

香港兒童權利委員會
THE HONG KONG COMMITTEE ON CHILDREN'S RIGHTS

Responding to

Concluding Observations by
the United Nations Committee on the Rights of the Child
on
the Second Report of the Hong Kong Special Administrative Region under
Convention on the Rights of the Child

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Next year 2014, the twentieth anniversary of the United Nations Convention on the Rights (UNCRC) being extended to the Hong Kong Special Administrative Region (HKSAR), is a golden opportunity for honest review, critical forward looking and proactive action plan for the best interest of our 1.1 million children population.

However the lack of a baseline study on the progress of child rights development; a central data bank to systematically trace child related trends and characteristics; and a plan of action for the UNCRC's implementation makes the review much more difficult, costly and time consuming. Unless such fundamental systems were put in place we would be facing the same problems again and again and thus doing a serious disservice to children.

It was not too long ago on 26 and 27 September, 2013 that the Hong Kong Special Administrative Region presented the 3rd and 4th Periodic Report on the Implementation of the United Nations Convention on the Rights of the Child to the UN in Geneva. The United Nations Committee on the Rights of the Child (UN Com) after meeting the Hong Kong Special Administrative Region (HKSAR) Government delegation, on 4th October adopted the following Concluding Observations. (Footnote 1)

There were previous recommendations left outstanding.

- a. To withdraw its reservation to art. 32 (20 AND 37 (C) of the Convention
- b. To strengthen coordination between the bodies and institutions working on the implementation of existing programs, policies and activities
- c. Explicitly prohibit by law corporal punishment in the family, schools, institutions and all other settings, including penal institutions.

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The new areas of concern:

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

a. Comprehensive policy and strategy

To adopt a comprehensive policy on children and on the basis of that policy, develop a strategy with clear objectives and coordinated plans for action, allocate adequate human, technical and financial resources for their implementation, monitoring and evaluation.

b. Allocation of resources

To define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and ensure those lines are protected even in situations of economic crisis, natural disasters or other emergencies.

c. Data collection

Data concerning children is scattered and there is a lack of disaggregated data on children under 18 in some areas of the Convention.

To ensure reliable data in place by establishing centralized data collection system to collect independently verifiable data on children.

To analyze the data as a basis for assessing progress achieved and for designing policies and programs to implement the Convention.

d. Independent monitoring

HKSAR has not taken any steps to set up an independent Children's Commission despite the Legislative Council of HKSAR motion unanimously passed in 2007 urging the government to set up one.

HKSAR to expedite the establishment of a Children's Commission or another independent human rights institution with a clear mandate to monitor children's rights and provide it with adequate financial, human and technical resources.

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

Non discrimination

To intensify measures to combat discrimination against children with disabilities, undocumented children of migrant workers, refugee and asylum-seeking children.

Best interests

Lack of general legislation providing for the best interests of the child.

To ensure integration and consistent application in all legislative, administrative and judicial proceedings, as well as in all policies, programs and projects that have an impact on children.

Right to life, survival and development

Mainly comments for Mainland China

Respect for the views of the child

To establish effective consultative mechanisms to ensure respect for the views of children and their participation in all matters affecting them, including in the development of policy making, court decisions and on program implementation.

There was a long list of pressing needs identified especially for our children in poverty; the ethnic minorities; asylum seekers; those suffering disabilities; new migrants; those in cross border families. Such children suffered violence, discrimination, bullying, deprivation of quality care and supervision, time to play and to rest and a safe and decent environment for their survival and holistic growth and development.

C. Violence against children (arts. 19-37(a) and 39 of the Convention)

The lack of procedures to identify and support child victims of sexual exploitation and trafficking in HKSAR.

The limited access to justice, shelter, medical services, psychological counseling and compensation for victims of sexual exploitation and abuse under the legislation in HKSAR.

To collect data on sexual exploitation and abuse against girls and boys, on the number of investigations and penalties and on redress and compensations offered to the victims

To establish effective and child-friendly procedures and mechanisms, including free help-lines, accessible to children, to receive, monitor and investigate complaints and

undertake awareness raising activities among children to encourage reporting of sexual violence and abuse in schools and communities.

To develop a national strategy to respond to shelter, health, legal and psychosocial needs of child victims of sexual exploitation and abuse.

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

Cross Border

Mothers from Mainland China married to HK residents and have children who are HK residents are not able to obtain residence permits in HK but regularly go back and forth to renew one way permit and they have no right to work or family support creating instability and vulnerable situations.

HK should take all necessary measures to facilitate family reunification, including by granting mothers residence permits in HKSAR.

HK should implement the Law Reform Commission's recommendations concerning law and procedural reforms.

HK should increase resources and services including family and psychosocial counseling and parent education, training for all professionals working with children.

Best interests of child taken as primary consideration in all decisions regarding custody, residence, contact or other issues impacting on the life and development of the child.

To review current mechanisms and procedures for domestic and inter-country adoption and ensure professionals are fully equipped with expertise in a timely manner, in observance of the Hague Convention;

To create a transparent and effective system for assessment and review of the adoption process.

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E. Disability, basic health and welfare (arts. 6, 18 (para.3) 23, 24, 26, 27 (para.1-3) of the Convention)

Lack of screening program for early identification of disabilities.

Lack of disaggregated data on children with disabilities.

Children with disabilities are commonly excluded and discriminated, including by teachers and bullied by peers.

HKSAR should adopt a human rights based approach to disabilities.

Independently collect disaggregated data to formulate policy and programs.

Monitor and record all cases of disability-based discrimination and provide effective remedies.

Develop screening services for prevention, proper follow up & early development programs.

Remove all barriers that prevent students with disabilities from entering and staying in the mainstream system.

Reallocate resources from the special education system to promote inclusive education.

Conduct awareness raising and educational campaigns targeting children with disabilities, the public at large and specific groups of professionals for prevention and quality handling.

Mental health

To expand preventive and therapeutic mental health services for adolescents and to adopt comprehensive child mental health policies and ensure that mental health promotion, counseling, prevention of mental health disorders in primary health care, schools and communities are integral features of the policy.

F. Standard of Living

To expedite the implementation of the public housing program.

To adopt a multidimensional set of criteria for assessing and addressing child poverty and to take all measures to eliminate regional, ethnic and urban-rural disparities in children's standard of living

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

The bullying in schools and competitive nature of the school system, resulting in anxiety or depression among children and infringing their right to play and rest; HK must take measures to train teachers, provide more social workers and psychologists in schools and sensitize parents and guardians.

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The de facto discrimination of ethnic minority children and racial segregation in public schools due to teaching only in Chinese and the system of the so called government designated schools for these children should be abolished.

Cross border children who have no access to local schools and are commuting daily to and from mainland China.

H. Other special protection measures (arts. 22, 30, 38, 39, 40, 37 (b) - (d), 32-36 of the Convention)

Asylum-seeking and refugee children.

Economic exploitation including child labor.

Sale, trafficking and abduction, including follow up to the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC).

The OPSC has not been extended to HKSAR and urges HK to extend the application without further delay.

I. Ratification of international human rights instruments

To ratify the core human rights instruments particularly the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

J. Cooperation with regional and international bodies

To cooperate with the ASEAN commission on the Promotion and protection of the Rights of Women and Children.

K. Follow up and dissemination

The 3rd & 4th report of HKSAR and the Concluding Observation to be made widely available to generate debate and awareness of the Convention and the Optional Protocols thereto and of their implementation and monitoring.

It is obvious that the to-do list expected of Hong Kong keeps growing. But, the HKSAR government is overwhelmed by political, economic and other pressing issues so much so that children's voices are not heard and their needs unless traumatic are not receiving priorities but assumed: "can wait".

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Children cannot wait as their development could be permanently thwarted or impaired if deprived of the opportunities or proper environment conducive to growth. If we are concerned for the aging population we must start early in childhood. If we are urging woman to join the labor force, we mustn't overlook the rights of quality care and education of a child.

The Government considered a child commission a duplication of available mechanisms and despite the unanimous call of the legislative Council in 2007 for a Child Commission. The government defended that the Family Council along with other Government bureaus would be sufficient to address children's concern.

The same argument of duplication can apply to the Youth Commission, the Women Commission and the Elderly Commission. Why should children be different?

While family solidarity is deteriorating and the family system experiencing storms and stresses, much time, efforts, expertise and resources must be devoted to tackle the sole problems and identify ways to cultivate caring and cohesive families and rescue those on the verge of breakdowns.

There are so many family related issues to resolved and children's rights and well being fail to get into the agenda. Time solely devoted to children has been minimal. Many pressing issues have been missed.

Furthermore, many of the incidents threatening the holistic development of a child falls outside the family, such as in schools, child care centers, hospitals, care institutions, tutorial centers, commercial complex, streets, playgrounds, through internets and mobile phones and must involve a coordinated multidisciplinary approach. Influential parties from the various sectors such as legal, business, information and technology and the mass media must get together to ensure children's rights are respected, protected and promoted.

Indeed, the need for a Children's Commission is no different from the youth, the women and elderly. There are serious issues and risks that are peculiar to these groups which require a dedicated platform to tackle with professionalism and commitment. A superficial or ad hoc treatment will simply be ineffective. In-depth and solid work is called for before any informed position can be reached in the best interests of children. Issues such as sexual violence and exploitation of children, welfare of cross border children, age of criminal responsibility, internet crimes and child fatality are all extremely complex issues that require research and multidisciplinary deliberations. No existing mechanism, neither bureaus nor Family Council, nor the Committee on Child Abuse, nor the Child Rights Forum can adequately address these wide range of important issues.

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A Child Commission performs an advocacy, education, community empowerment, investigation, data collection and analysis, policy formulation and child impact assessment role that no one available mechanism alone, government or non government, is currently performing.

Using this system to ensure a child perspective in society is becoming a mainstream and over 70 countries, 200 jurisdictions have set up such commissions, appointed commissioners and invited dedicated, knowledgeable people to join the commission and formulate policies, improve legislations, education and services in thorough ways. Children's participation plays a key role in the Commissions deliberation. Child impact assessment overseen by the Commission forms a part of government policy formulation.

The Child Commission in Germany enjoys a parliamentary status, and children's rights are fully enshrined in their legislation, policies and practices. Legislation ensures that a child is not deprived of a healthy and happy childhood in all spheres of development.

Two days from now, on 20 November 2013 - the Universal Children's Day (Footnote 2), the Legislative Council will be debating again since 2007 urging the HKSAR to set up a Child Commission to ensure a child perspective for Hong Kong.

Though non-legal binding, the Legislative Council's decision sends a loud and clear message to the community and the Government! *We urge you to vote for children and to ensure the Government putting necessary resources and measures in place to honor our commitment for children and for the sustainable development of Hong Kong.*

Our 1.1 million children count on you!

Footnote 1

CRC/C/CHM/CO/3-4

Convention on the Rights of the Child, 4 October, 2013

Concluding Observation on the combined third and fourth periodic reports of China (including Hong Kong and Macau Special Administrative Regions), adopted by the Committee as its sixty-fourth session (16 September - 4 October, 2013).

Footnote 2

The United Nations' (UN) Universal Children's Day, which was established in 1954, is celebrated on November 20 each year to promote international togetherness and awareness among children worldwide

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On November 20, 1959, the UN General Assembly adopted the Declaration of the Rights of the Child and on November 20, 1989, it adopted the Convention on the Rights of the Child. Since 1990, Universal Children's Day also marks the anniversary of the date that the UN General Assembly adopted both the declaration and the convention on children's rights.