Chapter 6
Being a Voice for Children in Residential Care
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Introduction

The residential care system is designed to help, protect and care for children, yet for many children in Hong Kong, it may instead be causing lifelong harm. Scientific evidence shows clearly the detrimental effect that long term placement in a residential care setting can have on children. Ideally therefore, it should be a last resort and a temporary solution. So why are such staggeringly high numbers of Hong Kong children spending years, if not entire childhoods, within this damaging system?

This paper first introduces the scope of the problem, laying out the statistics regarding children in residential care (also referred to as “children in care”) in Hong Kong. It then explains why having such large numbers of children in care is such a significant individual and societal problem, referencing scientific findings on the harmful effects of residential care and adverse childhood experiences, as well as the high societal cost of raising children in care. The paper then considers possible causes of the problem, exploring various gaps in the system that may help to explain why so many children become stuck in the residential care system in Hong Kong. Finally, this paper provides recommendations of steps that can be taken to both reduce the length of stay, and more importantly, reduce the number of children entering into residential care.

The Problem: Statistics on the Number of Children in Care

As of 2015, there were over 3,000 children in the residential care system in Hong Kong. Nearly half of these children live in residential homes, with another 30% living in foster care and 25% living in small group homes. There are hundreds more children who are on a waitlist, trying to get in to the system, waiting an average of 31 months.

In Hong Kong the vast majority of children are placed in the residential care system at the consent of their parents. Under this system, parents maintain legal rights and guardianship over their children.

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1 When referencing children in care, we refer to all forms of residential or institutional care in Hong Kong, including foster care, small group homes, and residential homes.
2 3,188 as of December 31, 2014. See Examination of Estimates of Expenditure 2015-16 (Question Serial No. 2297) LWB(WW)0116.
3 As of December 31, 2014 there were 932 in foster care, 792 in small group homes, and 1,464 in residential homes. See Examination of Estimates of Expenditure 2015-16, (Question Serial No. 3993), LWB(WW)0919.
4 Average time children waited to be placed into residential care was 31 months at the end of February 2015. See Examination of Estimates of Expenditure 2015-16 (Question Serial No. 2293), LWB(WW)0112. There were 442 children who had waited for 30 days or more when they received residential care services from April 2014 to January 2015. See Examination of Estimates of Expenditure 2015-16 (Question Serial No. 2294), LWB(WW)0113, Session 18 LWB(WW).
5 “As at 31 December 2014, there were 3,188 children in residential care with the consent of their parents or guardians. SWD does not keep statistics on the number of children in residential care because of a Care or Protection Order or of children in residential care by parental consent before a Care or Protection Order was made.” See Examination of Estimates of Expenditure 2015-16, (Question
The assumption appears often to be that the child will temporarily be placed into care while the parent gets the time and help needed to get back on their feet. In around 90% of cases, the plan for the child is eventual “family reunion.”

The reality, however, is that in the many of these cases the children will never be reunited with their family. Although 90% of all cases begin with family reunion as the plan, fewer than 60% of these reunions are achieved. Of the other 40%, many will remain in care until they age out of the system at 18. However, even those children who are eventually reunited with their family often spend years in the system first. The average length of stay for a child in care, as of 2015, was 42 months. This lengthy stay in residential care can be extremely detrimental to a child’s development.

The Costs: The Societal and Financial Impact of Raising Children in Care

There is a common assumption in Hong Kong that children growing up in the residential care system are better off than many other children. Their basic needs are taken care of: they have adequate housing, nutrition, and access to education. The reality, however, is that raising children within a residential care system has serious and long lasting effects on the physical and social development of that child. Raising children in residential care also comes at a tremendous financial and social cost.

The Physical and Social Impacts on a Child’s Development

A child’s early experiences have a lasting impact on the development of their brain. During this early period, the brain is developing the neural circuitry, or “architecture,” that it will rely and build on for the rest of the child’s life. The nerve connections and neurotransmitter networks that are being created during these early years can be influenced by a variety of conditions and traumas. Having appropriate interactions and experiences at the right time is therefore crucial for how the brain develops. It is particularly important that the child experiences consistent interactions with a primary caregiver during this period. These early experiences shape a child’s healthy cognitive and social development, and have long lasting effects on their learning, behavior, and health.

Serial No. 4002), LWB(WW)0928.

6 Statistics taken from independent study conducted for Mother’s Choice by Bain and Co. (on file with authors).

7 Data taken from the SWD indicates that the average time that a child spends in care in Hong Kong is 42 months. See independent Bain and Co. study for Mother's Choice (on file with authors).

8 Research by Eric I. Knudsen, a Professor of Neurobiology at Stanford University School of Medicine indicates that there are “sensitive periods” during which the brain goes through specific developmental phases, and during which experiences have a particularly powerful effect on neural circuits and neural development. See Sensitive Periods in the Development of the Brain and Behavior, JOURNAL OF COGNITIVE NEUROSCIENCE 16:8 (2004), 1412–1425.


11 Children who have inadequate or unstable relationships with caregivers can develop ‘insecure attachments,’ which harms their healthy social development. This has been famously demonstrated by the 1960s attachment experiments by Mary Ainsworth and John Bowlby. For a description see Inge Bretherton, The Origins of Attachment Theory: John Bowlby and Mary Ainsworth, DEVELOPMENTAL PSYCHOLOGY 28 (1992), 759-775. See also HARRIET WAR AND REBECCA BROWN, SAFEGUARDING CHILDREN IN THE EARLY YEARS (2014), 2, draft chapter.
The effect of stress is particularly devastating on the young developing brain. While learning to deal with stress is a critical part of healthy development, experiencing prolonged exposure to stress, particularly when children do not have adequate buffers such as a healthy relationship with a caregiver, can result in toxic stress. This leads to long term damage of a child’s brain architecture and development. In particular, prolonged exposure to stress during critical early periods of development can have a strong effect on the areas of the brain tied to learning and reasoning. Adverse childhood experiences impact not only a child’s brain development, but have also been documented to affect a person’s physical health more generally, including increasing the risk for chronic health conditions such as heart disease, diabetes, back pain, stroke, mental illness and asthma.

Children growing up in residential care systems are particularly vulnerable to these types of long term physical and developmental issues. Children in care often do not have access to a primary caregiver, and do not have the types of consistent, comforting interactions needed to promote healthy neural development. Indeed, children in care often have their primary social relationships disrupted.

Moreover, children in care are also especially vulnerable to exposure to highly stressful or traumatic experiences. Statistics from other jurisdictions show high levels of exposure to trauma among children who grow up in care. One shocking study in the U.S. revealed Post Traumatic Stress Disorder (PTSD) rates among children in foster care were higher than those in returning military combat veterans. Many children entering care may come from families with drug abuse problems, mental illness, poverty and/or family violence, and may enter care already having experienced trauma or neglect. In other cases, foster care itself may be an unstable and even traumatic experience for the child.

Research also indicates that children who grow up in residential care are more likely to struggle with anti-social behavior and to engage in harmful activities such as drug use, criminal activities and delinquency, homelessness, or teenage crises pregnancy. Children in foster care have also been documented to have higher rates of mental health problems, as well as higher suicide rates.

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13 Id.


16 Peter J. Pecora, et al., Improving Family Foster Care, Findings from the Northwest Foster Care Alumni Study, Casey Family Programs (2005).


18 Vinnerljung et al., Suicide attempts and severe psychiatric morbidity among former child welfare clients—a national cohort study, JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY, AND ALLIED DISCIPLINES 47(7) (2006), 723–33.
Perhaps even more troublingly, the harmful effects of residential care are often multi-generational. Children who grow up with the long term effects of adverse childhood experiences, often end up at higher risk of having dysfunctional behavior and relationships as adults, leading to harm within their own children and families.19

There is also a correlation between the length of time that a child spends in care and their likelihood of family reunification. Reunification is more likely to take place early in a placement. Studies have shown that after the first year, reunification rates typically decrease for every additional year that a child spends in care.20 Reunification rates for adolescents in care is significantly lower than reunification rates for younger children.21

The Financial Impacts

At a financial level, the cost of raising children in residential care is significant. In 2013-2014, the expenditure for foster care, small group homes and residential homes for children in Hong Kong was $136.5 million, $172.8 million and $241.2 million respectively.22 This does not include expenditure outside of government funding spent by private organisations, hospitals, faith groups and NGOs like Mother’s Choice.

These numbers also do not take into account the huge financial costs that result from generations of children and youth growing up with increased risks of homelessness, unemployment, incarceration, engagement in risky behaviours, and dependency on the welfare system. Nor does it account for the long term economic costs on the healthcare system associated with an increased risk for general health problems.23

Case Study: Mak-yin’s Story

These numbers can seem staggering and overwhelming. One way to illustrate what all of this looks like in practice is to look at one individual story. Mak-yin was born to a mother who was mentally unstable and physically abusive. By the time Mak-yin was one year old, he was placed into a children’s home. When he was two years old, despite evidence of serious physical abuse, he was returned to his mother. The abuse grew worse. When Mak-yin was four, his mother dangled him from the balcony of their flat, more than 20 stories from the ground, threatening to kill him. Her attempt

was thwarted, and as a result of this incident, Mak-yin went back into care, beginning a painful journey through five different foster homes, some of which were abusive and dangerously neglectful.

Although it was clear from the beginning that Mak-yin’s mother was both unable and unwilling to care for him, and that family reunion was not an option available to him, Mak-yin was also not released for adoption for many years. At age 11, after years in the residential care system, he was finally released for adoption. However, with no legal requirement to do so, and little knowledge or understanding of the practice, Mak-yin’s social workers made no effort to process the paperwork required for him to join an adoptive family until he was almost 16 years old. By then it was too late. Mak-yin aged out of the foster care system at age 18, with no family to support him.

Children like Mak-yin are “stuck” in a system that does not prioritise what is best for their needs or their development. Under international law, governments and individual social workers have a legal responsibility in prioritising a child’s ”best interests”. This means that they must always place what is best for the child above other considerations in the case. In addition, best practices dictate that social workers should always look to a child's need for a permanent placement and must develop a “permanency plan” to ensure that children like Mak-yin are placed into a stable and permanent home as soon as possible. None of this appears to have happened in this case. Despite the fact that it was clear early on that Mak-yin's mother was unable and unwilling to care for him, and that it was in Mak-yin's best interests to be released for adoption to a safe, permanent, and loving family, the system in this case failed to take the necessary steps to make this happen. Mak-yin became “stuck” in a residential care system that did not adequately take his best interests into account.

**What is causing all these “stuck” children?**

Mak-yin is just one of many such children in Hong Kong. How is it that so many children like him are getting stuck in the residential care system?

In 2015, Mother’s Choice began to conduct an initial pilot assessment on the foster care system in Hong Kong, researching the current law and practice and speaking to front line social work colleagues about their experiences with clients, their understanding of the current law, and how this influences their practice. As we began to collect and analyse the data, we began to find potential gaps throughout these systems. We have categorized these gaps as knowledge gaps, practice gaps, and legal gaps.

**Hong Kong’s Foster Care System**

First, it is important to lay out the outlines of the Hong Kong foster care system. In Hong Kong, unlike in many jurisdictions, the majority of children are placed in the residential care system with the consent of their parents.24 Because these placements are voluntary, parents retain legal custody and guardianship over their children. Unlike in cases of wardship, in voluntary placements there is typically no court involvement. Major decisions regarding the child’s care and placement are made not through the judicial system, but through the Social Welfare system.

Moreover, the foster care system in Hong Kong operates under a subvention arrangement. While the system is centrally managed by the Social Welfare Department (SWD), management of the day to day care of the child is placed into the hands of a network of Foster Care Agencies.

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24 See footnote 4 supra.
The SWD has a dedicated foster care body named the Central Foster Care Unit (CFCU). This body oversees a team of referral workers, who are mobilised across family services centers. Families who cannot adequately care for their children due to various family problems or crises can apply for foster care services through a referring social worker. The application will be accepted if all parties agree that foster care is the most suitable service for the child. Once the application is approved, the CFCU will refer the case to Foster Care Agencies for matching and placement.

Once a child is matched, Foster Care Agencies will then work closely with referral worker in the planning and monitoring of the implementation and development of foster care services for child and the family. The Foster Care Worker is in charge of the day-to-day supervision of foster homes and foster children during placement. They will visit and stay in regular contact with the child, supervise and support foster parents, record case notes, and facilitate regular case review meetings to develop the child’s permanency plan and review case progress along with the referral worker.

Knowledge Gaps

As so many of the decisions regarding a child’s care are determined by social workers and other frontline staff, it is important to understand how much knowledge frontline staff have regarding child welfare laws and the legal rights of children. Starting with an initial pilot survey, interviewing Mother’s Choice social workers, we quickly discovered that this was an area of concern. Frontline staff receive little training on the law and there appears to be mixed understanding and interpretation regarding what the law or official policy says on particular issues. This knowledge gap has an impact on how well frontline workers are able to advocate for children in care. It is impossible to help protect the legal rights of a child without knowing what those rights are.

Our initial interviews indicated that many social workers seemed unsure about whether they are in a position to report child abuse and what it takes to substantiate these claims. Many had questions about what qualifies as child abuse or risk of abuse. Social workers and other frontline staff may often be the first individuals to hear or suspect a potential incident of child abuse, yet without such knowledge, it is difficult for them to know when and how to report a case.

Another example of knowledge gaps in frontline practitioners and professionals revolves around the rights of unmarried putative fathers. Many of Mother’s Choice frontline staff were unclear whose names should be registered on the birth certificate, and whether putting an unmarried father’s name on the birth certificate would give him any legal rights. Additionally, during adoption proceedings, social workers were unsure whose permission was needed to free the child for adoption. Would an unmarried biological father’s permission be needed? Did it make a difference if his name was on the birth certificate? What about the legal husband of the mother, if he was not the biological father? Such confusion can seriously delay or impede the freeing of a child for adoption.

There also appears to be a critical knowledge gap around the topic of freeing orders. Under Hong Kong law, the Director of Social Welfare can move to have a child in care freed for adoption in certain specified circumstances. This is one of the primary ways in which a child, who is stuck in the residential care system, with little to no chance of ever being returned to her birth parents, can be moved into a permanent and loving family. Often, however, applying for such an order will require a well-documented history of abuse, abandonment, or other reasons why the birth parent is, and will
remains, unfit to parent. Social workers are ideally placed to gather and record such information. Currently, however, Mother’s Choice social workers have a lot of questions on what this process looks like and what evidence they might document to support such a motion.

**Practice Gaps**

We also discovered concerns around the management of cases - what we have termed “practice gaps”. Staff expressed concerns that there are often discrepancies in how various individual cases are handled in practice and in how the needs of the child are prioritised.

For example, there appears to be wide discrepancies in the area of “tracing”. Tracing is the process used to track down missing birth parents or other individuals to seek their permission to free a child for adoption. Practices on how long this process takes, whose signature is required, and what the procedure looks like appear to vary in practice. In some cases, tracing procedures can drag on for months, or even years, trapping the child in a kind of legal limbo. SWD offices are decentralized, and social workers are often moved between different offices and departments. Knowledge and experience regarding particular types of child welfare cases therefore varies widely between workers. This may explain why practices are sometimes inconsistent. This warrants the need for a statutory review of guidelines and policies needed to help clarify accountability and keep practices consistent.

Additionally, our interviews indicated that the culture within the residential care system often emphasises the rights of parents over the rights of children. There appears often to be little discussion on the *best interests* of the child, or a child’s need for *permanence*. Instead, decisions regarding a child’s time in care are often made in response to the birth parents’ wishes. The goal is almost always “family reunion”, regardless of the best interests of the child or the child’s need for a permanent and stable placement. “Almost all of the cases are assigned family reunions,” stated one SWD referral workers interviewed. “We would only put up the child for adoption if the parents have asked us and have already relinquished their rights.” “The decision (for adoption or family reunion) is made by the birth parents with help from the referral worker. Typically the decision is already made by the time the case is referred to us,” a Foster Care Agency worker reported.25

Recent discussions around the proposed Children Proceedings (Parental Responsibility) Bill have further highlighted this concern that an emphasis on the rights of the parent has often substituted and overridden discussion on the rights and needs of children within the Hong Kong system.26

Though an emphasis on the rights of the parent appears to be mainstream practice within the residential care system, and indeed the wider legal system in Hong Kong, any child welfare processes that place a parent’s request or wishes above the best interests of the child are contrary to that child’s rights under international law. Under the Convention on the Rights of the Child, the welfare of the child must be a primary consideration in all actions concerning children.27 Although the rights and responsibilities of parents should be respected, this must always be done in light of the rights of the child.

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25 Quotes taken from private report done by Bain and Co. for Mother's Choice (on file with authors).
child.  

When there is a conflict, it is the welfare and bests interests of the child, which must come first.  

Lack of a standardised practice among social workers in Hong Kong however, appears to mean that the best interests of the child is not always prioritized, adding to discrepancies in practice and an increase in “stuck” children.

Legal Gaps

At the highest level, there appear to be gaps in the law itself regarding the child welfare system. For example, there are currently no statutory regulations in Hong Kong regarding the residential care system. This means that there is wide discretion within the system, little oversight, and no statutory guidelines to equip and empower workers to act in the best interest of the child.

Of particular concern, there are no legally defined timelines that serve the best interests of children in the foster care or adoption systems. This means that processes such as “tracing” procedures have no time constraints and can continue indefinitely. Similarly, there are no legally mandatory timeframes guiding how long a child can remain in care or how frequently they must have an updated case review or permanency plan.

The lack of any statutory or judicial oversight in the current residential care system also means that there is no mechanism to enforce permanency plans. While a social worker may plan with the parents on family reunion, the worker has no enforcement power over the parents’ actions or rehabilitation plan.

Finally, there is currently no independent representation for the child. This means that the child’s views, wishes, and opinions are not adequately heard within the process. This is contrary to children’s explicit right to be heard as laid out in the Convention on the Rights of the Child.

What Can Be Done?

What can be done about these gaps in the system? Steps can be taken at all three levels – working to fill in the knowledge gaps, practice gaps, and legal gaps.

The Need for Training for Frontline Practitioners and Professionals

At the knowledge level, greater training and resources are needed for workers at the forefront of caring for children. Legal professionals can play a role here, helping to translate the law into understandable terms. Greater resources could also be provided by the government to provide or accredit trainings and continuing education for frontline professionals working with children and families, including those working in social welfare, schools, hospitals, law enforcement, the judiciary, and NGOs. This would help to bridge these professionals’ knowledge gaps on the law, as well as their pivotal roles in safeguarding and protecting the rights of children in residential care.

Higher education institutions, particularly departments of social sciences and departments of law, can

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consider combining efforts to educate their students about current laws and policies, and also how the principles laid out in the Convention on the Rights of the Child apply to their practices. As these preprofessionals then enter the workforce, they have a greater understanding of the laws, their application, and practice from the start.

At the practice level, there should be child-friendly mechanisms in place to ensure children’s voices are heard in individual cases (including assessment, review, and permanency planning). This could involve allowing for specialisation within the SWD, with greater training and expertise for those working on child welfare cases. It could mean greater synchronization and transparency within the SWD regarding the policies on various topics. It could also mean making available individual representation for children, for example legal representatives or guardians ad litem, to push forward individual cases.

The Need for Data Collection and Analysis

There is also a concern on the paucity of reliable data collected and analysed with regards to children in family breakdown or in residential care. There is room for further data monitoring on child abuse, neglect, ill treatment, exposure to domestic violence and other serious matters affecting the fundamental rights of children. Where such data is collected, it should be regularly published for consideration by NGOs and academia. Improving the performance of the law and the various institutions concerned with the rights of children depends upon the effective and reliable collection and analysis of such data by civil society and Government departments.

The Need for Statutory Oversight and Improved Safeguards in the Residential Care System

The draft Children’s Proceedings (Parental Responsibility) Bill, released in 2015, has taken positive strides towards a more child centered and child friendly approach to legal proceedings. Its focus, however, is primarily on private law matters and only slightly touches on matters such as child protection proceedings. This is an area with little statutory regulation in Hong Kong, despite the large number of children in residential care. Although the draft Children’s Bill is a starting point, further statutory attention is needed towards protecting children in care and the need for greater legal frameworks and protections in such matters.

Ultimately there needs to be systemic change in the residential care system with greater statutory oversight including but not limited to: providing for the filing of permanency plans with the court (with regular updates); implementing mechanisms to allow such plans to be reviewed by independent parties with the power to refer the case to court for review if the permanency plans are no longer appropriate or achievable in the perspective of the best interest of the child; specifying target timeframes for the stages of a children in adoption and other proceedings, among others.

At all of these levels, there needs to be greater assessment, planning, and oversight, as well as greater collaboration between different agencies and organisations, and between front line workers and lawyers to address these challenges.

Finally, the fact that so many children are ending up and remaining in residential care reflects not
only a failure to provide adequate social and legal services to that child, but it reflects a wider failure to support struggling families. Ultimately the goal must be not only to reduce the time children spend in care, but also to reduce the number of children going into care in the first place. Greater attention is needed on strengthening families and to providing the resources and support to ensure that children are not placed into residential care.

Further statutory oversight and improved safeguards in the residential care system, as well as surrounding social services, are a vital first steps towards a better child law for Hong Kong and towards protecting the voices and best interests of children in care.