

Submission to the Panel on Home Affairs, Legislative Council

By

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(For your concern on Agenda item V, Meeting on Tuesday, 21 June 2005)

Questions for the HKSAR Government to answer

World Refugee Day 2005 (20 June 2005)

We urge the LegCo Panels on Security and Home Affairs, to require the HKSAR Government to provide written answers to the following important questions in the light of its replies to the UN Committee on Economic Social and Cultural Rights (hereafter "the Committee") on 29 April 2005.

(A) During the recent hearings by the Committee on 29 April 2005, in response to the Committee's concerns, a Hong Kong representative stated that given its small size and prosperity, there had been a long-standing policy in Hong Kong not to grant persons asylum. However, there were mechanisms in place for persons requesting refugee status which referred such cases to the United Nations High Commissioner for Refugees. The persons were able to remain in Hong Kong until the settlement was resolved through the UNHCR.

Q1: Does Hong Kong foresee in the near future to adopt an asylum procedure, in particular in the event of a possible phase out of the UNHCR Office?

Q2: Since the end of the Comprehensive Plan of Action, UNHCR bears the sole responsibility to assess refugee claims. If UNHCR, because of its limited resources, cannot continue its work, how does Hong Kong plan to uphold the principle of non-refoulement at its borders for individuals who claim persecution in their country of origin?

Q3: Does the fact that a UN organisation has undertaken a role normally entrusted to government bodies limit the HKSAR Government's policy and control over immigration and asylum matters?

(B) China is a party to the 1951 Convention on Refugees and its 1967 Protocol. The Convention has been extended to Macao. A HKSAR delegation said in the hearings of the Committee that Hong Kong was not able to sign the Convention on Refugees given its administrative status. A member of the Chinese delegation noted that under the Basic Law the application of international agreements signed by China in its special administrative regions was decided by the Central Government according to the situation and needs of the special administrative region after soliciting the views of the special administrative region.

Q4: Would the HKSAR authorities officially approach the Central Government to request consideration of the extension of the Refugee Convention to Hong Kong? If no, what are the reasons preventing it?

(C) In its Concluding Observations, the Committee recommends that HKSAR "reconsider its position regarding the extension of the Convention relating to the Status of Refugees and its Protocol to its territorial jurisdiction, and that it strengthens its cooperation with UNHCR, in particular in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination." (Para. 92)

Q5: How is Hong Kong intending to implement this recommendation? Have there been any talks with UNHCR to strengthen cooperation in the formulation of a coherent asylum policy?

Q6: The next report to the Committee is in 5 years. To show progress in the next reporting, would Hong Kong consider a 5-year strategic plan whereby UNHCR's responsibilities will gradually be handed-over to the HKSAR authorities? If the HKSAR does not, for the time being, consider taking responsibility for asylum and refugee issues, at the very least, will the Government better assist UNHCR and NGOs in dealing with these matters, including protection and care for refugees and asylum seekers in Hong Kong?

(D) The arbitrary detention of asylum seekers during the asylum process runs contrary to international human rights law and standards. UNHCR takes the position that asylum seekers should not be detained (see UNHCR policy attached: *UNHCR REVISED GUIDELINES ON APPLICABLE CRITERIA AND STANDARDS RELATING TO THE DETENTION OF ASYLUM SEEKERS, February 1999*). Yet Hong Kong still retains a policy of detaining asylum seekers for "overstaying" ("Overstaying" may be "government-made" by its refusal to grant the required visa or recognizance. There are currently about 35 asylum seekers in detention).

Q7: On this basis will the HKSAR Government consider changing this policy to avoid detention of asylum seekers and publish guidelines to limit such detention?

(E) Education of children asylum seekers and refugees: During the hearings by the Committee, the HKSAR delegate mentioned, "The children of refugees and asylum-seekers received educational support while in Hong Kong." (Para. 23, Summary record of the 9th meeting : China. 04/05/2005. E/C.12/2005/SR.9.)

Q8: What are the provisions and procedures that have been put in place?