

# THE LEFT BEHIND: ALMOST 2M HONG KONGERS STILL DO NOT HAVE A ROUTE OUT OF THE CITY

## HONG KONG WATCH BRIEFING ON THE STATUS OF LIFEBOAT POLICIES

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### EXECUTIVE SUMMARY

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Hong Kong Watch has found that 1.9m Hong Kongers are currently left behind in Hong Kong, as they are not covered by the UK BNO visa scheme, Canada's 'Young Talents', US deferred enforced departure, or Australia's lifeboat scheme.

- Hong Kong's National Security Law (NSL), enacted at the end of June 2020 has led to a relentless crackdown of freedoms and rights in the city.
- The total population of Hong Kong is around 7.5 million
- The UK government estimates that 5.4 million out of 7.5 million Hong Kongers are theoretically eligible for the BNO visa scheme.<sup>1</sup>
- Canada's lifeboat scheme is split into three distinctive components: young talents, asylum, and family reunification. It is realistic that at least 200,000 Hong Kongers could potentially be eligible to move to Canada to take up the 'young talents' portion of the scheme.<sup>2</sup>
- Australia's lifeboat scheme for Hong Kongers, which opened on March 5, 2022, covers Hong Kong passport holders already present in Australia on temporary skilled, temporary graduate, and student visa holders, and is estimated to benefit 11,000 Hong Kongers.<sup>3</sup>
- The US policy, known as deferred enforced departure (DED), will allow certain Hong Kongers to stay in the US for 18 months, with extensions made at the discretion of the President. Based on 2020 non-immigrant visa figures, around 20,000 might benefit from this.<sup>4</sup>
- At the very least, assuming that those eligible for one scheme are not eligible for another, there will be in excess of 1.9 million Hong Kongers who are still left behind in Hong Kong, without a route out of the city.

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<sup>1</sup> [https://www.legislation.gov.uk/ukia/2020/70/pdfs/ukia\\_20200070\\_en.pdf](https://www.legislation.gov.uk/ukia/2020/70/pdfs/ukia_20200070_en.pdf)

<sup>2</sup> <https://www.hongkongwatch.org/all-posts/2020/11/24/canadas-lifeboat-scheme-for-hong-kongers-hkw-explainer>

<sup>3</sup> <https://www.hongkongwatch.org/all-posts/2021/11/1/hong-kong-watch-welcomes-the-opening-of-australias-lifeboat-scheme-for-hong-kongers>

<sup>4</sup> <https://qz.com/2080828/who-is-a-hong-konger-the-us-has-one-of-the-widest-definitions/>

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## OVERVIEW OF THE HUMAN RIGHTS SITUATION

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- Beijing continues its crackdown on basic rights and freedoms in Hong Kong in direct violation of its international legal commitments under the Sino-British Joint Declaration. This includes arresting pro-democracy protestors, lawmakers, journalists, academics, and civil society organisers.
- Since the introduction of the National Security Law over 50 civil society organisations have been forced to close, including independent media outlets *Apple Daily*, *Stand News*, and *Citizen News*.<sup>5</sup>
- Of a survey of 222 journalists by Hong Kong Journalists Association, 64% reported experiencing police violence on the job. One former *South China Morning Post* photojournalist reported being teargassed at close range for his journalism.
- As of January 2022, there were over 721 political prisoners in Hong Kong, facing jail sentences for a variety of protest related offences. This includes charges under the National Security Law, colonial era sedition laws, unlawful assembly, and politicised rioting charges.<sup>6</sup>
- Human rights groups have raised concerns regarding the lack of bail conditions for national security defendants. In the case of the 47 pro-democracy activists and lawmakers who took part in the democratic primaries in 2020, 32 individuals have been denied bail and have been in jail for over a year waiting for their national security trial to begin.<sup>7</sup>
- Academics, teachers, and civil servants accused of “pro-democracy” sympathies have been fired, and students’ unions and trade unions have been forced to disband. Prominent lawyers and pollsters have left the city, including Paul Harris, QC, the former Chair of the Hong Kong Bar Association<sup>8</sup>.
- A number of UK-based businesses including HSBC and Standard Chartered have publicly backed the ongoing crackdown, endorsed the National Security Law, and in HSBC’s case actively frozen the accounts of pro-democracy activists in Hong Kong and abroad.<sup>9</sup>

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<sup>5</sup> <https://hongkongfp.com/2021/11/28/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>

<sup>6</sup> <https://www.hongkongwatch.org/political-prisoners-database>

<sup>7</sup> <https://foreignaffairs.house.gov/2022/2/meeks-mccaul-bera-and-chabot-issue-statement-on-the-one-year-anniversary-of-the-mass-arrests-of-hong-kong-pro-democracy-leaders>

<sup>8</sup> <https://hongkongfp.com/2022/03/02/hong-kong-bar-assoc-ex-chief-paul-harris-reportedly-leaves-city-hours-after-meeting-with-national-security-police/>

<sup>9</sup> <https://www.theguardian.com/business/2021/feb/08/hsbc-urged-to-unfreeze-accounts-of-hong-kong-activist-china>

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## THE LIFEBOATS CURRENTLY ON OFFER

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### UK BNO Visa Scheme (5.4 million Hong Kongers are eligible)

The UK currently offers the most extensive lifeboat policy for Hong Kongers via its BNO visa, which was announced immediately after the implementation of the National Security Law in Hong Kong and opened for applications at the end of January 2021.<sup>10</sup> Anyone who possesses British National (Overseas) status, a category of British nationality which was open to citizens of British Hong Kong prior to its handover to China in June 1997, can apply for the BNO visa. Family members can apply as dependents together with the main BNO applicant.<sup>11</sup> The route allows holders to live, work and study in the UK and apply for settlement after five years, and then British citizenship after an additional year.<sup>12</sup>

Out of Hong Kong's population of 7.5 million, there are an estimated 2.9 million BNO status holders, plus an additional 2.3 million eligible dependents, and an additional 187,000 18–24-year-olds not deemed BNO dependents, but who have at least one BNO parent. The BNO visa scheme therefore covers a potential 5.4 million people.<sup>13</sup> As of the end of March 2022, there were a total of 123,400 applications for the BNO visa.<sup>14</sup>

Thanks to the efforts of Damian Green MP in the House of Commons, and Lord Alton, Lord Patten, Lord Falconer, and the Bishop of St Albans in the House of Lords, there was an important change to the BNO visa announced by the government in February 2022 to allow individuals born on or after 1 July 1997 and who have at least one BNO parent to apply to the route independently of their BNO parent.<sup>15</sup>

The rule change is likely to be implemented in November this year and Hong Kong Watch is urging the Home Office to activate a Leave Outside the Rules (LOTR) policy for anyone who would be eligible for the visa later this year so that they can come to the UK now and start integrating before the visa change is implemented. This LOTR policy would mirror what was on offer for eligible BNO visa applicants prior to the original scheme's opening at the end of January 2021.<sup>16</sup>

In theory, the UK's policy covers over 70% of the population of Hong Kong, but there are still many gaps and inconsistencies which leaves two million without access to this route. Most significant are the following two groups, since they were minors at the time of the handover and did not have agency over their BNO status registration:

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<sup>10</sup> <https://www.gov.uk/british-national-overseas-bno-visa>

<sup>11</sup> <https://www.gov.uk/british-national-overseas-bno-visa/your-family-members>

<sup>12</sup> <https://www.gov.uk/british-national-overseas-bno-visa/living-permanently-in-the-uk>

<sup>13</sup> [https://www.legislation.gov.uk/ukia/2020/70/pdfs/ukia\\_20200070\\_en.pdf](https://www.legislation.gov.uk/ukia/2020/70/pdfs/ukia_20200070_en.pdf)

<sup>14</sup> <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2022/how-many-people-come-to-the-uk-each-year-including-visitors#british-national-overseas-bno-route>

<sup>15</sup> <https://questions-statements.parliament.uk/written-statements/detail/2022-02-24/hcws635>

<sup>16</sup> <https://committees.parliament.uk/publications/6564/documents/71253/default/>

- Those born before 1 July 1997 (but were under the age of 18 at this point) and whose parents are BNO status holders, but didn't apply for BNO status for their children.
- Those born after or before 1 July 1997 (but were under the age of 18 at this point) and whose parents were not BNO status holders.

Since the passing of the NSL in 2020, there have been 181 applications for asylum or humanitarian protection from Hong Kongers, with just 18 grants of protection given, representing just 10% of the overall applications.<sup>17</sup> Many applicants have been waiting for well over a year for their claim to be decided, unable to work during much of this time, their lives on hold.

### Case Study 1

Stanley was born in 1987, so was only 10 years old at the time of the handover in 1997. His parents did not register him as a BNO by this time as they were under the impression that it was just a travel document. His parents applied for BNO passports for themselves in 1994 as they needed a travel document to take a trip to Thailand, however they did not mention their children in their passports. He has his original birth certificate, the expired BNO passports of his parents, but was rejected when he contacted HM Passport Office.

Stanley doesn't have any options on the table to get out of Hong Kong. The Canada stream is not appropriate for him as he is already 35 years old and is the main breadwinner in his family meaning that he cannot afford the time and money of studying in Canada for two years without an income.

Stanley works in the construction industry. He is particularly concerned about political instability, the education of his children, and the dismantling of fundamental freedoms, as well as his personal security in Hong Kong. He doesn't have any protest-related convictions, yet did join protests in the past. While still safe now, he doesn't know if he and his family will be on the target list someday.

### Case Study 2

Tony was born in Hong Kong in 1991. He is married to his wife who was born in Macau. Tony wasn't registered as a BNO before the handover in 1997 – at that time he was just six years old. His family had a relatively low income when he was growing up; his parents worked low-paid jobs for long hours and didn't think about the importance of all having BNO passports ready for the handover. In 1989, Tony's father was granted a vacation abroad by his company. At this point, his father applied for the BNO passport which was valid for 10 years. However, since Tony was born in 1989, he didn't show up as a registered child on his father's passport. His father only travelled abroad this one time and so didn't see the need to get a new passport which would reflect the number of children he had.

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<sup>17</sup> <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>

There is no chance now for Tony to register as BNO again and join the BNO visa route. He has his own life with his wife now and cannot come over on the BNO visa as a dependent of his father – who, being over 60-years-old himself, and with limited English proficiency, does not want to move anyway.

Tony says he has witnessed the destruction of freedoms in Hong Kong since 2019 and believes the city doesn't have the bright future it once had when he was a child. He doesn't have any protest-related convictions, but lives in daily fear that he may be arrested on any spurious charge.

### **Case Study 3**

Andrew was born in Hong Kong in the mid-1980s, and his parents were both from mainland China. At the time of his birth, his parents did not believe they were permanent residents in Hong Kong and so did not apply for BNO status for their son, under the assumption that he would not be eligible.

As for his brother, born a few years later, his parents thought they were already permanent residents and so applied for BNO status for the brother. However, the parents did not go back to register Andrew as a BNO at this time. They did not believe it was important.

Andrew's brother is a journalist, at high risk of arrest and often facing threats and intimidation from the Hong Kong Police Force. Andrew fears that his connection to his brother could put him at risk of arrest – and these fears are well-founded since the Hong Kong police have been known to intimidate family members of political activists and journalists in exile abroad.

Andrew isn't eligible for any of the other lifeboat schemes, and isn't a dependent relative of his brother so cannot have access to the BNO visa. It is nonsensical that one brother born in British Hong Kong has access to the BNO visa, but the other, also born in British Hong Kong, does not.

### **Case Study 4**

Sarah is a creative director in Hong Kong and was only 12 years old at the time of the handover in 1997. Her parents and siblings were all born in British Hong Kong. Her parents did not register themselves or any family members as BNOs before 1997 as they thought it was just a travel document. Since the family did not travel abroad while growing up, they did not see the need to get BNO status. As such, she cannot access the BNO visa scheme for her or her family – and neither do they meet the requirements for any of the other lifeboat schemes.

Sarah does not have any protest-related convictions, but has been running a yellow-economy shop (support for the 2019–20 protests) in Hong Kong and she is worried that the government may turn on her business at any moment, leaving her without any income, and perhaps even land her in prison. She is worried about her four-year-old daughter, and would like to get out of Hong Kong to give her a brighter future. She is most concerned about her

daughter's education, and she fears that her own child, and many others will suffer from mental harm under the 'patriotic' education policy.

#### Canada's Open Work Permit (200,000 Hong Kongers are eligible)

Canada currently offers the best lifeboat for young people from Hong Kong. The Canadian Government's scheme focuses on 'Young Talents', which is a new youth work visa scheme targeted at Hong Kong students and their dependents which would allow a pathway to Canadian citizenship. They have also made changes to their asylum rules to ensure that Hong Kongers will not be disqualified from making a claim by virtue of a charge under the National Security Law. Additional resources have also been made available to speed up processing of permanent residence applications, including for family members.<sup>18</sup>

Specifically, any resident of Hong Kong who has graduated from a recognised university (in Canada or elsewhere) in the past five years can apply to work for up to three years in Canada, with easier transition to permanent residency thereafter. Dependents are also eligible to apply. There is also a streamlined pathway to permanent residency for any Hong Kong citizen who has graduated from a Canadian university.<sup>19</sup>

There are around 25,000–30,000 graduates (bachelor or above) from universities across Hong Kong each year.<sup>20</sup> UNESCO data shows that there are an estimated 36,000 students from Hong Kong studying internationally.<sup>21</sup> We can take as a rough estimate from this that there are 9,000 per year studying abroad. If a rough total of 39,000 of total Hong Kong graduates per year is multiplied by the five years' time frame which falls under the work permit criteria, then around 200,000 Hong Kongers would be eligible for Canada's scheme.

In 2020<sup>22</sup> and 2021 there were a total of 65 asylum claims from Hong Kongers in Canada, with 26 grants in 2021.<sup>23</sup> This represents 40% of total claims—a significantly higher success rate than in the UK.

#### **Case Study 5**

Fiona was born in Hong Kong in 1990. Her parents were not aware of BNO status and passport and so did not apply for themselves or Fiona (who was seven years old at the time of the handover). She graduated from university in Hong Kong in 2015, so was not eligible for the Canada Young Talents scheme when that came online in 2021 (it covers people who have graduated up to five years ago). She works for an NGO in Hong Kong, a sector which has been decimated by the National Security Law. Her job is very insecure and she fears that

<sup>18</sup> <https://www.hongkongwatch.org/all-posts/2020/11/24/canadas-lifeboat-scheme-for-hong-kongers-hkw-explainer>

<sup>19</sup> <https://www.canada.ca/en/immigration-refugees-citizenship/news/2020/11/measures-to-support-hong-kong-residents-including-youth-to-come-to-canada.html>

<sup>20</sup> See page 367:

[https://www.censtatd.gov.hk/en/data/stat\\_report/product/B1010003/att/B10100032021AN21B0100.pdf](https://www.censtatd.gov.hk/en/data/stat_report/product/B1010003/att/B10100032021AN21B0100.pdf)

<sup>21</sup> <http://uis.unesco.org/en/uis-student-flow#slideoutmenu>

<sup>22</sup> <https://www.irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat2020.aspx>

<sup>23</sup> <https://www.irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat2021.aspx>

her organisation could be targeted by the NSL at any time. She currently has no route out of Hong Kong.

#### **Case Study 6**

Jane was a member of different professional bodies and held several senior positions in Hong Kong. But due to her mature age, she scored very low in the traditional immigration schemes in Canada, such as the Express Entry pathway. When there were different pathways announced by the Canadian Government in early 2020, she was disappointed when she found out that none were applicable to her. Since her graduation was long past the five-year fresh threshold prescribed by the Hong Kong Pathway, she was not eligible for Stream B of the Hong Kong Pathway even though she had already accumulated over two years of local experience.

#### **Case Study 7**

Nelly received her bachelor degree in Hong Kong in 2016 and managed to meet the five years deadline for applying to the Open Work Permit in Canada. However, she was not eligible to apply for Permanent Residency as it was impossible for her to get one year of experience and still have her degree finished within the prescribed five-year timeframe. Many of the 2016 and 2017 graduates feel left out by this policy, and Nelly counts herself among them.

Nonetheless, she bought a ticket to Canada with her partner in May 2022 given the worsening political environment and state of freedoms in Hong Kong, deciding to leave Hong Kong for good. They had seen prosecutions and charges against a lot of people who were previously released or regarded as not guilty during the arrests in 2019. Nelly's partner was arrested during the 2019 movement. He was not charged at the time, but they were afraid that the police would charge him with anything they could come up with as the situation in Hong Kong deteriorated. They had noticed they were being followed by the police and decided that it was not safe to stay in Hong Kong. Without access to Permanent Residency in Canada, she feels stuck in limbo, without any assurances about her future.

#### Australia's Lifeboat Scheme (11,000 Hong Kongers are eligible)

Australia's lifeboat scheme for Hong Kongers, which opened on March 5, 2022, covers Hong Kong SAR and/or BNO passport holders already present in Australia on temporary skilled, temporary graduate, and student visa holders. The scheme allows university students in Australia to apply for a five-year Temporary Graduate visa on the successful conclusion of their studies.<sup>24</sup> There were over 11,000 Hong Kong SAR citizens studying in Australia in 2020,<sup>25</sup> the second-most popular destination after the UK. There is a pathway to permanent residency thereafter.

There is an additional pathway for skilled workers to be able to apply for a five-year Temporary Skills Shortage visa with a pathway to permanent residency.

<sup>24</sup> [https://hongkong.consulate.gov.au/hkng/VISMG\\_MigrationPathwaysHK.html](https://hongkong.consulate.gov.au/hkng/VISMG_MigrationPathwaysHK.html)

<sup>25</sup> <https://www.dese.gov.au/higher-education-statistics/resources/2020-section-7-overseas-students>

There have been 128 onshore protection (asylum) visa claims by Hong Kongers since the introduction of the NSL.<sup>26</sup>

#### USA Deferred Enforced Departure (20,000 Hong Kongers temporarily)

The US policy, deferred enforced departure (DED), allows Hong Kongers who were present in the US as of August 5, 2021, and have continuously resided there since, to stay in the US until February 5, 2023, with extensions made at the discretion of the President.<sup>27</sup> Based on 2020 non-immigrant visa figures, around 20,000 might benefit from this.<sup>28</sup>

However, the US policy is not a long-term option since it is only a temporary order which prevents the enforced departure of Hong Kongers by immigration officials for a set period of time and only applies to Hong Kongers who were in the US at the time that the policy was announced. It does not offer a credible pathway out of Hong Kong which could lead to permanent residency after a period of time. A permanent option, as what is suggested in the Hong Kong Safe Harbour Act, a bipartisan bill led by Senators Robert Menendez (Democrat) and Marco Rubio (Republican), would be a serious lifeboat scheme and a far more favourable option.

#### EU

The EU does not currently have a lifeboat scheme for Hong Kongers. At present, just one EU Member State, Hungary, is blocking forward movement on a package of measures for Hong Kong.<sup>29</sup> Such measures would include a review of asylum policies for Hong Kongers arriving in Europe.

There is one known case of a Hong Kong asylum seeker in Sweden, and several in France. Germany broke ground by becoming the first EU country to grant asylum to Hong Kongers in May 2018 when it granted Ray Wong and Alan Li refugee protection. Sweden's grant of political asylum to the journalist Narayan Liu in April 2022 is believed to be the first asylum award for a Hong Konger in the EU to explicitly cite the National Security Law.<sup>30</sup>

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<sup>26</sup> <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

<sup>27</sup> <https://www.uscis.gov/newsroom/news-releases/uscis-implements-employment-authorization-for-individuals-covered-by-deferred-enforced-departure-for>

<sup>28</sup> <https://qz.com/2080828/who-is-a-hong-konger-the-us-has-one-of-the-widest-definitions/>

<sup>29</sup> <https://www.politico.eu/article/orban-taunts-germany-by-doubling-down-on-support-for-china/>

<sup>30</sup> <https://www.scmp.com/news/china/diplomacy/article/3183050/hong-kong-activist-granted-political-asylum-sweden-security>



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## SUMMARY OF FINDINGS

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Hong Kong's population is 7.5 million. Examining the various lifeboat schemes currently on offer, at the very least there are in excess of 1.9 million people who do not currently have a way out of Hong Kong:

- 5.4 million are potentially covered by the UK's BNO visa scheme (BNO status holders, plus dependents, and 18–24-year-olds with at least one BNO parent).
- Around 200,000 are covered by Canada's Open Work Permit.
- Australia's scheme, which covers Hong Kongers already present in the country, will cover around 11,000 people.
- The USA's scheme, which is not a permanent option, covers around another 20,000.
- In total, even forgetting that some people may be double-counted in the above figures as they may be eligible for more than one scheme, approximately 5.6 million have a route out of Hong Kong.