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17 June 2021

Clerk to Panel on Constitutional Affairs  
Legislative Council Complex  
1 Legislative Council Road,  
Central, Hong Kong  
(Attn: Ms Joanne MAK)

Dear Ms MAK,

**Panel on Constitutional Affairs**

At its meeting on 15 March 2021, the Panel on Constitutional Affairs called for the Government to provide written response to the enquiry made by Hon Mrs Regina IP under Agenda Item III concerning the existing measures to protect children born out of wedlock. After consulting the relevant bureaux/department, the requested information is at Annex, please.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Cathy LI'.

( Miss Cathy LI )

for Secretary for Constitutional and Mainland Affairs

Encl.

**Panel on Constitutional Affairs  
Meeting on 15 March 2021**

**III. An outline of the topics for the Third Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child**

**Follow-up Action**

After consulting the relevant bureaux/department, the consolidated response to Hon Mrs Regina IP's enquiry on the existing measures to protect children born out of wedlock is as follows –

2. The fundamental rights and freedoms of Hong Kong residents are guaranteed at the constitutional level in Chapter III of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Basic Law").

3. Article 25 of the Basic Law, for example, guarantees the right to equality before the law. Article 39 of the Basic Law further provides, among others, that the provisions of the International Covenant on Civil and Political Rights ("ICCPR") as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Basic Law of the Hong Kong Special Administrative Region ("HKSAR"). The provisions of the ICCPR as applied to Hong Kong have already been incorporated into local law by the Hong Kong Bill of Rights Ordinance (Cap. 383).

4. Article 20(1) of the Hong Kong Bill of Rights ("BOR"), which gives domestic effect to Article 24(1) of the ICCPR, guarantees that every child shall have the right to such measures of protection as are required by his status as a minor on the part of his family, society and the State without any discrimination as to, among others, birth. Article 22 of BOR also prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on the ground of, among others, birth.

5. The Parent and Child Ordinance (Cap. 429) was enacted in 1993 to remove legal disadvantages that previously applied to illegitimate children.<sup>1</sup> It provides that in all legislation and all future documents, whether private or public, references to relationships such as “parent” and “child” must include references to illegitimate relationships unless a contrary intention appears. Consequential amendments to other legislation extended the principle. For instance,

- (a) Intestates’ Estates Ordinance (Cap. 73) – to enable the illegitimate issue of a person who dies intestate to enjoy the same rights as the deceased’s legitimate issue; and
- (b) Guardianship of Minors Ordinance (Cap. 13) – to enable either parent to apply for the same range of maintenance orders for a child, irrespective of its legitimacy or otherwise.

6. The case of *Ng Ka Ling & Others v Director of Immigration*<sup>2</sup> illustrates the protections afforded to the rights of children born out of wedlock. The Court of Final Appeal ruled that the category of permanent residents under Article 24(2)(3)<sup>3</sup> of the Basic Law included persons born in as well as out of wedlock. Besides, the Court directed that paragraph 1(2)(b) of Schedule 1 to the Immigration Ordinance (Cap. 115) read “(b) of a father and child, between a man and a child born to him in wedlock or out of wedlock”. As a result of this decision, Schedule 1 to the Immigration Ordinance (Cap. 115) was amended to provide that the relationship of parent and child is taken to exist “between a person and a child born to such person *in or out of wedlock.*”

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<sup>1</sup> The Law Reform Commission (“LRC”) published its report on “Illegitimacy” in December 1991. The LRC report found that illegitimate children were legally disadvantaged in a number of areas including the following: in succession matters, an illegitimate child cannot succeed to his father’s estate on the father’s death intestate, unlike a legitimate child; the illegitimate child must seek maintenance under a specific procedure which does not apply to legitimate children and the range of maintenance orders available is more limited; and in custody proceedings the child’s welfare is the paramount consideration for the court but, where an illegitimate child is concerned, the court must take account instead of the mother’s superior claim to custody rather than the child’s welfare. The report’s recommendations were adopted with the enactment of the Parent and Child Ordinance in March 1993.

<sup>2</sup> (1999) 2 HKCFAR 4.

<sup>3</sup> Article 24(2)(3) of the Basic Law provides that the permanent residents of Hong Kong include persons of Chinese nationality born outside Hong Kong of Chinese citizens born in Hong Kong before or after the establishment of the HKSAR and Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the HKSAR.