

**Society for Community Organization
Hong Kong Human Rights Commission
Voices of the Rights of Asylum Seekers and
Refugees**

Denial of asylum seekers' rights

**Submission to Panel on Welfare Services and Panel on Security
(Meeting Tuesday 18 July 2006)**

Agenda item no. II:

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

July 2006

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1. Number of asylum seekers

There are currently 1,800 persons in Hong Kong who seek asylum under the International Convention Relating to the Status of Refugees (Refugee Convention). 78.4% are from Asia, 21.2% from Africa and 0.4% from other continents. 17% of the asylum seekers are female.

An asylum seeker is someone who seeks protection under the Refugee Convention to be recognized as a refugee. A refugee is someone who has been recognized to be unable to return to his country because he has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, as defined in article 1 of the Refugee Convention.

2. Refugee convention not signed

While China and Macao have already ratified the Convention Relating to the Status of Refugees, which now already have 145 States Parties, the Convention has not yet been extended to Hong Kong. The lack of any refugee law means that asylum seekers are left without any basic means of living, including food and shelter and are subject to detention and deportation.

In the concluding observations of the Committee on Economic Social and Cultural Rights (E/C.12/1/Add.107) May 2005, the Committee expressed concern "that HKSAR lacks a clear asylum policy and that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of the HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction."

The Committee has recommended that the "HKSAR reconsider its position regarding the extension of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to its territorial jurisdiction, and that it strengthen its cooperation with UNHCR, in particular, in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination."

3. No coherent asylum policy

The lack of any local asylum policy means that asylum seekers do not receive proper protection by the government. There is a need to deal with their right to not be arbitrarily detained, not to be deported, right to food and accommodation, right to education and medical care.

Firstly, when asylum seekers seek to renew their visas because they are making claims of asylum, the Immigration Department ignores their asylum claims and denies them a renewal of visas and asks them to return to their countries of origin. The result is that asylum seekers are forced to live illegally in Hong Kong, always being at risk of being detained for overstaying their visas. However, seeking asylum is not a crime, and the government should issue legal identity documents to people who are on its territory to seek protection of their lives.

In fact the government's lack of planning and coordination between departments was clearly shown when 13 asylum seekers living in a government supported shelter were arrested on 29th June 2006 by the police because they did not have any immigration papers. Thirdly, there are still children who are unable to attend school because fear

approaching the government. This clearly is an infringement on the rights of the child to receive education. The government must immediately deal with the problems faced by these destitute people instead of turning a blind eye to their fates.

4. Hong Kong needs its own refugee status determination mechanism

Currently there is no refugee status determination system set up by the Hong Kong government to deal with their claims, and the government says that it has no obligation to set up such a system and relies on the United Nations High Commissioner for Refugees to process their claims. However, the UNHCR does not provide adequate protection to asylum seekers and in fact UNHCR only accepted 10% of the asylum seekers as refugees during 2005. This figure is highly disturbing and many asylum seekers are rejected without having access to a fair refugee status determination mechanism.

In March 2006 the UN Human Rights Committee asked the HKSAR to establish an appropriate mechanism to assess the risks faced by individuals expressing fears of being victims of grave human rights violations in the locations to which they may be returned. The committee is thus concerned about the absence of adequate legal protection and has asked the government to set up its own mechanism. However, the government has turned a blind eye to the recommendations of the Human Rights Committee and in fact it has stated that it has a firm policy of not granting asylum.

The need for the government to urgently set up its own mechanism is shown in the results of our survey of 100 asylum seekers called “Survey of the UNHCR HK’s Refugee Status Determination Mechanism” (July 2006). It reveals severe problems of the UNHCR’s system and that the HK UNHCR does not observe its own procedural guidelines published September 2005.

Main findings of the survey

1. Asylum seekers are denied right to legal representation by the UNHCR

According to UNHCR guidelines applicants may be accompanied by a legal representative during the interviews. However, in 91% of cases, UNHCR never informed the asylum seekers about this right, and UNHCR never allows lawyers to be present during the interviews. This seriously infringes on the right to legal representation.

2. UNHCR only conducts very short interviews before rejecting cases

The UNHCR guidelines instruct the interviewers to provide adequate time to the asylum seekers to present their cases. However, the UNHCR rejects cases even though the applicants did not get enough time to present their case. In fact 61% of the asylum seekers say that they were not allowed to make a full account of what happened to them in their country.

3. Interpreters are not always provided, and the quality of interpretation is highly questionable

The survey shows that many asylum seekers were highly unsatisfied with the interpretation. 41% of the respondents felt that the interpreter only summed up what they said. The bad quality of interpretation denies the asylum seekers the opportunity

to clearly explain their claims and to make a well-presented claim.

4. No detailed documentation of case is given to the applicant

According to the UNHCR guidelines, the interviewer should read back major important points of the interview transcripts. However, 88% were not asked to agree on the major points of the interview and 98% were not given a copy of the interview transcripts. Thus the applicant has no access to check whether the UNHCR makes a faithful recording of his account of what happened.

5. No detailed written reasons for refusal are given

According to UNHCR guidelines rejection letters should permit the rejected applicant to understand the details of the reasons why he has been rejected, so that he is able to make an appeal focusing on relevant facts and issues. However, in 81% of cases the respondent did not receive a detailed written reply about the reasons for refusal of his case. The practice of the UNHCR is to simply give a verbal explanation. However, it is highly difficult to make an informed appeal based on a verbal explanation from the UNHCR. The results show that 64% say it was difficult to make an appeal because they couldn't remember all the reasons for the rejection.

6. Uncomfortable questioning by UNHCR officers

According to UNHCR guidelines, the interview should be conducted in a non-confrontational manner. However, the attitude of the interviewers reveals a hostile environment in which 72% of the applicants say that they felt uncomfortable during the interviews. The hostile environment makes the asylum seekers uncomfortable making their claims and many feel as if they are being interrogated.

7. UNHCR does not have a regular complaint mechanism

According to the guidelines UNHCR should have a procedure to receive and respond to complaints. However, it seems that no systematic mechanism is in place to deal with such complaints. 37% had made a complaint, but of these 69% did not get any reply from the UNHCR about the complaint. The lack of any complaints mechanism makes it difficult for asylum seekers to have their cases reassessed if any procedural unfairness has taken place.

8. The UNHCR are slow in processing claims

According to the guidelines initial decisions made by the UNHCR should be issued within one month following the interviews. However, many have to wait for a long time before getting the results from the UNHCR. 43% had to wait for 7 months or above before they got the first rejection and as many as 22% had to wait between 13-24 months after the appeal before they got a second rejection.

5. No Legal aid for asylum seekers and torture claimants.

No legal aid is granted to asylum seekers, refugees or torture claimants. This applies both regarding the refugee status determination procedures and the Convention Against Torture (CAT) procedures.

6. No valid identity papers

At the moment asylum seekers are basically illegal immigrants when their visas expire. If they approach the Immigration Department to extend their visas or get recognizance they are often rejected and will be asked to leave Hong Kong, which they are unable to. Furthermore most asylum seekers are afraid to contact the Immigration Department as they are most often detained. Thus they are left without any valid identity documents. The UNHCR does issue identification papers about their status as asylum seekers, however, these documents are not recognized by the Hong Kong government. Those who do get identity documents because they somehow had to contact the Immigration Department are on recognizance. However, the recognizance is nothing more than a recognition by the HKSAR that the refugee is an offender for overstaying and enjoys no rights. The recognizance states that they are detained or liable to be detained. Although carrying the recognizance letter, the Immigration Department may still charge them for overstay. Thus this stance essentially amounts to non-recognition, which is against all international humanitarian standards.

7. Detention

Asylum seekers and torture claimants are arbitrarily detained. The Immigration Ordinance does not have specific provisions to protect refugees, and basically treat refugees as regular overstayers. Thus Immigration Ordinance doesn't comply with article 28 and 41 of the Basic Law which protects non-residents against arbitrary or unlawful arrest, detention or imprisonment. Furthermore the Bill of Rights Ordinance (Part III, para. 11) does not cover immigration legislation as regards persons not having the right to enter and remain in Hong Kong.

Furthermore for those who may be released on bail, they are obliged to find a guarantor who is a permanent resident of Hong Kong. This poses great problems, as the network of asylum seekers seldom extends to local Hong Kong people.

8. Detention conditions

Many asylum seekers and claimants of torture, who have been detained by the Immigration Department or the Correctional Services Department, have complained that they were ill-treated during detention. The same complaints also existed in the detention cells controlled by Correctional Services Department. Reports of sleeping on the floor, bad hygiene arrangements, and punishment for making complaints are common. The government has no culturally sensitive services nor does it seem to provide any kind of training for against racial discrimination.

Secondly, given the fact that refugees may suffer from post-traumatic-stress-syndrome (PTSS) it is highly questionable to detain refugees, especially because the detainees do not receive specialist treatment for PTSS. The medical services only general symptoms and the doctors do not seem to be aware of PTSS symptoms.

9. Domestic violence and rape left unreported

The fear of detention results in the fact that female asylum seekers, who are victims of violence or harassment (including sexual and domestic violence) in Hong Kong do

not dare to report the case to the police. In 2005, UNHCR received around 5 claims of rape and domestic violence, which occurred in Hong Kong. However, UNHCR reports that the majority of victims, although counseled about the possibility to lodge complaints, choose not to do so mainly for fear of arrest by the police. Thereby asylum seekers are easy targets of rape and domestic violence, and furthermore the perpetrator goes unpunished, and the victims are left without any proper channels for counseling. Lastly, without proper protection the victim may live in continued fear of being further subject to victimization.

Furthermore there are no shelters to which female asylum seekers and refugee victims of violence can safely be sent to and cared for. At the moment the victims are solely dependent on NGOs and UNHCR. NGOs and UNHCR have had to find accommodation for the victims in which they could hide.

The government should immediately protect women asylum seekers against prosecution and provide protection under the law against sexual and domestic violence.

10. Deportation – lack of safeguards against *refoulement*¹

No adequate protection under the CAT

The Hong Kong government ignores its obligations to set up a screening procedure to process asylum claims, and has left it to the UNHCR. However, while such claims are being assessed there is no protection against *refoulement* through the UNHCR procedure. Only some protection against *refoulement* is only given to people who make claims of torture at the Immigration Department under the Convention Against Torture (CAT). However yet, the CAT procedure is wrought with problems and offers no adequate protection against deportation.

There is no adequate legal protection against *refoulement*. The procedures under CAT are non-statutory and The Crimes (Torture) Ordinance does not specifically incorporate the principle of non-*refoulement*. Additionally the definition of “torture” is inconsistent with the definition in the Convention Against Torture.

Secondly, the determination procedure only allows two weeks for claimants to make petitions against the determination to the Chief Executive. Two weeks however, is not sufficient time for claimants to make appeals. Even UNHCR allows 1 month to make appeals.

Third, The Bill of Rights (article 9) does not confer a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before a competent authority.

In addition to the above mentioned problems, in fact most victims of torture are deterred from making a CAT claim at the Immigration Department, since, if they are overstayers, they are usually detained.

¹ The principle of non-*refoulement* includes that no refugee should be returned to any country where he or she is likely to face persecution or torture.

11. Welfare

The government has failed to provide adequate housing and food to the asylum seekers. While there are more than 1,800 asylum seekers in Hong Kong, the new project by the Social Welfare Department has only been designed to support around 80 people on a trial basis at a budget of \$1,800-1,900 per person per month. According to the government the project is only on a trial basis and meant to be small scale. It has stated that when the project finishes it is still unclear whether new projects will be set up. The lack of any long term planning clearly ignores the plight of the asylum seekers.

Risk of detention when seeking welfare assistance

Access to welfare is highly questionable as the risk of detention is ever present when approaching the Social Welfare Department for assistance. Asylum seekers without immigration papers who approach the Social Welfare Department for assistance, are asked to reveal their identity to the Immigration Department. If they do not agree to do so, in most cases the Social Welfare Department will not refer their cases for assistance from the International Social Service. Some asylum seekers who did not want to approach Immigration have been told by the Social Welfare Department not to approach them again unless they had immigration papers and that they would call the police if they approached again.

Welfare assistance discriminatory

Secondly, it is extremely discriminatory to only support asylum seekers on a budget of around \$1,800-\$1,900 per month. According to the Social Welfare Department, the Comprehensive Social Security Allowance is designed to support only local residents. Thus asylum seekers are not eligible for CSSA. However, a singleton on CSSA receives around \$2,800 which is meant to cover basic needs. First of all it is discriminatory to provide assistance which is \$1,000 lower than the assistance provided to local residents. Secondly, it is very clear that \$1,800 is not enough to even cover the basic needs of asylum seekers. Asylum seekers do not receive cash to buy their own food but are instead asked to collect food items every ten days at designated spots. For a single person, he/she will only receive food worth a total of \$900 per month. Even worse, families with children are not given food for the children but only for the adults. Thus a family of four will only receive food to cover two people.

The food is unvaried and cannot cover the essential nutritious needs of the asylum seekers. For instance, the asylum seekers are only given tomatoes but not other vegetables. Also, because the food is only provided every 10 days, some of it gets bad and has to be thrown out.

When it comes to housing, they are supported at a maximum of \$1,000. With the high house rent in Hong Kong it is extremely difficult to find housing at such a rate. The support given by the Social Welfare Department does not cover electricity, water or gas, nor does it cover clothing, pocket money, transportation costs or other basic needs.

The government now runs some shelters in Yuen Long for asylum seekers and torture claimants. In the first shelter there are around 13 people, and the other there are 5 people. However, these are poorly managed by the government. In fact women, men, children and unaccompanied minors all live in the same shelter without any consideration of the safety of the individuals. It is not proper to let both men and

women live in the same shelter. Secondly, the shelters only have one kitchen and one bathroom which all residents have to share. This arrangement is quite inconvenient and the residents have to line up to use the kitchen and bathroom. Lastly, the shelters only have one refrigerator. This is clearly not enough for so many people, especially when the food they collect covers 10 days. Often they are forced to throw out some of the food because of lack of space.

12. Children left without any education

Asylum seeking children are not eligible to study in the public schools in Hong Kong given their legal status. Currently there are 31 asylum seeking children and 31 refugee children. The Government does not recognize the right to education of these children migrants. There is no clear policy or guidelines to offer school placements to these children. The Education Department will not offer school placements to these children unless their eligibility has been confirmed by the Director of Immigration. Such applications are dealt with on a case-by-case basis. That is to say, the right to public education of these children is vested in the discretion of the Director of Immigration. Several children who are not on recognizance from the Immigration Department currently do not attend school.

13. No support from the Student Financial Assistance Agency

The projects by the Social Welfare Department does not support expenses related to children's education. Previous applications to the government's Student Financial Assistance Agency have been under process for even 1 year without any answers. It eventually meant that children had to rely on support from NGOs or private individuals. It is only recently that the Student Financial Assistance Agency invited asylum and refugee children to apply. However, they are actually not considered eligible for financial assistance from the agency, which only offers assistance to student-applicants who are Hong Kong residents. The agency has stated that only where strong humanitarian and compassionate groups exist, will it consider applications on a case-by-case basis. So far only a few cases have been accepted.

14. No support to unaccompanied minors

At the moment there is no special support given to unaccompanied minors. Unaccompanied minors are children to arrive in Hong Kong alone without their parents to seek asylum. There are nearly 20 unaccompanied minors who are left on their own. There is no shelter with supervision and management to take care of this vulnerable group. At the moment most of them do not attend school because of lack of immigration papers, and they live scattered around in small room, living by themselves or with others.

The government should immediately find a solution to provide a managed shelter, education and support to these children.

15. Risk of detention when approaching hospitals

There have been changes in the possibility of access to health care in hospitals for asylum seekers. Prior to September 2005 all asylum seekers were able to access hospital care by showing their UNHCR identity documents. However a new hospital

policy was implemented in September 2005, which meant that asylum seekers without valid visas or recognizance from the Immigration Department would be reported to the police. Thus, an asylum-seeking woman who was pregnant was reported to the police although she had a valid UNHCR identity document. She was arrested by the police and detained by the Immigration Department. However, after the incident was reported in the news, it seems that the hospitals have loosened up on the policy and accepted the UNHCR document. Still, the hospitals' general policy is to ask for passports or recognizance papers as proof of identity. It is only if the asylum seeker is unable to provide these that the UNHCR document is accepted as a valid document.

However, the Hospital Authority has stated that persons whose applications for refugee status have been rejected by the UNHCR will be reported to the Police or the Immigration Department if they fail to produce a passport with a valid visa or a recognizance paper when seeking medical attention at public hospitals and clinics. Thereby asylum seekers, who have been rejected by UNHCR are clearly discouraged from seeking medical attention when needed because of fear of detention.

16. Waiver system for asylum seekers impractical

The existing system for medical charges distinguishes between eligible and non-eligible persons. While eligible persons are charged a subsidized rate, non-eligible persons are required to pay higher fees. For instance eligible persons pay HK\$ 100 for Accident & Emergency care while non-eligible persons need to pay HK\$ 570 for such care.

Local residents who receive CSSA are waived from payment of their medical expenses given the fact that they do not work. These are usually given on a half-year basis, so that a waiver needn't be obtained each time a hospital visit is made. However, asylum seekers and refugees are considered to be non-eligible persons and the Hospital Authority only considers exceptional waivers on a case-by-case basis.

There are examples of asylum seekers who have been presented with bills they were unable to pay, although the hospitals knew that they were asylum seekers. For instance a pregnant asylum seeking woman was presented with a bill of HK\$ 20,000 because she was going to deliver her baby. There are also examples of people who have been told by doctors that operations couldn't be provided because it would be too expensive. While waivers are granted in most cases out-patient cases, it is discriminatory against asylum seekers that they are not considered to be eligible persons, as they by law are not allowed to work.

Secondly, it is administratively also a waste of resources and stressful for asylum seekers to have to apply for a medical waiver each time they need to access health care services rather than being given a waiver on a half-year basis similar to that of local CSSA recipients.

Recommendations:

- 1. The Hong Kong government should immediately sign the Convention Relating to the Status of Refugees and formulate a coherent and comprehensive asylum policy to deal with aspects of immigration, refugee status determination, food, accommodation, education and health.**
- 2. The government should set up a fair screening procedure to assess claims under the Convention Relating to the Status of Refugees**
- 3. Amend the Immigration Ordinance so that asylum seekers and refugees are not liable to be detained for overstaying or not possessing valid travel documents.**
- 4. The government should immediately provide adequate financial assistance to asylum seekers, refugees and claimants of torture**
- 5. Asylum seeking and refugee children should be provided schooling without delay.**
- 6. Legal aid should be available for the screening procedures under the Refugee Convention and the Convention Against Torture.**
- 7. The government should ensure that UNHCR observes its procedural guidelines for refugee status determination.**
- 8. The government should provide adequate and culturally sensitive health care.**