

Joint Submission to Subcommittee on Children's Rights  
Meeting on 24 July 2017

**Re: Rights of refugee children**

**Introduction**

1. This submission is made on behalf of an alliance of child welfare organizations, social workers, individuals and child law practitioners and experts. It represents our collective, considered views and is a product of our experience working for and on behalf of the children of the refugee, non-refoulement and asylum-seeker community in Hong Kong (hereinafter 'refugee children').
2. Refugee children are children, and as such entitled – morally and legally – to our protection: see Article 20 of the Hong Kong Bill of Rights. In particular, there is a special need and duty to protect refugee children because of their peculiar vulnerability. Most refugee children will belong to ethnic and linguistic minorities, exposing them to a higher risk of public and private discrimination. Most will have limited family and social support, and will therefore be in greater need of public support. Many will have been traumatized by removal from their homes and families in the countries of origin.
3. The Subcommittee will note the history of refugee children being subject to persistent discrimination and denial of basic and fundamental rights in Hong Kong.<sup>1</sup> Therefore, the Subcommittee is right to be concerned about the current welfare of refugee children.
4. This submission will address three areas of immediate and special concern to refugee children:
  - i. Infant Care;
  - ii. Medical Care; and
  - iii. Education and Schooling.

**Infant Care**

5. The Convention on the Rights of the Child (CRC) guarantees every child from birth the right to protection and care that is necessary for his or her well being

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<sup>1</sup> We refer to the Concluding Observations of the UN Committee against Torture (UNCAT) CAT/C/HKG/CO/4 (January 19, 2009); the UN Committee on the Rights of the Child (UNCRC) CRC/C/CHN/CO/3-4 (October 29, 2013); and the UN Committee on Economic, Social and Cultural Rights (UNCESCR) E/C.12/CHN/CO/2 (June 13, 2014).

(Article 3). Each child has the right to be registered immediately after birth and the right to acquire a nationality. The government should ensure the implementation of these rights in particular where the child would otherwise be stateless (Article 7).

6. Care for infants and toddlers is especially time sensitive. It is important for the government to ensure that such resources are accessible for the refugee families in Hong Kong. The HKSAR is obliged under the Convention to ensure refugee infants and toddlers have access to necessary care.

#### Infant Care: Concerns

7. Regrettably, refugee children in Hong Kong are not receiving adequate care in their earlier years:

- a. **Lengthy wait before access to humanitarian welfare assistance:**

Without proof of birth registration, many public services are harder to obtain. Local newborns usually obtain their birth certificate within ten days. However, it takes *up to 4-6 weeks* for refugee babies to have their births registered. Only after receiving this certificate can parents include their child's information in their claim for non-refoulement protection at the Hong Kong Immigration Department, and only when this application is approved can they register their newborn to receive humanitarian welfare assistance from a government-contracted agency. This whole process can take up to 2 months, meanwhile basic needs of infants remains a huge financial burden for the parents.

- b. **Inadequate access to diapers**

Refugee babies and toddlers receive only two reusable washable diapers as part of their assistance package. However, lacking facilities to wash and dry cloth nappies remains a concern for hygiene. Due to limited housing support, many families live in small and very cramped, unventilated and ill-equipped rooms. There is no additional subsidy for parents to buy diapers in the supermarket.

- c. **Additional expenses on infants and toddlers care**

Currently the government does not provide extra financial assistance for family with infants and toddlers. However, baby products such as milk bottles, baby food, baby clothes and strollers are costly in Hong Kong. There are also extra expenses on transportation to-and-from the maternal and child health centre and other healthcare expenses. These are expenses that refugee parents are simply unable to afford.

### Infant Care: Recommendations

8. We recommend that the Administration take the following action to remedy some of the difficulties faced by infant refugee children:
  - a. **Distribute free disposable diapers for refugee infants** – Two reusable cloth diapers is not realistic or feasible for newborn infants, especially with the living situations that many refugees face. Providing free disposable diapers to all refugee infants is not only a hygienic solution but one that benefits the family as a whole.
  - b. **Streamline administration procedure to ensure timely access of infant and toddler care** – The process for obtaining immigration status should be streamlined for infants and toddlers as their need for resources is especially time-sensitive.
  - c. **Additional financial support for refugee parents with children under age 3** – The Administration should immediately increase the amount of financial support for infants and toddlers. This would have an immediate positive effect on their care.

### Medical Care

9. Health is a fundamental human right and it is enshrined in the CRC:

*“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services” (article 24.1).*
10. In Hong Kong, refugee children are entitled to access needed healthcare services at public hospitals and clinics (managed by the Hospital Authority and the Department of Health), for which the charges can be waived by applying for a medical waiver through Medical Social Workers (at the Hospital Authority) or Social Workers at Integrated Family Service Centres (IFSC) (at the Social Welfare Department).

### Medical Care: Concerns

11. Unfortunately, there are often practical and administrative barriers that prevent the full enjoyment of these rights by refugee children:
  - a. Some refugee children are in need of regular medical appointments. However, neither these children nor their parents are given additional transport allowance from International Social Services (ISS) to support

their journeys to and from hospitals and clinics. The practical result is that children and parents must choose between eating and essential medical treatment.

- b. The Hospital Authority clinics and hospitals require a separate medical waiver to be applied for every medical appointment before receiving treatment. This presents an undue additional difficulty for refugee children, who have to attend school, and their parents. It can lead to delay in receiving treatment, to the detriment of the children.
- c. Free dental care is currently provided to schoolchildren up to primary six. However, children in secondary school have no access to dental care (apart from extraction) and some of these children have suffered from dental pain so severe that they are unable to attend school. Unlike many other families, the families of refugee children do not have the resources to pay for private dental care. Public dental clinics (managed by the Department of Health) only provide emergency dental service (limited to pain relief and extraction of one tooth only) and limited quota are given on a first-come-first-served basis.
- d. Although refugee school children receive eye check up every year through the Student Health Service (managed by the Department of Health), there is no subsequent support for refugee children to obtain eyeglasses should it be required.
- e. Public hospital and clinic staff are often not aware of the rights and entitlements of refugee children in accessing healthcare services in Hong Kong, hence refugee children are often turned away at hospitals and clinics when the staff asked the parents to pay but the parents are unable to do so; alternatively refugee children are asked by staff to attend private medical services instead of using public services.
- f. Parents of refugee children have expressed that their children who were born in their home countries suffered from discrimination by public hospital staff, as compared to their children who were born in Hong Kong.
- g. There is currently a complete absence of publicly-funded rehabilitation services for child victims of torture, which includes legal, medical, psychological and welfare services. The right to rehabilitate is recognised in both Convention Against Torture (CAT) and the CRC and is fundamental to the recovery of children to allow healthy and safe development into adulthood. The right to rehabilitation is fundamental to CAT and the Committee specifically in respect of children has said, “*States parties shall establish a system to oversee,*

*monitor, evaluate, and report on their provision of redress measures and necessary rehabilitation services to victims of torture or ill-treatment. Accordingly, States parties should include in their reports to the Committee data disaggregated by age, gender, nationality, and other key factors regarding redress measures afforded to victims of torture or ill-treatment, in order to meet their obligation as recalled in General Comment 2 to provide continual evaluation of their efforts to provide redress to victims.*<sup>2</sup>

- h. Moreover, many refugee children have experienced trauma by torture or persecution. There have been calls made by lawmakers to set up detention camps for asylum seekers and refugees. It has been found by research that detention is not a place where unaccompanied children are able to recover from past trauma.<sup>3</sup> A 19-year-old asylum seeker in Hong Kong has recently said in a media interview that he will jump into the Victoria Harbour and kill himself if he is to be put in a detention camp.<sup>4</sup> Detaining unaccompanied children may therefore violate Article 39 of the CRC, which provides that States shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.<sup>5</sup> Furthermore, prolonged detention may cause serious mental harm to children and amount to cruel, inhumane and degrading treatment, violating Article 37(a) of the CRC.<sup>6</sup> The practice of detaining refugee and asylum-seeking children of the Hong Kong Administration has been specifically cited and criticized by the CRC.<sup>7</sup>

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<sup>2</sup> Committee against Torture, General Comment No. 2 “Implementation of Article 2 by States Parties” (CAT/C/GC/2), 2008, para 45.

<sup>3</sup> See Australian Human Rights Commission, “The Forgotten Children: National Inquiry into Children in Immigration Detention”, 2014, page 34, available at: [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf)

<sup>4</sup>梁銘恩, “政黨倡住禁閉營 也門難民寧跳維港死”, Apple Daily, 11 June 2017, available at: <http://hk.apple.nextmedia.com/news/art/20170611/20052129>

<sup>5</sup> Australian Human Rights Commission, “The Forgotten Children”, p.34.

<sup>6</sup> See for example Human Rights and Equal Opportunity Commission of Australia, “A Last Resort? National Inquiry into Children in Immigration Detention”, April 2004, page 431, available at:

[https://www.humanrights.gov.au/sites/default/files/document/publication/alr\\_complete.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf)

<sup>7</sup> See CRC/C/CHN/CO/3-4 (October 29, 2013) at paras 82 and 84.

## Medical Care: Recommendations

12. Many of our concerns can be addressed immediately by administrative measures without need for further law reform. Accordingly, we make the following recommendations to the Administration:
  - a. Provide additional transport allowance through ISS to refugee children and their parents who have regular medical follow up appointments at public hospitals and clinics.
  - b. Issue renewable half-year medical waivers (instead of current one-off medical waivers) to refugee children for accessing healthcare services at the Hospital Authority and the Department of Health.
  - c. Provide grants to refugee children to cover costs of dental treatment (for children above primary six) and eye-glasses, by taking the Comprehensive Social Security Assistance's (CSSA) "Medical and rehabilitation grants" as a reference.
  - d. Strengthen training to frontline staff of public hospitals and clinics (the Hospital Authority and the Department of Health) about the policies and procedures of medical service provision to refugee children and families.
  - e. Enhance cultural competence of frontline staff of public hospitals and clinics (the Hospital Authority and the Department of Health) towards refugee children and families, such as awareness of female genital mutilation (FGM).
  - f. We urge the Security Bureau not to introduce detention camps for asylum seekers and refugees, especially not for children. The Bureau should ensure that any detention of children is in conformity of the law and only used as a means of last resort for the shortest appropriate period of time.
  - g. We ask the Hong Kong Government to follow the technical guidance given by both the Committee on the Rights of the Child and the Committee against Torture specifically addressing the rights and responsibilities of asylum-seeking children and children who are victims of torture within the CRC and the CAT. In particular, acknowledging in existing and future policy that the definition of

‘victim’ under the latter convention covers children born in Hong Kong whose parents were victims of torture.<sup>8</sup>

13. We would also call upon the Administration to take further steps for the welfare of children with special needs or in need of additional support:
  - a. Medical care for ASN (Additional support need) Children should be extended to refugee children; and
  - b. Special education schools should also provide English teacher or English learning environment.

### **Education and Schooling**

14. Refugee children are protected in Hong Kong under obligations set by the CRC. They are entitled to access to education as a fundamental human right. The Subcommittee is referred to Articles 19(1), 23(3) and (4), 24(2), 28 and 29. Those rights include the right to primary, secondary and higher education.
15. This protection should ensure that refugee children are able to access education, as well as governmental assistance if their parents are unable to provide appropriate care. Refugee children can, like all Hong Kong children, achieve the highest levels of educational attainment, if they are properly supported and resourced. Though the HKSARG gives refugee children permission to attend school on case-by-case basis, the community faces significant challenges in accessing this provision due to their immigration status, ethnicity, language and economic abilities.

### **Education and Schooling: Concerns**

16. In practice, many refugee children face obstacles to equal access to education including:
  - a. **Uniforms** – For refugee children to integrate successfully, it is essential that they have a suitable selection of required uniforms. Quite naturally, money for such uniforms is very hard to come by for an asylum seeker/refugee parent. As a result, they are a higher risk of discrimination and social exclusion.
  - b. **School Trips** – Another hardship faced by refugee children is having to forego school trips because a modest fee is required.

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<sup>8</sup> UNCAT, General Comment No. 2 “Implementation of Article 2 by States Parties” (CAT/C/GC/2), 2008, para 45; and UNCRC General Comment No. 6 “Treatment of Unaccompanied and Separated Children Outside their Country of Origin” (CRC/GC/6), 2005.

- c. **International Educational Opportunities** – A similar problem that arises is the inability of refugee children to travel with their peers internationally to take part in international competitions or inter-school events, even if resources can be found. Refugee children who have been selected or invited to represent their schools in international competitions, workshops, conferences, and other learning or personal development opportunities are unable to participate as the Hong Kong Immigration Department does not presently allow non-refoulement claimants to leave the country with the guarantee that they would be able to return to Hong Kong and continue their protection claim. There were cases that a refugee child won the interschool competition and was offered a chance to compete with schools in Japan, as well as refugee children who were outstanding in academics that they were offered trainings in Singapore and mainland China. However, these opportunities dismissed because of their status.
- d. **Nursery & Kindergarten Education** – Unlike many Hong Kong children, refugee children have no independent means to afford nursery education. Early years education is essential for success and development. In particular, depriving refugee children of access to nursery education deprives them of essential early access to a Cantonese language environment – permanently handicapping their education and integration in Hong Kong.

As of 2017, refugee children are eligible to apply to the Kindergarten and Child Care Centre Fee Remission Scheme offered by the Student Finance Office (SFO). However, this assistance takes at least three months to process, meaning refugee parents—who have no right to earn an income—are required to make initial payments to the school at the start of the school year without knowing whether or not their applications will be approved.

- e. **Primary and Secondary Education** – Refugee children are entitled to 12 years' free admission in publicly funded primary and secondary schools. They are also eligible to apply for Financial Assistance Schemes from the SFO, which *partially* covers textbook, travel expenses and Internet access fees. As with kindergartens, assistance through the SFO takes several months beyond the start of the school year to process, meaning refugee parents—who have no right to earn an income—are required to make initial payments to the school at the start of the school year with only an assumption that their applications will be approved.

In addition to the assistance provided by SFO, significant gaps remain to finance school-related items not covered by the financial schemes,



such as uniforms, shoes, stationary, school bags, activity fees, administrative fees, etc. These constitute a significant financial burden on families that are already living at the brink of destitution. While some non-governmental organizations, churches and philanthropic foundations have offered small scholarships or tangible assistance to fill these gaps, their highly limited resources mean that only a few refugee children have full and equal access to education as their peers. This could mean that there might be children missing-out on accessing education.

- f. **Lengthy period for receiving permission to study and school allotment** – Despite having the intention to claim asylum, refugee children who entered on valid visas must first wait for their visas to expire before filing non-refoulement claims for protection. This period for some can be as long as 3 months from point of arrival. Following this, prospective students are required to file applications for permission to study and school allotment from the Immigration Department and the Education Bureau. This process may take a further 6 months, meaning children are left without any access to education during this period, significantly putting them behind their peers.
- g. **Lack of awareness among frontline staff in schools** – Teachers and school staff are more often than not ill-equipped to work with refugee children. This lack of awareness has led to refugee children being humiliated and bullied, for example, when they are asked in front of their class why they are not able to attend a field trip, why they are not eligible for HK Identity Cards, or not able to pay school fees. Also, the Hong Kong Immigration Department requires that recognizance holders, including children, must report to immigration every few weeks, often during school hours. These mandatory meetings cause children to skip class and experience embarrassment from other classmates and school staff.
- h. **Language Support** – Most schools are also ill-equipped, and do not have systems in place to work with children from non-Chinese and non-English speaking backgrounds, regardless whether they are refugees, immigrants, or Hong Kong ethnic minorities. For instance, many schools serving these children do not provide interpretation services for communicating with parents. This often times results in relying on the children themselves to translate, which can be unreliable and unprofessional depending on the subject matter.
- i. **Risk of Deportation** – There is a persistent problem of refugee children being deported during school terms. This can cause high stress

and anxiety to children, who may be detained pending deportation, and devastating to their educational development.

- j. **Higher Education** – Although many refugee children are capable of attending university, they are not able to do so because of total lack of financial resources. Most publicly available scholarships or loan grant programs have status requirements that make refugee children ineligible.<sup>9</sup> This is unfair and a direct breach of the Administration’s duties under CRC Article 28(1)(d).
17. A sense of hopelessness overwhelms refugee children after graduation from secondary school because there is only an empty future ahead – with no job and prospects for continuing education. As children draw closer to the end of their secondary education, we note a troubling decrease in their motivation and desire to do well in school due to a lack of future prospects. Some even opt to quit school prematurely for this reason, seeing no point to continue.
  18. Moreover, the lack of future prospect for their children means that refugee parents are put in further stress and depression. Education for them is hope, especially coming from a situation where they almost lost everything and when this hope is taken away from them, they may fall into hopelessness and depression.

#### Education and Schooling: Recommendations

19. Many of our concerns can be addressed immediately by administrative measures without need for further law reform. Accordingly, we make the following recommendations to the Administration:
  - a. **Issue education permission to refugee children immediately from the point of claim for non-refoulement protection.**
  - b. **Provide training for teachers and school staff on working with refugee children** – Allow frontline staff to understand the system and the difficulties faced by refugee children and their family, as well as the special psychosocial need of these students.
  - c. **Increase language support and interpretation services in school** – Support could be given to those organizations already providing translation to expand their services to more students.
  - d. **Extend the eligibility of Free Quality Kindergarten (KG) Education Policy to refugee children** – Under the new policy, if parents wish to admit their child to K1 classes in the 2017/18 school

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<sup>9</sup> Eg the Hong Kong Scholarship for Excellence Scheme.

year, they are required to apply for the “Registration Certificate for Kindergarten Admission” from September to November 2016 from the Education Bureau; however, we note that several applications for the Registration Certificate were rejected due to refugee children’s immigration status, meaning they are deemed ineligible to access kindergarten education.

- e. **Improve the SFO financial assistance schemes** – SFO’s current practice to reimburse funds to refugee families several months after the start of the school year, requiring parents to make initial payments from pocket at the beginning of the school year, do not take into account that refugees have no right to work in Hong Kong. Urgent improvements are therefore needed to ensure refugee children are able to access education regardless of their financial status, either by providing assistance at the beginning of August, or by creating a temporary loan given to refugee children that could be reimbursed by SFO in due time. A few NGOs and churches in Hong Kong have successfully adopted the latter model. Ultimately, support should be given directly to schools to provide services and necessities directly to children.
- f. **Uniform Bank** – A simple solution would be the creation of a “uniform bank”. Serviceable uniforms could be donated to such a bank. The uniforms would need to be cleaned, ironed etc. They would need to be identified by the relevant school. Needy parents would be able to acquire suitable uniforms for their children from such a “Uniform Bank”.
- g. Alternatively, the purchase of uniforms and other necessary costs (eg stationary) could be paid directly and up front by Government rather than through reimbursement, after the payment of a small deposit.
- h. **Refugee School Trip Fund** – Refugee children would not be deprived of the chance to go on a school trip if a specific fund existed to pay for such trips. We suggest the creation of a “Refugee School Trip Fund” to ensure that every refugee child could benefit from school trips.
- i. **Free education** – The 15 year free education should include asylum-seeker and refugee children/ Children should be allowed to receive free nursery education.
- j. **No Deportation / Allow students to participate in overseas competition using temporary travel documents** – Director of Immigration can exercise discretion on case-to-case basis to approve the international exposure of refugee students. Refugee children should

not be deported or refused re-entry to Hong Kong during school terms or after returning from school-related trips. This should be set out clearly in a published policy.

- k. **Allow refugee children to apply for non-local student status for scholarship application** – Refugee children should be eligible for capacity tested scholarships for higher education in Hong Kong. There are several scholarship schemes for persons with non-local student status. However, under the current criteria, refugee children are not eligible to apply for such status. We recommend the government to make changes on the eligibility to ensure refugee children get access to available educational resources.
- l. **Financial assistance for the tertiary education of children with special immigration status** – The current available financial assistance scheme, regardless of public or private ones, does not consider the special immigration status of the refugee children. The marginalization reduces their chances to pursue further education.

### **Conclusion**

20. Refugee children are children. They deserve the same opportunities, the same happiness, the same dignity as any other child.
21. We wish to express our appreciation to the Subcommittee for raising this topic and for considering our submissions.

Submitted by

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