

Ladies, Gentlemen, my dear Friends ... Good Afternoon!

- 1. Vision First** is a voluntary organization dedicated to serving the needs of refugees who are forced to live with little economic or political autonomy, essentially at a subsistence level. We understand "*refugee*" to include those currently seeking refuge and not yet recognized. We stand with them to combat discrimination, uphold their rights and further their legitimate expectations. We are accountable to refugees, for they are the constituents our efforts serve. We depend on the compassion and assistance of concerned citizens who offer the means necessary to respond to these challenges.
- 2. Current situation** – Refugees are victims of circumstances beyond their control – torture and death await them if they return home. They live in refuge under lukewarm application of conventions (like the Torture Convention and Stateless Convention) and non-application of others (like the Refugee convention). Hong Kong's inconsistent domestic legislation attracts strong criticism for its narrow scope. It provides no clear mechanism of integration or post-screening management. Although 42M visitors arrived in 2011, only 1432 applied for CAT protection and 720 for UNHCR protection. The media sensationalizes the problem, yet there is no risk of an asylum surge as relatively few decide to come here. The most desirable asylum goals are EU, UK, USA and Canada, where those seeking refuge, perceive rights are upheld and community services better organized. Pursuant to court rulings, HKGOV enhanced CAT screening in December 2009. In 2011 ImmD processed **2182** claims; the number of outstanding CAT claims was **6447**; the number of withdrawn cases rose to **2311**
<http://www.immd.gov.hk/ehhtml/20120120.htm>
- 3. UNHCR issue** – While not privy to agreements between UNHCR and the Security Bureau, we draw basic conclusions from what we observe. Persons making refugee claims are directed by ImmD to UNHCR. A UNHCR interview panel determines if the person has a genuine case. The process is internally controlled: no details, reasons or interview records are shared with HKGOV. If UNHCR accepts a claim, ImmD may temporarily withhold removal action pending resettlement by UNHCR. Mandated refugees are not granted residence. There were only 82 mandated refugees in January 2010 and 154 in January 2011. If UNHCR rejects a claim, ImmD may deport the person. However, a CAT claim is usually

launched, creating an illogical and ineffective “two-stage process”. Several court judgments question UNHCR practices and procedures.

The most serious complaints are:

- UNHCR is immune from suit and legal process;
- RSD (refugee status determ.) is immune from judicial scrutiny;
- processes fail to meet what the courts see as procedural fairness;
- UNHCR maintains rights relating to its privileges and immunities.

RSD is unfair, unreasonable and opaque. A High Court judgment reads, “*ImmD does not know the basis of UNHCR decisions and must be aware of shortcomings in its decision-making process and the real possibility that it is an unfair process.*”

http://legalref.judiciary.gov.hk/doc/judg/word/vetted/other/en/2006/HCAL000132_2006.doc.

4. **UNHCR illusion** – The presence of UNHCR creates an illusion that refugees are properly screened and managed. In various court cases, ImmD deflected responsibility, claiming UNHCR offers the best solution, since the Refugee Convention wasn’t extended here. With 6700 staff (compared to UNHCR’s 20) and ample resources, ImmD is better suited to conduct RSD and manage refugees. Notwithstanding official policy, the “**Duck Test**” makes it plain HKGOV does indeed have a refugee policy, albeit hidden beneath UNHCR plumage. Without this camouflaged illusion, HKGOV would urgently require domestic legislation to screen and integrate refugees – fully respecting their human rights. Instead, ImmD surrenders its discretionary powers to a body immune from judicial scrutiny that reaches its decisions in secret and offers no explanations. We maintain HKGOV has a duty of independent inquiry into whether a claimant is a refugee. This duty is not delegable to UNHCR, which does not provide safeguards against mistaken determinations. By removing this “UNHCR Illusion” lobbying and legal action will improve a defective process.
5. **UNHCR screening failure** – The Law Society and Bar Association noted that, “*RSD, if it was amenable to HK jurisdiction, would not meet high standards of fairness and would most likely be declared unlawful.*” The Prabakar and FB judgments noted that asylum determinations demand great fairness, because mistaken refusals will jeopardize life and limb.

These are the main issues with RSD:

- most interviews are conducted without lawyers (one man had 15 interviews in 24 months w/o legal representation)

- lack of judicial scrutiny and judicial review;
- no independent board of appeal;
- no video-recording safeguards and transcripts;
- if present, lawyers may take notes but can't speak;
- interpretation is frequently criticized, sometimes unavailable;
- interviews may be years apart or change (one man had 6 case-officers in 24 months and was told his interview records were lost)
- unacceptable length of time for interviews and decisions.

Further, procedural fairness is lacking:

- a disproportionate percentage of refugees are Somali: yet some are recognized based on geographical origin, others must prove persecution and a few are rejected for living abroad;
- Togolese are never accepted despite a 42 year father/son dictatorship, the same with Cameroonians.
- certificates from other UN offices + UNRWA take ages to validate;
- clear-cut interview categories may not correspond to reality;
- COI is interpreted in light of developed states' perspective;
- interviews are conducted without presumption of innocence
- interviews demand a heavy burden of proof.

[Joint Submission of the Law Society and Bar Association dated 8Apr2011](#)
[Court of Final Appeal – FACV 16/2003 “Secretary for Security vs. Sakthevel Prabakar](#)
[High Court – HCAL 51/2007 “FB vs. Director of Immigration and Secretary for Security”](#)
[High Court – CACV 132-137 / 2008 “C and Others vs. Director of ImmD and S of S”](#)
<http://www.legco.gov.hk/yr08-09/english/panels/se/papers/secb2-1234-1-e.pdf>

6. **UNHCR welfare failure**– In 2011 UNHCR contributed to the welfare of local refugees about 5 million HKD. In January 2012, claiming lack of funds, an agreement was reached with HKGOV. By shifting the burden, UNHCR cut individual monthly allowances from 2500 to 300 HKD. By this 88% decrease, it achieved a 5M saving, while receiving 27M in private donations that combined into a 32M cash balance. UNHCR's head claimed: *“My office had to secure an alternative source of support to refugees and approached the government for assistance. It's only right that HKGOV share the burden and assists the refugee community.”* Again the “Duck Text” We find these reasons disingenuous, as we watch UNHCR abandon the very refugees it recognized and is mandated to protect. Local refugees would appreciate local donations supporting them more. UNHCR also stated: *“Our financial resources are stretched to the limit and we are unable to continue our material assistance for refugees ... The government assistance for refugees is fundamental and sufficient already.”* However, the suffering we witness paints an entirely different picture. A simile could be made with a hospital that collects 32M dollars, but refuses care to local patients to address emergencies elsewhere.

<http://visionfirstnow.org/2012/02/26/refugees-left-with-hk300-a-month-after-subsidy-cut/>
<http://visionfirstnow.org/2012/03/03/scmp-time-to-sign-the-un-refugee-convention/>

<http://visionfirstnow.org/2012/03/18/time-out-how-we-fail-our-refugees/>

7. **UNHCR resettlement failure**– HKGOV allows RSD with the understanding UNHCR will provide durable solutions for recognized refugees, i.e. resettlement to a third country. Wherever UNHCR has handled RSD, it appears to have failed, as it does not have a sovereign state in which to resettle clients. ImmD removal actions against refugees are stayed pending resettlement, yet UNHCR has no control over consular decisions and cannot oblige states to join these schemes. For the past years only the USA and Canada have accepted HK refugees, though Sweden has recently joined. About a dozen are resettled each year, an inadequate result given the current total and what the average should be with accurate RSD. ImmD categorically states it owes no obligation to mandated refugees, because it delegated all responsibilities to UNHCR, including resettlement. But the majority cannot be resettled through UNHCR's efforts and are condemned to a squalid, indigent life. Because of its inability to resettle, UNHCR limits recognition to less than **3%** of cases, compared with the UK granting asylum to **35%** with a similar mix of nationalities.

<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-brief-q2-2011/asylum>

8. **UNHCR trust failure** – ImmD complains UNHCR doesn't share interview transcripts, which delays CAT screening. It might be appropriate to retain a separation between RSD and CAT, but ImmD uses this as an excuse. Refugees lament not receiving copies of their files; several complain UNHCR lost original documents, at the airport or at their office, including sometimes entire life-files. An applicant complained and received this threat: *"If you are not happy, why don't you withdraw your case?"* It is a matter of concern that in November 2011 UNHCR misinformed both NGOs and refugees, claiming: *"We haven't received enough donations. HK people aren't generous in this financial crisis."* When challenged by the media, they changed the story to: *"The HO reduced our budget to 700,000 USD and we spend **12%** of it on refugee programs."* UNHCR offers no accountability to small donors and does not provide expense reports. They claim funds are allocated to other regions, but our clients from 42 countries saw little tangible results of a 3.6 billion USD annual budget. Unlike governments and NGOs, UNHCR doesn't disclose information on salaries, accommodation, entertainment or travel expenses.
9. **UNHCR credibility failure** – When UNHCR reduced its welfare assistance they caused widespread suffering: some refugees lost their home; many are troubled by landlords; a few had utilities cut; some had to take up illegal employment. One man was so desperately hungry he begged at UNHCR, who called the police to

remove him. This agency manages by intimidation!
The following threat has been reported to us by clients: *"If you go to the media without our permission, we will cancel your status!"*
If this is true, the agency should be reminded of its mandate that demands utmost respect and compassion – despite its immunity.
In an Open Letter to UNHCR we asked 20 questions and received a predictable "smoke and mirrors" PR spin.

We insist it is incumbent upon UNHCR to explain:

why it disregards refugee demands and suffering;
why it appears to spread disinformation while eschewing transparency;
why it is not audited for the benefit of both refugees and the donating public.

10. **UNHCR irrelevance** – Persecution is not as clear-cut as the 1951 "UNHCR nexus" that no longer mirrors reality. Refugees flee their homeland for more than the 5 neat criteria of race, religion, nationality, social group and political opinion. Interviewers' perceptions force refugees to adhere to certain sets of values, behavior and needs: you must remember dates despite trauma; if you don't look sad you are lying; if you find some sort of work you're not a genuine case. An interpreter saw a UNHCR officer reject an applicant **in chains** on a ship, determining at a glance he was bogus. One man, who spent his entire life in Mogadishu, is told he is not Somali despite the fact that the Somali embassy provided a nationality certificate. Several applicants were summarily rejected at the airport and are now legally represented with strong cases. It is plain that without CAT, hundreds of rejected UNHCR claimants could be deported to face torture or worse. Undoubtedly HKGOV realizes RSD is unsound and the courts protect those the agency fails. It is said that *"Evil happens when good men do nothing."*
11. **UNHCR anachronism** – Defending human rights can conflict with more comfortable objectives and with the status quo. Vision First speaks up for refugees to raise awareness and demand change. The facts – some of which I have referred to – have led us to the sad conclusion that **UNHCR has evolved into irrelevance:**
 - RSD is unlawful and incompatible with the interests of justice;
 - welfare assistance is contemptuous of real needs;
 - many policies are absurdly unjust;
 - programs are misdirected;
 - resettlement is ineffective;
 - and, most sadly, UNHCR seems not to care at all.

We only speak of what we have heard first hand: the injustices I've described are driving refugees crazy, their hopes are slipping away, and they regret not dying in their country. They feel betrayed by UNHCR.

12. **Conclusion** – We suggest that Hong Kong Government:
- extend the Refugee Convention to Hong Kong (before this happens automatically in 2047);
 - implement a coherent and comprehensive system for the contemporaneous assessment of both RSD and CAT;
 - develop unskilled-labour migration policies to avert asylum abuse;
 - increase social assistance and integration of recognized refugees;
 - allow recognized refugees the right to work;
 - take on RSD in a fair and efficient way;
 - as this will enable UNHCR to focus on its original role (i.e. the massive violence in developing countries where states cannot intervene);
 - retain UNHCR exclusively in a consultative and supervisory role.
13. **Hong Kong** is rightly proud of its world city status, of being the freest economy, of its rule of law and respect for human rights. We are at a critical junction where refugee protection must be enshrined in the Immigration Ordinance. Facts lead us to believe that the only hope for refugees in Hong Kong is that the government will decouple its refugee policies from UNHCR's failure. This is a matter of great public importance and concern, firstly, to limit the suffering of refugees and, secondly, because good citizens must strive to create a fairer and more compassionate society – in the interest of justice.

Thank you very much!