

立法會
Legislative Council

LC Paper No. CB(2)3077/05-06
(These minutes have been
seen by the Administration)

Ref: CB2/PL/WS+SE

**Panel on Welfare Services and
Panel on Security**

**Minutes of joint meeting
held on Tuesday, 18 July 2006 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Panel on Welfare Services

- Dr Hon Fernando CHEUNG Chiu-hung (Chairman)
- Hon CHAN Yuen-han, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- * Hon Albert HO Chun-yan
- Hon LEE Cheuk-yan
- Hon TAM Yiu-chung, GBS, JP
- Hon LI Fung-ying, BBS, JP
- Hon Albert CHAN Wai-yip
- Hon Frederick FUN Kin-kee, SBS, JP
- Hon Alan LEONG Kah-kit, SC
- * Hon LEUNG Kwok-hung

Panel on Security

- Hon James TO Kun-sun (Chairman)
- Dr Hon LUI Ming-wah, SBS, JP
- Hon Margaret NG
- Hon CHEUNG Man-kwong
- Hon Howard YOUNG, SBS, JP
- Hon LAU Kong-wah, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon Andrew LEUNG Kwan-yuen, SBS, JP

**Members
absent** : Panel on Welfare Services

Hon Bernard CHAN, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Dr Hon YEUNG Sum

Panel on Security

Hon Daniel LAM Wai-keung, SBS, JP (Deputy Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon CHOY So-yuk, JP
Hon CHIM Pui-chung

**Members
attending** : Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC

(* Also members of the Panel on Security)

**Public Officers
attending** : Item II

Ms Grace LUI
Deputy Secretary for Security 3

Mr Alan CHU
Principal Assistant Secretary for Security (Security) D

Mr Freely CHENG
Principal Assistant Secretary for Health, Welfare and
Food (Family)

Mr FUNG Pak-yan
Assistant Director of Social Welfare (Development)

Mr CHAN Kwok-ki
Assistant Director (Enforcement & Litigation)
Immigration Department

Ms Ivis CHUNG
Coordinator (Allied Health)
Hospital Authority

**Deputations
by invitation**

: Item II

The Centre for Comparative and Public Law of the
University of Hong Kong

Ms Jennifer STONE

Hong Kong Bar Association (Special Committee on
Constitutional Affairs and Human Rights)

Mr Philip DYKES, S.C.

Association Concerning Sexual Violence Against Women

Miss NG Wai-ching
Service Co-ordinator

Vine Christian Fellowship

Mr John MACPHERSON

Ms Margaret LIDDLE

Justice and Social Concern Committee of Hong Kong
Christian Council

Rev. Hans LUTZ
Member

Mr WAN Hoi-wing
Assistant Executive Secretary

Society for Community Organization

Ms Annie LIN
Community Organizer

Ms Lisa

Voice of the Rights of Asylum Seekers and Refugees

Mr Patrick
Member

Mr Peter
Member

Hong Kong Christian Institute

Ms Rose WU
Director

Ms Debby CHAN
Project Secretary

Barnes & Daly

Mr Mark DALY
Partner (Solicitor)

International Social Service Hong Kong Branch

Ms Adrielle M PANARES
Director of Programme

United Nations High Commissioner for Refugees
Hong Kong Sub-Office

Miss Monique SOKHAN
Head of Sub-Office

Refugee Concern Network

Ms Sarah CORNISH
Assistant Manager

Ms Raquel AMADOR
Refugee Advisor

Congolese Refugee Community

Mr Christian KILA
Vice President

Ms Maggie KILA
Secretary

Amnesty International (Hong Kong)

Miss HO Wai-ying

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Clerk in attendance : Ms Doris CHAN
Chief Council Secretary (2) 4

Staff in attendance : Mr Chris LAI
Senior Council Secretary (2) 7

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Election of Chairman

Dr Fernando CHEUNG was elected Chairman of the joint meeting.

II. Situation of refugees, asylum seekers and torture claimants in Hong Kong

(LC Paper Nos. CB(2)2747/05-06(01) to (03), CB(2)2761/05-06(01) to (04) and (06) to (07), CB(2)2788/05-06(1) to (04) and CB(2)2831/05-06(1))

2. The Chairman welcomed the deputations and representatives of the Administration to the meeting. He said that the United Nations High Commissioner for Refugees (UNHCR) had ceased its support to vulnerable asylum seekers from May 2006. To his knowledge, there were currently about 1 800 asylum seekers in Hong Kong, and around 120 of them were in detention. This meeting was held to discuss their situation.

3. At the invitation of the Chairman, Deputy Secretary for Security 3 (DSS3) briefed members on the salient points of the Administration's paper (LC Paper No. CB(2)2747/05-06(01)), which sets out the situation of refugees, asylum seekers and torture claimants in Hong Kong.

4. Assistant Director (Enforcement & Litigation) of the Immigration Department (AD(E&L)) supplemented that discretion might be exercised by the Director for Immigration to grant release on recognizance to asylum seekers in detention on the merit of individual cases, having regard to the following three

Action

conditions –

- (a) whether the person concerned constitutes a security risk to the community;
- (b) whether there is any risk of the person absconding and (re)offending; and
- (c) whether removal is going to be possible within a reasonable time.

Meeting with deputations

5. The Chairman invited the deputations to make oral representations, details of which were summarized in ensuing paragraphs.

*The Centre for Comparative and Public Law of the University of Hong Kong (CCPL of HKU)
(LC Paper No. CB(2)2761/05-06(07))*

6. Ms Jennifer STONE introduced the submission of CCPL of HKU, which recommended that the Administration should –

- (a) formulate a comprehensive, systematic policy towards refugees and asylum seekers based on the international obligations arising from international human rights law and customary international law;
- (b) establish its own refugee status determination procedures; and
- (c) extend the 1951 United Nations Convention relating to the Status of Refugees (the Convention) to Hong Kong.

Hong Kong Bar Association (Special Committee on Constitutional Affairs and Human Rights)

7. Mr Philip DYKES pointed out that although the Convention was not extended to Hong Kong, the Government still had international obligations to protect the rights of refugees and asylum seekers and to ensure that the support rendered to them was in compliance with international standards. He considered it illogical to detain and prosecute asylum seekers for overstaying since they were often made to do so due to the lengthy process of assessing their refugee claims. He expressed concern that the right to education of children of asylum seekers was at the discretion of the Director for Immigration, when the Education and Manpower Bureau had statutory obligations relating to education in Hong Kong.

Action

*Association Concerning Sexual Violence Against Women
(LC Paper No. CB(2)2788/05-06(03))*

8. Ms NG Wai-ching drew members' attention to a rape case involving a female asylum seeker who approached RainLily for help. She said that in the course of investigation, during which inadequate legal support was provided, the victim was reminded that she was liable to prosecution for overstaying. Ms NG pointed out that the fear of removal rendered female asylum seekers easy targets of sexual violence and the perpetrators were often unpunished. She urged the Government to take immediate actions to protect female asylum seekers against sexual violence.

Vine Christian Fellowship

9. Mr John MACPHERSON said that the Government failed to provide asylum seekers with adequate assistance to cover their basic necessities, making them live a miserable life during the lengthy process of determination of their refugee claims. He urged the Administration to put in place provisions and procedures to ensure that asylum seekers and torture claimants would not be removed to their country of origin.

*Hong Kong Christian Council's Justice and Social Concern Committee
(LC Paper No. CB(2)2747/05-06(02))*

10. Rev. Hans LUTZ presented the views of Hong Kong Christian Council's Justice and Social Concern Committee. He recommended that asylum seekers should be granted extension of their visas by the Immigration Department until their refugee status had been determined by the UNHCR and should not be detained for overstaying. He hoped that adequate assistance should be given to all asylum seekers instead of on a case-to-case basis as at present. He said that religious beliefs of asylum seekers should be taken into account when providing shelters and food to them.

*Society for Community Organization
(LC Paper Nos. CB(2)2747/05-06(03) and CB(2)2761/05-06(01))*

11. Ms Annie LIN was dissatisfied that in spite of international criticisms, the Government still did not recognize the right to education of children of asylum seekers and refugees. Ms Lisa said that asylum seekers were living a miserable life in Hong Kong. Their children were not given sufficient food, and little transportation allowance was provided to them, making it difficult for them to get food and to go to hospital when sick. She hoped that the Government could provide adequate financial assistance to refugees and asylum seekers.

Action

Voice of the Rights of Asylum Seekers and Refugees
(LC Paper Nos. CB(2)2747/05-06(03) and CB(2)2761/05-06(01))

12. Mr Peter and Mr Patrick expressed the difficulties they were facing in Hong Kong as asylum seekers from Africa. They said that the assistance given to them was insufficient to meet their subsistence needs, and asylum seekers were not provided with adequate legal assistance. They were dissatisfied that the determination of refugee status took a long time to complete, and no detailed reasons were given for rejection of refugee claims.

Hong Kong Christian Institute
(LC Paper No. CB(2)2788/05-06(01))

13. Ms Rose WU was of the view that assistance provided to asylum seekers should be equivalent to the levels of Comprehensive Social Security Assistance (CSSA), given the high standard of living in Hong Kong. If such arrangement was not feasible, they should have the right to work to earn a living. She was in strong opposition to detaining asylum seekers for overstaying during their status determination process, and urged the Government to extend the Convention to Hong Kong.

Barnes & Daly
(LC Paper No. CB(2)2761/05-06(02))

14. Mr Mark DALY said that there were increasing international criticisms of the way Hong Kong had treated refugees, asylum seekers and torture claimants. He suggested to take immediate concrete actions to put in place fair, efficient and comprehensive legislation and a coherent refugee policy to address the concerns raised in his submission. He urged the Administration to extend the Convention to Hong Kong without delay.

International Social Service Hong Kong Branch (ISS)
(LC Paper No. CB(2)2788/05-06(02))

15. Ms Adrielle M PANARES outlined the assistance-in-kind provided by ISS to asylum seekers and torture claimants in Hong Kong as commissioned by the Administration, details of which were set out in its submission. She said that ISS was committed to provide a safe and adequate service for the asylum seekers, torture claimants and refugees it served ensuring their basic needs were met.

UNHCR Hong Kong Sub-Office
(LC Paper No. CB(2)2761/05-06(03))

16. Miss Monique SOKHAN stressed that contrary to public perception, UNHCR was an international body with limited resources. She pointed out that

Action

with a rising number of asylum seekers and decreasing resources, the welfare of asylum seekers and refugees had been affected by a longer processing time and reduction in material assistance. There were now only seven to eight lawyers in the Hong Kong Sub-Office to process refugee claims from 1 800 asylum seekers. As regards the protection of refugee rights in Hong Kong, she said that to UNHCR's understanding, the principle of non-refoulement was in general observed by the Government. For mandated refugees whose claims had been established, resettlement would be arranged for them by the UNHCR.

(Post-meeting note : A further submission from UNHCR Hong Kong Sub-Office received after the meeting was circulated to members vide LC Paper No. CB(2)2831/05-06(01) on 24 July 2006.)

*Refugee Concern Network
(LC Paper No. CB(2)2761/05-06(04))*

17. Ms Raquel AMADOR remarked that asylum seekers should be granted temporary legal status and provided with adequate assistance during the status determination process. She pointed out that ongoing detention had exacerbated the psychological health of asylum seekers. She urged the Administration to establish an independent status determination mechanism to safeguard procedural fairness and ensure efficiency of the process.

18. Ms Sarah CORNISH said that the assistance currently provided by ISS, as commissioned by the Administration, was limited in capacity and children's needs were accorded low priority. She recommended to provide sensitivity training for all social workers primarily responsible for the care of refugees in Hong Kong with further training for those providing psychosocial support to survivors of torture and persecution.

Congolese Refugee Community

19. Mr Christian KILA pointed out the absurdity of Government's policy of allowing the UNHCR to carry out refugee status determination on the one hand but detaining asylum seekers holding certificates from the UNHCR on the other. He said that many members of his community dared not lodge refugee/torture claims for fear of arrest and detention. He referred to a case where a member of his community disappeared during the detention at Siu Lam Psychiatric Centre, and requested members' assistance to follow up the case. He asked the Administration to explain what mechanisms had been put in place to arrange resettlement of asylum seekers to a third country, if repatriation to the country of origin would put the asylum seekers in danger.

Action

Amnesty International (Hong Kong)
(LC Paper No. CB(2)2761/05-06(06))

20. Ms HO Wai-yang said that Amnesty International (Hong Kong) considered that the Hong Kong Special Administrative Region Government should introduce asylum determination procedures to grant refugee status to asylum seekers in need of international protection and extend the Convention to Hong Kong. She remarked that asylum seekers should not be detained, unless the Administration could demonstrate legitimate reasons.

Hong Kong Human Rights Monitor

21. Mr LAW Yuk-kai said that the Convention should be extended to Hong Kong to ensure adequate protection of refugee rights. He was concerned about the lengthy status determination procedures, and recommended the setting up of an independent, comprehensive status determination mechanism in Hong Kong to process both refugee claims and torture claims. He said that asylum seekers should not be detained without legitimate reasons other than overstaying, which was common and unavoidable during status determination process. He requested the Panel to follow up the cases of some 120 asylum seekers in detention, and hoped that options other than detention could be pursued.

The Administration's response

22. In response to the deputations' views, AD(E&L) clarified that –
- (a) although the Convention was not extended to Hong Kong, asylum seekers who had lodged their refugee claims might not be removed during the status determination process. Asylum seekers might only be removed after their refugee claims had been denied and had not been given permission to remain in Hong Kong; and
 - (b) the drastic surge in asylum seekers was worrying. According to the UNHCR, around 85-90% of the claimants were not genuine refugees. Referring to the Vietnamese refugees problem in the 1980s, AD(E&L) said that there was a strong case not to cause the extension of the Convention to Hong Kong so as to prevent possible abuses of the existing mechanisms.

Discussion

23. Mr Albert HO asked the Administration whether there were any asylum seekers whose refugee claims had already been established under detention, and if yes, what were the reasons for detaining them. Mr HO further asked whether there were any asylum seekers, whose refugee claims were being processed, under detention for violation of the Immigration Ordinance by overstaying.

Action

Admin

24. In reply to Mr HO's first question, AD(E&L) said that to his knowledge, no person who was a mandated refugee was under detention. As to Mr HO's second question, AD(E&L) said that asylum seekers who were in breach of Hong Kong laws, including the Immigration Ordinance, would be detained, but they might be granted release on recognizance pending the determination of their claims having regard to the three conditions set out in paragraph 4 above. AD(E&L) pointed out that there was a considerable number of cases where the persons concerned only lodged their refugee/torture claims after being detained for violating Hong Kong laws. In response to Mr HO's request, AD(E&L) agreed to provide the relevant detention figures after the meeting.

25. In response to further question from Mr Albert HO, AD(E&L) clarified that generally speaking, asylum seekers released on recognizance and had not been in breach of recognizance conditions would not be detained again simply for overstaying while their refugee claims were being processed. Mr HO invited the deputations to provide further information if they had any observations to the contrary.

26. Mr LEE Cheuk-yan was disappointed at the Administration's opposition to extension of the Convention to Hong Kong. He expressed dissatisfaction that our economic prosperity was used as one of the reasons for the Administration's stance, having regard to the fact that the Mainland and Macau were parties to the Convention. To speed up the process of determination, Mr LEE agreed that Hong Kong should set up its own refugee determination mechanism.

27. DSS3 responded that in view of the soaring trend of asylum seekers, extension of the Convention to Hong Kong could create a magnet effect which would have serious implications for the sustainability of our economy and support services. She stressed that although the Convention was not applied to Hong Kong, the territory had given due respect to the principle of non-refoulement, as pointed out by the representative of UNHCR at the meeting.

28. Mr Albert CHAN was dissatisfied with the Administration's refugee policies, having regard to the fact that many of our residents came to Hong Kong in 1950s as refugees. Noting that the Mainland and Macau were parties to the Convention and the alleged magnet effect had not arisen there, he considered the reasons given by the Administration for opposing the extension of the Convention to Hong Kong unacceptable.

29. In response, DSS3 said that she was not in a position to comment on the economic conditions of individual signatories to the Convention. She reiterated that given Hong Kong's unique situation, such as its dense population, economic prosperity in the region and liberal visa regime, it would make Hong Kong vulnerable to possible abuses if the Convention were to be extended to Hong Kong. She drew members' attention to the Vietnamese refugee problems in the

Action

1980s, which had brought us a financial burden of \$8.7 billion in providing assistance to them.

30. Miss Audrey EU asked the following questions –

- (a) whether Hong Kong's current domestic law and policy were in compliance with the international legal obligations towards refugees applicable to Hong Kong under customary international law, especially in relation to detention of asylum seekers;
- (b) whether legal aid had been provided to the asylum seeker who was the victim in the sexual violence case mentioned by RainLily; and
- (c) whether most asylum seekers in Hong Kong were economic migrants instead of genuine refugees, as claimed by "informed sources" in recent news reports.

31. DSS3 responded as follows –

- (a) any person in breach of our laws would be liable to enforcement actions. However, in the case of asylum seekers and torture claimants, discretion might be exercised by the Immigration Department to grant them release on recognizance if the three conditions as stated in paragraph 4 above were met. In fact, three quarters of asylum seekers and torture claimants had been granted release on recognizance, and there were only some 120 in detention;
- (b) whether or not residents of Hong Kong, any eligible persons involved in court proceedings might apply for legal aid. They could also make use of the judicial review procedure. To her knowledge, the sexual violence case mentioned by RainLily had been thoroughly investigated by the Police before a decision was made; and
- (c) according to the statistics provided by the UNHCR, only about 10% of asylum seekers in Hong Kong had been recognized as genuine refugees.

32. Ms Emily LAU expressed sympathy towards the situation of refugees and asylum seekers in Hong Kong. She remarked that Hong Kong had an obligation to provide assistance to them. She urged the Administration to –

- (a) cause the Convention to be extended to Hong Kong;
- (b) set up its own refugee determination mechanism for asylum seekers;

Action

and

- (c) formulate explicit domestic policies and legal provisions to grant temporary admission to all asylum seekers during the status determination process and to provide across-the-board support to meet their fundamental needs.

Admin

Ms LAU also requested the Administration to provide further information on the sexual violence case referred to by RainLily, the missing person case raised by Mr Christian KILA, and the current conditions of the 31 children of asylum seekers denied access to education in Hong Kong.

33. Principal Assistant Secretary for Health, Welfare and Food (Family) responded as follows –

- (a) the assistance currently provided to asylum seekers was made on humanitarian grounds, and it was not welfare;
- (b) as offering assistance-in-cash would likely create a magnet effect, the Administration had no intention to change the present arrangement of providing assistance-in-kind to asylum seekers. In a recent court case the judge considered the current practice of assistance-in-kind to asylum seekers appropriate; and
- (c) some asylum seekers were seeking judicial review against the Director of Social Welfare for not providing CSSA to them. As the expenditure on CSSA for some 540 000 CSSA recipients already amounted to over \$17 billion, the sustainability of our current welfare support systems would be at risk if the Convention were extended to Hong Kong.

34. DSS3 expressed reservation about granting permission to stay to asylum seekers once they had lodged their refugee claims. She said that such recommendation would put the interests of our community at risk since their refugee claims had not yet been established.

Admin

35. Mr Ronny TONG was of the view that adequate legal assistance should be provided to asylum seekers. He asked the Administration to respond to a complaint that an asylum seeker had made an application for legal aid, but after four months, no one from the Legal Aid Department had ever contacted him for assistance.

36. Mr LEUNG Kwok-hung said that even though the Convention was not applied to Hong Kong, we had an international obligation to provide assistance to asylum seekers in Hong Kong. He opined that it was unreasonable to detain asylum seekers pending the determination of their refugee claims because they

Action

were not criminals.

37. Mr James TO asked the Administration to respond to the following points in a news report in the Sing Tao Daily –

Admin (a) whether the Immigration Department had intercepted suspected asylum seekers upon their arrival at the Hong Kong airport. Given that 10% of the asylum seekers were genuine refugees, he considered that the Department would put their lives at risk if they were repatriated to the place of origin where they would face the danger of persecution; and

Admin (b) if asylum seekers lodged their refugee claims when first arrived in Hong Kong, how the Administration could claim that most asylum seekers were economic migrants who only made their refugee claims after being arrested by the Immigration Department for overstaying.

Admin 38. Mr Frederick FUNG asked the Administration to provide a breakdown on the 120-odd asylum seekers being detained indicating which of the three conditions as set out in paragraph 4 above they had not fulfilled, and to confirm if there were any asylum seekers being detained for reasons other than not fulfilling the three conditions. He asked whether the present arrangement of assistance-in-kind covered medical care and education for children of asylum seekers, and whether there were any NGOs providing regular activities for children denied access to education.

Admin 39. Mr CHEUNG Man-kwong was dissatisfied with the discontinuation of assistance to asylum seekers by UNHCR from May 2006 and the lengthy process of its refugee status determination. He urged the UNHCR to improve the efficiency of its status determination mechanism in order to speed up the process. He expressed grave concern that 31 refugee children and 31 asylum seekers' children were denied access to education, and asked the Administration to provide further information on their latest condition.

40. Referring to the Vietnamese refugees problem in the 1980s, Mr TAM Yiu-chung pointed out that extension of the Convention to Hong Kong could have serious impacts on the sustainability of our support systems. He considered the present arrangement of providing assistance-in-kind to asylum seekers appropriate because it could prevent a person from becoming destitute without creating a magnet effect. He said that it would be difficult for Hong Kong to establish its own refugee determination mechanism, having regard to the territory's limited experience in assessing refugee claims.

41. Mr LAU Kong-wah opined that giving all asylum seekers temporary permission to stay prior to establishment of their refugee claims would attract an

Action

uncontrollable influx of asylum seekers to Hong Kong. He recommended to change the existing immigration policies to reduce the magnet effect and urged the UNHCR to speed up the process of refugee status determination. He further said that \$1.1 billion outstanding payments owed by the UNHCR for our expenses incurred for maintenance of Vietnamese refugees had not yet been reimbursed to Hong Kong.

42. As the meeting had overrun and there was inadequate time for members to discuss their concerns with the Administration, the Chairman suggested and members agreed that another meeting should be held as soon as possible to continue discussion on the subject.

(Post-meeting note : A special meeting of Panel on Security was held on 31 July 2006 to continue discussion on the subject.)

43. There being no other business, the meeting ended at 4:44 pm.

Council Business Division 2
Legislative Council Secretariat
25 September 2006