

# 立法會 *Legislative Council*

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## **Panel on Welfare Services**

### **Background brief prepared by the Legislative Council Secretariat for the special meeting on 22 July 2013**

## **Situation of refugees, asylum seekers and torture claimants in Hong Kong**

### **Purpose**

This paper provides background information and gives an account of members' discussions on the situation of refugees, asylum seekers and torture claimants in Hong Kong.

### **Background**

#### Claims for refugee status

2. The 1951 Convention relating to the Status of Refugees ("the Refugee Convention") and its 1967 Protocol do not apply to Hong Kong. According to the Administration, it has always maintained a firm policy of not granting asylum, and accordingly, asylum claims (on grounds of a claimed fear of persecution) have always been assessed by the United Nations High Commissioner for Refugees ("UNHCR") in Hong Kong. However, before exercising powers of removal or deportation to another country, the prevailing practice of the Director of Immigration ("D of Imm") is that he would, on humanitarian grounds, have regard to a person's claimed fear of persecution. Where UNHCR determines such claim to be well-founded, that person will not be removed to the country of putative persecution. This practice is consistent with the principle of non-refoulement expressed in Article 33 of the Refugee Convention<sup>1</sup>, despite that the Convention does not apply to Hong Kong.

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<sup>1</sup> Article 33 of the Refugee Convention provides that : (1) No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion; and (2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

### Torture claims

3. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") has been extended to Hong Kong since 1992. Article 3(1) of that Convention provides that "no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

4. Article 3 of the Hong Kong Bill of Rights ("BOR") (giving effect to Article 7 of the International Covenant on Civil and Political Rights ("ICCPR")) protects individuals from being subjected to torture or cruel, inhuman or degrading treatment or punishment ("CIDTP"). Accordingly, the Hong Kong Special Administrative Region Government should not expose individuals to the danger of torture or CIDTP. On the other hand, section 11 of the Hong Kong Bill of Rights Ordinance (Cap. 383) provides that the Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of such legislation, as regards persons not having the right to enter and remain in Hong Kong.

5. According to the Administration, persons not having the right to enter and remain in Hong Kong (e.g. illegal immigrants and overstayers) may claim non-refoulement protection by invoking Article 3 or BOR to resist removal or deportation to another country.

### **Members' deliberations**

6. The Panel on Welfare Services ("the WS Panel") and the Panel on Security discussed in 2006 the situation of refugees, asylum seekers and torture claimants in Hong Kong.

### Support for refugees, asylum seekers and torture claimants

7. Some members were gravely concerned that refugees and asylum seekers were treated in an inhumane manner in Hong Kong. They were dissatisfied that no allowance-in-cash was provided for refugees and asylum seekers to meet their daily needs.

8. The Administration advised that on humanitarian grounds, the Social Welfare Department ("SWD"), in collaboration with a non-governmental organization (i.e. the International Social Service Hong Kong Branch ("ISS")) and on a case-by-case basis, offered in-kind assistance to CAT and asylum claimants to prevent them from becoming destitute. The assistance covered temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances and medical service. To ensure that the basic needs of the claimants were met, each case was reviewed monthly by

ISS. SWD monitored the programme closely, reviewed the assistance level from time to time and made adjustments as necessary. In the Administration's view, offering assistance-in-cash would likely create a magnet effect. As such, it had no intention to change the present arrangement of providing assistance-in-kind to the claimants.

9. Some members considered the arrangement of providing assistance-in-kind to CAT and asylum claimants appropriate because it could prevent a person from becoming destitute without creating a magnet effect.

10. At its meeting on 31 July 2006, the Panel on Security passed a motion urging the Government to, among other things, ensure that during the vetting process of their claims, refugee and torture claimants, would be attended to and treated in such a manner that upheld human dignity and humanity.

11. In reply to the written questions raised at the Council meetings of 6 June 2012 and 20 February 2013 regarding the Administration's expenses incurred in providing support for torture claimants and the number of torture claims in the past three years, the Administration stated that as at the end of 2009-2010, 2010-2011 and 2011-2012, 5 258, 5 825 and 5 703 persons were receiving humanitarian assistance respectively. The corresponding expenditure on such assistance was \$124 million, \$151 million and \$143 million respectively.

#### Education for minors of refugees, asylum seekers and torture claimants

12. At the joint meeting of the WS Panel and the Panel on Security on 18 July 2006, members expressed grave concern that a number of children of refugees and asylum seekers were denied access to education. The Administration advised that its policy was to provide children of refugees, asylum seekers and torture claimants whose removal was unlikely to take place shortly with access to education. Arrangements for schooling might be made for minors of refugees, asylum seekers and torture claimants on a case-by-case basis. Factors to be considered included the availability of school places, length of study, the age and education background of the minors, etc. The admission of these children to schools did not give rise to an undertaking by D of Imm that removal proceedings would not be instituted or continued. This had been made clear to the children and the parents concerned. To ascertain whether these minors were likely to be removed within a reasonable time, views from the Immigration Department ("ImmD") would be sought.

13. According to the records of ImmD, in 2005 and 2006 (as at 26 July 2006), 32 applications for admission to schooling had been approved. These applications comprised five in pre-school education, 15 in primary education, five in secondary education and seven in "Initiation Programmes for non-

Chinese speaking children” subsidized by the then Education and Manpower Bureau. Over the same period, no application for admission to school by children of refugees, asylum seekers and torture claimants was rejected. While these children were not eligible for student financial assistance, they would be provided with such assistance on a case-by-case basis if there were strong compassionate and humanitarian grounds.

14. Members urged the Government, by way of the carried motion mentioned in paragraph 10, to ensure that all children of refugee and torture claimants would have the opportunity to receive education during the vetting process of their claims.

### **Recent development**

15. According to a recent press report, instead of providing the full package of assistance, which should include housing rental of \$1,200, food, transportation and clothing, as stipulated in the service contract, ISS had asked its service recipients to choose from either accommodation or food assistance. As a result, two asylum seekers/torture claimants were forced to share a bed space and a portion of food. According to the ISS's response as reported by the press, it would not ask its service recipients to opt for only one kind of assistance and the nature and level of assistance provided to individual service recipients would be assessed on a case-by-case basis by its social workers.

### **Relevant papers**

16. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

**Relevant papers on  
Situation of refugees, asylum seekers and torture claimants in Hong Kong**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Welfare Services and Panel on Security	18 July 2006 (Item II)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Security	31 July 2006 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a> <a href="#">LC Paper CB(2)2994/05-06(01)</a> <a href="#">LC Paper CB(2)526/06-07(01)</a>
Legislative Council	6 June 2012	<a href="#">Official Record of Proceedings</a> <a href="#">Pages 122 – 125</a>
Legislative Council	20 February 2013	<a href="#">Official Record of Proceedings</a> <a href="#">Pages 107 – 114</a>

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