



## UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Law Society of Hong Kong makes the following submissions for the Second Report of the Hong Kong Special Administrative Region (HKSAR) under the *United Nations Convention on the Rights of the Child*, having reviewed the HKSAR'S earlier report submitted in June 2003 and received by the UN Committee in September 2005:

### **1. Section III Articles 3: Best Interests of the Child**

The Administration provided commentary on the following topics:

#### **(a) Court orders in relation to Child Protection and Protection for Child Victims of Domestic Violence - The Protection of Children and Juveniles Ordinance (Cap. 213)**

The Law Society commented in the 2003 Report on the unsatisfactory and unsuitable treatment of vulnerable children under the Protection of Children and Juveniles Ordinance.

The Administration acknowledged this Ordinance was originally drafted on “a model of the corresponding UK legislation” when it was introduced into Hong Kong in 1951. We note Section 34 which deal with “Care and Protection Orders” (“CPOs”) was amended in 1973, 1987, 1993 and 1995 but the underlying procedures whereby the Magistrates Courts deal with CPOs have not been reviewed for over half a century!

The Hong Kong Government continues to ignore the plight of vulnerable children because it continues to administer the two distinct and separate groups of children together namely juvenile offenders and children in need of protection and has introduced only cosmetic changes instead of conducting a complete overhaul.

The Administration should urgently review the matter and make arrangements to transfer all applications in relation to vulnerable children to the Family Court. There is no justification for these children to attend the Magistrates' courts or to be dealt with by Magistrates who administer justice in relation to criminal offences and juvenile offenders or for these children to attend the Magistracy buildings.

Over the years there have been complaints on the lack of empathy by some Magistrates when handling CPOs. We understand that vulnerable children still come into contact with juvenile offenders because of the lay-out of the buildings housing the older Magistracies; these children are also supervised by police officers in uniform; this treatment only adds to their distress as the environment is an intimidating one to them.

It is illogical in this day and age for children, who may be victims of domestic violence to be dealt with by any court other than the Family Court. The Government espouses a “holistic

policy” but fails to take robust action to implement its stated policy. Children who are victims of abuse and/or domestic violence should be dealt with by a Family Judge; many of these children come from broken homes, their parents are divorcing and the Family Court will, in any event, be making orders as to parental responsibility and custody orders.

**(b) Law Reform Commission Review of Guardianship and Custody (“LRC”)**

The HKSAR Government acknowledged in 2003 that the LRC was asked to review the law relating to Guardianship Custody in Children in light of the major reforms in this area in other jurisdictions particularly in England and Wales. An LRC Sub-Committee published its Consultation Paper in 1998 on Guardianship followed by the full Report in 2005 on “*Child Custody and access*”. The Law Society has been waiting for policy initiatives to be announced by the relevant Bureau; Law Society representatives eventually met with the Secretary for Labour and Welfare in April 2008. The Bureau indicated it has contacted some of the stakeholders such as frontline social workers and non-government organisations and sought the Law Society’s views again in April 2009. The Law Society regrets the lengthy delay in formulating policies which by the Government’s own admissions had taken place in other major jurisdictions in 1995.

The Law Society urges the Administration to give priority to this important task as current statistics indicate more than 18,000 divorce petitions are now filed annually with the Family Court. The outdated concepts in the existing legislation hamper the ability of the Family Court judges to address the needs of divorcing parties and their children.

**E. Article 27: Recovery of Maintenance for the Child**

The Administration introduced the *Interest and Surcharge on Arrears of Maintenance Ordinance* 2003 which came into effect on 1 May 2005. The Law Society considers this new piece of legislation to be a wasted opportunity to introduce a meaningful review of enforcement of outstanding maintenance payments. Practitioners have noted the Ordinance is rarely used as imposing interest on outstanding maintenance payments, in some instances, does not even generate enough money to pay the travelling expenses of the applicants seeking enforcement.

The Family Court resources are also stretched in relation to hearing dates for applications to enforce maintenance arrears. When dealing with enforcement, practitioners have encountered unacceptable waiting times for full hearings of judgment summonses. We have been advised of applications which have taken more than a year and the applicant has no other avenues to enforce payment and thus receives little or no income as she waits for a court date.

Cross border enforcement is another issue which requires attention. The HKSAR Government has not provided adequate assurances that it is taking this problem seriously or that it is attempting to make progress to reach an agreement with the relevant Mainland Authorities.

**The Law Society of Hong Kong**

**26 May 2009**

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