



**Submission to the Constitutional and Mainland Affairs Bureau  
On Hong Kong Special Administrative Region's upcoming  
review under the Convention on the Rights of the Child**

**Refugee Concern Network**

**April 2021**

The Refugee Concern Network (“RCN”) appreciates this opportunity to provide submissions on the proposed outline on Hong Kong Special Administrative Region (“Hong Kong”)’s fifth report to the Committee on the Rights of the Child (“the Committee”), under the Convention on the Rights of the Child (“UNCRC”). Our submission focuses on the situation of refugee and asylum seeking children in Hong Kong.

Primary information in this report is based on interviews with refugee children and young adults, as well as their parents. The RCN thanks them for their valuable contributions.

A child for the purpose of this submission is an individual below the age of 18.

**1. Article 2: Non-discrimination**

**We encourage the Government to respond to the Committee’s concerns that discrimination against refugee and asylum-seeking children, and undocumented children of migrant workers is persistent<sup>1</sup>.**

**The Government should provide information on steps taken to combat racism, discrimination and xenophobia against non-refoulement claimants.**

The Government’s categorisation of people seeking non-refoulement protection in Hong Kong as “illegal immigrants”, “overstayers” or “foreigners who smuggled themselves into Hong Kong” reinforce false constructions of refugees and asylum seekers as criminals. This categorisation is disingenuous, as pursuant to section 37W of the Immigration Ordinance, people seeking protection must overstay their visas – and henceforth become officially “illegal” – before they are eligible to lodge non-refoulement claims. Article 31 of the 1951 Convention Relating to the Status of Refugees also recognises that people seeking protection may have legitimate reasons to enter a territory unlawfully, and that they should not be criminalised if they present themselves without delay and show a good cause for their unlawful entry.

This language feeds into discrimination, racism and xenophobia. As discussed below in Section 4.7, refugee and asylum-seeking children said that they experience racial harassment and bullying at school, including being subjected to racial slurs, comments and physical violence. Since 2015, civil society have observed the use of xenophobic terms such as “fake refugees”, “toxic tumours” and “Southeast Asian thieves” by the media and some politicians with

---

<sup>1</sup> CRC/C/CHN/CO/3-4 at [29] – [30]

increasing frequency<sup>2</sup>. The Human Rights Committee<sup>3</sup>, the Committee on the Rights of the Child<sup>4</sup> and Special Mandate holders<sup>5</sup> have all expressed concerns over discrimination and the use of negative and stigmatising rhetoric towards refugees, migrants and ethnic minorities in Hong Kong.

## **2. Article 22: Refugee Children**

### **2.1 Statistics on children seeking non-refoulement protection**

**We encourage the Government to provide statistics on the number of children seeking non-refoulement protection in Hong Kong, disaggregated by year, sex, nationality, the stage of their non-refoulement claim (e.g. substantiated, pending Immigration decision, pending Torture Claims Appeal Board/ Non-refoulement Claims Petition Office (“TCAB/ NRCPO”) decision, with ongoing judicial review, not removable, removal being arranged and other categories as appropriate) and whether the child is accompanied by family members when they arrived in Hong Kong.**

### **2.2 Children seeking non-refoulement protection**

**We encourage the Government to discuss on how the best interest of the child is taken as a primary consideration within the Unified Screening Mechanism (“USM”).**

**Following the Court of Appeal’s decision in *Fabio Arlyn Timogan and Others v Evan Ruth, ESQ, Adjudicator of the Torture Claims Appeal Board/Non-refoulement Claims Petition Office (“Fabio”)*<sup>6</sup>, we encourage the Government to clarify their policy on:**

- (1) the rescreening of non-refoulement claims involving child claimants;**
- (2) the provision of duty lawyers to child claimants for the purpose of rescreening these claims;**
- (3) the screening of non-refoulement claims involving child claimants post *Fabio*; and**
- (4) the provision of duty lawyers to child claimants post *Fabio*.**

We are concerned that the Unified Screening Mechanism (“USM”) falls short of international human rights standards, including rights guaranteed under the UNCRC. Hong Kong’s substantiation rate for non-refoulement claims is at less than 1%, which is among the lowest in the developed world. The low recognition rate is indicative of systematic failures of the screening mechanism, including poor quality decisions, the lack of substantive and procedural fairness, and the lack of legal representation. For a detailed critique of the USM, see Justice Centre Hong Kong, “Submission to the constitutional and Mainland Affairs Bureau on Hong Kong Special Administrative Region’s upcoming review under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, March 2021<sup>7</sup>.

---

<sup>2</sup> Isabella Ng, Sharice Fungyee Choi and Ales Lihshing Chan, “Framing the Issue of Asylum Seekers and Refugees for Tougher Refugee Policy—a Study of the Media’s Portrayal in Post-colonial Hong Kong”, *Journal of International Migration and Integration* 20, 593-617 (2019)

<sup>3</sup> E/C.12/CHN/CO/2 at [41]

<sup>4</sup> CRC/C/CHN/CO/3-4 at [29] – [30]

<sup>5</sup> Communication No. CHN 14/2016. Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22905>

<sup>6</sup> [2020] HKCA 971

<sup>7</sup> Available at: <https://www.justicecentre.org.hk/framework/uploads/2021/04/Justice-Centre-Hong-Kong-Submissions-to-CAT-March-2021.pdf>

These structural issues means that child specific needs for non-refoulement protection are often overlooked. We highlight a few concerns relating to children's claims below:

- (1) Children's claims are usually considered jointly with other family members. This means that children are not always able to have their claims considered meaningfully with regard to child specific needs for non-refoulement protection, which may be independent from the claims of their parents. There is no guidance on whether the claims of women, children and other members of a family should be considered jointly or individually in cases involving families.
- (2) Children who are part of a family seeking asylum have limited opportunities to participate in the USM. As a result, child specific issues are often overlooked. There is no practical guidance on whether children should be interviewed during the asylum process, and we have observed that most children are not provided an opportunity to be heard.
- (3) In cases where children are directed to give evidence by decision makers, the Immigration Department and the TCAB/ NRCPO do not have any practical guidance on how children should be approached during asylum interviews. The only form of procedural guidance available is the TCAB's *Principles, Procedures and Practice Direction of the Torture Claims Appeal Board* and the NRCPO's *Practice and Procedure Guide for the Administrative Non-refoulement Claims Petition Scheme*, which provide that claimants should indicate their special needs in their Notice of Appeal or Petition, and that the appeal board "will take steps to accommodate such special needs as far as practicable"<sup>8</sup>. The lack of procedural guarantees and guidance significantly hampers the fairness of the USM. For example, we have assisted a child with a severe psychological condition who was made to testify at her family's TCAB hearing despite the family's requests that the experience would be harmful to her. Subsequent to the hearing the child's mental health deteriorated and she attempted suicide.
- (4) No special measures are in place to assist unaccompanied children applying for non-refoulement protection in Hong Kong, and they are treated as adult claimants within the USM for all intents and purposes.
- (5) Decision makers lack child sensitivity in cases involving child claimants. For example, decision makers often make negative credibility assessment based on late disclosure of traumatic events, peripheral or minor inconsistencies, speculative plausibility arguments and the claimant's behaviour (such as their demeanour when giving evidence) without regard to the impact of age and trauma on the memory and the capacity of children to give complete and coherent information.

---

<sup>8</sup> Security Bureau, "The Principles, Procedures and Practice Directions of the Torture Claims Appeal Board" (Sixth Edition, 28 August 2019) and "The Practice and Procedure Guide of the Administrative Non-refoulement Claims Petition Scheme" (Fifth Edition, 28 August 2019) at [24.1] and [30.1] respectively. Available at <https://www.sb.gov.hk/eng/links/tcab/index.htm>

- (6) There is a lack of training for lawyers under the Duty Lawyer Service’s Legal Assistance Scheme for Non-refoulement Claims on child sensitivity and child-specific asylum claims. Children are uniquely vulnerable, and child-specific needs for non-refoulement protection are complex and not always well understood. It is therefore crucial that lawyers providing legal representation to child claimants receive proper training, adequate practical and technical support and relevant supervision.

In the recent case of *Fabio*, the Court of Appeal affirmed that non-refoulement claims by children are separate claims from claims advanced by their parents, and that separate consideration should be given to each claimant’s personal circumstances even if the claims were based on the same set of primary facts. It was specifically noted that the threshold for what constitutes ill treatment may be different for children, as compared to adults. The Court further concluded that child claimants should have legal representation for the full strength of their claims to be presented and to maintain the high standard of fairness required by law<sup>9</sup>.

We understand that following *Fabio*, the TCAB/ NRCPO has begun reconsidering non-refoulement claims involving child claimants, and duty lawyers have been assigned to child claimants for the purpose of rescreening these cases. While we welcome this positive development, we are concerned that decision makers and lawyers have yet to receive training on children’s asylum claims, and that the TCAB/ NRCPO have yet to formulate comprehensive procedural guidance on interviewing children and otherwise assessing children’s claims.

### **2.3 Lack of childcare services**

Non-refoulement claimants said that they struggle to access childcare when they have to attend appointments or hearings for their USM claims.

## **3. Articles 22 and 37: Detention of refugee children**

### **3.1 Statistics on immigration detainees under 18**

**We encourage the Government to provide yearly statistics on the number of children detained by the Immigration Department, disaggregated by the place of detention, sex, age, nationality, immigration status and reason for detention. If this information is not maintained, the Government should provide justifications and elaborate on steps taken to maintain data on the detainee population.**

The Immigration Department detains more than 10,000 individuals annually on average<sup>10</sup>. Despite this high number, there is very little publicly available information about the detainee population, the duration of detention, and detention condition. The lack of information makes it incredibly difficult for civil society to monitor the prevalence of immigration detention. In this regard we would like to draw the Government’s attention to Objective 1 of the UN Global Compact on Migration, which provides that the collection and utilization of accurate and

---

<sup>9</sup> At [53], [34]

<sup>10</sup> Immigration Department, “Appendix 13 – Enforcement Branch Statistics”, *Annual Report 2018*. Available at: [https://www.immd.gov.hk/publications/a\\_report\\_2018/en/appendices-13.html](https://www.immd.gov.hk/publications/a_report_2018/en/appendices-13.html)

disaggregated data is crucial to evidence-based policy-making and well-informed public discussions on migration issues<sup>11</sup>.

### **3.2 Policy on the detention of children**

**We encourage the Government to provide details on their policy on the detention of asylum-seeking children, including unaccompanied children and children within a family seeking asylum. We also encourage the Government to respond to the Committee’s recommendation that Hong Kong should cease the administrative practice of detaining asylum seeking and refugee children<sup>12</sup>.**

We understand that pursuant to the Immigration (Places of Detention) Order (Cap. 115B), minors should be detained at the Tuen Mun Children and Juvenile Home operated by the Social Welfare Department. We are however concerned that children who seek asylum at border control points and refused permission to land are detained at the Immigration Department Detention Quarters within the Hong Kong Airport Building. There are also reports from our service users that children have been detained at police stations and at the Castle Peak Bay Immigration Detention Centre.

## **4. Articles 22 and 28: Access to education for refugee children**

### **4.1 Statistics on school enrollment for refugee children**

**We encourage the Government to provide statistics on:**

- (1) the number of refugee and asylum-seeking children enrolled in pre-primary, primary and secondary schools, disaggregated by year, age and sex;**
- (2) the number of applications to study in pre-primary, primary and secondary schools made to the Education Bureau and/or the Immigration Department, and the outcome of these applications (e.g. approved, refused, withdrawn and other categories as appropriate)**

Refugee and asylum-seeking children are able to access free basic education including six years of primary education and six years of secondary education, subject to approval from the Immigration Department. While some children have positive experiences at school, others experience language barriers, financial barriers and bullying.

### **4.2 Financial and economic barriers**

Refugee and asylum seeking children enrolled in kindergarten can apply for Student Financial Assistance to cover school fees, and children enrolled in primary and secondary schools can apply for textbook, travel costs and internet access charges assistance<sup>13</sup>. It is important to note that Student Financial Assistance does not cover all school related expenses. The kindergarten scheme does not cover uniforms, transportation and educational materials like textbooks, and the primary and secondary scheme does not cover uniforms and educational materials, such as

---

<sup>11</sup> Global Compact for Migration, “Global Compact for Safe, Orderly and Regular Migration – Intergovernmentally Negotiated and Agreed Outcome” (13 July 2018). Available at:

[https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf)

<sup>12</sup> CRC/C/CHN/CO/3-4 at [82],[84(a)]

<sup>13</sup> Student Finance Office, “Pre-primary level: Financial Assistance Schemes”. Available at: <https://www.wfsfaa.gov.hk/sfo/en/preprimary/index.htm>

stationery and computers. In particular, because kindergarten is not part of the 12-year free basic education, parents may not be able to afford to send their children to kindergarten due to ancillary costs.

The amount of assistance provided to students is not always sufficient for them to attend school. For example, a lot of students have had to rely on additional financial support provided by NGOs to cover their transportation costs.

Further, it takes several months for payments under the Student Financial Assistance scheme to be processed, which means parents have to make the relevant payments first and be reimbursed. For example, payments for the School Textbook Assistance Scheme is often made in October, but students usually have to purchase textbooks before the academic year starts in September. This arrangement is difficult for refugees and asylum seekers as they are unable to become self-sufficient through employment and lack cash liquidity.

#### **4.3 Reporting requirements**

**We encourage the Government to justify the need for school-aged children to regularly report to the authorities, and explain whether considerations have been given to allow for flexible reporting, such as allowing reporting via telephone call, allowing for one family member to report on behalf of the family, or allowing school-aged children to report on weekends or outside school hours.**

Refugees and asylum-seeking children are required to regularly report to the authorities in person; most are required to report once or twice per month<sup>14</sup>. This means children have had to skip school for up to 13 days each academic year to fulfil their reporting requirements. Missing school impacts children's learning as well as their conduct assessment.

#### **4.4 Extracurricular activities**

Refugee and asylum-seeking children's access to extracurricular activities is generally limited, mainly due to financial constraints. There are also reports of students being told they are ineligible for extracurricular activities due to their immigration status.

Specifically, these children are not able to participate in school trips abroad or attend international competitions as their non-refoulement claims are considered withdrawn if they leave Hong Kong<sup>15</sup>. There are reports of children unable to attend events and competitions in Japan, Korea and Mainland China, for example. This is one of the many ramifications of refugees and asylum seekers' lack of access to legal status and perpetual illegality.

#### **4.5 De facto racial segregation and Chinese as a second language**

**We encourage the Government to inform the Committee on steps taken to ensure non-Chinese students, including refugees and asylum seekers, have equitable access to quality education, including education in Chinese as a second language.**

Ethnic minority children, including refugees and asylum seekers, continue to be impacted by the lack of a quality Chinese-as-a-second-language curriculum and *de facto* racial segregation

---

<sup>14</sup> Immigration Ordinance, Section 36.

<sup>15</sup> Immigration Ordinance, Section 37ZF(1)

in kindergartens and public school systems<sup>16</sup>. Students said they find Chinese class difficult and that they often do not fully understand class. Very few schools provide additional support to students who are struggling with the Chinese language.

#### **4.6 Access to education during Covid-19**

**We encourage the Government to provide information on steps taken to support refugee and asylum-seeking students during the Covid-19 pandemic.**

Remote learning during the Covid-19 pandemic disproportionately affects children from less privileged backgrounds, including refugee and asylum-seeking children. Some students may not have access to computers and internet which are essential for distance learning. Their parents' varying education levels and experience with technology also make it difficult for refugee children to learn from home.

#### **4.7 Bullying, harassment and lack of awareness**

**We encourage the Government to inform the Committee on steps taken to eliminate bullying and harassment against refugee and asylum seeking children. The Government should respond to concerns that its use of stigmatising language against non-refoulement claimants fuels racism, discrimination and xenophobia.**

Some refugee and asylum-seeking children experience racial harassment and bullying at school by classmates as well as teachers, including being subjected to racial slurs, comments and physical violence. Examples include:

- (1) A child being told by classmates that their blackness was ugly
- (2) A teacher using the racial slur “nigger” in class and making stereotypical assumptions about black people, such as that they are lazy
- (3) A child was pushed and shoved by their classmates
- (4) A child said that their classmates tried to clean their skin to remove their skin colour

Children also note that teachers do not always adequately respond to these situations.

Moreover, some children said that their teachers and school mates lack awareness and understanding about the children's status as non-refoulement claimants, which may lead to confusion, misunderstanding and impacts the quality of teaching.

#### **4.8 Access to education for older school aged children**

**We encourage the Government to clarify their policy on the provision of education for older school aged refugee and asylum-seeking children.**

We are concerned that some refugees and asylum seekers who arrived in Hong Kong as adolescents have been discouraged from pursuing an education by their International Social Service (“ISS”) caseworkers due to their age.

#### **4.9 Tertiary education and adult learning opportunities**

---

<sup>16</sup> For a detail analysis on de facto racial segregation in public schools see Puja Kapai, “Status of Ethnic Minorities in Hong Kong 1997 – 2014” p.17. See also E/C.12/CHN/CO/2 [52] – [53]

**We encourage the Government to provide statistics on the number of applications made by non-refoulement claimants for approval to study in higher education institutions and the outcome of such applications (e.g. approved, refused, withdrawn and other categories as appropriate).**

**We encourage the Government to provide justifications for not allowing refugees and asylum seekers to enrol in higher education programmes with internship or work placement requirements.**

Education opportunities beyond the 12-year primary and secondary education is limited for refugees and asylum seekers. Eligible students can apply to local higher education institutions subject to approval from the Immigration Department. However, this requirement to apply for prior approval for higher education is not published anywhere and most students are not aware of this requirement, which has led to complications.

There are reports that the Immigration Department have refused to grant permissions for refugees and asylum seekers to enrol in programmes with internship or work placement requirements, such as social work programmes, due to the prohibition of taking paid or unpaid employment<sup>17</sup>.

The main obstacle for refugees and asylum seekers' access to higher education is that they are treated as non-local students and must pay full tuition fees. Some NGOs offer financial sponsorships and scholarships, in addition to supporting a range of adult learning opportunities, such as online university courses, English language programmes, and computer classes. The demand for higher education opportunities remains high, especially as more young adults are graduating from secondary schools. There is a great need for Hong Kong to improve the accessibility of higher education opportunities for this community.

##### **5. Articles 22 and 27: Refugee children's standard of living**

**We encourage the Government to respond to concerns that refugee and asylum-seeking children are living in prolonged destitution below the poverty line, and that they face numerous barriers in attaining an adequate standard of living.**

The current level of humanitarian assistance provided to non-refoulement claimants is inadequate for them to enjoy an adequate standard of living, and many are in fact living in prolonged destitution below Hong Kong's poverty line<sup>18</sup>. For details, see Refugee Concern Network, "Parallel report to the Committee on Economic Social and Cultural Rights complementing the fourth periodic report submitted by Hong Kong, China", December 2020<sup>19</sup>.

In regard to housing, the meagre amount provided to protection claimants means that they often have to live in accommodation that is substandard, unsafe, overcrowded, with inadequate infrastructure and located in the outskirts of town<sup>20</sup>. Oftentimes the housing allowance is insufficient to cover protection claimants' rent, and many people have to rely on CSOs or other

---

<sup>17</sup> Immigration Ordinance, S38AA

<sup>18</sup> Census and Statistics Department, "Poverty Situation". Available at: <https://www.censtatd.gov.hk/hkstat/sub/so461.jsp>

<sup>19</sup> Available at: <https://www.justicecentre.org.hk/framework/uploads/2020/12/Refugee-Concern-Network-ICESCR-parallel-report.pdf>

<sup>20</sup> The level of housing allowance provided to non-refoulement claimants is HKD\$1500 per adult and HKD\$750 per child.



means to cover the gap. For example, it is virtually impossible for a single parent with a young child receiving housing allowance at HKD\$2250 to find suitable accommodation without additional rental support from CSOs.

In terms of food and nutrition, food allowance at HKD\$1200 delivered in the form of pre-paid ParknShop cards is not sufficient to last through the month, and many claimants rely on CSO community kitchens and food banks for additional food support. Some protection claimants report that they have had to skip meals or go to bed early due to food insecurity. Food insecurity also impacts claimants' physical and mental health, as they tend to purchase low-cost or filling food items that are not nutritionally adequate. Culturally appropriate food items, such as halal options, is not always available at ParknShop.