

## **Submission to Constitutional and Mainland Affairs Bureau on the Hong Kong Special Administrative Region's third report under the UN Convention on the Rights of the Child**

09 April 2021

### **Introduction**

Amnesty International Hong Kong (AIHK) provides the following information, in response to the Hong Kong Special Administrative Region's (HKSAR) government's invitation for public views on the HKSAR government's third report under the UN Convention on the Rights of the Child (CRC).

This submission sets out some of Amnesty International's key concerns and observations related to the implementation of the CRC by the HKSAR government. It highlights our concerns with regard to respect for the view of the child (Article 12); the right to freedom of expression (Article 13); the right to freedom of association and of peaceful assembly (Article 15); the right to not be subjected to torture (Articles 37); the right to education and aim of education (Articles 28, 29); and refugee children (Article 22).

### **Respect for the view of the child (Article 12)**

In the last Concluding Observations, the CRC Committee on the Rights of the Child (CRC Committee) reiterated concern about the lack of effective consultative mechanisms to ensure respect for the views and participation of children in matters affecting them.<sup>1</sup> The HKSAR government in 2018 established the Commission on Children (the Commission). Although the Commission aims to ensure that "children's rights, interests and well-being" are respected and safeguarded, and their voices are heard, it has little representation of children and youth in its composition.<sup>2</sup> In 2018, only one of its 34 non-official members was aged below 24, which calls into question whether children's views are given due weight as required by Article 12.<sup>3</sup> Children also have no stake in the nomination and appointment of the Commission's non-official members. The Commission's effectiveness in

<sup>1</sup> UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of China (including Hong Kong and Macau Special Administrative Regions)*, adopted by the Committee at its sixty-fourth session (16 September – 4 October 2013), 4 October 2013, UN Doc. CRC/C/CHN/CO/3-4 (2013), para. 36.

<sup>2</sup> Government of HKSAR, "Government establishes Commission on Children", 31 May 2018, [www.coc.gov.hk/en/welcome.html](http://www.coc.gov.hk/en/welcome.html); Jeffie Lam, "Long-awaited children's rights body for Hong Kong may end up toothless", *South China Morning Post*, 10 October 2017, [www.scmp.com/news/hong-kong/community/article/2114604/long-awaited-childrens-rights-body-hong-kong-may-end](http://www.scmp.com/news/hong-kong/community/article/2114604/long-awaited-childrens-rights-body-hong-kong-may-end)

<sup>3</sup> Grenville Cross, "Protecting child rights in Hong Kong will take more than an official commission", *South China Morning Post*, 15 June 2018, [www.scmp.com/comment/insight-opinion/hong-kong/article/2150906/protecting-child-rights-hong-kong-will-take-more](http://www.scmp.com/comment/insight-opinion/hong-kong/article/2150906/protecting-child-rights-hong-kong-will-take-more); Committee on the Rights of the Child, General comment No.12, Article 12: The Right of the Child to be Heard, UN Doc. CRC/C/GC/12, para. 49.

incorporating children's views into policymaking and the implementation of policies concerning children's interests is in question.

According to a baseline study on the implementation of Article 12 in Hong Kong, the quality of child participation opportunities does not generally meet the UN's requirements of consultative participation mechanisms.<sup>4</sup> There is also a systematic lack of follow-up with child participants and low level of child-friendly information.

### Recommendations:

- Increase direct representation and participation of children and youth in the Commission's formation and work to effectively respect and reflect children's views on government policies and their implementation, and ensure the Commission's independence and function to represent exclusively the interests of children and not only those of the administration
- Ensure training for NGOs, adults and stakeholders on the right of the child to be heard and ensure adequate conditions for supporting and encouraging children to express their views in all matters affecting them
- Provide adequate training, opportunities and accessible child-friendly information to encourage and empower children to participate meaningfully in the policymaking process

### **Freedom of expression (Article 13)**

Freedom of expression enjoyed by students has been severely limited since the enactment of the National Security Law in July 2020, as the Education Bureau (EDB) effectively stifles all forms of peaceful expression of "political messages" at schools.<sup>5</sup> According to the new EDB guidelines in relation to safeguarding national security, teachers must bar or dissuade students from all activities that involve the expression of political views on campus, including displaying propaganda items that may be "in breach of the national security law", chanting political slogans and singing songs that contain political messages.<sup>6</sup> Schools must also ensure that displays of words or objects within the campus, including library collections, bulletin boards and leaflets, have no contents that "endanger national security".

<sup>4</sup> The Hong Kong Committee on Children's Rights, *Baseline Study on the Implementation of UNCRC Article 12 in Hong Kong*, [v2.childrenrights.org.hk/v2/web/index.php?lang=en](http://v2.childrenrights.org.hk/v2/web/index.php?lang=en)

<sup>5</sup> Government of the HKSAR, "LCQ22: Restricting students' freedom of expression", press release, 8 July 2020, [www.info.gov.hk/gia/general/202007/08/P2020070800306.htm](http://www.info.gov.hk/gia/general/202007/08/P2020070800306.htm)

<sup>6</sup> Education Bureau, Government of the HKSAR, "National Security: Specific Measures for Schools", 4 February 2021, [www.edb.gov.hk/attachment/en/sch-admin/national-security/specific-measures.pdf](http://www.edb.gov.hk/attachment/en/sch-admin/national-security/specific-measures.pdf)

Amnesty International has repeatedly expressed concern that the authorities' overly broad and vague definition of national security may further silence opposition views on campus, creating a chilling effect on children's free expression.<sup>7</sup> Peaceful expression of political views and academic discussion should not be regarded as a breach or threat of national security if not intended or likely to incite imminent violence.<sup>8</sup> National security should not be used as a pretext to deny people the right to express different political views or other human rights as protected by international legal standards.<sup>9</sup>

## Recommendations

- Stop using national security as a pretext to unnecessarily restrict students' right to freedom of expression, including political activities, within and outside the campus
- Ensure and facilitate a campus environment which students feels respected and secure to freely express their opinions by peaceful means

## **Freedom of association and peaceful assembly (Article 15)**

Amnesty International Hong Kong is deeply concerned about the increasing restriction of the rights to freedom of association and peaceful assembly enjoyed by all children. After the enactment of the National Security Law, the EDB has instructed all primary schools and secondary schools to dissuade students from initiating, organising, joining or encouraging their fellows to participate in activities that express their political views, including class boycotts and forming human chains as actions of solidarity.<sup>10</sup> Schools are also instructed to report "acts and activities that involve elements endangering national security" to the EDB and, in case of a grave situation, to the police immediately.<sup>11</sup>

Outside campus, peaceful assemblies of self-organised student groups are heavily patrolled by police.<sup>12</sup> In a number of incidents, youth activists who set up street booths

<sup>7</sup> Amnesty International, "Hong Kong: New national security guidelines on schools further stifle freedom of expression on campus" (Press Release, 5 February 2021); Amnesty International, "Hong Kong: Education must not be censored after teacher stripped of license for 'promoting independence'" (Press Release, 6 October 2020).

<sup>8</sup> Principle 6 of Johannesburg Principles on National Security, Freedom of Expression and Access to Information, [www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf](http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf); Human Rights Committee, General Comment No. 34, Article 19, Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34.

<sup>9</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, annex, para. 30.

<sup>10</sup> Education Bureau, Government of the HKSAR, "Letters from SED to school principals", 10 June 2020, [www.edb.gov.hk/attachment/en/news002/Letter\\_from\\_SED\\_to\\_school\\_principals%2010\\_June\\_2020\\_eng.pdf](http://www.edb.gov.hk/attachment/en/news002/Letter_from_SED_to_school_principals%2010_June_2020_eng.pdf)

<sup>11</sup> Education Bureau, Government of the HKSAR, "National Security: Maintaining a Safe Learning Environment Nurturing Good Citizens", circular, 4 February 2021, [applications.edb.gov.hk/circular/upload/EDBC/EDBC21003E.pdf](http://applications.edb.gov.hk/circular/upload/EDBC/EDBC21003E.pdf)

<sup>12</sup> "'中學時政' 街站收集簽名促撤 '改革' 學生斥校方只談經濟不談政治" ("Hong Kong.Students" set up booths to collect signatures against the "revamp" of Liberal Studies"), *Stand News*, 27 December 2020, [bit.ly/2Q8kl4E](https://bit.ly/2Q8kl4E); "中學生街站反通識殺科遭警威脅登報" (Secondary student group terminates street booth as police threatens to issue fixed penalty fines), *Apple Daily*, 21 February 2021, [hk.appliedaily.com/local/20210221/72XCBA25PZE7DM7BKWJS5RQJJY/](http://hk.appliedaily.com/local/20210221/72XCBA25PZE7DM7BKWJS5RQJJY/)

were intercepted by the police, ID-checked and fined HK\$5,000 (USD \$650) for violating the social gathering ban under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation. Fines in the name of COVID-19 disease control have been effectively used by the authorities to restrict peaceful assemblies, placing a heavy financial burden on young people.

### **Recommendations:**

- Stop using national security and public health as a pretext to unnecessarily restrict students' rights to freedom of association and peaceful assembly
- Ensure that any restriction on peaceful assemblies to protect public health or other legitimate concerns are necessary, proportionate and non-discriminatory. The government should also consider the public health measures voluntarily adopted by the demonstrators, such as maintaining social distance and wearing masks, that help to facilitate peaceful assemblies without endangering public health.

### **Right to education (Articles 28, 29)**

The CRC highlights human rights education as an integral part of serving the aims of education, including by nurturing children's respect for human rights and fundamental freedoms and preparing them for a responsible life in a free society.<sup>13</sup> The government has primary responsibility to promote and ensure human rights education and training, as well as to create a safe and enabling environment for the engagement of civil society and other relevant processes.<sup>14</sup> In addition to building knowledge of human rights standards and instruments, the CRC Committee stresses that children should be able to learn about human rights by seeing human rights implemented in practice, whether at home, in school or within the community.<sup>15</sup>

In Hong Kong, human rights education is neither a part of education policy nor an independent subject at schools.<sup>16</sup> It is incorporated in the school-based subject of Moral and Civic Education with some topics included in subjects like General Studies and Liberal Studies. However, human rights education and the discussion of rights-related topics have been sidelined under the framework of strengthening education on national development and national security.<sup>17</sup> Since 2019, the HKSAR government has effectively censored

<sup>13</sup> Article 29 (1) of the Convention on the Rights of the Child.

<sup>14</sup> UN General Assembly, Declaration on Human Rights Education and Training, UN Doc. A/RES/66/137, art. 7.

<sup>15</sup> Committee on the Rights of the Child, General comment No.1, Article 29: The Aims of Education, UN Doc. CRC/GC/2001/1, para. 15.

<sup>16</sup> D. Tsui, "Overview of AIHK's Human Rights Education Work in Hong Kong", Human Rights Education in Asia Pacific, 2016, p. 99, [www.hurights.or.jp/archives/asia-pacific/section1/seven\\_1-6.pdf](http://www.hurights.or.jp/archives/asia-pacific/section1/seven_1-6.pdf)

<sup>17</sup> Government of HKSAR, "The Chief Executive 2020's Policy Address: Moral and National Education", 25 November 2020, [www.policyaddress.gov.hk/2020/eng/p152.html](http://www.policyaddress.gov.hk/2020/eng/p152.html)

contents related to human rights and democracy in school textbooks. Some examples of such censorship include negative information about China being removed and class activities on freedom of peaceful assembly being cut short and revised.<sup>18</sup> With minimal professional and public consultation in advance, the EDB also announced a controversial overhaul of the Liberal Studies curriculum to drastically reduce teaching hours while simultaneously strengthening national education to nurture patriotism and children's sense of belonging to their country. These changes combined with the stringent new EDB guidelines to step up scrutiny on students' political expression and assemblies on campus out of national security consideration, sends a strong message that human rights education is not adequately respected in the education policies of the HKSAR government.

### Recommendations:

- Ensure that all key education policies and guidelines for schools, especially those related to national security, are human rights compliant in accordance with the requirements of UN guidelines on ensuring the right to education<sup>19</sup>
- Promote the development of strategies, policies and programmes to implement human rights education and training, such as through its integration into school and training curricula. Human rights education should be valued and strengthened in the education policies of the HKSAR government, with equal importance and priority as the education of national values, moral and civic values, anti-discrimination, cultural identity, and other important concepts crucial to children's development
- Provide adequate training in human rights for officials involved in the policymaking and implementation of education policies, teachers, trainers and other educators
- Refrain from arbitrarily interfering with school policies without prior adequate consultation of the school management bodies and restricting students' freedom of peaceful expression on campus out of national security consideration

<sup>18</sup> Rachel Wong, "Activist sets up online archive to highlight 'political' editing of Hong Kong school textbooks", *Hong Kong Free Press*, 14 December 2020, [hongkongfp.com/2020/12/14/activist-sets-up-online-archive-to-highlight-political-editing-of-hong-kong-school-textbooks/](http://hongkongfp.com/2020/12/14/activist-sets-up-online-archive-to-highlight-political-editing-of-hong-kong-school-textbooks/); Kelly Ho, "Hong Kong teachers' union raises concerns over censorship as publishers revise textbooks after gov't review", *Hong Kong Free Press*, 19 August 2020, [hongkongfp.com/2020/08/19/hong-kong-teachers-union-raises-concerns-over-censorship-as-publishers-revise-textbooks-after-govt-review/](http://hongkongfp.com/2020/08/19/hong-kong-teachers-union-raises-concerns-over-censorship-as-publishers-revise-textbooks-after-govt-review/)

<sup>19</sup> UNESCO, *Right to Education Handbook* (2019), pp. 118-121, [unesdoc.unesco.org/ark:/48223/pf0000366556](https://unesdoc.unesco.org/ark:/48223/pf0000366556); UN General Assembly, Declaration on Human Rights Education and Training, UN Doc. A/RES/66/137.

## **Rights not to be subject to torture or to cruel, inhuman and degrading treatment or punishment (Articles 37)**

### **Reported torture and other ill-treatment of children in conflict with the law**

Article 37(a) of the Convention on the Rights of the Child expressly prohibits torture and other ill-treatment, as well as certain forms of punishment. Every child deprived of liberty must be treated with humanity and respect for the child's inherent dignity, as well as in a manner that takes into account the needs of his or her age.<sup>20</sup>

In a number of media reports published in 2017, children recalled being tortured and otherwise ill-treated in detention centers and training centers for young people aged 14 to 24. They reported being subjected to physical punishment, being barred from going to the toilet and being slapped and insulted by correctional officers.<sup>21</sup> Department said all alleged cases were referred to law enforcement agencies and persons in custody may lodge complaints to the Complaints Investigation Unit of the Department.<sup>22</sup> Reports also alleged that in 2020 officers insulted and beat inmates' feet and palms with wooden rods, metal rulers and batons at Pik Uk Correctional Institution for males under 21.<sup>23</sup> In many of these alleged cases, complainants expressed fear of retaliation if they were to file an official complaint.

### **Recommendations**

- Take immediate and effective measures to ensure that deprivation of children's liberty, including before trial, is a measure of last resort and implemented for the shortest appropriate period of time
- Ensure that force or restraint is used only when children pose an imminent threat of injury to themselves or others, and only when all less intrusive means of control have been exhausted. It should not be used to ensure compliance
- Disciplinary measures in violation of Article 37 of the Convention must be strictly forbidden, including corporal punishment, placement in a dark cell, solitary

<sup>20</sup> Article 37(c) of the Convention on the Rights of the Child. See also Guideline 31(a)(v) of the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa.

<sup>21</sup> 林裕華, 鄭秋玲, 邱靖汶, 陳宇軒, "50 少年犯控訴: 把我們當狗一樣 懲教人員嚴正澄清" (Cruel treatment of detainees: the outcry of 50 juvenile offenders), *HK01.com*, 9 August 2017, [bit.ly/3cmkyvq](http://bit.ly/3cmkyvq); 陳娉婷, "人在囚籠: 鐵窗背後的吶喊" (Locked up: the cries behind bars), *The News Lens*, [www.thenewslens.com/feature/hk-prisoners-cry](http://www.thenewslens.com/feature/hk-prisoners-cry); Angela Siu, Kristy Tong and Fiona Chan, "Rough justice: Former juvenile offenders speak of abuse behind bars, and a broken complaints system", *Hong Kong Free Press*, 19 November 2017, [hongkongfp.com/2017/11/19/rough-justice-former-jvenile-offenders-speak-abuse-behind-bars-broken-complaints-system](http://hongkongfp.com/2017/11/19/rough-justice-former-jvenile-offenders-speak-abuse-behind-bars-broken-complaints-system)

<sup>22</sup> Government of the HKSAR, "CSD issues statement regarding treatment of persons in custody", press release, 21 November 2017, [www.info.gov.hk/gia/general/201711/21/P2017112100864.htm?fontSize=1](http://www.info.gov.hk/gia/general/201711/21/P2017112100864.htm?fontSize=1)

<sup>23</sup> Rachel Wong, "Hong Kong prisons need independent monitor, say activists, as ex-detainees allege abuse", *Hong Kong Free Press*, 6 May 2020, [hongkongfp.com/2020/05/06/hong-kong-prisons-need-independent-monitor-say-activists-as-ex-detainees-allege-abuse/](http://hongkongfp.com/2020/05/06/hong-kong-prisons-need-independent-monitor-say-activists-as-ex-detainees-allege-abuse/); Jessie Pang, "Young Hong Kong democracy protester says he was beaten by prison guards", *Reuters*, 28 August 2020, [www.reuters.com/article/us-hongkong-security-detention-idUSKBN25002X](http://www.reuters.com/article/us-hongkong-security-detention-idUSKBN25002X)

confinement or any other punishment that may compromise the physical or mental health or well-being of the child concerned

- Conduct prompt, impartial, independent and effective investigations into allegations of torture and other cruel, inhuman and degrading treatment in juvenile correctional facilities
- Reform the existing oversight and complaint mechanism to allow victims of torture or other cruel, inhuman and degrading treatment to lodge complaints safely without fear of retaliation

## **The Rights of refugee children (Article 22)**

In its last Concluding Observations, the CRC Committee recommended that the HKSAR government provide accessible and adequate support for asylum-seeking and refugee children in Hong Kong.<sup>24</sup> Amnesty International Hong Kong is concerned about the persistent inaccessibility of fundamental rights for asylum-seeking and refugee children in Hong Kong, including the right to healthcare and education.

Although asylum-seeking and refugee children are entitled to healthcare provided by public hospitals and the medical expenses can be waived by applying separately to the Social Welfare Department, the time-consuming, complex and costly process, which include unsubsidized travel cost to and from hospitals and the paperwork of applying for a waiver, may prevent parents from seeking medical care for their children.<sup>25</sup> Likewise, although asylum-seeking and refugee children are entitled to free education until completion of high school, the government subsidies for tuition fees, uniforms, school trips and other expenses are often reimbursed months after the school year starts. Parents will have to pay for those necessities up front, which is unaffordable for most asylum-seeking and refugee families.<sup>26</sup> According to a study on discrimination experience commissioned by the Equal Opportunities Commission, asylum-seeking children are often denied borrowing services at public libraries and cannot join the budget courses provided by Leisure and Cultural Service Department because they cannot present the recognized identity document.<sup>27</sup>

<sup>24</sup> Concluding observations of UN Committee on the Rights of the Child: Hong Kong, UN Doc. CRC/C/CHN/CO/3-4 (2013), para. 83.

<sup>25</sup> Amnesty International Hong Kong, "Refugees in Hong Kong in the time of COVID-19", 26 April 2019, [www.amnesty.org.hk/en/covid-19-blog-justicecentre-en/](http://www.amnesty.org.hk/en/covid-19-blog-justicecentre-en/)

<sup>26</sup> Raquel Carvalho, "HK parents of refugee children face hurdles to get them an education", *South China Morning Post*, 12 July 2015, [www.scmp.com/news/hong-kong/education-community/article/1837307/hk-parents-refugee-children-face-hurdles-get-them](http://www.scmp.com/news/hong-kong/education-community/article/1837307/hk-parents-refugee-children-face-hurdles-get-them); Yen Nguyen, "No Future for the Children of Asylum Seekers in Hong Kong", *The Diplomat*, 28 August 2020, [thediplomat.com/2020/08/no-future-for-the-children-of-asylum-seekers-in-hong-kong/](http://thediplomat.com/2020/08/no-future-for-the-children-of-asylum-seekers-in-hong-kong/)

<sup>27</sup> Ng Suet-yi, Michelle, Law Timyan and Yeung Tszning, "Study on the Discrimination Experience based on Residency Status of Asylum seeker/Refugee in Hong Kong", March 2019, p. 22.

**Recommendations:**

- Request that the central government extend the 1951 Convention relating to the Status of Refugees and its 1967 Protocol to the HKSAR
- In line with the Convention on the Rights of the Child, take appropriate measures to ensure that asylum-seeking and refugee children receive appropriate protection and assistance, including access to timely and adequate support in healthcare, education, transport and other aspects crucial for their enjoyment of fundamental rights
- Minimize the administrative barriers for asylum-seeking and refugee children and their parents to apply for waiver, subsidies and reimbursement
- Ensure that asylum-seeking and refugee children are protected from discrimination, including in the public sector and when accessing cultural services

— End —