
LEFT BEHIND: THE FAILURE OF INTERNATIONAL POLICY MAKERS TO SUPPORT THE MOST VULNERABLE IN HONG KONG

EXECUTIVE SUMMARY

- Young Hong Kongers have been left behind by the British Government's offer of a pathway to citizenship for Hong Kongers, which has a cut-off in 1997 as BNO passports can only be held by those before the handover of Hong Kong.
- But 18-25s are the people most in need of support from international governments.
- Hong Kong Watch has conducted an analysis of those facing political prosecution in Hong Kong:
 - 1) 93% of those who have faced trial for involvement in the 2019 pro-democracy protests are under the age of 25.
 - 2) 29% of those facing National Security Law charges are under the age of 25.
 - 3) Of all those charged with politicised rioting charges, 72.5% are under the age of 25.
 - 4) Of the 10,000 people arrested during the protest movement, 2,000 were still at primary or secondary school.
- This briefing includes analysis of some of the most sensitive cases of political charges against young Hong Kongers under the age of 25.

There are two key opportunities for international governments to support this vulnerable cohort.

- 1) Damian Green has tabled an amendment, supported by leading conservatives and cross-party MPs, which would be a stand-alone clause that would require the Secretary of State for the Home Department to make provision to allow Hong Kongers with one parent who has British National Overseas (BNO) status to register for the Government's British National Overseas Visa Scheme, and allow 18-25s to access the scheme. The Government has an opportunity to adopt this amendment before it is considered at report stage.
- 2) The US Senate should adopt the key provisions in the Safe Harbor Act, sponsored by Senators Menedez and Rubio.

BACKGROUND

- BNO status was offered to people who, before the 1997 Hong Kong handover, had British Dependent Territories Citizenship (BDTC) through a connection with Hong Kong. They lost their BDTC status on 1 July 1997 but could apply for BNO status in the ten years before the handover.
- This excludes anyone who did not have the opportunity to apply for BNO status before the handover of Hong Kong to China, including anyone born after 1997, or minors whose parents did not register them.
- Currently, only BNO status holders and their dependents are eligible to apply for the BNO visa, but dependents are only eligible if they apply at the same time as the status holder.
- The BNO visa is therefore in most cases closed to anyone born after 1997, and dependency on a BNO status holder usually finishes at the age of 18. This means that there is a large cohort of 18–24-year-olds who are unable to flee Hong Kong on the visa route.
- Existing pathways for young people are inadequate. The youth mobility scheme is not renewable, there are only 1,000 places available on it per year and applications must be made from outside of the UK, so it is not suitable for young people who urgently need to leave Hong Kong, or have already left, because of the well-evidenced risk of arrest under the national security law. It also does not contribute to the five-year path to settlement. The Government's newly introduced points-based system would also not be applicable to many of these young people as – despite their potential - they have not accrued enough years of work experience to be eligible.

THE DATA

In partnership with legal scholars from Hong Kong, Hong Kong Watch has broken down the political prisoner charges in Hong Kong and has found the following:

- According to our research, at least 936 defendants out of 1009 who have faced charges relating to the anti-extradition law pro-democracy protests to date, were born in or after 1997. This data is derived from multiple sources and includes only cases which completed the whole judicial process by 31 July 2021.
- Putting this into percentages, 93% of those who have faced charges related to the 2019 protests to date are not covered by the BN(O) policy.
- In addition, out of the 168 citizens arrested for the National Security Law or by the National Security Department on non-NSL charges such as sedition, 49 were born on or after 1997. This data is accurate as of October 2021.
- Translating this into percentages, 29% of those who have faced charges under the National Security Law are not covered by the BN(O) policy.

In addition, Stand News¹ reporting on rioting charges, as of April 2021, found that:

- Of the 750 people who have been charged under Hong Kong's politicised rioting legislation², 543 were 24 years old or younger.
- Translating this into percentages, 72.5% of those who have faced politicised rioting charges and potentially years in jail are not covered by the BN(O) policy.

And Citizen News³ recently underlined that:

- Of the 10,000 people who were arrested for participation in protests, as of the end of October 2020, around 2000 were primary and secondary school students, with 1747 being under the age of 18.

¹ Stand News, 'People charged with rioting, as of 30 April 2021'. 2021. [Follow this link for more.](#)

² For in-depth analysis of the problems with Hong Kong's rioting and illegal assembly laws, read: Hong Kong Watch, 'Outdated and Draconian: Hong Kong's Public Order Ordinance'. July 2019. [Follow this link for more.](#)

³ HKC News, //孫曉嵐：2020年參與反送中運動被定罪兒童的統計//. January 2021. [Follow this link for more.](#)

Case-studies: A number of Hong Kongers under the age of 25 have faced charges under the National Security Law. Tong Ying-kit, 24, was jailed for 9 years under the legislation, partially as a result of his waving of a 'secessionist' flag. Tony Chung, 20, was found guilty of secession as a result of his social media output, and has been sentenced to 43 months in jail. Pro-democracy activist Agnes Chow is among the many young people still awaiting their trial under the law.

Protest related charges including illegal assembly and rioting are disproportionately tabled against young people. For example, one 15-year-old boy was sent to jail for 6 months for 'unlawful assembly' and 'possession of an offensive weapon' after being found holding a laser pointer at a protest. 3 other young Hong Kongers under the age of 25 were arrested with him and jailed. In another example, Lau Ka-tung, a 23-year-old, was sentenced to one year in jail for 'obstructing the police' for his activities in a protest in Yuen Long where he stood between the protestors and the police. People are routinely being sentenced to five to six years in jail under rioting charges.

THE OPPORTUNITY

There are two policy opportunities right now which provide a chance to offer a lifeline to the young Hong Kongers who need it most.

OPPORTUNITY 1: THE DAMIAN GREEN AMENDMENT TO THE BORDERS BILL

- The Government should consider adopting Damian Green's amendment to the Borders' Bill. Damian Green has tabled an amendment to the Borders Bill which would require the Secretary of State for the Home Department to make provision to allow Hong Kongers with one parent who has British National Overseas (BNO) status to register for the Government's British National Overseas Visa Scheme. The Government should consider committing to adopting these provisions before the amendment comes to report stage.
- A recent survey of 24 Hong Kong asylum seekers found that half had at least one BNO status parent. This figure is probably largely representative given that there are an estimated 2.9 million BNO status holders in Hong Kong out of a total population of 7.5 million people in the city. This amendment will offer a vital lifeline to the Hong Kongers who need it.
- Supporters of the amendment include: Damian Green, Tom Tugendhat, Andrew Mitchell, Iain Duncan Smith, David Davis, Jeremy Hunt, Graham Brady, Nusrat Ghani, David Jones, Tim Loughton, Steve Baker, Peter Bottomley. The amendment also has the support of senior figures in the Labour Party, Liberal Democrat Party, Scottish National Party and Green Party.

- Amending the Nationality and Borders Bill to allow Hong Kongers with one parent who has BNO status to register for the Government's British National Overseas Visa Scheme, would free up caseworker time in the asylum system at the same time as providing a safe haven for the many young Hong Kongers who are at risk of politically-motivated prosecution resulting in lengthy jail terms in Hong Kong.
- The proposed amendment is as follows:

NC5

To move the following clause –

British National (Overseas) visas: eligibility

- 1) Within two months of this Act being passed, the Secretary of State must amend the Immigration Rules to ensure that all persons meeting the condition set out in subsection (2) are eligible to apply for the BNO visa.
- 2) The condition referred to in subsection (1) is that the person has at least one parent who is a BNO.

OPPORTUNITY 2: THE ADOPTION OF THE SAFE HARBOR ACT BY THE US CONGRESS

- As the Chinese Communist Party tightens its grip on Hong Kong's fundamental rights and freedoms, the people of Hong Kong, especially protesters, are in desperate need of a lifeline out of the city. The US should join the U.K., Canada and Australia in providing them a safe harbor as soon as possible and continue to work with our international allies to support the people of Hong Kong.
- The Safe Harbor Act, proposed by Senators Menendez and Rubio, provides the right policy pathway forwards. The bill would:
 - Grant certain Hong Kongers Priority 2 Refugee Status: Hong Kongers who participated peacefully in the protest movement, and have a well-founded fear of persecution, will be eligible for Priority 2 Refugee processing in Hong Kong or a third country. Refugees from Hong Kong will not be subjected to the numerical limitation on refugees.
 - Waive Immigration Intent as a Factor for Non-Immigrant Visas: For those Hong Kongers who have been arrested for protest-related offenses or served in a humanitarian or organizing role in the protests, the intent to immigrate will not be considered as a factor for non-immigrant visas to ease the way for an asylum claim.
 - Treat Revocation of Hong Kong Residency in Retaliation for Applying for Refugee Status or a U.S. Visa as Political Persecution : If Beijing revokes the residency of Hong Kongers for applying for refugee status or a U.S. visa, then those individuals will remain eligible for refugee status as victims of political persecution.