

**Report of the Hong Kong  
Special Administrative Region  
under the Convention on the  
Rights of the Child**

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# **Part I**

## **General Profile of the Hong Kong Special Administrative Region**

## LAND AND PEOPLE

Background statistical information, using the most up-to-date figures available, is as follows -

### (a) Population by sex

<u>Sex</u>	<u>Mid 1987</u> (million)	<u>Mid 1992</u> (million)	<u>Mid 1999</u> (million)	<u>Mid 2000</u> (million)	<u>End 2000</u> (million)
Male	2.9	2.9	3.3	3.3	3.3
Female	2.7	2.9	3.3	3.4	3.4
Total	5.6	5.8	6.6	6.7	6.7

### (b) Population by age group and sex

<u>Age</u>	<u>Sex</u>	<u>Percentage of total population</u>				
		<u>Mid 1987</u>	<u>Mid 1992</u>	<u>Mid 1999</u>	<u>Mid 2000</u>	<u>End 2000</u>
Under 15	Male	11.7	10.6	9.1	8.8	8.6
	Female	10.8	9.9	8.4	8.2	8.0
15-18	Male	3.3	2.9	2.9	2.9	2.8
	Female	3.0	2.7	2.7	2.7	2.6
<i>(0-18)</i>	<i>Male</i>					
	<i>Female</i>	15.0	13.5	11.9	11.6	11.4
19-64	Male	13.8	12.6	11.1	10.8	10.6
	Female	33.0	33.3	32.5	32.5	32.5
65 and over	Male	30.2	31.5	33.7	34.1	34.4
	Female	3.4	4.0	4.9	5.0	5.1
All age groups	Male	4.5	5.0	5.8	5.9	6.0
	Female	51.4	50.8	49.4	49.2	49.0
	Female	48.6	49.2	50.6	50.8	51.0

Note: Since August 2000, population estimates have been based on "resident population". Formerly they were based on the "extended de facto" approach - which counted all Hong Kong Permanent and Non-Permanent Residents, visitors and at a reference time-point. We have revised the population and related statistics for 1996 onwards on this basis.

(c) **Educational attainment (population aged 15 and above)**

<u>Educational attainment</u>	<u>Percentage</u>							
	<u>1986</u>		<u>1991</u>		<u>1996</u>		<u>2000@</u>	
	Male	Female	Male	Female	Male	Female	Male	Female
No schooling/ kindergarten	7.0	21.6	7.1	18.5	5.1	13.8	3.7	11.3
Primary	30.8	27.7	26.1	24.3	22.7	22.6	22.3	22.1
Secondary and above	62.2	50.7	66.8	57.2	72.2	63.6	74.0	66.6
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

(d) **Literacy rate#:** 1984: 88.4%; 1996@: 90.4%; 2000@: 92.4%

@ The figures derive from the General Household Survey

# Persons aged 15 and above with educational attainment at primary or above.



(e) **Percentage of population (excluding mutes) aged five and over by usual language/dialect**

<u>Usual language/dialect</u>	<u>Percentage</u>		
	<u>1991</u>	<u>1996</u>	<u>2001<sup>1</sup></u>
Cantonese	88.7	88.7	89.2
Putonghua	1.1	1.1	0.9
Other Chinese dialects	7.0	5.8	5.5
English	2.2	3.1	3.2
Others	1.0	1.3	1.2
	100.0	100.0	100.0

(f) **Crude birth and death rates**

	<u>1987</u>	<u>1992</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Crude birth rate (per 1,000 population)	12.6	12.3	8.1	7.8	8.1
Crude death rate (per 1,000 population)	4.8	5.3	5.0	5.0	5.1

(g) **Life expectancy at birth (number of years)**

<u>Sex</u>	<u>1987</u>	<u>1992</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Male	74.2	74.8	76.3	76.7	77.0
Female	79.7	80.7	81.7	81.8	82.2

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<sup>1</sup> These figures were readily available from the 2001 Census. We can present them here because, unlike some of the other statistics in this section, they did not require cross-analysis with other data sets.

(h) **Infant mortality ratio (per 1,000 live births)**

<u>1987</u>	<u>1992</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
7.4	4.8	3.2	3.1	3.0

(i) **Maternal mortality ratio (number of deaths per 100,000 total births)**

<u>1987</u>	<u>1992</u>	<u>1998</u>	<u>1999</u>	<u>2000<sup>2</sup></u>
4.3	5.5	1.9	2.0	5.6

(j) **Fertility rate**

	<u>1987</u>	<u>1992</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
General fertility rate (per 1,000 women aged 15-49) excluding foreign domestic helpers	47.9	46.3	29.3	28.1	29.5

(k) **Percentage of household heads by sex**

<u>Sex</u>	<u>1986</u>	<u>1991</u>	<u>1996</u>	<u>2000</u>
Male	73.0	74.3	72.8	N.A. <sup>3</sup>
Female	27.0	25.7	27.2	

<sup>2</sup> The 2000 ratio is provisional. The apparently drastic increase in 2000 is a function of very low numbers. In 1999, there were 51,281 births and one death. In 2000, there were 54,134 births and three deaths.

<sup>3</sup> Figures not available, the gender ratio is pending analysis of the 2001 Census findings.

(l) **Unemployment rate**

(Averages of the estimates obtained from the quarterly General Household Surveys of the year)

<u>1987</u>	<u>1992</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
1.7	2.0	4.7	6.2	4.9

(m) **Rate of inflation**

(i) Composite Consumer Price Index (CPI)

<u>Year</u>	<u>Annual rate of increase in CPI (%)</u>
1990	10.2
1991	11.6
1992	9.6
1993	8.8
1994	8.8
1995	9.1
1996	6.3
1997	5.8
1998	2.8
1999	-4.0
2000	-3.8

Note : The Composite CPI is compiled on the basis of the expenditure patterns of about 90% of Hong Kong households with an average monthly expenditure of HK\$4,000 to HK\$59,999 in the base period of October 1994 to September 1995. This approximately corresponds to a monthly expenditure range of HK\$4,400 to HK\$65,600 at 2000 prices.

(ii) Implicit price deflators of Gross Domestic Product (GDP)

<u>Deflator year</u>	<u>(1990 = 100)</u>	<u>Annual rate of change (%)</u>
1990	100.0	7.5
1991	109.2	9.2
1992	119.8	9.7
1993	130.0	8.5
1994	139.0	6.9
1995	142.5	2.5
1996	150.9	5.9
1997	159.7	5.8
1998	160.4	0.4
1999	151.8	-5.4
2000 <sup>#</sup>	141.8	-6.6

(n) **Gross Domestic Product for 1990 to 2000**

<u>Year</u>	<u>At current market prices (US\$ Million)</u>	<u>At constant (1990) market prices (US\$ Million)</u>
1990	74,791	74,791
1991	86,027	78,756
1992	100,676	84,013
1993	116,011	89,222
1994	130,808	94,139
1995	139,238	97,703
1996	154,110	102,114
1997	170,997	107,080
1998	162,596	101,365
1999	158,244	104,257
2000 <sup>#</sup>	162,646	114,688

(o) **Per capita income**

(Per capita GDP for 1990-2000)

<u>Year</u>	<u>At current market prices (US\$)</u>	<u>At constant (1990) market prices (US\$)</u>
1990	13,111	13,111
1991	14,956	13,692
1992	17,357	14,484
1993	19,660	15,120
1994	21,674	15,598
1995	22,618	15,871
1996	23,947	15,867
1997	26,351	16,501
1998	24,848	15,491
1999	23,953	15,781
2000 <sup>#</sup>	24,403	17,208

(p) **External debt:** the HKSAR Government does not incur external debts.

# GDP figures refer to estimates released in August 2001

## **GENERAL POLITICAL STRUCTURE**

### **Constitutional document**

2. In accordance with the provisions of Article 31 and sub-paragraph 13 of Article 62 of the Constitution of the People's Republic of China (PRC), as well as the relevant decisions of the National People's Congress (NPC) adopted at the Third Session of the Seventh NPC on 4 April 1990, the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) was established on 1 July 1997. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was also put into effect on 1 July 1997. Under the principle of "One Country, Two Systems", the socialist system and policies are not practised in the HKSAR and Hong Kong's previous capitalist system and way of life will remain unchanged for 50 years. A copy of the Basic Law is at Annex 1.

3. To fully realise the principle of "One Country, Two Systems", the Basic Law sets out the broad framework of the relationship between the Central Authorities and the HKSAR (Chapter II); the fundamental rights and duties of Hong Kong residents (Chapter III); the political structure (Chapter IV); economic, financial and social systems of the HKSAR (Chapters V and VI); its conduct of external affairs (Chapter VII); and the interpretation and amendment of the Basic Law (Chapter VIII).

4. Among other matters, the Basic Law provides that -

- (a) the HKSAR shall exercise a high degree of autonomy except in defence and foreign affairs and enjoy executive, legislative and independent judicial power, including that of final adjudication.

The power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal established in the Region;

- (b) the executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong;
- (c) the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes the Basic Law, and subject to any amendment by the legislature of the HKSAR;
- (d) national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law and that the laws listed therein shall be applied locally by way of promulgation or legislation by the Region. The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting the Committee for the Basic Law of the HKSAR and the HKSAR Government;
- (e) the HKSAR is authorised to conduct relevant external affairs on its own. The HKSAR may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields;

- (f) the HKSAR remains a free port, a separate customs territory and an international financial centre. There shall be free flow of capital. HKSAR issues and manages its own currency;
- (g) the HKSAR formulates its own policies on the development of education, science, culture, sports, labour and social services, and Hong Kong residents have the freedom of religious belief;
- (h) Hong Kong residents enjoy a wide range of freedoms and rights and this will be further dealt with under the section of “General Legal Framework Within Which Human Rights Are Protected”; and
- (i) the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

## **System of Government**

### **General structure**

5. The Chief Executive of the HKSAR is the head of the Region. An Executive Council assists him in policy-making. The Legislative Council of the HKSAR is the legislature of the Region – it enacts, amends or repeals laws, approves taxation and public expenditure, and raises questions on the work of the government. The method for the formation of the Legislative Council is stipulated in the Basic Law and the "Decision on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR" adopted at the Third Session of the Seventh NPC on 4 April 1990. District organisations – established in accordance with Articles 97 and 98 of the Basic



Law – are consulted on district administration and other affairs, though they are not organs of political power. There is an independent judiciary.

### **Chief Executive**

6. The Basic Law provides that the Chief Executive of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People’s Government. The method for selecting the Chief Executive is to be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress.

7. The first Chief Executive was selected in accordance with the NPC’s “Decision on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR”. A Selection Committee was formed to recommend a candidate to the Central People’s Government for appointment. The Selection Committee comprised 400 members from various sectors of the community. In future, the Chief Executive will be elected by an Election Committee composing of 800 members.

8. Annex I of the Basic Law further provides that amendments to the method for selecting the Chief Executive for the terms subsequent to the year 2007 may be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive. Any such amendments are to be reported to the Standing Committee of the NPC for approval. Article 45 of the Basic Law provides that the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

## **Executive Council**

9. The Executive Council is an organ for assisting the Chief Executive in policy-making. Under Article 56 of the Basic Law, except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills into the Legislative Council, making subordinate legislation, or dissolving the Legislative Council. The Chief Executive in Council also determines appeals, petitions and objections under those ordinances which confer a statutory right of appeal. If the Chief Executive does not accept a majority opinion of the Executive Council, he shall put the specific reasons on record.

10. The Council normally meets once a week, and its proceedings are confidential, although many of its decisions are made public. It is presided over by the Chief Executive. It has 12 members (14 before 1 July 1999). As provided for in Article 55 of the Basic Law, Members of the Executive Council are appointed by the Chief Executive from among the principal officials of the executive authorities, Members of the Legislative Council and public figures. They are Chinese citizens who are permanent residents of the Hong Kong Special Administrative Region with no right of abode in any foreign country. Their appointment or removal is decided by the Chief Executive. Their term of office may not extend beyond the expiry of the term of office of the Chief Executive who appoints them.

## **Legislative Council**

11. Article 68 of the Basic Law provides that the HKSAR Legislative Council shall be constituted by election. The method for its formation shall be specified in the light of the actual situation in the HKSAR and in accordance

with the principle of gradual and orderly progress. Annex II to the Basic Law prescribes the composition of the Legislative Council during its first three terms as follows –

<u>Membership</u>	<u>First term</u> 1998-2000 (two years)	<u>Second term</u> 2000-2004 (four years)	<u>Third term</u> 2004-2008 (four years)
(a) elected by geographical constituencies through direct elections	20	24	30
(b) elected by functional constituencies	30	30	30
(c) elected by an election committee	10	6	-
Total	60	60	60

12. The present (second term) Legislative Council assumed office on 1 October 2000.

13. Annex II of the Basic Law provides that amendments to the method for forming the Legislative Council after 2007 may be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive. Any such amendments are to be reported to the Standing Committee of the NPC for the record. According to Article 68 of the Basic Law, the ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

14. According to Article 73 of the Basic Law, the powers and functions of the Legislative Council include enactment, amendment or repeal of laws in accordance with the provisions of the Basic Law and legal procedures;

examining and approving budgets introduced by the government; approving taxation and public expenditure; receiving and debating the policy addresses of the Chief Executive; raising questions on the work of the government; debating any issue concerning public interests; endorsing the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court; and receiving and handling complaints from Hong Kong residents. The Council is also empowered to pass a motion impeaching the Chief Executive and report it to the Central People's Government for decision under certain prescribed circumstances.

### **District Councils**

15. The 18 District Councils came into being on 1 January 2000 by virtue of the District Councils Ordinance. The Councils advise the HKSAR Government on district affairs and promote recreational and cultural activities, and environmental improvements within their respective districts. District Councils comprise both elected members and appointed members. Additionally, in the case of District Councils in rural areas, the local Rural Committee Chairmen serve as ex-officio members. The HKSAR is divided into 390 constituencies, each returning one elected member. There are 102 appointed members and 27 ex-officio members.

16. The Councils have a wider role than the Provisional District Boards that they replaced. The latter were established on 1 July 1997 by the HKSAR Government in order to take up the advisory role of the former District Boards which were dissolved when the People's Republic of China resumed the exercise of sovereignty over Hong Kong.

## **Abolition of the Municipal Councils**

17. Like the former Legislative Council and District Boards, the two Municipal Councils were dissolved on 30 June 1997 and replaced – when China resumed the exercise of sovereignty over Hong Kong on 1 July 1997 – by Provisional Councils. And, following public consultations in mid-1998, the decision was taken to reorganise the structure for delivering municipal services in order to improve co-ordination and efficiency. Analysis of the response indicated general support for a new structure for the delivery of services whereby the Government would resume direct responsibility for food safety and environmental hygiene. There was also support for a reform of the administrative framework for the delivery of arts and culture, sports and recreation services.

18. In December 1999, the Legislative Council passed the Provision of Municipal Services (Reorganization) Bill. This provides the legal basis for the reorganisation of the municipal services. The Provisional Municipal Councils were dissolved after the terms of office of the incumbent members expired on 31 December 1999. The Government set up new dedicated agencies to be responsible for food safety, environmental hygiene and leisure and cultural services with effect from January 2000.

## **The structure of the Administration**

19. The Chief Executive is the head of the HKSAR Government. If the Chief Executive is not able to discharge his duties for a short period, such duties will temporarily be assumed by the Chief Secretary for Administration, Financial Secretary or Secretary for Justice in that order of precedence.

20. The Administration of the HKSAR Government comprises a Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions and commissions. There are currently 14 policy bureaux and two resource bureaux concerned respectively with finance and the civil service. The bureaux, each headed by a Secretary, collectively form the Government Secretariat.

21. With certain exceptions, the heads of government departments are responsible to the bureau Secretaries for the direction of their departments and the efficient implementation of approved government policy. The exceptions are the Independent Commission Against Corruption and the Commission of Audit, each of which functions independently and is accountable to the Chief Executive.

### **The judicial system of the HKSAR**

22. The legal system is firmly based on the rule of law and a Judiciary, which is independent of the executive authorities and the legislature.

23. Article 19 of the Basic Law provides that the HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained. The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall

obtain a certifying document from the Central People's Government.

24. The courts of justice comprise the Court of Final Appeal, the High Court (which consists of the Court of Appeal and the Court of First Instance), the District Court, the Magistracy, the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Coroner's Court. The courts hear and determine all criminal trials and civil disputes, whether between individuals or between individuals and Government of the Region.

25. Article 82 of the Basic Law provides that the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. Article 83 further provides that the structure, powers and functions of the courts of the HKSAR at all levels are prescribed by law.

26. All judges and judicial officers must have qualified as legal practitioners in Hong Kong or in a common law jurisdiction and have substantial professional experience. Article 88 of the Basic Law provides that "Judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors."

27. Judges have security of tenure. Article 89 of the Basic Law provides that "A judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only

for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.”



## GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

### Rule of Law

28. The fundamental basis for the protection of human rights is the rule of law maintained by an independent judiciary (see paragraphs 22 to 27 above). The principles that inform the rule of law are -

- (a) **the supremacy of the law:** no individual is punishable or can lawfully be made to suffer personally or financially except for a breach of law established before the independent courts. Where, under the law, an official or an authority has a discretion to make a decision, that discretion must be exercised legally, fairly and reasonably. Where it does not do so, the decision must be capable of successful challenge before the courts. The Basic Law guarantees the right of Hong Kong residents to institute legal proceedings in the courts against the acts of the executive authorities and their personnel; and
- (b) **equality before the law:** Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. Article 22 provides that all offices set up in the HKSAR by departments of the Central People's Government, or by provinces, autonomous regions, or municipalities directly under the Central Government and personnel of these offices shall abide by the laws of the Region. Article 14 provides that members of the garrison shall, in addition to abiding by national laws of the PRC, abide by the laws of the HKSAR. Article 35 also provides that Hong Kong residents shall have the right to institute legal proceedings in the courts against the

acts of the executive authorities and their personnel. No government authority or official, and no individual, is above the law. All persons, regardless of race, rank, politics, religion or sex, are equal before the law and subject to the same law. Individuals and the HKSAR Government have the same access to the courts to enforce legal rights or defend an action.

29. Some commentators have argued that the principle of equality before the law was compromised by a recent amendment to the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of the HKSAR). The amendment in question was an adaptation of the reference to the “Crown” by the “State” in section 66 of the Ordinance. Before 1 July 1997, section 66 used to provide that no ordinance was binding on the Crown unless it expressly stated, or necessarily implied, that the Crown was bound. After 1 July 1997, the reference to the “Crown” in section 66 had to be amended. The amendment to section 66 of Chapter 1 was simply made in order to preserve the substance of the law before 1 July 1997 and reflect the change of sovereignty.

### **Human rights guarantees in the Basic Law**

30. Article 4 of the Basic Law provides that the HKSAR shall safeguard the rights and freedoms of residents of the HKSAR and of other persons in the Region in accordance with law. The Basic Law guarantees a wide range of freedoms and rights, including -

- (a) equality before the law;
- (b) freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the

- right and freedom to form and join trade unions, and to strike;
- (c) freedom of the person; freedom from torture; freedom from arbitrary or unlawful arrest, detention or imprisonment; freedom from arbitrary or unlawful search of the body; and right against arbitrary or unlawful deprivation of life;
  - (d) freedom from arbitrary or unlawful search of, or intrusion into, one's home or other premises;
  - (e) freedom and privacy of communication;
  - (f) freedom of movement within the HKSAR and freedom of emigration to other countries and regions and freedom to travel and to enter or leave the Region;
  - (g) freedom of conscience; freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public;
  - (h) freedom of choice of occupation;
  - (i) freedom to engage in academic research, literary and artistic creation, and other cultural activities;
  - (j) right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies; right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel;
  - (k) right to social welfare in accordance with law; and
  - (l) freedom of marriage and right to raise a family freely.

Persons in Hong Kong other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed by Chapter III of the Basic Law. In addition, permanent residents of the HKSAR enjoy the rights to vote and to stand for election in accordance with law.

### **Effect of other human rights instruments in HKSAR law**

31. According to Article 39 of the Basic Law -

“The provisions of the ICCPR, the ICESCR and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

32. In general, and as is usual in common law systems, treaties that apply to Hong Kong (including human rights treaties) do not themselves have the force of law in the domestic legal system of Hong Kong. They cannot directly be invoked before the courts as the source of individual rights. However, the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with these international obligations. The usual method of giving effect in local law to treaty obligations (when these require some change in existing laws or practice) is to enact specific new legislation<sup>4</sup>. Where this results in the creation or definition of specific legal rights and where these rights are denied or interfered with (or there is the threat of such action), a remedy will be available in the courts through the ordinary procedures of civil

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<sup>4</sup> An example is the Crimes (Torture) Ordinance (Chapter 427 of the Laws of the HKSAR) which was enacted to give effect in Hong Kong to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

litigation; or the law may provide criminal sanctions.

### **Bill of Rights Ordinance**

33. The Hong Kong Bill of Rights Ordinance (BORO) (Chapter 383 of the Laws of the HKSAR) was enacted in June 1991 specifically to give effect in local law to the provisions of the ICCPR as applied to Hong Kong. It achieves this by setting out a detailed Bill of Rights, the terms of which are almost identical to those of the ICCPR.

### **Adoption of laws: effect on the BORO**

34. Article 160 of the Basic Law provides that the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the NPC declares to be in contravention of the Basic Law. In February 1997, the Standing Committee considered that three sections of the BORO (relating to the interpretation and application of the Ordinance<sup>5</sup>) had an overriding effect over other laws, including the Basic Law. As such, they contravened the Basic Law and could not be adopted.

35. The non-adoption of these sections has no effect on the protection of human rights in the HKSAR in view of the constitutional guarantee in Article 39 of the Basic Law. The substantive protections in Part II of the Ordinance

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<sup>5</sup> The three sections were -

- (a) Section 2(3): “In interpreting and applying this Ordinance, regard shall be had to the fact that the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters.”
- (b) section 3: “Effect on pre-existing legislation -
  - (1) All pre-existing legislation that admits of a construction consistent with this Ordinance shall be given such a construction.
  - (2) All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed.”
- (c) Section 4: “Interpretation of subsequent legislation - All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.”

(almost identical to the provisions of the ICCPR) are unchanged. So too are the remedies provided under section 6 for contravention of the Ordinance and the binding effect on the Government and all public authorities under section 7. The full text of the BORO as it now stands is at Annex 2.

### **Legal aid**

36. Legal aid, advice and assistance is provided by two organisations: the Legal Aid Department (which is part of the Government) and the Duty Lawyer Service. The latter is jointly managed and operated by the Bar Association and the Law Society, though it is wholly funded by the Government.

#### Legal Aid Department

37. The Legal Aid Department provides legal representation to eligible persons in both civil and criminal cases heard in the District Court, the Court of First Instances, the Court of Appeal and the Court of Final Appeal. Applicants must satisfy the Director of Legal Aid of their financial eligibility (the means test) and of the justification for legal action (the merits test). In criminal cases, the Director has discretion to waive the upper limits of the means test if he considers it in the interest of justice to do so. He also has that discretion in meritorious applications where a breach of the BORO or the ICCPR as applied to Hong Kong is in issue. The grant of legal aid is mandatory in appeals against conviction for murder. This is to ensure that all relevant matters are placed before the court by the appellant's legal representative. The grant of legal aid is not subject to a residence requirement.

#### The Duty Lawyer Service

38. This Service complements the legal aid services provided by the

Legal Aid Department. It operates three schemes that respectively provide legal representation (the Duty Lawyer Scheme), legal advice (the Legal Advice Scheme) and legal information (the Tel Law Scheme). The Duty Lawyer Scheme offers legal representation to virtually all defendants (juvenile and adult) charged in the Magistracies who cannot afford private representation. Applicants are subject to a simple means test and a merits test, based on the “interest of justice” principle in accordance with Article 11 of the BORO. The Legal Advice Scheme and the Tel Law Scheme respectively provide members of the public with free legal advice through individual appointments and taped information on the legal aspects of everyday problems.

39. The Legal Aid Services Council, an independent statutory body, was established in 1996. Its role is to oversee the provision of legal aid services by the Legal Aid Department and advise the Chief Executive on legal aid policy.

### **Office of the Ombudsman**

40. The Ombudsman - formerly known as the Commissioner for Administrative Complaints (COMAC) - is an independent authority, established under the Ombudsman Ordinance (formerly known as the COMAC Ordinance). The Ombudsman investigates and reports on grievances arising from maladministration. “Maladministration” includes such things as inefficient, bad or improper administrative decisions, acts, recommendations or omissions. Members of the public can complain directly to the Ombudsman. She can also initiate investigations on her own volition and may publish investigation reports of public interest. Additionally, the Ombudsman is empowered to investigate complaints of non-compliance with the administrative Code on Access to Information.

41. To enable her to carry out her functions effectively, the Ombudsman is able to appoint her own staff to carry out her duties. Subject to the Ombudsman Ordinance, she may obtain any information and documents from such persons as she thinks fit; she may summon any person to provide information relating to her investigations and may enter any premises of the organisations under her jurisdiction to conduct investigations. She also has sufficient means with which to ensure that her recommendations are heard and acted upon.

42. After investigation of a complaint, The Ombudsman is empowered to report her opinion and reasons, together with a statement of any remedy and recommendation that is considered necessary, to the head of the organisation affected. If The Ombudsman believes that there has been a serious irregularity or injustice done, she may make a report to the Chief Executive of the HKSAR. Such a report is bound by law to be laid before the Legislative Council.

43. With two exceptions, The Ombudsman has jurisdiction over all Government departments of the HKSAR and major statutory bodies. The exceptions are the Police and the Independent Commission Against Corruption (ICAC). Complaints against these departments are handled by discrete, dedicated bodies (see paragraphs 46 and 47 below).

### **Equal Opportunities Commission (EOC)**

44. The EOC was established under the Sex Discrimination Ordinance (SDO) in May 1996 and started full operation in September that year. The Commission is responsible for conducting formal investigations, handling complaints, encouraging conciliation between parties in dispute, providing assistance to aggrieved persons in accordance with the SDO, the Disability



Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO). It undertakes research programmes and public education to promote equal opportunities in the community. The Commission is also empowered to issue codes of practice to provide practical guidelines to facilitate public compliance with the laws on equal opportunities. Accordingly, it issued Codes of Practice on Employment in relation to the SDO and the DDO in December 1996. It issued a similar code in relation to the FSDO in March 1998.

### **Privacy Commissioner for Personal Data**

45. The Personal Data (Privacy) Ordinance (“PDPO”) provides for statutory control of the collection, holding and use of personal data in both the public and private sectors. Its provisions are based on internationally accepted data protection principles. It applies to personal data to which access is reasonably practicable whether they are in computerised, manual, (for example, paper file) or audio-visual form. To promote and enforce compliance with its provisions, the Ordinance provides for an independent statutory authority – the Privacy Commissioner for Personal Data – with appropriate powers of investigation and enforcement. His responsibilities also include promoting awareness and understanding of the Ordinance, publishing codes of practice on how to comply with the Ordinance, and examining proposed legislation that may affect the privacy of individuals in relation to personal data.

## **Complaints and investigations**

### **The Police**

46. The Complaints Against Police Office (CAPO) investigates all complaints about the conduct and behaviour of members of the police force. The CAPO's investigations are monitored and reviewed by the Independent Police Complaints Council (IPCC). The IPCC is an independent civilian body comprising non-official members appointed by the Chief Executive from a wide spectrum of the community and include Members of the Legislative Council and the Ombudsman or her representative.

### **The ICAC**

47. The Independent Commission Against Corruption Complaints Committee - established in 1977 - monitors and reviews the handling by the ICAC of complaints against the ICAC. Again, this is an independent committee appointed by the Chief Executive. The Committee comprises mainly of members of the Executive and Legislative Councils and a representative of the Ombudsman. Persons with complaints against the ICAC or its officers have direct access to the Committee as well as the ICAC itself. The investigation of such complaints is handled by a special unit of the ICAC Operations Department. When the unit has completed its investigation of a complaint, its conclusions and recommendations are submitted to the Committee for consideration.

### **Other disciplined services**

48. Other disciplined services departments maintain clear guidelines and procedures for handling complaints. For example, the Correctional Services Department (CSD), which runs HKSAR's prisons, has a Complaints

Investigation Unit to manage its internal grievance redress system for staff and prisoners. CSD staff and prisoners may also direct their complaints to the Ombudsman. The existing complaint channels are considered effective in view of the number and the nature of complaints handled.

49. The Immigration Department applies complaints procedures set out in the Immigration Service Standing Orders made by the Director of Immigration under the authority of the Immigration Service Ordinance. Complaints about abuse of authority or maltreatment by service members can be made to the Director of Immigration and are investigated promptly in accordance with the procedures in the Standing Orders. To ensure that all complaints are properly handled, a Complaints Review Working Party examines the results of investigations, conduct reviews and recommends follow-up action. Persons who consider that they have been improperly treated or that their cases have been mismanaged also have access to the Ombudsman. If there is evidence that a member of the Immigration Service has committed a criminal offence, the Immigration Service will immediately report the matter to the police for further investigation. Disciplinary procedures against Immigration Service staff are also governed by the Immigration Service Ordinance and the Immigration Service Standing Orders. Under section 8 of the Immigration Service Ordinance, unlawful or unnecessary exercise of authority resulting in loss or injury to any person is a disciplinary offence.

## **INFORMATION AND PUBLICITY**

### **Promotion of public awareness of the human rights treaties**

50. The Home Affairs Bureau of the HKSAR Government is responsible for promoting public awareness of the rights and obligations stipulated in the human rights treaties applicable to the Region. Following the enactment of the BORO in 1991, the Committee on the Promotion of Civic Education (CPCE) under the Home Affairs Bureau established a Human Rights Education Sub-Committee to promote public understanding of the BORO and respect for human rights as set out in the various treaties. Human rights have been one of the major emphases of the CPCE's work. Recently, the CPCE has increased its efforts to promote a public understanding of the Basic Law, which provides the constitutional guarantees for human rights protection in the Region. A Basic Law Promotion Steering Committee - chaired by the Chief Secretary for Administration - was established in January 1998 to guide promotional strategy.

### **Government publications**

51. The Central People's Government of the People's Republic of China is obliged to submit reports in respect of the HKSAR under various human rights treaties (but see paragraph 52 below in relation to the ICCPR and the ICESCR). Draft reports are prepared by the Home Affairs Bureau and the Health and Welfare Bureau of the HKSAR Government. The Bureaux consult the Legislative Council and non-governmental organisations on the state of the implementation of these treaties in the Region. They address their views in the reports, which they table before the Legislative Council - and publish in bound, bilingual format - after the PRC Government has submitted them to the United Nations. Copies are deposited in public libraries and posted on the

Internet for public inspection.

**Reports of the HKSAR in the light of the ICCPR and the ICESCR**

52. In November 1997, the Central People's Government of the People's Republic of China announced that, in line with the Joint Declaration and the Basic Law, and considering that China was not yet a signatory to the two Covenants, it would make reference to the provisions of the two Covenants as applied to Hong Kong and transmit reports on the HKSAR to the United Nations. Thus the Government of the HKSAR is responsible for preparing the reports on the Region in relation to the two Covenants for transmission to the United Nations.

# **I. General measures of implementation (Articles 4, 42 and 44)**

## **A Article 4: Implementation of rights**

### Review of the Adoption Ordinance (Chapter 290)

This is addressed in paragraph 206 below, under section VG in relation to Article 21 of the Convention.

### Minimum age of criminal responsibility

2. This is discussed in paragraphs 410 to 412 below under section VIIC, in relation to Article 40 of the Convention.

### Child Policy

3. In paragraph 20 of its concluding observations on the previous report<sup>1</sup>, the Committee suggested that legislation and policy-making should take account of a holistic and comprehensive approach to implementing the Convention. It recommended that an independent mechanism be introduced to monitor the implementation of policy on the rights of the child. Several Hong Kong commentators have added their voices to these recommendations, calling on the Government to establish a Child Commission to put them into effect.

4. In paragraph 10 of our updating report<sup>2</sup>, we expressed the view, having carefully examined these proposals, we considered that they were not necessary either to give effect to the Convention or as a practical

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<sup>1</sup> Here, and throughout this document, "the previous report" refers to the report on Hong Kong submitted under the Convention by the United Kingdom Government in February 1996 and heard by the Committee at its 22nd meeting in October 1996. References to "the Committee's concluding observations" mean the concluding observations on that report, issued on 30 October 1996.

<sup>2</sup> Here, and throughout this document, "the updating report" refers to the report submitted under the Convention by the United Kingdom Government in June 1997.

response to its requirements. In this context, the Committee also recommended that in formulating policy proposals there should be "an accompanying assessment of [their] impact on children" as they affected the rights of the child. We took the view that no new arrangements were necessary for this purpose. This was because the Convention covered various areas of government that were the responsibility of several different policy branches (now bureaux). Those branches were assisted by boards and committees and non-governmental organisations ("NGOs") in planning and decision-making. Where a particular area overlapped the responsibilities of more than one branch there were arrangements for co-ordination between branches.

5. The updating report went on to say that the concepts of child protection and the "best interests of the child" were necessary considerations in all relevant decision-making in Hong Kong, whether respecting legislative proposals or policies, and were taken into account as a matter of course. Specific laws dealt with different aspects of the Convention. The impact of legislation and the execution of policies was monitored by the Legislative Council, the Ombudsman and the press as well as by being reviewed by the policy branches concerned. These arrangements allowed for flexibility and a swift response to changing circumstances and to the concerns of the public, and we saw no advantage in replacing them with some unified administrative system, a single children's ordinance, or a single monitoring system<sup>3</sup>.

6. The position in paragraphs 4 and 5 remains valid and there have been no new developments that indicate a need for a change of approach. But our minds are open and we are prepared to reconsider our position, should changing circumstances so warrant.

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<sup>3</sup> Such as a Child Commission as proposed by some of our respondents.

7. In paragraph 21 of its concluding observations, the Committee encouraged efforts to involve civil society and non-governmental organisations more closely in the monitoring and implementation of the Convention, including with respect to the development of a comprehensive strategy for children in Hong Kong.

8. In paragraph 13 of the updating report, we said that we had long established and good working relationships with NGOs. NGOs were closely involved in the making of policies relating to the Convention by giving advice through boards and committees composed of representatives of NGOs and Government officials, and through direct communication with branches (now bureaux) and departments. They had offered their views on the drafting of reports, including the Initial Report, assisted in the dissemination of the Convention and scrutinised Government's actions in giving effect to the Convention. NGOs themselves also took part in implementing the Convention, for example by providing counselling and care services for youths, abused children and split families.

9. That position remains essentially the same, though our relations with the NGOs have continued to develop and interface between them and the Government has become even closer. An example of that relationship was the Child Ambassadors Scheme, explained in paragraph 12 below. NGOs were consulted in the drafting of this report, which summarises and responds to their views.

10. In paragraph 22 of its concluding observations, the Committee suggested a review of the effectiveness of the present system of co-ordinating policies and programmes, especially as regards child abuse. In paragraphs 11 and 12 of the updating report, we explained that, where there was an overlapping of areas of responsibilities of policy branches



(now bureaux), there were arrangements for co-ordination. The 'lead' branch would, as a matter of course, co-opt other branches or departments in considering and dealing with the issues. Co-operation at the highest level of the Administration was provided by the Chief Secretary's Committee Policy Groups, which comprised the most senior representatives of the relevant branches. The Home Affairs Branch (which was - and, as the Home Affairs Bureau, remains - responsible for drafting reports under the Convention) acted as a bridge between Government, the Legislative Council and the public. Where necessary it sought advice from the Government's experts on human rights and international law to ensure compliance with the Convention. For these reasons, we considered that the existing arrangements for institutional co-operation adequately served Hong Kong's needs. That remains our view, as the mechanisms described in the updating report have not changed.

## **B Article 42: Dissemination of the Convention**

### Measures to publicise the principles and provisions of the Convention

11. Several commentators have said that the Government, schools and NGOs should join together to promote children's rights in expression and participation. We endorse these views and have taken active steps - described in the paragraphs that follow - to put them into effect.

### The Child Ambassadors Scheme

12. The year 2000 marked the tenth anniversary of the Convention's entering into effect. To commemorate the occasion we launched a poster campaign to draw public attention to the Convention and issued a commemorative envelope specifically marking the

anniversary. But the key initiative was the 'Child Ambassadors Scheme'. Its purpose was to draw attention to the Convention by capturing the public's imagination and interest. It was jointly organised by Against Child Abuse, the Hong Kong Committee on Children's Rights and the Hong Kong Committee for UNICEF. These are Hong Kong's leading organisations for children's rights. Finance for the project was jointly provided by Cathay Pacific Airways and the Government, so harnessing the talents and resources of the charitable, commercial and public sectors. Twenty 'ambassadors' were selected in open competition. Ten went to Geneva where they met members of the Committee, to whom we are most grateful. The remaining ten will undertake a Convention-related mission in the Asian region in 2002. But their main task will be to actively promote public awareness of the Convention - and of the rights that it secures for their fellow children - in Hong Kong itself.

#### Media campaigns

13. Television advertisements (known in Hong Kong as an 'Announcements in the Public Interest' or 'APIs') are probably the most powerful of publicity tools and we use them to that effect in the course of our public education campaigns in relation to human rights. Currently, we are running an animated API that we commissioned in 1996, when it won an industry award. But because the impact of any kind of advertisement tends to diminish over time, we periodically need to replace them with fresh material. With that in mind, we are working with the Child Ambassadors and the 'child-focused' NGOs to create a new API. Together, we are exchanging ideas with a view to launching the new API in 2002.

### Human rights education

14. In paragraph 23 of its concluding observations, the Committee suggested that consideration be given to taking further measures to inform the general public about the Convention on the Rights of the Child and to incorporate education about human rights and children's rights in training programmes for professionals. The Committee encouraged the incorporation of questions on the awareness and understanding of the public of the Convention and its principles and provisions in future civic awareness surveys.

15. As explained in paragraphs 17 and 18 of the updating report, we have used several channels (the media, schools, public education, publicity campaigns and NGOs), to stimulate public awareness of children's rights. The Education Department has included human rights topics in the curricula of individual school subjects and in the guidelines on civic education. The Committee on Promotion of Civic Education (CPCE) contributes with publications, APIs on television, seminars and roving exhibitions. Paragraphs 17 and 18 (and the related Appendix) listed some of the numerous initiatives that we had taken in this regard. Those initiatives have continued: the key ones are described in paragraphs 9, 12 and 13 above. Details of other initiatives to promote human rights are at Annex 3.

### Briefing sessions for social workers and other frontline staff

16. The Social Welfare Department has introduced measures to ensure that social work professionals are familiar with the Convention. Details are at Annex 4.

**C Article 44: Making the report available**

17. The Central People's Government of the People's Republic of China is responsible for submitting reports in respect of the Hong Kong Special Administrative Region under various human rights treaties, including the Convention on the Rights of the Child. It does so on the basis of drafts prepared by the Hong Kong Special Administrative Region Government. In preparing the draft of the present report, the HKSAR Government drew on information from internal and outside sources and the views of Legislative Councillors, NGOs and concerned individuals<sup>4</sup> on the state of implementation of the Convention. The relevant parts of the report seek to give due regard to the views received. We have made it clear that we cannot undertake to address all of them, particularly where they appear to us to be either concerned with minutiae, *expressed too broadly to admit of ready response*, or of only tenuous relevance to the Convention.—

18. The report will be tabled before the Legislative Council and made public once it has been submitted to the Committee. Copies will also be sent to interested organisations and available for collection free of charge at local District Offices. The report will also be deposited in public libraries and uploaded on the Government's website for public inspection.

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<sup>4</sup> Including the Child Ambassadors.

## II. Definition of 'the child' (Article 1)

19. As explained in paragraph 25 of the previous report, "a person shall attain full age on attaining the age of 18 years"<sup>1</sup>.

### Statistics and indicators

20. In paragraph 22 of its concluding observations, the Committee suggested that the collection and analysis of statistical data by age group be guided by the provisions of Article 1 of the Convention. It further suggested that consideration be given to undertaking or encouraging research on the development and use of indicators to monitor the progress of the implementation of all the principles and provisions of the Convention. In paragraphs 14 and 16 of the updating report, we explained that -

- (a) **age groupings:** our practice was to present population data in quinquennial age groupings (birth to 4, 5 to 9, 10 to 14, and so forth). This enabled statistics for the 15 to 19 age group to be provided conveniently but not for the 15 to 17 group. However, it was possible to compile statistics by different groupings depending on the data sources and the levels of details of the analysis. As far as possible, we have presented the data in this report in accordance with the Committee's suggestion; and
- (b) **indicators:** we considered that our existing practices were consistent with the Committee's suggestion. By way of example we cited the purpose-designed indicators for evaluating the Police Superintendents' Discretion Scheme against the rate

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<sup>1</sup> Section 2(1) of the Age of Majority (Related Provisions) Ordinance Chapter (410).

of recidivism<sup>2</sup>. We were considering the need to develop new indicators in other policy and programme areas. Some examples of indicators developed since then include -

- **Community Support Services Scheme:** percentage of 'supervisees' who have resumed their studies or secured gainful employment during their supervision period;
- **school attendance rates:** in principle, education is universal between the ages of six and 15. But, as elsewhere, there is a residual level of truancy (under 0.2% in the 1999-2000 school year). The indicator, which monitors the non-attendance rate, measures the progress we are making in addressing this; and
- **percentage of school children securing Secondary 4 places:** most children complete their nine years of free and compulsory education at the level known as 'Secondary 3', normally at the age of 15. Beyond that, public sector school places are highly subsidised but are awarded essentially on merit. The indicator is therefore a significant measure of our increasing ability gradually to increase the numbers and percentage of children proceeding beyond the junior secondary level (over 92% in the 2000-01 school year).

### Legal counselling and medical treatment

21. The position is as explained in paragraphs 26 and 27 of our previous report. That is -

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<sup>2</sup> Young persons who have been cautioned under the Scheme are considered to be recidivists if arrested for criminal offences before attaining the age of 18 years and within two years of the date of caution.

- (a) **legal counselling:** the Rules of the High Court provide that persons aged under 18 cannot sue or be sued in their own name in civil proceedings. Rather, they must sue through a “next friend” and be sued in the name of a guardian ad litem, who will seek legal aid on behalf of the plaintiff or defendant as appropriate; and
- (b) **medical counselling:** the Hong Kong Medical Council has promulgated in its Professional Code and Conduct for the Guidance of Registered Medical Practitioners that consent is part of quality care. In regard to the treatment of mental health, it is also a legal requirement<sup>3</sup>. Patients should be properly informed about the general nature, effect and risk of medical procedures. Consent is normally given by patients themselves or by designated persons in certain specified circumstances. The Code provides that, when it is not possible for an otherwise competent patient to give consent, the views of family members "should be considered provided that such views are compatible with (i) the patient's best interests; and (ii) the patient's right of self-determination."

### Free and compulsory ('universal') education

22. Education is free and compulsory<sup>4</sup> for all children between the ages of six and 15 (Part VII of the Education Ordinance (Chapter 279), together with the relevant definitions in section 3 thereof). This is

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<sup>3</sup> Section 59ZD in Part IVC of the Mental Health (Amendment) Ordinance (Chapter 136).

<sup>4</sup> In 1997, a sub-committee of the Board of Education - established to review the nine-year system of compulsory education - proposed changing the term 'compulsory education' to 'universal education'. The concern was to avoid the negative sense of forcing the young to attend school and to signify the mission of providing education for all. However, we have retained the term 'free and compulsory education' throughout this report with a view to Article 28(1)(a) of the Convention.

discussed in paragraphs 333 to 364 below, under Section VIIA, in connection with Article 28.

### Employment

23. The employment of persons under the age of 18 is discussed in paragraphs 440 to 450, under Section VIIIG below, in relation to Article 32.

### Sexual acts

24. Sexual offences against children are prescribed in the Crimes Ordinance (Chapter 200). Section 122 makes it an offence for a person, male or female, to indecently assault another person. A person under the age of 16 cannot in law give consent to such act. Section 124 makes it an offence for a man to have sexual intercourse with a girl under the age of 16. Section 146 proscribes acts of gross indecency with or towards a child under the age of 16. Homosexual buggery and gross indecency with or by a man aged under 21 are prohibited under sections 118C and 118H respectively. Section 118D makes buggery with a girl under 21 an offence.

25. The Ordinance makes other proscriptions that are relevant to the protection of children. These include sections 126 and 127 in regard to abduction (discussed in paragraph 90 below, under Section IVB, in relation to Article 8), sections 129 and 132 in regard to trafficking and procurement (discussed in paragraphs 480 and 481 below, under section VIIIJ in relation to Article 35), and sections 135, 140 and 141 in regard to prostitution (discussed in 472 to 479 below, under Section VIII(I), in relation to Article 34).



### Conclusion of marriage

26. The position is as explained in paragraph 32 of the previous report. That is, the minimum age for marriage is 16 years<sup>5</sup>. Persons aged under 21 require parental consent.<sup>6</sup>

### Competence to give evidence in court

27. The position is as explained in paragraph 34 of the previous report. That is, the Criminal Procedure Ordinance (Chapter 221), the Evidence Ordinance (Chapter 8), and the Juvenile Offenders Ordinance (Chapter 226) prescribe special procedures for the giving of evidence in court by witnesses aged under 14 years. The special procedures under the Criminal Procedure Ordinance also apply to witnesses aged under 17 years in relation to offences of sexual abuse. These matters are discussed in paragraphs 214 to 231 below under Section V(I) in relation to Article 19.

### Criminal liability

28. As explained in paragraph 37 of the previous report, section 3 of the Juvenile Offenders Ordinance provides that no child under seven years of age is liable for any criminal offence. The Committee expressed concern about this in paragraph 19 of its concluding observations. In paragraph 34, it recommended that we review the matter with a view to raising the age. Commentators have echoed that recommendation. The matter has since been the subject of review and - as at the time of drafting this report (mid-2001) - we were formulating proposals to increase the age from seven to ten. This is addressed in detail in paragraphs 410 to 412 below, under Section VIIC, in connection with Article 40 of the Convention.

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<sup>5</sup> Section 13 of the Marriage Ordinance (Chapter 181).

<sup>6</sup> Section 14 of the Marriage Ordinance

### Consumption and purchase of controlled substances

29. The position remains as explained in paragraph 40 of the previous report. That is -

- (a) **alcohol:** regulations under the Dutiable Commodities Ordinance (Chapter 109)<sup>7</sup> make it an offence to permit a person under the age of 18 years to consume alcoholic liquor in premises licensed for its sale or supply; and
- (b) **tobacco:** section 15A of the Smoking (Public Health) Ordinance (Chapter 371) prohibits the sale or giving of tobacco products to persons under the age of 18 years;

The use of controlled substances by children is discussed in paragraphs 451 to 471 under Section VIIIH below, in relation to Article 33.

### Access to indecent material

30. The position is as explained in paragraph 41 of the previous report. That is, section 22 of the Control of Obscene and Indecent Articles Ordinance (Chapter 390) prohibits the selling, hiring, circulating, lending and showing of indecent articles<sup>8</sup> to persons under 18 years of age. This and other protections for children are discussed in paragraphs 103 to 114 below, under Section IVD, in relation to Article 17.

### Entry into controlled premises

31. The position is as explained in paragraph 43 of the previous report. That is -

- (a) section 3(2) of the Betting Duty Ordinance (Chapter 108) authorises the Hong Kong Jockey Club to organise race

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<sup>7</sup> Regulation 28, Dutiable Commodities (Liquor) Regulations, Sub. Leg. B.

<sup>8</sup> The definition of 'articles' includes magazines, books, comics, newspapers, sound recordings, videotapes, laser discs and CD-ROMs.

meetings and conduct betting on races in Hong Kong. The Betting Rules of the Club prescribe a minimum age of 18 years for lawful entry to racecourses and off-course betting centres;

- (b) the Gambling Regulations proscribe the entry of persons aged under 18 into licensed mahjong parlours<sup>9</sup>; and
- (c) section 20(1) of the Amusement Games Centres Ordinance (Chapter 435) prohibits persons aged 16 years or over from entering amusement game centres that have been licensed for the playing games by persons aged under 16<sup>10</sup>. Strict licensing conditions are imposed on adult game centre to prevent children aged under 16 from entering.

32. Commentators have said that the variations in the statutory definitions of a 'child' are anomalous and inconsistent with the Convention. Clearly, we do not accept this view. The variations merely recognise the fact that children mature as they grow older: 14 year-olds are normally more mature than ten year-olds, 16 year-olds more so than 14 year-olds, and so forth. With increasing maturity comes an increasing ability to distinguish right from wrong, acceptable from unacceptable behaviour, and thus the ability to understand the consequences of specific actions. That children do not have the full capacity in this regard as do adults is recognised and reflected in both the law and in its administration: hence the gradation of culpability and judicial response.

33. It would be inappropriate and unrealistic for the law to afford, say, a 17 year-old the same relative indulgence as it does, say, an eight year-old. The converse would be at least equally inappropriate.

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<sup>9</sup> Sub-legislation under the Gambling Ordinance (Chapter 148): Second Schedule, condition 2.

<sup>10</sup> Except when accompanying a person aged under 16.

Expressed another way, were the law - in the quest for absolute consistency - rigidly and for every purpose to consider all under-18 year olds equally as children, and 16 year-olds would need to wait an additional two years before being allowed access to certain categories of entertainment. The 'children' would certainly be among the most vociferous objectors. And we suspect that the Committee would also regard such developments as retrogressive.

### **III. General principles (Articles 2, 3, 6 and 12)**

#### **A Article 2: Non-discrimination**

##### Basic Law

34. Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. Article 39 provides that the provisions of - among others - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

##### Bill of Rights Ordinance

35. The Bill of Rights Ordinance (the BORO, Chapter 383) gives effect in domestic law to the provisions of the ICCPR as applied to Hong Kong. In that context, Article 1 of the BORO gives effect to the provisions of the ICCPR in regard to the enjoyment of rights without distinction. Article 22 gives effect to the provisions of the ICCPR in regard to discrimination, insofar as such discrimination is on the part of the Government and public authorities and any persons acting on behalf of the Government or a public authority.

##### Sex Discrimination Ordinance

36. The Sex Discrimination Ordinance (SDO, Chapter 480) was enacted in July 1995. It came into full force in 1996. The Ordinance renders unlawful discrimination on the grounds of sex, marital status or pregnancy in prescribed areas<sup>1</sup>. It also outlaws sexual harassment.

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<sup>1</sup> Employment, education, provision of goods, facilities or services, disposal or management of premises, eligibility to vote for and to be elected or appointed to advisory bodies, activities of clubs, and activities of the Government.

The Equal Opportunities Commission – established under the SDO - is responsible for the implementation of the Ordinance.

#### Disability Discrimination Ordinance

37. The Disability Discrimination Ordinance (DDO, Chapter 487) has been in full operation since December 1996. The Ordinance provides the legal means to ensure equal opportunities for people with disabilities and to facilitate their integration into the community to the fullest extent possible. It gives people with disabilities and their associates the legal means to assert their right to equal opportunities and to obtain redress for discrimination, harassment and vilification. The Ordinance makes it unlawful to discriminate against or harass people with disabilities and their associates in the same areas as does the SDO (footnote (1) above).

#### Promotion of equal opportunities in respect of race and sexual orientation

38. The HKSAR Government is committed to the promotion of equal opportunities for all, considering that all forms of discrimination - including racial discrimination - are wrong. At the same time, we believe that each form of discrimination has its own characteristics, including the particular ways in which they may be manifest in Hong Kong. Therefore, strategies for combating them must be appropriate to the particular form of discrimination that they are intended to address. Thus, in the case of discrimination on the grounds of sex, disability and family status, we have considered the legislative approach to be appropriate. In the case of discrimination on the grounds of race and sexual orientation, our considered view - following extensive research and public consultation - has been that, for the present, a combination of administrative measures and public education offers the best way forward.

39. This remains our position in regard to sexual orientation as at the time of drafting this report. However, in response to domestic calls and with a view to the designation of the year 2001 as the International Year for the Mobilisation Against Racism, we are currently revisiting the question of race. In the course of the year, we will discuss the issues and their implications with representatives of those most likely to be affected by legislation in this area, namely the ethnic minorities and the business sector. We expect to reach a conclusion in early-2002.

40. Meanwhile, our programme of public education and administrative measures remains effective. Between 1997 and 2000 we spent some HK\$7 million on measures to promote equal opportunities in these areas. And we will spend about \$2.8 million in 2001. Those measures include extensive publicity programmes, community participation projects and discrete codes of practice for employers and employees.

41. In paragraphs 23, 24 and 32 of its concluding observations, the Committee made several suggestions regarding the evaluation of public awareness and understanding of the Convention and of the need to prevent and combat discrimination. It also made suggestions regarding the evaluation of the effectiveness of human rights education. In paragraph 18 of the updating report, we affirmed our agreement with those suggestions and undertook to consider making appropriate provision in a future civic awareness survey. Independently, the Equal Opportunities Commission was closely monitoring discrimination on the grounds of sex and disability<sup>2</sup>.

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<sup>2</sup> The Commission has yet to analyse response to its campaigns against specific indicators. But a valuable practical lesson has been that, where the messages were clear and specific - and where the public related to a particular message - feedback was substantial and the public actively participated in the ensuing discussion. Where the messages were somewhat general, public reaction was 'flat'. Both the Commission and Government are drawing lessons from these observations.

42. In 2000, we investigated the extent to which materials aimed at fostering racial tolerance among school children were reaching the classrooms. The findings were broadly encouraging. But the response rate was too low for a scientific evaluation. And we were not, at the time, in a position to assess the impact on the children reading the materials. As at the time of drafting this report, we were considering the possibility of commissioning consultants to investigate the issue in greater depth and scientific rigour. But we were deferring action pending the outcome of the discussion referred to in paragraph 39 above in regard to legislation in this area.

43. Commentators have expressed concern that the rights of children from the ethnic minorities should not be affected by cultural or language barriers. They have called on the Government to review existing services to ascertain whether they are culturally sensitive. Most of these issues relate to education, though we recognise that other factors are also entailed. These matters are addressed in paragraphs 353 to 363 below, under Section VIIA, in regard to Article 28; in paragraph 382, under Section VIIB, in regard to Article 29(c), and in paragraph 482 below, under Section VIIIK, in regard to Article 30.

#### The Parent and Child Ordinance

44. As explained in paragraph 46 of the previous report, the Parent and Child Ordinance (Chapter 429) removed legal disadvantages that formerly applied to illegitimate children. It provides that in all legislation and all future documents, whether private or public, references to relationships such as 'parent' and 'child' must include references to illegitimate relationships unless a contrary intention is expressly stated. Consequential amendments to other legislation extended the principle. For example, the Guardianship of Minors Ordinance (Chapter 13) now enables either parent to apply for the same range of maintenance orders for a child, irrespective of its legitimacy or otherwise. Similarly, the



Intestates Estates Ordinance (Chapter 73) now enables the illegitimate issue of a person who dies intestate to enjoy the same rights as the deceased's legitimate issue. The position has not changed.

45. The case of *Ng Ka Ling & Others and Director of Immigration* illustrates the protections afforded to the rights of children born out of wedlock. Article 24(2)(3) of the Basic Law provides that the permanent residents of Hong Kong include persons of Chinese nationality born outside Hong Kong of Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region and Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region. In *Ng Ka Ling's* case, the Court of Final Appeal ruled that this category of permanent residents included persons born in as well as out of wedlock. In reaching this ruling, the Court considered that two principles were relevant. First, both the Basic Law and the ICCPR enshrine the principle of equality, which is the antithesis of any discrimination<sup>3</sup>. The Court observed that, following a clear trend in recent years, Hong Kong domestic legislation usually treated illegitimate children on an equal footing with legitimate children. Secondly, the ICCPR recognised that the family was the natural and fundamental group unit of society and was entitled to protection by society and the state.

#### The Protection of Children and Juveniles Ordinance (Chapter 213)

46. As explained in paragraph 47 of the previous report, the Protection of Children and Juveniles Ordinance provides for the protection of children or juveniles who have been, or are suspected to have been, abused physically, psychologically, sexually, or through neglect. The protection applies to all children and juveniles, irrespective

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<sup>3</sup> Article 1 of the BORO gives effect in domestic law to Articles 2 and 3 of the ICCPR.

of gender, ethnic origin, ability (or disability), legitimacy (or illegitimacy), and so forth.

#### Immigration Ordinance (Chapter 115)

47. Section 4 of the Immigration (Places of Detention) Order<sup>4</sup> prescribes the requirements for the treatment of illegal immigrants aged under 18<sup>5</sup> who are held in places of detention. The Order guarantees that treatment accorded to young illegal immigrants is the same as for local children and juveniles detained in a place of refuge under the Protection of Children and Juveniles Ordinance (Chapter 213).

#### Non-discrimination in major aspects of child welfare

##### Education

48. Equal treatment for students of either sex is a matter of established policy. The Education Department encourages schools to promote the concepts of equality and equity in all aspects of life and reminds them of their role in ensuring equal opportunities in the learning process.

49. The education of disabled children is discussed in paragraphs 290 to 306 below, under Section VID, in relation to Article 23. That of newly arrived migrants from the Mainland and children from the ethnic minorities is discussed in paragraphs 353 to 363, under Section VIIA, in relation to Article 28.

##### Welfare

50. As explained in paragraph 51 of the previous report, all children, regardless of age, sex, race, ability (or disability), cultural, linguistic or religious background, have equal access to welfare services on the basis of the same eligibility criteria. Such services include adoption, foster

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<sup>4</sup> Immigration Ordinance (Chapter 115), sub legislation of 1994.

care, residential childcare, protection and so forth.

#### Recreation, culture and media

51. The position remains essentially as explained in paragraph 52 of the previous report, though the Government's Leisure and Cultural Services Department has assumed responsibility for these matters from the former Municipal Councils (see Part I, paragraphs 17 and 18). The Government's policy is that all children shall have the opportunity to take part in recreational, sports and cultural activities, without discrimination of any kind.

#### **B Article 3: Best interests of the child**

52. The interests of the child are primary in the formulation and dispensation of all legislation and policies relating to or affecting children. It is also paramount in all actions undertaken by social welfare facilities, courts of law, administrative authorities or legislative bodies.

#### Court orders in relation to child protection

53. There are cases where, having received assistance from the Government or from NGOs parents nevertheless do not adequately protect their children. In these circumstances, the court has powers to order the children concerned to be placed under care or protection, with a view to protecting their interests. Specifically -

- (a) **the Protection of Children and Juveniles Ordinance (Chapter 213)**: as explained in paragraph 56 of the previous report, this empowers the court to grant care or supervision orders in respect of children or juveniles who have been abused, ill-treated, neglected, or are beyond control to the extent that

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<sup>5</sup> "A person, who in the opinion of an immigration officer is under the age of 18 years...."

harm may be caused to them or others. The Director of Social Welfare may be appointed as the legal guardian by court order. The children may be committed to the care of persons or facilities fit to take care of them, or to supervision by social welfare officers. Alternatively, parents or guardians may be ordered to enter into recognisance to exercise proper care and guardianship. The Ordinance provides for orders permitting authorised officers to search any place with a view to the removal and taking into care of any child or juvenile who appears to be in need of care or protection. A child's parents or guardians may be required to take the child for medical, psychological or social assessment when a Child Assessment Order is issued;

- (b) **the Guardianship of Minors Ordinance (Chapter 13) and the High Court Ordinance (Chapter 4):** empower the Director of Social Welfare to initiate applications to the District Court or the Court of First Instance for making orders on maintenance, legal guardianship, and care or supervision of children or juveniles who need regularisation of their legal rights in the absence of or to the exclusion of surviving parents; and
- (c) **the Matrimonial Causes Ordinance (Chapter 179):** empowers the District Court or the Court of First Instance to appoint the Director of Social Welfare to be the legal guardian or custodian, or to assume care and control or supervision of children whose parents are found to be unfit to exercise their parental rights due to judicial separation or divorce.

#### Representation of children in courts

54. As explained in paragraph 59 of the previous report, when a

child and other parties concerned are present before the court, the Judge may ask for and ascertain the views of the child. The Official Solicitor Ordinance (Chapter 416) allows judges to appoint the Official Solicitor to represent the child. The Adoption Ordinance (Chapter 290) authorises the appointment of the Director of Social Welfare as guardian ad litem to act on behalf of children in adoption proceedings, and under certain circumstances, section 12 of the Adoption Ordinance provides that some persons other than the Director of Social Welfare can be appointed to act as guardian ad litem. The duty of the guardian ad litem is to investigate as fully as possible all circumstances relevant to a proposed adoption with a view to safeguarding the interests of the child before the Court. The Official Solicitor Ordinance (Chapter 416) provides for separate representation by the Official Solicitor, where necessary.

55. Care and protection orders are issued by the Magistrates Courts. Some commentators consider this unsuitable because, they say, the children in question are often placed in the same rooms as juvenile offenders, are frightened, confused, and perceive themselves as being guilty of wrongdoing. The commentators who take this view consider the Court procedure to be a form of degrading, even cruel, treatment and raised the issue in regard to Article 16 of the Convention Against Torture. We addressed the issue in paragraphs 146 and 147 of our report under that Convention, heard by the Committee Against Torture (UNCAT) in May 2000. The following paragraphs repeat the explanation that we gave the UNCAT, both in our report and in paragraph 43 of the updating report that we submitted before the hearing.

56. As we advised the UNCAT, the arrangements are in accordance with section 34 of the Protection of Children and Juveniles Ordinance (Chapter 213) which was originally drafted on the model of the

corresponding UK legislation. We recognised that most of our magistracies were designed for the conduct of criminal proceedings and that some children might find them somewhat forbidding. Court officials did what they could to reduce any stress that children involved in care and protection cases might experience. For example -

- where conditions (such as the caseload in a particular court) permitted, they would schedule the hearing of criminal cases on different days - or at different sessions - from care and protection cases;
- in the event that children involved in criminal proceedings and children in need of care or protection orders were attending the same court, they would not be placed in the same waiting room. Police officers would look after them and ensure that there was no contact between the two groups;
- children involved in care or protection cases were accompanied by their family members and/or social workers to provide emotional and psychological support; and
- where physical constraints permitted, children in particular need of emotional support might be invited to await their hearings in the office of the duty probation officer. This arrangement was admittedly not ideal. But it afforded a measure of privacy and a sense of security.

57. Since then, separate waiting rooms have been set aside for the use of children awaiting care and protection hearings. The rooms are located closest to the juvenile courts of the five magistracies concerned so that they will not meet either adult or juvenile defendants in criminal cases. New magistracy buildings now being built in Kowloon City,

West Kowloon and Hong Kong Island will have separate juvenile criminal courts, care and protection courts, and waiting rooms with separate access.

#### Law Reform Commission (LRC) Review of guardianship and custody

58. In 1995, in the light of major reforms of this area of the law in other jurisdictions, the Law Reform Commission was asked to review the law relating to the guardianship and custody of children. An LRC Sub-committee was established, which - in 1998 - issued a detailed consultation document, running to some 350 pages. In reviewing the responses to that paper, the Sub-committee took the view that the various concerns would best be addressed by submitting their recommendations to the full Commission in four separate reports -

- (a) guardianship;
- (b) child abduction;
- (c) mediation in disputes involving children; and
- (d) custody and access.

59. The Commission has now considered the sub-committee's report on guardianship and plans to issue the final Commission report and recommendations in early 2002. Final reports on the other three aspects of this project will follow over the next 12 months or so. The Government will consider the recommendations - and form its views on them - as they become available.

#### Policy

60. In his Policy Addresses of 1999 and 2000, the Chief Executive stressed the importance of strengthening support to parents in the discharge of their parental responsibilities and in providing guidance to their children. Accordingly, we have allocated additional resources for

the promotion of family education and the organisation of activities to foster closer parent-child relationships. This is further discussed in Section V below.

### Welfare facilities

61. Several kinds of welfare facilities and service units provide care for children requiring different types of care in different circumstances. That is, their functional remits reflect the particular form of care that they provide. But in all of them, the core operational principle is that the best interests of the child are paramount. Their work is discussed in the relevant sections of this report. Specifically -

- (a) **Family Services Centres:** are the first point of call for families needing help or advice. Their primary goal is to preserve and strengthen the family for the healthy growth and development of the children. This is achieved through such services as individual and group counselling, referrals for tangible and supportive services, and through statutory services provided by the Social Welfare Department for the care or protection of children in need. In all these processes, the interests of the child are of paramount concern. This aspect of the Centres' work is discussed in Section VB in relation to Article 18 of the Convention;
- (b) **Child Custody Services Unit:** assess all aspects of the welfare of children affected by parental divorce, and provide reports to assist judges in determining questions of custody, guardianship and access. They are discussed in Section VC below, in relation to Article 9 of the Convention;
- (c) **Family and Child Protective Services Units:** afford protection to children who are victims of abuse and of domestic violence.



Their work is discussed in Section V(I) below, in relation to Article 19 of the Convention;

- (d) **Children's homes and other facilities for their protection:** provide institutional care, protection or custody for children specific to their circumstances, as decided by the Courts. Individually, they function as places of refuge for children in need of care or protection, places for holding children on remand pending investigation or trial, or places of detention for young offenders. The interests of the children are of paramount concern and safeguards are in place to ensure those interests. These include, for example, statutory and procedural requirements and a monitoring system. Their work is discussed in Section VF below, in relation to Article 20 of the Convention;
- (e) **Child care centres:** provide care services in a safe and nurturing environment for children aged under six. They are discussed in Section VB below, in relation to Articles 18.1 and 18.2 of the Convention;
- (f) **Occasional Child Care Service and Extended Hours Service:** these are supplementary to regular daycare services for parents who cannot take care of their children. The services are provided on an occasional basis or outside normal operating hours. They are discussed in Section VB below, in relation to Articles 18.1 and 18.2 of the Convention; and
- (g) **Child Care Centres Advisory Inspectorate:** visits and advises all child care operations to ensure that they provide adequate standards of care and are conducive to children's physical, social, emotional and intellectual development. The

Inspectorate's work is discussed in Section VB below, in relation to Articles 18.1 and 18.2 of the Convention.

**C Article 6: The right to life, survival and development**

62. The right to life is guaranteed under Article 2 of the BORO which gives effect in domestic law to ICCPR.

63. In June 1997, the Offences Against the Person Ordinance (Chapter 212) was amended. Now, the Ordinance gives the court discretion - in respect of a person convicted of murder and who was under 18 years of age at the time of the offence - as to whether the person should be sentenced to imprisonment for life or to imprisonment for a shorter term.

64. Matters pertaining to the survival and development of the child (Article 6.2) are discussed in paragraphs 243 to 288 below, under Article 6.2 in Section VIA and Article 24 in Section VIB. This includes calls by commentators for statistics on accidents involving children travelling on school buses for Government to make it mandatory to wear seat belts in such buses (paragraph 277).

**D Article 12: Respect for the views of the child**

65. As explained in the previous report, children who are capable of forming their own views are encouraged to express themselves freely on all matters affecting them. This section addresses areas in which the exercise of the right to free expression is of particular consequence.

Custody and guardianship

66. As explained in paragraph 67 of the previous report, social

workers of the Child Custody Services Units encourage children involved in custody and guardianship cases to express their views on custody and access arrangements. Those views - which the Units take into account before making recommendations to the Courts - address such matters as the child's relationship with each parent and significant others, the likely effect of separation from either parent and other siblings, and access arrangements. As far as practicable - having regard to the child's age, maturity and level of understanding - the Units also involve the children in the formulation of the welfare plan.

#### Medical consultation, treatment and assessment

67. In paragraph 68 of the previous report, we explained that medical consultation, treatment and assessment required the consent of children assessed as possessing sufficient understanding and intelligence to comprehend the proposed treatment and its consequences. The attending doctor would assess the child's mental capacity and explain his/her consultation and treatment in a way that is comprehensible to the child. Where they lacked such understanding, their parents or guardians should make the decision in the best interest of the children. Where it was considered that their parents had failed to do that, the doctor attending to the child could apply to the court to have their decision reversed. In paragraph 69, we explained that children could not make valid consent to the donation of living organs, nor could their parents or guardians give consent on their behalf<sup>6</sup>. The position remains unchanged.

68. In paragraph 70 of the previous report, we described the circumstances in which doctors might be justified in giving treatment, without the parent's consent, to children with mental impairment. The

guiding principle was that doctors should be able to do whatever good medical practice required in the best interests of the patient's health. The specific circumstances were where -

- (a) treatment was necessary to save life, or to prevent serious deterioration of the patient's health; and
- (b) patients were likely to be permanently incapable of giving consent and there was nobody in a position to do so on their behalf.

The position remains unchanged<sup>7</sup>.

### Child care placements

69. In considering out-of-home placement, social workers discuss with the children involved the reasons for such placement and the choices available. In so doing, they use language that the children can understand having regard to their age, maturity and circumstances. They encourage the children to express their views on the proposed placement and on their future aspirations. A change of placement will be made if that is in a child's best interests.

### Multi-disciplinary case conference on Child Abuse

70. These are fora in which professionals<sup>8</sup> directly involved with children who are, or are believed to be, victims of child abuse, share their professional knowledge, information and advice. The purpose is to analyse risks and formulate welfare plans for abused children and their families, to determine whether a particular case is genuinely one of child

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<sup>6</sup> Section 5(4) of the Human Transplant Ordinance (Chapter 465). Such a donation is permissible if the donor has reached the age of 16 and is married, subject to the approval of the Human Organ Transplant Board.

<sup>7</sup> The relevant prescriptions are contained in Part IVC - sections 59ZA to ZK - of the Mental Health Ordinance (Chapter 136).

abuse, and to formulate a welfare plan. The paramount principle that informs the process is the need to protect the best interests of the child. The children and their families are invited to participate and to take an active role in the implementation of the welfare plan.

71. In 1998, the Social Welfare Department, on behalf of the Committee on Child Abuse, commissioned research on 'Professional, Parental and Victims' perspectives on the Process and Outcomes of Investigation, Assessment and Intervention by Child Protection Professionals in Child Sexual Abuse Cases in Hong Kong.' This confirmed that the professionals in case conferences explored and considered the views of the children and their parents during the investigation process. In formulating the welfare plans, they respected and addressed the views of the children and sought the parental perspective on professional intervention.

#### Views of the child: children in adoption proceedings

72. This is addressed in Section VG below, in relation to Article 21 of the Convention.

#### Views of the child: children in penal institutions

73. This is addressed in Section VIIID in relation to Articles 37(b), (c) and (d).

#### Children as bearers of rights

74. In paragraphs 25 and 32 of its concluding observations, the Committee suggested that, in the spirit of article 12 of the Convention, greater priority be accorded to the participation of children in school life and that a study be conducted from the perspective of children on their

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<sup>8</sup> These include social workers, police, medical practitioners, nurses, clinical psychologists, teachers, and so

participation in family, school and society.

75. The position remains as explained in paragraph 21 of the updating report. That is, we attach importance to children's participation, as is reflected in Government and NGO's publicity and public education programmes that seek to develop public consciousness of the need for children to participate in society. Our schools require teaching staff to create a positive, inviting and caring school environment to encourage and facilitate students' participation. Staff development programmes train persons working with children to involve them in programme planning as befits their age and maturity. See also the related discussion in paragraphs 374 to 378 below, under Section VIIB, in relation Article 29.

76. In the course of the current curriculum reform exercise, the Education Department has given high priority to fostering such values as human dignity, justice, equality, freedom, respect for others, and so forth. Children learn about the rights they bear through various subjects that are taught at the levels appropriate to their age and development. Examples at the primary level include General Studies. Examples at the secondary level include Civic Education, Social Studies, Economic and Public Affairs, Government and Public Affairs. The Education Department's 'Guidelines on Civic Education in Schools' provide a reference for schools in designing civic education programmes. They also encourage theme-based activities to foster awareness and understanding of human rights issues.

77. Commentators have said that the Government should organise community events to promote child/parent understanding. We have noted this proposal and, as a first step, we arranged for the Child

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forth, precise membership varying according to the circumstances of particular cases.

Ambassadors to put their views on this to a regular meeting of the Parent Steering Committee on Education. The Committee responded positively to their ideas and there will be further meetings of this kind.

78. We have discussed this with the 'Ambassadors' and the child-focused NGOs and have agreed that the Ambassadors should lead the way by stimulating discussion of the issues in the schools, encouraging their peers to engage their parents in dialogue. As stated in paragraph 13 above, under Section IB in relation to Article 42, the Ambassadors have actively participated in the production of a new API. This will take as its theme the need for parents and other adults to listen to the views of their children. We will consider other ways of disseminating the message at a later stage.

## **IV. Civil rights and freedoms** **(Articles 7, 8, 13, 17, 14, 15, 16 and 37(a))**

### **A Article 7: Name and nationality**

#### Right to a name

79. Article 20(2) of the Bill of Rights provides that every child shall be registered immediately after birth and shall have a name. The Births and Deaths Registration Ordinance (Chapter 174) also provides for a child who is not named at the registration of birth to have its name inscribed on the register at a later time.

#### Registration of newborns

80. As explained in paragraph 75 of the previous report, the Births and Deaths Registration Ordinance (Chapter 174) provides that the particulars of a child born alive in Hong Kong must be registered with the Births Registry within 42 days of the birth. Registration particulars include the date of birth, the child's sex and name, the father's name and surname (but see paragraph 81 below), the mother's name and maiden surname and the registering party's residential address and description. The position is unchanged. Parents who, without reasonable excuse, fail to register a birth are liable upon summary conviction to a fine of up to \$2,000 or six months' imprisonment.

#### Illegitimate children

81. As explained in paragraph 77 of the previous report, the Births and Deaths Registration Ordinance (Chapter 174) provides that the name of the father of an illegitimate child is not required to be included in the



registration of birth. Nevertheless, the father may be named at the request of one or both parents, together with the necessary declarations or court orders. The position is unchanged.

### Abandoned children

82. As explained in paragraph 78 of the previous report, section 8(2) of the Births and Deaths Registration Ordinance (Chapter 174) requires persons who find abandoned children, or the persons in whose charge the children are placed, to report the finding to the Registrar of Births and Deaths. Within 42 days of the finding, they must give such particulars of the birth as they possess and as are relevant to the registration process. If the natural parent(s) cannot be traced within a reasonable time, an application will be made to court to appoint the Director of Social Welfare to be the guardian of the child<sup>1</sup>. If the child's identity remains unknown, it will then receive a name for registration purposes. The position is unchanged.

### Adoption

83. As explained in paragraph 79 of the previous report, sections 18 and 19 of the Adoption Ordinance (Chapter 290) provide that the Registrar of Births and Deaths (the Registrar) shall maintain an 'Adopted Children Register', "in which shall be entered entries directed by adoption orders" of the Court. Those entries include the date and country of the child's birth, its name and the address and occupation of the adopter(s). That procedure is unchanged. The position regarding the alteration of an adopted person's name is explained in paragraph 86 below, in

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<sup>1</sup> Section 7 of the Guardianship of Minors Ordinance (Chapter 13). The section actually permits "any person" to make an application for guardianship. In practice, that person is always the Director of Social Welfare. Additionally, section 34(1)(a) of the Protection of Children and Juveniles Ordinance (Chapter 213), provides that the Juvenile Court on its own motion, or the Director of Social Welfare, or any person authorised by the Director of Social Welfare in writing, or

connection with Article 8 of the Convention.

Births on aircraft and ships

84. The position is essentially as explained in paragraphs 81 and 82 of the previous report. That is -

- (a) **births on Hong Kong-registered aircraft:** regulations under the Civil Aviation (Births, Deaths and Missing Persons) Ordinance (Chapter 173) require the Civil Aviation Department to keep records of such births, wherever they occur. The Department must copy those records to the Registrar of Births and Deaths; and
- (b) **births on Hong Kong-registered ships:** are regulated under the Merchant Shipping (Seafarers) Ordinance (Chapter 478) and/or the Births and Deaths Registration Ordinance (Chapter 174). Where the birth occurs on a Hong Kong-registered ship outside Hong Kong waters, only Chapter 478 applies. The master of the ship must make a return to the Superintendent of the Mercantile Marine Office within six months. Where the birth occurs on a Hong Kong-registered ship within Hong Kong waters, both Chapter 478 and Chapter 174 apply. In addition to the return to the Superintendent of the Mercantile Marine office, the parents or occupier of the ship in which the birth occurs must register the birth to the Registrar of Births and Deaths within 42 days after the day of the birth.

Chapter 478 also applies to births on ships not registered in Hong Kong when the birth is given to a Hong Kong identity card holder and the ship enters the waters of Hong Kong in the course of or at the end of the

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any police officer, can make an application to court to appoint the Director of Social Welfare to be the legal guardian of the child.

voyage during which the birth occurs. The Superintendent of the Mercantile Marine Office must record such birth and, within seven days, send a certified copy of the record to the Registrar of Births and Deaths.

Chapter 478 does not apply to fishing vessels licensed under Part IV of the Shipping and Port Control Ordinance, Chapter 313. Births on licensed fishing vessels operating only within Hong Kong waters are subject to the Births and Deaths Registration Ordinance (Chapter 174).

### Nationality

85. The Nationality Law of the People's Republic of China (CNL) applies to Hong Kong by virtue of Article 18 of the Basic Law. Article 4 of the CNL provides that any person born in China whose parents are both Chinese nationals, or one of whose parents is a Chinese national, shall have Chinese nationality. Article 6 of the CNL states that any person born in China whose parents are stateless or of uncertain nationality and have settled in China shall have Chinese nationality. The CNL became effective in the Hong Kong Special Administrative Region on 1 July 1997. Having considered the historical background and the current situation, the Standing Committee of the National People's Congress has made certain 'explanations' regarding the implementation of the Nationality Law of the People's Republic of China in Hong Kong. Inter alia, these provide that Hong Kong residents who are of Chinese descent and born in Chinese territory (including Hong Kong), and others who satisfy the conditions prescribed in the CNL, are Chinese nationals. Thus, children born in Hong Kong have the right to acquire Chinese nationality if they satisfy the conditions of the CNL.

## **B Article 8: Preservation of identity**

### Name alteration

86. The position remains as explained in paragraphs 88 and 89 of the previous report. That is -

- (a) section 13 of the Births and Deaths Registration Ordinance (Chapter 174) provides for a parent or guardian to alter or to add to the given name - but not the surname - of a child under 11 years of age;
- (b) the registration of a name is optional (section 13(1) of the Ordinance); and
- (c) to mark the new life of an adopted child, its adoptive parents may alter the child's name when they apply for adoption. Under sections 19(2)(b) and 20(1)(a) of the Adoption Ordinance (Chapter 290), an adopter - or the adopted child - may, within one year of the date of an adoption order, apply to the court to change or add to the child's name. Section 19(2)(b) of that Ordinance provides that, where the name or surname that the infant is to bear after adoption differs from its original name or surname, the new name or surname shall be specified in the (adoption) order instead of the original. In practice, the Registrar of Births follows the order of the court in this regard, if any. The child's name and surname are normally proposed by the adopters, especially in the case of very young children. Adopters will normally consider the views of older children before registering their names.

87. In paragraph 88 of the previous report, we explained that some commentators considered that these provisions were inconsistent with

Articles 7 and 8 of the Convention. We did not share that view, considering that the provisions were reasonable, having regard to Hong Kong's cultural and social circumstances. We explained that, in Chinese tradition, if a person's name was not in harmony with his or her environment, adverse effects could be caused to that person and to those around him or her. Therefore, children's names were often chosen, and in some cases subsequently changed, on the advice of fortune-tellers. For these reasons, births were sometimes registered before the children's names had been finally decided. The statutory provisions enabled these traditions to continue. The position is unchanged.

#### Preservation of nationality

88. The position of children born in Hong Kong is explained in paragraph 85 above.

#### Re-establishing a child's lost identity

89. This is explained in paragraph 82 above in relation to Article 7.

#### Child abduction

90. We are not aware of any cases of children in Hong Kong being abducted for unauthorised adoption. But child abduction for any purpose is a serious offence. The relevant legal provisions are -

- (a) **section 126 of the Crimes Ordinance (Chapter 200):** makes it an offence to take an unmarried girl under the age of 16 out of the possession of her parent or guardian against the will of the parent or guardian and without lawful authority or excuse;
- (b) **sections 42 to 44 of the Offences Against the Person Ordinance (Chapter 212):** make it an offence to take or detain anyone by force or fraud with intent to sell them (section 42); to steal a child aged under 14 years (section 43); and to unlawfully

transfer possession, custody or control of other persons for valuable consideration (section 44); and

- (c) **section 26 of the Protection of Children and Juveniles Ordinance (Chapter 213):** makes it an offence unlawfully to take (or cause to be taken) any child or juvenile out of the possession and against the will of the father or mother or of any other person having the lawful care or charge of such child or juvenile.

Some of these provisions are complex and this summary inevitably omits much of the detail. The provisions are reproduced in full at Annex 5.

## **C Article 13: Freedom of expression**

91. At the constitutional level, Article 27 of the Basic Law provides that all Hong Kong residents shall have freedom of speech, of the press and of publication. So too does Article 16 of the BORO, which gives domestic effect to ICCPR.

### Right to obtain information

#### Code on Access to Information

92. Our policy is to make available to the public as much information as possible to enhance their understanding of the formulation and implementation of policy, so that they can more readily understand the basis on which the Government makes decisions. To that end, in March 1995 we introduced an administrative Code on Access to Information initially on a pilot basis but, by December 1996, across the whole of Government. Under the Code, information held by the Government is made available to the public, either routinely or on request, unless there are valid reasons - related to public, private or commercial

interests - to withhold it. Members of the public who are dissatisfied with a department's response under the Code have access to the Ombudsman. Both adults and children receive the same treatment under the Code. The Code is reproduced at Annex 6.

### Privacy

93. The Personal Data (Privacy) Ordinance (Chapter 486) provides for a living individual, including a child, to have rights of access to, and correction of, his or her personal data. Children have the same rights of access under the Ordinance as do adults. The Ordinance also provides for a person who has parental responsibilities for a child to assist the child to access or correct its personal data. Commentators have said that parents should show greater respect for their children's privacy, particularly in the home. This is a difficult area for governments to address directly, particularly as the best interests of children must balance their right to privacy (Article 16) with the responsibilities of parents for the upbringing and development of their children (Article 16). Nevertheless, we will take account of the concern in future public education projects.

### Access to birth data by adopted children

94. See paragraph 206 in relation to the review of the Adoption Ordinance.

## **D Article 17: Access to appropriate information**

### Television for children

95. Two domestic broadcasters provide free television services. Their licences require them to broadcast a minimum of two hours of

children's programmes<sup>2</sup> daily on each of their channels and at prescribed times. Domestic pay television licensees also provide programmes for children.

#### Educational television programmes

96. Radio Television Hong Kong (RTHK), Hong Kong's public broadcaster, produces educational television programmes for schools in collaboration with the Education Department. These are broadcast by the two domestic licensees between prescribed weekday hours<sup>3</sup>. The programmes may be curriculum-based, and are watched by pupils from primary level one to secondary level five.

#### Library services for children and promotion of leisure reading

97. This is addressed in paragraphs 393 and 394 below under section VIIC in relation to Article 31 of the Convention.

#### Access to the Internet

98. Our policy is to raise community awareness and confidence in the use of information technology and to foster a culture of life long learning and knowledge renewal. To those ends, we aim to promote the wider use of computers and the Internet and to ensure that our children have ready access to the world of information technology.

99. A survey conducted in March 2000 indicated that one in every two Hong Kong households possessed a computer. More than one third of the population were connected to the Internet. These findings reveal a high level of home computer and Internet penetration. Nevertheless, we have actively sought to facilitate computer/Internet access in public areas, including those visited by children. To that end, we have installed

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<sup>2</sup> "Children's programmes" are programmes designed specifically for children up to and including the age of 15.

<sup>3</sup> In the year 2000, educational broadcasts totalled some 1,300 hours.



some 2,200 public computers with Internet access in district government offices, community hall/centres, post offices, public libraries and various youth and social centres. These are available to the public without charge. And, as elsewhere, such facilities are widely available in private sector outlets.

100. In 1997, we announced a series of initiatives to promote the use of information technology (IT) in teaching and learning in schools. Under this project, each school receives funding to establish a network infrastructure and other IT facilities for teachers and students to share information, to tap into the wealth of knowledge available through the various electronic networks, and to make IT-based teaching and learning more efficient and effective. All our schools can now access the Internet.

101. To minimise the “digital divide”, we provide incentive grants to encourage schools to extend the opening hours of their computer rooms and facilities for use by students. Additionally, we have allocated HK\$200 million<sup>4</sup> to enable public sector secondary schools to purchase notebook computers for on-loan to needy students.

102. Public libraries and some 125 community and youth centres also play an important role in bridging the gap between the “haves” and “have-nots”. Since July 1999, students have had access to IT facilities that we have installed in all public libraries and in community and youth centres around the territory. These enable them to browse the Internet

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<sup>4</sup> Through the Quality Education Fund, which was established in 1998 with an allocation of \$5 billion to finance projects for the promotion of quality education. It provides funding for non-profit making initiatives within the ambit of basic education.

and to use computer applications for self-study outside school hours. Additionally, the Education Department's website, 'HKeducationCITY.net' (launched in August 2000) provides online teaching materials for schools, teachers, students and parents, and a forum for them to share views and experience.

#### Protection of children from injurious material

#### Regulation of radio and television programmes

103. Television and sound broadcasting is subject to regulation by the Broadcasting Authority. The Authority has issued codes of practice that set programme and advertising standards for the four categories of television programmes<sup>5</sup> licensed under the Broadcasting Ordinance (Chapter 562) and sound broadcasting services licensed under the Telecommunications Ordinance (Chapter 106). The Ordinance and the Broadcasting Authority Ordinance (Chapter 391)<sup>6</sup> empower the Authority<sup>7</sup> to impose sanctions on licensees who do not comply with the Codes.

104. The domestic broadcasters (see paragraph 95 above) are -

- (a) prohibited under Chapter 2 of the Generic Code of Practice on Television Programme Standards from broadcasting programmes unsuitable for children during family viewing hours<sup>8</sup>. They must not show material unsuitable for children outside those hours when a large number of children might be

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<sup>5</sup> Domestic free, domestic pay, non-domestic, and 'other'.

<sup>6</sup> Section 24 provides that the Authority may impose a financial penalty on a sound broadcasting licensee for contravention of a provision of the codes of practice.

<sup>7</sup> Section 28 of the Broadcasting Ordinance provides that the Broadcasting Authority may impose a financial penalty on a television programme service licensee for contravention of a provision of the codes of practice.

<sup>8</sup> From 4:00pm to 8:30pm.

expected to be watching television, for example during school holidays; and

- (b) required to classify programmes regarded as unsuitable for children by category, namely 'Parental Guidance Recommended' and 'Mature'. They must advertise the classification before and during the transmission by superimposing indicators on the screen.

105. Programmes provided by domestic pay television services must carry advisory announcements together with a descriptive statement of problematic content if they contain material that is unsuitable for children (Chapter 8 of the Generic Code of Practice on Television Programme Standards). And sound broadcasting licensees must not schedule programmes targeting adult listeners at times when they normally broadcast programmes targeting children. The purpose of these requirements is to help parents exercise guidance over their children's viewing.

106. Some commentators have called for more programmes suitable for children - particularly for adolescents in the 15 to 18 group - to be broadcast after 7 p.m, which is prime viewing time. We plan to conduct a review of these services before the two domestic free television service licences expire in 2003. As part of the review process, the Broadcasting Authority will seek public views as to whether the existing services meet the needs of society and their expectations in regard to future services. A question to be addressed in the consultations will be whether the licences should include positive programming requirements.

#### Films, videotapes and laser discs

107. All films intended for public viewing in Hong Kong (including videotape and laser disc versions) are subject to classification by the

Commissioner for Television and Entertainment Licensing, who is the Film Censorship Authority. There are three categories -

- Category I - suitable for all ages;
- Category II<sub>A</sub> - not suitable for children;
- Category II<sub>B</sub> - not suitable for young persons and children;  
and
- Category III - for persons aged 18 or above only.

108. Regular surveys of community views and consultation with a statutory panel of advisers<sup>9</sup> ensure that the classification standards are attuned to those of the community. Categories I, II<sub>A</sub>, and II<sub>B</sub> are advisory in nature and give parents more information for the selection of films suitable for their children. The age restriction for Category III films is strictly enforced<sup>10</sup>.

109. Sections 10(2) and (3) of the Ordinance provide that, when approving a film for exhibition, censors must consider -

- (a) whether the film portrays, depicts or treats cruelty, torture, violence, crime, horror, disability, sexuality, or indecent or offensive language or behaviour;
- (b) whether the film denigrates or insults any particular class of the public by reference to the colour, race, religious beliefs or ethnic or national origins or the sex of the members of that class;

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<sup>9</sup> The panel comprises more than 260 members from a wide cross-section of the community.

<sup>10</sup> The Film Censorship Ordinance (Chapter 392) makes it an offence to allow persons under 18 years of age to watch category III films. The maximum fine is \$50,000, rising to \$100,000 for the third and subsequent convictions. Advertising materials (including posters) for Category III films must also be submitted to the Film Censorship Authority for approval prior to public display. The Television and Entertainment Licensing Authority regularly conducts inspections to cinemas to ensure that the statutory requirements under the Film Censorship Ordinance are observed by the cinema operators.

- (c) the effect of the film as a whole and its likely effect on the persons likely to view the film;
- (d) the artistic, educational, literary or scientific merit of the film and its importance or value for cultural or social reasons; and
- (e) the circumstances of any intended exhibition of the film.

#### Control of obscene and indecent articles

110. Our policy objective in the control of obscene and indecent articles is to protect public morals and young people from harmful effects of obscene and indecent materials while preserving the free flow of information and safeguarding the freedom of expression. Advertising for Category III films and films that are for public exhibition is regulated under the Film Censorship Ordinance. Those that are not for public exhibition are regulated under the Control of Obscene and Indecent Articles Ordinance (COIAO) (Chapter 390). The COIAO prohibits the publication of obscene articles and restricts the publication of indecent articles (including printed matter, sound-recordings, films, videotapes, discs, electronic publications and records of pictures). The Television Ordinance (Chapter 52) and the Telecommunication Ordinance (Chapter 106) govern the content of sound and television broadcasts.

111. Section 2(2) of the COIAO provides that -

- “(a) a thing is obscene if by reason of obscenity it is not suitable to be published to any person; and

(b) a thing is indecent if by reason of indecency it is not suitable to be published to a juvenile”<sup>11</sup>.

And section 2(3) provides that “obscenity” and “indecency” “include violence, depravity and repulsiveness”.

112. Section 8 of the Ordinance prescribes a classification hierarchy under which articles may be -

- Class I - neither obscene nor indecent;
- Class II - indecent; or
- Class III - obscene.

Class I articles may be published without restriction. Class II articles must not be published to a juvenile<sup>12</sup>. Publication of Class II articles must comply with the restrictions prescribed in relevant sections in Part IV of the Ordinance. These include the requirements to seal such articles in wrappers and to display a statutory warning notice as prescribed in section 24. Class III articles must not be published. The Ordinance is enforced by the Television and Entertainment Licensing Authority (TELA), Customs and Excise Department and the Police.

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<sup>11</sup> The term “publish” is defined in section 2(4) of the Control of Obscene and Indecent Articles Ordinance (Chapter 390) -

“(4) For the purposes of this Ordinance, other than s.24(1E) and (1F), a person publishes an article if he, whether or not for gain –

(a) distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public;

(b) in the case of an article –

(i) consisting of or containing material to be looked at; or

(ii) that is a sound recording or a film, video-tape, disc or other record of a picture or pictures, shows, plays or projects that article to or for the public or a section of the public.”

Section 2(5) of the Ordinance defines 'article' as including “anything which is intended to be used, either alone or as one of a set, for the purpose of manufacturing or reproducing an article.”

<sup>12</sup> The COIAO defines the term “publish” as including “distribute, circulate, sell, hire, give, shows, plays or projects or lend the article to the public or a section of the public”.

113. The COIAO also provides for the establishment of an Obscene Articles Tribunal. This is a judicial body with exclusive jurisdiction to determine whether an article is obscene, indecent or neither. The Tribunal comprises a presiding magistrate and two or more members of the public selected from a wide spectrum of the community to serve as adjudicators. Submission of articles to the Tribunal is entirely voluntary. But the Secretary for Justice and any public officer authorised by the Chief Secretary for Administration may submit any article to the Tribunal for classification. In determining whether an article is obscene or indecent, a Tribunal shall have regard, among other things, to the standards of morality, decency and propriety that are generally accepted by reasonable members of the community.

#### Content regulation on the Internet

114. The Government's policy is to strike a balance between protecting public morals (and the vulnerable young) and preserving the free flow of information and the freedom of expression. In July 1996, we conducted public consultations to assess the views of both the industry and the community on the need to regulate the content of information transmitted on the Internet. The response was overwhelmingly in support of self-regulation through the development of a Code of Practice by Internet Service Providers. In practical terms, the Government agrees with the industry that it is impossible to monitor the content of the Internet, which transmits vast volumes of information anonymously and at high speed. Accordingly, in October 1997, the Hong Kong Internet Service Providers Association (HKISPA) (with the Government's assistance) adopted a self regulatory Code of Practice that addressed the question of obscene and indecent materials on the Internet in the spirit of the COIAO. A complaint handling mechanism was also

established. In January 1999, TELA conducted a review of these arrangements. Its findings indicated that the self-regulatory regime was effectively and satisfactorily dealing with objectionable web sites and public complaints.

## **E Article 14: Freedom of thought, conscience and religion**

### The Basic Law

115. Article 32 of the Basic Law provides that all Hong Kong residents shall have the freedoms of conscience, religious belief and to participate in religious activities. Article 15 of the Bill of Rights makes similar provision.

### Religious education in school

116. As explained in paragraph 120 of the previous report, children may withdraw from religious education in school with the consent of their parents. The position is unchanged.

## **F Article 15: Freedom of association and of peaceful assembly**

### The Basic Law and the Bill of Rights Ordinance

117. Article 27 of the Basic Law and Articles 17 and 18 of the BORO provides that all Hong Kong residents shall have the freedom of association and of assembly, and the right and freedom to form and join trade unions, and to strike.

118. The Public Order Ordinance (Chapter 245) is the principal legal instrument for the regulation of public meetings and processions. It requires organisers of public meetings and processions, in normal circumstances, to notify the Commissioner of Police of their intention to hold events at least seven days in advance. If the Commissioner objects



to the proposed event, he must indicate his objection within a specified time limit (no less than 48 hours in advance of the event if seven days' notice is given) and explain his reasons for so objecting. If the organisers are aggrieved by the Commissioner's decision, they may appeal to an independent appeal board chaired by a retired judge formed under the Public Order Ordinance. Alternatively, they may seek judicial review. The Ordinance empowers the Commissioner to impose conditions or to prohibit/object to the holding of public meetings and processions on grounds of "national security, public safety, public order (ordre public) and protection of rights and freedom of others if he reasonably considers necessary".

119. In practice, the freedoms of assembly and of association are extensively exercised: between 1 July 1997 and 31 December 2000, there were more than 7,000 public meetings and processions. The Police have exercised their power of objection and prohibition under the Public Order Ordinance (Chapter 245) on only seven occasions: all on grounds of public safety and order and protection of the rights and freedoms of others<sup>13</sup>.

120. The Societies Ordinance (Chapter 151) is the principal legal instrument for the regulation of formation of societies. The Ordinance provides for a registration system to ensure that the Societies Officer (the Commissioner of Police) has sufficient information to determine whether a society should be allowed to operate in Hong Kong. Within one month of their establishment, societies must apply to the Societies Officer for registration or exemption from registration. Between 1 July 1997 and 31 December 2000, more than 4,000 societies were registered or exempted from registration. The Police have not rejected any application for the formation of a society.

### Participation by children in trade unions

121. Article 27 of the Basic Law guarantees that Hong Kong residents shall have the freedom of association and the right and freedom to form and join trade unions. Article 18 of the Bill of Rights specifically provides that a person's right to freedom of association with others includes "the right to form and join trade unions for the protection of his interests".

122. As explained in paragraph 124 of the previous report, the Trade Unions Ordinance (Chapter 332) permits persons under the age of 16 to join registered trade unions but not as voting members or members of the union's executive. Persons aged between 16 and 20 may enjoy all the rights of trade union membership except membership of the executive body.

### **G Article 16: Protection of privacy**

#### Article 30 of the Basic Law and Article 14 of the Bill of Rights Ordinance

123. Article 30 of the Basic Law provides that the freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communications in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences. In addition, Article 14 of the BOR guarantees the protection of privacy, family, home, correspondence, honour and reputation.

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<sup>13</sup> Three of the seven events eventually took place after the organisers modified their plans so as to minimise the likely disturbance to others in the community.

## Personal Data (Privacy) Ordinance (Chapter 486) and the work of the Privacy Commissioner for Personal Data

124. The Personal Data (Privacy) Ordinance (Chapter 486) came into force in December 1996. It protects the privacy of individuals with respect to personal data. The Ordinance covers any data relating directly or indirectly to living individuals, including children, from which it is practicable to ascertain the identity of the individual and which are in a form in which access or processing is practicable. Its enforcement is overseen by the Privacy Commissioner for Personal Data (PCO): an independent statutory body established by the Ordinance.

125. At present, a person who has parental responsibility for a child has the right to access the child's personal data. But, at the time of drafting this report, we were considering whether the parents' right to access such data should be subject to restriction in certain circumstances. Examples of such circumstances include where a child expressly states that data should not be released to its parent(s) or where such release would not be in the interests of the child.

### Privacy of children confined in facilities

126. Residential homes operated by the Social Welfare Department and NGOs respect the privacy of the children in care or custody. The children are generally free to occupy recreational or quiet areas of the facilities during their free time. They also have the right to receive mail without censorship and to receive visitors in private. Where exceptional circumstances warrant the presence of a staff member the child is kept within sight at a distance. For the most part, such circumstances are those where there is a risk to the safety of other children or to the security of the institution. An example would be where a particular resident was

suspected of trying to smuggle drugs or offensive weapons into an institution.

#### Maintaining confidentiality in social welfare

127. The Social Welfare Department and the NGOs that provide welfare services fully comply with professional ethics and codes of practice on confidentiality. They are also bound by the data protection principles set out in the Personal Data (Privacy) Ordinance (Chapter 486) and service quality standards that require service operators to respect the rights of service users, including children to privacy and confidentiality. Thus, personal information that children provide on a confidential basis to the Social Welfare Department and NGOs is fully protected.

128. In the administration of social security schemes, the personal data of applicants, including children, are collected for purposes relating to their applications for assistance. The information is treated in confidence and is not disclosed to third parties without the applicants' consent.

#### Protection against slander and libel

129. Protection against libel and slander is provided for under the Defamation Ordinance (Chapter 21) and the common law. Children are afforded the same protection as adults.

### **H Article 37(a): The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment**

#### Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

130. The Convention Against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment was extended to Hong Kong in December 1992. The Committee Against Torture heard the initial report on the Hong Kong Special Administrative Region (which formed part of China's third under that Convention) in May 2000. The Crimes (Torture) Ordinance (Chapter 427) - enacted in January 1993 - gives effect in domestic law to the torture-related provisions of the Convention. There have been no prosecutions under the Crimes (Torture) Ordinance - and no cases involving the torture of children - since its enactment.

#### Death of a child in custody

131. In 1997, a 14-year old boy committed suicide while in custody in a home operated by the Social Welfare Department. Some commentators have said that the incident was a violation of the Torture Convention and therefore of Article 37(a) of the Convention. For the reasons below, we do not consider that this is warranted<sup>14</sup>.

132. The death of the boy was a tragedy that is deeply regretted. But it was not, as some commentators have suggested, symptomatic of deep-seated, or endemic, failures within the system. Lest this assertion seem complacent, we must explain that it reflects the fact that this was the first time an event of this kind had occurred in any of the Social Welfare Department's correctional homes. Notwithstanding that, the incident came as a severe shock to all concerned and, on the basis of recommendations made by the Coroner's Court (which brought in a verdict of suicide), the Social Welfare Department has put into effect measures for improving the management and operation of the homes and for the better safety of persons detained in them.

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<sup>14</sup> The discussion of this incident is based on that contained in paragraphs 74 to 78 of our supplementary report under the ICCPR, submitted to the UN Human Rights Committee before the hearing of our initial report under that Covenant in November 1999. We have repeated it here because of its relevance to Article 37(a) of the Convention.

133. There are strict guidelines governing the use of segregation in the Social Welfare Department's correctional homes and the periods of segregation to be applied in particular cases. Justices of the Peace inspect all such homes every month. The Social Welfare Department is required to report on any follow-up action taken in the light of such visits.

#### Life imprisonment and abolition of the death penalty

134. The death penalty was abolished in April 1993 with the enactment of the Crimes (Amendment) Ordinance 1993. The death sentence for murder was then replaced by mandatory life imprisonment, under section 2 of the Offences Against the Person Ordinance (Chapter 212). In June 1997, section 2 of the Offences Against the Person Ordinance was further amended to give the court discretion as to whether a person convicted of murder who was under 18 years of age at the time of the offence should be sentenced to imprisonment for life or to imprisonment for a shorter term.

135. Before April 1993, persons who were under the age of 18 when they committed murder would be sentenced to detention for an indeterminate term "at Her Majesty's pleasure" (now "detention at Executive discretion"<sup>15</sup>). Thereafter and until June 1997, persons who were under the age of 18 when they committed murder would be sentenced to life imprisonment. As at 1 July 1997, 15 young murderers were serving life terms. The Chief Executive has since determined their minimum terms. These range from 15 years to 30 years. The progress of their rehabilitation is reviewed every two years by the independent and

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<sup>15</sup> The Long-term Prison Sentences Review Ordinance (Chapter 524).

statutory Long-term Prison Sentences Review Board. The Chief Executive may order a determinate sentence on the Recommendation of the Board.

136. The Court may impose discretionary life sentences on young offenders who have committed murder or other offences that attract the maximum sentence of life imprisonment. In passing such a sentence, the Court must specify a minimum term. Young offenders so convicted are subject to review by the Long-term Prison Sentences Review Board five years after the start of sentence and thereafter once every two years.

#### Prohibition of corporal punishment

137. Corporal punishment is prohibited in schools and in all correctional/residential homes. Discipline in these facilities is fostered by a system of reward and privileges with the emphasis on “positive reinforcement”. Punishments are regulated by the governing legislation and rules of the facilities. They include forfeiture of rewards or privileges, restriction of recreation, imposition of additional tasks, and so forth.

138. Regulation 15 of the Child Care Services Regulations (Chapter 243, subsidiary legislation) prohibits corporal punishment in childcare centres.

## **V. Family environment and alternative care (Articles 5, 18(1), 18(2), 9, 10, 27(4), 20, 21, 11, 19, 39 and 25)**

### **A Article 5: Parental guidance**

139. As explained in paragraph 137 of our previous report, our child care policy is to support and strengthen families to enable them to provide a suitable environment for the physical, emotional and social development of their children. We also aim to assist disadvantaged and vulnerable children who are not adequately looked after by their families. We believe that the family should provide an environment in which physical care, mutual support and emotional security foster the healthy development of children. The primary responsibility for the adequate care of children rests with parents.

140. This policy was reaffirmed in the Chief Executive's 2000 Policy Address -

“...the objectives of the family and child welfare services are to preserve and strengthen the family as a unit, to develop caring inter-personal relationships, to enable individuals and family members to prevent personal and family problems and to deal with them when they arise, and to provide for needs which cannot be met from within the family.”

#### Family life education

141. This is addressed in paragraphs 237 to 238 below under Section VJ, in connection with Article 39.

#### Health care

142. Social workers provide parents with personal counselling and family life education to help them understand their roles and



responsibilities in relation to their children's welfare and health. The views of children are sought on matters relating to their health and welfare in accordance with their age and maturity<sup>1</sup>. This is an integral part of the decision-making process.

### Guardianship of Minors Ordinance

143. When the Director of Social Welfare is appointed as the legal guardian or custodian of any child under the Guardianship of Minors Ordinance (Chapter 13), she, or her authorised officer, assumes the parental role for the child. The Ordinance requires the Director to provide guidance and support, and to arrange services and assistance to meet the developmental needs of the child. Individual care and long term welfare plans are formulated in consultation with the child and its parents or relatives. In the event that the child cannot continue to live in its natural home, substitute care - such as foster care - is arranged to provide a home-like environment for the healthy development of the child. The emphasis is on long-term planning. Social welfare officers report to the court on any significant changes in regard to the child.

### Children in care

144. Families with children in foster care, small group homes or institutional care are involved in the formulation of their children's welfare plans and in the conduct of their case reviews. Family programmes are organised to promote parent-child relationships and communication. Parents and family members are encouraged to maintain close contact with the children with the ultimate aim of family reunion. Counselling and family life education programmes serve to develop the parents' child care skills.

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<sup>1</sup> See paragraph 65 onwards, under Section IIID, in relation to Article 12.

## **B Article 18 (paragraphs 1 and 2): Parental responsibilities**

### White Paper on Social Welfare into the 1990s and Beyond

145. This is addressed in paragraph 139 above.

### Promotion of joint responsibility of parents in child rearing and family counselling services

#### Family life education: promoting joint responsibility for child rearing

146. The Social Welfare Department provides family life education to equip parents and parents-to-be with the knowledge, skills and attitudes necessary for responsible parenthood. Joint responsibility is a key element of the family life programmes. Some 2,855 programmes were organised in 1999-2000, attended by 124,791 participants. These programmes are complemented by the -

(a) **Family Services Centres:** social workers in the 65 Family Services Centres provide counselling and assistance to parents to enhance their awareness of parental responsibilities and improve their child rearing skills. In handling relationship problem cases or families at risk of breakdown, social workers provide counselling to help parents realise their joint responsibility in child rearing and provide them supportive services and other forms of assistance in preserving the family under the parents' joint effort;

(b) **Family Activity and Resource Centre:** provides professional support and guidance, educational programmes, and so forth on a drop-in basis; and

(c) **Family Care Demonstration and Resource Centre:** provides support programmes through live demonstration and group training in a real home environment.

These programmes all teach and emphasise parenting skills and the importance of joint responsibility.

Child care assistance for parents (the problem of 'home alone children')

147. Several commentators have expressed concern about 'home alone children': a popular term for children whose parents - for various reasons - leave them at home without supervision. The Government shares those concerns and has measures in place to assist parents who cannot provide constant supervision for their children. Such assistance takes several forms -

- (a) **the child care centre service:** this is a service for parents who need child care assistance during the day. The centres provide a safe and nurturing environment for children below six years of age. They also arrange activities for parents that develop child care skills and a better understanding of the developmental needs of young children, and promote parent-child relationships. Participants are encouraged to form parents associations that then work with the child care centres for the best interests of children. The centres provided over 52,000 places in 2000-2001;
- (b) **the occasional child care service:** this service is provided in child care centres on a sessional, half-day or full-day basis. Some 726 occasional child care places were provided in 2000-2001;
- (c) **the extended hours child care service:** like the occasional child care service, the extended hours service is provided by the child care centres. It meets the needs of parents who have to work long hours or attend training programmes. There were

1,610 extended hours places, mostly in districts with high concentrations of working parents, single-parents and new arrivals. A special grant from the Comprehensive Social Security Assistance Scheme is available for recipients who need the service in order to take up employment or undergo retraining; and

- (d) **the after-school care programme:** this provides half-day care services for children aged six to 12 whose parents cannot provide care for them in after-school hours. The programmes are run by NGOs that receive Government subsidy for the purpose. Activities include homework guidance, meal services, parent-guidance and education, skill learning, and other so forth. Currently, there are 6,000 such places. The programmes help parents - particularly CSSA recipients, single-parents, low income families, and new arrivals - join the work force or attend re-training courses with a view to becoming self-reliant. Depending on their personal circumstances, CSSA recipients and low-income families may obtain full or half-fee relief.

148. The services for children under the age of 6 are governed by the Child Care Services Ordinance (Chapter 243) and Regulations and under the supervision of the Social Welfare Department's Child Care Centres Advisory Inspectorate. The Ordinance and Regulations provide for a system of registration, inspection and control for child care centres and for mutual help child care centres. They also regulate childminding activities by prohibiting unsuitable persons from acting as childminders. The Advisory Inspectorate visits the centres and offers advice as necessary in the interests of the safety and well-being of the children in

their care.

### Family life education

149. Family life education is a form of community education designed to strengthen family relationships and functioning. The principal targets are parents and parents-to-be. The programme is delivered by 79 family life education workers and seeks to foster the attitudes, knowledge and skills appropriate to good parenting. Topics include preparation for parenthood, understanding the developmental characteristics of infants and young children, effective parenting, parent-child relationship, parental stress, and management of children behaviour.

### Parent education

150. Parent education is a subset of family life education that focuses on developing parents' ability to guide their children, and on fostering positive parent-child relationships for the healthy growth and development of the children. It is provided jointly and interactively by Government departments, NGOs and professionals (social workers, teachers, nurses, student guidance officers, and Parent-Teacher Associations).

### Residential child care services

151. Residential child care services are provided for children and young persons who cannot adequately be cared for by their families for such reasons as illness, death, desertion, the child's own behaviour, and so forth. The underlying principle is that - particularly in the case of younger children - a family setting is preferred to an institutional one. Thus, non-institutional care in the form of foster care and small group homes is the normal option of choice. As at December 2000, a total of 1,140 children were in non-institutional residential care. See Annex 7.

## **Home help service**

152. The home help service helps parents with difficulties to take care of their families and children. Services include child-minding, personal care, meals, and household management. Currently, there are 164 home help teams serving families and persons in need.

## Family Services Centres

153. These help parents to understand their responsibilities as parents and to foster their child-rearing skills. Services include counselling, tangible assistance and referral to child care or other community support. Currently, there are 728 social workers in 65 Family Services Centres.

## Family Activity and Resource Centres

154. There are 22 such Centres. Their role is to promote better communication and the relationships between family members and to identify family problems that may require professional intervention. To that end, their services include drop-in facilities, professional support and guidance, educational programmes, family activities, and mutual help groups, and information on family life and community resources.

## Family Care Demonstration and Resource Centres

155. These provide support programmes that help parents to acquire or improve their child rearing skills through live demonstrations and group training in a real home environment.

## Community centres

156. These are focal points where persons of all ages meet and interact with one another. The aim is to promote cohesion within the community and encourage the participation of individuals in solving community problems. They give special attention to those with special

needs, such as single parent families, new arrivals, low-income families, and families receiving CSSA. The Centres help such families to acquire problem-solving and stress management skills, and to develop mutual support networks.

#### Services for families with disabled children

157. These services help families with disabled children to cope with the special needs and challenges that they face. Principally, they comprise the general family support services such as counselling, home help, family aid, social security, and Parents Resource Centres for Disabled Persons. The objectives of such Centres are to foster -

- (a) self-support and mutual help within and among families with disabled members;
- (b) knowledge and acceptance – within the family circle - of their disabled relatives;
- (c) the ability of families to cope with their emotional stresses and other difficulties in nurturing persons with disabilities; and
- (e) public understanding and acceptance of disabled persons and their families.

The Centres stock books, magazines, educational toys and other information of value to children with disabilities.

### **C Article 9: Separation from parents**

#### Protection of children's interests in cases of separation

##### Divorce and separation

158. Social workers in Family Services Centres, the Family Mediation Service and the Social Welfare Department's Child Custody Services Unit provide counselling, assistance and advice on matters

relating to children's interests in cases of divorce and separation. The Family Services Centres specialise in resolving marital divorce and generating child care arrangements. The Family Mediation Service provides support and practical assistance to help divorcing or separating couples to reach agreement on the arrangements for the care of their children and the resolution of financial matters.

159. Where couples in divorce proceedings are in dispute over the custody of their children, the Child Custody Services Unit provides social enquiry reports to the courts and makes recommendations in regard to custody and access arrangements. The social workers making those recommendations regard the interests and welfare of the children as paramount. The recommendations themselves take into consideration the views of the children and parties concerned. The courts may order the Unit to supervise the access arrangements in order to protect the interests of the child. Social workers then help the divorced couple and their children to adjust to the divorce, and guide the couple in co-parenting so that the interests of the child will not be jeopardised.

160. Some commentators consider that family mediators should assess the feasibility of including the children in at least some mediation sessions and encourage parents to invite their children to do so. In principle, we accept there could be merit in involving children in some mediation sessions, provided that they were of appropriate age and maturity. But that acceptance is subject to certain caveats. The mediation process is non-adversarial. But the sessions can be the scene of - sometimes emotional - arguments and inter-personal conflict, particularly where the parties have not fully resolved their feelings. Direct exposure to such conflicts between their parents - which are impossible to predict - could obviously be traumatic for the children. Involving them in the sessions would therefore require very careful



handling with regard to the individuals concerned and to the circumstances of each case. However, the principle of involving children of appropriate age and maturity in some suitable mediation sessions is agreeable. In any case, the views of child are solicited when the Court refers the case to the Child Custody Services Unit for a social enquiry report or in some cases, the child's view will be ascertained directly by the Judge during the proceedings.

### Proceedings

161. The Guardianship of Minors Ordinance (Chapter 13) and the Protection of Children and Juveniles Ordinance (Chapter 213) empower the Director of Social Welfare to apply to the courts for care or supervision orders or emergency protection orders. In emergencies, children may be removed to places of refuge. The views of all parties concerned are ascertained during investigation, intervention, and in the preparation of reports to the courts. The Official Solicitor may be appointed guardian ad litem to act on behalf of the child during the proceedings. The courts invite parents and children to express their views during the court hearings.

162. This topic is discussed in paragraphs 53 to 57 above, under Section IIIB, in relation to Article 3. Those paragraphs also address concerns expressed by commentators who consider the existing procedures to be degrading and potentially damaging to at least some of the children involved.

### Right of the child to maintain regular contact with both parents in situations of separation

163. In child custody cases, social workers of the Child Custody Services Unit record in a social investigation report the views of all parties concerned, including those of the child, having regard to his or her

age, maturity and circumstances. Social workers treat the interests of the child as paramount and will make recommendations regarding access arrangement for the non-custodial parent, so that the child will maintain the right to have regular contact with both parents. The courts may make orders on access arrangement to be supervised by social workers of the Child Custody Services Unit. Social workers help children placed in out-of-home centres - but whose permanent plan provides for family reunion - to maintain regular contact with both parents. This is effected through visits, home leaves and counselling on family relationships.

#### Representation of children in care and protection cases

164. Commentators have said that, to avoid conflicts of interest, children involved in care and protection cases should be represented separately from their parents. They also consider that such representation should be provided as of right. At present, such provision is discretionary and it has been argued that this is inconsistent with Article 37(d) of the Convention. Taking the two points seriatim -

- (a) **separate representation:** normally, this is considered unnecessary because - in most cases - there is no conflict of interest between the children and their parents. We are taking active steps to provide separate representation to children placed in a place of refuge under care or protection proceedings, irrespective of whether there is a conflict of interest between the children and their parents; and
- (b) **provision of representation as of right:** our view has been that Article 37 is concerned with criminal proceedings. However, recognising that children placed in a place of refuge under care or protection proceedings are deprived of their liberty, the "as of right" requirement will be built into our system to provide separate representation for these children.

Adequate measures will be put in place to address the issue with a view to the requirements of Article 37(d).

### Detention of parents

165. In paragraph 160 of the previous report, we explained that where a mother is detained in prison, the Commissioner of Correctional Services may permit any of her children to accompany her until she has completed her sentence or the child attains the age of three years old, whichever is the earlier. While in prison, the mother and child stay in a special ward similar to a maternity ward. Our policy is to encourage the father or relatives of the child of the inmate to bring up the child in open society. Only if a proper guardian is not available to take care of the child in this way would the child be detained with the mother. In such circumstances, the Commissioner of Correctional Services arranges for either the father or a relative who can take care of the child properly to take the child out occasionally. The authorities provide milk powder, baby food and nappies for infants in the institutions. The children's diets comply with nutrition standards approved by the Director of Health and the United Nations Food and Agriculture Organisations. The aim of these arrangements is to preserve and strengthen the mother-child relationship.

166. We recognise that children need maternal care during their most tender years (particularly those under seven) and that contact with their children helps to prepare imprisoned mothers for future reintegration into society. With that in view, a special programme - that operates in three institutions for female prisoners - permits young children to spend half-day open sessions (which include direct physical contact with their mothers in addition to those provided for

under the Prison Rules<sup>2</sup>. These take place in specially designed facilities within the prisons. The number of institutions with such programme has been limited because the programme requires additional staff and special facilities, such as playrooms. But active consideration is being given to extending the programme to male institutions.

167. Commentators say that children aged over six also need direct contact with their parents. This issue is currently under examination, as regards the possibility of extending the arrangements to male institutions. Factors to be considered in the review process will be the needs of the prisoners and their children and the concomitant questions of security maintenance and resource requirements<sup>3</sup>.

#### **D Article 10: Family unification**

168. The Hong Kong Bill of Rights guarantees the liberty of movement of everyone lawfully within Hong Kong and specifically guarantees the freedom of everyone to leave Hong Kong. Certain exceptions are allowed, which are the same as those permitted by Article 10 of the Convention. In relation to a child, these could, for example, include restrictions on public health grounds or because of a child custody order restraining a child from leaving Hong Kong without the prior consent of the parent without the right of custody.

#### **Immigration from Mainland China for family reunion**

169. Persons migrating to the HKSAR from Mainland China for permanent settlement do so in accordance with an established programme

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<sup>2</sup> Rule 48 provides that prisoners may receive visits from friends and relatives twice a month, subject to such restrictions as may be imposed for the maintenance of discipline and order and for the prevention of crime. Additional visits may also be arranged for any special reason and there are no restrictions on the age or sex of the prisoners or their visitors. This enables imprisoned mothers to receive visits from older children.

<sup>3</sup> These would include staffing levels and the availability of suitable venues.

of quota-based immigration designed to foster family reunification at a rate that Hong Kong's economic and social infrastructure can absorb without excessive strain. For many years, the quota was 75 persons a day, or 27,000 a year. That quota has steadily increased and the current rate is 150 a day, or about 54,000 a year: the population of a small European town.

170. Traditionally, persons entering for settlement in this way were gradually absorbed into the mainstream population after a period of adjustment that varied between individuals. Indeed, a substantial percentage of the present day population comprises persons who entered in this way in the decades since the Second World War and their Hong Kong-born descendants. However, the increased quota and the entry of those with entitlement under Article 24 of the Basic Law have substantially increased the rate of entry. There are now a much greater number of new residents - mostly mothers and children - who are largely unfamiliar with Hong Kong's way of life. Like immigrants everywhere, they share certain difficulties that people commonly encounter when adapting to life in a new environment. Perhaps because of their position in society, they are sometimes treated unfairly and their situation has attracted considerable discussion and public concern.

171. In paragraph 26 of its concluding observations, the Committee recommended further measures be taken to address the issue of illegal immigrant children from Mainland China, especially with respect to the difficulties arising from families split between Hong Kong and Mainland China. Its view was that, in the light of the best interests of the child, action should be taken on an urgent basis to reduce the waiting period for family reunification, to raise the quota of permits and to consider other measures to deal with the problems that will arise in the future. Some

local commentators have echoed that view.

172. As we explained to the Human Rights Committee - in paragraphs 417 to 425 of our report under the ICCPR<sup>4</sup> (in relation to Article 26 of that Covenant) - Mainland China is Hong Kong's principal source of immigrants. Over 90% come to the SAR for family reunion. Entry is controlled by the quota system described in paragraph 169 above. But the extent of demand is such that not all members of a family can obtain the necessary exit permits at the same time from the Mainland authorities. This has led to the problem of 'split-families' which is largely the result of cross-boundary marriages between Hong Kong men and Mainland women, who are, of course, subject to the quota system and must therefore wait in the immigration queue. The subsequent birth of children increases the numbers so waiting.

173. To expedite entry for family reunion, a special sub-quota of 48 places has been reserved (within the overall daily quota of 150) to enable Mainland mothers to take with them a child aged under 14 when they enter Hong Kong for settlement. Nevertheless, some families continue to arrange for their children to enter Hong Kong illegally. When discovered, they are removed to the Mainland: a practice that some commentators consider inhumane. But removal remains necessary both in justice to those waiting their turn in the queue and in order to preserve an orderly and manageable rate of entry that our social infrastructure (welfare services, schools, housing, and so forth) can reasonably sustain. The existing in-take rate is hardly ungenerous, given the fact that Hong Kong is one of the most densely populated regions in the world with nearly seven million people living in an area of 1,100 square kilometres. For these reasons, there is no plan to relax the quota.

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<sup>4</sup> Thus updating paragraphs 22 and 23 of the updating report.

174. We have also devised measures to manage and contain the additional demand engendered by Article 24(2)(3) of the Basic Law<sup>5</sup>. That provision accords right of abode in the HKSAR to children of Chinese nationality born outside Hong Kong who - at the time of their birth - had at least one parent who was a Hong Kong permanent resident of Chinese nationality. (There had been disputes over the right of abode of residents from the Mainland, details are at Annex 8). As at 1 July 1997, an estimated 66,000 Mainland residents qualified for the right of abode under the provision. To expedite their entry, the relevant sub-quota was increased from 45 to 60 a day from January 1998. Between 1 July 1997 (when the Basic Law came into effect) and 31 December 2000, about 95,000 eligible children entered Hong Kong for settlement.

175. The increased rate of migration has substantially increased the numbers of new residents. Between 1 July 1995 (when the daily quota was increased) and 31 December 1999, some 246,500 people from the Mainland have settled in Hong Kong. As we advised the Committee on the Elimination of Racial Discrimination (CERD)<sup>6</sup>, many (some 20%) cannot speak either Cantonese or English and so have difficulty in communicating with their neighbours, co-workers and schoolmates. The children have been educated in a different pedagogic tradition and are unfamiliar with the Hong Kong curricula. Adults often find that their qualifications are not recognised in Hong Kong. Together, these things can result in disorientation, ‘culture shock’ and other difficulties such as finding work or school places, particularly on first arrival.

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<sup>5</sup> Article 24(2)(3) of the Basic Law is reflected in Schedule 1 of the Immigration Ordinance, which stipulates that a person is a permanent resident if he/she is of Chinese nationality and born outside Hong Kong to a parent who is a permanent resident and who had the right of abode in Hong Kong at the time of the birth of the person.

<sup>6</sup> Paragraph 44 of our initial report under the ICERD, in relation to Article 2 of that Convention.

176. Other difficulties arise from family circumstances. The (Hong Kong based) husbands are often less well off than their mainland based families had expected. Their living conditions may have been adequate when they were single. But, often, they are less than adequate for families with children. These difficulties, compounded by those described above, have in some cases led to family breakdown, domestic violence, and spouse/child abuse.

177. As we informed the CERD, both NGOs and Government are acutely aware of these matters and, together, have taken active steps to address them. New arrivals have access to the full range of welfare services, including counselling, day and residential child care services, financial assistance, and housing assistance where compassionate grounds apply. And as explained in paragraph 97 of the United Kingdom's third report on Hong Kong under the ICESCR, Government subvents the Hong Kong Branch of the International Social Service (ISS), to provide post-migration support, including information and enquiry services; orientation sessions; short-term counselling and referral services. The ISS subvention is a long-standing arrangement (it began in 1972). But since 1996, following the decision to increase the rate of immigration, Government has provided it with additional resources to strengthen its post-migration services.

178. With the co-operation of the Guangdong Provincial Government and funding from the Hong Kong Jockey Club, the ISS operates a pre-migration service in Guangzhou<sup>7</sup>. The programme comprises casework and group counselling, orientation programmes, English and computer classes and other social activities. It targets families and their children who will come to Hong Kong within three

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<sup>7</sup> Guangzhou is the provincial capital of Guangdong, Hong Kong's neighbouring province.



years so that they can more readily assimilate on arrival. Additional resources will be provided to set up four pre-migration centres on the Mainland.

#### Services provided to newly arrived children

179. Like other Hong Kong residents, newly arrived children, have access to the full range of social welfare services. These include family services, financial assistance, child care, and other community support services. Four post-migration centres - run by Government-subsidised NGOs - provide dedicated services to facilitate their early integration into the local community. Four new centres will be opened in 2001 to meet increasing demand. Additionally, there are help desks to provide information to new arrivals upon first arrival and when they apply for Hong Kong identity cards. They are located at the Lo Wu Control Point - where Mainlanders enter Hong Kong for settlement - and in the Registration of Persons Office of the Immigration Department.

180. Once settled in Hong Kong, new arrivals have access to outreach services, such as orientation programmes, language classes, school placement, and family and parent education programmes. The Government monitors these services to ensure that they remain useful, introducing new services where necessary.

#### **E Article 27 (paragraph 4): Recovery of maintenance for the child**

##### Maintenance Orders

181. As explained in paragraph 169 of our previous report, the Matrimonial Proceedings and Property Ordinance (Chapter 192), the Separation and Maintenance Orders Ordinance (Chapter 16), and the

Guardianship of Minors Ordinance (Chapter 13) provide for maintenance orders to be made by the court in cases of divorce, separation and wilful neglect by a party to a marriage. Such an order may require a spouse or ex-spouse to provide proper maintenance for the other spouse and any children of the family. A child of the family is defined as a child of both parties to the marriage and any other child who is treated by both as a child of the family. In deciding the terms of a maintenance order, the court takes into account all the circumstances of the case, including the relative financial needs, resources and earning capacity of all parties concerned, the duration of the marriage, and the standard of living enjoyed by the family before the breakdown of the marriage. Consideration is also taken of any physical or mental disability of children of the marriage and of their education and training.

#### Child Custody Services Unit

182. The traumas engendered by divorce and subsequent custody disputes require careful management to protect the best interests of the child. Social workers of the Social Welfare Department's Child Custody Services Unit provide counselling and tangible assistance to assist divorcing couples and their children to tackle problems arising from the divorce or to assist in reconciliation if the couples so desire. Statutory supervision to protect the best interests of the child will be provided as directed by the court. Social workers in the 65 family services centres and 5 single parent centres also advise and support the single parents in the course of recovery of maintenance.

#### Enforcement of Maintenance Orders

183. A person can apply for a court order to enforce a maintenance order if the person liable under the order fails to pay. In 1997, we amended the ordinances in paragraph 181 in order to address the

difficulties that divorcees, particularly women, experience in collecting maintenance payments. The effect of those amendments is that, now -

- (a) where a maintenance payer has defaulted in payment without reasonable cause, the court may issue an Attachment of Income Order. Such an order requires the payer's income source - for example, his or her employer - to deduct prescribed amounts from the payer's income and pay the amounts so deducted to the payee;
- (b) maintenance payers must notify their payees of any change of address within 14 days of the change;
- (c) where necessary, the court is empowered to order the sale of matrimonial property to ensure the equitable division of the property; and
- (d) the court is empowered to order the payment of maintenance for the benefit of children aged 18 or above if they are in full-time education or have special needs.

184. We have continued our efforts to address the difficulties that maintenance recipients experience. In May 2000, a Government Working Group - formed in 1999 to review the law and administrative measures affecting persons eligible for maintenance - recommended -

- (a) relaxing the circumstances in which Attachment of Income Orders are issued;
- (b) relaxing the requirement that judgement summonses for the recovery of maintenance arrears must be served personally on the maintenance payers;
- (c) enabling the court to order payment of maintenance arrears accrued up to the date of the court hearing, instead of - at

present - up to the date of application for judgement summonses;

- (d) providing court Bailiffs to serve judgement summonses for maintenance payees who are not legally represented;
- (e) that the courts exercise their powers to order that maintenance specified in maintenance orders be paid into court (that is, through the court to the payee) in appropriate cases;
- (f) empowering the court to impose a surcharge against defaulting maintenance payers;
- (g) informing NGOs and professional bodies that - where maintenance payers fail to notify payees of changes of address - the fact can be reported to the police station nearest to the payer's last known address;
- (h) requesting the Law Society of Hong Kong to inform its members that they can, with the use of a standard letter, request relevant Government departments to search their records for addresses of maintenance payers who are to be sued for arrears;
- (i) streamlining the procedures of applications for CSSA and legal aid;
- (j) that the Social Welfare Department should streamline its procedures for referring single-parent families for counselling and family welfare services; and
- (k) educating the public on the subject of maintenance.

185. The Government is in the process of implementing all the recommendations that can be effected administratively. Recommendation (j) has been implemented. The Social Welfare

Department has since May 2000 streamlined the referral procedures between social security field units and family services centres by implementing two standardised referral forms in such a way that all the required information is contained in the referral form, so that single parent clients need not repeat their plight of single parenthood to different officers of the department. Recommendations (a), (b), (c) and (f) entailed amending legislation. Recommendation (a) has been enacted into law<sup>8</sup>. We plan to implement recommendations (b) and (c) by amending the existing subsidiary legislation in the first half of 2002. We are giving further consideration to recommendation (f) in the light of comments made by the Bar Association and the Law Society.

186. The Maintenance Orders (Reciprocal Enforcement) Ordinance (Chapter 188) provides for the recovery of maintenance by persons in Hong Kong from persons in reciprocating countries. The Chief Executive is vested with the power to designate a country or territory as a 'reciprocating country' for the purposes of the Ordinance if he is satisfied that similar benefits will, in that country or territory, be applied to orders made by the courts of Hong Kong.

## **F Article 20: Protection of children deprived of a family**

### Residential child care services

#### General

187. The Social Welfare Department's residential homes provide care for children. The homes are governed by statute, supplemented by manuals on procedure and operational guidelines. All institutions

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<sup>8</sup> Attachment of Income Order (Amendment) Ordinance, enacted in July 2001, outside the period of this report. The plan is for the amendment to commence operation after the Chief Justice has made the necessary court rules, which must then pass through a 'negative vetting' procedure by the Legislative Council.

observe Government-prescribed standards of fire safety, health and sanitation. Their staffing is determined by manpower planning standards prescribed by the Social Welfare Department. Justices of the Peace regularly visit them to ensure that the residents are properly cared for and that the institutions are properly run. The Justices inquire into the operation and management of the institutions and receive comments and complaints from the residents. Their reports are forwarded to the Government for necessary action. The children and their parents or guardians are clearly informed of the complaints procedures in the course of arrival procedures. Further details are provided in the following paragraphs.

#### Foster care

188. The foster care service provides placements for children aged under 18 years who are in need of care in a stable family with persons serving as substitute parents. The care arrangement continues until the child returns to its natural family, joins an adoptive home, or lives independently. If family reunion is the permanent plan, arrangements are made to facilitate close contact with their parents and thence restoration to their homes. Foster care is also available for children with mild mental handicap.

189. Before a child is placed into their care, foster parents are assessed and approved by the Social Welfare Department's Central Foster Care Unit. Foster care workers supervise the foster home throughout the period of placement. The Social Welfare Department and foster care agencies organise orientation briefings and both pre and in-service training to ensure that foster homes provide the best possible care. There are regular case reviews, discussions and visits to monitor the services those homes provide. Emergency foster care service is

available for children who need urgent out-of-home care in unforeseen circumstances. Currently, there are 580 foster care places.

#### Small group homes

190. Small group homes provide home-like residential care for groups of eight children aged between four and 18 years and who are in need of out-of-home care. The children are under the care of a married couple, working as house-parents. The house-parents are assessed according to their maturity, personality, child care experience and educational background. They receive training from the Social Welfare Department and the support of social workers, who provide advice and guidance on the care and well-being of the children. The social workers also work directly with the children if there are problems requiring intervention.

191. The children attend school in the local community. Arrangements are made for them to maintain close contact with their parents or guardians. The aim is to facilitate future family reunion, if home restoration is the permanent plan. As at December 2000, there were 113 small group homes, with a total of 774 children in their care. In 24 of the homes, each group of children included one child with mild mental handicap.

#### Residential Special Child Care Centres

192. Details of the residential special child care centres are discussed in paragraph 293(b) below, under Section VID, in relation to Article 23.

#### Residential crèches and nurseries

193. Two residential crèches and two residential nurseries provide care for children under the age of six who are in need of residential care. Such children may have been abandoned, orphaned, abused or neglected.

Or their parents may have died or be undergoing such crises as illness, drug abuse, or imprisonment. The service has to comply with the standards prescribed in the Child Care Services Ordinance and Regulations (Chapter 243) and is under the supervision of the Social Welfare Department's Child Care Centres Advisory Inspectorate. There were two residential crèches and two residential nurseries of 292 places as at the end of 2000.

#### Children's homes

194. These accommodate children and young persons aged between six and 21 who are undergoing family crises, or having behavioural or emotional problems, and are considered to be able to benefit from a structured group living environment. The residents are looked after by house-parents in small group living units, with relatively structured home routines. They attend schools in the community, and training is provided in the homes through small group programmes. As at 31 December 2000, 292 children were accommodated in five such homes.

#### Boys' and girls' homes

195. The seven boys' homes and four girls' homes provide residential care services for children or young persons aged between seven and 21, who -

- (a) have difficult behavioural or emotional problems, and who may be under the influence of undesirable peers; or
- (b) have relationship problems with their families and require a period of group living experience away from them.

As at 31 December 2000, some 705 children and young persons were in the care of such homes. Some of the homes provide schools for social development within the premises.



### Boys' and girls' hostels

196. These hostels provide residential care for children and young persons aged between 14 and 21 who are either working or studying and need a period of out-of-home care due to family problems. Some may have been discharged from other residential child care units but are unable to return home because of their own behavioural problems, relationship or other problems with their families, or they have no families to whom they can turn. As at 31 December 2000, 67 young persons were accommodated in such hostels<sup>9</sup>.

### The child's needs

197. Before children are placed out-of-home, the Social Welfare Department and NGOs solicit the views of both the children in question and their parents. Preference is normally given to placement in non-institutional services, such as foster care or small group homes, particularly in the case of sub-teen aged children. Particular consideration is given to the child's needs, taking due account of its ethnic, religious, cultural and linguistic background. Although some residential units are operated by religious bodies, the emphasis on religion is not pronounced and the children are free to practise the religion of their choice.

### Profile of children placed in different types of residential care

198. Annex 9 profiles the number of children in residential care.

### Safety and health standards of child care facilities

199. Child care facilities must take all steps to ensure a safe and healthy environment for the children in their charge. To that end, the

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<sup>9</sup> There is one Boy's Hostel and three Girls' Hostels.

Child Care Services Ordinance (Chapter 243) and Regulations set standards and require all child care centres to obtain certification of structural and fire safety, and of the safety of their electrical and gas installations. The centres must also comply with the Social Welfare Department's requirements in regard to their daily programme, dietary provision, staff qualifications, and physical capacity. The Fire Services, Buildings and Social Welfare departments will regularly inspect the centres to ensure that they comply to these standards.

#### Report by the Human Rights Monitor

200. In mid-2001, the Hong Kong Human Rights Monitor - a respected NGO - published a report that was critical of some of the standards and practices in the homes run by the Social Welfare Department, particularly the boys' and girls' homes described above. Strictly speaking, the publication date was outside the 'cut-off' date for the present report (31 December 2000) report. But we feel obliged to refer to it because its subject matter pertains so closely to the objectives of the Convention. Both the Monitor's report and our response to it were too extensive to be included here, even as annexes.

201. In essence, however, we accepted some of the Monitor's comments and suggestions and have either taken - or are taking - action to address them. In other cases, we disagreed with the Monitor's findings for reasons that we explained candidly and in detail in our response. The resulting exchange of views between Government and NGOs was, we believe, a useful and healthy dialogue that has been a valuable contribution to the aim that they and we share, of furthering the best interests of children in care.

## **G Article 21: Adoption**

### Overview

202. As explained in paragraph 187 of our previous report, adoption in Hong Kong is governed by the Adoption Ordinance (Chapter 290). The Adoption Unit of the Social Welfare Department is the only body authorised to administer adoptions in Hong Kong (that is, there are no authorised private adoption agencies). Local applicants are assessed according to publicised criteria and undergo a 'home study' by the Social Welfare Department. Suitable couple are matched to a child with due regard to the child's needs and to the strengths and preferences of the prospective adopters. If matching is successful, the child is placed into the adoptive home under the close supervision of an adoption worker for at least six months. In 2000-01, 166 children were placed into local adoptive homes. Among them, 114 involved the adoption of SWD wards and 52 were private adoption cases, which usually entail the adoption of a child by its step-parents or relatives. Private adopters undergo the assessment process and legal proceedings described above.

### Birth parents' consent

203. The position remains essentially as explained in paragraph 188 of our previous report. That is, where the adoption of a child who is not an orphan is being considered, the birth parent(s), if known, are given intensive counselling to help them formulate the best welfare plan for the child. If reunion with the birth parent(s) is in the best interest of the child, the family receives support services. If adoption is assessed to be the best welfare plan, the necessary arrangements are made as early as possible so that the child can be cared for in a permanent home. Once an adoption order is granted, the birth parents relinquish their parental rights, duties, and legal obligations, and cannot revoke their decision to

relinquish the child.

204. The Adoption Ordinance empowers the courts to dispense with parental consent if they -

- (a) have abandoned, neglected or persistently ill-treated their children; or
- (b) have persistently neglected or refused to contribute to their children's maintenance; or
- (c) cannot be found or are incapable of giving consent; or
- (d) have unreasonably withheld consent.

The practice in such cases is for the Director of Social Welfare to act as the legal guardian of the children or for the children to be made wards of court who are placed under the care of the Director of Social Welfare.

The Director would then -

- (a) apply to the Court for orders dispensing the parents' consent for adoption and declaring that the children are free for adoption; and
- (b) seek suitable adoptive parents, making provisional placements for the children pending the issue of freeing orders or the determination of any adoption application.

#### Interests of the adopted child

205. As explained in paragraphs 189 to 191 of our previous report, the Adoption Ordinance provides for the appointment of a guardian ad litem, usually an officer of the Social Welfare Department (SWD), to represent a child's interests in adoption proceedings. The duties of the guardian ad litem are to investigate all circumstances related to the adoption and to make a report to the court for that purpose in order to

safeguard the interests of the child. Concern has been expressed about the fact that officers of the Social Welfare Department act in this capacity when the Department is also the authorising body for adoption. But we see no conflict between the two roles. The Department is the authorised body for adoptions and the appointment of its staff as guardians ad litem is wholly consistent with the principle of protecting and promoting the best interests of the child. Before granting an adoption order, the courts carefully examine every application to ensure that both adoption as such and the particular adoption application is in the child's best interests. Where necessary, provisions in the Official Solicitor Ordinance (Chapter 416) are invoked to provide separate representation for the child.

#### Review of the Adoption Ordinance

206. As explained in paragraph 192 of the previous report, a working group convened by the Secretary for Health and Welfare was then reviewing the Adoption Ordinance with a view to ensuring that our adoption practices complied with the Convention. In the course of its work, the group considered ideas put forward by NGOs, the legal profession, academics, birth and adoptive parents, and other interested parties. This led to the formulation of proposals amending the Ordinance in the ways described in Annex 10. Amending legislation is under preparation.

#### Adoption of local children by families overseas

207. In principle, it considered that the interests of children who are to be adopted are best served by placement within their 'natural' cultural context. But we recognise that children with special needs may be difficult to place locally and, with their interests in mind, there are procedures for placing them with families overseas. In this context, 'children with special needs' are those with disabilities, health problems,

older children, or from families with complex backgrounds<sup>10</sup>. The criteria and procedures are similar to adoption by local families and the aim is protection of the child's best interests. Essentially –

- (a) two non-profit-making NGOs with extensive approved agencies overseas - the International Social Service (Hong Kong Branch) and Mother's Choice - help the Social Welfare Department to find suitable overseas adoption placements;
- (b) approved adoption agencies in the overseas country conduct a comprehensive assessment of the suitability of the prospective adopters and of the ability of the overseas community to meet the special needs of the child;
- (c) the Social Welfare Department assesses the 'match' between the child and its prospective adopters. If the Department approves the adoption in principle, it then applies to the Court of First Instance to make the child a Ward of Court and for permission for the child to leave Hong Kong for adoption overseas; and
- (d) upon approval of the placement, the Department authorises the overseas authorities (or an approved adoption agency) to act as interim guardians for the child in the overseas country until an adoption order is granted by the courts of that jurisdiction.

It must be emphasised that overseas adoptions are uncommon: only 27 children were so placed in 2000-01.

#### Adoption of overseas children by Hong Kong residents

208. As explained in paragraph 195 of our previous report, children

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<sup>10</sup> Such families include, for example, single parents, drug addicts, persons with mental illness, persons with a criminal background, and so forth. 'Complexity' often entails more than one of these conditions.

adopted from overseas by Hong Kong residents are admitted to join their adoptive parents if the adoptions are believed to be genuine, are recognised under Hong Kong law, and if all immigration requirements are met.

#### Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption

209. Mindful of the provisions of Article 21 of the present Convention, we are currently considering the possible application of the Hague Convention to Hong Kong.

#### Prevention of improper financial gain through adoption

210. As explained in paragraph 196 of our previous report, the Adoption Ordinance prohibits the giving or receiving of remuneration or reward in connection, directly or indirectly, with the adoption or proposed adoption of an infant. An exception is made for payments in consideration of the professional services provided by, for example, a lawyer. Any person who contravenes these provisions is liable to a fine and imprisonment.

#### Adopted children and the right of abode

211. Paragraph 2(c) of Schedule 1 of the Immigration Ordinance (Chapter 115) - which gives effect to Article 24(2)(3) of the Basic Law (BL24(2)(3))<sup>11</sup>, provides that persons of Chinese nationality born outside Hong Kong to a parent who at the time of the child's birth was a Chinese citizen falling within category (a) or (b) are permanent residents of the

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<sup>11</sup> BL 24(2)(3) provides that 'the permanent residents of the Hong Kong Special Administrative Region shall be: (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region; (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region; (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2)...'

HKSAR<sup>12</sup>.

212. In June 1999, in a judicial review concerning four children born in the Mainland and adopted by Hong Kong permanent residents,<sup>13</sup> the Court of First Instance ruled that Article 24(2)(3) conferred the right of abode on persons of Chinese nationality who were born outside Hong Kong but who had been adopted by a Hong Kong permanent resident. In March 2000, the Government successfully appealed against the ruling by the Court of First Instance. The case was further appealed by the applicants to the Court of Final Appeal which handed down its judgement in July 2001 and confirmed that Article 24(2)(3) did not confer the right of abode on adopted children.

## **H Article 11: Illicit transfer and non-return**

### Child abduction: co-operation with overseas governments to combat child smuggling

213. As foreshadowed in paragraph 198 of the previous report, the Hague Convention on the Civil Aspects of International Child Abduction has been extended to Hong Kong. The Convention calls for the prompt return of children wrongfully retained or removed from their habitual place of residence in violation of custody rights. The Convention has force in domestic law through the Child Abduction and Custody Ordinance (Chapter 512), which came into effect in September 1997. The Secretary for Justice discharges the functions of the 'Central Authority' as prescribed in Article 7 of the Convention. The Police and other government bureaux/departments assist the Central Authority in the

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<sup>12</sup> Paragraphs 2(a) and 2(b) of Schedule 1 of the Immigration Ordinance give effect to Articles 24(2)(1) and 24(2)(2) of the Basic Law.

<sup>13</sup> The children in question were adopted in the Mainland by Hong Kong permanent residents.



location and return of abducted children. There have been about 20 cases under the Convention since its extension to Hong Kong: see Annex 11.

## **I Article 19: Abuse and neglect**

214. Child abuse is defined as any act of commission or omission that endangers or impairs a child's physical/psychological health and development<sup>14</sup>. It is committed by individuals, singly or collectively, who are in a position of differential power that renders a child vulnerable. There are several categories of abuse. These are described in Annex 12.

Response to paragraphs 15 and 27 of the concluding observations (pg. 25 of the report)

### Committee on Child Abuse

215. In paragraph 15 of its concluding observations, the Committee stated that, despite the measures taken to address the problems of child abuse, neglect and the number of accidents affecting children, these issues continued to give cause for concern. Equally, adolescent mental health issues, including the problem of youth suicide, was a matter of serious concern to the Committee. In paragraph 27, the Committee acknowledged the important efforts taken to deal with the question of child abuse. Notwithstanding this, the Committee was of the view that the prevention of this violation of children's rights required further attitudinal changes in society, not only as regards the non-acceptance of corporal punishment and physical and psychological abuse but also greater respect for the inherent dignity of the child.

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<sup>14</sup> The definition derives from the Social Welfare Department's 'Procedures for Handling Child Abuse Cases - Revised 1998'.

216. In paragraph 24 of the updating report, we explained our belief that the general public was becoming more aware of the negative effect of child abuse on society. Nevertheless, we were increasing our efforts through our public education programmes to bring the message home. Those efforts have continued and the Director of Social Welfare's Committee on Child Abuse (formerly known as the Working Group on Child Abuse) continues to examine and co-ordinate multi-disciplinary efforts to improve measures to deal with child abuse and to raise public awareness of the problem. Annex 13 lists the committee's initiatives to those ends.

217. The effective prevention of child abuse requires strategies that focus on reducing risk factors and increasing protective factors. As in other jurisdictions, our strategies to those purposes comprise educational, legislative, and administrative elements. In this section, we aim to explain the measures that we are taking in each of those areas.

#### Educational measures

218. Legislation is, of course, essential to guarantee our children an enforceable framework of rights and protections. But, often, the law comes into play only after the occurrence of the events - such as child abuse - that it is designed to deter. Ultimately, we can only hope to prevent such occurrences by addressing the socio-psychological dynamics - the complex interaction of individual, familial, and societal factors - that give rise to them. We consider that, given adequate legal 'teeth' and administrative support, educational measures are likely to be the most effective means of achieving that.

#### Educating the children

219. Alerting children to the nature and dangers of abuse - and how to protect themselves against it - is a high priority. To that end, the

Education and Social Welfare Departments have been working with other professionals to develop teaching kits on the 'Prevention of Sexual Abuse, Harassment and Violence'. The kits were distributed to kindergartens, child care centres, and primary schools in the year 2000. A similar kit, with appropriate adaptation, will be distributed to secondary schools in 2001.

### Parent education

220. A key part of our educational strategy is a parent education programme that imparts knowledge of how children develop, teaches child rearing skills, and enables parents to understand how to manage the difficulties that arise in their personal, marital and parent-child relationships. In these ways, education programmes can foster positive parent-child relationships and so help to prevent child abuse. Parent education at the preventive level is conducted by various Government departments and disciplines<sup>15</sup>. Initiatives include -

- co-operation between social workers and medical professionals in the conduct of parent education programmes in Maternal and Child Health Centres;
- co-operation between social workers, teachers, and Parent-Teacher Associations in schools;
- reaching out to the commercial and private sectors; and
- public education programmes to promote parent education.

### Public education

221. At the territory-level, our efforts in this regard are directed by the Public Education Sub-committee on Child Abuse and the Committee

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<sup>15</sup> At the support and remedial levels, parent education is more specialised and is conducted by the Social Welfare Department and NGOs.

on Family Life Education. At the district level, they are directed by the District Co-ordinating Committees on Family and Child Welfare Services. The respective roles of these bodies are -

- (a) **Public Education Sub-committee on Child Abuse:** each year, the sub-committee mounts a major campaign to raise public - particularly parental - awareness of the issues. Delivery is effected through such means as posters, leaflets, radio and television advertisements ('Announcements in the Public Interest'), booklets, and so forth. In 1996-1997, the theme was "Child Sexual Abuse". The campaign sought to teach young children how to protect themselves against sexual abuse and arouse the awareness of parents and carers. Since then, the themes have been -
- **1998-1999:** "Prevention of Child Neglect". This sought to promote public awareness of child neglect and proper child care;
  - **1999-2000:** "Child Discipline but Not Child Abuse". Inter alia, this included a booklet on child neglect; and
  - **2000-2001:** "Good Parenting". The campaign included a 17-episode television programme with 'phone-in' sessions, posters and leaflets on that theme.
- (b) the Committee on Family Life Education Publicity Campaign: has developed the use of the mass media and printed materials to promote responsible parenthood. In November 1999, it established a website on family life education to promote parent education through the Internet. The site is hyperlinked to the home-pages of the Committee on Home-School Co-operation,

the Hong Kong Council of Social Service, other NGOs, and the Department of Health;

- (c) the District Co-ordinating Committees on Family and Child Welfare Services: thirteen such committees co-ordinate the educational efforts of different organisations and disciplines at the district level. Their work ensures that those efforts are concerted and complement both each other and the main campaign theme(s) per (a) and (b) above. The Committees also organise district-based programmes to educate the public - particularly families - on the danger of leaving children unattended. In 2000, they ran 369 such programmes, attracting over 49,000 participants; and
- (d) the Family and Child Protective Services Units: social workers from the Units deliver talks to Government departments, schools, kindergartens and child care centres to enhance their awareness of the issues. They also address other professionals, such as teachers, police officers, and medical professionals.

#### Staff training

222. Such training is also a form of education, albeit not of a public nature. In 2000-2001, some 22 training programmes were organised for frontline staff. In some cases, staff from different disciplines participate in the same course. The programmes focused on the identification, handling, and treatment of child abuse.

## Legislative measures

223. These comprise -

(a) **the Protection of Children and Juveniles Ordinance (Chapter 213):** empowers the court to grant a care or supervision order in respect of a child or juvenile -

- who has been or is being assaulted, ill-treated, neglected or sexually abused; or
- whose health, development or welfare has been or is being neglected or avoidably impaired; or
- whose health, development or welfare appears likely to be neglected or avoidably impaired; or
- who is beyond control, to the extent that harm may be caused to the individual or to others.

The court may grant an order appointing the Director of Social Welfare to be the legal guardian of the child. Or it may commit the child to the care of a person or institution fit to take care of the child, or order the parent to enter into recognisance to exercise proper care and guardianship. Or it may place the child under the supervision of a social welfare officer;

(b) **the Child Care Services Ordinance (Chapter 243):** regulates the child care centres and mutual help child care centres and prohibits unsuitable persons from acting as childminders. The Ordinance imposes a maximum penalty of HK\$100,000 and imprisonment for two years for contravention of the relevant provisions;

- (c) **the Domestic Violence Ordinance (Chapter 189):** empowers the Court to grant injunctions on application by a party to a marriage to restrain the other party from molesting the applicant or exclude the other party from a specified area which may include the matrimonial home;
- (d) **the Offences Against the Person Ordinance (Chapter 212):** provides that any person who unlawfully abandons or exposes a child under the age of two years, so endangering the child's life or health, is guilty of an offence. Any person over the age of 16 years who has the custody, charge or care of any child under that age is guilty of an offence if he or she wilfully assaults, ill-treats, neglects or abandons the child or causes the child to be assaulted, ill-treated, neglected or abandoned or to be exposed in a manner likely to cause the child unnecessary suffering or injury to its health. The maximum penalty is ten years' imprisonment;
- (e) **the Criminal Procedures Ordinance (Chapter 221):** section 79B of the Ordinance came in to effect in February 1996. It provides for testimony from a child witness to be given by way of a live television link from a place outside the courtroom. Section 79C provides that a video-recorded interview with a child witness may be given in evidence. In addition, the prosecution may issue a notice of transfer to bypass the preliminary hearing before a Magistrate, enabling the matter to go directly to a full trial;
- (f) **the Crimes Ordinance (Chapter 200):** covers sexual offences - including rape, incest, prostitution related offences - against children; and

- (g) **the Evidence Ordinance (Chapter 8):** section 4 of the Ordinance provides that the evidence of a child under 14 years of age should be given unsworn. Corroboration from other material evidence is not necessary for a conviction (section 4A of 30 June 2000). Nor is it required that a jury be warned against convicting a person accused of an offence on the uncorroborated evidence of a child.

Administrative measures (investigation, treatment and follow up)

Family and Child Protective Services Unit

224. In paragraph 206 of the previous report, we referred to the work of the (then) Child Protective Services Units of the Social Welfare Department. There are now five such Units and their role now includes the protection of other victims of domestic violence. They have been renamed 'Family and Child Protective Services Units' to reflect that expansion (April 2000). Social workers from the Units take charge of the intervention process (early intervention is a priority) and are fully responsible for the welfare aspects of each particular case. In so doing, they address the needs of abused children and their families in a holistic manner and work closely with other professionals on a multi-disciplinary basis. The Units receive referrals from many sources: hospitals, clinics, NGOs, schools, child care centres, professionals working with children, the victims themselves, and so forth. All such referrals are acted on promptly and treated in strict confidence. After the initial assessment, the Units arrange for the children and their families to receive a co-ordinated package of social, financial, medical, psychological and legal assistance.

225. A Child Protection Special Investigation Team, comprising specially trained police officers and social workers from the Family and



Child Protective Services Units, is formed to handle each case of child abuse. To minimise trauma, the victim's statement - in the form of a video-recorded interview - is taken in a home-like suite designated for the purpose. So too is the forensic pathologist's examination conducted. During the trial, child witness involved in sexual and physical abuse, incest and cruelty to a child will give evidence in a separate room in the court through a closed circuit television link system. The Social Welfare Department operates a Witness Support Programme to provide practical assistance and emotional support to child abuse victims when they are involved in court proceedings. Under this Programme, a group of trained volunteers and family aides of the Social Welfare Department serve as support persons to accompany the child for a pre-trial familiarisation visit to the court and during trial in giving evidence in court through the closed circuit television link system.

#### Procedures for handling cases of child abuse

226. Commentators have also suggested that the Government should develop 'parents-at-risk' indicators so that early professional support can be provided to those who need it. Such indicators already exist. In 1996, we introduced new procedures for handling child sexual abuse cases, complementing the existing 'Procedures for Handling Child Abuse Cases'<sup>16</sup>, which addressed all other forms of child abuse. Both sets of procedures were updated and combined into a single, comprehensive volume. The resulting "Procedures for Handling Child Abuse Cases - Revised 1998" took effect from November 1998. The revised 'Procedures' take full account of the provisions of the Convention and incorporate improvements to improve co-ordination between the relevant agencies and disciplines. Appendix IV of the 'Procedures' comprises a

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<sup>16</sup> Referred to paragraph 202 of the previous report.

'Guide to the Identification of Child Abuse'. This defines all forms of child abuse, and provides indicators and checklists for their identification.

227. After each report of child abuse, and in accordance with the 'Procedures' referred to in paragraph 226, a multi-disciplinary case conference meets to formulate a welfare plan to protect the child's best interests. The participation of the child and its family is encouraged and the child's views are considered. The conference will arrange psychological counselling and therapeutic group work to help the child overcome the trauma and to rebuild confidence.

#### Criminal investigation of child abuse

228. Based in Police Headquarters, the Child Protection Policy Unit formulates and implements policies and procedures for the treatment and protection of vulnerable witnesses and liaises with agencies concerned with the investigation and prosecution of child abuse. It supervises the five Child Abuse Investigation Units, which were formed in 1995 to deal with complicated and serious cases of such abuse. Officers of these Units undergo twice-yearly training programmes on 'Child Protection Special Investigation'. These ten-day programmes aim to equip participants with the knowledge and skills they need in handling and interviewing victims of child abuse. Additionally, police officers attending criminal investigation, command and promotion courses receive awareness training on the subject of child abuse.

229. Commentators have expressed the concern that social workers and child professionals only handle cases where the abusers are family members. Otherwise, they believe, abuse cases are handled by the Police. They consider that all cases should be handled by social workers and child professionals. Their perception is mistaken: social workers - and, where appropriate - child professionals - provide service and

assistance to victims of child abuse, whether the abusers were family members or not. They do so in collaboration with the Police because child abuse is a criminal offence.

#### Resources for dealing with child abuse

230. The resources available for these purposes have increased -

- (a) **Family and Child Protective Services Units:** the number of social workers serving in the Units increased from 11 in 1995 to 55 in 2000-2001. In 2001-2002, the Units will receive 22 additional social workers and two more clinical psychologists to cope with the increasing number of cases;
- (b) **refuge centres:** children - and their parents if they, too, are victims of domestic violence - have recourse to three such centres, which take admission on a 24-hour basis. From January 2001, each of the centres will receive an additional social worker to improve the centres' capacity to provide need assessments, intensive counselling, therapeutic group work to their clientele;
- (c) **family help-line:** the Social Welfare Department established this hotline service in April 2000, to increase the likelihood of early identification - and thence prevention - of child abuse. Social workers manning the help-line provide immediate counselling to victims of abuse and families with child discipline problems; and
- (d) **training for frontline professionals:** the Social Welfare Department and the Police Force run joint training courses - on the conduct of investigations and video-recorded interviews for child abuse victims - for social workers and police officers of

the Child Abuse Investigation Units. Other training programmes help to increase frontline professionals' knowledge and skills in the handling of child abuse cases. In 2000-2001, the Department ran over 40 such programmes. Overseas trainers are invited to conduct intensive workshops on multi-disciplinary co-operation in child protection work. Participants have included social workers, legal professionals, police, teachers and clinical psychologists. In December 2000, a team of social workers, police officers and clinical psychologists attended a 'train-the-trainer' programme to learn how to provide basic courses to other professionals in this area.

231. Some commentators consider these resources to be insufficient and have called for the establishment of a register of convicted child abusers. The Police do maintain the criminal records of convicted child abusers as, indeed, they do of other convicted offenders. Going beyond this would require careful consideration taking into account the labelling and stigmatising effect on the rehabilitation of child abusers. And we could expect considerable reservations on the part of other human rights commentators.

## **J Article 39: Physical and psychological recovery and social reintegration of child abuse victims**

### **Rehabilitative treatment and social integration of child victims**

232. Rehabilitative treatment is an integral part of the welfare plans that are formulated in the multi-disciplinary case conferences on child abuse (see paragraph 239 below, under section VK), with input from medical practitioners and clinical psychiatrists. On the basis of those plans, social workers help the children in their care to reintegrate into

society through individual and family counselling, therapeutic group treatment, and mobilisation of community resources. Each child abuse victim - and, as appropriate, the child's family - receives co-ordinated follow-up services such as medical treatment, psychological counselling, school placement, financial and housing. The object is to help them overcome their trauma and to resume normal living.

#### Case load of social workers handling child abuse cases

233. In paragraph 28 of its concluding observations, the Committee expressed the view that, despite the [then] recent increase in the number of social workers employed for child abuse cases, the case-load of each professional might still be too high. The question of taking additional action to address such matters deserved further study.

234. In paragraph 25 of the updating report, we said that - between 1994 and 1997 - twenty social workers at the senior practitioner level were added to the Child Protective Services Unit (now the Family and Child Protective Services Units). The caseload of each officer had been reduced from an average of 35 in 1994-1995 to an average of 27 in 1996-1997. We also provided in-service training to enhance social workers' effectiveness in managing their caseloads.

235. Since then, we have continued regularly to review the caseload of social workers in this area to ensure that the protections afforded to each child abuse victim are adequate and that they are improved where there is scope to do so. The number of social workers handling child abuse cases in the Social Welfare Department increased from 32 in 1998-1999 to 48 in 1999-2000. But when, in April 2000, the former Child Protective Services Units became the Family and Child Protective Services Units with an extended role and numbers (see paragraph 224 above) the total number of cases increased. So although there are now

(2000-2001) 55 social workers in these Units, they each have an average caseload of 32. The situation will improve in 2001-2002, when the Units will receive 22 additional social workers.

236. NGOs and the Social Welfare Department have been allocated additional resources for a two-year project to improve outreach services to families needing support for children at risk of behavioural or emotional problems. Between March 2001 and March 2003, and networking with other local organisations, they will provide a family education service targeting families at risk. In this way, they expect to identify families with difficulties in guiding and supervising their children and then to provide customised services to prevent such difficulties from deteriorating into family breakdown or child abuse.

#### Family life education

237. In paragraph 28 of its concluding observations, the Committee also encouraged the initiative taken to ensure within future reviews of the Family Life Education Programme, an assessment of its effectiveness in preventing child abuse. In paragraph 30 of the updating report, we said that one of the objectives of that Programme was to increase parental knowledge and skills (including the cultivation of an informed approach to the role and application of discipline) and improve parents' consciousness of their responsibilities. The programme was, we said, one of the initiatives we were taking to develop respect for the rights of children. It had been found that the Programme helped parents to develop their skills as parents and their awareness of their parental duties and responsibilities. Although the Programme was not directly aimed at child abuse, it was believed to help in its prevention.

238. We maintain that belief but experience has shown that family life education must interface with other family support services to form a

continuum of services. In August 2000, in order better understand that process, the Social Welfare Department commissioned a review of our family services, including family life education. The main objectives were to formulate a new service delivery model that would more effectively address family needs and to develop outcome measures to gauge service effectiveness. Recommendations of the review will be available by mid- 2001<sup>17</sup>.

## **K Article 25: Periodic review of placement**

### Child welfare case conferences and regular case reviews

239. The conditions of - and welfare planning for - children in care are closely monitored through case conferences and reviews -

- **case conferences:** are chaired by senior officers of the Social Welfare Department. They ensure that all child welfare cases are properly handled and that the best interests of the children are protected. They review the welfare plans made for the children in their jurisdiction<sup>18</sup> and offer advice where difficulties have been encountered. The case conferences are documented to facilitate further periodic reviews; and
- **case reviews:** are regular meetings for the consideration of each child welfare case on an individual basis. Participants include the key social worker responsible for the particular case,

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<sup>17</sup> Although the conclusion of the review fell outside the cut-off for this report (31 December 2000), we believe that the outcome will be of interest to the Committee. Among the recommendations of the review, the one of relevance to family life education is that, it should become an integral part of the programme team of family services centres and other community-based programmes with more attention directed towards the needs of vulnerable families.

<sup>18</sup> The conferences are held at the District and Regional levels.

the social worker and care staff of the home or centre taking care of the child in question, the child's parents, the child itself (if it is of reasonable maturity), and concerned professionals, such as clinical psychologists and teachers. The discussion covers matters relating to the welfare of the child (progress of work plans, family reunion or other permanent plans, problems arising from the placement, and so forth). As in all matters pertaining to child welfare, the principal objective is to ensure that the best interests of the child are being protected. The reviews are documented and follow-up action plans are formulated to solve any difficulties encountered.

240. These arrangements apply equally to children with disabilities who are in care for reasons of physical and mental health. Services for children with disabilities and special needs are discussed in paragraphs 290 to 306 below, under Section VID, in relation to Article 23.

#### **L Statistics on child abuse**

241. The Social Welfare Department's Child Protection Registry maintains a computerised system for case-checking and to increase the chances of timely intervention when incidents of child abuse occur. The Department also maintains a database for planning and research. The table below shows the broad trends over the five-years 1996 to 2000. The figures quoted were on newly reported case of each year.



<b>Year</b> <b>Types of abuse</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Physical abuse	120	181	193	286	265
Neglect	22	18	17	15	30
Sexual abuse	125	146	162	210	150
Psychological abuse	10	6	11	11	16
Multiple abuse	34	30	26	53	39
<b>Total</b>	<b>311</b>	<b>381</b>	<b>409</b>	<b>575</b>	<b>500</b>

242. Over two-thirds of the abusers were the parents of the children concerned. The number of cases of abuse in the form of neglect rose from 3% of the total number of cases in 1999 to 6% in 2000. Both phenomena reflect inadequate parenting. The measures that we (particularly the Social Welfare Department) have taken to address them are explained in paragraphs 214 to 231 above, under Section V(I), in connection with Article 19.

## **VI. Basic health and welfare: (Articles 6(2), 18(3), 23, 24, 26, 27(1), 27(2) and 27(3))**

### **A Article 6(2): Survival and development**

243. The infant mortality rate was 2.9<sup>1</sup> per 1,000 registered live births in 2000, down from 3.2 in 1999, 4.9 in 1992 and 7.5 in 1987. By contrast, the maternal mortality ratio was 5.6<sup>2</sup> per 100,000 total births in 2000, up from 2.0 in 1999, and 1.9 in 1998. However, the apparently steep increase in 2000 is a function of very low numbers: there were a total of three deaths in that year<sup>3</sup>, and one in each of the previous two years. Because the numbers are so low, the rates tend to fluctuate from year to year: in 1987 it was 4.3 and, in 1992, it was 5.5. That these figures compare well with those in most developed countries is illustrated by the ratios for Germany (8 per 100,000), Japan (7), the United Kingdom (7), and the USA (8).

#### Pre and post-natal care

#### Maternity benefits and protections

244. In 1997, as foreshadowed in paragraph 34 of our updating report, amendments to the Employment Ordinance (Chapter 57) strengthened the maternity protections afforded to pregnant employees. The amendments were extensively described in paragraphs 239 to 241 of our 1998 report in the light of the International Covenant on Economic, Social and Cultural Rights (ICESCR): reproduced for ease of reference at

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<sup>1</sup> Provisional figure

<sup>2</sup> Provisional figure

<sup>3</sup> The causes of the three deaths in 2000 were: (a) septicaemia due to septic abortion (miscarriage and infection leading to systemic infection); (b) severe haemorrhage due to placenta praevia (abnormal positioning of placenta leading to severe haemorrhage); and (c) pre-eclampsia (a severe complication of pregnancy leading to multi-system involvement).

Annex 14. The Ordinance now permits pregnant employees to take part of their ante-natal leave as *post-natal* leave. This gives them more time to take care of their babies in the crucial earliest days of life.

245. Additionally -

- (a) the Sex Discrimination Ordinance (Chapter 480) prohibits discrimination in employment on the ground of pregnancy;
- (b) the Department of Health's Family Health Service operates 50, easily accessible, Maternal and Child Health Centres throughout Hong Kong. These provide free antenatal check-ups and collaborate with the public hospitals in monitoring the entire pregnancy and delivery process. They also give talks on pregnancy, labour and preparation for parenthood. Some 49% of expectant mothers attended the centres in 2000<sup>4</sup>; and
- (c) after delivery, all women receive postnatal check-ups and advice on family planning. The Maternal and Child Health Centres run support groups that provide experience sharing sessions and individual counselling to help new mothers adapt to motherhood and to take care of themselves and their babies.

### Breastfeeding

246. In paragraph 30 of its concluding observations, the Committee recommended that a review be conducted of the effectiveness of measures in place to support the policy of promoting and encouraging breast-feeding.

247. The position is essentially as explained in paragraph 33 of our updating report. That is, neither the Hospital Authority nor the

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<sup>4</sup> So too did 95% of newborns.

Department of Health distributes free formula milk, as commentators have continued to assert. And hospitals only feed babies formula milk when their mothers, for medical or other reasons, decide not to breast-feed this babies. Public hospitals do not distribute free breastmilk substitutes to nursing mothers upon discharge. Promotional and advertising activities relating to breast-milk substitutes are not allowed in public hospitals. Nevertheless, the Hospital Authority is reviewing its current practice of accepting breastmilk substitute sponsorship<sup>5</sup> with a view to phasing out the practice in all public hospitals in future. The Government continues actively to promote breast-feeding through pamphlets, posters, ante-natal programmes and counselling.

248. Public hospitals in general comply with the Joint WHO/UNICEF 'Statement on Ten Steps to Successful Breast-feeding' and the Hospital Authority's policy is to encourage nursing mothers to breast-feed their babies. It proactively promotes breast-feeding through -

- (a) talks, exhibitions and seminars for pregnant women, nursing mothers, and parents in public hospitals;
- (b) training, seminars, and workshops for hospital staff; and
- (c) breast-feeding support services for nursing mothers in all public hospitals with obstetric services.

All qualified healthcare personnel in public hospitals are conversant with the recommendation of the World Health Organisation (WHO) and the United Nations Children's Fund (UNICEF) on the optimum period of breast-feeding.

249. These initiatives have served steadily to increase the ever

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<sup>5</sup> That is, sponsorship for the breastmilk substitutes given to mothers who, for medical or other reasons, decide not to breast-feed their babies.

breast-feeding rate in public hospitals<sup>6</sup> -

1996	36%
1997	39%
1998	48%
1999	49%
2000	53%

But relatively few mothers - about 14% in the year 2000<sup>7</sup> - sustain breastfeeding beyond six months. And about a third stop breastfeeding when they return to work. To address these tendencies, the Maternal and Child Health Centres (see paragraph 6.3 (b) above) organise workshops for working mother just before they return to work. They also tell them how to express and store breast milk. Additionally, the Department of Health plans to introduce an education kit to stimulate public awareness of breastfeeding and to solicit community support for breastfeeding mothers. A leaflet "Especially for Employers" provides guidelines to employers on the creation of mother and baby-friendly workplaces.

## **B Article 24: Right to health**

### General

250. The Hospital Authority runs all Public Hospitals. The hospitals charge paediatric inpatients HK\$68 per day and specialist outpatients HK\$44 per consultation. But fee waivers are granted to all

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<sup>6</sup> The ever breastfeeding rate on discharge from maternity units reflects the initiation rate in breastfeeding only. The figure includes partial, predominant and exclusive breastfeeding a few days after birth.

<sup>7</sup> According to the data from the Annual Breastfeeding Survey conducted by the Family Health Service, Department of Health.

recipients of Comprehensive Social Security Assistance and in cases of genuine financial hardship.

### Patients' Charter

251. The Hospital Authority's 'Patients Charter' (Annex 15) applies equally to all patients, including children. The Authority has not formally adopted a Charter for Children. But the planning and provision of paediatric services in its hospitals accord with the spirit of the 'Charter for Children in Hospital'<sup>8</sup>. So do those provided by Hong Kong's 12 private hospitals. Some of the private hospitals have adopted the Charter; others are in the process of developing their own.

### Primary healthcare

252. The Maternal and Child Health Centres provide a comprehensive range of health promotion and disease prevention services for babies and young children aged five years or under. The centres also disseminate information on child care, health and development and provide professional advice and support to foster parental competence in nurturing their children's physical and mental health. They physically examine infants at regular intervals (and whenever indicated), refer children with suspected medical problems to specialist clinics for further assessment

### Preventive healthcare

253. A comprehensive immunisation programme protects infants and young children from nine childhood infectious diseases: see Annex 17<sup>9</sup>. An expert panel, the Advisory Committee on Immunisation,

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<sup>8</sup> The Charter is an adaptation of the 'Children in Hospital's Charter' of the United Kingdom's National Association for the Welfare of Children. A copy - for which we are grateful to The Hong Kong Committee on Children's Rights - is at Annex 16.

<sup>9</sup> Tuberculosis, hepatitis B, diphtheria, tetanus, whooping cough, poliomyelitis, measles, rubella and mumps.

regularly reviews the programme. The coverage rates for the different vaccines are at Annex 18.

254. The Maternal and Child Health Centres regularly monitor children for early detection of growth, developmental or behavioural anomalies. This process - known as the Comprehensive Observation Service - monitors children's abilities in the areas of gross motor functions, co-ordination, language development, hearing, vision, and social adaptation. It ensures prompt remedial treatment and maximises the potential for rehabilitation. The results are discussed with parents and, where necessary, the centres make referrals to specialist clinics or Child Assessment Centres. The Assessment Centres may, in turn, refer children to nurseries and special child care centres subvented by the Social Welfare Department, or to special schools run by the Education Department. Parents receive leaflets that alert them to possible developmental problems<sup>10</sup> and are encouraged to discuss their children's development with health professionals.

### Unwanted births

255. As explained in paragraph 227 of the previous report, abandoned newborns are cared for by the Social Welfare Department. Efforts are made to trace the birth parents. When the parents are located and are assessed as suitable to resume parental responsibility, the children are returned to their care. The Department then provides such welfare services as may be necessary (counselling, home help, family aide, child care arrangements, and financial assistance). If the birth parents are untraceable, the Director of Social Welfare assumes guardianship of the child and arranges placement for adoption. Adoption is discussed in

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<sup>10</sup> These include such titles as "Developmental warning signs" and "Can your baby hear you?" and "Checklist for Detection of Visual Problems".

greater detail in paragraphs 202 to 212 above, under Section VG, in connection with Article 21 of the Convention.

#### Paediatric care in hospitals

256. Public hospital services have been expanded to meet the needs of the increasing population. The Hospital Authority operates 17 medical institutions that provide inpatient paediatric services. Of those, 13 admit children with acute illness and four provide paediatric rehabilitation services. As at end 2000, there were a total of 1,214 hospital beds for paediatric patients and 161 for paediatric surgery. Since the submission of the previous report (see paragraph 255 thereof), the Authority has designated specialised service centres for tertiary paediatric services, extended the scope of paediatric services to include adolescents and established a neonatal service network.

#### Assistance for children with suspected abnormalities

257. As at end 2000, some 26 specialist out-patient clinics were providing paediatric services in our public hospitals. The Hospital Authority operates a Specialist Paediatric Rehabilitation Clinic, which assesses and treats children requiring neurological and pulmonary rehabilitation.

#### Dental care

258. As explained in paragraph 259 of the previous report, the Government actively promotes oral hygiene and oral health awareness. It also facilitates the proper use of oral care services. The Department of Health's School Dental Care Service (SDCS) provides basic dental care to primary school children. This includes regular dental examinations, oral health education programmes, preventive and curative treatment. In the 1999/2000 school year, 86.5% of primary school children participated in



the SDCS: up more than 5% on the 1994/1995 rate recorded in the previous report.

#### Oral Health Education Unit

259. The Unit is part of the Department of Health. As explained in paragraph 260 of the previous report, it promotes oral health through educational and promotional activities and information. Its services include the planning, implementing and evaluating pre-school and secondary school oral health education programmes; conducting roving oral health exhibitions; organising campaigns and talks; and producing oral health education materials. The Unit also runs a 24-hour Oral Health Education Hotline and an Oral Health Education Homepage.

#### Student Health Service

260. Launched in 1995, the Student Health Service caters for all Hong Kong's primary and secondary school children through 12 student health service centres and three special assessment centres. The Service promotes and maintains the physical and psychological health of students, who receive free annual appointments. Services include physical examination; screening for problems related to growth<sup>11</sup>; individual counselling; and health education. Students found to have health problems are referred to special assessment centres or appropriate specialist clinics.

261. To help older children face the challenges of adolescence, the adolescent health programme – introduced in the 2000/2001 school year – seeks to enhance the adolescents with the skills they need to cope with stresses and crisis, and to foster a positive attitude to life. A pilot multi-

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<sup>11</sup> Such problems include nutrition, blood pressure, vision, hearing, spinal curvature, psychosocial health and sexual development.

disciplinary team, comprising medical staff and other health care professionals, conducts programmes in selected secondary schools for students, teachers, and parents on the psychosocial health of adolescents. The programme will be extended to other schools after evaluation and refinement.

#### Disease and malnutrition

##### Clean drinking water

262. Hong Kong's tap water conforms both chemically and bacteriologically to World Health Organisation guidelines. It is available to all, either through public or through local supply systems.

##### Environmental pollution and children's health.

263. Children are susceptible to air pollution and - as we explained in paragraph 266 of the previous report - respiratory illnesses are common among Hong Kong children. They impair the development of healthy lungs and may cause cancer. With these things in mind, a comprehensive programme to reduce air pollution has continued in earnest, though some commentators consider the pace of progress to be too slow. There are also ongoing programmes to address other forms of pollution (water, noise and waste). These were summarised in our reply to a written question put to us in 2000 by the Committee on Economic, Social and Cultural Rights prior to its hearing of our report in the light of the International Covenant on Economic, Social and Cultural Rights. The reply is reproduced at Annex 19 for ease of reference.

##### Food safety

264. Food safety is regulated under the Public Health and Municipal Services Ordinance (Chapter 132) and its subsidiary legislation. The main provisions provide general protection for food purchasers, offences

in connection with sale of unfit food and adulterated food, composition and labelling of food, food hygiene, and seizure and destruction of unfit food. Regulations under the Ordinance provide more specific controls in areas relating to the protection of children's health. Examples include the Milk Regulation and the Frozen Confections Regulation, which govern the import, manufacture and sale of those - high-risk - food groups. Similarly, the Food and Drugs (Composition and Labelling) Regulations and the Dried Milk Regulations govern the composition and labelling of such products as full cream milk, skimmed and partly skimmed milk, condensed and evaporated milk<sup>12</sup>.

265. Risk assessment provides the scientific basis for effective management of food safety and for the accurate communication of real and perceived risks. In 2001-02, the Government's Food and Environmental Hygiene Department will conduct a study on dietary exposure to dioxin and heavy metals in secondary school students.

266. To ensure that consumers are alert to and aware of the risks when choosing their food - and that they observe safe food practices at home - the Department of Health conducts public education programmes on food safety and hygiene. School children are, of course, a key target group<sup>13</sup> and, in 2000, the Department conducted 32 talks in schools, distributing some 13,800 pamphlets on food safety to pupils and teachers.

#### Control of Communicable Diseases

267. Immunisation is the most cost-effective measure to combat communicable diseases in childhood. In 1999, over 98% of the newborn babies were immunised against tuberculosis. Over 85% of the

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<sup>12</sup> For example, the container of all kinds of skimmed milk and partly skimmed milk must bear a label stating: "Children under one year of age should not be fed on this milk except under medical advice".

<sup>13</sup> So too are expectant mothers.

one-year-old were immunised against poliomyelitis, diphtheria, pertussis, tetanus, measles, mumps, rubella and hepatitis B<sup>14</sup>. Chickenpox, viral hepatitis and tuberculosis remain endemic. However, the immunisation programme, improvements in general hygiene and sanitation - together with safe food and water supplies - have done much to reduce the instance of serious outbreaks<sup>15</sup>. The Government has issued guidelines on the prevention of communicable diseases to all child care centres, kindergartens and schools. Outreach health talks are also given to schools.

## Mental health

### Prevention of child suicide

268. In paragraph 31 of its concluding observations the Committee suggested that a review be undertaken of the possible links between school pressures and adolescent health problems in view of the concerns raised on these issues during its discussion of the report. The Committee also suggested that the reasons for suicide among youth and the effectiveness of programmes for the prevention of suicide among children deserved further study.

269. In paragraphs 38 and 39 of the updating report, we acknowledged that the reasons for youth suicide were diverse. Psychological autopsies of suicide victims had revealed that poor family relations and personal problems accounted for most of the cases. School and learning problems followed. We explained that, as part of a review of the social work service for school students and young people in

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<sup>14</sup> As at the time of drafting this report the year 2000 figures were not available because not all the 2000 newborns had reached the age of one.

<sup>15</sup> The Government's disease surveillance system requires all medical practitioners to report occurrences of notifiable disease to the Department of Health which will act promptly to contain any risk of wider infection. The Department works closely with the WHO to monitor and exchange information about newly emerging diseases.

need, a working group was evaluating the effectiveness of the school social work service and examining its future development. This review was to be completed by the end of 1997. At the same time, research was being conducted in secondary schools (under the title 'Understanding the Adolescent') to develop a screening tool to identify young people at risk and to determine how such a tool could be used in schools to facilitate early identification. This was conducted by a research team of overseas and local professionals, commissioned in 1994 by the Co-ordinating Committee for the Welfare of Children and Youth at Risk.

270. The team completed its task in 1997, recommending the introduction of programmes designed to teach students potentially at risk in the skills and knowledge to cope with behavioural and emotional problems and to develop a positive self-image. The programmes are now operative and include such elements as interpersonal communications, parent-child relationships and community service. Another Committee initiative was to promote the concept of a peer group support network to help young people develop positive self-images and life values, and to improve their skills in coping with crises. The networks now operate throughout the various youth services.

271. The Committee's work has continued. In January 1997, it completed a review of Children and Youth Centre facilities, recommending that they be modernised in order to attract young people to use them and to engage in healthy pursuits.

272. The core youth services, which include integrated teams, children and youth centres, and school social work, seek to meet young people's needs and to provide a favourable environment for their healthy development. In paragraph 277 of the previous report, we indicated that the ratio of school social workers to pupils was expected to rise from 1:2000 in 1995-96 to 1:1000 in 1996-97. At that time, the school social

work service was provided on ratios based on student population and the category of school<sup>16</sup>. However, since September 2000, the policy has been to provide one school social worker for each secondary school. Consequently, the number of school social workers increased from 300 in September 1999 to 456 in September 2000. Because such provision is now on a substantially different basis to that prevailing when we last reported, it is not possible to make direct comparisons between the rates of provision then and now. However, in general terms, the current rate of provision is better than under the former system.

273. These measures appear to be achieving their purpose and the number of attempted suicides appears to be declining -

School year	Fatal cases	Attempts
1993-94	22	88
1994-95	14	42
1995-96	17	28
1996-97	20	21
1997-98	11	15
1998-99	15	10
1999-2000	19	5

274. Commentators have acknowledged that the Government and NGOs provide hotline services at the time of the school examinations, which is always a time of stress for school children and their parents. They suggest that these services should be available on an all-year basis.

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<sup>16</sup> Schools were categorised according to the academic achievement of their pupils. Thus, social workers were provided to schools catering to 'academic low-achievers' at a ratio of 1:1000 and at a ratio of 1:2000 to other schools.

There are, in fact, several hotlines run on that basis by NGOs and the Social Welfare Department. In particular, in the context of child suicide, the Hong Kong Federation of Youth Groups runs the 'Youthline': a subvented, all-year service, dedicated to young people who may be contemplating suicide or are suffering other forms of stress. To ensure maximum publicity for this, information cards and posters are sent to *all* primary and secondary schools, public libraries, and the youth service units of *all* NGOs. A dedicated working group monitors the suicide problem (all age groups) and reviews strategies and programmes.

#### Mental health service

275. Severe mental illness, such as schizophrenia and severe mood disorders, often starts in the teen-years and in early adulthood. Early detection and treatment has the potential to alleviate the suffering, improve the long-term treatment prospects, and reduce long-term impairment. A recent local study indicates that the lag time between the onset of illness and treatment normally exceeds 18 months. There is therefore an urgent need for early intervention programmes. To that end, the Hospital Authority is now (2001-02) conducting a pilot programme for the early detection and treatment of young people with psychotic illnesses. Some 1,400 persons aged below 25 will be assessed under the programme for early treatment for those suffering from psychotic problems.

#### Prevention of accidents

##### Home safety

276. In 1998/1999, the Public Education Sub-committee on Child Abuse (see paragraph 221 above, under section V(I) in relation to Article 19) launched a major publicity campaign to alert the public to the dangers of child neglect and the need for the proper care of children. At the

same time, district level campaigns sought to arouse awareness of the need for home safety and the dangers of leaving children unattended. In 1999, the districts ran 296 such programmes; 369 in 2000.

### Road safety

277. Commentators have expressed concern about the safety of children travelling to and from schools and kindergartens by bus. They have called on us to include the related accident statistics in this report and to make compulsory the installation and wearing of seatbelts in such vehicles. The accident statistics are as follows -

Year	Number of accidents	Number of injuries
1998	210	207
1999	242	292
2000	230	265

None of these accidents - which comprise just 1.6% of the total number of all traffic accidents - entailed fatalities. But we share the concern for children's safety and are currently consulting both parents and the trade on the question of seatbelts.

### Consumer Goods Safety Ordinance (Chapter 456)

278. The Ordinance imposes a statutory duty on manufacturers, importers and suppliers of consumer goods to ensure that the goods they supply for local consumption are reasonably safe. Our Consumer Council is a vigilant and active 'watchdog' in this regard.

### The Toys and Children's Products Safety Ordinance (Chapter 424)

279. The Toys and Children's Products Safety Ordinance imposes a statutory duty on manufacturers, importers and suppliers of toys and children's products to ensure that the goods they supply for local



consumption satisfy the stipulated safety standards. Again, the vigilance of the Consumer Council is a valuable safeguard.

### Health care education

#### Health Care and Promotion Fund

280. The Fund provides financial support for health care and promotion projects; research related to health promotion and preventive care; and treatments - such as special types of operation - that are currently unavailable in Hong Kong. All non-profit making organisations may apply.

#### Central Health Education Unit

281. The Unit is part of the Department of Health. It plans, organises, co-ordinates and promotes health education activities. It also provides professional advice to Government departments and NGOs, produces health education resource materials, trains health promoters, and delivers health education to the public. Many health risks are lifestyle-related (drug abuse, smoking, lack of exercise, unhealthy diet, and so forth). The Unit is sensitive to changes in community behaviour, including that of children, and is addressing these problems mainly by promoting the advantages of a healthy lifestyle. For example, in 1999 it organised activities to promote healthy diet in schools and kindergartens. In 2000, it ran a campaign under the title 'Healthy Exercise for All' to promote physical activity.

282. Other initiatives of the Unit include -

- (a) **the Student Health Ambassadors:** the Unit trains groups of secondary school students to undertake health promotion in their schools and in the community. The training takes place during the summer vacation and covers such topics as smoking,

alcoholism, drug abuse, sex education, mental health, HIV/AIDS, and other communicable diseases. In 1999, 584 'ambassadors' completed the course; 560 did so in 2000; and

- (b) **sex education, sexually transmitted diseases, contraception and pregnancy:** the Unit produces resource materials on sex education, sexually transmitted diseases, contraception and pregnancy. Among other things, these include a 24-hour Health Education Hotline and a website<sup>17</sup>.

## AIDS

### Education and information on AIDS

283. In 1997, the Education Department issued its 'Guidelines on Sex Education in Schools' - prepared by the Curriculum Development Council - to all kindergarten, primary and secondary schools. The 'Guidelines' included elements on AIDS. In schools, AIDS education is promoted in schools as part of the sex education programme and through other learning activities that focus on AIDS. The aim is to foster a supportive attitude towards victims, and an understanding both of the routes of transmission and of the need for precautions when handling wounds and blood. The Department also runs regular sex education courses for primary and secondary school teachers. In 2001, the Education Department and the Department of Health will publish revised "Guidelines on the prevention of blood-borne diseases in schools" to better inform students and teachers about HIV prevention and care.

284. The schools take a cross-curricular approach to sex education. At the primary level, elements of sex and AIDS education are

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<sup>17</sup> This offers 13 topics. The most popular is "Adolescent Health and Sex Education", which received over 80,000 calls in 2000.

substantially integrated into the General Studies syllabus. At the secondary level, they are integrated into various subject syllabuses<sup>18</sup>.

285. In 1997, the Department of Health established the Red Ribbon Centre for AIDS education, research and resources. In December 1998, the Centre was designated an UNAIDS Collaborating Centre. It is open to members of the public and - with the Education Department and Social Welfare Department - organises regular seminars and training activities for (inter alia) teachers, social welfare personnel, and students. The Department of Health regularly publishes newsletters, bulletins and other publications to foster communication and co-ordination among the AIDS community. It also runs an interactive AIDS Hotline that receives an average of 5,000 calls per month. An integrated hotline on sex, sexually transmitted diseases and AIDS - launched in July 1996 - now receives an average of about 10,000 calls per month.

#### Preventing discrimination against children infected with AIDS

286. As at the end of 2000, 36 out of the 1,542 reported cases of HIV infection in Hong Kong were aged 15 or below. Twelve were infected as a result of mother-to-child transmission. Most of the remainder contracted the virus through transfusion of blood or blood products before August 1985. Universal antenatal HIV testing will be introduced into the public health sector in 2001 with a view to minimising prenatal transmission of HIV infection. All infected babies will benefit from early life-prolonging treatment.

287. As a matter of policy, children with HIV are not segregated in schools or in regard to access to social services. This policy has legal

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<sup>18</sup> Such as those for Social Studies, Economics and Public Affairs, Integrated Science, Biology, Human Biology, Home Economics, Ethics and Religious Studies, Physical Education and Liberal Studies.

'teeth' in the form of the Disability Discrimination Ordinance (DDO: Chapter 487), which outlaws discrimination against - inter alia - persons with HIV/AIDS<sup>19</sup>. Recently, the Equal Opportunities Commission published a Code of Practice on Education for public consultation. The Code aims to -

- (a) assist educational establishments to develop policies and procedures that prevent and eliminate disability discrimination;
- (b) provide educators with practical guidance on making provision for students with disabilities that are consistent with the provisions set out in the DDO; and
- (c) enable persons with disabilities, their parents, and associates to understand their rights and responsibilities under the Ordinance.

The Code explains the definitions of disability in the DDO and that they include persons suffering from HIV/AIDS. Instances of mistreatment of children with those conditions are included in the examples provided in the Code to illustrate the various forms that discrimination can take.

#### International co-operation in the Promotion of children's health

288. Hong Kong co-operates closely with the WHO, the International Planned Parenthood Federation (IPPF), the United Nations Children's Fund (UNICEF) and the World Bank. We draw on the experience of other countries to formulate policies and programmes suited to local circumstances.

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<sup>19</sup> The application of the Ordinance to persons with HIV/AIDS is made clear in section 61(2).

### **C Article 18.3: child care services for working parents**

289. Child care services for working parents are discussed in paragraphs 146 to 157 above, under Section VB, in relation to Article 18(1) and 18 (2).

### **D Article 23: disabled children**

#### Services for children with disabilities and special needs

290. Our policy objective is to help people with disabilities to develop their physical, mental and social capabilities. We also seek to create a physical and social environment conducive to their full participation in social life and development, and in which they enjoy equality of opportunity. Over 90% of the direct rehabilitation services for disabled persons are provided by subvented NGOs. In 2000-01, the Government spent over HK\$14 billion (about US\$1.8 billion) for these purposes.

#### Prevention, identification, assessment

291. We help to prevent disabilities through health education, free immunisation programmes and early identification and assessment. The Department of Health's Comprehensive Observation Service and health education for parents help to ensure the early identification of disabilities among children from birth until the age of five. The Student Health Service provides annual health assessments for all primary and secondary school students. The Education Department's Combined Screening Programme provides audiometric and vision screening for all primary one students and identifies those with speech and learning difficulties. Children found to have developmental retardation or health problems are referred to either the child assessment centres run by Department of

Health or the Hospital Authority; the Education Department's special education services centres; and/or appropriate specialists for detailed assessment, treatment and follow-up.

### Medical rehabilitation

292. The Hospital Authority provides medical rehabilitation services to children with disabilities through multi-disciplinary collaboration. Most of such services are provided in ordinary clinics and hospitals. But there are also specialised facilities to serve certain disability groups, such as autistic children.

### Pre-school training and education

293. Early intervention in the rehabilitation of disabled children helps to reduce developmental delays. To that end, various services cater for the needs of children of different ages and with different degrees of disability -

- (a) **early education and training centres:** serve disabled children aged from birth to two years old, though they also take disabled children aged two to six if they are not concurrently receiving other pre-school rehabilitation services (see below). The centres are run by NGOs and provide educational and training activities for disabled children on an individual and/or group basis. Social workers, physiotherapists and occupational therapists help develop the children's gross and perceptual, motor, communication, self-care, cognitive and social skills. The centres also provide support and counselling for the children's families. As at 31 December 2000, the centres provided places for 1,615 children;
- (b) **special child care centres:** serve moderately and severely

disabled children aged two to six. They help to develop their charges to the fullest possible extent, so as to establish a firm foundation for subsequent education and development. The centres provide occupational therapy, physiotherapy and speech therapy. Some special child care centres also provide residential services to children who are homeless or abandoned, or whose disabilities are so severe as to require more intensive care. As at 31 December 2000, there were 1,269 places in these centres, of which 108 had residential facilities;

- (c) **integrated programmes in ordinary child care centres:** cater for mildly disabled children aged two to six. As a matter of policy and wherever possible, disabled children are integrated into ordinary child care centres. Child care centres participating in the programme are allocated an additional 'special child care worker' for every six disabled children, together with psychological and allied health support. As at 31 December 2000, there were 1,338 places in the programme; and
- (d) **integrated programmes in kindergartens:** serve mildly disabled children aged three to six. The disabled children take part in the same activities as their non-disabled counterparts but are withdrawn from classes for half an hour each day to receive special remedial support in cognitive, social, communication, perceptual-motor and self-help skills. Each participating kindergarten is allocated an additional resource teacher and, where needed, receives the support of educational psychologists and inspectors of the Education Department. As at 31 December 2000, there were 168 places in the programme.

294. Emotional support and practical advice to the relatives of disabled children is also important to the children's overall care and development. That support is provided through six 'Parent Resource Centres', patient resource centres, and a Community Rehabilitation Network service. The resource centres foster parents' understanding and acceptance of their children's disabilities. They also help them to secure appropriate training opportunities for the children.

295. In paragraph 29 of its concluding observations, the Committee encouraged the efforts being undertaken to integrate disabled children into regular schools. The following paragraphs explain the present position.

#### Primary and secondary school education for disabled children

296. As explained in paragraphs 544 to 547 of our report in the light of the ICESCR, children with special needs are encouraged, and given appropriate support, to receive education in ordinary schools as far as possible. Annex 20 sets out the recognised definitions of the various forms of disability. Annex 21 lists the support services provided to disabled children studying in ordinary schools.

297. Children with more complex needs, or whose disabilities are so severe that they cannot benefit from education in the mainstream, receive free and compulsory general education in special schools up to the junior secondary level. Children with physical or sensory impairment receive a minimum of nine years' education. Mentally handicapped children receive ten.

298. Disabled children who are capable of pursuing academic studies have access to senior secondary education (Secondary 4 and Secondary 5) in ordinary or special schools depending on their needs.



Those who are not academically inclined have access to vocational training. The supply of and demand for the various types of special schools are indicated at Annex 22.

### Way forward

299. In September 1997, the Education Department initiated a two-year pilot project to test ways empowering ordinary school personnel to participate more fully in the integration progress. The project - which is essentially a control study - covers nine schools and 48 integrators. It was extended to 40 schools in the 2000-2001 school year and will be extended to 65 (in total) in 2001-2002.

### Vocational rehabilitation and employment

300. Upon completion of junior secondary education<sup>20</sup>, children with disabilities may choose to pursue further education, training in daily living skills, seek employment in the open market, or receive vocational training according to their abilities. The Vocational Training Council, a Government subvented body, provides a vocational assessment service to assess students' potential for employment and for vocational training. Those wishing to seek open employment will receive free placement services from the Labour Department's Selective Placement Division. But some disabled children are not ready, at that stage of life, to take up open employment. Others cannot do so because of limitations arising from their disabilities. These groups can avail themselves of the vocational training provided in skills centres or the simple job skills training provided in sheltered workshops and in supported employment units. As at the end of 2000, the skills centres provided 1,184 full-time training places; the sheltered workshops provided 6,795 places; and there were 1,250 supported employment places.

## Transport

301. The Government and public transport operators continuously seek to improve the user-friendliness of public transport facilities for people with disabilities. The Transport Department convenes a working group comprising representatives of major public transport operators and various disability groups. The group meets regularly to identify new initiatives and to monitor progress of any improvement measures. Centre-based transport services are available for disabled persons who cannot make use of public transport. Additionally, a Government subvented 'Rehabus' service provides door-to-door transport for people with serious mobility difficulties.

## Access to buildings

302. The Buildings Department's "Design Manual: Barrier Free Access 1997" prescribes both obligatory and recommended requirements for building-design to facilitate access by people with disabilities. The obligatory requirements are incorporated in the Buildings Ordinance (Chapter 123). The Ordinance prescribes the criteria for the approval of plans for new buildings. Where structurally feasible, access and other facilities in existing government buildings are modified to meet the statutory requirements as far as possible.

## Welfare allowances for disabled persons and their families

303. Severely disabled persons are eligible for a non means-tested disability allowance. The current normal rate is HK\$1,260 per month<sup>21</sup>. A higher rate of HK\$2,520 per month is payable to those who require constant attendance at home. Families in financial difficulties may also apply for the Comprehensive Social Security Assistance Scheme, which

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<sup>20</sup> Normally at the age of 15, though this may vary, particularly with disabled children.

<sup>21</sup> The Hong Kong dollar is pegged to the US dollar at the rate of HK\$7.8 equals US\$1.

is means-tested (see paragraphs 307 to 313 below). Additionally, persons with disabled dependants enjoy a tax allowance, currently set at HK\$60,000 for each disabled dependant who is eligible to claim the disability allowance.

#### Cultural and recreational activities

304. Children with disabilities enjoy the same rights as their non-disabled counterparts in regard to participation in cultural and recreational activities. Special facilities and programmes are available to cater for their needs. As at the end of 2000, NGOs were operating 17 social and recreation centres providing social, developmental, recreational, and sporting programmes for people with disabilities and their families.

#### Public education

305. Every year both Government and NGOs run campaigns to promote public understanding of the different kinds of disability. Thematic messages include prevention of disabilities, caring and treatment, open and supported employment, and the right of people with disabilities to full participation in the life of the community. With effect from the financial year 2000-01, recurrent Government expenditure on these activities has been set at HK\$2 million a year.

#### International co-operation

306. The Hong Kong SAR is a signatory to the United Nations Economic and Social Commission of Asia and the Pacific's resolution proclaiming the Asian and Pacific Decade for Disabled Persons (1993-2002). NGOs and Government have been taking positive action to implement the Agenda of Action. We also participate extensively in international conferences on rehabilitation issues to acquire knowledge

and skills of benefit to people with disabilities in Hong Kong.

**E Article 26: The child's right to social security benefit**

307. Our social security policy is to meet the basic and special needs of Hong Kong's disadvantaged people. These include such people as the financially vulnerable, their children, and the severely disabled who may, of course, also be or have children. As we explained in paragraph 134 of our report in the light of the ICESCR, all local residents enjoy the right to social security. This is achieved through a comprehensive social security system administered on an entirely non-contributory basis. The Comprehensive Social Security Assistance (CSSA) Scheme provides a safety net. The Social Security Allowance (SSA) Scheme provides assistance to the elderly and the severely disabled to meet special needs arising from old age or disability<sup>22</sup>. Both schemes are non-contributory, are wholly funded by the general revenue, and are administered by the Government's Social Welfare Department.

Comprehensive Social Security Assistance (CSSA) Scheme

308. To be eligible for CSSA, a person must have resided in Hong Kong for at least one year. Commentators have said that this discriminates against new arrivals and their families. But the Director of Social Welfare has the discretion to waive the criterion in cases of genuine hardship. Able-bodied CSSA recipients aged between 15 and

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<sup>22</sup> It is of course, disability that is the relevant consideration in regard to child beneficiaries under the Allowance.

59 who are available for work must be ready for participation in employment-related activities under the Support for Self-reliance Scheme. This does not, of course, apply to children or young adults in full-time education.

309. This is an income-support scheme that provides a safety net for persons of any age with a proven need for financial assistance. The Scheme is means-tested. All recipients are entitled to free medical treatment at public hospitals or clinics. The standard rates payable under the Scheme include allowances for different categories of children receiving financial assistance. The standard rates have been increased on three occasions since we submitted the previous report to take account of inflation: by 7% in April 1996, 6.5% in April 1997 and 4.8% in April 1998.

310. In paragraph 152 of our report in the light of the ICESCR, we advised the Committee on Economic, Social and Cultural Rights that we were reviewing this policy with a view to encouraging employable CSSA recipients to find employment to re-join the workforce. The review concluded that it was necessary to reduce the standard rate payment to able-bodied adults and children by 10-20% for larger households comprising three or more such members, mainly to take account of the economies of scale. It was also necessary to reduce the standard rates and types of special grants available to able-bodied adults and children in order to guard against reliance on CSSA becoming a preferred option. These recommendations were put into effect from June 1999, together with other recommendations arising from the review. Able-bodied adults and children are still entitled to special grants for rent, water charges, schooling expenses, child-care centre fees, and burial expenses. The special grant for schooling expenses are retained to ensure that children would not be denied to access to education.

311. Some commentators have asserted that the rates payable under the CSSA rates do not provide an acceptable standard of living. But, even after we tightened the standard rates (and the range of special grants) in the light of the 1998 review, the estimated average monthly CSSA payments remained close to the average monthly expenditure of non-CSSA households in the lowest 25% expenditure group. This indicates that current CSSA rates *do* provide an acceptable standard of living.

#### Other forms of assistance available to families

312. Single parents face special difficulties in bringing up families without the support of a spouse. In recognition of those difficulties, single-parent families which are CSSA recipients receive a monthly single parent supplement from CSSA, in addition to the standard rates. Special grants are also payable to cover child care centre fees, school fees, and other educational expenses. And a flat-rate grant is available for selected items of school related expenses (introduced in April 1996).

#### Extra assistance to families with disabled and ailing children

313. Disabled and ailing children are entitled to additional assistance in the form of a higher standard rate or other allowances such as special diet allowance. Additionally, those who have received assistance continuously for 12 months, receive an annual long-term supplement to help replace household and durable goods.

#### The Disability Allowance under the Social Security Allowance Scheme

314. This takes the form of a monthly flat-rate allowance to persons with a disability. It is not means-tested and is payable to persons of all ages who are certified by recognised medical authorities to be suffering from a disability broadly equivalent to 100% loss of earning capacity according to the criteria in the First Schedule of the Employees

Compensation Ordinance. They must also have resided in Hong Kong for at least one year. Currently, the rate of payment is HK\$1,260 a month. A higher rate of HK\$2,520 is paid to persons who need constant daily attendance and who are not receiving such care in a government or subvented institution. As at 31 December 2000, some 86,000 people were receiving this allowance.

## **F Article 27 (paragraphs 1 to 3): Standard of living**

### General

315. The Hong Kong economy witnessed sustained strong growth before 1997, before experiencing a downturn in 1998 and in early 1999 upon the impact of the Asian financial crisis. There was a robust economic recovery from mid-1999 to 2000, upon a strong and broad-based upturn on both the external and domestic fronts. But 2001 has again seen a marked downturn.

316. Nevertheless, Hong Kong's average standard of living has improved significantly in the past decade. This is reflected in the following statistical indicators -

- **per capita GDP** amounted to HK\$190,100 in 2000: an increase of 86% in money terms over 1990. Netting out the price effect, the corresponding increase was also significant, at 31% in real terms;
- **median monthly household income** increased from HK\$8,900 in the second quarter of 1990 to HK\$18,000 in end 2000: a cumulative increase of 102% in money terms; and
- **median monthly employment earnings** increased from HK\$5,100 in the second quarter of 1990 to HK\$10,000 in end

2000: a cumulative increase of 96% in money terms over the past decade.

Currently, per capita GDP in Hong Kong ranks about 16th in the world.

#### General economic condition of Hong Kong

##### Unemployment rate

317. See Part 1, paragraph 1(1).

##### Number of children receiving CSSA benefits

318. As at 31 December 2000, a total of 98,969 persons aged under 18 - and who were, therefore, 'children' for the purposes of the Convention - received benefits under the CSSA Scheme. By way of comparison -

<b>Year</b>	<b>Number of recipients aged under 18</b>
1996	52,942
1997	69,665
1998	101,653
1999	103,639

##### Tax allowance for taxpayers with children

319. Taxpayers can claim income tax deductions for any unmarried children maintained by them at any time during the year of assessment.

The children must be either -

- (a) under the age of 18 during the year of assessment; or
- (b) under the age of 25 during the year of assessment and receiving full-time education at a university, college school or other similar educational establishment; or



- (c) aged 18 or over and, by reason of physical or mental disability, incapacitated for work. A medical certificate must accompany a claim for an incapacitated child.

In the current financial year, the allowance for both the first and second child is HK\$30,000 each. The allowance for the third to the ninth child, is HK\$15,000 each.

### Housing

320. Our housing policy is to achieve better housing for all, through an adequate supply of affordable housing for ownership or rent. This entails -

- (a) providing public rental housing for families who cannot afford adequate private accommodation. As at the end of December 2000, about 614,000 households, comprising 2.1 million people, lived in public rental housing estates. Eligibility is means tested and applicants must have at least seven years' residence in Hong Kong. Demand is high and applicants must join a waiting list. At the end of January 2001, there were over 110,000 applicants on the list. The average waiting time for public rental housing was five years: we aim to reduce this to three years by 2003; and
- (b) encouraging home ownership through various subsidised schemes. The aim has been to improve the living conditions of lower income families who are ineligible for public rental housing. And, when public rental tenants acquire subsidised home ownership flats, their rental flats become available to those in genuine need.

### Children's housing needs

321. Children under the age of 18 are eligible for public housing if their parents meet the relevant eligibility criteria. Most of the public housing are provided with such facilities as schools, playgrounds, clinics, bus terminuses, social services centres, shopping malls, and so forth. The space allocation standard (currently 5.5 square metres of internal floor area per person) and the living environment take into account children's development needs.

### Inadequately housed households

322. We are committed to reducing the number of inadequately housed people and helping all households gain access to affordable housing. In the past five years, we have taken the following measures to achieve these objectives -

- (a) **implementation of the public housing programme:** between 1995/96 and 1999/2000, we rehoused a total of 160,000 households in public rental flats<sup>23</sup>. Formerly, many of the beneficiaries were inadequately housed<sup>24</sup>;
- (b) **redevelopment of non self-contained public housing flats under the Comprehensive Redevelopment Programme:** so far we have cleared 415 blocks including 258 blocks of non self-contained flats;
- (c) **clearance of squatter areas:** since 1994/95, we have cleared a total of 80 squatter areas and have rehoused over 12,100

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<sup>23</sup> Rehousing of households from the redevelopment of public housing estates, the clearance of squatter areas and the Waiting List.

<sup>24</sup> An inadequately housed household is one that does not live in a self-contained living quarter built of permanent materials or if it shares a living quarter with other households. Families living in temporary housing (Temporary Housing Areas (THAs), Cottage Areas, and squatter areas), rooftop structures, non self-contained public and private flats or sharing in private self-contained flats will be considered as inadequately-housed households.

families; and

- (d) **clearance of old style Temporary Housing Areas (THAs) and cottage areas:** between 1994/95 and 2000, we cleared a total of 44 THAs and two cottage areas.

323. These measures have reduced the percentage of inadequately housed households from 10.3% in 1995 to 6.3% in 2000<sup>25</sup>. Between the first quarter of 1995 and the first quarter of 2000, the percentage of such households with members aged under 18 dropped from 30% to 27%<sup>26</sup>. With the decreasing number of THAs and cottage areas, and with the redevelopment of non self-contained public housing flats, we expect the percentage of inadequately housed households to continue steadily to decline. To ensure this, we will -

- clear the remaining THAs and cottage areas by the end of 2001;
- continue to clear squatter areas affected by new developments for public purposes;
- rehouse eligible households affected by clearances of unauthorised rooftop structures;
- redevelop the remaining non self-contained flats in public housing estates; and
- reduce the waiting time for public housing from five years to three.

#### Eligibility of new-arrival families for public housing

324. We encourage new arrivals and their children to register in the

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<sup>25</sup> The total number of inadequately-housed households has dropped from around 180,000 in the first quarter of 1995 to about 132,000 in the first quarter of 2000.

<sup>26</sup> The figures are projections based on the results of the General Household Surveys. Between the first quarter of 1985 and the first quarter of 2000, the percentage of inadequately-housed households with members aged under 18 dropped from 42% to 27%.

Waiting List for public rental housing so that their applications can be considered once they fulfil the residence rule and other eligibility criteria. One such rule was that over 50% of an applicant's household members must have lived in Hong Kong for seven years. Commentators considered that this policy discriminated against new arrivals who, they said, were obliged by financial circumstances to live in substandard private sector housing. But public housing resources are scarce in relation to demand and we have considered it fair and reasonable that longer-term residents should enjoy priority in the allocation of public rental housing. Nevertheless, in 1999, we relaxed the criteria as follows

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- (a) now only half of an applicant's household members (including the principal applicant) must have (at least) seven years' residence in Hong Kong on allocation (instead of over 50% as formerly required); and
- (b) all children under the age of 18, regardless of their places of birth, are deemed as having satisfied the seven-year residence rule, provided that one of their parents has lived in Hong Kong for seven years.

This has made it easier for newly arrived children and their families to qualify for public rental housing.

325. Newly arrived children aged under 18 and spouses of existing public housing tenants may join their families (that is, to live with them in public housing). Where this results in overcrowded living conditions, such households can apply for larger flats.

326. In exceptional cases, new arrivals who face genuine difficulty in finding accommodation may temporarily be accommodated in transit centres until they can make their own housing arrangements. Flexibility

is exercised where the Director of Social Welfare recommends compassionate housing on medical or social grounds.

### Transport

327. Hong Kong has an excellent public transport network, offering a wide range of choices to commuters. All public transport operators offer concessionary fares to children aged 12 years and under, usually at about half the regular fare. Children aged under three years (four years in the case of public buses) travel free when accompanied by an adult. Full time students also enjoy concessionary fares when travelling by rail. Spending on public transport comprises about 9% of average household expenditure in Hong Kong.

### Food

328. We recognise the right of everyone, particularly children, to be free from hunger. Through a combination of imported food and local primary production, an adequate supply of food is available for the whole community. The Agricultural, Fisheries and Conservation Department ensures that adequate stocks of essential commodities are maintained. Food has remained affordable as average wage increases have significantly exceeded increases in the price of food. This is demonstrated by the indices of wages, general consumer prices and foodstuff at Annex 23.

### Education

329. This is addressed in paragraphs 333 to 364 under section VII(A), in relation to Article 28.

### Social security

330. This is addressed in paragraphs 307 to 314 above under section VI, in relation to Article 26.

## Children in poverty

331. Some commentators have called on us to address the question of child poverty in this report. Our position is that -

- (a) poverty is a complex issue. There is no universally agreed and objective definition of the term. And any such definition is subject to contextual variables of time, place and prevailing social conditions. As we informed the Committee on Economic, Social and Cultural Rights, in response to a question about poverty in general<sup>27</sup>, Hong Kong has no official definition of 'poverty' and the Government does not recognise an official poverty line. Some NGOs define poverty in relative terms, setting the poverty line at, say, half the median wage, or half the median household income, or some other similar benchmark. But this approach implies that even the most affluent societies will always contain a group of people regarded as “poor” and we therefore consider it unsound. Other NGOs have defined poverty in terms of income distribution. But such analyses take no account of intangible income derived from Government spending on housing, health and education, so understating the economic effectiveness of welfare services in improving household income and its distribution;
- (b) although there is no official “poverty line”, it has always been Government policy to assist the financially vulnerable to meet their basic and essential needs. Our social security system ensures that no one is denied medical care, food, shelter,

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<sup>27</sup> "List of issues to be taken up in connection with the consideration of the initial report of China: the Special Administrative Region of Hong Kong concerning the rights covered by articles 1-15 of the International Covenant on Economic, Social and Cultural Rights": question 27.

education, and so forth and a poverty line is not prerequisite to action on behalf of those in need. At the end of 2000, about 365,000 people (about 5.4% of the population) were receiving such support, of whom nearly 99,000 were children for the purposes of the Convention. The latter account for about 5.3% of all Hong Kong's children;

- (c) children's needs are best met from within the family. With that in mind, consultants from the University of Hong Kong - whom we commissioned to review the provision of family welfare services (particularly with low-income families in mind) - have recommended that such provision should, in future, be "child-centred, family-focused and community-based". The aim, they propose, should be to meet changing family needs in a holistic and integrated manner. Being child-centred, a major direction in future will be to support parents, strengthen the institution of marriage, and reduce the risk of family breakdown. We have generally endorsed this approach; and
- (d) fundamentally, we consider that the best approach to poverty is to tackle the issue at source by focusing efforts on achieving strong economic progress and providing educational opportunities for all.

332. Some commentators have called on the Government to conduct a survey of children living in poverty in Hong Kong. For the reasons in paragraph 331 above - and particularly the fact that there is no recognised definition of poverty in Hong Kong - we do not consider that such a survey would be useful. We are aware of the needs of children in low-income families. Strategies, measures and services are in place to address their needs and to provide them with relief.

## **VII. Education, leisure and cultural activities** **(Articles 28, 29 and 31)**

### **A Article 28: Right to education**

333. Article 136 of the Basic Law provides that the HKSAR Government shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications. Article 137 provides that educational institutions of all kinds may retain their autonomy and enjoy academic freedom; and students shall enjoy the freedom to choose where to pursue their education. Article 144 provides that the HKSAR Government shall maintain the policy previously practised in Hong Kong in respect of subventions for non-governmental organisations in fields including education.

334. Education ranks among the Government's highest priorities, reflecting the fact that people are our only natural resource and that our future depends on our ability to prepare each new generation to meet the ever-changing challenges and demands of the global marketplace. Accordingly, education receives one of the highest allocations in the annual budget (nearly 23% of total Government spending in 2000-2001). In 2000-2001, expenditure on education totalled HK\$ 51.7 billion, or 4.1% of GDP. By way of comparison, the corresponding figures were HK\$25.365 billion in 1993 (2.99% of GDP) and HK\$11.266 billion in 1988 (2.81% of GDP). About one third of the budget is spent on tertiary education (\$17 billion in 2000-2001).



## **Access to education and educational attainment**

### **Pre-primary education**

335. Pre-primary education is not compulsory. But most parents consider such education to be an important preparation for primary schooling and about 76% of children aged three to five attend private kindergartens. The Government considers that pre-primary schooling is essentially a matter of parental choice and does not fully subsidise education at this level. But it is concerned that the services provided should be of a good standard. That is, they should be provided by qualified persons in premises that are fit for the purpose. To ensure this, the Government provides subsidies in the form of rent and rate reimbursements, purpose-built kindergarten premises in public housing estates, remission of fees to needy parents<sup>1</sup>, and grants to enable kindergartens to employ more qualified teachers<sup>2</sup>.

### **Nine years' free and compulsory education**

336. Access to education is not constrained on grounds of race, religion, sex, age, or language. Six-years' primary education became free in 1971. In 1978, free and compulsory education was extended to the third year of secondary education (“Secondary 3”). The Education Ordinance (Chapter 279) empowers the Director of Education to enforce school attendance if a child is not attending school without reasonable excuse.

### **Encouragement of regular attendance**

337. The Education Department's Non-attendance Case Team counsels children who fail to attend school, encouraging them to return to

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<sup>1</sup> Through the Kindergarten Fee Remission Scheme.

<sup>2</sup> The “Kindergarten Subsidy Scheme”.

school and enforcing attendance if necessary. Their success in this regard is illustrated by the steady fall in the dropout rate -

<u>School year</u>	<u>Dropout rate</u>
1997/1998	0.28%
1998/1999	0.22%
1999/2000	0.19%
2000/2001	0.18%

### School discipline

338. Corporal punishment was abolished in Hong Kong schools in 1991. The 'Guidelines on Student Discipline', issued to schools in March 1999, stress the primacy of the students' dignity in all disciplinary proceedings. The Guidelines recommend a 'whole school approach' whereby all personnel, students, and their parents reach a consensus on disciplinary issues. Communication and collaboration between home and school is essential to the effective realisation of this principle.

### The secondary curriculum

339. At present, our policy is to provide subsidised Secondary 4 places for 85% of Secondary 3 students, though in practice, about 90% of them receive subsidised senior secondary education. However, as Hong Kong develops into a knowledge-based economy, we see the need to provide more education and training opportunities beyond Secondary 3. To that end, from the 2002-2003 school year, we will provide subsidised Secondary 4 places, or training places, to all Secondary 3 students studying in publicly funded schools who have the ability to progress with their education and wish to do so. We expect that, from 2003-2004, about 95% of Secondary 3 graduates will so progress. We also expect

that, in future years, more schools will offer curricula that help their students to develop generic skills and enable them to receive more practical or vocation-oriented training. Such diversity will serve the varying needs and abilities of students.

340. Other schools also offer a five-year secondary course leading to the Hong Kong Certificate of Education Examination (HKCEE). But their curricula are essentially technical/vocational in orientation and seek to provide students with a solid foundation of general knowledge and generic - but fundamental and transferable - skills. If successful in the HKCEE, their students may proceed to Secondary 6 and 7, sit the Hong Kong Advanced Level Examination, and compete for places in local tertiary institutes, including universities.

341. **Practical schools:** offer a three-year junior secondary education to help students develop their interest in and motivation towards studies and prepare them for vocational training, employment or senior secondary education in mainstream schools. However, believing that placement in these schools may stigmatise students to their long-term detriment, we are taking action to integrate them into the educational mainstream in 2002-2003 and provide their students with a curriculum designed to meet their diverse learning needs.

342. **Skills opportunity schools:** offer a three-year skills-oriented curriculum to help students with severe learning difficulties to acquire basic social and vocational skills. These schools will also be mainstreamed in the long run.

#### Financial assistance

343. A fundamental Government policy is that no student shall be deprived of education for lack of financial means. There are several

publicly funded schemes that ensure this. These include -

- (a) **student travel subsidy:** needy full-time students aged 12 or above who have not yet completed their first degree level studies are eligible for a subsidy to cover part of their study-related travel expenses;
- (b) **textbook assistance:** this is a grant made to needy students attending public sector schools and local schools under the Direct Subsidy Scheme for the purchase of essential textbooks, and miscellaneous school-related expenses; and
- (c) **fee remission:** needy Secondary 4 to 7 students in public sector schools may have their tuition fees and public examination fees waived.

#### Education and vocational information

##### In-school education guidance

344. At the primary level, the Education Department's student guidance service helps primary schools to create a caring environment for the all-round development of students. At the secondary level, students in public sector schools receive careers guidance from dedicated careers staff or careers teams. To complement these services, the Education Department has established a homepage with up-to-date information on further study and vocational training opportunities.

##### Post-secondary education including vocational training

345. The Vocational Training Council (VTC) is Hong Kong's main provider of vocational training. It operates through -

- (a) **the Hong Kong Institute of Vocational Education (IVE):**

provides technical education on its nine campuses<sup>3</sup>. In the current academic year (2000-2001), it provided 21,779 full-time, 10,337 part-time day-release, and 24,658 part-time evening places, mainly at the diploma and higher diploma levels;

- (b) **the training and development centres:** there are 18 such centres. Their role is to provide skills training at a more basic level than those provided by the IVE. In the 2000-01 academic year, they offered 68,850 full and part-time places; and
- (c) **skills centres:** provide vocational training for people with disabilities. Currently, there are three such centres. In the 2000-01 academic year, they offered 1,193 full and part-time places.

The majority of the students in the VTC 'net' are aged between 15 and 19. As such, most of them are 'children' for the purposes of the Convention.

#### The Youth Pre-Employment Training Program

346. This initiative was launched in 1999 to prepare school leavers aged between 15 and 19 for the job market, to improve their competitiveness in the search for jobs, and to help them prepare career plans. The programme offers them employment-related training and workplace attachment opportunities in such fields as customer service, information technology, catering, and hospitality. The programme also offers guidance and counselling services thereby increasing the employability. In 2000-2001 over 12,000 young people received such training, of whom some 3,800 have decided to pursue further studies on

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<sup>3</sup> The IVE' was formed in 1999 by amalgamation of the nine former Technical Institutes.

completion of the Programme<sup>4</sup>.

### Higher education

#### Provisions of tertiary places

347. As part of our efforts to enhance the competitiveness of Hong Kong in the increasing knowledge-based economy, we have undertaken to support the progressive increase in post-secondary education so that 60% of our secondary school leavers will have access to post-secondary education by 2010-2011. This would include degree and sub-degree level programmes, and covers both publicly-funded and self-financing modes.

#### Financial assistance

348. It remains our policy that no qualified student is deprived of access to tertiary education for the lack of financial means. The Student Financial Assistance Agency administers various financial assistance schemes for tertiary students and privately funded scholarships awarded on the basis of academic merit. Details of these are at Annex 24.

#### Special educational needs

##### Students with disabilities and special needs

349. This is discussed in paragraphs 290 to 299 above, under Section VIC, in relation Article 23.

#### Education for the gifted

350. Educational policy takes full cognisance of the provision in Article 29.1(a) that education shall be directed to "the development of the child's personality, talents and mental and physical abilities to their fullest potential." That, indeed, is our aspiration and all students are now

exposed to enriched curricula designed to nurture higher order thinking skills, creativity, and personal social competence. But with a view to helping gifted children to achieve their fullest potential, such students additionally receive differentiated teaching with appropriate group methods and extended curricula, normally through 'pullout programmes' within mainstream schools. We recognise that the mainstream environment may not always adequately meet the educational needs of exceptionally gifted students and provide off-site support measures, where that is considered appropriate.

#### Counselling and guidance services

351. The guidance service is available to all students. It supports the development of the 'whole-person' and also serves a preventive function. The Education Department encourages a 'Whole School Approach' whereby all school personnel work together to create a positive learning environment that nurtures students' self-esteem, and ensures that their needs are addressed in a constructive manner. The Department supports the development of the service through funding, in-service training, resource materials, advisory visits, and school-based training workshops.

352. We discuss the related issue of child suicide - and respond to paragraph 31 of the Committee's concluding observations - in paragraphs 268 to 274 above, under section VIB, in relation to Article 24.

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<sup>4</sup> Of the remaining 8,200, over 6,500 trainees have secured employment as at mid-2001: a placement rate of 80%.

## Education for newly arrived children and young people from Mainland China<sup>5</sup>

353. Newly arrived children are entitled to the same educational services and support as local students. They also have access to remedial services such as educational and personal guidance and remedial teaching in Cantonese, English and Mathematics. They are also eligible to apply for the various types of financial assistance provided by the Government if they meet the relevant criteria.

354. In 1997-1998, we introduced a block grant system to help public sector schools provide school-based support services to these children. The grants are given at the rate of \$2,720 per child at the primary level and \$4,035 at the secondary level.

355. The Education Department's Central Placement Unit works closely with the District Education Offices to help newly arrived children secure school places. Those aged six to 15 are quickly enrolled. To help them to integrate into the local education system, the Department has issued curriculum guidelines to schools on Chinese Language, English Language and Mathematics. It has also formulated a testing system to help schools assess the standards that newly arrived applicants have attained in these subjects. The tests also enable the schools to determine the level of entry (class) appropriate to each such child.

356. The Department also provides placement assistance on request to young new arrivals aged over 15. Alternatively, they can attend craft courses run by the technical institutes of the VTC or adult educational courses run by the Department and NGOs. The minimum age for

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<sup>5</sup> The position of illegal immigrant children from the Mainland who are claiming the right of abode in Hong Kong is discussed in paragraph 403 below under Section VIII of this report.



admission to adult education courses was lowered from 18 to 15 in September 1996.

### Way forward

357. The arrival of these children has generated increased demand for school places. We expect that trend to continue. With that in view, we are constructing new schools to ensure that there are sufficient places. Since 1997-1998, we have built 13 new primary and 19 new secondary schools to meet the demand.

### Education for children from the non-Chinese speaking ethnic minorities

358. The discussion in this section relates to the education of non-Chinese children from the 'settled minorities', mainly South Asians<sup>6</sup>, though there are other settled groups<sup>7</sup>. Like new arrivals from Mainland China, many have - or realistically aspire to - the right of abode. And, like the ex-Mainlanders, they are entitled to all the rights of permanent residents, including education, welfare, and housing. Currently, most of Hong Kong's South Asian children attend either private international schools, English Schools Foundation (ESF) schools, or a small number of designated schools in the public sector. The ESF and the wholly private schools are too expensive for many families, particularly the Nepalese and the Pakistanis. Recently, there has been increasing public concern as to the adequacy of educational provision for these children, particularly in terms of school places, the language of instruction, and language learning opportunities.

359. All resident children – including non-Chinese speakers – are

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<sup>6</sup> Mostly, Indians, Nepalese, and Pakistanis.

<sup>7</sup> An (at present unknown) number of South East Asians (mainly Filipinos, Indonesians and Thais) are also settled in Hong Kong, some for many years. But, in general, they appear to experience fewer difficulties than do South Asians in regard to such matters as education, perhaps because many are married to local Chinese or to relatively well-off Western expatriates.

entitled to education in local public sector schools. And our goal is to integrate children from the settled minorities as quickly as possible into the educational mainstream. The public sector schools have sufficient places for that purpose and the Education Department has pledged to find such places for those wanting them within 21 working days. But, in practice, most non-Chinese speakers attend the relatively small number of schools that traditionally have catered to them. To a large extent, this is a matter of parental choice and recognises that the resulting concentration of non-Chinese speakers in those schools means that the children usually communicate in their mother tongue instead of Cantonese. But there are concerns that this may not be conducive to their successful integration into the mainstream community and that the schools that accept minority children may become 'ghetto' establishments that serve to segregate non-Chinese children from their Chinese peers.

360. Commentators have also said that it is difficult for children from the ethnic minorities to secure school places and that the Government discriminates against non-Chinese children by "excluding them" from the Scheme known as the "School based support scheme"<sup>8</sup>. But there is disagreement as to the nature of the difficulties facing those children when they enter school. For some, the principal concern is that, in some cases, the children are not taught Chinese. This, they say, compromises their ability to compete on equal terms for tertiary schooling and, later, for jobs. But other commentators say that the reduction in the number of schools using English as the medium of

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<sup>8</sup> Essentially, the scheme comprises cash grants to expedite the integration of children from the Mainland into local schools. See paragraph 354 above.

instruction<sup>9</sup> has created learning difficulties for minority children in schools that have switched to Chinese.

361. Taking these concerns seriatim -

- (a) **securing school places:** all children aged between six and 15 must attend school and the Director of Education has the duty of ensuring that they do<sup>10</sup>. The Education Department meets all requests for school placement on a standard procedural basis. All children - including those from the ethnic minorities and new arrivals from Mainland China - are treated alike. The Department's District Education Offices provide advice or information on schools, the education system, or policies on kindergarten, primary, and secondary education. Their offices are located throughout the territory, ensuring their ready accessibility. The services they provide are complemented by the Department's Central Placement Unit, which has been in place since February 1996. The Unit's role is to help children who need such assistance to find school places. It co-ordinates and monitors the progress of each case and will intervene to assist where necessary. The unit also keeps under review the supply and demand of school places and, if necessary, recommends the operation of additional classes. As stated above, the Education Department has pledged to place eligible children in schools within 21 working days. That pledge has been faithfully fulfilled;

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<sup>9</sup> The reduction is a consequence of the Government's policy of fostering 'mother tongue' (that is, Cantonese) as the principal medium of instruction. We explained the policy in paragraphs 519 to 524 of our report under the ICESCR, in relation to Article 13 of that Covenant.

<sup>10</sup> Section 74 of the Education Ordinance (Chapter 279).

- (b) **support services for newly arrived children not born in the Mainland:** at present, the Education Department provides various tailor-made support programmes to expedite the integration of newly arrived children into the local education system. These include induction programmes, short-term full-time preparatory courses, and block grants to enable the schools involved to run school based support programmes; and,
- (c) **opportunities to learn Chinese:** since the start of the 2000-2001 financial year, cash grants have - pace our interlocutors - been available to schools to facilitate the integration of non-Chinese children. They are provided on exactly the same basis as those for the integration of Mainland children. Inter alia, schools may use the grants to provide school-based support services, such as tutorial classes on Chinese/English, and developing teaching materials for their non-Chinese speaking students. Additionally, subvented NGOs run induction programmes to help the children adapt to the local school environment;

362. In this context, we think it relevant to mention that educational alternatives exist, both within and outside the public sector. For example, some public sector schools use English as the medium of instruction. And some of those that do so also offer the opportunity to learn the languages of Hong Kong's major minorities groups such as Hindi or Urdu. Most of these schools also offer Chinese as either a compulsory or optional subject. Additionally, several schools offer non-local curricula at the primary and secondary levels. These are privately-run but may nevertheless have access to public assistance. Under the current policy, if there is an established demand for school

places for a particular non-local curriculum, international schools offering that curriculum may apply for land grants at nominal premium. They may also apply for interest-free loans of up to 100% of the cost of building primary or secondary public sector schools of standard design. The amount is adjusted downward if a school's capacity is smaller than that of a local school. At present, 44 such schools offer a range of curricula as those of the USA, Australia, Canada, England, France, Germany, Japan, Korea, Singapore and so forth.

#### Way forward

363. We are currently reviewing the overall provision of education in Hong Kong with a view to meeting the educational needs of non-Chinese speaking children. Concrete plans are expected to be in place by the end of 2001.

#### International co-operation

364. In paragraph 345 of the previous report, we explained that, in order to keep abreast of new curriculum theories and modern teaching methods, Hong Kong educators, administrators and policy makers regularly attended international conferences and courses. Attendees would subsequently conduct courses and seminars to pass on the information to local teachers. This practice continues: see Annex 25.

### **Article 29(c): Aims of education**

#### Educational policy

365. Our policy is to enable everyone to attain all-round development in the domains of ethics, intellect, physique, social skills and aesthetics according to their own attributes. In this way, we hope to ensure that all children emerge from the formal education system capable

of life-long learning, critical and exploratory thinking, innovating, and adapting to change.

### Medium of instruction

366. As we explained to the Committee on Economic, Social and Cultural Rights in paragraphs 519 to 527 of our initial (1998) report in the light of the ICESCR report, in relation to Article 13 of that Covenant. That is the introduction - in 1979 - of the system of nine years free and compulsory education meant that the schools had to accommodate students with a wider range of academic and linguistic ability. Teachers in English medium schools often found themselves having to use Chinese for explanation and discussion, because of their pupils' inadequate level of English. Teaching in a combination of English and Chinese did help some students. But in most cases it led to time being wasted on translation of English texts in class and, worse, learning being reduced to rote memorisation of facts in English.

367. Commentators have said that "the Government's stance on mother-tongue teaching has resulted in much distress to many children and their parents who have resisted attempts to phase out English as the medium." But we remain convinced that students learn best in their mother tongue and that most would learn English better if it were simply treated as an important subject and taught well. But our efforts - and those of schools that have tried to revert to using Chinese - have met with resistance from parents. Nevertheless, we have continued encouraging schools to teach in Chinese, while ensuring that students who have a proven ability to learn effectively in English continue to have the opportunity to do so.

368. To that end - in 1994-1995 - schools were advised that, by late 1997, they would have to choose the language of instruction best suited to

their students. To help them make informed choices, the Education Department provided them with language proficiency profiles of their past intakes. But they were warned that - from the 1998-1999 school year - schools that continued teaching in a language (or mixture of languages) unsuited to their pupils' ability would be instructed to teach in the appropriate medium.

369. Accordingly, in September 1997, we issued the '*Medium of Instruction Guidance for Secondary Schools*'. Its prescriptions took effect from the 1998-1999 school year when over 70% (about 300) public-sector secondary schools (government and aided schools) taught all academic subjects (except English) in Chinese<sup>11</sup>. It was applied first to the Secondary 1 intake progressing to Secondary 2 in the second year and to Secondary 3 in the third.

370. The 300 schools were directed to teach in accordance with the 'Guidance' after proficiency assessments (conducted by the Education Department<sup>12</sup>) indicated that their pupils were not capable of benefiting from instruction given in English and that the schools themselves could not adequately deliver such instruction. The assessment process also identified 114 schools that were so capable and whose pupils demonstrated ability to benefit from an English-based education. Those schools will continue to use English as the medium of instruction.

371. Some commentators have said that the policy is divisive, and elitist. Others say that it violates the Convention. The Government rejects these views and considers the policy to be in the best interests of children. It ensures that students are taught in the linguistic medium

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<sup>11</sup> Non-academic subjects, such as Religious Studies may continue to be taught in English.

<sup>12</sup> The assessment was conducted by a vetting committee - whose members were mostly unofficials - and an appeals committee comprised entirely of non-officials.

through which they are best equipped to learn. That, in turn, is their best guarantee of educational attainment and later career progression. The quality of a school cannot be assessed by its medium of instruction: schools that teach in Chinese and schools that teach in English have both produced outstanding students. We fully expect that the mother tongue policy will enable greater numbers of students to perform with distinction.

### Curricula at different levels and in different types of schools

#### Personality, talent and mental and physical abilities

372. In its 1999 'Review of the Direction in Special Education Curriculum Development in Hong Kong for the 21<sup>st</sup> Century', the Curriculum Development Council (CDC) Committee on Special Educational Needs advocated equal access by all students, irrespective of their disabilities, or special needs. The Committee's view was that disabled students would be able to maximise their potentials by learning through a curriculum framework applicable to *all* students. The CDC has presented such a framework in its consultation document "Learning to Learn". Essentially, the proposal is a development of the policy of integrating students with special educational needs into mainstream schools. The aim is to ensure that they receive the same curriculum as do their normal counterparts but with content that is elaborated, enriched, or extended to meet their special needs. If the proposals are accepted the principle will also apply to children with maladjusted personalities. It already applies to gifted children (see paragraph 350 above).

373. The curriculum materials that the Committee produces will be sent to all Hong Kong schools and will be uploaded on the Internet. This is to ensure that all teachers have access to materials developed on the principles put forward in the consultation paper and can use them as a



reference base in designing school and/or student-based curricula.

## **Civic education, human rights education and education against discrimination**

### **School curriculum and other measures**

374. In paragraph 17 of its concluding observations, the Committee expressed the view that insufficient attention appeared to have been given to the implementation of Article 29 of the Convention, particularly in respect of according human rights education the necessary status within school curricula. And, in paragraph 32, the Committee recommended the incorporation of human rights education, including education about the Convention, as a core curriculum subject in all schools. The Committee noted that this would require that sufficient time be allocated to this subject in the school timetable. It also suggested that an evaluation of human rights awareness raising and education be undertaken in the future to determine its effectiveness in equipping children with tools for life and in encouraging their decision-making and ability to think analytically from the perspective of human rights.

375. As we explained in paragraph 349 of the previous report, civic education, human rights education, and education against discrimination are integral to the curriculum and are addressed in a wide range of subjects. The coverage remains essentially as explained in paragraphs 349 to 351 of that report, though the new subject 'General Studies' now seeks to foster understanding of the needs of persons with disabilities, rehabilitation services and to develop positive attitudes towards the needy. Additionally, extra-curricular programmes encourage communication and the development of relationships between disabled and able-bodied children. These include such initiatives as the "Sister School Scheme",

the "Pick your Friend Scheme", and the "Opportunities for Youth Scheme".

376. In the 1996-1997 school year, the Government introduced a new curriculum framework in its "Guidelines on Civic Education in Schools". This covers human rights and education against discrimination. In 1998-1999, 'Civic education' was introduced as a specific subject at the junior secondary level. That, too, addresses human rights and discrimination.

377. Our policy is to promote equality for students of both sexes<sup>13</sup>. Schools are encouraged to offer all subjects in the curriculum to both female and male students. Mutual respect and equality between the sexes are fundamental values promoted in subjects such as Social Studies, Religious Studies and Liberal Studies at the secondary school level, and General Studies at the primary school level.

378. Other initiatives in this regard are discussed in paragraphs 74 to 78 above, under Section IIID, in relation to Article 12 to the Convention.

#### Less emphasis on achievement oriented education

379. Some commentators say that the present education system is incapable of developing children's academic abilities to their full potential. They have called for an end to 'spoon-feeding', greater emphasis on creativity and the development of critical thinking, and for less emphasis on examinations. They also say that the Government should provide a variety of play opportunities, both indoor and outdoor, in school or out of school to meet the developmental needs of children.

380. The Government agrees that children should enjoy more time for extra-curricular activities within school hours and more leisure time at

home. We are aware that heavy school work and examination pressure can adversely affect the learning process and on children's all-round personal development. They can also adversely influence parents' perceptions of the meaning of 'success' in the learning context and the way they monitor their children's use of time in the pursuit of such success. We agree too that improving the situation requires a new culture of learning and teaching and that the interests of students will best be served through a learner-focussed approach to their education. The promotion and development of that culture of learning requires the concerted efforts of different stakeholders including students, parents, the schools, the Government, and other sectors of society. This will be a learning process for both schools and parents and it would be unrealistic to expect entrenched attitudes to change quickly.

381. The pedagogical premise on which our view of the way forward is founded is that the aims of education are to foster students' moral, intellectual, physical, social, and aesthetic development. To achieve this, one of the issues that we have to address is the creation of space for students to learn. In so doing, we will address several related issues, including, inter alia -

- reducing factual content that students are required to learn;
- enhancing teachers' competence in adopting diversified learning activities and learning materials;
- raising teachers' 'assessment literacy', so as to reduce the number of tests, examinations - and assignments that are mechanical in nature -and the time spent on them. This is predicated on the belief that - in raising the quality and

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<sup>13</sup> In 2000, the Court of Final Appeal ruled that admissions to secondary schools were biased against girls. The Education Department is taking steps to comply with that ruling.

effectiveness of learning - assessment for learning is more important than assessment for selection;

- greater flexibility in the school calendar and class time-table to make more time for play, leisure, and social development and to provide more opportunities for students to learn beyond the confines of the classroom;
- co-operating with NGOs, schools, and other Government departments to develop parents' understanding of the learning process and the aims of education;
- providing extra recurrent funding to enable schools to engage additional staff;
- systematically converting schools to whole-day operation<sup>14</sup> to leave more time for play; and
- systematically improving school facilities to provide more physical space (such as student activity rooms) for students' use.

### Cultural identity and national values

382. In primary schools, these values are fostered through such subjects as General Studies and Chinese Language. At the secondary level, the main 'vehicles' are Chinese Language, Chinese Language and Culture, Chinese History, Civic Education, Social Studies, and Liberal Studies. The schools also organise theme-based activities to develop

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<sup>14</sup> The Government introduced the system of half-day operation in primary schools in 1954 to meet the explosive increase in the primary age population during the post-war years with limited resources of space and capital. Our target for primary education remains the provision of whole-day schooling for all and we are committed to providing it to 60% of primary students by the 2002-2003 school year. Our longer-term aim is for virtually all primary school students to enjoy whole-day schooling from the 2007/08 school year (a small number of schools may not be ready for whole day by the appointed year for such reasons as construction delays due to persistent inclement weather).

students' awareness and understanding of their cultural identity and national values.

### Respect for the natural environment

383. Respect for the natural environment is one of the fundamental objectives of environmental education in schools. Environmental education has been incorporated in the curricula at all levels and schools have been provided with learning and teaching resources and relevant training support for teachers. The object is to foster the knowledge, skills, and attitudes that will enable students to become environmentally responsible citizens. The 1999 'Guidelines on Environmental Education in Schools' prescribe useful directions for the achievement of these goals.

### **C Article 31: Leisure, recreation and cultural activities**

384. In paragraph 32 of its concluding observations, the Committee stated that ways and means of ensuring the fuller implementation of Article 31<sup>15</sup> appeared to deserve further study. As we explained in paragraph 42 of the updating report, the Government attaches great importance to the development and promotion of arts, sports, heritage and extra-curricular activities for children. We hope to demonstrate that commitment - and recognition of the rights in Article 31 - in the following paragraphs.

#### The arts

385. The Hong Kong Arts Development Council (HKADC), a statutory body, is responsible for planning, promoting and supporting the broad development of arts. Arts Education is one of its priorities. It

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<sup>15</sup> Article 31 provides for the right of the child to rest and leisure and the right of the child to participate fully in cultural life and the arts.

recently completed a three-year pilot scheme - 'Artists-in-Schools' - under which artists, arts groups and schools collaborated in various activities. Some 30,000 students benefited under the scheme, in which 34 schools, 44 artists and 17 arts groups participated. The HKADC provided the necessary co-ordination and funding support. It will launch a similar 'Arts-in-Education' programme in 2001.

386. The Council also provides funding support (in the form of grants) to dance and theatre companies whose education and outreach units regularly arrange workshops, demonstration performances and school tours for schools.

#### Arts programmes for children

387. The Leisure and Cultural Services Department presents programmes that are suitable for children and young persons on a year-round basis. These comprise educational programmes and workshops on various art forms and are either free or near-free of charge. The aim is to promote an appreciation of the arts and to stimulate creativity. Inter alia, the Department's key initiatives in this area include

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- **the School Culture Day Pilot Scheme:** a wide range of arts education activities are offered in the Department's performing arts venues, libraries and museums for schools to organise students to attend during school hours;
- **the School Arts Animateur Scheme:** performing arts animateurs are placed at schools where they offer weekly workshops and lecture demonstrations for a duration of four months to one year. The purpose is to help students to acquire the basic knowledge and skills of various art forms including

drama, musical theatre, multi-art and modern dance;

- **the Artist-in-residence and Community Cultural Ambassador Schemes:** performing arts companies engaged by the Department conduct performing arts workshops and performances for children and young persons in youth centres and in the Department's performing arts venues;
- **major annual children events:** these include various seasonal carnivals, competitions and exhibitions. They are expected to attract about 199,000 participants over the year 2001, at a cost of over HK\$12.9 million.

388. The Department's Music Office runs training programmes in Western and Chinese orchestral instruments for children and young persons aged six to 23 years. In the year 2000, it organised 340 'outreach music education programmes' for some 210,000 participants. The Office also organises the annual Hong Kong Youth Music Camp at which some 400 resident students receive intensive orchestral and choral training conducted by overseas/mainland China and local guest musicians. The Camp is not restricted to the musical elite: beginners and children who are just interested in music can participate as day campers.

### Heritage

389. Hong Kong's 13 museums specialise in such areas as history, art, folk culture, science and astronomy. Their service philosophy places emphasis on education and they have strong links with schools and students. Educational corners, children's discovery galleries, hands-on exhibits for children to learn and explore their cultural heritage, general science principles and artistic creations are provided in all major museums. Full-time students are admitted at discounted rates and

groups of 20 or more students are admitted free. They publish informative materials for young visitors and organise numerous activities for them, such as workshops, seminars, guided tours, field trips and so forth.

### Sport

390. The Leisure and Cultural Services Department seeks to provide opportunities for all children - regardless of race, class, sex or ability - to participate in sport. To that end, it organises training courses, competitions and games for children, adults, persons with a disability, and senior citizens. In 2000-2001, the Department will organise some 22,000 such activities for about 1,250,000 participants. Current initiatives in regard to the participation of children in sport include -

- **'EasySport'**: modified versions of various sports adapted to suit children of different size, ability, and intellectual/emotional development. The programme has been introduced into primary schools and special schools;
- **'SportCaptain'**: a programme of workshops and camps to train secondary school students to assist their schools in coaching, refereeing and administration; and
- **the Community Sports Club Project**: an ongoing programme to foster the formation and development of sports clubs where children can develop their sports skills beyond the basic levels.

391. The 'EasySport' and SportCaptain' projects will be extended in 2001 to encourage more pupils to participate in sport.

### Country parks

392. The Government manages country parks - which cover about 38% of our total land area - for the conservation of Hong Kong's natural



heritage and for public recreation and education. Country parks are equipped with picnic and barbecue sites, camp sites, children's play equipment, and trails that provide families and children with easy access to the hills and woodlands. Tree walks, nature trails, visitor centres and other facilities help children to explore the countryside and to learn about nature. Programmes that are specially designed for children include the 'Eyes on Nature Scheme', the 'Bring Kids to Nature Scheme', and the 'Conservation Camp'. The Government's 'country parks' website incorporates a children's corner.

### Library services

393. Hong Kong's 69 public libraries (eight of which are mobile) are spread throughout the territory to ensure accessibility. They have a total stock of 8.8 million library items. Of their total stock of books, CD-ROMs, video and audio tapes, educational kits and so forth, about a quarter (2.2 million), are children's items. Usage by children is high, with some 10.2 million borrowings in the year 2000-2001. The Hong Kong Central Library incorporates a toy library. This is well stocked with educationally and intellectually stimulating toys and multi-media kits.

394. The libraries organise a Reading Programme to encourage young readers to develop regular reading habits and to widen their reading experience. The programme includes numerous reading-related activities such as dramatisations of books, talks, quizzes, book report competition and meetings with local authors. Since the programme first began in 1984, some 220,000 members have read over 4 million books. The libraries also organise other regular activities to encourage children to read. These include weekly children's hours, library visits, interest clubs and so forth. Some 4.4 million children participated in these

activities in 2000-2001.

### Summer Youth Programme

395. This is a community building programme aimed at providing healthy recreation for the six to 25 age group. It takes place during the summer holidays and provides opportunities for the all-round development of young people. In 2000, the Programme included over 23,000 activities and attracted over 2 million participants.

### Arts and physical education in the school curriculum

396. Physical education is a core subject in the curriculum of all primary and secondary schools. Every school child has the right to receive physical education and to take part in extra-curricular activities such as sports programmes and competitions. The Government provides substantial subsidies to schools and other organisations to ensure the enjoyment of that right. Hong Kong's high-density urban environment means that few, if any, schools have sports grounds of their own. To ensure that the lack of such facilities does not pre-empt the right of children to healthy exercise, school children and schools enjoy a 50% concessionary rate for the use of government-run sports facilities. Some of those facilities are available to schools free of charge during school hours.

## **VIII. Special protection measures**

### **I Children in situations of emergency (Articles 22, 38, 39)**

#### **A Article 22: Refugee and illegal immigrant children**

397. In paragraph 33 of its concluding observations, with regard to the situation of Vietnamese children then in detention, the Committee recommended that an evaluation of present and previous policy on this matter be undertaken, to ensure that any errors made were not repeated in the future. The Committee recommended that for the remaining children in detention a solution to their situation must be found in the light of the principles and provisions of the Convention. It was the view of the Committee that measures must be taken immediately to ensure a marked improvement in their conditions of detention and that other measures to protect these children in the future must be put in place.

398. In February 2000, the decision was taken to allow the remaining 973 refugees, the 327 persons whom the Vietnamese authorities did not recognise as its nationals, and the latter's 108 family members to apply for permanent settlement in Hong Kong. On 1 June that year, the Pillar Point Refugee Centre in which they had been housed closed for good. The camps now lie in our past.

399. As at the time of drafting this report, some 63 refugees/migrants had not accepted the offer. Most are confirmed refugees nursing hopes of overseas resettlement. Other 'non-settlers' comprised -

- (a) some 38 persons whose return to Vietnam had been cleared with the Vietnamese Government but had delayed their

departure because family members were receiving medical treatment. They will return to Vietnam once the patients recover from their illness; and

- (b) some 350 'Ex-China Vietnamese'. These are refugees who came to Hong Kong after being granted resettlement in Mainland China. As such, they were ineligible for resettlement in Hong Kong or elsewhere. The group has initiated judicial review proceedings against their removal to Mainland China. Pending judgment, they have been released on recognisance.

400. The three groups of 'non-settlers' may live, work, study and move freely in Hong Kong. They have access to public educational and medical services. Caritas-Hong Kong, which formerly managed the Pillar Point camp, looks after the welfare of those in need. Their services include cash assistance, counselling, interpretation services, and referral to medical institutions for treatment and post-treatment liaison with medical staff.

#### Welfare services for refugee and illegal immigrant children

401. As explained in paragraph 398, the question of refugees and economic migrants from Vietnam has been resolved: their children receive the same access to services as local children. A very small number of Vietnamese children - just 54 between 1998 and 2000 - still enter Hong Kong illegally, either seeking illegal employment, or in order to claim refugee status and to join refugee parents. Children in the former category are repatriated at the earliest opportunity: pending that, they are detained in a children's reception centre. Those claiming refugee status are referred to the UN High Commission for Refugees (UNHCR) for consideration of their claim. Pending the UNHCR's

decision, the children are accommodated in places of refuge where they are treated in the same way as local children living there. In either situation, children whose parents are detained in Hong Kong may be detained with their parents if, in the particular circumstances, that is in their best interests.

402. Very occasionally, the UNHCR grants refugee status to asylum seekers from other parts of the world. The Commission looks after their welfare pending their departure for resettlement, which occurs usually within a few months of arrival.

#### Illegal immigrant children from Mainland China

403. Illegal immigrants and persons who enter Hong Kong as visitors and then overstay are subject to removal. Children in this position are usually released on recognisance<sup>1</sup> pending arrangements for their return to the Mainland. Since arrangements are made to return these children as soon as possible to their place of residence, no schooling will usually be arranged while they are in Hong Kong.

404. Nevertheless, we recognise that, in individual cases, there may be exceptional circumstances that justify special consideration<sup>2</sup> and we have exercised flexibility. Arrangements have been made for the children concerned to enter our schools on a strictly case-by-case basis. This approach enables us to take account of the educational needs of individual children while maintaining effective immigration control. It is, we believe, an essential safeguard that is in the interests of the community. During the four school years from 1997-98 to 2000-01,

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<sup>1</sup> "On recognisance" means that the persons concerned are liable to detention pending their removal from Hong Kong but have been temporarily released until arrangements for their removal can be made.

<sup>2</sup> For example, where it is foreseen that the removal of the child is unlikely to take place for an extended period of time.

some 1,546 Mainland children on recognisance applied for admission to Hong Kong schools. Some 1020 (66%) of them were admitted into local schools.

**B Article 38: Children in armed conflicts and Article 39: Physical and psychological recovery and social reintegration of such children**

405. Hong Kong has not been involved in armed conflict for a long time. The question of children being involved in such conflict does not arise.

**II Children in conflict with the law (Articles 37(a), (b), (c) and (d); 40 and 39)**

**C Article 40: The administration of juvenile justice**

**Prompt and direct information of charges**

406. When the police have sufficient evidence to lay a charge against children, they will, without delay, cause the children to be charged or informed that they may be prosecuted. As far as practicable, the Police should only interview or charge children under the age of 16 in the presence of -

- (a) a parent or guardian; or
- (b) another appropriate adult who is of the same sex as the children and is neither a Police officer nor a civilian employed by the Police.

Under the Police Superintendents' Discretion Scheme, a young offender may be cautioned instead of being charged: see paragraphs 413 to 415 below.

#### No compulsion to give testimony or confess guilt

407. An overriding principle governing the taking of statements is that statements must be given voluntarily. Statements are inadmissible as evidence if they are obtained by fear of prejudice, hope of advantage, or oppression. As far as practicable, statements are taken in accordance with the rules in paragraph 406. This applies irrespective of whether the children in question are suspected of crime.

#### Legal representation/legal aid

408. Before interviewing persons who have been arrested or are under police investigation, the Police serve notice on them, informing them of their rights, which include the right to contact a legal representative. If the arrested persons are juveniles, notice will - as far as practicable - be served in the presence of their parents or guardians.

#### Interpreters

409. The Police arrange for interpreters to record statements from persons, including children, who do not share a common language with the interviewer. The interpreters record such statements in the language and dialect used by the interviewees. Interpreters are also present during court proceedings. There is no charge for the service.

#### Minimum age of criminal responsibility

410. The minimum age of criminal responsibility is prescribed in the Juvenile Offenders Ordinance (Chapter 226). At present, no child under the age of seven can be guilty of an offence. Between the age of seven and 14, there is a legal presumption that a child is incapable of

committing a crime<sup>3</sup>. The prosecution can rebut the presumption by proving beyond reasonable doubt that, at the time of the offence, the child was well aware that the act was seriously wrong, and not merely naughty or mischievous.

411. In paragraph 19 of its concluding observations, the Committee expressed the view that "the low age of criminal responsibility [was] not in conformity with the principles and provisions of the Convention". In paragraph 34, the Committee recommended "that a review of legislation in relation to the issue of the age of criminal responsibility be undertaken with a view to raising this age in the light of the principles and provisions of the Convention." There have also been calls for a review of the law with a view to raising this age in the light of the principles and provisions of this Convention.

412. In May 2000, following public consultations, the Law Reform Commission (LRC) - which is independent of the Government - published a '*Report on the Age of Criminal Responsibility in Hong Kong*'. Inter alia, this recommended raising the minimum age of criminal responsibility from seven to ten years and continuing to apply the rebuttable presumption of doli incapax to children aged between ten and 14 years. We have accepted these recommendations and will introduce the necessary amending legislation in the 2001-2002 legislative session.

#### Alternatives to judicial proceedings: the Police Superintendents' Discretion Scheme

413. Under this Scheme, police officers of Superintendent rank or above may, at their discretion, caution young offenders instead of initiating criminal prosecution. In general, child offenders are

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<sup>3</sup> This is known as the presumption of doli incapax.



considered for cautioning if –

- they are under 18 years of age on the date that the caution is administered;
- the evidence is sufficient to support a prosecution;
- they admit the offence; and
- they and their parents or guardians agree to the cautioning.

414. A Superintendent will normally consider the following factors before administering a caution –

- the nature, seriousness and prevalence of the offence;
- the offender's previous caution record. Only in extenuating circumstances will a second caution be given;
- an offender with a previous conviction should not normally be considered for a caution;
- the attitude of the victim; and
- the attitude of the child's parent(s) or guardian(s).

415. Post-caution follow-up is conducted by the Juvenile Protection Sections (JPS) of the Police Region in which the offender lives. A JPS officer in plain clothes conducts regular visits to the residence of the juvenile, in accordance with the directive of the Superintendent who administered the caution. Visits to and supervision of female offenders are undertaken exclusively by female officers. The visits continue for a maximum of two years from the date of caution or until the juvenile reaches 18 years of age, whichever is sooner. Their purpose is to ensure that the juvenile does not re-offend or associate with undesirable characters. With the consent of its parent(s) or guardian(s), the child

may be referred to the Social Welfare Department, Education Department, or other agencies for aftercare services.

#### Alternatives to institutional care (Article 40.3)

416. The subject of alternatives to institutional care is an inextricable part of the sentencing process. We therefore address the two issues together in paragraphs 417 to 422 below, under Section VIIID, in relation to Article 37(b).

#### **D Article 37(b), (c) and (d): Children deprived of their liberty**

##### Arrest, detention or imprisonment only in conformity with the law and as a measure of last resort

##### Deprivation of liberty

417. Section 15 of the Juvenile Offenders Ordinance (Chapter 226) gives the court wide discretion to deal with child or juvenile offenders. Depending on the circumstances of the particular case, it may discharge them either absolutely or conditionally. Section 11(2) prohibits imprisonment of young persons if they can suitably be dealt with in any other way. In order to deal with the case in the best interests of the child or young person, the court takes into consideration the individual's general conduct, home surroundings, school record, and medical history<sup>4</sup>. Having regard to the circumstances - including the nature of the offence and the offender's character - the court may place the offender under probation in lieu of institutional care<sup>5</sup>. It may also issue community service orders to offenders aged 14 or above<sup>6</sup>."

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<sup>4</sup> Section 8(8) of the Juvenile Offenders Ordinance (Chapter 226).

<sup>5</sup> Section 15(1)(c) of the Juvenile Offenders Ordinance (Chapter 226) and s.3 of the Probation of Offenders Ordinance (Chapter 298).

<sup>6</sup> Section 4(1) of the Community Service Orders Ordinance (Chapter 378).

418. Some commentators consider that these provisions mean that children aged between 16 and 18 are regarded as adults for the purposes of the law and that no account is taken of their youth. Indeed, they assert that, after the age of 15, a child's youth "pales into insignificance"<sup>7</sup>.

419. A fundamental principle in the sentencing of juveniles is that such considerations as just deserts and retributive sanctions - that might apply in the sentencing of adults - are normally outweighed by the interests of safeguarding the well being and the future of the young person. It is true that the provisions in Chapter 226 in regard to extreme youth apply only to under-16 year-olds. But other statutory provisions afford similar consideration to 16 to 21 year-olds. For example, section 109A of the Criminal Procedure Ordinance (Chapter 221) - which mirrors section 11 of Chapter 226 - provides that -

"(1) No court shall sentence a person of or over 16 and under 21 years of age to imprisonment unless the court is of opinion that no other method of dealing with such person is appropriate; and for the purpose of determining whether any other method of dealing with any such person is appropriate the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to the character of such person and his physical and mental condition.

(1A) This section shall not apply to a person who has been convicted of any offence which is declared to be an excepted offence by Schedule 3".

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<sup>7</sup> The comment was originally made in relation to 'definition of the child', under Section II. We have addressed it in this section in the belief that the concern relates more directly to the question of the treatment of young offenders.

The 'excepted offences' in Schedule 3 include crimes of extreme violence such as armed robbery, manslaughter, rape, drug trafficking, and so forth.

420. Additionally, the Reformatory School Ordinance (Chapter 225) and the Training Centres Ordinance (Chapter 280) provide specifically for rehabilitation programmes. Indeed, the Training Centres Ordinance exists entirely "to provide for the establishment of training centres for the training and reformation of offenders who have attained the age of 14 years and have not attained the age of 21 years."<sup>8</sup>

421. Thus, the position in Hong Kong is essentially that provided for in Rule 17.1(b) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'). That is -

“Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.”

Clearly, therefore, our interlocutors are mistaken in their assertion that, at the age of 15, a child's youth “pales into insignificance” in the sentencing process.

#### Children and juveniles awaiting trial

422. Homes operated by the Social Welfare Department serve as assessment centres for children awaiting trial and assist in the formulation of their future plans. So as not to deprive the children of their education, the Department provides essential academic and workshop training during this transitional period. To improve the education service, the Department has recently recruited graduate teachers and regularly conducts on-going reviews on the training programmes in the homes.

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<sup>8</sup> Preamble to Chapter 280.

### Appropriate length of deprivation of liberty

423. Section 3E(a) of the Juvenile Offenders Ordinance requires that children or young persons under remand be brought before the court at least once in every 21 days. In considering the place of detention, the options available to the courts include training centres, detention centres, drug addiction treatment centres, reformatory schools, or approved facilities<sup>9</sup> designated under a probation order made in accordance with section 3(3) of the Probation of Offenders Ordinance (Chapter 298). Their choice is assisted by pre-sentence assessments prepared by the Correctional Services Department and Social Welfare Department following interviews and home visits. The court may also seek a recommendation from the Young Offender Assessment Panel, which comprises professional staff from both the Correctional Services Department and the Social Welfare Department. In all cases, the procedures take account of the offenders' age and the desirability of promoting their rehabilitation: a requirement of Article 11(3) of the BORO.

### Treatment with humanity and respect for dignity

424. Article 6(1) of the BORO provides that persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person. Young offenders in the facilities run by the Social Welfare Department are called by name instead of designated number. Staff of the facilities are specially trained to build up positive relationships with the residents in order better to understand their needs and to ensure the provision of appropriate service and assistance.

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<sup>9</sup> Facilities are so designated in accordance with section 11 of the Probation of Offenders Ordinance.

### Separation of young offenders from adults

425. The essential principles in regard to the detention of prisoners have legal force through Article 6(3) of the Hong Kong Bill of Rights Ordinance (Chapter 383), which mirrors Article 10(3) of the ICCPR -

“The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

The term “juvenile offender” is not defined. But the Commissioner of Correctional Services, who is responsible for Hong Kong's correctional institutions, makes special provision for offenders aged below 21 years. Prisoners aged 21 are detained at “Correctional Institutions” and are not transferred to adult prisons until after they attain the age of 21.

426. Male offenders aged under 18 are separated from those aged 18 or above. But that is not possible in the Training Centres for female inmates because of overcrowding. Young prisoners under 21 years of age are accommodated separately from adults. But 14 to 17 year-olds and 18 to 20 year-olds attend the "young prisoners' programme" together. The programme comprises half-day schooling and half-day vocational training (both of which are compulsory), plus psychological counselling and in-centre care by Welfare and Aftercare Officers. Separation is not possible due to the lack of suitable detention facilities, though as far as practicable, the two groups are accommodated separately at night. The case is different in the Drug Addiction Treatment Centres, where the treatment programmes for offenders aged 21 and above are different from those for under 21 year-olds. This is because the younger group are more vulnerable.

427. We are now devising a long-term prison development plan to ease the overcrowding problem and to meet the projected growth in the penal population. If realised, this will ensure sufficient accommodation to enable us to separate under 18 year-olds from older offenders throughout the system.

#### Right to receive family visits

428. All young offenders under the care of facilities operated by the Social Welfare Department have the right to receive family visits. Parents are encouraged to visit their children during their period of confinement to foster family relationships and to facilitate reintegration into the community.

429. Under the Prison Rules (sub-legislation under Chapter 234), offenders have the statutory right to receive at least two visits from relatives and friends every month. Young inmates are generally encouraged to receive more frequent visits to help them maintain and improve their family relationships.

#### Legal and other forms of assistance

430. Defendants before the Juvenile Court are entitled to legal representation by a lawyer provided by the Duty Lawyer Service. Legal aid services are available to children who are prosecuted in the higher courts. It is also available to young inmates lodging appeals or seeking review of their sentences.

431. The welfare of young offenders is the responsibility of the Welfare, Aftercare and Personal Officers of the Correctional Services Department, who help and guide them with personal problems or difficulties arising from imprisonment or detention. The guidance programme includes regular interviews, organised activities, information

on legal assistance and other community resources (such as social welfare and medical services, and the labour market) and training on job interview techniques and human interaction skills. Inmates receive regular counselling from clinical psychologists. The Prison Chaplain ensures that inmates who so wish are able to attend religious services and/or receive spiritual guidance.

#### Right to challenge the legality of detention

432. Article 11(4) of the BORO provides that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". The Magistrates Ordinance (Chapter 227) provides for a right to appeal (section 113) within 14 days of the magistrate's decision (section 114).

#### Right of young offenders to express their views

433. Young offenders detained in penal institutions may express their views on any matter related to their treatment of detention to any Officers or Senior Officers of the Department. They can also make use of the following channels -

- the Complaints Investigation Unit of the Correctional Services Department;
- visiting Justices of Peace;
- the Independent Commission Against Corruption;
- the Office of the Ombudsman;
- Executive, Legislative and District Councillors;
- the Secretary for Security; and
- the Chief Executive



All inmates are informed of these avenues through information booklets, notices posted in appropriate places, induction talks, and interviews with officers of the Correctional Services.

**E Article 37(a): The sentencing of juveniles; the prohibition of capital punishment and life imprisonment**

Life imprisonment and corporal punishment

434. Before 1 July 1997, persons who were aged under 18 when they committed murder were sentenced to detention for an indeterminate term until “Her Majesty’s pleasure” was known. On 1 July 1997, the legal term for this form of detention became “detention at Executive discretion” under the Long-term Prison Sentences Review Ordinance (Chapter 524). At that time, there were 15 young murderers detained at Executive discretion. The Chief Executive has since determined their minimum terms, which range from 15 years to 30 years. The progress of their rehabilitation is reviewed every two years by the Long-term Prison Sentences Review Board, which is an independent statutory body. On the recommendation of the Board, the Chief Executive may order a determinate sentence.

435. In future cases, the courts may impose discretionary life sentences on young offenders who have committed murder or other offences that attract the maximum sentence of life imprisonment. In passing such a sentence, the Court must specify a minimum term. Their rehabilitation is subject to the review procedures described in paragraph 434.

Facilities for young offenders

436. These comprise -

- (a) **facilities run by the Social Welfare Department:** the Department runs four types of facilities for young offenders whose offences are of a relatively minor nature. These comprise two 'places of detention', two probation homes, a probation hostel, and a reformatory school: see Annex 26. These facilities take a 'social work' approach to the management of their charges, with the aim of helping them to change their behaviour and attitudes and to equip them with the necessary skills to cope with the problems of daily life and to reintegrate into the community. To that end their programmes include formal academic and pre-vocational/trade training, social and developmental groups, interest classes, recreational activities, uniform groups, and community service. Counselling and therapeutic treatment are available to individual residents when necessary. Their performance and welfare plans are regularly reviewed in case conferences attended by such persons as probation officers and parents. Residents have the right to complain, to access information, and send letters (without limit). They are informed of these rights upon admission when they receive information on institutional routine, rules and regulations, rights, privileges and welfare assistance. Residents of these Homes, except probation hostel which is an open institution, have their medical examination upon admission and prior to discharge.
- (b) **institutions operated by the Correctional Services Department:** these cater to repeat and more serious offenders, and to young people who have become addicted to drugs. Details are at Annex 27. The philosophy underlying the overall institutional programme is that of 'throughcare'. This entails

constant care for all young offenders from the time of their admission and beyond their discharge. Education programmes for young offenders provide a balance of general education and vocational training. Inmates are encouraged to participate in programmes that lead to external accreditation and qualifications that are recognised by employers. Throughout his or her detention, each young inmate is assigned to the care of an Aftercare Officer who provides appropriate, continuous support and guidance. The Officers help their charges to adapt to the institutional programme and to prepare for the challenges of discharge and re-integration into society. As with the inmates of Social Welfare Department facilities, those in Correctional Service institutions may receive and send unlimited mail<sup>10</sup>.

#### Promotion of forms of punishment other than imprisonment

437. Section 11(1) of the Juvenile Offenders Ordinance (Chapter 226) provides that no child under the age of 14 may be sentenced to imprisonment or committed to prison in default of payment of a fine, damages, or costs. But children or young persons aged between 14 and 16 who are found guilty of offences for which adults might be imprisoned, may be detained in a reformatory school for not more than six months (section 14 of the Juvenile Offenders Ordinance). Under 16 year-olds may be detained in a reformatory school for a period of not less than one year and not more than three years<sup>11</sup>. Persons aged 14 or over may be required to perform unpaid work for up to 240 hours<sup>12</sup>.

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<sup>10</sup> At the time of the previous report, inmates were allowed unlimited (letter) contact with close friends and relatives only. That restriction was lifted in 1997 by amendment of the Prison Rules.

<sup>11</sup> Section 17 of the Reformatory Schools Ordinance (Chapter 225). The Ordinance provides for the detention of 'youthful offenders', defined in section 2 as an offender aged between seven and 16.

<sup>12</sup> Section 4(1) of the Community Service Orders Ordinance (Chapter 378).

**F Article 39: Physical and psychological recovery and social reintegration**

Rehabilitation of juvenile offenders

438. Rehabilitation is a key priority in the treatment of young offenders and we have well-established programmes designed for that purpose. Research completed in 1996<sup>13</sup> confirmed the effectiveness of existing rehabilitation programmes but recommended improvements, some of which are now in effect and we are taking action on others. Annex 28 describes the major recommendations and the state of progress as at the date of drafting this report. The main elements of the overall programme are as follows -

- (a) **the Rehabilitation of Offenders Ordinance (Chapter 297):** section 2<sup>14</sup> protects rehabilitated offenders from unauthorised disclosure of their previous convictions. This is subject to –
- their having been convicted of an offence but not sentenced to imprisonment for more than three months or fined more than \$10,000;
  - their not having been previously convicted in Hong Kong of an offence; and
  - a period of three years having elapsed without their being again convicted in Hong Kong of an offence.

As detention in a reformatory school, in a detention centre, in a place of detention or in a training centre does not constitute imprisonment, the protection applies to young offenders in

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<sup>13</sup> 'Research on the Effectiveness of Rehabilitation Programmes for Young Offenders' conducted by the City University of Hong Kong on behalf of the Standing Committee on Young Offenders of the Government's Fight Crime Committee.

<sup>14</sup> Both sections 2(1) and 2(1A) provide protection against the unauthorised disclosure of previous convictions.

these institutions.

- (b) **Juvenile Offenders Ordinance (Chapter 226):** the sentencing options under the Ordinance seek to foster the rehabilitation of young offenders. For example, among other options, a court may discharge an offender on recognisance; issue a probation order; issue an absolute or conditional discharge; or place the offender under a care or protection order. And, of course, the programmes of the facilities described in paragraph 436 are also designed to foster the rehabilitation of offenders;
- (c) **the Community Support Service Scheme:** offers training and social rehabilitation programmes to young offenders and delinquents who are under probation or reformatory school orders, or have been cautioned under the Police Superintendents' Discretion Scheme, or have been referred by social workers or family case workers. The Scheme aims to prevent recidivism and to help its clientele to re-integrate into the community. It comprises intensive social work and counselling groups, job training, placement services, skills learning, outdoor adventure activities and programmes for parents;
- (d) **probation orders:** an offender aged seven or above may be placed under the supervision of a probation officer for a period of one to three years. Probation officers provide supervision and personal guidance to probationers through regular home visits and interviews during the probation period. They also help to meet the needs of probationers and their families to secure financial assistance, employment, schooling, and so forth. Some young offenders may be required to reside in a probation home or a probation hostel during part of their

probation period: their rehabilitative functions are described in paragraph 436(a);

- (e) **Reformatory school orders:** Reformatory school caters for male offenders under 16 who are convicted before any court of a punishable offence, in the case of an adult by a fine or by imprisonment, necessitating separation from peer with bad influence and longer character training. The maximum period of in-home training is three years, but normally these offenders are given 12 months' in-home training followed by 18 months' after care supervision. The school offers academic, pre-vocational and community service. Social work programmes, including developmental and therapeutic groups, individual counselling service and recreational activities, such as interest classes and uniform groups, are also provided.
- (f) **Community service order:** Community service orders can be made against offenders aged 14 years old and above who are convicted of offences punishable by imprisonment. The offenders perform unpaid work for a number of hours not exceeding 240 hours within a period of 12 months. They will be arranged to work at or for any hospital, charitable, educational, cultural or recreational institution or organisation for old, infirm or handicapped person. These work placements benefit the community, and educate the offenders with civic responsibilities.

#### New measures

439. In October 2000, as part of that process, we introduced the Rehabilitation Centres Bill into the Legislative Council. The Bill proposes a correctional and rehabilitative programme lasting between six and nine months, with emphasis on community-based measures for the

rehabilitation of young offenders whose crimes call for short-term residential treatment. The programme will be less physically demanding than that of the detention centres (which only cater for male offenders), and will provide an intermediate sentencing option between the longer term Training Centre Programme of the Correctional Services Department and the non-custodial measures administered by the Social Welfare Department.

### **III Children in situations of exploitation, including physical and psychological recovery and social reintegration (Articles 32, 33, 34, 35, 36 and 39)**

#### **G Article 32: Economic exploitation, including child labour**

##### Minimum ages for different types of employment

##### Apprenticeship Ordinance (Chapter 47)

440. The Ordinance governs the training and employment of apprentices in designated trades<sup>15</sup> with a view to ensuring that they receive systematic training and protection in matters concerning their employment. Persons aged between 14 and 18 who are employed in such trades and have not completed apprenticeships must enter into contracts with their employers. Contracts in the designated trades must be registered with the Director of Apprenticeship. Contracts in other trades may be registered voluntarily. Over 2,500 contracts were registered in 2000 and nearly 5,900 apprentices were under training.

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<sup>15</sup> Trades are selected for such designation on the advice of the Training Committees established under the Vocational Training Council' for each industrial category.

### Employment in the non-industrial sector

441. The Employment of Children Regulations<sup>16</sup> prohibits the employment of children aged under 15 in industrial undertakings. Children aged 13 and 14 years may work in non-industrial establishments, subject to stringent restrictions imposed by the Regulations in order to ensure their full-time schooling and protect their safety, health, and welfare.

### Employment in the industrial sector

442. The Employment of Young Persons (Industry) Regulations<sup>17</sup> prohibit the employment of under 18 year-olds in underground work and other works involving tunnelling. They also prohibit the employment of under 16 year-olds in dangerous trades. We are considering amending these Regulations to prohibit the employment of persons under the age of 18 years in dangerous trades. Other sub-legislation under Chapter 59 - the Factories and Industrial Undertakings (Woodworking Machinery) Regulations<sup>18</sup> - prohibits children aged under 16 from working on woodworking machinery, except with the written permission of the Commissioner for Labour. And the Occupational Safety and Health Ordinance (Chapter 509) contains provisions prohibiting under 18 year-olds from undertaking hazardous work processes.

### Working hours and condition of employment

#### Regulation of working hours

443. Working hours and conditions of employment for persons aged 15 to 17 years and employed in industrial undertakings are strictly controlled by the Employment of Young Persons (Industry) Regulations.

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<sup>16</sup> Sub-legislation under the Employment Ordinance (Chapter 57).

<sup>17</sup> Also sub-legislation under the Employment Ordinance.

<sup>18</sup> Subsidiary legislation under the Factories and Industrial Undertakings Ordinance (Chapter 59).



The Regulations prescribe the following restrictions -

- (a) working hours are limited to eight hours per day and 48 hours per week between 7am and 7pm;
- (b) at least half an hour is provided for a meal or rest after five hours of continuous work;
- (c) young persons aged under 16 may not carry any load exceeding 18 kilograms in weight; and
- (d) working on rest days is prohibited.

#### Entitlement to employment rights and benefits

444. The Employment Ordinance (Chapter 57) is the principal law governing conditions of employment in Hong Kong and applies to all employees irrespective of their age. It prescribes various employment rights and benefits such as wage protection, rest days, holidays with pay, paid annual leave, sickness allowance, maternity protection, severance payment, long service payment, and employment protection.

445. The Employees' Compensation Ordinance (Chapter 282) provides for the payment of compensation to employees and family members of deceased employees for injuries and fatalities caused by accidents arising out of and in the course of employment or by prescribed occupational diseases. Employers who fail to pay timely compensation are subject to penalties.

#### Occupational safety and health

446. Several statutes protect safety and health at work. These are the Occupational Safety and Health Ordinance (Chapter 509), the Factories and Industrial Undertakings Ordinance (Chapter 59), and the Boilers and Pressure Vessels Ordinance (Chapter 56). These laws apply to employees irrespective of their age. The Government helps

employers and employees control their risks at work by enforcing the laws and promoting safety management through advice, training, publicity and promotional activities.

#### Enforcement of legislation to protect child workers

447. The Labour Department's inspectors rigorously enforce the Employment of Young Persons (Industry) Regulations and the Employment of Children Regulations through routine and surprise inspections of workplaces. In 2000, they conducted 162,640 inspections, detecting just four cases of the illegal employment of children. The Department also regularly inspects workplaces to enforce the safety laws referred to in paragraph 446.

448. The Occupational Safety Service conducts special enforcement campaigns at construction sites and other hazardous workplaces to ensure that they comply with the law. It also organises seminars, conferences, training courses and issues publications that include codes of practice and guides to promote understanding of the law. The Service also advises the Government and the public on matters concerning workers' health and workplace hygiene. Initial medical screening is available without charge to workers of all ages at the Occupational Safety and Health Centre.

449. Some commentators have called for "minimum and reasonable wage protection for young persons". We are opposed to the introduction of minimum wages in Hong Kong - regardless of considerations of age - because we consider them economically unsound. Our reasons are explained in paragraph 87(e) of our initial report in the light of the ICESCR, in relation to Article 7 of that Covenant. And, for the reasons in paragraph 483 below - in relation to the special Section IX on reservations and declarations - we consider the existing protections to be

adequate. An additional consideration in regard to young persons is that the unemployment rate for 15 to 19 year-olds is much higher than that for other age groups (20.5% at end-2000 against the overall average of 5%). Were we to restrict the working hours of those in non-industrial establishments and/or legislate for minimum wages, those rates would be higher still.

## **H Article 33: Drug abuse**

### Illicit use of narcotic and psychotropic substances

#### Drug abuse among children

450. Statistics maintained by the Central Registry of Drug Abuse (CRDA), show that, in 2000, 6.4% of young drug abusers (persons aged under 18) had taken heroin, 75.7% had taken amphetamines (such as 'ecstasy' and 'ice'), 22.3% had taken cannabis. And the proportion of young abusers of psychotropic substance had increased from 81% in 1999 to 95%.

451. Some 63.2% of the 2 046 young abusers aged under 18 reported in 2000 were male. Their average age was 15.8. Some 71.8% of them had taken MDMA ('ecstasy'), 6.4% had taken heroin, and 22.3% had taken cannabis. About 26.0% had previously convictions; 23.8% were employed, and 36.0% were studying. The pattern among newly reported young abusers remained much in line with the general trend. In 2000, some 63.3% of these cases were male. Average age of these abusers was 15.7. MDMA was the most popular drug (71.6% of all cases), followed by ketamine (48.3%) and cannabis (19.8%). Some 26.4% had previous convictions and 22.5% were employed. Over 98% had received at least secondary education.

452. The percentage of drug abusers aged under 18 remains fairly low. But - after five years of steadily declining<sup>19</sup> - there was a sudden upsurge in 2000 - 2,046 (or 11%) of all individuals reported to the CRDA were aged under 18 years, up 112% from the 965 recorded in the same period of 1999. Of these, 1,574 were known to the CRDA for the first time, and 72% took MDMA (ecstasy), 48% ketamine and 20% cannabis: a marked change from the pattern among new cases in 1995 (when 67% took heroin, 19% cannabis and 14% cough medicine: see paragraph 431 of the previous report). Similarly, among the young abusers aged under 18 reported in 2000, 72% took MDMA (ecstasy), 45% ketamine and 22% cannabis: a marked change from the pattern among cases in 1995 (when 66% took heroin, 22% cannabis and 14% cough medicine). The new drug abuse pattern is of major concern.

453. A detailed analysis of drug abuse by under 18 year-olds (by type of drug abused) is at Annex 29.

454. In early 2000, to address the rising trend of psychotropic substance abuse, we established a 'Task Force on Psychotropic Substance Abuse'. The key task for the new body is to recommend comprehensive strategies to tackle psychotropic substance abuse among young persons. The Task Force is expected to complete its work in 2001. But it has already commenced several in-depth studies into the problem and taken proactive measures, including a Code of Practice for Dance Party Organisers. The Task Force has also recommended tighter controls over ketamine, which is an increasingly popular "date-rape" drug<sup>20</sup>.

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<sup>19</sup> The number of drug abusers aged 11 to 17 decreased from 1817 (3.02 per thousand) in 1995 to 965 (1.54 per thousand) in 1999. These numbers relate to abusers known to the Central Registry of Drug Abuse (CRDA).

<sup>20</sup> The Government classified ketamine as a dangerous drug in December 2000.

### Reasons for initial drug abuse

455. As explained in paragraph 432 of the previous report, the reasons for drug abuse are varied and complex. But studies have shown that curiosity, identification with peers, and relief of boredom are the three main reasons for initial drug use. Curiosity is the leading factor among school children. But there has been an increase in the number of abusers in Chinese-speaking schools who have turned to drugs to relieve boredom: from 20% in 1992 to 28% in 1996. The percentage of those who started drugs under peer influence also rose: from 19% in 1992 to 21% in 1996. Only a minority claim to have started drugs for mystical experience or self-medication.

### Patterns of abuse

456. A 1996 'Survey on Drug Use among Students of Secondary Schools and Technical Institutes' revealed a significant increase in the proportion of students abusing heroin. The proportion of female students abusing psychotropic substances had also increased. Most used their pocket money to finance their habit, and they usually took drugs with their friends in their friends' homes. The survey also revealed that students who shared their feelings with their parents were less likely to take drugs. Clearly, therefore, parents had an important role to play in helping children to resist the related temptations and pressures.

457. In 2000, we conducted a survey of over 100,000 students in secondary schools and technical institutes, in order to update ourselves on developments since 1996. We are analysing the findings and expect that they will improve our understanding of the factors leading to drug use. That will, we believe, enable us to devise effective early intervention strategies.

### Action to tackle drug abuse among children

458. Because students comprise a major proportion of young drug abusers in Hong Kong, the young population - particularly students - has been the major focus of the Government's preventive education campaigns. The Security Bureau's Narcotics Division co-ordinates anti-narcotics policies in close co-operation with such agencies as the Police, other Government Departments (Customs, Social Welfare, and so forth), and NGOs. The overall strategy for reducing the supply of illicit drugs and the demand for them comprises five elements: legislation and law enforcement, research, preventive education and publicity, treatment and rehabilitation, and international co-operation.

### Legislation

459. The Dangerous Drugs Ordinance (Chapter 134) is the principal statutory instrument for the control of dangerous drugs, which include commonly abused psychotropic substances. It is jointly enforced by the Police, the Customs and Excise Department, and the Department of Health. The Police and Customs are mainly concerned with enforcement against trafficking, manufacture, and other non-medical use of dangerous drugs. The Department of Health is responsible for the import/export, manufacture, sale and supply of dangerous drugs for medical purposes. Penalties for offences under this Ordinance are severe. For example, the maximum penalty for trafficking in or illegally manufacturing dangerous drugs is a fine of HK\$5 million (about US\$640,000) and life imprisonment. In 1997, the Ordinance was amended to -

- (a) provide for heavier sentences for adult offenders who use or involve minors in the commission of drug offences; and
- (b) give the courts' power to pass more severe sentences for the offences of conspiracy to commit, inciting another to commit,

attempting to commit, and aiding, abetting, counselling or procuring of a specified drug offence.

460. Other laws include -

- (a) **the Pharmacy and Poisons Ordinance (Chapter 138):** imposes controls on the supply of pharmaceutical products;
- (b) **the Control of Chemicals Ordinance (Chapter 145):** controls the import and export of precursor chemicals for the manufacturing of drugs; and
- (c) **the Drug Trafficking (Recovery of Proceeds) Ordinance (Chapter 405):** provides for the tracing, restraint and confiscation of proceeds from drug trafficking.

The legislation is kept under regular review to ensure that it is effective and in step with international practices.

461. The laws are regularly amended in response to local drug abuse trend and international requirements. For example, in 1998, we included norephedrine - the precursor for manufacturing of amphetamine - to the proscriptions in schedule 2 of the Control of Chemicals Ordinance (Chapter 145)<sup>21</sup>. This was in order to comply with the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances. And, in 2000, we added ketamine, a drug commonly abused by young people, to the First Schedule of the Dangerous Drugs Ordinance.

### Law enforcement

462. Involvement in criminal proceedings is distressing for young people and the stigma of a conviction can cause irreparable harm to their

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<sup>21</sup> The proscriptions are contained in section 2A of Chapter 145.

future prospects. Therefore, when a person aged under 18 is arrested for a drug offence, careful consideration is given to the possibility of dealing with the offender by way of a caution under the Superintendents' Discretion Scheme. The basic criteria of the Scheme are at paragraphs 413 and 414 above.

#### Preventive action: general

463 Various subsidised youth services help to dissuade young people from involvement in drugs, through preventive, educational and developmental programmes, counselling, therapeutic groups and training projects. One such service is the 'Integrated Teams', which provides, among others, outreach and counselling services for young people at risk. Currently, there are 64 such teams, among which, 18 Integrated Teams provide extended service for young night drifters - a group that is particularly vulnerable in regard to drugs - throughout Hong Kong, and 3 Integrated Teams provide Community Support Service Scheme service (a total of 5) for juvenile cautioned under the Police Superintendents' Discretion Scheme. In addition, we will launch the Understanding the Adolescent Project (UAP) at secondary schools for early identification of potential at-risk youth and conducting primary preventive programmes for early identification. We will also provide additional resources to the Local Committees on Services for Young People for projects and programmes to tackle the needs and problems of young people at the district level.

#### Preventive education: the schools

464. In the primary schools, drug education is part of 'General Studies'. Secondary schools take a cross-curricular approach whereby drug education is integrated into various subjects within the formal school curricula. Outside the formal curriculum, NGOs and the Security



Bureau's Narcotics Division give talks to students from the primary five to secondary levels (the 10 to 18 age group). The emphasis is on dispelling common misconceptions about drugs, teaching refusal skills, and providing information on the harmful effects of drug abuse, particularly psychotropic substances.

#### Preventive education: training the trainers

465. The Narcotics Division regularly organises seminars and workshops for teachers, social workers and youth groups, in collaboration with government departments and NGOs. In 2000, it jointly organised the first 'Drug Education Course for Scout Leaders' in partnership with the Boy Scout Association. Forty scout leaders participated in the course, which included anti-drug talks, visits to drug treatment and rehabilitation agencies, and anti-drug projects. On completion of the course, the leaders were expected to teach fellow scouts about the harmful effects of drugs. Also in 2000, the Narcotics Division expanded its anti-drug volunteer scheme for the propagation of anti-drug messages. Besides, the Lady Trench Training Centre of Social Welfare Department organised six training courses for frontline social workers in 2000.

#### Public education

466. Our policy in this regard is to mobilise the whole community in the fight against drugs. Publicity programmes designed to that end target at young people and children. Projects in 2000 included essay and drawing competitions, a television series, and an inter-school quiz for primary schools that was also broadcast on television. The Narcotics Division updated its homepage and introduced new interactive games to attract young people. And, in June 2000, the Division opened Phase I of Hong Kong's first 'Drug InfoCentre', which centralises local and overseas information on drugs and provides a venue for anti-drug community

involvement activities. Phase II, an exhibition hall, is currently under construction.

467. The Government receives advice on anti-narcotics policies from the Action Committee Against Narcotics, which is a non-statutory advisory board. A key task of the Committee is to provide preventive education and publicity programmes to against drug abuse in the community. Such programmes mainly comprise anti-drug seminars, territory wide publicity activities, and media programmes. The Committee also provides funding to encourage community involvement in anti-drugs education and publicity.

#### Treatment and rehabilitation

468. Programmes in this regard include compulsory treatment programmes operated by the Correctional Services Department, a voluntary methadone out-patient treatment programme offered by the Department of Health, substance abuse clinics, operated by the Hospital Authority, and counselling services and other voluntary treatment programmes, offered by NGOs. All services are provided to young persons.

469. Within the community, the Social Welfare Department's 'Against Substance Abuse Scheme team', which comprises specially trained social workers, has provided community-based substance abuse prevention programmes for students of more than 200 secondary schools. It also aims at helping the experimental or occasional drug abusers under 21 who exhibit no physical dependence on drugs, no chronic psychological or mental problem, to stay away from substance and develop healthy life. The Social Welfare Department also subvents three Counselling Centres for Psychotropic Substance Abusers and to young people who are at risk. It will offer both short term residential

treatment and non-methadone outpatient programmes for young male addicts.

#### Way forward

470. In October 2000, we published the second 'Three-year Plan on Drug Treatment and Rehabilitation Services'. This set the forward direction for our drug treatment and rehabilitation services and recommended ways to improve them. One such recommendation was that young drug dependent persons should receive tailor-made programmes.

### **I Article 34: Sexual exploitation and sexual abuse**

#### Child involvement in unlawful sexual activities and pornographic performances

471. Prostitution as such is not a crime in Hong Kong. Provisions of the Crimes Ordinance (Chapter 200) protect children from procurement or coercion into prostitution: see paragraph 24 above under Section II, in relation to Article 1, and paragraph 223, under Section V(I), in relation to Article 19. The Police frequently conduct raids on - and inspections of - vice-related entertainment establishments and figures for related arrests remain low: there were five cases in 1996, one in 1997, none in 1998, and one each in 1999, and 2000. For these reasons, we are confident that underage prostitution - that is, where children are either working as prostitutes or are otherwise exploited for sexual purposes - is not serious in Hong Kong.

472. There are also rare cases where children exploit others for sexual purposes: two persons aged between seven and 15 were convicted of offences relating to prostitution in 1997; one in 1998; none in either

1999 or 2000. All three were aged 15. The corresponding numbers for 16 to 18 year-olds were: 11 in 1997; 29 in 1998, 16 in 1999, none in 2000. In Hong Kong, prostitution as such is not a crime. The offences for which the persons in question were convicted included such things as exercising control over women, causing prostitution (procuring), and living on the earnings of women, all of which are offences under the Crimes Ordinance.

Statistics on sexual offences against minors

473. The trends for the past four years are as follows -

<b>Sexual offences against minors</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Rape	31	27	28	38
Indecent assault	355	425	353	355
Incest	5	2	1	6
Unlawful sexual intercourse	353	282	302	224
Others	30	21	12	41
<b>Total</b>	<b>774</b>	<b>757</b>	<b>696</b>	<b>664</b>

Publicity programmes to prevent sexual exploitation and sex-related crimes

474. This is discussed in paragraph 221 above, under Section V(I), in relation to Article 19.

Treatment, handling and protection for sexually-abused or exploited children

475. These are prescribed in multi-disciplinary guidelines formulated by the Committee of Child Abuse in 1998. These are discussed in paragraphs 226 and 227, under Section V(I), in relation to Article 19.

### Penalties for child abusers

476. The maximum penalties for selected sexual offences are listed at Annex 30.

### Prevention of Child Pornography Bill and Crimes (Amendment) Bill

477. The Prevention of Child Pornography Bill aims to create offences for the possession, production, distribution and advertising of child pornography. The Crimes (Amendment) Bill aims to tackle the issue of child sex tourism. It is proposed to create an offence for arranging or advertising child sex tours. It also gives extra-territorial effect to 24 provisions of the Crimes Ordinance which are related to child sexual abuse.

478. The two bills were introduced into the Legislative Council in June 1999 but lapsed before the Council could allocate priority for their scrutiny. The Government plans to reintroduce them into the Legislative Council in 2001.

## **J Article 35: Sale, trafficking and abduction**

### Legislation.

479. The legal protections comprise -

- (a) **section 126 of the Crimes Ordinance (Chapter 200):** provides that it is an offence to take an unmarried girl under the age of 16 out of the possession of her parent or guardian, without lawful authority or excuse;
- (b) **sections 42 to 44 of the Offences Against the Person Ordinance (Chapter 212):** together these provisions prohibit -
  - (i) taking away or detaining persons against their will with

- intent to sell them (section 42);
- (ii) leading or taking away any child under the age of 14 with intent to deprive their parents, guardians or other persons having the lawful care of them of the possession of that child (section 43); and
  - (iii) transferring a person to another for a valuable consideration (section 44); and
- (c) **section 26 of the Protection of Child and Juveniles Ordinance (Chapter 213):** makes it an offence to take or cause to be taken any child or juvenile out of possession and against the will of their parents or other persons having a lawful care or charge of them.

Some of these provisions are complex and this summary presentation inevitably omits much of the detail. The provisions are re-produced in full at Annex 30.

480. As explained in paragraph 213 above, under Section VH, in relation to Article 11, the Hague Convention on the Civil Aspects of International Child Abduction now applies to Hong Kong.

#### **K Article 30: Children belonging to minority or indigenous groups**

##### Right to profess and practice own religion: religious freedom, provision of religious facilities

481. As explained in paragraph 455 of the previous report, Article 23 of the Bill of Rights guarantees to all persons belonging to ethnic,

religious or linguistic minorities the right, in community with other members of their group, to enjoy their own culture, to practise and profess their own religion and to use their own language. See also paragraphs 115 to 116 above, under Section IVE in connection with Article 14 of the Convention.

## **IX. Reservations and declarations**

482. In paragraph 10 of its concluding observations, the Committee said that it was a matter of regret to the Committee that the State Party<sup>1</sup> had not yet decided to withdraw its reservations, particularly as they related to the issues of working hours for children, of juvenile justice and of refugees.

483. In paragraphs 6 to 9 of the updating report, we explained that the reservations took account of the circumstances of Hong Kong in 1994, when the Convention was extended to the territory. They were reviewed regularly. But there had been no substantial change in the relevant circumstances and we considered it premature to withdraw them. Specifically, we explained that -

- (a) **working hours of children (Article 32(2)(b))**: there were regulations governing the hours and conditions of employment of young persons aged 15 to 17 in industrial undertakings. We were studying the extension of some of those regulations to the non-industrial sector and would be able to bring any new regulations into effect in 1998. We would be in a better position to consider whether the reservation should be withdrawn after any new regulations had been brought into force;

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<sup>1</sup> That is, the United Kingdom on behalf of Hong Kong. On 10 June 1997, the Government of the People's Republic of China issued a letter informing the United Nations Secretary-General of the continued application of the Convention to the Hong Kong Special Administrative Region with effect from 1 July 1997. The declarations and reservations applicable to the Hong Kong Special Administrative Region are substantially the same as those applicable to Hong Kong prior to 1 July 1997.



- (b) **children seeking asylum in Hong Kong (Article 22):** at the time of the updating report (mid-1997), there were still Vietnamese seeking asylum in Hong Kong. The reservation was needed to cover the relevant legislation and the extent of the services available in detention centres; and
- (c) **juveniles in penal institutions (Article 37(c)):** young prisoners were separated from prisoners aged 21 and above. Offenders aged 18 to 20 were held together with those aged 14 to 17. The lack of suitable detention facilities and general overcrowding precluded a change in this practice. We were considering a plan to build a new prison to alleviate the overcrowding problem.

484. The current position is as follows -

- (a) **working hours of children:** in 1998, we completed the study referred to in paragraph 2(a), concluding that the Occupational Safety and Health Ordinance (Chapter 509) of 1997 afforded adequate protection to young workers in both the industrial and non-industrial sectors. There was therefore no need for additional legislation in regard to the working hours of young people in the non-industrial sector. For that reason, our reservation against Article 32(2)(b) remains necessary;
- (b) **children seeking asylum in Hong Kong:** now that the Vietnamese refugee crisis is over - see paragraph 398 above, under Section VIIIA, in relation to Article 22 - the reservation against that is no longer necessary. We therefore propose taking steps to formally withdraw it; and

(c) **juveniles in penal institutions:** since 1997, overcrowding has persisted and it is still only practical to separate the 14 to 17 years olds from the 18 to 20 years olds as far as possible at night<sup>2</sup>. In the daytime, they attend the same rehabilitation programmes. To address these and the wider problems of overcrowding - and the growth of the penal population - we are formulating a long-term prison development plan with a view to providing adequate penal facilities. When those facilities are in place, we will ensure that the younger and older groups are separated at all times. Until then, we must retain the reservation against Article 37(c).

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<sup>2</sup> Separating the age groups at night does not present any difficulty in institutions housing male offenders. But overcrowding in institutions housing female offenders occasionally renders such separation impractical. For example, the occupancy rate at the Tai Tam Gap Correctional Institution recently reached 157%.

**THE BASIC LAW  
OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF  
THE PEOPLE'S REPUBLIC OF CHINA**

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**Decree of the President of  
the People's Republic of China**

**No. 26**

I hereby promulgate the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, including Annex I, Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region, Annex II, Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures, Annex III, National Laws to be Applied in the Hong Kong Special Administrative Region, and designs of the regional flag and regional emblem of the Hong Kong Special Administrative Region, which was adopted at the Third Session of the Seventh National People's Congress of the People's Republic of China on 4 April 1990 and shall be put into effect as of 1 July 1997.

(Signed)  
Yang Shangkun  
President of  
the People's Republic of China

4 April 1990

**THE BASIC LAW  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF  
THE PEOPLE'S REPUBLIC OF CHINA**

**Adopted on 4 April 1990 by the Seventh National People's Congress of the  
People's Republic of China at its Third Session**



## **Preamble**

Hong Kong has been part of the territory of China since ancient times; it was occupied by Britain after the Opium War in 1840. On 19 December 1984, the Chinese and British Governments signed the Joint Declaration on the Question of Hong Kong, affirming that the Government of the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997, thus fulfilling the long-cherished common aspiration of the Chinese people for the recovery of Hong Kong.

Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, and that under the principle of "one country, two systems", the socialist system and policies will not be practised in Hong Kong. The basic policies of the People's Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration.

In accordance with the Constitution of the People's Republic of China, the National People's Congress hereby enacts the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, prescribing the systems to be practised in the Hong Kong Special Administrative Region, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong.

## **Chapter I : General Principles**

### Article 1

The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China.

### Article 2

The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.

### Article 3

The executive authorities and legislature of the Hong Kong Special Administrative Region shall be composed of permanent residents of Hong Kong in accordance with the relevant provisions of this Law.

### Article 4

The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of the Hong Kong Special Administrative Region and of other persons in the Region in accordance with law.

### Article 5

The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.

### Article 6

The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law.

### Article 7

The land and natural resources within the Hong Kong Special Administrative Region shall be State property. The Government of the Hong Kong Special Administrative Region shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organizations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region.

#### Article 8

The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.

#### Article 9

In addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region.

#### Article 10

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may also use a regional flag and regional emblem.

The regional flag of the Hong Kong Special Administrative Region is a red flag with a bauhinia highlighted by five star-tipped stamens.

The regional emblem of the Hong Kong Special Administrative Region is a bauhinia in the centre highlighted by five star-tipped stamens and encircled by the words "Hong Kong Special Administrative Region of the People's Republic of China" in Chinese and "HONG KONG" in English.

#### Article 11

In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law.

No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law.

## **Chapter II: Relationship between the Central Authorities and the Hong Kong Special Administrative Region**

### Article 12

The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government.

### Article 13

The Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region.

The Ministry of Foreign Affairs of the People's Republic of China shall establish an office in Hong Kong to deal with foreign affairs.

The Central People's Government authorizes the Hong Kong Special Administrative Region to conduct relevant external affairs on its own in accordance with this Law.

### Article 14

The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region.

The Government of the Hong Kong Special Administrative Region shall be responsible for the maintenance of public order in the Region.

Military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall not interfere in the local affairs of the Region. The Government of the Hong Kong Special Administrative Region may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief.

In addition to abiding by national laws, members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region.

Expenditure for the garrison shall be borne by the Central People's Government.

### Article 15

The Central People's Government shall appoint the Chief Executive and the principal officials of the executive authorities of the Hong Kong Special Administrative Region in accordance with the provisions of Chapter IV of this Law.

#### Article 16

The Hong Kong Special Administrative Region shall be vested with executive power. It shall, on its own, conduct the administrative affairs of the Region in accordance with the relevant provisions of this Law.

#### Article 17

The Hong Kong Special Administrative Region shall be vested with legislative power.

Laws enacted by the legislature of the Hong Kong Special Administrative Region must be reported to the Standing Committee of the National People's Congress for the record. The reporting for record shall not affect the entry into force of such laws.

If the Standing Committee of the National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated. This invalidation shall not have retroactive effect, unless otherwise provided for in the laws of the Region.

#### Article 18

The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.

National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.

The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.

In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region.

#### Article 19

The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication.

The courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.

The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.

#### Article 20

The Hong Kong Special Administrative Region may enjoy other powers granted to it by the National People's Congress, the Standing Committee of the National People's Congress or the Central People's Government.

#### Article 21

Chinese citizens who are residents of the Hong Kong Special Administrative Region shall be entitled to participate in the management of state affairs according to law.

In accordance with the assigned number of seats and the selection method specified by the National People's Congress, the Chinese citizens among the residents of the Hong Kong Special Administrative Region shall locally elect deputies of the Region to the National People's Congress to participate in the work of the highest organ of state power.

## Article 22

No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law.

If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government.

All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region.

For entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the Region.

The Hong Kong Special Administrative Region may establish an office in Beijing.

## Article 23

The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

### **Chapter III : Fundamental Rights and Duties of the Residents**

#### Article 24

Residents of the Hong Kong Special Administrative Region ("Hong Kong residents") shall include permanent residents and non-permanent residents.

The permanent residents of the Hong Kong Special Administrative Region shall be:

- (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
- (5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
- (6) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

The above-mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region and shall be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode.

The non-permanent residents of the Hong Kong Special Administrative Region shall be persons who are qualified to obtain Hong Kong identity cards in accordance with the laws of the Region but have no right of abode.



Article 25

All Hong Kong residents shall be equal before the law.

Article 26

Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.

Article 27

Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.

Article 28

The freedom of the person of Hong Kong residents shall be inviolable.

No Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. Arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited. Torture of any resident or arbitrary or unlawful deprivation of the life of any resident shall be prohibited.

Article 29

The homes and other premises of Hong Kong residents shall be inviolable. Arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited.

Article 30

The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.

Article 31

Hong Kong residents shall have freedom of movement within the Hong Kong Special Administrative Region and freedom of emigration to other countries and regions. They shall have freedom to travel and to enter or leave the Region. Unless restrained by law, holders of valid travel documents shall be free to leave the Region without special authorization.

Article 32

Hong Kong residents shall have freedom of conscience.

Hong Kong residents shall have freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public.

Article 33

Hong Kong residents shall have freedom of choice of occupation.

Article 34

Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities.

Article 35

Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies.

Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.

Articles 36

Hong Kong residents shall have the right to social welfare in accordance with law. The welfare benefits and retirement security of the labour force shall be protected by law.

Article 37

The freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law.

Article 38

Hong Kong residents shall enjoy the other rights and freedoms safeguarded by the laws of the Hong Kong Special Administrative Region.

Article 39

The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

Article 40

The lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region.

Article 41

Persons in the Hong Kong Special Administrative Region other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed in this Chapter.

Article 42

Hong Kong residents and other persons in Hong Kong shall have the obligation to abide by the laws in force in the Hong Kong Special Administrative Region.

## **Chapter IV : Political Structure**

### *Section 1: The Chief Executive*

#### Article 43

The Chief Executive of the Hong Kong Special Administrative Region shall be the head of the Hong Kong Special Administrative Region and shall represent the Region.

The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this law.

#### Article 44

The Chief Executive of the Hong Kong Special Administrative Region shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

#### Article 45

The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

The specific method for selecting the Chief Executive is prescribed in Annex I: "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region".

#### Article 46

The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms.

#### Article 47

The Chief Executive of the Hong Kong Special Administrative Region must be a person of integrity, dedicated to his or her duties.

The Chief Executive, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region. This declaration shall be put on record.

#### Article 48

The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To lead the government of the Region;
- (2) To be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region;
- (3) To sign bills passed by the Legislative Council and to promulgate laws;  
To sign budgets passed by the Legislative Council and report the budgets and final accounts to the Central People's Government for the record;
- (4) To decide on government policies and to issue executive orders;
- (5) To nominate and to report to the Central People's Government for appointment the following principal officials: Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise; and to recommend to the Central People's Government the removal of the above-mentioned officials;
- (6) To appoint or remove judges of the courts at all levels in accordance with legal procedures;
- (7) To appoint or remove holders of public office in accordance with legal procedures;
- (8) To implement the directives issued by the Central People's Government in respect of the relevant matters provided for in this Law;
- (9) To conduct, on behalf of the Government of the Hong Kong Special Administrative Region, external affairs and other affairs as authorized by the Central Authorities;

- (10) To approve the introduction of motions regarding revenues or expenditure to the Legislative Council;
- (11) To decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees;
- (12) To pardon persons convicted of criminal offences or commute their penalties; and
- (13) To handle petitions and complaints.

#### Article 49

If the Chief Executive of the Hong Kong Special Administrative Region considers that a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he or she may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by not less than a two-thirds majority of all the members, the Chief Executive must sign and promulgate it within one month, or act in accordance with the provisions of Article 50 of this Law.

#### Article 50

If the Chief Executive of the Hong Kong Special Administrative Region refuses to sign a bill passed the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council.

The Chief Executive must consult the Executive Council before dissolving the Legislative Council. The Chief Executive may dissolve the Legislative Council only once in each term of his or her office.

#### Article 51

If the Legislative Council of the Hong Kong Special Administrative Region refuses to pass the budget introduced by the government, the Chief Executive may apply to the Legislative Council for provisional appropriations. If appropriation of public funds cannot be approved because the Legislative Council has already been dissolved, the Chief Executive may, prior to the election of the new Legislative Council, approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year.

#### Article 52

The Chief Executive of the Hong Kong Special Administrative Region must resign under any of the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (2) When, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and
- (3) When, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute.

#### Article 53

If the Chief Executive of the Hong Kong Special Administrative Region is not able to discharge his or her duties for a short period, such duties shall temporarily be assumed by the Administrative Secretary, Financial Secretary or Secretary of Justice in this order of precedence.

In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law. During the period of vacancy, his or her duties shall be assumed according to the provisions of the preceding paragraph.

#### Article 54

The Executive Council of the Hong Kong Special Administrative Region shall be an organ for assisting the Chief Executive in policy-making.

#### Article 55

Members of the Executive Council of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their appointment or removal shall be decided by the Chief Executive. The term of office of members of the Executive Council shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them.

Members of the Executive Council of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country.

The Chief Executive may, as he or she deems necessary, invite other persons concerned to sit in on meetings of the Council.

#### Article 56

The Executive Council of the Hong Kong Special Administrative Region shall be presided over by the Chief Executive.

Except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record.

#### Article 57

A Commission Against Corruption shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.

#### Article 58

A Commission of Audit shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.

### *Section 2: The Executive Authorities*

#### Article 59

The Government of the Hong Kong Special Administrative Region shall be the executive authorities of the Region.

#### Article 60

The head of the Government of the Hong Kong Special Administrative Region shall be the Chief Executive of the Region.



A Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions and commissions shall be established in the Government of the Hong Kong Special Administrative Region.

#### Article 61

The principal officials of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country and have ordinarily resided in Hong Kong for a continuous period of not less than 15 years.

#### Article 62

The Government of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To formulate and implement policies;
- (2) To conduct administrative affairs;
- (3) To conduct external affairs as authorised by the Central People's Government under this Law;
- (4) To draw up and introduce budgets and final accounts;
- (5) To draft and introduce bills, motions and subordinate legislation; and
- (6) To designate officials to sit in on the meetings of the Legislative Council and to speak on behalf of the government.

#### Article 63

The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference.

#### Article 64

The Government of the Hong Kong Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and it shall obtain approval from the Council for taxation and public expenditure.

#### Article 65

The previous system of establishing advisory bodies by the executive authorities shall be maintained.

### *Section 3 : The Legislature*

#### Article 66

The Legislative Council of the Hong Kong Special Administrative Region shall be the legislature of the Region.

#### Article 67

The Legislative Council of the Hong Kong Special Administrative Region shall be composed of Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. However, permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 percent of the total membership of the Council.

#### Article 68

The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures".

#### Article 69

The term of office of the Legislative Council of the Hong Kong Special Administrative Region shall be four years, except the first term which shall be two years.

#### Article 70

If the Legislative Council of the Hong Kong Special Administrative Region is dissolved by the Chief Executive in accordance with the provisions of this Law, it

must, within three months, be reconstituted by election in accordance with Article 68 of this Law.

#### Article 71

The President of the Legislative Council of the Hong Kong Special Administrative Region shall be elected by and from among the members of the Legislative Council.

The President of the Legislative Council of the Hong Kong Special Administrative Region shall be a Chinese citizen of not less than 40 years of age, who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

#### Article 72

The President of the Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To preside over meetings;
- (2) To decide on the agenda, giving priority to government bills for inclusion in the agenda;
- (3) To decide on the time of meetings;
- (4) To call special sessions during the recess;
- (5) To call emergency sessions on the request of the Chief Executive; and
- (6) To exercise other powers and functions as prescribed in the rules of procedure of the Legislative Council.

#### Article 73

The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;
- (2) To examine and approve budgets introduced by the government;
- (3) To approve taxation and public expenditure;
- (4) To receive and debate the policy addresses of the Chief Executive;
- (5) To raise questions on the work of the government;
- (6) To debate any issue concerning public interests;
- (7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
- (8) To receive and handle complaints from Hong Kong residents;

- (9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and
- (10) To summon, as required when exercising the above-mentioned powers and functions, persons concerned to testify or give evidence.

#### Article 74

Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government polices are introduced.

#### Article 75

The quorum for the meeting of the Legislative Council of the Hong Kong Special Administrative Region shall be not less than one half of all its members.

The rules of procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene this Law.

#### Article 76

A bill passed by the Legislative Council of the Hong Kong Special Administrative Region may take effect only after it is signed and promulgated by the Chief Executive.

#### Article 77

Members of the Legislative Council of the Hong Kong Special Administrative Region shall be immune from legal action in respect of their statements at meetings of the Council.

#### Article 78

Members of the Legislative Council of the Hong Kong Special Administrative Region shall not be subjected to arrest when attending or on their way to a meeting of the Council.

#### Article 79

The President of the Legislative Council of the Hong Kong Special Administrative Region shall declare that a member of the Council is no longer qualified for the office under any of the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (2) When he or she, with no valid reason, is absent from meetings for three consecutive months without the consent of the President of the Legislative Council;
- (3) When he or she loses or renounces his or her status as a permanent resident of the Region;
- (4) When he or she accepts a government appointment and becomes a public servant;
- (5) When he or she is bankrupt or fails to comply with a court order to repay debts;
- (6) When he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two-thirds of the members of the Legislative Council present; and
- (7) When he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present.

### *Section 4: The Judiciary*

#### Article 80

The courts of the Hong Kong Special Administrative Region at all levels shall be the judiciary of the Region, exercising the judicial power of the Region.

#### Article 81

The Court of Final Appeal, the High Court, district courts, magistrates' courts and other special courts shall be established in the Hong Kong Special Administrative Region. The High Court shall comprise the Court of Appeal and the Court of First Instance.

The judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the establishment of the Court of Final Appeal of the Hong Kong Special Administrative Region.

#### Article 82

The power of final adjudication of the Hong Kong Special Administrative Region shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal.

#### Article 83

The structure, powers and functions of the courts of the Hong Kong Special Administrative Region at all levels shall be prescribed by law.

#### Article 84

The courts of the Hong Kong Special Administrative Region shall adjudicate cases in accordance with the laws applicable in the Region as prescribed in Article 18 of this Law and may refer to precedents of other common law jurisdictions.

#### Article 85

The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.

#### Article 86

The principle of trial by jury previously practised in Hong Kong shall be maintained.

#### Article 87

In criminal or civil proceedings in the Hong Kong Special Administrative Region, the principles previously applied in Hong Kong and the rights previously enjoyed by parties to proceedings shall be maintained.

Anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay and shall be presumed innocent until convicted by the judicial organs.

#### Article 88

Judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.

#### Article 89

A judge of court of the Hong Kong Special Administrative Region may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges.

The Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.

#### Article 90

The Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country.

In the case of the appointment or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region, the Chief Executive shall, in addition to following the procedures prescribed in Article 88 and 89 of this Law, obtain the endorsement of the Legislative Council and report such appointment or removal to the Standing Committee of the National People's Congress for the record.

#### Article 91

The Hong Kong Special Administrative Region shall maintain the previous system of appointment and removal of members of the judiciary other than judges.

#### Article 92

Judges and other members of the judiciary of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.

#### Article 93

Judges and other members of the judiciary serving in Hong Kong before the establishment of the Hong Kong Special Administrative Region may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

The Government of the Hong Kong Special Administrative Region shall pay to judges and other members of the judiciary who retire or leave the service in compliance with regulations, including those who have retired or left the service before the establishment of the Hong Kong Special Administrative Region, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, irrespective of their nationality or place of residence.

#### Article 94

On the basis of the system previously operating in Hong Kong, the Government of the Hong Kong Special Administrative Region may make provisions for local lawyers and lawyers from outside Hong Kong to work and practise in the Region.

#### Article 95

The Hong Kong Special Administrative Region may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other.

#### Article 96

With the assistance or authorization of the Central People's Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance.

### *Section 5: District Organizations*

#### Article 97

District organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.

#### Article 98

The powers and functions of the district organizations and the method for their formation shall be prescribed by law.



## *Section 6: Public Servants*

### Article 99

Public servants serving in all government departments of the Hong Kong Special Administrative Region must be permanent residents of the Region, except where otherwise provided for in Article 101 of this Law regarding public servants of foreign nationalities and except for those below a certain rank as prescribed by law.

Public servants must be dedicated to their duties and be responsible to the Government of the Hong Kong Special Administrative Region.

### Article 100

Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

### Article 101

The Government of the Hong Kong Special Administrative Region may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels, but only Chinese citizens among permanent residents of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise.

The Government of the Hong Kong Special Administrative Region may also employ British and other foreign nationals as advisers to government departments and, when required, may recruit qualified candidates from outside the Region to fill professional and technical posts in government departments. These foreign nationals shall be employed only in their individual capacities and shall be responsible to the government of the Region.

### Article 102

The Government of the Hong Kong Special Administrative Region shall pay to public servants who retire or who leave the service in compliance with regulations, including those who have retired or who have left the service in compliance with regulations before the establishment of the Hong Kong Special Administrative Region, or to their dependants, all pensions, gratuities, allowances

and benefits due to them on terms no less favourable than before, irrespective of their nationality or place of residence.

#### Article 103

The appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained, except for any provisions for privileged treatment of foreign nationals.

#### Article 104

When assuming office, the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

## **Chapter V: Economy**

### *Section 1: Public Finance, Monetary Affairs, Trade, Industry and Commerce*

#### Article 105

The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property.

Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.

The ownership of enterprises and the investments from outside the Region shall be protected by law.

#### Article 106

The Hong Kong Special Administrative Region shall have independent finances.

The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People's Government.

The Central People's Government shall not levy taxes in the Hong Kong Special Administrative Region.

#### Article 107

The Hong Kong Special Administrative Region shall follow the principle of keeping the expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product.

#### Article 108

The Hong Kong Special Administrative Region shall practise an independent taxation system.

The Hong Kong Special Administrative Region shall, taking the low tax policy previously pursued in Hong Kong as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation.

#### Article 109

The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre.

#### Article 110

The monetary and financial systems of the Hong Kong Special Administrative Region shall be prescribed by law.

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law.

#### Article 111

The Hong Kong dollar, as the legal tender in the Hong Kong Special Administrative Region, shall continue to circulate.

The authority to issue Hong Kong currency shall be vested in the Government of the Hong Kong Special Administrative Region. The issue of Hong Kong currency must be backed by a 100 percent reserve fund. The system regarding the issue of Hong Kong currency and the reserve fund system shall be prescribed by law.

The Government of the Hong Kong Special Administrative Region may authorize designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency.

#### Article 112

No foreign exchange control policies shall be applied in the Hong Kong Special Administrative Region. The Hong Kong dollar shall be freely convertible. Markets for foreign exchange, gold, securities, futures and the like shall continue.

The Government of the Hong Kong Special Administrative Region shall safeguard the free flow of capital within, into and out of the Region.

#### Article 113

The Exchange Fund of the Hong Kong Special Administrative Region shall be managed and controlled by the government of the Region, primarily for regulating the exchange value of the Hong Kong dollar.

Article 114

The Hong Kong Special Administrative Region shall maintain the status of a free port and shall not impose any tariff unless otherwise prescribed by law.

Article 115

The Hong Kong Special Administrative Region shall pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital.

Article 116

The Hong Kong Special Administrative Region shall be a separate customs territory.

The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in relevant international organizations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles.

Export quotas, tariff preferences and other similar arrangements, which are obtained or made by the Hong Kong Special Administrative Region or which were obtained or made and remain valid, shall be enjoyed exclusively by the Region.

Article 117

The Hong Kong Special Administrative Region may issue its own certificates of origin for products in accordance with prevailing rules of origin.

Article 118

The Government of the Hong Kong Special Administrative Region shall provide an economic and legal environment for encouraging investments, technological progress and the development of new industries.

Article 119

The Government of the Hong Kong Special Administrative Region shall formulate appropriate policies to promote and co-ordinate the development of various trades such as manufacturing, commerce, tourism, real estate, transport, public utilities, services, agriculture and fisheries, and pay regard to the protection of the environment.

## *Section 2: Land Leases*

### Article 120

All leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognized and protected under the law of the Region.

### Article 121

As regards all leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, the lessee is not required to pay an additional premium as from 1 July 1997, but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, shall be charged.

### Article 122

In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or , in the case of small houses granted after that date, where the property is granted to, a lessee descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the previous rent shall remain unchanged so long as the property is held by that lessee or by one of his lawful successors in the male line.

### Articles 123

Where leases of land without a right of renewal expire after the establishment of the Hong Kong Special Administrative Region, they shall be dealt with in accordance with laws and policies formulated by the Region on its own.

## *Section 3: Shipping*

### Article 124

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen.

The Government of the Hong Kong Special Administrative Region shall, on its own, define its specific functions and responsibilities in respect of shipping.

#### Article 125

The Hong Kong Special Administrative Region shall be authorized by the Central People's Government to continue to maintain a shipping register and issue related certificates under its legislation, using the name "Hong Kong, China".

#### Article 126

With the exception of foreign warships, access for which requires the special permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Region.

#### Article 127

Private shipping businesses and shipping-related businesses and private container terminals in the Hong Kong Special Administrative Region may continue to operate freely.

### *Section 4: Civil Aviation*

#### Article 128

The Government of the Hong Kong Special Administrative Region shall provide conditions and take measures for the maintenance of the status of Hong Kong as a centre of international and regional aviation.

#### Article 129

The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft.

Access of foreign state aircraft to the Hong Kong Special Administrative Region shall require the special permission of the Central People's Government.

#### Article 130

The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated to it under the regional air navigation procedures of the International Civil Aviation Organization.

#### Article 131

The Central People's Government shall, in consultation with the Government of the Hong Kong Special Administrative Region, make arrangements providing air services between the Region and other parts of the People's Republic of China for airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong and other airlines of the People's Republic of China.

#### Article 132

All air service agreements providing air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government.

In concluding the air service agreements referred to in the first paragraph of this Article, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the government of the Region.

Representatives of the Government of the Hong Kong Special Administrative Region may, as members of the delegations of the Government of the People's Republic of China, participate in air service consultations conducted by the Central People's Government with foreign governments concerning arrangements for such services referred to in the first paragraph of this Article.

#### Article 133

Acting under specific authorizations from the Central People's Government, the Government of the Hong Kong Special Administrative Region may:

1. renew or amend air service agreements and arrangements previously in force;
2. negotiate and conclude new air service agreements providing routes for airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong and providing rights for over-flights and technical stops; and
3. negotiate and conclude provisional arrangements with foreign states or regions with which no air service agreements have been concluded.

All scheduled air services to, from or through Hong Kong, which do not operate to, from or through the mainland of China shall be regulated by the air service agreements or provisional arrangements referred to in this Article.



#### Article 134

The Central People's Government shall give the Government of the Hong Kong Special Administrative Region the authority to :

- a) negotiate and conclude with other authorities all arrangements concerning the implementation of the air service agreements and provisional arrangements referred to in Article 133 of this Law;
- b) issue licences to airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong;
- c) designate such airlines under the air service agreements and provisional arrangements referred to in Article 133 of this Law; and
- d) issue permits to foreign airlines for services other than those to, from or through the mainland of China.

#### Article 135

Airlines incorporated and having their principal place of business in Hong Kong and business related to civil aviation functioning there prior to the establishment of the Hong Kong Special Administrative Region may continue to operate.

## **Chapter VI : Education, Science, Culture, Sports, Religion, Labour and Social Services**

### Article 136

On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications.

Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region.

### Article 137

Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Schools run by religious organisations may continue to provide religious education, including courses in religion.

Students shall enjoy freedom of choice of educational institutions and freedom to pursue their education outside the Hong Kong Special Administrative Region.

### Article 138

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies to develop Western and traditional Chinese medicine and to improve medical and health services. Community organizations and individuals may provide various medical and health services in accordance with law.

### Article 139

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on science and technology and protect by law achievements in scientific and technological research, patents, discoveries and inventions.

The Government of the Hong Kong Special Administrative Region shall, on its own, decide on the scientific and technological standards and specifications applicable in Hong Kong.

#### Article 140

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture and protect by law the achievements and the lawful rights and interests of authors in their literary and artistic creation.

#### Article 141

The Government of the Hong Kong Special Administrative Region shall not restrict the freedom of religious belief, interfere in the internal affairs of religious organizations or restrict religious activities which do not contravene the laws of the Region.

Religious organizations shall, in accordance with law, enjoy the rights to acquire, use, dispose of and inherit property and the right to receive financial assistance. Their previous property rights and interests shall be maintained and protected.

Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

Religious organizations and believers in the Hong Kong Special Administrative Region may maintain and develop their relations with religious organizations and believers elsewhere.

#### Article 142

The Government of the Hong Kong Special Administrative Region shall, on the basis of maintaining the previous systems concerning the professions, formulate provisions on its own for assessing the qualifications for practice in the various professions.

Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications in accordance with the relevant regulations and codes of practice.

The Government of the Hong Kong Special Administrative Region shall continue to recognize the professions and the professional organizations recognized prior to the establishment of the Region, and these organizations may, on their own, assess and confer professional qualifications.

The Government of the Hong Kong Special Administrative Region may, as required by developments in society and in consultation with the parties concerned, recognize new professions and professional organizations.

#### Article 143

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on sports. Non-governmental sports organizations may continue to exist and develop in accordance with law.

#### Article 144

The Government of the Hong Kong Special Administrative Region shall maintain the policy previously practised in Hong Kong in respect of subventions for non-governmental organizations in fields such as education, medicine and health, culture, art, recreation, sports, social welfare and social work. Staff members previously serving in subvented organizations in Hong Kong may remain in their employment in accordance with the previous system.

#### Article 145

On the basis of the previous social welfare system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of this system in the light of the economic conditions and social needs.

#### Article 146

Voluntary organizations providing social services in the Hong Kong Special Administrative Region may, on their own, decide their forms of service, provided that the law is not contravened.

#### Article 147

The Hong Kong Special Administrative Region shall on its own formulate laws and policies relating to labour.

#### Article 148

The relationship between non-governmental organizations in fields such as education, science, technology, culture, art, sports, the professions, medicine and health, labour, social welfare and social work as well as religious organizations in the Hong Kong Special Administrative Region and their counterparts on the mainland shall be based on the principles of non-subordination, non-interference and mutual respect.

#### Article 149

Non-governmental organizations in fields such as education, science, technology, culture, art, sports, the professions, medicine and health, labour, social welfare and social work as well as religious organizations in the Hong Kong Special Administrative Region may maintain and develop relations with their counterparts in foreign countries and regions and with relevant international organizations. They may, as required, use the name "Hong Kong, China" in the relevant activities.

## **Chapter VII : External Affairs**

### **Article 150**

Representatives of the Government of the Hong Kong Special Administrative Region may, as members of delegations of the Government of the People's Republic of China, participate in negotiations at the diplomatic level directly affecting the Region conducted by the Central People's Government.

### **Article 151**

The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

### **Article 152**

Representatives of the Government of the Hong Kong Special Administrative Region may, as members of delegations of the People's Republic of China, participate in international organizations or conferences in appropriate fields limited to states and affecting the Region, or may attend in such other capacity as may be permitted by the Central People's Government and the international organization or conference concerned, and may express their views, using the name "Hong Kong, China".

The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organizations and conferences not limited to states.

The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organizations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another.

The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organizations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

#### Article 153

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.

International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements.

#### Article 154

The Central People's Government shall authorize the Government of the Hong Kong Special Administrative Region to issue, in accordance with law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese citizens who hold permanent identity cards of the Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Region.

The Government of the Hong Kong Special Administrative Region may apply immigration controls on entry into, stay in and departure from the Region by persons from foreign states and regions.

#### Article 155

The Central People's Government shall assist or authorize the Government of the Hong Kong Special Administrative Region to conclude visa abolition agreements with foreign states or regions.

#### Article 156

The Hong Kong Special Administrative Region may, as necessary, establish official or semi-official economic and trade missions in foreign countries and shall report the establishment of such missions to the Central People's Government for the record.

Article 157

The establishment of foreign consular and other official or semi-official missions in the Hong Kong Special Administrative Region shall require the approval of the Central People's Government.

Consular and other official missions established in Hong Kong by states which have formal diplomatic relations with the People's Republic of China may be maintained.

According to the circumstances of each case, consular and other official missions established in Hong Kong by states which have no formal diplomatic relations with the People's Republic of China may be permitted either to remain or be changed to semi-official missions.

States not recognized by the People's Republic of China may only establish non-governmental institutions in the Region.



## **Chapter VIII: Interpretation and Amendment of the Basic Law**

### Article 158

The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.

The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region.

The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.

### Article 159

The power of amendment of this Law shall be vested in the National People's Congress.

The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People's Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region.

Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views.

No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong.

## **Chapter IX: Supplementary Provisions**

### **Article 160**

Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.

Documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong Special Administrative Region, provided that they do not contravene this Law.

## **Annex I: Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region**

1. The Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People's Government.

2. The Election Committee shall be composed of 800 members from the following sectors:

Industrial, commercial and financial sectors	200
The professions	200
Labour, social services, religious and other sectors	200
Members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference	200

The term of office of the Election Committee shall be five years.

3. The delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the Hong Kong Special Administrative Region in accordance with the principles of democracy and openness.

Corporate bodies in various sectors shall, on their own, elect members to the Election Committee, in accordance with the number of seats allocated and the election method as prescribed by the electoral law.

Members of the Election Committee shall vote in their individual capacities.

4. Candidates for the office of Chief Executive may be nominated jointly by not less than 100 members of the Election Committee. Each member may nominate only one candidate.

5. The Election Committee shall, on the basis of the list of nominees, elect the Chief Executive designate by secret ballot on a one-person-one-vote basis. The specific election method shall be prescribed by the electoral law.

6. The first Chief Executive shall be selected in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region".

7. If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval.

## **Annex II : Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures**

### **I. Method for the formation of the Legislative Council**

1. The Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members in each term. In the first term, the Legislative Council shall be formed in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region". The composition of the Legislative Council in the second and third terms shall be as follows :

#### Second term

Members returned by functional constituencies	30
Members returned by the Election Committee	6
Members returned by geographical constituencies through direct elections	24

#### Third term

Members returned by functional constituencies	30
Members returned by geographical constituencies through direct elections	30

2. Except in the case of the first Legislative Council, the above-mentioned Election Committee refers to the one provided for in Annex I of this Law. The division of geographical constituencies and the voting method for direct elections therein; the delimitation of functional sectors and corporate bodies, their seat allocation and election methods; and the method for electing members of the Legislative Council by the Election Committee shall be specified by an electoral law introduced by the Government of the Hong Kong Special Administrative Region and passed by the Legislative Council.

### **II. Procedures for voting on bills and motions in the Legislative Council**

Unless otherwise provided for in this Law, the Legislative Council shall adopt the following procedures for voting on bills and motions :

The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee.

III. Method for the formation of the Legislative Council and its voting procedures subsequent to the year 2007

With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record.

### **Annex III : National Laws to be Applied in the Hong Kong Special Administrative Region**

The following national laws shall be applied locally with effect from 1 July 1997 by way of promulgation or legislation by the Hong Kong Special Administrative Region:

1. Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China.
2. Resolution on the National Day of the People's Republic of China.
3. Declaration of the Government of the People's Republic of China on the Territorial Sea.
4. Nationality Law of the People's Republic of China.
5. Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities.
6. Law of the People's Republic of China on the National Flag.
7. Regulations of the People's Republic of China concerning Consular Privileges and Immunities.
8. Law of the People's Republic of China on the National Emblem.
9. Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone.
10. Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region.
11. Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf.\*

\* Added to Annex III on 4 November 1998 and applied in the HKSAR with effect from 24 December 1998.



**Decision of the National People's Congress on  
the Basic Law of the Hong Kong Special Administration Region  
of the People's Republic of China**

Adopted at the Third Session of the  
Seventh National People's Congress on 4 April 1990

The Third Session of the Seventh National People's Congress has adopted the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which includes Annex I, Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region, Annex II, Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures, Annex III, National Laws to be Applied in the Hong Kong Special Administrative Region, and the designs of the regional flag and regional emblem of the Hong Kong Special Administrative Region. Article 31 of the Constitution of the People's Republic of China provides: "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions." The Basic Law of the Hong Kong Special Administrative Region is constitutional as it is enacted in accordance with the Constitution of the People's Republic of China and in the light of the specific conditions of Hong Kong. The systems, policies and laws to be instituted after the establishment of the Hong Kong Special Administrative Region shall be based on the Basic Law of the Hong Kong Special Administrative Region.

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China shall be put into effect as of 1 July 1997.

**Decision of the National People's Congress  
on the Establishment of the  
Hong Kong Special Administrative Region**

Adopted at the Third Session of the  
Seventh National People's Congress on 4 April 1990

In accordance with the provisions of Article 31 and sub-paragraph 13 of Article 62 of the Constitution of the People's Republic of China, the Third Session of the Seventh National People's Congress has hereby decided

1. that the Hong Kong Special Administrative Region is to be established as of 1 July 1997; and
2. that the area of the Hong Kong Special Administrative Region covers the Hong Kong Island, the Kowloon Peninsula, and the islands and adjacent waters under its jurisdiction. The map of the administrative division of the Hong Kong Special Administrative Region will be published by the State Council separately.

**Decision of the National People's Congress  
on the Method for the Formation of the First Government  
and the First Legislative Council  
of the Hong Kong Special Administrative Region**

Adopted at the Third Session of the  
Seventh National People's Congress on 4 April 1990

1. The first Government and the first Legislative Council of the Hong Kong Special Administrative Region shall be formed in accordance with the principles of state sovereignty and smooth transition.

2. Within the year 1996, the National People's Congress shall establish a Preparatory Committee for the Hong Kong Special Administrative Region, which shall be responsible for preparing the establishment of the Region and shall prescribe the specific method for forming the first Government and the first Legislative Council in accordance with this Decision. The Preparatory Committee shall be composed of mainland members and of Hong Kong members who shall constitute not less than 50 per cent of its membership. Its chairman and members shall be appointed by the Standing Committee of the National People's Congress.

3. The Preparatory Committee for the Hong Kong Special Administrative Region shall be responsible for preparing the establishment of the Selection Committee for the First Government of the Hong Kong Special Administrative Region (the "Selection Committee").

The Selection Committee shall be composed entirely of permanent residents of Hong Kong and must be broadly representative. It shall include Hong Kong deputies to the National People's Congress, representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, persons with practical experience who have served in Hong Kong's executive, legislative and advisory organs prior to the establishment of the Hong Kong Special Administrative Region, and persons representative of various strata and sectors of society.

The Selection Committee shall be composed of 400 members in the following proportions :

Industrial, commercial and financial sectors	25 per cent
The professions	25 per cent

Labour, grass-roots, religious and other sectors	25 per cent
Former political figures, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference	25 per cent

4. The Selection Committee shall recommend the candidate for the first Chief Executive through local consultations or through nomination and election after consultations, and report the recommended candidate to the Central People's Government for appointment. The term of office of the first Chief Executive shall be the same as the regular term.

5. The Chief Executive of the Hong Kong Special Administrative Region shall be responsible for preparing the formation of the first Government of the Region in accordance with this Law.

6. The first Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members, with 20 members returned by geographical constituencies through direct elections, 10 members returned by an election committee, and 30 members returned by functional constituencies. If the composition of the last Hong Kong Legislative Council before the establishment of the Hong Kong Special Administrative Region is in conformity with the relevant provisions of this Decision and the Basic Law of the Hong Kong Special Administrative Region, those of its members who uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and pledge allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, and who meet the requirements set forth in the Basic Law of the Region may, upon confirmation by the Preparatory Committee, become members of the first Legislative Council of the Region.

The term of office of members of the first Legislative Council of the Hong Kong Special Administrative Region shall be two years.

**Decision of the National People's Congress  
to Approve the Proposal by the Drafting Committee for  
the Basic Law of the Hong Kong Special Administrative Region on  
the Establishment of the Committee for the Basic Law of  
the Hong Kong Special Administrative Region  
Under the Standing Committee of the National People's Congress**

Adopted by the Third Session of the  
Seventh National People's Congress on 4 April 1990

The Third Session of the Seventh National People's Congress has decided

1. to approve the proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress; and
2. to establish the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress upon the implementation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

## Appendix

### **Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress**

1. Name: The Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress.

2. Affiliation: To be a working committee under the Standing Committee of the National People's Congress.

3. Function: To study questions arising from the implementation of Articles 17, 18, 158 and 159 of the Basic Law of the Hong Kong Special Administrative Region and submit its views thereon to the Standing Committee of the National People's Congress.

4. Composition: Twelve members, six from the mainland and six from Hong Kong, including persons from the legal profession, appointed by the Standing Committee of the National People's Congress for a term of office of five years. Hong Kong members shall be Chinese citizens who are permanent residents of the Hong Kong Special Administrative Region with no right of abode in any foreign country and shall be nominated jointly by the Chief Executive, President of the Legislative Council and Chief Justice of the Court of Final Appeal of the Region for appointment by the Standing Committee of the National People's Congress.

**Decision of the Standing Committee  
of the National People's Congress on  
the English Text of the Basic Law  
of the Hong Kong Special Administrative Region  
of the People's Republic of China**

Adopted on 28 June 1990

The 14<sup>th</sup> sitting of the Standing Committee of the Seventh National People's Congress hereby decides that the English translation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China which has been finalized upon examination under the auspices of the Law Committee of the National People's Congress shall be the official English text and shall be used in parallel with the Chinese text. In case of discrepancy between the two texts in the implication of any words used, the Chinese text shall prevail.

**Decision of the Standing Committee of the  
National People's Congress on the Addition to or Deletion from  
the List of National Laws in Annex III to the Basic Law of the  
Hong Kong Special Administrative Region of the People's Republic of China**

Adopted at the Twenty Sixth Session of the Standing Committee of the  
Eighth National People's Congress on 1 July 1997

I. The following national laws are added to the list of laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China -

- (1) Law of the People's Republic of China on the National Flag;
- (2) Regulations of the People's Republic of China concerning Consular Privileges and Immunities;
- (3) Law of the People's Republic of China on the National Emblem;
- (4) Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone;
- (5) Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region.

The above national laws shall be applied with effect from 1 July 1997 by way of promulgation or legislation by the Hong Kong Special Administrative Region.

II. The following national law is deleted from Annex III to the Basic Law of the Hong Kong Special Administrative Region:

Order on the National Emblem of the People's Republic of China Proclaimed by the Central People's Government.

Attached: Design of the national emblem, notes of explanation and instructions for use.



**Decision of the Standing Committee  
of the National People's Congress  
on the Addition to the List of National Laws  
in Annex III to the Basic Law  
of the Hong Kong Special Administrative Region  
of the People's Republic of China \***

Adopted on 4 November 1998

The Fifth meeting of the Standing Committee of the Ninth National People's Congress decides: the national law being the "Law of the People's Republic China on the Exclusive Economic Zone and the Continental Shelf" is added to the list of laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

- \* This English translation text is prepared by Department of Justice, Government of the Hong Kong Special Administrative Region. It is for reference purposes and has no legislative effect.

**The Interpretation by the Standing Committee of the National  
People's Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the  
Hong Kong Special Administrative Region of the People's Republic of China**

Adopted by the Standing Committee of the  
Ninth National People's Congress at its Tenth Session on 26 June 1999

The Standing Committee of the Ninth National People's Congress examined at its Tenth session the "Motion Regarding the Request for an Interpretation of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" submitted by the State Council. The motion of the State Council was submitted upon the report furnished by the Chief Executive of the Hong Kong Special Administrative Region under the relevant provisions of Articles 43 and 48(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. The issue raised in the Motion concerns the interpretation of the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Court of Final Appeal of the Hong Kong Special Administrative Region in its judgment dated 29 January 1999. Those relevant provisions concern affairs which are the responsibility of the Central People's Government and concern the relationship between the Central Authorities and the Hong Kong Special Administrative Region. Before making its judgment, the Court of Final Appeal had not sought an interpretation of the Standing Committee of the National People's Congress in compliance with the requirement of Article 158(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Moreover, the interpretation of the Court of Final Appeal is not consistent with the legislative intent. Therefore, having consulted the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, the Standing Committee of the National People's Congress has decided to make, under the provisions of Article 67(4) of the Constitution of the People's Republic of China and Article 158(1) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, an interpretation of the provisions of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China as follows :

1. The provisions of Article 22(4) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China regarding "For entry into the Hong Kong Special Administrative Region, people from other parts of China

must apply for approval” mean as follows : People from all provinces, autonomous regions, or municipalities directly under the Central Government, including those persons of Chinese nationality born outside Hong Kong of Hong Kong permanent residents, who wish to enter the Hong Kong Special Administrative Region for whatever reason, must apply to the relevant authorities of their residential districts for approval in accordance with the relevant national laws and administrative regulations, and must hold valid documents issued by the relevant authorities before they can enter the Hong Kong Special Administrative Region. It is unlawful for people from all provinces, autonomous regions, or municipalities directly under the Central Government, including persons of Chinese nationality born outside Hong Kong of Hong Kong permanent residents, to enter the Hong Kong Special Administrative Region without complying with the appropriate approval procedure prescribed by the relevant national laws and administrative regulations.

2. It is stipulated in the first three categories of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China that the “permanent residents of the Hong Kong Special Administrative Region shall be :

- (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);”.

The provisions of category (3) regarding the “persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2)” mean both parents of such persons, whether born before or after the establishment of the Hong Kong Special Administrative Region, or either of such parents must have fulfilled the condition prescribed by category (1) or (2) of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China at the time of their birth. The legislative intent as stated by this Interpretation, together with the legislative intent of all other categories of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, have been reflected in the “Opinions on the Implementation of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China” adopted at the Fourth Plenary Meeting of the Preparatory

Committee for the Hong Kong Special Administrative Region of the National People's Congress on 10 August 1996.

As from the promulgation of this Interpretation, the courts of the Hong Kong Special Administrative Region, when referring to the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, shall adhere to this Interpretation. This Interpretation does not affect the right of abode in the Hong Kong Special Administrative Region which has been acquired under the judgment of the Court of Final Appeal on the relevant cases dated 29 January 1999 by the parties concerned in the relevant legal proceedings. Other than that, the question whether any other person fulfils the conditions prescribed by Article 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China shall be determined by reference to this Interpretation.

**HONG KONG BILL OF RIGHTS  
ORDINANCE, CAP. 383**

**HONG KONG BILL OF RIGHTS ORDINANCE**  
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# CHAPTER 383

## HONG KONG BILL OF RIGHTS

An Ordinance to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong; and for ancillary and connected matters.

[8 June 1991]

### PART I

#### PRELIMINARY

##### 1. Short title

This Ordinance may be cited as the Hong Kong Bill of Rights Ordinance.

##### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"article" means an article of the Bill of Rights;

"Bill of Rights" (人權法案) means the Hong Kong Bill of Rights set out in Part II;

"commencement date" (生效日期) means the date on which this Ordinance comes into operation;

"legislation" (法例) means legislation that can be amended by an Ordinance;

"pre-existing legislation" (先前法例) means legislation enacted before the commencement date.

(2) The Bill of Rights is subject to Part III.

(3) (\* Not adopted as the Laws of the HKSAR)

(4) Nothing in this Ordinance shall be interpreted as implying for the Government or any authority, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Bill of Rights

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\* See Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which is published in Volume 1, P. 13/1.

or at their limitation to a greater extent than is provided for in the Bill. [cf. ICCPR Art. 5.1]

(5) There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in Hong Kong pursuant to law, conventions, regulations or custom on the pretext that the Bill of Rights does not recognize such rights or that it recognizes them to a lesser extent. [cf. ICCPR Art. 5.2]

(6) A heading to any article does not have any legislative effect and does not in any way vary, limit or extend the meaning of the article.

### 3. Effect on pre-existing legislation

(1)-(2)(\* Not adopted as the Laws of the HKSAR)

@ (3)-(4)(Repealed 2 of 1998 s. 2)

### 4. (\* Not adopted as the Laws of the HKSAR)

### 5. Public emergencies

(1) In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, measures may be taken derogating from the Bill of Rights to the extent strictly required by the exigencies of the situation, but these measures shall be taken in accordance with law.

(2) No measure shall be taken under subsection (1) that-

- (a) is inconsistent with any obligation under international law that applies to Hong Kong (other than an obligation under the International Covenant on Civil and Political Rights);
- (b) involves discrimination solely on the ground of race, colour, sex, language, religion or social origin; or
- (c) derogates from articles 2, 3, 4(1) and (2), 7, 12, 13 and 15.

[cf. ICCPR Art. 4]

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\* See Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which is published in Volume 1, P. 13/1.

@ S. 3(3) and (4) was added by 107 of 1997. As to suspension of operation of 107 of 1997, please see S. 2(1) and (2) of Cap 538.

## **6. Remedies for contravention of Bill of Rights**

- (1) A court or tribunal-
  - (a) in proceedings within its jurisdiction in an action for breach of this Ordinance; and
  - (b) in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant,

may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances.

(2) No proceedings shall be held to be outside the jurisdiction of any court or tribunal on the ground that they relate to the Bill of Rights.

## **7. Binding effect of Ordinance**

- (1) This Ordinance binds only-
  - (a) the Government and all public authorities; and
  - (b) any person acting on behalf of the Government or a public authority.

(2) In this section-

"person" (人) includes any body of persons, corporate or unincorporate.

# **PART II**

## **THE HONG KONG BILL OF RIGHTS**

## **8. Hong Kong Bill of Rights**

The Hong Kong Bill of Rights is as follows.

### **Article 1**

#### **Entitlement to rights without distinction**

(1) The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Men and women shall have an equal right to the enjoyment of all civil and

political rights set forth in this Bill of Rights.

[cf. ICCPR Arts. 2 & 3]

## **Article 2**

### **Right to life**

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

(2) Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of this Bill of Rights and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

(3) When deprivation of life constitutes the crime of genocide, nothing in this article shall authorize the derogation in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

(5) Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment in Hong Kong.

[cf. ICCPR Art. 6]

## **Article 3**

### **No torture or inhuman treatment and no experimentation without consent**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

[cf. ICCPR Art. 7]

## **Article 4**

### **No slavery or servitude**

- (1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
- (2) No one shall be held in servitude.
- (3) (a) No one shall be required to perform forced or compulsory labour.  
(b) For the purpose of this paragraph the term "forced or compulsory labour" shall not include-
  - (i) any work or service normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
  - (ii) any service of a military character and, where conscientious objection is recognized, any national service required by law of conscientious objectors;
  - (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - (iv) any work or service which forms part of normal civil obligations.

[cf. ICCPR Art. 8]

## **Article 5**

### **Liberty and security of person**

- (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
- (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

[cf. ICCPR Art. 9]

## **Article 6**

### **Rights of persons deprived of their liberty**

- (1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- (2) (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.  
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
- (3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.  
[cf. ICCPR Art. 10]

## **Article 7**

### **No imprisonment for breach of contract**

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.  
[cf. ICCPR Art. 11]

## **Article 8**

### **Liberty of movement**

- (1) Everyone lawfully within Hong Kong shall, within Hong Kong, have the right to liberty of movement and freedom to choose his residence.
- (2) Everyone shall be free to leave Hong Kong.
- (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Bill of Rights.
- (4) No one who has the right of abode in Hong Kong shall be arbitrarily deprived of the right to enter Hong Kong.  
[cf. ICCPR Art. 12]

## **Article 9**

### **Restrictions on expulsion from Hong Kong**

A person who does not have the right of abode in Hong Kong but who is lawfully in Hong Kong may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

[cf. ICCPR Art. 13]

## **Article 10**

### **Equality before courts and right to fair and public hearing**

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

[cf. ICCPR Art. 14.1]

## **Article 11**

### **Rights of persons charged with or convicted of criminal offence**

(1) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(2) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality-

- (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

- (c) to be tried without undue delay;
  - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - (g) not to be compelled to testify against himself or to confess guilt.
- (3) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
- (4) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
- (5) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
- (6) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of Hong Kong.

[cf. ICCPR Art. 14.2 to 7]

## **Article 12**

### **No retrospective criminal offences or penalties**

- (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
- (2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

[cf. ICCPR Art. 15]



## **Article 13**

### **Right to recognition as person before law**

Everyone shall have the right to recognition everywhere as a person before the law.  
[cf. ICCPR Art. 16]

## **Article 14**

### **Protection of privacy, family, home, correspondence, honour and reputation**

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

[cf. ICCPR Art. 17]

## **Article 15**

### **Freedom of thought, conscience and religion**

(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

(4) The liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions shall be respected.

[cf. ICCPR Art. 18]

## **Article 16**

### **Freedom of opinion and expression**

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include

freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary-

- (a) for respect of the rights or reputations of others; or
- (b) for the protection of national security or of public order (ordre public), or of public health or morals.

[cf. ICCPR Art. 19]

## **Article 17**

### **Right of peaceful assembly**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

[cf. ICCPR Art. 21]

## **Article 18**

### **Freedom of association**

(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms or others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

(3) Nothing in this article authorizes legislative measures to be taken which would prejudice, or the law to be applied in such a manner as to prejudice, the guarantees provided for in the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to organize as it applies to Hong Kong.

[cf. ICCPR Art. 22]

## **Article 19**

### **Rights in respect of marriage and family**

(1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

(2) The right of men and women of marriageable age to marry and to found a family shall be recognized.

(3) No marriage shall be entered into without the free and full consent of the intending spouses.

(4) Spouses shall have equal rights and responsibilities as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

[cf. ICCPR Art. 23]

## **Article 20**

### **Rights of children**

(1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

(2) Every child shall be registered immediately after birth and shall have a name.

[cf. ICCPR Art. 24]

## **Article 21**

### **Right to participate in public life**

Every permanent resident shall have the right and the opportunity, without any of the distinctions mentioned in article 1(1) and without unreasonable restrictions-

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) to have access, on general terms of equality, to public service in Hong Kong.

[cf. ICCPR Art. 25]

## **Article 22**

### **Equality before and equal protection of law**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[cf. ICCPR Art. 26]

## **Article 23**

### **Rights of minorities**

Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

[cf. ICCPR Art. 27]

## **PART III**

### **EXCEPTIONS AND SAVINGS**

#### **9. Armed forces and persons detained in penal establishments**

Members of and persons serving with the armed forces of the government responsible for the foreign affairs of Hong Kong and persons lawfully detained in penal establishments of whatever character are subject to such restrictions as may from time to time be authorized by law for the preservation of service and custodial discipline.

#### **10. Juveniles under detention**

Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is mutually beneficial, article 6(2)(b) and (3) does not require juveniles who are detained to be accommodated separately from adults.

## **11. Immigration legislation**

As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation.

## **12. Persons not having the right of abode**

Article 9 does not confer a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before the competent authority.

## **13. Executive and Legislative Councils**

Article 21 does not require the establishment of an elected Executive or Legislative Council in Hong Kong.

## **14. Temporary savings**

(1) For a period of 1 year beginning on the commencement date, this Ordinance is subject to the Ordinances listed in the Schedule.

(2) This Ordinance does not affect-

- (a) any act done (including any act done in the exercise of a discretion); or
- (b) any omission authorized or required, or occurring in the exercise of a discretion,

before the first anniversary of the commencement date, under or by any Ordinance listed in the Schedule.

(3) The Legislative Council may before the first anniversary of the commencement date by resolution amend this section for all or any of the following purposes-

- (a) to provide that, for a period of 1 year beginning on the first anniversary of the commencement date, this Ordinance is subject to such of the Ordinances listed in the Schedule as are specified in the amendment;
- (b) to provide that this Ordinance does not affect-
  - (i) any act done (including any act done in the exercise of a discretion); or
  - (ii) any omission authorized or required, or occurring in the exercise of a discretion,

- before the second anniversary of the commencement date, under or by any Ordinance listed in the Schedule that is specified in the amendment; and
- (c) to repeal this subsection.
- (4) In this section, a reference to an Ordinance includes a reference to any subsidiary legislation made under that Ordinance.
- (5) This section operates notwithstanding section 3.

[section 14]

## **SCHEDULE**

### **PROVISIONS TO WHICH SECTION 14(1) AND (2) APPLIES**

Immigration Ordinance (Cap 115)

Societies Ordinance (Cap 151)

Crimes Ordinance (Cap 200)

Prevention of Bribery Ordinance (Cap 201)

Independent Commission Against Corruption Ordinance (Cap 204)

Police Force Ordinance (Cap 232)

**Promotion of human rights**

**General**

Between 1998 and 2000, expenditure on human rights promotion exceeded HK\$21.5 million. This included an Equal Opportunities (Race and Sexual Orientation) Funding Scheme; a television variety show; Announcements in the Public Interest; poster campaigns; roving board exhibitions; leaflets and booklets; a drawing competition and guide books for ethnic minorities. In 2001, we expect to spend some \$6.9 million on educational and administrative initiatives directed to this end.

2. The Committee on the Promotion of Civic Education has also run several human rights education projects to foster awareness among the general public. These include human rights projects under the Committee's Community Participation Scheme; radio and television programmes; the dissemination of human rights messages through free telephone hotline stories; large-scale exhibitions, and seminars. The Committee has also established a full-time education unit to develop human rights education materials and programmes. The Unit has produced several picture books, comic booklets, and teaching kits for distribution to students, parents and members of the public.

3. Every two years, the Committee conducts an opinion survey to assess the community's civic awareness, which includes their level of knowledge about human rights. The latest survey - conducted in May 2000 - indicated that half the respondents considered that the human rights of Hong Kong people were protected by law.

## **Privacy**

4. The Privacy Commission's promotional campaigns have resulted in a high degree of awareness and acceptance of the Personal Data Privacy Ordinance: about 95 % according to a survey, conducted in mid-2001.



**Promoting awareness of the Convention among  
social welfare professionals**

NGOs and the Social Welfare Department have organised conference, symposiums, and seminars to this purpose. Examples include -

- “Children’s Right to Participation”: organised by the Hong Kong Committee on Children’s Rights Limited in November 1998;
- “Children’s Agenda for Hong Kong in 21St Century”: organised by the Save the Children Fund in August 1999;
- “Working Together for the Best Interests of Children in Hong Kong”: organised by the Hong Kong Family Welfare Society in September 1999;
- “The 5th IPSCAN Asian Conference on Child Protection”: organised by the Social Welfare Department, Against Child Abuse, and International Society for Prevention of Child Abuse and Neglect (IPSCAN) in November 1999.

2. Additionally, the Social Welfare Department has regularly circulated information on the Convention to frontline staff who work with children. The Convention and its implications for the work of social workers are a topic in the induction courses for all grades of staff who have to work with children.

**Child abduction: legal provisions**

Paragraph 90 of the main report defers to this Annex the detailed legal proscriptions against child abduction. Those proscriptions are -

**(A) Chapter 200: CRIMES ORDINANCE**

Section: 126 : Abduction of unmarried girl under 16 Version Date: 22/05/1998

- (1) A person who, without lawful authority or excuse, takes an unmarried girl under the age of 16 out of the possession of her parent or guardian against the will of the parent or guardian shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years. (Amended 31 of 1997 s. 5)
- (2) In subsection (1), "guardian" (監護人) means any person having the lawful care or charge of the girl.

**(B) Chapter 212: OFFENCES AGAINST THE PERSON ORDINANCE**

Section: 42: Forcible taking or detention of person, with intent to sell him

**FORCIBLE TAKING OR DETENTION OF PERSONS**

Any person who, by force or fraud, takes away or detains against his or her will any man or boy, woman or female child, with intent to sell him or her, or to procure a ransom or benefit for his or her liberation, shall be guilty of an offence triable upon indictment, and shall be

liable to imprisonment for life.

Section: 43: Stealing child under 14 years

(1) Any person who-

(a) unlawfully, by any means, leads or takes away, or decoys or entices away, or detains any child under the age of 14 years, with intent to deprive any parent, guardian, or other person having the lawful care or charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; or (Amended 13 of 1929 s.2)

(b) with any such intent receives or harbours any such child, knowing the same to have been led, taken, decoyed, enticed away, or detained as in this section before mentioned, (Amended 25 of 1930 s. 4) shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for 7 years: (Amended 30 of 1911 ss. 2 4 & 5; 39 of 1954 Second Schedule; 50 of 1991 s. 4)

Provided that no person who has bona fide claimed any right to the possession of such child, or is the mother or has bona fide claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child or taking such child out of the possession of any person having the lawful charge thereof. (Amended 13 of 1929 s.2)

(2) For the purposes of this section, the adoptive parent of a child under the age of 14 years, and the employer of a child under the age of 14 years, shall be deemed to have had the lawful care or charge of such child:

Provided that-

(a) nothing in this subsection shall be construed as affecting any rights vested in or conferred on the Director of Social Welfare by or under the Protection of Women and Juveniles Ordinance (Cap 213); and (Amended 1 of 1958 Schedule)

(b) nothing in this subsection shall be construed as conferring upon any adoptive parent or employer any right of retaining possession, custody or control of any child as against the child's parent or guardian, or as against the child. (Added 13 of 1929 s.2)

Section: 44: Unlawful transfers of possession, custody or control of other persons for valuable consideration

(1) Any person who takes any part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of any other person for any valuable consideration shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to imprisonment for 2 years. (Amended 22 of 1950 s. 3; 50 of 1991 s. 4)

(2) Any person who without lawful authority or excuse harbours or has in his possession, custody or control any person with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person within or without Hong Kong shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to imprisonment for 2 years. (Amended 22 of 1950 s. 3; 50 of 1991 s. 4; 13 of 1999 s. 3)

(3) Nothing in this section shall be construed as affecting the customary giving or receiving of presents on occasions of bona fide betrothals, weddings or adoptions.

(4) No prosecution under this section shall be instituted without the consent of the Director of Social Welfare:

Provided that such consent shall not be necessary for the arrest of any person suspected of having contravened this section. (Amended 1 of 1958 Schedule)

(5) The consent of the person intended to be, or actually, unlawfully transferred, taken into possession, custody or control or harboured, or the receipt by such person of the consideration, or any part thereof, shall be no defence to a charge or indictment under this section. (Added 7 of 1939 s.2)

### **(C) Chapter 213: PROTECTION OF CHILDREN AND JUVENILES ORDINANCE**

Section: 26 Heading: Abduction of female infant or any young person or child

Any person who unlawfully takes or causes to be taken any child or juvenile out of the possession and against the will of the father or mother or of any other person having the lawful care or charge of such child or juvenile shall be guilty of an offence punishable on conviction on indictment by imprisonment for 2 years.

# Code on Access to Information

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# INTRODUCTION

The Government exists to serve the community as well as possible within available resources. To this end it recognises the need for the community to be well informed about the Government, the services it provides and the basis for policies and decisions that affect individuals and the community as a whole.

This Code defines the scope of information that will be provided, sets out how the information will be made available either routinely or in response to a request, and lays down procedures governing its prompt release.

The Code authorises and requires civil servants, routinely or on request, to provide information unless there are specific reasons for not doing so. These reasons are set out in Part 2 and will normally be referred to if a request for information is refused.

Requests for information will be handled as promptly and helpfully as possible and if necessary members of the public will be assisted to clarify their requests or direct them to the most appropriate department. Procedures will be kept as simple as possible.

The Code also sets out procedures for review or complaint if a member of the public considers that the provisions of the Code have not been properly applied.



# *PART 1*

## **SCOPE**

### **Government departments**

*1.1* The Code applies to all government departments (*1*) as listed at [Annex A](#).

---

*(1)* The term "department" includes any department, bureau, force, service, unit, secretariat, or other agency of the Government, however styled.

---

### **Courts, tribunals and inquiries**

*1.2* The Code does not apply to information held by courts, tribunals or inquiries. The existing legal rules governing disclosure of information in the context of proceedings before courts, tribunals and inquiries are not affected by the Code.

*1.3* The Code does, however, apply to other information held by the Registry of the Supreme Court, all registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility, and secretariats and similar offices of other tribunals and inquiries.

## **PROVISION OF INFORMATION**

### **Information to be published or made available routinely**

*1.4* Each year departments will publish -

- details of their organisation
- information on the services they provide
- their performance pledges and the extent to which they have been met.

They will also publish, or make available for inspection at appropriate locations -

- a list of their [records](#) by category
- a list of information either published or otherwise made available, whether free

or on payment

- the procedures and any charges for access to information not routinely published.

---

*1.5* Whenever a service for the public is introduced or changed the department responsible will publish sufficient information to explain the nature of the service or change, and who will be affected by it.

---

### **Information to be provided on request**

*1.6* Each department will also, on request, provide additional information relating to its policies, services, decisions and other matters falling within its area of responsibility, except that requests for information in the areas listed in Part 2 may be refused.

---

### **Legal obligations and restrictions**

*1.7* The Code does not affect statutory rights of access to information. Equally the Code does not affect legal restrictions on access to information whether these are statutory prohibitions, or obligations arising under common law or international agreements which apply to Hong Kong.

---

# PROCEDURES

## Access to Information Officer

1.8 Each department will designate an Access to Information Officer who will be responsible for promoting and overseeing the application of the Code.

---

## Requests for information

1.9 Requests for information may be made orally or in writing.

1.10 Oral requests will usually suffice where the information sought can be provided readily and simply, for example by oral replies or provision of leaflets or standard forms. Civil servants may, however, ask for an oral request to be confirmed in writing where necessary or appropriate.

---

1.11 Written requests may be made by letter or by the application form at [Annex C](#), and should be addressed to the Access to Information Officer of the department concerned.

---

## Responses to requests for information

1.12 Responses to requests for information will be given as quickly as possible.

1.13 Where a request, whether written or oral, cannot adequately be met by an oral reply or provision of a standard leaflet, form, etc., the information may be given by -

- providing a copy of the relevant record or part thereof
- providing a transcript of the relevant record or part thereof
- affording a reasonable opportunity to inspect, hear or view the relevant record or part thereof, or
- providing a summary of the relevant record or part thereof.

So far as possible information will be provided in the form in which it exists. Where disclosure of certain information in a record is to be refused, access will normally be provided to the remaining part of the record.

---

1.14 The Code does not oblige departments to -

- acquire information not in their possession
- create a record which does not exist
- provide on request information which is already published, either free or at a charge, or
- provide information available through an existing charged service.

In these circumstances an applicant for information will, where possible, be directed to the appropriate source of the information.

---

*1.15* However, if a department receives a written request for information which is held by another department, it will transfer the request to that department and so advise the applicant.

---

## **Target response times**

*1.16* Where possible information will be made available within ten days (2) of receipt of a written request. If that is not possible the applicant will be so advised by an interim reply within ten days of receipt of the request. The target response time will then be twenty-one days from receipt of the request.

---

(2) Whenever the term "days" is used in the Code this means "calendar days".

---

*1.17* If a request is to be refused the applicant will be so informed within the timeframe set out in paragraph 1.16 above.

---

*1.18* Responses may be deferred beyond twenty-one days only in exceptional circumstances, which should be explained to the applicant. Any deferral should not normally exceed a further thirty days.

---

*1.19* These targets may be extended if necessary to accommodate the third party procedures set out in paragraphs 1.20 - 1.23, or where the applicant fails to pay any charges levied in accordance with paragraph 1.24.

---

## **THIRD PARTY INFORMATION**

### **Procedures and timeframe**

1.20 Where information requested is held for, or was provided by, a third party under an explicit or implicit understanding that it would not be further disclosed, but a civil servant considers that the public interest may require disclosure, he will so advise the third party and invite him to consent to, or make representations against disclosure. The third party will be asked to respond within thirty days or such reasonable longer period as he may be granted on request.

1.21 On receipt of consent from the third party the information may be disclosed.

1.22 If the third party makes representations against disclosure, or fails to respond within the stipulated time, a decision will be taken as to whether the information should be disclosed on the ground that the public interest in disclosure outweighs any harm or prejudice that would result. The third party will be advised of the decision.

1.23 If the decision is that the information should be disclosed the third party will be notified that disclosure will be made at the expiry of thirty days from the date of the notification.

---

## **CHARGES**

1.24 Processing requests for information uses resources and departments may therefore require payment for this service. Any [charges](#) levied will reflect the cost of providing the information, and the information will not be released until the requisite payment has been made.

---

## **REVIEW**

1.25 Any person who believes that a department has failed to comply with any provision of the Code may ask the department to review the situation. The target response times set out in paragraphs 1.16 to 1.19 above also apply to requests for review.

---

1.26 Any person who believes that a department has failed properly to apply any provision of the Code may also complain to The Ombudsman. The Ombudsman's address is -

31/F, Gateway Tower I  
25 Canton Road  
Tsim Sha Tsui  
Kowloon  
Telephone : (852) 2629 0555  
Fax : (852) 2882 8149

---

## ***PART 2***

### **INFORMATION WHICH MAY BE REFUSED**

2.1 A department may refuse to disclose information, or may refuse to confirm or deny the existence of information, in the categories and for the reasons set out below, which will normally be referred to if a request is refused.

---

2.2 References in this Part to "harm" and "prejudice" include both actual harm and prejudice and the risk or reasonable expectation of harm and prejudice. In such cases the department will consider whether the public interest in disclosure of the information outweighs any harm or prejudice that could result.

---

#### **Defence and security**

- 2.3 (a) Information whose disclosure would harm or prejudice Hong Kong's defence.  
(b) Information whose disclosure would harm or prejudice Hong Kong's security.
- 

#### **External affairs**

- 2.4 (a) Information whose disclosure would harm or prejudice the conduct of external affairs, or relations with other governments or with international organisations.  
(b) Information received in confidence from and conveyed in confidence to other governments, courts in other jurisdictions, and international organisations.
- 

#### **Nationality, immigration and consular matters**

- 2.5 (a) Information relating to immigration or nationality cases.  
(b) Information whose disclosure would harm or prejudice the administration of nationality, registration of persons, immigration or consular matters, or the performance of consular functions as an agent for other governments.
- 

#### **Law enforcement, legal proceedings and public safety**

2.6 (a) Information whose disclosure would harm or prejudice the administration of justice, including the conduct of any trial and the enforcement or administration of the law.

(b) Information whose disclosure would harm or prejudice the conduct or impartial adjudication of legal proceedings or any proceedings conducted or likely to be conducted by a tribunal or inquiry, whether or not such inquiry is public or the disclosure of the information has been or may be considered in any such proceedings.

(c) Information which relates to proceedings which have been completed, terminated or stayed, or which relates to investigations which resulted in or may have resulted in proceedings, whether any such proceedings are criminal or civil.

(d) Information which would be privileged from production in legal proceedings on the ground of legal professional privilege.

(e) Information whose disclosure would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders, or the security of any detention facility or prison.

(f) Information whose disclosure would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property.

(g) Information whose disclosure might endanger the life or physical safety of any person (whether or not such person is in Hong Kong), or identify the source of information or assistance given in confidence for security purposes, or for the enforcement or administration of the law.

---

## **Damage to the environment**

2.7 Information whose disclosure would increase the likelihood of damage to the environment or to rare or endangered species and their habitats.

---

## **Management of the economy**

2.8 Information whose disclosure would harm or prejudice the conduct of monetary policy, the maintenance of stability in financial markets, or the ability of the Government to manage the economy.

---

## **Management and operation of the public service**

2.9 (a) Information whose disclosure would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by a department.

(b) Information whose disclosure would harm or prejudice the competitive or financial position or the property interests of the Government.

(c) Information whose disclosure would harm or prejudice the proper and efficient conduct of the operations of a department.

(d) Information which could only be made available by unreasonable diversion of a department's resources.

---

## **Internal discussion and advice**

2.10 (a) Papers prepared for, and records of meetings and deliberations of the Executive Council.

(b) Information whose disclosure would inhibit the frankness and candour of discussion within the Government, and advice given to the Government. Such information may include -

(i) records of discussion at any internal government meeting, or at any meeting of a government advisory body;

(ii) opinions, advice, recommendations, consultations and deliberations by government officials or advisers to the Government.

---

## **Public employment and public appointments**

2.11 Information which would harm or prejudice the management of the public service.

---

## **Improper gain or advantage**

2.12 Information whose disclosure could lead to improper gain or advantage.

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## **Research, statistics and analysis**

2.13 (a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication or commercial value.

(b) Information held only for preparing statistics or carrying out research, and which relates to individuals, companies or products which will not be identified in reports of that research, or in published statistics.

---



## **Third party information**

2.14 (a) Information held for, or provided by, a third party under an explicit or implicit understanding that it would not be further disclosed. However such information may be disclosed with the third party's consent, or if the public interest in disclosure outweighs any harm or prejudice that would result.

(b) Information provided in confidence by a third party if disclosure to the subject of the information would harm his or any other individual's physical or mental health, or should only be made to him by an appropriate third party.

---

## **Privacy of the individual**

2.15 Information about any person (including a deceased person) other than to the subject of the information, or other appropriate person, unless -

(a) such disclosure is consistent with the purposes for which the information was collected,  
or

(b) the subject of the information, or other appropriate person, has given consent to its disclosure, or

(c) disclosure is authorised by law, or

(d) the public interest in disclosure outweighs any harm or prejudice that would result.

---

## **Business affairs**

2.16 Information including commercial, financial, scientific or technical confidences, trade secrets or intellectual property whose disclosure would harm the competitive or financial position of any person.

---

## **Premature requests**

2.17 Information which will soon be published, or whose disclosure would be premature in relation to a planned announcement or publication.

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## **Legal restrictions**

2.18 Information whose disclosure would constitute -

- (a) a contravention of any law which applies in Hong Kong, or
  - (b) a breach of any obligation arising under common law or under any international agreement which applies to Hong Kong.
-

## **Departments to which the Code applies**

[Agriculture, Fisheries and Conservation Department](#)

[All registries and administrative offices of courts and tribunals for which the  
Judiciary Administrator has responsibility](#)

[Architectural Services Department](#)

[Audit Commission](#)

[Auxiliary Medical Service \(department\)](#)

[Buildings Department](#)

[Census and Statistics Department](#)

[Civil Aid Service \(department\)](#)

[Civil Aviation Department](#)

[Civil Engineering Department](#)

[Civil Service Bureau](#)

[Civil Service Training and Development Institute](#)

[Commerce and Industry Bureau](#)

[Companies Registry](#)

[Constitutional Affairs Bureau](#)

[Correctional Services Department](#)

[Customs and Excise Department](#)

[Department of Health](#)

[Department of Justice](#)

[Drainage Services Department](#)

[Economic Services Bureau](#)

[Education and Manpower Bureau](#)

[Education Department](#)

[Electrical and Mechanical Services Department](#)

[Environment and Food Bureau](#)

[Environmental Protection Department](#)

[Finance Bureau](#)

[Financial Services Bureau](#)

[Fire Services Department](#)

[Food and Environmental Hygiene Department](#)

[General Office of the Chief Executive's Office](#)

[Government Flying Service](#)

[Government Laboratory](#)  
[Government Land Transport Agency](#)  
[Government Property Agency](#)  
[Government Supplies Department](#)  
[Health and Welfare Bureau](#)  
[Highways Department](#)  
[Home Affairs Bureau](#)  
[Home Affairs Department](#)  
[Hong Kong Auxiliary Police Force](#)  
[Hong Kong Monetary Authority](#)  
[Hong Kong Observatory](#)  
[Hong Kong Police Force](#)  
[Housing Bureau](#)  
[Housing Department](#)  
[Immigration Department](#)  
[Independent Commission Against Corruption](#)  
[Information Services Department](#)  
[Information Technology and Broadcasting Bureau](#)  
[Information Technology Services Department](#)  
[Inland Revenue Department](#)  
[Innovation and Technology Commission](#)  
[Intellectual Property Department](#)  
[Invest Hong Kong](#)  
[Labour Department](#)  
[Land Registry](#)  
[Lands Department](#)  
[Legal Aid Department](#)  
[Leisure and Cultural Services Department](#)  
[Management Services Agency](#)  
[Marine Department](#)  
[Office of the Commissioner of Insurance](#)  
[Office of the Telecommunications Authority](#)  
[Offices of the Chief Secretary for Administration and the Financial Secretary](#)  
[Official Languages Agency](#)  
[Official Receiver's Office](#)  
[Planning Department](#)  
[Planning and Lands Bureau](#)  
[Post Office](#)  
[Printing Department](#)

[Radio Television Hong Kong](#)  
[Rating and Valuation Department](#)  
[Registration and Electoral Office](#)  
[Secretariat of the Independent Police Complaints Council](#)  
[Secretariat of the Public Service Commission](#)  
[Secretariat for the Standing Commission on Civil Service Salaries and Conditions of Service](#)  
[Secretariat for the Standing Committee on Disciplined Services Salaries and Conditions of Service](#)  
[Security Bureau](#)  
[Social Welfare Department](#)  
[Student Financial Assistance Agency](#)  
[Television and Entertainment Licensing Authority](#)  
[Territory Development Department](#)  
[Trade and Industry Department](#)  
[Transport Bureau](#)  
[Transport Department](#)  
[Treasury](#)  
[University Grants Committee Secretariat](#)  
[Water Supplies Department](#)  
[Works Bureau](#)

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This Annex will be revised as the scope of the Code is extended.

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## **Definition of Record**

**Record** may include a document in writing and -

- (a) any book, map, plan, graph or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever;
- (d) any diskette, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film, negative, tape, microfilm, microfiche, CD-ROM or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (f) anything whatsoever on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them.

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This Code may be reproduced freely without seeking permission.

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[Access to Government Information Home Page](#) | [Hong Kong Government Information Centre Home Page](#)

Last updated: 1 August 2001

**APPLICATION FOR ACCESS TO INFORMATION****申請索取資料表格**

(This form can be completed either in English or Chinese. Please read the notes below before writing.)  
這份表格可用英文或中文填寫，填寫前請細閱表格下面的備註。

**Applicant's Particulars 申請人個人資料**

Name 姓名	* Mr 先生 Mrs 夫人 Miss 小姐	# HK I/D No. 香港身份證號碼	( )
Correspondence Address 通訊地址			
		Tel. No. 電話號碼	Fax No. 傳真號碼

\* Please delete as appropriate  
請刪去不適用者

# Fill in only if personal information is required  
如索取個人資料方需填寫

**Information Requested 要求索取的資料**

To 致	: :	Access to Information Officer 公開資料主任
_____ (Name of department) 部門名稱		
Details of information requested (Please be as specific as possible : it will help us identify clearly what you are looking for. Use a separate sheet if necessary.) 所需資料詳情 (請盡量具體說明，以便我們清楚知道你需要的是甚麼資料。如有需要請另頁書寫。)		

**Signature** \_\_\_\_\_  
簽署

**Date** \_\_\_\_\_  
日期

**Notes  
備註**

- A charge reflecting the cost of reproducing the records concerned may be levied. The department will advise you in advance of any such charge.  
有關部門會按照翻印紀錄所需的成本收取費用，並預先告知你所需繳付的費用。
- You may be asked to provide additional information to help us meet your request. The department may not be able to process your application if you do not provide sufficient information.  
你或需提供更多資料，以協助我們回應你的申請。如你未能提供足夠資料，有關部門可能無法處理你的申請。
- The information provided will be used for processing your application for access to information. It may be divulged to other departments/agencies for the same purpose.  
你所提供的資料，將用於處理有關你申請索取資料的事宜上。有關資料可能會送交其他部門 / 機構，作同樣用途。
- For correction of or access to personal data contained in this application, please contact the Access to Information Officer of the department concerned.  
如欲更改或索取載列在本表格的個人資料，請與有關部門的公開資料主任聯絡。

**Number of children in non-institutional residential care  
(31 December 2000)**

Age and Sex Type		under 6			6 and above			Total		
		Boys	Girls	Sub- total	Boys	Girls	Sub-t otal	Boys	Girls	Total
<b>Non-institutional</b>	Foster Care	145	114	259	57	50	107	202	164	366
	Small Group Homes	52	32	84	367	323	690	419	355	774
	<b>Total</b>	<b>197</b>	<b>146</b>	<b>343</b>	<b>424</b>	<b>373</b>	<b>797</b>	<b>621</b>	<b>519</b>	<b>1,140</b>



**Right of abode: Court of Final Appeal decision in the cases of Cheung Lai-wah and Chan Kam-nga and the request for an interpretation by the Standing Committee of the National People's Congress of the People's Republic of China**

**Note:** with some necessary updating, this Annex reproduces paragraphs 230 to 238 of our report under the ICCPR and paragraphs 3 to 9 of the supplementary information that we provided to the Human Rights Committee immediately before its hearing of the report on 1 and 2 November 1999.

**Right of abode: the law**

Article 24 of the Basic Law provides that permanent residents of the HKSAR shall have the right of abode in the HKSAR and be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode. Article 24 also states that permanent residents of the HKSAR shall be:

- (1) Chinese citizens<sup>1</sup> born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;

---

<sup>1</sup> According to the 'Explanations of Some Questions by the Standing Committee of the NPC Concerning the Implementation of the Nationality Law of the PRC in the HKSAR', where a Hong Kong resident is of Chinese descent and was born in the Chinese territories (including Hong Kong), or where a person satisfies the criteria laid down in the Nationality Law of the People's Republic of China for having Chinese nationality, he is a Chinese national.

- (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
- (5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
- (6) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

2. Article 24 is silent as to how persons who qualify as permanent residents are to establish that status. To meet that need, the Immigration (Amendment) (No.2) Ordinance ('the No. 2 Ordinance') - enacted on 1 July 1997 replaced the previous provisions of the Immigration Ordinance on permanent residency, clarified other provisions of Article 24, and introduced provisions for establishing that right in respect of claims under Article 24(2)(4), (5) and (6). It also provided for the circumstances in which persons lose that right and for the retention by such persons of a right to land in Hong Kong.

3. Under the No.2 Ordinance, persons in categories (4) and (5) may forfeit the right of abode if they are absent from Hong Kong continuously

for 36 months. Those in category (6) may lose it if they are absent from Hong Kong for 36 months after acquiring the right of abode elsewhere<sup>2</sup>. Permanent residents who left Hong Kong before 1 July 1997 and have obtained foreign nationality may retain the right of abode in the HKSAR. There is no need for them to return to Hong Kong in order to do so. Should they return to Hong Kong and wish to remain there, those who are ethnically Chinese will normally be regarded as Chinese nationals and will automatically retain their right of abode. But they may, at their option, remain in Hong Kong as foreign nationals and, subject to certain conditions<sup>3</sup>, retain the right of abode. Essentially, they need only declare their new nationality to the Immigration Department. But there are certain exceptions (related to when the applicant left Hong Kong, how long he/she was away, and when he/she makes the declaration to the Immigration Department) that might prevent an applicant from retaining the right of abode. But persons so affected will still be free to enter Hong Kong for residence, study, and work without restriction.

### **Certificate of Entitlement (C of E) Scheme**

4. Before 1 July 1997, persons covered by Article 24(2)(3) of the Basic Law were not entitled to the right of abode in Hong Kong. The Basic Law is silent on the procedures by which persons may establish their entitlement to the right of abode in the HKSAR. The Immigration (Amendment) (No. 3) Ordinance ('the No.3 Ordinance') was enacted on 10 July 1997, with effect from 1 July 1997, to provide such procedures.

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<sup>2</sup> Paragraph 7, Schedule 1 to the Immigration Ordinance (Chapter 115) - amendment of 1 July 1997.

<sup>3</sup> These are set out in paragraph 6 of Schedule 1 to the Immigration Ordinance and in Articles 5 and 6 of "Explanations of some questions by the Standing Committee of the National People's Congress concerning the Implementation of the Nationality Law of the People's Republic of China in the HKSAR".

This Ordinance, which introduced the C of E Scheme, provides that a person's status as a permanent resident of the HKSAR under Article 24(2)(3) of the Basic Law can only be established by his/her holding, amongst other things, a valid travel document with a valid C of E affixed to it. In this connection, persons who were born in Mainland China to Hong Kong residents and claim that they have the right of abode in the HKSAR have to apply for a valid travel document and C of E before being admitted to Hong Kong. This arrangement ensures that those who claim that they have the right of abode in the HKSAR under Article 24(2)(3) of the Basic Law have that claim verified before entering the HKSAR. As at 31 December 2000, the Scheme had ensured the speedy and orderly admission of about 85,000 eligible children.

### **Legal challenges to the No.2 and No.3 Ordinances**

#### **(a) Cheung Lai-wah v Director of Immigration**

5. Following the enactment of the No.3 Ordinance, parents of over 1,000 children born in Mainland China applied for legal aid to challenge the C of E Scheme's consistency with the Basic Law. Legal aid was granted to enable four test cases to be judicially reviewed. Cheung Lai-wah, the applicant in one of the four test cases, was a child born out of wedlock to a father who was a permanent resident in Hong Kong and a mother who was resident in Mainland China. The applicant entered Hong Kong before the two Ordinances took effect on 1 July 1997. In October 1997, the Court of First Instance affirmed the legality of the C of E Scheme and its consistency with the Basic Law. The Court also held the retrospectivity of the No.3 Ordinance to be lawful. It rejected the argument, advanced on behalf of the applicants, that any person who claims the right of abode is entitled to enter

and/or remain in the HKSAR pending the determination of his claim. The Court also ruled that children born out of wedlock outside Hong Kong - to fathers who were permanent residents in Hong Kong - were eligible for the right of abode under Article 24 of the Basic Law irrespective of the status of their mothers. And the provision on illegitimacy in the No.2 Ordinance<sup>4</sup>, was inconsistent with the Basic Law.

6. The Government and the applicants in the four test cases appealed against these rulings. In April 1998, the Court of Appeal upheld the legality of the C of E Scheme and its retrospectivity to 1 July 1997. But it held that the C of E Scheme did not apply to persons who were in the HKSAR and came to Hong Kong before 1 July 1997. The illegitimacy provision was again ruled inconsistent with the Basic Law.

7. The applicants had also challenged the legality of the Provisional Legislative Council and thus of the No.2 and No.3 Ordinances that it had passed. The Court of Appeal addressed that issue in May 1998, affirming the Council's legality.

(b) Chan Kam-nga v Director of Immigration

8. The Immigration No.2 Ordinance stipulates, amongst other things, that in order for a child of Chinese nationality born outside Hong Kong to a parent who is a permanent resident of the HKSAR to be qualified for the right of abode, one of their parents must be a Chinese citizen and have

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<sup>4</sup> This introduced into Schedule 1 of the Immigration Ordinance (Chapter 115) the provision that the relationship of parent and child is taken to exist as follows -

- (a) of a mother and child, between a woman and a child born to the mother in or out of wedlock;
- (b) of a father and child, between a man and a child born to him in wedlock or, if out of wedlock, between a father and a child subsequently legitimated by the marriage of his parents;
- (c) of a parent and adopted child, between a parent and a child adopted only in Hong Kong under an order made by a Court in Hong Kong under the Adoption Ordinance (Cap.290).

acquired the right of abode at the time of the children's birth. In 1997, the parents of 81 children who were born in Mainland China before either of their parents had acquired the right of abode in Hong Kong applied for judicial review. They contended that the No.2 Ordinance was inconsistent with Article 24(2)(3) of the Basic Law, which did not specify that a parent must be a permanent resident at the time of a child's birth to acquire the right of abode. They also contended that the C of E Scheme was inconsistent with Article 24 of the Covenant in that the Scheme had the practical effect of separating the Mainland children in question from their parents and siblings.

9. Chan Kam-nga was one of the 81 children. Her case - which was the representative case for the group - was heard before the Court of First Instance in January 1998. The Court held that the provision under challenge was inconsistent with the Basic Law. The Government appealed and - in May 1998 - the Court of Appeal reversed that decision, ruling that the provision was consistent with the Basic Law.

10. All parties to these cases appealed against those decisions of the Court of Appeal that were not in their favour. The Court delivered its judgement on 29 January 1999. Among the several matters that it covered, the judgement gave rise to two questions of particular concern –

- first, the Court held that - under Article 24(2)(3) of the Basic Law - Mainland persons were eligible for the right of abode if either of their parents was a permanent resident at the time of their birth *and* - importantly - if either parent acquired permanent resident status after their birth;
- secondly, the Court held that Mainland residents who had the right of abode in Hong Kong under Article 24(2)(3) of the Basic Law

were not bound by the requirement under Article 22(4) of the Basic Law to obtain from the Mainland authorities permission to enter Hong Kong for settlement.

11. After thoroughly reviewing the Court's decisions, we came to the view that the Court's understanding of Articles 22(4) and 24(2)(3) of the Basic Law might not truly accord with the legislative intent of those provisions. Our own understanding of that intent derived from a careful analysis of the documents relating to these articles and drafting history of the immigration laws that they affect and the agreement between the Chinese and British sides to the Sino-British Joint Declaration on the interpretation of an equivalent provision of the Joint Declaration. A practical - and disturbing - consequence of the judgement was the extension of the right of abode to a very large number of people, most of whom are already adults and many of whom have spouses and children of their own in the Mainland: both in terms of absolute numbers and, more importantly, in terms of Hong Kong's physical capacity to absorb additional permanent population.

12. We carefully considered all options for resolving this problem, including seeking an amendment of the relevant provisions of the Basic Law and seeking an interpretation of those provisions. Both are lawful and constitutional options under the Basic Law. The power to amend the Basic Law is vested in the National People's Congress (NPC) of the People's Republic of China. The power of interpreting it is vested in the NPC's Standing Committee (NPCSC). We decided to seek an interpretation on the principle that there is a fundamental difference between an interpretation and an amendment. An interpretation is based on the true legislative intent of a provision. An amendment changes that legislative intent. Thus, in

seeking an interpretation, we sought to clarify the true legislative intent of the relevant provisions, not to change that intent. The decision received the support of the Legislative Council in the Motion Debate held on 19 May 1999. And independent opinion polls demonstrated that 60% of respondents also supported it.

13. Article 48(2) of the Basic Law confers on the Chief Executive the constitutional responsibility for the implementation of the Basic Law. In view of the problems encountered in implementing the Basic Law in respect of Articles 22(4) and 24(2)(3) - and in the light of the exceptional circumstances discussed in paragraph 4 above - the CE asked the State Council to request the NPCSC to interpret the two articles in accordance with the legislative intent of the provisions. The NPCSC announced its interpretation on 26 June. The interpretation made two things clear -

- first, under Article 24(2)(3) of the Basic Law, persons of Chinese nationality born outside Hong Kong are eligible for right of abode only if, at the time of their birth, at least one of their parents belongs to the category listed in Article 24(2)(1) or Article 24(2)(2) of the Basic Law. That is to say, generally speaking, he or she had been born in Hong Kong or had ordinarily resided in Hong Kong for seven years;
- secondly, the requirement under Article 22(4) of the Basic Law that Mainland residents must apply for approval from the Mainland authorities for entry into the HKSAR does apply to persons of Chinese nationality born outside Hong Kong or Hong Kong permanent residents.



14. Commentators have said that - by seeking an interpretation by the NPCSC - a non-judicial body - we have in some way undermined the rule of law. We understand why they should consider that this is so. But we profoundly disagree with their assessment. We have repeatedly affirmed - in the report and in other contexts - that the rule of law is the fundamental basis for the protection of human rights. We are firmly of the view that the actions we took were entirely consistent with the rule of law and we remain, as we always have been, wholly committed to the maintenance of the rule of the law and to the principles on which it is based.

### **Judicial independence**

15. It has been asserted that the interpretation has removed the CFA's power of final adjudication and undermines judicial independence. But the NPCSC's interpretation did no such thing. Indeed, it made it abundantly clear that the CFA decision in regard to the cases in hand was and remains final. The Court's adjudication was not overturned. And the rights of the litigants were not affected. Thus, the interpretation does not interfere with the independence of Hong Kong courts in deciding cases in accordance with the law. Rather, as in certain civil law jurisdictions, it provides the Courts with an authoritative legislative statement of what the relevant lawmaking body (in this case, the National People's Congress) intended when it framed a particular law or provision within a law. It is then incumbent on the Courts - in accordance with the rule of law - to determine cases in accordance with that statement.

16. The concern has also been expressed that the decision to seek an interpretation bodes ill for the rule of law as it indicates that Government may seek such interpretations whenever a CFA decision is not to its liking.

However, as our analysis in paragraphs 10 to 13 makes clear, the decision to seek an interpretation was taken in accordance with the law and was necessary in order to clarify the legislative intent of Articles 22(4) and 24 (2)(3) of the Basic Law and to address an objective problem of crisis proportions. The Chief Executive submitted his report to the State Council under Articles 43 and 48(2) of the Basic Law. The report set out the problems he had encountered in the implementation of the Basic Law and requested assistance for seeking the NPCSC's interpretation to resolve the problems. The SAR Government has pledged that it will not seek another interpretation by the NPCSC save in highly exceptional circumstances.

**Number of children placed in residential care  
(31 December 2000)**

Age and sex Type		under 6			6 and above			Total		
		Boys	Girls	Sub-total	Boys	Girls	Sub-total	Boys	Girls	Total
<b>Institutional</b>	Children's Homes	10	10	20	122	150	272	132	160	292
	Boys' Homes	0	0	0	543	0	543	543	0	543
	Boys' Hostels	0	0	0	15	0	15	15	0	15
	Girls' Homes	0	0	0	0	162	162	0	162	162
	Girls' Hostels	0	0	0	0	52	52	0	52	52
	Residential Crèches	58	55	113	0	0	0	58	55	113
	Residential Nurseries	55	44	99	0	0	0	55	44	99
	<b>Total</b>	<b>123</b>	<b>109</b>	<b>232</b>	<b>680</b>	<b>364</b>	<b>1,044</b>	<b>803</b>	<b>473</b>	<b>1,276</b>

**Amendments to the Adoption Ordinance (Chapter 290)**

The Working Group on the Adoption Ordinance (see paragraph 206 in Section V(G) of the report), recommended amending the Ordinance to –

- (a) make explicit the principle that the best interests of the child should be the paramount consideration throughout the adoption process;
- (b) provide that persons applying for adoption orders should be subject to criminal record checks;
- (c) allow birth mothers to give consent for their children to be placed for adoption when the children are four weeks old (the current requirement is six weeks);
- (d) make it unlawful for a person, or an organisation other than the Social Welfare Department - or an adoption agency authorised by Social Welfare Department - to make arrangements for the adoption of a child by unrelated persons;
- (e) prescribe procedures for overseas adoption;
- (f) provide that birth parents who remarry need no longer formally adopt their children from previous marriages;
- (g) provide a "root-tracing" mechanism to enable adopted persons to access their birth records<sup>1</sup> and to establish a contact register in the Social Welfare Department to facilitate contact between adopted children and their birth parents;
- (h) enable unsuccessful adoption applicants to appeal; and
- (i) update the penalty provisions for certain offences.

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<sup>1</sup> Except the addresses of the birth parents if they have exercised a veto against such disclosure.

**Child abduction cases processed by  
The HKSAR Central Authority  
(including non-Hague Convention cases)  
Position as at 31 December 2000**

<b>Country</b>	<b>Incoming</b>	<b>Outgoing</b>	<b>Total</b>
Argentina	-	1	1
Australia	1	1	2
Canada	1	3	4
Luxembourg	1	-	1
Panama	-	1	1
U.K.	6	1	7
U.S.A.	3	3	6
New Zealand	1	-	1
<b>Total</b>	13	10	23

<b>Category</b>	<b>Incoming</b>	<b>Outgoing</b>	<b>Total</b>
Pre-convention case (pre 1.9.97)	1	2	3
Art. 21 cases – access arrangement	1	0	1
Children not in HK when request for return received	1	0	1
Court ordered return	2	2	4
Court refused return	1	-	1
Proceedings issued – return uncontested	3	1	4
Resolved w/o proceedings	2	2	4
Non-Hague country/territory	1	0	1
Awaiting Resolution	-	4	4
<b>Total</b>	12	11	23

**Categories of child abuse case**

<b>Year</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>Types of abuse</b>					
Physical abuse	120	181	193	286	265
Neglect	22	18	17	15	30
Sexual abuse	125	146	162	210	150
Psychological abuse	10	6	11	11	16
Multiple abuse	34	30	26	53	39
<b>Total</b>	<b>311</b>	<b>381</b>	<b>409</b>	<b>575</b>	<b>500</b>

**Initiatives of the Committee on Child Abuse**

Examples of the Committee's initiatives include -

- (a) the establishment of a Child Protection Special Investigation Team to investigate suspected cases of the sexual and physical abuse of children. The team comprises social workers from the Social Welfare Department's Family and Child Protective Services Units and the Child Abuse Investigation Units of the Police (December 1995);
- (b) the establishment of five interview suites to provide a home-like environment for video-recorded interviews with - and where necessary, the forensic examination of - child victims (1995);
- (c) a Witness Support Programme to provide support persons to accompany child witnesses to give evidence in Court. The child witnesses give their evidence through closed circuit television links (November 1996);
- (d) a "Child Witness Pack" to help prepare child witnesses for court hearings (March 1997);
- (e) joint training programmes for frontline professionals from different disciplines (1995);
- (f) the multi-disciplinary "Procedures for Handling Child Sexual Abuse Cases". This provides guidance to professionals on the handling of sexual abuse (1996);
- (g) research studies into the associative factors of child abuse and the multi-disciplinary approach to dealing with child sexual abuse (September 1999); and

- (h) the 5th Asian Conference on Child Protection: organised jointly with the NGOs 'International Society for Prevention of Child Abuse and Neglect' and 'Against Child Abuse'. The Conference sought to promote awareness, to facilitate international exchanges of experience, and to determine a way forward in regard to the protection of children and their families. Over 400 participants from 23 countries participated (November 1999).



**Maternity protections**

The following is an extract from our report in the light of the International Covenant on Economic, Social and Cultural Rights (1998). The text formed paragraphs 239 to 241 of that report -

2. In paragraph 113 of the previous report<sup>1</sup>, we explained that the Employment Ordinance entitled female employees to maternity leave subject to certain conditions. At that time, those who had worked continuously for the same employers for at least 26 weeks were entitled to maternity leave. But they were only entitled to leave pay if their contracts so provided. Those who had worked continuously for the same employers for at least 40 weeks before the commencement of maternity leave - and had no more than two surviving children - were entitled to leave pay of at least four-fifths of their normal wage. Maternity leave normally began four weeks before the expected date of confinement and ended six weeks after the actual date of confinement. Employees could give notice that they intended to take maternity leave at any time after their pregnancies were certified. Those who had worked for their employers for at least 12 weeks before tendering such notice were protected from termination of employment during the period between the date on which they gave such notice and the date on which they were due to return to work. These provisions were substantially amended in June 1997.

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<sup>1</sup> In this context, the previous report' refers to the United Kingdom's third report under the ICESCR, submitted in 1995 and examined by the Committee on Economic, Social and Cultural Rights in November 1996. Hong Kong's report under the Covenant formed part of that report.

## Employment (Amendment) Ordinance (June 1997)

3. This amended the provisions relating to eligibility for maternity leave, flexibility in taking such leave, eligibility for maternity leave pay, employment protection for pregnant employees, and assignment of heavy, hazardous or harmful work. Specifically -

- (a) **eligibility for maternity leave:** the 26-week qualifying service period was abolished. Now, women employed under continuous contract immediately before the commencement of their maternity leave are entitled to maternity leave;
- (b) **flexibility:** with their employers' consent, pregnant employees may now commence maternity leave two to four weeks before the expected date of confinement. The ten weeks' leave period is then counted from the agreed commencement date. If confinement occurs later than the expected date of confinement, they enjoy a further period equal to the number of days from the day after the expected date of confinement to the actual date of confinement. They may enjoy a further period of up to four weeks on the grounds of illness or disability due to pregnancy or confinement;
- (c) **eligibility:** the former condition that pregnant employees should not have more than two surviving children was repealed;
- (d) **termination of employment:** the 12-week qualifying period (see paragraph 239 above) was repealed. With certain exceptions<sup>2</sup>, employers may not terminate the service of pregnant workers who are employed under continuous contract, have been confirmed pregnant and have served notice of pregnancy to their employers. Pregnant

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<sup>2</sup> The exceptions are where an employee is summarily dismissed for serious misconduct, or where an employee is serving a probationary period of not more than 12 weeks.

employees dismissed before serving notice of pregnancy may serve such notice immediately after being informed of such dismissal. Their employers must then withdraw the dismissal; and

- (e) **heavy, hazardous or harmful work:** employers may not assign such work to pregnant employees who produce medical certification of their unfitness to handle it.

4. Employers who fail to grant maternity leave or who fail to pay maternity leave pay to eligible employees shall be guilty of an offence and liable on conviction to a fine of up to HK\$50,000. Those who contravene the provisions on termination of employment shall be guilty of an offence and shall be liable on conviction to a fine of up to HK\$100,000. They will also be required to effect such payments as are due to the employees in question in accordance with the provisions of the Employment Ordinance. Additionally, the employees may claim remedies against their employers for unlawful dismissal. If an employer fails to show that such dismissal was for reasons that the Ordinance recognises as valid, the Labour Tribunal may order re-instatement or re-engagement, subject to the mutual consent of the parties. If the Labour Tribunal finds that an order for reinstatement or re-engagement is not appropriate in the circumstances of the case or either party does not consent to reinstatement or re-engagement, it may award terminal payments. If no order for reinstatement or re-engagement is made - and whether or not there is an award of terminal payments - the Labour Tribunal may, as it considers just and appropriate in the circumstances, award the employee compensation not exceeding HK\$150,000.

## Patient's Charter

As explained in paragraph 251 under Section VIB, in relation to Article 24, the Hospital Authority's 'Patient's Charter' - reproduced below - applies equally to all patients, including children.

### RIGHTS OF PATIENTS

#### 1. Right to Medical Treatment

- The right to receive medical advice and treatment which fully meets the currently accepted standards of care and quality.

#### 2. Right to Information

- The right to information about what health care services are available, and what charges are involved.
- The right to be given a clear description of your medical condition, with diagnosis, prognosis (i.e. an opinion as to the likely future course of any illness), and of the treatment proposed including common risks and appropriate alternatives.
- The right to know the names of any medication to be prescribed, and its normal actions and potential side-effects given your condition.
- The right of access to medical information which relates to your condition and treatment.

#### 3. Right to Choices

- The right to accept or refuse any medication, investigation or treatment, and to be informed of the likely consequences of doing so.
- The right to a second medical opinion.
- The right to choose whether or not to take part in medical research programmes.

#### 4. Right to Privacy

- The right to have your privacy, dignity and religious and cultural beliefs respected.
- The right to have information relating to your medical condition kept confidential.

#### 5. Right to Complaint

- The right to make a complaint through channels provided for this purpose by the Hospital Authority, and to have any complaint dealt with promptly and fairly.

### RESPONSIBILITIES OF PATIENTS

- Give your health care providers as much information as you can about your present health, past illnesses, any allergies and any other relevant details.
- Follow the prescribed and agreed treatment plan, and conscientiously comply with the instructions given.
- Show consideration for the rights of other patients and health care providers, by following the hospital rules concerning patient conduct.
- Keep any appointments that you make, or notify the hospital or clinic as early as possible if you are unable to do so.
- Should not ask health care providers to provide incorrect information, receipts or certificates.
- Should not waste medical resources unnecessarily.

**CHARTER FOR CHILDREN IN HOSPITAL<sup>1</sup>**

1. Children shall be admitted to hospital only if the care they require cannot be provided equally well at home or on a day basis.
2. Children in hospital shall be able to have their parents with them at all times, provided this is in the child's best interests. Accommodation shall be offered to all parents whenever possible and they should be helped and encouraged to stay. In order to share in the care of their child, parents shall be fully informed about ward routines and their active participation shall be encouraged.
3. Children shall enjoy the care of appropriately trained staff who are fully aware of the physical and emotional needs of each age group.
4. Children shall be cared for with other children of the same age group.
5. Children and/or their parents shall be provided with information appropriate to their age and understanding.
6. Children and/or their parents shall be able to participate in all decisions involving their health care and shall be provided with the relevant information for making decisions.
7. Children shall be treated with tact and understanding, and their privacy shall be respected. Children shall be protected from unnecessary medical treatment and shall be given aid in the prevention and relief of physical and emotional distress.
8. Children shall be able to wear their own clothes whenever possible and have their own personal possessions.

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<sup>1</sup> Adapted from the Charter of the United Kingdom National Association for the Welfare of Children in Hospital.

9. Children shall be in an environment that is furnished and equipped for their requirements. The setting for the care of children shall conform to recognized standards of safety and supervision.
10. Children shall have the opportunity for play, recreation and education suited to their age and condition.

**Programme of immunisation**

<b>Age</b>	<b>Immunisation recommended</b>
New born	B.C.G. (Bacillus of Calmette and Guerin) Vaccine
	Polio Type I
	Hepatitis B Vaccine - first dose
One month	Hepatitis B Vaccine - second dose
Two to four months	DPT Vaccine (Diphtheria, Pertussis and Tetanus) - First Dose
	Polio Trivalent - first dose
Three to five months	DPT Vaccine (Diphtheria, Pertussis and Tetanus) - Second Dose
Four to six months	DPT Vaccine (Diphtheria, Pertussis and Tetanus) - third dose
	Polio Trivalent - second dose
Six months	Hepatitis B Vaccine - third dose
One year	MMR Vaccine (Measles, Mumps and Rubella) - first dose
18 months	DPT Vaccine (Diphtheria, Pertussis and Tetanus) - booster dose
	Polio Trivalent - booster dose
Primary 1	DT Vaccine (Diphtheria and Tetanus) - Booster Dose
	Polio Trivalent - booster dose
	MMR Vaccine (Measles, Mumps and Rubella) - second dose
Primary 6	DT Vaccine (Diphtheria and Tetanus) - booster dose
	Polio Trivalent - booster dose



**Coverage rate<sup>1</sup>**

	Year of birth			
	1996	1997	1998	1999
<b>BCG (at birth)</b>	99.64%	99.72%	99.46%	98.52%
<b>Third dose of DTP (at 4-6 months)</b>	89.09%	90.64%	90.41%	88.38%
<b>Second dose of OP (at 4-6 months)</b>	88.97%	90.91%	90.63%	88.36%
<b>Third dose of HBV (at 6 months)</b>	87.93%	88.96%	89.15%	87.57%
<b>First dose of MMR (at one year)</b>	86.74%	87.88%	87.44%	85.68%

Total local live births in 1996: 63 775

Total local live births in 1997: 59 373

Total local live births in 1998: 53 007

Total local live births in 1999: 51 304

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<sup>1</sup> 'Coverage rate' means the number of doses administered/total local live births.

**Pollution control**

Public concern about air pollution has mounted in Hong Kong following the large number of very high pollution readings in 1999. Of all the pollutants, respirable suspended particulates and nitrogen oxides are consistently at a high level and pose threat to public health. We are keenly aware of the severity of the problem and are making every effort to reduce these pollutants.

2. In the urban area, vehicle emissions contribute to 75% of the respirable suspended particulates and 80% of nitrogen oxides in the air at street level. Diesel vehicles account for 98% of the respirable suspended particulates and 80% of all nitrogen oxide emissions from vehicles. In his Policy Address, the Chief Executive announced a comprehensive programme to improve Hong Kong's air quality through reducing diesel vehicle emissions. The results of the programme are beginning to show up. In 2000, the overall non-compliance rate of short-term air quality objectives for general monitoring stations fell by 45%, and the overall annual concentrations of respirable suspended particulate and nitrogen dioxide fell by 8% and 6% respectively compared with 1999. The number of smoky vehicles spotted has been decreasing since mid-2000, and the number of fixed penalty tickets issued to repeated smoky vehicle offenders has dropped sharply since January 2001. We expect to see a continuous improving trend as we continue to bring the measures in the programme to fruition.

3. The comprehensive programme to improve air quality includes the following measures -

**(a) liquefied petroleum gas (LPG) taxi scheme:** replacing all diesel taxis with LPG taxis would reduce vehicle fleet emissions of respirable suspended particulates and nitrogen oxide by up to 25% and 6% respectively. To encourage the switch, we have been providing a subsidy of HK\$40,000 (US\$5,100) for each diesel taxi replaced by an LPG one since August 2000. As at 30 June 2001, about 10,000 out of the entire fleet of 18,000 taxis had been replaced. Our target is to complete the replacement process by end-2005;

**(b) alternative fuel light buses:** the trial of LPG and electric light buses was completed in January 2001 and the monitoring committee completed its report in June 2001. Both types of alternative-fuel light bus have proven more environmentally friendly than those run on diesel. We are considering the way forward in the light of these findings and the views of the trade and others in the community;

**(c) particulate traps:** since September 2000, we have been providing financial assistance to enable owners of pre-Euro light diesel vehicles to retrofit their vehicles with particulate traps. As at 30 June 2001, over 14,000 such vehicles had been retrofitted with the device. Total vehicular emissions of respirable suspended particulates will reduce by 6% upon completion of the scheme;

**(d) catalytic diesel converters:** the trial of retrofitting different types of catalytic converters on pre-Euro heavy vehicles is near completion. We are drawing up the technical specifications and making preparations for tendering out a retrofit contract;

**(e) Euro III Vehicle Emission Standard:** in January 2001, we upgraded the emission requirements for newly registered vehicles to Euro III standards or equivalent;

**(f) ultra low sulphur diesel (ULSD):** in July 2000, Hong Kong became the first city in Asia to introduce ULSD on a comprehensive scale for vehicle use. We have introduced a concessionary duty to encourage a quick switch to this environmentally cleaner fuel. The new fuel has become the only motor diesel sold at filling stations;

**(g) fixed penalty for smoky vehicles:** on 1 December 2000, we increased the fine on vehicles emitting excessive smoke by more than 100%;

**(h) smoky vehicle tests:** in December 2000, we started using chassis dynamometers for the smoke-testing of diesel vehicles; and

**(i) control of idling engines:** we have published to encourage drivers to switch off their engines - where practicable - while waiting.

4. Other ideas are being explored. These include pedestrianisation, incentives for cleaner fuel vehicles, restraining vehicle numbers and road use, and reducing emissions from non-vehicle pollution sources.

### **Water Pollution**

5. The greatest threat that water pollution poses to general health is contamination of potable water supplies. In Hong Kong, this threat effectively does not exist because piped water supplies are treated to meet WHO standards. Other potential threats are contamination of recreational waters and marine and freshwater biota used for human consumption.

6. Hong Kong's inland water quality has improved dramatically in the last 15 years or so with the percentage of river sampling stations graded bad or very bad declining from about 54% in 1987 to about 10% in 2000. Pollution of the 10% residue is mainly caused by waste discharges from the livestock industry. We are considering how to address this.

7. Beach water quality is generally good. In 1999, 35 of 41 publicly managed beaches met our objective for water quality (an annual average *E. coli* concentration of no more than 180 per 100mL of seawater). At this level swimmers face no more than a 1% risk of contracting a minor illness. The equivalent risk at the remaining six beaches stood at no more than 1.5%. We are working to reduce this further by extending mains sewerage to public beaches in unsewered areas.

8. The quality of some of our marine waters remains patchy, with Deep Bay and Victoria Harbour suffering severe pollution. In Deep Bay, the main problems are pollution by domestic sewage from unsewered villages and waste discharges from livestock farms. We are gradually extending mains sewerage systems to unsewered areas. As indicated above, we are considering how to deal with livestock waste.

9. The poor water quality in Victoria Harbour is caused by the discharge each day of approximately 1.5m tonnes of domestic and commercial sewage, of which 1.2m tonnes receive only rudimentary treatment. To deal with this, we are putting the finishing touches to a system of deep tunnels that will capture 70% of the sewage for chemical treatment prior to discharge through a deep-tunnelled marine outfall. This system will be commissioned around the end of 2001. We are reviewing how best to handle the remaining 30% of the sewage, and whether the treatment level for all sewage should be raised. Additionally, we are planning to disinfect all our major sewage discharges.

10. Threats due to contamination of local biota are very low. Strict controls on the discharge of toxic pollutants are in place. The imposition of these controls and other factors have led to a decline in the quantity of toxic metals discharged into Victoria Harbour from about 7000 kg/day in 1993 to about 600 kg/day in 2000.

**Definitions of the various forms of disability**

(A) General definitions of disabilities (per the ‘Hong Kong Rehabilitation Programme Plan 1998-99 to 2002-03’) -

(a) **physical handicap:**

a physically handicapped person is a person who has disabilities of orthopaedic, musculoskeletal, or neurological origin which mainly affect locomotor functions, and constitute a disadvantage or restriction in one or more aspects of daily living activities.

(b) **visual impairment -**

Total blindness: a person with no visual function (that is, with no light perception).

Low vision: which comprises three categories -

- (i) severe low vision: visual acuity of 6/120 or worse or with constricted visual field in which the widest field diameter subtends an angular subtense of 20 degrees or less, irrespective of the visual acuity;
- (ii) moderate low vision: visual acuity from 6/60 to better than 6/120;
- (iii) mild low vision: visual acuity from 6/18 to better than 6/60;

(c) **hearing impairment -**

<u>Degree of hearing impairment</u>	<u>Definition</u>
Profound	Hearing loss greater than 90dB
Severe	Hearing loss 71 to 90dB
Moderately severe	Hearing loss 56 to 70dB
Moderate	Hearing loss 41 to 55dB

Mild	Hearing loss 26 to 40dB
Normal	Hearing loss up to 25dB

(B) Definitions used for educational purposes -

**deaf:** deaf pupils are pupils with impaired hearing and who require education by methods suitable for pupils with little or no naturally acquired speech or language.

**partially hearing:** partially hearing pupils are pupils with impaired hearing whose development of speech and language, even if impaired, is following a normal pattern, and who require for their education special arrangements or facilities though not necessarily all the educational methods used for deaf pupils. (The Handicapped Pupils and Special Education Amending Regulations 1962, Statutory Instrument 1962 No. 2073, HM Stationery Office, UK.)

**mentally handicapped:** mental handicap (retardation) refers to significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behaviour and manifested during the developmental period. (Grossman V. (Ed.) Classification in Mental Retardation, American Association on Mental Deficiency 1983). Persons who are mentally handicapped do not develop in childhood as quickly as other children nor attain the full mental capacities of normal adults. The handicap may be slight or severe. In the most severe cases, development does not progress in adult life beyond the mental capacity of a young child; such severe handicap is much less common than milder degrees of handicap covering a wide spectrum ranging up to and merging into the 'normal' (Better Services for the Mentally Handicapped, Department of Health and Social Security, London 1971).

**maladjusted:** a maladjusted child is one whose behavioural and emotional difficulties, however caused, have prevented the child from benefiting from the ordinary social and educational experiences of home and school, and whose difficulties will persist unless help is given by those with appropriate skills - a child for whom failure in learning and in socially approved situations is

more probable than success. (Robert Laslett, *Educating Maladjusted Children* 1977). The term on ‘maladjustment’ is not a clinical term indicating a precise diagnosis. It is generally recognised as a descriptive term for a child who is developing in ways that have a bad effect on himself or his fellows and cannot without help be remedied by his parents, teachers and other adults in ordinary contact with them. (Underwood Report of the Committee on Maladjusted Children 1955, UK). Maladjustment is often a temporary state which can be helped by treatment. It is not necessarily a permanent state.



## **Support services for disabled children in ordinary schools**

### Resource teachers for visually impaired children

Visually impaired children who attend ordinary schools and other categories of special schools are supported by resource teachers of a special school for the visually impaired. These teachers help to prepare supplementary teaching materials such as books, test and examination papers and notes in braille; embossed maps and diagrams. They also provide training in the use of technical aids, counselling, optometric referrals and so forth. In the 2001-02 school year, 50 visually impaired children are reported to be attending ordinary schools or other categories of special schools and registered with the special school for the visually impaired. The number of resource teachers for these children will be increased to 6.5 accordingly.

### Special classes for visually impaired and hearing impaired children

2. Unless such children have an assessed need for special schooling, they are placed in special classes or Integrated Education Programme in ordinary schools. These special classes cover the primary curriculum and the first three years of the secondary curriculum. In 2001-02, there are 90 places for the visually impaired and 30 places for the hearing impaired. However, with more parents preferring to place their children in ordinary classes, these special classes are gradually phasing out to give way to the development of Integrated Education Programme.

### Peripatetic advisory service

3. Hearing-impaired integrators are supported by visiting inspectors from the Education Department. At present, there are about 700 integrators serviced by nine such inspectors.

### Supportive remedial service

4. Some hearing-impaired integrators in ordinary primary schools require additional remedial support in Chinese, English and Mathematics (which, in Hong Kong, are referred to as “The three basic subjects”). These children attend a unit attached to a special school outside normal school hours. Since 1998-99, there are 180 places, which fully meet the established demand.

### The Resource Help Service

5. The Service provides remedial teaching and guidance to physically handicapped integrators. It comprises -

- (a) **remedial teaching sessions:** students with poor attainment or interrupted schooling receive remedial teaching in the “three basic subjects” outside school hours. If necessary, they also receive counselling and guidance in coping with the ordinary school environment. This service is normally provided at Resource Teaching Services Centres;
- (b) **the peripatetic teaching service:** for some pupils - mainly those with mobility difficulties - who cannot easily go to the Centres, Resource Help Service teachers visit them in their schools. Visiting teachers liaise closely with the schools to monitor these students’ progress in adjusting to the ordinary school environment; and
- (c) **follow up service:** students who no longer require Resource Help Service are regularly contacted to ensure that they adjust well in their schools.

6. In 2000-01, 206 students required these services. As at 30 June 2001, the position was -

<u>Type of services</u>	<u>No. of pupils</u>
Remedial teaching sessions	69 (43 primary, 26 secondary)
Peripatetic teaching service	107 (79 primary, 28 secondary)
Follow-up	30 (20 primary, 10 secondary)
Total	206 (142 primary, 64 secondary)

### Intensive remedial services

7. In primary schools, mildly mentally handicapped integrators-not under the Integrated Education Programme, are placed in the Intensive Remedial Teaching Programmes in their own school buildings. They are taught Chinese, English and Mathematics in small groups by resource teachers but join their 'normal' peers for all other learning and social activities. Where schools cannot offer such programmes, mildly mentally handicapped children attend resource teaching centres outside normal school hours. The progress of these children is regularly reviewed by the resource teachers and by educational psychologists. At present 345 integrators receive this service.

8. In secondary schools, these children are included in the "School-based Remedial Support Programmes" which are provided to help the bottom 10% of junior secondary students. They can also enrol in Resource Teaching Centres to receive additional help with Chinese, English and Mathematics from resource teachers outside normal school hours.

[Note: Provision of these services is adjusted according to demand.]

**Special schools: supply and demand**(A) Types of special schools

<u>Category</u>	<u>No. of schools</u>	<u>No. of places</u>	<u>Known demand</u>
Visually impaired	2	225	175
Hearing impaired	4	630	465
Physically handicapped	7	790	741
Mildly mentally handicapped	10) ) +7*	3,080	2,738
Moderately mentally handicapped	14)	1,900	1,742
Severely mentally handicapped	10	808	793
Schools for social development	7	945	831
Hospital schools	<u>1</u>	<u>525</u>	<u>473</u>
	<u>62</u>	<u>8,903</u>	<u>7,958</u>
	==	=====	=====

\* Schools for combined mildly and moderately mentally handicapped children.

(B) Boarding places in special schools

<u>Category</u>	<u>Provision</u>	<u>Known Demand</u>
Visually impaired	175	145
Hearing impaired	60	41
Physically handicapped	166	148
Moderately mentally handicapped	230	221
Severely mentally handicapped	<u>441</u>	<u>397</u>
	<u>1,072</u>	<u>952</u>
	=====	=====

**Indices of wages, consumer price index (A) and foodstuff**

Year	Nominal wage index (September 1992 = 100)	CPI(A) (October 1999-September 2000=100)	
		All items	Foodstuff
1991	88.8	66.1	71.4
1992	97.5	72.3	77.6
1993	108.0	78.4	83.3
1994	118.4	84.8	88.6
1995	127.9	92.1	95.0
1996	135.9	97.6	98.8
1997	144.9	103.2	102.4
1998	150.2	105.9	104.3
1999	149.6	102.5	102.0
2000	150.4	99.5	99.7
Overall cumulative increase during 1991-2000	69.4	50.5	39.6

**Financial Assistance Schemes administered by the  
Student Financial Assistance Agency**

(a) Student Travel Subsidy

Needy students aged between 12 and 24 in full-time study up to first degree level are eligible for a subsidy to cover part of their study-related travel expenses. In 1998-99 academic year, the scheme was extended to full-time students aged 25 or above who had not completed their first degree. This benefits needy mature students pursuing tertiary education up to the first-degree level. In the 2000-01 academic year, 201,455 students received assistance totalling \$357 million.

(b) Local Student Finance Scheme (LSFS)

The LSFS provides means-tested grants and/or loans to needy full-time tertiary students in specified tertiary institutions. The scheme provides loans to meet living expenses and grants to cover tuition fees, academic expenses and student union fees. In the 2000-01 academic year, a total of about \$832 million in grants and \$606 million in low interest loan was provided to over 33,300 needy students (or about 43% of the student population).

(c) Non-Means Tested Loan Scheme

In the 1998-99 academic year, we introduced a new non-means tested loan scheme to all full-time tertiary students covered by the LSFS to

complement the existing means-tested scheme. The scheme operates on a no-gain-no-loss and cost-recovery basis. In the 2000–01 academic year, a total of \$306 million was provided to 10,373 students.

(d) Student Finance Assistance Scheme

Loans and grants are awarded to eligible full-time students of Hong Kong Shue Yan College, a privately funded post-secondary college. In 2000-01, 1,065 students received loans totalling \$17.8 million. Of these, 974 also received grants totalling \$7.6 million.

(e) Scholarship schemes

There are numerous private sponsorship schemes that offer awards on the basis of academic merit. In the 2000-01 academic year, the Sir Edward Youde Memorial Fund, a well-established scholarship fund, disbursed a total of \$11.3 million to meritorious students at various levels. The Fund also administers an award for disabled students. In 2000-01, 27 disabled students at secondary, post-secondary and tertiary levels received awards under the Fund.

**Examples of international education conferences and courses  
attended by Hong Kong delegates**

“Global Summit on Science and Science Education” from 27 to 29 December 1996 in San Francisco, USA

“Development of National Curriculum & its Educational Assessment & Measurement” from 3 January to 16 March 1997 in the U.K.

3-week attachment to Education Organization from 11 February to 2 March 1997 in Australia and New Zealand

“Curriculum Development of Drug and Life Education in Primary & Secondary Schools” from 25 September to 6 December 1997 in Sydney, Australia (University of Sydney)

“Resource Based Curriculum Planning and Development for Primary & Secondary Schools” from 2 October 1997 to 17 January 1998 in Bristol, the U.K. (University of Bristol)

To attend the “1988 Australian Conference of Curriculum Assessment and Certificate Authorities” from 26 to 31 July 1998 in Darwin, Australia

“Lower Secondary Education: An International Perspective” from 9 to 12 June 1999 in London, the U.K.

“Conference of the European Educational Research Association” from 21 to 28 September 1999 in Lahti, Finland

“5<sup>th</sup> UNESCO-ACEID International Conference on Reforming Learning, Curriculum and Pedagogy: Innovative Visions for the New Century” from 12 to 17 December 1999 in Bangkok, Thailand



26<sup>th</sup> Annual International Association for Educational Assessment (IAEA) Conference on “Educational Assessment in a Multi-cultural Society: Integrating Unique Perspectives and Shared Values” from 12 to 21 May 2000 in Jerusalem, Israel

“9<sup>th</sup> International Congress on Mathematics Education (ICME9)” from 30 July to 6 August 2000 in Tokyo/Makuhari, Japan

**The functions, governing ordinances and programmes of the homes for young offenders**

Name of institution	Governing ordinance	Institutional programmes
<b><i>(I) Place of detention</i></b>		
1. Begonia Road Juvenile Home  2. Ma Tau Wai Girls' Home	Section 14 of the Juvenile Offenders Ordinance (Chapter 226)	During their stay in the Home (maximum six months), children and juveniles attend classes, handicraft sessions and social skill training. Social workers help them gain insight into their problems and work out their welfare and rehabilitation plans.
<b><i>(II) Approved Facilities</i></b>		
<b><i>(A) Probation homes</i></b>		
1. Shatin Boys' Home  2. Fanling Girls' Home	Section 3 (3) of the Probation of Offenders Ordinance (Chapter 298)	Young offenders so ordered by the courts reside in probation homes - under the supervision of probation officers - for a period not exceeding 12 months. Upon discharge, the probation officers help them put their rehabilitation plans into effect.  In both homes, the training programmes comprise academic studies (junior to secondary level), prevocational training, counselling, and group work.

<b>(B) Probation hostel</b>		
Kwun Tong Hostel	Section 3 (3) of the Probation of Offenders Ordinance (Chapter 298)	The residents of the hostel study or work outside the hostel but return there at night. Programmes include social skills training groups, educational, social, and recreational activities. These are conducted mainly in the evening. Their purpose is to help the residents acquire better life-skills. Individual counselling is provided if required.
<b><i>(III) Reformatory school</i></b>		
O Pui Shan Boys' Home	Reformatory Schools Ordinance (Chapter 225)	The programme comprises 12 to 18 months of in-home training, followed by 18 months of aftercare supervision in the community. The training programmes and activities are similar to those in the probation homes but with more emphasis on character building and discipline.

## **Institutions for Young Offenders**

### **Detention centres**

(Detention Centres Ordinance (Chapter 239))

**Age:** 14 to 25 years

14 to 17 years: Young Offender (Junior) Section

18 to 20 years: Young Offender (Senior) Section

21 to 25 years: Young Adult Section

**Length of sentence:** 14 to 20 years: 1 to 6 months

21 to 25 years: 3 to 12 months

### **Institutional programme(s)**

- works skills, physical education training, high standard of discipline
- custodial officers, throughcare and aftercare, 'Never Again Association' gatherings involving inmates' families

### **Aim(s)**

- to instil respect for the law
- to develop self respect
- to raise awareness of neglected capabilities in legitimate pursuits
- to learn to live with others in harmony

## **Review**

Monthly Board of Review chaired by Senior Superintendent of the Correctional Services Department

## **Release**

Upon Board's satisfaction with inmate's institutional performance and the inmate securing suitable employment or a place in school

## **Post-institutionalisation statutory supervision**

One year, monitored by aftercare officers

## **Breach of Supervision Order**

14 to 20 years: may be recalled for further detention until the expiry of 6 months from first admission or 3 months from arrest, whichever is the later

21 to 25 years: may be recalled for further detention until the expiry of 12 months from first admission or 3 months from arrest, whichever is the later

## **Training Centres**

(Training Centres Ordinance (Chapter 280))

**Age:** 14 to 20 years

14 - 17 years: }

} separate centres for male offenders

18 - 20 years: }

14 - 20 years: female offenders

**Length of sentence:** 6 months to 3 years

**Institutional programme(s)**

- half-day education in primary to secondary level classes. Inmates are encouraged to participate in public examinations
- half-day vocational training in typewriting, food and beverage services, refrigeration and air-conditioning, printing, plumbing, electrical fitting and installation etc.
- throughcare and aftercare involving inmates' families

**Aim(s)**

To develop good working habits and skills which would help secure employment after release

**Review**

Monthly Board of Review chaired by Senior Superintendent of the Correctional Services Department

**Release**

Upon Board's satisfaction that inmate has reached peak institutional performance and upon arrangements for suitable employment or a place in school. Arrangements are made for inmates who wish to continue their vocational training to further their training in the Vocational Training Council or the Construction Industry Training Authority

## **Post-institutionalisation statutory supervision**

3 years

## **Breach of Supervision Order**

May be recalled for further detention until the expiry of 3 years from first admission or 6 months from arrest, whichever is the later

## **Young Prisoners Programme**

(Criminal Procedure Ordinance (Chapter 221))

**Age:** 14 - 20 years

## **Institutional programme(s)**

- half-day education. Study modules cover general academic subjects such as Chinese, English, Mathematics, Social Studies, Moral and Civic Education and commercial courses leading to public examinations in book-keeping, typewriting and accounting. Inmates are encouraged to participate in public examinations.
- half-day vocational training in craft skills, telecommunications, plumbing and pipe-fitting, food and beverage service, refrigeration and air-conditioning, technical drawing, general engineering, practical word processing, electronics and electricity.
- throughcare and aftercare, "Never Again Association" gatherings involving inmates' families.

### **Aim(s)**

- to cultivate good work habits and prepare for fulfilling employment upon release
- to equip inmate with a level of skills training commensurate with aptitude and capacity
- to develop confidence, satisfaction and self respect
- to facilitate re-integration into community upon release and to refrain from crime

### **Breach of Supervision Order:**

May be recalled for imprisonment for a period equivalent to the amount of remission earned

### **Drug Addiction Treatment Centre Programme**

(Drug Addiction Treatment Centres Ordinance (Chapter 244))

**Age:** 14 years and above

**Length of sentence:** 2 to 12 months

### **Institutional programme(s)**

- medical treatment for drug withdrawal, check-ups, recreational activities, physical education
- work therapy, individual and group counselling
- compulsory remedial education for young addicts
- aftercare team offering support and guidance, family involvement



### **Aim(s)**

- to improve health and mental development
- to develop good work habits
- to build self-confidence and sense of responsibility

### **Review**

Board of Review chaired by Senior Superintendent discusses the case during second month, and at least once every two months after first interview, and thereafter, monthly

### **Post-institutionalisation statutory supervision**

One year statutory supervision to assist re-integration into society

### **Breach of supervision order**

May be recalled for treatment until the expiry of 12 months from first admission or four months from arrest, whichever is the later.

**The state of progress of the major recommendations  
contained in the "Research on the Effectiveness of  
Rehabilitation Programmes for Young Offenders"**

The research team made some 30 sets of recommendations. Action on 13 of them is complete. Major examples include -

- (1) a new Rehabilitation Division in the Correctional Services Department: the division's function is to formulate strategies for the long-term development of rehabilitation programmes and aftercare services, and to better co-ordinate the provision of these programmes and services;
- (2) a wider range of practical subjects: these include such things as computer studies and languages;
- (3) SWD has developed a checklist for assessing offender's suitability for Community Service Order (CSO) and issued a reference kit on streamlining the compilation of CSO suitability report to the court;
- (4) group counselling sessions in half-way houses increased from five to eight a week;
- (5) Community Support Service Scheme (CSSS) teams operating on a permanent (as opposed to 'pilot') basis since April 1998;
- (6) Community Service Order extended to District Courts, the Court of First Instance and the Court of Appeal in May 1998.

2. Three of the remaining 17 recommendations have been implemented in 1998. These are -

- (1) new computer and office training facilities in the Lai Sun Correctional Institution, and new home decoration and office training facilities to be provided in the Pik Uk Correctional Institution (end-1998);
- (2) a Parent-Inmate Centre at Tai Tam Gap Correctional Institution to improve communication among inmates, their family members and aftercare staff (completion in August 1998); and
- (3) the NGO-run pilot Community Support Service Scheme team to operate on a permanent basis from October 1998.

The Correctional Services Department and the Social Welfare Department will pursue the remaining recommendations.

**Number of reported young drug abusers aged under 18  
by type of drug abused, 1995 – 2000**

Type of drug abused	1995	1996	1997	1998	1999	2000
<u>Non-psychotropic substances</u>						
Heroin	1 073	806	554	351	199	116
Opium	-	-	-	-	-	-
Morphine	-	-	-	-	-	-
Physeptone/methadone	8	2	3	1	-	1
Other narcotic analgesics	6	1	-	-	-	-
<u>Psychotropic substances</u>						
Amphetamines	26	138	246	239	351	1 382
Ecstasy	-	1	35	21	182	1 310
Ice	18	134	218	220	187	179
Cocaine	1	-	1	-	2	5
Barbiturates	-	-	-	-	-	-
Methaqualone	3	9	2	-	2	8
Cannabis	364	365	332	365	364	407
Ketamine	-	-	1	-	8	825
Brotizolam	2	-	-	-	-	-
Flunitrazepam	101	70	18	7	6	7
Triazolam/midazolam	35	26	24	13	9	16
Cough medicine	224	126	90	35	35	41
Organic solvents	49	149	119	82	70	34
<hr/>						
Total no. of psychotropic substance abusers aged under 18	666	730	677	655	704	1 736
Total no. of drug abusers aged under 18 with type of drug known	1 622	1 425	1 125	941	869	1 825
Total no. of reported drug abusers aged under 18	1 817	1 557	1 236	1 080	965	2 046

**Note:** The number of drug abusers may not add up to the indicated totals for each type of drug, as each individual may abuse more than one substance

**Source:** Central Registry of Drug Abuse

**Provisions under the Crimes Ordinance (Chapter 200)**  
**relating to sexual abuse, and the prescribed penalties**

<b>Section</b>	<b>Offence</b>	<b>Maximum penalty Imprisonment (number of years)</b>
47(1)	Incest by men	14
47(1)(a)	Incest by men with girl of or above the age of 13 and under the age of 16	20
47(1)(b)	Incest by Men with girl under the age of 13	Life imprisonment
47(3)	Attempting or inciting a girl under 16 to commit incest	10
48	Incest by women of or over 16	14
118	Rape	Life imprisonment
118A	Non-consensual buggery	Life imprisonment
118B	Assault with intent to commit buggery	10
118C	Homosexual buggery with or by man under 21 years of age	Life imprisonment
118D	Buggery with girl under 21 years of age	Life imprisonment
118E	Buggery with mentally incapacitated person	10
118F	Homosexual buggery committed otherwise than in private	5

<b>Section</b>	<b>Offence</b>	<b>Maximum penalty Imprisonment (number of years)</b>
118G	Procuring others to commit homosexual buggery	2
118H	Gross indecency with or by man under 21 years of age	2
118I	Gross indecency by man with male mentally incapacitated person	2
118J	Gross indecency by man with man otherwise than in private	2
118K	Procuring gross indecency by man with man	2
121	Administering drugs to obtain or facilitate unlawful sexual act	14
122	Indecent assault	10
123	Intercourse with girl under 13 years of age	Life imprisonment
124	Intercourse with girl under 16 years of age	5
125	Intercourse with mentally incapacitated person	10
126	Abduction of unmarried girl under 16 years of age	10
127	Abduction of unmarried girl under 18 years of age for sexual intercourse	7

<b>Section</b>	<b>Offence</b>	<b>Maximum penalty Imprisonment (number of years)</b>
128	Abduction of mentally incapacitated person from parent or guardian for sexual act	10
129	Trafficking in persons to or from Hong Kong	10
130	Control over persons for purpose of unlawful sexual intercourse or prostitution	14
131	Causing prostitution	10
132	Procurement of girl under 21 years of age	5
133	Procurement of mentally incapacitated person	10
134	Detention for intercourse or in vice establishment	14
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on girl or boy under 16 years of age	10
136	Causing or encouraging prostitution of mentally incapacitated person	10
137	Living on earnings of prostitution of others	10
139	Keeping a vice establishment	10
140	Permitting girl or boy under 13 years of age to resort to or be on premises or vessel for intercourse	Life imprisonment

<b>Section</b>	<b>Offence</b>	<b>Maximum penalty Imprisonment (number of years)</b>
141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act	14
142	Permitting mentally incapacitated person to resort to or be on premises or vessel for intercourse, prostitution, or homosexual act	10
143	Letting premises for use as a vice establishment	7
144	Tenant etc, permitting premises or vessel to be kept as a vice establishment	7
145	Tenant etc, permitting premises or vessel to be used for prostitution	7
146	Indecent conduct towards child under 16 years of age	10
147	Soliciting for an immoral purpose	1/2
148	Indecency in public	1/2