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**Submission to LegCo Panel on Security  
regarding the legislative proposal for the torture claim screening system**

**Introduction**

This is a follow up submission in relation to the Panel on Security meeting held 12 April 2011 under item IV: Torture claim screening system: current practice and legislative proposal. We suggest that the following considerations be included when the government proposes the legislative framework:

**Setting up a single screening mechanism**

The government has repeatedly stated that it has no plans to extend the Refugee Convention to Hong Kong or to take up its responsibility of screening asylum seekers' claims. This is despite the fact that China and Macao have already ratified the Convention Relating to the Status of Refugees, which now already has 144<sup>1</sup> States Parties.

The government has also ignored the concluding observations of several UN committees. 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."

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 Human rights 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.

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<sup>1</sup> As of 1 October 2008.( <http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>)

Also, in its concluding observations of November 2008<sup>2</sup> the Committee Against Torture has expressed concern that “there is no legal regime governing asylum and establishing a fair and efficient refugee status determination procedure. The Committee is also concerned that there are no plans to extend to HKSAR the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.”<sup>3</sup> It further urges the government to consider “adopting a legal regime on asylum establishing a comprehensive and effective procedure to examine thoroughly, when determining the applicability of its obligations under article 3 of the Convention, the merits of each individual case”<sup>4</sup>.

Human rights lawyers, NGOs and asylum seekers have long argued that it would be beneficial if the HKSAR government signed the Refugee Convention and set up a single mechanism to screen cases under the Refugee Convention and the Convention Against Torture. Besides from the procedural problems of each mechanism, the current set-up is ineffective as claimants may make claims under both mechanisms thus prolonging the time that a claimant may stay in Hong Kong. For genuine cases, this is highly frustrating. The current system also makes it easy for illegal immigrants without any genuine case to abuse the system to stay longer time in Hong Kong, which goes against the government official policy of combating abuse of the CAT system.

It is recommended that the two systems be combined into one single mechanism so that one single independent body makes screenings of cases. This body must process claims with a high standard of fairness, which includes legal representation.

### **3. Right to work and training**

#### **Right 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.

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

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<sup>2</sup> Concluding observations of the Committee against Torture, Hong Kong Special Administrative Region (CAT/C/HKG/CO/4)

<sup>3</sup> Concluding observations of the Committee against Torture, Hong Kong Special Administrative Region (CAT/C/HKG/CO/4), para. 7.

<sup>4</sup> Ibid, para. 7(b).

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.

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.

#### 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. 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.