State party take into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee on its day of general discussion on the rights of children with disabilities (see CRC/C/69) to ensure the implementation of the all the principles and provisions of the Convention for children with disabilities within its jurisdiction. It further recommends that in mainland China, the State party:

- a) strengthen its system of data collection to ensure the availability of precise data on children with disabilities, disaggregated by sex, age, rural or urban areas, living arrangements and type of disability;
- b) establish a definition that adheres to internationally accepted standards, and;
- c) take all necessary measures to eliminate de facto discrimination against children with disabilities, in particular abandonment of such children.

Health and health services

62. While noting the marked improvement in health care indicators, the Committee reiterates its previous concern with regard to existing disparities in the mainland between rural and urban areas, eastern and western provinces and Han and ethnic minorities related to infant and child mortality, nutrition, and other child health indicators. It is also concerned at the persistence of malnutrition as well as the emergence of child obesity and inadequate breastfeeding policies throughout the State party.

63. The Committee recommends that the State party take all necessary measures to provide universal access to maternal and child health services for all children in its jurisdiction, including for non-registered children. It further urges the State party to develop policies and programmes to adequately address the problems of malnutrition and obesity in children and to promote breastfeeding through strengthening the implementation of the International Code of Marketing of Breastmilk Substitutes in all parts of the State party, including the China Code for Marketing of Breast Milk Substitutes, and through the promotion of Baby Friendly Hospitals in Hong Kong SAR.

Adolescent health

64. The Committee is concerned at the lack of information on adolescent health services available in mainland China and Macau SAR, as well as the high incidence of teenage pregnancies and abortions in Hong Kong SAR.

65. 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 counseling and care.

Mental health

66. The Committee appreciates the measures taken by the State party in Hong Kong SAR to address the high number of suicides by youth. It remains concerned about the lack of data and information on mental health services available for children in the mainland and Macau SAR, and on tobacco, alcohol and drug abuse.

67. The Committee recommends that in all areas under its jurisdiction, the State party expand preventive and therapeutic mental health services for adolescents and develop programmes to decrease tobacco smoking, alcohol consumption and drug abuse among adolescents, in particular through the development of campaigns specifically designed for adolescents on health-behavioral choices and life skills. It further recommends that in Hong Kong SAR, the State party continue to strengthen its efforts to prevent youth suicide.

HIV/AIDS

68. The Committee welcomes the development of policies and programmes for children infected with, and affected by, HIV/AIDS in mainland China. Yet, the Committee expresses its concern about that implementation of these policies and programmes is insufficient.

69. The Committee recommends that the State party strengthen its implementation of policies and programmes for children infected with, and affected by, HIV/AIDS in the mainland by:

- a) increasing the financial resources allocated to these programmes;
- b) strengthening cooperation with local authorities to ensure that they are adequately trained and equipped to implement programmes and policies in conformity with the best interest principle of the Convention (art. 3);
- c) strengthening public information campaigns to raise awareness about the disease and to eliminate discrimination against children with HIV/AIDs, as mentioned in para. 32 of these concluding observations.

70. In the light of the Committee's General Comment No. 3 on HIV/AIDS and the rights of the child (CRC/GC/2003/3) and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37), the Committee recommends that the State party strengthen its efforts to prevent the spread of HIV/AIDS both in the mainland and Special Administrative Regions and continue to raise awareness about HIV/AIDS among adolescents, particularly among those belonging to vulnerable groups.

Standard of living

71. The Committee commends the State party for impressive economic achievements in mainland China and increased resources allocations for people living in poverty in recent years, including through the provision of scholarships to disadvantaged children. However, it is concerned that poverty, in particular with regard to certain regions and specific populations, such as the migrant or 'floating' population, as well as growing disparities remain serious concerns.

72. Similarly, despite the economic achievements of Hong Kong SAR, 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.

73. The Committee recommends that in mainland China, the State party continue to strengthen its efforts to achieve a balanced economic development, including through adjustments in budgetary allocations mentioned in para. 20 of this document and through the consolidation of the database on child poverty. It further urges the State party to expand benefits, such as scholarships, for disadvantaged children, including from vulnerable populations such as the 'floating population' and from poor regions in western China.

74. The Committee recommends that in Hong Kong SAR, 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.

7. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)

Education, including vocational training and guidance

75. While noting efforts made by the State party in mainland China, the Committee is concerned about remaining disparities in access and availability of education which negatively affects girls, children with learning difficulties, ethnic minority children, children living in rural areas and Western provinces and migrant children. The Committee is also specifically concerned about the existence of miscellaneous fees for compulsory education, high student-teacher ratios, high drop-out rates in middle and secondary school and the quality of education throughout the mainland.

76. In Hong Kong SAR, the Committee is concerned about drop out rates in secondary schools, the competitive nature of the school system and bullying in schools. The Committee regrets the limited amount of information available on these issues in Macau SAR.

77. The Committee recommends that in mainland China, the State party:

- a) Eliminate all miscellaneous and other 'hidden' fees for primary education to ensure that it is truly free;
- b) increase its allocation of resources to education in step with increases in GDP as directed by the Education Law, target those resources to ensuring that all children, in particular girls, children with learning difficulties, ethnic minority and migrant children complete nine years of compulsory education and have equal access to early childhood education and development programmes;
- c) promote the development of flexible learning systems so that children who have dropped out of school, in particular due to poverty or migration, are able to complete compulsory education and earn appropriate accreditation through non-formal channels, and also ensure the availability and accessibility of suitable technical and vocational education and training;

- d) ensure that all teaching and learning materials are also available in ethnic minority languages and with culturally-sensitive content for the primary and secondary level;
- e) further strengthen efforts to improve the quality of education, including through teacher training and the improvement of teacher-student ratios;
- f) strengthen the implementation of its policy on “all-round development” in particular through the development of a curriculum promoting children’s active learning capacities which also includes a focus on a child’s right to play and leisure;
- g) seek technical assistance in this regard from inter alia UNICEF and relevant national agencies.

78. 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.

79. In Macau SAR, the Committee encourages the State party to expedite its plans to expand free compulsory education to 12 years in duration. The Committee requests further information on the quality of education and programmes aimed at reducing violence in schools in the next periodic report.

8. Special protection measures (arts. 22, 38, 39, 40, 37(b)-(d), 32-36 of the Convention)

Refugee and migrant children

80. The Committee notes the efforts made by the State party to allow the approximately 300,000 Indochinese refugees to settle permanently in mainland China. However, it is concerned that the children born in China of these former refugees are not granted Chinese citizenship. It is further concerned that children entering mainland China from the Democratic People’s Republic of Korea (DPRK) are categorically considered as economic migrants and returned to the DPRK without consideration as to whether there are risks of irreparable harm to the child

upon return.

81. With regard to the Special Administrative Region of Hong Kong, the Committee notes that refugee children and undocumented migrant children are not guaranteed access to education.

82. 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:

- a) Amend legislation to allow children born in China of former Indochinese refugees in mainland China to obtain Chinese citizenship;
- b) Ensure that no unaccompanied child, including from DPRK, is returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child for instance through disproportionate punishment for violating immigration laws, in accordance with the Committee's General Comment on Unaccompanied Minors (no. 6);
- c) 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.

Economic exploitation

83. The Committee welcomes the ratification of ILO Conventions nos. 138 and 182 in 1998 and 2002 respectively. However, it is concerned about the absence of specific data on child labour in the mainland, yet reports indicate that it is widespread. It is also concerned about the lack of legislation and specific administrative regulations defining and protecting children from exploitation in hazardous work. The Committee is further concerned about the widespread practice of re-education through labour.

84. The Committee recommends that the State party further strengthen its implementation of ILO Conventions nos. 138 and 182 in particular by:

- a) Gathering specific disaggregated data on child labour and using it to

- develop, in cooperation with working children, effective measures to prevent and eliminate all forms of child labour,
- b) developing detailed regulations on the forms of hazardous and dangerous work in which all persons under 18 should not be engaged, in consultation with the children affected, and;
 - c) ensuring that that re-education through labour does not result in children working in violation of the principles and provisions of ILO Conventions nos. 138 and 182.

Street children

85. While noting with appreciation the efforts of the State party in mainland China, the Committee is concerned at the significant numbers of children living and working in the streets.

86. The Committee recommends that in mainland China, the State party strengthen its efforts related to street children, in particular by:

- a) undertaking further research into the situation of children living and working in the streets, and use such research to develop appropriate programmes and policies to reduce the number of street children and provide them with appropriate assistance;
- b) prioritizing family and community-based interventions aimed at reintegrating these children successfully into their families;
- c) increasing the resources provided to local authorities providing services to street children and their families.

Sexual exploitation and trafficking

87. With respect to mainland China and Macau SAR, the Committee notes with appreciation the submission of the initial report under the Optional Protocol on the sale of children, child prostitution and child pornography, and refers the State party to the relevant recommendations contained in CRC/C/OPSA/CO/2. The Committee regrets that the application of the Optional Protocol has not yet been extended to Hong Kong SAR. 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 Hong Kong SAR.

88. In order to prevent and combat trafficking in children for sexual and other exploitative purposes, the Committee recommends that the State party in Hong Kong SAR:

- (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).

Administration of juvenile justice

89. The Committee welcomes the State party's abolition of the death penalty in mainland China for persons who have committed an offence while under the age of 18. However, it is concerned that life imprisonment continues to be possible for those under 18, even if such a sentence is not often applied. While noting efforts to reform laws related to juvenile justice, such as the Law on the Protection of Minors, the Committee remains concerned that existing legislation, regulations and administrative procedures do not adequately set out the detailed obligations of the authorities and the judiciary for the protection of children in conflict with the law at all stages.

90. While noting that the State party has raised the minimum age of criminal responsibility in Hong Kong SAR, 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.

91. The Committee shares the concerns of the delegates from Macau SAR

about the lack of restorative justice for children in conflict with the law and welcomes the information they provided about plans to reform the juvenile justice system.

92. 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.

93. Within mainland China, the Committee further recommends that the State party:

- a) abolish life sentences for persons who have committed offences while under the age of 18;
- b) amend legislation so as to ensure that all children deprived of their liberty, including in Work Study Schools, have the right to prompt access to legal and other appropriate assistance, and the right to challenge the legality of their deprivation of liberty before a court or other competent, independent and impartial authority in a timely manner;
- c) 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;
- d) Ensure that both sentenced and released persons below 18 are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development;
- e) Seek technical cooperation and assistance from, inter alia, the Office of the UN High Commissioner for Human Rights (OHCHR), the United Nations Office on Drugs and Crime Prevention (UNODC), and the United Nations Children's Fund (UNICEF).

94. 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 such as mediation, probation, community service or suspended sentences.

95. In Macau SAR, the Committee recommends that the State party expedite its plans for reform of the juvenile justice system, and ensure that such reforms include:

- a) measures to ensure that detention is used only as a last resort and an expansion of the possibilities for alternative sentencing such as probation, community service or suspended sentences;
- b) possibilities for restorative justice, such as family group conferencing;
- c) an expansion of services to assist juvenile offenders with social reintegration in an environment which fosters the health, self-respect and dignity of the child.

9. Optional Protocols to the Convention on the Rights of the Child

96. The Committee recommends that the State party extend the application of the Optional Protocol on the sale of children, child prostitution and child pornography to Hong Kong Special Administrative Region. It further recommends that the State party ratify the Optional Protocol on the involvement of children in armed conflict, which it signed on 15 March 2001, and extend its application to Hong Kong and Macau SARs.

10. Follow-up and dissemination

Follow-up

97. The Committee recommends the State party to take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the National People's Congress and the State Council in the mainland, the Executive and Legislative Councils in Hong Kong SAR and the Executive Council and Legislative Assembly in Macau SAR, and to relevant provincial or local authorities, when applicable, for appropriate consideration and further action.

Dissemination

98. The Committee further recommends that the second periodic report and written replies submitted by the State party and related recommendations (concluding observations) adopted by the Committee be made widely available in the languages of the country, including through Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

11. Next Report

99. In light of the recommendation on reporting periodicity adopted by the Committee and described in the report of its twenty-ninth session (CRC/C/114), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of State parties' responsibilities to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by State parties is crucial. The Committee recognizes that some State parties experience difficulties in initiating timely and regular reporting. As an exceptional measure, in order to help the State party catch up with its reporting obligations in full compliance with the Convention, the Committee invites the State party to submit its third and fourth periodic reports in one consolidated report by 31 March 2009, the due date for the submission of the fourth report. The report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.

**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 statistics¹ 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

¹Such 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' views² 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.

² '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 statistics¹

Statistical item	Periodicity	Reference period of latest figures (as at Dec 2005)
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 ² by age group and educational attainment (highest level attended)	Annually	2004
3. Population aged under 18 ² 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 ² 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 ² who had personal computer at home by age group and sex	Annual	May – Aug 2005
12. Persons aged under 18 ² who had personal computer at home connected to Internet service by age group and sex	Annual	May – Aug 2005

Statistical item	Periodicity	Reference period of latest figures (as at Dec 2005)
13. Persons aged under 18 ² 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 ² 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

Ordinance	Section	Offence	Maximum Penalty
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 ¹ <u>reported</u> to the Police	576	599	611	667	595
No. of physical crimes against children ² <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.