

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: 3rd Cycle, 31st Session

**PEOPLE'S REPUBLIC OF CHINA AND THE SPECIAL
ADMINISTRATIVE REGIONS OF HONG KONG AND MACAO**

I. BACKGROUND INFORMATION

The People's Republic of China (hereinafter China) became a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1982 (hereinafter jointly referred to as the *1951 Convention*). China is not a State party to either the *1954 Convention Relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. China has acceded to a number of human rights treaties, including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention against Torture*, the *Convention on the Elimination of Discrimination against Women*, and the *Convention on the Rights of the Child*.

In absence of a national asylum law or system, UNHCR is currently conducting refugee status determination under its mandate for individual asylum-seekers. UNHCR's refugee status determination decisions are communicated to the Chinese authorities. Once recognized by UNHCR, the Government only permits refugees to remain in China temporarily, while a durable solution (excluding local integration) is being sought by UNHCR. The *2012 Exit and Entry Administration Law*, which came into force on 1 July 2013 stipulates that refugees and asylum seekers shall hold an identity document issued by Chinese competent authorities during their stay in China. However, this provision is not yet implemented in practice.

There are three distinct groups of persons of concern to UNHCR in China. The first consists of asylum-seekers and refugees. In 2016, there were 668 asylum-seekers and 162 recognized refugees awaiting a durable solution. The second group consists of Indo-Chinese refugees, who came to China in the early 1980s from Vietnam, Laos, and Cambodia. They were granted refugee status on a *prima facie* basis by UNHCR. Although these individuals remain in the statistics, UNHCR no longer considers this group as people of concern as they have *de facto* integrated into China and have access to the same rights as citizens. This group is mainly of Chinese ethnic origin and has settled mostly in rural areas in six of China's southern provinces. Currently, there are an estimated 317,000 Indo-Chinese refugees, mainly from Vietnam. The third group consists of citizens from the Democratic People's Republic of Korea who are in China and who may be in need of international protection. The exact size of this group is unknown, because there are no official statistics and UNHCR does not have access to this group or to the border areas of the country.

With respect to the Hong Kong Special Administrative Region (hereinafter HKSAR), the *1951 Convention* does not apply in this region. A wide range of international human rights instruments have been extended to Hong Kong, most notably the *1984 Convention against*

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (extended in 1992). The *Hong Kong Bill of Rights Ordinance* (enacted in 1991) and Article 39 of the *Hong Kong Basic Law* essentially gives effect to the *International Covenant on Civil and Political Rights* in domestic law. The *1954 Convention relating to the Status of Stateless Persons* was extended to the HKSAR by China in 1997 following the formal resumption of sovereignty.

HKSAR does not have a legal framework governing the granting of asylum and does not admit any legal obligations towards the protection of refugees on its territories; as such persons under UNHCR's mandate are subject to domestic immigration laws, and are generally not entitled to legal residency or the right to work. However, since March 2014 a Government-implemented process called the Unified Screening Mechanism (hereinafter the USM) has been in place, identifying potential deportees with claims who satisfy *inter alia* the refugee inclusion criteria, suspending their removal and referring the claims to the UNHCR to review and assist with durable solutions. The Government is presently conducting a comprehensive review of the system with major reform and legislation expected in 2018/2019.

According to Government statistics, as of 30 September 2017, there were 7,244 claims awaiting first instance USM decisions. As of 30 November 2017, there were 56 cases / 99 refugees recognised under UNHCR's mandate, from 16 different countries of origin. One person has been identified as stateless.

With regard to the Macao Special Administrative Region (hereinafter MSAR), the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* were formally extended to this region in 2001. The *Legal Framework on the Recognition and Loss of Refugee Status under Law* (hereinafter Law 1/2004) came into force in January 2004, transposing into domestic law procedures governing the assessment of asylum claims in cooperation with UNHCR. The *1984 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* have also been extended to the territory in 1999 and 2010, respectively. None of the *Statelessness Conventions* have been extended to MSAR.

Since August 2004, the MSAR authorities, through the Macao Refugee Commission, has been responsible for registering asylum claims and conducting refugee status determination, with the UNHCR on-hand to provide technical expertise and support on request. UNHCR has access to all asylum-seekers and the determination process at all stages. The number of asylum claims are relatively small, with 5 persons/3 cases pending determination as of 30 November 2017. MSAR has yet to positively recognise a refugee.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 186.243: "Provide adequate protection to asylum seekers and cross-border refugees including especially those from neighbouring countries, in accordance with humanitarian considerations and relevant international norms such as the principle of *non-refoulement*" (Republic of Korea).

Through the launch of the Government-implemented USM in the Hong Kong SAR in March 2014, persons assessed to be in need of international protection under *inter alia* the *1951 Refugee Convention* are protected from removal. In Macao SAR, the MSAR Government has maintained a working relationship with UNHCR and fully respects its *non-refoulement*

obligations. It has further developed its welfare assistance policy as implemented by the Social Welfare Bureau, providing quality welfare assistance and access to essential services (education, medical) to registered persons under UNHCR's mandate in the territory.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Protection of asylum seekers and refugees

Linked to 2nd cycle UPR recommendation no. 186.243: “Provide adequate protection to asylum seekers and cross-border refugees including especially those from neighbouring countries, in accordance with humanitarian considerations and relevant international norms such as the principle of non-refoulement”, and recommendation no. 186.242: “Accept the recommendations of UNHCR on refugee issues including the adoption of national asylum legislation” (Republic of Korea).

The adoption of the changes in the *Law of Entry and Exit* was an important first step toward national ownership of the asylum process. The next steps should be the adoption of national asylum legislation and the creation of national institutions. As far back as 2008, a refugee regulation was drafted with input from all relevant ministries and submitted to the State Council for its final deliberation. It was never adopted, however. During UNHCR's Ministerial Conference on Refugees and Stateless Persons to commemorate the 60th anniversary of the *1951 Convention* and the 50th anniversary of the *1961 Convention* in December 2011, China pledged to accelerate the legislation process relating to refugees in light of China's national conditions and legislative process.

Despite possession of UNHCR certificates confirming their registration and status with the Office, urban asylum-seekers and refugees continue to face risks of arrest and detention in China for violation of immigration offences if they enter the country unlawfully or overstay their visas. Without valid work permits or license to do business, they cannot obtain legal employment or establish businesses.

Although generally China respects the principle of *non-refoulement* for individuals registered with UNHCR, within the reporting period there are two cases in which asylum-seekers registered with UNHCR were deported to their country origin.

Furthermore, despite recent developments, the Hong Kong Government's position remains firmly against the granting of asylum to refugees on the territory. The result is the present quasi-legislative regime where refugees are protected from removal but are not recognised, leaving substantiated claims in a suspended state of protracted limbo with no recourse to a durable solution in the territory. Accession to the *1951 Convention* would provide clarity to the situation, and facilitate the strengthening of the protections available for persons under UNHCR's mandate.

With regard to the Macao SAR region, the adjudication process for the pending asylum claims has stalled, with little to no progress recorded over the past years, despite clear timeframes stipulated in its laws. One of the key obstacles observed is the inability of Government officials who make up the Refugee Commission to formally convene meetings due to other responsibilities. Other challenges appear to be resource-related, including the lack of suitable interpreters. UNHCR has frequently expressed views on this issue to the Commission, but there has been no action taken to date to rectify this.

Recommendations:

UNHCR recommends that the Governments of China:

- (a) Adopt national asylum legislation that provides for capacity building for public officials to undertake registration and refugee status determination and develop a national refugee response procedure.
- (b) Establish a responsible government institution in charge of refugee matters.
- (c) Consider extending the *1951 Convention* to Hong Kong, and adopting a legislative framework that provides for a comprehensive and effective refugee status determination procedure consistent with international standards.
- (d) Consider granting substantiated USM claimants an alternative legal status to promote real local integration and the enjoyment of basic social-economic rights in Hong Kong.
- (e) Take legislative measures to amend article 5 of the *Law 1/2004* governing the strict composition of the Refugee Commission in order to permit the participation of appropriate members who are able to participate in refugee status determination and implement the Law in a timely manner.
- (f) Consider procedural safeguards that would render independent, qualified and free legal advice accessible to those claiming asylum.
- (g) Take legislative measures to explicitly guarantee the rights of refugees recognised in MSAR.

Issue 2: Protection of North Koreans

Linked to 2nd cycle UPR recommendation no 186.241: “Protect North Korean refugees in accordance with international law, honouring the principle of *non-refoulement*” (Czech Republic).

It is noted that the position of the Government of China is that North Koreans come to China for economic reasons and that they are therefore not asylum seekers, however it should be emphasised that some of these individuals may be in need of international protection.

Recommendations:

UNHCR recommends that the Government of China:

- (a) Acknowledge the severity of treatment issued to those returnees who are deemed to have left North Korea illegally.
- (b) Take all measures to ensure viable and effective humanitarian space for those North Korean asylum-seekers who may be determined to be in need of international protection, including issuing them identification and documentation to legally reside in China.

Issue 3: Enjoyment of economic, social and cultural rights for Refugees in Hong Kong

Linked to 2nd cycle UPR recommendation no. 186.243: “Provide adequate protection to asylum seekers and cross-border refugees including especially those from neighbouring countries, in accordance with humanitarian considerations and relevant international norms such as the principle of *non-refoulement*” (Republic of Korea).

With scarce possibilities for resettlement-to-a-third-country, the condition of refugees who remain in Hong Kong without the possibility of enjoying basic economic, social and cultural rights, such as the right to work, access to tertiary and vocational education and other self-development opportunities, is destined to worsen as their situation remains unaddressed. The cost of living in Hong Kong is high, and continued reliance on existing basic humanitarian assistance prevents individuals from sustaining dignified livelihoods for themselves and their families.

Recommendations:

UNHCR recommends that the Government of Hong Kong SAR:

- (a) Consider amending immigration laws and/or existing policies to enable mandated refugees access to gainful employment and tertiary/vocational education opportunities while awaiting durable solutions to their situation.

UNHCR
March 2018

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies

CHINA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to CHINA.

I. Universal Periodic Review (Second Cycle – 2013)

Recommendation ¹	Recommending State/s	Position ²
Refugees/asylum-seekers		
186.241. Protect North Korean refugees in accordance with international law, honouring the principle of <i>non-refoulement</i> .	Czech Republic	Noted ³
186.242. Accept the recommendations of UNHCR on refugee issues including the adoption of national asylum legislation.	Republic of Korea	Supported ⁴
186.243. Provide adequate protection to asylum seekers and cross-border refugees including especially those from neighbouring countries, in accordance with humanitarian considerations and relevant international norms such as the principle of <i>non-refoulement</i> .	Republic of Korea	Noted ⁵
Birth registration		
186.86. Ensure proper registration of all boys and girls born in China in order to protect their rights to legal personality and equality before the law.	Mexico	Supported
186.87. Give priority to protecting the rights of girl children by ensuring that all girls are registered at birth, implement wide awareness raising campaigns on the human rights of girls and promote their education.	Slovenia	Supported

¹ All recommendations made to China during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of China" (4 December 2013), A/HRC/25/5, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CNIndex.aspx>.

² China's views and replies can be found in: *Addendum* (27 February 2014), A/HRC/25/5/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CNIndex.aspx>.

³ **Addendum:** "The Chinese government has consistently followed the principle of *non-refoulement* and other international practice in refugee management. The illegal entrants from the DPRK are not refugees. Thus, their treatment should be different from that of refugees. The Chinese government follows the international law, domestic law and humanitarian spirit to properly handle the illegal entrants from the DPRK."

⁴ **Addendum:** "China's Constitution stipulates that asylum may be granted to foreigners who request it for political reasons in China. The Exit and Entry Administration Law of China which came into force on July 1, 2013 stipulates that foreigners applying for refugee status may, during the screening process, stay in China on the strength of temporary identity certificates issued by public security organs; foreigners who are recognized as refugees may stay or reside in China on the strength of refugee identity certificates issued by public security organs. China places importance on the refugee legislation, and is actively promoting the relevant legislation along with its domestic legislation progress."

⁵ **Addendum:** "The Chinese government has consistently followed the principle of *non-refoulement* and other international practice in refugee management. China follows the *non-refoulement* principle and offers corresponding protection for all asylum seeker and cross-border refugees, be they from neighbouring countries or other countries. Therefore, there is no need to make a special request concerning "refugees from neighbouring countries".

Human Trafficking		
186.96. Continue to adopt appropriate measures in combating the trafficking of human beings.	Romania	Supported ⁶
186.97. Combat the crimes of abduction of and trafficking in women, provide women victims with physical and psychological rehabilitation services with a view to their integration into the society, continue improving the pension system covering urban and rural areas.	Mali	Supported ⁷
186.98. Review its sentencing policy for perpetrators of human trafficking and strengthen assistance measures to victims.	Botswana	Supported ⁸
Religious freedom		
186.142. Stop the prosecution and persecution of people for the practice of their religion or belief including Catholics, other Christians, Tibetans, Uyghurs, and Falun Gong, and set a date for the visit of the Special Rapporteur on Freedom of Religion or Belief.	Canada	Noted ⁹
Access to rights		
186.76. Continue the efforts aimed at fighting against poverty and discrimination of the most vulnerable groups.	Ecuador	Supported
186.210. Improve access to education for disadvantaged people.	Senegal	Supported
186.211. Guarantee the right to education for children of migrant workers.	Chad	Supported

II. Treaty Bodies

Committee against Torture

Concluding Observations, (3 February 2016), [CAT/C/CHN/CO/5](#)

4. The Committee welcomes the following legislative measures taken by the State party in areas of relevance to the Convention:

[...];

(b) The adoption in 2012 of the Exit-Entry Administration Law, which contains provisions regarding the treatment of refugees;

[...].

⁶ **Addendum:** “The Chinese government attaches great importance to combating human trafficking. It has adopted resolute and comprehensive measures to effectively prevent and crack down on human trafficking, worked actively for the rescue, settlement and rehabilitation of victims, and conducted effective cooperation with related countries and international organizations in the field of combating human trafficking.”

⁷ **Addendum:** “See 186.96. China has established and continued to improve the unified social old-age pension system covering both rural and urban residents.”

⁸ **Addendum:** “See 186.96.”

⁹ **Addendum:** “China’s Constitution and laws guarantee citizens’ freedom of religious belief, and, at the same time, stipulate obligations that citizens must fulfill. The Chinese government handles in accordance with the law illegal religious organizations and individuals that promote superstition and fallacies, deceive the people, instigate and create disturbances, and undermine social stability. “Falun Gong” is not a religion but an out-and-out cult. The purpose of banning “Falun Gong” by the Chinese government in accordance with the law is to protect human rights and fundamental freedoms of citizens, and uphold the sanctity of the Constitution and laws.”

46. While welcoming the adoption in 2012 of the Exit-Entry Administration Law (see para. 4 (b) above), the Committee remains concerned that, in the absence of national asylum legislation and administrative procedures, the refugee determination process has to be carried out by the Office of the United Nations High Commissioner for Refugees (UNHCR). The Committee is also concerned at the State party's rigorous policy of forcibly repatriating all nationals of the Democratic People's Republic of Korea on the ground that they have illegally crossed the border solely for economic reasons. In that regard, the Committee takes note of over 100 testimonies received by United Nations sources (see A/HRC/25/63, paras. 42-45), in which nationals of the Democratic People's Republic of Korea indicate that persons forcibly repatriated to the Democratic People's Republic of Korea have been systematically subjected to torture and ill-treatment. In the light of this information, the Committee regrets the State party's failure to clarify, in spite of the questions raised during the dialogue, whether or not nationals of the Democratic People's Republic of Korea are denied access to refugee determination procedures in China through UNHCR, as reported to the Committee by various sources (art. 3).

47. The State party should:

- (a) Adopt the necessary legislative measures to fully incorporate into domestic legislation the principle of non-refoulement set out in article 3 of the Convention, and promptly establish a national asylum procedure, in cooperation with UNHCR;**
- (b) Immediately cease forcible repatriation of undocumented migrants and victims of trafficking to the Democratic People's Republic of Korea, and allow UNHCR personnel unimpeded access to nationals of the Democratic People's Republic of Korea who have crossed the border, in order to determine if they qualify for refugee status.**

48. The Committee reminds the State party that under no circumstance should the State party expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In order to determine the applicability of the obligations that it has assumed under article 3 of the Convention, the State party should thoroughly examine the merits of each individual case, including the overall situation with regard to torture in the country of destination. It should also support effective post-return monitoring arrangements in cases of *refoulement*, including any conducted by UNHCR.

59. The Committee regrets the lack of information on the proportion of persons trained on the provisions of the Convention and on the impact such training have had on the prevention of torture (art. 10).

60. The State party should ensure that periodic and compulsory training is provided to all officials involved in the treatment and custody of persons deprived of their liberty on the provisions of the Convention, non-coercive interrogation techniques and on the guidelines set out in the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (the Istanbul Protocol). The State party should also develop and apply a

methodology for evaluating the effectiveness of educational and training programmes relating to the Convention and the Istanbul Protocol.

Committee on the Elimination of Discrimination against Women

Concluding Observations, (14 November 2014), [CEDAW/C/CHN/CO/7-8](#)

Trafficking and exploitation of prostitution

28. The Committee welcomes the promulgation of the National Plan of Action on Combating Human Trafficking (2013-2020). However, the Committee is concerned about the absence of comprehensive anti-trafficking legislation and the lack of clarity as to whether domestic law criminalizes all forms of trafficking, including trafficking for the purpose of sexual exploitation, forced labour, forced marriage and illegal adoption. The Committee is further concerned that notwithstanding the abolition of the re-education through labour system, the State party continues to use the custody and education programme that involves the incarceration of women, which disproportionately affects women in prostitution.

29. **The Committee recommends that the State party:**

- (a) Provide information in the next periodic report on the adoption of comprehensive anti-trafficking legislation with an explicit definition of trafficking in persons and explain how it complies with international standards;**
- (b) Continue to intensify efforts aimed at bilateral, regional and international cooperation to prevent trafficking, including working with other countries in the region by exchanging information and harmonizing legal procedures to prosecute traffickers;**
- (c) Ensure that all women who were subjected to the re-education through labour system receive adequate compensation, and consider abolishing the custody and education programme, which may be used to justify the arbitrary detention of women.**

56. The Committee is concerned that the State party has not extended the applicability of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime to Hong Kong, China. The Committee is also concerned about the lack of comprehensive anti-trafficking legislation. The Committee is further concerned that Hong Kong, China, has not repealed the legislative provisions on “vice establishment”, which compel women in prostitution to work alone in isolated settings, where they are exposed to a higher risk of abuse, exploitation and violence by clients.

57. **The Committee recommends that Hong Kong, China:**

- (a) Intensify efforts to address the root causes of trafficking in women and girls and ensure the rehabilitation and social integration of victims, including by providing them with access to shelters, legal, medical and psychosocial assistance and alternative income-generating opportunities;**
- (b) Undertake a comprehensive study with a view to collecting data on the extent and forms of trafficking in women and girls, which should be disaggregated by age and region or country of origin;**

- (c) Intensify efforts aimed at bilateral, regional and international cooperation to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers, particularly with regard to source countries such as Indonesia and the Philippines;
- (d) Consider extending the applicability of the Palermo Protocol to Hong Kong, China, and adopt comprehensive anti-trafficking legislation;
- (e) Repeal legislative provisions on “vice establishment” and afford enhanced protection to women in prostitution, including exit programmes for those who wish to leave prostitution.

Committee on Economic, Social and Cultural Rights

Concluding Observations, (13 June 2014), [E/C.12/CHN/CO/2](#)

Non-discrimination in Hong Kong, China

41. The Committee is concerned about the prevalent and widespread discrimination against some disadvantaged and marginalized groups, such as migrants and internal migrants, asylum-seekers and refugees, as well as on the grounds of sexual orientation and gender identity, particularly in employment, education, health care and housing. The Committee notes with concern the absence of comprehensive anti-discrimination legislation and regrets that the Race Discrimination Ordinance does not include discrimination on the grounds of nationality, citizenship, resident status or the length of residence in Hong Kong, China (art. 2, para. 2).

The Committee recommends that Hong Kong, China, take steps to adopt comprehensive anti-discrimination legislation in compliance with article 2, paragraph 2, of the Covenant and taking into account the Committee’s general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights. The Committee reiterates its previous recommendation (E/C.12/1/Add.107, para. 91) and urges Hong Kong, China, to eliminate the widespread discriminatory practices against migrants and internal migrants from other parts of China. The Committee also urges Hong Kong, China, to take adequate measures to ensure that lesbians, gays, bisexual and transgender persons are able to fully enjoy their economic, social and cultural rights without any discrimination.

Refugees and asylum seekers in Hong Kong, China

42. The Committee is concerned that the absence of comprehensive legislation granting protection to refugees and asylum seekers prevents them from enjoying economic, social and cultural rights, particularly in accessing legal employment, vocational training and adequate housing (arts. 6 and 11).

The Committee recommends that Hong Kong, China, adopt legislation on asylum-seekers and refugees in order to improve their enjoyment of economic, social and cultural rights, granting them access to legal employment, including vocational training, and adequate housing.

The Committee recommends that Hong Kong, China;

- (a) **Adopt a comprehensive law to regulate domestic work and ensure that migrant domestic workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection;**
- (b) **Take immediate action to repeal the two-week rule and the live-in requirement and eliminate conditions that render migrant domestic workers vulnerable to compulsory labour and sexual assault;**
- (c) **Provide effective mechanisms for reporting abuse and exploitation in light of the difficulty some domestic workers have in accessing telecommunications services;**
- (d) **Establish an inspection mechanism for monitoring the conditions of work of domestic workers, in particular migrant workers.**

Non-discrimination in Macau, China

54. The Committee notes with concern that Macao, China has not yet adopted comprehensive anti-discrimination legislation and that widespread discrimination against migrants, as well as lesbian, gay, bisexual and transgender persons, persists in Macao, China, particularly in employment, health care, education and housing. The Committee also notes with concern that de facto discrimination against persons with disabilities persists, particularly in the field of employment (art. 2, para. 2).

The Committee urges Macao, China to consider the adoption of comprehensive anti-discrimination legislation, in compliance with article 2, paragraph 2, of the Covenant and taking into account the Committee's general comment No 20 (2009) on non-discrimination in economic, social and cultural rights. The Committee recommends that Macao, China, take all appropriate measures, including awareness-raising campaigns, to address the de facto discrimination against persons with disabilities.

Committee on the Rights of the Child

Concluding Observations, (29 October 2013), [CRC/C/CHN/CO/3-4](#)

4. The Committee notes with appreciation the ratification of:

- (a) The Optional Protocol on the involvement of children in armed conflict, in 2008; [...].

5. The Committee welcomes the adoption of the following policy measures in mainland China:

- (a) The Plan of Action against Human Trafficking 2013-2020, in March 2013; [...].

Non-discrimination

25. The Committee is deeply concerned at the continuous violations of the rights of and discrimination against Tibetan and Uighur children and children of Falun Gong practitioners in mainland China, including their right to freedom of religion, language and culture. The Committee is further concerned about the persistence of discrimination against children with disabilities, children of migrant workers, refugee and asylum-seeking children, and children

infected with or affected by HIV/AIDS, particularly in relation to education, housing, health care and other social services.

26. In light of article 2 of the Convention, the Committee urges the State party to take immediate action in mainland China to eliminate policies, practices and security measures that disproportionately affect or discriminate against Tibetan and Uighur children and children of Falun Gong practitioners. It further recommends that the State party identify and eliminate all forms of discrimination, including in education, and health and social services, against children with disabilities, children of migrant workers, refugee and asylum-seeking children and children infected with or affected by HIV/AIDS.

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.

30. The Committee recommends that Hong Kong, China intensify measures, including awareness-raising, identification of discriminatory policies and timely implementation of relevant programmes, to combat discrimination against children with disabilities, undocumented children of migrant workers, and refugee and asylum-seeking children, and to ensure that these children have equal access to basic services, including health, education and other social services. The Committee reminds Macao, China that the absence of formal complaints does not imply that children are not discriminated against in its jurisdiction and recommends that it actively seek information on discrimination, especially with respect to children who are vulnerable to discrimination, and pursue all legislative and policy measures to eliminate all forms of discrimination against children.

Birth registration, name and nationality

39. The Committee is concerned that the rate of birth registration is low in poor and remote areas of mainland China and among girls, migrant children, adopted children and children whose birth would put a family above the limit of the locally "sanctioned" family size. It remains particularly concerned that:

- (a) The current family-planning policies on birth registration, including the issuance of birth certificates and the negative impact of financial and other forms of penalties and practices, significantly deter parents or guardians from registering their children;
- (b) The family household registration (hukou) to which the birth registration is attached impedes birth registration of children of migrant workers;
- (c) Numerous administrative requirements for obtaining a birth certificate and complex registration procedures create many barriers to birth registration.

**40. The Committee recommends that the State party:
Reform family planning policies in order to remove all forms of penalties and practices that deter parents or guardians from registering the birth of their children;**

- (a) **Abandon the hukou system in order to ensure birth registration for all children, especially for children of migrant workers;**
- (b) **Simplify, streamline and facilitate the process of birth registration by removing all financial and administrative barriers associated with the process and improving services, including availability and access to birth registry services for parents and guardians;**
- (c) **Intensify community sensitization and public awareness of the importance of birth registration, including among government agencies and in rural areas;**
- (d) **Seek technical assistance from the United Nations Children’s Fund (UNICEF), among others, to implement these recommendations.**

Asylum-seeking and refugee children

81. The Committee welcomes the State party’s pledge in 2011 to “endeavour to finally settle the Indochinese refugee issue”. The Committee, however, is particularly concerned that:

- (a) Children entering mainland China from the Democratic People’s Republic of Korea are still categorically considered as economic migrants and returned to the Democratic People’s Republic of Korea without consideration of whether there are risks of irreparable harm to the children upon return;
- (b) Children whose mothers are from the Democratic People’s Republic of Korea lack legal identity and access to basic rights, particularly education, as they are not registered under the hukou system out of fear that their mothers would be identified and forcibly returned to the Democratic People’s Republic of Korea;
- (c) The State party failed to recognize the Kachin asylum seekers, including children, as refugees despite their circumstances and forcibly returned them to Myanmar in August 2012;
- (d) There is an absence of special reception procedures or facilities for unaccompanied and separated refugee and asylum-seeking children and that they lack access to health care, special care and protection.

82. The Committee notes as positive the decision of Hong Kong, China to grant asylum-seeking and refugee children access to the national public school system. However, it is concerned about the lack of special care and protection for asylum-seeking children upon their arrival and the administrative practice of detaining such children, as well as unaccompanied children arriving in Hong Kong, China by air and children who are refused entry, in juvenile detention facilities.

83. The Committee recommends that the State party:

- (a) **Respect the principle of non-refoulement and reminds it of its obligation under the Convention to ensure that no accompanied, unaccompanied or separated child, including those from the Democratic People’s Republic of Korea, is returned to a country where there are substantial grounds for believing that she or he will suffer irreparable harm, and that this principle applies to all children and their families without distinction and regardless of nationality;**
- (b) **Ensure that Kachin child refugees and their families are provided with temporary protection in view of the ongoing conflict in northern Myanmar; it should also allow the Office of the United Nations High Commissioner for**

Refugees free and unfettered access to Yunnan Province to conduct refugee status determinations;

- (c) Cease the arrest and repatriation of citizens of the Democratic People's Republic of Korea, especially children, and women who have children with Chinese men, and ensure that children of mothers from the Democratic People's Republic of Korea have access to fundamental rights, including the right to identity and education;
- (d) Take immediate initiatives to meet the special needs and vulnerabilities of unaccompanied and separated children seeking asylum and provide appropriate care and cater for the special needs of these unaccompanied and separated children.

84. The Committee recommends that Hong Kong, China:

- (a) Cease the administrative practice of detaining asylum-seeking and refugee children;
- (b) Ensure that asylum-seeking and refugee children are provided with accessible and adequate support, including special care, protection and adequate guardianship and legal representation;
- (c) Accede to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

Concluding Observations, (29 October 2013), [CRC/C/OPAC/CHN/CO/1](#)

Measures adopted to protect the rights of child victims

31. The Committee is deeply concerned that asylum-seeking and refugee children, especially those who may have been recruited or used in hostilities abroad, continue to be routinely arrested and detained in detention facilities, especially in Hong Kong, China. The Committee is also concerned about the absence of official statistics and data on asylum-seeking and refugee children in the State party — mainland China, Hong Kong, China, and Macao, China — and at the lack of procedures to identify children under its jurisdiction who may have been recruited or used in hostilities in other countries.

32. In the light of its obligations under article 7 of the Optional Protocol, the Committee urges the State party to, in all areas under its jurisdiction:

- (a) Cease the administrative practice, especially in Hong Kong, China, of detaining asylum-seeking and refugee children, including those who may have been recruited or used in hostilities abroad;
- (b) Establish a mechanism for identifying children, including asylum-seeking and refugee children, who have been or may have been involved in armed conflict abroad, and ensure that personnel responsible for such identification are trained on child rights, child protection and child-friendly interviewing skills;
- (c) Provide children who have been or may have been involved in armed conflict with appropriate assistance for their physical and psychological recovery and their social reintegration; and
- (d) Establish a system to ensure data collection and registration of all asylum-seeking and refugee children in all areas under its jurisdiction.