

Supplementary information in relation to situation of refugees, asylum seekers and torture claimants

Purpose

This paper aims to provide supplementary information as requested by members at the joint meeting of the Panel on Welfare Services and Panel on Security on 18 July 2006 and the Panel on Security meeting on 31 July 2006 in relation to situation of refugees, asylum seekers and torture claimants.

Population of Refugees, Asylum Seekers and Torture Claimants

2. As the 1951 United Nations Convention relating to the Status of Refugees does not apply to Hong Kong, claims for refugee status are dealt with by the United Nations High Commissioner for Refugees (UNHCR) Hong Kong Sub-office. Despite that the Immigration Department (ImmD) enforces immigration control at control points by, inter alia, intercepting susceptible passengers, an arriving passenger who has been refused permission to land or who are under secondary examination may approach the UNHCR Hong Kong Sub-office to lodge a refugee status claim, if he so wishes.

3. As the refugee status claims lodged in Hong Kong are dealt with by the UNHCR Hong Kong Sub-office, the Government does not have up-to-date statistics on the total population of refugees and asylum seekers. However, according to records of the ImmD, some 765 refugees, asylum seekers and torture claimants were known to the ImmD as at early October 2006.

Education for minors of refugees, asylum seekers and torture claimants

4. Out of the known refugees, asylum seekers and torture claimants, 68 were minors under the age of 18. These minors had stayed in Hong Kong for an average of 14 months. Arrangements for schooling may be made for minors of refugees, asylum seekers and

torture claimants by the Education and Manpower Bureau (EMB) on a case-by-case basis. Factors to be considered include the availability of school places, length of study, the age and education background of the minors, etc. To ascertain whether these minors are likely to be removed within a reasonable time, views from ImmD will be sought. From January 2005 to early October 2006, the ImmD has not adversely commented on any single schooling request made by these minors.

5. According to the EMB, the schooling situation of such minors under the age of 18 is as follows -

Schooling arrangements (position in October 2006)	Number of minors under the age of 18
Attending mainstream schools or six-month full-time Initiation Programme for Newly Arrived Children	21
Under consideration	1 (Note 1)
Rejected for admission to school	0
Total (Note 2)	22

Note 1: The applicant is 17 years old. His schooling request is being processed.

Note 2: Amongst the 68 children who were under the age of 18, there are 46 minors (including 36 children at or below the age of 6), whom EMB has no record of schooling arrangements.

6. Notwithstanding the fact that these children are not eligible for student financial assistance, the Student Financial Assistance Agency may consider their applications for such assistance on a case-by-case basis where strong and compassionate grounds exist.

7. The Social Welfare Department understands that some non-governmental organisations may organise programmes and activities such as language classes and social groups for children, including those from the refugee, asylum seeker and torture claimant population, as well as classes for children of school age with special emphasis on homework help.

Medical Services to Minors of Refugees, Asylum Seekers and Torture Claimants

8. On humanitarian grounds, the Government provides, on a case-by-case and need basis, assistance-in-kind to asylum seekers and torture claimants, to tide them over during their presence in Hong Kong pending the determination of their claims by relevant authorities. The types of assistance offered to them include, amongst others, medical services for minors.

Legal Assistance to Refugees, Asylum Seekers and Torture Claimants

9. As Hong Kong's legal aid service is an integral part of Hong Kong's legal system, legal aid will only be granted for legal representation in civil and criminal proceedings in the courts of Hong Kong, in accordance with the Legal Aid Ordinance and the Legal Aid in Criminal Cases Rules. Legal aid is therefore not available if no legal proceeding is involved.

10. Applications for legal aid from refugees, asylum seekers and torture claimants are classified as immigration-related matters. For the period from January to mid October 2006, the Legal Aid Department (LAD) has received 184 applications made by refugees, asylum seekers or torture claimants, 159 of which were made whilst the applicants were in detention. The breakdown of the nature of applications is as follow:

Release from detention (most were already subject to removal or deportation order, and were purported to be detained by the Director of Immigration (D of Imm) pending removal or deportation)	147
Judicial Review against removal/deportation order	10
Judicial Review against the Government for not assessing applicant's refugee status	1
Judicial Review against the Government for not providing legal representation in the torture claim assessment process	1

11. As of mid October 2006, 13 of the 159 applications were granted legal aid and 61 applications were refused for lack of merits according to the particular circumstances of individual cases, e.g. the applicants were released on recognizance during the processing of their applications, the decision of the D of Imm was not unlawful and unreasonable, and the applicants have committed serious criminal offence, such as robbery or wounding with intent, rendering his release from detention a threat to the public.

12. A member mentioned at the meeting on 18 July 2006 that there was a case where LAD had not contacted the applicant four months after the application. When an application for legal aid was made, LAD will contact the applicant as soon as practicable either by fax, telephone, post, or if necessary in person at the detention centre for the purpose of conducting the means and merits tests. LAD is not aware of any application for legal aid where LAD had not contacted the applicant in four months.

Detention or Release on Recognizance

13. 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 be liable to such enforcement actions. In the case a refugee, asylum seeker or torture claimant who is found to be in violation of our laws and is in immigration detention in accordance with our laws, the D of Imm may on a case-by-case basis exercise his discretion to grant that person release on recognizance.

14. As at early October 2006, no mandated refugee was detained by the ImmD.

15. Amongst the 630 asylum seekers and torture claimants known to ImmD, 459 were granted release on recognizance as at early October 2006. The vast majority of the 171 detainees were arrested either during anti-crime operations or on street after going underground for a considerable length of time (12 months on average). The majority of them (over 73%) had been detained for less than three months.

16. Amongst these 171 detainees, over 60% of them had overstayed in Hong Kong or taken up unapproved employment; around 10% had used false or forged passports or made false representations; some 15% had gained entry illegally and some 15 % of such detainees had committed other offences including assaulting a police officer in the due execution of duty, possession of offensive weapons in a public place, theft, assault with intent to rob and possession of an identity card relating to another person etc.

17. In considering whether to grant recognizance in lieu of detention, ImmD will taken into account (a) whether the person concerned constitutes a security risk to the community; (b) whether there is any risk of the person absconding and (re)offending; and (c) whether removal is not going to be possible within a reasonable time. As a rough indication, some 4% of the detainees were detained because they failed to meet 1 criterion; some 60% could not meet all the three criteria and the rest failed to meet either two of the criteria.

Alleged Rape and Missing Person Case

18. We have submitted two reports to members of the Panel on Security and Panel on Welfare Services concerning the alleged rape case and the alleged missing Congolese case. The allegations are not substantiated.

Security Bureau
Education and Manpower Bureau
Health, Welfare and Food Bureau
Immigration Department
Legal Aid Department
Social Welfare Department

1 December 2006