



ngo group for the crc

## STATE PARTY EXAMINATION OF HONG KONG'S SECOND PERIODIC REPORTS

### 40<sup>TH</sup> SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

12 - 30 SEPTEMBER 2005

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*The People's Republic of China (China) ratified the Convention on the Rights of the Child (CRC) in 1992. It presented its Initial Report to the Committee in 1996. The CRC was extended to Hong Kong Special Administrative Region (SAR) upon the Chinese resumption of sovereignty over the region in 1997.*

*On 19 and 20 September 2005, the Committee on the Rights of the Child (the Committee) examined China's (including Hong Kong) Second Periodic Report. The delegation from Hong Kong SAR consisted of seven representatives and was headed by Mr Stephen Fisher.*

#### Opening Comments

Fisher affirmed Hong Kong's commitment to the CRC. He referred to recent measures including the establishment of a commission on poverty to better meet the needs of the poor, with children and young people among the top priorities, and a comprehensive child development service for children aged 0-5 years old. He noted that the Committee's recommendation for an independent monitoring mechanism for children's rights was under discussion. As an interim measure, a

children's rights forum would be created as a regular platform for discussing issues among children representatives, NGOs, and government officials.

The country rapporteurs were Ms Lee, Ms Kattab and Mr Krappmann. One of the country rapporteurs noted that insufficient resources were allocated in Hong Kong, where there were significant income disparities. There was also no comprehensive and coordinated child policy, and there was a need for a children's ombudsman.

### **Domestic Legislation and the CRC**

The Committee raised the issue of the China's reservation to Article 37 of the CRC. The delegation explained that Hong Kong had places of detention for 16-21 year olds, making the segregation according to the definition of the child (up to the age of 18) difficult. Mixing people in this age group was deemed to be beneficial and if it proved to be harmful, steps would be taken.

### **Coordination and Monitoring**

The Committee noted the importance of a comprehensive approach and recommended an integrated action plan and the creation of a specific instrument to emphasise and implement children's rights. It further enquired about the level of coordination with the central government of China. The delegation explained that there was already a youth commission for 16-24 year olds and a new commission would require a reorganisation of the structure of the system already in place. There would, however, be a children's rights forum. The delegation emphasised the existence of comprehensive laws regarding children. Coordination was not a problem in such a small government where work was distributed between two or three bureaux. In terms of the relations between Hong Kong's policies and agencies with the central government, the delegation stated that there was a high degree of autonomy as well as close liaison with the central government.

### **Definition of the Child**

The delegation noted that the age of consent for heterosexual sex was 16. Sex with a child under 16 constituted statutory rape and was subject to severe penalties. Consensual sex between a man and a girl of age 16-18 was not a criminal offence. Between two men, sexual intercourse was an offence if one of the partners was under 21. In a recent judicial review case regarding this law, the court ruled that the law was unconstitutional due to the difference for heterosexual and homosexual sex. The government was considering whether or not to appeal.

### **Civil Society**

The delegation noted that Hong Kong had a vibrant civil society. Consultation with NGOs in producing the Report had involved publishing a draft online and then incorporating the NGOs' comments.

### **Birth Registrations**

The Committee expressed regret at the use of the term "illegitimate" with regard to children born out of wedlock and the practice of not requiring a record of the name of the father. The delegation explained that the term "illegitimate" was a common law concept but that this was not normally used either in official documents or in private conversation. Legislation including the "parent and child ordinance" contained provisions to ensure that there was no distinction with regard to the rights of children. The inclusion of the name of the father was an administrative problem and could only be carried out with the consent of the father.

## **Adoption**

The delegation noted that the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption would apply to Hong Kong and legislation had already been enacted in preparation. Adoption was carried out by orders of the court on the basis of recommendations from the government's social welfare department or by NGOs, depending on who was caring for the child.

## **Health**

The Committee asked if Hong Kong intended to introduce baby-friendly hospitals. The delegation explained that there were general hospitals with paediatric wards, including twelve public hospitals offering a full range of general paediatric services and located in all districts of Hong Kong.

The Committee asked what was being done to deal with the problem of suicide among youth, noting a decrease in the actual number of successful cases, but not attempted cases. The delegation pointed to the pressure that existed in the fast-paced living in such a densely populated area. The education and examination system was very competitive, with great pressure from parents, as in other Asian societies, to get into the best universities. Some suicides were for family reasons, due to the expectations of parents or peer pressure, while others were a result of a mental disorder. A working group had been established to further address this issue.

## **HIV/AIDS**

The Committee asked if HIV/AIDS was a concern in Hong Kong. The delegation responded that the figures indicated that HIV/AIDS was not a serious problem. In 2004, there were no new cases among children under the age of 18. There was a programme in place to educate youth and the general population with regard to prevention as well as sex education regarding hygiene and other related concepts in schools. There was also moral education based on the Confucian tradition of the importance of family values.

## **Children with Disabilities**

The Committee asked for more information regarding children with physical disabilities, noting, for example, that the University of Hong Kong had steep steps. The delegation explained that there were regulations on accessibility, with architects and other authorised persons designing buildings required to provide access. However, these regulations did not apply to historical buildings, where possible measures were sometimes limited by design. The University of Hong Kong was built in 1911 on the side of a hill; there was special access, though it was not direct.

The Committee asked for more information on children with mental disabilities. The delegation referred to a large-scale survey undertaken in 2000 on people with disabilities and explained that the numbers of individuals with a mental disability were not sufficiently significant to be included in the table. Estimates placed the number of individuals with a mental disability at around 60,000-80,000. The Committee noted with concern the cut in the daily allowance in the Comprehensive Social Security Assistance for people with disabilities.

## **Abuse of Drugs**

The Committee asked for more information about the abuse of drugs and preventive measures. The delegation noted two trends, with a steady decrease in the use of hard drugs such as heroine but an increase in the use of soft, psychotropic, drugs such as ecstasy and other "party drugs". An inflow of cheap psychotropic drugs meant that they were readily available in places frequented by young people. Hong Kong was fighting drug trafficking and had a programme to educate young people about the dangers of drug abuse.

## **Education**

The Committee noted with concern the high degree of competitiveness at school and the consequent lack of time for play and other leisure activities. It also highlighted the significant problem of bullying among children in schools. The delegation declared that there was a zero-tolerance approach. Peer support groups were set up to help change children's attitudes and a resource package was provided for teachers and school principals to help them assess the risk.

The delegation noted that Hong Kong provided nine years of free and universal education and highly subsidised education at higher levels.

## **Primary Consideration of the Child's Best Interest**

The delegation noted that the principle of primary consideration of the child's best interest was recognised by the legislative council in consideration of new legislation and taken into account by courts. The Department of Justice had a human rights unit responsible for clearing papers of the Executive Council from a human rights perspective. The International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights were protected in Hong Kong's Basic Law and the review process ensured that any new legislation would be consistent with the rights of the child. The recent report of the Law Reform Commission on child custody and access recommended that the principle of the primary consideration of the best interest of the child be enshrined in legislation. The government was considering this recommendation.

## **Refugees, Migrants, and Asylum Seekers, and the Right of Abode**

The Committee asked if the quota of 150 persons per day might be increased, expressing concern about the issue of children separated from their parents. The delegation noted that population pressure was great in an area of around 1,000 square kilometres with a population of seven million. The entry of migrants from Mainland China was controlled by a one-way permit system, with a quota of 150 people per day. The quota led to a substantial number over the year. Recently, the quota had not been filled. There was less waiting time for children to be reunited with their families, with a two-way permit system in the interim to enable them to be with their parents.

In terms of asylum seekers, the delegation explained that Hong Kong had a liberal visa policy with visitors from all over the world and its relative economic prosperity acted as a pull factor for migrants. There was no asylum policy. Instead, there was an agreement whereby the UNHCR arranged resettlement. Social security benefits were not extended to people seeking political asylum, but there was a form of assistance in kind, including the provision of food. NGOs were also active in this area.

The Committee asked if the seven-year residence requirement for the Comprehensive Social Security Assistance program (CSSA) might be withdrawn. The delegation explained that Chinese nationals acquired permanent resident status and so were entitled to social security benefits. In the past, the system had been generous, granting benefits for residents of one year or more. However, such generosity encouraged local residents to bring their relatives from the mainland before being able to support them. Exceptions were made for children and people in conditions of genuine hardship.

The delegation noted that Hong Kong had a relatively liberal visa regime but the Government was worried that the adoption of the convention on refugees might create problems for Hong Kong as a result of the abuse of the system.

## **Minorities**

The delegation noted that 95 per cent of Hong Kong's population was Chinese, predominantly Han. The other five per cent consisted of five settled minorities. Hong Kong had a policy of integration, allowing parents to choose the form of education for their children. Special facilities were provided if parents chose integrated schools. English and Chinese were the official languages but minority languages were also used at school. The Home Affairs Bureau provided after-school support services that were also extended to parents. This support was intended to help parents concerned about Chinese-medium schools and their inability to help their children or to communicate with the teachers. Vocational courses were taught in Chinese and sometimes in English. There were arrangements for institutes to provide special courses if there were sufficient numbers interested (12-15 pupils), employing an interpreter for technical language assistance.

There were committees for the promotion of racial harmony as well as a funding scheme for the promotion of equal opportunities. An ethnic minority forum consisted of representatives from ethnic communities, NGOs serving ethnic communities, human rights NGOs, and government representatives. A race discrimination bill was being prepared. It should be introduced to the legislative council by the end of 2005.

## **Poverty**

The Committee expressed concern that the government saw no need for an official definition of poverty or a poverty line, noting the gap between the rich and poor in Hong Kong. The delegation acknowledged the decrease in funding for certain childcare services but maintained that there had also been an increase in the workload. A period of economic reorganisation had involved a number of efficiency savings, including salary cuts in the civil service, so that more was achieved for less. There was no poverty line but the government was trying to develop indicators useful to tackle the problem. The delegation noted the problem of inter-generational poverty, in which poorer children did badly in school, so the cycle of poverty continued. Special training and education was provided to break this cycle, as well as the mobilisation of local resources to help poorer families.

The Committee expressed concern at reductions in social security benefits in 1993 and 2003. The delegation explained that rates of payment in the Comprehensive Social Security Assistance program were index-linked, thus adjusted according to the cost of living. As a result of the 1997 economic downturn and the inflationary pressure, there had been a decline in wages, including salaries of civil service officials. The rates of payment to social welfare recipients were adjusted in line with the decrease in the cost of living. Nonetheless, there were discretionary measures in place to cushion the effect on families receiving social security.

## **Right to Participation**

The Committee expressed concern that the views of children were not systematically heard on relevant issues such as reform of the education system or poverty affecting children. The delegation explained that a children's council had been organised by NGOs and included a process for electing children councillors and chief executives. The government met these councillors at least once a year. Hong Kong would also be establishing a children's rights forum with children among the councillors and chief executives, human rights and children's rights NGOs, and government representatives. There were already indications of a desire to discuss educational reforms and the design and location of recreational facilities for children. In addition, there were district youth councils, which were elected bodies at district level. They included some children, covering the age group of 16-24.

## **Freedom of Religion**

The Committee enquired about legislation on the freedom and protection of religion. The delegation explained that the policy was not to interfere in religious affairs, so there was no special department. The Home Affairs Bureau acted as a contact point and liaison office with the religious communities. Aside from the public government schools, there were also schools run by religious bodies including the Catholic and Protestant Churches, Buddhist organisations, Taoist organisations, and Islamic bodies. Schools provided religious studies as a subject but did not compel students to adopt particular beliefs. Students could be excused from classes with parental consent.

## **Protection of Privacy**

The Committee expressed concern regarding the media and the tendency to invade the privacy of children, recommending education on children's rights for journalists working in the children's section of newspapers. The delegation noted that there were a large number of newspapers, magazines, and television stations and these were under relatively little control. There was no censorship of printed media. The Law Reform Commission's report of December 2004 on "privacy and media intrusion" had recommended the establishment of an independent and self-regulating commission to pay particular attention to "vulnerable persons", including children, and the government was considering this report.

## **Juvenile Justice**

The Committee expressed concern at the low age for criminal responsibility. The delegation explained that the age had been raised from seven to ten in 2003 but even then prosecution did not necessarily follow. The common law presumption meant that it was necessary to prove that the child had "criminal intent", that is, he or she fully understood that the act was wrong. Administrative guidelines included a "prosecution policy" which stated that the young age was a consideration in sentencing an offender. It also included the consideration of the mental capacity and apparent maturity of the individual as well as whether prosecution was likely to be harmful to the child. Courts further had to consider other ways of dealing with juvenile offenders. The "police superintendents' discretion scheme" provided the possibility of visits, counselling services, or the administering of a caution to prevent further crimes.

Children under the age of 16 were dealt with by a magistrate in a specialised juvenile court. There were five such courts that had jurisdiction to hear all charges against children under the age of 16 except cases of suspected homicide. Children were accompanied by their parents or guardian and not mixed with adult offenders. Proceedings were carried out in an informal set-up in consideration of the best interests of the child and not open to members of public.

## **Abuse, Neglect and Corporal Punishment**

The Committee enquired about mechanisms to deal with abuse within the family and asked about the impact of parent education programmes to prevent such abuse, asking if these might be made mandatory. The delegation explained that training was provided for the relevant staff, including the police and the social welfare department. The delegation noted that corporal punishment was not used in schools or detention centres, and physical punishment was illegal in these institutions. There was no law with regard to such punishment in the home but there was a voluntary programme to educate parents and carers to increase awareness that corporal punishment was not the best means of disciplining children. This programme could not be made mandatory unless existing laws were amended and the delegation noted the importance of the liberty of the parents but declared that the issue would be looked at again.

The Committee enquired about the early warning systems in place and the existence of mandatory reporting of cases of abuse. The delegation explained that teachers and neighbours

usually acted as an early warning system but that there was no mandatory system in place for detecting early signs and reporting child abuse cases. The region relied on the training of frontline staff and other people such as teachers, doctors to detect signs of child abuse and report cases to the authorities.

### **Child Labour**

The delegation noted that there was no mining in Hong Kong. Children over the age of 16 could take up employment but not if the work was dangerous.

### **Concluding Remarks**

The head of the delegation declared that there was a vibrant civil society in Hong Kong and thanked the NGOs for their work with regard to children's rights. He noted that a children's rights forum was to be established and reaffirmed the region's commitment to the CRC and its intention to apply the Optional Protocol.