

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 25/2, 26/19, 25/5, and 25/32.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **negative and stigmatizing rhetoric towards refugees, migrants and ethnic minorities in Hong Kong; and envisaged regressive changes to the Unified Screening Mechanism including increased detention powers and accelerated removal of rejected claimants by the Hong-Kong SAR Administration.**

According to the information received:

There is a worrisome trend in public discourse tying asylum seekers with mounting criminal activities in Hong-Kong, fostering a widespread stigmatization of asylum seekers, migrants and minorities alike. It appears that the administration in charge of processing non-refoulement claims (Hong-Kong SAR Administration) is increasingly using negative rhetoric towards refugees and migrants. Discriminatory terminology such as "fake refugees" or "illegal non-ethnic Chinese refugees", has been utilized in official policy documents and press releases.

The Hong-Kong SAR Administration has reportedly frequently disseminated misleading statistics about criminal offenses allegedly committed by refugees and migrants focusing on number of arrests rather than prosecution or conviction rates. Civil society attempts to obtain statistics on the asylum claim screening mechanism and crime rates among refugees and migrants through access to information requests seem to have remained unsuccessful. This lack of information has served as a significant barrier in combatting intolerance and discrimination among the public.

A number of politicians and political parties have also vilified refugees and migrants in pamphlets, flyers, websites and press releases. Media coverage of refugees and migrants has been increasingly negative and inaccurate.

Dehumanizing and inflammatory language has been used to describe this population group as “evils,” “toxic tumors,” “trouble makers” and “fake refugees.” Between 2015 and 2016, there was a 1,171% increase in the use of the term “fake refugees” in media articles which is disproportionate to the increase in the number of claimants over the same period of time. Some officials in the Administration have comforted this biased perception. For example, in a press conference Chief Executive CY Leung thanked the Oriental Daily News for its coverage of the issue of “fake refugees”. Other politicians recommended that lawmakers read this newspaper more frequently to have a stronger understanding of the refugee problem. Also the courts have utilized media coverage as evidence of increasing crime rates tied to refugees and migrants, such as in the case of Hong Kong SAR v. Shah Syed Arif. Social media is also frequently used to disseminate hateful messages about refugees and ethnic minorities.

It is alleged that the negative rhetoric utilized by the SAR Administration and the media contributed to an increasingly negative public perception of refugees, migrants and ethnic minorities.

In the lead-up to elections of the Legislative Council in September, several politicians and their parties are said to have vilified “fake refugees” and “illegal immigrants”, using charged language in pamphlets, banners, websites and statements to the media. This included the New People’s Party which distributed flyers describing “fake refugees” as repeated perpetrators of robberies, thefts and assaults, and the Hong Kong Federation of Trade Unions which compared refugees to terrorists. One politician made a remark to the media that South Asians are more likely to be violent. During the Legislative Council’s Panel on Security, held in June 2016, a majority of speakers used the term “bogus refugees” and some referred to refugees as “home-made explosives” and “cancers to society.” The Chairperson of the Panel did not intervene to condemn any of these statements.

A motion on “Combating “bogus refugees”, which makes unsubstantiated claims of abuse of the unified screening mechanism for non-refoulement claims, was submitted before the Legislative Council on 30 November 2016.

Civil society organizations advocating for refugees and equality have reportedly also been targeted by this campaign of vilification. Several of them have publicly expressed their concerns about these issues but their request to engage with the Administration has remained unanswered.

We also received information that between April and May 2015, some protection claimants were questioned through telephone calls, text messages, and/or visits to their places of residence or when reporting to the Immigration Department. Reportedly, they were questioned by individuals in plain clothing purporting to be from the Hong Kong government authorities, but failing to present clear credentials or give sufficient explanation about their reasons for contacting the

claimants. This practice seems to have disproportionately affected Muslim individuals or individuals from predominantly Muslim countries. The interviews, reportedly conducted without interpretation or adequate safety measures, have caused a number of concerns amongst the protection claimants increasing both their anxiety and feeling of insecurity.

It has been alleged that authorities have not extended the 1951 Refugee Convention and the 1967 Protocol to its territory but instead in March 2014 implemented a “Unified Screening Mechanism” (USM) to process so-called “non-refoulement claims”, which respond to criteria related to the risk of torture, cruel, inhuman and degrading treatment or punishment persecution (using elements of the 1951 Convention) and harm to the right to life. When the USM commenced on 3 March 2014, building on the previous torture screening system, the Department changed title from “Torture Claim Assessment Branch” to “Enforcement and Removal Assessment Branch”.

It has been alleged that the Hong Kong SAR Administration has one of the lowest asylum recognition rates in the world with a 0.6 per cent success rate of claims. In February 2016 it announced that it would conduct a comprehensive review of its unified screening mechanism in four main areas in order to address the deteriorating crime situation and concerns for public order. These areas include increasing powers of detention and expediting the removal process. It is our understanding that the Hong Kong SAR is expecting to anchor this USM into a law in 2017 which, if not reviewed, might contradict Hong Kong’s obligations under international law. The focus on detention has been supported by several political parties and other stakeholders. The Business and Professionals Alliance of Hong Kong has advocated that all non-refoulement claimants be detained until they are recognized as refugees.

We also recall that when the UN Committee Against Torture reviewed China in November 2015, it expressed concerns that the SAR Administration’s may have an excessively high threshold in processing asylum claims.

This is all the more problematic as the Hong Kong’s Racial Discrimination Ordinance (RDO) does not prohibit discrimination on the grounds of immigration status or nationality, nor does it cover all government functions and powers. The areas covered in section 27 of this ordinance do not include “stop and search,” arrests, or investigations of complaints. According to the information received, discrimination against ethnic minorities has been a long-standing concern in Hong Kong as they are frequently excluded from mainstream society due to language barriers and lack of government support in health, education and employment, despite the fact that, on average, most ethnic minority groups have been living in Hong Kong for a minimum of seven years. OHCHR recently met with several of those refugees who reported to be systematically discriminated. Many face problems in access to employment and education, as well as in obtaining authorisation to rent an apartment. This climate of stigmatization has reached

concerning heights where it may take very little to trigger violence against this population group.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our concerns regarding the inflammatory rhetoric used by the SAR Administration, the media and the public. We are further concerned at the proposed changes to the Unified Screening Mechanism aimed at increasing detention powers and expedite the removal process of refugees and migrants. While cognizant of the importance of the right to freedom of expression, we express concern at what appears to be a systematic approach of the authorities to advocate national, racial and religious hatred that constitutes incitement to discrimination and hostility. Further concern is expressed that the comprehensive review of the Unified Screening Mechanism could lead to expanded detention and insufficient attention for the protection needs of refugees and migrants.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

Since it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Have any complaints been lodged by, or on behalf of, refugees or migrants? If yes what responses have been provided to these complains?
3. Please provide specific details of the comprehensive review of the Unified Screening Mechanism and the timeline to adopt and implement changes, particularly on increasing powers of detention and expediting the removal process.
4. Please indicate what measures are in place to ensure that the screening process is implemented in due respect for the principle of non-discrimination.
5. Please indicate what measures the Hong Kong SAR intends to take to fully implement the 1951 Refugee Convention and the 1967 Additional Protocol.
6. Please provide information on measures in place to safeguard the due process rights of claimants in need of protection and take into consideration their special needs and vulnerabilities.
7. Should the Unified Screening Mechanism be grounded into a law in 2017, please indicate how it will be made compliant with Hong Kong SAR's obligations under international human rights and refugee law.

8. Please indicate what measures have been taken to prevent the recurrence of negative rhetoric against refugees, migrants and ethnic minorities, to guarantee their rights and freedoms without discrimination, and to foster tolerance, mutual understanding and social harmony between citizens and non-citizens, and promote respect for cultural diversity.

9. Please provide information on the accessibility of reliable data generated through the unified screening mechanism including data on criminality linked to asylum seekers and migrants.

10. Please provide details of future plans to meaningfully engage with civil society organizations on these issues.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Annex

Reference to international human rights law

We would like to refer to China's obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ratified by your Excellency's Government in 1981, particularly articles 2.1, 4, 5 and 7. We would also like to refer to General Recommendation No. 35 of the Committee on the Elimination of Racial Discrimination, on "Combating racist hate speech. This recommendation urges State parties to criminalize dissemination of ideas based on racial or ethnic superiority or hatred and adopt measures to combat prejudice, including by calling attention to the harms caused by hate speech. General Recommendation 30 states that State parties "[t]ake resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of "non-citizen" population groups."

We would also like to refer to the International Covenant on Civil and Political Rights (ICCPR), applicable to Hong Kong pursuant to the Joint Declaration and article 39 of the Basic Law, particularly article 20(2), which requires that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is to be prohibited by law.

In this connection, we would also like to draw attention to General Assembly Resolution 63/184, which in paragraph 17, "urges States to apply and, where needed, reinforce the existing laws when xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts." We further draw your attention to the recommendation made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance regarding the responsibility of political leaders and political parties to explicitly and strongly condemn political messages that disseminate ideas based on racial superiority or hatred and that incite racial discrimination or xenophobia (A/HRC/20/38, para. 18).

We moreover refer to the right to freedom of expression, guaranteed in article 19 of the ICCPR. In this connection, we refer to Human Rights Council resolution 12/16, which urges States to take effective measures consistent with their obligations under international human rights law to address and combat racial and religious intolerance, discrimination and related violence, as well as negative racial and religious stereotyping, including advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

We would like to draw your attention to the ICCPR, particularly article 9.1, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of State parties, but to all individuals, under its jurisdiction, regardless of nationality or status of statelessness. The detention of migrants and asylum-seekers should therefore be a measure of last resort. Furthermore, as stated in the report of the Special Rapporteur on the human rights of

migrants to the Human Rights Council, “[d]etention for immigration purposes should never be mandatory or automatic” (A/HRC/20/24, para. 68).

We further recall paragraph 10 of GA resolution 62/156 which “urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification”.

In this regard, we refer your Excellency’s Government to article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ratified by China on 4 October 1988, according to which no State Party shall expel, return (“*refouler*”) or extradite a person to another State, when there are substantial grounds for believing that he would be in danger of being subjected to torture. Furthermore, we would like to draw your attention to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Article 33 of the 1951 Convention stipulates that no Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

In this connection, we would like to refer your Excellency’s Government to article 13 of the ICCPR, which provides that “An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” In its General Comment XV, the Human Rights Committee reaffirms this principle (Paragraphs 9 and 10).

We would also like to draw the attention of your Excellency’s Government to international standards relevant to the protection and promotion of the rights of minorities. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities requires under article 1.1 that States “shall protect the existence and the national or ethnic, cultural or religious identity of minorities within its respective territories and shall encourage conditions for the promotion of that identity”. It establishes in article 2.1 that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, and in article 2.2, that persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Furthermore, States are required to: ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1); create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2); take measures in the field of education in order to

encourage knowledge of the history, traditions, language and culture of the minorities within their territory and to ensure that persons belonging to minorities have adequate opportunities to gain knowledge of the society as a whole (article 4.4). States are also encouraged to consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country (article 4.5).