

## Asylum Seekers and Refugees

There were no recommendations made for the Hong Kong Special Administrative Region, China (HKSAR) in the Second UPR Cycle.

### Framework in HKSAR

*The Convention against Torture (CAT) applies to HKSAR but the Convention relating to the Status of Refugees does not. HKSAR only offers non-refoulement protection to asylum seekers. There is a lack of durable solutions. Refugees remain to be illegal immigrants even if their non-refoulement claims are substantiated. There are about 10,000 non-refoulement claimants in HKSAR.*

*The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) apply to HKSAR. Article 39 of the Basic Law provides that they shall be implemented through HKSAR laws. Additionally, the Convention on the Rights of the Child (CRC), the Convention to Eliminate All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of Persons with Disabilities (CRPD) apply in HKSAR.*

### Challenges

- Asylum seekers and refugees never have access to legal status, the right of abode or the right to work, violating Article 6 of ICESCR. They do not have the freedom to movement, breaching Article 12 of ICCPR
- Their children are also considered illegal immigrants even if they are born in Hong Kong. Unlike Chinese citizens, they do not have the right of abode even if they were born in HKSAR or have stayed for seven years. They are *de facto* stateless.

- Decision-making can be poor and opaque, raising concern over claimants potentially being returned to a situation of persecution, torture and/or death, in a manner inconsistent with Article 3 of CAT.
- Access to justice for non-refoulement claimants is limited, undermining rule of law principles.

### Cases, facts and comments

- Only four claimants have been resettled to a third country since 2014. At least 18 claimants who made claims on torture or other grounds are stuck as the United Nations High Commissioner for Refugees (UNHCR) only helps those who made claims on refugee grounds resettle.
- Asylum seekers' and refugees' non-refoulement claims are considered withdrawn once they leave HKSAR. An asylum-seeking child was unable to attend a music competition in Japan in 2018 for this reason.
- Claimants live on limited public assistance of about 400USD a month, raising concern over human trafficking. They cannot self-fund university studies.
- Only substantiated claimants can apply for permission to work. The permission is only granted if claimants can secure a contract and have to be renewed every six months. Official statistics show 70,000 job vacancies in the HKSAR in 2018.
- More than half of the public surveyed by The Education University of Hong Kong in 2018 supported giving refugee children the right of abode.
- Case officers and/or appeal adjudicators have made mistakes about which countries claimants come from and used Wikipedia to assess risks upon removal.
- Despite the recommendation of the CAT Committee and repeated calls of civil society and Legislative Councillors, the Government has not published redacted appeal decisions.
- Only 9% of claimants are legally represented for appeals. In 2017, only 2.7% of legal aid applications for judicial review are granted.

	<ul style="list-style-type: none"> <li>The government is considering legislative amendments that may further bar access to justice, such as allowing immigration officers to conduct screening interviews in a language other than a claimant's mother tongue.</li> </ul>
<ul style="list-style-type: none"> <li>The asylum-seeking parent of a permanent resident child can be refouled, raising concern over family breakups and compliance with Article 10 of ICCPR on protection of the family, and Article 3 of CRC on the best interests of the child.</li> </ul>	<ul style="list-style-type: none"> <li>Civil society reports very few cases where the Immigration Department issues visas on compassionate grounds to non-refoulement claimants whose children have acquired the right of abode from the other parent. A child can only apply for dependent visas for parents when they are 60 years old.</li> </ul>

### Recommendations

- HKSAR should amend legislation providing equal rights to access permanent residency for children of asylum seekers, refugees and all migrant workers, consistent with the children of other migrants under Article 24 of the Basic Law, within one year.
- Consistent with the concluding observations of the CRC Committee, HKSAR should ensure that children of migrant workers, refugee and asylum-seeking children have equal access to basic services, including health, education and other social services.
- China should extend the Refugee Convention and its 1967 Protocol to HKSAR within one year.
- HKSAR should not set an inappropriate high threshold for granting international protection and should grant asylum seekers and refugees the right to work immediately.
- Consistent with the concluding observations of the ICESCR Committee, HKSAR should ensure that all children, including asylum-seeking and refugee children, have free access to compulsory education on an equal basis immediately. HKSAR should provide scholarships and resource support for education for asylum seekers and refugees immediately.
- HKSAR should ensure the best interests of the child as a primary consideration in all actions, in line with CRC Article 3 regardless of his/her ethnicity, nationality, immigration status.

### Questions to ask in advance

- Noting that asylum seekers, refugees and their children have no access to legal status, has HKSAR studied the impact of the illegal status from a human rights perspective, including the right to health, access to justice and the right not to be tortured, especially of children?*
- Will HKSAR give asylum seekers and refugees, especially children, access to legal status and the right of abode, to ensure compliance with, inter alia, Article 3 of the CRC, which provides that the best interests of the child should be a primary consideration in all actions concerning children? If not, on what grounds?*
- Noting current labour shortages, does the HKSAR plan to give asylum seekers and refugees the right to work in the next five years? If not, what are the reasons for that?*

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