

Twenty-sixth Meeting of the Children's Rights Forum

Date : 21 January 2016 (Thursday)

Time : 5:15 p.m.

Venue : Lecture Room, Ngau Chi Wan Civic Centre,  
3/F, Ngau Chi Wan Municipal Services Building,  
11 Clear Water Bay Road, Kowloon

Attendance:

Constitutional and Mainland Affairs Bureau

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| 1) | Mr Gordon LEUNG, JP<br>(Chairman) | Deputy Secretary for Constitutional and Mainland Affairs              |
| 2) | Mr D C CHEUNG                     | Principal Assistant Secretary for Constitutional and Mainland Affairs |
| 3) | Mr Michael YAU                    | Assistant Secretary for Constitutional and Mainland Affairs           |
| 4) | Ms Connie LAU                     | Assistant Secretary for Constitutional and Mainland Affairs           |

Non-government organisations                      Representatives

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|----|---|--|
| 1) | Against Child Abuse                             | Ms LEE Yu-po   |
| 2) | Harmony House                                   | Ms Helena LO   |
| 3) | The Hong Kong Committee<br>on Children's Rights | Ms Billy WONG<br>Mr Dennis HO<br>Ms Angela LEE   |
| 4) | Kids' Dream                                     | Mr Jason LAU<br>Miss Sarah FANG<br>Mr Kelvin CHEUNG<br>Miss Janet WONG<br>Mr Jeff SIU<br>Mr Kevin CHEUNG<br>Miss Dorothy LUI |
| 5) | The Hong Kong Council<br>of Social Services     | Ms Dora NGAN   |

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| 6)  | Hong Kong Human Rights Monitor                    | Mr CHONG Yiu-kwong                    |
| 7)  | Mother's Choice                                   | Ms Monique YEUNG<br>Ms Winnie CHOY    |
| 8)  | PathFinders                                       | Ms Luna CHAN<br>Mr Kenneth LEE        |
| 9)  | The Boys' & Girls' Clubs Association of Hong Kong | Ms CHAN Fei<br>Ms HO Yin              |
|     |   | <u>Junior CEs</u><br>Miss LI Wing-lam |
| 10) | Urdu Neighbour Centre                             | Ms Cherry CHAN<br>Ms Minnie LAU       |

#### Discussion Item

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|----|------------------|--|
| 1) | Mr Kenneth CHENG | Principal Assistant Secretary for Labour and Welfare (Welfare)           |
| 2) | Mr Eugene WAN    | Assistant Secretary for Labour and Welfare (Welfare)                     |
| 3) | Ms Annisa MA     | Chief Social Work Officer (Domestic Violence), Social Welfare Department |
| 4) | Ms CHA Suk-han   | Social Work Officer (Domestic Violence), Social Welfare Department       |

#### 1. Introduction

- 1.1 Mr D C CHEUNG of the Constitutional and Mainland Affairs Bureau (CMAB) welcomed representatives of non-government organisations (NGOs) and children representatives to the meeting, and advised that due to the Chairman's other official commitments, he would be able to join the meeting later.
- 1.2 As recommended by children representatives and in line with the arrangement of the last meeting, discussions at the Forum would be conducted in a group setting from now on. Following the briefing given by the representatives of the Labour and Welfare Bureau (LWB) and the Social Welfare Department (SWD), attendees would be divided into two groups for group discussion. Under this arrangement, the attendees would have more opportunities to express their views.

- 1.3 On venue arrangement, since venues suitable for holding group discussions were limited, the Secretariat suggested that future meetings of the Children's Rights Forum would be held in the Central Government Offices in Tamar. Attendees could express their views, if any, to the Secretariat.

## 2. Discussion Item

### Public Consultation on the Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access (Paper No. CRF 1/2016)

- 2.1 2.1.1 Mr CHEUNG of CMAB invited representatives of the LWB and SWD to give a brief account of the proposed legislation to implement the recommendations of the Law Reform Commission (LRC) Report on Child Custody and Access (the Report).
- 2.1.2 Mr Eugene WAN of LWB said that LRC, having made reference to the latest developments in family law in overseas jurisdictions (England, Scotland, Australia and New Zealand), made recommendations on the law relating to child custody and access, including the "Parental Responsibility Model", the child's best interests principle and the consolidation of the existing relevant provisions into one consolidated ordinance, in the Report.
- 2.1.3 In April 2012, LWB consulted the Children's Rights Forum on whether to implement LRC's recommendations in the Report by legislative means. The "Parental Responsibility Model" received in principle support then but there were concerns about inadequate support measures (such as avenues for children to express their views). It was suggested that the Government should discuss with relevant sectors, such as the social welfare sector, on how to strengthen support measures. After listening to the views of various sectors, the Government had undertaken follow-up work, including setting up a mechanism of listening to the child's views in legal proceedings, initiating support measures for implementing the "Parental Responsibility Model" and arranging consultative sessions for exchanging views.
- 2.1.4 Mr WAN said that the current consultation exercise lasted from 25 November 2015 to 25 March 2016, and the Government would like to listen to the views of various sectors on the actual legal provisions of the draft Children Proceedings (Parental Responsibility) Bill (the draft Bill) and support measures.
- 2.1.5 Mr WAN gave a brief account of the salient provisions of the draft Bill. The draft Bill had defined a "child" as a person below the age of 18 years. A child's best interests should be the court's paramount consideration in children proceedings and a statutory list of factors should be drawn up to assist the court in determining what was in the best interests of the child. Under the draft Bill, the notion of "guardianship" under the existing law was to be replaced by "parental responsibility", and parental responsibility and rights for the child were defined. For day-to-day care decisions, a person

having parental responsibility might act alone in the best interests of the child, while for major decisions in relation to the child, the parent should notify or seek consent of the other parent. Checklist of acts requiring express consent of both parents included causing the child to be known by a new surname, removing the child out of Hong Kong for more than one month and removing the child permanently out of Hong Kong.

- 2.1.6. Mr WAN advised that under the draft Bill there was also a checklist of major decisions requiring notification to the other parent. Major decision meant a decision of long term consequence for the child's health, development and general welfare, e.g., a major operation or long term medical or dental treatment for the child, a major change in the child's schooling, religion, child's marriage, a change in the child's place of residence, removing the child out of Hong Kong for not more than one month, a change in the child's domicile or nationality, etc.
- 2.1.7 Mr WAN gave a brief account of the orders with respect to children in children proceedings under the draft Bill. It was proposed that the "child arrangements order" should be introduced to replace the "custody order" and "access order" to allow the court to determine the person with whom the child was to live and who would have the responsibility for the child's day-to-day care; both parents had responsibilities for the child and would participate in major decisions about the well-being and future of their child. Besides, the draft Bill also proposed to make clear that the third parties with whom the child had lived with for one year out of previous three years, could apply for child arrangements order.
- 2.1.8. In respect of views of the child, the draft Bill proposed setting up a mechanism of listening to the child's views in legal proceedings; but a child should not be required to express his or her views as to do so would place the child under pressure. In dispute relating to parental responsibility on the child, the child could have separate legal representation, the legal cost was to be borne by parents, or they might apply for legal aid if they had financial needs.
- 2.1.9 Mr WAN then introduced support measures for implementing the "Parental Responsibility Model". Currently, there were 65 Integrated Family Service Centres and two Integrated Services Centres operated by SWD and NGOs providing services to separated/divorced couples and their children. Examples of these services included co-parenting skills, counselling, emotional management, education programmes and referrals for support services. Besides, public education and publicity efforts had been made by the Government to promote the "Parental Responsibility Model", and the initiatives included launching a publicity campaign entitled "Marriage may end but parenthood goes on", producing teaching kit and co-parenting handbooks, a dedicated website, television and radio Announcements in the Public Interest as well as posters, and organising psycho-educational programme. The Government would also launch a two-year pilot project on children contact service to facilitate the arrangement of children contact with separated/divorced parents, and strengthen support for

separated/divorced families.

- 2.1.10 Mr WAN invited the attendees to give their views on the proposed legislation to implement the recommendations of the LRC Report before 25 March 2016 and asked them to put forward questions and comments in the coming group discussion session.
  - 2.1.11 The Chairman thanked the representative of LWB for the briefing, and invited attendees to divide into two groups for group discussion.
- 2.2 Comments and questions on the proposed legislation to implement the recommendations of the LRC Report put forward by attendees and children representatives, as well as responses from representatives of LWB and SWD were as follows (Group 1):
- 2.2.1 The attendees and children representatives generally welcomed the proposals in the draft Bill and agreed that the child's best interests should be the general underlying principle.
  - 2.2.2 An attendee asked how to define the best interests of the child. In response, LWB's representative Mr CHENG advised that under Part 2: General Principles of the draft Bill, a statutory checklist setting out various factors that should be considered by the court was proposed to assist the court in determining what was in the best interests of the child in relevant proceedings. These factors included: the child's physical, emotional and educational needs; the nature of the relationship of the child with each of the child's parents and with other persons; the child's age, maturity, sex, social and cultural background, as well as any other relevant characteristics; any harm or family violence that the child had suffered or was at risk of suffering; the practical difficulty and expense of a child maintaining contact with a parent.
  - 2.2.3 The attendees and children representatives generally agreed with LRC's proposal that a parent should notify or seek consent of the other person who had parental responsibility for the child before making any major decision in relation to the child, and they also welcomed the drawing up of the checklist. An attendee enquired about how the statutory requirements were to be enforced and the consequences of non-compliance on the part of the parents. In response, Mr CHENG advised that in case where a parent failed to notify or seek consent of the other parent, the latter could seek assistance from the Integrated Family Service Centre and Integrated Services Centre to address the disagreements through mediation. If consensus could still not be reached despite assistance from social worker or mediation service had been sought, the other parent could apply for a "specific issues order" to allow the court to give directions on the issue in question.
  - 2.2.4 The attendees and children representatives expressed support for separate legal representation for a child in legal proceedings, but were concerned that if the legal fee was to be paid by one side of the parent, the lawyer would

cause the child to have a prejudice against the other parent. They asked if parents could seek legal aid if they were unable to afford the legal costs. In response, Mr CHENG advised that lawyers had to maintain their professional integrity, and a lawyer would be appointed in accordance with the draft Bill to act in the best interests of the child; as such, the lawyer should not take side with the party that paid the fee. Generally speaking, the court might order the parents to pay the legal costs. Should the parents have financial difficulties, they might apply for legal aid. The Legal Aid Department would determine the applicant's eligibility by conducting the means test and merits test.

- 2.2.5 An attendee and a children representative asked, apart from the legal representative, whether social worker would be present to assist a child in presenting his/her views, and whether the child could request a meeting with the judge to express his/her views directly. SWD's representative Ms MA explained that in legal proceedings, a child would be assisted by a social worker in expressing his/her views, and the social worker had to make it clear to the child that the views expressed in the meeting would be recorded in the social enquiry report to be provided to the court and the contents of which would be revealed to his/her parents. The report would also contain the social worker's assessments which would reflect the views of the child, including his/her wish to meet the judge. The judge would decide whether or not to meet the child.
- 2.2.6 A children representative enquired whether the child could request for viewing the report provided to the court to ascertain that his/her views had been accurately presented in the report. Ms MA explained that it might not be appropriate to allow the child to view the report as both parents might have laid blame against each other during the process. If the child came to know that his/her parents had been accusing each other, he/she might be affected.
- 2.2.7 Attendees and children representatives enquired that in case where a divorced couple failed to reach a consensus on major decisions requiring notification to or consent of the other parent, what could be done to address the situation. Separately, the Government proposed that a parent should notify every other person who had parental responsibility of the child within a reasonable time before making major decisions in relation to the child. In this connection, by what means could a parent give consent/notification and whether the so-called "reasonable time" was defined. In response, Mr CHENG advised that a divorced couple could approach an Integrated Family Service Centre or Integrated Services Centre for assistance in resolving the dispute. Nevertheless, if a consensus still could not be reached after seeking assistance from the social worker, the divorced couple might seek directions from the court. As for giving consent/notification to the other parent, a parent could do so "in writing" by means of a letter, email, telephone message (SMS/WhatsApp message), etc.

The draft Bill had not specified the span of time that was deemed to be reasonable. What was a reasonable time was a question of fact and would

depend on the circumstances of individual cases.

2.2.8 An attendee suggested making reference to the practice of England in requiring parents to come to an agreement on major decisions within three months as stalling would affect their children (especially those who aged 0-3 years or involved in domestic violence case). In response, Ms MA advised that factors such as the child's age, maturity, family violence that the child had suffered or was at the risk of sufferings, etc. were included in the proposed statutory list of factors in the draft Bill to assist the court in determining what was in the best interests of the child, and the court would follow the child's best interests principle in considering the time span.

2.2.9 The attendees and children representatives were generally in support of the pilot project on children contact service and would like to know the details of the project. In response, Ms MA advised that currently there was no dedicated access service for separated/divorced families in Hong Kong. The Family and Child Protective Services Unit of SWD was responsible for executing access arrangements in respect of cases where children had been placed under statutory supervision subject to court orders, and these cases only accounted for a small portion of cases involving separated/divorced families in Hong Kong. In fact, many separated/divorced parents could not reach agreement on access arrangements of their children owing to tense relationship and communication breakdown, and they might not resort to the court for resolution. As there was currently no dedicated access service for separated/divorced families, it was necessary to provide such service to these families to facilitate access to their children.

As such, funding had been sought by SWD to launch a two-year pilot project on children contact service to strengthen support for separated/divorced families. SWD would invite proposals in respect of the pilot project from NGOs in the first quarter of 2016 and then select the most suitable organisation to run the service. SWD tentatively planned to roll out the pilot project on children contact service in the first half of 2016-17.

2.2.10 As NGOs' proposals for the pilot project on children contact service would be invited in the first quarter of 2016, the attendees were worried that the NGOs would not be able to take into full consideration the views of various sectors expressed in the current consultation exercise. The attendees also suggested that the access service could be provided by social workers specifically responsible for handling cases involving children instead of any general social workers. In response, Ms MA advised that the pilot project on children contact service was only one of the support measures for separated/divorced families. Attendees might put forward their views on other support measures, if any, to the Government during the consultation period.

2.2.11 An attendee asked in case where one side/both sides of the parent(s)

was/were abuser(s) or where parent-child relationship was broken, whether the child was still required to live with or have contact with his/her parent(s) under the “Parental Responsibility Model”. In response, Mr CHENG advised that despite its wish to strengthen the concept of continuing parental responsibility of divorced parents through the “Parental Responsibility Model”, the Government understood that if one side or both sides of the parents(s) was/were involved in family violence or had a broken relationship with the child, it might not be in the best interests of the child if he/she continued to live under the same roof or maintain contact with his/her parent(s). In cases where the father or mother was involved in family violence, the court might, in the best interests of the child, specified in the child arrangements orders that the child’s contact with his/her father or mother should be made under the supervision of a social worker.

Furthermore, in special circumstances (such as family violence) which made it impracticable or undesirable for the child to be entrusted to either of his/her parents or to any other individual, the court might commit the child to the care of the Director of Social Welfare under the relevant provision of the draft Bill. The draft Bill also provided that the Director might allow parents or any other related persons to have reasonable contact with the child who was in the Director’s care.

Separately, the Domestic and Cohabitation Relationships Violence Ordinance (Cap 189) specifically dealt with the issue of domestic violence.

- 2.2.12 Noting that despite the introduction of legislative amendments to implement the “Parental Responsibility Model” in Australia, there were not much changes to the parents’ mindset, an attendee worried that the number of cases would go up instead of going down after the implementation of the “Parental Responsibility Model”. The attendee also enquired whether LWB had consolidated and followed up on the views received in the previous round of consultation and whether assessment of gender mainstreaming had been made to the draft Bill. In response, Mr CHENG advised that the Australian Government had stepped up publicity and educational efforts following a review. The Government agreed that reliance on enactment of legislation alone would not suffice, and therefore support measures had been implemented to promote the “Parental Responsibility Model”; these measures included a publicity campaign entitled “Marriage may end but parenthood goes on” launched by SWD. Assessment of gender mainstreaming would be made before the draft Bill was submitted to the Legislative Council (LegCo) for deliberation. The LWB would provide the report it submitted to LegCo after the previous round of consultation for members’ reference.

(Post-meeting note: LWB has provided the relevant report to Forum members through the Secretariat).

- 2.2.13 Representatives of LWB and SWD thanked the attendees and children representatives for their questions and suggestions.

2.3 Comments and questions on the proposed legislation to implement the recommendations of the LRC Report put forward by attendees and children representatives, as well as responses from representatives of the LWB and SWD were as follows (Group 2):

2.3.1 The attendees and children representatives generally agreed that the best interests of the child should be the general underlying principle.

2.3.2 The attendees and children representatives supported “separate legal representation for a child in dispute relating to parental responsibility on the child” as provided in the draft Bill, but enquired who should bear the costs of the separate representation. In response, LWB’s representative Mr WAN advised that the costs would be borne by the parents who could apply for legal aid should they have financial difficulties.

2.3.3 A children representative enquired if the court would refuse to take the views of a child and would the child’s views be kept confidential so as not to make either parent feel bad. Mr WAN advised that a child’s best interests should be the court’s paramount consideration in children proceedings. It was set out in section 3 of the draft Bill that in determining what was in the best interests of a child, the court must have regard, in particular, to the views of the child concerned.

2.3.4 Children representatives pointed out that in respect of the criteria for application of child arrangements order by a third party, one of the criteria proposed was the child had lived with the applicant for a total of 365 days out of the previous three years, they then enquired whether it meant both sides stayed together during daytime or the child must also stay overnight at the home of the applicant. Mr WAN said he would discuss with and seek clarification from the Department of Justice.

(Post-meeting note: LWB has provided supplementary information to Forum members through the Secretariat.)

2.3.5 Regarding the “checklist of major decisions requiring notification to the other parent”, a children representative asked in so far as major change in the child’s schooling was concerned, say application for Primary One place, what was the length of notice period that would be considered as reasonable. In response, Mr WAN advised that the draft Bill had not specified the span of time that was deemed to be reasonable. What was a reasonable time was a question of fact, and would depend on the circumstances of individual cases. An attendee asked in respect of the major decisions on a child’s schooling (such as change to a new school) and change in the child’s nationality, whether the requirement of “notification” should be changed to “consent”. Mr WAN said LWB would further deliberate on the issue after taking into account public views on the draft Bill received during the consultation period. A children representative further enquired if either parent was not satisfied with some particular decisions, what measures would be put in place to relieve the dissatisfaction. In response, SWD’s

representative Ms CHA advised that the Integrated Family Service Centres operated by SWD and NGOs provided counselling and co-ordination services for separated/divorced parents in need. If agreement still could not be reached after receiving such counselling and co-ordination services, the parents could seek further directions or judgment from the court.

- 2.3.6 Some children representatives and attendees expressed concern about the mode of operation of the pilot project on children contact service, whether resources input and service points were adequate, whether a child-oriented approach would be adopted and child-friendly environment provided, and whether legal advice for children would be provided. In response, Ms CHA advised that the pilot project was designed to strengthen support for separated/divorced families, in particular, to facilitate contact between children and the parent whom they did not live with. SWD was now working on the details of the pilot project. It would invite proposals in respect of the project from NGOs in the first quarter of 2016 and then select the most suitable organisation to run the service. SWD tentatively planned to roll out the pilot project on children contact service in the first half of 2016-17.
- 2.3.7 An attendee was concerned about whether there would be sufficient avenues for a child to further express his/her views or lodge an appeal after the child arrangements order was made so as to safeguard his/her best interests.
- 2.3.8 A children representative expressed concern about the sufficiency of avenues for the children to express their views, and suggested that the Government might consult the children who had relevant experience (i.e., those with parents who had separated/divorced). Mr WAN advised that arrangements had been made by SWD to conduct focus group discussions to listen to the views of the children concerned.
- 2.3.9 A children representative proposed that a child should be entitled to have access to the part of the social worker's report which contained his/her own views and the social worker should also give an account of the content to the child to ensure that his/her views had been fully reflected in the report, and that part of the report should be handled separately and in confidence. In response, Ms CHA advised that there was a separate section in the report in which the views of the child were recorded, but the content of the report was not treated in confidence. Generally speaking, the social worker would explain to the child the purpose of their meeting and the mechanism of submitting a report to the court during the interview. Under special circumstances, SWD would consider individual case on its own merits.
- 2.3.10 A children representative expressed concern about whether the judge and the independent legal representative of the child had relevant experience or training on handling cases in relation to children. In response, Ms CHA advised that in arranging a meeting with the child concerned, the judge would normally request the presence of the social worker who prepared the social enquiry report at the interview to assist the judge in handling the case.

2.3.11 Representatives of LWB and SWD thanked the attendees and children representatives for their questions and suggestions.

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