



The Hong Kong Society for Asylum Seekers and Refugees

香港尋求庇護者及難民協會

The Hong Kong Society for Asylum-seekers and Refugees is a non-profit organization that aims to support and advocate for the rights and welfare of asylum-seekers and refugees in Hong Kong. This report is a response to the concluding observations from the United Nations and the CMAB's call for submissions regarding the UN Convention on the Rights of the Child (CRC).

General Observations from our Society:

1. CRC not incorporated into local legislation

Although Hong Kong has been a signatory of the United Nations Convention on the Rights of the Child ("CRC") since 1994 and therefore committed to the protection of children's rights, it has not been able to meaningfully and fully implement the Convention for the following reasons: **1) the Convention is not incorporated into local legislation; 2) the HKSAR government holds reservation to issues that relate to immigration, such that the children of asylum-seekers are not protected by the Convention.** Our government has the duty to protect children both under the CRC and Article 20 of our Bill of Rights. The closest thing that we have so far is the draft Children Proceedings (Parental Responsibility) Bill in 2015 which has still not been made into law.

In 2018 UPR, Croatia recommended the HKSAR government to incorporate the Convention on the Rights of the Child into local legislation, as stated in the Report of the working group on the UPR:

28.346 That the Hong Kong Special Administrative Region introduce internal legislation to implement the Convention on the Rights of the Child (Croatia).

Yet, no action has been taken by the Hong Kong government to incorporate the CRC into the local legislation so far. Neither has the government shown any intention to address this issue in the immediate future.

The following observations from our society address particularly CMAB's CRC report outline Section IX Special Protection Measures, regarding point 52 Article 22 Refugee children. We also incorporate the UN committee's observations in our discussion.

Rights concerning asylum-seeking and refugee children are discretionary, violating Article 2 of the UNCRC



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The Hong Kong government has held reservations on immigration matters, which have contributed to problems regarding the welfare and safety of asylum-seeking and refugee children

“The Government of the People’s Republic of China reserves, for the Hong Kong Special Administrative Region, the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the Hong Kong Special Administrative Region of those who do not have the right under the laws of the Hong Kong Special Administrative Region to enter and remain in the Hong Kong Special Administrative Region, and to the acquisition and possession of residentship as it may deem necessary from time to time.” (UNCRC)

Such a reservation contravenes Article 2, clause 1, which states that:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”

As **observed by the UN Committee in their report**, this reservation legitimises discriminatory and discretionary measures against vulnerable children, most notably asylum-seeking and refugee children. **Section B, point 29 of the same report states:**

29. The Committee reiterates its concern about the persistence of discrimination against children with disabilities, refugee and asylum-seeking children and undocumented children of migrant workers in Hong Kong, China. It is concerned about the justification provided by Macao, China in response to the Committee’s request to provide information on the practical implementation of article 2, namely, that no complaints related to discrimination have been recorded in its jurisdiction.

2. Hong Kong Government’s inaction to help asylum-seeking children establish their nationality

De facto statelessness of the asylum-seeking and refugee children (Article 8 of UNCRC)

Because of their parents’ asylum-seeking status as non-Chinese citizens, these children are not entitled to the right of abode (Immigration Department, 2012) or



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Chinese nationality, a policy that essentially discriminates against the children of non-Chinese nationals. This is clearly in breach of Article 7, which states that every child shall be registered immediately after birth and have the right to acquire a nationality. While the children of such non-Chinese national asylum-seeking parents are entitled to a birth certificate in Hong Kong, the HKSAR's reservation to the UNCRC regarding immigration legislation deprives Hong Kong-born asylum-seeking children of the right to obtain a nationality, making them stateless at birth. Therefore, the immigration status indicated on their birth certificate will be "Not Established".

Every asylum-seeking child, whether he or she is born in Hong Kong, will be issued the "recognizance paper," a document from the Immigration Department charging them for overstay. Any child born in Hong Kong to asylum seekers would thus come into the world labelled as a criminal, inheriting the status of their parents as asylum-seekers/non-refoulement claimants. This is a policy that exposes children to discriminatory treatment in every aspect of their lives, contradicting the "best interests of the child" principle and violating their rights.

As a rule, the HKSAR government does not take any proactive steps to help establish the nationality, identity or legal status of children born in Hong Kong to asylum-seekers. Neither does it consider itself responsible for such issues, as Hong Kong is not a signatory of the 1951 Refugee Convention and holds reservations to the UNCRC. The status of such children usually hinges by default on the country of origin of the parent to whom their cases are attached. As they are born with "not established" immigration status and inherit their parents' criminal status due to breaching Hong Kong's immigration law, such children do not qualify for protection under Article 2 of the UNCRC.

Asylum-seeking children should be protected from being separated from their family. In cases where a child's parents have different countries of origin, the family faces separation. Non-refoulement claims may be processed separately for members of the same family. In cases such as this, the family will be broken up if their non-refoulement cases are finalized and sent to different countries.

Hence, asylum-seeking children may be traumatized by being left alone in a country with no parents to take care of them. For example, Maria's (pseudonym) mother arrived in Hong Kong from Indonesia, and later her mother married her father from Pakistan. Maria's non-refoulement case is attached to her mother's case, whence the non-refoulement claim of Maria and her mother will be reviewed separately from that of her father. However, Maria's younger sisters are a separate case, attached to



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neither the mother's nor the father's case. Consequently, if Maria and her mother's non-refoulement claim is processed and finalized, she and her mother could be

repatriated to Indonesia, and if her father's case is also settled, he could be repatriated to Pakistan, while her siblings might leave for Indonesia with their mother or remain in Hong Kong because their cases are still under review. 30 to 35 out of every 50 asylum-seeking and refugee families face such a plight.

Further, under the Hong Kong judicial system, even if these cases were combined and reviewed together, family members would still be split up and sent back to their respective countries according to their nationality. There have never been special diplomatic arrangements to facilitate family union. More importantly, if Maria and her sisters leave Hong Kong with their mother, they may face discrimination or persecution having been born out of wedlock. They will be denied their right to survival, development and a secure future as a result of the Hong Kong policy of separately reviewing cases and splitting up families.

In addition, non-refoulement applications filed by a family often have other undesired outcomes. There are some single-parent asylum-seeking families, in which the children are HKSAR citizens and the mother or father are asylum-seekers. If an asylum-seeking parent applies for the Dependant Visa to remain in Hong Kong for the purpose of family unification but is denied the visa, this results in family separation, violating the child's right to familial identity.

Apart from asylum-seeking children, single-parent children who have Hong Kong citizenship are also deprived of their rights. These children face the situation of their asylum-seeking parents being deported to their home country or sent to other countries once their cases are finalized. Young children, lacking a sufficient income, cannot apply for a Dependant Visa for their parents

Another prominent case features asylum-seeking Filipina Luis (Case number: *FACV No. 10 of 2018*), a single mother who has three children with Hong Kong citizenship who suffer from health conditions that require regular medical monitoring (Benitez, 2018). Luis was granted an extension of stay to take care of her children, which ended in 2012, after the Immigration Department concluded that the children could depend on their father. The mother was refused application for an extension of stay in Hong Kong on compassionate grounds even though her children have health problems.



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Once the parent's non-refoulement case is concluded, they will be repatriated to their home country or sent to other countries which will cause: 1) the breakup of the single-parent family, undermining the children's right to be taken care of by their parents and barring these single-parent families from reunification; 2) those children who are Hong Kong citizens will be deprived of their right to stay in Hong Kong if they are forced by practical reasons to leave Hong Kong with their parents.

The Hong Kong government criminalizes the status children outside their country of origin seeking refugee protection, unaccompanied asylum-seeking children, internally displaced children, migrant children and children affected by migration. (art. 22)

Article 22 states that the government has the duty to protect children seeking asylum. However, people seeking asylum in Hong Kong are not permitted to lodge non-refoulement claims for as long as their visas are valid. This means that anyone intending to file a non-refoulement claim is forced to breach the HKSAR government's immigration laws by overstaying, i.e. to become "illegal immigrants" or "overstayers" (Loper 2013; Ng, 2019). Moreover, the HKSAR government has repeatedly stated that non-refoulement claimants are **illegal immigrants**; overstayers or persons who were refused entry upon arrival in Hong Kong and non-refoulement claimants do not have any legal status to remain in Hong Kong, regardless of the outcomes of their non-refoulement claims. Such discriminatory statements made by the government have disregarded their humanitarian obligations under the UN(CAT), and echoes the UN observation regarding the discriminatory treatment of vulnerable groups by the HKSAR government.

Systematically criminalizing all non-refoulement claimants allows the HKSAR government to justify suspending their rights. With respect to Article 22, the following will show that the HKSAR government has put in place administrative obstacles that prevent asylum-seeking children from enjoying the rights the UNCRC endows them with. In addition, a lack of proactive coordination between the government and NGOs and between the various departments within the government yields the impression that the HKSAR government is not committed to protecting asylum-seekers and refugees, as article 22 obliges them to. Moreover, NGO requests for meetings with the competent authorities have occasionally been rejected, the NGOs in such situations being forced to establish contact via legislators.

In 2013, the UN High Commissioner for Refugees launched a "Global Action Plan to End Statelessness: 2014-2024," which aims to end statelessness within a decade and sets out the guiding framework to achieve that objective (UNHCR, 2014).



In Hong Kong, the problem of de facto statelessness could be resolved by granting asylum-seeking and refugee children the right of abode in the territory. Representative [biennial surveys](#) conducted by the Department of Asian and Policy Studies at the Education University in 2018 (51.6%) and 2020 (61%) have shown that over half of the respondents agree that the asylum-seeking and refugee children should receive the right of abode, with a salient increase in willingness to accept these children as Hong Kong citizens (Ng et al., 2018; 2020). According to the Immigration Department, there are around 900 asylum-seekers/non-refoulement claimants who are under the age of 18 in Hong Kong as of February 2020 (personal communication, February 3, 2020). The asylum-seeking and refugee children should be granted right of abode under humanitarian principle.

3. Education Rights are discretionary

The reservation of the HKSAR government to the UNCRC risks the health, social security, education and family unification of children asylum-seekers, as stated in the UN committee's report:

Section III, 13(c) In Hong Kong, China, resource allocations to education and social welfare remain inadequate and do not effectively target the most vulnerable groups, particularly children of ethnic or linguistic minorities, asylum-seeking children, children living in poverty and children with disabilities.

As the UN Committee observes, while Hong Kong has made significant progress by allowing asylum-seeking and refugee children into public schools, asylum-seeking and refugee children do not receive the same kind of support as a child holding Hong Kong citizenship. Moreover the rights granted to the former group of children are all **discretionary**. Children with asylum-seeker status, regardless of whether they were born in Hong Kong, must obtain a “no objection letter” from the Education Bureau and the Education Bureau, which will check with the Immigration Department about the residential status of the children, before they or their caretakers can start applying to primary schools or kindergartens.

In essence, the current system in Hong Kong ironically requires asylum-seeking children to seek the approval of the HKSAR government for a right they are entitled



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to according to the UNCRC. Given the high demand for places at renowned schools, such unjustifiable administrative delays put these children at a social and educational disadvantage right from the outset—that is, if they even manage to obtain a “no objection letter” in the first place.

Children are most likely to have their right to attend schools taken away if their parents are caught in administrative limbo. Our NGO has handled several such cases, including that of an Indian asylum-seeker in 2019 who had applied to return home two years earlier. On these grounds, the Immigration Department had initially refused to allow his child of four to go to school in Hong Kong, only granting their approval after two years of negotiation.

Even after enrolling in school, further hurdles await these children. Most notably, because of their asylum-seeker status, they are required to report to the Immigration Centre during their operating hours on a weekly or monthly basis; the dates are pre-determined and non-negotiable. A school-going asylum-seeker like Jenny (pseudonym) has to sign in every Tuesday. She is forced to skip classes to do this, as the Immigration Centre closes for the day by the time school ends at 5 p.m. Not only does this legal stipulation compromise asylum-seeking children’s self esteem, but it disregards the children’s learning needs and significantly disrupts their participation at school.

The discretionary nature of support to the asylum-seeking and refugee children has led to particularly pronounced consequences during the COVID-19 crisis, when the asylum-seeking children are not receiving the additional education support promised in the Chief Executive’s 2019 Policy Address. There, everydaytime secondary school, primary school and kindergarten student was promised a one-off student grant of \$2,500 to defray their education expenses and alleviate their parents’ financial burden. However, *the application form for the grant states that “the student must be a Hong Kong resident. Students holding student visas only or recognizance forms issued by the Immigration Department are not eligible”*.

The foregoing points demonstrate that asylum-seeking and refugee children, while facing the same pandemic-related challenges as children with Hong Kong citizenship, are denied equal support, with their parents legally marginalized and denied the right to work. They have to rely on NGOs and other community groups to provide additional support such as computers, tablets and WiFi or data to be able to attend classes online.



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Obtaining access to higher education at universities, community colleges or through diploma courses is likewise a problem. Asylum-seekers in local tertiary education are considered international students by default, even if they may have been born in Hong Kong. Alex (pseudonym) is now 17 and preparing for his school-leaving examinations (Hong Kong Diploma of Secondary Education Examination (HKDSE)). However, his prospects are bleak at best. Even if he receives outstanding scores in all his subjects, he will not be able to afford a university education unless he secures a scholarship or sponsorship, as annual tuition fees for asylum-seeking students can amount to a staggering HK\$100,000. Not only will this mean less potential talent for Hong Kong's workforce, such deliberate social and economic marginalization of asylum-seekers and their children, some of whom have long assimilated into local society, may also drive them into poverty and even crime.

4. Livelihood and well-being is compromised

The HKSAR government has not granted the right to work to asylum-seeking children even if they are of legal working age, even if these children had grown up and sought early education in Hong Kong. Article 38AA of the Immigration Ordinance, , prohibits non-refoulement claimants in Hong Kong from employment because they are subjects of a removal order. Given in most cases that the child seeking asylum is not the child of a parent with Hong Kong citizenship, the child may be at risk of statelessness, and their rights are hence violated from birth by Hong Kong's legislation. Though a child may have lived all his life in Hong Kong, he or she would be deprived of the right to work, a basic necessity for social and financial independence and civic participation. From all assessable aspects, this vicious cycle deprives these children of an adequate livelihood.

This is true for Alex (pseudonym) (as mentioned above), a 17-year-old boy who will soon graduate from high school in Hong Kong. Owing to Hong Kong's legislation on employment for those subject to a removal order (Immigration Ordinance Article 38AA), Alex is not allowed to look for employment or join any business [nor is he able to receive college education once he graduates from high school due to exceedingly high costs (discussed in the Education Rights section above)], regardless of whether he is paid or unpaid. Not only do these restrictions prevent Alex from contributing to the workforce, they also eliminate most opportunities for Alex to achieve a standard of living on par with his school peers.



5. Recommendations:

Based on the foregoing observations, the Hong Kong Society for Asylum-Seekers and Refugees makes the following recommendations to the Legislative Council:

- 1. The HKSAR Government should lift the reservation to the UNCRC on matters relating to immigration issues at the soonest, so that asylum-seeking and refugee children can enjoy the same protection as a child who holds established status in the legal sense in Hong Kong.*
- 2. The UNCRC should be incorporated into the domestic legislation of Hong Kong without delay. (i.e. This was a recommendation raised in the 5th Universal Periodic Review and the recommendation has been accepted by the HKSAR government.)*
- 3. Asylum-seeking children (i.e. like Alex) should be entitled to employment once they reach the legal age to allow them reach their full potential and improve their livelihoods.*
- 4. Asylum-seeking and refugee children who are born or who have lived in Hong Kong for more than 7 years should be granted the right of abode in the territory.*
- 5. In line with the UN Committee's recommendation: Accede to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.*



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