

**THIRD REPORT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
("HKSAR") UNDER THE UNITED
NATIONS ("UN") CONVENTION ON
THE RIGHTS OF THE CHILD ("THE
CONVENTION")**

**— SUBMISSION BY
PLAN INTERNATIONAL HONG KONG**

INTRODUCTION

Plan International Hong Kong (“Plan International”) is submitting this briefing in response to the Hong Kong Special Administrative Region’s government (“the Hong Kong government”)’s invitation for public views on the implementation of the Convention on the Rights of the Child (“the Convention”) in Hong Kong since the Committee on the Rights of the Child last examined the Hong Kong report in 2013.

Plan International is an independent development and humanitarian organisation that advances children’s rights and equality for girls. Plan International initially operated a field office in Hong Kong from 1953 to 1973, helping nearly 12,000 local children and their families by providing support in education, food, healthcare, housing and career counselling. Plan International re-opened its Hong Kong office in July 2009, giving the Hong Kong community the chance to give back by supporting child development programmes in Asia, Africa, the Americas, Oceania and the Middle East.

Plan International Hong Kong advocates a holistic approach to protecting and promoting children’s rights through preventive and responsive measures so that all children can grow, thrive, lead and live in safety, free from harm, abuse and neglect. Committed to ending violence against children and promoting meaningful child participation, Plan International Hong Kong has rolled out local programmes and influencing work through evidence-based research, partnerships, policy influencing and public education since 2017.

The briefing covers some keys issues of the organisation’s concerns since 2013, without implying that these are exhaustive.

These main issues include:

- General Implementation of Rights
- Definition of the Child
- Best Interests of the Child
- Child Participation
- Violence against Children

Plan International welcomes the Hong Kong government’s practice of conducting public consultations when drafting its reports to United Nations’ treaty bodies and would appreciate any opportunity to present additional information, in writing or in person, to the Hong Kong government.

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SECTION I: GENERAL IMPLEMENTATION OF RIGHTS

ARTICLE 4: IMPLEMENTATION OF RIGHTS

1. Article 4 of the United Nations Convention on the Rights of the Child (“the Convention”) provides that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention.”
2. Plan International would further elaborate on relevant gaps of implementation in local legislation in Section II.
3. To ensure the realisation of children’s rights, it is essential to develop an appropriate infrastructure to monitor and review the work across various sectors that have impacts on children, including the government, the legislature, judiciary, and civil society organisations and private organisations.¹
 - 3.1 Plan International welcomes the Hong Kong government’s decision to establish the Commission on Children in June 2018. The Commission is mandated to provide an overall steer in policy directions on policies affecting children and monitor bureaux’s progress and effectiveness in taking forward relevant policy initiatives. The establishment of the Commission signifies the government’s significant advancement in coordinating the administrative branch’s efforts on children’s matters.
 - 3.2 Plan International acknowledges that the Commission on Children has appointed a research consultant to examine the feasibility and implementation issues of developing a central databank on children in Hong Kong.² Plan International hopes the databank would serve as a tool to map the progress achieved towards the realisation of children’s rights and a basis to inform future policy development to implement the Convention. Plan International calls on The Commission on Children to provide without delay a roadmap to establish the databank with a clear, realistic and binding timeline.
4. Plan International notes that the status and functions of the Commission on Children fall short of the recommendation of establishing “an independent human rights institution”

¹ Committee on the Rights of the Child, Workshop to Commemorate the Tenth Anniversary of the UNCRC’s adoption by the United Nations General Assembly, Conclusions and Recommendations, CRC/C/90, para. 291, 1999, cited in CRC Committee’s General Comment No. 5, paragraph 2.

² Commission on Children. (25 May 2020). *Notes of the Seventh Meeting of the Commission on Children*. Retrieved from:

<https://www.coc.gov.hk/files/Draft%20Notes%20of%207th%20Commission%20on%20Children%20Meeting%20Eng.pdf>

as stated in General Comment³ and reiterated in Concluding Observation⁴ by the United Nations Committee on the Rights of the Child (“the Committee”).

- 4.1 The Committee reiterates that governments should not delegate their monitoring obligations to a national institution. Instead, such an institution should remain independent and remain entirely free to set their own agenda and determine their own activities”, promote harmonisation of national legislation, regulations, and practices with the Convention and monitor the implementation of the Convention in Hong Kong.
- 4.2 To independently monitor the implementation of the Convention, the institution should be constitutionally entrenched or at least be legislatively mandated to be accorded with powers necessary to enable the discharge of its mandate. Such powers should include:
 - 4.2.1 the power to consider individual complaints and carry out investigations into any situation of violation of children’s rights, including those submitted on behalf or directly by children;
 - 4.2.2 the power to compel and question witnesses, hear any person and obtain any information and document necessary for assessing the situations falling within their competence;
 - 4.2.3 the power to conduct an inquiry into matters related to children; and
 - 4.2.4 the right to report directly, independently and separately on the state of children’s rights to the public and parliamentary bodies.⁵
- 4.3 Plan International reckons that there are some gaps that need to be addressed in order to give birth to an effective Commission on Children. The status of the Commission on Children in Hong Kong as an advisory body spearheaded by the Chief Secretary for Administration with all non-official members appointed by the government,⁶ and the absence of an enabling act that clearly spells out its scope of work and statutory power, would undermine the Commission’s independence,

³ Committee on the Rights of the Child. (2002). General Comment No. 2 (2002) The role of independent national human rights institutions in the promotion and protection of the rights of the child. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en

⁴ Committee on the Rights of the Child. (2013). Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013), paragraph 20. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en

⁵ Committee on the Rights of the Child. (2002). General Comment No. 2 (2002) The role of independent national human rights institutions in the promotion and protection of the rights of the child, paragraph 8-9, 18. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en

⁶ The Government of Hong Kong Special Administrative Region Press Releases. (n.d.) Appointments to Commission on Children. Retrieved from: <https://www.info.gov.hk/gia/general/202005/15/P2020051500328.htm?fontSize=1>

functions and authorities to monitor the government's implementation of the Convention.

- 4.4 Plan International recommends the government set up an independent Children's Commission to monitor and promote children's rights following the standards recommended by the Committee.

Plan International's recommendation on implementation of Article 4

- Plan International recommends the government set up an independent Children's Commission with an enabling act to set out its scope of work and statutory powers to monitor and promote children's rights following the standards recommended by the Committee.

SECTION II: DEFINITION OF THE CHILD

ARTICLE 1: DEFINITION OF THE CHILD

5. Under Article 1 of the Convention, a child is defined as a "human being below the age of 18 years unless, under the law applicable to the child, the majority is attained earlier." However, in Hong Kong, the definition of the "child" and the "young people" varies under different legislations.⁷
6. Plan International recommends that legislation should be aligned to include all children under 18 within the legal definition of a child while appropriately recognising their evolving capacity.

Plan International's recommendation on the implementation of Article 1

- Plan International recommends the government align the legal definition of a child as 'any person under the age of 18' while appropriately recognising their evolving capacity.

⁷ Constitutional and Mainland Affairs Bureau. (2013). *Combined Third and Fourth Reports of the People's Republic of China under the Convention on the Rights of the Child – Part Two: Hong Kong Special Administrative Region*. Definition of "the Child". Retrieved from: https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/childright2/Part_II-II-e.pdf

SECTION III: BEST INTERESTS OF THE CHILD

ARTICLE 3: THE RIGHT OF THE CHILD TO HAVE HIS OR HER BEST INTERESTS TAKEN AS A PRIMARY CONSIDERATION

7. In the Concluding Observation in 2013, the Committee expressed its concern that the best interest of the child was not always fully reflected and incorporated in key child-related policies in Hong Kong, and was concerned about the lack of general legislation providing for the best interests of the child. The Committee recommends the government to 'strengthen its efforts to ensure that the best interests of the child are appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings, as well as in all policies, programmes and projects that have an impact on children.'⁸
8. It is important to both harmonise the existing legislations and develop appropriate tools to monitor the compliance of the principle of "the children's best interests" in the Convention. Apart from harmonising the existing legislations following the Convention (of which the existing gaps would be elaborated in paragraphs 9-10), Plan International recommends the government develop the Child Rights Impact Assessment (CRIA) tool to closely monitor the compliance of laws, policies and administrative decisions with the Convention.
 - 8.1 According to the Committee, the child's best interests are a procedural right, which means that assessing and determining the child's best interests require procedural guarantees.⁹ A Child Rights Impact Assessment (CRIA) is a practical tool to aid in realising the best interests principle enshrined in the Convention. By employing CRIA in policy formulation or decision making in individual cases, policymakers and other child-related actors (including the court or officials in administrative bureaux) should evaluate the possible positive and negative impact of the decision on the child or children concerned and be held accountable in showing what has been considered to be in the child's best interests and how they have been weighted against other considerations in the decision making process.
 - 8.2 To effectively employ the CRIA in policy formulation, the government should also ensure that the assessment tool is employed in the early stage of the policy formulation process, and a publication detailing how children's best interests are accounted for should be made for accountability purpose.

⁸ Committee on the Rights of the Child. (2013). Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013), paragraph 32. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en

⁹ Committee on the Rights of the Child. (2013). General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, art. 3, para. 1. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en

- 8.3 Plan International acknowledges that the government has already established the Family Impact Assessment tool to assess policies' impact on a family. However, Plan International does not consider it a good substitute for CRIA, as children's affairs are not limited to the family context only, and even if some of the children's matters may overlap with family matters, the voice of children could easily be submerged in the overall family impact assessment.
9. Plan International notices that some existing local legislations remain incompatible with the Convention. There is a need for amendment of these legislations to ensure compliance with the Convention.
- 9.1 Juvenile Offenders Ordinance
- 9.1.1 Plan International urges the government to raise the age of criminal responsibility to an internationally acceptable level.
- 9.1.2 It is reiterated by the Committee that the differences between children and adults in their physical and psychological development constitute the basis for the recognition of lesser culpability and a separate, differentiated system and approach in dealing with child offenders.¹⁰ There has been vast documented evidence in child development and neuroscience, which indicates that maturity and the capacity for abstract reasoning are still evolving in children aged 12 to 13 years. Therefore young children as such are unlikely to comprehend the impact of their actions.¹¹ The actions of juvenile offenders, on the other hand, are affected by their entry into adolescence, a period marked by rapid brain development, which influences their risk-taking and decision-making behaviour.¹² Holding children responsible in criminal law proceedings has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.¹³
- 9.1.3 However, the age of criminal responsibility under the Juvenile Offenders Ordinance remains low at ten years old despite the robust neuroscientific findings and the Committee's recommendation to raise the minimum age of criminal responsibility to an internationally acceptable level.¹⁴

¹⁰ Committee on the Rights of the Child. (2019). General Comment No. 24 (2019). on children's rights in the child justice system, paragraph 2 and 18, retrieved from:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en

¹¹ Ibid., paragraph 22

¹² Committee on the Rights of the Child. (2016). General comment No. 20 (2016) on the implementation of the rights of the child during adolescence. Retrieved from:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f20&Lang=en

¹³ Ibid., paragraph 20.

¹⁴ Committee on the Rights of the Child. (2013). Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013), paragraph 94(a). Retrieved from:

- 9.1.4 Regarding the level of minimum age, Plan International recommends the government raise it to at least 14 years old and commends a higher minimum age at 15 or 16 years old as recommended by the Committee.¹⁵
10. Plan International recommends the government consistently incorporate the principle of best interests of the child in all legislations pertaining to children, with explicit provisions on children's substantive rights under different ordinances.
- 10.1 Plan International acknowledges that the principle of "the best interests of the child" is not incorporated in all legislation concerning children. Even if they do, the content of best interests is not explicit in such legislation. Without legal provisions to spell out child's rights under the best interests principle, the realisation of children's rights would be subject to officials' or judges' sole discretion in determining matters related to the child's welfare, without proper assurance for the rights of the child.
- 10.2 Education Ordinance
- 10.2.1 Provisions for children's best interests or their rights have not been included in the Education Ordinance¹⁶. The school environment is vital to children's development aside from their familial context. Therefore, the assurance of children's right to protection, development, and participation in schools is paramount for children's overall well-being.
- 10.2.2 Plan International recommends that the Education Ordinance be amended to include provisions for children's best interests with specific considerations to children's right to protection, development and participation.
- 10.3 Protection of Children and Juveniles Ordinance
- 10.3.1 It is provided in the Protection of Children and Juveniles Ordinance that the Director of Social Welfare may make any orders regarding the control and custody of the person endangered, which he thinks desirable in the interest of the person (child or juvenile).¹⁷ However, the ordinance does not set out criteria in the determination of the child's best interests.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en

¹⁵ Committee on the Rights of the Child. (2019). General Comment No. 24 (2019) on children's rights in the child justice system, paragraph 22. Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en

¹⁶ Education Ordinance. (HONG). (HK). Retrieved from: <https://www.elegislation.gov.hk/hk/cap279>

¹⁷ Protection of Children and Juveniles Ordinance. (HONG). 35. (HK). Retrieved from: <https://www.elegislation.gov.hk/hk/cap213>

- 10.3.2 It has been well-established that family life is central to the development of children, and a careful balance should be sought between respect for family life and the child's right to protection. Article 8 of the Convention stipulates that States Parties should undertake to respect the right of the child to preserve his or her family relations as recognised by law without unlawful interference, and Article 9 states that 'States Parties should ensure that children are not separated from their parents except when the competent authorities decide that separation is necessary for the best interests of the child, for example in cases of neglect or abuse by the parents.'¹⁸ In light of the Convention provisions above, removing a child from the family shall be the last resort amongst other child protection measures, given the possible adverse effects of care and protection proceedings on the child.
- 10.3.3 In contravention of the Convention, there have been cases of children being forced to enter social welfare institutions and removed from their families when apparent conditions indicate against the necessity to resort to family life deprivation for child protection purposes. In September 2019, three children aged 13-15 have been forced to enter Tuen Mun Children and Juvenile Home for almost a month after being found to be present amidst anti-extradition bill protests by the police.¹⁹²⁰ Such forced separation from family is contrary to a careful consideration of children's best interests, especially their right to family life and education.
- 10.3.4 Plan International calls for the government to amend the Protection of Children and Juveniles Ordinance to make specific provisions in determining the best interests of the child according to the Convention.

Plan International's recommendation on implementation of Article 3

Plan International recommends the government

- a) review the existing legislations and amend any incompatibilities with the Convention;
- b) consistently incorporate the principle of best interests of the child in all legislations pertaining to children; and
- c) explicitly spell out provisions on children's substantive rights under the principle of children's best interests in different ordinances.

¹⁸ See Article 9 of Convention on the Rights of the Child. Retrieved from:

<https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

¹⁹ 〈警申保護令 3 被捕學童入兒童院 暫住近一個月無法上學 家長擬上訴〉。(2019 年 9 月 1 日)。《明報》。取自: <https://bit.ly/3qv7oDL>

²⁰ 〈【逃犯條例】3 中學生未檢控即判入兒童院 官不發保護令 13 歲女還押 27 日終回家〉。(2019 年 9 月 27 日)。《明報》。取自: <https://bit.ly/30pYfSn>

SECTION III: CHILD PARTICIPATION

ARTICLE 12: RESPECT FOR THE VIEWS OF THE CHILD

11. In the Concluding Observation 2013, the Committee recommended the government establish effective consultative mechanisms to ensure respect for the views of the child and children's participation in all matters affecting them, including in the development of policymaking, court decisions and programme implementation.²¹
12. The Committee also reiterated that States Parties should avoid using tokenistic approaches in child participation. Rather, States Parties should integrate a set of basic requirements into all measures for the implementation of Article 12 in order for child participation to be effective and meaningful.²²
 - 12.1 In particular, children should be given the opportunities to identify issues that are relevant and important to their lives and be able to participate in these relevant matters, which enable them to draw on their knowledge, skills and abilities.
 - 12.2 Effective child participation should also be meaningfully complemented by capacity training for both adults and children, which strengthen their awareness of children's rights and skills to facilitate the cooperation between children and adults in accordance with children's evolving capacities.
 - 12.3 To avoid a tokenistic approach in child participation, a commitment to follow up is essential in any child participation process. Children need to know how their opinions are interpreted and should be provided with feedback on how their participation has influenced the outcome. Monitoring and evaluation of children's participation need to be undertaken, where possible, with children themselves.
13. In response to the Committee's recommendation, the government stated that the Children's Council project has already provided ample opportunities for children to reflect their views to the government through the Children's Council project and the Children's Rights Forum.²³
14. While Plan International acknowledges the above channels to collect children's views, we consider them inadequate for children at large to participate in matters relating to them, as these channels allow only limited participation of children representatives. Plan International recommends the government establish a strategy and mechanism to

²¹ Committee on the Rights of the Child. (2013). Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013). Paragraph 37 & 38. Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en

²² Committee on the Rights of the Child. (2009). General Comment No. 12 (2009) The right of the child to be heard, paragraph 132-134. Retrieved from: <https://www.refworld.org/docid/4ae562c52.html>

²³ Constitutional and Mainland Affairs Bureau. (2013). Combined Third and Fourth Reports of the People's Republic of China under the Convention on the Rights of the Child – Part Two: Hong Kong Special Administrative Region, Second report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child. p.39 Retrieved from: https://www.cmab.gov.hk/tc/issues/child_report2.htm

expand opportunities for different groups of children at large, including children with disabilities and children of different ethnicities, to participate meaningfully in their communities and the policymaking process that affects them.

14.1 Plan International notices that there are no existing channels for children to be consulted in decisions regarding their education²⁴ and recommends the government establish effective channels for children to participate in the education policymaking processes.

14.2 Consultative channels could also be established in communities to collect children's voices in community development. Plan International has recently developed the 'Voice of the Children' project to create opportunities for children to participate in community development, illustrating a child-centred participation model in community settings. By nurturing adult facilitators through capacity building and raising children's awareness about their rights, we have created a platform through which children can work with other children and adults to solve the problems they identify in their surroundings and make meaningful and practical changes.²⁵²⁶ Plan International believes the project serves as an illustration of how children can be engaged meaningfully in the community and hopes that it will be a reference for the government for establishing a regular mechanism in collecting children's views at large.

Plan International's recommendation on implementation of Article 12

Plan International recommends the government

- a) establish effective consultative mechanisms for children at large to participate meaningfully in matters relating to them; and
- b) integrate a set of basic requirements into all child participation measures following the standards recommended by the Committee.

²⁴ There are no student representatives in committees on different curricula planning. See the composition of Committees on Key Learning Areas and Liberal Studies by the Education Bureau at https://cd1.edb.hkedcity.net/cd/cdc/en/kla_committees.html

²⁵ Child Participatory Community Development. (n.d.) Plan International Hong Kong. Retrieved from: <https://www.plan.org.hk/en/child-participatory-community-development/>

²⁶ 'Voice of the Children' was first launched in June 2018. With consolidated experience, the model has now been implemented in various districts, including Yau Tsim Mong District, North District, Kwai Tsing District and Sham Shui Po District, with our community partners Alliance for Children Development Rights and HKSKH Lady Maclehorse Centre.

SECTION IV: VIOLENCE AGAINST CHILDREN

ARTICLE 19: THE RIGHT OF THE CHILD TO FREEDOM FROM ALL FORMS OF VIOLENCE

15. Article 19 of the Convention provides that States Parties shall take all appropriate measures to protect children from all forms of violence ‘in the care of parents, legal guardians or any other person who has the care of the child’.²⁷
16. The Committee has stated that ‘caregiver’ should be construed in the broadest sense, which includes not only permanent legal guardians of the child but also any proxy or temporary caregivers such as teachers, sports coaches or any other child-related workers who have recognised legal, professional or ethical responsibility for the safety and well-being of the child.²⁸ Also, the Committee recommended that the government develop a comprehensive strategy to prevent and address all forms of violence against children and adopt a national coordinating framework, including mandatory reporting of all cases and the follow-up measures necessary to address all forms of violence against children.²⁹ In other words, it is paramount that the government put in place effective child safeguarding measures to protect children from violence in institutional settings, given children are spending huge amounts of time with temporary caregivers in extra-familial contexts.
17. Plan International acknowledges that, in 2019, the Law Reform Commission of Hong Kong proposed the legislation of ‘Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult’ to motivate caregivers to uphold their duty of care to children.³⁰ However, without the supplementary measures that create an enabling environment for caregivers to take reasonable steps on child safeguarding, merely imposing criminal responsibility on caregivers could not effectively motivate them to fulfil their duty to protect the children from harm. Plan International reckons there are gaps in the child safeguarding measures in Hong Kong (elaborated in paragraph 18), which need to be rectified to better enable caregivers, especially temporary caregivers in institutional contexts, to prevent children from being harmed or abused.³¹

²⁷ See Article 19 of Convention on the Rights of the Child. Retrieved from:

<https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

²⁸ Committee on the Rights of the Child. (2011). General comment No. 13 (2011) The right of the child to freedom from all forms of violence, paragraph 33. Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en

²⁹ Committee on the Rights of the Child. (2013). Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013), paragraph 47. Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en

³⁰ The Law Reform Commission of Hong Kong. (May 2019). *Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult Consultation Paper*. Retrieved from:

https://www.hkreform.gov.hk/en/docs/cadcva_e.pdf

³¹ Plan International Hong Kong. (August 2019). *Submission to Law Reform Commission on “Consultation Paper on Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult”*. Retrieved from:

18. There are no systemic policies and procedures to ensure a safe and friendly environment for children in child-related organisations in Hong Kong, leaving children's safety to the inconsistent knowledge, experience and conscience of child-related workers in different sectors. Plan International's research on Child Safeguarding Policy indicated that nearly half (46%) of the sports organisations implemented less than half of the international child safeguarding policy standards. 17% implemented no formal child safeguarding measures to protect children's safety in the institution.³²
 - 18.1 Although the Social Welfare Department has recently launched a revised Procedural Guide for Multi-disciplinary Cooperation in Protecting Children from Maltreatment in 2020, which offers some guidance for the reporting of suspected child abuse in institutional settings, the procedural guide has offered no guidance for relevant institutions to set up comprehensive policies and procedures to prevent child abuse from occurring in the first place and is by far only an administrative guideline with no enforcement power.
 - 18.2 With no clear institutional guidance on safeguarding children, children's safety is left to the inconsistent practices of different child-related workers, which provide no guarantees for their safety. For instance, the recent child abuse case in Hong Chi School³³ (where children with intellectual disabilities were physically abused, secluded and unreasonably physically restrained by staff) reflects it is essential to put in place a clear code of conduct of staff and clear guidelines on ways of positive behaviour support strategies in handling students with emotional problems, to lessen the chances of inconsistent and unsafe practices of the frontline staff in the organisation. Other child abuse cases also indicate that there is no guarantee to children's safety in other child-related institutions as well, including other schools, sports institutions, and private tuition centres.³⁴³⁵³⁶
 - 18.3 Plan International recommends the government conduct a local inquiry into violence against children in institutional contexts, to understand the true scale and causes of institutional child abuse, in order to inform the establishment of a local

https://www.plan.org.hk/wp-content/uploads/2019/12/PIHK_Comment-on-causing-or-allowing-the-death-of-a-child-or-vulnerable-adult.pdf

³² Plan International Hong Kong. (July 2020). *Situation Analysis Study on Child Safeguarding Policy (Study with sports organisations in HKSAR)*. Retrieved from: <https://bit.ly/3vRmt6B>

³³ 〈無聲吶喊・二 | 匡智會宿舍智障童長期被鎖細房、椅子 玩屎無人理〉。〈2020 年 10 月 19 日〉。〈香港 01〉。取自：<https://bit.ly/3rBROYz>

³⁴ 〈中學男教師涉摸男學生乳頭 否認 5 項非禮罪共涉 3 人〉。〈2021 年 1 月 18 日〉。〈東網〉。取自：https://hk.on.cc/hk/bkn/cnt/news/20210118/bkn-20210118171744236-0118_00822_001.html

³⁵ 〈補習導師指小五生不斷說話 掌摑男童至其耳膜受損 認襲擊兒童〉。〈2020 年 12 月 7 日〉。〈香港 01〉。取自：<https://bit.ly/3tdSyn3>

³⁶ 〈呂麗瑤遭性侵害案 76 歲前教練被捕〉。〈2018 年 1 月 30 日〉。〈東方日報〉。取自：https://orientaldaily.on.cc/cnt/news/20180130/00176_042.html

strategy to tackle child abuse in child-related organisations, following the example from Australia³⁷ and the UK.³⁸

18.4 Following the recommendations from the Committee, such a strategy should include at least:

- 18.4.1 legislations to facilitate or encourage timely reporting of suspected cases of child abuse, be them cases in a familial or institutional context. Such legislations include a mandatory reporting requirement³⁹ for both child-related professionals and heads of child-related institutions to report suspected child abuse cases to appropriate authorities, as well as legal protection for whistle-blowers;
- 18.4.2 establishment of effective and child-friendly procedures and mechanisms, including free helplines accessible to children, to receive, monitor and investigate complaints; and to undertake awareness-raising activities among children to encourage reporting of child abuse;⁴⁰
- 18.4.3 the establishment of minimum child safeguarding standards for all child-related institutions to ensure standardisation and consistency among different sectors on child safeguarding.

Plan International's recommendation on implementation of Article 19

Plan International recommends the government

- a) conduct a local inquiry into violence against children in institutional contexts; and
- b) establish a local strategy to tackle child abuse in child-related organisations, including legislations to support an effective reporting of suspected child abuse cases and an establishment of minimum child safeguarding standards.

ARTICLE 34: PROTECT CHILDREN FROM ALL FORMS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

19. In the Concluding Observation in 2013, the Committee stated that Hong Kong should 'conduct a comprehensive review of sexual offences covered in the Crimes Ordinance

³⁷ Final Report. (n.d.) Royal Commission into Institutional Responses to Child Sexual Abuse. Retrieved from: <https://www.childabuseroyalcommission.gov.au/final-report>

³⁸ How we Work. (n.d.) Independent Inquiry Child Sexual Abuse. Retrieved from: <https://www.iicsa.org.uk/how-we-work>

³⁹ Committee on the Rights of the Child. (2013). Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013), paragraph 47(b)

⁴⁰ Ibid., paragraph 46(c)

and reform laws to criminalise all forms of child pornography and sexual exploitation of children on the Internet.⁴¹

20. Plan International acknowledges that the Law Reform Commission of Hong Kong (“the Commission”) has been conducting a review on sexual offences since 2010 and has recently published the consultation paper ‘Sentencing and Related Matters in the Review of Sexual Offences’ in November 2020, which is the final part of the overall review of substantive sexual offences in Hong Kong. Plan International urges the government to set out a clear plan with a concrete timeline to review the suggestions by the Commission and harmonise the legislation regarding sexual offences in Hong Kong.

20.1 In particular, Plan International considers the following gaps in the legislation of sexual offences are in serious contravention to Article 34 of the Convention, which warrant immediate rectification.

20.1.1 The ‘marriage defence’ provision in Section 124 of the Crimes Ordinance should be deleted as it is a serious loophole contravening the protection of children from sexual exploitation and abuse. Although intercourse with a girl under 16 is illegal, the provision under Section 124 (2) states that the invalidity of marriage by reason of the wife being under the age of 16 shall not make the husband guilty of intercourse with her if he has reasonable ground to believe her to be his wife. The deletion of the ‘marriage defence’ provision is significant for girls of ethnic minorities, who have a heightened risk of falling prey to child marriage in Hong Kong.⁴²

20.1.2 There are at present no existing legislation outlawing online sexual grooming. This phenomenon presents a heightened risk to children, especially during the Covid-19 pandemic, where children spend most of their time online. Legislations regarding online sexual grooming should be enacted to provide adequate protection for children from sexual exploitation and abuse.

20.1.3 The Sexual Conviction Record Check, a mechanism that allows employers to access information regarding the sexual criminal records of prospective employees, is still implemented as a voluntary administrative scheme with limited coverage on child-related roles. Plan International recommends that the mechanism be extended to include existing employees, self-employed persons and volunteers, and be made

⁴¹ Ibid., 46(d)

⁴² Kapai, Puja & Lalvani, Ravina. (2018). Dreams of Pakistani Children. Retrieved from: https://www.plan.org.hk/wp-content/uploads/2019/06/2_190410_FINAL-DREAMS-OF-PAKISTANI-CHILDREN.pdf

mandatory to ensure better compliance from child-related institutions, self-employed and volunteering child-related workers.⁴³

Plan International's recommendation on implementation of Article 34

Plan International recommends the government

- set out a clear plan with a concrete timeline to review the suggestions by the Law Reform Commission and amend the legislations that are incompatible with the Convention regarding sexual offences in Hong Kong

⁴³ Plan International Hong Kong. (10 February). Comment on 'Sentencing and Related Matters in the Review of Sexual Offences'. Retrieved from: https://www.plan.org.hk/wp-content/uploads/2021/02/PIHK_Comment-on-LRC-Review-of-Sexual-Offences_Feb21.pdf