

2015.08.24 下午 2-5 時 中興大學管理及法政學院 2 F

衛生福利部社會及家庭署委託國立中興大學辦理
兒童權利公約（CRC）進階培訓課程（種子師資培訓工作坊）

授課主題：

兒童權利公約國家報告（二）：各國國家報告導讀

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各國國家報告的用處

1. 香港（1996）、澳門（2003）、及中國（1995）的第一次國家報告（中文版本）？
2. 英文國家報告閱讀摘要（加拿大 / 英國 / 法國 / 德國 / 瑞典 / 芬蘭 / 荷蘭 / 奧地利 / 比利時 / 紐西蘭 / 日本 / 新加坡 / 韓國 / 中國 / 香港（由英國政府提交） / 澳門（由中國政府提交））？
3. 各國國家報告導讀 – 對照撰寫準則的各國撰寫範例摘錄

為何要看各國國家報告?

找個借鏡?

找個榜樣?

找一面魔鏡? 一支魔法棒?



為什麼要寫 CRC 國家報告?



寫作文.....

過程 \ 態度

一、CRC首次國家報告準備：A.聯合國「撰寫準則」

- * **UN Convention on the Rights of the Child (1989) -- 「兒童權利公約」 (2013.12.19 行政院審查核定版) – 簡稱 CRC**
- * **General Guidelines regarding the Form and Content of Initial Reports to be submitted by States Parties under Article 44, CRC/C/5, Oct.15, 1991 -- 依CRC 第44條第1款提出首次國家報告及形式與內容規範準則**
- * **Compilation of guidelines on the form and content of reports to be submitted by states parties to the international human rights treaties, HRI/GEN/2/Rev.6, June 3, 2009 -- 國際人權條約締約國提交報告的形式和內容準則彙編 [Chs 1&7]**
- * **Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, CRC/C/58/Rev.3, March 3, 2015 => CRC 定期報告專要文件撰寫準則**

一、CRC 首次國家報告撰寫準則：人權報告共同準則

《國際人權條約締約國提交報告的形式和內容準則彙編》

第一章 國際人權公約國家報告共同準則

本共同準則旨在指導締約國履行下列條款規定的報告義務：

- 《公民權利和政治權利國際公約》：人權事務委員會
- 《經濟、社會、文化權利國際公約》：經濟、社會、文化權利委員會
- 《消除一切形式種族歧視國際公約》：消除種族歧視委員會
- 《消除對婦女一切形式歧視公約》：消除對婦女歧視委員會
- 《禁止酷刑和其他殘忍、不人道和有辱人格的待遇或處罰公約》：
禁止酷刑委員會
- 《兒童權利公約》：兒童權利委員會
- 《保護所有移徙工人及其家庭成員權利國際公約》：移徙工人問題委員會

《準則彙編》國際人權公約國家報告共同準則

- 【24】新訂人權公約報告制度要求國家報告包含兩個部分：共同核心文件 (Common Core Document) 以及條約專要文件 (Treaty-specific Document)。國家報告所提供之資料應足以使主管各條約之人權委員會全面瞭解締約國執行各條約的情況。
- 【27】共同核心文件包括一般和事實性資料，介紹報告國履行其所有已簽署及加入之各條約的情況。
- 【29/45】條約專要文件旨在報告相關權利保障的法律規範與在地實踐的狀況、進展、困難及因應措施。
- 【43】報告國應分項說明其為增進人權保障所作的各種努力，包括政府官員、立法部門、地方議會、國家人權機構等採取的行動，並加上市民社會相關角色發揮的作用。

《準則彙編》共同核心文件 (The Common Core Document)

提出一般性事實和統計資料，協助審查委員會瞭解該報告國落實人權的政治、法律、社會、經濟、文化背景。

1. 介紹報告國一般情況的資料

- A. 國家人口、經濟、社會和文化特色
- B. 國家憲法、政治與法律結構

2. 保護和促進人權的一般框架

- A. 接受國際人權標準的情況
- B. 在國家層級保護人權的法律框架
- C. 在國家層級促進人權的法律框架
- D. 國家層級的報告程序

1. 核心文件由國家層級之人權報告機制統整提出（兩公約2016國家報告）

2. CRC權責機構提出兒童人權資料供統整

3. 關於非歧視與平等和有效補救措施的資料

CRC國家報告撰寫內容1

《國際人權條約締約國提交報告的形式和內容準則彙編》

條約專要文件 (Treaty-specific Document)

1. 一般執行措施

- (1) 國內法與CRC之銜接;
- (2) CRC實施情況之監督機制
- (3) 向成人和兒童廣泛宣傳CRC之措施
- (4) 在本國廣泛散發其報告之措施

2. 兒童之定義

3. 一般原則

免受歧視原則§2\ 兒童最佳利益§3

生命、生存發展權§6\ 表意權§12

4. 公民權與自由

5. 家庭環境和替代性照顧

6. 基本健康與福利

7. 教育、休閒與文化活動

8. 特別保護措施

1. 配合教育訓練課程進度之國家報告撰寫表格:
「進階」配合第一稿;
「基礎」配合第二稿

2. 計畫團隊匯整並註記內部專審查意見供各部會修正參考

3. 計畫團隊針對各部會具體需求提供工作坊

CRC國家報告撰寫內容2

《準則彙編》條約專要文件 (Treaty-specific Document)

第七章：兒童權利委員會：A. 初次報告

- [2] CRC專要文件應指出任何影響履行CRC義務的要素和困難，並提供充分資料，使委員會全面瞭解CRC在該國的落實情況。
- [9] 締約國應提供資料說明：採取何等措施使國內政策與法律落實CRC各條文，並說明現有或規劃建立的全國性和地方性兒童政策及CRC實施情況監督機制。
- [13-18] 締約國應提供分項資料，包括立法、司法、行政等方面現行或預計要採取的主要措施、各種落實要素和執行困難、執行CRC各條文的進展以及未來在執行上的優先次序和具體目標。
- [22] 締約國應具體說明其全國性及地區性的政府及非政府組織（如社會工作者機構）間合作執行CRC的各種活動與成效。

CRC專要文件撰寫準則 初次報告 vs 定期報告

書面資料

- 1.1991 首次國家報告及形式與內容規範準則 General Guidelines regarding the form and content of initial reports to be submitted by States Parties under Article 44, CRC/C/5, Oct.15, 1991
- 2.2015 CRC 定期報告專要文件撰寫準則 Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, CRC/C/58/Rev.3, March 3, 2015

二、各國國家報告導讀 - 撰寫範例

16 篇國家報告原文截取：

加拿大、英國(第一次及最近一次定期報告)、德國(第一次及最近一次定期報告)、瑞典、芬蘭、荷蘭、奧地利、義大利、日本(第一次及最近一次定期報告)、新加坡、韓國、中國、香港

15 篇國家報告中文摘要：

加拿大、英國、法國、德國、瑞典、芬蘭、荷蘭、奧地利、比利時、紐西蘭、日本、新加坡、韓國、中國、香港、澳門

報告前言

Introduction of State Report

- 該國之兒童權益發展歷史
- 政府批准CRC及內國法化的歷史
- 國家報告撰寫依據及參照準則
- 國家報告權責機關及組成部分
- 報告編撰歷程，如不同部會如何分工、政府與民間社會合作方式、報告內容中民間團體主要投入之處。

Introduct

〔兒童憲章〕－1951年日本為
確認並保障兒童之權利，將家
長及社會應負的義務和責任加
以典章化之重要宣言。

The child shall be respected as a human

The child shall be esteemed as a member of society.

The child shall be raised in a good environment.

簡述國家政府關心
兒童權益由來已久

of fundamental principles set out in the
established and declared in 1951 with the rise of
movement at that time. Ever since then, it has
these people as a significant philosophy
acknowledging the fundamental rights of children and promising to guarantee
and promote their well-being. With the ratification of the Convention on the
Rights of the Child on 22 April 1994 as a turning point, the awareness of the
rights of children has continued to grow, and the spirit of respecting and
protecting the rights of children is now understood among the Japanese people
more than ever before.

Introduction

再次以本國〔兒童憲章〕作為國家報告的開場白

The child shall be respected as a human being

The child shall be esteemed as a member of society

The child shall be raised in a good environment

(excerpt from the Children's Charter of Japan enacted in 1951)

第三次定期
國家報告

Japan ratified the Convention on the Rights of the Child in 1989. Since then, the country has been endeavouring to protect and promote the rights of the child in line with the spirit of this Convention. The Government of Japan has, in accordance with the provisions of article 44, paragraph 1 of this Convention, submitted a first (1996) and a second (2001) report of Japan in relation to this Convention, in which were introduced Japan's basic legal systems regarding the implementation of this Convention and efforts made during the corresponding reporting periods.

Introduction

政府批准 CRC， 內國法化的簡要歷史

1. Following the promulgation on 21 February 1992 of the Convention on the Rights of the Child of 1989, the Federal Republic of Germany (Federal Law Gazette I 1992, No. 10) the Federal Government deposited the instrument of ratification with the Secretary-General of the United Nations on 6 March 1992. **The Convention thereupon entered into force for the Federal Republic of Germany on 5 April 1992** (see official notification of 10 July 1992 - Federal Law Gazette, Part II, p. 990).

2. Prior to the introduction of the draft of a law to ratify the Convention in the German Bundestag, the Federal Government had, in keeping with its standard practice and as required in order to avert potential breaches of obligations under international law mandated by an international treaty, **examined whether it was necessary to amend national law prior to ratification of the Convention.** The Federal Government came to the conclusion that amendment of national legal provisions was not required solely on the basis of the intended ratification of the Convention.

3. It detailed its justifications for this conclusion in the Memorandum to the Convention addressing the individual articles of the Convention. The Federal Government also underscored its view that German law was in conformity with the Convention by submitting an internationally valid declaration at the time it deposited the instrument of ratification. This declaration stated, inter alia:

"The Federal Republic of Germany also declares that the Convention does not apply directly. It establishes state of emergency, in which the Federal Republic of Germany fulfils its obligations, which conforms with the Convention." (See the declaration of ratification.)

政府批准CRC，
內國法化的簡要歷史

4. In the same declaration the Federal Government stated that it attaches great importance to the Convention. It has always stressed that the Convention provides impetus for domestic reforms in the areas of legislation and other measures. This is all the more true in light of the fact that article 3, paragraph 2, of the Convention imposes on the States parties the general obligation to ensure the child such protection and care as are necessary for his or her well-being and, to this end, to "take all appropriate legislative and administrative measures".

Introduction

For the fourth Report, the Federal Republic of Germany has adopted the principles of the new report procedure for all international human rights monitoring.
2007.

國家報告撰寫依據
及
撰寫所參照之準則

國家報告之
組成部分

The report therefore consists of two parts for the first time: the Common Core Document (forwarded by the Federal Republic of Germany on 13 August 2009) and the Treaty-Specific Document (specialist report) submitted herewith. The Common Core Document and the Treaty-Specific Document are hence to be read in conjunction. The Treaty-Specific Document has been drawn up in accordance with Guidelines CRC/C/58/Rev.1 and with the Harmonized Guidelines HRI/MC/2006/3.

Introduction

- **Consultations with non-governmental and Aboriginal organizations**

6. In 1993, the Government of Canada's initial report was prepared by an umbrella group consisting of domestic and international interest in raising awareness.

簡述報告編撰歷程，如不同部會如何分工撰寫、政府與民間社會合作撰寫之方式、報告內容中，民間團體主要投入之處。

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7. The Government of Canada met with national Aboriginal organizations and a further consultation session was attended by the Assembly of First Nations, the Native Women's Association of Canada, the Native Council of Canada and the Métis National Council.

8. The Government of Canada has, to the extent possible, made use of Aboriginal and non-governmental input in the "Factors, Difficulties and Progress" and "Priorities and Goals" portions of the report. Furthermore, the submissions of Aboriginal and non-governmental organizations have been distributed to more than 40 federal governmental departments and agencies, for their consideration in future policy formulation.

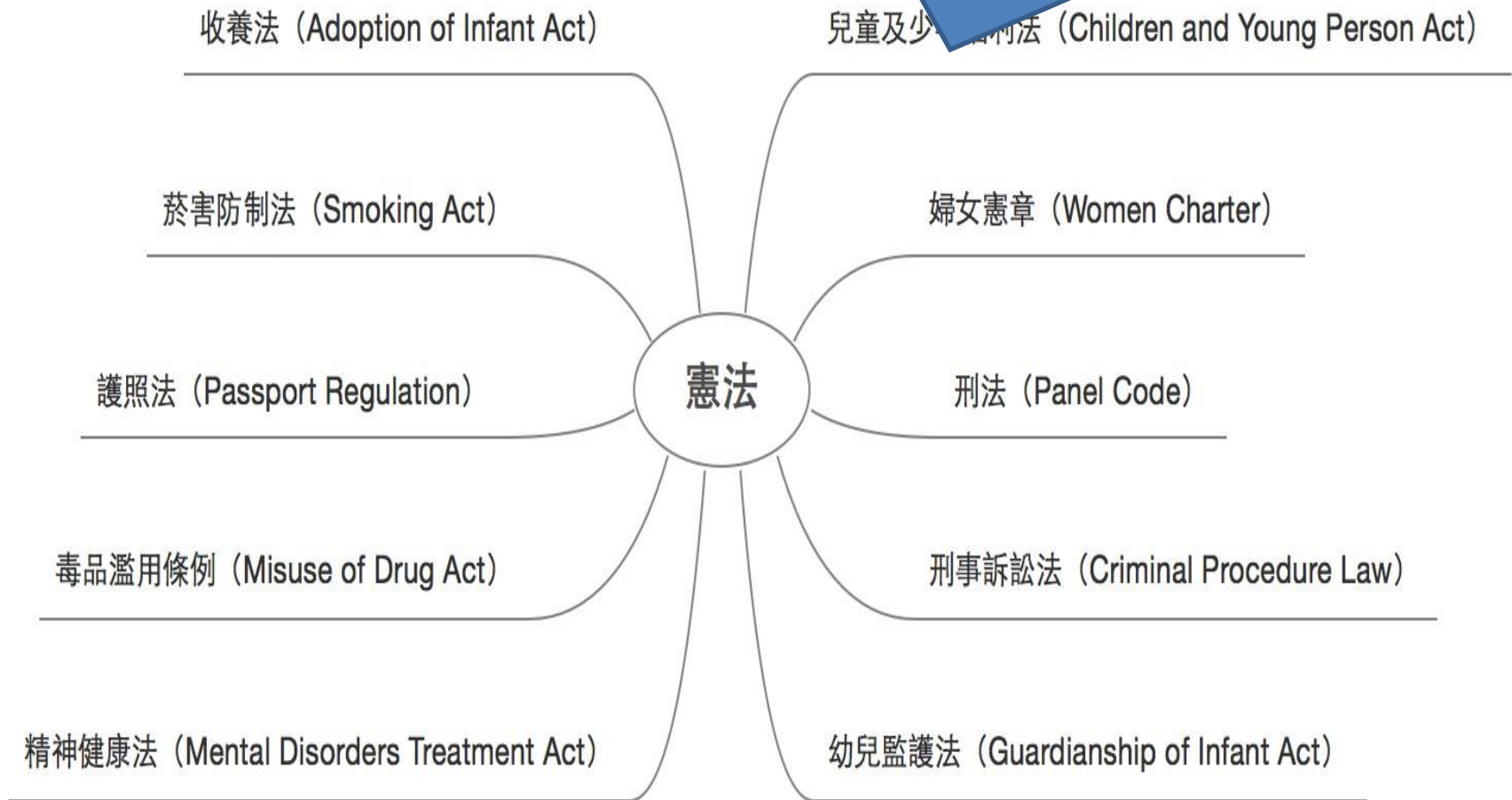
Introduction

This report concentrates on the measures taken by the government and public authorities over the last years. Where relevant, the report also includes information about the work of other child rights actors, such as county councils, foundations and civil society. Information about the work of county councils in strengthening child rights, the efforts co-ordinated by the Local Authorities and Regions, and the reports submitted by public authorities to the government, as well as the experience and knowledge that the Ombudsman for Children has gained from promoting and monitoring the implementation of the CRC within public authorities, municipalities and county councils.

簡述報告編撰歷程，如不同部會如何分工撰寫、政府與民間社會合作撰寫之方式。

新加坡國家報告 國家層級保護兒童

利用圖表呈現國家保護 兒童之法律架構



摘自：林志潔 -- 新加坡第一次國家報告閱讀摘要，頁3。

一般執行措施

General Measures of Implementation

- (1) 國內法與 CRC 之銜接
- (2) CRC 實施情況之監督機制
- (3) 向成人和兒童廣泛宣傳 CRC 之措施
- (4) 在本國廣泛散發其報告之措施
- 另參考 2015 CRC 定期報告
專要文件撰寫準則

一般執行措施

2015 CRC定期報告專要文件撰寫準則

- (a) 採取了哪些措施，對國內法律和實踐進行審查，使之完全符合《公約》；
 - (b) 是否制定了兒童問題國家綜合策略以及相應的計畫或行動計畫，這些計畫在多大程度上得到實施並評估；這些策略及計畫是否及如何構成總體發展策略和公共政策的一部分；它們與具體的部門策略和計畫是否有聯繫以及有何種聯繫。對聯邦政府而言，為兒童制訂計畫是否超出了聯邦或中央一級的範圍，以及超出的範圍；
 - (c) 政府哪一部門總體負責協調《公約》的執行工作，有何權力；
 - (d) 為執行《公約》劃撥的預算是否明確並得到監控，以及如何用於兒童問題國家綜合策略和相應的計畫；
 - (e) 為執行《公約》及相關的國家策略和計畫，是否專門提供國際援助和發展援助；
 - (f) 是否設立了獨立的國家人權機構來監督《公約》的執行工作，以及這類機構是否受理兒童或其代表的申訴；
 - (g) 採取了哪些措施，通過宣傳、培訓以及學校課程設置，讓成年人和兒童廣為瞭解《公約》的原則和規定；
 - (h) 已經或打算作出何種努力，讓公眾、民間團體、企業組織、工會、宗教組織、媒體以及其他方面廣為瞭解各項報告和結論性意見；
 - (i) 與民間團體、包括非政府組織和兒童及青年團體開展了何種合作，以及這些組織在多大程度上參與了執行《公約》的規劃和監督工作。
- 關於這一組權利，締約國應該提供資料，說明是否對企業公司(採掘行業、製藥業、農工行業等)可能影響兒童享受權利的活動進行了評估，以及是否採取了調查、評判、補救及調整這種影響的措施。
- 對於這組權利，締約國須考慮到委員會關於獨立國家人權機構在增進和保護兒童權利方面的作用的第2號一般性意見(2002年)、關於執行《兒童權利公約》的一般性措施的第5號一般性意見(2003年)、以及關於企業部門對兒童權利的影響方面的國家義務的第16號一般性意見(2013年)。

CCC專安文件撰寫準則:初次報告vs定期報告

* 【】為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
一般執行措施	第2號—獨立人權機構之角色與兒童權利之促進	【19】(p)：應說明締約國 <u>是否設立了獨立的國家人權機構來監督《公約》及任擇議定書的執行工作</u> ，以及這類機構是否受理兒童或其代表的申訴。
	第5號—有關公約落實之一般性措施	第5號一般性意見是專門針對一般執行措施做成的意見
	第16號—國家對於商業造成之兒童權利影響所負之義務	【20】：締約國應該提供資料， <u>說明是否對企業公司(採掘行業、製藥業、農工行業等)可能影響兒童享受權利的活動進行了評估</u> ，以及是否採取了調查、評判、補救及調整這種影響的措施。

一般執行措施

- **1991年成立Children's Bureau**，目的是為了處理與兒童相關之問題並且追蹤加拿大首相於**1990年World Summit for Children**所做出之承諾。
- **1992年時發布Brighter Futures: Canada's Action Plan for Children**。該計畫試圖處理非常廣泛的兒童相關問題，並將重點放置在未滿八歲之兒童，加拿大政府在5年內編列**4.59億元**執行此計畫。
- 在執行上**最主要的困難點**是加拿大聯邦與地方政府的分治，導致事務的管轄並不是非常明確。這在涉及原住民兒童的領域更是如此。
- **1993年時**，聯邦與的政府的工作會議中共同發布**Building for the Future: A Framework for Mental Health Services for Children in Canada**，肯認兒童與少年針對社會資源的利用享有優先地位。
- **1992年時政府提供Human Rights Directorate of Multiculturalism and Citizenship Canada資金**用來倡議**Convention on the Rights of the Child**，該組織與其他政府與非政府相關部門共同發展出一套計畫來增進社會對兒童權利及公約的認識。該組織同時也提供非政府組織資金用來執行教育性質之工作。
- **National Film Board**拍攝影片宣導兒童權利。
- 成立**Partners for Children Fund**促進國際性的兒童權利工作。

A. Measures taken to harmonize national law and policy with the provisions of the Convention (art. 4)

12. In ratifying conventions or treaties, the Japanese Government ensures that national laws are consistent with the provisions of the conventions or treaties. The Convention on the Rights of the Child, which defines "children" as "any person under 18 years of age" and broadly rights to freedom (such as freedom of expression, thought, conscience) and social rights (including the right to a high standard of living). It also stipulates the protection of children (such as the primary responsibility of the parent/guardian(s) for caring for and raising the child) and matters to deal with problems in modern society (such as the protection of children from narcotics, sexual exploitation and abuse, and the protection of children of refugees). Ratification of the Convention, nonetheless, did not require any amendments to Japanese legislation nor any new enactments of law, since most of those matters have been stipulated by the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights - to which Japan became party in 1979 - and are guaranteed under the existing legal framework of Japan, including the Constitution.

國內法與CRC之銜接

General measures of implementation

Incorporating the Convention on the Rights of the Child (CRC/C/15) into the German Basic Law (Grundgesetz – GG) (para. 10, CRC/C/15) and the rights of the child in the Basic Law and the German Union

採取了哪些措施，
對國內法律和實踐
進行審查，使之完
全符合《公約》

At Federal level

The German Basic Law provides comprehensive protection of the rights of the child just as adults, they are holders of fundamental rights. Child and youth protection has full constitutional status under the law as it stands. The Federal Constitutional Court has stated that...

At Land level

In the period to March 2010, the rights of the child in Germany have been explicitly included in all Land constitutions with the exception of Hamburg and Hesse.

At EU level

Article 24 of the Charter of Fundamental Rights of the European Union explicitly contains broad children's rights. This Charter became binding when the Treaty of Lisbon entered into force on 1 December 2009. Article 6, paragraph 1 of the Treaty on European Union now provides that the Union recognizes the rights, freedoms and principles set out in the Charter, and furthermore that the Charter and the Treaties have the same legal value.

GENERAL MEASURES OF IMPLEMENTATION

預算

- 56. In 1999, 25% of government operating expenditure was in the community services sector (environment, public housing and social welfare). The same sector accounted for 25% of development expenditure.
- 57. Singapore has set up the Inter-Ministry Committee on the CRC (IMC-CRC) to look into the implementation and promotion of the CRC and to report on and monitor its implementation. The IMC-CRC comprises representatives from various government ministries. It seeks the views of the non-governmental sector through the organization of dialogues, forums and workshops on issues pertinent to children and the CRC.

政府設立一獨立部門
總體負責協調監督
《公約》的執行工作

Mechanism for coordinating and monitoring implementation of the Convention

18. National policies for children and young persons are handled by various government departments and national authorities. Within the Government, the Ministry of Health and Social Affairs is responsible for the policies concerning children as the main department to plan and carry out child welfare policies, while the Ministry of Education is responsible for policies concerning youth.

CRC實施情況之監督機制

19. The Division of Child Welfare in the Ministry of Health and Social Affairs takes charge of the implementation of the Convention.

20. The Office of Youth Policy in the Ministry of Culture and Sports governs youth fostering policies. The Basic Act on the Youth of Korea was amended and enforced on 31 December 1991 to provide a legal ground for the effective implementation of the Basic Plan for Youth. Its main operation is:...

21. The Ministry of Education is responsible for the education system to guide and train children and youths.

22. The Ministry of Justice tries to eliminate harmful environments detrimental to the healthy development of youth, and provides services for social reintegration to young offenders through guidance, supervision or education and training. ...

23. The role of the family court is to mediate domestic conflicts. However, when the intervention fails, a judgement is made in accordance with the ideology of child welfare, the principle of the best interest of the child.

24. The Ministry of Labour is responsible for vocational training, providing jobs and various cultural and leisure activities for children and youths who are engaged in economic activity.

25. There are many government-funded research institutes developing policies for children and youths...

摘自：Republic of Korea's initial reports of state parties due in 1993，1994年11月，p.8-9。

26. Non-governmental organizations are playing an important part in work for children and promotion of their rights. There are...

一般執行措施

採取了哪些措施，通過宣傳、培訓以及學校課程設置，讓成年人和兒童廣為瞭解《公約》的原則和規定

- To raise the awareness of the CRC, MOH has printed the statement, “As a signatory to the United Nations Convention on the Rights of the Child, the Ministry of Health Singapore strives to ensure that no child is deprived of his or her right of access to a high standard of health-care services” in all health booklets. These health booklets are distributed to the parents and guardians of all babies born in Singapore.
- The National University of Singapore has also included the CRC in its training for social workers and psychologists. Copies of Singapore’s draft initial report on the CRC were also extended to postgraduate students of the National University of Singapore studying the module on Child Welfare Policy for discussion. This module is extended to both the Graduate Diploma and Masters programs in social work.
- An inter-agency working group has also been set up to look at raising awareness among adults and children on the principles and provisions of the CRC. To publicize the CRC to both adults and children, videotapes, posters, place mats, postcards, instructional manuals and booklets on the CRC have been produced and distributed to schools, childcare centers and VWOs as well as at public exhibitions. The notion of child rights is in place and Singapore will continue to look at measures to make the CRC and Singapore’s country report widely known, including applying the various information technology and Internet media.

一般執行措施

- 1991年成立Children's Bureau，目的是為了處理與兒童相關之問題並且追蹤加拿大首相於1990年World Summit for Children所做出之承諾。
- 1992年時發布Brighter Futures: Canada's Action Plan for Children。該計畫試圖處理非常廣泛的兒童相關問題，並將重點放置在未滿八歲之兒童，加拿大政府在5年內編列4.59億元執行此計畫。
- 在執行上最主要的困難點是加拿大聯邦與地方政府的分治，導致事務的管轄並不是非常明確。這在涉及原住民兒童的領域更是如此。
- 1993年時，聯邦與的政府的工作會議中共同發布Building for the Future: A Framework for Mental Health Services for Children in Canada，肯認兒童與少年針對社會資源的利用享有優先地位。
- 1992年時政府提供Human Rights Directorate of Multiculturalism and Citizenship Canada資金用來倡議Convention on the Rights of the Child，該組織與其他政府與非政府相關部門共同發展出一套計畫來增進社會對兒童權利及公約的認識。該組織同時也提供非政府組織資金用來執行教育性質之工作。
- National Film Board拍攝影片宣導兒童權利。
- 成立Partners for Children Fund促進國際性的兒童權利工作。

兒童之定義

- 提供國內法律及條例定義該國兒童之相關資料。特別是法定成年年齡和各種法律議題最低限度的年齡限制，包括免家長同意之合法或醫療諮詢年齡、義務教育年齡、可兼職就業年齡、全職就業年齡、從事危險性工作年齡、性自主年齡、可結婚年齡、自願應徵入伍的年齡、徵兵制年齡限制、自願至法庭作證的年齡、應負刑事責任的年齡、剝奪自由的年齡、監禁的年齡和購買酒品及其他管控的物品。
- 如果成年年齡低於18周歲，則締約國應該說明在18周歲之前所有兒童如何享受到《公約》所規定的保護以及權利。締約國應該說明立法規定的男孩和女孩的最低結婚年齡。

兒童之定義（一）

法律定義，提供法律制定所參考之兒童人權原則依據，以及兒童依據不同法規可行使之權利（legal capacity）。

- In Finnish law, the definition of the child is the same as it is in the Convention: a person below the age of 18 years is a person who has no capacity to decide on matters relating to his or her interests with his or her custodian.
- In Finnish law there are, however, some exceptions which aim to protect and afford the child a right to participate in decisions. Such rules have emerged in recent years. This article 12 of the Convention: the child has legal capacity in matters which are ordinary under the circumstances and of little significance. With the guardian's consent, the child has the right to enter into legal contracts without any minimum age requirement. A child who has attained the age of 15 years may conclude an employment contract, although the custodian may cancel it on certain conditions. The child may dispose of his or her earnings independently and speak in a trial relating to his or her earnings or to property bought with those earnings.
- If the minor contracts marriage, he or she is no longer subject to the custodian's authority in matters relating to his or her person. However, he or she cannot freely dispose of his or her property, but remains in that respect under the authority of the custodian until he or she attains the age of majority.

兒童之定義（二）

- If parents who are minors have a child, they have, regardless of their minority, a right to act as the custodians of their child. A man who is minor may recognize a non-marital child without the custodian's consent.
- In some decisions on involuntary child protection, children of 12 must demonstrably be heard, and the Provincial Court (Child Welfare Act, art. 11). In cases of involuntary psychiatric care (Mental Health Act), the child may independently demand to be heard by the Provincial Court against decisions relating to the care of the child.
- Even where the child may not, under the laws cited above, speak independently he or she must be heard in matters relating to his or her person, if he or she is old and mature enough to understand. The cases where the child has a right to prevent a measure include the following.
- If a child who has attained the age of 15 protests against the recognition of paternity, the paternity suit cannot succeed (Paternity Act, art. 16). Adoption cannot be confirmed, if a child who has reached the age of 12 opposes it. Even a younger child may prevent adoption if he or she is mature enough for his or her will to be considered (Adoption Act, art. 8). ...

兒童依據不同法規可
行使之權利(legal
capacity)。

兒童之定義 (二)

概念及年齡界限

A. Terms and age limits

8. Within the meaning of the Convention, a child is any human being below the age of 18 years, unless, under the law applicable to the child, majority is attained earlier. **This corresponds to the personal legal status of minority under the German legal system. Minors are all persons who have not yet attained the age of 18 (sect. 2 of the Civil Code (BGB)).**

9. In the sphere of **German criminal law**, minors under the age of 14 are considered children; persons between 14 and 18 years of age are termed **juveniles** (sect. 176, subsect. 1, of the Criminal Code (StGB); sect. 1, subsect. 2, of the Youth Courts Act (JGG)).

10. **The unborn child** enjoys protection in the Federal Republic of Germany pursuant to a number of different legal provisions. **To be sure, a person does not, as a matter of principle, have legal capacity until his or her birth** (sect. 1 of the Civil Code). Pursuant to section 1923, subsection 2, of **the Civil Code**, however, a child who has not yet been born must be considered to be a potential heir if he or she is born alive and had already been conceived at the time of the death of the person to whose estate he or she is to succeed; within the framework of section 823, subsection 1, of the Civil Code he or she is protected prior to birth against injury inflicted by tortious acts.

兒童之定義 (二) 兒童權利之享有

B. Rights of the child

The rights and obligations of children and juveniles by age group are summarized in the following:

(a) At the time of birth:

- (i) Begins the capacity to be a subject of legal rights and duties;
- (ii) Begins the capacity to be a party to legal proceedings;
- (iii) Begins the curatorship or guardianship of the Youth Welfare Office under certain conditions in the case of children born out of wedlock;

(b) At the age of three a child may be allowed to take part in musical performances and similar events and in the rehearsals connected therewith for up to two hours per day;

(c) At the age of five a change in the family name requires the consent of the child, whereby prior to the child's fourteenth birthday such consent is given by his or her legal representative;

(d) At the age of six:

- (i) Children are required to attend school (the cut-off date is always the first day of June). The obligation to attend full-time schools continues for 9 or, respectively, 10 years (education acts or, respectively, compulsory education acts of the Länder);
- (ii) A child may be allowed to take part in theatre performances for up to four hours per day and in musical performances or similar events for up to three hours per day;
- (iii) A child may be allowed to attend public film showings, provided the film is released for this age group;

(e) At the age of seven:

- (i) A child has limited capacity to enter into legal transactions;
- (ii) A child has limited (legal) responsibility for tortious acts; ...

香港第一次國家報告：兒童的定義

- 成年歲數
- 作為法律訴訟一方當事人
- 同意接受醫藥治療
- 強迫教育
- 聘用員工
- 同意進行性行為
- 婚姻
- 在武裝部隊服役
- 在法庭上作證
- 刑事責任
- 剝奪自由
- 青少年所員
- 越南船民兒童
- 使用及購買受管制物品
- 接觸不雅物品
- 進入受管制的場所

摘自：謝國欣-大\不列顛及北愛爾蘭聯合王國於1996年根據《兒童權利公約》第44條提交有關香港的第一次報告，p.29-33。

一般原則

- 免受歧視原則（§2）
 - 兒童最佳利益（§3）
 - 生命權、生存與發展權（§6）
 - 尊重兒童表意權（§12）
-
- 另參考 2015 CRC 定期報告
專要文件 撰寫準則

參考 2015 CRC 定期報告專要文件 撰寫準則

- 應該著重說明為防止歧視(第2條)和確保處境不利的兒童能夠享受並行使權利而採取的特別措施。應提到為反對基於性別的歧視以及為確保身心障礙兒童、屬於少數族群的兒童以及原住民兒童充分享受權利而採取的措施。
- 締約國應提供資料，說明生效的立法、司法、行政或其他措施，特別是在立法、行政和司法裁決中如何解決和實施維護兒童最佳利益原則(第3條)和尊重兒童意見(第12條)。
- 對於這組權利，締約國須考慮到委員會關於兒童有權將其最佳利益列為一種首要考慮的第14號一般性意見(2013年)、關於兒童表達意見的權利的第12號一般性意見(2009年)、以及關於原住民兒童及其在《公約》下的權利的第11號一般性意見(2009年)。

CRC專要文件撰寫準則：初次報告vs定期報告

* 【】為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
一般原則	第11號—原住民兒童及其公約權利	<p>【23】：關於這一組權利，締約國應該提供以下方面的相關資料：<u>(a) 不歧視(第2條)；</u></p> <p>【24】：對共同核心檔中所載的資料加以補充的資料應該著重說明為防止歧視(第2條)和確保處境不利的兒童能夠享受並行使權利而採取的特別措施。<u>在適當時應提供為反對基於性別的歧視以及為確保殘疾兒童、屬於少數群體的兒童以及土著兒童充分享受權利而採取的措施。</u></p>
	第12號—兒童表示意見的權利	<p>【25】：締約國應提供最新資料，說明已生效的立法、司法、行政或其他措施，特別是在立法、行政和司法裁決中如何處理和實兒童最大利益原則和<u>尊重兒童意見原則</u></p>

CRC專要文件撰寫準則：初次報告vs定期報告

* 【】 為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
一般原則	第14號—兒童最佳利益	【25】：締約國應提供最新資料，說明已生效的立法、司法、行政或其他措施，特別是在立法、行政和司法裁決中如何處理和實 <u>兒童最大利益原則</u> （ <u>第3條</u> ）和尊重兒童意見原則（第12條）。

免受歧視原則 Non-discrimination - article 2

77. Many countries have a written constitution enshrining certain rights and freedoms for the individual. However, under the United Kingdom constitution, rights and freedoms are an inherent part of the law.

78. The United Kingdom Government states that it respects the rights and freedoms of individuals or groups. Our anti-discrimination legislation, including the Race Relations Act 1976, prohibits discrimination on the grounds of colour, race, nationality and sex.

79. The Children Act requires local authorities to have regard to a child's religious persuasion, cultural and linguistic backgrounds. They are also required to take account of the different racial groups of children in their area when recruiting foster parents or arranging the provision of day care. Staff in children's homes should receive written guidance on important procedures which, dependent on the nature of the home, may include guidance on the particular care needs of children from minority ethnic groups and practices within the home to combat racism. Those responsible for recruiting staff to children's homes should seek to ensure that the composition of the staff group reflects the racial, cultural and linguistic background of the children being cared for and that there should be a proper balance between male and female staff.

根據英國兒童法，地方政府對於家庭提供服務時，應考量兒童的宗教信仰、種族、文化及語言背景

免受歧視原則 Non-discrimination - article 2

37. The requirements of this article are met through the Constitution. **The Constitution prohibits any form of discrimination** against a child by providing that "all citizens shall be equal before the law, and there shall be no discrimination in all fields of political, economic, social or cultural life on account of sex, religion or social status". It requires courts of law and administrative authorities and other agencies performing public administration duties in the course of their activities to respect universal equality and to observe objectivity and impartiality. **As Korea is a very homogenous country, no special provisions aimed at preventing discrimination have been made of the kind that would be made in a country where there is a large minority. There is no discrimination because of sex.**

免受歧視原則 之例外說明

38. **Children born out of wedlock** have been treated differently in the past and treatment due to the emphasis on the social custom of monogamy. **The Government of the Republic of Korea, valuing every individual as equal, endeavours to treat such a child equal to a child born of a legal marriage in terms of status and property. The Civil Code provides for a child born out of wedlock not to be legally discriminated against in most areas including inheritance.** However, in deciding the order of succession to family headship, the child born during marriage has priority among lineal descendants having the nearest relationship. Also, under the Family Registration Act, whether the child was born in or out of wedlock is stated on the birth report.

39. **No privileged class** shall be recognized or ever be established in any form. Also, no citizen shall suffer unfavourable treatment on account of an act not of his/her own doing but committed by a relative. That is, a privileged class is not recognized and a child is, by regulation, protected from disadvantages due to actions of relatives.

兒童最佳利益

兒童最佳利益原則
在法律案件中的廣泛運用

- 102. The importance of the “well-being of the child” reflected in the way the child-relevant laws are regulated. The law is section 178 a of the **General Civil Code “Taking care of the child”** - the central standard for evaluating the child's well-being is the basis for fashioning child-relevant legislation: “In a child-relevant case, an appropriate account shall be taken of the child's character, his mental predisposition, skills, likes and dislikes and his opportunities for development as well as his parents' living standard”.
- 103. Pursuant to section 137, paragraph 1 of the General Civil Code, promotion of the well-being of the child is a general aim of upbringing: “Parents shall take care of the upbringing of their children while minors, and shall promote their well-being in general”. Furthermore, the well-being of the child has to be taken into account by express statutory directive in a large number of cases: for example, in the undertaking by a married couple to live their lives in partnership (General Civil Code, sect. 91), the court decision on the legality of a change of domicile or the taking of a separate residence by married couples (sect. 92, para. 3), the decision as to which partner will be granted custody of the child if the parents are prevented from exercising custody (sect. 145, para. 1), the settling of differing views as to the child's education (sect. 147), the arrangements for visitation rights (sect. 148, para. 1), the undertaking of the legal guardian to determine paternity (sect. 163 a, para. 1), the decision regarding withdrawal or restriction of custody (sect. 176, para. 1), the decision regarding allocation of custody following separation or divorce of the parents (sect. 177, para. 1), regard for the views of the parent without custody (sect. 178, para. 1) or the approval of an adoption agreement (sect. 180, para. 1).
- 104. **The well-being of the child is also the decisive guiding principle for** the courts in guardianship proceedings in general...

Best interests of the child - article 3

兒童最佳利益

- 《XXXX法》第XX條規定：“XXX”。該條規定確立了在具體個案中，兒童最佳利益原則的衡量標準。該法第X條規定，XXX：《XXXX法》規定，“XXX”。在其它一些法律也規定了只有在XXX情況下，才能採取與兒童相關的福利措施。比XXX等案件中，兒童最佳利益雖沒有被表述，但XXX等案件，影響最終判決。
- 在執行兒童最佳利益原則時，主要存在以下問題：有關執行兒童會面交往權的程序規定遭到了猛烈批評，原因是其並沒有建立在保護兒童最佳利益原則上，而是建立在父母權利的基礎上。
- 實踐中，也有違反《兒童保護法》所規定的原則，即兒童有與不與自己共同生活一方的父母會面交往的權利。有時候，有些兒童會被迫與一方父母見面。相關機構對於與兒童共同生活一方的父母控制兒童的做法干預也不足。司法部正對此展開調查，未來有關會面交往的執行情序將得到進一步的完善。
- 社工在履行法律規定的維護兒童最佳利益的義務方面，存在以下困難：
(1) XX；(2) XX；(3) XX；(4) XX。

困難與挑戰

Best interests of the child - article 3

兒童最佳利益

- 社工的培訓也**存在問題**。現在大部分的社工培訓關注的更多的是成年人及家庭，而非兒童。最近的研究表明，兒童福利工作容易被忽視。**希望未來會有專門針對兒童福利工作的培訓**。社工往往沒有專注于兒童福利工作，他們的工作往往更偏向於那些貧窮的家庭。
- 兒童最佳利益原則中“最大利益”這一概念比較模糊。因此，**在具體個案中，這可能受到案件中的已有事實，個人印象，以及專家在選取相關解決方案時的職業能力的影響。在法律決策過程中，兒童的觀點應得到進一步的傾聽**。社工們都建議應為兒童設立專門的具有法律學位的訴訟代理人。
- 兒童最佳利益原則不光應體現在直接影響兒童的法律中，其也應被官員和決策者自覺應用於各種工作中。在應對諸如高齡化等社會問題時，也應考慮這些問題。在制定國家預算或者市級預算時，在制定可能影響兒童的立法時，也應考慮兒童最佳利益原則。在涉及外國人的實踐中，兒童最佳利益原則的適用也存在一定問題，比如是否將在校學校的外國兒童送回其外國的家庭。

困難與挑戰

生命權、生存與發展權

The right to life, survival and development - article 6

121. The United Kingdom fully accepts that **every child** has the inherent right to life.

122. **The Health Service in the United Kingdom is available to all, regardless of income, largely free of charge.** All health service patients must be treated equally. It is a specific power to charge -for example, for dental services- that **children under 16 are exempt from paying for**

進步與成就

123. The most significant factor in promoting children's survival in the United Kingdom has been **the success of our child immunization programme**. The infant mortality rate has been halved between 1978 and 1992. The halving of the rate of Sudden Infant Death Syndrome between 1991 and 1992 is also a considerable achievement.

124. **Considerable progress has been made in reducing accidental deaths** in children and young people. In the year to June 1993 a reduction of 15 per cent has been achieved in child road accident casualties compared with the 1981-1985 baseline average.

生命權、生存與發展權

The right to life, survival and development - article 6

125. There has also been **encouraging progress** in understanding of child development as a result of advances in paediatrics, neurology and psychology. The diagnosis of physical and sensory impairment and the arrangement of therapeutic programmes into a child's life to maximize their impact on the growth and development of the child.

進步與成就

126. **All children aged 0-5 years** have a named health visitor who offers a universal service of support and advice on child rearing matters. The type of services provided are checks on health and development, screening tests, advice on diet and accident prevention etc. **The service also provides an opportunity to identify children in need, as defined by the Children Act, and a link to be made with Social Services if required.**

127. All of these issues are dealt with in greater detail in chapter VI - Basic health and welfare.

Respect for the views of the child - article 12

尊重兒童

家庭、學校與鄰里

- **1. Family, school, neighbourhood**
- 53. Article 12 defines the right of the child to express them freely in all matters affecting him or her. Proper account must be taken of the child's views. The child also has the right freely to express its views on all kinds of subjects in the family, at school and in the neighbourhood.
- Family; School; Youth care...
- **2. The right to be heard in legal proceedings**
- 57. Article 7 of the Constitution of the Netherlands guarantees all citizens the right to express their views on any subject. In the case of children should be heard in legal proceedings their opinion or to obtain their consent. In general, children aged 12 or over should be given the opportunity to inform the court of his or her opinion on matters of general relevance and on particular matters such as a decision to be taken regarding custody, control of his or her property, access and contractual capacity. The court is also competent to allow children under the age of 12 to make known their views on a matter requiring decision...

司法程序上的權利

公民權與自由

5. Freedom of thought, conscience and religion (art. 14)

75. The provisions concerning the right of the child to freedom of thought, conscience and religion refer to rights which, in Sweden, are guaranteed to every citizen through the provisions of the Constitution on freedom of expression and the press, and through the Freedom of Religion Act. Under the main rule of the Freedom of Religion Act, children born in wedlock become, at birth, members of the Church of Sweden if one parent is a member and if the other parent is not, or if the child is not to be a member. If both parents become members of the Church, the child becomes a member of the Church if the parents marry each other. If one parent is a member of the Church and the other is not, the child becomes a member of the Church if the parents marry each other. If the child becomes a member of the Church, notification of entry in the Church register is given by the custodian. If the child is not a member of the Church, notification of entry in the Church register is given by the custodian. If the child has been asked whether or not he or she wishes to be a member of the Church, the child is entitled to apply personally for membership or withdrawal. The Ecclesiastical Advisory Panel recently appointed by the Government has, among other things, been instructed to review the rules governing membership of the Church of Sweden. The Panel is required by its terms of reference to draft rules on the subject which are compatible with the prescriptions of the Constitution Act concerning civil rights and liberties.

76. Religious education is taught as a social subject in compulsory and upper secondary school. Teaching is non-denominational and is required to deal with all the main religions in the world and with other creeds and ideologies which may be relevant to teaching. Since, however, it is Christianity which has meant most to the religious life and traditions of Swedish society, it is natural that teaching should make the Christian view of life its point of departure. If the custodian so requires, pupils can be exempted from the religious instruction provided in compulsory school. This applies regardless of whether a pupil belongs to a denomination having Government permission to provide such instruction instead of the school. The Catholic Church in

報告兒童之思想與宗教自由時，強調本國之特有宗教文化。

公民權與自由

Civil Rights and Freedoms (Articles 7, 8, 13-17 and 37(a))

Corporal punishment (CRC/C/GB/CO/4, Para 42)

體罰的在地概念

Our view is...

- The UK Government does not consider that corporal punishment has clear laws to deal with it. **On the other hand, it does not constitute violence and that parents can administer a mild smack.**
- All schools in England, Northern Ireland, Scotland, and Wales are banned by law from using any form of corporal punishment. **There are some unregistered independent settings, providing part-time education, that are not covered by this ban. However, work is underway to develop a code of practice which will send a clear message about the expected standards that all settings should meet, and to highlight that assault of children is unlawful in any setting.** Physical punishment has also been banned in child minding, other early years provision, local authority foster care and children's homes, either by statute or through codes of conduct.
- The UK is taking a variety of **action** to promote positive parenting and caring relationships. **Examples** are included in Northern Ireland's Families Matter Strategy, Scotland's National Parenting Strategy and the *Help at Hand; A Positive Approach to Parenting* publication in Wales.

2015定期報告準則

新增：5.對兒童的暴力行為

- 關於這一組權利，締約國應就以下問題提供相關資料：
- (a) 凌辱和忽視(§19)；
- (b) 為禁止和廢除一切形式的有害習俗(包括但不限於：女性外陰殘割、早婚和強迫婚姻)所採取的措施(§24-3)；
- (c) 性剝削和性侵犯(§34)；
- (d) 不受酷刑和其他殘忍、不人道或有辱人格的待遇或處罰(包括體罰)的權利(§37(a)和§28-2)；
- (e) 為受害兒童的身心康復和重返社會所採取的措施(§39)；
- (f) 是否有兒童救助熱線。
- 對於這組權利，締約國須考慮到關於兒童受保護免遭體罰和其他殘忍或不人道形式懲罰的權利的第8號一般性意見(2006年)、關於兒童免遭一切形式暴力侵害的權利的第13號一般性意見(2011年)、以及關於有害習俗的消除對婦女歧視委員會第31號和兒童權利委員會第18號聯合一般性建議/意見。

CRC專要文件撰寫準則：初次報告vs定期報告

* 【】為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
對兒童的暴力行為	第8號—兒童不受體罰及其他殘忍或有辱人格的處罰	<p>【30】：締約國應就以下問題提供相關最新資料：</p> <p><u>(d)不受酷刑和其他殘忍、不人道或有辱人格的待遇或處罰(包括體罰)的權利(第37條(a)項和第28條第2款)；</u></p> <p><u>(e)為受害兒童的身心康復和重返社會所採取的措施(第39條)</u></p> <p><u>(f)是否有兒童救助熱線。</u></p>
	第13號—兒童不受任何形式暴力之權利	<p>【30】：締約國應就以下問題提供相關最新資料：</p> <p><u>(a)凌辱和忽視(第19條)；</u></p> <p><u>(c)性剝削和性侵犯(第34條)；</u></p> <p><u>(e)為受害兒童的身心康復和重返社會所採取的措施(第39條)</u></p> <p><u>(f)是否有兒童救助熱線。</u></p>

CRC專要文件撰寫準則：初次報告vs定期報告

* 【】為2015年定期報告撰寫準則編碼

	相關一般性 意見	關連性
對 兒 童 的 暴 力 行 為	第18號—與CEDAW委員會共同出具之「有害習俗/作法」	<p>【30】：關於這一組權利，締約國應就以下問題提供相關最新資料：</p> <p><u>(b)為禁止和廢除一切形式的有害習俗(包括但不限於：女性外陰殘割、早婚和強迫婚姻)所採取的措施(第24條第3款)；</u></p> <p><u>(e)為受害兒童的身心康復和重返社會所採取的措施(第39條)</u></p> <p><u>(f)是否有兒童救助熱線。</u></p>

虐待和忽視

Abuse and neglect: article 19

法律規範

- 1. Measures in
- 172. The Criminal Code contains several provisions prohibiting all forms of sexual abuse: sections 151 (sexual interference), 152 (sexual touching), and 153 (sexual exploitation). Specific offences concerning parents, guardians and householders are (guardian procuring sexual activity), 171 (householder permitting sexual activity) and 172 (corrupting children).
- 173. In 1984 the Committee on Sexual Offences Against Children and Youths delivered its report entitled Sexual Offences Against Children (the Badgley Report) to the Ministers of Justice and Health.
- 174. The Family Violence Initiative and Welfare Canada coordinates federal activities in this area. **Current activities build upon** the 1986 five-year Child Sexual Abuse and Family Violence Initiative...
- 175. In 1991 the Family Violence Initiative was announced, with **a budget** of \$136 million over four years. Its purpose is to reduce the incidence of all forms of child abuse through various prevention strategies, including raising awareness, mobilizing resources and changing attitudes. It will also explore innovative models of intervention and support for abusive and neglectful families. The Aboriginal Initiative to combat violence on Indian reserves **reflects the recognition on the part of the Government of Canada of the seriousness of the problem in Aboriginal communities and involves an allocation of \$36 million over four years.**

研究報告與
政策之演進

問題與應對措施

原住民

不受酷刑和其他殘忍、不人道或有辱人格的待遇或處罰(包括體罰)的權利

- 學校紀律:處理問題學生

- 341. 教育署已向各中小學校長和教師發出訓導指引。這些指引說明處理學生問題時應採取積極的態度和從預防方面著手，並強調在訓導過程中，預防工作和家長參與的重要性。當局提醒學校，倘認為必須施行某種紀律處分，則所作的處分，必須只是為了要令學生行為有正面的改變及向學生灌輸自律意識。有批評指學校的訓導方針過分專橫，這方面通常包括在處罰時未能顧及學生的尊嚴，例如在班內當眾羞辱學生。港府的回應是，當局不時透過通告、研討會及由督學和教育心理學家到學校探訪等途徑，提醒各學校校長和學校監知道，學校如採用一個明白學生的困難和長處的制度，會令訓導工作事半功倍。此外，對於稱讚和獎賞兩者的積極作用和重要性亦加以強調，而對於任意動輒要全班留堂的做法和顧學生尊嚴的處分，則加以勸阻。有關廢除學校施行體罰的詳情，載於上文第134段（公約第37(a)條項下）。

CRC專要文件撰寫準則：初次報告vs定期報告

* 【】 為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
家庭環境和替代性照顧	第7號—兒童權利於幼兒時期之落實	<p>【32】：關於這一組權利，締約國應針對以下問題，提供關於主要的立法、司法、行政或其他現行措施的相關最新資料：</p> <p><u>(a)家庭環境和父母以符合兒童不同階段接受能力的方式進行的指導(第5條)；</u></p> <p><u>(b)父母的共同責任、向父母提供的協助以及托兒服務(第18條)；</u></p>
	聯合國大會2009年12月18日第64/142號決議附件中的關於兒童替代性照顧的準則	本準則目的是 <u>加強執行《兒童權利公約》以及其他國際文書中關於已失去或有可能失去父母照料的兒童的保護和福祉問題的相關規定</u> （聯合國大會2009年12月18日第64/142號決議）

家庭環境和替代性照顧 (Family and Alternative)

123. For the most part family law, the regulation within provincial and territorial jurisdiction and visiting rights to the extent that they and the lands reserved to them, and to the

A. Best interests: article 3

1. Measures in force

(a) Paragraph 1 (best interests)

124. See paragraph 66.

(b) Paragraph 2 (protection and care)

125. The Hazardous Products Act provides Consumer and Corporate Affairs Canada...

126. In 1990 the Government of Canada initiated KIDSCARE, a national programme to raise public awareness of accidental injuries and death due to product hazards. This programme was allocated \$312,000 in 1992-1993, and raised another \$130,000 through sponsorship from the private sector.

(c) Paragraph 3 (standards for institutions, facilities and services)

129. The Government of Canada, in part through its membership on the federal-provincial-territorial advisory committee structure, has provided leadership in the development of guidelines for standards regarding institutional care as they may be adopted or amended by each province. The Guidelines address such topics as distribution of units, bed requirements, policies for the units or services, staffing and preparatory learning required, supporting services required, space and equipment requirements...

2. Factors, difficulties and progress

130. Awareness of childhood injury as a major health issue is recent, and models for action have been geared to specific types of injuries and so are not widely applicable. The many individuals and organizations concerned have not traditionally worked together to deal with this problem. While injury is the leading cause of death in children, the rate of death by accident declined among children aged 1 to 4 by 54 per cent from 1971 to 1985. This decline is attributed to many factors, including less drinking by drivers, increased use of child restraints, improvements in the safety of children's products and a growing awareness among children, parents and care-givers of safety issues.

3. Priorities and goals

131. The goals of the Government of Canada are to increase federal collaboration with national organizations to heighten awareness of this major health issue, and to develop, implement and evaluate childhood injury programmes on the basis of Canadian Hospitals Injury Reporting and Prevention Programme data and other routinely collected morbidity and mortality data....

現有措施； 影響因素、
執行困難與執行進展；
優先執行與未來目標

家庭環境和替代性照顧

- 父母指導 (§5)
- 兒童福利政策載述於一九九一年發表的《跨越九十年代香港社會福利白皮書》內。有關政策旨在支援及鞏固家庭，使家庭能提供一個合適的環境，令子女在體能、情緒及社交方面得以發展。
- 社會工作者向父母提供個人輔導及家庭生活教育，以協助他們了解在照顧子女福利和健康方面的角色及責任。
- 當社會福利署署長被委任為任何一名兒童的法定監護人或監管人時，他或其授權人員便須負起作為該名兒童的父母的責任。
- 父母責任 (§18-1、18-2)
- 當局加強家庭個案工作服務及輔導服務、幼兒服務以及各項家庭支援服務，包括家務指導和家務助理服務。
- 幼兒服務提供情況：

	1991-92年	1994-95年	1995-96年
政府及資助日間託兒所名額	20,755個	23,768個	25,503個
資助日間育嬰園名額	947個	1,440個	1,750個
暫託幼兒單位	50個	135個	210個
家務助理隊	64支	100支	114支
家務指導員	4名	23名	45名
家庭資源及活動園地		19個	19個

摘自：謝國欣，1996年大不列顛及北愛爾蘭聯合王國根據《兒童權利公約》第44條提交有關香港的第一次報告-閱讀摘要，p.6-11。

CRC專要文件撰寫準則：初次報告VS定期報告

*【】為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
基本健康與福利	第3號—愛滋病與兒童權利	<p>【35】：締約國應就以下問題提供相關最新資料：</p> <p><u>(a)存活與發展(第6條第2款)；</u></p> <p><u>(c)為解決最普遍的健康問題、促進兒童身心健康及福利、以及預防並解決傳染病和非傳染病所作的努力；</u></p>
	第4號—公約下少年的健康及發展	<p>【35】：締約國還應就以下問題提供相關最新資料：</p> <p>(a)存活與發展(第6條第2款)；</p> <p>(b)健康與保健服務，特別是初級醫療保健(第24條)；</p> <p>(c)為解決最普遍的健康問題、促進兒童身心健康及福利、以及預防並解決傳染病和非傳染病所作的努力；</p> <p>(d)青少年的生殖健康權及為促進健康生活方式而採取的措施；</p> <p>(e)保護兒童不受藥物濫用之害而採取的措施(第33條)</p>

CRU 等安文件供為準則:初次報告VS定期報告

* 【】 為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
基本健康與福利	第9號—身心障礙兒童之權利	【34】 ：締約國應提供相關最新資料，說明殘疾兒童的情況，並說明採取了哪些措施確保他們享有尊嚴、能夠自立並積極參與社會生活，為他們提供各種服務、交通和設施便利，尤其是使他們能夠參加教育和文化活動(第23條)。
	第15號—兒童享有可達成範圍內最高水準之健康的權利	【35】 ：締約國應就以下問題提供相關最新資料： <u>(a)存活與發展(第6條第2款)；</u> <u>(b)健康與保健服務，特別是初級醫療保健(第24條)；</u> <u>(c)為解決最普遍的健康問題、促進兒童身心健康及福利、以及預防並解決傳染病和非傳染病所作的努力；</u> <u>(d)青少年的生殖健康權及為促進健康生活方式而採取的措施；</u> <u>(e)保護兒童不受藥物濫用之害而採取的措施(第33條)。</u>

基本健康與福利

- **Health and essential services (art**
- **A. Survival and development**
- **Child and infant mortality**
- 413. The constant improvement... a decrease in child and infant m...
- 414. In the early 2000s, mortalit...
- 415. Overall, in absolute terms, ... 4 fell ... cent...
- **Infectious diseases**
- 420. In Italy, many children's infectious diseases are now preventable thanks to the availability of safe and effective vaccines.
- 421. The epidemiological data concerning new cases of infectious diseases among Italian children are provided by the Ministry of Health and they are based on the reports sent by the competent local health authorities...
- **The cases of paediatric AIDS**
- 428. In the last 13 years there has been a gradual decrease in the number of cases of paediatric AIDS. In fact, after the peak of 84 new cases recorded in 1995, in 2007 there was only one case...

兒童與嬰兒死亡率；傳染病；嬰
幼兒獲得性免疫缺陷綜合征之案
件(AIDS)；兒童自殺及試圖自
殺；交通事故死亡率

基本健康與福利 (Basic health and welfare)

基本健康與福利 (生存權)

A. 生存與發展 (§6)

(1) 影響兒少發展的危險因素

(2) 主要的政策面向：需求導向、適當的提供、接受照顧的機會、強調預防、弱勢兒童的特別關注、多重問題的兒少、政策與服務的一致性與合作、品質、多元文化、主管機關的合作

B. 身心障礙兒童 (§23)

(1) 一般性政策介紹

(2) 心智障礙兒童：提供的機構、服務與措施

(3) 肢體障礙兒童：提供的機構、服務、措施、問題、改進方案

C. 健康照護服務 (§24)

(1) 一般性/預防性照護服務內容與方案及評估

(2) 兒童死亡率趨勢發展

(3) 營養：政策目標、服務方案與結果

(4) 家庭計畫：政策目標與服務、相關研究補助

(5) 傷害性措施：針對女性割禮的政策與措施

D. 社會安全 (§26)

(1) 荷蘭社會安全方案介紹

(2) 兒童擁有獨立權利的社會安全福利項目

E. 兒童照顧服務 (§18)

(1) 一般性介紹：政策目標與概況

(2) 照顧服務供給、需求、服務使用狀況、問題、身心障礙兒童。

F. 生活水準 (§27)

(1) 社會救助政策：國家救助法

(2) 女性貧窮狀況與因應政策

(3) 就學津貼與補助政策

(4) 稅額減免政策

(5) 特別救助政策內容

(6) 青年就業保障法

CRC專要文件撰寫準則：初次報告vs定期報告

*【】為2015年定期報告撰寫準則編碼

	一般性意見	關連性
教育、休閒與文化活動	第1號—教育的目的	<p>【38】：關於這一組權利，締約國應提供相關最新資料，說明有關法律和政策及其執行情況、品質標準、財力和人力資源以及其他措施，以<u>確保兒童、特別是處境不利和脆弱的兒童，有權享受到從學前教育到高等教育的全套教育以及職業教育和培訓</u>，尤其應涉及下列方面：</p> <p>(a)<u>受教育權，包括職業培訓和指導(第28條)；</u></p> <p>(b)<u>教育的目的(第29條)，同時還應注意教育品質；</u></p>
	第7號—兒童權利於幼兒時期之落實	<p>【38】：關於這一組權利，締約國應提供相關最新資料，說明有關法律和政策及其執行情況、品質標準、財力和人力資源以及其他措施，以確保兒童、特別是處境不利和脆弱的兒童，<u>有權享受到從學前教育到高等教育的全套教育以及職業教育和培訓</u>，尤其應涉及下列方面：</p> <p>(a)<u>受教育權，包括職業培訓和指導(第28條)；</u></p> <p>(c)<u>屬於土著群體和少數群體的兒童的文化權利；</u></p> <p>(d)<u>人權教育和公民教育；</u></p> <p>(e)<u>休息、遊戲、閒暇、娛樂和文化及藝術活動</u></p>

CRC專要文件撰寫準則：初次報告vs定期報告

*【】為2015年定期報告撰寫準則編碼

	一般性意見	關連性
教育、休閒與文化活動	第9號—身心障礙兒童之權利	<p>【38】：關於這一組權利，締約國應提供相關最新資料，說明有關法律和政策及其執行情況、品質標準、財力和人力資源以及其他措施，以確保兒童、<u>特別是處境不利和脆弱的兒童</u>，有權享受到從學前教育到高等教育的全套教育以及職業教育和培訓，尤其應涉及下列方面：</p> <p><u>(a)受教育權，包括職業培訓和指導(第28條)；</u></p> <p><u>(c)屬於土著群體和少數群體的兒童的文化權利</u></p> <p><u>(e)休息、遊戲、閒暇、娛樂和文化及藝術活動</u></p>
	第11號—原住民兒童及其公約權利	<p>【38】：關於這一組權利，締約國應提供相關最新資料，說明有關法律和政策及其執行情況、品質標準、財力和人力資源以及其他措施，以確保兒童、<u>特別是處境不利和脆弱的兒童</u>，有權享受到從學前教育到高等教育的全套教育以及職業教育和培訓，尤其應涉及下列方面：</p> <p><u>(c)屬於土著群體和少數群體的兒童的文化權利</u></p>

CRC專要文件撰寫準則：初次報告vs定期報告

*【】為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
教育、休閒與文化活動	第17號—兒童享有休息、休閒、遊戲、休閒活動、文化生活及藝術活動之權利	<p>【38】：關於這一組權利，締約國應提供相關最新資料，說明有關法律和政策及其執行情況、品質標準、財力和人力資源以及其他措施，以確保兒童、特別是處境不利和脆弱的兒童，有權享受到從學前教育到高等教育的全套教育以及職業教育和培訓，尤其應涉及下列方面：</p> <p><u>(a) 受教育權，包括職業培訓和指導(第28條)；</u></p> <p><u>(e) 休息、遊戲、閒暇、娛樂和文化及藝術活動(第31條)。</u></p>

受教權，包括職業培訓和指導

Education, including vocational training and guidance

- 457. The aim of education in the United Kingdom is to develop to the full the talents of both child and adult as a whole. Children in England, Wales and Northern Ireland) are generally known as continuing education, per cent of 3- and 4-year-olds now choose to enter an education college, for another 6 years before seeking employment, undertaking training on a government scheme or entering higher education.
- 458. Although the overall approach to education is now broadly similar throughout the United Kingdom, the service is administered separately in England, Wales, Scotland and Northern Ireland.
- 459. A series of reforms has been introduced during the last few years to implement the principal objectives of the Government's education policies...
- **Different forms of secondary education**
- **Higher education (HE)**
- **Information about Further Education (FE)**
- **Attendance**
- **Discipline**
- **International cooperation...**

英國國家報告在教育部分著墨甚多。從早期教育，中級教育，高等教育，到職業教育，繼續教育，受教參與率，紀律（含體罰的禁止）與國際合作都作了詳細的說明。

教育、休閒與文化活動 (Education, leisure and cultural activities)

通過向兒童發放問卷的方式調查其休閒娛樂活動的內容

<p>I will now name some different things people can do in their free time. Please tell me, on a scale of +5 to -5, what you like to do in your free time.</p> <p>" +5 " means you really enjoy a given activity; " -5 " means you don't enjoy that activity at all.</p> <p>You can use the numbers in between to indicate how much or how little you enjoy a given activity.</p>						
	WEST	Sex		EAST	Sex	
Average ratings	Total	Male	Female	Total	Male	Female
Number of respondents	1 015	513	500	1 190	608	582
Participate in sports	+3.0	+3.1	+2.9	+1.9	+2.2	+1.6
Attend sporting events	+0.5	+1.0	+0.0	+0.0	+0.4	-0.5
Go to the movies	+2.6	+2.2	+3.0	+1.9	+1.6	+2.2
Go to the theatre or to a concert	+1.0	+0.6	+1.5	+0.3	-0.3	+0.9
Listen to music, read	+2.5	+2.2	+2.8	+2.6	+2.3	+2.8
Go to bars	+1.4	+1.4	+1.4	-0.7	-0.3	-1.1
Go to the disco	+0.8	+0.8	+0.9	+1.6	+1.3	+1.8
Just hang around	+1.5	+1.1	+1.9	+1.4	+1.1	+1.7

教育、休閒與文化活動

(Education, leisure and cultural activities)

- **Leisure time**

- 160. An answer to the question of how much free time fathers spend with their children each day on average can be found in the 1988, the Institute asked a test of parents what they did in their free time, as well as what they did with their parents, the Institute found that 36 per cent of fathers went on outings (36 per cent). There were no married mothers who said they would like to spend their free time with their children (68 per cent) that they would like to spend their free time with their children. The Government by the Institute of Family Research in the Federal Republic of Germany in the March of 1993. Within the framework of this survey, fathers in the eastern and western parts of the country were asked what recreational activities were and what obstacles they felt prevented them from pursuing these activities. From their responses, western Germany appears to be a recreation-oriented society with a lot of recreational opportunities, little free time and quite a lot of work. Eastern Germany, by contrast, appears to be a work-oriented society with little work, a lot of involuntary free time and few recreational opportunities.

國家報告中呈現兒童之意見：
通過向兒童發放問卷的方式調
查其休閒娛樂活動的內容

- 161. The following table (IPOS) provides more detailed information concerning the recreational activities of young people in the eastern and western parts of the country.
- **Scientific research in the field of youth sports**
- 190. Numerous research projects designed to promote youth sports are being pursued in collaboration with the Federal Institute of Sport Science. These projects address a wide variety of topics; examples include the search for and promotion of athletic talent within the framework of special advanced sports instruction in schools for pupils between the ages of 8 and 14, the drafting of proposals for educationally oriented youth work in sports clubs, and an analysis of the problem of young non-athletes' abstinence from sports.

教育及職業培訓和指導

- **落實結果-立法方面：**...
- **落實結果-行政方面：**
- 學前教育：1993年中國幼兒園有16.52萬所，在園兒童有255.54萬人。3-6歲兒童入學園率達30%。交通不便的山區現兒童活動站，遊戲小組和巡迴輔導組等幼兒教育形式。這行政部門支持。
- 基礎教育：政府積極要求貫徹義務教育。1991-1993中國基礎教育發展狀況，詳報告書之附表六。
- 初等教育：學校布局合理，兒童可以就近入學。人煙稀少、牧區都設置有寄宿學校制和教學點，參詳報告書之附表七。
- 初等中級教育：大城市和沿海發達地區普級初等中級教育。...
- 1992年小學生和初中生輟學率為2.19%和5.7%。
- 1992年全國普通高中畢業生共226.13萬人。
- **未落實原因與改善方式：**
- 學前教育的幼兒占適齡幼兒總數的比例仍然較低，要達到「九十年代中國兒童發展規劃綱要」指標仍是艱鉅任務。幼兒教育發展不平衡，特別是經濟發展較差的農村，幼兒教育發展緩慢，師資質量亦有待加強。

統計資料

- 2%的學齡兒童未入學接受初等義務教育，主因是社會、地理存在不利因素。為幫助這些學童，政府每年撥款5億元人民幣補助，減免雜費，設置獎學金制度，開展「希望工程」、「春蕾計畫」等活動。...
- 部分學生繳不起學雜費而輟學，國家強調，義務教育不收學費，只收雜費，各地政府都規定雜費的具體標準，嚴禁亂收費，對家境困難的學生普遍實行減免雜費政策。
- 少部分學生學習困難而厭學、退學，國家根據各地經濟狀況，社會發展與學生自導和就業前教育，以及舉辦初中職業為者，國家要求工讀教育，使這些學...
- 中國貧困地區平均每年有100萬名失學兒童，每年來收到1多億元人民幣捐款，救助25個自治區生活困難的小學生重返校園，並興建62所希望小學。
- 1993年有261萬未入學的學齡兒童，女性比例高於男性，根據春蕾計畫在16個省(自治區)建立800多個女童班，使4萬名女童返回校園。
- 因普通高等教育規模有限，接受正規高等教育的人占全國總人口比例相當低，中國政府大力發展成人高等教育，爭取更多人接受高等教育機會。
- 1993年第八屆全國人民代表大會第四次會議「關於教育工作的報告」指出，計畫經濟轉向社會主義市場經濟加快轉軌的過程中，教育改革和發展正面臨著許許多多新問題，一是教育改革的步伐仍然滯後於經濟和社會發展的要求；二是教育的投入不足與教育事業發展的矛盾，特別是機嶺教育經費嚴重短缺；三是教師戴育偏低，教師隊伍不夠穩定。

詳細說明
未落實受教權之在地原因與改善方式

CRC專要文件撰寫準則：初次報告vs定期報告

* 【】 為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
特別保護措施	第6號—遠離原國籍無人陪伴和無父母陪伴的兒童待遇	<p>【40】：關於這一組權利，締約國應就保護以下各類兒童的措施提供相關資料：</p> <p><u>(a)在其原籍國之外尋求難民保護的兒童(第22條)、無人陪伴的尋求庇護兒童、國內流離失所的兒童、移徙兒童以及受移徙影響的兒童；</u></p> <p><u>(c)街頭兒童；</u></p> <p><u>(j)武裝衝突中的兒童(第38條)，包括身心康復和重返社會(第39條)。</u></p>
	第11號—原住民兒童及其公約權利	<p>【40】：關於這一組權利，締約國應就保護以下各類兒童的措施提供相關資料：</p> <p><u>(b)屬於少數群體或土著群體的兒童</u></p>

CRC專要文件撰寫準則：初次報告vs定期報告

* 【】為2015年定期報告撰寫準則編碼

	相關一般性意見	關連性
特別保護措施	第10號一少年司法法中的兒童權利	<p>【40】：關於這組權利，締約國應就保護以下各類兒童的措施提供相關資料：</p> <p><u>(e) 觸法兒童、犯罪活動的兒童受害人和證人、以及少年司法：</u></p> <p><u>(一)少年司法(第40條)，是否存在著專門的單獨法院，以及所適用的承擔刑事責任的最低年齡；</u></p> <p><u>(二)被剝奪自由的兒童，以及採取何種措施，確保將對兒童的任何逮捕、拘留或監禁作為最後手段，期限應為最短的適當時間；並迅速提供法律及其他援助</u></p> <p><u>(三)對兒童的判刑，特別是禁止判處死刑和無期徒刑(第37條(a)項)；是否存在恢復性質的替代性懲罰；</u></p> <p><u>(四)身心康復和重返社會(第39條)；</u></p> <p><u>(五)對於所有從事少年司法工作的專業人員進行的培訓活動</u></p>

特別保護措施 (Special protection)

公私各部門機構協力工作之現況，改革動機、方向與舉措，存在問題與目標，並提供相關統計數據佐證

觸犯法律之兒童、犯罪活動的兒童受害人和兒童證人、以及少年司法

Delinquency

of the law on j
the entry into
ct of a resoluti
ertaining to the sc
he entire law on juvenile

Findings

ence and sexual offences committed within the family sphere can suffer
of their - usually repeated - interrogation in criminal proceedings against
they feel burdened by the responsibility of perhaps destroying the family

- 184. A number of legal policy initiatives and proposals addressing this problem have already been put forward...
- 185. The goals to which these proposals aspire are admirable. **A number of questions concerning the type of measures to be taken are as yet unresolved.** The Federal Ministry of Justice has assigned a research project to the University of Berlin to go through and screen the relevant literature. In addition, the Federal Ministry of Justice is considering collaborating with the Ministry for Family Affairs and Senior Citizens within the framework of a research project to discuss in depth the questions that remain unresolved.
- 186. For this reason, the time-frame for potential institution of legislative measures is still undetermined.
Reform of the execution of sentences passed by youth courts
- 187. Up until now there has been no comprehensive statutory regulatory framework governing the execution of sentences passed by youth courts, the execution of prison sentences in reformatories and the execution of pretrial detention of juveniles and adolescents.
- 188. The objectives - especially re-education - which are specifically pursued in cases involving young people and are linked to the execution of the above-mentioned measures on young prisoners cannot be optimally attained in the absence of such a statutory framework. The same is also true, for example, of the specifically youth-related criteria to be stressed in the structuring of execution of pretrial detention of juveniles.
- 189. Plans are therefore under way to institute an independent statutory framework in the form of a special act on the execution of sentences passed by youth courts; incorporated into this act will be provisions governing the structuring of execution of pretrial detention of juveniles.

Children in the legal system

the Juvenile Justice Department has signed several **Agreement Protocols** with both the Regions and public and third-sector bodies. These protocols are a strategic tool in developing cooperation between the State, the Regions and local bodies. ...

In this field there are the following Protocols:

- • With the Ministry of Transport and Infrastructure and the Italian Red Cross for research to educate about legality and create greater awareness of the law, and the existence in order to obtain the license
- • With the Ministry of Transport and Infrastructure (Police and Carabinieri) for technical and professional training, and social and employment inclusion in the maritime transport sectors
- • With the National Department for Anti-Drugs Policies (Programme Agreement) for the promotion of health and the prevention of drug addiction and addictive disorders
- • With the National Union of Social Workers to prevent children from getting into trouble and protecting them when they are, provide integrated training, and monitor the procedures and processes of the USSM
- • With the National Association of Italian Pedagogists (ANPE) to promote and protect the rights of teenagers, and to implement socio-educational and rehabilitation programmes...
- • With the Italian Red Cross for socially useful activities; the renewal of the agreement in 2006 also included nursing activities, first-aid courses, studies and research to promote greater awareness among communities of the issue of juvenile delinquency
- • With the Association Auxilia for social inclusion, research and study activities on juvenile delinquency, the publication of the activities of the Juvenile Services in the Association's journal Social News...

公私各部門機構
協力工作之現況，
改革動機、方向
與舉措

受剝削的兒童（包括身心恢復及

兒童參與表意

iii. 性剝削及性虐待（第34條）

- 1989年，有7300名學齡兒童參加了有關性和暴力的調查。樣本代表了全國9年級的所有兒童。該調查是兒童福利中央聯盟、全國社會事務委員會、全國衛生委員會以及全國教育委員會的合作專案。
- 在該調查中，18%的女生報告比他們大5歲以上的人有過性行為。大多數案件都是與他們有親密關係的人。在性虐待方面，有7%的女生曾遭遇過性虐待，施虐者是爸爸，3%的案件中，施虐者是繼父。男生遭遇性虐待的比例較低。
- 芬蘭性虐待案件數和對相關案件進行調查的糾紛案件數都低於國際平均水準。但是，這一問題的特殊性也十分明顯：（1）試圖否認或淡化問題的趨勢；（2）對這一問題過於敏感，不考慮事實，更多將其解讀為與離婚相關的情形；（3）各機構之間合作困難；（4）職業技能的缺乏。此外，還有涉及多名兒童被虐待的案件。這也反映出法律對兒童權利的保護不足。對這類案件的庭前調查的材料總是變成公共資料，除非經過處理，否則會被提起公訴。這也侵犯了兒童的隱私權。
- 1992年，為解決這些問題，芬蘭成立了一個專家組，主要負責審查修訂相關指南，並提供相關的培訓。而且，在許多地區，各機構也建立了相關團隊，合作調查相關問題。

挑戰及原因分析

解決方式