

**Submission to the Legislative Council Sub-Committee on Children's Rights on the  
Proposal for Establishing a Commission on Children  
Meeting on 20 April 2017**

I firmly support the establishment of an independent Children's Commission ("Commission") with statutory power mandated to protect and promote the human rights of children in Hong Kong.

Like other segments of population, children have their special needs. But unlike those other segments, most decision-making processes about matters related to children do not involve children by design. Therefore, due consideration of the best interests of children does require the adults to take a deliberate effort. And just having a group of adults discussing matters about children, well meaning this may be, is necessary but insufficient. Children need a champion – a person who in a meeting room where children issues are debated and decisions made speaks on behalf of children and for children ONLY. To ensure that other adults<sup>1</sup> in the room listen to that advocate and to instil the public and children's confidence in that advocate, we need to give that advocate authority and independence. This is why our society needs an independent Children's Commission with robust statutory power in accordance to the Paris Principles<sup>2</sup> and the standards set by the UN Committee on the Rights of the Child.<sup>3</sup>

We also emphasize that establishing the Commission is a means of implementing the Government's duty under the UN Convention on the Rights of the Child ("UNCRC") under which the Government has binding international legal obligations, and is not merely a novel tool for improving policymaking for children. As such, in enshrining in law the independence,

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<sup>1</sup> Who may, and at times rightly so, take into considerations other than children's best interests in making decision. And for this particular reason we need one single adult that is solely responsible for thinking and speaking for children.

<sup>2</sup> The Paris Principles state that the six main criteria for a national human rights institution such as a Children's Commission are as follows.

- a) Mandate and competence: a broad mandate based on universal human rights standards;
- b) Autonomy from Government;
- c) Independence guaranteed by statute or constitution;
- d) Pluralism, including through membership and/or effective cooperation;
- e) Adequate resources;
- f) Adequate powers of investigation.

For details, see *National Human Rights Institutions: History, Principles, Roles and Responsibilities* by the Office of the United Nations High Commissioner for Human Rights. (United Nations, New York and Geneva, 2010) Accessible at [http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf)

<sup>3</sup> Article 4 of the UN Convention on the Rights of the Child ("UNCRC") states that governments must "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention".

The UN Committee on the Rights of the Child has consistently argued that a national human rights institution has a vital role in the full realization of children's rights, and had twice in its Concluding Observations on Hong Kong's periodic reports of the UNCRC recommends the Government to expedite the establishment of a Children's Commission. See [paragraph 18 and 19](#) of the Concluding Observations on the third and fourth periodic reports (2013) and [paragraph 8](#) of the Concluding Observations on the second periodic report (2006).

For the Committee's elaboration of how to comply with the six main criteria of the Paris Principles, see the Committee's [General Comment No 2](#) and also paragraph 65 of [General Comment No 5](#).

authority and funding for the Commission, the Government is, and as it should be, complying with an obligation that it assumed some 23 years ago.

One function of the Children's Commission is to promote the human rights of children. Specifically, it should create a culture of right-based thinking among policymakers and the wider community in general, a perspective that is acutely lacking in Hong Kong presently. Adopting right-based thinking has two consequences. First, it encourages society to recognize that there is always room for further realization of rights, and that human rights are not only a remedy for righting wrong but also a way for bettering lives. It thus encourages policymakers to adopt a more holistic view when formulating policies and legislation, rather than to adopt a make-do-and-mend approach when problems arise.

Second and more importantly, an emphasis of a right-based approach also means that decision-makers accord more respect to children as right-holders. There are no rights without the right-holders, and recognizing children as right-holders means seeing each individual child as a complete human being, worthy of respect and capable of expressing views. Instead of adopting a top-down approach of seeing children as inanimate objects with "problems" to be dealt with, adults would be more open to listening to them as persons with the autonomy and the capacity to say what is it that the decision-maker has to do to address their needs and concerns. Such view of children as right-holders gives purpose to consultation – instead of consulting to give an impression of open-mindedness, decision-makers see children as partners in identifying solutions to problems at hand. This is what meaningful children participation means.

Our society needs this change of attitude and thinking on and of children, especially among decision-makers in the public sector. We lack a centrally coordinated means to implement and monitor children rights in Hong Kong, and decision-makers in the public sector lack the capacity to assess the effect of their decisions on children's rights, let alone to promote and uphold children's rights. The Commission must be token on such roles, and be tasked with training of adults working with children in order to equip them with the capacity to communicate and cooperate effectively with children. Such training should include a general introduction on the concept of children as right-holders and as well as an analysis of what are the implications of the UNCRC for the specific context in which an adult works with a child – whether it be doctors working with child patients, judges in family courts or civil servants consulting children. These measures should be complemented with legislation or statutory guidelines published requiring public authorities in the exercise of their functions to uphold children's rights and to actively seek and give due weight to the views of children in matters affecting them.

It is hard to disagree with any policy that benefits children, and any advancement in the coordination of implementation of children's rights is to be welcomed. But we should not settle with a second-best solution, because it is Hong Kong children's human rights that we seek to protect and promote. Our society needs a shift in how children are thought of by decision-makers, and establishing an independent Children's Commission with statutory power is the right step in that direction.

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