

**The Government of the Hong Kong Special Administrative Region's
Response to the List of Issues raised by
the United Nations Committee on the Rights of the Child**

Part I – Responses to questions

<p>3. Please specify whether a comprehensive Plan of Action for Children has been developed and implemented in the Macau and Hong Kong Special Administrative Regions (SARs) and if so, please provide information on its content, including its aims, implementation budget and monitoring and evaluation process.</p>

3.1 The Hong Kong SAR (HKSAR) Government is firmly committed to promoting the rights of children and honouring its obligations under the United Nations Convention on the Rights of the Child (UNCRC).

3.2 The concepts of child protection and “the best interests of the child” have consistently been essential considerations in all relevant decision-making of the HKSAR Government, both in the formulation of policies and in the preparation of legislative proposals on matters relating to or affecting children. There are also specific pieces of legislation, such as the Child Abduction and Custody Ordinance (Cap. 512), Child Care Services Ordinance (Cap. 243), Guardianship of Minors Ordinance (Cap. 13), Protection of Children and Juveniles Ordinance (Cap. 213) and Toys and Children’s Products Safety Ordinance (Cap. 424), protecting the rights of children. The implementation of these policies and legislation is monitored by the Legislative Council (LegCo), the Ombudsman, the media and the public at large.

3.3 The HKSAR Government also has a clear policy concerning children’s welfare and comprehensive measures to address their needs. We believe that children are best protected and nurtured within a loving family and our policy is to preserve and strengthen the family as a unit, to develop caring interpersonal relationships, enable individuals and family members to prevent personal and family problems, and deal with them when they arise. To these ends, our policy is to provide services to meet needs that cannot be adequately met from within the family.

3.4 In pursuance of our policy commitment as stated in paragraph 3.3, we have been taking extensive measures in various policy areas, such as education, health and welfare, to enhance the rights and well being of children comprehensively. We are of the view that a separate Plan of Action will not add value to giving effect to the UNCRC.

4. Please provide information on the body responsible for the overall coordination of the implementation of the Convention across sectors and at the districts and local level in Hong Kong and Macau SARs respectively as well as on their mandate and the human, financial and technical resources allocated to them.

4.1 As stated in paragraphs 22 to 23 of our second report under the UNCRC, matters concerning children's rights and well-being cover a wide range of policy areas in the HKSAR. They are taken care of by the respective policy bureaux of the HKSAR Government.

4.2 In cases of policies and measures involving more than one bureau or department, mechanisms are in place within the Government, which serve the need of coordinating policies and measures among bureaux and departments, to ensure that adequate consideration is given to the best interests of children. The leading policy bureaux would consult other bureaux and departments in considering and dealing with relevant issues. Furthermore, the Policy Committee, led by the Chief Secretary for Administration of the HKSAR, provides a high-level mechanism for co-ordination and co-operation within the Government. Advice would also be sought from experts on human rights and international law where necessary to ensure compliance. The Executive Council assists the Chief Executive (CE) in policy-making and advises the CE on matters relating to the introduction of bills and subsidiary legislation.

4.3 As mentioned in paragraph 3.3 above, consistent with the UNCRC, the HKSAR Government firmly recognises the importance of the family as the fundamental group of society and the natural environment for the growth and well-being of all its members including particularly children. In late 2007, the HKSAR Government established the Family Council, which consists of both official and non-official members under the chairmanship of the Chief Secretary for Administration, for policy bureaux and departments to examine, from the family perspective, departments' policies and programmes designed for different age and gender sectors (including children), such as measures combating youth drug abuse, population policies on encouraging marriage and childbirth, etc.

4.4 With effect from 1 April 2013, the Family Council has been re-constituted under a new non-official Chairman to strengthen its advisory role. The established approach of including family perspectives in the policy-making process is further enhanced by introducing a mandatory assessment of family implications for all policies. Heads of policy bureaux are encouraged to consult the Council on new policies which may carry family implications.

5. Please indicate the steps taken by the State Party in mainland China and Hong Kong SAR to guarantee equities in public resource allocation for children's services, in particular to ensure that local governments in remote and poor regions have adequate resources for the implementation of children's rights.

5.1 As stated in paragraph 29 of our second report, the HKSAR Government attaches great importance to investing in our future, particularly on our children, and building a caring community. Extensive services are provided to enhance their well being. The respective policy bureaux and departments will ensure that adequate resources are available for implementing programmes and providing services for different sectors and regions in the community.

5.2 Taking the 2012-13 financial year (April 2012 to March 2013) as an example, education, healthcare and social welfare are three of the largest components of Government's expenditures, making up over 40% of the total. A significant portion of these expenditures are spent on children under the age of 18, which accounts for about 14.8% of the total population in the HKSAR.

Education

5.3 For the provision of education services, the public spending in 2012-13 amounted to about HK\$77.8 billion, representing about 20.4% of the Government's total expenditure.

5.4 It is the HKSAR Government's policy that no student will be deprived of the opportunity to receive education due to lack of means. As from 2008-09 school year, free education in public sector schools has been extended from nine years to 12 years. The completion rate for primary and junior secondary students is now close to 100%. To ensure that children with disadvantaged background can have access to education services provided by the HKSAR Government, a number of measures and programmes are in place -

- (a) *Student Financial Assistance Agency (SFAA) Student Subsidies:* In 2011-12 school year, the SFAA disbursed a total of HK\$5,300 million in financial assistance and loans, benefitting about 380 000 students, which is close to 40% of the total number of children in the HKSAR. Of the sum, around HK\$4,200 million are means-tested financial assistance (including HK\$500 million in low-interest loans) and HK\$1,100 million in non-means-tested assistance.

- (b) *School-based After School Learning and Support Programmes*: Public sector schools, schools under the Direct Subsidy Scheme and non-governmental organisations (NGOs) are provided with funding under the School-based After-school Learning and Support Programmes to organise after-school activities for eligible needy students to broaden their learning experiences outside classroom for whole person and all-round development. In 2012-13 school year, the provision is about HK\$208 million, benefiting over 200 000 students, which constitutes about 34% of the total number of students in the types of schools mentioned.
- (c) *Community Care Fund (CCF) Lunch School Subsidy*: The objective of the CCF is to support people in need. One of its programmes is to provide eligible needy primary students studying in whole day public sector schools and schools under the Direct Subsidy Scheme with lunch subsidy through their schools. In 2012-13 school year, the estimated provision is HK\$180 million for about 62 000 needy students.
- (d) *CCF School-based Fund for Cross Boundary Learning Activities (The Fund)*: The Fund is a three-year school-based project (July 2011 to June 2014) to subsidised primary and secondary school students from low-income families to take part in cross-boundary learning activities. In 2011-13, HK\$52 million was used to subsidise over 22 000 needy students. Starting from 2012-13 school year, the scope of the scheme has been extended to cover needy students representing the HKSAR in non-local competitions.
- (e) *CCF After-school Care Pilot Scheme (The Scheme)*: The Scheme begins from 2012-13 school year to address increasing community demands for after-school care services. It encourages schools and NGOs to collaborate to provide after-school care to needy primary one to secondary three students from low-income families. In 2012-13 school year, HK\$28 million will be used under the Scheme, benefiting around 5 400 students.

Public Health

5.5 The HKSAR's population of about 7.14 million¹ is provided with a comprehensive range of medical and health services by the public and private sectors. As at end December 2011, the number of hospital beds was about

¹ As at mid 2012, the population of the HKSAR is approximately 7.14 million.

35 500², comprising 26 981 beds in 38 public hospitals under the Hospital Authority (HA), 4 098 beds in 12 private hospitals, 4 190 beds in 46 nursing homes and 792 beds in correctional institutes - the bed-population ratio was about five beds per thousand population; the number of medical practitioners registered with the Hong Kong Medical Council were 12 818: 11 959 on the resident list and 859 on the non-resident list, equivalent to 1.8 medical practitioners per thousand population.

5.6 It has been the HKSAR Government's public healthcare policy to provide comprehensive and lifelong holistic healthcare services to each citizen, and to ensure that no one is prevented, through lack of means, from obtaining adequate medical treatment. The public healthcare services in the HKSAR are heavily subsidised by the Government, and affordable to the general public.

5.7 As at June 2013, the Department of Health (DH) operates 31 maternal and child health centres in the HKSAR. In addition, the HA runs 48 specialist out-patient clinics and 73 general out-patient clinics throughout the territory. In the more populous areas, polyclinics or specialist clinics provide specialist clinic sessions besides general out-patient services. Maternity and child health guidance, including antenatal and postnatal care of the mother and the entire immunisation programme for children, is provided for free in these centres.

5.8 The HKSAR Government also provides Eligible Persons (including children) with a wide range of multi-disciplinary healthcare services through the HA when necessary. HA charges its service users at subsidised rates according to the type of services provided. Children under 12 are charged half of the bed maintenance fees. Comprehensive Social Security Assistance (CSSA) recipients are not required to pay for their public healthcare expenses. For non-CSSA patients in financial hardship, medical fee will be waived upon application if they meet the financial criteria. Consideration of non-financial factors will also be taken into account on a case-by-case basis.

5.9 To improve the health of school children, the DH operates the Student Health Service programme which provides a comprehensive range of promotive and preventive services, such as physical examination, health assessment, individual counseling and health education, catering for the health needs of the students at various stages of their development at the student health service centres. Students found to have problems will be referred to a special

² The number of hospital beds includes all hospital beds in Hospital Authority hospitals, private hospitals, nursing homes and correctional institutions. The bed population ratio may not be directly comparable with figures for other countries as other countries may adopt different definitions to arrive at the total hospital beds.

assessment centre or appropriate specialists for further management. As at mid-2013, a total of 12 student health service centres and three special assessment centres have been established to provide services to around 700 000 primary to senior secondary school students, representing an enrollment rate of over 95% for primary school children and over 80% for secondary school students. The DH also implements the Adolescent Health Programme, which is an outreaching service for secondary school students to promote the psychosocial health of adolescents.

5.10 Furthermore, children are given a series of immunisations against ten childhood infectious diseases in maternal and child health centres under the DH. Family planning service is also available at a charge of HK\$1 for every visit. These preventive services have contributed to the HKSAR's remarkably low infant and maternal mortality rates, which are comparable to the best in the world. They have also kept the HKSAR, one of the most densely populated cities in the world, free from epidemics of major communicable diseases.

5.11 In order to cater for the upsurge in demands for medical services, throughout the years, the HKSAR Government has been increasing the recurrent resources allocation to enhance and expand various public healthcare services. The HKSAR Government plans to provide HA with recurrent subvention of about HK\$44,400 million in its 2013-14 financial year, which is a 43% increase as compared to the recurrent subvention of about HK\$31,100 million in the 2008-09 financial year.

5.12 To enhance the quality of paediatric services in the HKSAR, the HKSAR Government will develop a medical Centre of Excellence in Paediatrics. The construction works of the project will commence in mid 2013 for commencement of services by phases in mid 2018.

Welfare

5.13 The HKSAR Government is also committed to providing welfare services to meet the needs of needy families and children. A wide range of services, including social security, family and child welfare services, medical social services, group and community work, services for young people, etc. are available.

5.14 The Social Welfare Department (SWD) and NGOs provide a variety of family and child welfare services with the objective of preserving and strengthening the family as a unit. There is an extensive network of 65 integrated family service centres and two integrated services centres operated by SWD and NGOs over the territory to provide a spectrum of preventive,

supportive and remedial services including family life education, parent-child activities, enquiry service, volunteer training, outreaching service groups and programmes, counseling and referral services for individuals and families in need, with extended hour services. The Family and Child Protective Services Units of SWD provide services for families having problems of spouse / cohabitant battering and child abuse and safeguard the interest of children affected by child custody / guardianship disputes referred by the Courts. Five refuge centres for women provide emergency shelter for women and their children in face of domestic violence or family crisis. There are integrated services teams for street sleepers, temporary shelters and urban hostels for street sleepers and homeless persons.

5.15 A wide range of services including day and residential service are also in place for children and young persons who are in need of care or protection. The Child Care Centres Advisory Inspectorate is responsible for the registration, control and inspection of day child care centres for children under three and residential child care centres for children under six. The means-tested Kindergarten and Child Care Centre Fee Remission Scheme administered by the SFAA of the Education Bureau (EDB) helps families with social needs place their children in full day child care centres. Together with Accredited Bodies for adoption services, the Adoption Unit arranges local and overseas adoption, while the Central Foster Care Unit promotes and co-ordinates the recruitment of foster homes and development of foster care. Through a wide range of educational and promotional programmes, family life education aims to maintain and strengthen family functioning. A Family Life Education Resource Centre provides resource materials in support of the service.

5.16 Apart from providing services to families and children, the HKSAR also provides welfare services for young people. A total of 138 integrated children and youth services centres are operated by NGOs to offer socialisation programmes and holistic supportive services. At the same time, SWD has been implementing the “one school social worker for each school” scheme in all secondary schools over the territory to focus on supporting the majority of young people who are still at school. Besides, 19 district youth outreaching social work teams and 18 outreaching service for young night drifters teams operated by NGOs seek to identify and engage young people who are not receptive to social norms and are vulnerable to negative influences. The teams aim to prevent further deterioration in their behaviour and instill positive lifestyles so that they can overcome difficulties, develop potentials and foster the development of positive social values and attitude.

5.17 The HKSAR Government also attaches great importance to

providing additional support to children with disadvantaged background. Policy bureaux and departments have been paying special attention to the needs of children from a disadvantaged background, providing them with the support necessary for effective learning and whole-person development. Major programmes implemented include –

- (a) *Comprehensive Child Development Services (CCDS)*: The Labour and Welfare Bureau (LWB), EDB, DH, HA and SWD jointly launched the CCDS in 2005 on a trial basis. The service identifies, at an early stage, at-risk pregnant women, mothers with postnatal depression, families with psychosocial needs and pre-primary children with health, developmental and behavioural problems, and refers them to the appropriate health and welfare service units to receive follow-up and support services. Over the years, CCDS has been extended to cover all 18 districts in 2012-13.
- (b) *Child Development Fund (CDF)*: The HKSAR Government set up the HK\$300 million CDF in 2008. It funds projects which promote the longer-term development of children aged between 10 and 16 from a disadvantaged background and encourage them to develop an asset-building habit. With funding from CDF and the assistance of volunteer mentors, NGOs organise specially designed projects for the participants, teaching them how to formulate personal development plans and implement them using their own savings, matching donations and Government's special financial incentive. Since its implementation, more than 4 000 children have benefited from CDF. The fourth batch of CDF projects will be awarded to the selected NGOs in the third quarter of 2013. About 2 000 to 2 300 more children from a disadvantaged background will benefit from the fourth batch of projects.

5.18 To sustain the welfare services for the family and child, a total of HK\$2,169 million has been allocated in 2013-14 in this respect. The HKSAR Government will continue to take into account the needs of individual districts, such as population profile, socio-economic factors, in planning our services.

7. Please specify the reasons for the delay in the establishment of an independent Children's Commission in Hong Kong SAR (HKSAR) despite the Legislative Council's June 2007 motion and a subsequent appeal by the Panel on Constitutional Affairs to set up such a Commission in May 2009.

7.1 As stated in paragraph 3.2 above, there are specific pieces of legislation protecting the rights of children as enshrined in the UNCRC. The

implementation of legislation and policies is monitored by the LegCo, the Ombudsman and the media, and are reviewed by the policy bureaux concerned. The UNCRC covers areas of the Government that are the responsibility of several different policy bureaux. Advisory boards and committees and NGOs assist those bureaux in the planning and decision-making process. Where a particular area involves the responsibilities of more than one bureau, there are established arrangements for co-ordination between them as mentioned in paragraph 4.2 above.

7.2 These arrangements are conducive to flexibility and a swift response to changing circumstances and to the concerns of the public. We consider that there is no need to replace them with some unified administrative system, or an additional layer of monitoring system, such as a Children's Commission as some have proposed.

7.3 As mentioned in paragraphs 4.1 to 4.4 above, policy bureaux and departments will duly consult relevant advisory bodies in formulating and implementing measures and policies related to children. With effect from 1 April 2013, the Family Council was further enhanced to strengthen its advisory role. The Secretary for Home Affairs, the Secretary for Education, the Secretary for Labour and Welfare, as well as the Head, Central Policy Unit (or their representatives) continue to serve as official members of the Council to enable the Council's high-level interface on family-related issues both at policy and operational levels. The HKSAR Government believes that the enhanced Family Council will enable various policy bureaux and departments to examine and evaluate their policy proposals from the perspective of family core values in a more systematic and coherent manner.

7.4 Apart from the Family Council, policy bureaux and departments can also gauge children's views and suggestions through the Children's Right Forum (CRF). Established in 2005, the CRF comprises representatives from major organisations with focus on children's rights as well as children representatives. Forum members meet regularly to discuss matters affecting children. Representatives of relevant policy bureaux and departments attend the forum on relevant issues, and the views collected are given due weight in policy-making and other areas. Recent examples concerning policy bureaux' consultation with the CRF include the Security Bureau's consultation in 2009 concerning how best to protect children's privacy and reputation in developing school-based drug testing in schools; the Home Affairs Bureau's public engagement exercises in 2010 and 2011 concerning how child-friendly elements could be included in the development of the West Kowloon Cultural District; the Security Bureau's consultation in 2011 concerning the establishment of the Sexual Conviction Record Check Scheme and the Labour and Welfare Bureau's

consultation in 2012 concerning how children's best interests would be taken into account in the implementation of the "joint parental responsibility model" in relation to the custody and access arrangements for children of divorced parents. The Government will continue to liaise with, and listen to views of, NGOs that are concerned with children's rights.

13. With reference to paragraph 473 of HKSAR's report, please explain the rationale for promoting education for children of ethnic minorities and non-Chinese speaking students in 'designated schools' instead of ensuring that they are fully integrated into the mainstream state-run and private schools.

13.1 The HKSAR Government is committed to supporting the integration of non-Chinese speaking (NCS) students, notably ethnic minority students, into the community, including facilitating their early adaptation to the local education system and mastery of the Chinese Language. One of the support measures that have been put in place since 2006-07 school year is the provision of a recurrent grant and school-based professional support services to schools with school-based support programmes specifically arranged for NCS students³. These schools have served as the anchor point for the development of school-based support measures including learning and teaching materials for NCS students and sharing of experiences with other schools admitting NCS students through a support network formed so that all NCS students studying the local curriculum would benefit.

13.2 Our school system is open to all students, including NCS students. Parents are free to choose the schools (whether designated schools or not) for their children. It is therefore very much a personal decision of NCS parents to send their children to a school admitting more NCS students. The number of NCS students who have chosen to enroll in non-designated schools is in the rise spreading across about 500 primary and secondary schools in 2012-13 school year. It is not a design of the HKSAR Government to have a school becoming a "designated school" to enroll more NCS students. It is rather a result of parental choice. Nonetheless, there is a need for revision with a view to achieving a more desirable mix of local and NCS students within a school to facilitate better integration of NCS students. The EDB will continue to review the support measures, taking into account the views of stakeholders so as to further enhance the learning effectiveness of NCS students.

15. Please specify whether the legislation in mainland China, Hong Kong and Macau SARs explicitly prohibits corporal punishment in all settings, including home, schools, penal institutions and alternative care settings. With

³ These schools are generally known as "designated schools".

reference to paragraph 150 of the periodic report of Hong Kong SAR, please clarify how corporal punishment has been defined in the legislation and what types of corporal punishment in the family may not constitute criminal offences under the existing laws.

15.1 Pursuant to the Offences against the Person Ordinance (Cap. 212), it is unlawful for a person over the age of 16 years, including a parent, who has the custody, charge or care of a child or young person under that age, to wilfully assault or ill-treat the child or young person or cause such child or young person to be assaulted or ill-treated in a manner likely to cause such child or young person unnecessary suffering or injury to his health. If convicted, the person shall be liable to a maximum penalty of 10 years' imprisonment. A person may be convicted of the above offence notwithstanding that actual suffering or injury to health or the likelihood of such suffering or injury to health was obviated by the action of another person and notwithstanding the death of the child or young person in respect of whom the offence is committed.

15.2 The Child Care Services Regulations (Cap. 243, sub. leg. A) also prohibit the administration of corporal punishment to a child in a child care centre or a mutual help child care centre. The Education Regulations (Cap. 279, sub. leg. A) prohibit a teacher from administering corporal punishment to a pupil.

19. Please also indicate if legislation and policies on bilingual education have been adopted at all levels of education in HKSAR.

19.1 The HKSAR Government believes that the confidence and competence in the use of Chinese and English are essential for the HKSAR to maintain our competitive edge in the world. The Education Commission Report No.6, which the HKSAR Government has accepted, has already laid down a framework to achieve our goal for secondary school graduates to be proficient in writing English and Chinese and able to communicate confidently in Cantonese, English and Putonghua.

19.2 Starting from 2010-11 school year, the medium of instruction (MOI) arrangements for public sector secondary schools have been fine-tuned to enable schools to adopt diversified school-based MOI arrangements including adopting extended learning activities in English to increase students' use and exposure to English with a view to facilitating their bridging over to further academic pursuits.

19.3 Choice of teaching languages is within the academic autonomy of higher education institutions in the HKSAR. As such, they are free to choose their language of teaching in accordance with their own academic strategy and needs.

24. Please clarify the policies and procedures in place in the mainland and Hong Kong and Macau SARs to provide for the special treatment of unaccompanied asylum-seeking and refugee children, including access to education, psychosocial services and health care.

24.1 On humanitarian grounds, the HKSAR Government, in collaboration with NGOs and on a case-by-case basis, offers assistance-in-kind to torture claimants and asylum seekers who are deprived of basic needs during their presence in the HKSAR.

24.2 The SWD of the HKSAR Government has been commissioning the International Social Service Hong Kong Branch (ISS) to provide assistance-in-kind services to vulnerable asylum seekers and torture claimants since April 2006. Services provided include accommodation, food, clothing and other basic necessities, appropriate transport allowance, etc.

24.3 In order to protect the safety of and provide guidance to the unaccompanied minors whose age is under 18 and without parental guidance in the HKSAR, the ISS would assist to arrange them to stay in a shelter namely Anthony Lawrence International Refuge for Newcomers to Hong Kong with 24-hour supervision.

24.4 For schooling arrangements, the EDB allows torture claimants and asylum seekers under 18 to attend schools on a discretionary basis, taking into consideration the circumstances of each case (including age and whether removal may take place in the near future, etc.). As at the end January 2013, about 66 torture claimants and asylum seekers have applied for schooling and no application was rejected. The SFAA will also consider applications for tuition fee subsidy on a need basis.

24.5 Recommendations for one-off waiver of medical expenses at public clinics or hospitals will be given to torture claimants and asylum seekers (including unaccompanied minors) on a case-by-case basis subject to the assessment by service units of the SWD or the HA.

25. With reference to paragraph 525 of HKSAR's report stating that 'children with no right to remain in the HKSAR are subject to removal,' please indicate the process for determining when such removal is appropriate and

how it complies with HKSAR's obligations of non-refoulement. Please specify whether procedures are in place for the rapid identification of child victims of trafficking in the context of deportation or return. Furthermore, please provide information on the facilities where unaccompanied and asylum-seeking children are held upon arrival and / or under administrative detention pending deportation.

25.1 The Government of the People's Republic of China (PRC) made a number of reservations and declarations in relation to the application of the UNCRC to the HKSAR after 1 July 1997 including, inter alia, –

- (1) reserving the right to apply such legislation, insofar as it relates to the entry into, stay in and departure from the HKSAR of those who do not have the right under the laws of the HKSAR to enter and remain in the HKSAR, and to the acquisition and possession of residentship as it may deem necessary from time to time; and
- (2) seeking to apply the Convention to the fullest extent to children seeking asylum in the HKSAR except insofar as conditions and resources make full implementation impracticable. In particular, in relation to Article 22 of the Convention, the PRC Government reserves the right to continue to apply legislation in the HKSAR governing the detention of children seeking refugee status, the determination of their status and their entry into, stay in and departure from the HKSAR.

25.2 The reservation as stated in paragraph 25.1(2) above was withdrawn on 10 April 2003 as the crisis arising from the influx of Vietnamese refugee seeking asylum in Hong Kong was over and it was no longer necessary to retain this reservation. However, the reservation as stated in paragraph 25.1(1) remains. Under this Convention, there is still in force a reservation with respect to the application of legislation relating to the entry into, stay in and departure from the HKSAR of persons not having the right to enter and remain in the HKSAR.

25.3 Separately, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has been extended to Hong Kong since 1992. Article 3 of CAT provides that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The HKSAR Government provides non-refoulement protection under Article 3 of CAT and does not remove a torture claimant (including children) from the HKSAR to a torture risk State until his torture claim is withdrawn or finally

determined as unsubstantiated. In this connection, the LegCo enacted the Immigration (Amendment) Ordinance 2012 (Ord. No. 23 of 2012) to provide for a statutory framework to underpin the previous enhanced administrative mechanism in operation since December 2009 for determining torture claims. The Ordinance has commenced operation since 3 December 2012.

25.4 Under the statutory mechanism, each torture claimant is given every reasonable opportunity to establish his claim. After the claimant has submitted detailed grounds of the claim and supporting facts in a specified torture claim form, the Immigration Department (ImmD) as the authority will arrange an interview with the claimant so that he / she may volunteer further information and answer questions relating to the claim. The ImmD's decision on the torture claim and reasons for the decision will be given to the claimant in writing. A claimant who feels aggrieved by the ImmD's decision has the right to lodge an appeal to the statutory Torture Claims Appeal Board which is an independent body comprising former judges or magistrates. The Appeal Board may decide to hold an oral hearing if it considers that the appeal cannot be justly determined otherwise.

25.5 Throughout the process, torture claimants have ready access to publicly-funded independent legal assistance. Since the implementation of the enhanced screening mechanism for torture claims in December 2009, 99% of the torture claimants have applied for and all of them were provided with such legal assistance. The publicly-funded legal assistance has been operated by the non-government Duty Lawyer Service, under which over 260 barristers and solicitors in private practice, who have received prior training on handling torture claims, are put on a roster to provide legal assistance to claimants throughout the entire screening process. The publicly-funded lawyers will assist their claimant clients to prepare and complete the torture claim form, attend interviews with the ImmD, assess the merits of appeals if their clients so wish and, for meritorious cases, prepare submissions for the claimants during the appeal and represent them at the oral hearing, if any.

25.6 As required by the legislation, the ImmD must consider each claim on its own merits and take into account all relevant considerations in deciding on a torture claim, including the existence in the alleged torture risk State of a consistent pattern of gross, flagrant or mass violations of human rights. A claimant may not be removed from the HKSAR to another country where there are substantial grounds for believing that the claimant would be in danger of being subjected to torture there.

25.7 The Director of Immigration will normally not detain an illegal immigrant / overstayer who is under the age of 18 unless with strong reasons,

e.g., it is believed that the child will be assisted to abscond, the child is likely to be removed from the HKSAR within a short period of time, or the child is unaccompanied and would not be properly taken care of if he / she is not so detained. If detention is necessary, the child will, pursuant to paragraph 4 of the Immigration (Places of Detention) Order (Cap. 115, sub. leg. B), be admitted into the Tuen Mun Children and Juvenile Home operated by the SWD of the HKSAR Government who will provide proper care and guidance. In addition, the Order guarantees that a child under detention shall receive the same treatment as that which is accorded to a local child or juvenile detained in a place of refuge under section 34E of the Protection of Children and Juveniles Ordinance (Cap. 213).

25.8 Our law enforcement agencies (LEA), including the Hong Kong Police Force and the ImmD, have in place an effective mechanism to identify victims of human trafficking, in particular child victims, and provide the identified victims with necessary supporting services where appropriate.

25.9 An “Action Card for Debriefing of Human Trafficking Victims” is widely distributed to frontline law enforcement officers to facilitate victim identification in a systematic and comprehensive manner. Law enforcement officers have all along remained vigilant and sensitive in identifying human trafficking victims. Should any of these victims be identified, they would coordinate with the SWD to provide corresponding follow-up assistance and support to them.

25.10 Comprehensive training (both local and overseas) is also regularly provided for enhancing the law enforcement officers’ technique and capability in victim identification. For example, in July and December 2012, a police officer and two immigration officers respectively attended the “Trafficking in Persons / Child Exploitation Courses” organised by the International Law Enforcement Academy at Bangkok. In March 2012, 50 local law enforcement officers attended in the HKSAR a Workshop on Combating Human Trafficking jointly held by the United States and the HKSAR to share practical knowledge and experience on combating human trafficking and victim identification.

Part III – Data, statistics and other information

1. Please provide consolidated budget information for the last three years on resources allocated to children and the social sectors, indicating the percentage of each budget line in terms of the total national budget and GNP in the State party, including in Macau and Hong Kong SARs.

1.1 As mentioned in paragraphs 5.1 and 5.2 above, the HKSAR Government provides extensive services in areas such as education, public health and welfare, to enhance the well being of our children.

Education

1.2 As stated in paragraph 5.2 above, education is one of the largest components of the Government's total expenditure. The amounts of expenditure spent on providing education to the community, including student financial assistance to needy students, in the past three years are tabulated below. The majority of these expenditures is spent on children aged below 18.

	2010-11	2011-12	2012-13
Expenditure for providing education services (HK\$ million)	60,719	67,891	77,799
Percentage of total government expenditure (%)	20.1	18.6	20.4
Percentage of GDP (%)	3.3	3.5	3.8

1.3 The resources allocated to the provision of pre-primary, primary, secondary and special education in the past three years are tabulated below:

2010-11			
	Amount (HK\$ million)	Percentage of total government expenditure (%)	Percentage of GDP (%)
Pre-primary	2,429	0.8	0.13
Primary	12,451	4.1	0.68
Secondary	21,340	7.1	1.17
Special	1,554	0.5	0.09

2011-12			
	Amount (HK\$ million)	Percentage of total government expenditure (%)	Percentage of GDP (%)
Pre-primary	2,639	0.7	0.13
Primary	12,662	3.5	0.65
Secondary	22,797	6.3	1.16
Special	1,676	0.5	0.09

2012-13			
	Amount (HK\$ million)	Percentage of total government expenditure (%)	Percentage of GDP (%)
Pre-primary	2,891	0.8	0.14
Primary	13,745	3.6	0.67
Secondary	23,663	6.2	1.16
Special	1,960	0.5	0.10

Public Health

1.4 As stated in paragraphs 5.5 to 5.12 above, the HKSAR Government provides a comprehensive range of medical and health services to the community. The amount of public expenditures spent for providing healthcare services to the community through the HA and DH in the past three years are tabulated below. A significant portion of these expenditures are spent on children aged below 18.

	2010-11	2011-12	2012-13
Government's recurrent subvention to HA and DH for provision of healthcare services (HK\$ million)	35,924	40,525	44,986
Percentage of total government expenditure (%)	11.9	11.1	11.9
Percentage of GDP (%)	2.0	2.1	2.2

Welfare

1.5 As stated in paragraphs 5.13 to 5.18 above, the HKSAR Government provides a wide range of welfare services to the community. The amount of expenditures spent on providing welfare to the community in the past three years are tabulated below. A significant portion of these expenditures is for providing services for family and children.

	2010-11	2011-12	2012-13
Recurrent expenditure for providing social welfare services (HK\$ million)	37,577	40,333	42,694
Percentage of total Government expenditure (%)	12.5	11.1	11.3
Percentage of GDP (%)	2.1	2.1	2.1

Leisure, arts and culture

1.6 For the last three years, the amount of annual expenditure on supporting the development of the arts and culture was about HK\$3,000 million, which accounts for about 0.8% to 0.9% of the Government's total expenditure. These funds were used to implement various initiatives and activities presented, organised or funded by the Home Affairs Bureau, the Leisure and Cultural Services Department (LCSD), the Hong Kong Arts Development Council, and the Hong Kong Academy for Performing Arts. Resources for arts and cultures are for general public, including children. Some of the projects implemented by the LCSD and their relevant expenditure are tabulated for reference –

Programmes and General description	Expenditure (HK\$ million)		
	2010-11	2011-12	2012-13
Paid and free admission cultural programmes organised or sponsored by the LCSD ⁴	133.3	146.6	152.1
Programmes organised by the museums, heritage centres, Film Archive, Hong Kong Visual Art Centre managed under the LCSD ⁵	57.6	70.9	76.6

⁴ These are programmes available for the general public, including children, youths and family.

⁵ These are programmes available for the general public, including children, youths and family.

Programmes and General description	Expenditure (HK\$ million)		
	2010-11	2011-12	2012-13
Training programmes run by the LCSO in Western and Chinese musical instruments; annual Hong Kong Youth Music Camp for children and young persons; youth / children bands, orchestras and choirs organised for training young musicians; and music promotional activities for general public, including children, youths and family.	44	49	50.9
Cultural programmes such as storytelling and performance, child-parent workshops, thematic exhibitions, reading programmes, and publications for children, etc. ⁶	4.6	4.8	4.8
School Sports Programmes to promote “Sport for All” and encourage people with different ages (in particular students below the age of 18) and levels of ability to lead an active and healthy life; recreation and sports activities, such as ball games, dance, aquatic activities, for different target groups including children and the youth.	15.6	18.3	19.5

Ethnic Minorities

1.7 The Home Affairs Department also provides support services for ethnic minorities (EMs) to facilitate their integration into the community. The support services would not only target on children and thus no breakdown of expenditures for children is available. The expenditures for support services for EMs in the 2010-11, 2011-12 and 2012-13 financial years are HK\$28.4 million, HK\$22.7 million and \$32.5 million respectively.

⁶ These are programmes available for the general public, including children, youths and family.

5. Please provide data disaggregated, inter alia, by age, sex, socio-economic background, ethnic origin and urban / rural areas in the State Party, including Hong Kong and Macau SARs for the last three years on:
- The enrolment and completion rates in percentages of the relevant age group in pre-primary schools, in primary schools and in secondary schools;
 - Number and percentage of dropouts and repetitions; and
 - Teacher-pupil ratio.

5.1 Gross enrolment ratio for education

Gross enrolment ratio at kindergarten, primary and secondary levels⁷:

(a) Gross enrolment ratio at kindergarten level by sex

Sex	2010-11	2011-12	2012-13 (Provisional figures ⁸)
Male	103.9%	102.4%	103.5%
Female	102.3%	100.8%	101.6%
Total	103.1%	101.6%	102.6%

Figures refer to the position as at mid-September of the respective school years.

(b) Gross enrolment ratio at primary level by sex

Sex	2010-11	2011-12	2012-13 (Provisional figures ⁹)
Male	103.3%	105.4%	105.9%
Female	101.8%	103.9%	104.1%
Total	102.6%	104.7%	105.0%

Figures refer to the position as at mid-September of the respective school years.

⁷ The ratio in the tables under this section refers to the “Gross Enrolment Ratio” which is defined as “Total enrolment in a specific level of education, regardless of age, expressed as a percentage of the eligible official school-age population corresponding to the same level of education in a given school year” by the United Nations Educational, Scientific and Cultural Organization (UNESCO). According to this definition, the gross enrolment ratio in a given school year may be greater or less than 100%.

⁸ The figures for 2012-13 school year will remain provisional until August 2013.

⁹ The figures for 2012-13 school year will remain provisional until August 2013.

(c) Gross enrolment ratio at secondary level by sex

Sex	2010-11	2011-12	2012-13 (Provisional figures ¹⁰)
Male	89.3%	102.9%	104.5%
Female	88.1%	100.3%	101.0%
Total	88.7%	101.7%	102.8%

Figures refer to the position as at mid-September of the respective school years.

5.2 Number and percentage of dropouts

Number and percentage shares of dropout students under 9-year free and universal basic education by sex:

Level Sex	Number of Dropout Students			Percentage of Dropout Students		
	2009-10	2010-11	2011-12	2009-10	2010-11	2011-12
Primary						
Male	222	190	253	0.12 %	0.11 %	0.15 %
Female	153	257	166	0.09 %	0.16 %	0.11 %
Total	375	447	419	0.11 %	0.13 %	0.13 %
Secondary 1-3						
Male	829	596	706	0.67 %	0.51 %	0.65 %
Female	623	814	523	0.54 %	0.76 %	0.53 %
Total	1 452	1 410	1 229	0.61 %	0.63 %	0.59 %

Remark:

The HKSAR Government provides nine years' free and universal primary and junior secondary education¹¹ to all children attending public sector schools.

¹⁰ The figures for 2012-13 school year will remain provisional until August 2013.

¹¹ Pursuant to Sections 74 and 78 of the Education Ordinance (Cap. 279), parents have the legal responsibility to ensure that any children who have not completed Form 3 of secondary education attend schools regularly. Section 74 empowers the Permanent Secretary for Education to issue attendance orders to parents who fail to send such children to school without reasonable excuse. The HKSAR Government provides support services at the earliest possible opportunity to assist dropout students within universal basic education age range (i.e. children aged between 6 and 15) to return to school, and compile the statistics of these students for monitoring purpose. As mentioned in paragraph 5.4 under Part I of the Report, free education in public sector schools

5.3 Completion rate for primary and secondary education

Under the policy of 9-year free and universal basic education, the completion rate for primary education and junior secondary education is close to 100%. Since the 2011-12 school year, the new senior secondary academic structure has been fully implemented and all students are offered subsidised school places to complete senior secondary education. Under the New Senior Secondary Academic Structure, students having completed junior secondary education have multiple pathways for further development. They can choose to pursue and complete senior secondary education and majority of them will do so.

5.4 Number and percentage shares of repeaters

Number and percentage shares of repeaters in ordinary primary and secondary day schools by sex:

Level / Sex	No. of Repeaters			Percentage of Repeaters		
	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
Primary						
Male	1 487	1 402	1 124	0.9 %	0.8 %	0.7 %
Female	983	945	799	0.6 %	0.6 %	0.5 %
Total	2 470	2 347	1 923	0.7 %	0.7 %	0.6 %
Secondary						
Male	11 000	8 791	9 186	4.8 %	3.7 %	4.3 %
Female	7 120	5 229	5 021	3.2 %	2.3 %	2.5 %
Total	18 120	14 020	14 207	4.0 %	3.0 %	3.4 %

Figures refer to the position as at mid-September of the respective school years.

5.5 Pupil-teacher ratio

Level	Pupil-teacher ratio ¹²		
	2010-11	2011-12	2012-13
Kindergarten ¹³	9.8:1	9.7:1	9.3:1

has been extended to 12 years to cover senior secondary education. Under the New Senior Secondary Academic Structure, students who have completed junior secondary education have multiple pathways for further development.

¹² Figures for primary and secondary schools include ordinary day schools, but not special schools.

¹³ The pupil-teacher for kindergartens is compiled based on half-day equivalent unit. The figure excludes non-local kindergartens.

Primary School	15.1:1	14.7:1	14.3:1
Secondary School ¹⁴	15.0:1	14.8:1	13.9:1

Figures refer to the position as at mid-September of the respective school years.

¹⁴ The New Senior Secondary (NSS) academic structure has been fully implemented in 2011-12 school year. Under the NSS, all students will receive 6 years of secondary education to meet the needs of Hong Kong as a knowledge-based economy. Students wishing to pursue mainstream education should normally be able to complete 6 years of secondary education in the same school to ensure continuity of learning.

8. Please provide information about the number of children, broken down by country of origin, who had been granted asylum or humanitarian protection and the number of those who have been returned, extradited or expelled since the consideration of the second periodic report in mainland, Hong Kong and Macau SARs. Please provide details of the grounds on which they were sent back, including a list of countries to which individuals were returned.

8.1 As pointed out in paragraph 25.3 above, the CAT has been extended to Hong Kong since 1992. Article 3 of CAT provides that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The HKSAR Government provides non-refoulement protection under Article 3 of CAT and does not remove a torture claimant from the HKSAR to a torture risk State until his torture claim is withdrawn or finally determined as unsubstantiated. In this connection, the LegCo enacted the Immigration (Amendment) Ordinance 2012 (Ord. No. 23 of 2012) to provide for a statutory framework to underpin the previous enhanced administrative mechanism in operation since December 2009 for determining torture claims. The Ordinance has commenced operation since 3 December 2012.

8.2 Separately, the 1951 Convention relating to the Status of Refugees (“the Refugee Convention”) and its 1967 Protocol do not apply to the HKSAR. The United Nations High Commissioner for Refugees (UNHCR) has been performing refugee status determination for asylum seekers in the HKSAR. On the UNHCR’s advice that an illegal immigrant or overstayer (including children) has lodged an asylum claim with its Office, the Director of Immigration will exercise his discretion to temporarily withhold the removal or deportation of the asylum seeker pending determination of his refugee status, and if his asylum claim is accepted, pending resettlement to a third country.

8.3 In March 2013, the Court of Final Appeals of the HKSAR ruled in *C & Ors v Director of Immigration* (FACV 18-20/2011) that, as long as the Director of Immigration maintains such prevailing practice giving weight to any determination conducted by the UNHCR, he is required to independently determine whether the claimed fear of persecution is well-founded before executing one’s removal or deportation to another country. Accordingly, the HKSAR Government has announced its plan on 2 July 2013 to introduce a unified screening mechanism (USM) based on the existing statutory torture claims screening mechanism to assess non-refoulement claims (including persecution claims) in one go. Currently, the HKSAR Government aims to launch the USM by end 2013. Despite such, the judgment does not affect the HKSAR’s position and firm policy that the Refugee Convention and its Protocol has never been applied to Hong Kong.

8.4 According to information made available to Immigration Department of the HKSAR Government, 18 children have been granted refugee status since the consideration of the second periodic report of the HKSAR i.e. July 2010 till February 2013. Amongst the 18 children, 6 are Jordanian, 6 are Somali, 3 are Sri Lankan and 3 are Pakistani. During the same period, no torture claim lodged by persons under age of 18 has been determined as substantiated.