

BASELINE STUDY ON THE IMPLEMENTATION OF UNCRC ARTICLE 12 IN HONG KONG



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Commissioned by: Hong Kong Committee on Children's Rights

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EXECUTIVE SUMMARY

A: Introduction:

ES1. Hong Kong became a party to the United Nations Convention on the Rights of the Child (UNCRC) in 1994. As such the Hong Kong Government is committed to respect and implement those rights of the child enshrined in the Convention. Since the Convention came into being in 1989, the UN Committee on the Rights of the Child has identified four aspects of the Convention which it designates as the ‘general principles’ of the Convention: the Article 2 principle of non-discrimination; the Article 3 best interests principle; the Article 6 right of the child to life, survival and development; and the Article 12 right of the child to express their views and to have those views taken into account.¹ The Committee has explained that these four principal articles guide the interpretation and implementation of all other rights under the Convention.

ES2. The focus of this Study is Article 12, often referred to as the child’s participation right. The primary aim of this Study is to develop a clear picture of the degree of implementation of children’s participation in Hong Kong today because without a clear and comprehensive picture of how Convention rights are currently enjoyed by Hong Kong’s children, it is impossible to assess where implementation gaps exist and what remedial steps need to be taken. Furthermore, by setting a ‘baseline’ of the current level of implementation of Article 12 in Hong Kong, it will be possible to measure how much progress is made in the future.

ES3. Article 12 requires that:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

¹ Aisling Parkes, *Children and International Human Rights Law: The Right of the Child to Be Heard* (London: Routledge, 2013) 6–7. See also General guidelines regarding the form and content of initial reports to be submitted by States parties under article 44, paragraph 1 (a), of the Convention : Convention on the Rights of the Child / adopted by the Committee at its 22nd meeting (1st session) on 15 October 1991.

ES4. A brief word must be said about one key limitation of this Study. This Study reports on laws, mechanisms and structures that implement Article 12 and its associated concept of child participation. This is enriched by input from stakeholders from key sectors who work with children and child participation. What this Study does not include is the perspective of the rights-bearers, the children, themselves. However, no Baseline Study on child participation would be comprehensive without the input of children, as rights-bearers, using their voices to express their views on the implementation of Article 12. Therefore children’s own essential perspectives will be addressed in a complementary Study, where it will be possible to utilise a childappropriate methodology, focussed on gathering and representing children’s views on child participation.

B: The Aims of the Study are:

- ES5. • to identify the elements of the Article 12 right to participation, e.g. access to appropriate information;
- to identify Article 12 duty-bearers;
- to identify laws, policies and codes which promote the Article 12 elements;
- to assess the scope of those measures as written in comparison with the requirements of Article 12 itself;
- to discover and evaluate the extent to which those measures are utilised by rights-bearers;
- to discover procedures for complaint or grievance by rights-bearers, and related remedies, in relation to the enjoyment of the Article 12 right.
- to identify informal means by which rights-bearers exercise their Article 12 right.
- to provide a clear dataset by mapping the extent to which all of these provide for the implementation of Article 12 in Hong Kong;
- to extrapolate from that dataset, any ‘gaps’ in the implementation of Article 12;
- to make recommendations as to how the findings of the Study generally can be used to inform future advocacy and strategic decision-making on the implementation of Article 12 in Hong Kong.

C: The Structure of the Study:

- ES6. • **Part I: Background to the Report:** comprising this introductory section; the research methodology adopted to achieve the aims of the Study; and a third section which will discuss the literature on the meaning, and scope of Article 12 developed since the drafting of the UNCRC. This third section will provide a context within which the findings of this Baseline Study can be understood.

- **Part II: Provisions for the Implementation of Article 12 of the UNCRC in Hong Kong:** comprising seven sections, each of which will map the laws, mechanisms and structures currently in place in Hong Kong to implement Article 12. Each section will address one setting in which Article 12 has relevance: at HKSAR general policy-making levels; and in settings relevant to children’s lives: the legal setting, alternative care and family breakdown; education; healthcare; leisure and culture; and other miscellaneous settings. In addition to recording the laws, mechanisms and structures relevant to child participation, a brief commentary will be included in each section where stakeholders have provided feedback and additional context on the child participation opportunities reported for that setting.
- **Part III: The Implementation of Article 12 of the UNCRC in Practice in Hong Kong:** comprising five sections of thematic analysis of stakeholders’ experience of Article 12 in practice today. Themes include: an absence of participation; the quality of participation; the children who participate; enablers of good quality child participation; and the impact of child participation.
- **Part IV: Challenges to the Implementation of Article 12 of the UNCRC in Hong Kong:** comprising four sections addressing major barriers to child participation including: welfare and paternalism; adults’ perceptions of children; cultural values and structures; and lastly the need for leadership on child participation.
- **Part V: Overall Conclusions.**
- **Part VI: Recommendations.**

D: Methodology:

- ES7. By drawing on the existing literature in the field of children’s rights, and participation rights in particular, an evaluative tool in the form of a Child Participation Matrix was devised for this Study. The purpose of the Matrix is to assess the laws, mechanisms and structures currently in place to implement child participation by taking into account the multi-faceted nature of meaningful child participation.
- ES8. The Child Participation Matrix looks at the elements, form, quality, timing and setting of child participation opportunities. In the Matrix, child participation is defined as voluntary, presumptive, shaped by the child’s age and maturity, and an essential, though not determinative, factor for the decision-maker. Opportunities for child participation are measured against three key forms of authentic participation: consultative, collaborative and child-led. Three further examples of involving children in processes: tokenism, decoration and manipulation, are discounted as inauthentic child participation. Note is also taken of the stage in the policymaking or decisionmaking cycle at which the child is invited to participate; with a rebuttable presumption that involvement in the later stages of the cycle only must diminish the potential impact of the participation.
- ES9. All meaningful forms of participation should reflect the qualities set out in the UN Committee’s General Comment 12. That is, that the participation opportunity is:

- Transparent
- Voluntary
- Respectful
- Relevant
- Child-friendly
- Inclusive
- Supported by training for adults involved in facilitating the participation
- Safe
- Accountable

ES10. These UN requirements are supplemented with three further qualities: participation should be iterative wherever possible; embedded in general children’s rights capacity-building processes rather than merely sectoral; and the exercise of participation rights should be balanced in a child-appropriate manner with responsibilities. The Matrix also takes into account the settings within which the participation takes place, with particular focus on relevant sectoral hotspots and the stage in the decision-making or policy-making cycle at which they occur.

ES11. The settings are:

- General Policy-making
- Legal
- Alternative Care
- Education
- Health
- Leisure & Culture
- Miscellaneous: including environmental and consumer settings.

ES12. The Matrix is then applied to data gathered, by survey questionnaire, from dutybearers about the ways in which they implement their child participation obligations. Those duty-bearers include government departments and bureaux, as well as statutory bodies, whose remit touches on children’s lives. In total 31 requests for information were made. 16 were to government departments and bureaux and 15 were to statutory bodies. 31 responses were received, of which 30 made material responses to the questionnaire.

ES13. This data is supplemented by documentary research and by further data from interviews with adult stakeholders whose work involves child participation. In total 32 invitations to interview were issued and 21 interviews were conducted, with a total number of 25 interviewees. Interviews were designed to last around 40-45 minutes. However, some interviews extended beyond this to last up to 75 minutes. Interviewees were representatives from international and domestic NGOs, statutory bodies, academia, the Legislative Council or individual professional experts working with children's rights in sectors including law, social work, education and health. The significance of the interview data is that it gives context to the laws, measures and structures reported by the duty-bearers as being in place to implement child participation and allows an exploration of the practical impact of the duty-bearers' implementation choices.

ES14. In addition to evaluating the data by reference to the Child Participation Matrix, the data is also subjected to a thematic analysis to explore general trends in child participation in Hong Kong and to identify the key barriers to greater levels of implementation. Consequently, it is possible not only to establish the baseline implementation of child participation today in Hong Kong but also to make recommendations for how to achieve broader, more authentic implementation of child participation going forward.

E: General Conclusions

ES15. Looking across the different sectors, it is evident that laws, policies and structures are in place to facilitate child participation. Few of these innovations referenced the UNCRC or the elements of Article 12 directly but many and varied policies and mechanisms for participation were reported by duty-bearers for this Study. Whilst at first glance this might indicate that Article 12 is being duly implemented by duty-bearers, a noticeable proportion of the policies and mechanisms reported related not to child participation per se but to participation for 'people' from which children were not excluded. To report these types of participation opportunities as 'child participation' suggests little awareness of the meaning and requirements of child participation.

ES16. Turning to the *form* of participation available to children in Hong Kong, a significant proportion of policies and measures reported provide for 'consultative' participation by children. The value of consultation varies depending on the stage of policy-making or decision-making at which the consultation takes place. A noticeable proportion of the consultative participation available to children takes place at the later stages of the cycle when there is less possibility for significant impact on outcome.

ES17. There are reported pockets of activity where child participation extends beyond consultation. Examples include individual projects either led by NGOs or in which NGOs collaborate with government departments and bureaux. However, outside of NGO activity there is no reported child-led participation by duty-bearers and little collaborative participation. In relation to the choice of form of participation, little information was provided to shed light on how any instance of consultative participation was chosen in preference to other more intensive *forms* of child participation.

ES18. There were several instances of processes being reported as participation opportunities for children which, when measured against the Child Participation Matrix, fell within the

categories of inauthentic participation due to tokenistic or manipulative approaches to engaging children in participation. In particular, several instances were reported of inviting children to take part in competitions where children have no input to the design of the competition, no engagement in setting the criteria for judging, and no chance to give feedback on their experience. Whilst the chance to enter a government department's competition or to visit their offices can be a valuable participatory opportunity, careful design and authentic engagement with children are pre-requisites for good quality, meaningful participation.

ES19. Turning to the quality of the participation opportunities reported, the quality of child participation opportunities did not generally meet the UN's requirements under General Comment 12. Few of the examples of consultative participation mechanisms encompassed systematic provision for, and actualisation of, accountability in the form of follow-up with children on the impact of their participation.

ES20. In addition to a lack of systematic follow-up with child participants, there is, in general, a low level of good quality training for adults who work with child participation and a low level of child-friendly information for child participants. Other attributes of good quality participation are similarly scarce in the reported opportunities for child participation. The overall impression is that child participation is delivered in a fragmented and somewhat ad hoc manner. While some government and public bodies have instituted innovative child participation policies on paper, experience shows that these do not necessarily deliver meaningful child participation in practice. For example, children in legal proceedings theoretically have multiple avenues by which to express their views. In practice, stakeholders' feedback suggests these avenues are either rarely utilised, or where the child's view is sought in a more routine manner, usually by social workers for the Social Investigation Report in child custody and other child-related legal proceedings, the quality of this process can be 'patchy'. A similar pattern of a 'gap' between written provisions and practical implementation can be observed across the settings, from general policy-making and the limitations of the Children's Rights Forum, to education and the reality of the unhealthy academic pressure on even very young children in Hong Kong schools today.

ES21. Conversely, where examples of good practice exist, these exist mostly in work done by a small number of NGOs to provide children with more intensive participation opportunities which meet most, if not all, of the GC12 criteria for good quality participation. Where good quality child participation does occur, a pattern of 'enabling factors' is discernible. Meaningful child participation flourishes where properly trained adults are able to facilitate participation and support children and children themselves are given training to understand their own participation and to engage fully with participation opportunities.

ES22. To support that training, another important enabler identified in the Study is the creation and provision of child-friendly resources such as books, websites, videos or training kits, or child-friendly venues for participation events. In addition to resources that enable meaningful participation, a multidisciplinary, multi-stakeholder collaborative approach where expertise is shared, and the multi-faceted nature of meaningful child participation can be addressed, is most likely to result in meaningful participation for where expertise is shared, and the multi-faceted nature of meaningful child participation can be children

addressed, is most likely to result in meaningful participation for children.

ES23. Barriers to meaningful child participation are several and encompass adults’ attitudes to children as less competent, unreliable decision-makers, being not yet ‘fully formed’ as well as attitudes about appropriate roles for parents and children and the deeply-seated amalgamation in adult minds of the child’s ‘best interests’ with the paternalistic view that the adult knows best and the child is in need of protection from their own wishes.

ES24. One of the most pervasive and insidious barriers to meaningful child participation identified in this Study is the barrier built on ‘absence’. This may relate to an absence of awareness around child participation or an absence of leadership to implement participation. Without awareness of the child’s right to participate, the likelihood of meaningful implementation is reduced. The historic lack of dedicated leadership at both the general policy-making level and at sectoral levels, notwithstanding the recent establishment of the CoC, has been a fundamental barrier to the implementation of child participation in Hong Kong. Effective leadership is needed to build awareness, gather data and ensure informed multidisciplinary approaches to enabling child participation. Effective leadership could demand universal, unfragmented standards and training for all professionals whose work touches on child participation so that the knowledge and skills needed to facilitate child participation are embedded at all levels and in all sectors.

ES25. Despite the barriers to implementing child participation, and the current predominance of late-stage consultative or inauthentic participation opportunities for children, a highly positive theme arising from the data analysis was that in those pockets of more extensive, authentic child participation, where the participation is of appropriate form and quality, the participation results in: better decisions for children and their relevant adults; better policy-making; and consequently better use of public resources.

ES26. To achieve greater levels of meaningful child participation going forward, this Study ends with recommendations which relate to three target areas:

- General policy-making arena;
- Issues applicable to all settings;
- Setting-specific issues;

and which address four key areas for action:

- Mainstreaming and Raising Awareness of Child Participation;
- General Education Strategies, Platforms and Other Resources;
- Professional Skills and Capacity Building;
- Research, Data Collection and Analysis.

F: The Recommendations:

i): At General Policy Making-Level:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 1. One of the key barriers to implementing children’s participation is simply that it is absent from civic dialogue and from policy considerations in many areas of government. Therefore, the first step must be to raise awareness and mainstream children’s participation so that child participation is a ‘normal’, expected part of civic dialogue and of the machinery of governance. To achieve this, it is essential that the Administration adopts an overview of the full cycle of governance, policy-making and auditing to ensure that child participation is a consideration at every relevant part of the cycle.

Recommendation 2. Commit to the principle of nurturing child participation by including this as a central aim of the Hong Kong Administration in the Chief Executive’s Policy Address.

Recommendation 3. Introduce legislation to incorporate Article 12 of the UNCRC into Hong Kong’s domestic law with specific reference to the broad-based, voluntary and maturity-related nature of child participation. Further, to facilitate good quality child participation, the legislation should also enact the ‘no delay’ principle. This means that, while children should be given enough time and appropriate information to form and express their view, once that view has been expressed, there should be no undue delay by the decisionmaker or in the system for taking the child’s view into account, coming to a decision and giving the child feedback.

Recommendation 4. Periodically review existing legislation, policy and measures to identify the extent to which the child’s right to participate is implemented and take steps to address any gaps, starting with those gaps identified in this Study. The review should include children’s views on existing opportunities for child participation and possible reform.

Recommendation 5. Establish children’s consultations to run parallel to public consultations on all issues which are, on a liberal interpretation, relevant to children and their lives. The methodology adopted for children’s consultations about the establishment of the Commission on Children could be taken as a model and developed with expert support.

Recommendation 6. Introduce a “Child Participation Opportunity Assessment” (CPOA) for all proposed legislation, policies and measures which, on a liberal interpretation, could be relevant to children and their lives. The CPOA would ask public officials to consider whether child participation is needed, and if so, how the optimal form and quality of that participation will be delivered. If the Administration should in future move to adopt a general Child Impact Assessment (CIA), the CPOA could be included as part of that. However, until such time, the CPOA can function as a standalone factor in the governance cycle. The aim is to ensure that child participation is embedded within planning, design and implementation of general level policy-making.

Recommendation 7. Require information on child participation measures/incidence in all governmental annual reporting requirements; require duty-bearers to ‘name’ the forms and uptake of child participation offered: consultative, collaborative, child-led, and explain why one form

of participation was chosen over the other options. Special care should be taken to confirm that participation is not manipulative, decorative or tokenistic.

Recommendation 8. Improve transparency of governmental support for child participation by publishing a regular financial audit for funding of child participation initiatives and opportunities. The audit should indicate, amongst other relevant factors, whether the funding completely covered the costs of the child participation opportunity in question, whether individual participants or their families were required to contribute funds to participate, whether the child participation achieved ‘value for money’ in terms of quality of participation and uptake.

Recommendation 9. Introduce remedies for breach of the right to participate. Those remedies to address breach for individual children, groups of children and children as a group.

Recommendation 10. Review child participation at district-level; provide child-friendly information on district-level governance; institute child-appropriate forums on district matters open to all children living in the district; set up ‘mirror’ platforms to nurture children’s capacity to engage in district level governance issues.

General Education Strategies, Platforms and Other Resources:

Recommendation 11. Establish and fund Family Education and Public Education programmes on child participation which are relevant to Hong Kong society. These programmes would include education on what is meaningful child participation, how adults can encourage child participation, the positive link between child participation and children’s welfare.

Recommendation 12. Review CREFS to achieve effective application of funds and useful deliverables; repeat funding for successful programmes.

Recommendation 13. The Commission on Children: Set in place a roadmap to move from the current formation of the Commission towards greater levels of child participation and include children, from a range of ages and backgrounds, as members of the Commission, so that children are participating directly in the work of the Commission and children’s voices are heard without representation or interpretation by the adult members of the Commission.

Recommendation 14. The CoC: Commit to working towards an independent, empowered Commission which complies the Paris principles for an effective Commission.

Recommendation 15. Address stakeholder and rights-bearers feedback on CRF. In particular, liaise with experts to identify ways to: adopt child friendly timing of meetings (when in the day and in the week meetings occur and how much notice of agenda items and materials is given), develop collaborative agenda setting (children can raise items), expand the range of children who attend (publicise meetings to all children via schools and children’s organisations and seek to increase diversity of children attending); routinise giving feedback on the impact of children’s participation at CRF; and provide information and materials that are adapted in content and not only appearance to be child- and age-appropriate.

Recommendation 16. Develop and support opportunities for child-to-child peer mentoring for child participation education and implementation. This might be achieved providing by support for child-led NGOs or child-led platforms.

Recommendation 17. Establish a multidisciplinary platform for duty-bearers, other stakeholders, children and specialist professionals to share expertise on child participation. One possibility

is to liaise with the CoC on the databank it is currently considering.

Recommendation 18. Create a platform for children to initiate their own complaints to government bureaux/departments and statutory bodies about alleged maladministration. One possibility is to establish a Children’s Ombudsman.

Recommendation 19. Develop and periodically review child-friendly versions of relevant information to be available from all government and statutory bodies via their websites or hot-lines.

Recommendation 20. Continue funding for partnerships with NGOs to deliver child participation opportunities such as the Junior Chief Executive programme and the Children’s Council. Review current ‘partial funding’ practice to move towards full funding of successful initiatives in order to create time and space for NGOs to focus on delivering the child participation opportunities rather than writing grant applications to make up the current shortfall in government funding for individual programmes.

Professional Skills & Capacity Building:

Recommendation 21. Establish training programmes for all civil servants and public officials on child participation and in particular: how child participation is relevant to different sectors of the Administration, how child participation can be a positive input for the work of the Administration and how civil servants and public officials can facilitate child participation in the work of the Administration.

Research, Data Collection & Analysis:

Recommendation 22. Commit to supporting research on how to develop the implementation of Article 12 in Hong Kong. Specific ongoing research projects should address how to identify and implement ‘best practice’. Research also to be undertaken regularly to review changes to the baseline implementation of Article 12 and child participation identified in this Study.

Recommendation 23. Routinely and systematically gather longitudinal and disaggregated data on child participation. One possibility is to liaise with the CoC on the databank it is currently considering.

Recommendation 24. Adopt a research protocol for all publicly-funded research that children’s voices will be sought in all relevant/appropriate research studies on social, economic, political issues. This commitment understood in the context of ‘liberal interpretation’ by duty-bearers of when children and child participation are possible and desirable.

Recommendation 25. Engage in evidence-based policy-making, using data gathered as a result of, but not limited to, Recommendations 23 and 24 to identify, quantify and address child participation issues.

ii): Recommendations Across All Settings:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 26. All duty-bearers: statutory bodies, government bureaux and departments, to review this Study in relation to the opportunities for child participation in their own jurisdictions as reported here. Duty-bearers should address gaps in implementation of child participation, especially where the origin of the implementation gap is that the dutybearer currently has no child participation policy or where opportunities for child participation are not distinguished from participation opportunities available to adults.

Recommendation 27. Promoting good quality child participation: the importance of time: duty-bearers should assess all proposed opportunities for child participation within their sphere to ensure that the amount of time required by children to engage in meaningful child participation has been taken into account and is the necessary time is built into the proposed child participation process. Duty bearers should monitor and review the suitability of time frames adopted for child participation. This review process should include feedback from participating children.

Recommendation 28. Promoting good quality child participation: the importance of followup: duty-bearers should assess all proposed opportunities for child participation within their sphere to ensure that processes to give children feedback on the impact of their participation are in place. Duty-bearers should monitor and review the extent to which children, whether individuals or as a group, are given feedback on their participation. Where failures to provide follow-up are identified, steps should be taken as soon as possible to provide feedback and, where the failure is systemic, to introduce measures or mechanisms for consistent follow-up.

Recommendation 29. Promoting good quality child participation: the importance of safety of children: Duty-bearers to risk assess all opportunities, existing and proposed, for child participation. The aim is to ensure participation is voluntary and that participation does not cause the child distress, trauma or place the child in danger of harm.

General Education Strategies, Platforms and Other Resources:

Recommendation 30. Develop, distribute and review Hong Kong specific training manuals, educational kits and video resources for children, NGOs, parents and the public on child participation.

Recommendation 31. Launch and support initiatives and meetings for children to meet and exchange views with adults in key institutions on a non-tokenistic, iterative, respectful basis.

Professional Skills & Capacity Building:

Recommendation 32. Professional understanding and facilitation of child participation has been found to be inconsistent in terms of both actualisation, and quality. Therefore, a key recommendation is that minimum, uniform benchmarks must be articulated and required for training for all professionals, in any sector, whose work involves child participation. The training should address, as a minimum, the meaning of Article 12, the elements of good quality child participation, models of child participation, the development of skills and competences necessary to facilitate meaningful child participation. Training is to be delivered to professionals both at an initial stage of their professional or vocational training and also in the form of continuing professional development. The Administration could liaise with professional accreditation bodies to ensure high standards, good practice and maximum reception of the training. Implementation

of training standards to be monitored and periodically reviewed.

Recommendation 33. Develop, distribute and review Hong Kong specific training manuals, educational kits and video resources for duty-bearers and professionals working with child participation.

Recommendation 34. Sectoral representatives to develop relationships with children's rights NGOs and experts to build government officials' knowledge of the UNCRC and Article 12. This recommendation would not be satisfied by out-sourcing child-participation work to NGOs and other experts. The aim is to embed knowledge within the governmental institutions themselves.

Recommendation 35. Sectoral representatives to design and adopt, as broadly as possible, a multi-disciplinary approach to achieving effective child participation within and across sectors. Also, put in place systems and processes to facilitate the designated multidisciplinary approaches. The practical impact of these systems and processes should be monitored and reviewed periodically. The reviews should include consideration of feedback from child participants and other stakeholders.

Recommendation 36. Professional bodies in all sectors to develop codes of conduct for their members on the facilitation of, and support for, meaningful child participation.

iii): Recommendations For Specific Settings:

a) The Legal Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 37. The Department of Justice to monitor and periodically review legislative provisions requiring the child's views to be heard and taken into account. Further, the Department of Justice and the Judiciary, where appropriate, to monitor and review periodically the development and use of supporting regulations, guidance or practices. The aim of the 'monitor and review' measure is to evaluate the extent to which meaningful participation is being afforded to children in legal proceedings. General Education Strategies, Platforms and Other Resources:

General Education Strategies, Platforms and Other Resources:

Recommendation 38. The University law schools and the legal professional bodies to stipulate and design child participation education in relevant undergraduate, postgraduate and CPD law courses.

Recommendation 39. The Department of Justice to develop public education courses and school courses on what 'hearing the child's voice' in legal proceedings means, especially in relation to child custody hearings.

Recommendation 40. Children to be provided with child-friendly versions of: information for court proceedings, including information on matters such as separate representation and meetings with Judges and remedies; court orders which affect the child; and, where appropriate, judgments.

Recommendation 41. Each child whose parents are engaged in divorce or custody proceedings to be provided with the contact details of either a named individual or a hotline who can answer any questions or concerns they have about the legal proceedings and associated issues.

Recommendation 42. The Department of Justice, the Judiciary and the legal professional bodies to review the Official Solicitor and guardian ad litem systems of separate representation. Also, those stakeholders to consider whether and how to improve information for children about their options for separate representation in an age/maturity appropriate and child-friendly manner. A child-friendly website could be one option.

Recommendation 43. The Department of Justice, the Judiciary and the legal professional bodies to review generally the Juvenile Court jurisdiction, setting and processes. The review also to consider specifically whether to take care and protection work out of the Juvenile Court jurisdiction?

Recommendation 44. To establish a Family Court venue which promotes and facilitates child participation as widely as possible where relevant. Special suites for judges to meet with children; special suites for child consultants or specialist legal representatives to meet with children. To consider bringing family mediation services within the same venue to maximise available resources for child participation.

Professional Skills & Capacity Building:

Recommendation 45. The relevant legal professional bodies and the Department of Justice to take steps to build the competence and capacity of professionals to work with children's participation. Further, the legal professional bodies and the Department of Justice to require and provide training on multidisciplinary approaches to child participation for lawyers whose work touches on with child participation.

Recommendation 46. The Judiciary to seek expert assistance to design and deliver training for Judges hearing child-related proceedings at all levels of the court hierarchy, on how to facilitate meaningful child participation, particularly in relation to meeting with children or separate representation for children. This training to extend to encompass guidance and support for judges on when and how to write child-appropriate judgments and court orders.

Recommendation 47. Establish a specialist Bar (to replicate rights of audience across both branches of the Professions) for representation of children in legal proceedings; membership of this specialist Bar to be a requirement for eligibility for work with children under the Duty Lawyer Scheme.

Recommendation 48. The Department of Justice, the Judiciary and the legal professional bodies to review how social workers and expert witnesses are currently employed to gather the child's views, the boundaries to their role and the qualifications deemed necessary for those social workers and expert witnesses to be engaged in legal proceedings. The aim is to ensure good quality child participation which accurately represents the child's views and does not add to the trauma children may experience when their lives are touched by legal proceedings.

Recommendation 49. The Department of Justice, in conjunction with the Judiciary, to identify

all processes where one person both reports the child's views AND makes an evaluation of what is in the best interests of the child. The aim is to evaluate the potential for a conflict of interests or diminution of the child's voice and address accordingly.

Recommendation 50. The Social Welfare Department and the Department of Justice to promote the development of child-inclusive mediation. This to entail the development of training programmes for child-inclusive mediators and child consultants; the introduction of professional accreditation for child-inclusive mediators and child consultants; and to draft and institute a binding code of conduct for each.

Research, Data Collection & Analysis:

Recommendation 51. The Judiciary to keep statistics on when judges meet with children directly. Review data periodically and identify any issues which indicate that opportunities child participation could be improved.

Recommendation 52. Research to be commissioned by the Department of Justice and the Social Welfare Department on the impact of hearing the child's voice directly in proceedings, whether through separate representation or by meeting with the judge, in order to identify implementation gaps and good practice.

Recommendation 53. Research to be commissioned by the Judiciary to review practice around the world regarding the intersection of hearing the child's voice, confidentiality of what the child says and fairness within the legal proceedings.

b) In the Alternative Care Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 54. Include child participation opportunities as a required deliverable in all service delivery agreements between SWD and service providers.

Recommendation 55. Where a child is the subject of a MDCC: provide the child with child-friendly information about what the MDCC is and how they can choose to participate if they so wish. Directly invite the child to attend the MDCC, rather than extend the invitation through the child's parents as is current practice. Provide parents with information about child participation in a MDCC.

Recommendation 56. Provide children with an appropriate opportunity to check the accuracy of the way in which their views are being reported in instances such as SIRs, in MDCCs, in the adoption process, in care placements and any other instances when a child would express their view.

Recommendation 57. When a child is 'discharged' from alternative care include in the 'exit interview' express discussion of the child's experience of participating and being heard. This information to be used as a learning tool only for the social workers involved and not to be related to promotion or remuneration.

Recommendation 58. Develop child-specific processes for the participation of vulnerable children, including children being held in detention, asylum-seekers and refugees in the processes and decisions which affect them.

General Education Strategies, Platforms and Other Resources:

Recommendation 59. The Social Welfare Department to work with experts to promote child participation-friendly parenting through family intervention programmes.

Recommendation 60. The duty-bearers to design and provide child-friendly information and complaints processes to all children held in alternative care or detention.

Recommendation 61. The Social Welfare Department to review funding mechanisms and levels especially in relation to the lump sum grant mechanism, so that social workers have the time and resources necessary to facilitate effective child participation. In particular the review to consider the impact of the lump sum grant model whereby funding is sometimes diverted from the promotion and facilitation of child participation opportunities in order to meet arising remedial service needs.

Recommendation 62. The Social Welfare Department, professional bodies and experts to review the usefulness of existing child participation resources developed for social workers. Based on the findings of the review, update and extend resources to provide a range of training manuals, videos, case studies and checklists on meaningful child participation and review the usefulness of existing child participation resources developed for social workers. Based on the findings of the review, update and extend resources to provide a range of training manuals, videos, case studies and studies and checklists on meaningful child participation and good practice in different aspects of the alternative care settings which are relevant to Hong Kong today.

Recommendation 63. The Social Welfare Department, professional bodies and experts relevant public stakeholders to review current investment in social work professionals. Where the current investment levels do not support meaningful child participation facilitation, to take steps to address this, such as, but not limited to: training and employing more social workers, invest in necessary resources such as facilities for care placements, foster families, and emergency accommodation so that child participation is not excluded/overlooked due to resourcing shortages.

Recommendation 64. Under the auspices of the CoC: establish a confidential, anonymous telephone and/or online ‘hotline’ for children to gain information about their child participation rights and where children can share their concerns about whether and how they can participate in decisions being made about them and their lives. This recommendation could be actualised in conjunction with the second aspect of Recommendation 42.

Professional Skills & Capacity Building:

Recommendation 65. The relevant social work professional bodies and the Social Welfare Department to review and build the competence and capacity of professionals to work with children’s participation; specifically, to take steps to identify best practice and to roll out that best practice as a universal professional standard to be achieved.

Recommendation 66. The relevant social work professional bodies and the Social Welfare Department to review current rotation practice for social workers to identify its impacts on effective child participation. If the findings of the review show that the rotation practice has adverse consequences for effective child participation, to consider and implement solutions.

Recommendation 67. The relevant social work professional bodies and the Social Welfare Department in conjunction with the legal professional bodies, the Department of Justice, the Judiciary and other experts, to review the legal training currently given as part of social workers’ foundational training and to consider further training on child participation facilitation. Particularly consideration should be given to training relevant to the purpose and scope of the SIR. Also, to review current systems for monitoring and reviewing how social workers facilitate child participation in legal proceedings; this review to include where appropriate feedback from children involved. Utilising the findings of this review, to consider any changes necessary to ensure that good practice taught in training is being applied in practice.

c) In the Education Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 68. The Education Bureau to take steps to mainstream child participation in the school day by ‘ring fencing’ time for children’s participation opportunities so that child participation is not another ‘extra’ in children’s schedules and so that children’s abilities to participate can be nurtured and practised in a safe environment. Review school syllabus to identify where education on the meaning and practice of child participation can be explored with schoolchildren of all ages.

Recommendation 69. The Education Bureau, in conjunction with the Universities Grants Committee to review all higher education programmes, at associate, undergraduate and postgraduate levels to identify current provision of courses or programmes which address child participation as academic or skills-based syllabus content and to consider the need for improved course offerings so that child participation becomes a ‘natural’ part of academic dialogue in any relevant academic or vocational discourse. The Education Bureau to reach out to professional accreditation bodies to explore where need exists for ‘compulsory’ coverage of child participation in vocational and professional courses and programmes at higher education level.

General Education Strategies, Platforms and Other Resources:

Recommendation 70. Education Bureau to invite the LCSD to present their experiences of child participation in the design and planning of the Tuen Mun Inclusive Playground and to consider adopting this model to implement child participation in school design and renovation.

Recommendation 71. Education Bureau to ensure all groups of children, and especially those who are marginalised, vulnerable or fall outside of the mainstream, are provided with information about their educational choices which is appropriate for them; provide processes for children to participate in decision-making about their educational paths.

Professional Skills & Capacity Building:

Recommendation 72. Review and build competence and capacity of education professionals to work with children’s participation; specifically review current training for teachers, both at the foundational stage of training and as continuing professional development, on what constitutes meaningful child participation, and how to build good quality child participation into class planning, class schedules and in day to day decision-making in schools generally. The aim is the children are not passive recipients of ‘education’ but are engaged in the framework of their learning as partners. The ESF active learning model reported in the Study could be considered as one touchpoint for the review.

Research, Data Collection & Analysis

Recommendation 73. The Education Bureau to review existing instances of child participation in schools for groups of children and for individual children. As a result of the review, identify best practice for child participation for individual children and for different groups of children: depending on age and maturity, identity and needs, and roll out across the school system. Institute a regular monitor and review mechanism which includes feedback from the children themselves.

Recommendation 74. The Education Bureau to review and address current high levels of academic pressure on all ages of children. Specifically identify how this pressure works to diminish or negate children’s opportunities to participate and formulate recommendations for change.

d) In the Healthcare Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 75. The relevant duty-bearers across sectors, medical professional bodies, paediatric patients’ groups and other NGOs to liaise with experts to promote child participation in healthcare settings on matters other than medical treatment decisions; for example, choices children can make in relation to education, residence, play, when hospitalised or when children’s lives are disrupted by a course of medical treatment.

Recommendation 76. The relevant duty-bearers and medical professional bodies to review current legislative provisions and policies for references to arbitrary age limits relating to children’s access to and consent to medical treatment. To consider reform where necessary to move away from simple age limits and to reflect instead the Article 12 focus on the child’s age coupled with maturity of the child as the relevant consideration when hearing the child’s views.

Recommendation 77. The Hospital Authority to systematise meaningful child participation in the design and service delivery of paediatric health, including venues, processes and follow-up.

General Education Strategies, Platforms and Other Resources:

Recommendation 78. The Department of Health and the medical professional bodies to review current provision of, and take steps to improve where necessary, child-friendly materials on all common medical routines and procedures for children.

Recommendation 79. The Department of Health and the medical professional bodies to review

current provision of, and take steps to improve where necessary, manuals, training kits and checklists for all healthcare professionals on facilitating meaningful child participation in healthcare decision-making.

Recommendation 80. The Department of Health and the medical professional bodies to review current provision of, and take steps to improve where necessary, materials for families on child participation in healthcare decision-making.

Recommendation 81. The Department of Health, the Hospital Authority and the medical professional bodies to provide children, in an appropriate manner, with means by which to give feedback on their experiences of participation in the healthcare setting and to raise complaints.

Professional Skills & Capacity Building:

Recommendation 82. The professional healthcare bodies to review and, where necessary, build the competence and capacity of professionals to work with children’s participation; specifically, to take steps to identify best practice and to roll out that best practice as a universal professional standard to be achieved.

e) In the Leisure & Cultural Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 83. The Leisure & Cultural Services Department to roll out the Tuen Mun Inclusive Playground model for all leisure venue planning and design unless there are child participation relevant reasons for not doing so.

General Education Strategies, Platforms and Other Resources:

Recommendation 84. The Leisure & Cultural Services Department to review current provision of, and take steps to improve where necessary, training manuals, guidelines and kits for professionals working in the Leisure & Cultural sector on how to identify opportunities for child participation; how to engage and facilitate child participation in child-related projects.

Professional Skills & Capacity Building:

Recommendation 85. The Leisure & Cultural Services Department to provide periodic training to build competence and capacity of professionals to work with children’s participation.

Recommendation 86. The Leisure & Cultural Services Department in conjunction with relevant NGOs and other experts to offer, on a consultancy basis or otherwise, training to private property developers and site management companies on how to promote child participation in privately owned leisure settings and businesses.

Research, Data Collection & Analysis:

Recommendation 87. The Leisure & Cultural Services Department to monitor and periodically review the use by children of leisure and cultural facilities. The review process to include the

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views of the actual and potential child users of the facilities.

f) In Miscellaneous Settings:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 88. All government departments, bureaux and statutory bodies to take steps to raise awareness amongst sector workers and the public, including both adults and children, of the ways in which child participation is relevant in the given sector..

General Education Strategies, Platforms and Other Resources

Recommendation 89. All government departments, bureaux and statutory bodies to develop training manuals, guidelines and kits for their professionals on how to identify opportunities for child participation; how to engage and facilitate child participation in child-related projects.

Recommendation 90. The Consumer Council, The Office of the Ombudsman, the Town Planning Board and the Urban Renewal Authority to liaise with NGOs and experts in child participation to consider effective platforms through which children can participate in the work of these bodies. For example, in public administration accountability, children could have a Children's Ombudsman; in town planning, children could be provided with a childfriendly channel by which to receive information and to submit their views on proposed developments.

Professional Skills & Capacity Building:

Recommendation 91. All government departments, bureaux and statutory bodies to provide periodic training to build competence and capacity of their professionals to identify opportunities for child participation and to facilitate children's participation in their work.

Research, Data Collection & Analysis:

Recommendation 92. All government departments, bureaux and statutory bodies to collect disaggregated data on the extent to which children use the provided channels for child participation and their views about those channels.

Part One: Section One: Background to the Study.

Introduction:

1. Hong Kong became a party to the United Nations Convention on the Rights of the Child (UNCRC) in 1994. As such the Hong Kong Government is committed to respect and implement those rights of the child enshrined in the Convention.
2. To monitor and gauge the degree to which any UNCRC right has been implemented successfully by a State Party, the Convention requires all States Parties to report periodically to the UN Committee on Children's Rights (the UN Committee) on the measures they have taken to fulfil their obligations under the Convention. However, it can be difficult to obtain a clear picture of implementation from the official reports to the UN Committee for several reasons: the multiplicity and complexity of the governmental and non-governmental bodies that provide services to children; the diverse ways in which the Convention rights touch children's lives; the difficulty of conveying the detail of implementation in the relatively concise reports; and the political context of the reporting process. Furthermore, if, as has been the case until very recently in Hong Kong, there is no central co-ordinating body, like a Children's Commission, to oversee and record the implementation of the UNCRC, this increases the difficulty of formulating a comprehensive and cogent picture of the children's rights landscape in the given jurisdiction. NGO shadow reports to the UN Committee allow for the presentation of additional detail and context, though it can still be difficult to achieve a full picture of the extent to which any of the UNCRC rights is experienced by both rights-bearers and duty-bearers.
3. Without a clear and comprehensive picture of how Convention rights are enjoyed by Hong Kong's children, it is impossible to assess where implementation gaps exist and what remedial steps might be taken. Hong Kong is not alone here. To address these difficulties, a number of organisations have conducted 'Baseline Studies' to measure compliance with UNCRC obligations in their jurisdictions. For example, in the Asian region alone, the Children's Rights Coalition of Asia published the 'Child Rights Situational Analysis within the ASEAN Region' in 2016¹ and Save the Children in Sri Lanka published the 'Child Rights

¹ https://www.crcasia.org/wp-content/uploads/2016/11/Child-Rights-Situation-Analysis-Within-the-ASEANRegion_Mahidol-University-2016.pdf last accessed on 20th June 2019.

Baseline’ in 2009². In Europe, the report “Evaluation of Legislation, Policy and Practice of Child Participation in the European Union” published in 2015,³ provided a similar Baseline Study, this time focussed specifically on of Article 12 of the UNCRC and a small number of related UNCRC rights. These reports are invaluable because they provide a wide-ranging and detailoriented review of the implementation of children’s rights and establish a base-line from which to guide future strategy and resources for effective advocacy and policy-making and policymaking by States Parties.

4. In Hong Kong, the NGO Against Child Abuse proposed a similar project in 2009 in its report to the Legislative Council⁴. Four years later in 2013, in a submission to the UN Committee, Against Child Abuse noted that a Baseline Study had not yet been conducted in Hong Kong. Given the recent establishment, in 2018, in Hong Kong of a Commission on Children (CoC), which includes within its terms of reference the aim to “(p)romote and promulgate children’s rights as articulated in the United Nations Convention on the Rights of the Child, and engage with children on matters that affect them”⁵ now is an ideal time to undertake a Baseline Study of the children’s rights landscape in Hong Kong. The primary aim of the Study is to develop a clear picture of where we are now in terms of implementation of Article 12 UNCRC; to measure what work remains to be done; and to set a threshold against which it is possible compare how much progress is made in the future.
5. A brief word must be said about one key limitation of this Study. This Study focusses on the laws and mechanisms to implement Article 12 and its associated concept of child participation. This objective reporting has been enriched by input from stakeholders from key sectors who work with children and child participation. What this Study does not include is the perspective of the rights-bearers, the children, themselves. However, no Baseline Study on child participation would be comprehensive without the input of children, as rights-bearers, using their voices to express their views on the implementation of Article 12. Therefore children’s own essential perspective will be addressed in a complementary Study, where it will be possible to utilise a child-appropriate methodology, focussed on gathering and representing children’s views on child participation in decision-making which affects children. Findings from that Study will be assessed and used to supplement the findings from this Study, resulting in a comprehensive proposal for a framework of best practice for child participation in Hong Kong.

² https://www.researchgate.net/publication/233942518_Child_Rights_Baseline_2009_-_Sri_Lanka last accessed on 20th June 2019.

³ <https://publications.europa.eu/en/publication-detail/-/publication/3f3c50b2-6a24-465e-b8d1-74dcac7f8c42> last accessed on 20th June 2019.

⁴ http://www.aca.org.hk/posppr/20090506_Legco_2nd_uncrc_report/ACA_submission_to_legco_panel_on_outline_of_2nd_uncrc_report_2009.pdf at para. 6, last accessed on 20th June 2019.

⁵ <https://www.lwb.gov.hk/eng/advisory/coc.htm>, last accessed on 11th November 2019

The Focus of this Study: Article 12 of the UNCRC:

6. Since the Convention came into being in 1989, the UN Committee on the Rights of the Child has identified four aspects of the Convention which it designates as the ‘general principles’ of the Convention: the Article 2 principle of non-discrimination; the Article 3 best interests principle; the Article 6 right of the child to life, survival and development; and the Article 12 right of the child to express their views and to have those views taken into account.⁶ The Committee has explained that these four principal articles guide the interpretation and implementation of all other rights under the Convention. So, not only is Article 12 an important right in itself but it is also a ‘gateway’ right. As a gateway right, the implementation of Article 12 facilitates the exercise of other Convention rights. For these reasons, Article 12 is an ideal focus for this first Baseline Study of the implementation of UNCRC rights in Hong Kong.
7. Article 12 requires specifically that:
 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
8. Article 12 itself does not feature the word ‘participation’ but it is often referred to as establishing the ‘child’s right to participate’. Indeed, Article 12 being synonymous with the child’s right to participate has been acknowledged by the UN Committee which states that “(a) widespread practice has emerged in recent years, which has been broadly conceptualized as “participation”, although this term itself does not appear in the text of Article 12. This term has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of suchprocesses”.⁷
9. Further, whilst it is generally recognised that the Convention rights are indivisible from one another, some commentators have linked specific UNCRC articles to Article 12 to form a

⁶ Aisling Parkes, *Children and International Human Rights Law: The Right of the Child to Be Heard* (London: Routledge, 2013) 6–7. See also General guidelines regarding the form and content of initial reports to be submitted by States parties under article 44, paragraph 1 (a), of the Convention : Convention on the Rights of the Child / adopted by the Committee at its 22nd meeting (1st session) on 15 October 1991.

⁷ UNCRC General Comment 12 at para. 3.

‘cluster’ of participation-based rights.⁸ These articles are: Article 5 which refers to the evolving capacities of the child, Article 13 which guarantees freedom of expression, Article 14 which protects freedom of thought, conscience and religion, Article 15 which guarantees freedom of assembly and Article 17 which guarantees freedom of information.⁹

10. For the purposes of this Baseline Study, having taken the decision to focus on the implementation of Article 12 in Hong Kong and to acknowledge the UN Committee’s framing of Article 12 as an expression of the child’s right to participate, the other participation-based rights will be relevant to this Study to the extent that they support or promote the core meaning of Article 12. For example, the provisions in Articles 13 and 17 which secure a child’s right to access to information are clearly pre-requisites to the child’s ability to form a view. Similarly, the recognition of a child’s evolving capacities in Article 5 is relevant to the Study’s enquiry into the way in which participation is implemented for children of different ages and capacities.
11. The overall aim of the Study is to provide a baseline statement of the status of Hong Kong children’s participation today in the design and implementation of policies and mechanisms which affect them, with a view to measuring future developments against this fixed point. To achieve this overall aim, the Study comprises several subsidiary aims:
 1. to identify the elements of the Article 12 right to participation, e.g. access to appropriate information;
 2. to identify Article 12 duty-bearers;
 3. to identify laws, policies and codes which promote the Article 12 elements;
 4. to assess the scope of those measures as written in comparison with the requirements of Article 12 itself;
 5. to discover and evaluate the extent to which those measures are utilised by rights-bearers;
 6. to discover procedures for complaint or grievance by rights-bearers, and related remedies, in relation to the enjoyment of the Article 12 right.
 7. to identify informal means by which rights-bearers exercise their Article 12 right.

⁹ *Ibid.*, pp 39–41

⁸ Sriprapha Pecharamesree, Mark Capaldi and Vachrarutai Boontinand. *Child Rights Situation Analysis Within the ASEAN Region* (Manila, Philippines: Institute of Human Rights and Peace Studies, Mahidol University and Save the Children Philippines, 2015): 26

8. to provide a clear dataset by mapping the extent to which all of these provide for the implementation of Article 12 in Hong Kong;
9. to extrapolate from that dataset, any ‘gaps’ in the implementation of Article 12;
10. to make recommendations as to how the findings of the Study generally can be used to inform future advocacy and strategic decision-making on the implementation of Article 12 in Hong Kong.

The Structure of the Study:

12. **Part I: Background to the Report:** comprising this introductory section; the research methodology adopted to achieve the aims of the Study; and a third section which will discuss the literature on the meaning, and scope of Article 12 developed since the drafting of the UNCRC. This third section will provide a context within which the findings of this Baseline Study can be understood.
13. **Part II: Provisions for the Implementation of Article 12 of the UNCRC in Hong Kong:** comprising seven sections, each of which will map the laws, mechanisms and structures currently in place in Hong Kong to implement Article 12. Each section will address one setting in which Article 12 has relevance: at HKSAR general policymaking levels; and in settings relevant to children’s lives: the legal setting, alternative care and family breakdown; education; healthcare; leisure and culture; and other miscellaneous settings. In addition to recording the laws, mechanisms and structures relevant to child participation, a brief commentary will be included in each section where stakeholders have provided feedback and additional context on the child participation opportunities reported for that setting.
14. **Part III: The Implementation of Article 12 of the UNCRC in Practice in Hong Kong:** comprising five sections of thematic analysis of stakeholders’ experience of Article 12 in practice today. Themes include: an absence of participation; the quality of participation; the children who participate; enablers of good quality child participation; and the impact of child participation.
15. **Part IV: Challenges to the Implementation of Article 12 of the UNCRC in Hong Kong:** comprising four sections addressing major barriers to child participation including: welfare and paternalism; adults’ perceptions of children; cultural values and structures; and lastly the need for leadership on child participation.
16. **Part V: Overall Conclusions.**
17. **Part VI: Recommendations.**

Part One: Section Two: Methodology:

Setting the Foundations for this Study:

18. The first step in beginning this Study was to conduct a literature review with particular focus on a) similar baseline or implementation studies conducted in the field of children’s rights and on b) human rights institutions’ own publications on the meaning of the UN-CRC and Article 12. From this preliminary review it was possible to refine the aims and the scope of the Study. In particular it was decided to adopt ‘child participation’ as being synonymous with Article 12 and to include where relevant the supporting elements of other participation-based UNCRC rights, especially Article 5 in relation to the child’s evolving capacities and Articles 13 and 17 in relation to access to information.
19. Following on from this a more detailed scoping study¹⁰ was undertaken to unpack the concept of child participation. From this it was possible to develop a reference matrix to evaluate the implementation of both Article 12 and broader child participation in Hong Kong. The scoping study utilised keywords, with relevant variations, such as ‘United Nations Convention on the Rights of the Child’, ‘UNCRC’, ‘Article 12’, ‘child participation’, ‘the child’s right to express a view’, ‘the child’s voice’. The scoping study was applied to both the domestic Hong Kong context and more generally in international, regional and concept-based searches. The scoping study reviewed library-based resources as well as legal and social science databases such as Lexis, Westlaw, Proquest and JSTOR. Further database research included searches of Hong Kong institutional databases for the Legislative Council, the Judiciary and the Administration, with further research conducted via relevant government departments’ and bureaux’ websites. Lastly, the scoping study surveyed United Nations documentation relevant both to Article 12 generally and specifically to Hong Kong. These materials comprised documentation generated by the Hong Kong Administration, the United Nations Committee and various NGOs as part of the periodic reporting cycle under the Convention. In this way relevant primary sources, commentary and reporting from the fields of academia, national and international human rights institutions, governmental bodies, civil society and professional sectors were canvassed.
20. From this scoping study, first a working understanding of the meaning and scope of Article 12 and child participation were developed into a ‘Child Participation Matrix’. Using this matrix to consider the aims of the Study, the Study’s research questions were then generated and the research materials necessary for empirical research were formulated. The empirical research takes two main forms: a) requests for information from those entities identified as duty-bearers by the scoping study. The requests take the form of a standard format questionnaire sent to the duty-bearers; and b) semistructured interviews with stakeholders who work with children’s rights or child participation issues.
21. The first research tool developed was the questionnaire sent to duty-bearers. The aim of the

¹⁰ Arksey, H. and O’Malley, L. (2005) Scoping studies: towards a methodological framework, *International Journal of Social Research Methodology*, 8, 1, 19-32.

questionnaire was to elicit data to map with some degree of consistency the implementation of Article 12 by different duty-bearers. The questionnaire was developed taking into account the aims of the Study, the Child Participation Matrix and the need to obtain information without making the process so onerous for recipients that response rates would suffer. Other sources which fed directly into the design of the questionnaire included the EU Report “Evaluation of Legislation, Policy and Practice of Child Participation in the European Union” (2015)¹¹ and the UNICEF “Implementation Handbook for the Convention on the Rights of the Child” (2007)¹².

22. Duty bearers were identified by a) a web-based review of government departments and bureaux within the Hong Kong Administration using the Administration’s own organisational chart; ¹³ b) a web-based review of statutory bodies based on the Hong Kong Administration’s own record of statutory bodies;¹⁴ and c) an identification of ‘hotspots’ for children’s participation within the governmental and quasigovernmental structure which was made by reference to the ‘settings’ most relevant to children as identified in the United Nations Committee on the Rights of the Child’s General Comment No.12¹⁵ and the UNICEF Handbook and by reference to the HKSAR reports to the UN Committee and the Committee’s responses. The questionnaire template is at Annex 2.
23. The second research tool developed was the set of semi-structured interview questions for stakeholder interviews. The factors relevant to the questionnaire were also relevant here. The original set of semi-structured interview questions was adapted to address different cohorts of interviewees. These were either representatives of NGOs or individual experts working with child participation in their own professional fields. Again, the EU Report “Evaluation of Legislation, Policy and Practice of Child Participation in the European Union” (2015)¹⁶ and the UNICEF “Implementation Handbook for the Convention on

¹¹ <https://publications.europa.eu/en/publication-detail/-/publication/3f3c50b2-6a24-465e-b8d1-74dcac7f8c42> last accessed on 10th June 2019.

¹² https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf last accessed on 10th June 2019.

¹³ <https://www.gov.hk/en/about/govdirectory/govchart/index.htm> last accessed on 10th June 2019.

¹⁴ <https://www.info.gov.hk/cml/eng/cbc/index1.htm> last accessed on 10th June 2019.

¹⁵ <https://www.refworld.org/docid/4ae562c52.html> last accessed on 10th June 2019.

¹⁶ <https://publications.europa.eu/en/publication-detail/-/publication/3f3c50b2-6a24-465e-b8d1-74dcac7f8c42> last accessed on 10th June 2019.

¹⁷ https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf last accessed on 10th June 2019.

the Rights of the Child” (2007)¹⁷ were key sources in the design of the interview questions. The interview templates are at Annex 3.

Data Collection:

24. Having laid the foundation for the rest of the Study and developed aligned research tools, the next stage was to begin data collection. This took three forms: documentary review of primary sources; requests for information from duty-bearers; and interviews with stakeholders.
25. The documentary review entailed a survey of HKSAR legal provisions relating to Article 12 including constitutional legislation, other sector-specific domestic legislation, subsidiary legislation and case law. This was achieved by a search of the Department of Justice e-legislation database for primary and secondary legislation¹⁸, a search of the Judiciary database for case law and Practice Directions¹⁹, a search of the Legislative Council database for information regarding law reform to implement and promote Article 12 and child participation²⁰, and a search of legal databases Westlaw and Lexis to ensure a comprehensive survey of primary sources of law.
26. The second aspect of data collection entailed requests for information from dutybearers and potential duty-bearers using the questionnaire research tool.²¹ The Hong Kong Administration has instituted an ‘Access to Information Code’²² and this was employed to make formal requests to government departments and bureaux covered by the Code. Where duty-bearers were not covered by the Code, which included most of the statutory bodies, they were contacted with information about this Study and asked to complete the same questionnaire as that sent to bodies covered by the Code.
27. In total 31 requests for information were made. 16 were to government departments and bureaux and 15 were to statutory bodies. 31 responses were received, of which 30 provided material responses to the questionnaire.
28. The third aspect of data collection comprised interviews with stakeholders. The interviews were guided by the interview research tool.²³ The interview questions were modified from

¹⁸ <https://www.elegislation.gov.hk> last accessed on 20th June 2019.

¹⁹ <https://www.judiciary.hk/en/home/index.html> last accessed on 20th June 2019.

²⁰ <https://www.legco.gov.hk/index.html> last accessed on 20th June 2019.

²¹ See para. 21.

²² <https://www.access.gov.hk/en/home/index.html> last accessed on 10th June 2019.

²³ See para. 23.

one of the interview templates adopted by the research team in the 2015 EU Report.²⁴ interview format chosen was a semi-structured interview to allow for qualitative enquiry utilising open-ended and probing or follow-up questions to elicit the interviewees’ broad experience and reflection. Where a face-to-face interview was either not practical or not the preference of the interviewee, interviewees were offered the alternative of responding in writing to the interview questions.

29. In total 32 invitations to interview were issued and 21 interviews were conducted including three by written response, with a total number of 25 interviewees. Interviews were designed to last around 40-45 minutes. However, some interviews extended beyond this to last up to 75 minutes. Interviewees were representatives from either a) international and domestic NGOs, b) statutory bodies, c) academia, d) the Legislative Council or e) individual professional experts working with children’s rights in sectors including law, social work, education and health. Several interviewees also provided documentary materials produced by their organisation and these were used during the data analysis phase to supplement the context and data provided by interviewees.
30. Requests for meetings with representatives of selected government departments were not acceded to either because written information had already been provided in response to the questionnaire and this was relied upon by the departmental representative in lieu of an interview or because the representative’s schedule would not allow a meeting within the window of available research time.
31. The interview protocol adopted for this Study required that: interviews should be scheduled at the time and place most convenient for the respondent and interviews would preferably be conducted face to face or, if that was not possible, by Skype or telephone. As noted above, where this was not feasible either by preference of the interviewee or for scheduling reasons, then in three instances the interviews were ‘conducted’ by means of complementary document exchanges. All interviewees were informed at the beginning of the interview that the interview responses would be kept confidential and that where their responses were reported this would be done so anonymously. Each interviewee was asked for their permission to record the interview and to take notes. Each interviewee was asked to sign a Consent Form indicating that they understood the terms of the interview and that they consented freely to participating. The Consent Form template is available at Annex 4.
32. Organisations and individuals who assisted with data collection or otherwise supported this Study are listed in Annex 5.

Data Analysis:

33. *Data gathered via responses to the questionnaire:* this data was collated under six refined headings. These headings recorded what laws, measures and structures were in place to the

²⁴ See footnote 3 above.

implement Article 12 or child participation within the respondents’ own organisation; whether those provisions referred explicitly to Article 12 as the driver for their incarnation; how information about those provisions is disseminated to relevant persons; how regularly the provisions were utilised by rights-bearers; and if the organisation had received complaints about either the substance or application of the provisions. These headings were derived from the original seven questions on the questionnaire. The responses, once collated under the six headings, were then tabulated in three different formats: ‘all respondents’, ‘statutory bodies’, and ‘government departments and bureaux’. These datasets are available at Annex 1. Where relevant, data provided was supplemented by information derived from respondents’ own websites and/or annual reports gathered during the scoping study stage of the research to give the fullest picture possible of child participation opportunities within the recipient’s sphere of control.

34. Data gathered during interviews: interviews were audio-recorded (except in two instances where the surrounding environment made recording difficult; here hand notes were relied upon and written up). These recordings were transcribed and then subjected to a thematic analysis guided largely by the method prescribed by Braun & Clarke.²⁵ The steps taken in the thematic analysis for this Study were to: familiarise oneself with the data, code the data, identify themes (taking care that themes are not merely a repetition of the questions asked), allocate codes to themes, gather coded data under each theme. Next check that themes are coherent and distinct from one another and consider the prevalence of themes.
35. In addition to completing the thematic analysis, transcripts of the audio-recorded interviews were coded a second time with the specific aim of identifying structures for child participation known to the interviewees. This was then used to supplement data gathered by questionnaire from statutory bodies and government departments and bureaux to achieve the fullest picture of child participation. Lastly the transcripts were coded a third time to explore interviewees’ experience of barriers to the implementation of child participation in Hong Kong.
36. Having collated and organised all of the available data, the various datasets were subjected to a comparison analysis to identify any coherent patterns throughout the landscape of child participation in Hong Kong. This analysis was integrated into the reporting of the thematic analysis in Part III of this Study and the reporting of barriers in Part IV.

Part One: Section Three: The Child Participation Matrix:

Unpacking Article 12:

37. key stage in this Study was to build a framework by which to understand the meaning and scope of Article 12 and child participation. This framework would form the basis for all reresearch enquiries. The first step was to look at Article 12 itself. There is today a

²⁵ Virginia Braun & Victoria Clarke (2006) Using thematic analysis in psychology, *Qualitative Research in Psychology*, 3:2, 77-101,

widespread literature concerning Article 12 and its informal synonym: child participation. One of the richest sources of elaboration of the content and scope of Article 12 is to be found in the United Nations Committee on the Rights of the Child’s General Comment No. 12 (2009): *The Right of the Child to be Heard* (GC12).²⁶

38. The first part of Article 12 (emphasis added) requires that States Parties “**assure** to the child who is **capable of forming his or her own views** the right to **express those views freely** in **all matters affecting the child**, the views of the child being **given due weight** in accordance with **the age and maturity** of the child”.
39. ‘**Assure**’ as noted in GC12 connotes “a legal term of special strength, which leaves no leeway for States Parties’ discretion. Accordingly, States Parties are under strict obligation to undertake appropriate measures to fully implement this right for all children”.²⁷
40. Further in GC12, ‘**capable of forming his or her own views**’ “should not be seen as a limitation, but rather as an obligation for States Parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible... it is not up to the child to first prove her or his capacity”.²⁸ This can also be linked to Articles 13 and 17 which require that a child is provided with the appropriate information necessary to form a view.
41. That the child can “**express those views freely**” requires that the child can choose whether or not to express a view. Moreover, that the child must not be manipulated or coerced in any way to express a view. This, it has been suggested, requires that “(i)f children are to be able to express their views, it is necessary for adults to create the opportunities for children to do so”.²⁹
42. The right arises in ‘**all matters affecting the child**’ which, commentators have suggested, means taking a liberal approach to interpreting the range of matters which affect the child. In practice this has been taken not to go so far as to give a general political mandate to children but does include matters affecting a child, not just personally, as an individual, but also a child as a member of a group of children, or even ‘children as a constituency’.³⁰
43. The requirement that the child’s views are ‘**given due weight**’ has been subject to debate. Some commentators see this as a potential limitation when linked to the child’s age and maturity. However, GC12 makes it clear that there is a minimum threshold of consideration which the child’s views must be accorded: “simply listening to the child is insufficient; the

²⁶ <https://www.refworld.org/docid/4ae562c52.html> last accessed on 11th June 2019.

²⁷ GC12 at para. 19.

²⁸ GC 12 at para, 20.

²⁹ Gerison Lansdown, *Promoting Children’s Participation in Democratic Decision-Making*, Innocenti Insight, (2001), p.2.

views of the child have to be seriously considered when the child is capable of forming her or his own views.”³¹ It has been suggested that this threshold consequently requires that the child should be given some feedback on the impact or consequences of their views.³²

44. The double requirement to consider the ‘**age and maturity**’ of the child means that the weight given to the child’s views “needs to reflect their level of understanding of the issues involved. This does not mean that young children’s views will automatically be given less weight.”³³ This therefore links to Article 5: the evolving capacities of the child and the need for parents and other relevant persons to have respect for those. Age alone is not a sufficient indicator of weight to be given to the view of the child.
45. So, the impact of this first clause of Article 12 is, according to Gerison Lansdown, balanced but significant in its recognition of children as rights-bearers in themselves: “It is important to understand clearly what Article 12 does and does not say. It does not give children the right to autonomy. It does not give children the right to control over all decisions irrespective of their implications either for themselves or others. It does not give children the right to ride roughshod over the rights of their parents. However, it does introduce a radical and profound challenge to traditional attitudes, which assume that children should be seen and not heard.”³⁴
46. The second clause of Article 12 is narrower in its scope: “For this purpose the child shall in particular be provided the opportunity to be heard in **any judicial and administrative proceedings affecting the child**, either **directly, or through a representative** or an appropriate body, in a manner consistent with the procedural rules of national law.”
47. The application of the child’s right in ‘any judicial and administrative proceedings affecting the child’ is intended to be without limitation and irrespective of whoever initiates the proceedings. Moreover, the UN Committee reads this provision as implicitly requiring States Parties to create an environment in which the child can exercise this right in a way that is accessible, child-appropriate and not intimidating for the child. This is therefore linked to Articles 13 and 15 which require the child to have access to appropriate information.
48. Where the child chooses to be heard, there must be the possibility for a child either to be heard directly or if heard ‘through a representative’ then the “representative must be aware that she or he represents exclusively the interests of the child and not the interests of other persons (parent(s)), institutions or bodies (e.g. residential home, administration or society).

³¹ GC12 at para. 28.

³² Aisling Parkes, op. cit. at pp. 34-35.

³³ Gerison Lansdown, op.cit., p.2

³⁴ Ibid.

Codes of conduct should be developed for representatives who are appointed to represent the child’s views.”³⁵ This requires those who represent children’s views to final arbiters to be mindful of the possibility of a conflict of interest in their role which may detract from the clarity and focus of accurately and only representing the views of the child.

49. So, on a close reading of Article 12, we see that the child’s capacity to form a view is presumptive and not defined solely by age limits; the child’s view should be expressed freely, if the child so wishes, and their view must demonstrably be taken into consideration. Their view may be expressed directly or through a representative. Further, steps must be taken to facilitate the child’s wish to express a view in an appropriate manner. However, the child’s view is not automatically determinative of the issue to be decided.

From Article 12 to ‘Child Participation’ – Developing the Child Participation Matrix:

The Nature of Child Participation:

50. As discussed above³⁶, the bedrock of the child’s Article 12 right has evolved to encompass the concept of ‘child participation’. Therefore, the next step to developing the Child Participation Matrix for this Study was to add to our understanding of the meaning and scope of Article 12 by interrogating the concept of ‘participation’. Hart defines ‘participation’ in his landmark essay ‘Children’s Participation: From Tokenism to Citizenship’³⁷ as “the process of sharing decisions which affect one’s life and the life of the community in which one lives.” Hart identifies several ways in which a child may participate and ranks these as steps upwards on a ladder from three forms of non-participation through five increasing degrees of participation.
51. Hart locates opportunities for child participation in which children are either manipulated, decorative or tokenistic, on the three lowest rungs of his ladder and deems them ‘non-participation’. On manipulation, Hart says “If children have no understanding of the issues and hence do not understand their actions, then this is manipulation... Another example of manipulation is a situation where children are consulted but given no feedback at all.”³⁸ Children’s participation as decoration occurs when children are included and presented as part of the process but have no idea why they are there, no input on the issues and are simply there to be ‘decorative’. Tokenism is only mildly better, being “those instances in which children are apparently given a voice, but in fact have little or no choice about the-subject or the style of communicating it, and little or no opportunity to formulate their own

³⁵ GC12 at para. 37.

³⁶ At para. 8.

³⁷ Roger Hart, *Children’s Participation: From Tokenism to Citizenship*, Innocenti (1992) at p.5

³⁸ Roger Hart, op.cit. at p.9

opinions.”³⁹

52. Moving up the rungs of Hart’s Ladder, more authentic participation begins when child participation is ‘assigned but informed’: “The children understand the intentions of the project...They know who made the decisions concerning their involvement and why...They have a meaningful (rather than ‘decorative’) role...They volunteer for the project after the project was made clear to them.”⁴⁰
53. For Hart, the next rung up on the Ladder is when child participants are ‘consulted and informed’: “The project is designed and run by adults, but children understand the process and their opinions are treated seriously.”⁴¹
54. Better still for Hart is the next rung on the Ladder: when children participate in projects initiated by adults, but the decision-making is shared with children. Hart calls this ‘Adult-initiated, shared decisions with children’.⁴²
55. This leaves the top two rungs on the Ladder. These represent what Hart considers to be the two most engaged forms of child participation. Second from top is when participation is child-initiated and child-led, while at the very top of the Ladder is participation by the child which child-initiated and decisions-making is shared with adults. Hart locates the latter at the top of the scale of child participation because not only do the children take the initiative and responsibility for their participation but because they also incorporate adults’ support into their participation as resource which can enhance their own participation on their own terms.
56. Whilst Hart’s Ladder of Participation usefully maps the possibilities for child participation, it has been criticised for presenting an unduly incremental view of child participation: that each rung of the ladder improves upon, and subsumes, the previous step. This may not reflect reality. A further criticism of Hart’s Ladder is that its structure implies a ‘hierarchy of values’ which may lead to participatory activities being unfairly and misleadingly judged. Sometimes for example a less ‘intense’ form of child participation, from a lower rung on the ladder, might be the better option in the circumstances.⁴³
57. As an alternative to Hart’s Ladder’, Treseder offers a non-hierarchical model of forms of

³⁹ Ibid.

⁴⁰ Ibid at p.11

⁴¹ Ibid. at p.12

⁴² Ibid.

⁴³ Hart, J., Newman, J., Ackerman, L. and Feeney, T. (2004) *Children Changing their World: Understanding and Evaluating Children’s Participation in Development*, Woking: Plan International at p.48.

child participation which takes the top five levels from Hart’s Ladder and arranges them in a circle, demonstrating that they are different, but equal, forms of good participation⁴⁴.

58. For the EU Report “Evaluation of Legislation, Policy and Practice of Child Participation in the European Union” the Research Team’s working definition of child participation was: “The democratic action and involvement of individual children and groups of children in matters affecting them.”⁴⁵ To measure the extent of child participation found in the EU, they adopted a model yet again different from Hart’s Ladder: the Framework for Monitoring and Evaluating Children’s Participation developed by Lansdown.⁴⁶ This model takes account of three main types of participation: consultative, collaborative, and child-led. The Research Team consciously avoided placing categories in a hierarchy, believing that context should drive the aptness of any given form of child participation in any given circumstance. They also considered a possible fourth form of child participation: instances where children are provided with ‘child-friendly information’ but decided this already existed as part of the three main categories equally. The EU report also notes the stages of policy-making and decision-making at which participation is made available to children and the significance of this for the impact made by child participation: at the planning and design stage; at a mid-process consultation; or only to seek feedback after the delivery of services or resources?
59. Lansdown defines consultative forms of participation as adult-initiated, adult-led and managed. Children have no control over the outcomes although they may be provided with opportunities for “organizing together, acquiring skills and confidence and contributing towards influencing outcomes”. Collaborative processes are initiated by adults. They involve collaboration with children and the creation of structures through which children can challenge or influence outcomes. They will usually involve children taking “self-directed action once the project is underway”. Lastly, child-led processes, or self-advocacy processes as Lansdown terms them, are where the issues of concern are identified by children themselves, the role of adults is to facilitate, not lead. The process is controlled by the children⁴⁷.
60. Having surveyed the literature on the meaning and scope of both Article 12 and child participation, this Study adopts as one axis of its Child Participation Matrix the essential elements of Article 12 and on a second axis, a non-hierarchical, contextually relevant approach to evaluating child participation. Hart’s non-participation categories will be retained as part of the second axis in order to acknowledge that some attempt at child participation has been made even if that the resulting participation is inauthentic. The purpose for this is to provide a comprehensive survey of dutybearers’ claims to implementation of Article 12 and to highlight these examples of inauthentic child participation opportunities as learning opportunity for dutybearers. As in the EU study, the location of child participation

⁴⁵ <https://publications.europa.eu/en/publication-detail/-/publication/3f3c50b2-6a24-465e-b8d1-74dcac7f8c42>, p.2.

⁴⁶ Gerison

⁴⁷ Gerison Lansdown, op.cit. at p.16, p.21 and p.26 respectively.

opportunities in the cycle of decision-making and policy-making will also be considered where that is relevant for impact.

The Quality of Child Participation:

61. The ‘essential elements’ of Article 12 combined with the ‘from’ of child participation afforded by a State Party are significant but not enough by themselves to evaluate comprehensively the degree of implementation of Article 12 in Hong Kong. Equally important is the ‘quality’ of participation. What constitutes ‘good quality’ child participation? GC12 states that child participation processes should be:

a. *Transparent and informative* - children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to participate.

b. *Voluntary* – participation is not coerced, and children can withdraw from participation at any time.

Respectful - children’s views have to be treated with respect and they should be

c. provided with opportunities to initiate ideas and activities.

d. *Relevant* - the issues on which children have the right to express their views must be of real relevance to their lives.

Child-friendly - environments and working methods should be adapted to chil-

e. dren’s capacities.

f. *Inclusive* - participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved.

g. *Supported by training* - adults who facilitate child participation need preparation, skills and support to do so effectively.

Safe and sensitive to risk - in certain situations, a child’s expression of their

h. views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation or any other negative consequence of their participation.

Accountable - a commitment to follow-up on the impact or reception of the

i. child’s participation with the child is essential.⁴⁸

⁴⁸ GC12 at para. 134. See also Skivenes, M. and Strandbu, A. (2006) ‘A child’s perspective and children’s participation’, *Children, Youth and Environments*, vol. 16, no 2, pp 10-27 for an earlier guideline on quality of child participation.

61. In addition to these qualities, three further qualities will be considered important for this Study. First, participation should not, unless appropriate, be limited to ad-hoc, one-off opportunities for participation. Ideally, participation will be iterative. Secondly, children’s participation should not be limited to a sectoral interest but should be combined with macro-level children’s rights capacitybuilding processes. Thirdly, child participation will be shaped not only as an exercise of rights but as an exercise of responsibilities too. As Hart says: “The Convention, being more concerned with protection, does not emphasize the responsibilities which go along with rights. Children need to learn that with the rights of citizenship come responsibilities.”⁴⁹ Ideally children’s participation opportunities balance rights and responsibilities in a child and context appropriate manner.

62. This understanding of the quality of child participation forms a third axis of the Child Participation Matrix which will be employed in this Study.

Settings for Child Participation:

63. Evaluating the degree of implementation of Article 12 and child participation in any society requires not only an awareness of the elements, form and quality of child participation but also the settings in which those opportunities are available.

64. This Study’s methodology utilises the Hong Kong Administration’s own organisational chart as a guide to identify policy areas in which child participation may be relevant. This Study also notes the child participation settings identified in GC12 and in the UNICEF Implementation Handbook for the Convention on the Rights of the Child. These settings form the fourth and final axis of this Study’s Child Participation Matrix.

65. The GC 12 settings are: the family, alternative care, health care, education and school, play, recreation, sports and cultural activities, the workplace, situations of violence, the development of prevention strategies, immigration and asylum proceedings, emergency situations and national and international settings.⁵⁰

66. The UNICEF settings are: within government and in overall policy-making, in local government and services (including planning, housing, the environment), in the family, in child protection, in adoption, in custody decisions and alternative care, in schools, in child employment, in environmental protection and sustainable development, in individual health decisions and the planning and provision of health services, in the media, in asylum-seeking and other immigration procedures, in the juvenile justice system, in the work of the Committee and the reporting process under the Convention.

67. This Study, following data collection, concludes that the following settings are ‘hotspots’

⁴⁹ Hart op.cit. at p.7

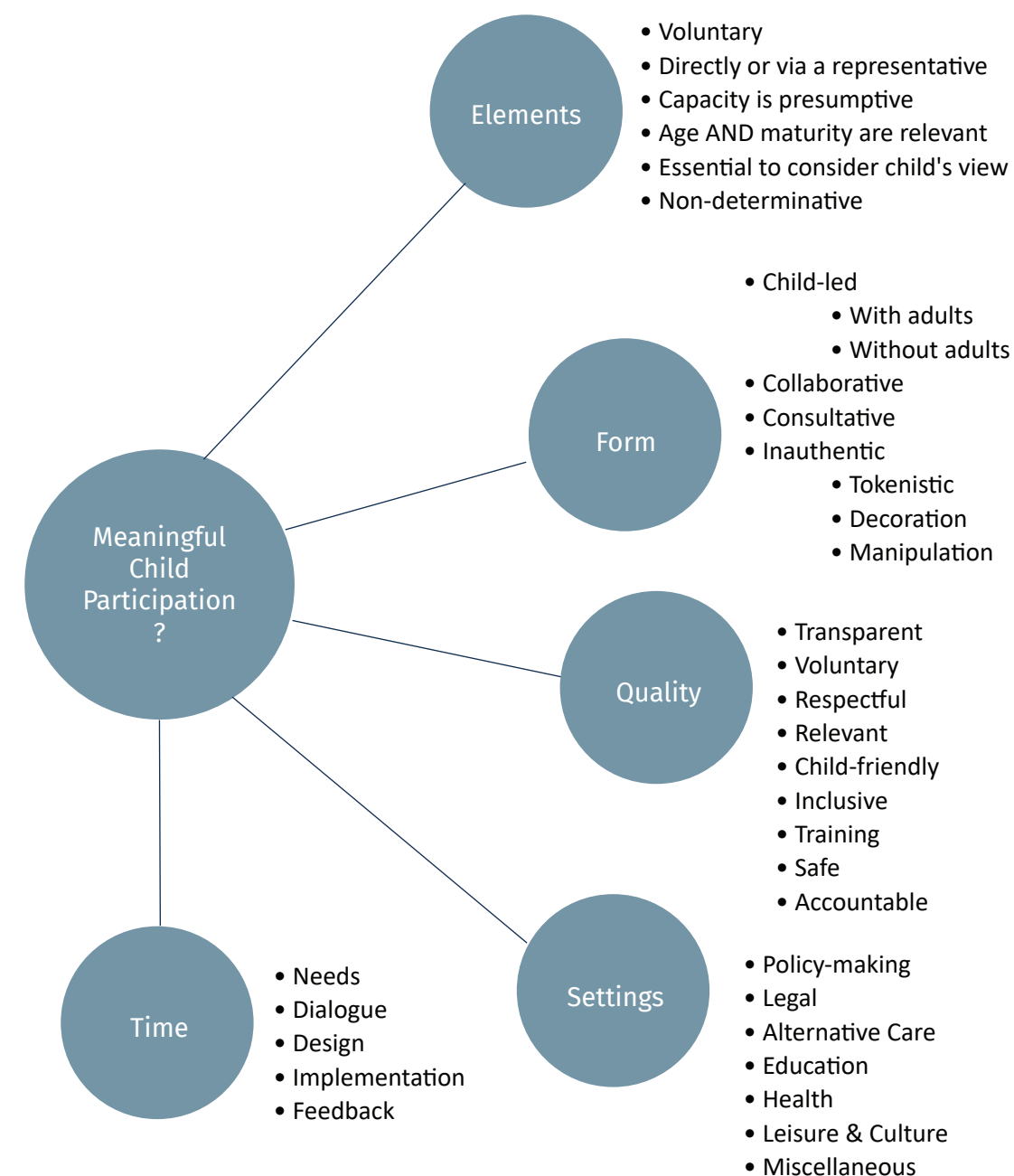
⁵⁰ GC 12 at paras. 89-131.

for child participation in Hong Kong and merit concentrated analysis: government and general policy-making, legal proceedings and justice, alternative care, education, healthcare, and leisure and culture. A small number of miscellaneous settings where child participation could be developed to a higher profile will also be considered in addition to the hotspots identified in the scoping study.

The Child Participation Matrix:

68. Having considered the elements of Article 12 and the meaning of child participation in terms of form, quality and setting, the evaluative tool adopted for this Study, the Child Participation Matrix, shall define child participation as voluntary, presumptive but shaped by the child's age and maturity, and an essential, though not determinative, factor for the decision-maker. Opportunities for child participation will be measured against three key categories: consultative, collaborative and child-led. Within these three categories, meaningful child participation may take one of Hart's five forms, but without hierarchical value ascribed to them. Whether the form of child participation provided is the 'best' implementation option possible will be determined by its context. Further, child participation opportunities which are judged as falling within Hart's three forms of non-participation will be acknowledged as attempts to provide opportunities for child participation, but which are nonetheless inauthentic forms of participation. All forms of participation should demonstrate the qualities outlined in GC12, supplemented by three further qualities: participation should be iterative wherever possible, embedded in general children's rights capacity-building processes rather than merely sectoral, and the exercise of participation rights should be balanced in a child-appropriate manner with responsibilities. Child participation will be identified and assessed in reference to these markers for essential elements, form and quality of participation across UNICEF and GC12 settings, with particular focus on relevant sectoral hotspots and the stage in the decision-making or policy-making cycle at which they occur.

Table 1: The Child Participation Matrix



**Part Two: Provisions for the Implementation of
Article 12 of the UNCRC in Hong Kong**

Introduction:

69. Part II of this Study reports on the laws, mechanism and structures in place across Hong Kong to implement Article 12 or, more broadly, child participation. Reporting will cover HKSAR general policy-making provisions and ‘hotspot’ sectors relevant to children’s lives including law, alternative care and family breakdown, education, health, and leisure and culture. A small number of sectors which have relevance for children, but which are traditionally not considered ‘core’ sectors for children’s interests will also be addressed under a ‘Miscellaneous’ section. Reporting is based upon the responses from the dutybearers: Hong Kong statutory bodies, government bureaux and departments, to this Study’s questionnaire.⁵¹ These responses are supplemented where relevant with information from additional documentary and web-based searches.
70. In addition to the data gathered from the duty-bearers themselves, observations from non-governmental organisations (NGOs) and individual experts who work with child participation within the given sectors is also reported in order to provide further context for the establishment of the Article 12 implementation baseline.

**Part Two: Section One: Laws, Mechanisms & Structures:
At HKSAR General Policy-Making Levels:**

Introduction:

71. General Policy-making refers to constitutional and cross-sectoral policy issues. It is the norm for adults to participate in public consultations on proposed legislation, to vote in elections, to avail themselves of their constitutional freedoms protected by law, and to engage with the leadership of HKSAR in a variety of ways. For children, these opportunities are limited. This section will look at the laws, mechanisms and structures available to children to allow them to participate in general policy-making.

Laws, Mechanisms and Structures: Child Participation At the HKSAR General Policy-Making Level:

Legislation:

72. There is not one comprehensive piece of children’s legislation in Hong Kong law. Recent attempts to reform child law in the region have not come to fruition.⁵²
73. The two key constitutional laws of Hong Kong are the Basic Law and the Bill of Rights

⁵² <https://www.hkreform.gov.hk/en/publications/raccess.htm> last accessed on 20th June 2019.

Ordinance (Cap. 383). The Basic Law does not refer to children as distinct from adults but refers instead to ‘residents’. Nor does the Basic Law, promulgated in 1990 and therefore before Hong Kong’s ratification of the UNCRC, refer to the UNCRC. However, Basic Law Article 39 does guarantee the lawful status of other Conventions in force at the time of drafting: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and ‘other international labour conventions’.

74. The ICCPR refers explicitly to children only in terms of protection of children from the death penalty, to guarantee that children will not be detained with adults and that legal proceedings involving children are not subject to the same requirements of open hearings and publicly available court judgments.⁵³
75. The ICESCR does address children’s rights but only in terms of States Parties’ obligation to take “special measures” to protect children from economic or social exploitation, including setting a minimum age of employment, barring children from dangerous and harmful occupations, and to improve child health and education.
76. The Bill of Rights Ordinance refers to children in Article 20, providing that: “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State” and that every child shall be registered immediately after birth and shall have a name.
77. Article 12 of the UNCRC is not directly enacted into domestic legislation in a form to be applied generally across all aspects of children’s lives. Moreover, there is no domestic legislation which provides children with a general right to participate in all matters which affect them. The only legal recourse children have to protection of their right to participate, as reported in subsequent sections of this Study, is in discrete, sector-based domestic legislation, for example in reference to their views being taken into account in custody proceedings⁵⁴.
78. Non-legally binding, political recourse is available at the macro-level in the form of the obligation on HKSAR to report periodically to the UN Committee on the steps it has taken to fulfil its Convention obligations. However, as has been seen from the responses of HKSAR Administration to the UN Committee’s List of Issues and Concluding Observations, the HKSAR Administration cannot be forced to adopt recommendations made by the Committee, however strongly worded those recommendations may be.⁵⁵ In terms of child participation, the UN Committee has consistently, over four reporting cycles, recommended that a national human rights institution, a Children’s Commissioner or similar, be

⁵³ In practice in Hong Kong judgments concerning children will usually as a minimum be anonymised to protect children’s identity.

⁵⁴ See Part II Section II; for example s.3 of the Guardianship of Minors Ordinance (Cap 13).

established in Hong Kong. In each response, the HKSAR Administration rejected the need to do so. When in 2018, the HKSAR Administration decided to establish a Commission for Children (CoC), the official press release made no reference to the UN Committee’s repeated recommendations to establish such a Commission.⁵⁶

Case Law:

79. In a common law system like Hong Kong, case law is an important source of law. A keyword search of legal databases shows that the UNCRC has been raised only a handful of times in reported case law. On one occasion a judge of the Family Court stated “It is clear from Art. 12 of the United Nations Convention on the Rights of the Child that the views of a child who is capable of forming his or her views should have the right to express those views freely in all matters affecting the child, and such views be given due weight in accordance with the age and maturity of the child, and that for this purpose, the child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body.”⁵⁷
80. Despite Hong Kong being a signatory to the UNCRC, until the Convention as whole or individual articles are incorporated into domestic legislation, the provisions of the UNCRC are not directly binding in domestic law, and when interviewees from the legal sector were asked if they were aware of Article 12 being raised in court as ‘persuasive’ in legal argument, their reply was unanimously not (Int. Nos. 1, 5 and 18). However, where the spirit of individual articles of the UNCRC has been incorporated into domestic law in sector-specific provisions, some interviewees from the legal sector were aware of the UNCRC background: for example, hearing children in matrimonial proceedings.

The Constitutional & Mainland Affairs Bureau (CMAB):

81. As the government bureau with general responsibility for matters concerning the rights of the individual, the CMAB is home to the Children’s Rights Unit (CRU) which was established in March 2006. The CMAB states that the aim of the CRU “is to promote children’s rights enshrined in the Convention on the Rights of the Child. The Unit’s duties are to provide secretarial support to the Children’s Rights Forum and implement any work plan decided by it; liaise with government departments, non-governmental organizations, and

⁵⁵ For a discussion of the Concluding Observations of the UN Committee to the HKSAR Administration on the need for a Children’s Commission or similar body see Anne Scully-Hill, “The Hong Kong Government, the UN Committee on the Rights of the Child and the Disagreement over the Need for a Children’s Commissioner for Hong Kong: Conflicting Perspectives on How Best to Implement Children’s Rights” in K. Lynch & A. Scully-Hill (eds), *International Perspectives on Disputes about Children and Child Protection: Collected Essays on Preventing Abuse, Parental Responsibilities and Empowering Children* (2015) CUHK Press.

⁵⁶ <https://www.lwb.gov.hk/eng/press/31052018.htm> last accessed on 14th June 2019.

⁵⁷ *R v N* [2009] HKEC 2622

related parties on issues relating to children’s rights; manage and monitor the Children’s Rights Education Funding Scheme; and launch publicity and education programmes to promote children’s rights.”⁵⁸

82. The CMAB has reported that the Children’s Rights Forum (CRF) was set up in 2005 to provide a channel for exchange of views on various subjects among child representatives, representatives from the Government and from NGOs. There is no specific mention of the UNCRC in the briefing paper on the establishment of the CRF, but reference is made to discussion of children’s rights. However, the CMAB website makes specific reference to the UNCRC when explaining the role of the CRU as providing support for the CRF.
83. At least two CRF meetings were held annually from 2005 to 2018 and at the beginning of 2019, 34 meetings had been held in total. Information about the CRF is disseminated to children and relevant adults by sending invitation emails to relevant NGOs and by uploading agenda and papers to the CMAB website before each meeting. In terms of giving due weight to participating children, the CMAB said this was achieved by “(i)nviting representatives of relevant bureaux/departments to hear the views expressed by NGOs and children representatives on the agenda items.” In response to the question whether complaints been made about the CRF as a process for child participation, the CMAB replied that no complaints had been received in 2018. No information was given about prior years. Interviews with stakeholders suggest that complaints have been made previously about the procedure and format of the CRF meetings (Int. Nos. 4, 7, 10, 14 and 17).
84. In addition to running the CRF, the CMAB also manages the Children’s Rights Education Funding Scheme (CREFS). The CMAB states that the objective of the CREFS is to encourage and enable community organisations to take up educational projects for raising public awareness and understanding of children’s rights enshrined in the UNCRC. Stakeholders, including NGOs and schools receive posters and leaflets by post to draw their attention to opportunities. Funding applications are reviewed by an Assessment Committee which is reported to include Children Representatives, though no further information on the nature of the children’s participation is provided. Funds are disbursed on an annual basis.
85. The “Children’s Council” project has been sponsored by the CREFS from 2013 to 2018. Under the project, Child Councillors are able to interact with representatives of the Government, Legislative Councillors and other guests on various policy issues. The management and execution of the Children’s Council project itself is in the hands of children’s rights NGOs. Questions about the adequacy of funding have been raised by stakeholder interviewees.⁵⁹
86. NGOs have reported mixed views about the effectiveness of the child participation

⁵⁸ <https://www.cmab.gov.hk/en/issues/human.htm> last accessed 14th June 2019.

⁵⁹ See Part III Section IV.

opportunities provided by the CMAB in terms of the form and quality of child participation they afford. These views are evident in the shadow reports submitted by NGOs to the UN Committee⁶⁰ and have been repeated during the course of this Study.

87. Regarding the CRF, some NGO representatives have expressed the view that the CRF, whilst a welcome initiative, is not an effective implementation of the child's right to participate: "The Government, in its previous reports to the Committee on the Rights of Child, seems to take the position that the Forum is one of the primary means to fulfil its obligations under Article 12 in Hong Kong. Despite of the repeated advocacy of NGOs and children participants of the Forum, which highlighted the ineffective and non-child-friendly nature of the arrangements of the Forum, the Government maintains that "current arrangement is 'conducive to flexibility and a swift response to changing circumstances and to the concerns of the public' on children-related issues" (Int. No. 17).
88. The key criticisms of the CRF turn on its perceived failure to be sufficiently respectful of children and to be child-friendly in its arrangements. With regard to setting the agenda, the children have no input to the choice of agenda items. This minimises the form of participation open to children and diminishes the relevance of the CRF for child participants: "And even in the children's forum...we usually received the email from the CMAB, we don't get to, we do not have a say in the agenda and many times we ask, how the agenda is set? Could we put in other things on the agenda? And the answer is that someone from the Committee, whatever that someone is from the Children's Forum, has set the agenda". (Int. No. 11) Not only can the CRF seem irrelevant to children, in its current form it fails to engage them: "...it is really boring...Even though they put some biscuits and chocolate and drinks on the table for the children to wake them up. But this is a very hard job. They put the serious topics and wish to know the children's voice. Some NGOs try to mobilize and take the children there to express their views, but the children cannot meet that boring stuff. They gossip, they eat, they run." (Int. No. 4).
89. Similarly, the timing of the CRF is not adaptable to the reality of children's lives but rather suits the adults' needs: "...the Children's Forum is not child friendly. I have told them many times. Because they start the Forum at 5.30 p.m. and also on weekdays. I have told them many times that they should change the time to night time or on the weekend so that more children can participate. But their reply is we need to have the presence of some government representatives or some department representative so then they cut off at 6.30 p.m. (Int. No. 10)
90. Others, while recognising that the CRF provides regular opportunities for children to participate, also question the quality and degree of participation. There seems little impetus to reach out to a diverse and broad range of children: "the CMAB regularly holds the Children's Rights Forum and invites government departments, related agencies and children's groups so as to collect the children's views on different child related topics. But the Forum

concentrates mostly on introducing upcoming services and measures that the government wants to carry out. Mostly for introducing such service and measures. And the list of invitations is not wide enough. For example, they invite agencies to join the Forum; every time they invite the same list regardless of what the topic is." (Int. No. 7).

91. The CRF may provide a channel by which to inform and gain feedback from children, but there is little evidence of follow-up with the children on the impact, if any, their input has had on policy or services: "Although the CMAB has passed the opinions collected in the Forum to the relevant departments, they seldom report back about the follow-up. Sometimes they report back the followup in the next meeting but mostly they will not report the follow-up. So, we do not know the opinion provided by the children have been heard by the relevant departments or if they will formulate a policy or regulation based on children's opinions, we do not know. Also, the consultation is made at a later stage, so we think that changing policy seems difficult because only consultation period." (Int. No. 7).
92. One observation has been that the CMAB is reticent to change due to lack of real understanding of what child participation entails: "When we stressed the importance of the officials receiving Article 12 training, the officials responded that they had no capacity or knowledge on such matters and invited NGO representatives to provide them with such training...While consulting external experts where expertise within the Government is lacking is understandable, the overall tone struck by government officials is to "outsource" such work to the NGO sector." (Int. No. 17).
93. Looking at the CRF and the NGO experiences outlined above, the importance of channels for participation being child-friendly comes to the fore. Children must, as in reference to Articles 5, 13 and 15 of the UNCRC, be given childappropriate information so that they are capable of forming the view which Article 12 supports to be expressed and requires to be heard. Looking at the CMAB website, it is difficult to find child-friendly versions of CRF meeting documents. One recent set of meeting papers were presented with childappropriate cartoons and drawings though the language used had not been adapted for children. For example, the meeting paper included phrases such as "Language policy – biliteracy and trilingualism, and medium of instruction"⁶¹
94. More positively, for several meetings, links to comic book versions of supporting documents are available with the papers. Nonetheless, whilst these comic books contain illustrative drawings, again it seems the text has not been translated into more child-appropriate language. For example, in one comic book, linked to a meeting on the International Covenant on Civil and Political Rights, the text accompanying the picture was "Every citizen shall have the right and the opportunity to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage*. When the Covenant was applied to Hong Kong in 1976, a reservation was made not to apply Article 25(b) insofar as it might

⁶⁰ NGO Shadow reports to the UN Committee: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HKG/INT_CRC_NGO_HKG_15380_E.pdf atpp.10-11;

⁶¹ https://www.cmab.gov.hk/en/issues/child_forum_20190111paper.htm last accessed on 14th June 2019.

require the establishment of an elected Executive or Legislative Council in Hong Kong”.⁶²

95. With regards to the CREFS, stakeholders welcome the budget allocation to support children’s rights education. However, concerns are raised that its impact as a means to promote child participation may be limited: “the CMAB, they have the Children’s Rights Education Funding Scheme, but this is not very popular and in the past 12 years I think they only have funded about 300 programmes. And also, some of the programmes we can find it in the website but not much views, not many people have viewed it.” (Int. No. 8). More problematically, sometimes the funding awarded under CREFS does not cover the full costs of the project and project organisers have to seek other funding in order to offer the project at all (Int. No. 10).

Home Affairs Bureau (HAB) & Home Affairs Department (HAD):

96. The HAB is the ‘home’ of the Family Council (FC), a statutory body set up in December 2007 to “promote a culture of loving families in the community”. The FC has routinely been relied upon in HKSAR reports to the UN Committee as evidence of a channel through which children, as part of a family, may participate in policy-making. Since 2014, the FC receives views expressed by Children at the CRF on government initiatives for reference in assessing the impact of relevant policies on families. Between February 2014 and June 2017, 9 items were referred from the CRF to the FC. To disseminate information to interested parties, all information regarding meetings and minutes of FC meetings are uploaded to the FC website and available to the public. However, child-friendly versions of these documents are not available on the website. The children’s views which are passed on from the CRF to the FC are reportedly given due weight by discussion at the FC meetings. The FC has received no complaints about this process.
97. In addition to hearing the views of children from the CRF, the Chair of the FC is an ex-officio member of the CoC. In February 2019, there had been one meeting of the CoC since its inception in June 2018. Regarding the inclusion of promotion of UNCRC rights in the terms of reference of the CoC, given the FC’s focus on the family as a whole, the FC view is that UNCRC rights should be: understood within the wider context of the family; that rights are coupled with responsibility; and that a Western approach to individual rights may not always be appropriate in Hong Kong’s mainly Chinese culture (Int. No. 19). The FC has recently innovated a Family Impact Assessment process for proposed legislation and policy. There is as yet no equivalent Child Impact Assessment adopted in Hong Kong.
98. The HAB offered no further information on policies or measures it had in place regarding child participation. However, the Secretary for Home Affairs is also an ex officio member of the recently established CoC.
99. The HAD says “Our mission is to enhance communication between the Government and

⁶² https://www.cmab.gov.hk/en/issues/child_forum_20180112paper.htm last accessed on 14th June 2019.

The HAD says “Our mission is to enhance communication between the Government and the people of Hong Kong and to facilitate the development of District Administration”. In response to a request for information on any policies or measures in place within the department to facilitate or implement child participation, the response was “The HAD’s work of providing support services to ethnic minorities (EMs) and new arrivals from the Mainland (NAs) is to help them integrate into the community. In fact, children are not our targets as they do not have the service needs. Indeed, EM and NA children’s needs for education and welfare support are under the purview of the Education Bureau and Social Welfare Department respectively. Nonetheless, HAD’s support services for EMs and NAs are not relevant to the furtherance of children’s rights of expression”.

100. No information was given about participation of Hong Kong children in matters affecting them arising from District Administration; nor was it clear why children would not have service needs under the HAD remit which includes “explain the Government’s aims, policies and services to the community; collect, assess and reflect the community’s views and aspirations to the Government...co-ordinate, through District Management Committees, the delivery of Government services and implementation of public projects at district level...foster community spirit in neighbourhoods through encouraging public participation in community building activities.”⁶³

101. From the HAD website, there is however indication of some engagement with children through the Youth Development Programme (YDP): “Applicant organisations and schools should encourage young people to participate in community affairs and promote their sense of civic responsibility. Balanced development is vital in nurturing young people to be future leaders”.⁶⁴ There is no information available on the manner or extent to which children are participating in this programme.

The Labour and Welfare Bureau: Commission on Children (CoC):

102. In June 2018 the CoC was established under the auspices of the office of the Chief Secretary (CSO) and located within the Labour & Welfare Bureau (LWB). The Commission terms of reference state that: “The Commission promotes and promulgates children’s rights as articulated in the United Nations Convention on the Rights of the Child and will engage with children on matters that affect them.” The LWB has reported that the process for establishing the CoC included four public engagement forums with stakeholders including children rights groups and three forums for children. Pre-school children’s views were collected via kindergartens and early education networks. The views of children participating in this process were given due weight by including their views in the Consultation Report.

103. The CSO has further reported that provision has been made to establish funding schemes

⁶³ https://www.had.gov.hk/en/about_us/mission/mission.htm last accessed on 14th June 2019.

⁶⁴ https://www.had.gov.hk/en/public_services/youth_development_programme/index.htm last accessed on 14th June 2019.

managed by the Commission for activities which should include children's participation. Children and relevant adults will be informed of Commission activities via meeting papers uploaded to the LWB website. Members of the Commission include representatives of children rights organisations who can feedback to children on the opportunities for participation. Children themselves are not included amongst members of the Commission⁶⁵.

104. At May 2019, the CoC had had four meetings. In many ways it is too soon to evaluate the CoC as a channel for implementation of child participation. However, the campaign for a CoC for Hong Kong has been a long one and the recommendation to establish a CoC or similar body has been made several times by the UN Committee in its Concluding Observations. While the institution of CoC has been welcomed by many, some are disappointed in the form that the current CoC takes and fear that it cannot provide the desired degree and quality of child participation: "Originally the Children's Commission we believe has the function of promoting children's rights. And providing channels for children to express their voice, their views and to participate in all matters affecting them. But the existing Commission does not meet the international standards. It is not an independent organisation. It does not have statutory powers. It does not have a fully responsible Children Commissioner and it does not have Child Representatives in the Commission" (Int. No. 7).

105. One recurring concern was that the CoC would be a 'service provider' rather than a 'children's rights' institution'. That is, that it would meet sectoral needs of children but fail to do the work of capacity-building and awareness-raising for children as rights-bearers and agents. If so, child participation would necessarily be limited to children's reactions to adult initiatives rather than initiatives being collaborative or child-led: "Absent any publicly known steps to kick start the development of children participation in Hong Kong or to review Hong Kong's obligation under Article 12, we are worried that the Commission's present work focus and modus operandi will continue the "service provider" approach of having adults talking about children and children's rights. This is contrary to the approach of seeing children as rights-holder and what is required under Article 12". (Int. No. 17).

106. One interviewee expressed the view that the CoC is merely a token, that it will not make progress towards being an independent, substantial channel for children's participation because there is no government will to achieve that: "The structure that was recommended by the UN Committee and agreed by many civil societies in Hong Kong, myself included, is an independent oversight that represents the voice of the children, and the government does not want any oversight ... this current structure which is pretty much controlled by the government with the main officials being de-facto or ex-officio members is something that they like ... they want to add feathers on their shoulders, they want to show the public that they care for children and are doing something. So, this is really the whole purpose of this current structure". (Int. No. 9)

107. However, some observers consider that, much as in other jurisdictions, the CoC is a work

in progress towards a more independent and empowered institution: "I think it's a step forward. We have been advocating for the past 10-20 years. You can see a commitment from the government side that they want to do something. Every new thing, it takes time to be tried, shaped, refined. I think the UK Commission went through the same process, so for me it is start ... but for me obviously I would like it to be a little more transparent than what is happening now. (Int. No. 3; and Int. No. 14 quoted)

Office of the Chief Secretary (CSO):

108. The CSO reported that no child-specific policies regarding children's participation were adopted in the work generally of the CSO but all members of the public, including children, are welcome to offer their views through various channels. However, the Chief Secretary is the Chair of the CoC and as such will be engaged in promoting opportunities for child participation through the work of the Commission itself and in commissioning relevant research and working groups.

Office of the Chief Executive (CEO):

109. The current Chief Executive, Carrie Lam, during her election campaign, was the only candidate to promise that if she was elected, she would consider putting some form of Children's Commission in place. Carrie Lam has, despite some commentators' misgivings about the form, independence and powers of the present CoC, acted on that election pledge.⁶⁶ Nonetheless, on request to the CEO for information regarding measures for child participation, in any form at all, in its own work, the response received was "This Office is unable to accede to your application for information as this information does not exist."

Statutory Bodies: Equal Opportunities Commission (EOC), Women's Commission (WoC) and Youth Development Commission (YDC):

110. The EOC does not have specific policies or channels for child participation in its work but carries out its mission to all equally and specifically to children where it is relevant: for example, hearing children's views on discrimination in schools; considering complaints by child(ren) or their parents on discrimination suffered by the child(ren); hearing children's views on equality training provided to them by the EOC. The EOC has also provided opportunities for children to develop knowledge about the work of the EOC and principles of equality through participation in various competitions. The EOC disseminates information to relevant persons through its website, schools and child-related organisations.

111. In response to requests for information on measures to promote child participation in its work, the YDC gave no response regarding child-specific, distinct from youth-specific, policies. No information was given on how the overlap between categories of 'child' and

⁶⁵ <https://www.lwb.gov.hk/eng/advisory/coc.htm> last accessed on 14th June 2019.

⁶⁶ https://www.ceo.gov.hk/eng/pdf/Manifesto_words_E_revised.pdf at para.6.10 last accessed on 15th June 2019.

‘youth’ is addressed by the YDC in its approach to its work. No definition of ‘youth’ was provided in the YDC’s response. However, supplementary research shows that the Charter for Youth defines a person between 15-24 years as a ‘youth’. Thus, there is an overlap between the UNCRC definition of child being a person under 18 years of age and the YDC’s target audience: youth.

112. The WoC responded to requests for information on measures regarding child participation in their work noting that there were no child-specific policies in place. However, the WoC has held competitions designed to encourage and promote child participation in the work of the WoC. For example, video, drawing and photography competitions for secondary and primary school children. Information about these opportunities is disseminated through collaboration with school and government departments and by publicity on WoC website.
113. For each of these statutory bodies, the competitions seemed to be ‘one-off’ rather than annual events. The design and judging of the competitions did not seem to incorporate child participation. This would place these activities in the non-participation categories defined by Hart. However, some measures such as school visits were part of an ongoing programme and did seem to collect feedback from children on their experiences.

The Legislative Council (LegCo):

114. Online and documentary research supplemented with information from interviews shows that, although the LegCo has no formal policies on hearing children, there is an informal practice by some members to extend invitations to NGOs known to work with children’s rights, to seek their participation and participation of the children they work with. A key example is the recent Sub-Committee on Children’s Rights headed by Dr. Fernando Cheung which not only heard NGOs working with children but also from children themselves on a wide range of matters relevant to children’s lives. The Sub-Committee’s terms of reference are “To study and review the existing child policy, including the respective services and policies for children with different disadvantages, encourage children to participate and express for themselves, analyse and study international policies, discuss relevant policies with the Administration and make timely recommendations”.⁶⁷

Mechanisms and Structures Provided by NGOs:

115. In addition to the mechanisms and structures in place within government departments, bureaux and statutory bodies, research shows that NGOs, either in collaboration with government bodies or working alone, can provide children with structures and channels through which to participate in the policy-making process or to engage with a ‘virtual’ or ‘parallel’ policy-making process. Examples include the Children’s Council and the Junior Chief Executive programme. These are ‘parallel’ annual legislative processes managed by NGO-sand funded partially by the CMAB.

⁶⁷ https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/general/hs101.htm last accessed on 16th June 2019.

Other platforms include the Children’s Ombudsman scheme run by the NGO SoCo and the Children’s Rights Alliance and the Young Envoys programme run by UNICEF.

116. The Children’s Council has run annually since 2002 and all children between 12-18 years may apply to the programme, which is offered free of charge. Through a democratic system, children present and discuss motions relating to children for consideration by government and community. Children’s views are collected and systematically presented by the Child Councillors. 40 motions concerning children have been discussed in areas such as education policies, child abuse, school bullying, children in poverty, childhood obesity, children’s right to participation, unhealthy information given to children, children and youth at risk, sex education among children, children left unattended, newly arrived Mainland children’s learning environment, children’s mental health, South Asian ethnic children’s learning of Chinese, cyber-bullying, parents’ divorce, children’s right to political participation, and integrated education. Child Councillors interact with government officials, Legislative Councillors as well as other guests in the Council Q & A sessions.
117. The ‘Junior Chief Executive’ programme, run by the Boys & Girls Clubs Association follows a similar process. Children are recruited by a competitive process, through several rounds of selection, to engage in policy-design and debate on topics of their own choosing. The children receive training from adults but lead the policy process themselves. They decide the topics which they will focus on as policy proposals; they draft the outline policies and research these as well as ‘trial’ them with the general public. The children compile a report on their policies which is sent to members of the Executive and Legislature. In one past year the children were invited to discuss policy with the then Chief Executive.

Part Two: Section Two: Reporting on Law, Mechanisms and Structures for Child Participation in Legal Proceedings:

Introduction:

118. Children may be involved in legal proceedings in myriad ways. In criminal proceedings they may be victims, witnesses or defendants.⁶⁸ In non-criminal cases, meaning civil proceedings, a child has no ‘standing’. This means that, because they are a minor, they are deemed by law to be a ‘person under disability’ who cannot represent themselves but must conduct civil proceedings through a ‘next friend’ or guardian.⁶⁹ This means that they cannot initiate proceedings directly as a party to protect their legal rights and interests, no matter their maturity or capacity. Children might also be affected by legal proceedings concerning

⁶⁸ The age of criminal responsibility in Hong Kong is 10 years of age. Before this age a child is deemed to be incapable of legal culpability (doli incapax). Several years ago a campaign to raise the age of child criminal responsibility to 14 years of age, in conformity with many jurisdictions globally, was unsuccessful.

⁶⁹ Rules of the High Court Order 80.

their welfare where the child’s parents divorce or separate, where the child needs care or protection or the child is to be adopted.

Laws, Mechanisms and Structures: Child Participation in Legal Proceedings:

Legislation:

119.Despite no general incorporation of Article 12 into domestic law in Hong Kong, Article 12 and child participation are nonetheless incorporated into certain aspects of domestic legislation. Specifically, children’s participation in legal proceedings which affect them is provided for in domestic legislation in several instances. The Guardianship of Minors Ordinance (Cap.13) (GMO) s.3 requires that, in any proceedings before any court relating to the custody or upbringing of a minor or the property of a minor, the best interests of the child will be the first and paramount consideration and due consideration should be given to the views of the minor where it is practical to do so having regard to the minor’s age and understanding and to available information from the Director of Social Welfare. In its original incarnation, s. 3 referred not to the ‘views’ of the child but to the ‘wishes’ of the child. This was amended in 2012 purely to betterreflect the language of the UNCRC.

120 The requirement to hear the views of the child is confirmed and underscored in s.7A (3)(b) of the Domestic & Cohabitation Relationships Violence Ordinance (Cap 189) (DCRVO) which states that, in circumstances of domestic violence, where a court is contemplating the variation of an existing child custody order, the court should give due consideration to the wishes of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so.

121.Turning to legal guardianship of children, the GMO, s.6(5) requires that where, to come into effect on their own death, a parent or guardian wishes to appoint a guardian for the child, the parent or guardian of the minor is required to take into account the views of the minor as far as practicable having regard to the minor’s age and understanding.

Where a child is to be adopted, the Adoption Ordinance (Cap 290) (AO) s.8 requires due consideration being for this purpose given to the wishes and opinions of the infant, having

122.regard to the age and understanding of the infant. Here, infant means anyone under 18 years of age unless now or previously married. Where care and control of an infant is to be passed to another person with a view to the infant being adopted, the court is also required to give due consideration to the wishes of the infant: s.23B (2) (b).

123.The child’s participation in the adoption process is guided by both ‘broad brush’ legislation and more detailed regulatory provisions⁷⁰ to the effect that “the adoption order if made will

⁷⁰ Details of the statutory requirements are stipulated in section 8(1)(b), section 23B(2)(b), Schedule 3 “Relevant Provisions of Protection of Children and Co-operation In Respect of Intercountry Adoption” Articles 4(d) and Articles 21(1) & (2) of the Adoption Ordinance (Chapter 290); and Schedule 2 Part II point 11 of the Adoption Rules (Chapter 290A)

be in the interest of the infant, due consideration being for the purpose given to the wishes and opinion of the infant, having regard to the age and understanding of the infant; having regard to the age and degree of maturity of the child...he or she must be counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required; the infant/child’s consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing. To achieve due consideration of the infant’s views, a social worker will understand the infant’s view to adoption as appropriate to his/her age and maturity. A thorough discussion regarding an infant’s views to adoption should also be made as far as possible and he/she should be reassured that they can voice their views and feelings freely.” Social workers are reported to receive training to achieve this degree of child participation in the adoption process⁷¹.

124.The Child Abduction and Custody Ordinance (Cap. 512) (CACO) gives effect in Hong Kong law to the Hague Convention on the Civil Aspects of International Child Abduction. Schedule 1, Article 13 states that, when considering whether to return a child abducted from their lawful custodian, the judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

125.The Protection of Children and Juveniles Ordinance (Cap 213) which governs the application for and making of court orders for the assessment and detention of children deemed in need of care or protection makes no reference to the child’s views.

126.The Juvenile Offenders Ordinance (Cap.226) s.8 provides for the child to engage in the Juvenile Court trial procedure, if they wish, by putting questions to witnesses, making statements, or giving evidence. This may be done directly or via a parent or guardian.

127.The legislative provisions requiring the child’s views to be heard are largely given effect in Social Investigation Reports (SIR) compiled by a Social Welfare officer. In response to the questionnaire seeking information, the SWD reported that it has compiled and disseminated Guidelines on the social worker’s role in relation to these reports. In custody cases specifically, the Social Welfare Department (SWD) view their role in compiling these reports as part of an evaluative process in which children’s views and preferences about post-divorce arrangement are presented to the court. The Social Welfare officers now refer to Guidelines on Custody Evaluation which “have been updated to highlight important judicial developments, which allow greater opportunities for children’s voices to be heard in family law proceedings affecting their interests and raise colleagues’ awareness of children’s right to participation.”

128. As a channel to present the child’s views to the court, the SIR is not without criticism. Inconsistency in the approach taken to compiling SIRs was a recurring theme in the stake

⁷¹ See Part IV Section IV on issues around training as a barrier to child participation.

holder interviews for this Study: “the first line of response is always the social worker, and as I said, every social welfare officer deals with it slightly differently.” (Int. No. 5) One interviewee from the legal setting went further, taking the view that the reports were “very patchy. It depends on which social welfare officer you get. Sometimes they change over the course of proceedings. Often they change because one of the parents becomes so enraged about them that eventually they bully the Social Welfare Department or the Court into saying there must be a new person”. (Int. No. 6.)

129. The reasons offered for inconsistency of approach were varied and ranged from lack of uniform training or standards (Int. No. 3), insufficient training on the legal context of the SIR (Int. No. 1) and the inherently difficult nature of child participation work: one interviewee from the legal setting noted that representing the child’s views to the court required highly developed skills to understand the motivation for the child’s stated views, whether that was immaturity, naivety, fear of hurting either parent or fear of punishment for saying ‘the wrong thing’. Another interviewee noted that in some cases cultural barriers might impact negatively on the ability of the welfare officer to accurately represent the children’s views (Int. No. 5).

The Judiciary and Child Participation:

130. Further to legislation drafted by the Hong Kong Administration and enacted by the Legislative Council, in response to a request for information the Hong Kong Judiciary reported that it has itself issued three Practice Guidance Notes to enable the child’s right to participation in legal proceedings.
131. The first is PDSL 5 Guidance on (Judges) Meeting Children. This Guidance explicitly references Article 12 and provides that direct communication between the judge and the child in a case can be requested by either the child or the judge. The child’s consent to meeting the judge will be taken as an indication of whether the meeting is in best interests of the child. If the judge refuses the child’s request to meet, the judge should explain their reasons to the child.⁷²
132. The second is PDSL6 Guidance on Separate Representation for Children in Matrimonial and Family Proceedings. This also explicitly references Article 12. It provides that where it is considered to be in the best interests of the child, and particularly where a child of mature years is expressing strong views on the proceedings affecting them, the Court may appoint either the Official Solicitor to represent the child or a guardian ad litem will stand as party to the proceedings on the child’s behalf. The guardian ad litem may then instruct a lawyer to represent the child.⁷³

⁷² <https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PDSL5.htm&lang=EN> last accessed on 15th June 2019.

⁷³ <https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PDSL6.htm&lang=EN> last accessed on 15th June 2019.

133. The final, and most recent, Guidance note is PDSL10.1 Guidance on Child Arrangements: Domestic Violence. This PDSL came into force on 1st February 2019 and while it does not explicitly reference the UNCRC, this PDSL references PDSL6 which does in turn refer to UNCRC Article 12. The Guidance Note makes provision for separate representation of a child where there is reason to believe the child has been subjected to or exposed to domestic violence or where there is a risk of such violence occurring in the future.⁷⁴

134. It is not clear from the Judiciary’s response how often judges take the opportunity to hear from the child directly under either PDSL 5 or PDSL 10.1. One interviewee from the legal setting expressed the view that it was still relatively unusual for judges to meet with children directly, saying “I think that the resistance to it is just because it is so new and alien and nobody really knows, and they are worried about a mis-step because you have taken the wrong role. Partly it is also that paternalistic history we have, don’t involve the children, don’t involve the children.” (Int. No. 5). Another interviewee expressed the view that some judges were more likely than others to meet children directly and that this could be attributed to personality or background (Int. No. 1).
135. Naturally, an absence of robust training in how to conduct a meeting with a child would serve to compound any personal inherent reticence or concerns about breaching common law requirement of fairness between the adult parties to the case by hearing the child in private. The Judiciary’s response to the questionnaire did not include information on training. However, a judicial interviewee confirmed that judges are given training, although it was not clear whether this was on a voluntary or mandatory basis (Int. No.20).
136. One interviewee from the legal setting took the view that in fact judges rarely met with children and that, in a culture where children are seen as holding an inferior position hierarchically to adults, there was the possibility that judges may, without taking up specialist, mandatory training, inadvertently bring this background into any meeting with children (Int. No. 1). The view was also expressed that, unless handled by a properly trained judge, the meeting may not result in a child freely expressing their views: “I think now what happens is that a judge sees the child and there is a record taken and the, the judge makes clear to the child that the judge will listen to them, what they say will be told to the parents and ultimately it is for the judge to make the decision and not the children... But of course, one of the difficulties with children is if there is anxiety, then they may not tell the judge (their true views) because they have been told that the judge is going to tell the parents.” (Int. No. 1).
137. Looking at separate representation for children under PDSL6, two interviewees from the legal sector stated that they had experienced separate representation to be very powerful as a means of conveying the child’s views (Ints. No. 1 and 18). One however noted that the current process for appointing separate representation can be onerous and costly if not undertaken by the Official Solicitor’s office and this may be one reason why it does not

⁷⁴ <https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PDSL10.1.htm&lang=EN> last accessed on 15th June 2019

happen more often (Int. No. 18) while the other noted that representing children requires great skill and some training other than legal training (Int. No. 1). More information on separate representation for children was provided by the Office of the Official Solicitor.

The Office of the Official Solicitor (OSO):

138. The OSO is located in an independently operated government unit separated from the other sections of its ‘home’ department, the Legal Aid Department⁷⁵. The OSO was approached in a follow-up enquiry for further information regarding separate representation of children after the role of the OSO was not referred to by the LAD and it was apparent that the OSO had the potential for promotion of child participation given the Judiciary’s PDSL6 Guidance on Separate Representation for Children PDSL6.

139. In their response, the OSO stated that “OSO is not a bureau/department responsible for formulating or overseeing policies relating to Article 12 of UNCRC. OSO receives referrals from courts when it appears to a court that any child ought to be separately represented. When OSO represents the child, he/she will be interviewed to ascertain that he/she can express his/her views freely. Such views will be respected and included in the report prepared by OSO and presented to the requesting court.” Nothing was said about how personnel interviewing children are trained to elicit effective child participation. In terms of disseminating knowledge to relevant children and adults, the OSO said that “OSO provides pamphlets at its office counter as well as softcopy of information leaflet on its web site describing its work concerning minors.” The OSO is also a member of the current Family Court Proceedings Users Committee, another avenue for sharing information about its work with children.

140. The number of cases each year in which the OS represents children fluctuates considerably. In 2015 there were nine cases; in 2016, fourteen cases; in 2017, four cases; and in 2018, twelve cases. Without knowing the overall number of cases in which children had a significant interest it is impossible to know whether this is an ‘active’ response to facilitating child participation in legal proceedings or not. However, in a case called R v N in 2009, on an application for separate representation of the children by the Official Solicitor, the judge noted that “(Counsel) has submitted that there have been many cases in Hong Kong where the Official Solicitor has been appointed to represent the children. I have to confess that I am not aware of that many. So far in my Court, there has been only one in the past 5 or 6 years.”⁷⁶

141. Whilst the Official Solicitor provides an avenue for child participation in legal proceedings, one interviewee expressed concern about the quality of that representation in terms of transparency and respect for the child: “Official Solicitors sometimes, or even often, play

⁷⁵ See below for information on the Legal Aid Department’s response on child participation.

⁷⁶ R v N [2009] HKEC 2622.

a dual role which I think is actually sometimes in conflict because one role might be to represent the child’s voice whereas the other is to advocate the child’s best interests and they might not necessarily be aligned. And I always think that is a bit of a difficult situation. (Int. No. 5).

Child Participation in Criminal or Care Proceedings:

142. As the government department responsible for criminal prosecutions, the DoJ was asked to provide information on policies and mechanisms in place to promote child participation. The DoJ responded with reference to children as a) witnesses in criminal proceedings and b) children as defendants. Where children are participating in criminal proceedings as witnesses, and in some instances will also have been the victim of the crime being prosecuted, the Department has not adopted child-specific policies. Children would be included in the general categories of victim, witness and vulnerable witness under the relevant Statement, Charter and Prosecution Code. These provisions include references to being kept informed and being able to express views to a prosecutor, or where relevant, to the court.

143. Where children are defendants in a prosecution, there are specific provisions for the prosecution of children under 16 years. These are given in paragraph 15 of the Prosecution Code. However, this paragraph does not make mention of the juvenile’s right to participate or express a view in decisions about mode of prosecution. Most juveniles will be prosecuted in a specialist Juvenile Court unless an alternative non-judicial method is possible. The Department did not give any information on training for prosecutors in relation to child participation. Nor has the Judiciary provided information on proceedings in Juvenile Court.

144. In terms of the disposition of criminal prosecutions against juvenile offenders, the SWD provides community-based statutory supervision and guidance for offenders through several channels: the Probation Service, the Community Service Orders Scheme, and a residential training and aftercare service where cases are referred to them by court. Upon receiving a referral from the court, the probation officer, a registered social worker, will prepare the social enquiry report on the offender, make recommendations and provide statutory supervision and guidance for a period as ordered by the court so that the offender may be rehabilitated within the community. The offender’s views will be considered throughout the process of their rehabilitation. Before making a statutory order, the court shall explain, or cause to be explained, to the offender in a language understood by him or her the effect of the order.

145. In addition to the core work of the Department, the DoJ also reported that it sought to promote child participation by hosting secondary school student visits. These visits are designed to promote children’s understanding of the work of the Department and strengthen career and life planning education. Further special outreach events are organised by the Prosecutions Division to raise awareness of criminal law amongst school students.

146. The Duty Lawyer Service (DLS) is a separate government office which provides representation for those appearing in Juvenile Courts. Since 2013, to fulfil the obligations under Article 37(d) of the UNCRC, the Government has commissioned the DLS to operate the Legal Representation Scheme (LRS) to provide legal representation for children and juveniles who appear in the Juvenile Court for either criminal prosecution or as the subject of a Care

or Protection hearing and to provide children with an opportunity to be heard in judicial proceedings affecting him/her. The LRS is to ensure that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. No information is available about training for lawyers working with juveniles.

147. Where children are either victims of crimes or witnesses to crimes committed against others, their participation in the legal process may be sought by the Police. In response to a request for information concerning policies regarding child participation, the Police stated that all officers engaged with the Child Abuse Investigation Unit receive specialised training to equip officers to engage with abused children and to support appropriate child participation in the investigation of child abuse cases. Further, Police officers engage with SWD policies to have support persons accompany child witnesses who are participating in the criminal justice process by giving evidence. Moreover, child witnesses are encouraged to participate as witnesses by special measures to allow them to give evidence by video link. By policy, the child should be kept the informed of any developments and to be told the outcome of the case. Lastly, Police officers participate in public education and awareness programmes to inform children and thereby enhance their self-protection abilities. No information was given on complaints received or how children's views were given due weight in these processes.

148. Children in Care or Protection legal proceedings will come into contact with social workers. The SWD has disseminated guidelines which refer to enabling child participation: According to the "Procedural Guide for Handling Child Abuse Cases (Revised 2015)", the children's participation is encouraged and their voices will be heard at different stages in handling suspected child abuse cases including the application to court for a Care or Protection Order. Their wishes and feelings will be explored and attended to in formulating follow up welfare plans. Social workers will brief and prepare the child in person and relevant parties of individual cases according to the child's maturity or how much the child understands. The Procedural Guide has been uploaded onto SWD's website for access by the public.

149. One interviewee made the point that there is no specialist Bar to represent children in criminal or care or protection proceedings and consequently there is no standard set for training those lawyers who represent children in the Juvenile Court. Furthermore, Juvenile Court proceedings can appear to be similar to adult legal proceedings. "Generally speaking, there are very few barristers with experience and primarily their expertise is in Criminal proceedings, and rarely in child protection. You could practically say there is no child protection bar in Hong Kong ...to say that it is a proper well formed group of advocates who do that on a regular basis is just a falsehood...No one is paying anyone to do it and no one is asking anyone to do it. The primary forum for child protection work is the Juvenile Court dealing with care and protection orders but they are asking the DLS to arrange Barristers and the result is that all of the lawyers, including the Magistrate, their primary focus is on criminal procedure, criminal aspects ...to the point where ... they normally refer to the child as a defendant in care or protection proceedings, the magistrate often refers to the child as the defendant, which may be indicative of a paradigm problem, without being critical of anyone. There is a reason why the Juvenile Court was separated from the rest of the criminal court, it was supposed to represent a different ethos, a different paradigm but even then, the juvenile criminal proceedings should be separate from child protection proceedings. And you often basically have presiding over the cases people who 99% of the time are doing

criminal practice and the lawyers who are appearing for the child are almost always also appearing for the parent. The duty lawyer treats them as the same group which results in an amalgamation of interests and sometimes a conflict of interest." (Int. No. 6).

Funding Child Participation in Legal Proceedings: The Legal Aid Department (LAD):

150. When approached for information regarding policies to promote child participation, the LAD's response was that there were no child specific policies or measures in relation to applications for LAD's services. This may be because representation in Juvenile Court is provided by the Duty Lawyer Service and children will be unlikely to have standing directly in other proceedings. Nonetheless, it is conceivable that legal aid would be necessary to fund proceedings brought on behalf of a child and therefore, some degree of child participation, even if limited to access to child-appropriate information, is conceivable. Underlying all of this is the convention that children do not have standing to initiate legal proceedings directly themselves but must do so through an adult representative, usually referred to as a 'next friend' or 'guardian ad litem'.

151. More broadly, information is provided for children on the work of the Department in another sense: in 2017-2018 the LAD arranged 8 visits to the Department by children to promote children's understanding of the work and services of LAD and to enhance students' career and life planning education.

Alternative Dispute Resolution (ADR): Child Participation in Family Mediation:

152. Increasingly, as legal proceedings become more costly and time-consuming, parties are turning to alternative forms of dispute resolution. This is particularly true in divorce or separation cases involving children. Family mediation provides a forum in which separating couples can come to agreement about the future upbringing of their children. The dominant form of family mediation used in Hong Kong is child-focused mediation, where children are not involved in the mediation process directly, but the mediator will keep the children's best interests at the forefront of their parents' minds. However, children can participate actively, in a child-appropriate manner, in child-inclusive mediation. In this process, children speak privately to a qualified child consultant who will elicit their views about their family situation. With the children's agreement the child consultant will separately feedback the voice of the child to the mediator and the parents.

153. Interviewees from the legal sector found this process to be a positive example of child participation in a matter directly affecting them: "I think most people mistake, or wrongly interpret child-inclusive to mean the children come into the room and negotiate with the parents. But it is actually just an avenue for feeding in how the children feel or think or maybe give a recommendation that the parents haven't thought about ...or simply sometimes give some insight to the parents of the impact their conflict has on the child, it makes them re-think what they are doing. So, I remember one was, they had to trace the child's body ...and one had a big knife on her head and said my head hurts every time I see my parents fight... So, this is why I think this is a wake-up call to jolt (the parents) out of their polarised positions in the conflict. ...You are dealing with something that is going to impact the children for life and it has a profound effect so why on earth would they not be entitled to a voice? It does not have to be a deciding voice but for God's sake hear them". (Int. No. 5).

154. Nonetheless, when asked, interviewees from the legal sector responded that to their knowledge there were very few mediators practising child-inclusive mediation and that there was a need for more qualified child consultants who could take on the role of talking to the child and feeding back to the parents. (Int. Nos. 1 and 5).

155. Proper training is necessary because, where there are no child consultants available and mediators themselves are not properly trained in the skills and protocols specific to child-inclusive mediation, there is a risk that the inclusive mediation process will damage rather than empower the child. Recent research on family mediation in Hong Kong reported that: “One child said that the mediator was caring and patient, and the mediator explained the mediation process in great detail. This child felt relaxed when attending the meetings. Another child’s experience was relatively negative because the mediator asked her to state her living arrangement preference in front of her parents.”⁷⁷ In this latter instance, this cannot be said to be child participation which protects the child from the risks of participation, as required under the GC 12 quality statement.

Part Two: Section Three:

Reporting on Law, Mechanisms and Structures for Child Participation Alternative Care and Family Breakdown Settings:

Introduction:

156. The scope of ‘alternative care’ addressed in this section of the Study includes any instance in which a child cannot be cared for in their ‘birth’ family, whether the child has been voluntarily placed into the care of another or the child has been removed for its own protection or for penal reasons from the family. The ‘family breakdown’ setting encompasses times when the child’s family is under pressure and may need to access support services while the child is still being cared for within the family. This section does not however include any legal proceedings relevant to alternative care or family breakdown. Those are covered previously in Part Two Section Two.

157. Given the ‘public-private partnership’ nature of Hong Kong’s social welfare landscape, while the government’s Social Welfare Department (SWD) will set the guidelines and policies which govern the provision of alternative care and services relating to family breakdown, those services may be provided by either SWD social workers or social workers employed by NGOs funded by the government’s ‘lump sum grant’. Further, where there have been service gaps, some NGOs have been formed to provide services which are not covered by the public sector.

Law, Mechanisms and Structures:

Residential Care Services: SWD:

⁷⁷ A Study On Family Mediation Services In Hong Kong, Central Policy Unit, The Government Of The Hong Kong Special Administrative Region (January 2017) at p.115.

158. In 2017, 2242 children were in residential care and 780 were placed in foster care⁷⁸. In accordance with the Manual of Procedures on the Central Referral System for Residential Child Care Services (CRSRC), when arranging residential child care services for children or young persons who cannot be adequately cared for by their families because of various reasons, the responsible social workers have to involve the child and state the child’s views in the referral form. Explanation has to be provided if the child cannot be involved in the referral process such as the child being too young, etc. Besides, caseworkers are advised to have a thorough understanding of the child in arranging out-of-home care for the child and among other factors, the child’s preference should also be considered in deciding the choice of care placement.

159. As set out in the Manual of Procedures for Foster Care Service, during the decision-making process, the view of the child’s birth family and the opinion of the child should be sought, having regard to the age and understanding of the child.

160. To make its policies on child participation known to children and relevant adults, social workers will brief the child and relevant parties according to the child’s maturity or how much the child understands. Further the Manual of Procedures on CRSRC and the Manual of Procedures for Foster Care Service are made available to social workers of different casework settings who work with families and children and may need to arrange out-of-home care for children in need. Training courses are organised for social workers in different casework settings of SWD in regard to residential care and permanency planning for children. In deciding the care placement or foster service, the child’s views will be given due weight.

161. Whilst the written policies and procedures create a potential framework for child participation in residential care decisions, the experience of NGOs working with children in residential care shows that implementation is often fragmented, delayed or the child’s participation is not followed up. One NGO worker shared their experience of the process in practice: “the child said the social worker said OK, independent living, but they just record it down for them ... But what I want to say is that (child participation) is on a case work practice so no one is really overseeing if it is working toward a goal or if something goes wrong and who is coming to intervene or supervise the process? So sometimes we will escalate the case to the district level, to the SWD, but not all cases are working like this. And to what extent do we escalate as there is no standardised procedures about when to escalate so it is just according to (our NGO) that if we see things are not going well over a period of time then we will escalate ... our dream is hearing the child’s voice and acting upon it, particularly in this kind of decision-making process. Right now, it is individual practices but if it is part of the system, it makes it clear that child’s voice needs to be heard and needs to be acted upon”. (Int. No. 3)

162. When policies are not consistently or fully implemented, children get to know that the

⁷⁸ CMAB Statistics: https://www.cmab.gov.hk/en/issues/child_statistics.htm last accessed on 16th June 2019.

policy has no real impact, that their participation will not be meaningful and so they stop participating: “We have a 15 year old, she has a family reunion plan all along, she has been in care since she was very young, so she’s told me that she has been voicing out for having an independent living, because she really don’t want to go home with her father, she doesn’t feel safe with her dad and she just want to be on her own. So, she tried to voice that out in the case review meeting (CRM) but her voice was so little that no-one wants to hear that... Coming from our teenage youth they tell us that they don’t dare to say anything during the CRM. The majority of them are very silent during the CRM as they think no-one will listen to me, it doesn’t matter what I say, you just have your own plan, writing up your own goals” (Int. No. 3)

163. Another interviewee from the social work sector suggested that the limited resources available today to social workers engaged in child protection work may impact negatively on the priority given to child participation: “If there is a budget constraint or whatever, the remedial service always comes first. For remedial service we tried to save children, child protection, child abuse issues, safety first.... And for those children they are quite vulnerable. They may not dare to ask why this happened to me? ... So professionally we know that it is a big decision that affects the children very much. Sad to say that because of scarce resources it is really hard to find an out-of-home placement for placing children in danger. Once the social worker has secured a placement, she will be very relieved and ‘fai di, fai di’, quick, quick, go to that safe place.” (Int. No. 4).

164. Children arrive in residential care by several channels, one of which is voluntary placement by the child’s parent(s). In this circumstance, one interviewee noted that, in addition to the negative impact on child participation of resourcing pressures, social workers may feel that without a court order they have no legal mandate for requiring parents to listen to the child’s voice or to explain that hearing the child’s view is in the child’s best interests: “Unless we have an aligned understanding ... we have varying understandings amongst referral workers which, I understand, with a lack of resources, they fear being a voice for the child will add more workload to their very already stretched resources. That’s one. And a lack of a legal framework for them actually doesn’t empower them to be able to become that voice so when they have to confront the parents, they actually have no grounds to confront the parents, they will be in fear that they will be in trouble, the parents will be complaining and then at the end of the day I am not actually helping the child at all... At the end of the day, it is the lack of the legal framework as a lack of empowerment. (Int. No. 3).

Preparing a Child for Adoption: SWD:

165. 73 children were adopted in Hong Kong in 2017⁷⁹. In addition to the legal requirements for ascertaining the child’s wishes in relation to adoption,⁸⁰ the Procedural Guide for Pre-

⁷⁹ CMAB Statistics: https://www.cmab.gov.hk/en/issues/child_statistics.htm last accessed on 16th June 2019.

⁸⁰ See Part II Section II: Reporting on Law, Mechanisms and Structures for Child Participation in Legal Proceedings.

adoption Service (May 2016) (the Guide) also specifies the requirements for the social workers to understand the infant’s view to adoption as appropriate to his/her age and maturity. A thorough discussion regarding an infant’s views to adoption should also be made as far as possible and he/she should be reassured that he/she can voice out his/her views and feelings freely.

166. However, whilst the guidelines represent good practice, child participation does not happen in a vacuum. The delay currently associated with adoption in Hong Kong can have a negative impact on quality of child participation. Two different interviewees recounted experiences where the child’s quality of participation was diminished by the late stage at which the child’s wishes for adoption were sought after the child had spent a long time in residential care, building up positive relationships with foster carers or being traumatised by the prolonged process of being freed for adoption. (Int. Nos. 3 and 6).

Children in Correctional Services Detention (CSD):

167. Asked for information regarding policies or mechanisms for child participation in the work of the CSD, the CSD replied that they do not have child -specific policies. The CSD state-it is committed to providing a secure, safe, humane, decent and healthy custodial environment for Persons In Custody and all Persons In Custody are treated in the same way, whether they are a child or an adult. Statistics show that, in 2017, 101 children were in detention in prisons, drug addiction treatment centres, training centres, detention centres or rehabilitation centres.⁸¹

168. On arrival at the correctional institution every Person In Custody, whether a child or adult, is given an induction and relevant booklets on their rights and channels of complaints. Notices of rights are visible throughout the correctional institution. There are multiple complaints channels within and without the correctional institution of which a child held as a Person In Custody may including CSD staff, the Ombudsman, the EOC, Legislative Council members and other government channels.

169. In the absence of an expressly stated, child-specific policy no further information was provided regarding guidance for children on how they might participate in decisions affecting them such as education, training, rehabilitation, drug or substance addiction treatment, future planning.

Children and Detention: Immigration Department (Immd):

170. In response to a request for information regarding child participation in the work of the Immd, the department responded that although it had adopted neither formal policies nor informal measures or processes to address Article 12 UNCRC, the Department undertakes extensive practices in various aspects to enhance the rights and well-being of children in

⁸¹ CMAB Statistics: https://www.cmab.gov.hk/en/issues/child_statistics.htm last accessed on 16th June 2019.

pursuance of its commitment to protecting children’s welfare.

171. In relation to the detention of children, unaccompanied minors arriving in Hong Kong as asylum seekers claiming non-refoulement, will not be detained under the existing departmental detention policy unless with strong reasons. Each case will be assessed on individual merits and the unaccompanied minors will normally be released on recognizance as soon as a supervised care home facility is available.

Channels for child participation in services offered by NGOs:

172. To give an idea of the scale of non-SWD social service provision in Hong Kong, the Hong Kong Council of Social Service is a federation of nongovernment social service agencies in Hong Kong. It was established in 1947 with the aim to plan and coordinate large scale relief works and social welfare after the Second World War. In 1951, it became a statutory body. Today the Council is an essential partner of the Hong Kong Government in social welfare and development and represents more than 470 Agency Members, providing quality social welfare service through their 3,000 operating units in Hong Kong.⁸²

173. Among the Council’s members are social service NGOs dealing with clients across the spectrum of Hong Kong’s population as well as NGOs which provide social services for a specific population, for example ethnic minority families, newly arrived mainland Chinese, families living in poverty, female migrant workers or pregnant teenage girls. Online and documentary research for child participation in the work of NGOs in the alternative care and family breakdown setting made it apparent that, in addition to the SWD’s Manuals and Guidance Notes, these NGOs had often adopted their own policies and mechanisms to enhance the participation of children they worked with.

174. Examples of participation mechanisms provided by the NGOs comprise: the inclusion of children in research on safeguarding; inclusion of children in training their peers on child protection; feedback from children on the services provided by the NGOs; feedback by children on the policies of the NGO; orientation for children before receiving the services of the NGOs with the chance for children to make suggestions for how the service delivery could progress; enabling children to voice their views to their parents where there is family pressure or breakdown; inclusion of children in service programme design; inclusion of children in the promotion and publicity of the NGO’s services.

175. NGOs which offer services such as counselling for family breakdown find that the child’s voice can be overshadowed by family conflict so the NGOs seek to bring out the child’s voice to be heard by the parent(s): “...when we handle the family problems, for example divorce of parents, we find that most of the time the adults in the family have many occupied agenda...often in the process they neglect the voice of the children and the interest of the children. ...And also, we use this kind of forum that sometimes when we deal with only

⁸² http://www.hkcss.org.hk/e/fc_detail1.asp?fc_id=15 last accessed on 16th June 2019.

one single family sometimes the children dare not speak, they do not voice out their views because they are afraid that the parents will not like them to say these kinds of words. So sometimes we will find the ‘typical voice’ of the children and can use it in some educational package (for parents) but of course our social workers also will encourage the children to speak up during the counselling” (Int. No. 8).

176. In addition to children as service users, the NGOs also support child participation in their work by recruiting summer interns, involving children in drawing up submissions to government bodies and the Legislative Council on alternative care and family breakdown policy-making.

**Part Two: Section Four:
Reporting on Law, Mechanisms and Structures for Child Participation
In the Education Setting:**

Introduction:

177. The Hong Kong government has a policy of providing a 9-year free and universal basic education, under which the completion rate for primary education and junior secondary education are close to 100%.⁸³ In addition to kindergartens and schools providing state-sponsored education, fee-paying education is provided by the English Schools Foundation, a statutory body, and a range of private schools. Just over 180,000 children are registered at private kindergartens, while around 68,500 and 69,500 are registered in private primary and secondary schools respectively.⁸⁴

178. In a culture where academic success is highly prized, schools have recently been the focus of parental and social concern about high levels of pressure on students. Some parents have acted recently to seek a change in assessment and examination patterns in light of a worrying wave of child anxiety and even suicide.⁸⁵

Law, Mechanisms & Structures for Child Participation in the Education Setting:

Education Bureau (ED):

179. Drawing up of school rules and making of meal arrangements: Schools are reminded to work with students when drawing up the school rules and making meal arrangements for the students. This is disseminated to relevant adults through various channels. For example, the School Administration Guide which states that school rules should be drawn up with

⁸³ CMAB Statistics: https://www.cmab.gov.hk/en/issues/child_statistics.htm last accessed on 16th June 2019.

⁸⁴ Ibid.

⁸⁵ <https://www.scmp.com/comment/insight-opinion/hong-kong/article/2163087/preventing-suicide-amonghong-kongs-youth-will> last accessed on 18th June 2019.

input from all stakeholders including students and the Education Bureau (EDB) Circular No. 17/2009 on Meal Arrangements in Schools which provides that schools should work with parents, suppliers and students to monitor the provision of healthy and green lunch on an ongoing basis.

180. Life Planning Education: the EDB collects views from different stakeholders, including secondary school students, parents and school personnel on its implementation of Life Planning Education through conducting a review during the period from Aug 2017 to Feb 2019 in which about 21,000 students completed the questionnaires and 56 students attended 13 focus group interviews. The EDB also conducts regular on-site visits to students' activities. The feedback and views collected will be taken into consideration for mapping-ways forward.
181. New Academic Structure Review: Views of key stakeholders, including students are collected on a need basis. In the New Academic Structure Review conducted from 2012 to 2015, focus group interviews were conducted to collect views from, among other stakeholders, secondary students, on the senior secondary curriculum and assessment and those views are passed to the relevant bodies for their consideration.
182. Vocational and professional education and training: For children receiving vocational and professional education and training their views on specific issues would be collected by VTC by means of surveys, questionnaires and focus groups as and when necessary to enable children to exercise their rights under Article 12.
183. Formulation of the policy of fine-tuning the medium of instruction (MOI) for secondary schools: During the formulation of the policy of fine-tuning the MOI for secondary schools in 2009, extensive consultation was conducted to collect views from various stakeholders including school heads, teachers, educational bodies, parents, students, and the public. Students were encouraged to express their views and concerns on the way forward of the MOI policy and these views were taken into consideration. The policy has been uploaded on the EDB website.
184. Provision of guidelines for supporting students with special educational needs (SEN): guidelines highlighting the need to involve students in the planning and implementation process include the Operation Guide on the Whole School Approach to Integrated Education advises schools to involve parents and students in the planning and delivery of support work, including devising and review of the individual education plan (IEP). The EDB has set indicators for the implementation of integrated education so that (i) "opinions of students are sought about how a school might be improved" and (ii) "the views of students would make a difference to what happens in school" are good indicators of an inclusive school. Students' views on appropriate examination arrangements are also sought. These views will be considered at the planning and implementation stages. Information on these policies is disseminated by the student support team and special educational needs coordinators, during their school visits or on other occasions of facilitating students' participation and offering comments in support work. EDB will also share policies, measures or processes direct with the stakeholders, such as parents, during meetings and talks.
185. Provision of guidelines for supporting students with special educational needs (SEN):

when educational psychologists, speech therapists and audiologists meet with the students for assessment and intervention, students are involved in making decisions for themselves as far as their capacity allows and for their good, and their views are listened to. When schools discuss support plans for students, for instance IEP or a school re-entry plan due to a student's long absence from schooling, the plans are worked out jointly by different parties including the students involved. To evaluate the planning and implementation as well as refining the support services, students' views will be collected by schools in various forms, such as questionnaire survey, interview, etc.

186. Special school placement and post-school placement: Subject to the readiness of the students in terms of their age, maturity and ability levels, referrers are advised to seek views of students in making the placement decision. For post-school placement, students' preference and views on career development and study plan will be collected through school personnel, such as school social workers. These policies are disseminated by the EDB at meetings and talks with students and parents.

English Schools Foundation (ESF):

187. In the International Baccalaureate (IB) primary years programme (PYP) the ESF has developed a policy to promote Learner Agency, which encapsulates children's participation in their own education and establishes the following principles: students have voice, choice and ownership for their own learning; when students have agency, the relationship between the teacher and students becomes a partnership; students with a strong sense of self-efficacy bring a stronger sense of agency to the learning community; the learning community supports agency and fosters self-efficacy. This policy is delivered through classroom teaching and learning.
188. Secondary school students may participate in several decision-making platforms within ESF schools: Parent Teacher Student Associations; School Councils; Student Led Consultations with Parents and Teachers; Student Council; Making a Difference Council; Sustainability Council; House Council; Prefect meetings; Interview panels; and Catering Committees. No information is provided however on how student participation occurs or the impact of that participation.
189. Disciplinary proceedings: for students suspected of misbehaviour, there is an opportunity for the student to write an account of what they did, where they were, etc, which is then cross-checked against other statements (verbal or written) from other students and teachers.
190. As an ongoing practice, students can express their views and feelings to teachers, school counsellors, school nurses on any matter that affects them. Students also have yearly meetings with personal tutors at which students may express their views. Students are informed of these resources through regular school communication.

Other platforms for child participation in the education setting:

191. NGOs support children to participate in the education setting through research or advocacy. For example, UNICEF recently funded research into children's rights education in schools. The research engaged children from primary and secondary schools in Hong Kong, as

wellas teachers and school princpals. The research found that children’s rights “are not entirelya part of the school ethos. While most principals responded that their school has channels to enable students to raise concerns regarding the curriculum, school activities and facilities, significantly fewer said that students are able to participate in decisionmaking at the school or that student’s views could influence changes in curriculum”.

192. The research also discovered that “while most students in secondary school reported the existence of a student council/union and a student newsletter/bulletin, freedom of expression in the student council/union and the usefulness of the student newsletter/bulletin were both reported to be weak. Most primary school principals were also of the view that students are not independent or mature enough to organize the student union. It appears that primary school teachers are more conservative about letting students express their views”.⁸⁶

193. Other NGOs provide services for specific groups of children. For example, support for ethnic minority children to express their views on education for non- Chinese speaking children to the relevant government bodies and during public consultation processes. Other NGO support includes collecting children’s views and lobbying on their behalf for improvement of education for ethnic minority children. As a result of such lobbying, schools have recently begun to provide more information in languages other than Chinese to parents and children on the school application and selection procedures. This enables children to develop informed views so that they can then participate in decisions about their education choices.

The Experience of Child Participation in Practice in the Education Setting:

194. Schools which embrace meaningful child participation in the formulation and review of school rules can have a positive impact on school attendance and the child’s sense of ownership of their education: “There is a school. When they started years ago, they involve the children to set the school rules and regulations. It was a many months’ long campaign. So, the teacher and the principal sat together and meet with the children and the students propose what kind of school regulations this school should have. They had a very democratic process...The students loved it. One of the students was my client in my (social work) practice. And she had (previously) refused to go to school and then enrolled in this school and then she gave me the information and she was very proud of the school.” (Int. No. 13).

195. It has been suggested by commentators that public schools today feel their main priority is to prepare children to perform well in territory-wide assessments⁸⁷ so that the school has a good reputation. One interviewer noted that this pressure was potentially detrimental to

maintaining meaningful child participation: “It is a kind of child abuse, I think. Actually, it poses many mental health issues for the children and the family conflict. It is really a very serious problem in Hong Kong. And I think as the school the main service target is the children and they do not include children’s voice and I think they want to have a good result academically, both the school and the parents want to have good academic results, and they just ignore the right of the children and the mental health of the children.” (Int. No. 8).

196. An essential element to achieving meaningful participation is to respect children’s lives by ensuring that children themselves must feel that there is ‘space’ for them to participate amongst all the other educational demands on their time. However, several interviewees noted that this is increasingly difficult for children: “But in Hong Kong the academic pressure is very heavy, and the children are very busy, and the parents’ most frequent words are “quick, quick”. If we have to do everything quickly children may not have a say”. (Int. No. 4).

197. In practice it seems there is sometimes a significant implementation gap between the Bureau’s policies and the School’s actions. One interviewee noted that: “...we think it is worth to raise some social issues to include the children’s voice in legislation. This is good but we observe that, let’s say in the Education Bureau we have some kind of quality standard that includes the children’s voice in the school. (But) when the school make some policy that are affecting the children, they have no such kind of standards or guidelines. Even let’s say about the homework policy at the Education Bureau, they would have some policy but (in school, homework) already delivered. I think it is really a big problem. In my practice we find that a lot of children have to do more than 3 hours of homework each day.” (Int.No.8).

198. An essential part of enabling children to participate in choices about their education is to provide them with child-appropriate information. This can be a particular challenge for non-Chinese speaking school students (NCS). One interviewee explained the adverse impact on children that not having the right information about needing to learn Chinese has for future options: “So it is about informed choice. And then after secondary, even if children really want to choose, want to change to another school, they cannot because they are already set up for failure. There are no other secondary schools that would want to take them.” Even though things have improved in the recent year or so, with more information being available, what information is given and how is up to each school which diminishes the transparency of information available to children; “ the next school year, September 2019, all these School booklets have a separate section on support for NCS children. So, schools who receive money from the government are obliged to say what kind of support they have. But again, there is no standard so you can say I have support, or you can say my support measures are these...” (Int. No.11).

199. In terms of schools as the locus for children learning and practising their participation rights, the view amongst interviewees from the NGO sector was that this was not happening: One said: “I think we don’t have systematic teaching, of course, for the children to learn what is children’s rights and how to use it (Int. No. 2) while another noted that “... especially in the Education. How you can include children’s voice as much as possible? Like I say if you really, really have Article 12 being implemented, you incubate the children to express themselves. That is something (that can be done) either through the family or through the Education. So, if the school can do it, that would be very good but obviously it is not in the curriculum.” (Int. No.14).

⁸⁶ A Comparative Study on Children’s Rights Education: Implications for Policy Reform n Hong Kong, Puja Kapai, John Bacon-Shone, Annelotte Walsh, Fay Wong The University of Hong Kong (2015) UNICEF.

⁸⁷ <https://www.scmp.com/news/hong-kong/education/article/3014113/more-hong-kong-ppils-takingcontroversial-tsa-exams-city> last accessed on 18th June 2019.

Part Two: Section Five:
Reporting on Law, Mechanisms and Structures for Child Participation
In the Healthcare Setting:

Introduction:

200. Three public bodies are charged with responsibilities for public health care in Hong Kong. They are the Department of Health (DH) which according to the Government website is the “Government’s health adviser and agency to execute healthcare policies and statutory functions. It safeguards the community’s health through a range of promotional, preventive, curative and rehabilitative services. (It) provides subsidised healthcare services through its centres and health clinics to citizens of Hong Kong”.
201. The Food and Health Bureau (FHB) is “responsible for forming policies and allocating resources for the running of Hong Kong’s health services. It also ensures these policies are carried out effectively to protect and promote public health, provide lifelong holistic health care to every citizen of Hong Kong, and ensure that no one is denied adequate medical treatment due to lack of means”.
202. The Hospital Authority (HA) is a statutory body providing public hospitals and related services to the citizens of Hong Kong. It offers medical treatment and rehabilitation services to patients through hospitals, day hospitals, specialist clinics, general out-patient clinics, Chinese Medicine service and community outreach services that are organised into seven clusters which together serve the whole of Hong Kong. Hong Kong citizens can enjoy subsidised medical services provided by HA.⁸⁸
203. The HA has recently opened the Hong Kong Children’s Hospital (HKCH) to provide specialist services, stating that “The hospital has adopted various children-centred and family-friendly designs with an aim to create a noninstitutional environment for a better patient experience and support their care, leisure, social and learning needs”.⁸⁹

Laws and Regulations:

204. The key legal issue regarding children’s participation in the healthcare setting is their consent to medical treatment. Legislation in Hong Kong recognises parents have ‘parental rights and authority’ over their children.⁹⁰ The common law has traditionally included within this the right of a parent to consent to medical treatment of their child⁹¹

⁸⁸ <https://www.gov.hk/en/residents/health/hosp/overview.htm> last accessed on 18th June 2019.

⁸⁹ <http://www31.ha.org.hk/hkch/eng/hospital/features.htm> last accessed on 18th June 2019.

⁹⁰ GMO (Cap 13) s.3(1)(b).

⁹¹ The Law Reform Commission of Hong Kong Report on Child Custody and Access at para. 2.10, <https://www.hkreform.gov.hk/en/docs/raccess-e.pdf> last accessed on 18th June 2019.

205. In several common law jurisdictions, the concept of parental rights and authority has largely been superseded by legislation which introduces the concept of parental responsibility. Parental responsibility respects the child’s evolving capacities and expects the parents’ authority over the child to be exercised for the child’s best interests in a diminishing degree as the child’s capacity evolves. Similar reform has been introduced as a draft Bill in Hong Kong but is currently on hold.
206. Despite the Hong Kong common law expectation that parents’ have the right to consent to medical treatment for their child, the Hong Kong medical profession has a different approach, placing the emphasis on the child’s consent. In its Code of Professional Conduct, it states that: “Consent given by a child under the age of 18 years is not valid, unless the child is capable of understanding the nature and implications of the proposed treatment. If the child is not capable of such understanding, consent has to be obtained from the child’s parent or legal guardian. The degree of maturity and intelligence required for a child to understand the nature and implications of the proposed treatment will depend upon the importance and complexity of the case. It is the doctor’s duty to ensure that the child is truly capable of such understanding before acting in reliance on the child’s consent. While a child may be competent to give valid consent, the child should be encouraged to involve the parents in the decisionmaking in respect of important or controversial procedures”.⁹²
207. The professional standard adopted by the medical profession on children’s consent mirrors the requirements of the UNCRC Article 12 and other participation-based rights specifically Article 5 in recognition of the child’s evolving capacities through assessments of age and maturity. It provides an opportunity for collaborative participation by the child in decisions about medical treatment.
208. However, in some instances the law explicitly overrides the right to consent. In 2017, a seventeen-year old girl wanted to donate part of her liver to her mother who would otherwise perhaps die⁹³. The relevant law, the Human Organ Transplant Ordinance (Cap. 465), stated that organ donors donating to another living person had to be 18 years or over. The legislative provision is in contrast to the approach adopted under Article 12 to consider the child’s maturity as well as her age when hearing the child’s view and taking that view into account.

Mechanisms and Structures for Child Participation in the Healthcare Setting

The Department of Health (DH):

209. In response to the questionnaire seeking information on policies and mechanisms relating

⁹² Medical Council of Hong Kong Code of professional Conduct at paras. 2.12.1-2.12.3, https://www.mchk.org.hk/english/code/files/Code_of_Professional_Conduct_2016.pdf last accessed on 18th June 2019.

⁹³ <https://www.scmp.com/news/hong-kong/health-environment/article/2086836/hong-kong-teen-exploring-allways-try-and-save> last accessed on 18th June 2019.

to child participation in the work of the DH, the DH replied that there were no child specific measures but views may be expressed by all service users to the Client Relations Officer of the Health Centre or Clinic. The DH also reported a number of programmes delivering different types of healthcare to children and through which children could either receive information about services or could take part in consultation processes, such as responding to surveys, questionnaires.

210. These opportunities included information sharing by the Family Health Service and Student Health Service. These services will respond to invitation or enquiries from children advocacy organisations to explain services.
211. Consultative participation opportunities include several surveys to collect children's views on diet, mental health and well-being to facilitate planning, implementation and evaluation of DH programmes; the School Dental Care Service (SDCS) twice yearly client survey to collect opinions and suggestions from students and parents; and focus groups and surveys run by the Oral Health Education Unit (OHEU) to evaluate and plan the programme (secondary school); questionnaires and suggestions forms to parents and teachers (primary and kindergarten).
212. Information on these participation opportunities is disseminated by the DH through outreach to schools, thematic websites, collaboration with relevant government departments, newsletters and e-mails to teachers and parents. In 2018, 270 primary schools enrolled in the Eat Smart Accreditation scheme; 1300 schools participated in Joyful Fruit Month; and 620 kindergarten and child care centres requested health promotional materials. The SDCS has developed and endorsed 'The Patients' Charter for the SDCS' and 'The Patients' Charter for Children Enrolled in the SDCS' which are posted up on the school dental clinics waiting room.

The Hospital Authority (HA) and the Hong Kong Children's Hospital (HKCH)

213. When requested for information regarding the implementation of Article 12 or child participation in its work, the HA replied: "The Hospital Authority (HA) is responsible for the management of public hospitals, general Out-patient Clinics and specialist Out-patient Clinics in Hong Kong. The HA does not have, in particular, either formal policies or informal measures or processes to implement Article 12 of the United Nations Convention on the Rights of the Child, either directly or indirectly, or to promote and implement in its work. HA patients can communicate with the attending doctor and seek information and advice if they have enquiries about medical treatment. Also, Patient Relations Officers (PROs) are appointed in each hospital under the HA. HA patients and their relatives are very welcome to contact the PRO of the hospital concerned if they have enquiries or feedback about services provided by the hospital or clinic concerned."
214. A follow-up request to the new HKCH initially received the same response, justified by HKCH being an entity under the auspices of the HA. A further request for clarification regarding children's participation in the design and planning for the hospital was answered, "During the service planning stage (around 2013 - 2017), a series of consultation with non-government organizations (NGOs) and patient groups was conducted." The aim of these

consultations were to achieve the goals of a children-centred, family-friendly design, facilities and services.

215. What is also known about children's opportunity to participate in the planning for the HKCH, from a public submission paper by the Hong Kong College of Paediatricians to the UN Committee in 2013, is that "Our College looks forward to the opening of the Centre of Excellence in Paediatrics. A children's hospital for Hong Kong is long overdue. During the July 2013 Children's Rights Forum when the children's hospital was on the agenda, the children that were invited to attend could hardly understand the preparatory consultation papers, difficult even for adults to digest. What the children were most interested in was whether the facilities were child friendly e.g. whether the children could play. They were reassured that the children's hospital will have a full range of play services including play specialists and therapists."⁹⁴

Food and Health Bureau (FHB):

216. Replying to a request for information on measures taken to implement child participation in its work, the FHB relied that it did not have any child-specific policies. However, when formulating policies, FHB holds public consultation sessions to collect feedback from the general public as and when necessary. Generally, members of the public, including persons under the age of 18, are welcome to participate in these public consultation sessions and express their views to FHB. Feedback collected from the public, including those from children, will be considered holistically by FHB when formulating policies.

Psychological Treatment and Services (SWD):

217. In addition to the three agencies responsible for public healthcare in Hong Kong, the SWD also provides mental healthcare services to children. Where SWD works with children referred for psychological assessment and/or treatment, child clients are facilitated to express their views about psychological services in the course of assessment and/or treatment. Where working with children being considered for adoption, children are facilitated to express their wishes and preferences in regard to the options available to them and their expressed wishes and preferences are duly considered by case social workers and their adoption plans are modified accordingly.
218. Where the SWD works with children in need of protection, they are facilitated to share their concerns and perspectives, which are conveyed in the multidisciplinary case conferences (MDCC) and case review meetings (CRM) where welfare decisions are made for them. Their views will be balanced against the need to ensure their safety and well-being when formulating child protection plans.

219. This framework puts in place a clear opportunity for children to participate in decision-making

⁹⁴ http://www.paediatrician.org.hk/index.php?option=com_docman&task=doc_view&gid=713&Itemid=66 at para. 4, last accessed on 18th June 2019.

about them. However, as noted above⁹⁵ children often do not participate in the CRM as they believe whatever they say will not be heard or will not be taken into account. Equally, the MDCC can be a missed opportunity for meaningful child participation if children are not directly invited to attend, the decision on children's attendance lies with the parents, or children do not feel they can express their views: "the first part of the case conference only professionals involved in the case will sit together to identify, to share information and assess the risk factors ...and then the second part of the multidisciplinary case conference, we will invite parents and children to participate. But I find that in the multidisciplinary case conference, and I have checked, before only one girl, one child, attended the second part of the multidisciplinary case conference to express her views... Only one child. Mostly parents attend the second part to receive the result of the multidisciplinary case conference... most of the cases it is determined by the parents, whether they will bring the child to the case conference or not." (Int. No. 7).

Part Two: Section Six:
Reporting on Law, Mechanisms and Structures for Child Participation
In the Leisure and Culture Setting:

Introduction:

220. One of the key questions around children's participation in the settings of leisure and culture is whether children in Hong Kong have the time for play or to enjoy cultural activities given the very heavy emphasis on academic achievement. Most decisions about how a child will spend their spare time, and indeed how much 'spare' time a child should have, will be made within the family.

221. As the State has a role in providing opportunities for children to engage in leisure and cultural activities, consequently children must be given opportunities to participate in decision-making around those leisure and culture measures that affect them. In Hong Kong these matters are primarily under the remit of the Leisure and Cultural Services Department.

Mechanisms and Structures:

The Leisure and Cultural Services Department (LCSD):

222. In its response to the questionnaire, the LCSD replied that in general it had no specific policies regarding Art. 12 UNCRC. However, it welcomes the views and comments from all citizens including children and it had engaged children's participation in some specific projects in the past.

223. In particular the process to create the Tuen Mun Inclusive Playground included children

⁹⁵ See para. 162 above.

from the very beginning of the design process and maintained the children's participation through to completion and subsequent review of the project. This project had been made possible with the collaboration of the NGO Playright Association, the Architectural Services Department (ASD) and selected schools. The child participation began with the NGO informing children about inclusive play and letting them experience this, then the children visiting playgrounds and the site, speaking to designers from the ASD, generating ideas, drawing and making models of these ideas, sharing them with the ASD, then another visit to the ASD see how a landscape architect works. And then the landscape architect shared with the children how they can incorporate their ideas. The children are told that it may not be possible to directly copy the children's drawings and models but the ASD understand their ideas. After they explained this to the children, the children had a chance to give feedback.

224. As one interviewee aware of the project said: "I think that is the most beautiful part. Usually we collect and then we do, or do nothing, and we do not report to the children. We think this is a beautiful communication. Because what is a real consultation is not one speak and one take and then finish. It is one speak, one take and then communicate. You may not be able to consider every suggestion but the beauty for the children is that it was explained and so if you really cannot bend, you explain to them and then they can learn and that is the beautiful part of it". (Int. No. 14).

225. Several months on from the completion of the Tuen Mun project, findings suggest that the playground is consistently popular with children and the high quality, iterative, collaborative child participation in design and planning of the project has resulted in a successful outcome for all parties involved.

226. The LCSD also works with children's participation by taking part in the CRF on LCSD related matters to gather children's views. The LCSD attaches great importance to the views received at the CRF and has taken appropriate follow-up actions.

227. The LCSD has also participated at the LegCo Subcommittee on Children's Rights at the Legislative Council on LCSD-related matters and specifically on play and sports programmes and venues. The LCSD again noted that it attaches great importance to the views received at the Sub-committee on Children's Rights and has taken appropriate follow-up actions.

Leisure and Cultural Services Provided by NGOs:

228. Countless NGOs in Hong Kong provide cultural and leisure activities to children. Several were interviewed for this Study. All provided children with consultative participation opportunities such as providing feedback on the delivery of services and programmes. Some NGOs enable collaborative or even child-led participation so that children design the programmes, arrange activities or develop initiatives either in partnership or with the support of adult staff and volunteers.

229. The Playright Association actively engages children in participation in leisure planning and advocacy through projects like the Tuen Mun inclusive playground described above and the Junior Playground Planner programme. The latter programme seeks to encourage

children’s participation in the design of playgrounds so that the Junior Playground Planner will participate to encourage the LCSD and other relevant departments, when they develop urban planning, to think about the where children play and where children might play and then turn that into a playable space. The NGO also provides opportunities for children in hospital to play and actively encourages children to make decisions about what they want to do with their play time. Lastly the NGO is piloting a scheme for ‘Free Play’ within the school day. The concept of ‘Free Play’ is for children to have time for undirected play with no particular goal in mind. This means that children lead the decision-making for what to do with that time and decide how it should progress. If successful this will incorporate child-led participation in the school day in a way which is relevant to children’s lives and interests and which, although it may be seen as a ‘small’ topic, gives children the opportunity to exercise their participation-based skills and to develop greater insight into what participation means for them.

Part Two: Section Seven:
Reporting on Law, Mechanisms and Structures for Child Participation
In Miscellaneous Settings:

Introduction:

230. Globally, the child’s right to participation clearly exists in certain ‘hotspot’ areas of children’s lives. Research for this Study has shown that this is also true of Hong Kong. However, there are other areas of policy-making and administration which also touch children’s lives, even though they may not be thought of at present as ‘first order’ locations for children’s participation. These areas include the planned environment; commerce and consumption; and public service.

Mechanisms and Structures:

The Planned Environment: The Town Planning Board (TPB) and the Urban Renewal Authority (URA):

231. As guardians of the quality of Hong Kong’s planned environment, the TPB and URA make decisions which will have an impact long after the adults making them have gone and which will live on to shape the future living environment of today’s children. For that reason alone, children’s participation today would seem to be a natural consideration. When asked for information on mechanisms or policies relating to child participation in their work, the TPB replied that they had no child-specific policies in place, but children may make representations or comments on Town Planning draft plans and on planning applications in the same way as any other person.

232. The URA replied that they had no child-specific policy but maintained a general principle that all residents affected by redevelopment policies should be given an opportunity to express their views on the projects. Public consultations are open to comment from all irrespective of age. Once a project is underway, the Social Impact Assessment (SIA) would take account of all affected residents including children’s educational needs and the needs of children of single-parent families. All residents affected, without age limit, are able to

comment on the SIA. The URA also conducts youth engagement through education and outreach: guided tours, talks and inter-school competitions.

Commerce and Consumption: The Consumer Council (CC):

233. Children are consumers, either indirectly through their parents and families’ purchasing power or directly with their own money. As such children should be able to participate in policy-making and implementation regarding protection for consumers. The key body in Hong Kong which acts to maintain a safe consumer environment is the CC. When approached regarding policies or mechanisms for child participation in the work of the CC, they replied that they adopted a general approach to include children in their projects, empowering children through education and fostering a positive consumer attitude at an early age. In particular, the CC ran the Consumer Culture Study Award which is designed to encourage children to exchange and express their views on a wide variety of consumer issues.

234. Children are given the opportunity to express their views and to enjoy the services of the Council in so far as it is appropriate to the issue at hand. Due weight is given to children’s views dependant on the child’s age and maturity, where they are apparent. Children are asked to discuss with an adult any advice given to them.

Public Service: The Office of the Ombudsman (OM) and the Independent Commission Against Corruption (ICAC):

235. Both the OM and ICAC act to ensure that there is integrity in public service. The OM addresses injustice caused by maladministration. When children are the subjects of administrative decisions, the work of the OM becomes relevant to children’s lives. The ICAC addresses corruption. Corruption can occur anywhere in public service, including when children have to compete for a scarce resource, such as scholarships, or when a decision-maker has the power to confer or withhold a benefit sought by the child.

236. The OM’s response to the questionnaire was that there its office has no childspecific policies but there is no restriction on the age of a complainant. Where a complaint is made by a child or by an adult representing a child, the Ombudsman will ascertain the views of the child and obtain information as well as consent from the child as appropriate. Where the Ombudsman initiates a direct investigation, without the need for a complaint from the public first, and that investigation touches on child-related matters, relevant concern groups will be contacted for their input.

237. The ICAC stated that it had no specific child participation policies or mechanisms in place, but Law Enforcement services and Prevention of Corruption services are available to all, including persons aged under 18. In addition to this the ICAC runs multiple promotional and educational activities for primary and secondary school children which provided children with opportunities to express their views and suggestions on ICAC related topics.

Part Three: Thematic Analysis of Stakeholders' Experience of the Implementation of Article 12 of the UNCRC

Introduction:

238. After data was collected from the questionnaires sent to duty-bearers, interviews were conducted with other stakeholders in the implementation of Article 12: NGOs, experts and professionals working with child participation. Those interviews with stakeholders were transcribed and then subjected to a thematic analysis to identify patterns arising in the way in which child participation is experienced or observed by those stakeholders. As noted above, the stakeholders who were interviewed work with children's rights in a range of contexts including international and domestic NGOs, statutory bodies, academia, the Legislative Council, the law, social work, education and healthcare.

239. The thematic analysis identified five key themes:

- the first theme is 'absence', either of an absence of awareness of Article 12, an absence of priority or practice of child participation amongst duty-bearers.
- the second theme is that of the quality of participation available to children.
- the third theme investigates how the way in which children are viewed and categorised impacts on children's participation.
- the fourth theme picks up on examples of what enables good quality, meaningful child participation.
- the fifth theme collects together instances where the impact of child participation has been observed and evaluate that impact in terms of outcome for children, duty-bearers and the community.

240. These themes, and the data supporting them, are presented here as a further layer in our understanding of the implementation of Article 12, and child participation generally, in Hong Kong today.

Absence:

241. Absence here refers to an absence of awareness of the UNCRC, Article 12 or child participation generally in legislation or policy and an absence of child participation in the Administration's priorities, either centrally or at bureau and department level. Absence also extends to professional and social discourse on child participation as well as absence of participation by children in the sense of a 'gap' between what is provided in writing for child participation and what happens in practice.

Absence in Legislation and Policy:

242. Interviewees, when asked about the implementation of Article 12, or child participation, in legislation or policy were generally able to point to limited, specific instances of laws or

policies relating to some form of child participation within their own settings. However this was most evident in the legal and social work sectors and the interviewees noted that the laws or policies rarely referenced the UNCRC directly.

243. However, when asked about legislation generally incorporating Article 12 or a systematic policy to enable child participation generally, the response was less positive: "If you said that about child participation whether it is well circulated or implemented, actualized in Hong Kong I am sad to say I had to say no. I read through the (interview) questions and prepared and you ask upfront about the legislation and regulation. I have to scratch my head, where is it?" (Int. No. 4)

244. One interviewee noted the absence of systematic incorporation of Article 12 and the consequent effect on the role of NGOs working with children's rights, "while we are aware of development of sectoral law that guarantees the child's right to be heard in family law context, we are not aware of any legislations, regulations or policies that imposes a general obligation on any adult duty-bearer to guarantee the participation of children in matters that affect them. This (is) because there is no systematic means of facilitating meaningful children participation in the public domain here in Hong Kong of which we are aware... we are not aware of any attempt to incorporate Article 12, or indeed any other provisions of the UNCRC, into domestic law or policies. The primary drivers for children participation in Hong Kong are NGOs with a professional interest in the issue. The role of such NGOs are confined to pointing out the insufficient space for children participation, and provide channels for children to do so and training for interested adults on this matter." (Int. No. 17).

245. Some interviewees were quite pessimistic about the possibility for future incorporation of Article 12 into domestic law, "although we know that these conventions are important to Hong Kong, our government does not have a whole lot of respect for them. There are not any laws, local laws, that implement these international conventions so it is hard sometimes to make reference to them and you really cannot pinpoint the government to any flaws or deviations from these local laws..." (Int. No.9).

246. The lack of a structured legislative approach to the implementation of good quality child participation was confirmed by another interviewee, specifically noting the adverse impact on children: "To the best of our knowledge, no structured and regular processes or mechanisms are in place to provide feedback or inform children of the outcomes of the decision-making processes. It is hard for children to learn whether or how their opinions have been given due weight in the decision-making process after expressing their opinions" (Int. No. 16).

247. Moreover, when child participation is absent from government policies, it is also likely to be absent from government service agreements with welfare service providers. This means child participation is not a deliverable required of contract service providers: "They (the children) have some problems that you professionals are paid by the government to fix, to solve the problem, to help the children. They (the government) are doing all this for good will but child participation may not pop up in their minds when they are working out these sorts of documents. But that (service) agreement governs the way our practice is delivered. The output indicators, the outcome indicators, the objective of the service... the service is delivered according to this agreement. So if child participation is not well stated in that,

you mean it is not required... then Frontline practice will not suddenly include (it)". (Int. No. 4).

Absence from Government Priorities:

248. A recurrent theme was the idea that child participation was not a priority for the Hong Kong Administration and that this was evidenced either by a lack of awareness of the significance of child participation or by a lack of awareness of what meaningful child participation requires.
249. For example one interviewee when asked about their experience of working with government bodies on child participation said "I think they might have it in mind but their priorities are low. Maybe they have but the priorities are not so high." (Int. No. 10). Another interviewee concurred saying, "No legislation. Plus the voting age is 18 right? From what we see it is like nobody, the government, doesn't care about the voices from children 18 and under..." (Int. No. 11). This lack of priority has, for some interviewees translated into a failure even to update laws to protect children, "Children are not the priority of the HK-SAR government. The laws that are on the books are from before. Even before the 70s. We have not had major child law reform in 50 years relating to child protection." (Int. No. 6).
250. The perceived low priority and lack of commitment to creating an environment in which child participation can flourish is presented in one interviewee's own experience "What alarmed us most in our engagement with the officials at CMAB, the principal drivers of children's rights within the Government, was their insufficient understanding towards the requirements of Article 12 and their obligations thereunder, and the general tendency to abdicate their obligations under Article 12... This is an indication of the Government's and its officials' lack of ownership on facilitating children participation in the public domain in Hong Kong." (Int. No. 17).
251. However, interviewees' experiences also show that there are pockets of engagement within the government where steps are being taken to improve commitment to child participation. For example, the CMAB has taken some steps to improve the format of the CRF by meeting with child representatives of NGOs to formulate and implement change although the general view is that more could still be done (Int. No. 17). Individual government departments have worked with other NGOs to listen to how to include child participation in the work, "I think the government, the people that we connected with, they are very receptive and they notice a good idea and they want to do it...when we get in touch they think that's a good idea and the government loves to have this, to have the children model...but it is also the values, the mindset that they think is good. I think it is more open and it is not in the policy, or standards, but the next step we want them to being the policies and the standards." (Int. No. 14).
252. Furthermore, it is not for the Administration alone to make law and the Legislative Council's interest in prioritising child participation was also queried by one interviewee's reference to the low numbers of legislators at committee and sub-committee meetings regarding children's issues and rights. (Int. No. 6).
253. The general impression arising from the interviews was that the UNCRC is almost never

referred to explicitly in either professional or social settings, even though in one or two instance instances the UNCRC may be explicitly referenced in official policies⁹⁶.

Absence of Child Participation in Social and Professional Discourse:

254. Despite governmental funding for children's rights education, representatives from NGOs observed that either uploaded video resources were rarely watched and rights education programmes were not widely funded in relation to the number of children in Hong Kong. (Int. No. 8). The interviewee took the view that this was not a question of 'fault' or 'blame' but instead one of awareness. If educators, other professionals or parents do not think about children's rights as an issue, then they will not search online for materials or education kits on children's rights or apply for children's rights funding. Another interviewee stated that people "rarely, rarely" talked about the UNCRC. (Int. No. 2).
255. In the legal sector, the view was expressed that the UNCRC itself was rarely referred to, even though the principle of child participation may be enshrined in specific pieces of family legislation, and indeed reference to the UNCRC would be a kind of 'wild card' strategy, "it's like waving around the Bill of Rights and usually the only people who do, are those who are not family law practitioners and they have a weak case." (Int. No. 1).
256. Similarly in the social work sector, when asked whether the UNCRC had previously been included in social workers' training and education the response was "no, no mention" (Int. No. 13) although this may be changing with options for courses on children's rights in future at some universities and in some CPD training. Prompts for course development are changes to family law practice because of the Judiciary's Guidelines on meeting children and discussions amongst professionals prompted by the recently proposed, now suspended, Children Proceedings (Parental Responsibility) Bill.
257. Does it matter that the UNCRC is not explicitly referenced in legislation, in governmental priorities, or in daily professional and social discourse, as long as child participation measures are in place? In some senses maybe not. However, what this absence tells us, for the purposes of this Study, is that the UNCRC, and Article 12 specifically, are not explicitly and consciously a part of how we think about children in Hong Kong and this does not bode well for our perception of children as rights-bearers.
258. Considering child participation more broadly, beyond Article 12, the way that expert reports, a form of professional discourse, are written in the aftermath of tragedies such as child suicides or fatal child abuse is instructive. One interviewee suggested that child participation was absent from these reports also, "I read the reports and talked with those officials. My first impression is that they do not know what you (the children) are struggling with. For the recommendation part in their report they always say that we have to boost their self-confidence, resilience, tolerance to stress, whatever, without knowing what they're struggling. I think when they are come with the report there is no room for the children's

⁹⁶ See Part II Section I.

voice.” (Int. No. 4). Child participation is, as a number of interviewees observed, ‘difficult’ and must be delivered in child-appropriate ways, particularly in sensitive matters such as child suicide and child abuse. Is that difficulty really sufficient reason to avoid meaningful, appropriate child participation in matters where the child’s voice could hold the key to real change?

Absence and the Implementation Gap:

259. A number of interviewees were keen to make the point that having written laws, policies or mechanisms in place on child participation is not the same as implementing meaningful children participation. There can be a ‘gap’ between what is supposed to happen and what does happen and this gap results in an absence of meaningful child participation.

260. In general the views expressed by stakeholders were that the words to implement Article 12 or child participation might be ‘on paper’ in most of the major settings relevant to children but that is not enough. Practical implementation, and resources to guide that, are essential, “We too experienced difficulties in our search for guidelines and best practices for facilitating children participation in the public domain, for most resources available discuss children participation mainly through regurgitating the basic requirements for the implementation of the right to be heard as stated in General Comment 12, with rudimentary examples for each of the requirements stated there as illustration. While guidelines of a general nature allow individual exercises of children participation to be tailored based on particular circumstances, it also requires more time and effort on an adult’s part in preparing for such an exercise. For instance, in one project which involved preparing our volunteers to facilitate children participation processes, we have to rely on our own network of supporters and invite a qualified social worker to provide introductions to children psychology and skills for interacting with children to assist the volunteers to put the requirements stated in General Comment 12 in practice. There are as yet no practical toolkits available in a local context that provide a step-by-step, practical advice as to the preparation and logistics required of a children participation exercise, which is an implementation gap which requires filling.” (Int. No. 17).

261. In the legal sector the view was that despite significant opportunities for child participation afforded by the Judiciary’s Guidance Notes and the existence of the Official Solicitor⁹⁷, these mechanisms were rarely utilised in practice, “There is almost no usage of the next friend or guardian ad litem in almost all of the children’s cases. There is rarely an independent or trained children’s advocate, almost never...in that way (the wording of) the Practice Direction is fine, but there’s rarely an implementation of the Practice Direction ... Even in the reported cases you do not see independent advocates appearing, being appointed... I think the only problem with the paper, with the system is that the default is wrong. There are no resources to back (it) up. There is a provision for the Official Solicitor to participate, there’s a provision for next friends and guardian ad litem but there are no resources

dedicated, there is no system to ensure that it happens, to make sure it’s been considered, basically the people who should be determining whether or not it should happen are the ones who have the least motive ...so you end up relying on the judge to initiate the suggestion of a different mechanism to hear from the child” (Int. No. 6).

262. Similarly in the social work setting, while guidelines might refer to child participation, practical implementation also requires a systematic framework, “the fact of the lack of a child’s voice in these situations, whether they were actually being asked about their wishes ... and they may not be offered the opportunities to say so, or if they are, are not actively listened to, this may be one of the gaps for us, a lack of a legal framework or even a system framework in place for doing so.” (Int. No. 3). Without a system in place to check the implementation of the guidelines, the ‘missing’ fact of child participation can go unseen, especially when relevant adults are acting ‘in the child’s best interests’, “...sometimes the agencies or the social workers or the parents (are) not mindful to ask children for their opinion. They just make the decision for them, for the children. With the best interests. For the good of the children. It is a general pattern.” (Int. No. 13)

263. The stakeholders’ experiences of an implementation gap illustrate the ‘difficulty’ of achieving meaningful child participation even where policies or mechanisms are, in theory, in place. There is evidence that in some settings where the implementation gap has been identified, steps have been taken. For example, “Capacity building and training really does make a difference. The Social Welfare Department has really upped its game over the past two years and we’re seeing the difference it makes.” (Int. No. 3). This is not however the experience across all sectors nor, from interviewees’ feedback, is the implementation gap in the social welfare sector completely eradicated yet.

Quality of Participation:

264. The second theme that arose from the analysis of stakeholder interviews is of the quality and nature of participation available to children in Hong Kong. The general view from most of the interviewees confirmed the information received from the government departments and bureaux and from the statutory bodies that opportunities for child participation exist in most of the settings canvassed. However, interviewees raised questions about the extent to which that participation could be deemed meaningful. Interviewees talked about the form of child participation they had observed, with some interviewees using the language of Hart’s Ladder and others using Gerison Lansdown’s language of consultative, collaborative and child-led participation. Linked to this were observations about the different stages of the decision-making or policy-making process at which child participation was invited. Another factor addressed by interviewees was the need for participation to be meaningful in the GC12 sense, especially the need for informative, relevant, child-friendly forms of participation. A final attribute that came up in many interviews was the need for children to be given feedback or some kind of follow-up on their participation. A final attribute that came up in many interviews was the need for children to be given feedback or some kind of follow-up on their participation.

⁹⁷ See Part II Section II.

The Form and Timing of Child Participation:

265. Asked to describe the child participation they had seen, one interviewee adopted the language of Hart's Ladder saying, "... According to the current situation in Hong Kong (child participation) seems to be staying at the intermediate level: children are consulted and informed of the decisions; not involved in the decision-making process. But we want, our vision is to motivate to the highest level, the most effective way is child-induced, making decisions with adults together... I think through the Children's Rights Forum children can participate in the later stage (of policy-making). Through the Children's Rights Forum or through public consultation, children can participate in the latest stage and not in the earlier stage. So children are mostly not involved in the decisionmaking process. Only being informed of the policy or the legislation." (Int. No.7)
266. From the information provided by government bodies and from the observations made by interviewees, it is possible to conclude that the predominant, though not sole, form of child participation available in government-led channels is consultative and happens mostly in the later stages of policy and decision-making, "Usually children can only voice their opinions on issues that are already framed by the government in the forums. They seldom have the opportunity to influence the agenda of the meetings, or initiate discussions on matters they consider important... Throughout forums where children get to participate in public affairs, they tend to be involved in stages of giving feedback in monitoring and evaluation or at most consulted before an already designed policy is implemented." (Int. No. 16). While consultative participation may at times be the most appropriate form of participation, it must be remembered that there are other options, and as observed in the Tuen Mun Inclusive Park example, children are capable of greater levels of participation in the right circumstances.
267. Opportunities for future child participation could be modelled on some of the practices currently adopted by NGOs in Hong Kong. For example, NGOs working with child custody and family breakdown have consciously engaged children in collaborative and consultative participation from the very first stage of the NGOs' engagement with the families concerned, both seeking feedback from children on their services but also including the child's voice in the process with the relevant adults. Another NGO has adopted a 'shared decision-making power' framework between children and adults working on their projects. And two NGOs gave the example of providing training for child participants expressly to empower children to take on the decision-making role in the project. Other NGOs routinely collaborate with children to engage them in the outcome of their decision-making process or projects. Still another NGO has adopted a model so that children are encourage to develop their participation skills by participating in the smaller daily decisions related to the service the NGO provides for them: how to use their time with the NGO, which activities to do and so on.
268. Looking at the possibility of more diverse forms of participation, one interviewee described the following example of collaborative participation: "... a project for those children and youth centres in Hong Kong funded by the Jockey Club. This is a modernization project. It is somehow a renovation of the hardware of the Centre. At that time for every Centre the first step is the stakeholders' engagement. (There are) workshops for the children and their parents. To ask the parents or the children what do you want? For the Centre to change or

to look like after the big renovation? This is a very rewarding experience. This is child participation". (Int. No. 4).

269. Another example of more engaged child participation was the possibility of allowing a child to participate indirectly through a 'friend' or 'support group'. In the legal sector the provision of a 'next friend' to facilitate the child's participation can be valuable, as can a 'child consultant' who can represent the child's voice to parents in a child-inclusive mediation. In the social work sector, one NGO has established a programme to offer extra support by volunteer families to children in care and waiting for adoption and to represent that child's voice. (Int. Nos. 3, 5 and 6).
270. In conclusion, despite the time-consuming and sometimes costly nature of facilitating meaningful child participation, the findings from documentary research and interviews are that a wide range of types of child participation, happening at all stages of decision-making processes and projects, are available to children through NGO practice.
- GC 12 and Good Quality Participation:*
271. Several interviewees addressed the importance of different aspects of good quality child participation. These included participation that is: relevant; respectful, informative; accountable (meaning follow-up is done) and consistent, in other words iterative.
272. Examples given by interviewees of relevant participation included NGO programmes for Junior Chief Executives, the Children's Council, the UNICEF Young Envoys, and the Children's Ombudsman. Involvement of children in choosing the topics and focus of their participation in these projects meant that the projects were inherently relevant to the children and their lived experiences.
273. Interviewees observed that opportunities for child participation can become irrelevant to children when either the topics are not something that children can relate to or when topics which might be relevant are presented to children as "serious topics" without making their relevance to the child clear. As one interviewee working with children's rights observed, " Sometimes, because when you see a lot of children's consultation, those topics are not really relevant for them and sometimes even when I go to some children's participation events this is not a children's thing, this is adult." (Int. Nos. 4 & 14).
274. For participation opportunities to be respectful, children must be "provided with opportunities to initiate ideas and activities. Adults working with children should acknowledge, respect and build on good examples of children's participation."⁹⁸ Examples of good practice raised by interviewees include, but are not limited to, the Tuen Mun Inclusive Playground, the Hong Kong Jockey Club Centres' renovation project, research projects led by Plan International and UNICEF. However, when most participation opportunities in Hong Kong

⁹⁸ GC12 para. 134.

are consultative only, it becomes more challenging to ensure that child participation is respectful in the sense that it gives children the chance “initiate ideas and activities”.

275. Good quality, child appropriate information is a pre-requisite for meaningful child participation. NGOs providing services to children reported that they take care to provide child-friendly materials, often providing one set of materials to children and another to their parents (Int. No. 12) and commissioning ‘graphic story’ format information so that children can comprehend difficult topics like family breakdown or human rights (Int. No. 8). Where information is not childappropriate, NGOs found this could undermine the participation process completely. In reference to children being able to express their views on their parents’ divorce, one NGO representative said “even if some of them had a chance to say, then they don’t know how to say. Simply supporting is not enough.” (Int. No. 2). Not only do children need child-appropriate information, the information must be delivered in a time-frame which is suitable for children, “Some children also express that it is their first time they hear of such issues in the forums. Without proper briefing on the matters concerned well beforehand, it is anticipated that children may have trouble formulating and expressing their opinions meaningfully in the meetings” (Int. No. 16).

276. In addition to the GC12 list of ‘good quality’ attributes, one interviewee from the social work sector thought that an important aspect of child participation was that it should be a consistent, or iterative, process where possible. In particular where vulnerable children are involved, their meaningful participation depends on having an ongoing, consistent relationship with the relevant adults who provide their participation opportunities. At present, some social workers are rotated every three years and this can present a problem for consistent child participation: “And I think that maybe if there is a chance that every child can have someone to really represent them so that wherever they go and they have the permanency plan, then someone will be responsible because for those children in care, their past lives have been really fragmented and when they change the placement, the permanency plan will change according to the different social worker.” (Int. No. 3).

277. The opportunities provided for children to participate are only meaningful if they are opportunities for good quality participation. NGO practice, as reported in interviews and in supporting documentation, provides opportunities for relevant, respectful participation based on child-appropriate information. Aspects of State-based channels for child participation, according to interviewees’ experience, including general policy-making, legal and social work sectors, do not always fully achieve respectful, relevant, consistent and informed participation.

Accountable Child Participation: the need for ‘follow-up’:

278. GC 12 states clearly that good quality participation includes ‘accountability’. This means that “a commitment to follow-up and evaluation is essential. For example, in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear

feedback on how their participation has influenced any outcomes.”⁹⁹ The value of follow-up also lies in giving the child the opportunity to check that their views have been represented or understood accurately, especially where their views are collected by an intermediary and not given directly by the decision-maker.

279. According to interviewees, follow-up is the aspect of participation which is perhaps least implemented. Several NGO representatives reported children’s frustration with not knowing how their input at forums such as the CRF impacted on policy development and change (Int. No. 2, 10, 7, 16, 17). As one interviewee said, “Promoting children’s participation can also be hard as many children might feel discouraged after expressing their opinions without changing the outcome, which discourages them from participating in similar processes. Therefore, a robust follow-up mechanism should be established to provide children with feedback on how their participation influences the outcome and how their voices are given due weight and valued in the decision making process, in order to encourage their ongoing participation.” (Int.No.16)

280. The value for children of receiving feedback is that, even when they do not get the outcome they want, their participation feels ‘real’: “They (the children) have to learn. So that is why for this project we built in the communication that adults need to learn. Adults need to report back to the children and the children also learn to accept that not all your opinions is always being (accepted). But then you can communicate. And even if they feel disappointed they can express this.” (Int. No. 14).

281. However, more than one interviewee noted the need to balance the feedback given to children with their vulnerability to being traumatised, especially in ‘crisis’ situations such as being taken into care or being subject to legal proceedings. In divorce cases, practitioners expressed a grave concern not to ‘put the child in the middle’ and so feedback must be calibrated to meet that concern, “I’m not sure they necessarily feedback to the child what’s happening in court process and that’s always been an issue that everybody tip toes around, as to how much information should the child be given. In some cases where the (Official Solicitor) is involved, it is expected that the Official Solicitor will take on that role for deciding and determining what is fed back to the child, what needs to be fed back to the child.” (Int. No. 5). In relation to children considered for adoption, more than one interviewee reported on the difficulty of giving followup information to children in a way that strikes the balance between giving feedback to the child on what impact their views had while not distressing them unduly (Int. Nos. 3 and 6). This difficulty may account for some reticence in following up with individual children where circumstances are sensitive but this does not justify a failure to feedback, but rather requires greater expertise and training to support those who give feedback to children.

⁹⁹ Ibid.

The Children:

282. To establish a baseline of children’s participation in Hong Kong, form, quality and extent of participation are all relevant. It is also important to identify who are the children participating in matters that affect them? Do certain types and groups of children have greater access to participation opportunities than other children? Responses from government bodies and statutory bodies made reference to the needs of specific groups of children. This information, supplemented with data gathered from the stakeholder interviews, gives an insight into which children do or do not have the opportunity to participate in matters which affect them. Two sub-themes under this theme of ‘The Children’ are the identities of children who participate including age, race, class and children with special needs; and the children’s wish to participate.

Identity:

283. The responses from statutory bodies and from government departments and bureaux showed that generally participation for children is a ‘universal’ policy. Often participation is universal not only in the sense that the same policy applies to all children, but it applies universally to all people: adults and children. However, in some specific respects, the participation needs of certain groups of children are catered for. These include children in alternative care, children in detention, unaccompanied children seeking asylum, and children with special educational needs. The EOC also responded that it had pursued complaints relating to the interests of ethnic minority children, sexual harassment and special educational needs, as would be expected given the remit of the EOC.

284. From the interviews, it is apparent that the stakeholders have worked with children’s participation across ages, races, class and gender. In terms of age, interviewees from the legal sector reported that older children are more likely to be given more extensive opportunities for direct participation in matters that affect them than younger children and that this is linked to concerns about maturity and the reliability of younger children’s views in relation to long-term decision-making. (Int. Nos. 1 and 5). In the social work context, an interviewee noted that although they would positively like the input of much younger children, pre-kindergarten, to be heard, “we could not get our heads around how that would be done”. (Int. No. 15). Another interviewee suggested that the way in which some platforms or forums at which children participate were set up made it difficult for young children or children with special needs to take part and child participation would tend by default to be by older children, especially those able to articulate their views in a mature and sophisticated manner. (Int. Nos. 1 and 16).

285. Interviewees and public bodies were mostly silent on questions of gender in relation to child participation, including the Women’s Commission.

286. With regard to socio-economic class as a strand of children’s identity, responses by statutory bodies and government bodies gave no details of specific measures to facilitate participation by grass roots children or children living in poverty. However a number of NGOs do promote participation by these children, including children who live in extreme poverty, who are at high risk of neglect, abuse and even trafficking. For those children who are unregistered and therefore do not exist in the system, the possibility of meaningful

participation becomes even more unlikely because they are invisible to most duty-bearers.

287. One interviewee working with grass roots children identified poverty as an extra hurdle for meaningful child participation, “...they don’t have the resources, they have less time. For example we request the Children’s Ombudsman (Commission for Children) should have representation of underprivileged children but the government do not have this kind of the structure.” (Int. No. 2). This view was supported by another interviewee who shared their experience that children participating at various forums are often more likely to be middle-class with parents who have the resources and the time to bring them along, “those who are more deprived probably don’t get the chance...or don’t get the support.” (Int. No. 15).

Nonetheless, participation can be difficult for children from all classes, and in some circumstances being from a higher socio-economic class can render child participation difficult. As one interviewee noted, “we have found there is still child abuse cases that happen in the middle class. But for lower socio-economic levels, we can approach that family easily. Our colleagues, some colleagues told me it is difficult to approach the middle class, the middle class parents.” (Int. No. 7).

289. In terms of race and language, the experience of interviewees was that participation was generally more difficult for children who were from minority ethnic backgrounds. With regard to language, “a lot of them just don’t have that ability to access things in the same way because of where they live or the fact that they do not speak the language or their parents do not speak the language, so those are other barriers to actually accessing help.” (Int. No. 15). Where translation services are available to help children participate, the importance of follow-up¹⁰⁰ to check for accuracy is significant, “if they do not speak the same language then there is a lot of misunderstanding in the representation perhaps of what the child actually means. I think sometimes that’s a little bit dangerous.” (Int. No. 5).

290. One interviewee observed that in terms of identity, ethnic minority children in Hong Kong will often also be a grass roots child. For these children, participating in decisions about their career and educational choices is limited by financial dependence on public education options which may focus resources on ‘mainstream’ children and not provide sufficient access to appropriate information for that particular child. However, one interviewee reported that this is slowly improving with the introduction of more non-Chinese language information on school and course choices being provided. (Int. No. 11).

291. No information was derived from either public body respondents or interviewees on participation for LGBTQI children. However, supplementary research indicates that identity-specific participation is generally not available to LGBTQI children in Hong Kong due to stigma and prejudice, “At high school in Hong Kong, LGBT and sexual diversity is completely ignored in the [sex education] curriculum”At Christian-affiliated high schools like the one he attended, he says, an actively hostile attitude towards sexual minorities

¹⁰⁰ See Part III: Quality of Participation.

is not only permitted but encouraged.”¹⁰¹ While there is little evidence arising from research that advocacy for participation rights by LGBTQI children exists in Hong Kong, one interviewee did refer this Study to one activist, Small Luk, who campaigns for child participation in the form of intersex children making their own choices regarding medical procedures.¹⁰²

292. Interviewees observed that the potential diversity of children who participate in formal forums and platforms to express their views, may be limited where attendance is by invitation and even where forums are open to all children, interviewees queried how children would know when and how to attend? Consequently, participation was therefore mostly limited to the members of children’s groups that are supported by agencies and NGOs who would have the necessary information about timing, location and agenda of the forum meetings. (Int. No. 7).

Children’s Wish to Participate:

293. Interviewees from legal, social work, healthcare and education sectors all reported that in their experience children want to participate actively in the decisions which affect them. Interviewees reported children taking exceptional steps, often having to speak out against the ‘expert’ view of what was best for them, to express their wishes in issues ranging from unwanted pregnancy, custody arrangements, choice of school, family reunion and independent living. (Int. Nos. 1, 3, 6, 7, 11, 18).

294. Similarly, interviewees recounted instances of children actively pursuing participation in general policy-making by making independent representations to the Legislative Council (Int. Nos. 6 and 15), submitting suggestions to public consultation processes, including suggestions for the election and monitoring of a Children’s Commissioner (Int. No. 2). One interviewee described their experience of children’s active participation “We discover in our programme that children are much more capable than most people think they are. They are important knowledge-bearers and they can identify issues of protection in the community from their own perspective.” (Int. No. 16). This experience was shared by other interviewees, “I think probably it is the children’s rights to solve the problem by themselves, and also maybe not solve the problem, but maybe they have some voices how to see the problem that is really serious, just like the quantity of homework. They have a lot of things to say.” (Int. No. 10).

295. When asked whether there was an appetite for participation amongst children, the consistent message that came back from those who work with children and children’s rights was irrefutably positive. One interviewee responded that: “I think it is quite obvious that there

¹⁰¹ South China Morning Post, 29th November 2018, <https://www.scmp.com/lifestyle/familyrelationships/article/2175396/lgbt-students-face-so-much-prejudice-hong-kong-theyre> last accessed on 126th June 2019.

¹⁰² South China Morning Post, 28th January 2016, <https://www.scmp.com/lifestyle/article/1905393/no-childshould-endure-my-ordeal-says-sex-disorder-hongkonger-forced-be> last accessed on 26th June 2019.

is an appetite. If it didn’t happen or if it was not like that we would not have seen such participation of the youth in the umbrella movement. So apparently there is quite a high level of discontent and there is a yearning for participation and ownership... I am optimistic about the yearning for participation in that age group and they will find a way to show that.” (Int. No. 9).

296. This deep need of children to be heard was evident in several interviewees’ experiences. For example, talking about children who call advice hotlines, one interviewee said they call “(b)ecause they are unhappy, because they feel frustrated and unhappy so they want somebody to listen to them.” (Int. No. 7).

297. While interviewees’ were unanimous in their experience that children want to be given the chance to decide whether or not to participate, experience also showed that sometimes children would decline the opportunity to participate because they have other demands on their time. For this reason child participation is most effective when children participate freely in a format that was respectful of their daily lives. Primary amongst the demands on children’s time was their education, “For children they are too busy. They have no time. So usually this participation, it is not a high priority. If you engage children you need the consent from the parents and from the school so it is likely a long process and you cannot have children coming in every session. Can you imagine the difficulties if they haven’t handed in their homework and they have to stay after school to finish the homework and they cannot join us, or they get the parents saying that they cannot come, there are a lot of issues and if they have an exam and they have too much work they haven’t done then they will skip this session... And the priority is not on this.” (Int. No. 14).

298. Key differences amongst children are their access to time, parental support and finances, while language and special needs also present challenges to how children access participation opportunities. Yet often child participation policies and mechanisms do not distinguish between children from different backgrounds; do not recognise that children of different identities will face different levels of access to participation processes. Participation for LGBTQI children appears to be largely unaddressed while participation by very young children does not seem to be well-developed in the Hong Kong context.

Enablers for Child Participation:

299. The thematic analysis of the data gathered showed clear evidence that implementation was best achieved when certain enabling factors were in place. Those enabling factors include the support and work of NGOs; training for both adults and children; sufficient and appropriate resources ranging from books and education kits to venues and adequate funding; and multi-disciplinary, multistakeholder collaboration from government departments, statutory bodies, NGOs, schools and by no means least, families.

The support and work of NGOs:

300. Across all of the interview data it was clear that there is a core group of NGOs in Hong Kong known for their work with children’s rights and specifically for “cultivating that participation culture” (Int. No. 9). Some NGOs work with child participation rights generally, and some with reference to participation in a specific setting. For example, the Boys and Girls Clubs Association, the Hong Kong Committee on Children’s Rights, Kids Dream, the

Society for Community Organisation and UNICEF were widely cited by interviewees for their work on platforms for child participation in general policy-making and civic engagement.

301. NGOs named by interviewees for work promoting child participation in specific areas of children's rights included the Playright Association, Plan International, Against Child Abuse, Hong Kong Family Welfare Services, the Society for the Protection of Children, Save the Children and Caritas. In general interviewees were able to name only one child-led organisation, Kids Dream.
302. NGOs were identified by interviewees as being essential for the development and continuation of child participation, particularly as there had previously been no Children's Commissioner, "The primary drivers for children participation in Hong Kong are NGOs with a professional interest in the issue. ...Absent any movements at an official/ government level, continuous development among the NGOs in creating an environment conducive to children participation is the only way to keep this issue alive." (Int. No. 17).
303. The commitment of NGOs to cultivating and implementing child participation was evident from the interviews with NGO representatives. For example, one interviewee noted that in the context of limited formal implementation of child participation, "... we need to keep going on to advocate, because we cannot stop. We need to continue to empower children, to protect their rights, to voice out about all matters affecting them." (Int. No. 7). This commitment exists even where child participation work is not the core work of the NGO employees, "...as I told you my position is not only this programme. So that other workers ... they are coming out to spend some time to take up these programmes. So, but we insist that we need to have, we insist not to stop these projects as we know that it is very important for the children. It is not only our workers' point of view but also the management's point of view." (Int. No.10).
304. Clearly the work and support for child participation from NGOs is vital in the Hong Kong context. NGOs not only provide child participation opportunities for children, they also create the resources and deliver the training which are further key enablers of meaningful child participation.

Training for meaningful child participation:

305. A strong finding from the interview data is that effective training for adults is a key enabler for meaningful child participation. Almost all interviewees concurred that eliciting good quality child participation is difficult. The difficulty lies in the need to develop trust with the children, to create a safe environment, to know how to communicate with children, to distil information into childfriendly and age-appropriate material, and to understand that children need time to engage in the participation process. One NGO representative spoke as being suited to children participants. They also have the awareness that if an adult facilitator for many of the interviewees when they talked about staff "adapting working methods that intends to let children to have input in a project, the same adult must be prepared to expend time and energy not only to achieve the intended outcomes of that project. He or she must also ensure that those outcomes are achieved in a way to ensure that there is opportunity for learning and expression of the views of the children. This requires a considerable level

of understanding of the value of child participation and a continuous effort to give space and respect to children's voices that lay the ground for creating a culture for working with children and young people. (Int. No.17; also Int. No. 10).

306. These measures reflect the 'good quality' factors listed in the GC12 and in particular the need for a safe environment was mentioned time and again as key to enabling child participation, "The process involves loads of trust, communication, understanding on children's worldview and mutual respect while engaging children's voice in decision making process. Therefore, it requires a shift in the adults' perception of children and an enhancement of their capacities as facilitators to create an enabling and encouraging social environment for genuine child participation." (Int.No.16).
307. NGOs provide training not only for their own staff but they also provide trained personnel to assist government departments where there is an absence of suitably trained adults: "To this day, when the Commission under the auspice of another government bureau organizes discussion forums for children four years well after our initial engagement with the Government on this matter, such forum are organized not by the Government itself but by external NGOs." (Int.No.17).
308. Interviewees' also noted the need for training as an enabler for social workers, "Even though if I believe in child participation, I do not know who to turn to if I need an expert to conduct training for social workers or for myself. University does not talk about this. They talk about counselling therapy and welfare law, whatever, but for practice skills we would talk about empathy, listening, that kind of stuff but particularly on child participation, I think there should be a unique kind of knowledge and skills you have to know, to have a thorough understanding of child development, their cognitive development, their language development, their social and emotional (development) and if you do not have that kind of background ...and alongside you have to know what participation is." (Int. No. 4). The observation that social worker's did not receive training specifically to elicit meaningful child participation was expressed by several interviewees (Ints. No. 3, 4,8, 10, 12,13). Nonetheless, as mentioned above, while University training for social workers is still fragmented, changes depending on each provider, and lacks child participation focus, one NGO interviewee did concede that the SWD had recently improved some of its training for social workers and that some benefits were being seen in practice. (Int. No. 3).
309. Training not only enables adults to facilitate child participation. Training enables children to participate meaningfully. Training for children can include general skills training or training related to the specific topic for participation. As a first step, interviewees named the need to nurture or "incubate" a culture of participation in children: "...you want them to be a better decision maker and they have to be nurtured from the very young age. We find it very difficult because the children from when they're very young, this (participation) culture is not nurtured... Like I say if you really, really have the Article 12 being implemented, how you incubate the children to express themselves, that is something either through the family or through the Education. So if the school can do it that would be very good but obviously it is not in the curriculum... and I am thinking if we really, really need to implement and obviously it is not in the curriculum... and I am thinking if we really, really need to implement and start from very small and if you need to engage all children, not those elite children, very good children but elite, but when we talk about children's voice it can

be every day... And if when they are very young their (participation) culture developed than they can say many things.” (Int. No.14; also Int. No. 4) .

310. Beyond nurturing a sense of participation, NGOs enable child participation by providing transferable skills training for children such as presentation skills, research skills, communication skills, and how to identify key issues (Ints. No.2, 10, 11,14, 15, 16, 17.)

311. With regard to specific topics, children may require help with understanding topic specific information, understanding the key issues and will need adequate time to digest the information and form a view. Good ‘enabling’ practice in this regard can be summed up in the explanation given by one interviewee on how to facilitate meaningful child participation: “I think give them some time and also to facilitate how they see the problem, help them analyse what they have, to have the 360 degree view to see the problem ...to see the problem instead of just handing them (the answer) or just have some comment on them. We usually do it so that they do have some time to discuss what their deficit in their thinking is and we give them more ways (to understand). In the coming years we have experiential learning... we want to have the, to have some experiential learning so that they can go into deeper to see what is going on in society.” (Int. No.10). Others also referenced the need to give children time and to help them with child-friendly versions of the relevant knowledge needed to from a view, “Without proper briefing on the matters concerned well beforehand, it is anticipated that children may have trouble formulating and expressing their opinions meaningfully in the meetings.” (Int. No. 16).

Adequate and Appropriate Resources:

312. Research findings, both from the scoping study and from the interviews, clearly show that meaningful child participation requires adequate and appropriate resources. These resources include sources of good information; safe and child-friendly venues; and financial support. Sources of good information are relevant not only for children but also for adults to understand what is child participation and how they can engage with child participation effectively. For children, interviewees referred to using ‘enablers’ such as child-friendly versions of the UN Convention, graphic stories to convey otherwise complex or sensitive topics, child-friendly versions of service manuals so that both children and parents can receive information at the same time about the service or process they are about to experience. (Ints. No. 8, 10, 14, 17). Interviewees noted that producing child-appropriate information is resource-intensive and goes far beyond adding cartoons to existing text (Int.No.16).

313. For adults, information resources to enable meaningful participation include ‘good practice’ manuals, training kits to enable facilitators to set up child participation exercises, videos for parents on how to engage their child’s decision-making and how to hear their child’s voice (Ints.No.8, 11, 14, 17). Whilst these resources are currently utilised in Hong Kong, some interviewees noted that they were mostly using materials produced overseas and Hong Kong context-specific materials would be better. To resolve this issue, more than one NGO has decided to produce their own material going forward (Ints. No.14 and 17).

314. In Hong Kong, space is a particularly scarce resource and interviewees commented on the need for appropriate venues in which to hold child participation events. Such venues, according to interviewees, were usually provided by public bodies and included community

halls for the Children’s Ombudsman and meeting rooms at the Legislative Council for the Children’s Council. The Social Welfare Department has, following a successful pilot programme, recently approved five more Child Contact centres where children whose parents have separated can not only meet with their non-resident parent but can also express their views on their family situation and be heard by specially trained social workers. The pilot programme specialist centre was the result of a long campaign to provide an appropriate space for children to meet with parents and interact with social workers. (Ints No. 2, 8 and 9).

315. Turning to financial resources, as one interviewee said “Genuine and ethical children participation can be resource-intensive as it requires the process of empowering children with full information about their rights and inform them of matters concerned so they can participate meaningfully and on their own terms. The training has to be age-appropriated and child-friendly. All this requires a commitment of government resources to training adults and equipping adults with essential skills to facilitate child participation effectively.” (Int. No. 16). From government departmental responses to the questionnaire and from the interviews, we know that the government funds various child participation activities each year. Moreover, a number of charitable bodies also sponsor NGOs to provide child participation opportunities.

316. However, two aspects of financial support were highlighted by interviewees as being problematic: the amount of funding and the intended target of the funding. A common theme in the interviews with NGO representatives was that either they received no public funding or if they received public funding for their child participation activities, it might not cover their full costs (Ints. No. 7, 8, 9, 10, 12, 13). The consequence of this was not only uncertainty as to whether their programmes could be achieved but they also had to dedicate considerable time and effort to making up the financial shortfall by writing grant and funding applications to charities and other sponsors (Ints. No. 2,10,12, 13). As one interviewee observed, “There are many different funding sources to support one NGO...It keeps them busy in proposal writing. That leaves them not much time for practice.” (Int. No. 13).

317. Regarding the way in which financial resources are targeted, while public funding is welcome, what matters is that it is targeted correctly to address unmet needs. For example, public funding has recently been increased for extra social workers in kindergartens and schools so that children have an outlet through which to express their feelings and views. Interviewees raised concerns that the funding would be spent in ways which did not address the root causes of students’ problems. Extra funding is only one part of a possible solution. It is essential also to investigate other non-financial remedies that may be more effective in addressing the underlying problems inhibiting child participation such as children’s stress, educational worries, lack of rights awareness or a fragmented policy approach.(Ints. No. 4 and 11).

Multi-Disciplinary. Multi-Stakeholder Collaboration:

318. Meaningful child participation is, according to stakeholders, most effectively enabled when it is the result of multi-disciplinary, multi-stakeholder collaboration: “...for the children’s voice, the right, to be implemented it takes all parties to make it happen.” (Int. No.14). This includes not only the government, public bodies and institutions, expert professionals who work with children, but also their parents and families, and the children themselves.

319. Where integration of child participation across different areas of children’s lives is possible, then it is more likely to be fully implemented. For example, as one representative from the social work sector explained, “...we see that it is important to really help the children through their natural settings in the school and in the family... So in that time we can incorporate some concepts into the programme. Because it is not the failing of the children, parents and teachers if you just pick a separate programme, a separate booklet, they will not even click into it. It is only a programme. I think we need to integrate into the natural setting.” (Int. No. 8)

320. While interviewees acknowledge that multi-layered approaches to child participation can be logistically more demanding, they also believe that this coherent approach is a core enabler for meaningful child participation: “The full realisation of child participation requires a multi-disciplinary collaboration and needs to be promoted across different sectors. This increases the complexity and demands delicate planning. More often than not, children may find it difficult to find time for participation as they are tied up in homework and after-school activities. The inconsistent level of participation in different settings, across family, school, social welfare, policy making, etc., would discourage children from participation” (Int. No.16).

The Impact of Child Participation:

321. The final theme derived for the data analysis is the impact of meaningful child participation. If, as has been discussed above, achieving child participation can be demanding in terms of: resources, time, logistics and planning, achieving diversity, and taking the participation process from inception to follow-up with child participants, then it is reasonable to ask: why strive for meaningful child participation? Other than the obvious answer that it is a child’s fundamental right under the Convention, Gerison identifies a number of reasons for seeking child participation: it results in better decisions, for the individual child and in general policy-making; children who know how to participate, to speak out, are more likely to challenge abusive behaviour; and participation teaches children how to be actively engaged citizens¹⁰³. These reasons were largely reflected in the data gathered from the stakeholders raised by interviewees also included its educational function, for both children and parents; and the positive feelings and enjoyment participation gave children.

Making Better Decisions:

322. One of the key reasons why child participation results in better decisions is because the child’s view adds another perspective, more information, to the decision-making process. This new addition may be startlingly different from the information the children’s parents have (Int. No. 3). Two key settings in which the child’s view has been shown to have a significant effect are custody disputes and parenting skills programmes.

¹⁰³ Lansdown Gerison, op.cit, at para. 1.4 onwards.

323. In custody disputes, interviewees reported that hearing the child’s voice in both court and family mediation settings can lead to better decisions for the children and parents. (Ints. No. 1,5, 6, 13,15). On hearing the child’s voice in court proceedings, one interviewee recounted, “one case we had been brought in (on), the child was 7 or 8 and they did actually get to the point where they ask the child’s opinion of what he wanted to happen... it was done through the social worker and the judge and they met with the judge and actually it was taken on board, it was not just dismissed. It was not just a process and ‘we have to go through this’. It was actually in the Family Court and so I think it can work, it can work very well and it can be helpful.” (Int. No. 15)

324. In family mediation, where child-inclusive mediation is an option, the child’s views, when heard and presented by a properly trained child consultant or social worker, can be a significant catalyst for better decision-making by the parents. For example, one interviewee’s experience of child inclusive mediation encapsulates the views expressed by a number of interviewees, “I have found that on the occasions where I have been involved, it has had amazing outcomes...it was child-inclusive mediation to include the child consultant’s feedback of what the children said and it was the most powerful, amazing experience to actually hear it and you could see the parents reacting to it. So I thought it is so important, and to witness it first-hand has only cemented my view of how important it is in a child-appropriate and sensitive way to involve them and have their voice heard, because parents, we see it all the time in disputes, even the best parents in the world get clouded by all the emotions and the conflict and they forget, so that to have someone neutral, and it has to be someone neutral, feeding it back is so emotionally powerful ...” (Int. No. 5).

325. Interviewees from the social work setting report positive outcomes for both children and parents from promoting child participation in informal parenting skills sessions, “actually they (the children) are more confident and they feel they have more knowledge and besides they know how to learn from this. Sometimes also the parents learn from this. They have more thinking about children.” (Int. No.2). Similar outcomes are seen in formal parenting programmes, “Actually we have devised programmes on these video play, it is a kind of (tool) that will help the parents to be more empathetic to the children and to help the children voice out their thoughts. And this kind of approach is quite effective actually. Actually we have our research in other countries that demonstrates that this intervention for children is effective. We are borrowing this experience to Hong Kong and we are using this for parents’ education and parent work and interventions.” (Int. No. 8).

326. With regard to better policy-making more generally on children’s issues, feedback from interviewees shows interviewees shows that the impact of child participation here is also positive. Where children’s views are included in the design of services and resources, children feel a sense of ownership and a positive engagement with the service or resource involved. Consequently, those services are subsequently well-used by children (Ints. No. 7, 13 and 14).

Children Learn Through Participation:

327. One of the positive impacts of child participation is that children learn by participation. As noted above, carefully designed child participation opportunities give children the chance to learn transferable skills such as presentation skills, research skills, communication skills,

how to identify key issues and to be aware of social issues in their own communities (Ints. No.2, 10, 11,14, 15, 16, 17.).

328.By participating, children learn that theirs is not the only view and that the views of others deserve equal respect. They also learn that their own effective participation aids their exchange of views with others, that it has a impact: “You (the decision-maker) may not be able to consider every suggestion but the beauty for the children is that it was explained and so if you really cannot bend, you explain to them and then they can learn and that is the beautiful part of it... (If the right to implement is just expressed that that is the right, yes, but to keep that right ongoing means that the children feel that they can see that their voice has an impact” (Int. No.14).

329.Interviewees felt that child participation also has an impact on how children see their role in life and as members of society. As one interviewee said, “By facilitating children to identify issues they consider important and initiating child-led actions with other community stakeholders, we hope to empower children at large to participate in matters that affect their everyday life. (Int. No.16). This impact extends into the child’s future adult life too. One interviewee described how a former child participant in one their programmes had returned to ‘give back’ to children taking part in programmes today. That young adult’s positive experience of participation had helped them, and they wanted to help today’s children have the same opportunity. (Int. No. 10).

Part Four: Barriers to the Implementation of Article 12 of the UNCRC in Hong Kong

Introduction:

330.When establishing a baseline for the implementation of Article 12 in Hong Kong, it is also useful to identify barriers to implementation. Evidence of key barriers had initially been derived from literature and documentation gathered during the scoping study undertaken at the start of this Study. Further evidence has also been identified from analysis if the transcripts of stakeholder interviews.

331.Four key barriers will be examined:

- the way in which adults perceive children as somehow less than adults;
- the tension between the concepts of ‘welfare/best interests of the child’ and child participation;
- cultural norms, structures and identities; and
- the absence of leadership on child participation.

The Way Adults Perceive Children:

332.The way in which adults perceive children: their abilities, capacities and status, shapes the extent to which children are allowed to participate. From the data gathered in stakeholder interviews, three particular adult perceptions of children act to limit or diminish children’s opportunities to be active participants in their own lives. First, children are perceived as either incompetent or unreliable decision-makers. This view seems to be related to the child’s age and maturity. Second, adults view children not as complete ‘beings’ in their own right but as ‘human becomings’ who are in preparation for their future lives as adults and for whom therefore the future is more important than the present. Lastly, children may be viewed by adults as existing outside of civil society, with lives untouched by politics and citizenship.

Children as Incompetent or Unreliable Decision-Makers:

333.Childhood is a particular time and stage of a person’s life during which skills, knowledge and judgment are developing. The wording of Article 12 specifically acknowledges this: first, in the reference to ‘a child capable of forming his or her own views’ and second by reference to the age and maturity of the child being relevant to the weight to be given to the child’s views. This does not however negate the child’s right to form and express their view and to have it taken into account. It merely indicates the weight to be given to the child’s view. Thus, “States Parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the

child to first prove her or his capacity.”¹⁰⁴ So, it is the States Parties’ obligation to assess the capability and maturity of each child in relation to giving weight to the child’s views, and to make neither judgments based on age limits nor presumptions about maturity based on age.

334. Nonetheless, negative presumptions about the competence and reliability of children as decision-makers exist and these may serve to limit child participation. From the interviews it seems that a common adult view is that, because of their age, children’s competence is automatically less than that of adults and therefore children’s views have less worth.

335. Several responses by interviewees from different settings, including the legislature, academia and civil society, noted the societal view that children just don’t ‘know’ enough to participate: “I think it is really the government in some ways representing the culture of Hong Kong which does not emphasise participation and rights. And we look at children and youth as being a lesser level in knowledge, judgement and capacity to deliberate on important matters. I think that has to change (Int. No. 9); “I think Chinese culture is not very child-focused. Or child-centred. It is parent-centred. So the adults have to make the decisions for the children. Children are too young to know things - it’s a belief.” (Int. No. 13); “I think it is the community, the community consider the children should not have, they do not have enough ability to express this decision or their opinion should not be considered seriously” (Int. No. 2).

336. These views stand in stark contrast to the experience of interviewees who report that the children they work with have much to offer in terms of knowledge and insight: “We discover in our programme that children are much more capable than most people think they are. They are important knowledge bearers... Involving children in the first stage of issue identification in decision-making processes has many benefits. By highlighting issues that are of real relevance to their lives of their own accord, children can draw on their knowledge and skills to contribute to the decision-making processes and participate more meaningfully.” (Int. No. 16).¹⁰⁵

337. Some interviewees, and predominantly from the legal setting, expressed concerns about the reliability of a child’s view (Ints. No. 1, 5, 10, 15, 18). For example children, especially young children, may express views which are changeable or which may not actually be their own view: “...what they say may not be what they think and they may not have thought through what they are saying. So they may say ‘blah blah’ because either they are upset with Dad or upset with Mum because the ice-cream wasn’t provided” (Int. No. 1); “and it is so easy to give children leading questions and you have to be careful they are not giving you what they think you want, to understand” (Int. No. 15). This view was developed further by an interviewee who raised the matter of child development and specifically that children under 12 do not have the same cognitive structure to make long-term projections

¹⁰⁴ UNCRC, General Comment 12 at para. 20.

¹⁰⁵ See also Part III Sections III and V on children’s wish to participate and the impact of their participation on decision-making.

as those over 12. (Int. No. 19).

338. While these observations are relevant to the practice of child participation, , especially when children are in distressing circumstances such as their parents’ separation or care proceedings, these observations may themselves become a barrier to children’s participation if they are understood as insurmountable problems. Instead, these challenges could be framed as part of the assessment of an individual child’s maturity and capacity. Moreover, none of this negates the requirement to hear the child, even though one may need to consider more carefully the weight to be given to the child’s view.

339. The concerns expressed also highlight the need for an iterative, rather than one-off, approach to hearing and checking the child’s view, “So, I think one also cannot take a statement at face value and it’s important to dig. Unless you do that, or you have the wherewithal to understand and make a leap between the mind sometimes, simply recording verbatim what someone says may not actually help the situation”. (Int. No. 5).

Children Becoming, Not Being:

340. In Childhood Studies¹⁰⁶ a distinction is made between children as ‘becoming’ and children as ‘being’. In the former, children are understood in comparison to adults and therefore viewed as weak, lacking agency, in need of protection and not yet competent. They are a ‘work in progress’. In the latter view, children are viewed as already formed as their own right and not simply as a project moving towards adulthood. They are capable of agency and participation in their own lives. They are rights-bearers not passive recipients of care.

341. Interviewees identified that the dominant view in Hong Kong was of children as ‘becoming’ and that this tends to act as a barrier to greater implementation of child participation. In particular, when adults focus on the child’s future, this can prevent the child from being allowed meaningful participation in decision-making about its own life now, “the expectation of the parents: what they expect is to prepare (the children) for the better future instead of looking around what is here and now.” (Int. No. 10).

342. Interviewees did not doubt that adults were acting with the best intentions but nonetheless, their view of children as ‘becoming’ would stifle child participation: “...so there is the term monster parent in Hong Kong, so the monster parent just do their best for children and arrange everything good, that is child-centred but at the same time it is actually parent-centred... They plan for the far, far future for the children and arrange everything possible for them... because they know better than the child.” (Int. No. 13).

343. Despite the current dominance of the child as ‘becoming’ rather than ‘being’, data from interviews with professionals from the social work setting suggests that this mindset can be overcome through professional training or parental education, but this has to be applied

¹⁰⁶ MDA Freeman (ed.), Law and Childhood Studies: Current Legal Issues (2012) OUP.

consistently and not just in ‘special circumstances’ (Int. Nos. 4 and 8). As one interviewee said, “We are trying to doing things for the children for their own good without learning how they feel or what they want....We have a very traditional belief that ‘one day you will know this is good for you’. So in our frontline practice (child participation) is not a priority, but from a social work training we know we have to trust our clients, believe in them, listen to them. The training will enable us to have the capacity to listen to children but (now) just in some special projects when we know we have to.” (Int. No. 4).

Children Are Not Citizens:

344. When children are perceived as ‘becoming’ rather than as ‘beings’, it is perhaps logical that children are not viewed as citizens ‘now’ and consequently are restricted from participation in democratic or citizenship activities. This is clear in the absence of children from the HAD’s response regarding promotion of participation in district level communities in Hong Kong. Similarly, the experience of one interviewee who has tried to promote children’s views and needs, has been that children do not have a vote and so their views are of little value to the legislative and executive branches of the State (Int. No. 14).

345. One interviewee referred to research which showed that “(most) principals and teachers (in Hong Kong) displayed a limited understanding of the notion that rights are inherent. More than half of them iterated that children must first fulfil their responsibilities before enjoying rights ... This seems to indicate that many teachers do not view children as full citizens in whom rights inhere but an extension of the parental family unit or society until they reach the age of majority...”. This interviewee posited that a failure to perceive children as rights-bearers may account for the decision not to include child representatives on the recently established CoC and to instead maintain the “service provider approach of having adults talking about children and children’s rights.” (Int. No.17).

346. That children are not seen as being rights-holding citizens may account for the shock and negative responses observed when children take the initiative to participate in civic matters; that this is perceived as something that should not be happening: “...our government is afraid of youth. Many officials have spoken in a way that they are afraid of young people in that they are so rebellious... and think it is in many ways looked at as a threat to the regime. So having independent thoughts, cultivating participation is something dangerous...I think they were taken aback by the participation of young people. It was really out of their (the children) own initiative and they were not really forced, in fact many of them evaded the parental disagreement and they insisted on coming to Admiralty and other places. I think it caused the regime to rethink how to use education perhaps to tame this rebellious nature. They don’t want to see more young people joining this movement. (Int. No. 9).

347. An inability to view children as citizens participating in civic life made it difficult for some adults to believe children were freely engaging in the public protests of 2014. It seemed easier instead to maintain their view of children as ‘unreliable’ decision-makers, “Some of them were surprised but many of them were being convinced that those children are convinced by some others, that they are being used or pushed. Some of the adults have those thoughts.” (Int. No.10).

The Welfare/Best Interests of the Child and Child Participation:

348. Traditionally adults who make decisions relating to children have been guided by the principle of ‘the welfare of the child’. This means that any decision will have as its aim the ‘good’ of the child: physical, psychological, emotional, educational or otherwise. This principle has been criticised as being both paternalistic and opaque. What does ‘good’ mean? Is this only the subjective opinion of the decision-maker? Does ‘welfare’ have any objective meaning? Some countries¹⁰⁷ have adopted a ‘welfare checklist’ to give meaning to the concept of welfare and to guide decision-makers, including judges and social workers. This may give some content to the meaning of ‘welfare’ but this does not address the paternalism critique.

349. In relation to child participation, there is a traditionally perceived to be a tension between the wishes of the child and the child’s welfare: what a child wishes for may not in fact be good for the child. This perception may explain some unwillingness to engage with child participation and a preference to act paternally for the ‘good’ of the child.

Complementary or Competing Concepts?

350. Until 2012, the Hong Kong law on children, and specifically s. 3 of the Guardianship of Minors Ordinance (Cap. 13) spoke of ‘the welfare of the child’ as the first and paramount consideration in most matters relating to the child. While Hong Kong courts refer to a ‘welfare checklist’ based on those used in the UK and Australia to help them identify the welfare of the child, this has not been enacted in legislation. In 2012, s. 3 of the Guardianship of Minors Ordinance (Cap. 13) was amended to replace ‘the welfare of the child’ with ‘the best interests of the child’. Although it had long been acknowledged that the two phrases were largely interchangeable, the change was made to bring the wording of the legislation more closely in line with the wording of Article 3 of the UNCRC: the ‘best interests’ principle. At the same time, and for the same reasons, the ‘wishes of the child’ was replaced with ‘views of the child’.

351. The use of ‘best interests’ rather than ‘welfare’ is preferred by children’s rights thinkers because welfare is seen as paternalistic and something done ‘to’ or ‘for’ a child without considering the child’s own views, whereas, as Ekelaar¹⁰⁸ has suggested, the best interests of the child could include something the child wants themselves.

352. The GC 12 sees no competition between the Article 3 requirement to make decisions in the best interests of the child and the Article 12 child participation requirement: “There is no

¹⁰⁷ England & Wales and Australia have legislated for a ‘welfare checklist’ to guide judicial reasoning in some child-related proceedings.

¹⁰⁸ John Ekelaar, “The Interests of the Child and the Child’s Wishes: The Role of Dynamic Self-Determinism” in Ursula Kilkelly, *Children’s Rights*, (2017) Routledge.

tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.”¹⁰⁹ In essence, to make a decision in the best interests of the child, the child must have been able to express their view on the matter and to have that view taken into account. They are wholly complementary rights.

353. Therefore, since 2012, in Hong Kong today decisions concerning children must be made by identifying the best interests of the child, from which hearing and taking into account the child’s view is indivisible. Nonetheless, from the data gathered for this Study, it seems that the concept of best interests as welfare-based rather than rights-based remains and is a barrier to the effective implementation of Article 12.

Welfare as Benign Paternalism:

354. One of the key barriers mentioned in stakeholder interviews was the continued view that promoting the child’s ‘best interests’ equates with ‘doing’ paternalistic welfare. One interviewee from the social work setting acknowledged that child participation may be ignored when the focus is to ‘do what is best for the child’: “Very paternal somehow. We are trying to doing things for the children for their own good without learning how they feel or what they want.” (Int. No. 4).

355. This approach is not unusual according to interviewees: “in actual practice, ... sometimes the agencies or the social workers or the parents (are) not mindful to ask the children for their opinion. They just make the decision for them, for the children. With the best opinion. For the good of the children. It is a general pattern.” (Int. No. 13). Systemically, this suggests there is a failure to embed the mutuality of Articles 3 and 12 into practice and to convey to adults that a decision cannot be in the best interests of a child unless the child is given the chance to express a view if they wish to, and to have that view taken to account.

356. A paternalism approach is not confined to alternative care decisions. As one interviewee from the legal setting noted, “I think historically our courts have been quite paternalistic and took the view that children should not get dragged into this and having children represented and involved in proceedings was counter-intuitive to that traditional thinking.” (Int. No. 5). Despite recent changes to Judiciary policy regarding meetings with children and separate representation for children, the extent to which the traditional approach of benign paternalism has been replaced by child participation-based best interests remains to be seen.

357. Key markers of change include the degree to which individual judges embrace hearing the

¹⁰⁹ GC12 at para. 74.

child’s voice directly where appropriate and the extent to which the Social Investigation Reports (SIR) actually reflect the views of the child rather than the recommendations of the welfare officer. This last point was raised by interviewees from the legal setting, one of whom commented, “I also think that it would be much better if courts, when they call for these reports, particularly either social welfare or psychologist reports, that they do not initially ask for recommendations. I think the most informative social welfare reports, they are very good I think, at finding out what’s happening but the wheels sometimes come off when they are asked to give a recommendation.” (Int. No. 1).

358. In the education sector, it seems that policies to ensure the child’s best educational interests do not consistently include the child’s own view, “we observe that, let’s say in the Education Bureau we have some kind of quality standard that includes the children’s voice in the school. When the school makes some policy that is affecting the children, they have no such kind of standards or guidelines.” (Int. No. 8).

359. To act in the child’s best interests must be more than an adult-centred process. Child participation must be facilitated so that the child’s view is one of the factors routinely heard and considered by decision-makers. To define best interests as welfare-based rather than rights-based represents a significant barrier to the implementation of child participation.

Cultural Norms and Identities:

360. When interviewees were asked what they thought were the barriers to child participation, a recurring response was ‘culture’. When asked to unpack what they meant by culture, interviewees spoke about Hong Kong as a traditional, conservative Chinese society in which Confucian values remain important and individual rights are less important than harmony of the group. They described a society in which the family is valued highly, where parents are figures of authority to whom children owe obedience and in return parents do everything they can to ensure their children had a better life than they had. A number of interviewees considered that this dominant culture was slowly changing in some respects. The main change observed is the development of a less authoritarian approach to parenting by younger parents. However, what has not changed is that children’s academic success is highly prized and seen as the pathway to a better future.

Hong Kong Chinese Culture:

361. Various aspects of Hong Kong’s culture were identified by interviewees as potential barriers to child participation (Ints. No. 1, 2, 4, 7, 8, 9, 10, 11, 12, 15, 16, 19). Some observed that the hierarchical nature of Hong Kong culture can mean that children’s obedience is more important and more acceptable than their participation: “In Asian community, the traditional notion that ‘good’ children should be obedient and follow instructions discourages children from participating and voicing out their opinions in matters that affect them, for fear that it might present a ‘disobedient’ image to significant adults like parents or teachers. Meanwhile, adults themselves may easily take children’s opinions or criticisms as offence or disregard.” (Int. No. 16). As a consequence, children might ‘opt out’ of participation at home and in school, “They keep silence, the children keep silence, they don’t talk with parents. They don’t argue but they don’t talk. They just hide... No one can understand what they want. They just think them (the children) to be lazy, show lack of interest, spoilt.” (Int. No. 13)

362. In the context of a hierarchical culture, one interviewee considered that children's rights, including the right to have and express a view, had to be understood as an aspect of filial piety (Int. No. 19). So, children can express their views on relatively small matters: what they want to eat, what film they want to watch, but when it comes to more important matters, this requires obedience to their elders. (Int. No. 4).
363. It was also suggested that individual participation, by adults or children, was a Western attribute, tied to Western political structures, and not something natural in Hong Kong's Chinese culture or welcomed necessarily by Hong Kong's administration, "children's participation does not come to mind usually. It is not thought of as something that is part of our culture. We are not a society that emphasizes on human rights. We talk about families, we talk about being self-reliant and we talk about being grateful and abide by the law. But we do not emphasize our participation." (Int. No. 9).
364. The conservative nature of Hong Kong culture can also be a barrier to child participation. Where change happens slowly, anything that seems 'novel' can be viewed with suspicion. For this reason interviewees advocated public education programmes to reassure the community and to build consensus (Ints. No. 12 and 19). One interviewee described the doubts expressed by their community at the introduction of a child participation programme, "some people think if we help the children to know what is children's rights or do advocacy they will be an embarrassment to their parents. But actually we are really concerned to teach the children that if they have a right then they also have a duty, this kind of thing. It is a balance." (Int. No. 2).
365. Lastly, the traditionally private nature of Hong Kong family life can be a barrier to child participation in civic matters: "Some traditional Chinese thoughts, you do not need to pick up the snow of the other neighbours, just look at your own. I think this is some traditional Chinese, they have such a view. I think these are also the barriers for the children." (Int. No. 10).
366. However, several interviewees made the point that the cultural identity of Hong Kong is dynamic and shifting. Some referred to younger parents having a less authoritarian approach to parenting which may in turn create space for greater levels of child participation. Some interviewees attributed this shift in part to greater awareness by parents of child development and mental health issues (Ints. No. 2, 4, 7, 8, 13, 18).

The Family and the Role of Parents:

367. Data from the stakeholder interviews and information received from the Family Council confirm the centrality of the family in Hong Kong Chinese culture. Within the traditional Hong Kong Chinese family, the role of the parents is to nurture and guide the children so that they can succeed in life and in turn the children will support the parents as they grow older. In this context, stakeholders explain that for any development of child participation, it is essential to have the parents' support: "I think the most influential person is the parents. If the parents support them (the children) then they are more willing to express a view. If the parents have double binding message or use some emotional threatening, they cannot do that. So I think that the rule of parents is very important" (Int. No. 8; also Int. No. 15).

368. Some interviewees described the traditional parent-child relationship as hierarchical and authoritarian, grounded in the principle of filial piety. In other words, the parent 'know best' and the child shows their respect for their parents by obedience to them. This structure is not one that easily accommodates child participation, "Most of them (the children), especially from the Chinese families... the parents have the authority. So they will obey what the parents tell them to do." (Int. No. 12). This means that parents will 'naturally' take on the role of decision-maker, "if the service involves parents then normally the parents will dominate in the decision-making process." (Int. No. 13).
369. This child-parent relationship pattern is supported not just by family members but also by adults outside of the family who share the same cultural values. This can diminish opportunities for child participation. For example, in social work it is good practice to work with a 'whole family' approach. However, in different cultural settings this can mean different things for child participation, "it is also the cultural approach of the social workers. I think if we encounter a whole family we have to talk to the children and the parents and so we have to choose sometimes but if we are very Chinese then sometimes we think that parents should decide for their children." (Int. No. 13).
370. When parents are the authoritative voice in a child's life, even though the children are legally empowered to speak out, they may feel unable to do so because of the practical impact that will have, "It's hard to encourage youth to have a voice because you might still rely on your parents, you might not want to do anything ... if it's contrary to what the parent wants. You have to go along with what the parent wants in order to stay in the home, to have a roof over your head. So even if there was law and policy giving them more of a voice, you're so reliant on your parents..." (Int. No. 13). So, where parental culture is a barrier to child participation, it is not enough to change the law. Attitudes must change too otherwise the barrier remains: "We also have to speak to parents to. It is not just children's participation because the parents have to know that the children's voice matters." (Int. No. 11).
371. Various interviewees described how the parents' wish to give their children the best possible future added to the often considerable pressure families in Hong Kong already feel in the current socio-economic circumstances: high cost of housing, long working hours, consumer society (Ints. No. 4, 7, 8, and 13). In these circumstances, the wish for a better future for the child may trump child participation as a priority, "...in some low-income families most parents are having thoughts that you should study well and have a brighter future instead of having such useless (participation) programmes or useless activities (Int. No. 10).
372. Not only are children under pressure to work hard for their future. Parents themselves are under great pressure to work hard to give their child the best possible start. This pressure can constitute yet another barrier to child participation: "...both adults are exhausted when they come home, and it is hard for them to have patience for each other. If their child cannot work, do their homework quickly or has some special needs, with more challenges in the coping with the daily requirements, this will be very easy for the parents to lose themselves. Perhaps child abuse or say something with very bad words. So, it is disheartening to see that many Hong Kong families are, I think, their functioning is breaking down. Even though, even for those so-called middle class families... So it is really hard for Hong Kong parents to be a good parent. And especially hard for the children to participate because no one has the patience or the tolerance for them." (Int. No. 4)

373. Some interviewees see changes in parenting styles which may afford limited opportunities for child participation: “The younger generation of parents, they know they have to honour their children’s voice. In small things but when it comes to academics, homework, health issues, parents comes first” (Int. No. 4; and Int. No. 19). Others however question the depth of change, fearing it exists only at a superficial level, “...nowadays I think parents do not think that they have much power over the children because they are so child-centred, they have to listen to the children and follow them. But in a very subtle way, it is a very manipulative way. They seem to listen to the children and then they will persuade the children using the children’s perspective to make the children follow the way they think is best for the children. So, very cheeky parenting style. It seems to be very democratic but actually the parents will dominate the decision-making process.” (Int. No.13).

374. So to support authentic movement towards meaningful child participation, interviewees felt that more and better parenting education is needed: “Yes I think it is changing. Right now, there are young couples who usually only have one child or two children and they spend much more time on the children. In recent years many of our families, many parents take their young kids to come and seek for counselling service. Because they are very worried about different kinds of behavioural problems so once they know that there is an approach called ‘childcentred’ then they are interested to know what is it about and they really want to know what is good for their children. So they are more able to accept this concept, they are more open.” (Int. No.12).

The Importance of Academic Success in Hong Kong Culture:

375. Recent years have seen reports of children under immense academic pressure, sometimes resulting in the tragedy of child suicide. Other reports have detailed parents’ campaigns to change academic assessment procedures for young children. Whilst these are extreme examples, it is apparent from the stakeholder interviews that academic success is highly prized in Hong Kong culture, as in many other cultures, and is seen as a path to a better future, “Hong Kong is highly competitive, and funded university places are very full. We have a traditional belief that children have to get into the university to secure a good job in the future. So ... when you are young I have to equip you with all the skills and knowledge so that you can squeeze into a good kind of university.” (Int. No. 4).

376. As a consequence of this pressure, parents may be tempted to make decisions without children’s input ‘for their own good’ (Ints. No. 4, 7, 8, and 13). The importance attached to education may even eclipse child participation when children are struggling at school and try to express their views, “for the students who refused to go to school, I think the most common response of parents and teachers are to push the children back to school. They do ask ‘why don’t you go to school, what is the difficulty?’ But if the children told them the difficulties they just say ‘oh it’s nothing to do with it, it is willpower, you will overcome it, so the most important thing is to go back to school as fast as possible’. I cannot say they don’t listen but they don’t understand sometimes because they are so preoccupied with the norm, what is the correct behaviour for children, so the children’s voice is not very important. Sometimes the children, they try hard to express their difficulties and their resistance and it’s no use. The expectation remains the same. Go back to school go back to school, go back to school, no matter what happen”. (Int. No.13)

377. In school the cultural expectations of children as obedient recipients of knowledge may also stifle child participation. Multiple interviewees described an approach to teaching based on ‘telling’ children what they need to know without encouraging a questioning, participatory frame of mind (Ints. No. 2, 4, 10, 12 and 14). One interviewee reported that children who keep asking questions, expressing their views on what they are learning, will be labelled as a ‘troublesome student’. (Int. No.19).

378. Opportunities for student participation at school, including the existence of ‘democracy walls’, student councils and student unions are welcomed by interviewees (Ints. No. 13 and 19). However there is a risk that ‘extra-curricular activities’ involving participation can become another ‘task’ to be completed as part of the child’s curriculum vitae, “...today academic success is not just academic. They have to join many extra-curricular activities for their all round of development. But the children may complain ‘I am very tired’. They just want to play with their phone or watch TV or read comics but they do not have a say about this schedule because this is for their prospects.” (Int. No.4).

Leadership for Child Participation:

379. Looking across the range of data gathered for this Study, and in particular the experience of stakeholders that there is an ‘absence’ of good quality child participation,¹¹⁰ it is possible to conclude that a significant barrier to participation is the failure of leadership to drive forward greater child participation. This failure resides at governmental, sectoral and multi-sectoral levels, in both policy-making and execution. Research for this Study shows that the absence of coherent, consistent leadership at governmental and sectoral levels on building awareness, compiling data and conducting research, multidisciplinary collaboration, professional training and standards, and the prevention of undue delay forms obstacles to the implementation of meaningful child participation.

Leadership to Build Awareness:

380. Awareness of a child’s right to participate in the matters that affect their lives is the basic foundation for the implementation of Article 12 and child participation generally. This Study has found three different instances of a failure of leadership to build awareness of child participation: in government and public bodies, in the community, and amongst children themselves. In the first instance, a significant proportion of the responses from government and public bodies, indicate that children as participants in their own right, and separate from adult participants, are not in the minds of departmental or institutional leaders when they develop policy or services. One interviewee offered the failure to appoint child representatives to the recently formed Children’s Commission as compelling evidence of a failure of administrative awareness around child participation. (Int. No. 17).

381. In the second instance, data from stakeholder interviews shows a leadership failure to

¹¹⁰ See Part III Section I.

educate the public about Article 12 of the UNCRC and about child participation generally. This is evident in interviewees' experience that the community views efforts to develop child participation with suspicion (Int. No. 2), as something dangerous (Int. No. 9), that relevant adults in the community do not know how to facilitate child participation (Ints. No. 4 and 16), that decisionmaking happens to children rather than with children (Ints. No. 5 and 6) and finally that parents are often not aware of how to engage their child's participation in a safe or positive way until they seek help at the point of crisis (Ints. No. 4, 7, 8, 12 and 13).

382. In the third instance, interviewees identify a failure of leadership to raise children's awareness of their right to participate. While some interviewees acknowledge the governmental funding for children's rights education, they also note that these programmes are neither extensively accessed (Int. No. 8) nor applied comprehensively to all children via the school curriculum (Ints. No. 2 and 7).

Leadership on Compiling Data and Conducting Research:

383. The implementation of child participation can only be done effectively if relevant policies and measures are evidence-based. This requires broad-based, longitudinal collection and disaggregation of data on how and when children participate. It also requires research into how children participate best at different ages and stages and in different settings. Independent research into the impact of child participation policies and measures is essential.

384. An absence of research into child participation in Hong Kong means ultimately that adults working locally with child participation do not have access to evidence-based, Hong Kong-relevant resources to support their child participation work. (Int. No. 17)

385. None of the government and public bodies contacted for information on their policies on child participation referred to conducting research or gathering data on child participation levels, forms or impacts. The government's Central Policy Unit has commissioned research into the Family Council's Divorce Mediation Pilot Scheme which included a short section on children's experience of their participation in child-inclusive mediation. This research did not form part of either the Family Council or the government's responses to requests for information.

386. One interviewee in the social work setting stated that "(T) here is across the board a lack of consistent data. And the lack of data loops us back into another kind of vicious cycle because no one is able to quantify the issues." (Int. No. 3). If no-one can quantify the issue-saround how and when children participate based on objective data, then how is it possible to implement child participation meaningfully?

387. Where publicly funded research is commissioned into matters affecting children, another barrier to child participation is a failure of leadership to require that children's voices are included as part of the research deliverables. For example, research into the recent child suicides, linked in part to academic pressure on children, was cited by interviewees as making recommendations but without reference to children's views on the matter (Ints. No. 4 and 8).

388. A final failure of leadership in relation to data and research has been the failure to establish a central database for information on child participation. As one interviewee noted, work is

being done by well-intentioned individuals or groups into how children can be heard and their participation facilitated but there is no centralised management of those findings so that they can be shared and utilised by other stakeholders (Int. No. 5). The terms of reference for the CoC include "Develop a framework with indicators to monitor and evaluate the extent to which the vision is achieved" and one of the two working groups established already is on research. That working group has recently adopted terms of reference which include "kick start and oversee two important studies on developing a central databank on children and children-related indices respectively". Hopefully this indicates improved leadership on research and data going forward.

Leadership for Multidisciplinary Collaboration:

389. One of the most 'intensive' and 'good quality' instances of child participation identified during the course of this Study is the process employed in the design and creation of the Tuen Mun Inclusive Playground. This involved multidisciplinary collaboration between government departments, the NGO sector, schools, children and parents. This collaboration resulted in a successful project, cherished by the children involved. It was also a good use of public money to provide a leisure resource still highly utilised today.

390. The multidisciplinary collaborative approach to facilitating child participation was recognised by several stakeholders as an example of 'good practice' and often the consequence of leadership taken up by NGOs (Ints. No. 3, 4, 5, 14, 16, and 18). However, interviewees also noted a failure of leadership by government and public bodies to develop this collaboration fully themselves, with some government bodies seeking to 'outsource' child participation work rather than collaborate (Int. No. 17). Membership of the CoC does reflect a multidisciplinary base. It remains to be seen if a sectoral or multidisciplinary approach will be taken to the work of the Commission.

391. A prerequisite to multidisciplinary collaboration is that there are professionals endowed with the necessary skills and knowledge to make collaboration possible. One NGO interviewee recounted their experience of trying to collaborate with government representatives to facilitate child participation during a public consultation process. The obstacle to collaboration was that neither partner in the collaboration had the necessary knowledge about facilitating child participation (Int. No. 4). The wish to collaborate without first taking steps to nurture the necessary knowledge and skills amongst the multidisciplinary partners implies a failure of leadership.

Leadership on Professional Training and Standards:

392. Stakeholders agreed that facilitating child participation requires specialist training. The overall impression was that training opportunities and the content of training were fragmented not only across sectors but also within sectors. For example, in the social work setting, while specialist training was available in some Masters programmes (int. No. 19), this was not a pre-requisite and training across different universities differed, without being subject to universal requirements (Int. No. 13).

393. While an interviewee from the Judiciary stated that training was given to judges in the context of matrimonial proceedings, it is not clear whether this training is voluntary or

mandatory, nor who provides the training. The questionnaire submitted to the Access to Information Officer of the Judiciary garnered no information on the work of the Magistracy in child-related matters and so it is unclear whether the Magistracy working in the Juvenile Courts receive training, mandatory or voluntary, on how to encourage children to participate in Juvenile Court proceedings.

394. Similarly, there is no evidence of required training in how to facilitate the child's participation for either the Official Solicitor or lawyers who are instructed to represent children and this is recognised as problematic by those in the legal setting, "The discomfort among practitioners is probably, in representing children, because nobody has been trained specifically for that, and maybe it is part of the culture that we don't." (Int. No. 5).

395. In the education setting, interviewees observed there was insufficient training to facilitate child participation beyond that of engaging the child as a pupil in class. (Ints. No. 8 and 12) This supports a recent UNICEF study where findings "may suggest that children are considered as 'subjects' who need to be provided for and protected but not as autonomous beings entitled to participation in decisions pertaining to their interests and needs and as rights-bearers themselves. This reveals that the concept and content of children's rights are much misunderstood among the teachers. Teachers play a fundamental role as transmitters of knowledge and as key facilitators of children's rights in schools. There is a critical lack of structured teacher training on the content of HRE/CRE across teacher training programs. Government provided resources and materials are mostly absent and fall far short of what is required."¹¹¹

396. In the NGO sector, when interviewees were asked whether any training on child participation had been offered to them from either governmental or sectorbased channels, the consistent reply was that no such training was available. Training available to NGOs working with child participation came primarily from other NGOs.

397. The failure at either the general policy-making level or at the sectoral level to train adults working with child participation in a systematic, universally applied, non-fragmented manner is a substantial barrier to implementation given the known difficulties inherent in facilitating the meaningful child participation. (Ints No. 1, 3, 4, 5, 6, 8, 12, 13, 14, 16, 17, and 18).

398. Regarding the standards set by different professions and sectors for their representatives working with child participation, interviewees report an absence of required standards, "And at the back here is that the children's voice is important. But the problem is this is not Regarding the standards set by different professions and sectors for their representatives working with child participation, interviewees report an absence of required standards, "And at the back here is that the children's voice is important. But the problem is this is not considered as the best practice and it is not in the guidelines." (Int. No. 14). Promulgated standards are a way in which to ensure that professionals abide by codes of conduct, act

¹¹¹ Kapai, Bacon-Shone, Walsh & Wong, "A Comparative Study on Children's Rights Education: Implication for Policy Reform in Hong Kong" (2015).

ethically and apply good practice. Giving professionals guidelines stating that they must seek the child's view is not the same as setting out the standards they must meet in doing so. Compliance with standards requires monitoring and review processes and training for professionals to understand and meet the standards set.

399. Interviewees report multiple instances of professionals across sectors seeking the child's view but failing to do so in a way that meets internationally accepted norms of 'good practice'. For example it is potentially damaging to ask a child in a child-inclusive divorce mediation which parent the child wants to live with. This was reported in a recent research study¹¹² and raises serious questions about the application of 'good practice' standards in the field of family mediation.

400. Where standards are not internalised by practitioners, there is the risk that the child participation process becomes a 'tick box' exercise rather than an authentic engagement with the principle of child participation with the result that the child does not feel heard. For example in the alternative care setting's Case Review Meeting, one interviewee described children's response to social workers asking for their view as "(the children) think: no-one will listen to me, it doesn't matter what I say, you just have your own plan, writing up your own goals." (Int. No. 3). Moreover, child participation might not be universally applied but, as one interviewee said, "only apply when the child is the Principal Client" (Int. No. 8).

401. To overcome the barrier to meaningful child participation caused by the absence of standards to guide professionals facilitating child participation, a number of interviewees have adopted 'best practice' standards from overseas (Ints. No. 3, 5, 8, 12, 14 and 19) and are using these to inform their own practice, "as with the development of our training manuals, that was part of it, to empower our frontline workers to become a voice for the child so that even without a law, as of now, we still have some grounds to say 'this is international bestpractice' and that as a social worker or frontline professional working closely with you it is our duty to be a voice for (the children) and to act on their best interests" (Int. No. 3).

Leadership to Address Undue Delay in Child-Related Decision-Making:

402. The concept of 'justice delayed is justice denied' is familiar in human rights discourse. Findings from the stakeholders interviewed for this Study suggest that 'participation delayed is participation denied'. Time passes differently for children than for adults. Recent research shows that as we age we perceive time's passing to speed up. Conversely, for children, the passage of time can seem to take much longer. How does this affect child participation? Children experience the decision-making process as happening more slowly than adults do. For good quality child participation, the process of decision-making must be relevant to the child. Their input therefore needs to be sought, heard and responded to in

¹¹² A Study on Family Mediation Services in Hong Kong Final Report Department of Social Work, The Chinese University of Hong Kong (January 2017), https://www.familycouncil.gov.hk/en/files/research/family_mediation_services_in_hong_kong.pdf, last accessed on 14th November 2019.

a shorter time frame than is necessary for adults, otherwise, there is a risk that the child feels that their input has been ignored or dismissed.

403. Several interviewees talked about the adverse impact that delayed child participation can have. There are multiple causes of delay. The first is resource driven in terms of employing adequate personnel to run the process in which the child will participate. For example, one of the ‘hot spots’ for child participation is in their parents’ divorce or separation proceedings. For the child’s participation to happen, either via a court welfare officer, a meeting with a judge directly or by separate representation, the legal case has first to get to court. As one interviewee noted, “At the moment there are 10 Family Court judges. The Family Court is overworked by about 3 times, I would say... you can split a dollar but you cannot split a child. Money can wait. Here is a situation where there is so much delay.” (Int. No.1). Legal practitioners report cases involving children facing delays of over a year between direction being given and the case being heard in court. The legal proceedings themselves may well have been initiated a year earlier than that.

404. Alternatively, complex procedures may cause delay in legal proceedings involving children. Interviewees referred to the lengthy procedure that begins when social services receive a report that a child is at risk and ends with the adoption of that child. In this process, hearing the child’s voice is an essential element of making a decision in the best interests of the child. However, the child’s voice becomes redundant if the process becomes drawn out by procedural hurdles and appeals, so that the child’s expressed wish becomes a distant element of the complex proceedings. Delay undermines the benefit to the child of having their voice heard and taken into account in the first place. It renders the child’s participation meaningless. (Int. No. 6).

405. Sometimes inadequate resources coupled with procedural problems can act together to cause delay for children waiting for decisions to be made about them. For example, when children are placed in alternative care their views will be sought on their future. But if the procedures in place for these children are subsequently fragmented by changes of social worker or changes to the permanency plan, or there is no consistent oversight of how procedures are being followed, this can delay the impact of the child’s participation (Int. No. 3). This delay can be compounded by a shortage of qualified social workers. One interviewee suggested that “the Social Welfare Department is so dramatically underfunded... there are like 100 children to every referral worker... Children are not the priority of the HKSAR government.” (Int. No. 6). Where delay exists in the decision-making processes for children, this is a barrier to meaningful child participation.

Part Five: The Implementation of Article 12 of the UNCRC in Hong Kong: Baseline Conclusions

Introduction:

406. This Study presents detailed findings from a survey of legislation, policy and practice on child participation in Hong Kong, with data gathered from duty bearers and stakeholders, including government departments, government bureaux, statutory bodies and NGOs as well individual professionals whose work touches on child participation. Part I of this study presented the background context for the study; the sectoral settings relevant to child participation in Hong Kong; and the research methodology, including the creation of the Child Participation Matrix. The Matrix is used to fulfil the key aim of this study: the establishment of a baseline of child participation as currently implemented in Hong Kong. This baseline can then be utilised as the threshold from which all future developments in child participation can be measured.

407. Subsequent Parts of this Study reported on the laws and mechanisms for child participation put in place by duty-bearers, examined the patterns of implementation of child participation, identifying recurring themes, and then considered barriers to greater implementation. Along the way, examples of potential good practice were noted and the extent and nature of child participation opportunities in each sector were probed by documentary research and interviews with adult stakeholders.

408. The aim of this final Part is to consider the key findings from this Study to draw initial conclusions regarding where the baseline for child participation in Hong Kong currently sits. Finally a number of interim recommendations for policy and programme development will be presented. These conclusions and recommendations will subsequently be supplemented and finalised with findings from the child-focussed partner project to this Study referred to in Part I.

Conclusions on Child Participation at the HKSAR General Policy-Making Level:

409. Based on the Child Participation Matrix, looking first at the elements of Article 12, there is no single piece of legislation that enshrines children’s right to participation in all matters which affect them. It is clear that there are mechanisms and structures put in place by the Administration through which children can voluntarily participate in policy-making. These frameworks are open to children of different ages and maturities. They enable children to participate either directly or through representatives. The primary frameworks for child participation in general policy-making are the CRF (direct participation) and more recently the CoC (indirect participation). It is unclear how much weight is given by decision-makers to the views expressed by children through these frameworks although assurance has been received that children’s views will be given due consideration in each framework.

410. Looking at the form of child participation that existing mechanisms and structures offer children, and utilising the categories of participation adopted for the Child Participation Matrix: inauthentic, consultative, collaborative and child-led, it is possible to conclude that most child participation is consultative in nature and outside of NGO practice, not one

measure affording child-led participation at HKSAR general policy-making level is in place.

411. The recently established CoC is one of the primary frameworks for child participation. At present the CoC's terms of reference suggest child participation will be indirect, taking the form of children being consulted for their opinions by adults who then report back to the Commission. This is therefore neither childled participation nor collaborative participation in which children can engage in structures through which they can challenge or influence outcomes.
412. The form of child-participation possible at the CRF is also largely consultative and cannot be said to be collaborative because opportunities for collaboration are limited by the lack of a child-friendly approach to timing, information and procedure for the CRF. These limitations, coupled with the difficulty faced by the restrictions on children choosing agenda items for CRF meetings, mean that child participation cannot accurately be said to be collaborative because it does not provide an environment in which children are able to engage actively, on terms they understand, with their adult CRF counterparts. Moreover, because of the paucity of follow-up provided to children on the impact of their input, it is not clear that the CRF is a structure through which children can challenge or influence outcomes. Nor are children taking self-directed action after an initial set-up by adults, another marker of collaborative participation.
413. However, the CRF does afford consultative participation for children: their participation is adult-initiated, adult-led and managed. The children have no control over the outcomes of their participation although they may be provided with opportunities for organizing together, acquiring skills and confidence and contributing towards influencing outcomes. Much, though not all of the children's participation is focussed at the later stages of the policy-making cycle.
414. Unfortunately, the value of the children's participation at CRF is diminished by quality issues. Under the GC12 requirements for good quality participation, the CRF fails on several factors: it is not informative in the sense that childappropriate information could be designed much better and the time given to digest and assimilate the information could be better too. The CRF is not respectful of children because it does not seem to give them opportunities to initiate ideas for agenda items. It is not sufficiently child-friendly in its set-up, despite some recent changes for the better, and perhaps most significantly it is not accountable because there is little routine follow-up on the impact of children's participation on policy decisions. If one was to judge the CRF stringently according to Hart's Ladder of participation, it is likely that the form of participation afforded to children at the CRF could be described as "those instances in which children are apparently given a voice, but in fact have little or no choice about the subject or the style of communicating it, and little or no opportunity to formulate their own opinions" and is therefore 'tokenism' and not in fact true participation.
415. Looking at other opportunities for child participation at the general policymaking level, the 'participation' opportunities reported by duty-bearers mostly provide children with information about services or concepts relevant to the bodies' work: equality, gender, personal-policy-makers in some way, these opportunities barely fall within the meaning of child

participation as envisaged under Article 12.

416. For some, such as the CSO and the FC, engagement with children's views is indirect and channelled through the CRF, the limitations of which have been outlined above. Some, such as the HAD do not include children within their services or mission while others provide one-off, non-iterative 'events' for child participation such as competitions. Competitions can be useful formats for child participation but only, as Hart says, if they truly engage children in a process which has an impact on the work of the department, and that impact is acknowledged by the department.¹¹³ Otherwise, to ask children to compete in a competition designed by adults where their contribution is judged and awarded on the basis of criteria set by adults but has no impact on the work of the department, is manipulative and not actually child participation.
417. In contrast, the form of child participation processes provided or enabled by NGOs are more likely to deliver collaborative participation or even child-led participation. Projects such as the Children's Council and the Junior Executive programme respect the elements of Article 12 and create opportunities to move beyond consultation to engage children as partners where that is the appropriate form of participation. These opportunities also bear the hallmarks of good quality participation, being informative, transparent, respectful and relevant to children's lives. These activities are made possible in part by funding from the CMAB's CREFS. However, as stakeholders have reported, the funding provided is not always sufficient to wholly sustain the projects.

Sectoral Conclusions:

Evaluating Child Participation in the Legal Setting:

418. The legal setting is a 'hotspot' setting for child participation. Article 12 is not incorporated into Hong Kong law generally, but it is reflected in several legislative provisions relating to how children's views impact on legal proceedings. Further, existing laws have been amended to incorporate the language of the UNCRC. However, to what extent does the practical application of these provisions afford good quality, meaningful child participation?
419. Looking first at the *elements* of Article 12, the relevant legal provisions and judicial practice guidelines provide for voluntary participation with weight given to children's view based largely on age combined with maturity. The child can directly express their views, specifically to the judge, or indirectly as relayed through a representative of the child, usually a social worker, legal representative or during child inclusive mediation. Problems regarding the elements of Article 12 arise in relation to the extent to which these opportunities to beheard happen in practice or in the competence and training of those who indirectly represent the child's views to the court. Lastly, where one professional, usually a social worker or the Official Solicitor, represents both the child's views and the child's best interests, this

¹¹³ Hart, op.cit. at p. 9

may present conflicts of interest or distract from the clarity and strength of the child's view.

420. Turning to the *forms* of child participation, utilising the categories of participation adopted for the Child Participation Matrix: inauthentic, consultative, collaborative and child-led, most of the provisions enabling the child's views to be heard fall within the consultative participation category. In the context of legal proceedings, where only the court has the power to decide an outcome, this may however be the most appropriate form of child participation.
421. Nonetheless, separate legal representation for children and the participation of children in child-inclusive mediation present real opportunities for children to participate collaboratively in matters which affect them. Separate representation allows children to collaborate in the definition and presentation of their 'case' to the court. Child-inclusive mediation allows the child a chance to influence the agreement reached by their parents at the outcome of the mediation. However, in both instances there appears to be a lack of properly trained personnel to take on the roles of specialist lawyers representing children, child-inclusive mediators, and child consultants.
422. Good quality child participation in the legal setting must be participation that fits with the GC 12 attributes: be respectful of the child, transparent, informative, child-friendly and so on as well as iterative and rights-focussed. However, without sufficient properly trained personnel and adequate follow-up, child participation in legal proceedings cannot be deemed good quality child participation.
423. There are several key areas in which the quality of the child participation is problematic. First, much of the child participation in legal proceedings takes place via the Social Investigation Report (SIR) process yet this presents several issues: a) in terms of respect for the child, the SIR fulfils two potentially conflicting roles: representing the child's views and the child's best interests; b) in terms of accountability, there seems to be no prescribed follow-up for the children or opportunity for the child to check the social worker has accurately understood and reported the child's views; and c) regarding training to support the adults facilitating child participation, concerns raised in interviews suggest that the quality of the SIR can be 'patchy'. This suggests better training is needed to accurately represent the views of the child.
424. Second, where the consultation is directly between the child and the judge, concerns raised in interviews suggest that this option is not used frequently by the judiciary and that this reticence may, in part, be due to insufficient training for judges in how to talk to children and elicit their views in an appropriate manner.
425. Third, in terms of proceedings in the Juvenile Court, the quality of child participation must be diminished by the absence of a specialist Bar from which the DLS can call on appropriately trained lawyers to represent children in trouble or at risk. It is also not clear, when children must agree to express certain views, such as being remorseful, in order to avoid custodial sentences, whether the child can be said to be participating freely.
426. Looking at other opportunities for child participation reported by government bodies in the legal setting, the visits arranged by government departments are valuable as educational

opportunities, but they are not necessarily instances of true child participation. That these events have been reported as instances of child participation suggests a misconception of what child participation entails. However, if the children are asked to give feedback on their experience and that feedback is reflected or acted upon by the Departments in arranging future visits, and the children are informed of this, then this would form valuable consultative participation for the children in an educational matter, but not a legal matter.

427. Overall, legislatively and in terms of judicial guidance, there is a documentary framework for child participation in legal proceedings. However, the extent of child participation and the quality of that participation are dependent on sufficient numbers of expert personnel, trained appropriately, consistently employing universally accepted standards of practice. There is room for improvement in this.

Evaluating Child Participation in the Alternative Care and Family Breakdown Settings:

428. Looking at the *elements* of Article 12, while the requirement to hear and take into account the child's views is represented in the legislative provisions relating to adoption and custody it is not mentioned in child protection legislation: the Protection of Children and Juveniles Ordinance (Cap 213). Whilst the inherent wardship function of the courts is not codified in legislation, it is possible that within its inherent jurisdiction the judge could seek the child's views. Nonetheless, the absence of the requirement in child protection legislation to hear the child's views is an oversight in the implementation of child participation as required under Article 12.
429. Turning to other measures in place to achieve child participation in the family breakdown and alternative care setting, and the available forms of child participation, SWD policies in place via Manuals and Guidelines create the opportunity for consultative participation for the child. Nonetheless, few opportunities for collaborative participation exist. As in the legal sector, it may be that in this setting, consultative participation is generally the most appropriate form of participation, especially where children are traumatised or vulnerable. However, policy-makers should not be blind to the possibility of more intensive participation, especially collaborative participation where children work with adults to achieve the best outcome, for children of greater maturity and insight into their own circumstances.
430. With regard to the *quality* of the participation available to children in this setting, the experience of interviewees is that SWD participation policies are inconsistently delivered: due either to inconsistency of training and oversight; or they are undermined by resourcing issues which delay meaningful participation or prevent social workers from facilitating good quality child participation. Lastly, there is an implementation gap between just 'doing' child participation and providing 'meaningful' child participation where the child feels heard and engaged in the process.
431. Where children participate in matters affecting their detention in CSD facilities, their participation is not distinguished from adult forms of participation. In this sense then, despite a clearly stated commitment to create a "secure, safe, humane, decent and healthy custodial environment" for Persons in Custody, there is an omission by CSD leaders to recognise the specific needs for child-appropriate information and child-friendly channel of participation. Thus, the *elements* of Article 12 cannot be said to be implemented in this quarter

of the alternative care setting. This failure of implementation is compounded by the possibility that technically children may be detained in adult facilities, as is possible given HKSAR's reservation from the UNCRC obligation to detain children in separate facilities from adults.

432. Similarly, where the Immd does not adopt specific measures to guarantee child participation for minors seeking non-refoulement, there is a failure to implement the *elements* of Article 12. While it is laudable that the department takes special steps to support the child's welfare, welfare is not automatically the same as child participation. Protecting a child's welfare usually connotes something done to or for the child; it is traditionally paternalistic in nature. Participation empowers and engages the child as an actor in their own life. Steps to protect the welfare of the child, without also providing the child with an opportunity for voluntary participation in matters affecting them, are insufficient.

Evaluating Child Participation in the Educational Setting:

433. With regard to implementing the elements of Article 12 in the education sector, there is no reference to child participation in the legislation relating to children's education. However, as reported by the ED, the Bureau's policies regarding children's educational experience do provide for hearing the child's views on a voluntary, non-determinative basis. These opportunities seem to increase as the child matures through the school system. Nonetheless, there is no explicit commitment within the governmental educational sector to the principle of child participation as enshrined in Article 12 and recent research shows that education in school on children's rights is equally lacking.
434. In the several governmental policies that provide for child participation in decision-making and policy formulation, the dominant form of child participation is consultative and entails consulting children on their view of services and programmes already provided. These consultations exist at different stages of the policy and decision-making cycles though several are clustered in the later stages. Examples of good practice in terms of collaborative participation exist in the set-up of the school recounted by one interviewee and potentially in the IB programme developed by the ESF which promotes student agency and responsibility for learning.
435. In terms of the *quality* of child participation on offer, the examples of consultative participation seem to be authentic in that both the ED and the ESF state that student input is encouraged in a wide variety of policy issues and that student input is given due consideration for planning and review purposes. However, the strongest message that came through from interviews with adult stakeholders was that any opportunity for good quality child participation must be fundamentally undermined by the failure of duty-bearers, particularly in the public and subvented schools' education setting to be informative for minority groups of children and sensitive to risks to children's well-being generally.
436. First, there has been a lack of access to vital information necessary for children to develop an informed view about their educational options, as experienced by NCS children and by silence on the topic of LGBTQI children in schools. Second, research strongly suggests that very large numbers of children in Hong Kong experience extremely heavy workloads on a daily basis and feel under such significant academic pressure that their mental health, let

alone their ability to participate, is under threat. Article 12 requires signatories to facilitate children's participation by creating spaces, in place, time and mentally, for children to participate. This obligation cannot be fulfilled in the context of the heavy academic pressure felt by Hong Kong's children today.

Evaluating Child Participation in the Healthcare Setting:

437. In terms of legal implementation of the elements of Article 12 in the healthcare setting, the first observation is that there is no legal provision which gives the child a right to participate in medical treatment decisions. Indeed, the common law places this squarely in the hands of the child's parents. This, like the rest of the 'parental rights and authority' framework of the common law tradition serves to exclude the child from participating in decisions which affect them. Legal reform to switch from parental authority to a framework of 'parental responsibility' for the child, with that responsibility diminishing as the child's own maturity and decision-making capacity grow, would begin to implement the elements of Article 12, especially the capacity and maturity factors.
438. Despite the common law focus on parental authority to consent to medical treatment of their child, the medical profession has tacitly adopted the elements of Article 12 within its Code of Professional Conduct by imposing an obligation on doctors to seek the child's consent, subject to an assessment of the child's maturity and capacity. Not only does this promote Article 12's aims but also establishes a form of child participation that is not only consultative but also collaborative in the sense that the process is adult-initiated and the child shares in the decision-making.
439. Turning to the government departments and bureaux in the healthcare sector, neither the FHB nor the HA distinguish between the participation opportunities for adults and children, which suggests a failure to understand what is required for meaningful child participation.
440. The DH has put a number of mechanisms in place to gather children's views on service delivery. In *form* these are mostly consultative and lie at the final stages of the policy-making cycle. It does not seem that children are regularly engaged in collaborative participation where their input can shape the outcome of the decision or policy-making process. The SWD's delivery of psychological and mental health support services have the potential to be collaborative depending upon how the participation is facilitated.
441. Looking at the quality of child participation in the healthcare setting, input from social workers aware of mental health processes for children suggests that the participation quality is varied. Similarly, the evidence given by the HK College of Paediatricians on the HA's engagement with children at the CRF for the planning for the HKCH shows the need to provide child-friendly information, which is an essential component of good quality child participation.

Evaluating Child Participation in the Leisure and Cultural Settings:

442. As with most of the settings surveyed, there was no legislative embodiment of Article 12 in the Leisure and Cultural setting. Further, as with a number of government bodies in various settings, the LCSD reported that it did not have child specific participation policies in place

but rather did not exempt children from its universal participation policies. As noted in other settings, this suggest a lack of understanding about what meaningful child participation requires and does not represent an implementation of the elements of Article 12.

443. Nevertheless, it is in the leisure and cultural setting that one outstanding example of good practice is found. The model of child participation adopted for the Tuen Mun Inclusive Playground project is a form of collaborative child participation which embodies meaningful child participation from the beginning phases of the project all the way through to post-completion review. Moreover, the way in which the project was run between the LCSD, AD and the NGO Playright Association demonstrates what good quality participation looks like, combining transparency, respect, relevance, follow-up and a child-friendly approach, amongst other GC12 factors. It is to be hoped that this does not become a one-off example of good quality, collaborative child participation but becomes a template for future use by government and statutory bodies.

444. Despite the successful implementation of this ‘good practice’ model, one significant hurdle to developing meaningful child participation in the leisure and cultural setting generally, lies in children’s over-scheduled days. Several interviewees noted children’s lack of free time and heavy academic pressure as a limitation on children’s ability to make choices freely about matters affecting them, including how they allocate their time.

Evaluation of Child Participation in Miscellaneous Settings:

445. The general tone from respondents in this set of miscellaneous public settings is that, in common with respondents in a number of other settings, there is neither reference to the elements of Article 12 nor provision for child-specific participation in their work. The CC can be distinguished somewhat from the other government and statutory bodies by: its position that children should be positively included in its work; the child-specific award it offers; and by the fact that the CC is conscious of the need to consider the child’s age and maturity where that is evident in a consumer complaint.

446. On the whole, even though these bodies fulfil functions which are relevant to children’s lives, and would be fit for child participation, there are no express, child-appropriate provisions beyond informing children about the work of the various bodies and other educational opportunities.

Broad Conclusions Relevant Across All Settings on the Nature and Quality of Child Participation in Hong Kong Today

447. Looking across the different sectors, it is evident that laws, policies and structures are in place to facilitate child participation. Few of these innovations referenced the UNCRC or the elements of Article 12 directly but many and varied policies and mechanisms for participation were reported by duty-bearers for this Study. Whilst at first glance this might indicate that Article 12 is being duly implemented by duty-bearers, a noticeable proportion of the policies and mechanisms reported related not to child participation per se but to participation for ‘people’ from which children were not excluded. In reality then, it cannot be said that child participation is implemented meaningfully across all sectors. To report these types of participation opportunities as ‘child participation’ suggests an absence of awareness of the meaning and requirements of child participation. This phenomenon was particularly evident in sectors which directly affect either children as a group (all children) or groups of children. For example, all children are affected by their living environment and the district-based communities in which they live, while children in detention are affected by their engagement with disciplinary services. Yet, in these specific sectors, there is little implementation of child-specific participation opportunities.

448. Turning to the *form* of participation, a significant proportion of policies and measures reported provide for ‘consultative’ participation by children. Having decided when designing the Child Participation Matrix for this study to set aside the hierarchical nature of Hart’s Ladder, it is entirely possible to conclude that consultative participation will be the most appropriate form of participation in a given set of circumstances. However, this alone does not justify consultation as the preferred form of child participation nor does it mean that every consultative process offers an opportunity for good quality, meaningful child participation. The value of consultation may vary depending on the stage of policy-making or decision-making at which the consultation takes place. A noticeable proportion of the consultative participation available to children takes place at the later stages of the cycle when there is less possibility for significant impact on outcome.

449. Looking at the forms of participation available to children, there are reported pockets of activity where child participation extends beyond consultation. Examples include individual projects either led by NGOs or in which NGOs collaborate with government departments and bureaux. However, outside of NGO activity there is no reported child-led participation by duty-bearers and little collaborative participation. In relation to the choice of form of participation, little information was provided to shed light on how any instance of consultative participation was chosen in preference to other more intensive forms of child participation.

450. Turning to the *quality* of the participation opportunities reported, few of the examples of consultative participation mechanisms encompassed systematic provision for, and actualisation of, accountability in the form of follow-up with children on the impact of their participation.

451. In addition to a lack of systematic follow-up with child participants, there is, in general, a low level of good quality training for adults who work with child participation and a low

level of child-friendly information for child participants. Other GC12 attributes of good quality participation are similarly scarce in the reported opportunities for child participation. The overall impression is that child participation is delivered in a fragmented and somewhat ad hoc manner. While some government and public bodies have instituted innovative child participation policies on paper, experience shows that these do not necessarily deliver meaningful child participation in practice. For example, children in legal proceedings theoretically have multiple avenues by which to express their views. In practice, stakeholders' feedback suggests these avenues are either rarely utilised, or where the child's view is sought in a more routine manner, usually by social workers for the SIR, the quality of this process can be 'patchy'.

452. Conversely, where examples of good practice exist, mostly in work done by a small number of NGOs, these often provide children with more intensive participation opportunities which also meet most, if not all, of the GC12 criteria for good quality participation.

Conclusions on Patterns of Implementation:

453. The thematic analysis of stakeholder interviews uncovered patterns around child participation as it is currently experienced in Hong Kong. One of the key themes identified is the absence of child participation in many of the settings relevant to children's lives. This is a significant barrier to child participation: if something is not thought of, whether in law, in government priority or in sociopolitical discourse, it is unlikely to happen.
454. Using the Child Participation Matrix adopted for this Study, it is possible to see a pattern of largely low-level child participation in Hong Kong supplemented with some outstanding examples of more intense, good quality participation opportunities. These are mostly provided by NGOs or driven by NGOs in collaboration with public bodies. One of the consistent limits to 'good quality' child participation is the lack of consistent, timely follow-up procedures to inform children of the impact of their participation. Equally, while some child participation is supported with child-friendly forms of information, a more systematic, specialist approach to the creation of appropriate material for children in all sectors would greatly enhance the levels of good quality child participation available.
455. NGOs provide opportunities for child participation across sectors for a wide range of children. However, some children find accessing child participation more difficult than others due to factors such as non-mainstream language or abilities; pressure from school or parents; lack of financial resources; or 'not being in the NGO loop' about when and where opportunities for child participation exist. What is evident from the findings is that children want to be given the choice to participate in matters which affect them.
456. Where good quality child participation occurs, a pattern of 'enabling factors' is discernible. These include most obviously the work of NGOs in creating and supporting child participation either within their own organisations or in external institutions including government platforms. Meaningful child participation will flourish where properly trained adults are able to facilitate participation and support children and children themselves are given training to understand their own participation and to engage fully with participation opportunities. Training can be underpinned by the creation and provision of child-friendly resources whether that means information such as books, videos or training kits, or child friendly

venues for participation events. Lastly, the most effective 'enabler' for child participation in Hong Kong is multidisciplinary, multi-stakeholder collaboration where expertise is shared, and the multi-faceted nature of meaningful child participation can be addressed.

457. Lastly, a highly positive theme arising from the analysis was that child participation, where it is given meaningful shape, results in better decisions for children and relevant adults, better policy-making and consequently better use of public resources.

Conclusions on the Barriers to Implementation:

458. Barriers to the implementation of meaningful child participation come in many guises. Some barriers, such as cultural norms and sensitivities, require careful, respectful consideration. Some barriers can conceivably be transformed from obstacles into enablers of child participation if a shift of mindset is possible; for example parental aspirations for their children may lead parents to make decisions for their children or, with a shift of mindset, may lead parents to encourage their children to develop decision-making skills through participation.
459. One of the most significant barriers this Study has identified exists where there is an 'absence' such as an absence of awareness or of leadership in relation to the UNCRC. Without awareness of the child's right to participate, the likelihood of meaningful implementation is reduced. The historic lack of dedicated leadership at both the general policy-making level and at sectoral levels, notwithstanding the recent establishment of the CoC, has been a fundamental barrier to the implementation of child participation in Hong Kong. Effective leadership is needed to build awareness, gather data and ensure informed multidisciplinary approaches to enabling child participation. Effective leadership could demand universal, unfragmented standards and training for all professionals whose work touches on child participation so that the knowledge and skills needed to facilitate child participation are embedded at all levels and in all sectors.

**Part Six: Recommendations to Promote the Future Implementation of
Article 12 of the UNCRC in Hong Kong**

Introduction:

460. On the basis of the data gathered and analysed for this Study, the following recommendations are made for the development of future policy and practical measures to build upon the current baseline of implementation of Article 12 UNCRC in Hong Kong.

461. The recommendations relate to three target areas:

- the general policy-making arena;
- issues applicable to all settings;
- setting-specific issues.

462. First, the recommendations for the general policy-making arena are suggested for application by Hong Kong's central administration at a meta-level of governance. These encompass the articulation of principles, setting standards and establishing centralised initiatives. Second, the 'all-settings' recommendations are common to all sectors in which child participation is a relevant factor, even those sectors which are not currently 'hotspots' for child participation but in which child participation could usefully be developed. These recommendations may be implemented within 'a margin of appreciation' relevant to each specific sector. For example, where the goal is to provide childfriendly information, the way in which the legal sector does that may differ considerably from the approach adopted by the Town Planning Board but the same necessary goal of informing children so that they can develop and express a view is achieved. The support of the central administration will be necessary to the co-ordination and actualisation of these recommendations but the engagement of other duty-bearers such as sector leadership, professional bodies and civil society organisations is also important. The third set of recommendations apply to specific settings and address child participation issues which are unique to that sector. These recommendations are necessarily more detailed than the more broadly drawn recommendations made for cross-sector innovation.

463. Across all three target areas, the recommendations generally fall within one of four main categories for action. These categories are derived from the needs identified in the data gathered for this Study. The four categories are:

- Mainstreaming and Raising Awareness of Child Participation;
- General Education Strategies, Platforms and Other Resources;
- Professional Skills and Capacity Building;
- Research, Data Collection and Analysis.

The Recommendations

A: At General Policy Making-Level:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 1. One of the key barriers to implementing children's participation is simply that it is absent from civic dialogue and from policy considerations in many areas of government. Therefore, the first step must be to raise awareness and mainstream children's participation so that child participation is a 'normal', expected part of civic dialogue and of the machinery of governance. To achieve this, it is essential that the Administration adopts an overview of the full cycle of governance, policy-making and auditing to ensure that child participation is a consideration at every relevant part of the cycle.

Recommendation 2. Commit to the principle of nurturing child participation by including this as a central aim of the Hong Kong Administration in the Chief Executive's Policy Address.

Recommendation 3. Introduce legislation to incorporate Article 12 of the UNCRC into Hong Kong's domestic law with specific reference to the broad-based, voluntary and maturity-related nature of child participation. Further, to facilitate good quality child participation, the legislation should also enact the 'no delay' principle. This means that, while children should be given enough time and appropriate information to form and express their view, once that view has been expressed, there should be no undue delay by the decisionmaker or in the system for taking the child's view into account, coming to a decision and giving the child feedback.

Recommendation 4. Periodically review existing legislation, policy and measures to identify the extent to which the child's right to participate is implemented and take steps to address any gaps, starting with those gaps identified in this Study. The review should include children's views on existing opportunities for child participation and possible reform.

Recommendation 5. Establish children's consultations to run parallel to public consultations on all issues which are, on a liberal interpretation, relevant to children and their lives. The methodology adopted for children's consultations about the establishment of the Commission on Children could be taken as a model and developed with expert support.

Recommendation 6. Introduce a "Child Participation Opportunity Assessment" (CPOA) for all proposed legislation, policies and measures which, on a liberal interpretation, could be relevant to children and their lives. The CPOA would ask public officials to consider whether child participation is needed, and if so, how the optimal form and quality of that participation will be delivered. If the Administration should in future move to adopt a general Child Impact Assessment (CIA), the CPOA could be included as part of that. However, until such time, the CPOA can function as a standalone factor in the governance cycle. The aim is to ensure that child participation is embedded within planning, design and implementation of general level policy-making.

Recommendation 7. Require information on child participation measures/incidence in all governmental annual reporting requirements; require duty-bearers to 'name' the forms and uptake

of child participation offered: consultative, collaborative, child-led, and explain why one form of participation was chosen over the other options. Special care should be taken to confirm that participation is not manipulative, decorative or tokenistic.

Recommendation 8. Improve transparency of governmental support for child participation by publishing a regular financial audit for funding of child participation initiatives and opportunities. The audit should indicate, amongst other relevant factors, whether the funding completely covered the costs of the child participation opportunity in question, whether individual participants or their families were required to contribute funds to participate, whether the child participation achieved ‘value for money’ in terms of quality of participation and uptake.

Recommendation 9. Introduce remedies for breach of the right to participate. Those remedies to address breach for individual children, groups of children and children as a group.

Recommendation 10. Review child participation at district-level; provide child-friendly information on district-level governance; institute child-appropriate forums on district matters open to all children living in the district; set up ‘mirror’ platforms to nurture children’s capacity to engage in district level governance issues.

General Education Strategies, Platforms and Other Resources:

Recommendation 11. Establish and fund Family Education and Public Education programmes on child participation which are relevant to Hong Kong society. These programmes would include education on what is meaningful child participation, how adults can encourage child participation, the positive link between child participation and children’s welfare.

Recommendation 12. Review CREFS to achieve effective application of funds and useful deliverables; repeat funding for successful programmes.

Recommendation 13. The Commission on Children: Set in place a roadmap to move from the current formation of the Commission towards greater levels of child participation and include children, from a range of ages and backgrounds, as members of the Commission, so that children are participating directly in the work of the Commission and children’s voices are heard without representation or interpretation by the adult members of the Commission.

Recommendation 14. The CoC: Commit to working towards an independent, empowered Commission which complies the Paris principles for an effective Commission.

Recommendation 15. Address stakeholder and rights-bearers feedback on CRF. In particular, liaise with experts to identify ways to: adopt child friendly timing of meetings (when in the day and in the week meetings occur and how much notice of agenda items and materials is given), develop collaborative agenda setting (children can raise items), expand the range of children who attend (publicise meetings to all children via schools and children’s organisations and seek to increase diversity of children attending); routinise giving feedback on the impact of children’s participation at CRF; and provide information and materials that are adapted in content and not only appearance to be child- and age-appropriate.

Recommendation 16. Develop and support opportunities for child-to-child peer mentoring for

child participation education and implementation. This might be achieved providing by support for child-led NGOs or child-led platforms.

Recommendation 17. Establish a multidisciplinary platform for duty-bearers, other stakeholders, children and specialist professionals to share expertise on child participation. One possibility is to liaise with the CoC on the databank it is currently considering.

Recommendation 18. Create a platform for children to initiate their own complaints to government bureaux/departments and statutory bodies about alleged maladministration. One possibility is to establish a Children’s Ombudsman.

Recommendation 19. Develop and periodically review child-friendly versions of relevant information to be available from all government and statutory bodies via their websites or hot-lines.

Recommendation 20. Continue funding for partnerships with NGOs to deliver child participation opportunities such as the Junior Chief Executive programme and the Children’s Council. Review current ‘partial funding’ practice to move towards full funding of successful initiatives in order to create time and space for NGOs to focus on delivering the child participation opportunities rather than writing grant applications to make up the current shortfall in government funding for individual programmes.

Professional Skills & Capacity Building:

Recommendation 21. Establish training programmes for all civil servants and public officials on child participation and in particular: how child participation is relevant to different sectors of the Administration, how child participation can be a positive input for the work of the Administration and how civil servants and public officials can facilitate child participation in the work of the Administration.

Research, Data Collection & Analysis:

Recommendation 22. Commit to supporting research on how to develop the implementation of Article 12 in Hong Kong. Specific ongoing research projects should address how to identify and implement ‘best practice’. Research also to be undertaken regularly to review changes to the baseline implementation of Article 12 and child participation identified in this Study.

Recommendation 23. Routinely and systematically gather longitudinal and disaggregated data on child participation. One possibility is to liaise with the CoC on the databank it is currently considering.

Recommendation 24. Adopt a research protocol for all publicly-funded research that children’s voices will be sought in all relevant/appropriate research studies on social, economic, political issues. This commitment understood in the context of ‘liberal interpretation’ by duty-bearers of when children and child participation are possible and desirable.

Recommendation 25. Engage in evidence-based policy-making, using data gathered as a result of, but not limited to, Recommendations 23 and 24 to identify, quantify and address child

participation issues.

B: Recommendations Across All Settings:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 26. All duty-bearers: statutory bodies, government bureaux and departments, to review this Study in relation to the opportunities for child participation in their own jurisdictions as reported here. Duty-bearers should address gaps in implementation of child participation, especially where the origin of the implementation gap is that the dutybearer currently has no child participation policy or where opportunities for child participation are not distinguished from participation opportunities available to adults.

Recommendation 27. Promoting good quality child participation: the importance of time: duty-bearers should assess all proposed opportunities for child participation within their sphere to ensure that the amount of time required by children to engage in meaningful child participation has been taken into account and is the necessary time is built into the proposed child participation process. Duty bearers should monitor and review the suitability of time frames adopted for child participation. This review process should include feedback from participating children.

Recommendation 28. Promoting good quality child participation: the importance of followup: duty-bearers should assess all proposed opportunities for child participation within their sphere to ensure that processes to give children feedback on the impact of their participation are in place. Duty-bearers should monitor and review the extent to which children, whether individuals or as a group, are given feedback on their participation. Where failures to provide follow-up are identified, steps should be taken as soon as possible to provide feedback and, where the failure is systemic, to introduce measures or mechanisms for consistent follow-up.

Recommendation 29. Promoting good quality child participation: the importance of safety of children: Duty-bearers to risk assess all opportunities, existing and proposed, for child participation. The aim is to ensure participation is voluntary and that participation does not cause the child distress, trauma or place the child in danger of harm. General Education Strategies, Platforms and Other Resources:

General Education Strategies, Platform and other Resources:

Recommendation 30. Develop, distribute and review Hong Kong specific training manuals, educational kits and video resources for children, NGOs, parents and the public on child participation.

Recommendation 31. Launch and support initiatives and meetings for children to meet and exchange views with adults in key institutions on a non-tokenistic, iterative, respectful basis.

Professional Skills & Capacity Building:

Recommendation 32. Professional understanding and facilitation of child participation has been found to be inconsistent in terms of both actualisation, and quality. Therefore, a key recommendation is that minimum, uniform benchmarks must be articulated and required for training

for all professionals, in any sector, whose work involves child participation. The training should address, as a minimum, the meaning of Article 12, the elements of good quality child participation, models of child participation, the development of skills and competences necessary to facilitate meaningful child participation. Training is to be delivered to professionals both at an initial stage of their professional or vocational training and also in the form of continuing professional development. The Administration could liaise with professional accreditation bodies to ensure high standards, good practice and maximum reception of the training. Implementation of training standards to be monitored and periodically reviewed.

Recommendation 33. Develop, distribute and review Hong Kong specific training manuals, educational kits and video resources for duty-bearers and professionals working with child participation.

Recommendation 34. Sectoral representatives to develop relationships with children's rights NGOs and experts to build government officials' knowledge of the UNCRC and Article 12. This recommendation would not be satisfied by out-sourcing child-participation work to NGOs and other experts. The aim is to embed knowledge within the governmental institutions themselves.

Recommendation 35. Sectoral representatives to design and adopt, as broadly as possible, a multi-disciplinary approach to achieving effective child participation within and across sectors. Also, put in place systems and processes to facilitate the designated multidisciplinary approaches. The practical impact of these systems and processes should be monitored and reviewed periodically. The reviews should include consideration of feedback from child participants and other stakeholders.

Recommendation 36. Professional bodies in all sectors to develop codes of conduct for their members on the facilitation of, and support for, meaningful child participation.

C: Recommendations For Specific Settings:

C1: The Legal Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 37. The Department of Justice to monitor and periodically review legislative provisions requiring the child's views to be heard and taken into account. Further, the Department of Justice and the Judiciary, where appropriate, to monitor and review periodically the development and use of supporting regulations, guidance or practices. The aim of the 'monitor and review' measure is to evaluate the extent to which meaningful participation is being afforded to children in legal proceedings.

General Education Strategies, Platforms and Other Resources:

Recommendation 38. The University law schools and the legal professional bodies to stipulate and design child participation education in relevant undergraduate, postgraduate and CPD law courses.

Recommendation 39. The Department of Justice to develop public education courses and

school courses on what ‘hearing the child’s voice’ in legal proceedings means, especially in relation to child custody hearings.

Recommendation 40. Children to be provided with child-friendly versions of: information for court proceedings, including information on matters such as separate representation and meetings with Judges and remedies; court orders which affect the child; and, where appropriate, judgments.

Recommendation 41. Each child whose parents are engaged in divorce or custody proceedings to be provided with the contact details of either a named individual or a hotline who can answer any questions or concerns they have about the legal proceedings and associated issues.

Recommendation 42. The Department of Justice, the Judiciary and the legal professional bodies to review the Official Solicitor and guardian ad litem systems of separate representation. Also, those stakeholders to consider whether and how to improve information for children about their options for separate representation in an age/maturity appropriate and child-friendly manner. A child-friendly website could be one option.

Recommendation 43. The Department of Justice, the Judiciary and the legal professional bodies to review generally the Juvenile Court jurisdiction, setting and processes. The review also to consider specifically whether to take care and protection work out of the Juvenile Court jurisdiction?

Recommendation 44. To establish a Family Court venue which promotes and facilitates child participation as widely as possible where relevant. Special suites for judges to meet with children; special suites for child consultants or specialist legal representatives to meet with children. To consider bringing family mediation services within the same venue to maximise available resources for child participation.

Professional Skills & Capacity Building:

Recommendation 45. The relevant legal professional bodies and the Department of Justice to take steps to build the competence and capacity of professionals to work with children’s participation. Further, the legal professional bodies and the Department of Justice to require and provide training on multidisciplinary approaches to child participation for lawyers whose work touches on with child participation.

Recommendation 46. The Judiciary to seek expert assistance to design and deliver training for Judges hearing child-related proceedings at all levels of the court hierarchy, on how to facilitate meaningful child participation, particularly in relation to meeting with children or separate representation for children. This training to extend to encompass guidance and support for judges on when and how to write child-appropriate judgments and court orders.

Recommendation 47. Establish a specialist Bar (to replicate rights of audience across both branches of the Professions) for representation of children in legal proceedings; membership of this specialist Bar to be a requirement for eligibility for work with children under the Duty Lawyer Scheme.

Recommendation 48. The Department of Justice, the Judiciary and the legal professional bodies to review how social workers and expert witnesses are currently employed to gather the child’s views, the boundaries to their role and the qualifications deemed necessary for those social workers and expert witnesses to be engaged in legal proceedings. The aim is to ensure good quality child participation which accurately represents the child’s views and does not add to the trauma children may experience when their lives are touched by legal proceedings.

Recommendation 49. The Department of Justice, in conjunction with the Judiciary, to identify all processes where one person both reports the child’s views AND makes an evaluation of what is in the best interests of the child. The aim is to evaluate the potential for a conflict of interests or diminution of the child’s voice and address accordingly.

Recommendation 50. The Social Welfare Department and the Department of Justice to promote the development of child-inclusive mediation. This to entail the development of training programmes for child-inclusive mediators and child consultants; the introduction of professional accreditation for child-inclusive mediators and child consultants; and to draft and institute a binding code of conduct for each.

Research, Data Collection & Analysis:

Recommendation 51. The Judiciary to keep statistics on when judges meet with children directly. Review data periodically and identify any issues which indicate that opportunities child participation could be improved.

Recommendation 52. Research to be commissioned by the Department of Justice and the Social Welfare Department on the impact of hearing the child’s voice directly in proceedings, whether through separate representation or by meeting with the judge, in order to identify implementation gaps and good practice.

Recommendation 53. Research to be commissioned by the Judiciary to review practice around the world regarding the intersection of hearing the child’s voice, confidentiality of what the child says and fairness within the legal proceedings.

C2: In the Alternative Care Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 54. Include child participation opportunities as a required deliverable in all service delivery agreements between SWD and service providers.

Recommendation 55. Where a child is the subject of a MDCC: provide the child with child-friendly information about what the MDCC is and how they can choose to participate if they so wish. Directly invite the child to attend the MDCC, rather than extend the invitation through the child’s parents as is current practice. Provide parents with information about child participation in a MDCC.

Recommendation 56. Provide children with an appropriate opportunity to check the accuracy of the way in which their views are being reported in instances such as SIRs, in MDCCs, in the

adoption process, in care placements and any other instances when a child would express their view.

Recommendation 57. When a child is ‘discharged’ from alternative care include in the ‘exit interview’ express discussion of the child’s experience of participating and being heard. This information to be used as a learning tool only for the social workers involved and not to be related to promotion or remuneration.

Recommendation 58. Develop child-specific processes for the participation of vulnerable children, including children being held in detention, asylum-seekers and refugees in the processes and decisions which affect them.

General Education Strategies, Platforms and Other Resources:

Recommendation 59. The Social Welfare Department to work with experts to promote child participation-friendly parenting through family intervention programmes.

Recommendation 60. The duty-bearers to design and provide child-friendly information and complaints processes to all children held in alternative care or detention.

Recommendation 61. The Social Welfare Department to review funding mechanisms and levels especially in relation to the lump sum grant mechanism, so that social workers have the time and resources necessary to facilitate effective child participation. In particular the review to consider the impact of the lump sum grant model whereby funding is sometimes diverted from the promotion and facilitation of child participation opportunities in order to meet arising remedial service needs.

Recommendation 62. The Social Welfare Department, professional bodies and experts to review the usefulness of existing child participation resources developed for social workers. Based on the findings of the review, update and extend resources to provide a range of training manuals, videos, case studies and checklists on meaningful child participation and Kong today.

Recommendation 63. The Social Welfare Department, professional bodies and experts relevant public stakeholders to review current investment in social work professionals. Where the current investment levels do not support meaningful child participation facilitation, to take steps to address this, such as, but not limited to: training and employing more social workers, invest in necessary resources such as facilities for care placements, foster families, and emergency accommodation so that child participation is not excluded/overlooked due to resourcing shortages.

Recommendation 64. Under the auspices of the CoC: establish a confidential, anonymous telephone and/or online ‘hotline’ for children to gain information about their child participation rights and where children can share their concerns about whether and how they can participate in decisions being made about them and their lives. This recommendation could be actualised in conjunction with the second aspect of Recommendation 42.

Professional Skills & Capacity Building:

Recommendation 65. The relevant social work professional bodies and the Social Welfare Department to review and build the competence and capacity of professionals to work with children’s participation; specifically, to take steps to identify best practice and to roll out that best practice as a universal professional standard to be achieved.

Recommendation 66. The relevant social work professional bodies and the Social Welfare Department to review current rotation practice for social workers to identify its impacts on effective child participation. If the findings of the review show that the rotation practice has adverse consequences for effective child participation, to consider and implement solutions.

Recommendation 67. The relevant social work professional bodies and the Social Welfare Department in conjunction with the legal professional bodies, the Department of Justice, the Judiciary and other experts, to review the legal training currently given as part of social workers’ foundational training and to consider further training on child participation facilitation. Particularly consideration should be given to training relevant to the purpose and scope of the SIR. Also, to review current systems for monitoring and reviewing how social workers facilitate child participation in legal proceedings; this review to include where appropriate feedback from children involved. Utilising the findings of this review, to consider any changes necessary to ensure that good practice taught in training is being applied in practice.

C3: In the Education Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 68. The Education Bureau to take steps to mainstream child participation in the school day by ‘ring fencing’ time for children’s participation opportunities so that child participation is not another ‘extra’ in children’s schedules and so that children’s abilities to participate can be nurtured and practised in a safe environment. Review school syllabus to identify where education on the meaning and practice of child participation can be explored with school children of all ages.

Recommendation 69. The Education Bureau, in conjunction with the Universities Grants Committee to review all higher education programmes, at associate, undergraduate and postgraduate levels to identify current provision of courses or programmes which address child participation as academic or skills-based syllabus content and to consider the need for improved course offerings so that child participation becomes a ‘natural’ part of academic dialogue in any relevant academic or vocational discourse. The Education Bureau to reach out to professional accreditation bodies to explore where need exists for ‘compulsory’ coverage of child participation in vocational and professional courses and programmes at higher education level.

General Education Strategies, Platforms and Other Resources:

Recommendation 70. Education Bureau to invite the LCSD to present their experiences of child participation in the design and planning of the Tuen Mun Inclusive Playground and to consider adopting this model to implement child participation in school design and renovation.

Recommendation 71. Education Bureau to ensure all groups of children, and especially those who are marginalised, vulnerable or fall outside of the mainstream, are provided with information about their educational choices which is appropriate for them; provide processes for children to participate in decision-making about their educational paths.

Professional Skills & Capacity Building:

Recommendation 72. Review and build competence and capacity of education professionals to work with children’s participation; specifically review current training for teachers, both at the foundational stage of training and as continuing professional development, on what constitutes planning, class schedules and in day to day decision-making in schools generally. The aim is the children are not passive recipients of ‘education’ but are engaged in the framework of their learning as partners. The ESF active learning model reported in the Study could be considered as one touchpoint for the review.

Research, Data Collection & Analysis:

Recommendation 73. The Education Bureau to review existing instances of child participation in schools for groups of children and for individual children. As a result of the groups of children: depending on age and maturity, identity and needs, and roll out across the school system. Institute a regular monitor and review mechanism which includes feedback from the children themselves.

Recommendation 74. The Education Bureau to review and address current high levels of academic pressure on all ages of children. Specifically identify how this pressure works to diminish or negate children’s opportunities to participate and formulate recommendations for change.

C4: In the Healthcare Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 75. The relevant duty-bearers across sectors, medical professional bodies, paediatric patients’ groups and other NGOs to liaise with experts to promote child participation in healthcare settings on matters other than medical treatment decisions; for example, choices children can make in relation to education, residence, play, when hospitalised or when children’s lives are disrupted by a course of medical treatment.

Recommendation 76. The relevant duty-bearers and medical professional bodies to review current legislative provisions and policies for references to arbitrary age limits relating to children’s access to and consent to medical treatment. To consider reform where necessary to move away from simple age limits and to reflect instead the Article 12 focus on the child’s age coupled with maturity of the child as the relevant consideration when hearing the child’s views.

Recommendation 77. The Hospital Authority to systematise meaningful child participation in the design and service delivery of paediatric health, including venues, processes and follow-up.

General Education Strategies, Platforms and Other Resources:

Recommendation 78. The Department of Health and the medical professional bodies to review current provision of, and take steps to improve where necessary, child-friendly materials on all common medical routines and procedures for children.

Recommendation 79. The Department of Health and the medical professional bodies to review current provision of, and take steps to improve where necessary, manuals, training kits and checklists for all healthcare professionals on facilitating meaningful child participation in healthcare decision-making.

Recommendation 80. The Department of Health and the medical professional bodies to review current provision of, and take steps to improve where necessary, materials for families on child participation in healthcare decision-making.

Recommendation 81. The Department of Health, the Hospital Authority and the medical professional bodies to provide children, in an appropriate manner, with means by which to give feedback on their experiences of participation in the healthcare setting and to raise complaints.

Professional Skills & Capacity Building:

Recommendation 82. The professional healthcare bodies to review and, where necessary, build the competence and capacity of professionals to work with children’s participation; specifically, to take steps to identify best practice and to roll out that best practice as a universal professional standard to be achieved.

C5. In the Leisure & Cultural Setting:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 83. The Leisure & Cultural Services Department to roll out the Tuen Mun Inclusive Playground model for all leisure venue planning and design unless there are childparticipation relevant reasons for not doing so.

General Education Strategies, Platforms and Other Resources:

Recommendation 84. The Leisure & Cultural Services Department to review current provision of, and take steps to improve where necessary, training manuals, guidelines and kits for professionals working in the Leisure & Cultural sector on how to identify opportunities for child participation; how to engage and facilitate child participation in childrelated projects.

Professional Skills & Capacity Building:

Recommendation 85. The Leisure & Cultural Services Department to provide periodic training to build competence and capacity of professionals to work with children’s participation.

Recommendation 86. The Leisure & Cultural Services Department in conjunction with relevant NGOs and other experts to offer, on a consultancy basis or otherwise, training to private

property developers and site management companies on how to promote child participation in privately owned leisure settings and businesses.

Research, Data Collection & Analysis:

Recommendation 87. The Leisure & Cultural Services Department to monitor and periodically review the use by children of leisure and cultural facilities. The review process to include the views of the actual and potential child users of the facilities.

C6. In Miscellaneous Settings:

Mainstreaming & Raising Awareness of Child Participation:

Recommendation 88. All government departments, bureaux and statutory bodies to take steps to raise awareness amongst sector workers and the public, including both adults and children, of the ways in which child participation is relevant in the given sector.

General Education Strategies, Platforms and Other Resources

Recommendation 89. All government departments, bureaux and statutory bodies to develop training manuals, guidelines and kits for their professionals on how to identify opportunities for child participation; how to engage and facilitate child participation in child-related projects.

Recommendation 90. The Consumer Council, The Office of the Ombudsman, the Town Planning Board and the Urban Renewal Authority to liaise with NGOs and experts in child participation to consider effective platforms through which children can participate in the work of these bodies. For example, in public administration accountability, children could have a Children's Ombudsman; in town planning, children could be provided with a childfriendly channel by which to receive information and to submit their views on proposed developments.

Professional Skills & Capacity Building:

Recommendation 91. All government departments, bureaux and statutory bodies to provide periodic training to build competence and capacity of their professionals to identify opportunities for child participation and to facilitate children's participation in their work.

Research, Data Collection & Analysis:

Recommendation 92. All government departments, bureaux and statutory bodies to collect disaggregated data on the extent to which children use the provided channels for child participation and their views about those channels.



Tabulated Data Set: Baseline Study on UNCRC Article 12 in Hong Kong:
Implementation of Child Participation by Government Departments & Statutory Bodies in Their Work.

Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults	Frequency of Reliance on Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Constitutional and Mainland Affairs Bureau	Children's Rights Forum(CRF) : The CRF was set up in 2005 to provide a channel for exchanging among NGOs that are focusing on children-related issues, children representatives and representatives from the Government views on various subjects.	No specific mention of the UNCRC in the briefing paper on establishing the CRF but reference is made to discussion of children's rights. However, the CMAB website makes specific reference to the UNCRC when explaining the role of the Children's Rights Unit as support for the CRF	Send invitation emails to relevant NGOs; and Upload agenda and papers to the CMAB website before each meeting	At least two CRF meetings were held annually from 2005 to 2018; and Until now, 34 meetings were held in total.	Inviting representatives of relevant bureaux/departments to hear the views expressed by NGOs and children representatives on the agenda items.	No complaints received in 2018	

	Children's Rights Education Funding Scheme (CREFS): The objective of the CREFS is to encourage and enable community organisations to take up educational projects for raising public awareness and understanding of children's rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC).	paper on establishing the CREFS but reference is made to children's rights education.	Issue promotional collaterals of the CREFS such as posters and leaflets to different NGOs and schools by post to draw their attention.	On an annual basis	The applications received for funding are reviewed by an Assessment Committee with the presence of Children Representatives	No complaints received in 2018	
	The "Children's Council" project sponsored by the CREFS from 2013 to 2018. Under the project, Child Councillors were able to interact with representatives of the Government, Legislative Councillors as well as other guests on different issues.	The NGO organisers of the Children's Council expressly reference the UNCRC right to participation but this is not mentioned by the sponsor, the CMAB.	See above; and through the organising NGOs.	Annual programme	The applications received for funding are reviewed by an Assessment Committee with the presence of Children Representatives	No complaints received in 2018	
Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults?	Frequency of Reliance on Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Consumer Council	The Consumer Culture Study Award: designed to encourage children to exchange and express their views on a wide variety of consumer issues.	No.	Through secondary schools.	Annual	Children are given the opportunity to express their views and to enjoy the services of the Council in so far as it is appropriate to	Information about complainants is not disaggregated by age.	Consumers are not distinguished on the basis of age and all are afforded the services of the Council

	General approach to include children in Consumer Council projects, empowering children through education and fostering a positive consumer attitude at an early age.		Information available through the Council's website.	Ongoing	Due weight is given dependant on the child's age and maturity, where they are made apparent. Children are asked to discuss with an adult any advice given.	and are heard. On occasions where children are involved, they are treated no differently from adults (subject to considerations of age and maturity where made apparent)
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Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults?	Frequency of Reliance on or Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Correctional Services Department	No child -specific policies but there are multiple complaints channels within and without the correctional institution of which a child held as a 'Person In Custody' may use.	No	On arrival at the correctional institution every 'Person In Custody', whether a child or adult, is given an induction and relevant booklets on their rights and channels of complaints. Notices of rights are visible throughout the correctional institution.		Children who are 'Persons In Custody' are given the same opportunities to express their views and be heard as adult 'Persons In Custody'. These include multiple channels within and without the Correctional Institution, including CSD staff, the Ombudsman, the EOC , LegCo members and		The CSD is committed to providing a secure, safe, humane, decent and healthy custodial environment for Persons In Custody.

					other government channels.		All Persons in Custody are treated in the same way, whether they are a child or an adult
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Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults?	Frequency of Reliance on or Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Department of Health	Not child specific but views may be expressed by all service users to the Client Relations Officer of the Health Centre or Clinic	No	Through the individual health centre or clinic or the DH's Client Relations Unit.	Ongoing	No information received on how the information gathered from children and relevant representative adults is given due weight. However, MCHC reports 'taking into account scientific evidence as well as views of stakeholders to ensure effective programme delivery'.	None recorded by the Client Relations Unit of the DH.	Not applicable.
	Family Health Service (FHS): will respond to invitation or enquiries from children advocacy organisations to explain services provided by FHS to children (0-5 years) and their parents in Maternal and Child Health Centres (MCHC).		Response to enquiry; not outreach.	Ongoing			
	Student Health Service (SHS): will respond to invitation or enquiries from children advocacy organisations to explain services provided by SHS for children and adolescents (primary and secondary school) Department of Health (DH): Several surveys		Response to enquiry; not outreach	Ongoing	Enrolled students have an annual appointment to attend the Health Centre.		
			Through outreach to schools, thematic websites, collaboration	In 2018 270 primary			

	operated to collect children's views on diet, mental health and wellbeing to facilitate planning, implementation and evaluation of DH programmes.		with relevant government departments, newsletters and emails to teachers and parents. For a specific programme on promotion of breastfeeding, the DH works with several child rights advocacy groups who are invited to join the Committee on Promotion of Breastfeeding.	schools enrolled in the EatSmart Accreditation scheme; 1300 schools participated in Joyful Fruit Month; and 620 kindergarten and child care centres requested health promotional materials.			
	School Dental Care Service (SDCS): Client Survey to collect opinions and suggestions from students and parents.		The SDCS has developed and endorsed 'The Patients' Charter for the SDCS' and 'The Patients' Charter for Children Enrolled in the SDCS' which are posted up on the school dental clinics waiting room.	The Client Survey is carried out twice a year.			
	Oral Health Education Unit (OHEU): Focus groups and surveys to evaluate and plan the programme (secondary school); questionnaires and suggestions forms to parents and teachers (primary and kindergarten).		Children and relevant adults are informed of their rights through programme co-ordinators during their contact.	No information given.			
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Department of Justice	Secondary school student visits to the Department of Justice to promote children's understanding of the work of the Department and strengthen	No.	Through partnerships with organising bodies including the HK Jockey Club, universities and the business -School Partnership programme of the Law Society of Hong Kong.	In 2017 and 2018 there were six visits to the Department, by more than 200	Programme organisers provide feedback from the children to the Department on the activities	None.	

	career and life planning education. Further special outreach events organised by the Prosecutions Division to raise awareness of criminal law amongst school students.				secondary schools students.	provided.		
	Prosecution policies relating to child victims/witnesses: No specific child-related policies but children would be included in the general category of victim, witness and vulnerable witness under the relevant Statement, Charter and Prosecution Code.	No.	The Statement on the Treatment of Victims & Witnesses Victims of Crime Charter 2007 Prosecution Code.		No information given.			
	Prosecution policies: specific provisions for prosecution of children under 16 years are given in paragraph 15 of the Prosecution Code. However, this does not make mention of the juvenile's right to participate or express a view in decisions about prosecution mode.	No.	Prosecution Code.		No information given.			
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Education Bureau	Drawing up of school rules and making of meal arrangements: Schools are reminded to	No.	<i>The School Administration Guide</i> and the relevant circular are made known to the public (including students) through the EDB website.	Schools would review the relevant rules and arrangements	Schools should strike a proper balance to the views of all stakeholders	Nil	Not applicable	

	work with students when drawing up the school rules and making meal arrangements for the students. Details are as follows: (i) As stated in the <i>School Administration Guide</i> , school rules should be drawn up with input from all stakeholders including students. (ii) According to Education Bureau (EDB) Circular No. 17/2009 on <i>Meal Arrangements in School</i> , schools should work with parents, suppliers and students to monitor the provision of healthy and green lunch on an ongoing basis.			periodically or on a need basis subject to school-based circumstances.	(including students) and address their concerns subject to school-based circumstances.	Nil	Not applicable
	Life Planning Education: EDB collects views from different stakeholders, including secondary school students, parents and school personnel on its implementation of Life Planning Education through conducting a review during the period from Aug 2017 to Feb 2019 and regular on-site visits to students' activities. The feedback and views collected will be taken into consideration for mapping ways forward.	Schools are informed of the review/ visits through letters/emails.	In the review on Life Planning Education, about 21,000 students, among others, completed the questionnaires and 56 students attended 13 focus group interviews. On average, 50 visits to students' activities are conducted per school year.	The feedback and views collected will be taken into consideration for mapping ways forward.	Nil		
	New Academic Structure Review:	On a need basis, students would be invited, through schools, to attend	On a need basis.	Students' views would be passed	Nil		

	Views of key stakeholders, including students are collected on a need basis. In the New Academic Structure Review conducted from 2012 to 2015, focus group interviews were conducted to collect views from, among other stakeholders, secondary students, on the senior secondary curriculum and assessment.	focus group interviews to express their views on specific issues.		to the relevant bodies for consideration.		
	Vocational and professional education and training: For children receiving vocational and professional education and training (mainly admitted to the Vocational Training Council (VTC) Youth College), their views on specific issues would be collected by VTC as and when necessary to enable children to exercise their rights under Article 12	VTC would collect the information through different means, such as questionnaires, surveys and focus group meetings, on matters relating to them	On a need basis	For children studying in the VTC Youth College, their views on specific issues would be collected by VTC as and when necessary through different means, such as questionnaires, surveys and focus group meetings, to facilitate the formulation of policies or dealing with matters relating to them.	Nil	
	Formulation of the policy of fine-tuning the medium of instruction (MOI) for secondary schools: During the formulation of the policy of fine-tuning the MOI for secondary schools in 2009, extensive consultation was conducted to collect views	Information about the MOI policy has been uploaded onto the EDB website for public consumption (including students).	On a need basis Views	Views expressed by students were taken into consideration when formulating the MOI fine-tuning policy.	Nil	

	conducted to collect views from various stakeholders including school heads, teachers, educational bodies, parents, students, and the public. Students were encouraged to express their views and concerns on the way forward of the MOI policy.					
	Provision of guidelines for supporting students with special educational needs (SEN): EDB issued guidelines for schools on suggested practices for supporting students with SEN. Some guidelines highlight the need to involve students in the planning and implementation process. For example, the <i>Operation Guide on the Whole School Approach to Integrated Education</i> advises schools to involve parents and students in the planning and delivery of support work, including devising and review of individual education plan (IEP). The <i>Special Arrangements for Internal Examinations for Students with SEN</i> advises schools to determine special examination arrangements with reference to the objectives and nature of assessment, as well as the views from all parties, including the students. Besides, EDB has set indicators for	While the above-mentioned guidelines uploaded onto the EDB website can be accessible by the public, EDB officers will remind schools, in particular the student support team and special educational needs coordinators, during their school visits or on other occasions of facilitating students' participation and offering comments in support work. EDB will also share policies, measures or processes direct with the stakeholders, such as parents, during meetings and talks.	On a need basis	Students' views will be sought directly if necessary and will be given due weight in making decisions in the planning and implementation.	Nil	

	implementation of integrated education that (i) "opinions of students are sought about how a school might be improved" and (ii) "the views of students would make a difference to what happens in school" are good indicators of an inclusive school.					
	Provision of Support Services for students with SEN: During the provision of support services for students with SEN, officers and specialists will involve students as appropriate. For example, when educational psychologists, speech therapists and audiologists meet with the students for assessment and intervention, students are involved in making decisions for themselves as far as their capacity allows and for their good, and their views are listened. When schools discuss support plans for students, for instance IEP or school re-entry plan due to student's long absence from schooling, the plans are worked out jointly by different parties including the students involved. To evaluate the planning and implementation as well as refining the support services, students' views will be collected by	Officers and specialists will make these known to the students and/or parents when providing the services.	On a need basis.	Students are involved in making decisions for themselves directly or jointly with other concerned persons in making the decisions.	Nil.	

	schools in various forms, such as questionnaire survey, interview, etc.							
	Special school placement and post-school placement: Subject to the readiness of the students in terms of their age, maturity and ability levels, referrers are advised to seek views of students in making the placement decision. For post-school placement, students' preference and views on career development and study plan will be collected through school personnel, such as school social workers.		EDB will share policies, measures or processes direct with the stakeholders, such as parents during meetings and talks.	On a need basis	Students' preference and views will be heard and given due weight. No information given on how.	Nil		
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English Schools Foundation	2018 Child Protection Safeguarding policy.	Yes.	Children informed in class about 'intelligent disobedience' and introduced to skills to challenge something they perceive as wrong.	On a need basis.	No information given.	No information given	Not applicable.	
	IB primary years programme (PYP): Policy to develop Learner Agency: - Students have voice, choice and ownership for their own learning. When students' have agency, the relationship between the teacher and students becomes a	No.	Through classroom teaching and learning.	Throughout the school year.	No information given.	No information given		

	- partnership. - Students with a strong sense of self-efficacy bring a stronger sense of agency to the learning community. - The learning community supports agency and fosters self-efficacy.							
	Secondary School Student membership of: - Parent Teacher - Student Associations, School Councils. - Student Led Consultations with Parents and Teachers - Student Council - Making a Difference Council - Sustainability Council - House Council - Prefect meetings - Interview panels - Catering committees	No.	Through school communications.	Ongoing.	No information given.	No information given		
	Disciplinary proceedings: For students suspected of misbehaviour, there is an opportunity to write an account of what they did, where they were, etc, which is then cross checked against other statements (verbal or written) from other students and teachers.	No.	Direct communication with student.	On a need basis.	Taken into account with other relevant information in the disciplinary process.	No information given		
	Schools provide channels to hear students: social workers, school nurse and counsellors are available for students to share their thoughts and feelings.	No.	Through school communications	On a need basis	No information given.	No information given.		
	Schools provide channels	No.	Through school communications	On a need	No information	No		
	to hear students: social workers, school nurse and counsellors are			basis	given.	information given		

	to hear students: social workers, school nurse and counsellors are available for students to share their thoughts and feelings.			basis	given.	information given	
	Teaching Staff: Students can email staff regarding any issues. Students have access to a personal tutors who they will meet regularly.	No.	Through school communications.	Students meet with personal tutors on a daily basis. There will also be the opportunity several times a year for one-to-one discussions	No information given.	No information given	
	Parent-teacher meetings: general practice to invite students to attend meeting at some point or to brief students about the meeting afterwards.	No.	School communication with the student	On a need basis.	No information given.	No information given	
	Surveys: - Well-being survey - ESF Stakeholder Survey	No.	Surveys circulated to stakeholders	Annual.	Student responses are considered when formulating improvements.	No information given	
	Development within school of guidance for students and staff on the UNCRC, supported by collaboration with child-related NGOs	Yes.	Shared within the school and with students and staff at other ESF schools.	Ongoing	No information given.	No information given.	
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				by Children		Measures or Mechanisms?	
	No specific policies to implement Article 12 in the work of the EOC	N/A	N/A	N/A	N/A	No complaints received.	N/A
Equal Opportunities Commission (EOC)	The EOC carries out its mission to all equally and specifically to children where it is relevant: for example, hearing children's views on discrimination in schools; considering complaints by child(ren) or their parents on discrimination suffered by the child(ren); hearing children's views on equality training provided to them by the EOC.	No.	EOC website and other means of communications.	Ongoing but no formal statistics kept on how often children engage with the complaints procedure or express views on equality and discrimination to the EOC.	By receiving and investigation where appropriate complaints of discrimination within the parameters of the relevant Hong Kong antidiscrimination legislation: e.g treatment of EM children, SEN children and sexual harassment.		
	Generation i: training and competition to hear secondary school students' voices on equality and diversity via multimedia.	No	Through schools.	Once.	Through competition.		
	Tally & Friends: Competition to encourage school students' storytelling based on EOC created storybook campaign on equality and diversity.	No.	Through the EOC website, schools and child-related organisations	Once.	Through competition.		
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Family Council (FC)	Since 2014: FC receives views expressed by	No.	All information regarding meetings and minutes of FC meetings are	Between February	By discussion at the Family	No complaints	Not applicable

	Children at the Children's Rights Forum (CRF) on government initiatives for reference in assessing the impact of relevant policies on families.		are uploaded to the FC website and available to the public. However, no child-friendly versions available.	2014 and June 2017, 9 items referred from the CRF to the Family Council	Council meetings.	received.	
	The Chairperson of the FC is an ex-officio member of the Children's Commission.	Yes: FC position on the UNCRC generally as a guiding principle for the Children's Commission was that the UNCRC should be understood within the context of the wider family, that rights were coupled with responsibility; and that a Western approach to individual rights may not always be appropriate in Hong Kong's mainly Chinese culture.	All information regarding meetings and minutes of FC meetings are uploaded to the FC website and available to the public. However, no child-friendly versions available.	There has been one meeting of the Children's Commission since its inception in June 2018.	No information given		
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				Mechanisms by Children		Measures or Mechanisms?	That?
Food and Health Bureau (FHB)	No child-specific policies: When formulating policies, FHB holds public consultation sessions to collect feedback from the general public as and when necessary. Generally, members of the public, including children (persons under the age of 18), are welcome to participate in these public consultation sessions and express their views to FHB.	No	The consultation sessions are opened to members of the public.	On a needs basis.	No specific measure to ensure children's views are given due weight: Feedback collected from the public, including those from children, will be considered holistically by FHB when formulating policies.	Nil	No information given on why child-specific policies in terms of participation have not been adopted.
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Home Affairs Bureau (HAB)	As the 'home' of the Family Council (FC) the HAB's input is a reiteration of the response of the Family Council. The HAB offers no other information on further policies, measures etc.						
Home Affairs Department (HAD)	Nil (see explanatory note below)	N/A	N/A	N/A	N/A	N/A	N/A
	Explanatory Note from HAD: The HAD's work of providing support services to ethnic minorities (EMs) and new arrivals from the Mainland (NAs) is to help them integrate into the community. In fact, children are not our targets as they do not have the service needs. Indeed, EM and NA children's needs for education and welfare support are under the purview of the Education Bureau and Social Welfare Department respectively. Nonetheless, HAD's support services for EMs and NAs are not relevant to the furtherance of children's rights of expression.						
Hospital Authority (HA)	The Hospital Authority (HA) is responsible for the management of public hospitals, General Outpatient Clinics and Specialist Out-patient Clinics in	No.	N/A	N/A	N/A	N/A	No explanation given. Important Note: The

Hong Kong. The HA does not have, in particular, either formal policies or informal measures or processes to implement Article 12 of the United Nations Convention on the Rights of the Child, either directly or indirectly, or to promote and implement child participation in its work.	No.	N/A	N/A	N/A	N/A	relatively newly established Hong Kong Children's Hospital (HKCH) was approached separately given its patient base is specifically children, and the response from the HKCH was “as one of the public hospitals under the management of HA, the arrangement of implementing Article 12 of the UNCRC in our hospital would follow the advice from HA Head Office. You may refer to the response given by HA Head Office for the information needed.”
	HA patients and relatives generally may contact the Patient Relations officer in each hospital to make enquiries or give feedback on services provided by the hospital or clinic concerned.					
	HKCH: Supplementary information received on follow-up enquiry: The Hong Kong Children's Hospital (HKCH) has adopted various children-centred and familyfriendly designs, facilities and services to create a non-institutional environment for a better patient experience, and to support users' care, leisure, social and learning needs. During the service planning stage (around 2013 - 2017), a series of consultation with nongovernment organizations (NGOs) and patient groups was conducted in order to achieve the above goals. Being a public hospital					

	under the Hospital Authority (HA), HKCH upholds HA's corporate value of “People-centred staff including medical professionals. The importance of having a caring heart and good twoway communication is highlighted in HKCH and we acknowledge that communication with child patients is as indispensable as with their parents in understanding and meeting their needs. HKCH would continue to engage child patients, parents, community working partners including NGOs and patient groups in providing quality medical services.					
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Immigration Department (Imnd)	<p>No formal policies and informal measures or processes solely implemented for addressing Article 12 UNCRC, the Department takes extensive practices in various aspects to enhance the rights and well-being of children in pursuance of departmental commitment of protecting children's welfare</p> <p>The wishes of the child will be considered in a parent's applications for a dependant spouse.</p> <p>Unaccompanied minors seeking non-refoulement in Hong Kong, will not be detained under the existing policy unless with strong reasons. Each case will be assessed on individual merits and they will normally be released on recognizance as soon as supervised care home facility is available.</p> <p>Law Enforcement: <i>Direction No.5 of the Rules and Directions</i> "Interrogation of Children and Young Persons".</p>	No.	No information given except noting that Rules & Directions guiding law enforcement practice are promulgated in the Government Gazette	No information given.	No information given.	No information given directly on complaints procedures. Comments and suggestions can be made via the Suggestion/Appreciation Form (ID909), calling the Customer Services Unit or writing to the Management Audit Section.	N/A.

Independent Commission Against Corruption (ICAC)	No specific policies or measures in place for the implementation of Article 12 of the UNCRC.	No.	Through the ICAC website, collaboration with schools and child-related organisations.	Ongoing.	No information given.	Nil.	N/A
	<p>Law Enforcement services and Prevention of Corruption services are available to all including persons aged under 18.</p> <p>Education: promotional and educational activities for primary and secondary school children are provided with opportunities for children to express their views and suggestions on ICAC related topics.</p>						
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Judiciary	Guardianship of Minors Ordinance, s.3.	No.	Legislation available to all on the Government website 'e-Legislation'	Required reference in every case concerning children's upbringing, custody or property.	Either through Social investigation Report compiled by a social worker and submitted to the court or through expert testimony (child psychologist etc) or, be representation of the child by a lawyer (PDSL 6; PDSL10.1) or by a guardian ad litem or by direct communication between the child and the judge	No information given.	N/A

	PDSL 5 Guidance on (Judges) Meeting Children	Yes	Available to all on the Judiciary website.	No information available on how often this PDSL has been relied upon	(PDSL5). Direct communication between the judge and the child can be requested by either the child or the judge. The child's consent to meeting the judge will be an indication of whether meeting is in best interests of the child. If the judge refuses the child's request to meet, the judge should explain their reasons to the child.	No information given.
	PDSL6 Guidance on Separate Representation for Children in Matrimonial and Family Proceedings	Yes	Available to all on the Judiciary website.	No information available on how often this PDSL has been relied upon	Where it is considered in the best interest of the child, and particularly where a child of mature years is expressing strong views on the proceedings affecting them, the Court may appoint either the Official Solicitor to represent he child or a guardian ad litem will stand as party to the	No information given.

						proceedings on the child's behalf who may then instruct a lawyer to represent the child's interests.		No information given.	
						This PDSL came into effect in February 2019.			
						Available to all on the Judiciary website.			
						Not directly but this PDSL references PDSL6 which does explicitly refer to the UNCRC Article 12.			
						PDSL10.1 Guidance Child Arrangements: Domestic Violence.			
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	Competitions designed to encourage and promote child participation in the work of the LWB. For example, video, drawing and photography competitions for secondary and primary school children.	No.	Collaboration with schools, statutory bodies including the Women's Commission and publicity on LWB website.	Various activities organised over a number of years.	By entering and entries judged the competition.		
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Legal Aid Department (LAD)	No child specific policies or measures in relation to applications for Legal Aid Department's services.	N/A	N/A	N/A	Like views from other members of the public, children's views will be considered.	Nil.	No information given regarding no child specific policies for provision of LAD core services.
	Arranging visits to the Department by children to promote children's understanding of the work and services of LAD and to enhance students' career and life planning education.	No.	Through collaboration with NGOs including the HK Jockey Club and Caritas along with collaboration with other relevant government bureaux and departments.	In 2017- 2018, LAD arranged 8 visits for local secondary students including non- Chinese speaking students.			
Leisure & Cultural Services Department (LCSD)	No specific policies regarding Art. 12 UNCRC but LCSD welcomes the views and comments from all citizens including children.	No.	Through the LCSD website; suggestion boxes at cultural venues and the 1823 service.	Ongoing.	Inclusion of customer focus and improvement of services is a core value.	Nil.	N/A
	Participation at the Children's Rights Forum (CRF) on LCSD related matters, and specifically to gather views on the new inclusive playground at Tuen Mun.	No.	Via uploading of meeting papers and minutes on the CMAB website.	On a needs basis.	LCSD attaches great importance to the views received at the CRF and has taken appropriate follow-up		

					LCSD attaches great importance to the views received at the CRF and has taken appropriate follow-up actions		
	Participation at the Subcommittee on Children's Rights at the Legislative Council on LCSD related matters and specifically on play and sports programmes and venues.	No.	Via uploading of meeting papers and minutes on the CMAB website.	On a needs basis.	LCSD attaches great importance to the views received at the Sub-committee on Children's Rights and has taken appropriate follow-up actions		
	LCSD has sought participation from children in the design and build of new playgrounds. In particular the process to create the Tuen Mun inclusive playground included children from the very beginning of the design process.	No.	Collaboration with the children rights NGO: Playright Association, with schools and with the Architectural Services Department as well through the LCSD website. More generally, for playground projects, works agents might invite children of the local community to take part in community engagement workshops	For the duration of the venue design and implementation process.	Child participation from the beginning of the project through to review of the completed project has been primarily for the Tuen Mun playground. In the Kai Tak project children were involved in selecting equipment.		
Office of the Chief Executive	information received: "This Office is unable to accede to your application for information as this information does not exist."						

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Office of the Chief Secretary (CSO)	No child -specific policies regarding children's participation in the work generally of the CSO but all members of the public, including children, are welcome to offer their views through various channels.	No.	Contact details provided on the CSO website.	No information given.	Treated in the same manner as any member of the general public.	N/A	No explanation given.
	Establishment of the Commission on Children and provision for funding schemes by the Commission for activities which should include children's participation.	Yes.	<ul style="list-style-type: none">- Children were actively consulted during the public engagement process in preparation for the establishment of the Commission through three child-specific forums.- Papers for Commission meetings are uploaded on the LWB website; members of the Commission include representatives of children rights organisations who can feedback to children on the opportunities for participation as children are not members of the Commission themselves.	<ul style="list-style-type: none">- Public forums: November 2017- February 2018.- Ongoing; one meeting held since its inception in 2018.	The Commission terms of reference state that: "The Commission promotes and promulgates children's rights as articulated in the United Nations Convention on the Rights of the Child and will engage with children on matters that affect them."		Feedback to the Commission from stakeholders has included criticism of the form adopted for the Commission and the absence of child participation in the Commission membership. However, the CSO has not provided information itself on any complaints received.

Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults?	Frequency of Reliance on or Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Office of the Official Solicitor (OSO)	OSO is not a bureau/department responsible for formulating or overseeing policies relating to Article 12 of UNCRC. OSO receives referrals from courts when it appears to a court that any child ought to be separately represented.	No.	OSO took part in the biennial review of Legal Representation Scheme for Children/Juvenile's Care or Protection Proceedings run by the Labour and Welfare Department; Before the amalgamation of various working groups concerning children matters into the present Family Court Proceedings Users Committee (FCPUC") which OSO is still a member, OSO took part in the Working Group on Children and Ancillary Relief Procedures in Family Proceedings where various topics concerning children affairs in court proceedings were discussed. Such work continues in the FCPUC. OSO provides pamphlets at its office counter as well as softcopy of information leaflet on its web site describing its work concerning minors.	Between 2014-2018 there were 61 cases of separate representation of children	When OSO represents the child, he/she will be interviewed to ascertain that he/she can express his/her views freely. Such views will be respected and included in the report prepared by OSO and presented to the requesting court	Reply: N/A	N/A.
Office of the Ombudsman	No child-specific policies but there is no restriction on the age of a complainant.	No.	Where a direct investigation is undertaken by the Ombudsman which touches on child-related matters, relevant concern groups will be contacted for their input.	No information given.	Where a complaint is made by a child or by an adult representing a child, the Ombudsman will ascertain the views of the child and obtain information as well as consent from the child as appropriate.	No information given.	No explanation offered for why no child-specific policies regarding a child's participation as either a complainant or in any other function.

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Police	All officers engaged with the Child Abuse Investigation Unit receive specialised training to equip officers to engage with abused children and to support appropriate child participation in the investigation of child abuse cases.	No.	Practical interaction with child victims and witnesses.	On a needs basis.	No information given.	No information given.	N/A
	Police officers engage with SWD policies to have support persons accompany child witnesses who are participating in the criminal justice process by giving evidence. Moreover, child witnesses are encouraged to participate by witnesses by special measures to allow them to give evidence by video link.	No.	Through the SWD and other relevant advisors to child witnesses.	On a needs basis.	No information given.	No information given.	N/A
	Police officers participate in public education and awareness programmes to inform children and thereby enhance their self-protection abilities.	No.	Through the Police Force website, collaboration with schools and child-related organisations.				

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Social Welfare Department (SWD)	A. Clinical Psychological Services						
	1. Working with children referred for psychological assessment and/or treatment Child clients are facilitated to express their views about psychological services in the course of assessment and/or treatment.	No.	Interview child clients individually and elicit their views in a child-friendly manner.	Part of day-to-day work practices of clinical psychologists	Their wish to continue or terminate psychological service is balanced against the need to safeguard their well-being.	Nil	N/A
	2. Working with children in need of protection or adoption Child victims of abuse/neglect are facilitated to share their concerns and perspectives, which are conveyed in the multi-disciplinary case conferences and case review meetings where welfare decisions are made for them.		Interview child clients individually and elicit their views in a child-friendly manner	Part of day-to-day work practices of clinical psychologists	Their views are balanced against the need to ensure their safety and wellbeing when formulating child protection plans.	Nil	
	3. Working with children in need of adoption Children being considered for adoption are facilitated to express their wishes and preferences in regard to the options available to them.		Interview child clients individually and elicit their views in a child-friendly manner	Part of day-to-day work practices of clinical psychologists	Their expressed wishes and preferences are duly considered by case social workers and their adoption plans modified accordingly.	Nil	
	4. Working with children involved in custody/access proceedings In custody/access evaluation, children's views and preferences about post-divorce arrangement		Interview child clients individually and elicit their views in a child-friendly manner	Part of day-to-day work practices of clinical psychologists	Their views are a relevant factor in assessing their best interests, especially for custody/access	Nil	

are invariably included in the psychological reports submitted to Court so that their voices can be heard by judges. Guidelines on Custody Evaluation have been updated to highlight important judicial developments, which allow greater opportunities for children's voices to be heard in family law proceedings affecting their interests, and raise colleagues' awareness of children's right to participation.				cases involving older children.		
B. Youth and Corrections Services						
SWD adopts the social work approach in providing communitybased statutory supervision and guidance for offenders through Probation Service, Community Service Orders Scheme, residential training and aftercare services. The age of criminal responsibility is 10 so that no child under the age of 10 years can be guilty of an offence. Upon receiving a referral from the court, the probation officer, who is also a registered social worker, will prepare the social enquiry report on the offender, make recommendations and provide statutory supervision and guidance for a period as ordered by the court so that the offender may be rehabilitated within the community. Views of the offender and his family	No.	Reports and records on case progress and case handling are regularly submitted to the supervising officer and/or the supervising court for scrutiny.	The measures are applicable to all cases referred by the court for probation service, community service orders scheme and reformatory school service.	Views are gathered and taken into account through the process.	Nil	N/A

member(s) will be considered throughout the process for the rehabilitation of the offender. Before making a statutory order, the court shall explain, or cause to be explained, to the offender in a language understood by him the effect of the order. In particular, for probation service, if the offender is 14 years old or above, the court shall not make the order unless he shows his willingness to comply with the requirements thereof. Besides, a copy of the order will be served to the offender by the probation officer that the requirements and conditions of the order will be explained clearly to the offender to promote his participation in the rehabilitation.						
C. Family and Child Welfare Services						
Since 2013, to fulfil the obligations under Article 37(d) of the UNCRC, the Government has commissioned the Duty Lawyer Service (DLS) to operate the Legal Representation Scheme (LRS) to provide legal representation for children and juveniles who are deprived of liberty and detained in a gazetted place of refuge under Section 34E of the Protection of Children and Juveniles Ordinance, Chapter 213. Through a representative	Reference to UNCRC Article 37 but not directly to Article 12.	The staff of the places of refuge, the Police or caseworker of the SWD notify the respective DLS Court Liaison Office for the for children and juveniles who are deprived of liberty and detained in a gazetted place of refuge. DLS duty lawyers contact and obtain the parents or guardians' consent of the children or juveniles involved to have access to LRS. With effect from 1 March 2007, LRS has been further extended to cover all such cases even without parental or guardian consent.	No relevant statistics is captured.	Under the Scheme, DLS duty lawyer are to act as the legal representatives of the children or juveniles involved in Care or Protection proceedings. Their role is to ensure that all matters and witnesses relevant to the children or juveniles' welfare are put before the court and to assist the court in	Nil	N/A

	under LRS for Children/ Juveniles involved in Care or Protection (C or P) proceedings, the child is provided with the opportunity to be heard in judicial proceedings affecting him/her. The LRS is to ensure that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.		DLS duty lawyers may visit the child/juvenile concerned on a need basis. The child or juvenile's parent(s) or guardian(s) may approach the duty probation officer to make enquiries about the provision of LRS to their child(ren).	In handling each suspected child abuse case	Throughout the process.	
	According to the "Procedural Guide for Handling Child Abuse Cases (Revised 2015)", the children's participation is encouraged and their voices will be heard at different stages in handling suspected child abuse cases including initial assessment, social investigation, multi-disciplinary case conference and application for Care or Protection Order. Their wishes and feelings will be explored and attended to in formulating follow up welfare plan.		The Procedural Guide has been uploaded onto SWD's website. Social workers will brief and prepare the child in person and relevant parties of individual case according to the child's maturity or how much the child understands.	In handling each child custody case	This is a guiding principle. Either the social worker will reflect the child's views in the report or the child's views can	Nil
	The Procedural Guidelines for Handling Child Custody Cases (for internal reference) emphasises the welfare of the child as the first and paramount importance with the guiding		Social workers will brief and prepare the child in person and relevant parties of individual case according to the child's maturity or how much the child understands. A leaflet on "Child Custody Investigation Report – Guide for			Nil

	principle that "any views expressed by the child and any factors (such as the child's maturity or level of understanding) that are considered by the FCPSU Workers to be relevant to the weight it should give to the child's views". In preparing social investigation report for the Court and handling child custody cases, FCPSU social workers would interview the children, listen to their views and reflect their views if they can give and explain to them their right to meet the Judge to indicate their views directly (according to the child's maturity or level of understanding).		Children" is published and distributed to the child in person during social investigation.		be given due weight at a direct meeting between the child and the judge.	
	<i>On child adoption:</i> (a) In accordance with the Adoption Ordinance (Chapter 290) and the Adoption Rules (Chapter 290A), having regard to the age and understanding of the infant, the children's wish and opinions must be considered in regard to local and inter-country adoption. Details of the statutory requirements are stipulated in section 8(1)(b), section 23B(2)(b), Schedule 3 "Relevant Provisions of Protection of Children and Co-operation In Respect of Intercountry Adoption" Articles 4(d) and Articles 21(1) & (2) of the Adoption Ordinance (Chapter 290); and Schedule 2 Part II point		The requirements are stated in the Ordinance for strict compliance of all related parties in regard to application for adoption. The information is accessible to the public through the government's legislation website. The caseworkers of SWD as well as three Accredited Bodies of Adoption are required to comply with the related requirements and they will take all necessary measures to inform the children or relevant adults. Training courses are organised for social workers and their supervisors. Prein different casework settings of SWD in regard to child adoption. Social workers will brief the child	For each case of application for adoption	Yes. It is statutory requirement that the related parties must comply with.	Nil

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	voice out his/her views and feelings freely.							
	<i>On residential child care services:</i> (a) In accordance with the Manual of Procedures on the Central Referral System for Residential Child Care Services (CRSRC), in arranging residential child care services for children or young persons who cannot be adequately cared for by their families because of various reasons, the responsible social workers have to involve the child and state the child's reaction in the referral form. Explanation has to be provided if the child cannot be involved in the referral process such as the child being too young, etc. Besides, caseworkers are advised to have thorough understanding of the child in arranging outof-home care for the child and among other factors, the child's preference should also be considered in deciding the choice of care placement. (b) As set out in the Manual of Procedures for Foster Care Service, during the decision making process, the view of the child's birth family and the opinion of the child should be sought, having regard to the age and understanding of the child.			The Manual of Procedures on CRSRC (including the referral form – CRSRC Form 3) and the Manual of Procedures for Foster Care Service are made available to social workers of different casework settings who work with families and children and may need to arrange out-of-home care for children in need. Training courses are organised for social workers in different case-work settings of SWD in regard to residential care and permanency planning for children. Social workers will brief the child and relevant parties of individual case according to the child's maturity or how much the child understands.	In referring the child for residential child care services	In deciding the care placement or foster service, the child's views will be given due weight.	Nil	

Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults?	Frequency of Reliance on or Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Town Planning Board (TPB)	No child-specific policies but children may make representations or comments on Town Planning draft plans and on planning applications in the same way as any other person.	No.	Information is available to all members of the public on the Town Planning Board's website and from Planning Enquiry Counters of the Planning Department.	No statistics on the rate of children's involvement in the work of the Town Planning Board have been kept.	All representations, further representations and comments from adults and children alike will be submitted to the Board for consideration.	Nil.	No explanation given for no child-specific policies.
	No child-specific policy but a general principle that all residents affected by redevelopment policies should be given an opportunity to express their views on the projects.	No.	See detail below.	On an ongoing and needs basis.	Views expressed by the public, whatever age, during consultations or assessment processes will be noted down by URA officers and incorporated into reports for the Secretary for Development and the Town Planning Board.	No information given.	No explanation given for no child-specific policies.
Urban Renewal Authority (URA)	Public consultation to hear views and suggestions: no age limit. It is also possible to make written submissions.	No.	Publication in the Gazette and for public inspection. Also public access to the consultation process as outlined by the Town Planning Board.	On an ongoing and needs basis.	Views expressed by the public, whatever age, during consultations or assessment processes will be noted down by URA officers and incorporated into reports for the Secretary for Development and the Town Planning Board.	No information given.	No explanation given for no child-specific policies.
	Public briefing sessions on planning, acquisition and compensation for owners and tenants.	No.	Invitation to affected residents.				
	Social Impact Assessment (SIA) & Freezing Survey (FS): considers matters including those affecting child residents of an urban renewal project such as educational needs, children of single-parent families. All residents affected, without age limit, are able to comment on the SIA.	No.	Invitation to affected residents.				

	Youth engagement through education and outreach: guided tours, talks and inter-school competitions.	No.	Through the URA website and social media, through collaboration with schools and community organisations and through the Urban Renewal Exploration centre.				
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Women's Commission (WoC)	No child-specific policies.	N/A	N/A	N/A	N/A	N/A	No explanation given for no child-specific policies.
	Competitions designed to encourage and promote child participation in the work of the WoC. For example, video, drawing and photography competitions for secondary and primary school children.	No.	Collaboration with schools, and government departments including the LWB and publicity on WoC website.	Various activities organised over a number of years.	By entering and entries judged the competition.	No information given.	No explanation given for no child-specific policies.
Youth Development Commission (YDC)	No response regarding child-specific, as opposed to youth specific, policies. No information given on how overlap between categories of child and youth is addressed by the YDC in its approach to its work. No definition of 'youth' provided. However, the Charter for Youth denotes a person between 15-24 years as a 'youth' and thus there would be an overlap between the UNCRC definition of child being a person under 18 years of age and the definition of 'youth' in the YDC's target audience.	No information given.	Youth engagement programme: use of multiple platforms, visits and talks.	Ongoing since late 2018.	To ensure that young people's views are taken into account during YDC deliberations, over 50% of YDC non-official members were aged between 18-35 at the tie of their first appointment in 2018. No information given on representation on the Commission of people aged between 15-18 years (assuming the definition of 'youth' is taken from the Charter	No information given.	No explanation given for no child-specific policies generally, nor in particular for no policies addressing the 'overlap category' of 15-18 year olds who are both children and youth.

					for Youth and denotes a person between 15-24 years). Feedback from the youth engagement programme is shared with YDC members.		
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Tabulated Data Set: Baseline Study on UNCRC Article 12 in Hong Kong:
Implementation by Government Departments & Statutory Bodies in Their Work.

Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults	Frequency of Reliance on or Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Consumer Council	The Consumer Culture Study Award: designed to encourage children to exchange and express their views on a wide variety of consumer issues.		Through secondary schools.	Annual	Children are given the opportunity to express their views and to enjoy the services of the Council in so far as it is appropriate to the issue at hand.	Information about complainants is not disaggregated by age.	Consumers are not distinguished on the basis of age and all are afforded the services of the Council and are heard.
	General approach to include children in Consumer Council projects, empowering children through education and fostering a positive consumer attitude at an early age.		Information available through the Council's website.	Ongoing	Due weight is given dependant on the child's age and maturity, where they are made apparent. Children are asked to discuss with an adult any advice given.	On occasions where children are involved, they are treated no differently from adults (subject to considerations of age and maturity where made apparent)	

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English Schools Foundation	2018 Child Protection Safeguarding policy.	Yes.	Children informed in class about 'intelligent disobedience' and introduced to skills to challenge something they perceive as wrong.	On a need basis.	No information given.	No information given.	Not applicable.
	IB primary years programme (PYP): Policy to develop Learner Agency: <ul style="list-style-type: none">- Students have voice, choice and ownership for their own learning.- When students' have agency, the relationship between the teacher and students becomes a partnership.- Students with a strong sense of self-efficacy bring a stronger sense of agency to the learning community.- The learning community supports agency and fosters self-efficacy.	No.	Through classroom teaching and learning.	Throughout the school year.	No information given.	No information given.	
	Secondary School Student membership of: <ul style="list-style-type: none">- Parent Teacher Student Associations,- School Councils.- Student Led Consultations with Parents and Teachers Student Council <ul style="list-style-type: none">- Making a Difference- Council- Sustainability Council- House Council	No.	Through school communications.	Ongoing.	No information given.	No information given.	

	<ul style="list-style-type: none">- House Council- Prefect meetings- Interview panels- Catering committees						
	Disciplinary proceedings: For students suspected of misbehaviour, there is an opportunity to write an account of what they did, where they were, etc, which is then cross checked against other statements (verbal or written) from other students and teachers.	No.	Direct communication with student.	On a need basis.	Taken into account with other relevant information in the disciplinary process.	No information given.	
	Schools provide channels to hear students: social workers, school nurse and counsellors are available for students to share their thoughts and feelings.	No.	Through school communications.	On a need basis.	No information given.	No information given.	
	Teaching Staff: Students can email staff regarding any issues. Students have access to a personal tutors who they will meet regularly.	No.	Through school communications.	Students meet with personal tutors on a daily basis. There will also be the opportunity several times a year for one-to-one discussions	No information given.	No information given.	
	Parent-teacher meetings: general practice to invite students to attend meeting at some point or to brief students about the meeting afterwards.	No.	School communication with the student	On a need basis.	No information given.	No information given.	
	Surveys: <ul style="list-style-type: none">- Well-being survey- ESF Stakeholder Survey	No.	Surveys circulated to stakeholders.	Annual.	Student responses are considered when formulating improvements.	No information given.	
	Development within school of guidance for students and staff on the UNCRC, supported by collaboration with	Yes.	Shared within the school and with students and staff at other ESF schools.	Ongoing	No information given.	No information given.	

	child-related NGOs						
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Equal Opportunities Commission (EOC)	No specific policies to implement Article 12 in the work of the EOC	N/A	N/A	N/A	N/A	No complaints received.	N/A
	The EOC carries out its mission to all equally and specifically to children where it is relevant: for example, hearing children's views on discrimination in schools; considering complaints by child(ren) or their parents on discrimination suffered by the child(ren); hearing children's views on equality training provided to them by the EOC.	No.	EOC website and other means of communications.	Ongoing but no formal statistics kept on how often children engage with the complaints procedure or express views on equality and discrimination to the EOC.	By receiving and investigating where appropriate complaints of discrimination within the parameters of the relevant Hong Kong anti-discrimination legislation: e.g treatment of EM children, SEN children and sexual harassment.		
	Generation i: training and competition to hear secondary school students' voices on equality and diversity via multimedia.	No	Through schools.	Once.	Through competition.		
	Tally & Friends: Competition to encourage school students' storytelling based on EOC created storybook campaign on equality and diversity.	No	Through the EOC website, schools and child-related organisations	Once.	Through competition.		

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Family Council (FC)	Since 2014: FC receives views expressed by Children at the Children's Rights Forum (CRF) on government initiatives for reference in assessing the impact of relevant policies on families.	No	All information regarding meetings and minutes of FC meetings are uploaded to the FC website and available to the public. However, no child-friendly versions available.	Between February 2014 and June 2017, 9 items referred from the CRF to the Family Council	By discussion at the Family Council meetings.	No complaints received.	Not applicable
	The Chairperson of the FC is an ex-officio member of the Children's commission.	Yes: The FC position on the UNCRC generally as a guiding principle for the Children's Commission was that the UNCRC should be understood within the context of the wider family, that rights were coupled with responsibility; and that a Western approach to individual rights may not always be appropriate in Hong Kong's mainly Chinese culture.	All information regarding meetings and minutes of FC meetings are uploaded to the FC website and available to the public. However, no child-friendly versions available.	There has been one meeting of the Children's Commission since its inception in June 2018.	No information given		

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Hospital Authority (HA)	The Hospital Authority (HA) is responsible for the management of public hospitals, General Out-patient Clinics and Specialist Out-patient Clinics in Hong Kong. The HA does not have, in particular, either formal policies or informal measures or processes to implement Article 12 of the United Nations Convention on the Rights of the Child, either directly or indirectly, or to promote and implement child participation in its work.	No.	N/A	N/A			No explanation given.
	HA patients and relatives generally may contact the Patient Relations officer in each hospital to make enquiries or give feedback on services provided by the hospital or clinic concerned.						Important Note: The relatively newly established Hong Kong Children's Hospital (HKCH) was approached separately given its patient base is specifically children, and the response from the HKCH was "as one of the public hospitals under the management of HA, the arrangement of implementing Article 12 of the UNCRC in our hospital would follow the advice from HA Head Office.

							You may refer to the response given by HA Head Office for the information needed."
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Office of the Ombudsman	No child-specific policies but there is no restriction on the age of a complainant.	No.	Where a direct investigation is undertaken by the Ombudsman which touches on child-related matters, relevant concern groups will be contacted for their input.	No information given.	Where a complaint is made by a child or by an adult representing a child, the Ombudsman will ascertain the views of the child and obtain information as well as consent from the child as appropriate.	No information given.	No explanation offered for why no child-specific policies regarding a child's participation as either a complainant or in any other function.
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Police	All officers engaged with the Child Abuse Investigation Unit receive specialised training to equip officers to engage with abused children	No.	Practical interaction with child victims and witnesses.	On a needs basis.	No information given.	No information given.	N/A

	and to support appropriate support appropriate child participation in the investigation of child abuse cases.						
	Police officers engage with SWD policies to have support persons accompany child witnesses who are participating in the criminal justice process by giving evidence. Moreover, child witnesses are encouraged to participate by witness by special measures to allow them to give evidence by video link.	No.	Through the SWD and other relevant advisors to child witnesses.				
	Police officers participate in public education and awareness programmes to inform children and thereby enhance their self-protection abilities.	No.	Through the Police Force website, collaboration with schools and child-related organisations.				

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Town Planning Board (TPB)	No child-specific policies but children may make representations or comments on Town Planning draft plans and on planning applications in the same way as any other person.	No.	Information is available to all members of the public on the Town Planning Board's website and from Planning Enquiry Counters of the Planning Department.	No statistics on the rate of children's involvement in the work of the Town Planning Board have been kept.	All representations, further representations and comments from adults and children alike will be submitted to the Board for consideration.	Nil.	No explanation given for no child-specific policies.

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Urban Renewal Authority (URA)	No child-specific policy but a general principle that all residents affected by redevelopment policies should be given an opportunity to express their views on the projects.	No.	See detail below.	On an ongoing and needs basis.	Views expressed by the public, whatever age, during consultations or assessment processes will be noted down by URA officers and incorporated into reports for the Secretary for Development and the Town Planning Board.	No information given.	No explanation given for no child-specific policies.
	Public consultation to hear views and suggestions: no age limit. It is also possible to make written submissions.	No.	Publication in the Gazette and project information made available for public inspection. Also public access to the consultation process as outlined by the Town Planning Board.				
	Public briefing sessions on planning, acquisition and compensation for owners and tenants.	No.	Invitation to affected residents.				
	Social Impact Assessment (SIA) & Freezing Survey (FS): considers matters including those affecting child residents of an urban renewal project such as educational needs, children of single-parent families. All residents affected, without age limit, are able to comment on the SIA.	No.	Invitation to affected residents.				
	Youth engagement through education and outreach: guided tours, talks and inter-school competitions.	No.	Through the URA website and social media, through collaboration with schools and community organisations and through the Urban Renewal Exploration centre.				

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Women's Commission (WoC)	No child-specific policies.	N/A	N/A	N/A	N/A	N/A	
	Competitions designed to encourage and promote child participation in the work of the WoC. For example, video, drawing and photography competitions for secondary and primary school children.	No.	Collaboration with schools, and government departments including the LWB and publicity on WoC website.	Various activities organised over a number of years.	By entering and entries judged the competition.	No information given.	No explanation given for no child-specific policies.
Youth Development Commission (YDC)	No response regarding child-specific, as opposed to youth specific, policies. No information given on how overlap between categories of child and youth is addressed by the YDC in its approach to its work. No definition of 'youth' provided. However, the Charter for Youth denotes a person between 15-24 years as a 'youth' and thus there would be an overlap between the UNCRC definition of child being a person under 18 years of age and the definition of 'youth' in the YDC's target audience.	No information given.	Youth engagement programme: use of multiple platforms, visits and talks.	Ongoing since late 2018.	To ensure that young people's views are taken into account during YDC deliberations, over 50% of YDC non-official members were aged between 18-35 at the time of their first appointment in 2018. No information given on representation on the Commission of people aged between 15-18 years (assuming the definition of 'youth' is taken from the Charter for Youth and denotes a person between 15-24 years). Feedback from the youth engagement	No information given.	No explanation given for no child-specific policies generally, nor in particular for no policies addressing the 'overlap category' of 15-18 year olds who are both children and youth.

					programme is shared with YDC members.		
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Implementation of Child Participation by Government Departments & Statutory Bodies in Their Work.

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Constitutional and Mainland Affairs Bureau	Children's Rights Forum(CRF) : The CRF was set up in 2005 to provide a channel for exchanging among NGOs that are focusing on children-related issues, children representatives and representatives from the Government views on various subjects.	No specific mention of the UNCRC in the briefing paper on establishing the CRF but reference is made to discussion of children's rights. However, the CMAB website makes specific reference to the UNCRC when explaining the role of the Children's Rights Unit as support for the CRF	Send invitation emails to relevant NGOs; and Upload agenda and papers to the CMAB website before each meeting	At least two CRF meetings were held annually from 2005 to 2018; and Until now, 34 meetings were held in total.	Inviting representatives of relevant bureaux/departments to hear the views expressed by NGOs and children representatives on the agenda items.	No complaints received in 2018	
	Children's Rights Education Funding Scheme (CREFS): The objective of the CREFS is to encourage and enable community organisations	No specific mention of the UNCRC in the briefing paper on establishing	Issue promotional collaterals of the CREFS such as posters and leaflets to different NGOs and schools by post to draw their attention.	On an annual basis	The applications received for funding are reviewed by an Assessment Committee with	No complaints received in 2018	

	to take up educational projects for raising public awareness and understanding of children's rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC).	the CREFS but reference is made to children's rights education.			the presence of Children Representatives	No complaints received in 2018	
	The "Children's Council" project sponsored by the CREFS from 2013 to 2018. Under the project, Child Councillors were able to interact with representatives of the Government, Legislative Councillors as well as other guests on different issues.	The NGO organisers of the Children's Council expressly reference the UNCRC right to participation but this is not mentioned by the sponsor, the CMAB.	See above; and through the organising NGOs.	Annual programme	The applications received for funding are reviewed by an Assessment Committee with the presence of Children Representatives	No complaints received in 2018	

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Correctional Services Department	No child -specific policies but there are multiple complaints channels within and without the correctional institution of which a child held as a 'Person In Custody' may use.	No	On arrival at the correctional institution every 'Person In Custody', whether a child or adult, is given an induction and relevant booklets on their rights and channels of complaints. Notices of rights are visible throughout the correctional institution.		Children who are 'Persons In Custody' are given the same opportunities to express their views and be heard as adult 'Persons In Custody'. These include multiple channels within and without the Correctional Institution, including CSD		The CSD is committed to providing a secure, safe, humane, decent and healthy custodial environment for Persons In Custody. All Persons in Custody are treated in the same way.

						staff, the Ombudsman, the EOC , LegCo members and other government channels.		whether they are a child or an adult
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Department of Health	Not child specific but views may be expressed by all service users to the Client Relations Officer of the Health Centre or Clinic	No	Through the individual health centre or clinic or the DH's Client Relations Unit.	Ongoing	No information received on how the information gathered from children and relevant representative adults is given due weight However, MCHC reports taking into account scientific evidence as well as views of stakeholders to ensure effective programme delivery”.	None recorded by the Client Relations Unit of the DH.	Not applicable.	
	Family Health Service (FHS): will respond to invitation or enquiries from children advocacy organisations to explain services provided by FHS to children (0-5 years) and their parents in Maternal and Child Health Centres (MCHC).		Response to enquiry: not outreach.	Ongoing				
	Student Health Service (SHS): will respond to invitation or enquiries from children advocacy organisations to explain services provided by SHS for children and adolescents (primary and secondary school).		Response to enquiry: not outreach.	Ongoing Enrolled students have an annual appointment to attend the Health Centre.				
	Department of Health (DH): Several surveys operated to collect children's views on diet, mental health and wellbeing		Through outreach to schools, thematic websites, collaboration with relevant government departments, newsletters and emails to teachers and parents.	In 2018 270 primary schools enrolled in the EatSmart				

to facilitate planning, implementation and evaluation of DH programmes.		emails to teachers and parents. For a specific programme on promotion of breastfeeding, the DH works with several child rights advocacy groups who are invited to join the Committee on Promotion of Breastfeeding.	Accreditation scheme; 1300 schools participated in Joyful Fruit Month; and 620 kindergarten and child care centres requested health promotional materials.						
	School Dental Care Service (SDCS): Client Survey to collect opinions and suggestions from students and parents.		The Client Survey is carried out twice a year.						
	Oral Health Education Unit (OHEU): Focus groups and surveys to evaluate and plan the programme (secondary school); questionnaires and suggestions forms to parents and teachers (primary and kindergarten).		No information given.						

	Department and strengthen career and life planning education. Further special outreach events organised by the Prosecutions Division to raise awareness of criminal law amongst school students.			200 secondary schools students.	the activities provided.	
	Prosecution policies relating to child victims/witnesses: No specific child-related policies but children would be included in the general category or victim, witness and vulnerable witness under the relevant Statement, Charter and Prosecution Code.	No.	The Statement on the Treatment of Victims & Witnesses Victims of Crime Charter 2007 Prosecution Code.	No information given.		
	Prosecution policies: specific provisions for prosecution of children under 16 years are given in paragraph 15 of the Prosecution Code. However, this does not make mention of the juvenile's right to participate or express a view in decisions about prosecution mode.	No.	Prosecution Code.	No information given.		
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Education Bureau	Drawing up of school rules and making of meal arrangements: Schools are reminded to work with students when	No.	The <i>School Administration Guide</i> and the relevant circular are made known to the public (including students) through the EDB website.	Schools would review the relevant rules and arrangements periodically or	Schools should strike a proper balance to the views of all stakeholders (including	Not applicable

	drawing up the school rules and making meal arrangements for the students. Details are as follows: (i) As stated in the <i>School Administration Guide</i> , school rules should be drawn up with input from all stakeholders including students. (ii) According to Education Bureau (EDB) Circular No. 17/2009 on Meal Arrangements in School, schools should work with parents, suppliers and students to monitor the provision of healthy and green lunch on an ongoing basis.			on a need basis subject to school-based circumstances.	students) and address their concerns subject to school-based circumstances.	
	Life Planning Education: EDB collects views from different stakeholders, including secondary school students, parents and school personnel on its implementation of Life Planning Education through conducting a review during the period from Aug 2017 to Feb 2019 and regular on-site visits to students' activities. The feedback and views collected will be taken into consideration for mapping ways forward.		Schools are informed of the review/ visits through letters/ emails.	In the review on Life Planning Education, about 21,000 students, among others, completed the questionnaires and 56 students attended 13 focus group interviews. On average, 50 visits to students' activities are conducted per school year.	The feedback and views collected will be taken into consideration for mapping ways forward.	Nil
	New Academic Structure		On a need basis, students would	On a need	Students' views	Nil

	<p>Review:</p> <p>Views of key stakeholders, including students are collected on a need basis. In the New Academic Structure Review conducted from 2012 to 2015, focus group interviews were conducted to collect views from, among other stakeholders, secondary students, on the senior secondary curriculum and assessment.</p> <p>Vocational and professional education and training:</p> <p>For children receiving vocational and professional education and training (mainly admitted to the Vocational Training Council (VTC) Youth College), their views on specific issues would be collected by VTC as and when necessary to enable children to exercise their rights under Article 12.</p> <p>Formulation of the policy of fine-tuning the medium of instruction (MOI) for secondary schools:</p> <p>During the formulation of the policy of fine-tuning the MOI for secondary schools in 2009, extensive consultation was</p>	<p>be invited, through schools, to attend focus group interviews to express their views on specific issues.</p>	<p>basis.</p>	<p>would be passed to the relevant bodies for consideration.</p>	
		VTC would collect the information through different means, such as questionnaires, surveys and focus group meetings, on matters relating to them	On a need basis	For children studying in the VTC Youth College, their views on specific issues would be collected by VTC as and when necessary through different means, such as questionnaires, surveys and focus group meetings, to facilitate the formulation of policies or dealing with matters relating to them.	Nil
		Information about the MOI policy has been uploaded onto the EDB website for public consumption (including students).	On a need basis	Views expressed by students were taken into consideration when formulating the MOI fine-tuning policy.	Nil

	<p>conducted to collect views from various stakeholders including school heads, teachers, educational bodies, parents, students, and the public. Students were encouraged to express their views and concerns on the way forward of the MOI policy.</p> <p>Provision of guidelines for supporting students with special educational needs (SEN):</p> <p>EDB issued guidelines for schools on suggested practices for supporting students with SEN. Some guidelines highlight the need to involve students in the planning and implementation process. For example, the <i>Operation Guide on the Whole School Approach to Integrated Education</i> advises schools to involve parents and students in the planning and delivery of support work, including devising and review of individual education plan (IEP). The <i>Special Arrangements for Internal Examinations for Students with SEN</i> advises schools to determine special examination arrangements with reference to the objectives and nature of assessment, as well as the views from all parties,</p>	<p>While the above-mentioned guidelines uploaded onto the EDB website can be accessible by the public, EDB officers will remind schools, in particular the student support team and special educational needs coordinators, during their school visits or on other occasions of facilitating students' participation and offering comments in support work. EDB will also share policies, measures or processes direct with the stakeholders, such as parents, during meetings and talks.</p>	<p>On a need basis</p>	<p>Students' views will be sought directly if necessary and due weight in making decisions in the planning and implementation.</p>	
					Nil

	including the students. Besides, EDB has set indicators for implementation of integrated education that (i) “opinions of students are sought about how a school might be improved” and (ii) “the views of students would make a difference to what happens in school” are good indicators of an inclusive school.					
	Provision of Support Services for students with SEN: During the provision of support services for students with SEN, officers and specialists will involve students as appropriate. For example, when educational psychologists, speech therapists and audiologists meet with the students for assessment and intervention, students are involved in making decisions for themselves as far as their capacity allows and for their good, and their views are listened. When schools discuss support plans for students, for instance IEP or school re-entry plan due to student’s long absence	Officers and specialists will make these known to the students and/or parents when providing the services.	On a need basis.	Students are involved in making decisions for themselves directly or jointly with other persons in making the decisions.	Nil.	

	from schooling, the plans are worked out jointly by different parties including the students involved. To evaluate the planning and implementation as well as refining the support services, students’ views will be collected by schools in various forms, such as questionnaire survey, interview, etc.					
	Special school placement and post-school placement: Subject to the readiness of the students in terms of their age, maturity and ability levels, referrers are advised to seek views of students in making the placement decision. For post-school placement, students’ preference and views on career development and study plan will be collected through school personnel, such as school social workers.	EDB will share policies, measures or processes direct with the stakeholders, such as parents during meetings and talks.	On a need basis	Students’ preference and views will be heard and given due weight. No information given on how.	Nil	

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Food and Health Bureau (FHB)	No child-specific policies: When formulating policies, FHB holds public consultation sessions to collect feedback from the general public as and when necessary. Generally, members of the public, including children (persons under the age of 18), are welcome to participate in these public consultation sessions and express their views to FHB.	No	The consultation sessions are opened to members of the public.	On a needs basis.	No specific measure to ensure children's views are given due weight: Feedback collected from the public, including those from children, will be considered holistically by FHB when formulating policies.	Nil	No information given on why child-specific policies in terms of participation have not been adopted
Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults	Frequency of Reliance on or Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Home Affairs Bureau (HAB)	As the 'home' of the Family Council (FC) the HAB's input is a reiteration of the response of the Family Council. The HAB offers no other information on further policies, measures etc.						
	However, it is not clear why when both the Secretary for Home Affairs and the Chairperson of the Family Council are ex-officio members of the Children's Commission, HAB relies upon the FC to fulfil its obligations with regard to implementing children's participation rights. Over-representation?						
Home Affairs Department (HAD)	Nil (see explanatory note below) Explanatory Note from HAD: The HAD's work of providing support services to ethnic minorities (EMs) and new arrivals from the Mainland (NAs) is to help them integrate into the community. In fact, children are not our targets as they do not have the service needs. Indeed, EM and NA children's needs for education and welfare support are under the purview of the Education Bureau and Social Welfare Department respectively. Nonetheless, HAD's support services for EMs and NAs are not relevant to the furtherance of children's rights of expression.	N/A	N/A	N/A	N/A	N/A	N/A

Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults	Frequency of Reliance on or Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	If There Are No Relevant Policies, Measures or Mechanisms, Why Is That?
Immigration Department (ImmD)	No formal policies and informal measures or processes solely implemented for addressing Article 12 UNCRC, the Department takes extensive practices in various aspects to enhance the rights and well-being of children in pursuance of departmental commitment of protecting children's welfare The wishes of the child will be considered in a parent's applications for a dependant spouse. Unaccompanied minors seeking non-refoulement in Hong Kong, will not be detained under the existing policy unless with strong	No.	No information given except noting that Rules & Directions guiding law enforcement practice are promulgated in the Government Gazette	No information given.	No information given.	No information given directly on complaints procedures. Comments and suggestions can be made via the Suggestion/Appreciation Form (ID909), calling the Customer Services Unit or writing to the Management Audit Section.	

					concerning children's upbringing, custody or property.	compiled by a social worker and submitted to the court or through expert testimony (child psychologist etc) or, be representation of the child by a lawyer (PDSL 6; PDSL10.1) or by a guardian ad litem or by direct communication between the child and the judge (PDSL5).		
PDSL 5 Guidance on (Judges) Meeting Children	Yes	Available to all on the Judiciary website.	No information available on how often this PDSL has been relied upon	Direct communication between the judge and the child can be requested by either the child or the judge. The child's consent to meeting the judge will be an indication of whether meeting is in best interests of the child. If the judge refuses the child's request to meet, the judge should explain their reasons to the child.	No information given.			
PDSL6 Guidance on Separate Representation for Children in Matrimonial and Family Proceedings	Yes	Available to all on the Judiciary website.	No information available on how often this PDSL has been relied upon	Where it is considered in the best interest of the child, and particularly where a child of mature years is expressing	No information given.			

					strong views on the proceedings affecting them, the Court may appoint either the Official Solicitor to represent he child or a guardian ad litem will stand as party to the proceedings on the child's behalf who may then instruct a lawyer to represent the child's interests.			
PDSL10.1 Guidance Child Arrangements: Domestic Violence.	Not directly but this PDSL references PDSL6 which does explicitly refer to the UNCRC Article 12.	Available to all on the Judiciary website.	This PDSL came into effect in February 2019.				No information given.	

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Labour & Welfare Bureau (LWB)	Not child-specific but all members of the public and civil society, including children and child-related organisations may take part in public consultation on LWB policy and programme formulation and implementation,	No.	Consultation with stakeholders and publicity efforts to solicit public views.	On a needs basis.	No information given.	No complaints received.	N/A
	Establishing the Children's Commission: four public engagement forums with stakeholders including children rights groups and three forums for children. Pre-school children's views were collected via kindergartens and early education networks.	No.	Consultation with stakeholders and liaison with schools and kindergartens.	Consultation period from November 2017- January 2018. Four public forums held November-December 2017. Three child forums held January - February 2018.	Inclusion of children's forums input to the Consultation Report.		
	Competitions designed to encourage and promote child participation in the work of the LWB. For example, video, drawing and photography competitions for secondary and primary school children.	No.	Collaboration with schools, statutory bodies including the Women's Commission and publicity on LWB website.	Various activities organised over a number of years.	By entering and entries judged the competition.		

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Legal Aid Department (LAD)	No child specific policies or measures in relation to applications for Legal Aid Department's services.	N/A	N/A	N/A	Like views from other members of the public, children's views will be considered.	Nil.	No information given regarding no child specific policies for provision of LAD core services.
	Arranging visits to the Department by children to promote children's understanding of the work and services of LAD and to enhance students' career and life planning education.	No.	Through collaboration with NGOs including the HK Jockey Club and Caritas along with collaboration with other relevant government bureaux and departments.	In 2017-2018, LAD arranged 8 visits for local secondary students including non-Chinese speaking students.			
	No specific policies regarding Art. 12 UNCRC but LCSD welcomes the views and comments from all citizens including children.	No.	Through the LCSD website; suggestion boxes at cultural venues and the 1823 service.	Ongoing.	Inclusion of customer focus and improvement of services is a core value.	Nil.	N/A.
	Participation at the Children's Rights Forum (CRF) on LCSD related matters, and specifically to gather views on the new inclusive playground at Tuen Mun.	No.	Via uploading of meeting papers and minutes on the CMAB website.	On a needs basis.	LCSD attaches great importance to the views received at the CRF and has taken appropriate follow-up actions		
	Participation at the Subcommittee on Children's Rights at the Legislative Council on LCSD related matters and specifically on play and sports programmes and venues.	No.	Via uploading of meeting papers and minutes on the CMAB website.	On a needs basis.	LCSD attaches great importance to the views received at the Sub-committee on Children's Rights and has taken appropriate follow-up actions		

	LCSD has sought participation from children in the design and build of new playgrounds. In particular the process to create the Tuen Mun inclusive playground included children from the very beginning of the design process.	No.	Collaboration with the children rights NGO: Playright Association, with schools and with the Architectural Services Department as well through the LCSD website. More generally, for playground projects, works agents might invite children of the local community to take part in community engagement workshops.	For the duration of the venue design and implementation process.	participation from the beginning of the project through to review of the completed project has been primarily for the Tuen Mun playground. In the Kai Tak project children were involved in selecting equipment.	
Office of the Chief Executive	Information received: "This Office is unable to accede to your application for information as this information does not exist."					

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Office of the Chief Secretary (CSO)	No child-specific policies regarding children's participation in the work generally of the CSO but all members of the public, including children, are welcome to offer their views through various channels.	No.	Contact details provided on the CSO website.	No information given.	Treated in the same manner as any member of the general public.	N/A	No explanation given.
	Establishment of the Commission on Children and provision for funding schemes by the Commission for activities which should include children's participation.	Yes.	<ul style="list-style-type: none">Children were actively consulted during the public engagement process in preparation for the establishment of the Commission through three child-specific forums.Papers for Commission meetings are uploaded on the .	<ul style="list-style-type: none">Public forums: November 2017 - February 2018.Ongoing; one	The Commission terms of reference state that: "The Commission promotes and promulgates children's rights as articulated		Feedback to the Commission from stakeholders has included criticism of the form adopted for the Commission and

			LWB website; members of the Commission include representatives of children rights organisations who can feedback to children on the opportunities for participation as children are not members of the Commission themselves.	meeting held since its inception in 2018.	in the United Nations Convention on the Rights of the Child and will engage with children on matters that affect them."		the absence of child participation in the Commission membership. However, the CSO has not provided information itself on any complaints received.
Respondent Body (Alphabetical)	Policies, Measures or Mechanisms to Implement or Promote Art.12 or Child Participation	Do Policies, Measures or Mechanisms Reference the UNCRC Explicitly?	How Are Policies, Measures or Mechanisms Made Known to Children or Relevant Adults	Frequency of Reliance on or Use of Policies, Measures or Mechanisms by Children	How are the Views of the Child(ren) Heard and Given Due Weight?	Complaints Received about Drafting or Application of Policies, Measures or Mechanisms?	Are There Any Policies, Measures or Mechanisms, Why Is That?
Office of the Official Solicitor (OSO)	OSO is not a bureau/department responsible for formulating or overseeing policies relating to Article 12 of UNCRC. OSO receives referrals from courts when it appears to a court that any child ought to be separately represented.	No.	OSO took part in the biennial review of Legal Representation Scheme for Children/Juvenile's Care or Protection Proceedings run by the Labour and Welfare Department; Before the amalgamation of various working groups concerning children matters into the present Family Court Proceedings Users Committee (FCPUC") which OSO is still a member, OSO took part in the Working Group on Children and Ancillary Relief Procedures in Family Proceedings where various topics concerning children affairs in court proceedings were discussed. Such work continues in the FCPUC. OSO provides pamphlets at its office counter as well as softcopy of information leaflet on its web site describing its work concerning minors.	Between 2014- 2018 there were 61 cases of separate representation of children.	When OSO represents the child, he/she will be interviewed to ascertain that he/she can express his/her views freely. Such views will be respected and included in the report prepared by OSO and presented to the requesting court.	Reply: N/A	N/A.

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Social Welfare Department (SWD)	A. Clinical Psychological Services						
	1. Working with children referred for psychological assessment and/or treatment Child clients are facilitated to express their views about psychological services in the course of assessment and/or treatment.	No.	Interview child clients individually and elicit their views in a child-friendly manner.	Part of day-to-day work practices of clinical psychologists	Their wish to continue or terminate psychological service is balanced against the need to safeguard their well-being.	Nil	N/A
	2. Working with children in need of protection or adoption Child victims of abuse/neglect are facilitated to share their concerns and perspectives, which are conveyed in the multi-disciplinary case conferences and case review meetings where welfare decisions are made for them.		Interview child clients individually and elicit their views in a child-friendly manner	Part of day-to-day work practices of clinical psychologists	Their views are balanced against the need to ensure their safety and wellbeing when formulating child protection plans.	Nil	
	3. Working with children in need of adoption Children being considered for adoption are facilitated to express their wishes and preferences in regard to the options available to them.		Interview child clients individually and elicit their views in a child-friendly manner	Part of day-to-day work practices of clinical psychologists	Their expressed wishes and preferences are duly considered by case social workers and their adoption plans are modified accordingly.	Nil	
	4. Working with children involved in custody/access proceedings In custody/access evaluation, children's views and preferences about post-divorce arrangement are		Interview child clients individually and elicit their views in a child-friendly manner	Part of day-to-day work practices of clinical psychologists	Their views are a relevant factor in assessing their best interests, especially for custody/access cases involving	Nil	

	invariably included in the psychological reports submitted to Court so that their voices can be heard by judges. Guidelines on Custody Evaluation have been updated to highlight important judicial developments, which allow greater opportunities for children's voices to be heard in family law proceedings affecting their interests, and raise colleagues' awareness of children's right to participation.				older children.		
B. Youth and Corrections Services							
	SWD adopts the social work approach in providing communitybased statutory supervision and guidance for offenders through Probation Service, Community Service Orders Scheme, residential training and aftercare services. The age of criminal responsibility is 10 so thatno child under the age of 10 years can be guilty of an offence. Upon receiving a referral from the court, the probation officer, who is also a registered social worker, will prepare the social enquiry report on the offender, make recommendations and provide statutory supervision and guidance for a period as ordered by the court so that the offender may be rehabilitated within the community. Views of the offender and	No.	Reports and records on case progress and case handling are regularly submitted to the supervising officer and/or the supervising court for scrutiny.	The measures are applicable to all cases referred by the court for probation service, community service orders scheme and reformatory school service.	Views are gathered and taken into account through the process.	Nil	N/A

	his family member(s) will be considered throughout the process for the rehabilitation of the offender. Before making a statutory order, the court shall explain, or cause to be explained, to the offender in a language understood by him the effect of the order. In particular, for probation service, if the offender is 14 years old or above, the court shall not make the order unless he shows his willingness to comply with the requirements thereof. Besides, a copy of the order will be served to the offender by the probation officer that the requirements and conditions of the order will be explained clearly to the offender to promote his participation in the rehabilitation.						
C. Family and Child Welfare Services							
	Since 2013, to fulfil the obligations under Article 37(d) of the UNCRC, the Government has commissioned the Duty Lawyer Service (DLS) to operate the Legal Representation Scheme (LRS) to provide legal representation for children and juveniles who are deprived of liberty and detained in a gazetted place of refuge under Section 34E of the Protection of Children and Juveniles Ordinance, Chapter 213. Through a representative under LRS for Children/Juveniles involved in Care	Reference to UNCRC Article 37 but not directly to Article 12	The staff of the places of refuge, the Police or caseworker of the SWD notify the respective DLS Court Liaison Office for the for children and juveniles who are deprived of liberty and detained in a gazetted place of refuge. DLS duty lawyers contact and obtain the parents or guardians' consent of the children or juveniles involved to have access to LRS. With effect from 1 March 2007, LRS has been further extended to cover all such cases even without parental or guardian consent. DLS duty lawyers may visit the child/juvenile concerned on a need basis. The child or juvenile's parent(s) or guardian(s) may approach the duty	No relevant statistics is captured.	Under the Scheme, DLS duty lawyer are to act as the legal representatives of the children or juveniles involved in Care or Protection proceedings. Their role is to ensure that all matters and witnesses relevant to the children or juveniles' welfare are put before the court and to assist the court in reaching a decision that	Nil	N/A

	or Protection (C or P) proceedings, the child is provided with the opportunity to be heard in judicial proceedings affecting him/her. The LRS is to ensure that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.		probation officer to make enquiries about the provision of LRS to their child(ren).		is in the children or juveniles' best interests.		
According to the "Procedural Guide for Handling Child Abuse Cases (Revised 2015)", the children's participation is encouraged and their voices will be heard at different stages in handling suspected child abuse cases including initial assessment, social investigation, multi-disciplinary case conference and application for Care or Protection Order. Their wishes and feelings will be explored and attended to in formulating follow up welfare plan.		The Procedural Guide has been uploaded onto SWD's website. Social workers will brief and prepare the child in person and relevant parties of individual case according to the child's maturity or how much the child understands.	In handling each suspected child abuse case	Throughout the process.	Nil		
The Procedural Guidelines for Handling Child Custody Cases (for internal reference) emphasises the welfare of the child as the first and paramount importance with the guiding principle that "any views expressed by the child and		Social workers will brief and prepare the child in person and relevant parties of individual case according to the child's maturity or how much the child understands. A leaflet on "Child Custody Investigation Report – Guide for Children" is published and	In handling each child custody case	This is a guiding principle. Either the social worker will reflect the child's views in the report or the child's views can be given due weight at a direct	Nil		

	any factors (such as the child's maturity or level of understanding) that are considered by the FCPSU Workers to be relevant to the weight it should give to the child's views". In preparing social investigation report for the Court and handling child custody cases, FCPSU social workers would interview the children, listen to their views and reflect their views if they can give and explain to them their right to meet the Judge to indicate their views directly (according to the child's maturity or level of understanding).		distributed to the child in person during social investigation.		meeting between the child and the judge.	
	<i>On child adoption:</i> (a) In accordance with the Adoption Ordinance (Chapter 290) and the Adoption Rules (Chapter 290A), having regard to the age and understanding of the infant, the children's wish and opinions must be considered in regard to local and inter-country adoption. Details of the statutory requirements are stipulated in section 8(1)(b), section 23B(2)(b), Schedule 3 "Relevant Provisions of Protection of Children and Co-operation In Respect of Intercountry Adoption" Articles 4(d) and Articles 21(1) & (2) of the Adoption Ordinance (Chapter 290); and Schedule 2 Part II point 11 of the Adoption Rules (Chapter 290A) with the		The requirements are stated in the Ordinance for strict compliance of all related parties in regard to application for adoption. The information is accessible to the public through the government's legislation website. The caseworkers of SWD as well as three Accredited Bodies of Adoption are required to comply with the related requirements and they will take all necessary measures to inform the children or relevant adults. Training courses are organised for social workers and their supervisors Prein different casework settings of SWD in regard to child adoption. Social workers will brief the child and relevant parties of individual case according to the child's maturity how much the child	For each case of application for adoption	Yes. It is statutory requirement that the related parties must comply with.	Nil

	gist as follows- - the adoption order if made will be in the interest of the infant, due consideration being for the purpose given to the wishes and opinion of the infant, having regard to the age and understanding of the infant; - having regard to the age and degree of maturity of the child...he or she must be counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required - the infant/child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing. (b) Apart from the Adoption Ordinance and Adoption Rules, the Procedural Guide for Pre adoption Service (May 2016) (the Guide) also specifies the requirements for the social workers to understand the infant's view to adoption as appropriate to his/her age and maturity. A thorough discussion regarding an infant's views to adoption should also be made as far as possible and he/she should be reassured that he/she can voice out his/her views and feelings freely		understands.			
	<i>On residential child :</i>					

					Nil
				In deciding the care placement or foster service, the child's views will be given due weight.	
				In referring the child for residential care services	
				The Manual of Procedures on CRSRC (including the referral form – CRSRC Form 3) and the Manual of Procedures for Foster Care Service are made available to social workers of different casework settings who work with families and children and may need to arrange out-of-home care for children in need. Training courses are organised for social workers in different casework settings of SWD in regard to residential care and permanency planning for children. Social workers will brief the child and relevant parties of individual case according to the child's maturity or how much the child understands.	
				(a) In accordance with the Manual of Procedures on the Central Referral System for Residential Child Care Services (CRSRC), in arranging residential child care services for children or young persons who cannot be adequately cared for by their families because of various reasons, the responsible social workers have to involve the child and state the child's reaction in the referral form. Explanation has to be provided if the child cannot be involved in the referral process such as the child being too young, etc. Besides, caseworkers are advised to have thorough understanding of the child in arranging out-of-home care for the child and among other factors, the child's preference should also be considered in deciding the choice of care placement. (b) As set out in the Manual of Procedures for Foster Care Service, during the decision making process, the view of the child's birth family and the opinion of the child should be sought, having regard to the age and understanding of the child.	

ACCESS TO INFORMATION REQUEST: Correctional Services Department:
SUPPLEMENTARY SHEET:

Hong Kong is a signatory to the United Nations Convention on the Rights of the Child (UNCRC).

Article 12 of the UNCRC says:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

In essence, Article 12 affords children (persons under the age of 18) the opportunity to participate in matters which affect them by expressing their views and having those views taken into account within the context of the child's age and maturity.

Questions

1. What formal policies, if any, does the Correctional Services Department have in place to implement Art.12 UNCRC, either directly (that is, a policy referring directly to Article 12) or indirectly (that is, a policy implementing the meaning of Article 12 without express reference to Article 12 or the UNCRC itself) or to promote and implement child participation in its work?
2. What informal measures or processes does the Correctional Services Department have in place which implement Art.12 either directly or indirectly or to promote and implement child participation in its work?
3. Where policies, measures or processes are in place to allow children as rights-bearers to exercise their Article 12 right to participate in the work of the Correctional Services Department, how do you make that known to children or relevant adults?
4. How often do children as Art. 12 rights-bearers make use of the policies, measures or processes which are in place?
5. Have you received any complaints about how the policies, measures or processes are drafted or applied?
6. In what other ways does the Correctional Services Department acknowledge and implement children's Article 12 right to express a view, and that view be given due weight, on matters relating to them?

7. Where there are no policies, measures or processes in place to facilitate children’s exercise of their Article 12 right in relation to the work of the Correctional Services Department, please give a brief outline of why that is?

ANNE SCULLY-JOHNSON 09.01.2019

**Specimen Interview Questions for Baseline Study on the Implementation of UNCRC
Article 12 in Hong Kong: Interviews with Individual Experts**

Dear Interviewee,

Thank you for taking part in this research study. I forward these questions to you in advance to give you some idea of what we might cover in the interview. In general, the overall aim of this study is to identify when and how the child’s Article 12 UNCRC participation right to express a view in relation to matters that affect them is implemented in Hong Kong today.

The following questions refer to the ‘professional or expert knowledge’ relating to children which you have developed during your career. For example, this may be in relation to children’s education, children’s health, children’s access to justice, child welfare, child protection, or another aspect of children’s lives.

Please consider these questions in relation to your understanding of how children’s participation is implemented in your own area(s) of expertise, either directly by laws and government policies or indirectly by programmes or measures which have been developed or adopted by stakeholders.

About Your Role

1. Can you briefly describe the objectives/main areas of your professional role/expertise and any relevant organisation in which you work? Briefly what are your specific roles and responsibilities in relation to the participation of children? In what ‘context’ would you say you most often engage with decision-making about and by children?

Overview of the HKSAR context

2. Can we start with a bit of **background** to the context of the children relevant to your work and the professional role/expertise you work in?
- Overall situation/circumstances
 - Funding and policy development
 - How services and support structures are organised

Legislation and policy frameworks

3. To your knowledge, what **legislation or regulations relevant to your professional role/expertise** are in place to guarantee that children are able to participate in matters that affect them?
4. To your knowledge, in your area(s) of expertise what **specific provisions are made within legislation and/or policies**, to guarantee the participation of: the individual child; children as a group; and specific groups/ages of children?

- 5. To what extent have these laws, policies or statutory provisions been effective in supporting the **implementation** of participation for these children?
- 6. How many of these laws, policies and provisions reference the UNCRC directly as the reason for guaranteeing the child’s right to participate? What **other drivers/prompts to child participation** exist beyond specific obligations to implement Article 12?

Structures, networks and budgets

- 7. In relation to your professional role/expertise, what **specific institutions or agencies** have you come across that are involved in promoting and implementing child participation? For example, governmental department or agency, legislative body, statutory body, other NGOs?
- 8. Do you know how that support for children’s participation is **funded**?
- 9. In relation to your professional role/expertise what **children’s organisations and networks** are you aware of that exist to promote participation for the children?
- 10. To what extent would you say these organisations have been able to interact with policy and legislation? What have been the **main barriers and enablers** for their engagement?

Standards and training

- 11. Are you aware of any **standards/quality assurances** that exist to support the development and implementation of children’s participation in the sector? For example, a ‘child-friendly information’ award?
- 12. How have these been **implemented**, and with what degree of success?
- 13. Have you been aware of any **training and support** being available for organisations and services you interact with in your professional role/expertise to help stakeholders understand and develop good standards of child friendly participation?

Developing child participation in practice

- 14. In your professional experience, in what **contexts** and for what **purpose** does children’s participation tend to occur?
- 15. At what stages in the **decision-making cycle** do children tend to be involved, and what **forms** of child participation are possible?

This table is only an aid to thinking about this question. Please feel free to answer as your experience suggests.

Stages in the cycle of decision-making on a matter which affects the child/children:	Forms of participation
	Some examples of ‘forms of child participation’ might include:
	1. Consultation with children via surveys, workshops, etc.
	2. Collaboration with children in decision making itself
	3. Enabling child led projects /research
	4. Training and recruitment of professionals to include children’s input and perspectives
	5. Producing child friendly information (e.g. children’s leaflets, results letters to children, quizzes, websites)
a. Identifying and prioritising needs	
b. Dialogue, reflection and inquiry (analysis and sense making)	
c. Policy or programme design	
d. Policy or programme implementation	
e. Giving evaluation and/or feedback	

- 16. What **structures and forums** have you come across in your professional role/expertise that support the participation of children? For example, children’s advisory panels, children’s legislative bodies, children’s councils etc.

- 17. What processes are in place to **provide feedback to and /or inform** children of the outcomes of the decision making process they have contributed to and any impact they had?
- 18. To what extent are children able to initiate and be supported in **shaping the agenda for participation** in your area(s) of expertise on their own terms?

Appraisal of participation practice

A: Effectiveness

- 19. What are the commonly accepted measures of **‘quality’** and **‘effectiveness’** for children’s participation your area(s) of expertise? How are these applied and by whom?
- 20. From your professional/expert perspective, what forms or types of ‘participation practice’ have consistently proven to be the **most effective** for children? Have any been found to be problematic or ineffective?
- 21. Are there any regionally recognised examples of children’s participation that you consider to be **good practice**?

B: Impacts and Outcomes

- 22. How successful has children’s participation been in **influencing or affecting decisions** you and others in your area(s) of professional expertise have taken about those children? What evidence is there?
- 23. Overall, what have been the main **challenges and barriers** in promoting children’s participation and fully implementing article 12 in your area(s) of expertise?
- 24. What **additional legislation or policy** is required to enable the full participation of children?
- 25. Thank you for your time. Was there **anything else** you wanted to discuss today?

Specimen Interview Questions for Baseline Study on the Implementation of UNCRC
Article 12 in Hong Kong: Interviews with the Government & Legislature

Dear Interviewee,

Thank you for taking part in this research study. I forward these questions to you in advance to give you some idea of what we might cover in the interview. In general, the overall aim of this study is to identify when and how the child’s Article 12 UNCRC participation right to express a view in relation to matters that affect them is implemented in Hong Kong today.

The following questions refer to the ‘professional or expert knowledge’ relating to children which you have developed during your career. For example, this may be in relation to children’s education, children’s health, children’s access to justice, child welfare, child protection, or another aspect of children’s lives.

Please consider these questions in relation to your understanding of how children’s participation is implemented in your own area(s) of expertise, either directly by laws and government policies or indirectly by programmes or measures which have been developed or adopted by stakeholders.

About Your Role

- 1. Can you briefly describe the objectives/main areas of your position and the organisation in which you work? Briefly do you have any specific roles and responsibilities in relation to the participation of children? In what ‘context’ would you say you most often engage with decision-making about and by children?Can we start with a bit of **background** to the context of the children relevant to your work and the professional role/expertise you work in?

Overview of the HKSAR context

- 2. Can we start with a bit of background to the context of the children relevant to your work and the professional role/expertise you work in?

Legislation and policy frameworks

- 3. To your knowledge, what **legislation or regulations relevant to your professional role/ expertise** are in place to guarantee that children are able to participate in matters that affect them?
- 4. To your knowledge, in your area(s) of expertise what **specific provisions are made within legislation and/or policies**, to guarantee the participation of: the individual child; children as a group; and specific groups/ages of children?
- 5. To what extent have these laws, policies or statutory provisions been effective in supporting the **implementation** of participation for these children?
- 6. How many of these laws, policies and provisions reference the UNCRC directly as the reason

for guaranteeing the child’s right to participate? What **other drivers/prompts to child participation** exist beyond specific obligations to implement Article 12?

Structures, networks and budgets

- 7. In relation to your responsibilities, what **specific institutions or agencies** have you come across that are involved in promoting and implementing child participation? For example, governmental department or agency, legislative body, statutory body, other NGOs?
- 8. Do you know how that support for children’s participation is **funded**?
- 9. In relation to your responsibilities what **children’s organisations and networks** are you aware of that exist to promote participation for the children?
- 10. To what extent would you say these organisations have been able to interact with policy and legislation? What have been the **main barriers and enablers** for their engagement?

Standards and training

- 11. Are you aware of any **standards/quality assurances** that exist to support the development and implementation of children’s participation in the sector? For example, a ‘child-friendly information’ award?
- 12. How have these been **implemented**, and with what degree of success?
- 13. Have you been aware of any **training and support** being available for organisations and services you interact with in your professional role/expertise to help stakeholders understand and develop good standards of child friendly participation?

Developing child participation in practice

- 14. In your experience, in what **contexts** and for what **purpose** does children’s participation tend to occur?
- 15. At what stages in the **decision-making cycle** do children tend to be involved, and what **forms** of child participation are possible?

This table is only an aid to thinking about this question. Please feel free to answer as your experience suggests.

Stages in the cycle of decision-making on a matter which affects the child/children:	Forms of participation
	Some examples of ‘forms of child participation’ might include: 1. Consultation with children via surveys, workshops, etc. 2. Collaboration with children in decision making itself 3. Enabling child led projects /research 4. Training and recruitment of professionals to include children’s input and perspectives 5. Producing child friendly information (e.g. children’s leaflets, results letters to children, quizzes, websites)
a. Identifying and prioritising needs	
b. Dialogue, reflection and inquiry (analysis and sense making)	
c. Policy or programme design	
d. Policy or programme implementation	
e. Giving evaluation and/or feedback	

- 16. What **structures and forums** have you come across in your professional role/expertise that support the participation of children? For example, children’s advisory panels, children’s legislative bodies, children’s councils etc.

17. What processes are in place to **provide feedback to and /or inform** children of the outcomes of the decision making process they have contributed to and any impact they had?
18. To what extent, in your experience, are children able to initiate and be supported in **shaping the agenda for participation** in your area(s) of expertise on their own terms?

Appraisal of participation practice

A: Effectiveness

19. What are the commonly accepted measures of **‘quality’** and **‘effectiveness’** for children’s participation in your experience? How are these applied and by whom?
20. From your perspective, what forms or types of ‘participation practice’ have consistently proven to be the **most effective** for children? Have any been found to be problematic or ineffective?
21. Are there any regionally recognised examples of children’s participation that you consider to be **good practice**?

B: Impacts and Outcomes

22. How successful has children’s participation been in **influencing or affecting decisions** you are aware have taken about those children? What evidence is there?
- Overall, what have been the main **challenges and barriers** in promoting children’s participation and fully implementing article 12 in your experience?
23. What **additional legislation or policy** might be possible enable the full participation of children?
24. Thank you for your time. Was there **anything else** you wanted to discuss today?

Specimen Interview Questions for Baseline Study on the Implementation of UNCRC Article 12 in Hong Kong: Interviews with NGOs

Dear NGO Representative,

Thank you for taking part in this research study. I forward these questions to you in advance to give you some idea of what we might cover in the interview. In general, the overall aim of this study is to identify when and how the child’s Article 12 UNCRC participation right to express a view in relation to matters that affect them is implemented in Hong Kong today.

The following questions relate to the ‘sector’ relevant to your NGO’s work. For example, this may be children’s education, children’s health, children’s access to justice, child welfare, child protection, or another aspect of children’s lives.

Please answer these questions in relation to your understanding of how children’s participation is implemented in this sector, either directly by laws and government policies or indirectly by programmes or measures which have been developed or adopted by stakeholders.

About the NGO

1. Can you briefly describe the objectives/main areas of work of your organisation, and your specific roles and responsibilities in relation to the participation of children? What ‘sector’ would you say your NGO works in?

Overview of the HKSAR context

2. Can we start with a bit of background to the context of the children you work with and the sector you work in?
- Overall situation/circumstances
 - Funding and policy development
 - How services and support structures are organised

Legislation and policy frameworks

3. To your knowledge, what **legislation or regulations relevant to your professional role/ expertise** are in place to guarantee that children are able to participate in matters that affect them?
4. To your knowledge, in your area(s) of expertise what **specific provisions are made within legislation and/or policies**, to guarantee the participation of: the individual child; children as a group; and specific groups/ages of children?
5. To what extent have these laws, policies or statutory provisions been effective in supporting the **implementation** of participation for these children?

6. How many of these laws, policies and provisions reference the UNCRC directly as the reason for guaranteeing the child’s right to participate? What **other drivers/prompts to child participation** exist beyond specific obligations to implement Article 12?

Structures, networks and budgets

7. In relation to your professional role/expertise, what **specific institutions or agencies** have you come across that are involved in promoting and implementing child participation? For example, governmental department or agency, legislative body, statutory body, other NGOs?
8. Do you know how that support for children’s participation is **funded**?
9. In relation to your professional role/expertise what **children’s organisations and networks** are you aware of that exist to promote participation for the children?
10. To what extent would you say these organisations have been able to interact with policy and legislation? What have been the **main barriers and enablers** for their engagement?

Standards and training

11. What standards exist to support the development and implementation of children’s participation in the sector?
12. How have these been **implemented**, and with what degree of success?
13. Have you been aware of any **training and support** being available for organisations and services you interact with in your professional role/expertise to help stakeholders understand and develop good standards of child friendly participation?

Developing child participation in practice

14. In your NGO experience, in what **contexts** and for what **purpose** does children’s participation tend to occur for children in this sector?
15. At what stages in the **decision-making cycle** do children tend to be involved, and what **forms** of child participation are possible?

This table is only an aid to thinking about this question. Please feel free to answer as your experience suggests.

Stages in the cycle of decision-making on a matter which affects the child/children:	Forms of participation
	Some examples of ‘forms of child participation’ might include: 1. Consultation with children via surveys, workshops, etc. 2. Collaboration with children in decision making itself 3. Enabling child led projects /research 4. Training and recruitment of professionals to include children’s input and perspectives 5. Producing child friendly information (e.g. children’s leaflets, results letters to children, quizzes, websites)
a. Identifying and prioritising needs	
b. Dialogue, reflection and inquiry (analysis and sense making)	
c. Policy or programme design	
d. Policy or programme implementation	
e. Giving evaluation and/or feedback	

16. What **structures and forums** have you come across in your professional role/expertise that support the participation of children? For example, children’s advisory panels, children’s legislative bodies, children’s councils etc.

- 17. What processes are in place to **provide feedback to and /or inform** children of the out-comes of the decision making process they have contributed to and any impact they had?
- 18. To what extent are children able to initiate and be supported in **shaping the agenda for participation** on their own terms?

Appraisal of participation practice

A: Effectiveness

- 19. What are the commonly accepted measures of ‘**quality**’ and ‘**effectiveness**’ for children’s participation in this sector? How are these applied and by whom?
- 20. From your professional/expert perspective, what forms or types of ‘participation practice’ have consistently proven to be the **most effective** for children in this sector? Have any been found to be problematic or ineffective?
- 21. Are there any regionally recognised examples of children’s participation that you consider to be **good practice**?

B: Impacts and Outcomes

- 22. How successful has children’s participation been in **influencing or affecting decisions** in this sector? What evidence is there?
- 23. Overall, what have been the main **challenges and barriers** in promoting children’s partici-pation and fully implementing article 12 in this sector?
- 24. What **additional legislation or policy** is required to enable the full participation of children in this sector?
- 25. Thank you for your time. Was there **anything else** you wanted to discuss today?

Survey No. _____

Consent Form

Title of research: Baseline Study on the Implementation of United Nations Convention on the Rights of the Child Article 12 in Hong Kong.

Name of Principal Investigator: Anne Scully-Johnson

Introduction to the research: This research project explores how Article 12 of the UNCRC is currently implemented in Hong Kong.

Purpose of the survey 調查目的: The purpose of this survey is to explore stakeholders’ aware-ness of and experience of the ways in which Article UNCRC is currently implemented within their fields of expertise in Hong Kong and to identify, where appropriate, the barriers to effec-tive implementation of Article 12.

Procedures of data collection (including methods used to ensure confidentiality of person-al and research data): With the permission of interviewees, interviews will be audio-recorded. All audio-recordings and research data will be kept in a locked, password protected computer file. All audio-recordings and research data will only be accessible by the Principal Investigator, and exceptionally the projects Research Assistants under supervision of the Principal Investiga-tor for the purposes of analysis related to the research project only. All audio-recordings and re-search data will be destroyed upon completion of the research project. Interviewees may access the interview transcript. All data will be anonymised, except with express consent otherwise.

Rights of the interviewee

The interviewee shall have the following rights:

- To terminate the survey at any time;
- To have access to his/her personal and research data; and
- To preserve confidentiality of his/her personal and research data.

I confirm that I understand my rights as an interviewee and give voluntary informedconsent to participate in the survey and to allow the use of the survey findings for the above research purpose in the form of publications and/or reports.

Signature of interviewee _____

Name of interviewee _____

Affiliation: _____

Date: _____

~ End ~

Contributing Organisations and Individuals

NB: This list is not exhaustive. Some participants exercised their option to remain entirely anonymous.

- Against Child Abuse
- Azan Marwah, Barrister, Gilt Chambers
- Children and Family Services Centre (Kowloon City), Hong Kong Society for the Protection of Children
- Constitutional and Mainland Affairs Bureau
- Consumer Council
- Correctional Services Department
- Daniel T.L. Shek, Chair Professor of Applied Social Sciences, The Hong Kong Polytechnic University and Chairman of the Family Council, Government of the HKSAR
- Dennis Ho, Partner, Ho & Ip; Chairman of the Family Law Committee of the Law Society of Hong Kong.
- Department of Health
- Department of Justice
- Education Bureau
- English Schools Foundation
- Equal Opportunities Commission
- Family Council
- Fernando Cheung, Legislative Councillor.
- Food and Health Bureau
- Home Affairs Bureau
- Home Affairs Department
- Hong Kong Children’s Hospital
- Hong Kong Family Welfare Society
- Hong Kong Police
- Hong Kong Unison Limited
- Hospital Authority
- Immigration Department
- Independent Commission Against Corruption
- Labour & Welfare Bureau
- Legal Aid Department
- Leisure & Cultural Services Department
- Office of the Chief Executive
- Office of the Chief Secretary
- Office of the Official Solicitor
- Office of the Ombudsman
- PathFinders Limited
- Plan International Hong Kong
- Playright Children’s Play Association
- Robin Egerton, Barrister, Parkside Chambers
- Social Welfare Department
- Society for Community Organization (SoCO)
- The Boys’ and Girls’ Clubs Association of Hong Kong

- The Hong Kong Council of Social Service
- The Judiciary
- Town Planning Board
- UNICEF HK Young Envoy Programme
- Urban Renewal Authority
- Winnie Chow, Partner, CRB
- Women’s Commission
- Youth Development Commission
- Yuk King LAU, PhD, RSW, Professional Consultant, Department of Social Work, The Chinese University of Hong Kong



Published by:

3/F, Western District Community Centre,
36A Western Street,
Sai Ying Pun, Hong Kong

Tel: 2324 9782

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