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## Schooling ban denies basic right

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**Cliff Buddle questions the reasoning and motives of those seeking to keep mainland abode seekers out of Hong Kong's classrooms**

WHEN THE Government wanted to mark the 10th anniversary of the United Nations Convention on the Rights of the Child last year it emblazoned 80 buses with the message: 'Let our children create a better tomorrow.'

It has become clear this week, however, that these worthy sentiments were not intended to apply to mainland-born children in Hong Kong seeking the right of abode.

The Government is banning 170 such children, aged between three and 15, from attending school. Some have been here for years, waiting for the outcome of protracted court proceedings.

They want to go to school. There are schools willing to take them. But the Government says this is not allowed. Indeed, it has suggested prosecutions may follow if the ban is breached.

But lawyers and rights activists have raised grave doubts about whether the ban is legal. It would certainly appear to go against at least the spirit of the international convention the Government was so keen to celebrate last year.

'One of the basic human rights is the right of a child to an education. Hong Kong is out of step with international human rights law,' said Paul Harris, a barrister and spokesman for the Hong Kong Human Rights Monitor.

The ban - and remarks made by senior officials supporting it - also speaks volumes about the administration's attitude towards human rights and the siege mentality it has long adopted when it comes to the right-of-abode issue.

It is difficult to grasp the legal basis upon which the Government justifies preventing these children from attending school.

A spokesman for the Security Bureau said the legal basis for the ban was Immigration Regulation No 2. This lays down conditions for people who are given permission 'to land in Hong Kong as a visitor'. One of the restrictions is that people in this position 'shall not become a student at a school, university or other educational institution'.

You do not need to be a lawyer to see that this cannot easily be applied to the children concerned. They are not here as visitors. So far as the Government is concerned, they are either illegal immigrants or overstayers. They have been allowed to remain here while their status is determined.

'It definitely does not apply to them,' said solicitor William Clarke, a veteran of abode battles. 'It is referring to people who have a chop in their travel document saying 'you are a visitor'.'

The regulation is also expressed in mandatory terms. The words 'shall not' are used, apparently leaving no room for flexibility. If it applies to children fighting for the right of abode, how is it that the Government has permitted some in this category to attend school, but not others?

According to the Security Bureau spokesman, it was decided to deny such children access to schooling in March last year, when the Government considered court rulings had made the right of abode situation clearer. This further suggests the apparently rigid immigration regulation does not apply.

The ban is also enforced through an Education Department circular that tells schools they cannot grant places to such children without permission from both the Director of Education and Director of Immigration. This was introduced in August.

A spokesman for the Education Department said the circular was intended to inform schools of government policy.

'We have to look into the matter case by case. We expect the school to follow what we have said. If they do not, we will negotiate,' he added. But he declined to say what powers the department had to enforce the policy if, even after negotiation, schools refused to apply them.

'They are using the Education Department to enforce immigration policy,' said Audrey Eu Yuet-mee, SC, a barrister and legislator. 'While these children are in Hong Kong you cannot deny them education, even for one day. I would have thought it is the duty of the Secretary for Education and Manpower to provide them with schooling. It is not her duty to implement immigration control.'

Even if the ban can be supported under Hong Kong law, it is arguable it breaches international agreements. There has long been international recognition of the need to protect children and to provide them with an environment in which they can develop.

'Mankind owes to the child the best that it has to give,' said the first Declaration on the Rights of the Child, delivered by the League of Nations in 1924.

These principles were developed over the years and laid down in the UN Convention on the Rights of the Child, which Hong Kong has signed and ratified. According to the convention: 'State parties recognise the right of the child to education.' It adds with a view to achieving this right progressively and on the basis of equal opportunity, primary education should be made compulsory and available free to all. Secondary education is to be made available to every child.

Dr Lyal Sungar, an international law expert at the University of Hong Kong, said this applied to all children. 'When they say free to all, they mean free to everyone in your jurisdiction, because children cannot control where they are,' he said.

The Government has claimed the convention does not apply to Hong Kong in this respect because it has a get-out clause in relation to immigration matters.

But there is a question mark over whether the ban is an immigration matter, or simply one concerning education.

'I don't see how this comes into it at all. It only applies to people who want to come here. These children are physically here,' Ms Eu said.

Doubts about the legality of the ban have led to speculation about the motives of the Government in seeking to enforce it.

Secretary for Justice Elsie Leung Oi-sie has said it would not be practical to allow the children to attend school. Secretary for Security Regina Ip Lau Suk-yea claimed to do so would encourage other abode seekers to flood across the border.

Doubts have been raised about both arguments. Barrister and legislator Margaret Ng Ngoi-yea said: 'What it suggests to me is that they want to make their stay in Hong Kong as tough as possible, without imprisoning them. They want to encourage them to go back to the mainland.'

She branded claims that giving them places would strain resources as 'ludicrous', given the relatively small number involved. 'Is it really a sin for them to want to assert their rights?' Ms Ng said.

Mr Clarke suggests another reason why the Government may want to enforce the ban. Some of the children concerned have been adopted by Hong Kong residents and are hoping to be allowed to stay on humanitarian grounds.

One adopted child, Agnes Tam Nga-yin, 14, was recently granted a one-way permit by mainland authorities. She had been allowed to attend school in Hong Kong during her battle and her academic achievements together with support from classmates helped win sympathy from local people.

'I think they [the Government] are trying to prevent that from happening again,' Mr Clarke said.

For many of the children, the issue of whether they can stay in Hong Kong will be determined soon. A ruling by the Court of Final Appeal involving more than 5,000 abode seekers is pending.

But it may take a new court case - to challenge the education ban - if they are to be allowed to attend school while waiting.

Cliff Buddle edits the Post's opinion pages

**Topics:** Regina Ip

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