

**LEGCO PANEL ON SECURITY
AND
LEGCO PANEL ON WELFARE SERVICES**

**Situation of Refugees, Asylum Seekers and
Torture Claimants in Hong Kong**

Purpose

This paper briefs Members on the situation of refugees, asylum seekers and torture claimants in Hong Kong.

Claims for Refugee Status

2. The 1951 United Nations Convention relating to the Status of Refugees (“the 1951 UN Convention”) does not apply to Hong Kong. Hong Kong is small in size and has a dense population. Our unique situation, set against the backdrop of our relative economic prosperity in the region and our liberal visa regime, makes us vulnerable to possible abuses if the 1951 UN Convention were to be extended to Hong Kong. We thus have a firm policy of not granting asylum and do not have any obligation to admit individuals seeking refugee status under the 1951 UN Convention.

3. Claims for refugee status lodged in Hong Kong are dealt with by the United Nations High Commissioner for Refugees (“UNHCR”). The Immigration Department will continue to maintain close liaison with the UNHCR Hong Kong Sub-office to ensure persons whose claims for refugee status have been denied and who have no permission to remain here leave Hong Kong in accordance with our law.

Torture Claims

4. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the CAT Convention”) applies to Hong Kong. The Government has put in place an administrative mechanism for handling torture claims. As at early July 2006, there are about 330 outstanding

torture claim cases involving some 360 persons. These are all overseas nationals.

5. For a torture claimant who has failed to establish his claim, he will be removed from Hong Kong in accordance with our laws. For a torture claimant who has established his claim, he will not be removed to the country where there are substantial grounds for believing that he would be in danger of being subjected to torture. However, his removal to another country to which he may be admitted without the danger of being subjected to torture will be considered. Furthermore, if subsequent changes in country conditions are such that a torture claim established earlier in respect of a particular country can no longer be substantiated, removal to that country will be considered.

Detention or Release on Recognizance

6. 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 however be liable to such enforcement actions. For example, persons who have entered Hong Kong illegally or breached their conditions of stay may be so liable under our law.

7. In the case of a person under detention in accordance with our laws who is also a refugee, asylum seeker or torture claimant, the Director of Immigration may on a case-by-case basis exercise his discretion to grant the person release on recognizance pending the determination of his claim by the relevant authorities or, for mandated refugee, pending his resettlement elsewhere arranged by the UNHCR.

Support to Refugees, Asylum Seekers and Torture Claimants

8. The UNHCR used to support vulnerable refugees while it is making arrangements on their resettlement overseas, and vulnerable asylum seekers while their claims are being processed. The UNHCR has ceased its support to vulnerable asylum seekers starting from May 2006 but it will continue to support vulnerable mandated refugees. The Administration, in collaboration with non-governmental organizations (NGOs) and on a case-by-case basis, offers assistance-in-kind to refugees, asylum seekers and torture claimants who are deprived of basic needs during their presence in Hong Kong while their claims are being processed by relevant authorities on humanitarian grounds. The types of assistance offered include temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances and

counseling. Recommendations for the waiver of medical expenses at public clinics or hospitals have also been made as needed. The type of assistance offered to the individual varies according to the needs and personal situations of the person concerned, including the availability of his own resources and the resources available to him from other sources.

9. To facilitate better coordination and provision of services, the Administration has commissioned the International Social Service Hong Kong Branch (ISS) to provide assistance-in-kind services to mainly vulnerable asylum seekers and torture claimants. The service components of the ISS assistance include mainly assistance-in-kind in the form of temporary accommodation, food, clothing and other basic necessities as well as appropriate transport allowances. Up to 4 July 2006, 262 cases involving 317 persons have been referred to the ISS.

10. In formulating the policy regarding the nature, level and form of support to be given to those refugees, asylum seekers and torture claimants who are in need, the Administration has considered a basket of factors including the needs of the individual concerned and the reasonableness of his demands. 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 to the sustainability of our current support systems. It is considered that the present arrangement of providing assistance-in-kind strikes an appropriate balance having regard to the aforesaid relevant factors.

Education of Minors of Refugees, Asylum Seekers and Torture Claimants

11. Children with no right to remain in Hong Kong, including refugees, asylum seekers and torture claimants, are subject to removal and the question of their schooling in Hong Kong therefore does not normally arise. Where removal is unlikely for a considerable length of time, the Director of Immigration may, on a case-by-case basis, indicate that he has no objection to the provision of schooling whereupon arrangements for schooling may be made by the Education and Manpower Bureau.

12. It should be noted that the admission of a child to a school does not give rise to an undertaking by the Director of Immigration that removal proceedings would not be instituted or continued. This has been made clear to both the children and their parents concerned.

13. Children of refugees, asylum seekers and torture claimants are not eligible for student financial assistance. However, where strong compassionate

and humanitarian grounds exist, such assistance is provided to them on a case-by-case basis.

14. Members are invited to note the contents of the paper.

Security Bureau
Health, Welfare and Food Bureau
Education and Manpower Bureau
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