

**SUBMISSIONS BY AMNESTY INTERNATIONAL (HONG KONG) FOR
CONSIDERATION BY THE LEGISLATIVE COUNCIL ON 18TH JULY 2006
RELATING TO MATTERS CONCERNING REFUGEES AND ASYLUM
SEEKERS.**

The Refugee Group of Amnesty International HK (“AIHK”) is an active group in advocating for the protection of human right of refugees and asylum seekers in Hong Kong.

Although the AIHK is concerned with a variety of refugee and asylum issues, these submissions will focus on the following matters:

1. The failure of the HKSAR government (“HKSARG”) to introduce national asylum determination (RSD) procedures to grant refugee status to asylum-seekers in need of international protection.
2. The failure of the HKSARG to cause the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”) to be applied to Hong Kong, or to implement similar provisions in its domestic legislation to protect asylum seekers and their right to enjoy asylum.

**THE NEED FOR THE GOVERNMENT OF HKSAR TO ADOPT REFUGEE STATUS
DETERMINATION PROCEDURES:**

The HKSARG believes it is not obligated to adopted domestic asylum legislation and conduct its own RSD procedures because it is not a party to the Refugee Convention nor is the Refugee Convention applied to Hong Kong.

To this day, the HKSARG has not instituted any legislative or procedural measures to enable the Government to consider asylum claims independently, fairly and satisfactorily. It has come to the attention of AIHK that the HKSARG has deported asylum-seekers at the border, in violation of its obligation of *non-refoulement* under customary international

law. Moreover, the HKSARG relies entirely on the refugee status decisions made by the UNHCR when considering whether to deport asylum-seekers without making its own independent assessment.

AIHK reminds the HKSARG that Article 14(1) Universal Declaration of Human Rights (“UDHR”) recognizes that everyone has the right to seek and to enjoy in other countries asylum from persecution. Amnesty International would like to stress that HKSARG is obliged under the customary international law norm of *non-refoulement* not to return anyone to a situation where they may be at risk of serious human rights violations. Furthermore, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which applied to Hong Kong prohibits the expulsion, return or extradition of any person to a state where they would be in danger of being subjected to torture. Amnesty International believes that a fair and satisfactory asylum procedure is the only effective way to ensure that people who would be at risk of serious human rights violations if returned to a particular country are identified and offered protection.

AIHK further reminds the HKSARG that the Refugee Convention can be made to apply in Hong Kong under Article 153 of the Basic Law and the HKSARG may ask for the assistance of the Central People’s Government in extending the Refugee Convention into Hong Kong.

AIHK strongly urges the HKSARG to adopt a policy of recognizing the right to claim and enjoy asylum as consistent with the UDHR. The HKSARG should adopt the necessary legislation implementing domestic asylum determination procedures to allow asylum-seekers to exercise their right to claim and enjoy asylum under international law. An independent or judicial body should decide asylum claims and asylum determination procedures should be consistent with the principles of natural justice.

EXTENSION OF THE APPLICATION OF THE CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES TO HKSAR

AIHK believes that the rights of refugees and asylum seekers cannot be adequately protected without extending the application of the Refugee Convention to HKSAR. The Refugee Convention elaborates and expands on the right to seek and enjoy asylum as enunciated in Article 14(1) UDHR. Furthermore, the Convention reflects HKSARG's obligations under the customary norm of *non-refoulement*. The Refugee Convention provides a safeguard for the basic and fundamental needs of refugees who are often very vulnerable due to the conditions under which they have fled their countries of origin or of habitual residence. Many of the rights protected by the Refugee Convention echo the rights protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of which apply to Hong Kong: see Article 39 of the Basic Law.

AIHK reiterates the concerns of the Committee on Economic, Social and Cultural Rights as stated in paragraph 80 of the Concluding Observations dated 13 May 2005, "*The Committee is concerned that HKSAR lacks a clear asylum policy and that the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction.*"

AIHK considers it unacceptable that many asylum-seekers are essentially *refouled* without having access to independent, fair and satisfactory asylum determination procedures offered by the HKSARG. The lack of such determination procedures and the HKSARG's refusal of responsibility in protecting the fundamental human rights of all asylum-seekers under the blanket reason that the Refugee Convention is not applicable to HK, cannot be justified in light of international obligations under the ICESCR, ICCPR, (Convention on the Rights of the Child) CRC, and customary international law.

Furthermore, there is lack of a comprehensive governmental policy in the protection of basic human rights of all asylum seekers as the HKSARG itself admits that offer of support to asylum seekers are made only on a case-by-case basis.

AIHK reminds the HKSARG of its obligation to recognize the right to claim and enjoy asylum by those fearing persecution under international law. AIHK recommends that in order to protect adequately the rights of refugees and asylum-seekers, the HKSARG should adopt necessary legislative and administrative measures that provide, at least, the same level of human rights protection as the Refugee Convention.

AIHK further reminds the HKSARG the protection of the fundamental human rights of the asylum seekers under international law, especially those rights protected under the ICESCR, ICCPR, and CRC, is paramount in complying with the obligation of *non-refoulement*. AIHK urges the HKSARG to implement legislation and to adopt a comprehensive governmental policy for the protection of the rights all asylum seekers guaranteed by various international instruments especially the ICESCR, ICCPR, and CRC so as not to commit ‘constructive *refoulement*’ of asylum seekers.

CONCLUSION

Refugees and asylum seekers are forced to flee their countries in order to escape from persecution and to protect their fundamental human rights, including both civil and political rights, and economic, social and cultural rights. In many cases, they are forced to flee to protect their basic right to life or their right to be free from torture. When these vulnerable and innocent victims arrive in a host country, it is incumbent on the host country to treat these individuals with compassion and without discrimination. The lack of a legislative framework protecting the rights of refugees and asylum-seekers, and of independent, fair and effective procedures to determine asylum claims represents a failure to protect refugees and asylum seekers from forcible return in accordance with the customary norm of *non-refoulement* and the failure to ensure the protection of their basic human rights. Asylum-seekers and refugees are left in a precarious position such that

their rights under the ICESCR and ICCPR are violated. Hence, AIHK strongly recommends that the HKSARG extend the application of the Refugee Convention to its territory and adopt fair and satisfactory asylum determination procedures in order to protect the rights of all persons fleeing from persecution.

Amnesty International (Hong Kong)

13th July 2006