

LEGISLATIVE COUNCIL PANEL ON SECURITY BRIEFING

Comprehensive Review of Strategy of Handling Non-Refoulement Claims

For discussion on 6 June 2017

This briefing outlines Justice Centre's concerns regarding the comprehensive review of the Government's strategy for handling non-refoulement claims. As individuals seeking non-refoulement protection may face severe persecution or torture if returned to the country of origin, it is paramount that the fairness and thoroughness of the screening procedure is not left out from the Administration's comprehensive review, which is currently focused on pre-arrival control, removal and detention.

Implementation of the recommendations of the United Nations Committee against Torture

In its Concluding Observations on Hong Kong in February 2016, the United Nations Committee against Torture (UNCAT) expressed strong concerns and made a number of detailed recommendations in relation to the Unified Screening Mechanism (USM).¹ In particular, the UNCAT notes with concern that the threshold for granting protection may be distinctly high and recommends the Administration publish redacted decisions of the Torture Claims Appeal Board.

While the Administration has continuously drawn attention to its policies to contain the number of non-refoulement claimants in its public messaging, it gives very little information on how it will address the concerns and implement the recommendations of the UNCAT. We continue to urge that these recommendations inform the comprehensive review. Honouring these international human rights mechanisms is a fundamental component of the rule of law and vital to Hong Kong's international reputation.

- **QUESTION:** Will the Administration inform the Council of how the comprehensive review of the strategy of handling non-refoulement claims will enhance the fairness and thoroughness of the USM, given the fact that individuals seeking non-refoulement protection may face severe persecution or torture if returned to the country of origin?
- **QUESTION:** Will the Administration inform the Council of any measures put in place to follow up on the recommendations highlighted by the UNCAT as part of its comprehensive review?

¹ Committee against Torture, "Concluding observations on the fifth periodic report of China with respect to Hong Kong, China", CAT/C/CHN-HKG/CO/5, 3 February 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/38/PDF/G1601738.pdf?OpenElement>

- **QUESTION:** Will the Administration inform the Council of the factors that it has taken into account when considering the UNCAT's recommendation that it publish redacted decisions of the Torture Claims Appeal Board? If no redacted decision is published, in light of the UNCAT's concern that the threshold for granting protection may be distinctly high, how will the Administration assure protection claimants and civil society that the correct threshold is applied in the determination of claims?

Consultation with civil society

Justice Centre regrets that the comprehensive review has not been open to consultation and that little evidence is provided regarding if and how the Administration has drawn on technical expertise from other countries or the United Nations High Commissioner for Refugees (UNHCR), whilst there is no explanation for ignoring the UNCAT's clear concerns and specific recommendations.

- **QUESTION:** What is the Administration's rationale for failing to consult with external stakeholders and independent experts in its review of the strategy of handling non-refoulement claims?

Proposal to increase detention powers

Many lawmakers have put forward proposals to set up detention camps to accommodate non-refoulement claimants, most often framed around putative "public security" concerns relating to unauthorised entry. However, there is no empirical evidence to suggest that the threat of being detained deters irregular migration. This was concluded by the International Detention Coalition in a 2015 report – finding that detention was "ineffective at reducing irregular migration to desired levels."² Moreover, significant public money has been spent in overseas jurisdictions on the liability arising from unlawful detention. For example, the United Kingdom spent £13.8 million (HK\$131 million) on compensation payments for unlawful detention from 2012 to 2015.³

Most importantly, detention causes unnecessary harm to people who are already highly vulnerable. Several independent psychologists' reports have documented the human cost of detention; depriving people of freedom is inherently disempowering, causes self-harm behaviours and inflicts significant psychological harm,⁴ which can be long-lasting and even permanent. Detention has repeatedly been found across jurisdictions to be in breach of the right to personal liberty.⁵

²International Detention Coalition, "Reframing immigration detention in response to irregular migration Does Detention Deter?", April 2015 No. 1, available at: http://idcoalition.org/wp-content/uploads/2015/04/Briefing-Paper_Does-Detention-Deter_April-2015-A4_web.pdf

³ UK Minister for Immigration Robert Goodwill, Holding answer received on 13 October 2016, available at: https://www.theyworkforyou.com/wrans/?id=2016-10-10_47658.h&s=immigration+detention#g47658.q0

⁴ See, for example: Doherty, Ben, "Nauru and Manus incident reports reveal stream of despair and privation", The Guardian, 19 June 2016, available at: <https://www.theguardian.com/australia-news/2016/jun/20/nauru-and-manus-incident-reports-reveal-stream-of-despair-and-privation>

⁵ See: *Namah v Pato* [2016] PGSC 13; SC1497 (26 April 2016), available at: <http://www.pacii.org/pg/cases/PGSC/2016/13.html>

- **QUESTION:** Since February 2016, the Administration has continued to say it will consider ways to increase the capacity to detain irregular migrants. Will the Administration inform the Council of the scale of the expected increase, the estimated ongoing costs for such detention and the expected impact in quantifiable terms?

Ensuring individuals in need of protection have access to the USM irrespective of immigration status

In its paper on the proposal to stiffen penalties imposed on smugglers in 2016, the Administration stated that such measures are a key linchpin in its strategy in 'containing the number of non-refoulement claimants.'⁶ This policy objective is directly contradicts the UNCAT's recommendation in its 2015 Concluding Observations on Hong Kong that the Administration should ensure unhindered access to the USM to all individuals wishing to claim protection, irrespective of their immigration status.

Asylum seekers fleeing persecution and torture often have to rely on smugglers to travel to another country to seek protection. For example, membership in an opposition political group means they will be caught if they try to leave through an official immigration control point. Some clients of Justice Centre have been deceived by their agents about the destination and means of travel. Often they did not know that the agent was arranging for them to enter Hong Kong illegally until they were brought onto a boat and travelled in hazardous conditions to Hong Kong. While states have legitimate concerns in enforcing immigration controls, it is paramount to ensure people in need of protection are not denied access to the USM or returned to the country where they would face persecution or torture just because they came to Hong Kong through irregular channels.

- **QUESTION:** Will the Administration inform the Council of any measures put in place to ensure all individuals in need of protection, including those who entered Hong Kong through irregular channels, have unhindered access to the USM, in light of the UNCAT's recommendation to this effect?

Non-discrimination and public education about the situation of non-refoulement claimants

In Hong Kong's State Report to the United Nations Committee on the Elimination of Racial Discrimination, the Administration states that it believes legislation aimed at eliminating race discrimination must go hand in hand with public education and support.⁷ Given the negative rhetoric promoted by certain stakeholders regarding non-refoulement claimants, which is often based on the race of claimants, the Administration is encouraged to carry out

⁶ Security Bureau, Hong Kong Government, "Legislative Council Brief: Immigration Ordinance (Chapter 115)- Immigration (Unauthorized Entrants) (Amendment) Order 2016", 18 May 2016, available at: http://www.legco.gov.hk/yr15-16/english/subleg/brief/2016ln066_brf.pdf

⁷ Hong Kong Government, "Fourteenth to seventeenth periodic reports of States parties due in 2015- Hong Kong, China", CERD/C/CHN-HKG/14-17, 24 January 2017, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=802&Lang=en

public education about the rights and situation of non-refoulement claimants in Hong Kong and the principle of non-refoulement as part of customary international law and to proactively eliminate discriminatory or inflammatory rhetoric about refugees in Hong Kong.

- **QUESTION:** Will the Administration inform the Council of any measures put in place to monitor public discussions about non-refoulement claimants and to eliminate discriminatory or inflammatory rhetoric about claimants in Hong Kong?

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