

**Society for Community Organization
Hong Kong Human Rights Commission
Asylum Seekers' and Refugees' Voice
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1. Introduction

This document represents our submission to the Bills Committee on Immigration (Amendment) Bill 2009 for the meeting to be held on 27 July 2009.

Here, we specially discuss the issue of the proposed offence of taking employment or establishing/joining in business by illegal immigrants and others.

2. Questions on the proposed law

It is true that there is currently no specific offence against the taking of employment or establishing/joining in of business by illegal immigrants (IIs), but the government's long established policy has been that IIs found working illegally would be prosecuted for "unlawful remaining" under section 38(1)(b) of the Immigration Ordinance (see paragraph 5 of the Legislative Council Brief). Although that policy was recently challenged in the judicial review case *Iqbal Shahid, Waseem Abbas & others v Secretary for Justice* HCAL 150/2008 where the court ruled that recognizance granted to asylum seekers and torture claimants under section 36 of the Immigration Ordinance represented an authority for them to remain in Hong Kong (hence they would have a defence against the charge of unlawful remaining), the Department of Justice has already lodged an appeal against the ruling. Thus, it seems that it may not be good to urgently legislate before the outcome of the final adjudication of the appeal court.

Secondly, even under the ruling of the recent judicial review case, not all IIs have the authority to remain in Hong Kong lawfully. The court only ruled that those who had been granted recognizance would have a defence against the charge of unlawful remaining. Thus, it is doubtful whether the proposed section 38AA of the Immigration Ordinance on prohibition of taking employment and establishing business should cover all IIs.

If the proposed law just aims to tackle the problem raised by the recent judicial review ruling, it should be confined to those asylum seekers and CAT claimants who have been granted recognizance.

Instead of legislating as proposed by the Bill, another way of dealing with the above problem would be to spell out in the recognizance paper that the person is not allowed to work.

Thirdly, the exact meaning of the phrase “must not take any employment, whether paid or unpaid, or establish or join in any business” is unclear. Does it cover volunteer work as well? If so, it seems that the proposed legislation is too harsh and difficult to follow.

3. Right to work and training

Currently asylum seekers, claimants under the Convention Against Torture (CAT) and recognized refugees are not allowed to work.

Even though there is a need to legislate to prohibit IIs from taking employment, we suggest that the proposed law should at least allow those who have been recognized as refugees by the UNHCR, and those whose claims have been successful under the CAT screening procedure to be allowed to work.

According to the Convention relating to the Status of Refugees (‘Refugee Convention’ article 17 (3) “[the] Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals”.

Also, article 6 of the International Covenant on Economic, Social and Cultural Rights, recognizes the right to work and training.

Recognized refugees and successful CAT claimants may have to stay in Hong Kong for several years before they can be resettled to another country. It is important that they fully develop their skills while they are awaiting resettlement.

Vocational training

Refugees are not eligible for any training from either the Employees Retraining Board (ERB) or the Vocational Training Council (VTC).

According to section 4(c) of the Employees Retraining Ordinance (ERO), the retraining courses are only “intended or designed for the benefit of eligible employees”. An “eligible employee” is defined in the ERO as one who is the holder of an identity card or a certificate of exemption, which is not subject to any condition of stay other than a limit of stay. Thus refugees on recognizance are not eligible.

Also, the government’s policy is that courses provided by the Vocational Training Council is not offered to refugees, torture claimants and asylum seekers as they are not allowed to work in Hong Kong.

The government should consider relaxing these policies for refugees and successful CAT-claimants. Many of the refugees we know are relatively young people in their

teens or twenties, and they may not have attended much schooling in their countries. According to statistics¹ from the United Nations High Commissioner for Refugees (UNHCR) Hong Kong sub-office, there are 29 refugees in the age group 18-30. Having escaped from civil war in Somalia or other countries, a stable training environment would definitely be beneficial for them.

The ERB and the VTC already have organized courses in English for ethnic minorities to attend. We recommend that such courses should be offered to all refugees and successful CAT claimants.

4. Welfare assistance to asylum seekers and CAT claimants

4.1. Assistance much lower than CSSA

Asylum seekers and CAT claimants who are not allowed to work, do not have any other source of assistance than that provided by the Social Welfare Department (SWD). As they are not given the opportunity to gain their living by work, it is important that the assistance provided by the SWD can provide for an adequate standard of living.

However, the assistance provided does not meet the basic needs of the recipients. The low level of support reflects that the objective seems to be to provide substandard assistance, much lower than that of the basic level provided through the Comprehensive Social Security Assistance (CSSA). The aim is only to prevent destitution and prevent that they are “seriously hungry”! The government leaves it up to asylum seekers to scatter around, and beg for help from others.

A comparison of the assistance to Hong Kong residents and that to asylum seekers (table 1) reveals the government’s discriminatory policy. Asylum seekers only receive 79% of the rent subsidy given to HK residents. Also they only receive 23-55% of the food assistance to HK residents.

¹ As of July 2009.

Table 1. Comparison between Hong Kong residents receiving social security and asylum seekers receiving assistance-in-kind

Type of assistance	Hong Kong residents	Asylum seeker/torture claimants	Difference
<i>Rent subsidy</i>	\$ 1,265 cash for singleton	\$1,000 directly to landlord. Children do not receive rental assistance.	Asylum seekers only get 79% compared to HK people
<i>Food</i>	Standard rates for singletons: Adults: \$ 1,630 cash Children: \$1,955 cash	- Food worth \$900 for adults - Food worth \$450 for children	Asylum seekers assistance compared to HK residents Adults: 55% Children: 23%
<i>Electricity, water and gas</i>	Part of standard rate and only case by case for grants	Case by case	HK residents: Standard rate Asylum seekers: Case by case
<i>Transportation</i>	Included in the standard rate above	Only provided through social worker specified purposes.	HK residents: standard rate. Asylum seekers only get for specific purposes through ISS.

4.2 Survey of assistance provided

Furthermore our survey of the assistance, through interviews of nearly 60 asylum seekers during the period July-December 2008, reveals the following figures:

a. Food:

Not enough food

71% of respondents say they eat less than they feel they should because of lack of food.

9% say that their children eat less than they should because there is not enough food.

Received spoiled food on pick up day

92% had received bad food on the day they picked up the food

Food expired

59% had received food, which was already expired when received from the shop

b. House rent

All asylum seekers only get \$1,000 for house rent. However only six were able to find accommodation with a house rent at \$1,000 or less.

c. Utilities

Percentage of people receiving assistance for utilities

Utility	Percentage of people receiving help
Gas	25%
Water	12%
Electricity	10%

Only 8% of those who made a special request were helped.

d. Transportation

Percentage of people who live more than 30 minutes walking distance from venue and who are *not* being reimbursed.

Venue	No transportation
Food collection	82%
Clinic	66%
Religious institution	95%
Lawyer	69%
ISS	39%
NGO	0%

e. Clothing

78% said they needed extra clothing, but only 9 out of the 46 people were assisted by SWD with clothing (20%). Of the 16 that approached SWD for support, only 1 was supported with clothing.

5. Policy Recommendations

1. The recent court case does not necessitate legislation. In order to prohibit asylum seekers and CAT claimants from working, it is only necessary to add in the recognizance paper that they are not allowed to take up employment.
2. The government should recognize the right to work and vocational training and allow recognized refugees and successful CAT claimants to apply for temporary work visas.
3. The government should allow refugees and young asylum seekers to apply for courses offered by the Vocational Training Council and the Employees Retraining Board.
4. The government should review the assistance provided to asylum seekers and CAT claimants and ensure that they can enjoy a basic standard of living.