

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

**Views towards the 6<sup>th</sup> Report of the People's Republic of China under the Convention  
Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment  
Part II: Hong Kong Special Administrative Region**

**Hong Kong Committee on Children's Rights (HKCCR)** was formed in 1992. The Committee was formally established as an independent agency with charitable status in 1995, followed the United Nations Convention on the Rights of the Child (UNCRC) came into effect in Hong Kong in 1994. Since then, it is always our main objectives to monitor the rights said in such to be implemented in the territory and that the best interest of our children is being concerned. We have 4 focused areas of work: Advocacy and Monitoring; Education and Training; Promotion and Community Work; Research and Publication. We work with children, youth and child related professionals and we share with them our knowledge and experience in the application of the UNCRC.

**Our views**

**Preamble**

**Preparation of Report & Dissemination of Concluding Observations**

- We suggest the government to take a more proactive approach in conducting genuine public consultation in preparing the report and not merely a consultation on the outline of the report only.
- We also suggest the government to acquire a more proactive and interactive approach by making the Concluding Observations public in briefings and discussion forums instead of merely uploading such on the website.
- Child friendly versions should be made available and channels created to ensure children being well informed of their rights and that of their family members. The available supportive services in the community should be made known to them.
- We suggest the government in the future reports, they should not merely refer readers to the earlier reports as points may be lost and readers are discouraged to comprehend. The government should take the trouble to capture the essence in the report for public's understanding.

**Article 1: Defining "torture"**

- We reiterated the concern for a more inclusive definition of the term "public official" in the definition of torture. Hong Kong should actively involve three levels of intervention: primary, secondary, tertiary, and the personnel involved in each level should be properly involved and informed. Those who help to detect, identify and report/refer alleged torture cases and those who receive such cases and handle them along the way should all receive proper training and information.

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- In the State report, paragraph 1.3, government should include legal professionals from the Department of Justice as they are the ones to advise whether cases should be brought to court, and the judges and magistrates who decide on conviction and sentencing. The remarks made by judges and magistrates, often captured by the mass media, serves sound educational values in the society.
- For prevention and identifying at risk cases purposes, education personnel such as school heads, teachers, etc. must be adequately equipped with knowledge, skills and support network to educate and follow up cases properly.

**Article 3: Torture as a ground for refusal to expel, return or extradite**

- In the State report, paragraph 3.7, it was said *“As at 30 June 2012, 1,983 claims made under Article 3 of the Convention were determined under the enhanced screening mechanism. Around 5,600 outstanding torture claims are pending screening in Hong Kong.”* The HKSAR Government needs to be asked how many of these claims involved the under-18 children. Are children treated in the same way by the same procedures as adults? Is there any specific guidelines, procedures and training to alert various stakeholders of children's needs and their rights?

**Article 10: Education and information on the prohibition of torture**

- The State report mentioned that training and guidelines have been given to the various disciplined services in handling suspects, arrested persons, prisoners, and detainees. However, it did not mention the extent of the training and the transparency of the guidelines. In the development process of these guidelines, human rights advocates have never been included, and the guidelines have never been made public.
- The State report mentioned training for Police, Correctional Services Department, Customs and Excise Department, Immigration Department, Independent Commission Against Corruption, and health professionals, however, educational and counselling professionals who are with children and young people on a day to day basis have not been mentioned. Teachers and social workers take an important role in prevention of and detecting child abuse and violence. The knowledge, skill, and handling procedures of the educational and counselling professionals are key to stop the situation escalate and to provide and channel support to the child. The HKSAR Government needs to be asked about that.

**Article 13: Right of complaint**

- The independence and transparency of the complaint mechanisms relating to different disciplined services has always been queried and criticized by the civil society. In the “Umbrella Movement” which sprawled from September to December in 2014, loads of complaints had been made by the protesters and witnesses against the police on their methods of handling the arrested persons. In one case, the CCTV footage captured by a local

TV media agency showed a protester was beaten up by six police officers at a street corner<sup>1</sup>. However, no case has been substantiated so far.

- We are concerned about the knowledge of children and young people towards their right of complaint, and the timely assurance of legal representation. The promotion and education around children and young people all along has been on crime prevention and the consequences of crime. However, their rights in situation when they get caught and detained are equally significant so as to uphold the spirit of human rights. We are skeptical if resources have ever been allocated in this particular area to seriously discuss the issue with children and young people. The lack of knowledge and support for them in this area is prone to give loophole for abuse. More resources should be put in fully informed children and young people and make them aware of the nature, choices, impact, and consequences on themselves and the community throughout the process.
- We are skeptical about the availability of child friendly procedures and mechanism for children in situation of arrest, interrogation, and detention so as to ensure that they understand and are fully informed of the situation and impacts. We need to set up an independent Children's Commission like many other countries do to help the disciplined services, different sectors, and the community to develop child friendly procedures in all settings.

**Article 16: Prevention of other acts of cruel, inhuman, or degrading treatment or punishment**

- The article states *"Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture..."* However, we saw no substantial effort, strategy, policy agenda to explicitly prohibit corporal punishment against children altogether like the other 44 countries do. The UN Committee on the Rights of the Child has repeatedly urged the State Party to ban all forms of corporal punishment by law. The Committee also recommends that the State Party prioritize the elimination of all forms of violence against children by taking into account of its General Comment No. 13 (2011)<sup>2</sup>.
- The Government should have a clear timetable and plan on how to ban corporal punishment altogether with legislation and resources allocated.
- The Government should also increase funding allocation for positive parenting and child management to ensure a non-violent approach.
- In the State report, paragraph 16.3, it was mentioned that in order to prevent ill-treatment of children, *"any child or juvenile who is taken to the Juvenile Court directly by the Police for the purpose of applying for a Care or Protection Order, without being detained at a gazette place of refuge before the court hearing"*. However, in a recent incident where a 14-year-old girl was arrested for drawing flowers on the "Lennon Wall" in the protest area of the "Umbrella Movement", it has sparked concerns in the community that the authorities were seeking a "care and protection" order for the girl for political means that target minors<sup>3</sup>. We are

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<sup>1</sup> The Guardian, *Hong Kong police "beat up protester" on street corner – video*, 15 October 2014, <http://www.theguardian.com/world/video/2014/oct/15/hong-kong-police-beat-up-protester-street-corner-video>

<sup>2</sup> Committee on the Rights of the Child, General Comment No. 13 - The right of the child to freedom from all forms of violence, 18 April 2011, [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf)

<sup>3</sup> Channel News Asia, source AFP, *Hong Kong protest 'graffiti teen' allowed to stay with family*, 19 January 2014, <http://www.channelnewsasia.com/news/asiapacific/hong-kong-protest/1599574.html>

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concerned how "The Best Interests of the Child" notion has been interpreted by the authorities in this regard.

- In the State report, paragraph 16.5, it was said that no teacher has been charged with the offence of corporal punishment. Our question is whether there were any alleged reports received.
- In the State report, paragraph 16.6, the HKSAR Government needs to report if there were any alleged cases in children institutional care.
- In the State report, paragraphs 16.7-16.12 on "Domestic violence", the changes government listed in law, in mechanisms are welcome and found important measures. However, there exists concerns when risks are reported but cases not thoroughly followed through. Past experience has been that some alleged cases have come forward seeking for help and yet for different reasons, including officials' lack of experience in handling, clients' hesitation to further pursue, injuries hidden or no physical injuries found, cases were wrongly or too early dismissed and harm continued. It could be more worrying with children and vulnerable individuals who may not have the language, skills, knowledge and support to ensure their cases carried through. Their representation, legal representation in particular, must be strengthened.
- In the State report, paragraphs 16.25-16.27 on "Prevention and early intervention", the HKSAR Government should attach stronger value in the preventive elements of the Comprehensive Child Development Service by adding resources for home visitations of the families with new born. Such home visitation programs are found positive in strengthening family cohesion and parental capacity with safe and non-violent methods. We also wish to reiterate the need for the government to expand the Child Fatality Review Mechanism to review of seriously injured cases and such would push one step forward for early prevention.
- We reiterate our recommendation for a Children's Central Data Bank capturing the situation of children and families to ensure consistency in definition and to allow such data to be analyzed and effective measures put in place.

#### **Hong Kong Committee on Children's Rights**

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