

# *Don't Ask, Do(n't) Tell: Homeschooling in Hong Kong*

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## **Abstract**

Hong Kong's history of compulsory schooling (as opposed to education) commenced under colonial rule and has been maintained by the local government following the 1997 Handover. Beyond the exception of "reasonable cause," homeschooling, or elective home education, is in principle prohibited under the laws of Hong Kong. However, there is evidence of a growing homeschooling community in Hong Kong that relies on loopholes in the law and an apparent *de facto* government policy to operate. This article sets out the background, legal framework, and homeschooling practice in Hong Kong. It criticizes the current situation from the perspectives of legal certainty and children's rights. The author suggests that the government should take action to devise clear laws and public policy in relation to elective home education.

**Keywords:** homeschooling, education, children's rights, colonialism, Hong Kong

## 1. INTRODUCTION

Schooling, as opposed to education, has been compulsory in the Hong Kong Special Administrative Region (Hong Kong or HKSAR)<sup>1</sup> since 1971. In that year, the British colonial government adopted the Education Ordinance Cap. 279, which made schooling mandatory.<sup>2</sup> The Ordinance has remained in force following the 1997 Handover to China<sup>3</sup> and, as a consequence, parents in Hong Kong are still required to send their children to a registered school for educational purposes, unless a special exemption applies. Elective home education, or homeschooling, is seemingly not an available option to parents with children of compulsory school age. However, since around 2010, an increasingly active and open homeschooling community has started to flourish as a result of dissatisfaction with the Hong Kong school system and

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1. The official name of Hong Kong is "The Hong Kong Special Administrative Region of The People's Republic of China." See the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which functions as Hong Kong's "mini-constitution."

2. Cap. 279 Education Ordinance (1971), L.N. 116 of 1971. See also Hong Kong Legislative Council (1971).

3. In 1997, Hong Kong returned to the People's Republic of China, albeit under a special arrangement that stipulated that, for another 50 years (until 2047), Hong Kong would retain its own legal system (common law as opposed to Chinese civil law) and extensive regulatory autonomy. These arrangements are set out in the Letters Patent, Sino-British Joint Declaration and the Basic Law, see Chan & Lim (2015), Parts I and II.

parental (religious or philosophical) convictions.<sup>4</sup> This community operates in a grey area of the law, relying on apparent loopholes in the law and a *de facto* homeschooling policy by the Hong Kong Education Bureau.<sup>5</sup> Irrespective of whether the actions of the homeschooling community are effectively legal under the current law, the increasing number of parents that homeschool in Hong Kong is a reality that should be addressed. This article aims to start doing this by discussing the background to compulsory schooling and by providing an overview of both applicable laws and the *de facto* practice of homeschooling in Hong Kong. It offers a critique of the current situation from the viewpoint of legal certainty and children's rights, and provides suggestions for reform that include clear laws and public policy.

## 2. COMPULSORY SCHOOLING FROM A HISTORICAL PERSPECTIVE

Whilst officially based on "this new idea of the basic human rights,"<sup>6</sup> various developments that had little to do with human rights played an important role in the decisions to establish, expand, and maintain compulsory schooling in Hong Kong. The territory was acquired by the British in 1842 as a trading post only, meaning that the colonial rulers initially had little incentive to occupy themselves with education in Hong Kong.<sup>7</sup> This was at least the case for education for the masses. In respect of the Chinese elites, the British sought enlightenment through education, which the colonizers considered would result in an attitude of co-operation.<sup>8</sup> Hence the Education Committee remarked in 1902 that:

what education is given should be thorough ... better results will be obtained by assisting to enlighten the upper classes of Chinese than by attempting to force new ideas on the mass of the people.<sup>9</sup>

The general disinterest in education nonetheless changed to an increasingly acute interest during the second part of the twentieth century. This shift came about primarily as a result of political and economic considerations, although there was equally increased attention for the welfare of poorer children.<sup>10</sup> Political factors were of crucial importance, in particular the rise of the Communist Party in China since the end of the World War II.<sup>11</sup> This did not, however, immediately lead to a state system of compulsory schooling, but it prompted the use of education to keep the masses in check. More specifically, the colonial government decided to rely on, and subsidize, the many religious organizations that were already expanding into the educational field.<sup>12</sup> It was keen on children of Chinese descent attending such schools, because as the Secretary of the Board of Education revealed in 1950:

The government both in UK [sic] and in its colonial policy recognizes that by and large only religion can resist Communism and that non religious [sic] secular primary

4. See Zhao (2014); Sieh (2015); Riley (2016).

5. See e.g. Steimle (2014a); Riley, *supra* note 4, pp. 2–3.

6. Hong Kong Legislative Council, *supra* note 2, p. 853.

7. Tang (1994), p. 336; Luk (2005), p. 43; Sweeting (2007), p. 91.

8. Sweeting, *supra* note 7, p. 92; Morris & Vickers (2015), p. 312.

9. Sweeting, *supra* note 7, p. 92.

10. Education Commission (2000), p. 3; Ou (2016), p. 513.

11. Sweeting (2004), p. 2; Lau et al. (2016), p. 681.

12. Luk, *supra* note 7, p. 40.

education on a large scale will produce atheistic proletariat as prepared ground for Communist sowing.<sup>13</sup>

By the time compulsory schooling was introduced in 1971, the Communist threat was still considered prevalent. Yet, with a tighter grip on the education system,<sup>14</sup> the colonial government was confident that compulsory schooling would ensure that all children received an education that would steer them away from Chinese nationalism.<sup>15</sup> Moreover, the expansion of education provision had created an expectation amongst parents that the government should ensure their children could attend school.<sup>16</sup> Legislators also never questioned whether parents would actually want schooling; from the legislative history of the Education Ordinance, it transpires they agreed that school attendance was an opportunity of which to take advantage.<sup>17</sup>

Irrespective of the “links between politics and education,”<sup>18</sup> it appears that economic considerations provided the final push for the establishment and expansion of free, but compulsory, schooling.<sup>19</sup> Prior to the introduction of compulsory schooling, “child labour was prevalent” in Hong Kong and still in 1971 there was “great demand” for such labour.<sup>20</sup> However, legally, children were no longer allowed to work until age 14 and sending them to school was a means to ensure that they would indeed not work.<sup>21</sup> Whilst this consideration was important for the establishment of compulsory schooling up to age 12 in 1971, it proved decisive for the extension of compulsory school age to 15 in 1979. Around that time, Hong Kong was negotiating textile quotas and the local government feared being branded competitive as a result of the exploitation of child labour.<sup>22</sup> Compulsory schooling until age 15 allowed it to “escape criticism” and negotiate a very important economic deal for the territory.<sup>23</sup>

Maintenance of the system of compulsory education since 1971–79 has been predominantly based on political considerations. When in the 1980s it became clear that Hong Kong would be returned to China Mainland,<sup>24</sup> it became imperative to prepare the younger generation for the event. Through school education, students could be made ready for both “reunification and democratization.”<sup>25</sup> On the one hand, students needed to “understand and appreciate their Chinese cultural heritage”<sup>26</sup> if they were going to become loyal citizens of the People’s Republic of China. On the other hand, students also needed to be ready for life in a semi-autonomous region,<sup>27</sup> as the British had negotiated that, for

13. Bishop Hall, quoted in Leung (2005), p. 102.

14. Lau et al., *supra* note 11, p. 681.

15. Sweeting, *supra* note 7, pp. 100–1.

16. Sweeting & Morris (1993), p. 203.

17. Hong Kong Legislative Council, *supra* note 2; Hong Kong Legislative Council (1979).

18. Sweeting, *supra* note 7, p. 101.

19. Sweeting & Morris, *supra* note 16, p. 203.

20. Ou, *supra* note 10, pp. 512 and 514.

21. See Sweeting & Morris, *supra* note 16, p. 206.

22. *Ibid.*, p. 205.

23. *Ibid.*

24. The Sino-British Jointed Declaration was signed in 1984 for the Handover in 1997.

25. Education Commission, *supra* note 10, p. 3. See also Morris & Vickers, *supra* note 8, p. 316; Lau et al., *supra* note 11, p. 683.

26. Sweeting & Morris, *supra* note 16, p. 211.

27. *Ibid.*

another 50 years, until 2047, Hong Kong would maintain its own legal and economic system.<sup>28</sup> In order for the Special Administrative Region to function as a capitalist, common-law jurisdiction governed by a local government, there was a real need for its residents to be appropriately trained. Moreover, there was the anticipation that China would reform and “Hong Kong might support this evolution.”<sup>29</sup> Compulsory schooling could ensure the required training, as well as an appreciation of the new Motherland, across the population.<sup>30</sup> It offered the possibility (though perhaps not reality) of a smooth transition with a largely uniformly prepared population.

Since the 1997 Handover, emphasis has mostly been placed on the use of schooling to facilitate reunification,<sup>31</sup> though more recently the government has highlighted children’s interests in receiving the comprehensive academic and social education that it feels only schools can provide.<sup>32</sup> There still appears to be deep distrust of what children may be taught (or not taught) by those outside the school system. Particularly since the 2003 public unrest caused by a Central (Beijing) government attempt to make Hong Kong adopt rights-restricting national security legislation, the Central government has urged Hong Kong to use instruction as a means to cultivate patriotism.<sup>33</sup> Whilst the attempts to implement Moral and National Education in 2012, and more recently adjust the topic of history,<sup>34</sup> have proven largely unsuccessful due to overwhelming protest from the local population,<sup>35</sup> “[t]he assumption that a passive student body can be moulded according to the ideological predilections of an all-powerful establishment is widely held across the political divide.”<sup>36</sup>

The current Chief Executive of the Hong Kong Special Administrative Region certainly does view schooling as creating an opportunity to “nurture the future generations into quality citizens,”<sup>37</sup> as the following sections from her 2017 policy address demonstrate:

It is the intrinsic duty of school education to help students to understand the development of the history, culture, economy, technology, political system, and law of their country and to cultivate in them a sense of their national identity ....<sup>38</sup> We expect that through the learning of Chinese history and meaningful activities, students will develop positive values and attitudes, become knowledgeable and responsible citizens with a sense of our national identity, and contribute to our country and our society.<sup>39</sup>

Alongside the idea that schooling is important to create a uniform identity, however, a new narrative surrounding compulsory schooling that focuses on children’s interests has developed over the last half-decade. This development has coincided with continued critique from

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28. See Chan & Lim, *supra* note 3, Parts I and II.

29. Morris & Vickers, *supra* note 8, pp. 315–16; Lau et al., *supra* note 11, p. 683.

30. Sweeting & Morris, *supra* note 16, p. 211; Morris & Vickers, *supra* note 8, p. 318.

31. Morris & Vickers, *supra* note 8, pp. 319–21.

32. Hong Kong Legislative Council (2014).

33. Morris & Vickers, *supra* note 8, p. 320. See also Lau et al., *supra* note 11, p. 685.

34. Chief Executive [of the Hong Kong Special Administrative Region] (2017), p. 44; Lam & Zhao (2017).

35. Cheng & Ho (2014), pp. 1–2; Lau et al., *supra* note 11, p. 688.

36. Morris & Vickers, *supra* note 8, p. 321.

37. Chief Executive [of the Hong Kong Special Administrative Region], *supra* note 34, p. 40.

38. *Ibid.*, p. 44.

39. *Ibid.*, p. 45.

the Committee on the Rights of the Child regarding neglect of children's best interests<sup>40</sup>; a local legal community (including judges)<sup>41</sup> that has increasingly pressed for adoption of the term<sup>42</sup>; and community organizations advancing the notion of best interests in their interactions with the government.<sup>43</sup> Whilst none of these has specifically focused on homeschooling, the government has adopted similar language to explain why it thinks that children should attend school. According to the (then) Secretary for Education:

We firmly believe ... it is in the best interest of children that they should all go to school. The school provides a more balanced and structured formal curriculum as well as extra curriculum activities, and opportunities for interaction with peers and teachers. All these are essential for all-round development, covering the domains of ethics, intellect, physique, social skills, and aesthetics.<sup>44</sup>

It thus appears to be the government's stance that homeschooling parents have neither the resources to provide children with a comprehensive education that includes desired social skills nor the readiness to prepare them for a life as citizens of the Hong Kong Special Administrative Region of the People's Republic of China. Seen against this background, it is unsurprising that the Hong Kong government has not been willing to formally facilitate homeschooling, as explained in the next section.

### 3. THE LEGAL FRAMEWORK WITHIN WHICH HOMESCHOOLING OPERATES

The legal provision that regulates compulsory education in Hong Kong is somewhat ambiguous as to whether or not elective homeschooling is a legally acceptable alternative to schooling. Section 74(1) of the Education Ordinance stipulates:

Where it appears to the Permanent Secretary that a child is not attending primary school or secondary school without any reasonable cause, the Permanent Secretary, may after making such inquiries as he considers necessary, serve upon a parent of the child an attendance order in the specified form requiring him to cause the child to attend regularly as a pupil the primary school or secondary school named in the attendance order.

Whereas the homeschooling community has been keen to advocate for an interpretation of the law that grants parents the choice to homeschool—reducing “reasonable cause” to a formality (e.g. noting that objection to rote learning is sufficient)<sup>45</sup>—the government and courts do not appear to favour such a flexible approach. It is clear from the parliamentary discussion of the initial 1971 law and subsequent 1979 Amendment raising the compulsory school age to 15 that the “goal is that *all our children will attend primary [and secondary]*

40. Committee on the Rights of the Child (2005) “Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations China (including Hong Kong and Macau Special Administrative Regions),” CRC/C/CHN/CO/2, pp. 6–7. See also Committee on the Rights of the Child (2013) “Consideration of Reports submitted by States parties under article 44 of the Convention: Concluding Observations China (including Hong Kong and Macau Special Administrative Regions),” CRC/C/CHN/CO/3–4, p. 7.

41. See e.g. *PD v. KWW* [2010] 4 HKLRD 191, at [51], to Hartmann J.A.

42. See e.g. The Law Reform Commission of Hong Kong (2005), pp. 190 and 292; Irving & Hewitt (2011), p. 227.

43. Constitutional and Mainland Affairs Bureau (2016).

44. Hong Kong Legislative Council, *supra* note 32.

45. Cheung (2014a).

*schools.*<sup>46</sup> As a rule, parents must send their child to school, and only in very exceptional circumstances will they be excused from “withholding the child from attending.”<sup>47</sup> In particular, legislators and the Directors for Education at the time the relevant section was first adopted, and later amended, had three such circumstances in mind: economic hardship, special educational needs, and remoteness. On economic hardship, it was agreed that, for as long as the government had not fully implemented a financial assistance programme, children could be exempted if their families would not be able to survive financially without them looking after younger siblings whilst their parents worked low-income jobs.<sup>48</sup> Second, if a child with special educational needs could not be accommodated at a special school, then parents could be excused until such time as a suitable place would become available.<sup>49</sup> A third group of children eligible for homeschooling were those living in “remote areas,” and more specifically children of itinerant boat dwellers (of which Hong Kong had a sizable population at the time).<sup>50</sup> All other children were to attend school.

The requirement of school attendance has previously been confirmed by the Secretary for Education in response to a 2001 parliamentary question regarding the legality of homeschooling.<sup>51</sup> In his reply to the enquiry, the Secretary stated unambiguously that children between the ages of five and 15 “must attend school” and that the government had “no plan to review/change this policy.”<sup>52</sup> More recently, in 2014, the Secretary for Education replied to a renewed request for clarity on homeschooling that “parents have a legal responsibility to ensure that their children ... attend school regularly.”<sup>53</sup>

At the same time, the Secretary appeared to set the door ajar for a potential change in policy and/or the law. He suggested in his reply that he “would not as a rule disallow homeschooling,” despite emphasizing that, as far as the Education Bureau is concerned, it is in children’s best interests to attend school where they receive a “well-rounded” education.<sup>54</sup> No promises were given, other than that the Education Bureau would examine homeschooling on a “case by case” basis.<sup>55</sup> The government, however, did not proceed to take any action to reform the education law, or to issue any policy documents indicating a new appreciation of homeschooling. To the contrary, in 2015, the Secretary issued an official statement to confirm that “[h]omeschooling is no substitute for a proper school education” and “parents must ensure their children attend school.”<sup>56</sup>

46. Hong Kong Legislative Council, *supra* note 2, p. 855 (Dr The Hon. Chung Sze-Yuen OBE, J.P.), emphasis in original.

47. Hong Kong Legislative Council, *supra* note 17, p. 794 (Director of Education: The Hon. Kenneth Wallis Joseph Topley, CMG, J.P.).

48. Hong Kong Legislative Council, *supra* note 2, pp. 849, 853, and 855.

49. *Ibid.*, p. 912 (Director of Education: The Hon. John Canning, J.P.); Hong Kong Legislative Council, *supra* note 17, pp. 794–5 (Director of Education: The Hon. Kenneth Wallis Joseph Topley, CMG, J.P.).

50. Hong Kong Legislative Council, *supra* note 2, p. 849 (The Hon. Wilfred Wong Sien-Bing, OBE, J.P.), p. 853; Hong Kong Legislative Council, *supra* note 17, p. 795 (Director of Education: The Hon. Kenneth Wallis Joseph Topley). Numbers for 1971 are unknown but, when the law was amended in 1979, there was still a population of around 60,000 itinerant boat dwellers. See also Hong Kong Legislative Council, *supra* note 17, p. 783 (Secretary for Housing: The Hon. Alan James Scott, J.P.).

51. Hong Kong Legislative Council (2001).

52. *Ibid.*

53. Hong Kong Legislative Council, *supra* note 32.

54. *Ibid.*

55. *Ibid.*

56. Hong Kong Information Services Department (2015).

Where parents fail to send their children to school, the Secretary for Education may issue an attendance order requiring parents to send their child to a particular school (the school in question is under an obligation to accept the child)<sup>57</sup> (section 74(1) Education Ordinance). The relevant provision allows the Secretary for Education to make prior enquiries before issuing such order and there is the expectation that, in every case, the Secretary will either involve the Social Welfare Department<sup>58</sup> or mandate an Education Bureau Officer (e.g. a School Development Officer) to investigate the case and seek parental co-operation.<sup>59</sup> Parents are also able to appeal the decision to issue an attendance order to the Administrative Appeals Board (section 74A Education Ordinance). Once an attendance order is issued, failure to comply with such an order (bar reasonable cause or an appeal) is an offence pursuant to section 78 Education Ordinance, and may result in a fine of HKD 10,000 (GBP 966) or three months' imprisonment.

Three cases are known in which the Secretary for Education has issued an attendance order. In the first, the parents complied.<sup>60</sup> In the second case, after a two-and-a-half-year-long struggle between the parent and the Education Bureau, the parent took the child and fled to Mainland China.<sup>61</sup> The third case, however, ended in court and resulted in judgment given in *HKSAR v. Pun Chi Fai and Another*.<sup>62</sup> The parents in this case (Pun Chi Fai and Leung Suk Fong) were prosecuted after failing to comply with an attendance order for their son X. X had been attending the top school in the district where he lived. However, his father had kept him home from school out of dissatisfaction with the school principal, the parent-teacher association, the school transport service, and the selection of textbooks for students.<sup>63</sup> The judgment clarified two important matters on school attendance. First, a parent issued with an attendance order had to send their child to the school named in the attendance order and was no longer at liberty to choose another school (therefore, the Education Bureau had to be careful when determining the school and not force the parents and school back into a relationship where all trust had broken down).<sup>64</sup> Second, the court dealt with reasonable cause, ruling that it had to be determined objectively, taking all circumstances into account.<sup>65</sup> In this regard, the court notably deemed the proposition by the father that he would home-school his son a reason supporting the imposition of an attendance order, rather than one strengthening the case for reasonable cause.<sup>66</sup> The proposition of homeschooling was seen as further evidence that the parents were unwilling to send their perfectly healthy child to school in violation of the law. Judge Fung therefore upheld the conviction of the parents for failure

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57. Education Ordinance, s. 74(2A).

58. Hong Kong Legislative Council, *supra* note 2, pp. 850 (The Hon. Wilfred Wong Sien-Bing, OBE, J.P.) and 853 (The Hon. Ellen Li Shu-Pui, OBE, J.P.).

59. See *HKSAR v. Pun Chi Fai and Another* [2010] HKCFI 1719 [4–7]; Hong Kong Legislative Council, *supra* note 32.

60. Hong Kong Legislative Council, *supra* note 51.

61. Epochtimes (2002); Zhao, *supra* note 4.

62. *HKSAR v. Pun Chi Fai and Another* [2010] HKCFI 1719.

63. There are nonetheless some indications in the judgment that a principal reason was actually a personal dispute between the father and the school, intimately linked with the father's non-election for a school governing position. *Ibid.*, [13] and [47].

64. *Ibid.*, [35] and [45]–[48].

65. *Ibid.*, [32], with reference to *HKSAR v. Ho Chung Bong* [2012] HKCFI 1105, at [15]–[16].

66. *Ibid.*, [45].

to comply with the attendance order,<sup>67</sup> thus issuing a clear signal that the courts side with the legislator, rather than the homeschooling community on the matter of elective home education.

Under the current law, homeschooling in Hong Kong is for children who are *unable* to attend school, not for children whose parents are *unwilling* to send them to school. Yet the law leaves room for manoeuvring and, as will be discussed in the next section, the practice of homeschooling is much more varied than the law suggests.

#### 4. HOMESCHOOLING IN PRACTICE: DON'T ASK, DON'T TELL?

Despite the legal restrictions outlined above, an increasingly visible homeschooling community is emerging in Hong Kong,<sup>68</sup> showing that law, policy, and practice do not always coincide. In practice, homeschooling in Hong Kong is considered possible through two apparent loopholes in the law, combined with an ad hoc, *de facto* policy from the Education Bureau.

For a long time, the homeschooling community has advanced the argument that, under the laws of Hong Kong, only children who have the right of abode have a right—and corresponding obligation—to attend school.<sup>69</sup> Since expatriates do not have the right of abode, this means that their children need not attend school and they can homeschool them at will. Yet such argument would fly in the face of both Hong Kong's international obligations, local laws, and policy regarding child protection, which classifies not sending a child to school as neglect.<sup>70</sup> Still there is some anecdotal evidence that, historically, the Education Bureau takes a more hands-off approach to homeschooling where expatriates are concerned. In a couple of cases, the Education Bureau has reportedly turned a blind eye to homeschooling expatriates, considering it “[their] business.”<sup>71</sup>

The most important loophole is the fact—admitted by representatives of the Education Bureau—that,<sup>72</sup> as long as the Secretary for Education has not issued an attendance order, parents who keep their child away from school are not doing anything illegal (apart, perhaps, from raising child-protection concerns).<sup>73</sup> It is only once the Education Bureau has confirmed that a child is not attending school without reasonable cause *and* the Secretary for Education has issued an attendance order that parents are liable to sanctions when they do not send their child to school. As a result, much of homeschooling in Hong Kong takes place under a “don't ask, don't tell” policy, with homeschoolers contending that there is no requirement to make themselves known to the Education Bureau,<sup>74</sup> despite being encouraged to do so.<sup>75</sup> Most homeschooling parents in Hong Kong simply take their chances at not being

67. *Ibid.*, [45] and [49]. The parents had been sentenced to three months' imprisonment; however, whilst Fung J. upheld the conviction *per se*, the judgment indicates that a further hearing would address appeal against sentence. That judgment is not publicly available.

68. See e.g. Cheung, *supra* note 45; Steimle (2015); Springer (2015).

69. Steimle, *supra* note 5; Homeschool (2015a).

70. Social Welfare Department (2015), pp. 4 and 19.

71. The homeschooling mother quoted and others posted their experiences on two expat fora (geoschools and geobaby, Hong Kong editions). See Erlings (2011).

72. Steimle, *supra* note 5; Steimle (2014b).

73. Steimle, *supra* note 72; Riley, *supra* note 4, pp. 2–3.

74. Steimle, *supra* note 68.

75. Cheung (2014b).



found out by the Education Bureau, and never receiving an attendance order. Hence, in 2014, the Director for Education stated that there were 25 registered homeschooling families<sup>76</sup>—a figure that had reportedly risen to 33 by 2015<sup>77</sup>—whereas the Hong Kong Homeschool Meetup group alone was said to count 119 families.<sup>78</sup>

Even where the Education Bureau becomes aware of a homeschooled child, through its own investigations or because parents contact the Education Bureau, this does not necessarily mean that the end of the homeschooling adventure is in sight. The Education Bureau will initially prompt the parents to send the child to school by warning them of the sanctions that may follow a non-attendance order, and explaining why they feel children should attend school (to ensure a well-rounded education).<sup>79</sup> These warnings can come in the form of e-mails, phone calls, and visits by Education Officers.<sup>80</sup> Where explanations and stern warnings have no effect, the Bureau will embark on a course of negotiation with a view to transitioning the child to school if they feel that the child is not receiving sufficient education, as in *HKSAR v. Pun Chi Fai and Another*.<sup>81</sup> The Bureau will send its own inspectors, but may equally dispatch psychologists, counsellors, and other “support services.”<sup>82</sup> Depending on the case, this can be a lengthy process. In the instance of the homeschooling parent who fled to China, two and a half years of negotiations and visits preceded the issuing of the attendance order by the Secretary for Education.<sup>83</sup>

Of perhaps greater interest are situations in which the Education Bureau is not immediately of the opinion that a particular child should attend school. Although there is no formal homeschooling policy in Hong Kong, there is increasing evidence of an informal, internal, *de facto* homeschooling policy adhered to by the Education Bureau and the Secretary for Education. When prompted on the issue of official processes by a homeschooling parent and reporter:

[T]he Principal Education Officer (School Administration Division) and Senior Education Officer (Placement and Support Section) ... responded that because the Hong Kong government believes it is best for children to be attending a traditional school, they do not wish to condone homeschooling by having an official application or registration process.<sup>84</sup>

In practice, however, homeschooling parents have reported on relatively set procedures that seem to be in place for when homeschooling families become known to the Education Bureau and there are no concerns in relation to abuse or neglect.<sup>85</sup> Where it becomes clear

76. Hong Kong Legislative Council, *supra* note 32.

77. Riley, *supra* note 4, p. 2.

78. See Homeschool (2015b).

79. Steimle, *supra* note 72; Steimle, *supra* note 68; Riley, *supra* note 4, p. 2. This reflects the author's own experience. In 2011, the author sent an information request regarding homeschooling to the Education Bureau. The Bureau apparently thought she planned to homeschool any children she might have and the response contained both an indication of why children should not be homeschooled and what sanctions could follow a failure to send children to school (personal communication with the Education Bureau dated 3 October 2011). That same information is now included in Hong Kong Legislative Council (2014), with the Secretary for Education being unwilling to disclose anything further on the Bureau's handling of homeschooling cases. See Hong Kong Legislative Council, *supra* note 32.

80. Steimle, *supra* note 5; Steimle, *supra* note 72.

81. See *HKSAR v. Pun Chi Fai and Another* [2010] HKCFI 1719.

82. Hong Kong Legislative Council, *supra* note 32.

83. Zhao, *supra* note 4.

84. Steimle, *supra* note 5; see also Steimle, *supra* note 72.

85. Steimle, *supra* note 5; Steimle, *supra* note 68; Riley, *supra* note 4.

that parents will not be persuaded to send their child to school, the Education Bureau will follow up regularly with the parents via e-mail, phone calls, interviews with Education Officers, and regular home visits that take place every three to six months.<sup>86</sup> On these occasions, the parents must satisfy Education Officers that they are providing their child with a well-rounded education. They will, *inter alia*, be asked to show their child's schoolwork, the materials they use to educate their children, and the environment in which they educate them.<sup>87</sup> Parents must, in particular, be able to explain what and how they educate their children (e.g. the teaching style they use or lesson plans they follow), the results they are obtaining academically, and how they ensure that their child does not suffer from social isolation (an important aspect of schooling being the social education that children receive there).<sup>88</sup> Officers will normally equally wish to speak with the children themselves to ensure that they are indeed sociable and academically at a comparable level to their peers.<sup>89</sup>

Where parents have managed to convince the Education Officers that their children are indeed receiving a balanced education, the usual practice has always been that they were then simply left alone until the next visit or call.<sup>90</sup> However, a new practice appears to be taking hold where Education Officers will provide a "non-disapproval" to parents who meet the Education Bureau's standards, and "[r]enewal of a 'non disapproval' happens around every three to six months."<sup>91</sup> The standard against which decisions regarding non-disapprovals are taken nonetheless remains unknown.

Despite the apparent strictness of the law, and absence of a formal policy, it thus appears that homeschooling is far from absent from Hong Kong. Moreover, it is governed by a *de facto* policy that tolerates the practice within limits, and renders it subject to the discretion of the Education Bureau. Yet where does that leave those affected by homeschooling, especially the children receiving elective home education?

## 5. THE NEED FOR HOMESCHOOLING LAWS AND POLICY

Whilst the current situation allows the government to have its cake and eat it, the absence of homeschooling regulation leads to a lack of legal certainty for everyone involved in the practice, whether on the side of the homeschooling community or the authorities. Education Officers do not have any clear powers with which to fulfil their duties and parents have little insight into what sort of homeschooling is potentially acceptable to the Education Bureau. What is more, it leaves the group most affected by the (non) regulation of elective home education unprotected: homeschooled children themselves. These children are caught between a reality in which homeschooling exists and a regulatory framework that does not account for the existence of that reality. In particular, the lack of oversight resulting from homeschooling functioning largely "underground" and the absence of formal standards and procedures with clear time lines where the Education Bureau does become involved raise

86. Riley, *supra* note 4, p. 9.

87. Steimle, *supra* note 68; Riley, *supra* note 4, p. 9.

88. Steimle, *supra* note 5; Steimle, *supra* note 68; Riley, *supra* note 4, p. 9.

89. Steimle, *supra* note 68.

90. Steimle, *supra* note 5; Steimle, *supra* note 72.

91. Riley, *supra* note 4, pp. 2 and 12.

serious child rights and protection concerns. For example, in the case of the parent who fled to China mentioned above, the Education Bureau negotiated for two and a half years with the parent before issuing an attendance order. During all this time, the child was not attending school, or was otherwise properly educated. Such cases leave the children involved in unacceptable limbo and violate their rights, including that to a balanced education under Articles 28 (right to education) and 29 (aims of education) of the Convention on the Rights of the Child (CRC), which is applicable in Hong Kong.

As a party to the CRC, Hong Kong is under an obligation to review its national laws and policy so as to ensure that children's rights are met (Article 4 CRC). In addition, the HKSAR government has pledged to make children's interests paramount in all actions and decisions concerning them, following critique by the Committee on the Rights of the Child that the Hong Kong government needed to take better regard of children's interests.<sup>92</sup> Clearly, it is not in children's interests, or compatible with Hong Kong's international obligations, for the government not to take responsibility for the regulation of their education outside the formal school system. This is especially true if it prompts worried parents to hide from educators, rather than seek their co-operation. Children's rights are currently sacrificed on the altar of non-confrontation, including by avoiding a potentially thorny debate on the regulation of homeschooling. Yet this is mistaken and not only from the perspective of the rights of the child. Hong Kong could benefit from a discussion on homeschooling that leads to clear laws and policy setting out what the expectations are for children's education. Such a discussion would furthermore fit well with the broader discussion regarding the role of schools that is already underway, such as through debate on national education and Chinese history (Section 2 above). Given compulsory education's historical background, it would not be incongruous for the homeschooling debate to jump onto that bandwagon.

Irrespective of the need for public debate, however, it is imperative that the HKSAR government devise a clear and workable regulatory framework governing elective home education for the sake of children and other actors involved. Such a framework should at the least clarify whether elective homeschooling qualifies as a "reasonable cause" and is thus in principle allowed or not. If a parental choice to homeschool can indeed constitute reasonable cause, the government should specify relevant procedures with appropriate time frames for applications to homeschool, monitoring by the Education Bureau, and follow-up when the Education Bureau suspects that a child is not provided with sufficient education. The latter could perhaps include the power to require a child to attend school for a certain number of hours per week in the interim, so as to ensure the child's right to education. If elective home education becomes formally accepted, it is equally important that the government produces a clear set of standards and guidelines setting out what it expects of homeschooling in view of children's rights to education conform the aims stipulated in the CRC, and children's ability to function in a modern, multicultural society.<sup>93</sup> Any regulation in this respect is long overdue.

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92. Committee on the Rights of the Child (2012) "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," CRC/C/CHN-HKG/2, p. 28.

93. See *K v. K* [1996] HKEC 466, per Seagrott J. on the need for Hong Kong children to be educated in ways preparing them for life in multicultural Hong Kong, lest their best interests be compromised.

## 6. CONCLUSION

Despite existing evidence that homeschooling is increasingly prevalent in Hong Kong, the reality of its existence is not matched with official recognition, or indeed a legal framework to regulate the practice. Officially, elective home education is not an option for parents with children of compulsory school age. However, the apparent *de facto* Education Bureau policy indicates that the government is aware of homeschooling within the jurisdiction and seeks to manage the practice behind the scenes. The lack of clear laws and policy on homeschooling is nonetheless problematic for parents, who do not know where they stand; potentially problematic for Education Officers, who work without a legal framework; and especially problematic for children, whose rights and interests cannot be guaranteed under the current state of affairs. There is an urgent need for the government to devise a workable legal framework and policy, perhaps in co-operation with the soon-to-be-established Children's Commission.<sup>94</sup> It is well past time for the government to start fulfilling its pledge to (homeschooled) children.

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94. Chief Executive [of the Hong Kong Special Administrative Region], *supra* note 34, p. 63.

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