

SOCIETY FOR COMMUNITY ORGANIZATION

HONG KONG HUMAN RIGHTS COMMISSION

**VOICES OF THE RIGHTS OF
ASYLUM SEEKERS AND REFUGEES**

**Refugee children no right
to education**

**Submission to the
LegCo Panel on Home Affairs, Hong Kong SAR**

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Introduction

SoCO and HKHRC would like to urgently draw the attention of the Panel on Home Affairs to the fates of children of refugee and asylum seekers in Hong Kong. Although most Vietnamese refugees have been resettled, there are still many asylum seekers from other countries. As for the asylum seeking children, they are mainly from West African countries, the Great Lakes region, East and Horn of African and Asia.

While China and Macao have already ratified the Convention Relating to the Status of Refugees, which now already have 145 States Parties, the Convention has not yet been extended to Hong Kong. The lack of any refugee law means that asylum seekers are **left without any basic means of living, including food and shelter and no adequate protection against refoulement for refugee and asylum seeking children.**

In the concluding observations of the Committee on the Rights of the Child considering the second periodic report of China CRC/C/15/Add.271), the Committee notes that refugee children and undocumented migrant children are not guaranteed access to education. In paragraph 82, it recommends that the government should:

"Amend legislation and regulations to ensure that all refugee, asylum seeking or undocumented migrant children in the Hong Kong Special Administrative Region are able to attend school without undue delays."

It further is concerned about the persistence of discrimination against refugee, asylum-seeking and undocumented migrant children in Hong Kong SAR.

In the concluding observations of the Committee on Economic Social and Cultural Rights (E/C.12/1/Add.107) May 2005, the Committee expressed concern "that HKSAR lacks a clear asylum policy and that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of the HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction."

The Committee has recommended that the **"HKSAR reconsider its position regarding the extension of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to its territorial jurisdiction, and that it strengthen its cooperation with UNHCR, in particular, in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination."**

Since UNHCR has limited funding and may not stay in Hong Kong for a long time, the government should set up its own mechanism to protect the rights of asylum seekers. The appalling conditions must be changed immediately, and we urge the Panel on Home Affairs to seriously criticize the government for the abhorrent denial of the rights of the child.

Number of refugees and asylum seekers

By May 2005 there were 57 children in Hong Kong, of which 18 are refugee children and 39 are asylum-seeking children. The breakdown of the asylum seeking children are as follows: There are 18 children aged 0-4, and 21 children are aged 5-17. Among the asylum seekers there are 14 unaccompanied minors. At the moment there is a total of around 900 asylum applications from adults and children being processed by the UNHCR.

Children left without any education

Asylum seeker children are not eligible to study in the public schools in Hong Kong given their illegal status. The Government does not recognize the right to education of these children migrants. There is a lack of a clear policy or guidelines to offer school placements to these children. The Education Department will not offer school placements to these children unless their eligibility has been confirmed by the Director of Immigration. However, such applications are dealt with on a case-by-case basis at the discretion of the Director of Immigration. At the moment there are only few asylum seeker children who have been able to gain access to education. Access to public education should be made available to all children asylum seekers and refugees, taking into consideration the language and culture of the children.

No food or shelter

The lack of any policies to deal with the various problems met by asylum seekers means that government does not support asylum seekers in any way. Social security or special funds are not available. Thus many asylum seekers are homeless, living on the street. Others who are lucky may be able to seek shelter temporarily at churches. Those who do find accommodation, live in cramped conditions, often without air-conditioning. There are no hostels that accept asylum seekers because of their lack of any Hong Kong Identity Cards. At the same time, because the government does not recognize the status of asylum seekers, staying illegally in Hong Kong means that some are in detention while waiting for their status determination by UNHCR.

The government has left it to the UNHCR to support asylum seekers and refugees. However, because of limited funding, asylum seekers are not eligible for any support from the UNHCR except in special cases, which involve children or single women. However, when an asylum application has been rejected, the financial support stops immediately from the UNHCR, also even if the asylum seeker seeks asylum under the Convention Against Torture. So far the government has not provided any support.

No valid identity papers

At the moment refugee and asylum seeking children are basically illegal overstayers when their visas expire. In most cases they receive a “recognizance” letter from the Immigration Department. However this letter is no less than recognition by the HKSAR that the refugee is an offender for overstaying and enjoys no rights. Although carrying the recognizance letter, the immigration department may still charge them for overstay. Thus this stance essentially amounts to non-recognition, which is against all international humanitarian standards.

No medical assistance

So far it is the UNHCR, which carries the costs of psychiatric and medical care for refugee children and those seeking asylum. However, as UNHCR may not maintain its presence in Hong Kong for an extended period of time, it is important that the government faces its responsibility to assist these groups.

Birth registration problems

Registration for new-borns of asylum seekers and refugees has been complicated for asylum seekers and refugees, because they have no legal existence in Hong Kong. Especially for parents who have no legal papers to prove their identity (some arrive in Hong Kong without a passport) have had problems with registration. The government should have a procedure for registering the birth of children of asylum seekers and refugees.

No stay on humanitarian grounds

At the moment there are no procedures in place to assess the need of rejected asylum seeker children for protection other than refugee protection, and determine his/her best interest, i.e. stay on humanitarian grounds or return after care in the country of origin is guaranteed.

Recommendations

- 1. To enact a refugee law and establish an asylum mechanism which can benefit and offer adequate protection against refoulement for refugee children and children seeking asylum.**
- 2. To extend the 1951 Convention Relating to the Status of Refugees to the HKSAR.**
- 3. To provide valid identity papers to children of refugees and asylum seekers.**
- 4. To immediately assist asylum seekers and refugees with food and shelter and medical assistance.**
- 5. To provide public education to children of asylum seekers, refugees and torture claimants.**
- 6. To include the principle of stay on humanitarian grounds in refugee legislation.**

Appendix

Letter from 16 year old refugee

I am from Africa and I am 16 years old. I have lived in Hong Kong for 3 months. I am a refugee but I don't go to school. That is my problem. I feel my future is done, because I have no school, no job and no family here. I want some help from the government. My future is not good, because I am 16, but I have nothing. All I do is wake up and sleep. That is no good. If I could go to school, then that would be good. I want the government to give me school, because I want a future, I want to learn more. I have problems. I studied in a private school for only 6 months because there are problems in my country. In my country I didn't have money, so I had to stop going to school. I can't go back to my country. Please help me.

Anonymous.

Letter from 17 year old asylum seeker

I am from Asia. I came to Hong Kong 10 months ago. I am 17 years old and I am waiting for a UNHCR decision on my case. I am an asylum seeker and don't have any immigration visa. Often I don't go out because sometimes the police will check me. I cannot do anything. Before, Hong Kong people were also refugees, but even so they don't help us now. I cannot do anything in my spare time. Before, in my country I studied for 11 years. Now, my life is wasted. I am thinking about my future. Before, I was studying everyday, but now I am doing nothing. I want to learn computer studies or mechanics. And I want an immigration visa. Every day I go to the library and the park. Everyday I do like this. I can't go back to my country. I would like to ask the Hong Kong government to please help me.

Anonymous.

Letter from 19 year old torture claimant

To the HK government

I am from Africa. I came last year 2004 to Hong Kong with my parents to apply for refugee status in 2004. After 9 months United Nations closed our case. Now we are living a bad life in Hong Kong and no one is supporting us with financial assistance. I need help from the Hong Kong government to let me go to school. I am 19 years old. I have three brothers and one sister. The Hong Kong government allows my brothers and sister to go to school, but they didn't allow me because I'm 19 years old. I need help from the Hong Kong government. I came to Hong Kong when I was 18 years old. I escaped my home because our government doesn't accept my nationality. I cannot go back to my home because our government will kill me.

Please, I need help from the Hong Kong government.

Thank you

Anonymous

Letter from 17 year old asylum seeker

I am 17 years old and I am from Africa. I left my country because of war. I request help from the Hong Kong government, to help me find work or school. I really need help from the Hong Kong government. If it is possible the Hong Kong government should allow me to go to another country. The government should screen my asylum case, because I have been waiting long for the UNHCR to screen my case. There is no result, no answer. I need to know about my future. Everyday is just eating, sleeping, and walking in the part. Please, I would like to ask the government to provide schooling for me.

Anonymous