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ABSTRACT

The Convention on the Rights of the Child was extended to Hong Kong in 1994 but with little publicity and with reservations, relating in particular to Vietnamese children in Hong Kong. These reservations are unacceptable. It is strongly recommended that conditions for asylum seeker children and illegal immigrant children be improved to conform with Convention standards.

A child policy is needed to set minimum standards of child care, clarify family and government responsibilities towards children and define the consequences of disregarding those responsibilities.

An independent Child Commission is advocated to ensure compliance with the Convention, to investigate complaints, disseminate information, conduct research.

A review of legislation affecting children is needed to harmonise the law with the provisions of the Convention; a comprehensive Child Ordinance is recommended, bringing together all relevant legislation and mandating the courts and the administration that the best interest of the child principle is paramount.

Although provision is made for legal representation of the child in court, this does not always happen. Legal representation of the child is urged, so that his/her voice can be heard. It is also urged that the child's view is sought in other contexts such as residential care settings.

Regarding child protection, more coordination is recommended; more public education and advocacy are needed to cultivate a positive, nonviolent environment for children. Health services need to be child- and family-centred, planned and coordinated.

The education system needs a holistic approach, reducing the present emphasis on cognitive development and examination results, which has been found detrimental to children's mental health and overall development. Mother-tongue teaching is strongly recommended.

1. INTRODUCTION

1.1 The Hong Kong Committee on Childrens Rights was formed in 1992 under the auspices of Against Child Abuse and originated from a Concern Group for Children Left Unattended. Its current members (Appendix A) all have special interests in children and are working with organizations or in their individual capacity for the improvement of the quality of life of children in Hong Kong.

1.2 One of the Committees major objectives has been to work towards achieving the extension of the United Nations Convention on the Rights of the Child to Hong Kong and to monitor actively the implementation of the Conventions standards in Hong Kong. The Convention was finally extended to Hong Kong in September 1994. The extension of the Convention is made subject to various reservations (Appendix B), a number of which go beyond the reservations entered by the United Kingdom when it ratified the Convention in respect of its metropolitan territory. However, there was no prior consultation with the people of Hong Kong or with interested non-government organizations as to how reservations could be minimized or even avoided. In fact, a number of these reservations represent an acceptance by the United Kingdom of a lesser level of obligation in certain respects than it has already accepted under other UN human rights treaties including the two International Covenants.

1.3 The Committee has prepared this report with the help of Miss Celie Nehmer, Mrs Nancy Rhind and the Dr Bart Rwezaura to highlight some of the areas of concern in Hong Kong. The report is not meant to be a comprehensive survey of the extent to which the Conventions standards, or other applicable standards are implemented in Hong Kong, but to identify areas of prior concern. The report follows the Guidelines for NGO Reports on the Convention as stipulated by the United Nations.

2. GENERAL MEASURES OF IMPLEMENTATION (ARTICLE 4)

2.1 Hong Kong does not have an identifiable and coherent policy on children although NGOs have been strongly advocating for such a child policy. Public education in this respect is not a government priority; in the process of achieving ratification the government took no steps to publicize the Childrens Convention widely, or to review Hong Kongs existing laws to ensure that the rights of the child are protected. Moreover, there is no specific mechanism to promote and monitor the implementation of the Convention in Hong Kong, or for receiving complaints of violation of its guarantees.

2.2 The extension of the Childrens Convention to Hong Kong means that it is imperative for the government to develop a coherent child policy (which should include setting up the machinery for educating the public), to disseminate information on the Convention, and to monitor implementation of the Convention.

3. DEFINITION OF THE CHILD (Article 1)

The current age of majority in Hong Kong is 18 years which is in keeping with the Article 1 of the Convention on the Rights of the Child (Appendix C). However, even though the Age of Majority (Related provisions) Ordinance (Cap.40) reduced the age of majority from 21 to 18 years in 1990 this change does not apply to some laws in Hong Kong which still hold the age of majority to be 21 years. These include the Adoption Ordinance (Cap.290), the Marriage ordinance (Cap.181), the Domestic violence Ordinance (Cap.189) and the Protection of Children and Juveniles Ordinance (Cap.213). The voting age is 18 years.

Age of Attainment of Majority and Legal Minimum Age

TOPIC AGE

Age of majority (in general)	18 years
Minimum age for medical counselling without parental consent	Depends on individual circumstances. If a young person is able to understand the nature of treatment or counselling, then with the permission of two doctors she/he may make whatever decision necessary without parental consent.
End of compulsory education	15 years
Part-time employment	13 years as long as employment does not interfere with full time school commitments.
Full-time employment	15 years
Hazardous employment	In Article 10.3 of the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) which applies to Hong Kong, children and young persons should be protected from economic and social exploitation. Their employment in work that is harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.
Sexual consent	16 years between heterosexuals 21 years between homosexuals
Marriage	16 years with parental consent, otherwise 21 years.
Voluntary enlistment into the armed forces	Not relevant for Hong Kong
Conscription into the armed forces	Not relevant for Hong Kong
Competence as a witness in court proceedings	If the child can understand the complexities of the situation and has clear understanding of what he/she is required to do.
Criminal liability	A child under 7 years of age cannot be found guilty; between 7 and 14 years of age, there is a rebuttable presumption of incapacity. A boy under the age of 14 cannot be convicted of rape, and if he is between the ages of 12 and 14 can only be convicted of indecent assault.
Deprivation of liberty	See section on Special Protective Measures.
Imprisonment	Dependent on the nature of the crime. However a child from 7 years up to 16 years may have his or her case tried in the Juvenile Court.
Consumption of alcohol or other controlled substances	18 years of age
Voting	18 years of age

4. GENERAL PRINCIPLES

4.1 The law governing children in Hong Kong is to be found in pieces of legislation which have been enacted over the years in response to specific issues of social policy. There is no comprehensive statute governing children (along the lines of the Children Act 1989 (UK)), and, some of the statutory provisions do not manifest a consistent policy towards the child regarding non-discrimination and the best interests of the child.

4.2 Non-discrimination (Article 2)

The enactment of the Parent and Child Ordinance in 1993 has gone a long way towards removing legal discrimination against children born out of wedlock. However, there are areas

where this discrimination still exists, namely in the areas of citizenship and domicile. Under the present law an illegitimate child born in Hong Kong whose father is a British Dependent Territory Citizen (BDTC) but whose mother is not a BDTC or settled in Hong Kong, will not acquire the right of abode in Hong Kong.

4.3 An illegitimate child takes on the domicile of the mother and not that of the father. This can create problems when the mother has a domicile other than that of Hong Kong and yet the child is a resident of Hong Kong. Similar problems can arise from the retention in Hong Kong of the common law rule that a woman takes the domicile of her husband. If a couple separates (but not divorces) and the husband leaves for another country, his wife and children remaining in Hong Kong, the domicile of the wife and children continues to be that of the husband. This can cause problems involving the jurisdiction of the courts to hear matrimonial proceedings and in issues of inheritance.

4.4 Another area where the child suffers from discrimination is under immigration law. Article 2 of the Childrens Convention requires that: States Parties should respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind irrespective of the child's or parents or legal guardians race, colour, sex, language, religion, national, political, or other opinion, ethnic or social origin ... birth or other status. This obligation is not fulfilled however, in respect of refugee and illegal immigrant children in Hong Kong, the former in detention centres, the latter in prison awaiting deportation. These have not for example, had access to comparable educational and other facilities available to children resident in Hong Kong.

4.5 Despite Article 28 (States Parties shall (a) Make primary education compulsory and available free to all (b) Encourage ... secondary education ... make ... available to every child), since 1993, the UNHCR has systematically reduced educational and recreational services in the refugee camps. Secondary school in detention centres ended in July 1995 and Primary school for Chinese children had already ended.

4.6 Best Interests of the Child

The best interests principle is reflected in some legislation but not all. The Parent and Child Ordinance (No 17 of 1993), besides seeking to reduce legal disabilities associated with illegitimacy, consolidates and amends certain aspects of the law relating to paternity and provides for the determination of parentage in cases where birth is a result of scientifically assisted reproduction. Another recently amended ordinance, the Protection of Children and Juveniles Ordinance (Cap.213) seeks to provide better protection for abuse children and other children in need of protection.

4.7 The Guardianship of Minors Ordinance (Cap.13) specifically requires courts to apply the principle of the best interests of the child as the first and paramount consideration in the custody or upbringing of a minor and in relation to the administration of property belonging to the minor (Appendix C). However, this provision does not apply fully to case of adoption where the best interests of the child are not paramount, but rather, are only one of the factors to be considered. In the Domestic Violence Ordinance (Cap.189), there is no specific direction to administrative tribunals and government agencies to observe the principle of the best interests of the children in their decisions. This would appear to be inconsistent with Article 3 of the Convention which provides that: in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

4.8 Respect for the Views of the Child (Article 12)

The Guardianship of Minors Ordinance (Cap.13) provides that, in matters of custody and upbringing, the wishes of the minor should be taken into account, having regard to his/her age and understanding (Appendix C). The provision can be used extensively by the court to obtain the views of the child though this does not ensure that this will happen. There are statutory provisions under the Matrimonial Causes Rules (rr 72 and 108) which provide for separate representation of the child in matrimonial proceedings. However, separate legal representation of the child is not the regular practice. This may be partly due to the predominant belief that adults know what is best for the child. When children are taken into care, when children are

caught up in custody battles or when they are accused of criminal offences (Articles 12.1 and 12.2) separate legal representation for the child should be the norm. The child's views should be represented. The Convention would oblige the government to provide guardians ad litem to represent the children involved.

5. CIVIL RIGHTS AND FREEDOMS

5.1 Name and Nationality (Article 7)

The Birth and Deaths Registration Ordinance (Cap.174) requires that a child must be registered within 42 days of birth. This obligation is imposed upon the father in the first instance but, where for good reason the father is not able to discharge this obligation, the mother must register the child. There is no rule as to which surname a child may be given on registration. In practice however, the father's surname is given. Somewhat surprisingly, the registration of the child may be effected before a child has been given a name and parents are also permitted to alter or add another name to those already included in the register provided this is done by written declaration and before the child has attained the age of 12.

5.2 Preservation of Identity (Article 8)

The child's right to identity, enshrined in Article 8 of the Convention, requires the preservation of the child's identity in terms of the child's name, nationality, family ties, language, and culture. A number of ordinances touch on this right. The law governing registration of births which requires compulsory registration of a child is consistent with this provision. However, the law conflicts with Articles 7 and 8 of the Convention in permitting the registration of births without a child's name, and in allowing a child's name to be altered by a written declaration of the parent or guardian before the child's twelfth birthday. It is recommended that Hong Kong legislation regarding registration of a child and giving the child a name should adhere to convention standards expressed in Articles 7 & 8.

5.3 Freedom of Expression, Association and Peaceful Assembly (Articles 13 and 15)

Children as well as adults are entitled to free expression of their thoughts and may form organizations for the peaceful expression and dissemination of those views. However, there are certain laws such as the Public Order Ordinance and the Societies Ordinance (Cap.151) which limit this freedom. The restrictions imposed on these freedoms are generally justified on grounds of public order and security.

5.4 More specifically, children are protected from political manipulation and/or indoctrination by regulations made under the Education Ordinance (Cap.279), empowering the Director of Education to regulate the formation of student associations and the dissemination of information or expression of political opinion in schools. Teachers are also required to ensure that students are not exposed to politically biased opinions while in school.

5.5 Access to Appropriate Information (Article 17)

Access to appropriate information seems to entail not only the provision of educational material and other information necessary for a balanced development of the child, but also the regulation and exclusion of information which are deemed detrimental to the moral and intellectual development of minors. This topic covers a very wide area including the regulation of the sale and publication of documentary and audio-visual material as well as the censorship and regulation of the media and entertainment industry through licensing and inspection. It is unfortunate that in Hong Kong, radio and television programmes that are clearly unsuitable are presented during children's television time slots and children's shows are presented after the normal bedtime for children. Television programming in Hong Kong needs to be thoroughly reviewed from the perspective of children.

5.6 Freedom of Thought, Conscience and Religion (Article 14)

Freedom of conscience and religion are protected by the law in Hong Kong, and the law makes no distinction between adults and children. Parents are responsible for the religious upbringing of children and this is respected in schools. There is no compulsory religious instruction in

public schools. Where a child is placed in the care of a public school body such as a reformatory school or a juvenile home, the child's religious beliefs are to be respected and facilities must be given to enable such a child to practice his/her religion without hindrance.

5.7 Protection of Privacy (Article 16)

The right to privacy in Hong Kong is variously protected through the law of libel and slander. Interference with correspondence is also punishable. Young persons accused of criminal conduct are tried by juvenile courts and these courts are not open to the public.

5.8 The Right not to be Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 37a)

Torture is prohibited in Hong Kong. No court may order any punishment falling within this category. The Education Regulations (reg 58) now prohibit corporal punishment as a disciplinary measure in all Hong Kong schools (1991) (Appendix C).

5.9 Summary

A comprehensive and coherent legislative framework for the recognition of the rights of the child, as envisaged by the Convention is needed, with a clear mandate to the courts and the administration that the best interests of the child principle is paramount. A thorough review of all legislation affecting children is necessary to update and harmonize the law with the provisions of the convention.

6. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

6.1 Parental Guidance and Parental Responsibilities (Articles 5 and 18 paras. 1-2)

In Hong Kong, the family unit is still considered a vital component of society, providing a physically and emotionally secure environment in which children can develop into healthy and responsible members of society. (White paper, Social Welfare into the 1990s and Beyond, 1991.)

6.2 However family life has been changing over the last decade as extended families with their support mechanisms are replaced by an increase of nuclear families - an increase which correlates with greater numbers of divorces, separations and single-parent families. Once strong family ties are now being weakened by the dispersal of family members within Hong Kong and through migration, causing split families and putting children at risk.

6.3 The current overall objectives of child welfare services are to support and strengthen families so that they may provide a suitable environment for the physical, emotional and social development of their children and to provide assistance to those disadvantaged and vulnerable children who are not adequately looked after by their families.

6.4 Family education

In Hong Kong, the impact of western culture upon traditional child-rearing methods inevitably brings some confusion. Preparation for parenting and on-going support for parents, recognition of the role of women (who are still predominantly responsible for child-rearing) are not adequate. The message of equal parenting responsibilities for fathers and mothers needs to be widely disseminated (Article 18). Though the government and NGOs continue to provide Family Life education, a well-planned, well coordinated public education programme has to be developed. A positive, non-violent approach to child-rearing needs to be reflected in text books and through the media. The role of the Maternity and Child Health Clinics can be reviewed, to incorporate a stronger educative and supportive programme for parents.

6.5 Child care

With women increasingly joining the paid labour force, there is a growing demand for child care facilities. It should be government policy that a child care placement would be available for any child needing one. The involvement of employers in creating work-based child care services can be required by the government. Minimum standards must be set for institutional and private child-minding and a system of registration of private child-minders installed, instead of simply adopting the proposed Control of Child Minders Bill (awaiting implementation), which is limited

to blacklisting those with child abuse related offences.

6.6 Few child care facilities at present offer extended hours to suit the needs of many working parents. Facilities need to be affordable, flexible, with extended hours and extended age range, and covering occasional child care. More resources are also needed to expand the after-school care programme.

6.7 Separation from Parent (Article 9)

Children of parents who are in prison.

The Convention provides the basis for protecting and extending the rights of prisoners children. Article 2 contains the underlying principle that all rights apply equally to all children and expresses the obligation of the States to protect children from any form of discrimination. The importance of family ties is emphasized in Article 9.

6.8 There is a lack of provision for children to visit parents in prison and to interact on a basis of anything approaching normal family interaction. Visits by children are mostly restricted to normal visiting arrangements. The challenge is for Hong Kong to seek more imaginative means of addressing the issue in terms of the wider concept of prevention of family breakdown.

6.9 Prisoners who are parents have a role in parenting and in sharing responsibility for their families and this needs to be recognized within a family policy and realized in practice by schemes such as all day visiting schemes, which other countries have initiated.

6.10 Children Deprived of a Family Environment (Article 20)

Barriers to the improvement of service for children in care

a/ Lack of empirical evidence

Very little is known about why children in Hong Kong come into care and what happens when a child begins his/her care career. The 1987 working Group and its 1989 Steering Group (both concerned with residential care), noted the need for more research to be commissioned and supported by government. Eight and six years later respectively there is still little research on children in care.

b/ No comprehensive, in-depth service review of residential care.

The need remains for an in-depth review of residential care, for while a few of the needs highlighted in the reports of the Steering and Working Groups have been addressed, the underlying problems of lack of specialization, problems of relationship, coordination and planning persist. (Report of the Steering Group on Development of Residential Child Care Services, 1991).

c/ The child's view is not heard

The child's view (Article 12) is seldom documented and no complaint or grievance procedure for children in care has been developed.

6.11 Adoption (Article 21)

6.12 Legal representation

Article 21 provides for the protection of children in adoption cases while Article 21(a) provides that adoption shall be authorized by competent authorities in accordance with applicable law and procedures. In Hong Kong, procedures presently in place allow for the Social Welfare Department to purport to represent both the authorizing body and the interests of the child. This is an unsatisfactory state of affairs and should be addressed by the provision of a separate guardian ad litem for the child. A simple amendment to the Adoption Ordinance would suffice.

6.13 Inter-country adoption

Inter-country adoption (Article 21) features strongly as a care strategy for children with special needs. While recognizing that there are no easy solutions, Article 21(b) of the Convention implies a preference for adoption within the child's country of origin and therefore raises the question: Is Hong Kong doing all that it can to exhaust all possible means within Hong Kong, to match the achievements of other developed countries in addressing this issue? (UNICEF

Background Note No.5, Adoption in the Convention of the Rights of the Child).

6.14 Illicit Transfer and Non-Return (Article 11)

In view of the impact of 1997, with the return of the territory to Chinese sovereignty, divorced parents now often live in different countries and the question of kidnapping ones own child may become a matter of concern. The Hague Convention on the Civil Aspects of International Child Abduction should be made applicable to Hong Kong. The Convention makes it simpler for a parent who has legal custody of a child to take the child back to the place from where he/she was abducted, without going through a lengthy trial of merits, thereby causing less trauma to the child.

6.15 Recovery of Maintenance for the Child (Article 27)

Government should adopt more effective measures for the enforcement of maintenance orders so that children can benefit.

6.16 Abuse and Neglect (Article 19)

In Hong Kong, the best interests of the child is a dictum too often honoured in word rather than deed, particularity in the area of child abuse.

6.17 Physical abuse

Corporal punishment has been abolished in the courts and in schools but is still widely accepted in the community and amongst some professionals, so much so that children with dozens of bruises are often considered to have been unduly disciplined rather than maltreated. The lack of intent to harm, the fact that the childs behaviour was provocative, the notion that defining someone as an abuser stigmatizes and leads to further abuse - are all used as reasons for not identifying a case as one of abuse, and can leave children unprotected. Parents, guardians and adults rights carry more weight than those of children.

6.18 Child neglect (including unattended children)

Even though there is increased awareness of child neglect, children are still being left inadequately supervised and it is only when there is a death or serious injury that much attention is paid to these problems. From 1989 to 1994, 113 unattended children aged under 9 years, died (Hong Kong Coroners Statistics, 1994). Although relevant legislation is in place, it is rarely invoked in cases of neglect. Families who do not take adequate precautions to protect their children have to be held responsible in law.

6.19 Psychological abuse

Established child-rearing methods of harsh punishment, scolding, shaming, denigrating still persist and children continue to be overburdened by a demanding education system. The harmful consequences are not widely recognized; children tend not to be considered psychologically abused unless serious psychiatric or emotional symptoms are observed.

6.20 Sexual abuse

An increasing number of sexual abuse cases are coming to light. Reported cases of sexual abuse increased from 2% in 1990 to 17% in 1994, of all reported abuse cases (Hong Kong Social Welfare Department Quarterly Statistics, 1990-94). However, insufficient public understanding, and lack of knowledge and skills in handling cases hamper identification and intervention,. Effective follow-up services such as therapy for victims and perpetrators are far from satisfactory.

6.21 Training

Pre-service and in-service training programmes for all relevant disciplines must be stepped up. Tertiary institution and training schools have begun to teach on child abuse but at a basic and minimal level. Comprehensive, multidisciplinary courses covering child protection concepts and trends, skills in interviewing and counselling victims, perpetrators and family members need to be regularly conducted and those working with children encouraged to attend.

6.22 Different disciplines often work without consensus on the definition of child abuse or on an intervention strategy. A team approach needs to be developed. Ongoing, multidisciplinary

communication forums are needed.

6.23 A central coordinating body for child protection is recommended. Also, resources must be made available for much more public education and advocacy to cultivate a positive, nonviolent atmosphere for children at home, at school and in the community.

6.24 Summary

Overall, these concerns call for a clearly communicated child policy to clarify family and government responsibilities towards children and to establish principles and minimum standards of child care as well as defining the consequences of violating such principles. Such principles and standards must be reflected in comprehensive, well-coordinated legislation.

6.25 An independent children's commission is needed to promote the rights and best interests of children, to ensure that all policies and services affecting children take account of children's rights and interests and to create channels for children's participation. (The present Youth Commission is targeted towards ages 15-25, with an additional five years at both ends (10-30 years). Under 10s are not included, but already the age range encompasses widely different interests).

6.26 Hong Kong is a wealthy, developed society with the capacity to respond to the needs of children flexibly and proactively rather than reactively, as in the past.

7. BASIC HEALTH AND WELFARE

7.1 Survival and Development (Article 6 para 2) :

Under Article 6.2 of the convention, States parties are required to ensure to the maximum extent possible the survival and development of the child.

7.2 Children in Hong Kong enjoy very low infant and under five mortality rates, much of which is attributable to the reduced incidence of very low birth weight babies, lethal congenital malformations and sudden infant deaths, and to good socio-economic and living conditions as well as a good health care system. The immunization coverage rate for the nine common childhood infections in general, is over 90%. However, health care service provision does not match the socio-economic status that Hong Kong enjoys. The Hong Kong government spends 2% of GDP on public health care services.

7.3 Advocacy for children in the area of health.

The future well-being of children and young people is threatened by the lack of vigorous advocacy on behalf of children and their health. It is important that the interests of children be considered in all government policies and actions concerning children directly or indirectly. (Article 3). In 1993, the government published a consultative paper Towards Better Health on future health care financing. The specific needs of children were not mentioned in the paper.

7.4 Disabled Children (Article 23)

The government provides a wide range of services for handicapped children and there has been a significant improvement in remedial and preventive services in the past decade. However, organization of services is still fragmented and scattered; the gap between supply and demand of services in most areas is still very great. The 1990 Rehabilitation Programme Plan records shortfalls for 1990/91 of 708 integrated child care places, 2,482 sheltered workshop places, 2,170 places in day activity centres, 810 hospital beds for the severely mentally handicapped. The figures may be an underestimate. Exact figures for the prevalence of disabilities in Hong Kong are not available. A territory-wide surveillance system to obtain more accurate prevalence rates for better planning is very much needed. According to figures from most countries, around 10% of children are likely to have special needs. The present provision of services and facilities are thus insufficient to cater for the needs of children. These must be substantially improved.

7.5 The services provided are in general not child- and family-centred, and not integrated with education and other community services. To allow integration at planning and operation levels, an infrastructure should be built to facilitate effective integration of services.

7.6 Access and transport

Access remains a major problem for many disabled children, whether it is access to buildings, to transport, or to information. These deficiencies have created tremendous barriers to the integration of disabled children into mainstream education, to be trained, to receive services, to enjoy social activities and to find employment. These problems need urgent attention.

7.7 Crucial empowerment of parents and public education

Both preventive and rehabilitative care need to s needs. Most services mainly target child and parental health; education and training are not given adequate attention. However greater parental knowledge is critical to building a longitudinal framework of care.

7.8 Human resources planning and training

The main obstacle to the development of services is the shortfall in the numbers of trained professionals, which must be tackled with full commitment. Rehabilitative medicine is largely undeveloped in Hong Kong and should be given proper recognition and facilities for its development. Training of professionals needs to be continuous and must be tied in with the career structure so as to enable recruitment and retention of staff.

7.9 Health and Health Services (Article 24)

Health education

Health education and health promotion are being provided by several health care agencies e.g. the Central Health Education Unit of the Department of Health, the family life education programme of the Social Welfare Department, pre-marital counselling and sex education by the Family Planning Association, and other services such as the Council on Smoking and Health and AIDS Council. Health education activities are often in response to crises. They are often not well planned with clear targets, objectives and evaluation programmes.

7.10 School health education

The deficiencies can be summarized as follows:-

- Lack of information on the needs of children and society.
 - Insufficient coordination between the Department of Health, the Education Department and other agencies involved in health education.
- Insufficient programme planning.

(Curriculum - the last syllabus on health education for primary schools was developed in 1980.)

7.11 Reproductive health education (sex education)

There is no uniform approach to reproductive health education in Hong Kong. It is included in school curricula but the effectiveness of the programme is unknown. Recent surveys indicate that adolescents still lack accurate knowledge about sex. (Youth in Hong Kong - a Statistical profile. Central Committee on Youth-information and Research Committee, 1988).

7.12 Recently there has been an explosion in the number of obscene movies, videos and comic books on the market. Though children under 18 years of age are prohibited by law from gaining access to these items, they can easily do so. The widespread ignorance on sexual matters and flooding of the media with sexual images and ideas point to the need for early and continuous, comprehensive sex education.

7.13 Nutrition

The breastfeeding rate dropped from over 80 % in the 1960s to less than 10% in the 1980s. It has since increased slowly to a breastfeeding rate of 32% in 1995. Commitment from the government and professionals is lacking for the promotion of breastfeeding. There is no monitoring system for the International Code on the Marketing of Breastmilk Substitutes. There is also a shift away from the excellent traditional Cantonese diet which is nutritiously well balanced, with its low intake of saturated fat and refined carbohydrate and high fibre, to a very high fat and high protein diet.

7.14 Undernutrition is a rarity now, but over-nutrition is very prevalent. Obesity is estimated to occur in about 21% of 11 year old boys and 12% of 10 year old girls, many children having a

very high cholesterol level. Diet-related disorders in later life are increasing rapidly in Hong Kong. (Growth Standards for Hong Kong. S.S.F. Leung, Department of Paediatrics, Chinese University of Hong Kong, 1994).

7.15 It is highly desirable that population dietary surveillance be performed regularly and that a food and nutrition policy be developed.

7.16 Exercise and physical fitness

Physical fitness in terms of endurance running, hand-grips and pull-ups in Hong Kong school children has been found to be inferior to children in Thailand and Canada. According to one recent survey 19.5% rarely took any exercise and only 41% did suitable exercise regularly. (Physical Fitness of Children in Hong Kong. School of Education, Chinese University of Hong Kong, 1985). Television watching is by far the most popular leisure activity both during weekdays and even during holidays. Most schools do not give sufficient importance to physical education and facilities and equipment in school are inadequate.

7.17 Environment

Accidents and poisonings are the commonest cause of death for children aged 1 to 14 years. As yet there is no comprehensive information on the incidence and factors contributing to childhood accidents. Preventive efforts are fragmented and poorly organized. A Child Safety Council needs to be set up to examine the causes and extent of accidental childhood injuries and deaths, and to set safety standards in homes, institutions and playgrounds.

7.18 The air and water in many parts of Hong Kong is still heavily polluted. Significant progress has been made since the implementation of the 1989 White paper on Environmental Protection but a lot more needs to be done.

7.19 New morbidity

The number of youths involved in acts of delinquency and crime, smoking, drug abuse and prostitution, is increasing rapidly, as are the incidents of pregnancy and suicide among teenagers. Factors implicated in teenage suicide have included poor self-concept and self-esteem, stressful state of mind usually due to interpersonal problems accompanied by other factors such as poor school performance, psychiatric or behavioural problems. There are still inadequate support services for this important group of young people.

7.20 Mental health

The status of childrens mental health in the community has only recently gained public attention. Contemporary studies of prevalence indicate that between 6% and 23% of Hong Kong children may be at risk of mental disorder. (Behaviour Problems in a group of Preschool Boys in Hong Kong. Lui, S.L., Lee P.W.H., - Yu, K.K. 1986. Hong Kong Journal of Paediatrics, 1:14-25).

7.21 The importance of the family environment in mental health is well established. The very common authoritarian attitude of absolute parental authority can have an adverse effect on the self-esteem of children. Low self-esteem in turn is associated with depression. Factors in school have been implicated in childrens mental health problems, including unreasonable academic demands, excessive homework and authoritarian school discipline. The emphasis on examination success combined with constant homework pressure from parents have been cited as causing a variety of neurotic and psychosomatic disorders. Children in Hong Kong are under tremendous pressure and stress.

7.22 Underlying the socialization practices of many Hong Kong family is a preoccupation with parental and family interests over childrens needs and rights. It is thus important to introduce the point of view to the general public that children have rights that are separable from those of their family and that childrens rights are intrinsically their own.

7.23 Hospital services

Since December 1991, all public hospitals have been brought under the management of the Hospital Authority which aims to achieve greater efficiency, more public participation and better patient care in hospital services. While the standard of medical care in hospitals for children is

satisfactory, there are a number of deficiencies :-

7.24 Lack of child-and family-centered care

There is, in general, a lack of space and facilities for play - an activity that can be therapeutic for sick children. There are few facilities for parents to stay with their children considered elsewhere as essential to reduce the trauma of hospitalization for a young child. Most hospitals treating children have separate childrens wards but separate out-patient and accident and emergency facilities are much rarer. Provision for adolescents is largely absent. Communication between staff and families is inadequate in many hospitals.

7.25 Lack of specially trained staff

Over 90% of children admitted to paediatric departments are emergency admissions. Training in paediatrics is not a requirement in the curriculum of an accident and emergency training programme, although about 20% of accident and emergency patients are children.

7.26 There is no standard requirement as to the quantity and quality of medical staff to provide safe and quality service in paediatric departments. However, medical audits are being introduced into public hospitals which hopefully will solve some of these problems.

7.27 In the UK and USA, play specialists or child life specialists have become standard in paediatric settings so as to address the psychological concerns that accompany hospitalization and medical care. This has yet to be developed in Hong Kong hospitals, although a non-government organization is doing some pioneering work in this regard.

7.28 Lack of home care services to continue secondary care at home

There are community nurses in each district to support secondary care at home but their training, as well as their links with hospitals and primary care workers are far from satisfactory. More careful planning is need to improve the service.

7.29 Social Security (Article 26)

Social justice for Hong Kongs children demands that they all have an equal opportunity to participate fully in Hong Kongs economic and social affairs. They must not only be able to subsist on the basic essential (food, clothing, housing), but they must be able to attain their optional physical and psychosocial development.

7.30 There are about 20,000 underprivileged children who depend entirely on public assistance. The basic rate of Comprehensive Social Security Assistance (CSSA) for children is currently HK\$1,465 which is below the rate for the elderly (over 60 years).

7.31 The special assistance available to children dependent on CSSA should enable them to: engage in developmental, social and recreational activities and to complete their secondary education with extra tuition classes if necessary.

7.32 The administration of the CSSA should be sensitive to each individual case and not stigmatize families, especially not the children involved. For instance, the current humiliating requirement to submit receipts for small expenditures should be abolished.

8. EDUCATION LEISURE AND CULTURAL ACTIVITIES

8.1 Education - Article 28

Primary and Secondary School

Hong Kong has had free, compulsory education for children from Primary 1 to Secondary Form 3 since 1978. Over 87.5% of children go to government schools or primary and secondary schools operated by non-profit making, voluntary organizations which receive public funds under a code of aid. The rest attend private schools.

8.2 Preschool education

About 95% of three to five year old children attend preschools. At present, the government does

not subsidize school providing early childhood education directly, though both educators and parents agree that preschool age is a very crucial period in the development of every child. A clear set of aims and objectives for the education and care of preschoolers needs to be established, with a planned scheme of government subsidy, including teacher training and salaries. (Hong Kong Council of Early Childhood Education and Services, 1994).

8.3 Quantity vs quality of education

The top tiers of Hong Kong school children achieve high academic performance. However, though the government has ensured an education opportunity for every child, this is sometimes at the expense of the quality of education. For instance, in order to ensure enough places, a restriction on the quota of student repeaters in schools is imposed. This restriction results in schools promoting underachieving children to an advanced grade regardless of their knowledge and ability level.

8.4 The school dropout rate is a cause of concern. The dropout rate of students between 13 and 15 years has soared by 97.3% from 1,153 persons in the academic year of 1992-3 to 2,275 in that of 1993-4. Teenagers who lack the motivation and skills required for furthering their studies often choose to leave school. Intervention services fostering a positive self-concept and enhancing learning motivation has to be provided at an early stage when problems begin to emerge.

8.5 Overemphasis on cognitive development

Although the aim of education as described by the Education Commission is to develop the potential of every individual child, the major focus is on academic and cognitive development (Education Commission Report No: 4, 1990). The overemphasis on examination success in schools and high expectations of academic accomplishments at home have been a cause of adjustment problems among children and teenagers. (Lau, 1995; Pryde, 1993). A holistic concept of developing the child's emotional and social well-being, personality, talents and abilities needs to be emphasized within schools and families.

8.6 School discipline

Though corporal punishment was abolished in schools in 1991, other forms of punishment inconsistent with the child's human dignity are still prevalent, for instance, a teacher deliberately ridiculing or humiliating a child in front of the whole class.

8.7 Mother tongue teaching

Many school students suffer from having to learn in a second language. Since the publication of the report by a visiting panel of international experts (A perspective on Education in Hong Kong, 1982), which advised the government to adopt mother tongue education in nine years of compulsory education, there has been a strong voice from educators that children can benefit most when learning in their mother tongue. However, the government is not yet committed to full implementation of such a scheme. It is urged that the practice of mother tongue teaching be implemented.

8.8 Special education

Opportunities for appropriate education for the special groups, both the disabled and the gifted, are still insufficient in Hong Kong. Equal education should not mean providing the same kind of education for every child. The spirit of the convention is to provide an education for every child to develop the individual child's potential to the full. It is recommended that ability-appropriate education be provided for all groups of children including the less able and high ability groups. (The Board of Education has set up a sub-committee to review special education, which should be reporting in 1995).

8.9 Aims of Education (Article 29)

Respect for human rights

Little is taught in the curriculum about the origins of the United Nations, nor the Universal Declaration of Human Rights or the Convention on the Rights of the Child. Concepts of human rights and children's rights should be incorporated in school subjects like Economics and

Public Affairs, Government and Public Affairs.

8.10 The natural environment

Environment education is introduced as a hidden curriculum item in schools. A hidden curriculum item has no specific resources or lessons allocated to it and so often is neglected.

8.11 Leisure, Recreation and Cultural Activities (Article 31)

Play

The value and purpose of play are not widely appreciated in Hong Kong. All young children need and have the right to play. However, the exercise of a child's right to play in Hong Kong is limited by the following factors :

1. failure to recognize the vital role of play in a child's development;
2. lack of space;
3. pressure of rote learning and expectations of academic excellence in the education system;
4. lack of professional training for playworkers.

9. SPECIAL PROTECTION MEASURES

9.1 Special protection measures need to be made available to children who are either: orphans and abandoned children, physically and intellectually disabled children, children taken into care, children accused of a criminal offence, children caught up in custody battles, physically, sexually or psychologically abused children and children in detention, be they illegal immigrant children, refugee children, asylum-seeking children without parents or with parents.

9.2 Refugee Children (Articles 22 and 37(a))

Since 16 June 1988, Hong Kong has operated a detention policy towards Vietnamese asylum seekers. Thousands of children have lost their liberty over this period. The present number is about 8,000 children.

9.3 The rationale behind the policy is one of deterrence. Arrivals have practically ceased, the Vietnamese population has decreased to 23,000. Services have been cut. It is time to re-establish the protection of children living in Hong Kong. The United Kingdom reservation relating to Vietnamese children in Hong Kong is unacceptable. (Appendix B)

9.4 Illegal immigrant children are held in prison usually with their mother, pending their deportation to China. The liberty of these children should be sought by means of bail applications for them and their mothers. It is recommended that both mother and child be released to their families on strict reporting conditions if necessary, so that they can lead a normal life, go to school, play in the park, until they are returned to China (See also Article 10.1).

9.5 In Hong Kong the recent case of a Vietnamese orphan boy highlighted an anomalous situation. Hong Kong Government had delegated its power under the Immigration Ordinance (Cap.115) to make a decision concerning removal of asylum-seeking children from Hong Kong to the High Commissioner for Refugees, a UN functionary. (Article 22.2 mandates cooperation, not delegation). Despite the fact that the High Commissioner breached the UN Convention (Article 3.1), the best interests of the child shall be a primary consideration, by the decision that he made, the Hong Kong Government not only would not reconsider the decision, but refused to take any responsibility whatever for it. When two separate applications were made in the High Court to have the decision overturned, Hong Kong Government lawyers applied to have those applications struck out as an abuse of process, scandalous, frivolous, and vexatious. They succeeded, on both occasions.

9.6 A month later the High Commissioner reversed his own decision. The next orphan in the same situation may not be so fortunate. States parties should ensure that the best interests of a child in their jurisdiction remains the concern of their own judiciary, in cooperation with the UN and NGOs. Indeed, the case demonstrated that the United Nations itself should be subject to checks and balances. Now that the Convention has been extended to Hong Kong, it can be

used to insist upon the responsibilities for children in the jurisdiction. The State Parties to the Convention are hereby exhorted to cooperate with the UN or NGOs to protect the child (Article 22.2).

9.7 Children in Conflict with the Law (Articles 40 and 37(b))

Children accused of offences (Article 40.2(b)) can now be represented by the Duty Lawyer Scheme run by the Law Society and paid for by the government. Representing a child of such tender years would be a hard task for a newly qualified young lawyer (as many of the Duty Lawyers are). The Official Solicitor has a responsibility towards vulnerable litigants, and can be invited by the Court to represent a child. We recommend that the Law Society and the Official Solicitor combine to draw up a suitable panel for representation of juveniles and such representation be paid for under the Duty Lawyer Scheme.

9.8 The age of criminal responsibility is seven years in Hong Kong. The Committee considers this to be inherently unacceptably low and out of line internationally. The Hong Kong Bar Association agrees and suggests that the age limit should be increased to 10 years in keeping with international standards. However, so far there has not been any legislative change.

9.9 Some children have been held in Hong Kong prisons pending trial of persons against whom they can give evidence. This detention is legal under Section 32 of the Immigration Ordinance (Cap.115), judicial review being the only legal remedy available in Hong Kong. But this is cumbersome and very expensive. The law should therefore be amended and alternative methods of ensuring attendance of witness at trial be found.

10. Conclusion

10.1 It can be seen that although a good deal has been achieved in Hong Kong, much awaits to be done. Basic information is often lacking, hindering our review. We strongly feel that we need a Children's Policy written in the spirit of the Convention for Hong Kong and a comprehensive Child Ordinance to bring all our child-related legislation together for ease of reference and application.

10.2 We need an independent Child Commission to ensure that the minimum standards of the Convention are complied with and hopefully exceeded through a process of monitoring, identification of priorities, recommendations and implementation; a Commission to receive and investigate complaints of violations of the Convention; to conduct research; to gather, publish and disseminate information on children and their rights and to educate the society at all levels on the rights of the child. Resources have to be made available in order that reforms recommended will become a reality.

RECOMMENDATIONS

General Measures and Implementation

A thorough review of all legislation affecting the child in Hong Kong should be undertaken, harmonizing the law with the provisions of the Convention.

One, all-embracing Ordinance governing children in Hong Kong needs to be enacted, embodying the best interest of the child principle.

General Principles

Non-discrimination

The government should desist from continuing to treat unequally, refugee children and illegal immigrant children in Hong Kong. This is inconsistent with Article 20 of the Hong Kong Bill of Rights.

It is recommended that the reservations demanded by the Hong Kong Government pertaining to refugee and illegal immigrant children be withdrawn.

Respect for the views of the child

The views of the child should be respected both in legal practice as well as in statutory provisions.

Separate legal representation for the child should be the norm.

An amendment to the Adoption Ordinance is needed to allow a child a guardian ad litem in adoption proceedings.

Civil Rights and Freedoms

Name and nationality

A child born in Hong Kong who is illegitimate should have the same rights of citizenship and domicile as a legitimate child born in Hong Kong. The law relating to British Dependent Territory Citizenship needs amendment.

The Hague Convention on civil aspects of International Child Abduction should be made applicable to Hong Kong.

Family Environment and Alternative Care

Parental guidance and responsibility

A Child Policy to be adopted, clarifying family and government responsibilities towards children and establishing minimum standards of child care.

An independent Childrens Commission to be established to promote and ensure the rights of children in policy and services affecting children, and to create channels for child participation.

It should be government policy to provide child care facilities for any child who needs placement.

Abuse and neglect

A central, child protection coordinating body to be set up. Multidisciplinary training in child protection to be established. A positive, nonviolent approach to child-rearing to be promoted.

Children deprived of a family environment

Visits to parents in prison to be extended for children.

In residential care, an in-depth service review and empirical research are urgently needed.

The child's voice must be listened to and a grievance procedure for children in care be instigated.

Basic Health and Welfare

Disabled children

Services to disabled children to be child- and family-centred, to be properly planned and integrated; a surveillance system to obtain prevalence rates to be implemented and shortfalls in rehabilitation services rectified.

Improved access to buildings, transport, information urgently needed.

Education and support for parents needed

Rehabilitative medicine needs recognition in Hong Kong, with improved training for rehabilitation staff.

Health and health services

A Child Safety Council should be set up to examine the circumstances of accidental childhood injuries and deaths and to propose safety standards.

Health education to be proactively planned and coordinated, rather than responding to crises.

Child health advocacy to be strengthened; child health education to be stepped up amongst professionals (e.g. : in accident and emergency departments) and amongst the general public (e.g.: childrens nutritional needs).

Hospital services

The Government should ensure a/ space for parents to stay with their children in hospital b/ provision of facilities to play, including provision of play specialists, and c/ improved communication between staff and families.

Social Security

The standard rate of Comprehensive Social Security Assistance childrens allowances to be raised and the reimbursement process improved.

Education, Leisure and Cultural Activities

Mother-tongue teaching

It is strongly urged that mother-tongue teaching be implemented in schools.

Aims of education

A holistic concept of child learning and development to be emphasized instead of the current over emphasis on the cognitive level and exam results, which appears to contribute to mental health problems and other problems.

Concepts of human rights and childrens rights to be incorporated into school curricula.

More emphasis needed on environmental education.

Leisure, recreation

The value of play and the importance of leisure activities for children to be widely promoted.

Special Protection Measures

Refugee and illegal immigrant children

The government detention policy towards Vietnamese asylum-seekers must be reviewed and measures sought to expedite release of the (currently) 8,000 children in detention centres.

The government should release illegal immigrant mothers and children from prisons prior to deportation.

Children in conflict with the law

The age of criminal responsibility is recommended to be raised from 7 years to 10 years, in line with international standards.

A panel of suitable lawyers for representation of juveniles is recommended to be set up under the Duty Lawyer Scheme.

Amendments to the law are needed and methods found for the attendance of witnesses (including child witnesses) at trial, to avoid child witnesses being held in prison pending a trial.

APPENDIX A

NAMES OF CURRENT MEMBERS OF THE HONG KONG COMMITTEE ON CHILDRENS RIGHTS. (All members are on individual capacity except those with*)

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Mrs Cheng Chung Yau Ling Mrs Priscilla Lui
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