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**Submission to Panel on Constitutional Affairs**

**on “An outline of the topics to be covered in the third report of  
the Hong Kong Special Administrative Region under the Convention on the Rights of the Child”**

Baby Friendly Hospital Initiative Hong Kong Association (BFHIHKA) was formed by the Hong Kong Committee for UNICEF in 1992 to promote, support, and protect breastfeeding.

After the last hearing on the implementation of the Convention on the Rights of the Child in the Hong Kong SAR (HKSAR) in 2013, the United Nations Committee on the Rights of the Child published its recommendations in its Concluding Observations<sup>1</sup>. The Committee strongly recommended the promotion of exclusive breastfeeding, the establishment of baby-friendly hospitals and the effective enforcement of the International Code of Marketing of Breast-milk Substitutes with appropriate controls on the marketing of artificial infant formula.

**1. Exclusive breastfeeding**

WHO recommends that children initiate breastfeeding within the first hour of birth and be exclusively breastfed for 6 months. The initiation of breastfeeding during skin-to-skin contact at birth is conducive to effective and continued breastfeeding.

HKSAR already has a relatively high ever breastfeeding rate at hospital discharge from maternity units of 86.4% in 2014 and increased slightly to 87.5% in 2018 as indicated by the biennial Department of Health Breastfeeding Surveys<sup>2,3</sup>. The exclusive breastfeeding rate at 6 months<sup>4</sup> on the other hand remained low

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<sup>1</sup> UN Committee on the Rights of the Child. Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September-4 October 2013).

[www.cmab.gov.hk/doc/en/documents/policy\\_responsibilities/Concluding\(eng\).pdf](http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/Concluding(eng).pdf) accessed 3 March 2021

<sup>2</sup> Department of Health, Hong Kong SAR. Breastfeeding Survey 2015.

[www.fhs.gov.hk/english/reports/files/BF\\_survey\\_2015.pdf](http://www.fhs.gov.hk/english/reports/files/BF_survey_2015.pdf) accessed 3 March 2021

<sup>3</sup> Department of Health, Hong Kong SAR. Breastfeeding Survey 2019.

[www.fhs.gov.hk/english/archive/files/reports/BF\\_survey\\_2019.pdf](http://www.fhs.gov.hk/english/archive/files/reports/BF_survey_2019.pdf) accessed 3 March 2021

<sup>4</sup> Exclusive breastfeeding rate at 6 months means the baby is feeding on breastmilk without using any formula milk, and they may or may not have started complementary food.

at 25.5% and 26.3% respectively. The exclusive breastfeeding rate at 6 months is far short of both the Global nutrition target 2025 of 50%<sup>5</sup> and the extended target of 70% by 2030<sup>6</sup>.

While most mothers intend to breastfeed as shown by the ever breastfeeding rate, many mothers are using supplements of formula milk before discharge from hospital. The Department of Health has been officially collecting data on the exclusive breastfeeding rate at hospital discharge and the initiation of breastfeeding since May 2016 from all maternity units but this important information has not been included in the biennial breastfeeding surveys. More transparency in data reporting helps the monitoring of the trend and the finding of effective solutions. The centralized data collection system recommended in the Concluding Observations remains a piecemeal information list of Children Statistics and Information<sup>7</sup> with no information on breastfeeding.

## 2. Baby-friendly Hospitals

The Baby-friendly Hospital Initiative (BFHI) is part of the means to support exclusive breastfeeding from birth. In the HKSAR, the BFHI started in 2013 is a voluntary programme under the BFHIHKA. So far 3 out of 8 public hospitals with a maternity unit have been designated baby-friendly. None of the 11 private hospitals with a maternity unit has been designated. The programme was extended to the community in 2016 but only 3 out of 31 Maternal and Child Health Centres have been designated as baby-friendly.<sup>8</sup> The Committee on Promotion of Breastfeeding, an advisory body under the Food and Health Bureau<sup>9</sup> focusses mainly on promotion and public education. There is no governmental commitment to achieve

<sup>5</sup> World Health Organization. Global targets 2025. [www.who.int/nutrition/global-target-2025/en/](http://www.who.int/nutrition/global-target-2025/en/) accessed 3 March 2021

<sup>6</sup> UNICEF, WHO. The extension of the 2025 Maternal, Infant and Young Child nutrition targets to 2030. 2018 [www.who.int/nutrition/global-target-2025/discussion-paper-extension-targets-2030.pdf?ua=1](http://www.who.int/nutrition/global-target-2025/discussion-paper-extension-targets-2030.pdf?ua=1) accessed 3 March 2021

<sup>7</sup> Constitutional and Mainland Affairs Bureau. Children Statistics and Information. [www.cmab.gov.hk/en/issues/child\\_statistics.htm](http://www.cmab.gov.hk/en/issues/child_statistics.htm) accessed 3 March 2021

<sup>8</sup> Baby Friendly Hospital Initiative Hong Kong Association. World Breastfeeding Week Survey 2020. [www.babyfriendly.org.hk/wp-content/uploads/2020/08/2020-WBW-Annual-Survey\\_E\\_Final.pdf](http://www.babyfriendly.org.hk/wp-content/uploads/2020/08/2020-WBW-Annual-Survey_E_Final.pdf) accessed 3 March 2021

<sup>9</sup> Food and Health Bureau, HKSAR. Committee on Promotion on Breastfeeding. [www.fhb.gov.hk/en/committees/cpb.html#:~:text=Committee%20on%20Promotion%20of%20Breastfeeding&text=To%20Oversee%20the%20planning%20and,protect%2C%20promote%20and%20support%20breastfeeding.](http://www.fhb.gov.hk/en/committees/cpb.html#:~:text=Committee%20on%20Promotion%20of%20Breastfeeding&text=To%20Oversee%20the%20planning%20and,protect%2C%20promote%20and%20support%20breastfeeding.) accessed 3 March 2021

territory-wide implementation and sustainability of BFHI through taking up the key responsibilities identified in the UNICEF/WHO Implementation Guidance of the revised BFHI in 2018<sup>10</sup>.

### 3. International Code of Marketing of Breast-Milk Substitutes

WHO urged governments to regulate the marketing of artificial formula milk in 1981 to protect breastfeeding by implementing the International Code of Marketing of Breast-milk Substitutes. Thirty-six years later the HKSAR finally launched The Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children (the HK Code)<sup>11</sup> in 2017, but only as a voluntary code with no sanction for non-adherence. While the scope covers formula milk for children below 36 months of age, many companies had shifted the promotion to that for children above that age while retaining similar labels. The HK Code does not regulate nutrition or health claims that were to be done through legislation. Despite identifying this as the way forward in 2015<sup>12</sup>, no such legislation is in sight. The HK Code also excludes any reference to pricing because of the Hong Kong Competition Ordinance<sup>13</sup> ignoring exemptions on the grounds of public policy or avoidance of conflict with international obligations.

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<sup>10</sup> WHO, UNICEF. Protecting, promoting and supporting breastfeeding in facilities providing maternity and newborn services: the revised Baby-friendly Hospital Initiative 2018 Implementation Guidance.

[www.who.int/nutrition/publications/infantfeeding/bfhi-implementation/en/](http://www.who.int/nutrition/publications/infantfeeding/bfhi-implementation/en/) accessed 3 March 2021

<sup>11</sup> Food and Health Bureau, The Government of the Hong Kong SAR. Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children. 2017. [www.hkcode.gov.hk](http://www.hkcode.gov.hk) accessed 3 March 2021

<sup>12</sup> LegCo Panel on Food Safety and Environmental Hygiene. Nutrition and Health Claims for Formula Products and Foods for Infants and Young Children – Results of Public Consultation and Proposed regulatory Framework. 2015. [www.legco.gov.hk/yr14-15/english/panels/fseh/papers/fseh20150714cb2-1861-3-e.pdf](http://www.legco.gov.hk/yr14-15/english/panels/fseh/papers/fseh20150714cb2-1861-3-e.pdf) accessed 3 March 2021

<sup>13</sup> Hong Kong Legislation. Competition Ordinance. [www.elegislation.gov.hk/hk/cap619](http://www.elegislation.gov.hk/hk/cap619) accessed 3 March 2021



#### 4. Other means to support the achievement of WHO's recommendation of exclusive breastfeeding for 6 months

##### 4.1 Maternity Protection

After five decades, the 10-week maternity leave was extended to 14 weeks in July 2020.<sup>14</sup> This is the minimum according to ILO Maternity Protection Convention, 2000.<sup>15</sup> The change does not include, as in the Convention, mandated nursing breaks or a daily reduction of hours of work for a woman to breastfeed her child. As WHO recommends exclusive breastfeeding for 6 months, even with this extension, challenges are many. There appears little hope that the ILO Maternity Protection Recommendation 2000<sup>16</sup> of at least 18 weeks maternity leave will be considered in the near future.

##### 4.2 Discrimination of Breastfeeding Mothers

Because of adverse experiences encountered by breastfeeding mothers in the community, an amendment to the Discrimination Legislation<sup>17</sup> was passed in June 2020 to prohibit direct and indirect discrimination on the ground of breastfeeding. Although this is a step in the right direction, interpretation of the law and what evidence is required to prove contravention await to be seen. Also, the amendment does not mandate employers to provide facilities for breastfeeding or nursing breaks. The government has recommendations for baby care/lactation rooms. This is a mandatory requirement in land sales for new commercial developments from 2018 and new government premises in 2019.<sup>18</sup> As this does not cover the vast majority of existing premises, currently mothers can only rely on government and community encouragement schemes to be breastfeeding-friendly.

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<sup>14</sup> Hong Kong Special Administrative Region. Employment (Amendment) Ordinance 2020.

[www.legco.gov.hk/yr19-20/english/ord/2020ord013-e.pdf](http://www.legco.gov.hk/yr19-20/english/ord/2020ord013-e.pdf) accessed 3 March 2021

<sup>15</sup> ILO. C183 – Maternity Protection Convention, 2000 (No.183)

[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C183](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183) accessed 3 March 2021

<sup>16</sup> ILO. R191 – Maternity Recommendation, 2000 (No. 191)

[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R191](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R191) accessed 3 March 2021

<sup>17</sup> Hong Kong Legislative Council Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020.

[www.legco.gov.hk/yr19-20/english/ord/2020ord008-e.pdf](http://www.legco.gov.hk/yr19-20/english/ord/2020ord008-e.pdf) accessed 3 March 2021

<sup>18</sup> Legislative Council Panel on Health Services. Promotion of Breastfeeding. 2019.

[www.legco.gov.hk/yr18-19/english/panels/hs/papers/hs20190218cb2-769-4-e.pdf](http://www.legco.gov.hk/yr18-19/english/panels/hs/papers/hs20190218cb2-769-4-e.pdf) accessed March 2021

## 5. Protection of Breastfeeding under the COVID-19 pandemic

A child impact assessment<sup>19</sup> is clearly one of the requirements in upholding the best interests of the child under the Convention of the Rights of the Child with implementation of new policies or change in policies. When visiting in public hospitals was suspended early 2020, many mothers with their babies admitted to neonatal units were unable to directly breastfeed not only when the mothers had been discharged from the postnatal wards but even before. Mothers are considered visitors rather than partners in care while their babies are in the neonatal units. Despite WHO having reviewed the risks and benefits of protecting breastfeeding during the COVID-19 pandemic and issuing clear guidance, only in December 2020 did the Hospital Authority overseeing all public hospitals finally issued a guidance in support of direct breastfeeding of babies admitted into the neonatal unit when the mothers are not confirmed with COVID-19. Yet the continued variable practice between hospitals still left many mothers unable to breastfeed directly.

## 6. Conclusion

To ensure the right of the child to breastfeed, HKSAR needs to restructure the Committee on Promotion of Breastfeeding to give it a greater role in policy making, adopt the 2018 revised BFHI standards in all maternity and neonatal units, implement a comprehensive effective Hong Kong Code by law, and other measures where the best interests of the child are a primary consideration. These need to be supported by appropriate resources, monitoring and evaluation.

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<sup>19</sup> UN Committee on the Rights of the Child. General Comments No.14 (2013) on the right of the child to have his or her best interest taken as a primary consideration (ad.3, para.1)

[www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf) accessed 3 March 2021