

Subcommittee on Children’s Rights
Rights of Refugee and Asylum Seeking Children

Submission from the Equal Opportunities Commission

Purpose of the Paper

Education is a fundamental human right of every child. This paper aims to provide views of the Equal Opportunities Commission (EOC) on an issue of concern relating to refugee and asylum seeking children realizing their rights to education.

Protections under the Convention on the Rights of the Child and the Race Discrimination Ordinance

2. The United Nations Convention on the Rights of the Child (CRC) provides protection of a range of children’s human rights internationally, and the Hong Kong Government is a party to the CRC. The CRC requires States Parties to ensure the right of children to education,¹ and that there should be no discrimination in the enjoyment of that right including on grounds of race, national or ethnic origin.

3. In addition, the Race Discrimination Ordinance (RDO) provides that it is unlawful to discriminate against, harass or vilify any person on the ground of his/her race (this covers race, colour, descent or national or ethnic origin of a person). Although residency status is not within the definition of race, the RDO still protects refugees and asylum seekers, just as any person in Hong Kong, from being discriminated against where they are treated less favourably on grounds of their race. Given that access to equal education opportunities is a right protected by

¹ Article 28 of the CRC, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

the RDO, discrimination in school admission and access to benefits, facilities and services of an educational establishment on the ground of one's race may be unlawful under the RDO.

School Admission Problems Encountered by a Group of Vietnamese Asylum Seeking Children

4. An organization working for asylum seekers drew to the EOC's attention that a number of asylum seeking children, who have been accepted by a secondary school, have to date not been granted permission for school admission by the Education Bureau (EDB) and Immigration Department (ImmD). All of them came from Vietnam and their waiting time for the permission to date ranges from 4 to 15 months. This contrasts with the situation of all the other asylum seeking children from other countries referred by the same organization to the school. All in the latter group were granted permission to attend the school in less than two months. Among the 12 Vietnamese asylum seeking students requesting this permission through the school since 2016, only one to date has been granted. In this only successful case, the granted student's younger brother, aged 12, sought permission on the same date (11 April 2016), but is still waiting for a response.

5. The organization has tried to follow up with the EDB and ImmD on the progress of the children's requests without success. According to the organization, the EDB replied that it is the ImmD that makes the decision whether or not to grant permission, and the organization received no response from the ImmD despite leaving repeated messages.

6. Without permission for school admission, the Vietnamese asylum seeking children and minors are mostly idling at home, which not only prevents their education, but also their social development and interaction with other children.

EOC's Concerns & Recommendations

7. In 2005, the concluding observations of the Committee on the Rights of the Child, the United Nations body that monitors compliance of all States Parties with the CRC, recommended that the Hong Kong Government should:

*“Amend legislation and regulations to ensure that all refugee, asylum seeking or undocumented migrant children in the Hong Kong Special Administrative Region are able to attend school **without undue delays.**”²*

8. The ongoing delay in granting the above-mentioned group of Vietnamese children and minors permission for school admission fails to comply with the CRC Committee's recommendation. Their right to education under the CRC is therefore being denied, which would adversely affect their mental and social well being.

9. From the information provided by the organization as stated in paragraph 4, it does appear on its face that Vietnamese asylum seeking children are required to wait for much longer time in seeking permission to receive education when compared with children from other countries. This raises concerns of possible racial discrimination against the Vietnamese asylum seeking children, in relation to the right to education.

10. The EOC has written to the EDB and has drawn the attention of the ImmD on this issue, and called on them to clarify their position and take any appropriate action to ensure that the Vietnamese children are provided with education. The EOC also believes it is necessary for the respective Bureau/Department to provide

² Paragraph 82, Concluding Observations China, CRC/C/CHN/CO/2, 24 November 2005

a proper and effective channel for the parents as well as their support workers to follow up with the progress of their permission requests.

Conclusion

11. In conclusion, the Government has international human rights obligations to ensure that the right to education of asylum seeking children is complied with, and the current long delays are denying Vietnamese children of that right. The EOC also believes that the Government should provide support for direct school place referral, rather than individual asylum seeking families having to seek placements with particular schools. The possibly discriminatory treatment of Vietnamese asylum seeking children should be addressed as soon as possible.

Equal Opportunities Commission

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