

**Hong Kong Human Rights Commission
Society for Community Organization
Voices of the Rights of Asylum Seekers and
Refugees**

Denial of refugee rights

Submission to Panel on Home Affairs

(Meeting Friday 10 March 2006)

Agenda item no. IV:

**Regarding the second periodic report of China: The Special Administrative
Region of Hong Kong concerning the rights covered by the article 1 – 28 of the
International Covenant on Civil and Political Rights (ICCPR)**

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Introduction

This report represents Society for Community Organization (SoCO), Hong Kong Human Rights Commission (HKHRC) and Voices of the Rights of Asylum Seekers and Refugees' (VORAR) submission to the Home Affairs Panel on agenda item IV: *Submission of report by Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights*. We would like to urgently draw the attention of the Home Affairs Panel to the fate of refugees in Hong Kong. Although most Vietnamese refugees have been resettled, there are still many people escaping from Africa and South-Asia seeking asylum in Hong Kong.

There is no refugee law in Hong Kong meaning that refugees are left without any adequate safeguards against deportation or detention, have no legal protection or access to legal representation. Also, there is no financial support or adequate access to health care.

Number and definition of refugees

As of 30 November 2005 there were 999 persons living in Hong Kong pending refugee status determination while 115 were refugees pending durable solutions. From 2001-2005 (May) a total of 372 have been granted refugee status and will be resettled to another country.

Refugee convention not signed

While China and Macao have already ratified the Convention Relating to the Status of Refugees, which now already have 145 States Parties, the Convention has not yet been extended to Hong Kong. The lack of any refugee law means that asylum seekers are left without any basic means of living, including food and shelter and are subject to detention and deportation. More recently, asylum seekers have been denied their right to health.

In the concluding observations of the Committee on Economic Social and Cultural Rights (E/C.12/1/Add.107) May 2005, the Committee expressed concern "that HKSAR lacks a clear asylum policy and that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of the HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction."

The Committee has recommended that the "HKSAR reconsider its position regarding the extension of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to its territorial jurisdiction, and that it strengthen its cooperation with UNHCR, in particular, in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination."

Article 7: No torture or inhuman treatment and no experimentation without consent

Deportation – lack of safeguards against refoulement

No adequate protection under the CAT

The Hong Kong government ignores its obligations to set up a screening procedure to process asylum claims, and has left it to the UNHCR. However, while such claims are being assessed there is no protection against *refoulement* through the UNHCR procedure. Only some protection against *refoulement* is only given to people who make claims of torture at the Immigration Department under the Convention Against Torture (CAT). However yet, the CAT procedure is wrought with problems and offers no adequate protection against deportation.

There is no adequate legal protection against refoulement. The procedures under CAT are non-statutory and The Crimes (Torture) Ordinance does not specifically incorporate the principle of non-refoulement. Additionally the definition of “torture” is inconsistent with the definition in the Convention Against Torture.

Secondly, the determination procedure only allows two weeks for claimants to make petitions against the determination to the Chief Executive. Two weeks however, is not sufficient time for claimants to make appeals. Even UNHCR allows 1 month to make appeals.

Third, The Bill of Rights (article 9) does not confer a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before a competent authority.

In addition to the above mentioned problems, in fact most victims of torture are deterred from making a CAT claim at the Immigration Department, since, if they are overstayers, they are usually detained.

No proper refugee status determination system

The HKSAR attempts to subcontract its obligations to the UNCHR and leaves it to the UNCHR to process asylum claims. However, there are several problems with the UNCHR system. First of all it is a body which cannot be compelled to appear in the HKSAR courts. Secondly, the UNHCR HK Sub-office does not allow legal representatives to be present during the refugee status determination interviews, nor does it provide detailed written statements with reasons for rejection of applications. Thus making appeals is difficult, and the rejection rate is more than 85%. Also, the UNHCR does not provide copies of interview notes and the appeals mechanism is not independent. In general the UNHCR Sub-office is under-staffed and under heavy stress, meaning that the system does not allow enough time for refugees to fully explain what problems they have gone through, and interpreters only summarize what has been said by the refugee, given time constraints.

Article 9: Liberty and security of person

No valid identity papers

At the moment asylum seekers are basically illegal immigrants when their visas expire. If they approach the Immigration Department to extend their visas or get recognizance they are often rejected and will be asked to leave Hong Kong, which they are unable to. Furthermore most asylum seekers are afraid to contact the

Immigration Department as they are most often detained. Thus they are left without any valid identity documents. The UNHCR does issue identification papers about their status as asylum seekers, however, these documents are not recognized by the Hong Kong government. Those who do get identity documents because they somehow had to contact the Immigration Department are on recognizance. However, the recognizance is nothing more than a recognition by the HKSAR that the refugee is an offender for overstaying and enjoys no rights. The recognizance states that they are detained or liable to be detained. Although carrying the recognizance letter, the Immigration Department may still charge them for overstay. Thus this stance essentially amounts to non-recognition, which is against all international humanitarian standards.

Detention

Asylum seekers and torture claimants are arbitrarily detained. The Immigration Ordinance does not have specific provisions to protect refugees, and basically treat refugees as regular overstayers. Thus Immigration Ordinance doesn't comply with article 28 and 41 of the Basic Law which protects non-residents against arbitrary or unlawful arrest, detention or imprisonment. Furthermore the Bill of Rights Ordinance (Part III, para. 11) does not cover immigration legislation as regards persons not having the right to enter and remain in Hong Kong.

Furthermore for those who may be released on bail, they are obliged to find a guarantor who is a permanent resident of Hong Kong. This poses great problems, as the network of asylum seekers seldom extends to local Hong Kong people.

Article 10: Right of persons deprived of their liberty

Detention conditions

Many asylum seekers and claimants of torture, who have been detained by the Immigration Department or the Correctional Services Department, have complained that they were ill-treated during detention. The same complaints also existed in the detention cells controlled by Correctional Services Department. Reports of sleeping on the floor, bad hygiene arrangements, and punishment for making complaints are common. The government has no culturally sensitive services nor does it seem to provide any kind of training for against racial discrimination.

Secondly, given the fact that refugees may suffer from post-traumatic-stress-syndrome (PTSS) it is highly questionable to detain refugees, especially because the detainees do not receive specialist treatment for PTSS. The medical services only general symptoms and the doctors do not seem to be aware of PTSS symptoms.

Article 14: Equality before courts and right to fair and public hearing

No Legal aid for asylum seekers and torture claimants.

No legal aid is granted to asylum seekers, refugees or torture claimants. This applies both regarding the refugee status determination procedures, the CAT procedures and matters relating to detention.

Welfare issues

Children left without any education

Asylum seeker children are not eligible to study in the public schools in Hong Kong given their legal status. The Government does not recognize the right to education of these children migrants. There is in lack of a clear policy or guidelines to offer school placements to these children. The Education Department will not offer school placements to these children unless their eligibility has been confirmed by the Director of Immigration. Such applications are dealt with on a case-by-case basis. That is to say, the right to public education of these children is vested in the discretion of the Director of Immigration.

No food or shelter

The lack of any policies to deal with the various problems met by asylum seekers means that government does not support asylum seekers in any way. Social security or special funds are not available. Thus many asylum seekers are homeless, living on the street. Others who are lucky may be able to seek shelter temporarily at churches. There are no hostels that accept asylum seekers because of their lack of any Hong Kong Identity Cards. At the same time, because the government does not recognize the status of asylum seekers, staying illegally in Hong Kong means that many are in detention while waiting for their status determination by UNHCR. In a specific case, a Pakistani asylum seeker spent two years in administrative detention before being granted refugee status.

The government has left it to the UNHCR to support asylum seekers and refugees. However, because of limited funding, asylum seekers are not eligible for any support except in special cases, which involve children or single women. Thus single males or couples are not assisted financially by the UNHCR either.

The government therefore sees no obligation to provide food and shelter to asylum seekers, nor does it allow them to work. The government should explain why no food and shelter is provided to asylum seekers while awaiting their refugee status determination.

Access to health care

Policy of the public hospitals: call the police

A new hospital policy means that asylum seekers without valid travel documents cannot get equal access to hospital services and that they may be detained.

In the past all asylum seekers and refugees could gain access to medical treatment in Hong Kong government public hospitals when they could show a referral letter from the UNHCR and that they were asylum seekers or refugees. The medical social worker would issue a medical waiver and the patient would get proper treatment.

However, since September 2005, the public hospitals are implementing a new policy. The new policy specifically targets people who do not possess valid travel documents. When an asylum seeker approaches the public hospital and presents his UNHCR letter that certifies he is an asylum seeker, this document is now not recognized by the hospital. The asylum seeker is instead asked to present either a passport with a valid visa or immigration papers, such as a recognizance paper.

At the moment most asylum seekers do not possess a valid visa or immigration paper. The reason is that the Immigration Department does not treat asylum seekers differently from an illegal immigrant. Thus the Immigration Department does not recognize their status as an asylum seeker. Asylum seekers who have previously

approached the Immigration Department to extend their visas or get immigration papers have been detained as if being an illegal immigrant. However, being refugees they are unable to return to their country and are just in Hong Kong to seek protection for their life and safety. In fact sometimes UNHCR will advise the asylum seekers not to contact the Immigration Department because of the risk of detention.

However, according to the Convention relating to the Status of Refugees article 31, the State should not “impose penalties, on account of their illegal entry or presence, on refugees who...enter or are present in their territory without authorization.”. Furthermore article 27 states that the government “shall issue identity papers to any refugee in their territory who does not possess a valid travel document.”.

As the Immigration Department does not issue visas or immigration papers, the asylum seeker is just treated as an illegal immigrant by the hospital. Without papers recognized by the Immigration Department several asylum seekers have been denied treatment in hospitals. Instead the hospital staff will call the police to arrest them.

Thus without valid documents the hospital:

- Does not provide hospital treatment
- Will not issue any medical waiver
- Will call the police to arrest them

The consequences of this policy are that asylum seekers do not have equal access to health care. Also, those who do not possess papers recognized by the Immigration Department will be frightened to contact hospitals because of the risk of detention.

No right to work

The fact that asylum seekers are not allowed to work, given the fact that most of them are either illegally staying in Hong Kong or having visitors' visas, further adds to the abhorrent situation. Without any social security or permission to work, they are left without any means to supporting themselves or their family.

Recommendations

- 1. The Hong Kong government should immediately sign the Convention Relating to the Status of Refugees**
- 2. The government should set up a fair screening procedure to meet its obligations under the Convention Relating to the Status of Refugees.**
- 3. Amend the Immigration Ordinance so that asylum seekers and refugees are not liable to be detained for overstaying or not possessing valid travel documents.**
- 4. The government should immediately provide financial assistance to refugees and provide adequate health care.**