

**Response to the Motion of the LegCo Panel on Security  
on Asylum Seekers and Torture Claimants**

The “1951 Convention Relating to the Status of Refugees” (“the Refugee Convention”) does not apply to the Hong Kong Special Administrative Region. We have a firm policy of not granting asylum and do not have obligation to admit persons who have applied for refugee status in Hong Kong in accordance with the Refugee Convention.

2. Despite the non-application of the Refugee Convention to Hong Kong, asylum seekers may approach the United Nations High Commissioner for Refugees (“UNHCR”) Hong Kong Sub-office to lodge asylum claims. We have supported the operation of the UNHCR Hong Kong Sub-office through provision of office accommodation at nominal rent.

3. The Government assesses torture claims independently with a high standard of procedural fairness. With reference to the ruling of the Court of Final Appeal, we cannot rely on UNHCR to assess torture claims. However, we will continue to maintain close liaison with them and explore how best to strengthen mutual cooperation under the existing framework.

4. The fact that a person is a refugee, asylum seeker or torture claimant will not lead to that person’s prosecution or detention in Hong Kong. However, a person who is found to be in violation of our laws may be liable to such enforcement actions. The period of detention will be decided in accordance with the law and may vary in view of individual circumstances. At mid-July 2006, some three quarters of the asylum seekers and torture claimants known to Immd who are liable to be detained had been released on recognizance in lieu of detention. When determining whether a person who is in breach of the Immigration Ordinance should be released on recognizance as an alternative to detention in accordance with the law, we will in general take into consideration (1) whether removal is not going to be possible within a reasonable time, (2) whether the person concerned constitutes a security risk and (3) whether there is any risk of the person absconding and (re)offending. Moreover, we may take into account the humanitarian factor of individual cases.

5. As regards humanitarian assistance, the Government provides, on a case-by-case and need basis, assistance-in-kind to asylum seekers and torture claimants to tide them over during their presence in Hong Kong pending the determination of their claims by relevant authorities. The types of assistance offered to them include temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances and medical services. The package of assistance offered varies according to the individual needs and personal situations of the person concerned, including the availability of his own resources and the resources available to him from other sources.

6. To facilitate better coordination and provision of services, we have commissioned the International Social Service Hong Kong Branch (ISS) to provide assistance-in-kind services to vulnerable asylum seekers and torture claimants.

7. In deciding on the nature, level and form of support for needy asylum seekers and torture claimants, we have considered a basket of factors including the needs of the individual concerned and the reasonableness of his requests. The aim is to provide support which is considered sufficient to prevent a person from becoming destitute while at the same time not creating a magnet effect which could have serious implications on the sustainability of our current support systems.

8. Apart from the tide-over support, arrangements for schooling may be made for children of refugees, asylum seekers and torture claimants by the Education and Manpower Bureau (EMB) on a case-by-case basis if their removal is not imminent. To ascertain whether these minors are likely to be removed in the near future, the EMB would consult the Director of Immigration when handling applications for schooling. The Immigration Department has been referred 32 applications for schooling for these minors from 2005 to late July 2006 and has **not** objected to any such applications throughout the said period. Notwithstanding the fact that these children are not eligible for student financial assistance, we may consider their applications for such assistance on a case-by-case basis where strong and compassionate grounds exist.

9. Our legal aid policy is to ensure that no one with reasonable grounds for taking or defending a legal action in the Hong Kong courts is prevented from doing so because of the lack of means. Legal aid is available to asylum seekers and torture claimants who satisfy the relevant criteria, namely the means test and the merits test.

10. As Hong Kong's legal aid service is an integral part of Hong Kong's legal system, legal aid will only be granted for legal representation in civil and criminal proceedings in the courts of Hong Kong, in accordance with the Legal Aid Ordinance and the Legal Aid in Criminal Cases Rules. Legal aid is therefore not available if legal proceedings are not involved. The Government has no intention to change the existing policy.

11. For claims made under the "Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment", the Government has put in place a set of administrative procedures for handling such claims. The administrative procedures allow a screened-out torture claimant to object to the refusal decision made against him, and the Secretary for Security will consider the appeal. As legal proceedings are not involved in the screening and appeal processes, no legal aid is available. However, the decision on a torture claim (including the decision on appeal) is subject to judicial review, and legal aid may be available for the judicial review proceedings. Similarly, if a deportation/removal order is made against a torture claimant or an asylum seeker, he may seek judicial review against the decision to deport or remove, and legal aid may again be available for such judicial review proceedings.

Security Bureau  
Health, Welfare and Food Bureau  
Education and Manpower Bureau  
Administration Wing  
Immigration Department  
Social Services Department

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