

NGO Group for the Convention on the Rights of the Child
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**Supplementary Comment on the Initial Report of the United Kingdom of
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Article 44 of the CRC**

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Introduction

In October 1995, the Hong Kong Committee on Children's Rights (HKCCR), in light of the International Convention on the Rights of the Child (ICRC), published a report entitled The Rights of the Child in Hong Kong. In September this year, the first reporting by the Hong Kong (HK) government to the United Nations' Committee on the Rights of the Child is due to be held in Geneva. In addition to the above-mentioned report, the HKCCR would like to submit this supplementary comment on the government's report.

Some Preliminary Observations

The Committee notes with regret, that despite the fact that the Committee's 1995 October report obviously had an impact on the government's report, its influences are restricted to that

of serving as a negative role: its observations are swept under a dazzling display of facts, organizational references, legislations, and statistics all parading to show that our recommendations/proposals are redundant. On this the Committee would like to emphasize that if our report is in any sense critical, it is only meant to be of a constructive nature. We fully realise that the concept of the rights of the child is relatively new to the Chinese culture. Difficulties in the implementation of the Convention are expected. Our Committee believes that the best way to promote the rights of the child is for non-government and professionals to work closely with the government. The same spirit applies to this commentary.

Shortcomings in the Government's Effort

There is no denial that the government has played a significant role in the overall improvement of the welfare of children in HK in the past decades. However, the government failed to identify factors and difficulties in the full implementation of the Convention. Services and provisions are listed with little mention of the inadequacies in quantity, nor, in particular, in quality. The extension of the ICRC to HK appears to have easy little impact on the daily lives of children here. The attitude of the government, as reflected in the overall complacent tone of the report, is to maintain the status quo. Indeed the government effort in publicizing the extension of the Convention to the territory appears to be all but adequate: there were only two briefing sessions for social workers and clinical psychologists and (a part) of a tour of exhibitions organized by the Committee on the Promotion of Civic Education, not to mention the fact that the popular version of the Convention was not published and made available to the general public until February 1996!

Similarly in response to a host of problems (many mentioned in our report) relating to the rights and welfare of the child in the territory, the government merely side-stepped the issue. The Committee would like to highlight some of them:

Non Discrimination

- In extending the Convention to HK, the government reserves the right to continue to apply legislation governing the detention of children seeking refugee status. It has never been clear whether these children are excluded from the Convention entirely or only in relation to their detention.
- The government's tacit approval of the UNHCR's withdrawal of secondary education for the Vietnamese asylum seekers (see 9.2, 9.3 of our report) is highly discriminatory and a retrograde step away from the spirit of the Convention.
- The government would not allow Vietnamese children who had obtained refugee status to attend government funded/subsidised schools in HK.

The Best Interest of the Child

- The government has not managed to explain clearly and convincingly why, in the case of adoption, the dual and potentially conflicting roles of the Social Welfare Department (as a representative of the child and as an agent with the authority for approval) is not a problem (see 6.12, 4.7 of our report).
- That children are not placed in or are withdrawn from foster care primarily because of their parents' objection appears to be a clear violation of the key tenet of the Convention by putting adults' wishes over what may be in the best interest of the child.
- Failure to encourage local adaption of disabled children (see 6.13 of our report)
- Although the government report states in paragraph 173 that children are best cared for in a home-like environment, there are more children under 6 in residential creches and nurseries than foster care (see Appendix 3 of the government report).

- The Hospital Authority has a Patient's Charter but does not see the special need of children in the form of a Children's Charter.

Rights to Survival and Development

- Education issues: the entire HK education system is ridden with serious persisting problems, the band system (in differentiating secondary school students based solely on their academic merit), over concentration on cognitive versus other aspects of development, and the problem of the medium of instruction, etc., and they are all exacerbated by the government's lack of commitment in dealing with them (see Section 8 of our report, especially 8.2, 8.3, 8.7, 8.9, 8.11).

- The number of children who died while left unattended by their parents is alarming (see 6.18 of our report). The number of injured is unrecorded. The claim that the Offences Against the Person Ordinance is often used against child neglect is misleading as the statistics shown included both ill-treatment or neglect (see paragraph 215 of the government report).

- The recently proposed Childminder's Bill fails to cover non-institutional practitioners of which there are substantial numbers.

- The breastfeeding rate of 32.4% quoted for 1995 (paragraph 267 of the government report) is dismally low as it was only the ever-breastfeeding rate at discharge from post-natal wards. No public hospital in HK has been recognized as a baby-friendly hospital" as the Hospital Authority has yet to show any intention of meeting the WHO target of ending, by 1995, the supply of free or subsidized breast milk substitutes to hospitals by milk companies.

Respect for the Views of the Child

- In many actions concerning the children, there are no built-in mechanisms or procedures by which representation of the views and opinion of the child is ensured (see 4.6,4.7,4.8 and also 6.10 of our report).

The Rationale behind a Child Policy, Child Commission and Child Ordinance

Another major, and in the opinion of the Committee crucial, area of disagreement, is the proposal of a defined Child Policy, an independent Child Commission and a comprehensive Child Ordinance.

On this the Committee wishes to point out that while the Home Affairs Branch of the HK government may be playing an overall role in the various policies affecting a child, the effect of such an arrangement is a far cry from what a designated Child Commission can accomplish. This is basically because the Home Affairs Branch has no statutory power to enforce the Convention and can at best only advise and channel the matter to the appropriate departments and functionaries of the government.

Furthermore, this Committee has no wish to dispute that 'Hong Kong already has a comprehensive network of legislation and welfare and professional services dedicated to protecting the rights of the child and promoting their interests" (paragraph 4 of the government report). However, throughout the history of HK this line of argument has been repeatedly shown to fail. A classic instance would be prior to the establishment of the Independent Commission Against Corruption in 1973, the government, in face of rampant internal corruption especially in the police force, argued that there was a battery of mechanisms within the administration to tackle the problem (like the anti-corruption much within the police). More recently, the government, under public pressure, has seen the need for an Equal Opportunity Commission, although similar arguments could be used against its establishment.

On the other hand, the Committee believes there are two important considerations supporting the establishment of a Child Policy/Commission Ordinance:

- Under the present arrangement the child in HK is represented (to the government) via myriads of arrangements and organizations often overlapping. Not only do we think that such an arrangement duplicates efforts, more importantly, there are bound to be inter-departmental, inter-policy blind spots. In the end it is the children themselves who suffer.

For example, to the Hospital Authority, a child is only a child in so far as he/she is a patient and the education of children suffering from prolonged illnesses would not be her concern; similarly, for the Education Department, a child is a child in so far as he/she is a student and his/her social and other family problems would be the concern of the Social Welfare Department. We believe that a child is a unique individual with inherent rights but because of the vulnerability of being a child, needs special care and attention via a multidisciplinary approach. It is this conviction and recognition of the intrinsic value of childhood that underlies the drafting of the Convention.

- In the same spirit we urge a review of all child related legislation in HK to arrive at a comprehensive Child Ordinance, one taking into account the best interest of the child, a concept not heard of when most legislation in HK were enacted. Here we do not legislate (as it seems to be the case for most legislation in countries of common law) to meet some new and unforeseen contingencies. Rather what we are enjoined to do, in endorsing the Convention, is to take on a completely different conception of this phase of human existence

- a period which we call childhood - and to which we (re)attribute its independent value and significance.

Conclusion

Under the present state of arrangements, the child appears to the government like the fragmented image reflected from a broken mirror. It is partial and incomplete. We believe the most effective way in which a 'complete child' can be restored is through the establishment of a Child Policy/Commission Ordinance. The attitude on promoting the rights of the child does not lie in complacency. We have to have the will and vision to be proactive

Chairperson

The Hong Kong Committee on Children's Rights 27th April, 1996
27th April, 1996

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