

**Submission to Joint Meeting of the  
Panel on Welfare Services  
and Panel on Security**

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**Prepared by the Refugee Concern Network**

An overview of the challenges facing this vulnerable group of people and  
recommendations on how the HKSAR can address these concerns

## **Summary**

In Hong Kong, the human rights of refugees, asylum seekers and claimants under the Convention Against Torture are often violated. Their most basic needs are denied, including access to adequate food, shelter, medical care, education, legal assistance and work opportunities. Lack of attention to this invisible population group brings shame on the Hong Kong government and the people of Hong Kong.

## **Introduction**

According to UNHCR sources, in mid June 2006 the total number of asylum applicants stood at 1613. Meanwhile the current number of recognized refugees waiting to be resettled is 144. The average number of new arrivals since January 2006 was 150 asylum seekers per month. Of these, 24.7% were women and 23.9% children.

Asylum seekers and refugees originate from over 40 countries in Asia and Africa:

- 58% South Asia
- 30% South West Africa
- 11% Central-East Africa
- 1% Other

RSD Watch, an independent source of information about the way the UNHCR decides refugee cases, estimates that of 998 cases decided by UNHCR in Hong Kong in 2005 there was a 16% success rate.

The Hong Kong government is presently dealing with over 265 applications under the Convention Against Torture (CAT). Reportedly, there has been one positive decision and several refusals which are on appeal.

## **“Protection” Under Domestic Law and Treaties**

The 1951 Geneva Convention or 1967 Protocol relating to the Status of Refugees (‘the Refugee Convention’) are not applicable to Hong Kong. Though China is a signatory to them, the Central Government of China has not extended its obligations under these treaties to Hong Kong. It has no procedures to determine refugee status. The Hong Kong Government, in ignoring and sometimes violating the rights of asylum seekers, often highlights that it is not bound by the Refugee Convention and the Protocol.

The International Covenant on Civil and Political Rights has been extended to Hong Kong by the United Kingdom before the Handover. The application has survived the Handover and the rights enshrined in it are given the status of constitutional rights by Article 39 of the Basic Law. However, the application of the Covenant to Hong Kong is subject to a number of reservations, including one on the right to seek asylum in Hong Kong. Therefore, the right to seek asylum, being a right so reserved, is not legally enforceable.

In addition, Hong Kong has no domestic legislation specifically on refugees.<sup>1</sup> Hong Kong, however has in the past enacted refugee related legal provisions specifically for Vietnamese asylum seekers. In 1988, as part of the international efforts to deal with the mass exodus of asylum seekers leaving Vietnam after the Vietnam war, domestic legislation was enacted to put in place screening procedures for asylum seekers leaving Vietnam and for handling refugees so determined.<sup>2</sup> Vietnamese

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<sup>1</sup> [There were legal provisions under the Immigration Ordinance ]

<sup>2</sup> While the legislation was in place, about 213, 000 asylum seekers passed through Hong Kong. Nearly 150,000 persons were detained in camps awaiting resettlement.

asylum seekers have the rights to land in Hong Kong and to have their claim for refugee status determined by the procedures so set up. Those screened in as a refugee were allowed to remain in Hong Kong pending resettlement. The legislation on the determination procedures was repealed when the government ended in 1998 its policy of designating Hong Kong as one of the first ports of asylum for refugees from Vietnam,

Since then, the government has not enacted further legislation to protect asylum seekers. They are often treated as illegal immigrants or overstayers by the authorities and are subjected to harsh penalties, detention and removal under immigration law. They are illegal immigrants and overstayers artificially created by the authorities by denying them the visa or visa extension when their status are being determined by UNHCR and/or the Immigration Department.

UNHCR has been involved with refugee work in Hong Kong since the Vietnamese refugee period, and since then has maintained a sub-office in Hong Kong to provide refugee status determination (RSD) screening in the absence of a government procedure.

Despite the lack of domestic legislation and obligation under the Refugee Convention, the Convention Against Torture has applied to Hong Kong for the last 15 years. Following a recent High Court case,<sup>3</sup> the government put in place a non-statutory screening procedure to deal with CAT applications. This procedure does not make provision for the right to legal assistance to those who cannot afford a lawyer during the process. The procedures related to CAT exist without RSD procedures, creating an awkward situation where one subset of asylum seekers have rights to have CAT claims heard, yet no rights exist for asylum seekers as a whole.

The Convention on the Rights of the Child has been extended to Hong Kong but no domestic legislation exists to protect refugee children.

Hong Kong prides itself on being a free port with a liberal visa regime. In December 2004, only nationals of 40 countries required visas to gain entry and 170 countries were visa free. In 2005, visa restrictions were extended to a further 16 countries, all of which are countries of origin for refugees in Hong Kong.<sup>4</sup>

### **Welfare**

Due to their lack of immigration status asylum seekers and torture claimants have no right to work. They are therefore dependent on others to supply their daily needs.

The *Social Welfare Department* (SWD) contracted *International Social Services* (ISS) in April 2006 to provide for the basic needs of destitute asylum seekers and torture claimants. Refugee Concern Network has concerns about how this assistance is being implemented:

- **Limited capacity:**  
The capacity is reported to be only sufficient for 80 people; however there are over 1600 asylum seekers and 250 CAT claimants in Hong Kong and the numbers of destitute in this people groups is high. For example, the UNHCR used to assist over 90 of the most vulnerable asylum seekers and this still left dozens of single men destitute and sleeping outside on the streets and many more in

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<sup>3</sup> Secretary for Security and Sakthevel Prbakar [June 2004, Court of Final Appeal FACV 16 of 2003]

<sup>4</sup> Countries that require entry clearance include Cameroon, Eritrea, Ethiopia, Democratic Republic of Congo, Nepal, Pakistan, Somalia, Sri Lanka

temporary, unsanitary and crowded accommodations and reliant on handouts for food, clothes and other daily basic needs.

- No provision of accommodation allowance for children:  
The allowance for rental charges allocated by ISS is up to \$1,000 per person. However, for some inexplicable reason, children are not included in the calculation of rental for a family. So families only receive a rental allowance calculated on the number of parents in a family. For example, a family of five with two parents and three children receives an allowance of \$2,000 per month. It is not possible for families to rent adequate accommodation with this money. This policy is also discriminatory against families with one parent (surely one of the most vulnerable parts of the community) who only receive \$1,000 per month rental allowance, no matter how many children they may have.
- No provision of diapers, baby milk, baby clothes:  
Among the 23.9% of asylum seekers who are children, many of them are infants and toddlers. The infants need baby milk and diapers, but up to now none of these infants are receiving milk and diapers. The ISS workers are telling parents it is expensive so they cannot provide.  
ISS also has a deeply concerning policy of providing food only for adults. Even if there are several children in a family only the adults will get food. No specific food is provided for children. ISS workers have mentioned they want to encourage mothers to breastfeed, but the mother often doesn't agree because the food provided is not nutritious enough for breast feeding mothers.  
Several infants have been diagnosed with malnutrition over the last year. It is essential that the nutritional needs of children are met as a matter of priority.
- Lack of provision of adequate food:  
Many destitute people are not yet being assisted by the new ISS system and are still reliant on SWD for direct provision of food from Integrated Family Service Centres (IFSCs). This food provision is completely inadequate for individuals and families to live on. Dried noodles, powdered milk and cans of meat do not meet daily nutritional requirements.<sup>5</sup> Individuals being given expired food has also been a recurring problem.  
The food provided by ISS is only available every 10 days.<sup>6</sup> For service users who don't have adequate refrigeration it is not possible to safely store the food provided.
- Forced relocation due to conditions placed by ISS for acquiring shelter.  
The provision of \$1,000 per person for rent each month is inadequate. This small amount must also cover the costs of electricity, water and gas. ISS will only allow contracts signed with landlords on a one month basis. Deposit and agency commission to secure a lease is also not provided which makes it almost impossible to secure desirable accommodation.  
Many families and individuals have found it impossible to continue to live in the same homes they did under UNHCR support, as many landlords are unwilling to accept the inclusion of electricity, water and gas fees within a one month contract. These families have been forced to relocate to ISS housing in Yuen Long which is far from their children's schools, their communities, religious places of worship, lawyers and the support system of charities which they continue to be dependent on due to the inadequacies of the current SWD/ ISS system.

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<sup>5</sup> See photo of food provided: attachment 1

<sup>6</sup> See list of food stuffs available from ISS: attachment 2

- Lack of training of social workers:  
Social workers implementing this project in IFSCs and ISS have limited or no training in handling the sensitive issues surrounding care of refugees. Asylum seekers and CAT claimants are being asked to describe the persecution they faced in their home countries without adequate awareness of the possibly traumatic consequences of this for the client. Adequate access to psychosocial support and referrals for medical assistance requires a deeper understanding by social workers of the particular issues of trauma facing individuals. These issues include persecuted, torture, death or separation from family members who remain in danger, loss of home culture and the stresses which accumulate for individuals living in destitution and under the continual fear of arrest and detention.
- A complete lack of interpreters:  
Clients often cannot communicate their needs to social workers or understand what they are required to do to access services due to the complete lack of interpreters.
- Long waiting period for assistance:  
Over 200 asylum seekers and CAT claimants have been referred to ISS by the SWD but over 100 are still waiting for an interview and provision of services to meet their basic needs. Many have been waiting for over two months since their referral. During this time they live in destitution and struggle to meet their basic needs.
- Travel costs not provided:  
Costs for travel to receive medical assistance, meet with legal representatives, engage in religious activities and access education is not provided. This means service users are isolated from their communities and support networks, stopped from attending school or accessing medical and legal assistance.  
No travel costs are provided for people to go to ISS offices in North Point and Wanchai which is often expensive for them, as many service users live in Kowloon. Travel costs are also not provided for the service users to pick up food every 10 days.

### **Ongoing detention and persecution of asylum seekers**

Asylum seekers and CAT claimants are being held in detention centres for unknown lengths of time in crowded conditions, without access to legal assistance or any daily activities. These individuals are treated like criminals although they have not been prosecuted and sentenced. The policy of the Hong Kong government to detain them is contrary to UNHCR's guidelines. It is immoral, cruel and degrading treatment, if not even amounting to psychological torture. It serves to continue the torture and persecution they have experienced in their home countries.

### **Immigration hampering the work of the SWD**

The refusal of the Immigration to extend the visas of asylum seekers and CAT claimants hampers the assistance being given by the SWD. On June 29<sup>th</sup> police raided one of the ISS shelters in Yuen Long arresting 13 asylum seekers including children aged 1.5 yrs and 3yrs. The police were not aware it was SWD sponsored accommodation and it took advocacy from several human rights groups and lawyers to have the detainees released from custody.

In addition, social workers are referring asylum seekers to report to Immigration Department for visa extension or recognizance. They appear unaware that this will mean the applicants will be arrested and incarcerated.

The SWD should advise its staff that such advice is not reasonable until the

Immigration Department changes its policy and guarantees refugees, asylum seekers and CAT claimant's visas whilst they are being processed by UNHCR and HK Immigration Department under the Convention Against Torture.

#### Psychological health concerns exacerbated by detention

Asylum seekers and torture claimants arrive in Hong Kong already with psychological and physical scars from their past suffering. Health concerns common to these vulnerable groups of people are well documented in international studies. In the United Kingdom, one in six asylum seekers have a physical health problem severe enough to affect their life and two thirds have experienced anxiety or depression.<sup>7</sup> A past history of torture and feelings of insecurity amplify and extend the severity and duration of their illnesses.<sup>8</sup> Furthermore, post arrival factors such as discrimination, lack of social support, refusal of the right to work and the imminent threat of being arrested and detained at any time, have been identified as major contributors to anxiety and depression.

The incarceration of asylum seekers in detention centres reminds people of their past torment and exacerbates the psychological damage that they have already suffered. A study in the US on the psychological impact of detention on asylum seekers was conducted by the Physicians for Human Rights Group and the Bellevue NYU program for survivors of torture. Its conclusions were alarming, documenting high levels of anxiety, depression and post-traumatic stress disorder among the sample of asylum seekers who were interviewed. The levels of symptoms of distress worsened the longer individuals were held in detention<sup>9</sup>. Many of the detainees reported they had suffered substantial trauma prior to seeking asylum, however the large majority said that their condition worsened while during their incarceration. More alarmingly, the levels of anxiety, depression and Post Traumatic Stress Disorder (PTSD) observed in this sample of detained asylum seekers, were significantly higher than those reported in numerous earlier studies of asylum seekers living in refugee camps and those living in the community, further highlighting the detrimental effects of detention.<sup>10</sup>

Suicidal thoughts and attempted suicides by asylum seekers in detention have been well documented as common expressions of desperation. Individuals with suicidal thoughts have often been found not to inform detention staff as they fear repercussions such as being placed in segregation and others fear it may affect their asylum claim.<sup>11</sup> The current hunger strike in Castle Peak Immigration Centre exemplifies another well documented measure people will go to, in such a desperate situation, to obtain their freedom. Hong Kong's system of treating asylum seekers and torture claimants as criminals exacerbates their psychological difficulties, worsening their already fragile mental health.

#### Education

Until 2005 refugee children were not permitted to access education in Hong Kong, despite Hong Kong's obligations under the Convention on the Rights of the Child which clearly guarantees the rights of all children to education. The right to education is also enshrined in the International Covenant on Economic Social and Cultural

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<sup>7</sup> Carey Wood J, Duke K, Karn V & Marshall T (1995) The settlement of refugees in Britain. London; HMSO. (Home Office research study 141).

<sup>8</sup> Sundquist, J & Johansson S.E. (1996) The influence of exile and repatriation on mental and physical health. A population-based study. Soc Psychiatry Psychiatry Epidemiology; 31: 21-8.

<sup>9</sup> Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture (2003) From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers. Boston and New York City. [http://www.phrusa.org/campaigns/asylum\\_network/detention\\_execSummary/detention\\_pdf.pdf](http://www.phrusa.org/campaigns/asylum_network/detention_execSummary/detention_pdf.pdf)

<sup>10</sup> *ibid*

<sup>11</sup> *ibid*.

Rights. The protection of the Covenant is now entrenched by Article 39 of the Basic Law. The right of a child to education is irrespective of the child's legal status. Asylum and refugee children are entitled to education.

- No respect for children's right to education:  
Following litigation in 2005, the children of recognized refugees and CAT claimants may be accepted by the Education and Manpower Bureau on a case by case basis subject to approval by the Immigration Department. Approval is only given by Immigration if the child holds 'recognizance' papers from Immigration. This discretionary system does not respect the access to education by children as a right.
- Asylum seekers children excluded from accessing education  
This discretionary system also excludes the children of asylum seekers from accessing education. Asylum seekers generally do not hold recognizance papers unless they have been previously detained: a situation which is most undesirable and effectively excludes many asylum seeker children from education.
- Children cannot afford to go to school  
Access to education is also curtailed by the lack of provision of travel fees, school uniforms, text books and lunches. Children who cannot afford to go to school are also effectively excluded from education. Another often observed consequence is that food allowance is spent by desperate parents on education costs rather than providing adequate food for their children leading to health concerns. Applications to the Student Financial Assistance Agency have been refused in the majority and are only accepted on an ad hoc and case by case basis. This discretionary and inadequate financial support limits the rights of children to access education

### **Work**

The right to work is guaranteed by the International Covenant on Economic, Social and Cultural Rights to which HK is a signatory. Refugees do not want to be dependent on the charity of others. They are keen to make a contribution to Hong Kong society and to be independent. The stresses and disempowerment associated with not being able to work contribute to the ill health of refugees both physically and mentally. The beneficial effects of the right to work include individuals' increased self-respect and independence which will also reduce the burden on the welfare, medical and psychiatric support services currently necessary.

### **Legal Aid**

Until now, legal support for asylum claims has been extremely limited. Only a couple of lawyers in Hong Kong take asylum seeker cases. Asylum seekers are unable to cover the cost of legal fees. The government does not provide financial remuneration for lawyers to assist either asylum or CAT applicants. The legal aid department provides financial assistance only when an asylum seeker is making an application for Habeas Corpus or challenging a removal order or other public decision by judicial review.

The consequences of an erroneous decision in such cases could not be more serious. There is an urgent need to increase capacity for legal advice by extending the current legal aid provision for these vulnerable cases. Research from the US has shown that represented asylum applicants are 4-6 times more likely to succeed in their asylum applications than those without<sup>12</sup>

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<sup>12</sup> AMERA-Egypt Annual Report 2004

## **Inadequate access to medical care**

- **Children's health in danger**  
Several infants and asylum seeker children have been diagnosed with malnutrition. Some children have failed to get adequate vaccination due to the lack of information. There are unwanted pregnancies because of lack of information and access to family planning.
- **Destitution leads to ill health**  
Many asylum seekers' health suffers as a result of poor nutrition and the physical implications of being homeless. Frequently reported problems include colds, fevers and digestive complications from lack of nutrients in the diet – e.g. thyroid problems from iodine deficiency or digestive problems for lack of fiber.
- **Inadequate access to medical assistance**  
Access to medical assistance for all refugees is limited by the pre-requisite requirement of a medical waiver from IFSC social workers before each attendance to local government clinics and hospitals. Emergency medical assistance is therefore not available or medical assistance outside the opening hours of IFSCs. Repeat appointments for chronic conditions require individuals to get serial medical waivers.  
Asylum seekers who lack recognizance papers from ID fear arrest on approaching government hospitals. They may therefore avoid seeking medical care. This is due to the policy of the Hospital Authority to report individuals without ID to the police. Pregnant mothers with small children have been previously arrested due to this policy.
- **Inadequate provision of specialized medical assistance**  
There exists a disturbing lack of adequate medical treatment for illnesses related to torture and abuse, particularly relating to the sexual violence and abuse experienced by both men and women. Chronic pain relating to torture injuries is not adequately responded to. Women and men who have experienced rape and sexual violence are not routinely provided with sexual health check ups and medical attention. Permanent damage to sexual organs has been observed after inadequate medical attention in Hong Kong.  
Psychosocial support for individuals with psychiatric issues and illnesses relating to the trauma they have experienced is inadequate. Counseling provided by social workers untrained in trauma support is a matter of concern.  
Claimants suffering from dental damage due to torture and abuse must endure constant pain due to the lack of provision of adequate dental care currently provided.
- **Rape victims avoid reporting to police for fear of arrest**  
We are also concerned about victims of sexual violence in Hong Kong who due to their lack of status from immigration are reluctant to report the abuse to the police due to fear of being arrested and detained for overstaying.

## **Conclusion and Recommendations:**

Asylum seekers, refugees and CAT claimants must no longer suffer in silence. The Hong Kong Government must act to meet their most basic needs and uphold their rights. The Government of the Hong Kong SAR must:

- Request extension of the 1951 Refugee Convention and its 1967 Protocol to Hong Kong and/or institute domestic legislation for the protection of refugees and torture claimants
- Grant temporary admission to all asylum seekers and CAT claimants during the status determination process
- Make provision to protect survivors of violence and rape in Hong Kong to enable them to seek police assistance without fear of repercussions
- Guarantee equal access to education and medical assistance
- Grant welfare assistance to the equivalent of CSSA levels to asylum seekers and torture claimants
- Extend legal aid provision to asylum applicants and torture claimants
- Enact legislation which gives all asylum seekers and CAT claimants permission to stay in HK during the status determination process.
- Grant access to services to meet fundamental needs like food and accommodation
- Require sensitivity training for all social workers primarily responsible for the care of refugees in Hong Kong with further training for social workers offering psychosocial support to survivors of torture and persecution