

Society for Community Organization (SoCO)

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29 July 2013

Submission to Panel on Security regarding

Screening of Non-refoulement Claims

This submission refers to the Administration's document LC Paper No. CB(2)1465/12-13(01). Society for Community Organization (SoCO) welcomes the government's decision to set up a unified screening mechanism (USM), following the rulings of the Court of Final Appeal (CFA) in *Ubamaka Edward Wilson v. Secretary for Security* (FACV 15/2011) and *C & Ors v. Director of Immigration* (FACV 18-20/2011).

While welcoming a USM, SoCO would urge the government to review the whole administrative and legal framework protecting people from *refoulement*. We urge the government to consider the following:

Non-refoulement protection is not a durable solution

Non-refoulement protection is not in itself a durable solution. In paragraph 9 of LC Paper No. CB(2)1456/12-13(01) the government states that where a claim under the new USM is substantiated, the ImmD would provide *non-refoulement* protection to the claimant. It does not state whether it will be able to resettle claimants to other countries, or whether successful claimants will be granted residence or right to work.

Currently, people who have been declared refugees by the UNHCR (which would be equivalent to meeting the legal requirements of a successful persecution claim under Article 33 of the 1951 Convention under the new USM) have a chance of resettlement to a new country. They are thus not stuck in Hong Kong without any rights to work or residence as the current successful CAT claimants.

Although we welcome the new USM, we are concerned that it does nothing more than providing *non-refoulement* protection. The paper does not mention any type of durable solution for successful claimants.

According to the UNHCR there are three different durable solutions:

1. Voluntary repatriation
2. Resettlement
3. Local integration

For most HK-refugee cases, voluntary repatriation as a free and informed choice is seldom an option. Mostly, they are resettled to a third country. The resettlement country provides the refugee with legal and physical protection, including access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals.

However, it is worthwhile to note that only a small number of states take part in UNHCR resettlement programmes. The United States is the world's top resettlement country, while Australia, Canada and the Nordic countries also provide a sizeable number of places annually. In recent years there has been an increase in the number of countries involved in resettlement in Europe and Latin America¹.

Thus it is not all refugee cases that are resettled. Here local integration should be considered. Where there is little hope of voluntary repatriation or resettlement local integration should be an option, where refugees are fully integrated into the host society. This includes respecting their human rights, such as the right to work and education, and to be integrated into the local community.

So far the government has not offered any local integration to refugees or successful CAT claimants who could not be voluntarily repatriated or resettled.

Legislative framework

In its paper (LC Paper No. CB (2)1465/12-13(01)) the Security Bureau only mentions setting up an USM, without discussing the legal framework. While the screening mechanism under the Convention Against Torture (CAT) is protected under a legislative framework under the Immigration (Amendment) Ordinance 2012, the rights to be protected against cruel, inhuman or degrading treatment or punishment (CIDTP) or persecution with reference to Article 33 of the Refugee Convention are not yet incorporated in the Immigration (Amendment) Ordinance 2012. The government should therefore review the whole statutory framework based on the new USM.

Legal assistance

While welcoming the fact that the government is committed to providing legal assistance to all claimants under the new USM, SoCO urges the government to review the services

¹ <http://www.unhcr.org/pages/4a16b1676.html>

provided by the Duty Lawyer scheme to see whether it meets the needs of claimants or whether the Legal Aid Department would be in a better position to assist claims under the new USM.

The review should include the following:

- a. Does the assigned counsel provide effective representation, including advocating for the claimant's cause, conducting reasonable factual and legal investigations, and apply the necessary skills and knowledge?
- b. Is the current training sufficient to enable lawyers to provide effective assistance or representation? What is the content and frequency of the training?
- c. Is there any quality control of the provision of legal services to the claimants?
- d. Should the admission requirements (attending a 2 weekend training course and having a 3 year post-qualification experience) be tightened?
- e. Will lawyers qualified in other jurisdictions be allowed to provide represent claimants?
- f. Does the current fee structure attract lawyers with the necessary expertise?

Becoming party to the Refugee Convention

The government should strongly consider becoming a signatory to the 1951 Convention relating to the Status of Refugees (the Refugee Convention), which now has 145 State parties. The Refugee Convention is the only international agreement that recognizes the rights and obligations of refugees. It also includes basic human rights such as the right not to be forcibly returned, the right to education, work and public assistance. If Hong Kong signs it demonstrates its commitment to treating refugees according to internationally recognized standards.