



Studies on Protections of Non-refoulement Claimants in Hong Kong

*Should Hong Kong Adopt a Single, Government-led, Unified
System
to Process Torture Claims, Refugee Claims, and CIDTP
Claims?*

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Abstract

It has been suggested that cats and dogs enjoy more protection under the laws of Hong Kong than asylum seekers and refugees do. Although asylum seekers and refugees have long been one of the minority groups in Hong Kong, most of their grievances remain virtually unheard. Very little people in Hong Kong know or are interested to know where asylum seekers and refugees live, what they do to sustain their lives in Hong Kong, or their original reasons of coming to Hong Kong. They are often being neglected by the general public in Hong Kong.

For asylum seekers, there are currently two separate, but parallel paths for protection available in Hong Kong:-

- (1) a Refugee Status Determination screening mechanism conducted by the Hong Kong Sub-Office of the United Nations High Commissioner for Refugees; and
- (2) a Torture Claim Assessment conducted by the Immigration Department under the Immigration Ordinance.

With a review to the latest Court of Final Appeal decision in *C, KMF and BF v Director of Immigration and Secretary for Security*, according to which the Hong Kong Government is obliged to carry out its independent refugee screening procedure, our research argues that Hong Kong should adopt a single, government-led, unified system for refugee claims, torture claims and cruel, inhuman or degrading treatment or punishment claims. The research proceeds by examining both the Refugee Status Determination screening mechanism and the Torture Claim Assessment. On top of that, the scope of our research covers the rights and protection, if any, enjoyed by asylum seekers and refugees, including the right to education and the right to work.

The Abstract gives an overview of this research project, outlines the scope and structure of the research paper, and presents the findings, analyses and recommendations from the team in brief. Section 1 describes the research methodologies employed in this project, namely primary and secondary research. Section 2 presents the findings from various stakeholders involved in refugee-related issues, viz, academics, lawmakers, NGOs, legal

practitioners and the public, as well as findings from desk research on relevant legislations, relevant legal cases and other publications. Section 3 gives a consolidated analysis of the common issues identified in the research findings, and lays down the justification as well as suggesting possible elements of the proposed single, government-led, unified screening mechanism. In addition, this part examines the protection of the basic human rights of asylum seekers and refugees. Section 4 presents the findings from comparative studies of counterpart laws and administrative procedures in some selected overseas jurisdictions. Section 5 builds upon the foundation of our analytical review and proposes a comprehensive reform agenda for consideration by the Hong Kong Government.

In conclusion, our research findings establish that there is an intimate nexus between the effectiveness of the proposed unified screening system and the public perception towards asylum seekers and refugees. The proposed unified screening system would be doomed to fail without taking into account the interwoven nature between public perception and law enforcement. In fact, public education, as an additional actor, constitutes a prerequisite of the effective implementation of the new unified screening system. This paper reiterates the importance of the long-advocated, single, government-led, unified system for processing refugee claims, torture claims and cruel, inhuman or degrading treatment or punishment claims in protecting our unheard minority, and posits that such mechanism must be reinforced by the concerted effort from *individuals* and a change in social perception towards asylum seekers and refugees in *community*.

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Definition

Who is a ‘refugee’?

Article 1.A.2 of The 1951 United Nations Convention Relating to the Status of Refugees (the ‘**1951 Convention**’)¹ provides the basic legal definition of a ‘refugee’. According to the 1951 Convention, a ‘refugee’ is:-

‘any person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.’²

The 1967 Protocol relating to the Status of Refugees³ (the ‘**1967 Protocol**’) extends the concept of ‘refugee’ to include persons who had fled war or other violence in their countries.

Who is not a ‘refugee’?

Figure 1 compares ‘refugee’ with other similar categories of claimant who does not meet the definition of ‘refugee’ as mentioned above. For the purpose of this research study, in the discussions below:-

- refugee(s), asylum seeker(s), torture claimant(s), and CIDTP claimant(s) will be collectively referred to as ‘Claimant(s)’; and
- refugee claim(s), torture claim(s), and CIDTP claim(s) will be collectively referred to as the ‘Claim(s)’

¹ 1951 United Nations Convention

² Article 1.A.2 of 1951 Convention

³ 1967 New York Protocol

Asylum Seeker ⁴	Refugee
<ul style="list-style-type: none"> ❖ Person who asserts himself / herself as a refugee, but whose claim has not been definitively evaluated. ❖ No refugee status has been granted. 	<ul style="list-style-type: none"> ❖ Person who asserted himself / herself as refugees, and whose claim has been evaluated ❖ Refugee status has been granted.
Torture Claimant	Refugee
<ul style="list-style-type: none"> ❖ Person who seeks a government not to return him or her to another state where there are substantial grounds for believing that that person would be in danger of being subjected to torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT').⁵ 	<ul style="list-style-type: none"> ❖ Refugee has to establish his or her claim based on the definition of 'refugee' contained in the 1951 Convention as mentioned above.
Cruel, Inhuman or Degrading Treatment or Punishment Claimant ('CIDTP claimant')	Refugee
<p>Person who seeks a government not to return him or her to another state where there is a real risk that person would be in danger of being subjected to CIDTP under the International Covenant on Civil and Political Rights ('ICCPR').⁶</p>	<ul style="list-style-type: none"> ❖ Refugee has to establish his or her claim based on the definition of 'refugee' contained in the 1951 Convention as mentioned above.

Figure 1: Comparison between refugee, asylum seeker, torture claimant, and CIDTP claimant

⁴ Adelman (1988), 7-19

⁵ United Nations (2009)

⁶ Art 7 of ICCPR; UNHRC 'General Comment No. 31' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13 [12]; UNHRC 'General Comment 20' (3 August 1993) UN Doc CCPR/C/79/Add.25 [9]; *Kindler v Canada* (470/91) (1993) UN Doc CCPR/C/48/D/470/1991

1 SECTION 1 Research Methodology

Two research approaches, primary research and secondary research, are adopted to gain a more comprehensive understanding of issues concerning the Claimants, particularly asylum seekers and refugees. While the primary research is adopted to obtain first-hand observation and investigation,⁷ the secondary research is for examining other's publications, such as published texts and statistics.⁸

1.1 Primary Research

Since our research involves a study on how the current screening procedures for the Claims work, and whether these procedures achieve the expected outcomes, we have decided to pursue an empirical research.⁹ In particular, we carried out both quantitative and qualitative researches to obtain raw data, information, and opinions. Regarding the qualitative research, we conducted personal interviews with the stakeholders to the issue. For the quantitative research, a standardised questionnaire survey on random samples was carried out (See Appendix 2 for the Standardised Questionnaire Survey).

1.1.1 Qualitative Research: Personal Interviews

Conducting personal interviews enabled us to grasp a deeper understanding on the issues concerned. We base on the following factors to select our interviewees:-

- (1) the interviewee's social role or social sector that he or she belongs to;
- (2) his/her personal knowledge; and
- (3) his or her experience in the refugee issue.

After careful consideration, we interviewed parties from the following four sectors:-

- (1) law makers ('**LegCo members**');
- (2) legal practitioners;
- (3) non-governmental organizations ('**NGOs**'); and
- (4) academics

⁷ Clarke R.J. (2005)

⁸ Clarke R.J. (2005)

⁹ Teitelbaum (1985)

A bundle was provided to each interviewee before the respective interview took place (the ‘**Interview Bundle**’). The Interview Bundle consists of the interview details (e.g. time, location, names of interviewers), scope of interview (which includes our general plan of inquiry as explained below), and background information of our research. Although we had a general plan of inquiry, we did not set out an order of questions to avoid rigidity and the possibility of ‘leading’ or ‘guiding’. Instead, we allowed flexibility which created rooms for dialogues. Our general plan of inquiry comprised of the following matters:

- (1) views on the current problems associated with the Claimants (any particular examples);
- (2) views on the existing problems associated with the current screening procedure for the Claims in Hong Kong (and any suggestions on possible improvements);
- (3) views on the implementation of a single, Hong Kong Government-led, unified screening mechanism to process all Claims;
- (4) views on the elements required for the mechanism mentioned in (3) above in order to meet the high standards of fairness required;
- (5) given the low recognition rate of the current government-led torture claims screening system, how the implementation of the mechanism mentioned in (3) above will be effective in practice; and
- (6) views on the difficulties, if any, on the implementation of the mechanism mentioned in (3) above.

We employed unstructured personal interviews through open-ended questions, a format that allowed interviewees to freely give answers in their own words.¹⁰ There are a number of advantages of such research method. Firstly, there are more interactions between the interviewer and the interviewees. Secondly, the interviewer has the opportunity to probe into or ask follow-up questions based on the interviewees’ replies.¹¹ Thirdly, open-ended questions could help minimise the risks of bias.

¹⁰ Thio (2007)

¹¹ Valenzuela and Shrivastava (2002)

Each interview was audio-recorded with the respective interviewee's consent in writing (see Appendix 1 for the Standardized Consent Form for Interviewee). This is to protect both the interests of the interviewer and the interviewees. Besides, despite various biases inadvertently arose, we, both the interviewer and the interpreter of the data, remained impartial throughout the whole research project.¹²

1.1.2 **Quantitative Research: Surveys**

We employed public survey to explore the public's view on our research questions. The purposes of this survey are:-

- (1) to evaluate the public's understandings on the concept of 'refugees' and 'asylum seekers', such as the public's perception on these people;
- (2) to understand the public's attitudes towards issues like sharing social resources with refugees and asylum seekers;
- (3) to determine, from the public's perspective, the elements and procedural safeguards that have to be included in the new system; and
- (4) to educate the public and raise their social awareness about the Claimants.

1.1.2.1 *Independent Variables*

Independent variables are presumed as causing or influencing the outcome of other variables in a research project.¹³ In our survey, we set out three independent variables:-

- (1) the age of the respondents;
- (2) the education level of the respondents; and
- (3) the respondents' right of abode in Hong Kong.

In our questionnaire, we divided both the age and education level of the respondents into six intervals. By setting up dispersed intervals, our group aimed to collect as much sample as possible so as to project a result that accurately reflects the attitude of the general public.

¹² Ibid.

¹³ Hall (2008)

The purpose of dividing the respondents into six age groups was to observe the correlation between respondents' age and their attitude towards refugees and asylum seekers. In particular, we intended to find out the impact, if any, of the history of Vietnamese refugees on people's understandings on refugees and asylum seekers.

The second independent variable, the respondents' education level, was divided into six groups with an 'other' category. This independent variable is important for our survey as we were interested to see whether education level functions as an influential factor on their views on asylum seekers and refugees.

Finally, by inserting the respondents' right of abode in Hong Kong as the third independent variable, we identified residential status of the respondents. The reason to include such independent variable was to consider whether enjoying the right of abode would have any effects on their views on sharing social resources with refugees and asylum seekers in Hong Kong.

1.1.2.2 *Dependent Variables*

Dependent variables are variables that are observed and whose values are presumed to depend on the independent variables.¹⁴ Our research consisted of four dependent variables:-

- (1) the respondents' knowledge on 'refugees' and 'asylum seekers';
- (2) the respondents' knowledge on the rights and living conditions of refugees and asylum seekers in Hong Kong;
- (3) the respondents' views on including refugees and asylum seekers into the social resources coverage; and
- (4) the respondents' views on the potential problems if more social resources were given to refugees and asylum seekers by the Hong Kong Government (the '**Government**').

¹⁴ Wimmer and Dominick (2006)

1.1.2.3 *Construction of Questions*

Our survey is divided into three parts. The first part is about the demographic details of the respondents. It facilitates an accurate and precise analysis by identifying and separating the respondents into different groups. The second part is about the public awareness and perception towards refugees and asylum seekers. This part enables us to evaluate the respondents' understandings and perception of refugees and asylum seekers, as well as their opinions and attitudes towards the idea of implementing new policies to assist these claimants. The last part consists of questions which are based on a hypothetical scenario. This allows us to understand the respondents' expectation on a new screening mechanism.¹⁵

1.1.2.4 *Sampling*

The purpose of sampling is to select a set of elements (independent variables) from a population in such a way in which the statistics yielded would accurately portray the total population.¹⁶ By randomly selecting the candidate for our survey, each element would have an equal chance of selection independent of any other event in the selection process.¹⁷ Therefore, we used a randomised method to approach the respondents by posting the survey questionnaire on social networking websites and online discussion forums. This method can enable us to approach a wide range of represented randomly to represent the Hong Kong population.

1.1.3 **Difficulties and Limitations**

1.1.3.1 *Difficulties and Limitation with the Qualitative Research*

We experienced some difficulties regarding how the interviews were conducted. The first difficulty was to ensure that each interview was to be finished in 30 minutes, save for those interviewees who were willing to spend more time with us. Secondly, as the format of the interviews was conversational rather than a question-and-answer session, there were difficulties to eliminate all biases and obtain purely objective responses. Thirdly, despite the fact that we provided an Interview Bundle to each interviewee, some

¹⁵ Neuman (2001)

¹⁶ Earl and Lucia (2002)

¹⁷ Ibid.

interviewees expressed unfamiliarities with certain issues. Accordingly, they were more ready and willing to talk about those issues which they were interested in or familiar with.

The main limitation is that we were unable to reach parties who might potentially have different views on the subject matter. We invited lawmakers who belong to more conservative or pro-government camps, but they declined our invitations. Besides, the legal professional bodies refused to have interviews with us.

1.1.3.2 *Difficulties, Limitation and Ethical Consideration with the Quantitative Research*

In order to get a large sampling population that can represent the general public of Hong Kong despite the time and financial constraints, we sent out as many questionnaires as possible through two channels: social network websites and online discussion forums. The questionnaire was to be conducted online. Over a period of three weeks, we received 944 responses.

A. *Errors and Limitations*

- (1) Due to the time and financial constraints, we were unable to conduct a street survey. We discovered through the online responses that the age distribution of our respondents was not evenly spread. The fact that older people are relatively inactive visitors of social networking websites and discussion forums limited our analysis mainly to respondents aged from 18 to 35.
- (2) Due to the technical limitations of online survey, we were unable to provide a way for the respondents to raise questions if they encountered any difficulties in understanding the questionnaire. Thus, the answers may not truly reflect the respondent's opinions or views as they may be based on misinterpretation of the questionnaire.
- (3) For certain questions, in order to receive more accurate answers from our respondents, especially those who may not be familiar with 'refugees' and 'asylum seekers', we included a definition of these two terms in Q.6. However, if any of our respondents read through the whole questionnaire before answering, their answers to Q.4 and Q.5 may be affected. These two questions aimed to

evaluate their understanding and perception of ‘refugees’ and ‘asylum seekers’ based purely on their own knowledge.

- (4) We excluded the independent variable ‘gender’, since we initially considered the correlation between gender and the new screening procedures for refugees and asylum seekers would not be statistically significant. However, after carrying out some literature reviews on the matter, the exclusion of ‘gender’ as an independent variable could be an error. In some sociology and psychology theories, such as Social Structural Theory¹⁸, Feminist Social Theory¹⁹, etc., female are more sympathetic towards vulnerable than male, if we have included ‘gender’, some new perspective would have been yielded in our findings.

B. *Ethical Considerations*

The surveys were conducted fairly and without prejudice. All of our participants voluntarily participated in the survey. We disclosed our identities and the purpose of the survey to our participants at the very beginning. We also stated clearly that all information and data collected would maintain confidential and be secured. For almost all questions, we provided an option ‘prefer not to answer’ since we respect the freedom of our participants of not giving their answers and standpoints in all questions.

Besides, with a view to achieve fairness and impartiality, we avoided distributing the surveys to the Claimants. Conflict of interests and biases were therefore minimised.²⁰ Overall, all surveys were conducted in a professional attitude and held in accordance with high ethical standards.

1.2 **Secondary Research**

1.2.1 **Desk Research**

We conducted desk research to find out the current legal protections that are offered to the Claimants in Hong Kong. In particular, we researched on the existing legislative provisions which govern the screening procedures for torture claims, and the relevant international procedural standards of screening procedures for refugee claims. In

¹⁸ Eagly and Wood (1999)

¹⁹ Jackson and Jones (1998)

²⁰ Neuman (2001)

addition, we researched on relevant legal journals and publications, case laws, existing laws in selected overseas jurisdictions, relevant government consultative papers and progress reports, submissions from interest groups to the Government, and background briefs and minutes of relevant Legislative Council (“**LegCo**”) meetings.

2 SECTION 2 Findings

2.1 Findings from Desk Research

2.1.1 The Relevant Laws and Procedures

In accordance to the general classification of laws, the existing legal framework of screening procedures for torture claims and refugee claims is governed by domestic legislations, international instruments and cooperation memorandum, namely:-

Domestic Legislations (Alphabetically sorted)

Basic Law

Immigration (Amendment) Ordinance 2012

Immigration Ordinance Cap 115

International Instrument (Alphabetically sorted)

Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 Date of entering into force: 26 June 1987

Convention Relating to the Status of Refugees 1951 Date of entering into force: 22 April 1954

Protocol relating to the Status of Refugees 1967 Date of entering into force: 4 October 1967

Memorandum (Alphabetically sorted)

a Memorandum of Understanding on enhanced co-operation between the Hong Kong Special Administrative Region Government and the United Nations High Commissioner for Refugees Dated 20 January 2009

2.1.1.1 Descriptions of Procedures

Since the CAT was extended to Hong Kong in 1992, thousands of people have come to Hong Kong to seek protection from persecution and torture. Specifically, these people,

whether fleeing persecution or torture, are entitled to a decision as to whether they are entitled to protection from ‘forced return’ or ‘*refoulement*’.²¹

For these Claimants, there are currently two separate, but parallel paths for protection available in Hong Kong:-

- (1) a Refugee Status Determination (‘**RSD**’) screening mechanism for refugee claimants conducted by the Hong Kong Sub-Office of the United Nations High Commissioner for Refugees (‘**UNHCR**’); and
- (2) a Torture Claim Assessment by the Immigration Department of the Government under the CAT.²²

A. *RSD Assessment Process Conducted by UNHCR*

(a) *Legal Framework*

Hong Kong is not a party to the 1951 Convention and its 1967 Protocol, which imposes obligations on contracting state parties, including an obligation to ‘facilitate the assimilation and naturalization of refugees’ (Art 34).²³ Accordingly, Hong Kong does not make its own decisions on refugee status, i.e. the Government does not carry out its own RSD procedures.²⁴ Instead, there is a Memorandum of Understanding made between Government and the UNHCR dated 20 January 2009 which allowed UNHCR to process RSD procedures for refugee claims in Hong Kong.

As recognised refugees are still not permitted to settle in Hong Kong, UNHCR also bears the responsibility to resettle these people to third countries that are willing to offer them protection.²⁵

Although the Government does not carry out its own RSD Procedure, asylum seekers are generally allowed to remain in Hong Kong pending the final determination of their status by UNHCR. If a person is recognised as a refugee by the UNHCR, ‘it is the inevitable practice of the Director [of Immigration] not to repatriate that person but to afford him

²¹ The Law Society of Hong Kong and Bar Association (2011)

²² Donnelly (2013)

²³ UNHCR (2012)

²⁴ *C v KMF and BF v Director of Immigration and Secretary for Security* [2013] HKEC 428

²⁵ UNHCR (2013)

temporary refugee until the UNHCR – not the Hong Kong Government – is able to settle that person elsewhere in the world.’²⁶

(b) Procedure

According to the Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees,²⁷ the determination of refugee status is not specifically regulated. In particular, ‘the Convention does not indicate what type of procedures are to be adopted for the determination of refugee status. It is therefore left to each Contracting state to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure.’²⁸ As it is UNHCR which conducts RSD procedure in Hong Kong, it is necessary to consider the RSD procedures UNCHR adopts.

In short, there are two stages of the current RSD procedure in Hong Kong: (1) registration and (2) interview and decision. Below is a summary of the whole process (please also see Figure 2 and 3 for reference).

(1) Registration

The first step is for an asylum seeker to submit his or her application for protection at the UNHCR Office. He or she will be asked to fill out an application with the assistance of a UNHCR officer. This process is often referred to as the registration interview(s) by registration officer(s). The asylum seeker will then be given an appointment slip by UNHCR.²⁹

(2) Interview and Decision

(i). First Instance Interview with UNHCR

The claimant will be interviewed individually by a UNHCR Officer, who will ask questions about his or her application for refugee protection. The asylum seeker should give a precise and detailed description of why he or she came to Hong Kong and why he

²⁶ *C v KMF and BF v Director of Immigration and Secretary for Security* [2013] HKEC 428

²⁷ UNHCR (2011)

²⁸ *Ibid.*

²⁹ HKRAC (2013)

or she cannot return to his or her own country. During the interview the asylum seeker will be provided with a qualified interpreter, if necessary.³⁰

(ii). Decision

Based on the information provided during the interview, UNHCR will make a decision regarding the application for protection. The decision and the reasons for the decision will be provided to the claimant in writing.³¹

(iii). Recognition

If the application is accepted, i.e. the claimant is being recognised by UNHCR as a refugee, UNHCR will then contact the Government and request to permit the claimant to remain in Hong Kong until a resettlement is available.³²

(iv). Appeal

If the application is rejected, the claimant will have 30 days to appeal from the date he or she receives the decision letter. Otherwise, the first decision to reject the application becomes final and the case will be closed. In order to file an appeal a written statement with the reasons why the claimant does not agree with the decision has to be submitted.³³

Appeal interviews are not conducted in all cases. If there is one, a different panel of UNHCR Officers will review the case. If the appeal is still rejected, this will be the final determination and the case will be closed.³⁴

(v). Re-opening

Even if an application is closed, it is still possible for re-opening.³⁵ As a general rule, applications which have been duly examined and rejected and which have been closed should not be re-examined. This includes claimants who have failed to exercise the right to appeal within 30 days.³⁶

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ UNHCR (2003)

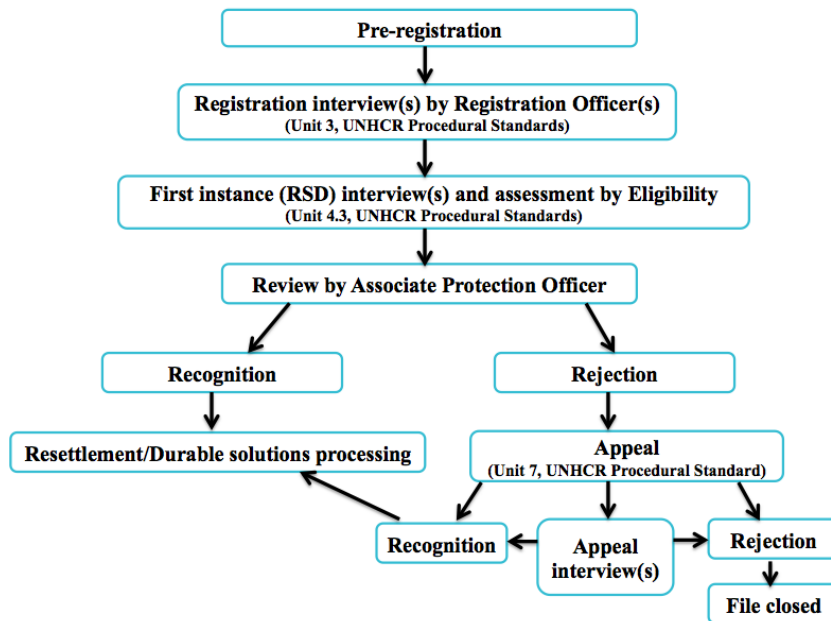


Figure 2: Procedure of RSD Assessment Conducted by UNHCR

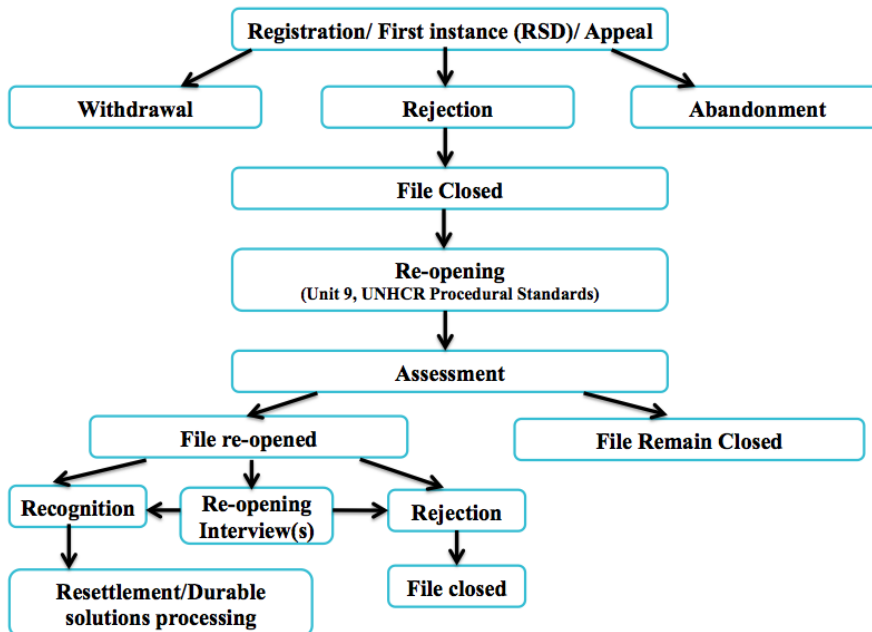


Figure 3: Re-opening Procedure of the RSD Assessment Conducted by UNHCR

B. *Torture Claims Assessment Conducted by Immigration Department*

(a) *Legal Framework*

CAT was extended to Hong Kong (by Britain as its sovereign) on 8 December 1992. After 1997, CAT continues to apply in Hong Kong. Article 3 of CAT provides a State Party's obligation of non-*refoulement*:-

'1. No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.'

In order for Hong Kong to satisfy its obligations under CAT, since December 2009, the Immigration Department has implemented an 'enhanced screening mechanism' to handle torture claims made under Article 3 of CAT.³⁷ Subsequently, the Immigration (Amendment) Ordinance 2012 (the '**Amended Immigration Ordinance**') was passed on 13 July 2012 to establish a statutory process for making and determining such claims, including how a torture claim is made, the time limit for a claimant to return the torture claim form, the requirements for the Immigration Department to arrange screening interviews, etc. The Amended Immigration Ordinance has become effective since December 2012.³⁸

For a torture claimant who has failed to establish his claim, he will be removed from Hong Kong in accordance with the law. For a torture claimant who has established his claim, he will not be removed to the country where there are substantial grounds for believing that he would be in danger of being subjected to torture. However, his or her removal to another country to which he or she may be admitted without the danger of being subjected to torture will be considered.³⁹

(b) *Procedure*

The procedure for processing torture claims by the Immigration Department is summarized below (see also Figure 4 for reference).

³⁷ HKSAR Government (2013)

³⁸ HKSAR Government (2012)

³⁹ Immigration Ordinance (Cap 115)

(1) *Signify the Intention to Seek Non-refoulement Protection*

A person can only claim non-refoulement protection under CAT in Hong Kong when he is subject or liable to removal, and does not have a right of abode or right to land in, or right to return to any state apart from a torture risk State.⁴⁰

To file a torture claim, a claimant must signify an officer at the Immigration Department (an 'Immigration Officer') in writing his or her intention to seek non-refoulement protection.⁴¹

(2) *Completion of Torture Claim Form*

After a written request is given by an Immigration Officer, a torture claimant would be required to complete a torture claim form to state the facts and reasons supporting the claim as well as other required information.⁴² This form must be returned within 28 days after the written request is given by the Immigration Officer.⁴³ The failure to complete it will lead to the claim being treated as withdrawn.⁴⁴ Once a torture claim is made, the torture claimant may not be removed from Hong Kong to a torture risk State until his claim is determined as unsubstantiated or withdrawn.⁴⁵

(3) *Interview*

After a completed torture claim form is returned by the torture claimant, the Immigration Office must require the claimant to attend an interview to provide information and answer questions relating to the claimant's torture claim.⁴⁶ The Immigration Officer may also arrange a medical examination for the claimant.⁴⁷

In order to decide if a torture claim shall be accepted as substantiated, the Immigration Officer must take into account all relevant grounds for believing that the claimant would

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

be in danger of being subjected to torture if the claimant were removed or surrendered to a torture risk State.⁴⁸

(4) *Informing the Decision by Written Notice*

Once a decision is made regarding the torture claim, the Immigration Officer must inform the claimant of the decision by written notice. If the torture claim is rejected, the Immigration Officer must, in his notice, inform the claimant of the reasons for the decision, and the claimant's right to appeal against the decision.⁴⁹ It shall be mentioned here that the decision to accept a torture claim as substantiated may be revoked.⁵⁰

(5) *Appeal*

A person whose torture claim is rejected may not subsequently make another torture claim, unless an Immigration Officer is satisfied that a significant change of circumstances gives the subsequent claim a realistic prospect of success.⁵¹ Yet, Section 37ZO to 37ZS provides that the 'Torture Claims Appeal Board' would be established to hear and determine appeals against decisions to reject a torture claim and to revoke a decision accepting a torture claim as substantiated.

(6) *Pilot Scheme under the Duty Lawyer Service*

On December 2009, a Pilot Scheme under the Duty Lawyer Service was launched to provide publicly-funded legal assistance to torture claimants who have passed the eligibility test. At the petition stage, publicly-funded legal assistance will also be available for meritorious cases.⁵² There is no related provision in the Immigration Ordinance which mentions the provision of legal representation or legal assistance.

(7) *Corporation Pact with UNHCR*

Beside the new legislative regime, the Director of Immigration signed a Memorandum of Understanding with the Hong Kong office of UNHCR on January 2009 to enhance co-operation between the Government and the UNHCR. According to the Memorandum of Understanding, certain Immigration Officers would be seconded to the Hong Kong office

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² The Duty Lawyer Service (2013)

of the UNHCR to receive screening training. The UNHCR would also organise training programmes for Immigration Officers who are responsible for processing torture claims.⁵³

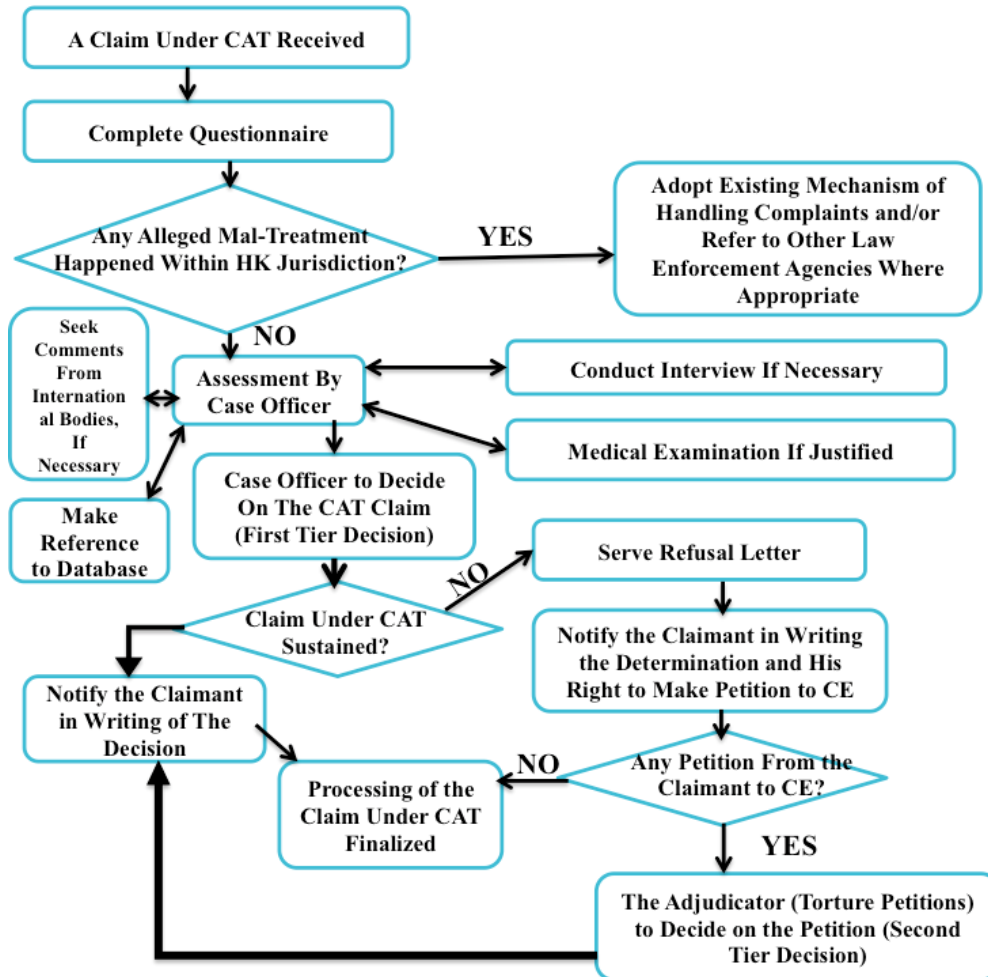


Figure 4: Procedure of Torture Claims Assessment Conducted by Immigration Department

⁵³ Law & Order (2009)

2.1.2 The Published Statistics

2.1.2.1 *Screening Results of the RSD Assessment Process Conducted by UNHCR*

As at January 2013, there were 117 recognized refugees and 835 asylum seekers residing in Hong Kong.⁵⁴ Daly, a veteran human rights lawyer, claimed that the acceptance rate of asylum claims in Hong Kong is around 5%.⁵⁵

The number of asylum seekers in Hong Kong has dropped dramatically in recent years. While there were about 2,400 people applied for refugee status through the UNHCR in 2006, there were only 790 new cases in 2012.⁵⁶ Vecchio from Monash University explained the reasons behind this dramatic drop:

“...as UNHCR application numbers have decreased, [torture claims] have increased...many [torture claimants] have told me they think it is useless to apply to the UNHCR.”⁵⁷

2.1.2.2 *Screening Results of the Torture Claim Screening Process Conducted by Immigration Department*

As at 31 March 2013, out of more than 12,000 torture claims received by the Government since CAT was extended to Hong Kong in 1992, only five have ever been accepted.⁵⁸ The recognition rate is about 0.02%. All these five successful claims were decided since the implementation of an enhanced mechanism in December 2009, but during the same period more than 3,000 claims were determined as unsubstantiated. In addition, during the same period there were a total of 1,570 torture claimants having lodged a torture claim petition or appeal and 3,330 torture claims were either withdrawn or deemed withdrawn. As at 31 March 2013, there were around 4,300 torture claims remain to be decided.⁵⁹

⁵⁴ UNHCR (2013)

⁵⁵ South China Morning Post (2012)

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Donnelly (2013)

⁵⁹ Ibid.

2.1.3 The Relevant Cases

Since 2004, there have been cases which continuously bring challenges and changes to the screening procedures for the Claims in Hong Kong. Listed below are the relevant cases on this matter:-

- (1) *Secretary for Security v Sakthevel Prabakar* [2005] 1 HKLRD 289
- (2) *FB v Director of Immigration* [2009] 2 HKLRD 346
- (3) *Ubamaka Edward Wilson v Secretary for Security* [2011] HKEC 716
- (4) *C v Director of Immigration* [2013] HKEC 428

These four cases are the basis of the current dual system, i.e. there is a screening procedure for torture claims (conducted by the Government) and another screening procedure for refugee claims (conducted by UNHCR). These judicial review cases show that the Government’s piecemeal approach for reform has been continuously rejected by the court.

2.1.3.1 Chronicle Study: Review of the Selected Cases Concerning the Development of the Screening Processes for Claims

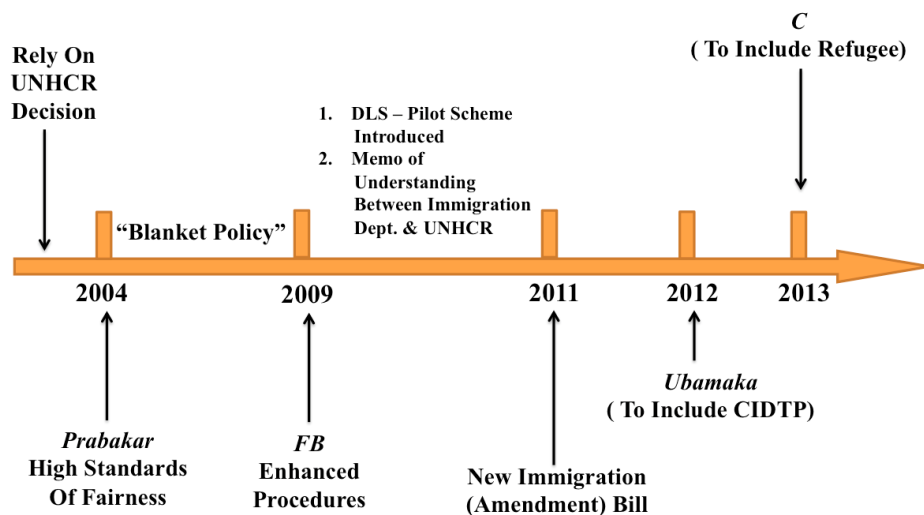


Figure 5: Chronology of the Development of Screening Procedures for the Claims

A. *Secretary for Security v Sakthevel Prabakar*

The chronicle began with *Secretary for Security v Sakthevel Prabakar*⁶⁰ (*'Prabakar'*) in 2004. It was a judicial review application on the Government's incomprehensive screening procedure for torture claims.

In *Prabakar*, the applicant's torture claim was not investigated by the Director of Immigration or any officer of the Government. The deportation order from the Secretary for Security was based entirely upon the assessment by the UNHCR as to whether the applicant was a refugee.⁶¹ It was argued that a victim of torture may also be a refugee, but it was nevertheless an erroneous assumption that the screening criteria of 'torture victim' and 'refugee' were identical.⁶² In addition, nothing was known to the Secretary for Security as to the steps that were taken by the UNHCR to determine the truth of any allegations made by the applicant. No records of interview had been produced. Equally importantly, neither the Director of Immigration, the Secretary for Security nor any other person within the Government had access to information as to what took place at the interviews conducted by the UNHCR, such as the ways they were conducted, the types of questions that were asked, and whether the applicant's allegations of being tortured were indeed investigated properly at all.

In light of the problems above, the Court of Final Appeal ('CFA') held that the result of the screening procedure for the applicant's torture claim was of momentous importance to the claimant. Therefore, high standards of fairness should be accorded with.⁶³ The high standards of fairness required that:-

- (1) the potential deportee, who had the burden of establishing that he would be in danger of being subjected to torture if deported to the country concerned, should be given every reasonable opportunity to establish his claim;
- (2) the claim must be properly assessed by the Secretary for Security; and
- (3) where the claim was rejected, reasons should be given by the Secretary for Security. Although the reasons need not to be elaborate, they must be sufficient

⁶⁰ [2005] 1 HKLRD 289

⁶¹ *Secretary for Security v Sakthevel Prabakar* [2005] 1 HKLRD 289

⁶² *Ibid.*

⁶³ *Ibid.*

enough to enable the potential deportee to consider the possibilities of administrative review and judicial review.⁶⁴

The CFA in *Prabakar* reiterated that it is for the Secretary for Security to assess the materials and to come to an independent judgment, as well as giving such weight to UNHCR's adverse determination as may be appropriate in the circumstances.⁶⁵

B. *Post-Prabakar*

Following the decision in *Prabakar*, the Government tried to address the problem by setting up a blanket administrative process, an independent administrative mechanism. Such independent administrative mechanism replaced the original flawed procedure, through which torture claims were determined solely based on UNHCR's RSD.⁶⁶

Thereafter, the numbers of torture claims have surged. The numbers of torture claims received were 186, 541, 1583 and 2198 respectively from 2005 to 2008.⁶⁷ However, the new independent administrative mechanism still failed to adhere to the high standards of fairness required and riddled with procedural improprieties. In particular, the unduly long interview process without the presence of an interpreter was a big issue. In addition, legal aid was not available in the screening and appeal processes.⁶⁸

C. *FB v Director of Immigration*

The independent administrative mechanism was challenged in *FB v Director of Immigration*⁶⁹ ('*FB*') in 2009. The CFI in *FB* highlighted various imperfections in this mechanism, notably:-

- (1) the person making the determination was a different person to that conducting the interviews;

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ *FB v Director of Immigration* [2009] 2 HKLRD 346

⁶⁷ See general the webpage of Financial Secretary' Hong Officer at <http://www.fso.gov.hk/eng/index.htm>

⁶⁸ [2009] 2 HKLRD 346

⁶⁹ *FB v Director of Immigration* [2009] 2 HKLRD 346

- (2) the persons conducting interviews, and making determinations, or considering and deciding upon appeals, were insufficiently guided or instructed in the nature of CAT screening and decision making;
- (3) the conducting of CAT screening interviews by officers of the Department, which was duty-bound to enforce and implement the immigration policies of the Government, raised an inherent conflict of interest, giving rise to a lack of impartiality and independence on the part of interviewers and decision makers;
- (4) the failure to provide for an oral hearing at the petition (appeal) stage, following the rejection of a claim; and
- (5) the failure of the Secretary for Security to give reasons for the refusal of a petition.⁷⁰

In addition, the CFI in *FB* held that the Immigration Department's blanket policy, which denied most, if not all, claimant's access to legal representation during any part of the screening process, failed to meet the required high standards of fairness.⁷¹ A publicly-funded legal representation should be made available to claimants who were without the means to pay for legal assistance.⁷² Besides, reformation should be carried out on the procedural anomaly of separating the roles of examining officers and decision-makers.⁷³ All decision-makers should be adequately trained⁷⁴ and an oral hearing for appeal should be granted for effective assessment of the claimant's credibility.⁷⁵

D. *Post-FB*

The CFI's decision in *FB* led to the commencement of an enhanced administrative mechanism in December 2009 for processing torture claims. Also, a Pilot Scheme under the Duty Lawyer Service was launched.⁷⁶

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ The Duty Lawyer Service (2013)

In 2012, the Immigration (Amendment) Bill 2012⁷⁷ was enacted to implement a statutory mechanism to screen torture claims.⁷⁸ The Immigration Department is responsible for the mechanism. It should be noted that the mechanism only deals with torture claims, but not other claims (such as refugee and CIDTP claims). The Bill has become effective since December 2012.

E. *Ubamaka Edward Wilson v Secretary for Security*

In December 2012, the CFA in *Ubamaka Edward Wilson v Secretary for Security*⁷⁹ (*'Ubamaka'*) held that the right of not being subjected to CIDTP is an absolute right and therefore protection from CIDTP should not be denied. The CFA held that Hong Kong must not send individuals to places where they would risk CIDTP, a concept that includes, but is not limited to, torture.⁸⁰

An implication from the decision of *Ubamaka* is that the Government will have to adopt a comprehensive and procedurally fair system to screen CIDTP claims, in addition to the torture claims. The decision also suggests that the Government has no option but to re-screen several thousand CIDTP claimants whose claims had been previously rejected.

F. *C v KMF and BF v Director of Immigration and Secretary for Security*

Shortly after *Ubamaka*, another CFA's decision was handed down in *C v KMF and BF v Director of Immigration and Secretary for Security*⁸¹ (*'C'*) in March 2013. One of the applicants was a national of the Democratic Republic of Congo (Zaire). His claim for refugee status was rejected by the UNHCR on 19 March 2004 and his appeal was dismissed by the UNHCR by a letter dated 24 March 2004.⁸²

The principal issue in *C* was whether the Government could rely on the decision of the UNHCR's RSD procedure to decide whether to deport a person.⁸³ The CFA is of the view that, given it is the practice of the Director of Immigration, when deciding whether or not to exercise his power under the Immigration Ordinance to remove a refugee

⁷⁷ Immigration (Amendment) Bill (2012)

⁷⁸ The Duty Lawyer Service (2013)

⁷⁹ [2012] HKEC 1757

⁸⁰ *Ubamaka Edward Wilson v Secretary for Security* [2012] HKEC 1757

⁸¹ *C v KMF and BF v Director of Immigration and Secretary for Security* [2013] HKEC 428

⁸² *Ibid.*

⁸³ *Ibid.*

claimant to the country of putative persecution, to have regard to humanitarian considerations, and that whether such claim is well-founded, is a relevant humanitarian consideration, the Director of Immigration must determine whether the claim is well-founded.⁸⁴ Moreover, any such determination must satisfy the high standards of fairness required having regard to the gravity of the consequence of the determination.⁸⁵

CFA also mentioned that UNHCR, the Bar Association and the Law Society have advocated a unified and efficient system consisting of one domestic screening exercise covering torture, CIDTP and refugee claims to avoid duplication and to reduce unmeritorious and protracted claims. CFA said this suggestion merits ‘careful consideration.’⁸⁶

The implication of the decision of *C* is that the Government must independently assess claims before deciding whether to deport an asylum-seeker, rather than simply relying on UNHCR’s RSD. In other words, the decision paves the way to a government-led RSD.

It is important to mention here that, the decisions of the two recent landmark CFA cases, *Ubamaka* and *C*, have not yet been implemented. Thus, one of the purposes of this research study is to find out how these decisions shall be implemented in practice.

2.1.4 Observational Studies on the Relevant Publications and Materials

Apart from the relevant laws and cases, we reviewed materials and publications on our research topic and other issues related to the Claimants. In order to gain a comprehensive understanding, we collected information from various sources, such as submission of professional bodies, weblogs of NGOs and the Claimants, press releases provided by NGOs, news reports concerning the Claimants, etc

The information obtained can be generally categorised into two types: firstly, comments on the current procedures for refugee claims and torture claims; secondly, comments on the living conditions of the Claimants.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

2.1.4.1 *Comments on the Current Procedures for Refugee Claims and Torture Claims*

A. *RSD Assessment Process Conducted by UNHCR*

(a) *Donnelly from the Hong Kong Refugee Advice Centre ('HKRAC')*

Donnelly,⁸⁷ a Staff Attorney with the HKRAC, the only dedicated provider of pro bono legal aid to refugees seeking protection from the UNHCR in Hong Kong, mentions in one of her publications a number of concerns in the current RSD assessment process:

‘Many legal aid lawyers working in the UNHCR RSD system will have experienced some difficulties in areas of this process. This includes problematic interviews, sub-standard interpretation, insufficient (if any) access to evidence or reasoning for decisions in some jurisdictions, the lack of an independent appeal, and the lack of the ability of lawyers or caseworkers in some jurisdictions, to attend interviews, and in others, to intervene, except on very limited grounds. UNHCR determinations are also immune from judicial scrutiny which was accepted by counsel for UNHCR.’⁸⁸

(b) *Law Society of Hong Kong and the Hong Kong Bar Association*

Similarly, the Law Society of Hong Kong and the Hong Kong Bar Association (collectively, the ‘**Joint Professions**’) repeated in their Joint Submissions dated 18 November 2011 their observations on the procedural deficiencies of the current RSD assessment process in Hong Kong:

‘The UNHCR assessment process, if it was amenable to the jurisdiction of the Hong Kong courts, *would not meet the high standards of fairness and would most likely be declared unlawful for substantially the same reasons as in FB*. Further, it is unfair and anomalous that the ultimate decision on the individual’s refugee status by the UNHCR is not amendable to judicial scrutiny.’⁸⁹

⁸⁷ Ms. Sonya Donnelly was one of our interviewed of the project. Findings from Ms. Sonya Donnelly were documented in Section 2.

⁸⁸ Donnelly (2013)

⁸⁹ The Law Society of Hong Kong and Bar Association (2011)

(c) *NGOs*

In addition, it has been suggested that the process of confirming refugee status of asylum seekers in Hong Kong is often ‘long, arduous and uncertain’.⁹⁰ As stated on the website of HKRAC,

‘...due to UNHCR’s capacity constraints asylum-seekers in Hong Kong frequently have to wait up to five years for their RSD interviews.’⁹¹

According to HKRAC’s annual report of 2011 – 2012, ‘the significant challenge faced by HKRAC’s clients is the length waiting time spent in Hong Kong as a refugee, often spanning years.’⁹² In fact, over 50% of HKRAC’s caseload in 2011 – 2012 consisted of previously registered clients. In particular, of HKRAC’s client cases in 2011 – 2012, 51% of clients had been in Hong Kong for 2 years or more, 27% for 3 years or more and a staggering 13% of clients had been registered with HKRAC for even 4 or 5 years.⁹³

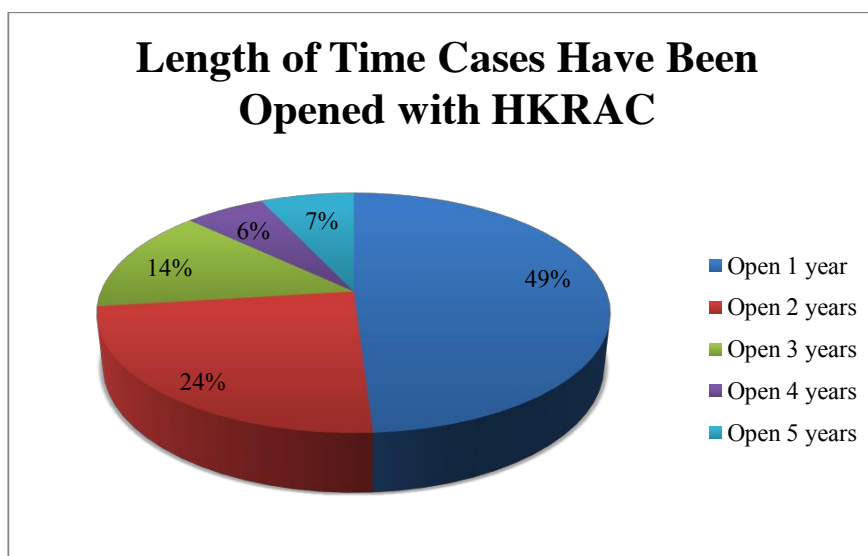


Figure 6: Length of Time Cases Have Been Opened with HKRAC as at the End of 2012

⁹⁰ Vision First (2013)

⁹¹ Hong Kong Refugee Advice Centre (2012)

⁹² Ibid.

⁹³ Ibid.

(d) *UNHCR*

Even the UNHCR itself talks about the drawbacks and limitations in the current RSD assessment process, ‘We don’t have the ability to force [S]tates to accept refugees and to respect their rights,’⁹⁴ and therefore there is no guarantee that the refugees in Hong Kong will ever be able to leave, said Philip Karani, head of the Hong Kong and Macau office of UNHCR.

Karani also mentioned that the Hong Kong Office of UNHCR is now under a severe funding shortage. According to Karani, Hong Kong is not a high priority because of its low number of refugees and locations in a wealthy, secure city. The office received just US \$2 million in 2012 to fund its 2012 programme and maintain a staff to only 11.⁹⁵

(e) *Bereket’s Story*

Bereket’s story can fully demonstrate how ‘slow and dictatorial’⁹⁶ the UNHCR’s RSD assessment process is. Bereket is the son of a Protestant pastor in Eritrea, a small country in the Horn of Africa where the government systematically tortures and imprisons Protestant Christians. After Bereket’s dad was killed, he fled to Hong Kong to apply for refugee status. Bereket was given refugee status by UNHCR within a year. However, even after Bereket had been granted refugee status, he still had to wait for resettlement in other countries, usually Canada or the United States.

Bereket’s extreme frustration with UNHCR reached to a breaking point when he found out that the Hong Kong office of the UNHCR had waited eight months before informing him that the United States had already accepted his resettlement claim. Having been accepted by the United States, asylum seekers usually have a year to complete clearance procedures including medical examinations. As the one-year deadline had passed for Bereket, he was forced to reapply.

According to Bereket, ‘That was when I understood that the Eritrean government kills by gun, but the UNHCR is killing by paper.’⁹⁷

⁹⁴ South China Morning Post (2012)

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

B. *Torture Claims Screening Process Conducted by the Immigration Department*

(a) *Beatson (Executive Director of Vision First)*

Vision First organised a protest on 27 April 2013 regarding almost 0% approval rate of the Government's torture claims programme. Few hundreds of Claimants participated and marched to the Immigration Department in Hong Kong. This protest was reported by a number of newspapers in Hong Kong. Figure 7 to Figure 10 below show some pictures taken on that day.

According to Beatson, although torture claimants in Hong Kong are similar to those in Australia, United Kingdom and other overseas countries (similar in social origin and ethnic distribution), there is a huge difference between the approval rate in Hong Kong (0.02%) and the international rate of 25% to 40%. According to him:

'Hong Kong's torture claim screening mechanism has its faults. In 21 years, with 12409 cases, there are only [5] successful cases. This number is unbelievable.'

Beatson understands that some torture claimants have not been contacted by the Immigration Department for six to seven years, and 'the Immigration Department's strategy is to force claimants to give up and leave in desperation.'⁹⁸



Figure 7



Figure 8

⁹⁸ Vision First (2013b).



Figure 9



Figure 10

(b) *Sze (Volunteer with Vision First)*

Sze also participated in the protest held by Vision First on 27 April 2013. She believes that the main reason for such a high number of rejections is that ‘there is not enough training for the assessment officers.’⁹⁹ In particular, according to Sze, for some claimants that have been in Hong Kong for years, it is possible that five to six years ago the situations changed in their home country, and the Immigration Officers might not know or are unclear of these changes. In the absence of an independent commission consisting of members from diverse backgrounds, including independents and professionals, Sze thinks ‘the current torture claims are done by the Immigration Department itself, which might lead to biases because it is not an independent assessment for torture claims.’¹⁰⁰

(c) *Donnelly from HKRAC*

Similar to what Beatson mentioned, Donnelly also suggested in her publication that references should be made to the challenges and questions raised about the adequacy of the existing government-led torture claims screening system given the low recognition rate.¹⁰¹

⁹⁹ Vision First (2013b).

¹⁰⁰ Vision First (2013a)

¹⁰¹ Donnelly (2013)

(d) *The Joint Professions*

In the Joint Submissions of Joint Professions dated 18 November 2011, the Joint Professions noted that a statutory framework for torture claims (not refugees) would be introduced, and therefore raised a number of concerns. Such statutory framework has become effective since December 2012. Some of the concerns the Joint Professions raised include the lack of a provision for temporary permission to stay, the prescribed time limits being ‘unrealistic and harsh’, and the appeal procedures.

The two concerns discussed below are of significant relevance to our research study.

(vi). *The Present Medical Procedures*

Currently, the Director of Immigration handles requests from torture claimants for medical examinations, but not the claimants’ lawyers. It is the case officer (an Immigration Officer) who makes the final decision on whether a medical examination should take place. As it is a condition precedent to the medical examination taking place that the physical or mental condition ‘is in dispute’, it is possible to that all claimed conditions ‘will be disputed or at least not accepted by the examiner.’¹⁰²

In addition, the relevant provision in the Immigration Ordinance only anticipates medial reports on a ‘clearly defined medical or psychological issue.’ In reality this may not always be the case as there might be other reasons why a medical examination is required. For instance, a medical examination is required when a claimant appears to be suffering from a Posttraumatic stress disorder.

(vii). *The Assessment of Credibility*

Clause 37ZD of the Immigration Ordinance lists out a number of situations that the decision-maker can take into account ‘as damaging the claimant’s credibility’. The Joint Professions believe that this provision, if applied by a decision-maker in a skewed manner or in the absence of balancing procedural safeguards, would result in injustice, and should therefore be removed.¹⁰³

¹⁰² The Law Society of Hong Kong and Bar Association (2011)

¹⁰³ Ibid.

C. *Issues of Having a Dual System*

(e) *The Joint Professions*

The Joint Professions believe that the current dual system results in unnecessary duplication and waste of resources and taxpayers' funds:

'CAT Panel Lawyers are aware that there have been many cases where claimants have made refugee and CAT claims, or where claimants have made a CAT claim first, and when this fails launched a refugee claim. The increase in the number of such claims and the lack of resources of the Hong Kong Sub-office of the UNHCR...increases the burden on UNHCR. It also gives such claimants "2 bites at the cherry" which is not in the best interests of Hong Kong. The failed CAT claimants cannot be removed from Hong Kong because they immediately put in an application to the UNHCR and prolong their presence in Hong Kong.'¹⁰⁴

(f) *Donnelly from HKRAC*

Donnelly also writes in her publication that, under the current dual system, in addition to applying for refugee status under the RSD system, many asylum seekers also seek relief under CAT, which HK has ratified. According to her, this dual system adds to the length of time it takes for a client to be processed. For asylum seekers, many of whom have undergone terrible trauma before they arrived in Hong Kong, which means years of living in uncertainty. For the government, it means potential for abuse by those who are not genuinely seeking asylum as they can linger in the system for a number of years.¹⁰⁵

(g) *Society for Community Organization ('SoCO')*

Similar comments are made by another SoCO, another NGO:

'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

¹⁰⁴ Ibid.

¹⁰⁵ Donnelly (2013)

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.¹⁰⁶

2.1.4.2 *Comments on Living Conditions of Claimants*

D. *Social Assistance Offered to Claimants*

After approaching UNHCR or the Government for either a RSD or a torture claim, an asylum seeker or torture claimant would be released with a recognisance paper. Upon the registration at the Social Welfare Department ('SWD'), he or she would be referred to the International Social Services ('ISS'), which provides the Assistance in kind to Asylum Seekers and Torture Claimants programme ('ASTC Programme'). In addition, the asylum seeker or torture claimant with recognisance paper can access to children's education with the permission from the Hong Kong authorities.

(a) *ASTC Programme*

The ASTC Programme aims to prevent destitution for the most vulnerable within the asylum seeking and torture claimants population.¹⁰⁷ Below is a summary of the ASTC programme.¹⁰⁸

(1) *Food*

Food is distributed to each service recipient every 10 days. Each service recipient is given a food order list to select the types and quantity of the food every month.¹⁰⁹

(2) *Accommodation*

Rented flats are provided for asylum seekers and torture claimants with a capacity of 11 roommates for one flat. An allowance (a maximum of \$1,200) is provided for each

¹⁰⁶ Society for Community Organiaation, Hong Kong Human Rights Commission, Asylum Seekers' and Refugees' Voice (2001)

¹⁰⁷ International Social Service Hong Kong Branch (2013)

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

asylum seeker or torture claimant who prefers to look for his or her own accommodation ('**HK\$1200 Housing Allowance**'). Such allowance is paid directly to the landlord.¹¹⁰

(3) *Transportation*

Allowance for the public transportation for interviews related to asylum seekers' or torture claimants' application for refugee claim or torture claim is provided upon presentation of appointment evidence. Allowance of transportation for medical appointment is also available.¹¹¹

(4) *Toiletries*

Toiletries can be provided on a monthly basis, which include one bar of soap, a bag of washing powder, one shaver, one bottle of shampoo, one tube of toothpaste, one tooth brush plus sanitary napkins for ladies.¹¹²

(5) *Clothing*

Clothing, which is available if clothes are donated to the ASTC programme, is given to asylum seekers or torture claimants upon their request.¹¹³

(6) *Medical Waiver*

The medical waiver entitles asylum seekers or torture claimants to free medical care, but it is the their responsibility to request the waiver from the SWD instead of ISS.¹¹⁴

(b) *Placement of education*

Access to children's education can only be done with the permission from the Hong Kong authorities. Very recently, the Education Bureau's decision to bar a three-year-old asylum seeker from attending a public kindergarten is being challenged by his family. The boy's 34-year-old father, who comes from Sri Lanka, says he is a torture victim and that the boy and his Indonesian mother are in the process of seeking refugee status. The family has been refused legal aid for a judicial review as the Legal Aid Department views the Education Bureau's ban as reasonable.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

E. *Difficulties Claimants Experienced in Daily Lives*

Despite the social assistance mentioned above, it has been suggested that the Claimants suffer needlessly in Hong Kong.¹¹⁵ For instance, regarding the HK\$1,200 Housing Allowance, the HKRAC has stated on its website that the amount is ‘evidently low given that Hong Kong has one of the most expensive property markets in the world, which means refugees have to live in substandard housing that is overcrowded, unsanitary, unsafe, and located in areas far from services.’¹¹⁶ In addition, ‘the level of assistance is not adjusted to reflect changes in the cost of living, meaning that the assistance loses real value over time.’¹¹⁷

The website of HKRAC provides a summary of the difficulties the Claimants face their daily lives in Hong Kong:

‘Due to UNHCR’s capacity constraints asylum seekers in Hong Kong frequently have to wait up to five years for their RSD interviews, during which they have to survive on minimal social service provision from local NGOs, have no right to employment, and have extremely limited rights to education and healthcare. Refugees and asylum-seekers also suffer from prejudice and negative misconceptions due to damaging media coverage portraying the terms “refugees”, “illegal immigrants” and “economic migrants” to be inter-changeable and the same. In addition, most refugees in Hong Kong are also torture victims, and their Post-Traumatic Stress is exacerbated by isolation from their communities and support networks, and by feelings of loss of agency and the ability to influence their own lives.’¹¹⁸

(a) *Perception from the public*

As pointed out above, it is of the HKRAC’s view that the Claimants suffer from prejudice and negative misconceptions due to damaging media coverage. HKRAC points out on its website that these misperceptions create confusion about who the Claimants are, why

¹¹⁵ South China Morning Post (2012)

¹¹⁶ Hong Kong Refugee Advice Centre (2013)

¹¹⁷ Ibid.

¹¹⁸ Ibid.

they come to Hong Kong and what life is like for them while they are here.¹¹⁹ Below explains some misperception the Hong Kong public has towards the Claimants.

(1) *Claimants Come to Hong Kong to Improve Their Economic Situation*

All categories of the Claimants and economic migrants are often being treated as the same. In other words, a Claimant is often being considered as a person who ‘chooses to come to Hong Kong voluntarily in order to better their prospects.’¹²⁰ Beatson and Vecchio also believe in the same. They have put in a publication that ‘a recent article on refugees’ appalling living conditions in Ping Che was railed at by readers who overlooked such dreadful, government-sanctioned slums, because they label refugees as economic migrants.’¹²¹

Daly also mentioned about this problem of misperception when being interviewed by a newspaper reporter. When being asking if an integrated system where the Government processes both asylum and torture claims would better serve the government’s interest, Daly responded by indicating that ‘[t]here is a lack of political will to push the [G]overnment to make this happen. The public tends to have a negative view of refugees. They may not know what a refugee is, or be affected by the [G]overnment propaganda that tells people that refugees are illegal migrants who come to Hong Kong to work illegally.’¹²²

A claimant also shared his view on a website where the Claimants can share their experiences in Hong Kong:

‘...no matter what our stories are, whatever our individualities and dreams are, we are all illegal immigrants. They [the Government authorities] want us to be

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ South China Morning Post (2013)

¹²² Ibid.

economic migrants. They make us live like this, but I'm not what they want us to be."¹²³

(2) *Refugees are 'Criminals' and 'Trouble-makers'*

On the one hand, it is of the view of people like Beatson and Vecchio that sometimes the Claimants are forced to break the law to work in order to sustain their daily life:

‘Claimants are forced to work illegally, fostering the perception they are criminals rather than victims, untrustworthy rather than credible.’¹²⁴

On the other hand, occasionally there are reports from newspapers which mention crimes that the Claimants committed which are not solely about ‘working’. Please see Appendix 3 for the News Reports related to Claimants that we have read. For instance, 5 torture claimants were arrested in June 2013 for raiding Kung Yan-sum’s son.¹²⁵ In another piece of news, a Mainland tourist was reported to be raped in Chung King Mansion by an asylum seeker from India in June 2013.¹²⁶ In February 2013, it was reported that a torture claimant was caught stealing two bottles of Chanel perfume.¹²⁷

While some of these types of news were reported in a neutral, descriptive, non-bias tone, some were not. For instance, in a piece of news titled ‘Crimes derived from Political Refugees,’¹²⁸ it is stated that ‘there are more and more crimes committed by political refugees, including stealing, fighting, or becoming triad members. Some female refugees even become prostitutes. They threaten the security and safety of Hong Kong.’ Being portrayed in such a biased way would fuel negative stereotyping of the claimants.¹²⁹

¹²³ Vision First (2013a)

¹²⁴ South China Morning Post (2013)

¹²⁵ Sing Tao Daily (2013)

¹²⁶ Ibid.

¹²⁷ Sina Hong Kong News (2013)

¹²⁸ Sing Tao Daily (2013)

¹²⁹ Hong Kong Legal Advice Centre (2013)

(b) *Real Life Stories*

To truly understand the difficulties that the Claimants face in their daily life in Hong Kong, it is necessary to read some real life stories and see how they describe their experiences in Hong Kong.

(1) *A Compound Housing 12 Claimants (\$1200/m per person)*

There are about 150 Bangladeshi Claimants who are living in the rural area around Ping Che (Fanling). The pictures below show a compound in the Ping Che rural area that houses 12 Claimants (including a mother with a baby).

The landlord of this compound collects \$1200 per month for rent for each of the 12 refugee. The compound is infested by cats, insects, rodents and snakes.



Figure 11



Figure 12

The dark corridors lead to squatting quarters, kitchen and toilet. There is no light because the residents (the 12 Claimants) cannot afford to pay for electricity.

The toilet shack has no plumbing or sewerage, and is flushed with a bucket.

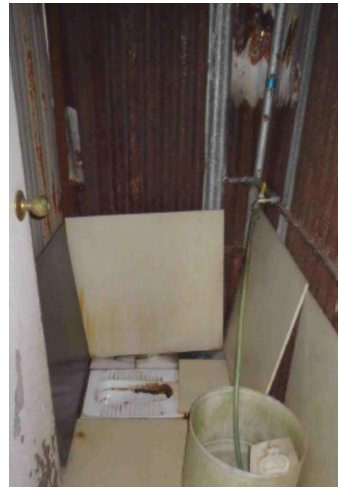


Figure 13



Figure 14

Gas cylinders are exposed to the weather: heat, downpours and flooding.

(2) *Dadu's Story*

Dadu is one of the Claimants living in the Ping Che rural area who made a refugee Claim in 2007. As Dadu did not have the right to work, he was arrested one day in May 2013 when working in a nearby warehouse.

While one may argue that there is never a justification for breaking the law, NGOs like Vision First believes that Dadu was forced to work by the financial pressure imposed on him.

Dadu was being charged \$1,400 per month as rent (for a place that was similar to the compound mentioned above), but ISS only paid \$1,000 to \$1,200. In addition, the landlord charged Dadu another \$800 per month for utilities, for which ISS paid nothing. Furthermore, in order to collect food in Yuen Long (part of the ASTC programme), Dadu spent \$28 for transportation, but ISS only refunded \$10 expecting him to walk through fields for thirty minutes to catch a cheaper bus in another village. To cook his food Dadu needed a gas cylinder ever two months, but ISS only allowed the purchase every four months.

Due to such financial circumstances, it is of the view of Vision First that Dadu was forced to raise the money needed to survive by working. As stated on the website of Vision First, Dadu took the risk of 15 months imprisonment (22 months for pleading non-guilty and 15 for guilty) for working in an attempt to pay his bills because ‘he simply had no alternative.’

(3) *Abalo's story*

About 3 years ago, Abalo fled to Hong Kong. When he arrived he applied immediately for refugee status from the UNHCR, but his application was rejected. Abalo then filed a torture claim to the Government, and has not yet had any results. Abalo felt ashamed and helpless at his situation now. Below is what Abalo told a newspaper reporter.

‘Life now is very difficult. You cannot work, and living in Hong Kong is very expensive. How do you live in a big city without work? In my first year in Hong Kong, I begged around for money and food. In your second year, you can no longer do this, because people will be tired and disgusted at you. I feel ashamed, because I am a human and I cannot beg around forever. Sometimes in the street, I ask people for 1-2 dollars for my bus ride, and I feel embarrassed. I would rather work than to beg for money. I am a man, I can work. They (the Government) do not open their doors for you, to give you opportunities to learn and to train your skill set.’

‘I feel desperate. We cannot work, and we do not have a chance to learn any skills. We can contribute to society, we are human and we deserve a better life. If the Non-Governmental Organizations did not help us, we would not survive.’

(4) *Voices from Claimants*

The Claimants in Hong Kong often share their living experiences online, with newspapers reporters or NGOs. Below are some quotations from these Claimants we read that would give a better understanding of the difficulties they face in Hong Kong:

‘I am an asylum seeker and I have been in Hong Kong since July 2005. I don’t have a right to work and can’t go to the hospital without getting trouble with the police and getting arrested. I am now sleeping outside on the streets. Even a dog has a house and a place to stay and to live. I want to ask you if the right to live, to be alive is only for a few people or for all people in the world...we are not really living here, we are just surviving’ – an asylum seeker on his living condition in Hong Kong.¹³⁰

‘We received little assistance. We were forced to undergo interviews at recognisance office. This was difficult because we were given no travel allowance. Sometimes asylum seekers had to travel from as far as Yuen long to attend an interview in [C]entral...because of the problem of transportation costs some of us would have to walk from Mei Fu to Star Ferry, and then to take the ferry to the interview centre...during these times I, along with many others, had to sleep under the Cultural Centre near Star Ferry. All because of economic reasons. I slept near Star Ferry for many, many months. About eight months in total. Sometimes whilst I was sleeping under the Cultural Central there would be a heavy pour of rain. Then the sadness would come. Because I could not sleep. Rather I coiled myself like a snake to keep warm....there were many of us sleeping in these areas. Imagine going through this situation for almost 3 years. How can such a person have a clear mind under these circumstances? How could these things happen? Why did they happen? Who is responsible for my questions?’

¹³⁰ RTHK 2011

Who is going to answer them?’ – an asylum seeker on her living condition in Hong Kong.¹³¹

‘I don’t imagine that I will get refugee status, because of the problems with the UNHCR. I have a lot of dreams as I have a lot of skills. I feel that Hong Kong kills the dreams of asylum seekers and refugees. Whatever profession you once had doesn’t matter here. You can’t take recognised education programs. You can’t work. You become aimless and hopeless here...we are not here to see Hong Kong’s light shows or its big buildings. We are here dreaming to become somebody, like law makers, engineers, doctors, things which we were in our home countries’ – an asylum seeker on his lack of rights and hope for future in Hong Kong.¹³²

‘I scavenged for food on the streets, and I ate with stray cats when people fed them. [Passers-by] pretended not to see me” – a Claimant on his living conditions in Hong Kong.¹³³

‘We are not asking for pity...we want to be able to work to make money and support ourselves. We want to be able to control our own lives’ – a refugee on the need of the right to work in Hong Kong.¹³⁴

‘...the food that the ISS gives its clients, asylum seekers...is not up to the standards that I expect...they give us a small bag of groceries which they say costs 330 dollars, but I know I could buy more food for that amount of money...I believe that it would be better for the ISS to provide us with food coupons which we could use at any supermarkets’ – an asylum seeker on the issue of food services provided by the ISS.¹³⁵

‘...how we are meant to get the money to put credit on our phones? No allowance is given for the phones, yet [case officers] expect that any time they

¹³¹ Seeking Refuge (2013)

¹³² Ibid.

¹³³ South China Morning Post (2013)

¹³⁴ Ibid.

¹³⁵ Seeking Refuge (2013)

call we should be able to pick up” – a claimant on the issue of not having enough money to put credit on his phone.¹³⁶

2.2 Finding from Survey

The survey enabled us to gain some insight into the public’s view on our research questions. As explained in Section 2, our survey is divided into three parts:

- (1) the demographic details of the respondent;
- (2) the public awareness and perception towards refugee and asylum seekers; and
- (3) the last part consists of questions which are based on a hypothetical scenario.

We intend to present the statistics obtained from each question in a description form. At the end of this section, an analysis of the key statistics is conducted in order to highlight key correlations between the independent variables and the dependent variables.

2.2.1 Findings from Individual Survey Questions

Part I – Demographic Details

The first part of our questionnaire contains three questions. The results show that every respondent answered all questions in this part.

¹³⁶ Seeking Refuge (2013)

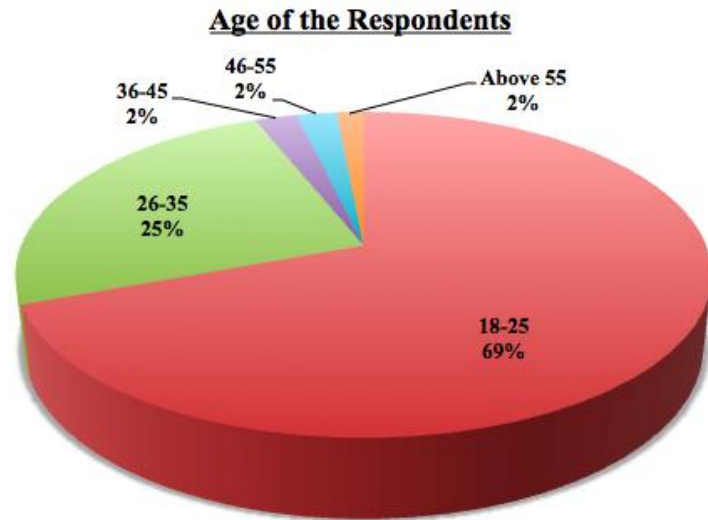


Figure 15: Survey Question 1

The first question is about the age distribution of the respondents. Most of our respondents are between the age of 18 and 25, but none of the respondents is under the age of 18.

Highest Education Level Completed by Respondents

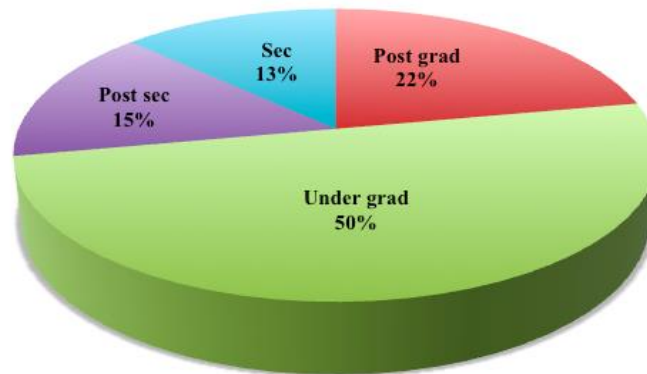


Figure 16: Survey Question 2

The second question is about the highest education level completed by the respondents. The majority of the respondents obtained undergraduate degree, followed by 22% of them received postgraduate degree. None of the respondents obtained doctorate or primary six or below.



Figure 17: Survey Question 3

For the last question in this part, we divided the respondents into two groups: people who enjoy the right of abode in Hong Kong and otherwise. Almost all of the respondents enjoy the right of abode in Hong Kong.

Part II – Public Awareness / Perception of Refugees and Asylum Seekers

For the second part of our questionnaire, all of the sampling population provided answers to all multiple-choice questions, and 64% of the respondents provided answers to the open-ended question.

In the following part, we will present our outcomes and the cross tabulations with the three independent variables asked in Part I, namely, age, education level and the right of abode in Hong Kong.

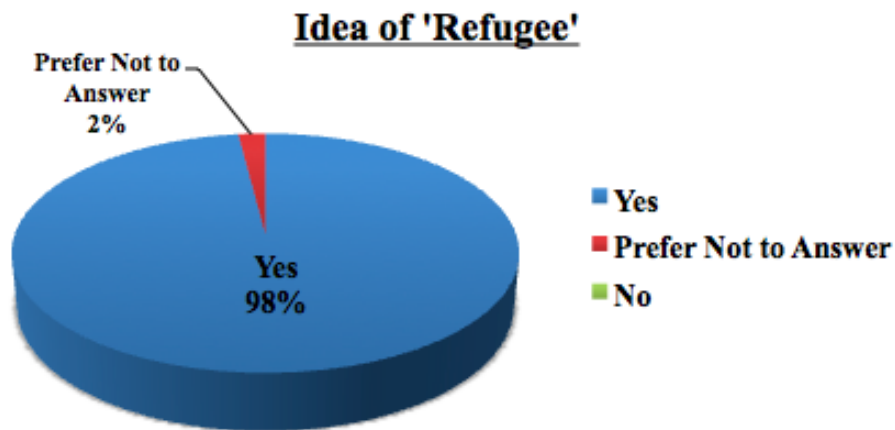


Figure 18: Survey Question 4

In question 4, while 98% of the respondents claimed that they do have a basic idea of what 'refugee' is, the remaining 2% preferred not to answer this question instead of choosing 'no idea'.

Idea of Refugee and the Three Independent Variables Cross Tabulation

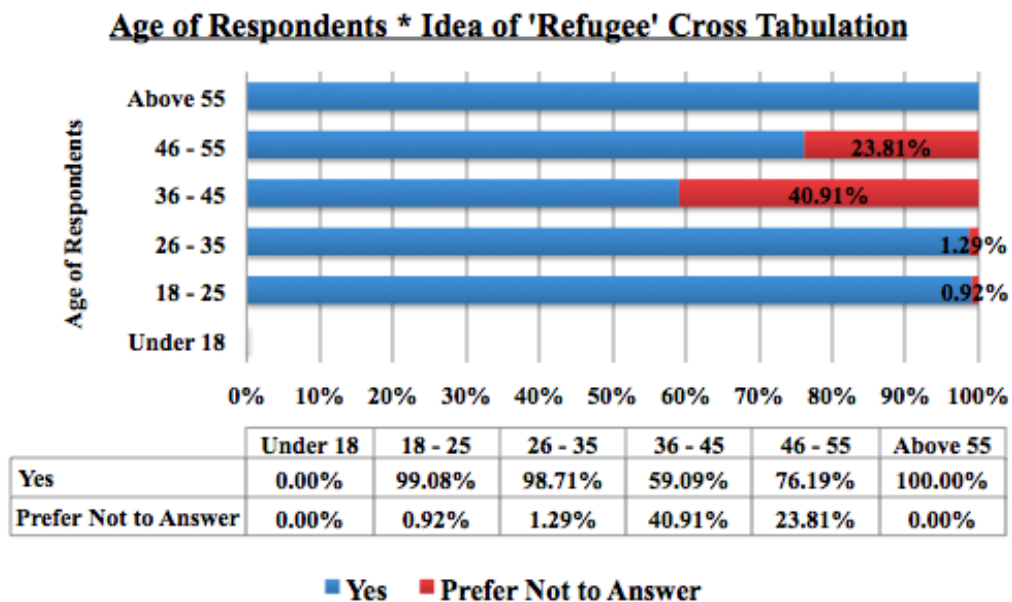


Figure 19: Age of Respondents *Idea of 'Refugee' Cross Tabulation

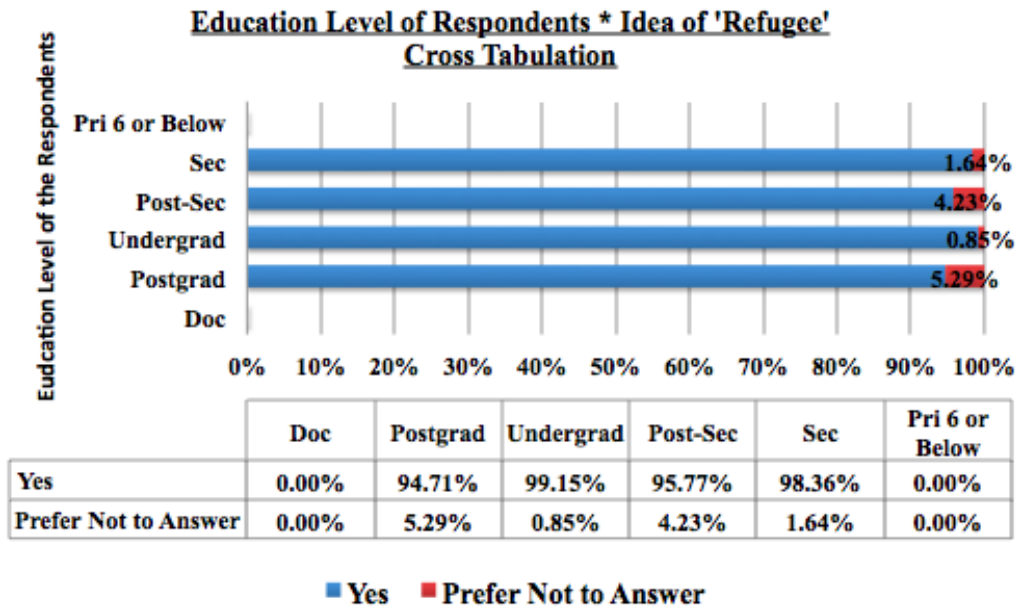


Figure 20: Education Level of Respondents *Idea of 'Refugee' Cross Tabulation

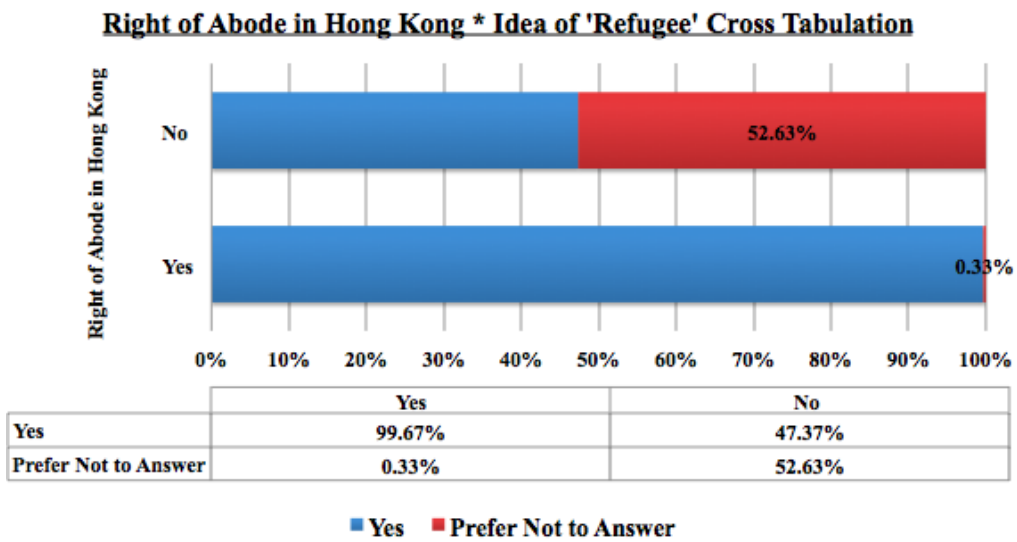


Figure 21: Right of Abode of Respondents *Idea of 'Refugee' Cross Tabulation

Are You Able to Distinguish Between 'Refugee' and 'Asylum Seeker'?

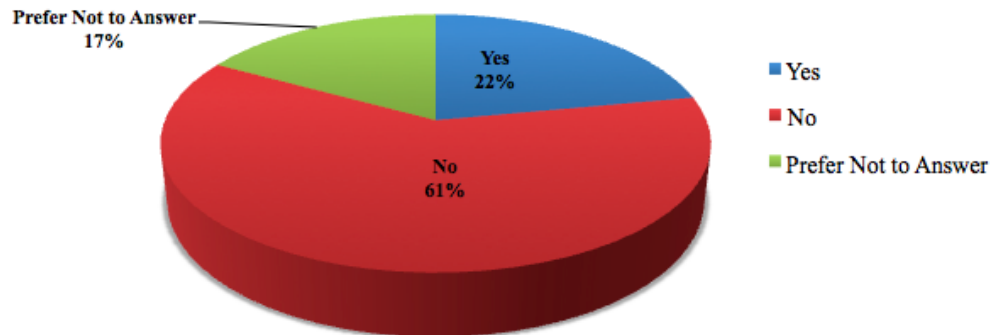


Figure 22: Survey Question 5

In order to ensure our respondents understand the correct idea of 'refugee', and to test their understanding of 'asylum seeker', we set up the next question to see if the respondents are able to distinguish between 'refugee' and 'asylum seeker'. About 60% of the respondents failed to distinguish between 'refugee' and 'asylum seeker', and 22% of the respondents preferred not to answer.

Able to Distinguish between ‘Refugees’ and ‘Asylum Seeker’ and the Three Independent Variables Cross Tabulation

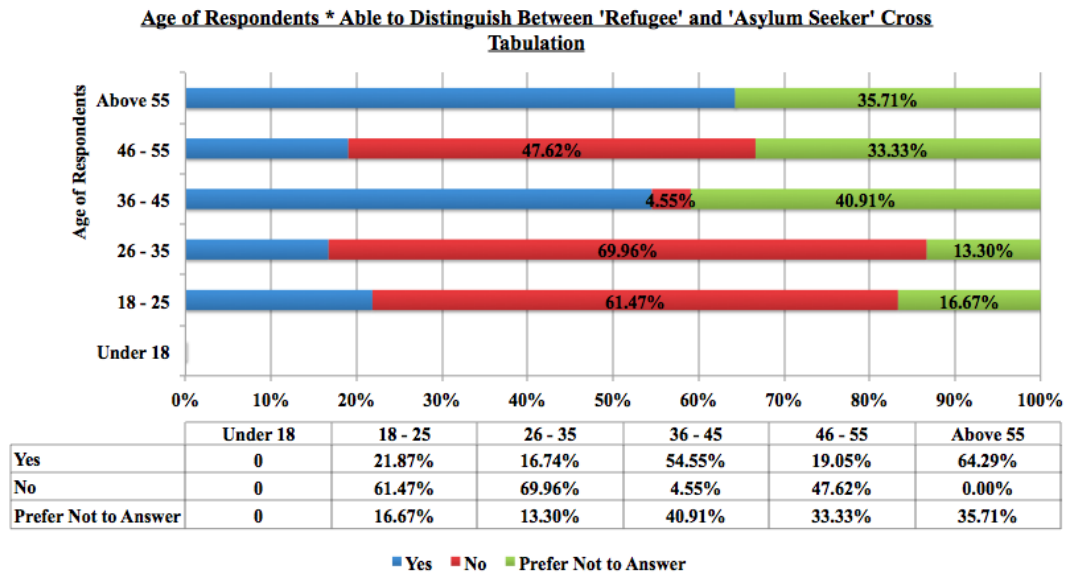


Figure 23: Age of Respondents * Able to Distinguish between ‘Refugees’ and ‘Asylum Seeker’ Cross Tabulation

Education Level of the Respondents * Able to Distinguish Between 'Refugee' and 'Asylum Seeker' Cross Tabulation

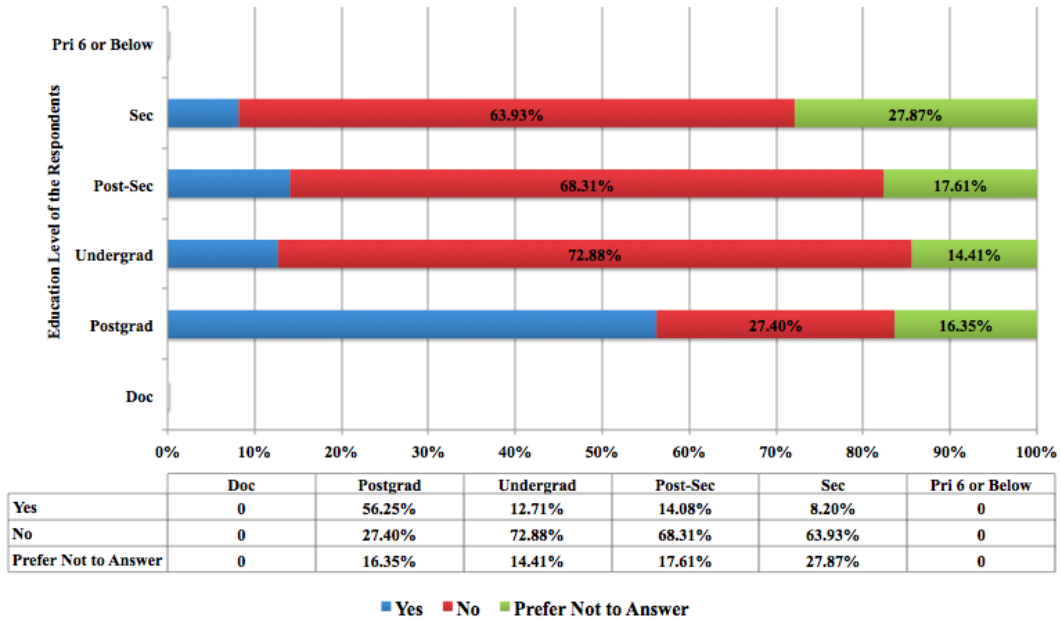


Figure 24: Education Level of Respondents *Able to Distinguish between ‘Refugees’ and ‘Asylum Seeker’ Cross Tabulation

Right to Abode in Hong Kong * Able to Distinguish Between 'Refugee' and 'Asylum Seeker' Cross Tabulation

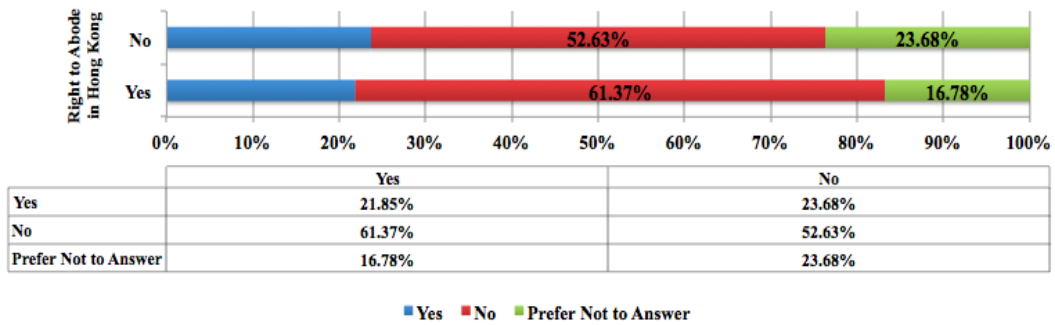


Figure 25: Right of Abode of Respondents *Able to Distinguish between ‘Refugees’ and ‘Asylum Seeker’ Cross Tabulation

Can the Refugee or Asylum Seeker Legally Work in Hong Kong?

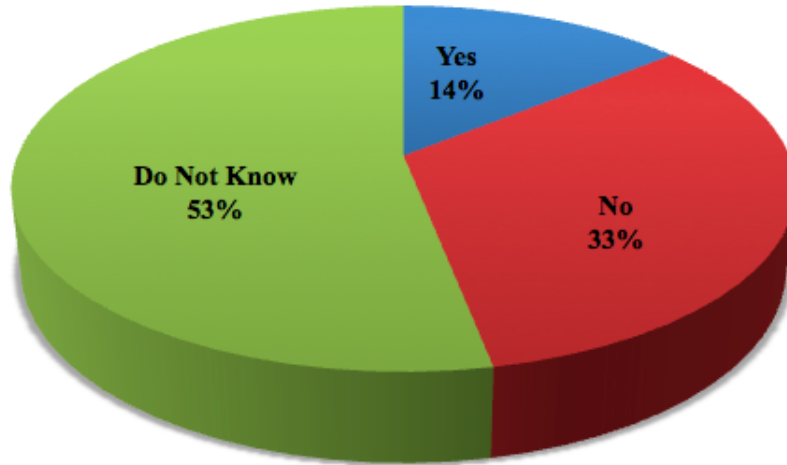


Figure 26: Survey Question 6

In the question above in Figure 26, the correct answer is that neither refugee nor asylum seeker can legally work in Hong Kong. While about 53% of the respondents do not know the answer, 33% of the respondents provided the accurate answer. The remaining respondents think that refugee or asylum seeker can legally work in Hong Kong.

Knowledge on Whether Refugee or Asylum Seeker can Legally Work in Hong Kong and the Three Independent Variables Cross Tabulation

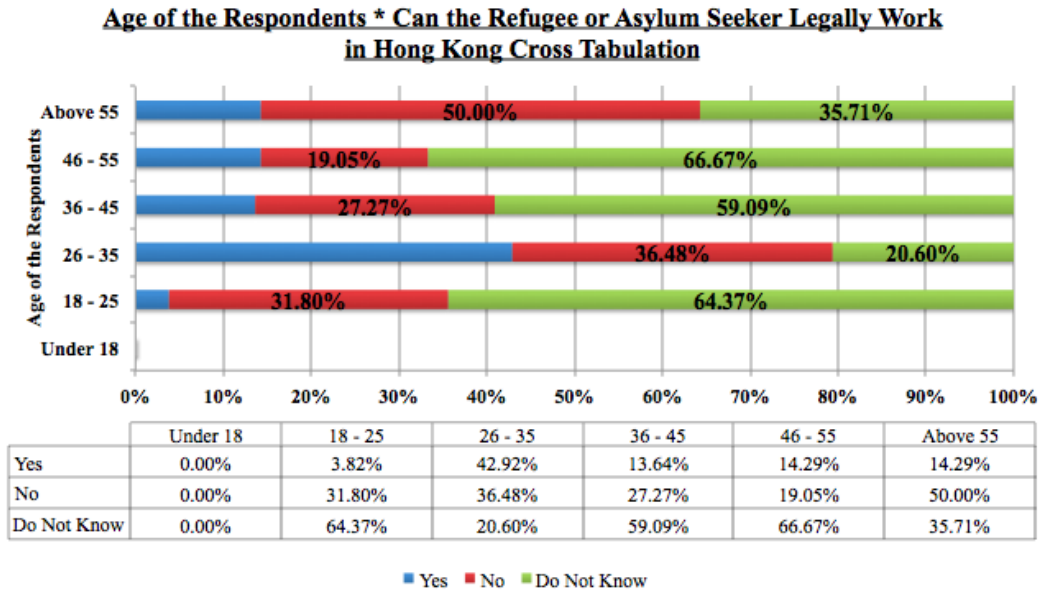


Figure 27: Age of Respondents * Knowledge on Whether Refugee or Asylum Seeker can Legally Work in Hong Kong Cross Tabulation

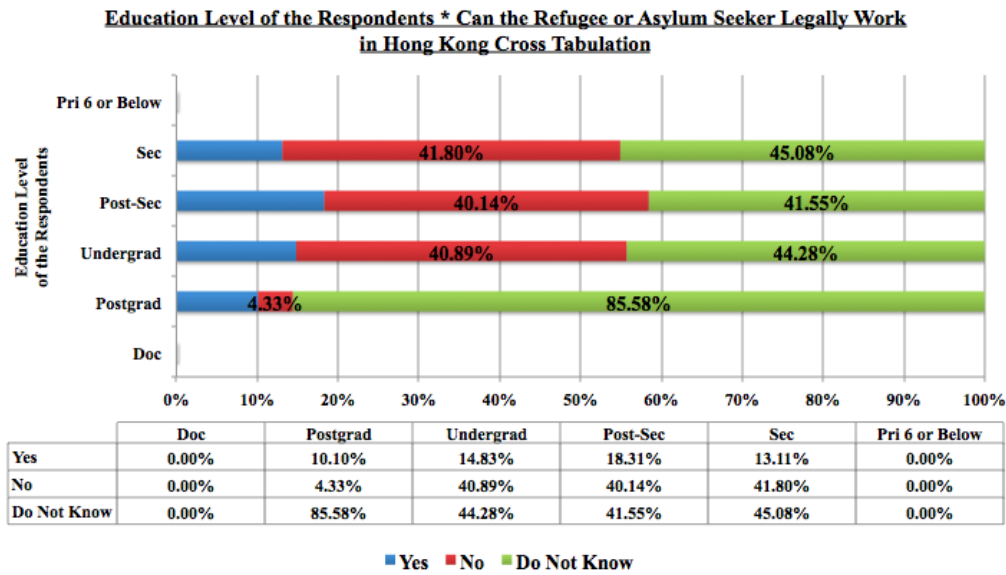


Figure 28: Education Level of Respondents *Knowledge on Whether Refugee or Asylum Seeker can Legally Work in Hong Kong Cross Tabulation

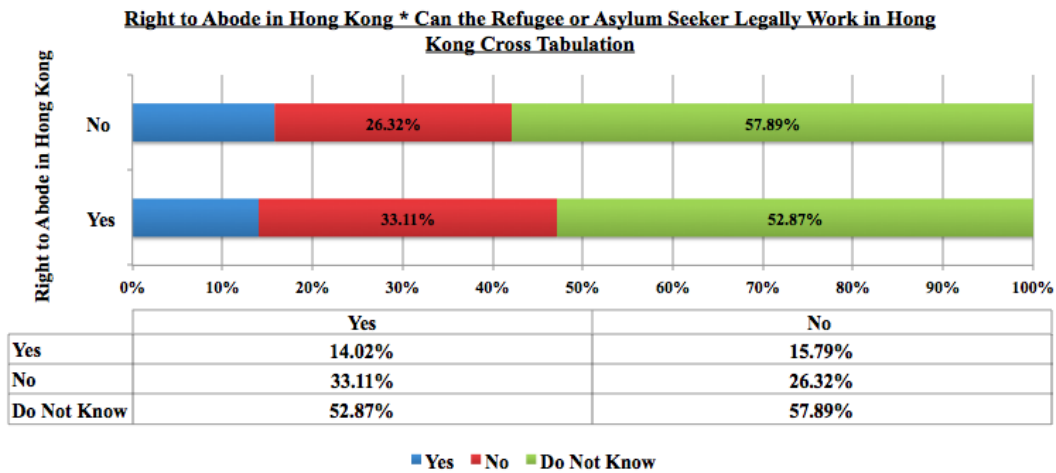


Figure 29: Right of Abode of Respondents *Knowledge on Whether Refugee or Asylum Seeker can Legally Work in Hong Kong Cross Tabulation

The seventh question in our questionnaire is an optional open-ended question. About 64% of the respondents provided an answer. In this question, respondents were asked to lodge written comments on the reasons why asylum seekers come to Hong Kong. The answers can be summarized into two main categories. Firstly, it has been suggested that Hong Kong is a safe place, which enjoys freedom of speech, values human rights, and has a good legal system. Accordingly, asylum seekers may choose Hong Kong as a shelter to avoid prosecution from their home countries. Secondly, Hong Kong is being identified as a rich country. Thus, asylum seekers come to make money with a hope for a better living environment and a prosperous future.

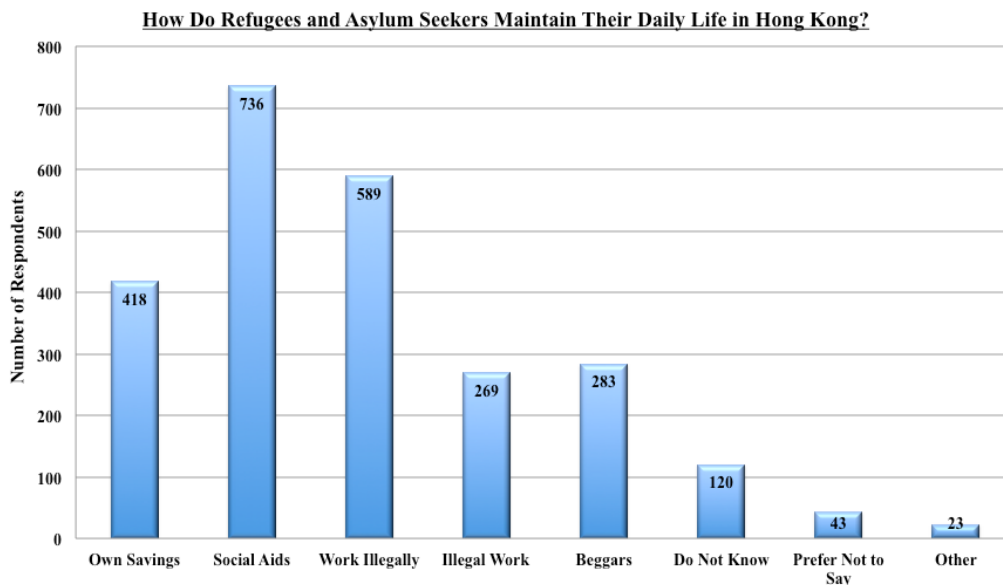


Figure 30: Survey Question 8

In the eighth question, as illustrated above in Figure 30, respondents were allowed to choose more than one option regarding how refugees and asylum seekers maintain their daily life in Hong Kong. Most of the respondents picked social aids, which takes up 736 respondents. 589 respondents think refugees and asylum seekers work illegally in order to maintain their daily life in Hong Kong. The third most common choice is ‘own savings’, which was selected by 418 respondents. Most of the respondents who chose

'other' think the refugees and asylum seekers would borrow money from either financial institutions or others to maintain their daily life in Hong Kong.

Do You Support the Hong Kong Government to Grant Working Permits to Refugees and Asylum Seekers in Hong Kong?

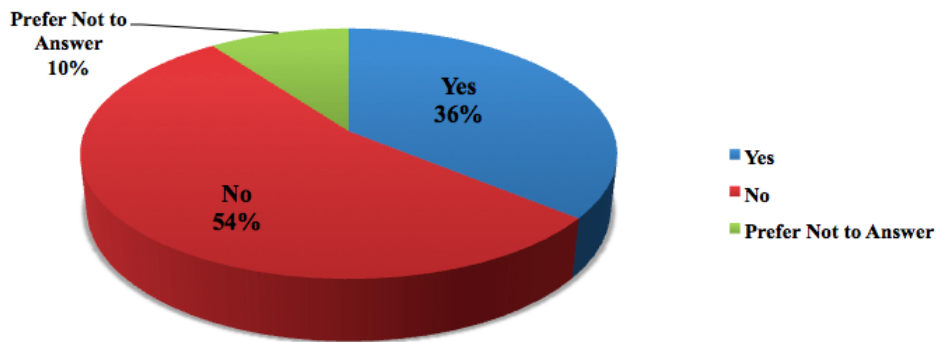


Figure 31: Survey Question 9

As illustrated above in Figure 31, over half of the respondents refuse to grant working permits to refugees and asylum seekers. Only 36% of the respondents are willing to support the Government to grant working permits, while the remaining 10% of the respondents preferred not to answer this question.

Whether Supporting the Government to Grant Working Permits to Refugees and Asylum Seekers in Hong Kong and the Three Independent Variables Cross Tabulation

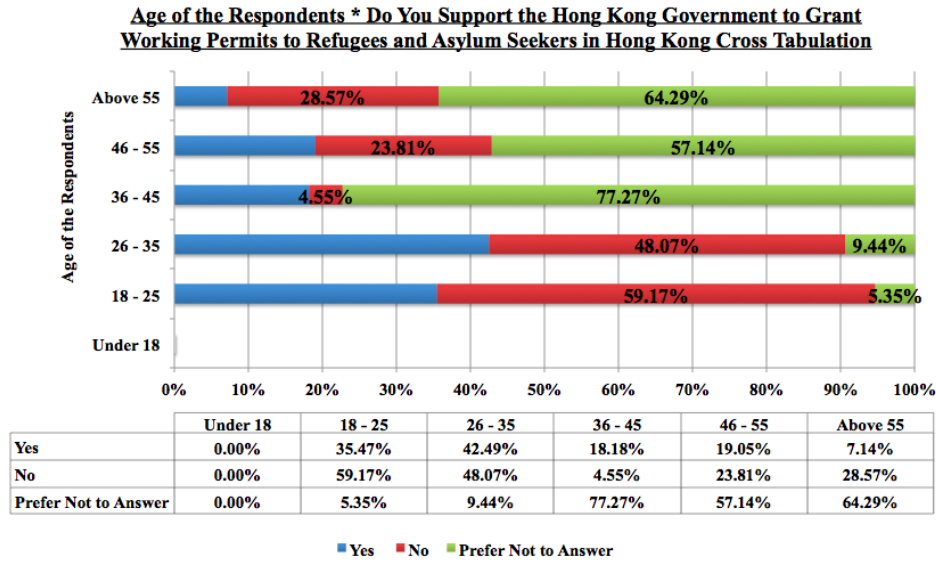


Figure 32: Age of Respondents *Whether Supporting the Government to Grant Working Permits to Refugees and Asylum Seekers Cross Tabulation

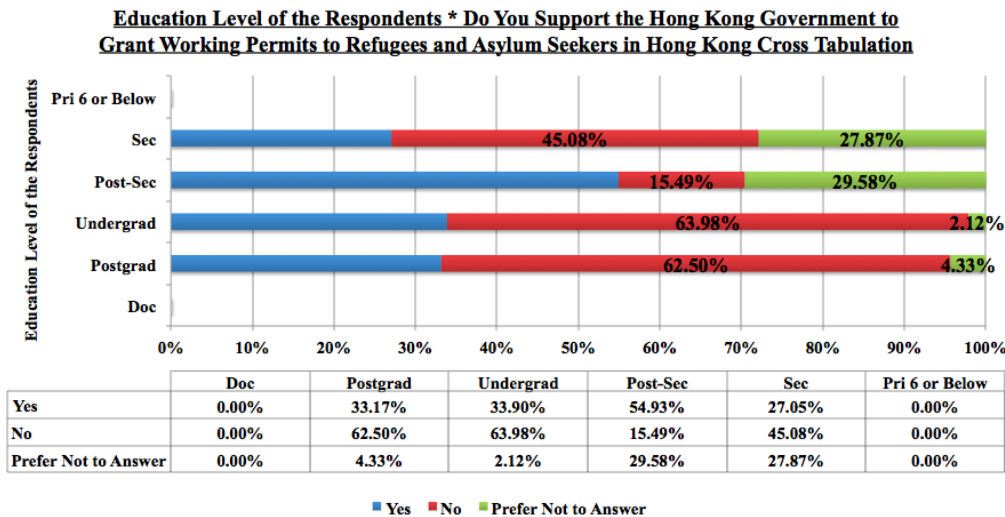


Figure 33: Education Level of Respondents *Whether Supporting the Government to Grant Working Permits to Refugees and Asylum Seekers Cross Tabulation

Right of Abode in Hong Kong * Do You Support the Hong Kong Government to Grant Working Permits to Refugees and Asylum Seekers in Hong Kong Cross Tabulation

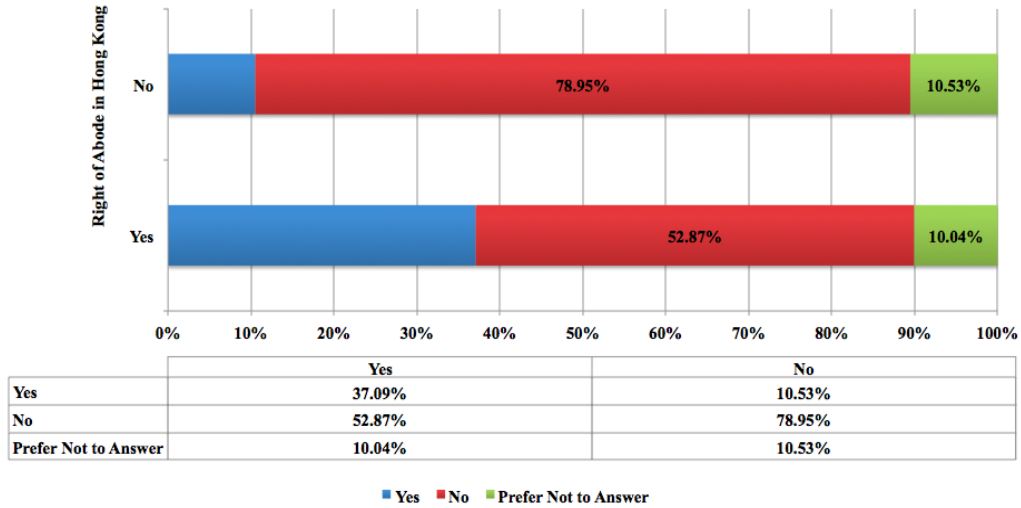


Figure 34: Right of Abode of Respondents *Whether Supporting the Government to Grant Working Permits to Refugees and Asylum Seekers Cross Tabulation

Do You Support the Hong Kong Government Offer Free Education to Refugees and Asylum Seekers in Hong Kong?



Figure 35: Survey Question 10

For Question 10, the respondents provided a similar answering pattern as that of Question 9. About 68% of the respondents do not support the Government to provide free education to refugees and asylum seekers. Only small portions of the respondents, around 14%, support such policy. The residual 18% preferred not to answer.

Whether Supporting the Government to Offer Free Education to Refugees and Asylum Seekers in Hong Kong and the Three Independent Variables Cross Tabulation

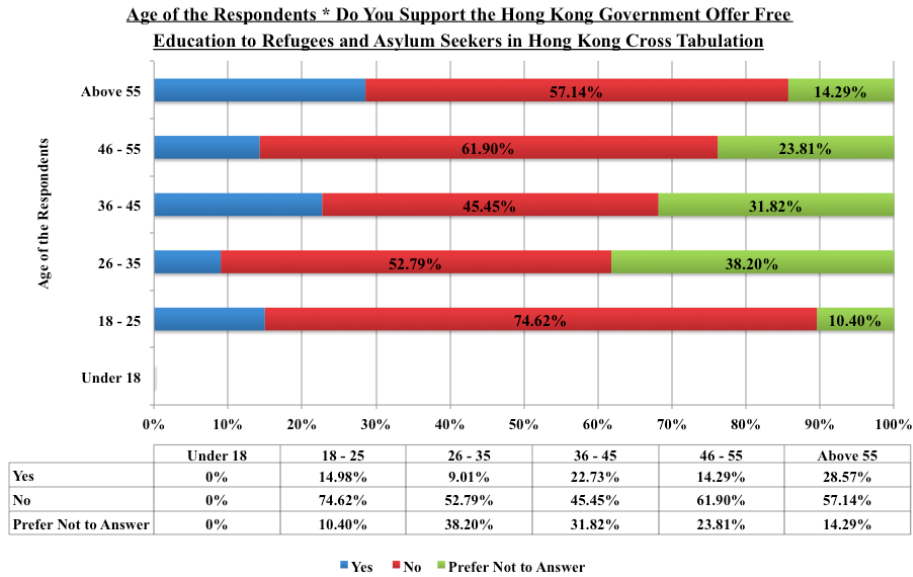


Figure 36: Age of Respondents *Whether Supporting the Government to Offer Free Education to Refugees and Asylum Seekers Cross Tabulation

Education Level of the Respondents * Do You Support the Hong Kong Government Offer Free Education to Refugees and Asylum Seekers in Hong Kong Cross Tabulation

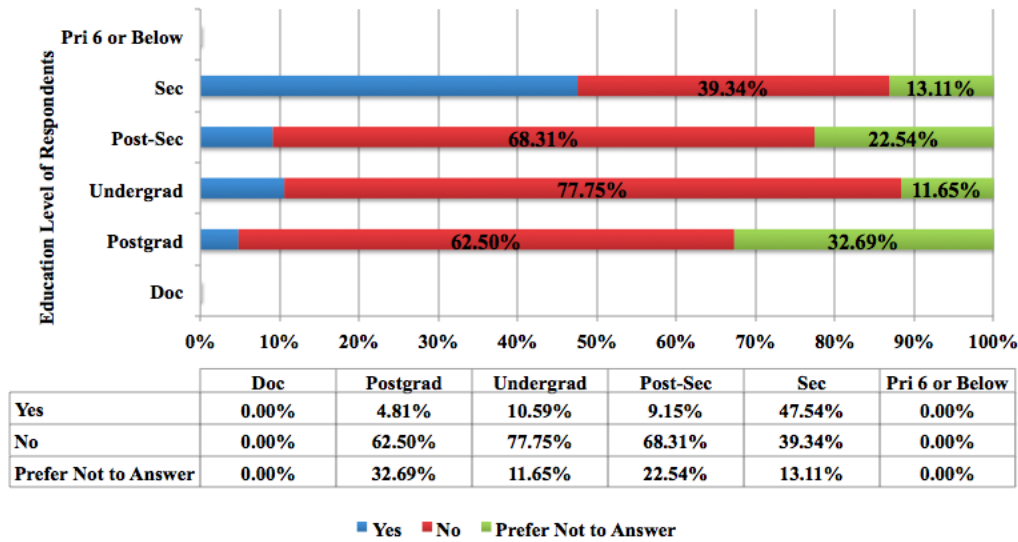


Figure 37: Education Level of Respondents *Whether Supporting the Government to Offer Free Education to Refugees and Asylum Seekers Cross Tabulation

Right of Abode of the Respondents * Do You Support the Hong Kong Government Offer Free Education to Refugees and Asylum Seekers in Hong Kong Cross Tabulation

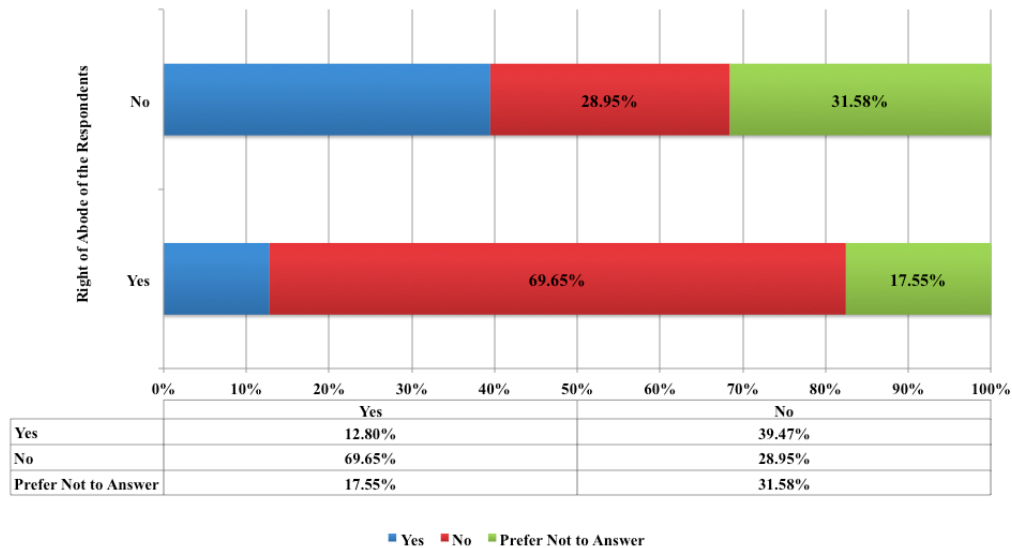


Figure 38: Right of Abode of Respondents *Whether Supporting the Government to Offer Free Education to Refugees and Asylum Seekers Cross Tabulation

Do You Think More Asylum Seekers and Refugees Will Be Attracted to Come to Hong Kong If the Policies in Q.9 and Q.10 Above were Adopted?



Figure 39: Survey Question 11

Although, as illustrated in Q.9 and Q.10, a large percentage of the respondents do not support the Government to provide and offer working permits and free education to the refugees and asylum seekers in Hong Kong, about 68% of the respondents do not think more asylum seekers and refugees will be attracted to come to Hong Kong if these two policies were adopted. Only 14% of the respondents think otherwise.

Whether More Asylum Seekers And Refugees will be Attracted to Come to Hong Kong if the Policies in Q.9 and Q.10 above were Adopted and the Three Independent Variables Cross Tabulation

Age of The Respondents * Do You Think More Asylum Seekers and Refugees Will Be Attracted to Come to Hong Kong If the Policies in Q.9 and Q.10 Above Were Adopted Cross Tabulation

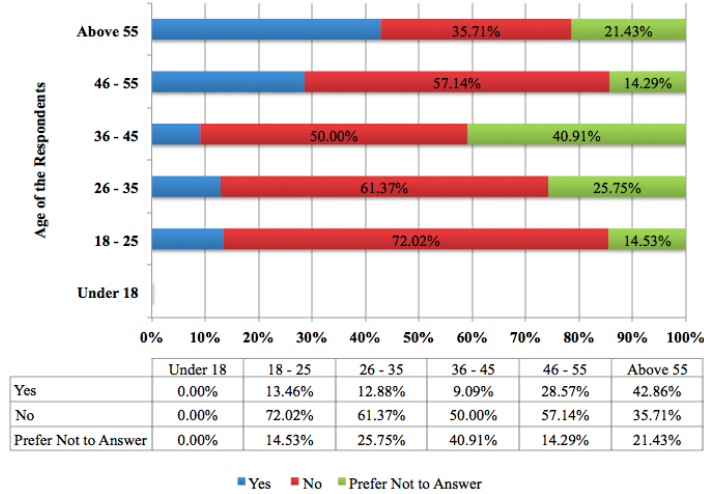


Figure 40: Age of Respondents *Whether More Asylum Seekers and Refugees will be Attracted to Come to Hong Kong Cross Tabulation

Education Level of the Respondents * Do You Think More Asylum Seekers and Refugees Will Be Attracted to Come to Hong Kong If the Policies in Q.9 and Q.10 Above Were Adopted Cross Tabulation

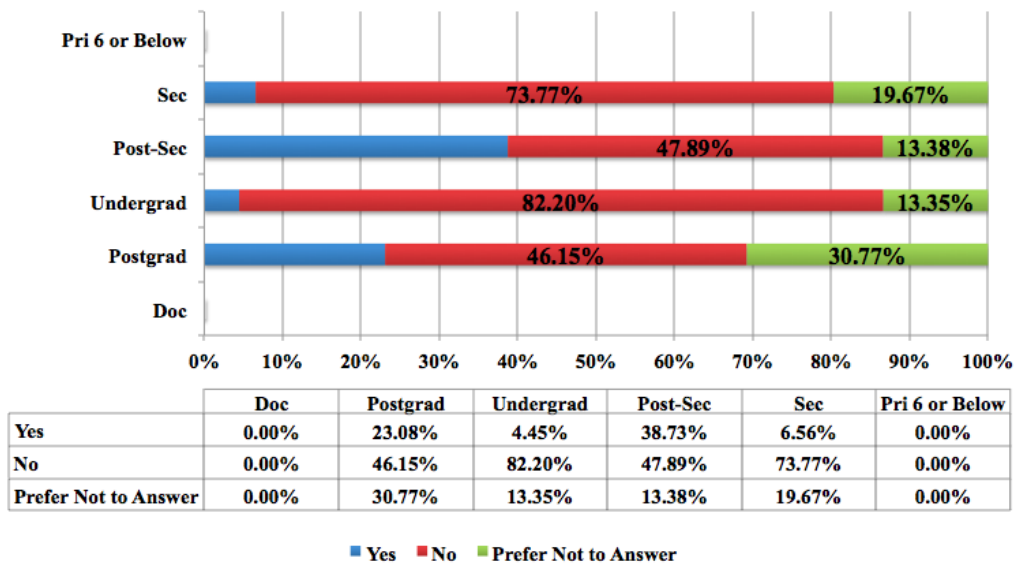


Figure 41: Education Level of Respondents *Whether More Asylum Seekers and Refugees will be Attracted to Come to Hong Kong Cross Tabulation

Right of Abode in Hong Kong * Do You Think More Asylum Seekers and Refugees Will Be Attracted to Come to Hong Kong If the Policies in Q.9 and Q.10 Above Were Adopted Cross Tabulation

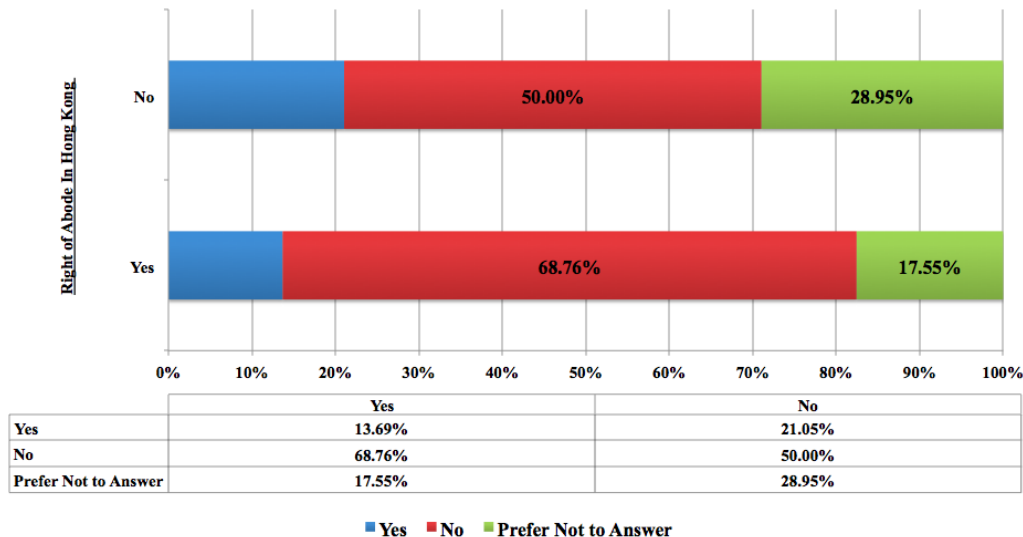


Figure 42: Right of Abode of Respondents *Whether More Asylum Seekers and Refugees will be Attracted to Come to Hong Kong Cross Tabulation

Part III – Scenario Questions

In this part, we intended to understand the respondents’ expectation on a new screening mechanism, as well as providing some educations to the respondents through a short scenario. Respondents were asked to visualise himself or herself as a person who escaped from his or her home country and fled to Hong Kong to make torture claims and refugee claims. Four questions that are based on this scenario were then asked. The scenario is quoted below.

The Scenario

Imagine that you had been tortured by the government of your home country, Togo. You just fled to Hong Kong since you believed it was a safe place to stay. However, you subsequently learnt that, you might be deported to Togo from Hong Kong unless:

- ❖ you apply for refugee status or make a torture claim to the respective departments in Hong Kong; and

- ❖ you are granted the refugee status or become a recognized torture claimant in Hong Kong.

As a result, you want to apply for refugee status and / or make a torture claim in Hong Kong.

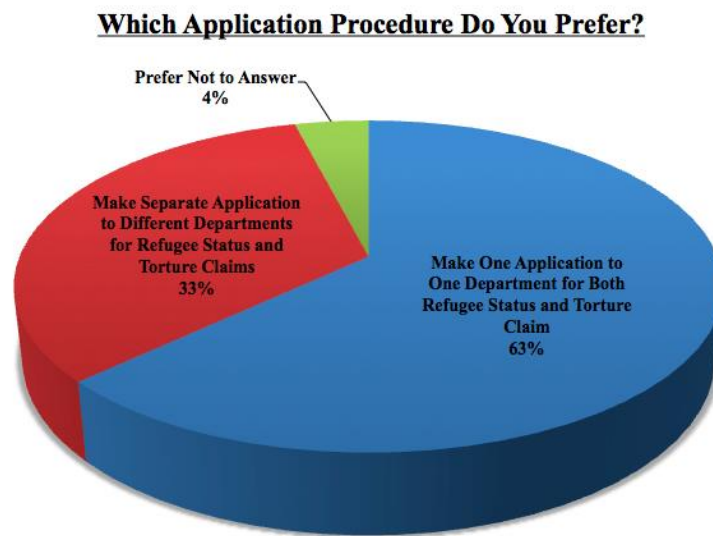


Figure 43: Survey Question 12

63% of the respondents prefer to make one application to one department for both refugee status and torture claim. Only 33% of the respondents prefer to make separate application to different departments for refugee status and torture claims. Apart from the above, the rest of the respondents prefer not to provide an answer.

Do You Need Legal Advices and Services?

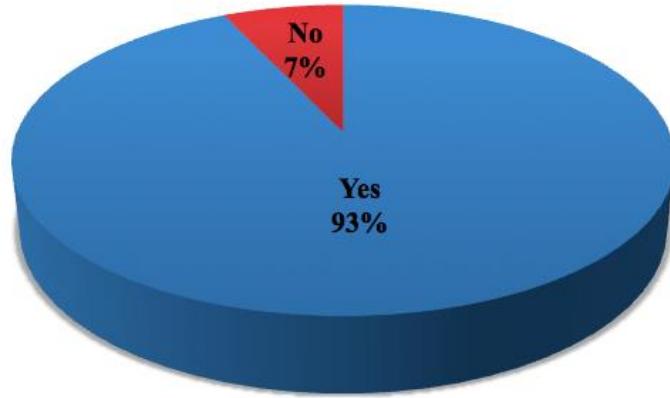


Figure 44 Survey Question 13

If the respondents were to make torture claim and refugee claim, the majority of the respondents, 93%, indicate that they would need legal advices and services. The residual 7% claim that they do not need any legal services and advices.

How Long Are You Willing to Wait Before Getting Any Determination For Your Application?

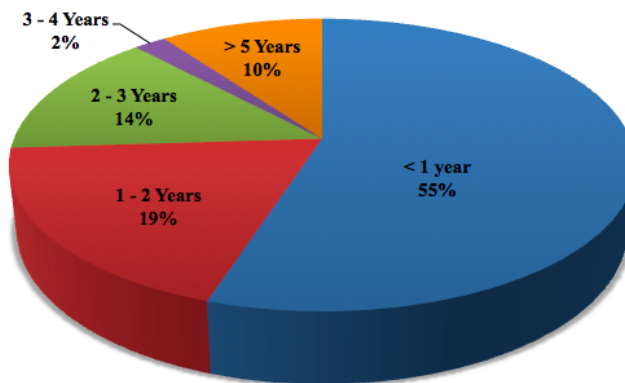


Figure 45 Survey Question 14

One notable finding is that majority people are unwilling to wait for a long time before getting any determination for their applications. Over half of the respondents are only

willing to wait for less than a year; 19% of the respondents are willing to wait a little bit longer for 1-2 years. Very few respondents (only 2%) are willing to wait for 3 to 4 years.

Do You Want to Legally Work in Hong Kong Pending the Results of Your Application

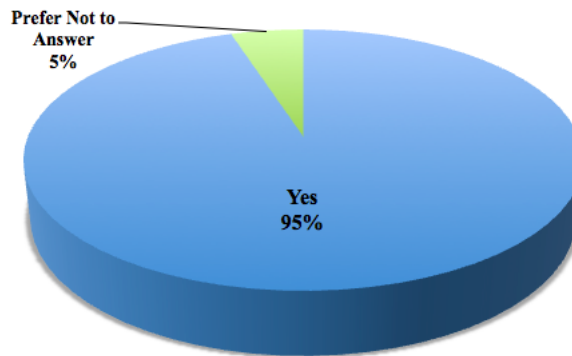


Figure 46 Survey Question 15

While about 95% of the respondents would like to legally work in Hong Kong pending the results of their applications, the rest preferred not to answer this question. None of the respondents choose the remaining option: do not want to legally work in Hong Kong pending the results of their applications.

2.2.2 A Summary Analysis of Survey Findings: The Public as a Stakeholder

Public Awareness/ Perception of Refugees and Asylum Seekers

Surprisingly, more than 98% of the respondents claim that they know who a ‘refugee’ is. However, in the subsequent questions, which required the respondents to distinguish between ‘refugees’ and ‘asylum seekers’, as well as asking the respondents about the nature of refugees and asylum seekers, most of the respondents either provide a wrong answer or choose not to answer the questions.

During the three weeks when the survey was conducted, the breaking news that Edward Snowden came to Hong Kong attracted lots of public attention. As it was reported on a number of newspapers that Snowden might apply for torture claim or refugee status in Hong Kong, our respondents might have read such information, and therefore believed

that they knew who a ‘refugee’ is. Indeed, from the results of the survey, it appears that most of the respondents either have a misunderstanding on ‘refugees’ and ‘asylum seekers’, or have no knowledge at all.

(i). Knowledge and Understanding on ‘Refugee’

(a) Relationship with Age

All the respondents who aged above 55 indicated that they know who a ‘refugee’ is. One of the possible reasons for such finding is that these people may have experienced the Vietnam Refugee Camps in Hong Kong. On the contrary, more than 40% of the respondents who aged between 36 and 45 do not have any ideas about ‘refugee’.

(b) Relationship with Education Level

Although ‘refugee’ is not a topic which requires a compulsory study in Hong Kong education system, over 98% of the respondents claim that they know about this topic. When observing the correlation between the education level of the respondents and the idea of ‘refugee’, all the demographic groups display a similar pattern. The percentage of respondents from different education level who have knowledge of ‘refugee’ range from 94.71% to 99.15%.

(c) Relationship with the Right of Abode in Hong Kong

More than 99.67% of the respondents who have the right of abode in Hong Kong reveal that they know who a ‘refugee’ is. Again, this finding may be due to those recent breaking news concerning Edward Snowden.

From the results above, we observe that 98% of the respondents claim that they know who a ‘refugee’ is, regardless of their age and education level. Yet, respondents who enjoy the right of abode display a stronger sense about the idea of ‘refugee’, which may be due to the effects of all the breaking news concerning Edward Snowden. Respondents who do not have the right of abode in Hong Kong are very likely to be tourists who come to Hong Kong and who do not really pay attention to the local news during the three-week survey period.

(ii). Able to Distinguish Between ‘Refugee’ and ‘Asylum Seeker’

(a) Relationship with Age

Respondents who are aged above 55 are again displaying a similar trend as to that of the previous question, since all of them claim that they are able to distinguish between 'refugee' and 'asylum seeker'. Again, this may be due to the fact that they have experienced Vietnam Refugee Camps during the 1970s. Apart from respondents from the two age groups, above 55 and between 36 and 45, the majority of respondents fail to distinguish between 'refugee' and 'asylum seeker'.

(b) Relationship with Education Level

Respondents who obtained postgraduate degree, the highest education level among all the respondents, have the highest percentage (56.25%) of respondents who indicate that they are able to distinguish between 'refugee' and 'asylum seeker'. All other demographic groups have a significantly lower percentage, ranging from 8.2% to 14.08%. A possible reason for the significant percent displayed by respondents who obtained postgraduate degree is that most of the respondents in this group are likely to be our law school schoolmates, who have at least gained some basic understandings on 'refugee' and 'asylum seeker' through their studies.

(c) Relationship with the Right of Abode in Hong Kong

Although respondents who enjoy right of abode in Hong Kong display a significantly larger percentage in the previous question (knowledge of 'refugee'), regarding the ability to distinguish between 'refugee' and 'asylum seeker', those who enjoy the right of abode in Hong Kong have a slightly lower percentage than those who do not. This may imply that respondents who enjoy right of abode in Hong Kong simply hear about the term 'refugee' through social media, which fails to correctly and accurately define it.

Based on the results, it is safe to conclude that respondents who aged above 55 and those who obtained postgraduate degree have a deeper and more accurate understanding about refugees as they displayed a significantly higher percentage in the ability to distinguish between 'refugee' and 'asylum seeker'. Nonetheless, the majority of the respondents fail to do so.

(iii). Knowledge on whether Refugee or Asylum Seeker can Legally Work in Hong Kong

(a) Relationship with Age

There is a great discrepancy between respondents who aged between 26 and 35 and other age groups. More than 40% of the respondents whose age are between 26 and 35 misbelieve that refugee or asylum seeker can legally work in Hong Kong, which is at least two times the percentage to the other demographic groups. On the contrary, half of the respondents who aged above 55 are able to provide the correct answer. Due to the great discrepancy among all demographic groups, it is possible to draw the conclusion that age is not correlated to the detailed understandings of refugee or asylum seeker.

(b) Relationship with Education Level

The percentage of respondents providing the correct answer is almost the same among respondents who obtained secondary, post-secondary and undergraduate education level. It ranges from 40.14% to 41.8%. It is a big surprise that almost 86% of the respondents who obtained postgraduate degree do not know the correct answer, given that almost 60% of these respondents claim that they are able to distinguish between ‘refugee’ and ‘asylum seeker’ in the previous question.

(c) Relationship with the Right of Abode in Hong Kong

No matter for respondents who have right of abode in Hong Kong or not, more than half of them do not know the answer as to whether refugee or asylum seeker can legally work in Hong Kong. Approximately one third of the respondents in both groups can provide the correct answer.

These results indicate that respondents who aged between 26 and 35 have a strong misunderstanding about refugees and asylum seekers, misbelieving that they can legally working Hong Kong. Most of the respondents who obtained postgraduate degrees may need more education about refugee as a high percentage of them fail to know whether refugee or asylum seeker can legally work in Hong Kong or not.

(iv). Whether supporting the Government to Grant Working Permits to Refugee and Asylum Seeker in Hong Kong

(a) Relationship with Age

Most of the respondents from the three age groups, between 36 and 45, between 46 and 55, and above 55 prefer not to answer this question. It ranges from 57.14% to 77.27%. However, the majority of the respondents from the other two age groups, between 26 and 35 and between 18 to 25, do not support the Government to grant working permits to refugee and asylum seeker.

(b) Relationship with Education Level

The findings indicate that respondents who received undergraduate or postgraduate degree are more unwilling to support the Government to grant working permits to refugee or asylum seeker. The post-secondary school holders display a different attitude since only 15.49% of them reject the issue of working permits to refugee and asylum seeker by the Government.

(c) Relationship with the Right of Abode in Hong Kong

Only 10.53% of the respondents who do not have the right of abode in Hong Kong are willing to grant working permits to refugee and asylum seeker. On the contrary, a triple percentage, approximately 37% of the respondents who have the right of abode in Hong Kong are willing to support the Government to grant working permits. About 10 % in both demographic groups prefer not to answer this question.

Although majority respondents from different demographic groups either refuse to grant working permits to refugees and asylum seekers in Hong Kong or prefer not to answer the question, the respondents who obtained post-secondary education level displayed a significantly strong intention (about 55%) than the others in granting working permits to the refugees and asylum seekers in Hong Kong. The majority respondents may be afraid the refugees and asylum seekers will take away their working opportunities or drag down the overall salary in the labour market through increasing in labour force.

(v). Whether Supporting the Government to Offer Free Education to Refugee and Asylum Seeker in Hong Kong

(a) Relationship with Age

The results are similar across all age groups, the majority respondents from each age group against the government in offering free education to refugees, especially between age 18 and 25; around 75% of the respondents refuse the government to offer free education.

(b) Relationship with Education Level

The respondents who obtained the highest education level in secondary school has the greatest percentage in supporting the government to offer free education to refugees and asylum seekers, while almost 80% of the respondents who obtained undergraduate degree object to this idea.

(c) Relationship with the Right of Abode in Hong Kong

About 70% of the respondents who have the right of abode in Hong Kong do not support the government offer free education to refugees and asylum seekers. However, almost 40% of the respondents who do not have the right of abode in Hong Kong support the government in offering free education. The results showed a great discrepancy between the two groups.

These results indicate that neither age nor education has significant impact in the views on supporting the Hong Kong government to offer free education to refugees and asylum seekers. About 70% of the respondents who enjoy right of abode in Hong Kong refuse to provide free education to refugees and asylum seekers may due to the reason refuse to share Hong Kong social resources with others, especially the taxpayers who contribute to the social resources.

(vi). Do You think More Asylum Seekers and Refugees Will Be Attracted to Come to Hong Kong if Government Grant Working Permits and Offer Free Education?

(a) Relationship with Age

Most of the respondents from all demographic groups do not think the asylum seekers and refugees will be attract to come to Hong Kong if the government grants

working permits and free education to them, especially the age group 18 and 25, which stands at 72.02%. On the other hand, about 43% of respondents who age above 55 do think more asylum seekers and refugees will come to Hong Kong if government provides more benefits to them.

(b) Relationship with Education Level

Both the secondary and the undergraduate demographic groups has more than two-third of their respondents do not think more asylum seekers and refugees will be attracted to come to Hong Kong if government grants working permits and free education to the refugees and asylum seekers. Approximately half of the respondents in post-secondary and postgraduate groups also do not think asylum seekers and refugees will be come to Hong Kong because of the government policies. However, approximately 38.73% from the post-secondary group think more benefit from the government will attract more asylum seekers and refugees to Hong Kong.

(c) Relationship with the Right of Abode in Hong Kong

Almost two third of the respondents, approximately 69%, do not think more asylum seekers and refugees will come to Hong Kong because of free education and working permits provided by the government, a slightly lesser respondents from the other group, about 50%, choose the same option.

The results show that 68% of the respondents do not think that more asylum seekers and refugees will be attracted to come to Hong Kong if government grant working permits and offer free education. However, the majority of respondents above age 55 have an opposite view, this may again due to their own experience of the Vietnam Refugee Camps during the 1970s.

418 respondents misbelieve that refugees and asylum seekers can maintain their daily life by their own savings, yet the reality is that most of the refugees and asylum seekers had spent most of their money on the air ticket to come to Hong Kong, they have to maintain their life through social aids or some of them become 'professional' beggar.

(vii).Scenario Questions

It is likely that most respondents do not understand the current refugee screening system and the unified government-led screen system that we are suggesting. From the scenario questions, respondents are asked to pick between two system, the first option to make one application to one department for both refugee status and torture claim indicate the new system that we are suggesting, while the second option to make separate application to different departments for refugee status and torture claims is the current refugee screening system. From the result, we can conclude that respondents who prefer the new system is two times to respondents who refer the old system, the result may serve as an indicator that there is a need to reform our current refugee screening system.

In the visualised scenario, about 93% of the respondents need legal advises and services. The high percentage from the respondents reflects that legal representatives are crucial to refugees and asylum seekers when they have to deal with all the complicated legal procedures in claiming their refugee status.

More than half of the respondents would like to wait less than a year before getting any determination for their application, however in reality it is almost impossible to have the application to be determined within a year. The great discrepancy between expectation and reality indicates a need to reform the current refugee screening system.

More than 95% of the respondents would like to legally work in Hong Kong pending the results of their application, however on the other hand, most of the respondents refuse to support the Hong Kong government to grant working visa in Part II, which indicates that when people make their decisions against the benefits for refugees and asylum seekers, they rarely put themselves in refugees and asylum seekers' shoes.

2.3 Findings from Personal Interviews

Our research questions centre on:-

- (1) whether Hong Kong should adopt a unified system to process all the Claims;
- (2) what elements should be include in new system; and
- (3) what other protections should be provided along with the new system.

A number of stakeholders involved in offering protection to the Claimants have been identified and interviewed. The feedbacks from these stakeholders are useful in various aspects: firstly, they give us comprehensive and balanced views in investigating the protection for the Claimants; secondly, they highlight the issues and challenges confronted by frontline personnel in the Claimants' application and bring to light the limitations in the current application procedures.

It should be noted that the findings from the stakeholders are narrative and necessarily lengthy. Therefore, in the following, we intend to present these findings in a summarized form in order to preserve their authenticity with simplicity. Common issues identified by different stakeholders are synthesized and consolidated for a configurative analysis in Section 3, the next section.

2.3.1 Non-governmental Organizations (Alphabetically sorted)

2.3.1.1 *HKRAC*

- ❖ Ms. Sonya Donnelly, Staff Attorney at HKRAC
- ❖ HKRAC was established in 2007 as an independent organization that gives advice on refugees' application in Hong Kong. HKRAC is the only dedicated provider of pro bono legal aid to refugees seeking protection from UNHCR. The goal of HKRAC is to empower asylum seekers and refugees, generate awareness and support from the community, and to maximize the reach and impact.

We sent an invitation email to the office of HKRAC for an interview. Donnelly kindly accepted our invitation. We met Donnelly in Flat B, 10/F, Comfort Building, 86-88A Nathan Road, Kowloon, Hong Kong, at 2:00pm on 11 June 2013. 2 members of the team (Coody Yuen and Sammy Ng) attended the interview. We briefly introduced the background of our research project to Donnelly before the interview took place.



Figure 47: Yuen, Donnelly from HKRAC, Ng

Donnelly's view on the current torture claim and RSD procedure:

First of all, Donnelly explains the procedure of the UNHCR's RSD screening process. The first stage is pre-registration, which is literally a registration of an asylum seeker's case in the UNHCR. After the pre-registration, asylum seekers will be called to a registration interview. In the first part of the interview, the background of the applicant will be recorded. Recently, the UNHCR has reformed the second part of interview and has replaced it with a new form, namely, the special need screening form. This new system would prioritise vulnerable applicants.

The person who determines whether an asylum seeker is vulnerable is not a trained psychiatrist. Therefore, Donnelly believes that some heavily loaded questions could re-traumatise asylum seekers to such an extent that they may not be able to verbalise what has happened to them.

Donnelly thinks that the current RSD process is not acceptable in terms of fairness because the UNHCR is severely underfunded and is not possible to afford all protections that a person would have normally received. In Donnelly's opinion, no access to a lawyer or proper legal aid is the number one issue. Given that the RSD process is supposed to be a protection process, the inaccessibility of free legal assistance takes away the meaning or the fullness of protection because the vast majority of people undergoing the RSD process do not have access to lawyers.

Lawyer's inaccessibility to all documentations in RSD process is another massive problem. This means only a limited amount of information is available to lawyers about what their clients had spoken to UNHCR at first instances. Regarding reasoning for its decision, although UNHCR does provide reasoning, it is not a really lengthy one.

The problem of delay and the low recognition rate under the current CAT procedure also catch Donnelly's concerns.

Donnelly's view on the Claimant's living conditions:

Donnelly points out that asylum seekers now rely on very limited rental allowance from the ISS. The allowance is paid directly to the landlord, which allows unscrupulous landlords to take advantage of asylum seekers. Asylum seekers are also being abused because some people who provide food to them give rotten food or food that are about to expire to asylum seekers, and there is no real complaint mechanism for such abuses. There are also inflexibilities in the reimbursement procedure of refugee's transportation expense, e.g. the requirement of using the cheapest mode of travel.

Donnelly said many refugee criminals are forced to commit criminal activities because of their inhuman living conditions for years in Hong Kong. They are forced to make decision that they would not normally make. Because of the desperation and the poor

living condition, they are forced to commit crimes. Donnelly also pinpoints that public media, most notably the Chinese language media, over-reported negative stories about the Claimants based solely on criminal convictions.

Donnelly's view on a unified screening mechanism:

HKRAC has always sought a unified protection procedure and this is the thing that Donnelly has always advocated for.

Donnelly thinks the new screening procedure needs high quality and transparent decision-makings by qualified persons, as well as access to legal representation. She mentions the legal aid scheme in UK, namely the Early Legal Advice Pilot in Solihull, through which an asylum seeker is represented from the moment he or she surrenders to the Immigration Department.

Besides access to legal representation, Donnelly believes that the new screening mechanism also requires high quality of legal representation by lawyers who are adequately trained. The training should cover not just the laws of Hong Kong, but also human rights laws in both the CAT procedures and international refugee protection law. Donnelly thinks the vast majority of lawyers currently working for the torture claim procedure are not fully trained. Under the current Duty Lawyer Scheme, lawyers have only 2-day training during weekend in relation to the CAT procedure. Donnelly thinks this is inadequate.

For adjudicators, Donnelly thinks anyone making RSD should be adequately trained in different procedures as world-wide international standards need to be met. She calls for the Government to invite international organisations to train decision makers for the screening procedures. She also calls for trainings to officials to cater the needs of the minor and vulnerable, particular for those who have mental health issues or those who have suffered from traumatic incidences in their past.

Donnelly's view on the potential difficulties of implementing the new screening mechanism:

In Donnelly's opinion getting suitable qualified lawyers with international experience to work in this system could be viewed as a difficulty. However, international lawyers are already used to work in RSD. Therefore, the Government should allow these people to operate under the new unified system.

Another difficulty concerns asylum seekers who have stayed in Hong Kong for a number of years with their RSD/CAT decision pending. There would be potential difficulties if they had already been interviewed by the UNHCR. The screening process might have to start over again if a new system is adopted.

2.3.1.2 *SoCO*

- ❖ Ms. Anne Lin, Community Organizer at SoCO
- ❖ SoCO, formed in 1972, is an organization that strives for equal rights in Hong Kong. It gives support to grassroots people, including refugees and asylum seekers, through civic education and social action. In respect of refugees, SoCO had in the past sent proposals to the Government to address the concerns of refugees' living conditions and human rights in Hong Kong.

We approached SoCO to request for an interview. Lin kindly accepted our invitation. We met Lin in 52, Princess Margaret Road, 3/F, Homantin, Kowloon at 10:00am on 14 June 2013. 2 members of the team (Samuel Wong and Alex Yiu) attended the interview. Before starting the interview, we briefly introduced the background of our research project to Lin.



Figure 48: Wong, Lin from SoCO, Yiu

Lin's view on the welfare of refugees:

Lin pinpoints various problems regarding the living conditions of the refugees, notably housing, food, medical treatment and education.

For housing issue, Lin's observation is that refugees cannot afford good accommodations with the insufficient allowance from ISS because refugees cannot settle the upfront rental deposit. Also, refugees are sometimes not welcomed by the landlord as tenants due to cultural and language barriers as well as racial discrimination.

For food issue, Lin describes that this has been an issue for a long time. Initially, no free food was supplied to refugees. Subsequently, because of some court cases, refugees can now get food every 10 days. However, as there are difficulties for them to store fresh food for 10 days, some refugees might need to sell their food to others so that they can get cash and go to the market every day instead.

For medical issue, initially asylum seekers who are not on recognizances could not get medical help. Lin highlights her previous experience that a pregnant Sri Lankan asylum seeker who went to have medical check was arrested at the hospital. According to Lin, although things have improved in recent years and asylum seekers now have access to medical treatments, there are still problems on medical waivers. The SWD needs to check an asylum seeker's physical conditions as well as his or her refugee status before medical fee waivers could be issued or any free medical treatments could be approved. Therefore, it takes time for asylum seekers with trauma or other serious mental issues to get to a specialist like a psychologist. Also, there is a lack of professional interpreters during medical checks.

For education, Lin has not experienced any specific problems on education for refugees under 18. However, for mature refugees, Lin thinks education could be a problem because they cannot be fitted into public secondary schools, and Vocational Training Council has a strict policy on not admitting asylum seekers. Lin considers changes are necessary as vocational trainings are helpful to refugees for their resettlement in the future. Also, getting permissions to study from the Immigration Department is very difficult in some cases. For instance, a 20-year-old African guy needed to get permission

for both the pre-admission assessment and the subsequent admission before his enrollment in a British Council English course. Now a year has passed and this guy is still not in any courses.

Lin considers the fact that refugees with no right to work poses serious pressure on churches and NGOs. Yet, Lin does not consider police mistreatment is a problem now, as asylum seekers would surrender to the Immigration Department directly.

Lin's view on possible improvements on refugees' welfare:

First of all, Lin thinks that housing, food and transportation allowance should be increased. Christian Action aside, the Government should also provide professional medical support to asylum seekers suffering from post-traumatic syndrome. Besides, refugees should enjoy the right to work.

Lin's comment on unifying the screening approach:

In reforming the screening process, Lin says the Government should focus on whether the people involved in helping the asylum seekers are well-trained enough. To Lin, the Immigration Officers still remain unfamiliar with the current torture claim screening procedure under CAT.

Lin also points out that the quality of duty lawyers is unsatisfactory. She has met a lawyer who did not have much experience but who just wanted to go into the field because her other business was not doing very well. Lin thinks that the Legal Aid Department should undertake the duty to provide legal assistance, because the lawyers are better paid by the legal aid, and hence it would attract qualified lawyers.

Although the Government should be responsible for the screening procedure, Lin hopes that the UNCHR can maintain its presence so that it can give support to the Government in the future. Lin also hopes that the Government can invite experts from overseas to train and work with the Immigration Officers.

Lin thinks that the system right now has the potential to attract more economic migrants because it takes a long time. A unified and efficient system can avoid Hong Kong from

the problem of economic migrants. Under the current system, UNHCR is responsible for the resettlement arrangement of recognised refugees. Under the new scheme, she hopes the Government can make arrangement for refugees that are waiting to be resettled, e.g. vocation training or work permits.

2.3.1.3 *Vision First*

- ❖ Mr. Cosmo Beatson, Executive Director at Vision First
- ❖ Vision First is an independent, Hong Kong-based NGO committed to provide the best possible support for Hong Kong-based refugees. Vision First offers assistances irrespective of religion, race, nationality, social group or political opinion. Its missions include advocating for the rights of refugees, providing them access to legal and medical care, and providing them safe emergency shelter and clean homes etc.

The team approached First Vision to request for an interview. Beatson, the Executive Director, kindly accepted our invitation. We met Beatson in 5/F, 102 First Street, Sai Ying Pun, Hong Kong at 2:00pm on 13 June 2013. 2 members of the team (Coody Yuen and Sammy Ng) attended the interview. Before starting the interview, we briefly introduced the background of our research project to Beatson.



Figure 49: Yuen, Beatson from Vision First, Ng

Beatson's view on the existing problem of refugees and asylum seekers in Hong Kong:

Beatson recognises public perception as the biggest problem. Hong Kong still has a cultural baggage with the Vietnamese Boat People. With the fact that the Government propaganda for the last 30 years has always depicted asylum seekers as economic migrants, Beatson thinks all the problems we have are cultural issues, and they are the biggest obstacles for things to change. Beatson thinks the solution is to change the perception of the young generation towards refugees through education and this would be the job of the community of educators.

Beatson's view on the welfare of refugees:

Beatson's observation is that the living condition of asylum seekers is very poor. They can only afford the rent of Shantytown-like accommodation with the minimal housing allowance provided by the Government. Also, they do not have the right to be employed and hospitals often deny medical treatment to them. Besides, Beatson underlines a latest case that the Education Bureau rejected a child of an asylum seeker for his admission to public school. However, Beatson does not reckon homelessness as a big problem.

Beatson thinks that the welfare problems can be resolved by one decision – the right to work. He pinpoints the practices of other jurisdictions that asylum seekers cannot 'come in to the country and work immediately'. Instead, only if their cases are substantiated in the first instance screening within 6 months then those refugees could apply for working permits.

Beatson's view on the current torture claim and RSD procedure:

Beatson believes the departments which should be giving help are not doing their job and they are insensitive to the hardship that a hard policy created. For the RSD, the main problem is that there is no judicial review and the UN has judicial immunity, which places itself above the law. Also, the current law is designed to stop economic migrants. According to Beatson, at the moment, 'refugee' is the painted label of 'economic migrant'.

For CAT, the low recognition rate is the main problem. The Government only recognise four claimants out of 12 500 claim over 21 years. In a system that everybody gets rejected, it is possible to say that it can identify genuine torture abuses.

Beatson thinks the only recourse is judicial review but it takes years to win. For instance, if a kid wins a judicial review after 2 to 3 years, it means he cannot go to school for 2 to 3 years. Judicial review is also not feasible for sick refugees who are waiting for medical treatment.

Beatson's view towards a unified procedure:

Beatson's view is positive towards the unification. He thinks the best approach as a long term solution is to study the practice of other jurisdictions before putting together something that will be torn down again by another CFA judgment in five years. Therefore, Beatson thinks the Government should pause the current enhanced system for one year, study and get advices from other professionals. The Government has to study the practices in other jurisdictions, bring the best practice to Hong Kong, and launches a refugee policy that is not limited to RSD and torture claims. The new system has to be efficient, effective, transparent and comprehensive. It has to be a one-stop shop and pass the test of fairness.

Beatson suggests that country experts are needed so as to distinguish between economic migrants and genuine asylum seekers. In other jurisdictions, they employ Pakistan, Bangladesh, Indonesia and other African countries experts for the screening procedure. Beatson also highlights the practice in Germany that an independent board is set up for first instance screening. The board consists of one immigration officer, a refugee expert, a country expert and a lawyer. All of them together decide whether a case is valid or not.

Beatson's view on the current Duty Lawyer Scheme:

Beatson points out that the current Duty Lawyer Scheme is disappointing. Training, in the form of lectures, will be provided to duty lawyers on refugee law, but there is no exam. On that front, he calls for much better training on learning country of origin information, or setting up examination or even pupilage scheme. As it is a matter of life

or limb, Beatson requests that there should be at least a 7 years of experiences requirement. He also thinks that all duty lawyers should be barristers but not solicitors because there is a much higher standard of professionalism in the Bar Association.

Beatson allows us to take some pictures of the Vision First Centre.



Figure 50: Vision First Centre



Figure 51: Vision First Centre

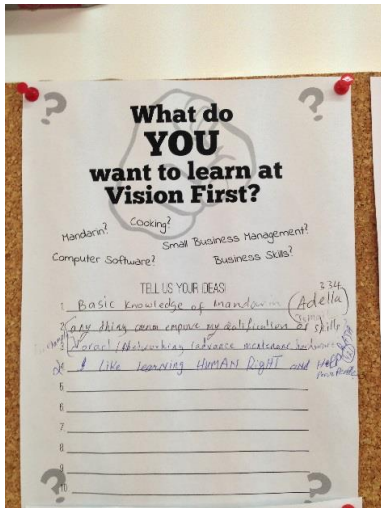


Figure 52: Vision First Centre



Figure 53: Vision First Centre



Figure 54: Vision First Centre



Figure 55: Vision First Centre

2.3.2 Lawmakers (Alphabetically sorted)

2.3.2.1 *The Honorable Mr. Alan Leong, Legislative Council Member.*

- ❖ Leong is currently a member of Hong Kong Legislative Council and the leader of the Civic Party. Leong graduated with an LLB from the University of Hong Kong and an LLM from the University of Cambridge. He was the chairman of Hong Kong Bar Association from 2001 to 2003.

We approached the Office of Leong to request for an interview. Leong kindly accepted our invitation. We met Leong in Room 811 of the Legislative Council Complex at 3:30pm on 25 June 2013. 2 members of the team (Daisy Leung and Sammy Ng) attended the interview. Before starting the interview, we briefly introduced the background of our research project to Leong.



Figure 56: Ng, Leong (LegCo Member), Leung

Leong's view on a single government led unified scheme?

Leong thinks it makes sense for the torture claims to be assessed together with other possible international convention schemes, including refugees claims. He supposes that if one could prove himself being tortured, then he could also be a refugee as well because the two schemes overlap to a very large extent. Therefore, he thinks it makes a lot more sense for there to be a synchronised and unified scheme for any person resisting deportation to follow.

To Leong's knowledge, for torture claimants, they are actually entitled to free legal representations in the Magistrate Court, because the scheme run by the Bar Association and the Law Society in Magistrate court in Hong Kong actually covers them. The UNHCR of course can run its own scheme, but so far Hong Kong as a jurisdiction concerns, it makes sense for all claimants, who claim that they should not be deported, to

be gathered under one overarching consideration for both torture claims and refugee status.

Leong's view on whether the Claimant's right to work and right to education should be protected:

If a person who resists deportation is a young child, Leong thinks it makes sense for him to receive education. It is because the screening process can last for a decade or more, and it will be a serious deprivation of the children's rights to education. So, Leong thinks it is only humane and only right for these children to be given the chance to attend schools or at least have their education needs looked after during their fights against deportation.

On the contrary, working visa would be a sensitive issue. Leong thinks the local labour force, as well as the unions may have a view that working visa will become an unjustified incentive for people to claim to be refugees or claim to be possible victims of torture. So, the Government has to consult a committee that consists of both employers and employees, especially the union. The existing labour policy cannot be circumvented by simply claiming yourself as a torture victim or a refugee. As there is a lot of balancing needed to be attended to, Leong feels incapable to give further comments.

Leong's recommendation on the elements of a unified scheme:

Leong suggests the new unified scheme should take into account all possible reasons for a foreigner not to be deported, including the claim of refugee status and torture claim. For example, the new scheme can gather information from previous UNHCR's decisions on refugees or previous judgments made by our Magistrate Courts on torture victims, and to put them together, to rationalise them and to codify them.

Leong's view on whether Hong Kong should request the PRC to extend the 1951 Convention to Hong Kong:

Leong thinks presently there is no need for such monitor because the UNHCR is conducting the screening by itself. As the obligation is not delegated to the Government, it is not necessary for the 1951 Convention to be extended to Hong Kong. Once it is

extended to Hong Kong, it means the Government would be obliged to do what is now being done by the UNHCR.

If the Government decided to go for a unified scheme, then the 1951 Convention must be extended to Hong Kong and the power to vest refugees will be delegated to the Government. Leong concerns that if that is the case, UNHCR may want to have oversight over the vesting process in Hong Kong, and we will then subject our courts to UNHCR's monitor. Leong will not accept the possibility that a Magistrate's determination could be overruled by UNHCR because Hong Kong courts must enjoy judicial autonomy.

2.3.2.2 *The Honorable Ms. Emily Lau, Legislative Council Member*

- ❖ Lau is currently a member of the Legislative Council and the chairwoman of the Democratic Party. She had been a journalist and a lecturer, and she has been on the front line of many social issues. In 1998, Lau received the Bruno Kreisky Award for her human rights work.

We approached the Office of Lau to request for an interview. Lau kindly accepted our invitation. We met Lau in Room 505A of the Legislative Council Complex at 05:25pm on 11 June 2013. 3 members of the team (Coody Yuen, Daisy Leung and Sammy Ng) attended the interview. Before starting the interview, we briefly introduced the background of our research project to Lau.



Figure 57: Leung, Ng, Lau (LegCo Member), Yuen

Lau's view on the C case:

Despite the CFA's decision in the *C* case, Lau wonders what the Government can do without Hong Kong firstly becoming a party to the 1951 Convention. She regards the CFA's decision as a force to compel the Government to sign the 1951 Convention. In her comment, the present situation is similar to the subsequent development to the court decisions concerning either torture claims or refugee claims in the last 10 years, and she also supports the signing of the 1951 Convention because it has been urged by the committees of the United Nations for long. To support her view, Lau directs the team to the situation of Macau to which the 1951 Convention is extended and the fact that PRC is also a party to the 1951 Convention. It is her view that the excuse for refusal to sign put forward by Government, that is the possibility of abuse of the system by illegal immigrants, is not sustainable at all.

Lau's view on how to improve the system in light of the C case and the Ubamaka case:

Lau does not comment on how the current procedure should be reformed technically because it is not in her expertise. Regarding these technical issues, she kindly suggests us to ask for the legal practitioners' views. However, she reiterates that Hong Kong should sign the 1951 convention and take up international responsibility to offer protection to those needed. Equally importantly, she supports the setup of a single, unified, fair and transparent mechanism to assess both torture claims and refugee claims.

Lau's view on how the new screening procedure (if being implemented) may affect the general public:

Lau does not think that this is a matter of public concern. She refers to the incidence of the Vietnamese Boat people in the past. At that time, the colonial government adopted 'port of first asylum policy' in Hong Kong and the general public was against it, but she did not receive many complaints or help-seeking from those asylum seekers. At the present, she has not received any complaints or help-seeking concerning asylum seekers.

Lau's view on what the Government can do to assist asylum seekers pending the reform or implementation of a new procedure:

Lau does not object the grant of temporary working visa to asylum seekers. In response to the view that this would severely affect the local job market and our economy may not afford it, she disagrees with this view and explains the current situation to the team: vacancies in certain industries are rising as no one is willing to do them such as dish-cleaning at restaurants. Even if the asylum seekers cannot get paid jobs, some voluntary works should be assigned to them.

Turning to asylum seekers who are children or teenage, Lau deems it necessary to provide them some education. Besides, adequate food and adequate housing should be provided. Beyond the policy reform, the Government must fully explain the policy and its rationale to the public, otherwise they may become repugnant to it.

Lau appreciates the existence of a diversity of opinions in the society so that she suggests us to ask other political parties' views, such as Democratic Alliance for the Betterment and Progress of Hong Kong.

Lau's view on how to make the mechanism effective if a new mechanism is implemented:

Lau emphasises that the mechanism must be fair and proper. In response to the low recognition rate of torture claims in Hong Kong (only 5 successful claims so far), she disagrees on assessing the effectiveness of a mechanism by referring to the recognition rate. Lau explains the reality is that many immigrants would lodge claims with the responsible institution, but not necessarily all of them are genuine claims. She believes upon proper application of the law the genuine claims will get approved.

Regarding the quality of legal representatives assigned to claimants, she agrees that better training should be provided to lawyers, but she questions if there is any evidence showing that the two-weekend training is inadequate; and if there is such evidence, she would be pleased to discuss the matter in LegCo meetings. She also questions whether the current screening procedure has no credibility at all. However, she does not further elaborate her views on what amounts to 'fair' and 'proper'.

2.3.2.3 *The Honorable Mr. James To, Legislative Council Member*

- ❖ To is a member of Legislative Council. He graduated with an LLB from University of Hong Kong and is currently practicing as a solicitor. He is also a member of the Democratic Party.

The team approached the Office of To to request for an interview. To kindly accepted our invitation. We met To in Room 909 of the Legislative Council Complex at 11:00am on 14 June 2013. A member of the team (Coody Yuen) attended the interview. Before starting the interview, Yuen briefly introduced the background of our research project to him.



Figure 58: Yuen, To (LegCo Member)

To's view on existing problems with the refugees and asylum seekers in Hong Kong:

To thinks the most obvious problem is that Hong Kong is not part of the signatory to the 1951 Convention, despite the repeated urging from international bodies, including the United Nations. To thinks Hong Kong should learn from other people's experience, and adopt suitable law for the situation in Hong Kong to help asylum seekers to go through the preliminary screening, or daily support work.

Also, with limited budget allocated to the Hong Kong Office, To understands that UNHCR may not have sufficient manpower. So, that causes the problem of delay.

To's view on legal assistance to refugees:

To believes that a lawyer can articulate claims better than a normal average person. For residents, they are protected by the relevant Ordinance and are entitled to legal aid. However, asylum seekers can only rely on some volunteer lawyers, or NGOs to help on the claims. Although both torture and refugee claims are comparable in term of nature and complexity, their treatments are different (legal assistance is provided to torture claimant but not asylum seekers). So, that is the point which is not good enough.

To's view on a single, unified, government-led single approach:

To thinks the C case will prone the Government to re-examine whether it should join the 1951 Convention and to put under that heading a statutory scheme to make the process better. A unified approach would be better from the Government's point of view because a person is no longer entitled to claim under both CAT and 1951 Convention to prolong his or her stay. To thinks the torture claim procedure incorporated in the new Immigration Ordinance is a balanced one because the Government has studied many foreign examples. Accordingly, the new unified system may base on such framework.

Some controversies were found in the deliberation of the new Immigration Bill on whether the Claimants would have enough time to gather such information or whether the so-called adverse inference drawn from the delay or inability to provide such information is fair to him. To thinks that the Government would be very slow to follow strictly statutory deadline and he considers the current CAT mechanism is suitable as a basic framework.

To's view on the low recognition rate of the current CAT procedure:

To thinks we cannot just draw a conclusion that low substantiation rate indicates the procedure must be flawed. One should look at the procedure to see if there are good balance between the claimant's right and the Government's duty to ensure a reasonably speedy process. The so-called substantiation rate cannot by itself make To to have a conclusion that there must be something flawed. Also, as there are not large numbers of CAT applications, the sample size is not large enough that he can draw a meaningful statistical inference.

To's view on refugee's living condition and right to work in Hong Kong:

In order not to attract unmeritorious claimants or economic migrants into Hong Kong, he believes it is the Government's policy to allow only very minimal subsidies to the Claimants. The Claimants could only enjoy a low living standard but one which would not cost the international body to have a conclusion that the Government is treating them inhumanly.

2.3.3 Legal Practitioners (Alphabetically sorted)

2.3.3.1 Mr. Mark Daly

- ❖ Daly is a renowned human rights lawyer. For the past 18 years, he has been fighting to defend the rights of minorities in Hong Kong, including foreign domestic workers, transsexuals, and refugees and asylum seekers. He is an expert in human rights law, administrative law and judicial review procedure.

The team approached the Office of Daly to request for an interview. Daly kindly accepted our invitation. We met Daly in 7/F, Yam Tze Commercial Building, 23 Thomson Road, Wanchai, Hong Kong at 5:00pm on 14 June 2013. 3 members of the team (Coody Yuen, Daisy Leung and Sammy Ng) attended the interview. Before starting the interview, we briefly introduced the background of our research project to Daly.



Figure 59: Ng, Leung, Yuen, Daly (Legal Practitioner)

Daly's view on the low recognition rate in the current CAT screening procedure:

Daly thinks Hong Kong is uniquely odd in the screening procedure. The Government is now screening torture claimants basically because it is mandated by the results of previous litigations. However, instead of putting up a unified system at the beginning where everyone said it should do so, the Government carries out piecemeal changes based on court's judgments. As a result, genuine claimants are the ones who are hurt in the process. Therefore, he thinks ceaseless judicial reviews are necessary to fine-tune the process so that it can satisfy the high standards of fairness required. For example, there is a case called ST under judicial review where the issue is on the right of oral hearing during the petition process seeking reconsideration.

Also, the sufficiency and the logic of the reason of refusal need to be improved, and more education is needed for the Immigration Officers to change the culture of rejection. Hopefully, the recognition rate will go up as well with these potential improvements.

Daly's view on a single, unified, government-led approach:

As the present system of CAT screening is supposed to be according to the high standard of fairness to claimant, Daly thinks what he would want is a unified system that also looks at refugee persecution and CIDTP claims with the same high standard of fairness as *Prabakar*.

Daly supports the idea to invite foreign experts to facilitate the screening process because there may be a lack of local expertise. However, he doesn't think it is realistic to introduce internationally qualified lawyer to represent the Claimants. There is a growing number of young barristers and solicitors with expertise in refugee law and he is confident that the Law Society and the Bar Association are not going to be favorable to bringing in somebody who do not meet their practicing requirements.

He considers there is no difficulty to impose a unified system as long as lawyers and Immigration Officers are trained on refugee law.

Daly's view on refugee's living condition:

To Daly's understanding, financial assistance to asylum seekers is not as good as the Comprehensive Social Security Assistance Scheme. Also, the food distribution system to refugee is imperfect. He thinks that the outcomes of judicial reviews are limited to call for piecemeal changes, but they cannot help set up an administration system for welfare.

Daly mentions that he is now working on a CFA case on refugees' right to work. He thinks temporary visa while a Claimant is being assessed is needed. As it is the Government who cannot access the claims within a reasonable period of time, it shouldn't humiliate the claimant further by not allowing him or her to work or to take part in other activities. Daly also criticises the current policy, which only gives a small amount of successful torture claimants a possibility to work. The right to work should be given clearly to the bigger set of people who cannot be assessed within a reasonable

period of time. Daly's concern is that the racial discrimination and negative media coverage may be barriers for granting the right to work to the Claimants. As in Canada, one can find stories about refugees doing good works and contributing to the society in the public media every day. So, legislators and the Government should foster the whole idea of multiculturalism in Hong Kong.

2.3.3.2 *Mr. Tim Parker*

- ❖ Parker was educated in Australia. He obtained his LLB at the University of Hong Kong in 2007 and was called to Bar in 2009. Parker's practice is primarily in the area of public law including human rights and judicial review. He has been the lawyer representing Mr. Ubamaka in *Ubamaka*.

The team approached the Office of Parker to request for an interview. Parker kindly accepted our invitation. We met Parker in Room 1501, 2 Pacific Place, 88 Queensway, Admiralty, Hong Kong at 3:00pm on 18 June 2013. 1 members of the team (Alex Yiu) attended the interview. Before starting the interview, Yiu briefly introduced the background of our research project to Parker.



Figure 60: Parker (Legal Practitioner), Yiu

Parker's view on the current CAT, RSD and CIDTP screening mechanism:

Parker thinks there is no point to pursue CAT screening process alone now without the refugee claims and the CIDTP claims. The Claimants are vulnerable people, but are required to recount their painful experience more than once. So, there is an overriding

concern that the Claimants should only be interviewed once. It is necessary to avoid repeatedly turning vulnerable people through the stressful process. As it also saves huge time and public money, there is no justification to do the same process twice or three times. In terms of fairness and public funding, the unification is inevitable.

Parker's view on the need to set up an independent panel and includes international qualified lawyers or country experts for the new screening procedure:

Parker agrees with the observation that the attitude of the Immigration Department is guided towards rejecting claims. It is undoubtedly a problem. Parker thinks that given the current moral climate, there is not sufficient independence in the procedures. Parker points out that in England and other countries, it is customary that the first instance screening is done by immigration authority, and then there is a right of appeal to an independent tribunal staffed by judges. Generally, that will satisfy the required fairness. However, given our current climate, there is not enough open-mindedness towards the screening system. Parker is quite sure that some genuine cases were rejected. It would be nice to have an independent panel to do the screening, but it just won't happen.

Also, the qualities of adjudications in the first instance and appeal board are extremely poor. They display ignorance of refugee law. There are complete failures in some cases to independently assess the reality in other countries. It can be vastly improved.

Parker's view on the current Duty Lawyer Scheme:

Parker feels ashamed to say that the quality is terrible. The problems can be structured in numbers of ways. Firstly, the pay is too low and can only attract lawyers who do not solicit clients in other practices. Secondly, it is far too easy to join the panel. The current requirement is that lawyers are only required to join a 4-day training course and 3-years post admission requirements. These requirements can also be waived. There is no selection process, no quality control and no mechanism to dismiss someone. It is a very serious structural problem. It stems from the lack of training through law school, PCLL, pupillage and junior practice. To have 5-year criminal practice experiences wouldn't help, as refugee law requires specific tutelage. If the scheme were funded by legal aid, it would have attracted better lawyers.

Parker's view on the substantive law governing the creditability of CAT claims:

Parker thinks many of them are completely non-sense. Professional adjudicator should be properly trained to assess creditability. It is insane to codify in the statute certain factors to make a person not creditable. The essence of a case is the condition of the country the claimant is going to be returned, or if there are some past events that put a claimant at particular risk that he is going to suffer. Parker emphasizes that only the content of a claim is relevant but not the behavior of a claimant in Hong Kong. The current provision is dangerous and empowers the Immigration Officers to disbelieve claimants.

Parker's view on the burden on proof and evidential matter in the screening procedure:

Parker basically agrees with the court's decisions in *Prabakar* and *TK v Jerkins* in relation to the burden of proof, i.e. the burden of proof is on the claimant, but the state should make enquiry, except for the internal relocation cases. The current burden of proof is on the State to provide evidence that there are safe havens in claimants' country of origin. However, Parker feels that the burden of proof should shift back to claimants.

Parker's view on the right to work

Parker opined that the right to employment in the new Immigration Ordinance is unduly limited because only successful claimants are only eligible.

2.3.4 Academic

2.3.4.1 *Professor Ms. Kelley Loper, Associate Professor, Faculty of Law, University of Hong Kong*

- ❖ Loper joined the University of Hong Kong in 2006. There she serves as Director of the LLM in Human Rights Programme. Loper also serves as chair of the Board of Directors of the HKRAC.

The team approached the Office of Loper to request for an interview. Loper kindly accepted our invitation. We met Loper on 10/F, Cheng Yu Tung Tower, Centennial

Campus, The University of Hong Kong, Pokfulam Road, Hong Kong at 04:30pm on 17 June 2013. A member of the team (Sammy Ng) attended the interview. Before starting the interview, Ng briefly introduced the background of our research project to Loper.



Figure 61: Loper (Professor), Ng

Loper's view on the living condition of asylum seekers in Hong Kong:

Loper's observation is that asylum seekers do not receive enough supports from the Government, neither when they are waiting for their claims to be determined, nor after their claims are determined. Asylum seekers are provided with a bag of food once every 10 days, which is not really enough, and so they are living at a subsistent level and this is definitely an issue.

Loper's view on refugee's right to work:

Loper thinks the poor living condition of asylum seekers can partly be relieved if their right to work can be recognised. She suggests both recognised refugees or successful CAT claimants, as well as the Claimants who have been staying in Hong Kong for more than one year pending the decision of their CAT or RSD applications, should be allowed to work in order to support themselves. She highlights that South Korea has recently passed a legislation which allows asylum seekers to apply for work visa after 6 months or 1 year of their arrivals.

Other than that, Loper thinks there should be a streamlined process of food or cash allowance by which people can choose what they want to buy. Loper understands that under the new Immigration Ordinance, the Director of Immigration has the discretion to allow successful torture claimants to work, but it is not really sufficient to meet the problem.

Loper's view on the current RSD procedure:

Loper is of the view that carrying out the RSD assessment process is not the UNHCR's intention, and it just undertakes the responsibility by default on the Government's behalf. UNHCR actually lacks the resources to conduct RSD. Also, UNHCR has higher priority to places like Somalia, or Syria than it does to Hong Kong. Therefore, globally speaking, UNHCR may not provide much money for the Hong Kong office. Thus, it is difficult to have a fair RSD system if UNHCR is not properly and adequately funded. Loper thinks that it is more appropriate for the Government to take over the procedure, not only from a practical perspective, but also because the UNHCR procedure is not judicially reviewable.

Loper's view on the current CAT procedure:

Loper thinks that the very low recognition rate of the current CAT procedure itself definitely indicates a problem within the system. It is unlikely that all of these people do not have merit claims.

Loper also concerns the experience of duty lawyers. She thinks that there are experienced lawyers like Daly, but there are only a handful of other lawyers that have experience in practicing refugee law. She thinks refugee law is a very different type of

law as it is forward looking. CAT claims and refugee claims are trying to determine what might happen in the future, whereas in most other areas of law the lawyers are trying to determine what has happened already. So, there are different types of burden of proof, and the Duty Lawyer Service and the Government should think how training should be done.

There are also issues about the fact that the medical examination is recommended by the responsible Immigration Officer rather than lawyers. Loper highlights that there have been problems relating to confidentiality and medical reports because these reports would go directly to the Immigration Department rather than to the claimants. Often, medical evidence is very important to the screening process and having an Immigration Officer responsible for arranging the appointment and getting the reports is probably unfair and would not have met the high standard of fairness in the system.

In Loper's opinion, it is problematic for the Immigration Department to conflate torture claims with immigration control because they are two very different matters. Torture claim is not only about immigration control but also about protection of refugees' rights. The danger is that Immigration Officers are well-trained with immigration controls and they might be quite tempted to view torture claim as control rather than protection. It may make sense to look at other parts of the Government that might be more concerned with human rights protection and have the culture of looking at refugee and torture claims.

Loper's view on a unified system to process all the Claims:

Loper thinks that it makes a lot more sense to integrate the refugee claims into CAT system, rather than having two sets of parallel system within the Government to consider claims based on similar facts. Also, one unified system would certainly cut down the opportunities for abuses by unmeritorious claims.

The UNHCR has a standard operating procedure for legal representation and has operated an accreditation scheme for lawyers who represent the Claimants. In New Zealand, lawyers arrange for an expert witness to testify on the condition of claimants' country of origin. There is also a very professional and well-funded Information Centre operating within the government so that information is also accessible to the lawyers and claimants.

Accordingly, Loper considers that it would be very useful to invite those lawyers or experts to the new system in Hong Kong because of their high level of expertise. It is very important because this forms part of the context of understanding the claims, and the decisions are often based on the country of origin information. Loper also suggests that it may be other government's department instead of the Immigration Department to carry out the independent first instance screening, with the torture claims tribunal at second tier.

Loper thinks that certainly more claims will be accepted if the system is expanded. However, this could be an opportunity for the Government to look at the system again and to really do something to comply with the *C* case and the *Ubamaka* case. It would be a great opportunity to get the UNHCR and international experts to involve in monitoring roles and help set up the new system

Loper's view on the need for Hong Kong to sign the 1951 Convention

Loper does not think it is necessary but preferable to work towards extension of the 1951 Convention because the 1951 Convention actually is a good compromise between the states to decide who can enter their territories. It provides guidance to the Government to figure out how to balance immigration control with protection of the claimants' rights in a workable manner. Therefore, in many ways it is in the Government's interest to extend the 1951 Convention because it does provide the framework for developing the system. Also, the 1951 Convention does not require recognized refugees to be resettled in the territory where they arrived first. Thus, it is not really that onerous for the Government to accept the obligation.

2.3.5 Limitations

The team aimed to arrange interviews with all stakeholders from various sectors, but there were few groups of people which we failed to confer with, namely, judges, the Immigration Department and the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region. Alongside of the aforesaid rejections, LegCo members from the Functional Constituency, if reachable, or from the pro-establishment camp declined our invitations.

3 SECTION 3 Analysis

3.1 Overview

We have conducted a large volume of research in the relevant legislations and case law together with publications, conducted a series of extensive interviews with various stakeholders and public advocates involved in Claimants protection and welfare, and consulted a representative sample in the public regarding their views on the Claims screening procedures and other matters related to their welfare. The findings from our research have been presented in Section 2 above. This section aims to consolidate and examine the common issues identified by stakeholders in order to yield a comprehensive analysis of our research questions. The focus of our research is given to the questions whether the procedures should be unified; if so, what elements to be included and how their basic rights can be protected. Equally important, mass perception emerges as a great hurdle to Claimants protection in Hong Kong so that we will address it before our concluding remarks. As such, our analysis will be divided in 5 parts, with elaboration of subtopics therein:

- (1) Identifying the problems and the need for reform;
- (2) Unification of procedures;
- (3) Elements of the Unified Screening Mechanism;
- (4) Protection or Rights in addition to having A Unified Screening Mechanism;
and
- (5) Mass perception and public education.

3.2 Identifying the Problems and the Need for Reform

3.2.1 Existing Procedural Problems

3.2.1.1 *Problems with RSD Assessment Process*

As illustrated above in the findings from Desk Research, findings from interviews (NGOs, LegCo members, legal practitioners, professor), and findings from public surveys, there

are problems associated with the RSD assessment process. These problems can be summarized as below:

A. *Long Delay*

NGOs like HKRAC, Vision First and SoCO have criticised for years that there is often a long delay before an asylum seeker has his or her claim determined. In particular, Donnelly pointed out that ‘delay must be a problem’.¹³⁷ Similarly, Lin from another NGO, SoCO, mentioned that ‘with the screening mechanism...it’s very lengthy – it takes so long time and that’s a huge strain on [the asylum seekers].’¹³⁸

As illustrated above in Figure 6, of HKRAC’s client cases in 2011 – 2012, 51% of clients have been in Hong Kong for 2 years or more, 27% for 3 years or more, and a staggering 13% of clients have been registered with HKRAC for 4 or 5 years. To, a LegCo member, even said that ‘some determinations may take ten years to finish.’¹³⁹ Bereket’s story and other Claimants’ stories and quotations highlighted above reveal the frustration the Claimants feel because of the long delay.

According to our finding from public surveys, over 50% of the respondents indicate that they are only willing to wait for less than one year for a determination. What actually happens in reality certainly does not meet such expectation.

B. *Lack of Legal Support*

‘The majority of people undergoing UNHCR’s RSD process do not have access to lawyers,’¹⁴⁰ said by Donnelly, who is a lawyer. According to her, ‘not having access to a lawyer or proper legal aid provision is the number one issue’¹⁴¹ of the current RSD

¹³⁷ Refers to transcripts

¹³⁸ Refers to transcripts

¹³⁹ Refers to transcripts

¹⁴⁰ Refers to transcripts

¹⁴¹ See Findings of Interviews in Section 2

assessment process. In fact, even from the public's point of view, over 90% of respondents who conducted our survey indicate that they would need legal advices and services if they were to make a torture or refugee claim in Hong Kong.

While there is now a scheme offering free legal assistance to torture claimants, there is no such scheme (or anything similar) offered to refugee claimants. To considers this as one of the limitations of the current RSD assessment process:

‘As a lawyer I believe lawyer can articulate the claim better than a normal average person...when you compare the procedures between the torture claim...and the...refugee claim, I think it is quite comparable in terms of complexity, in terms of the information needed, in terms of the complicated nature, [and] that's why if one is entitled to a legal representation, and not...the other claim, [then] obviously that is not a good enough procedure.’¹⁴²

Even if an asylum seeker does have access to a lawyer, according to Donnelly:

‘[Lawyers'] role in the RSD system at the moment is very much different than [their] role would normally be in a legal system...[lawyers] don't really speak and [their] main role is to take down what been said in a particular interview...[they] don't have an active role; [their] main role is to prepare clients for an interview, and also to draft legal papers that can be submitted to UNHCR on their case.’¹⁴³

C. *No Judicial Review*

As mentioned, the Joint Professions pointed out that one of the problems with the current RSD assessment process is that it is not amendable to judicial scrutiny, i.e. judicial

¹⁴² Ibid.

¹⁴³ Ibid.

review is not available, and hence the system is unfair. Beatson from Vision First shared similar thought. Cosmo believed that, in order to challenge the unfairness in procedures or systems that are supposed to offer protection to the Claimants, ‘the only recourse is judicial review.’¹⁴⁴ Accordingly, ‘the main problem [of RSD assessment process] is that there is no judicial review and the [UNHCR] has judicial immunity which places itself above the law. So the whole situation is hopeless.’¹⁴⁵

Loper, a professor, is one of many who hold the view that the Government should take over the RSD assessment process from UNHCR. When explaining her reasons, Loper said this is ‘not only from a practical perspective, but also because the UNHCR procedures are not judicially reviewable...that’s problematic.’¹⁴⁶

D. *Limited UNHCR power*

As explained in the findings from Desk Research, there are only very limited numbers of staff working at the Hong Kong office of UNHCR due to the limited budget. To has expressed his concern during his interview with us:

‘I understand that the UNHCR may not have a sufficient manpower, [based on] their limited budget allocating to the Hong Kong office.’¹⁴⁷

Loper also believes that the Hong Kong office of the UNHCR ‘does not really have the resources to conduct RSD since ‘it is not really an organization that is intended to conduct RSD.’¹⁴⁸ Loper believes the only reason UNHCR has to conduct RSD is because ‘the Government refuses to do so.’¹⁴⁹

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

Having limited budget also means the protections offered by the Hong Kong office of the UNHCR are limited, as pointed out by Donnelly:

‘Since the Hong Kong office of UNHCR is severely underfunded, it is not possible to have all of the protections that [one] will normally have in a legal system.’¹⁵⁰

In addition to the problem of being underfunded, as mentioned, UNHCR does not have the ability and power to force other countries to allow refugees to resettle there. In other words, even if an asylum seeker is being recognized as a refugee in Hong Kong, there is no guarantee that he or she can leave.

3.2.1.2 *Problems with Torture Claims Screening Mechanism*

Although there is now a statutory screening mechanism for torture claims, there are problems associated with the CAT procedure, according to our findings. As Daly pointed out:

‘I think there needs to be ongoing judicial review right now...to continue to fine tune the system so that we approach high standard of fairness. I think there are still a lot of problems with the system. There still needs to be a lot of fine tuning...which means some major development or changes with the system to make it fairer.’¹⁵¹

A. *Low Recognition Rate*

On the one hand, challenges have been made to the effectiveness of the current torture claim screening mechanism given the low recognition rate (about 0.02%). According to Beatson, who organized the protest against the low recognition rate on 27 April 2013,

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

‘we call the whole system the culture of rejection.’¹⁵² Daly to a large extent agrees with Beatson, ‘overall the recognition rate is very very very low. Cosmo probably tells you culture of rejection which to a large extent I agree with.’¹⁵³

Donnelly, who said although she did not work on torture claims, she ‘would argue five people from a thousand of claims that have gone through the system cannot possibly be a fair system. It cannot possibly be an adequate system for determining torture claims.’¹⁵⁴ Similarly, Loper believes that ‘the very very low recognition rate...[and] substantiated claims...[indicate] a problem definitely with the system.’¹⁵⁵

On the other hand, Lau, a LegCo member, disagrees on assessing the effectiveness of a mechanism by referring to the recognition rate. Lau also questioned if the current torture claims screening mechanism indeed ‘has no credibility at all’.¹⁵⁶ To believes in the same:

‘We cannot just draw a line [to say] that low substantial screening rate [means] the procedure must be flawed...the so-called substantial rate, cannot by itself make me to have a conclusion that there must be something flawed.’¹⁵⁷

B. *Problems with Screening Officers of the Immigration Department*

Regarding the identity of screening officers, Beatson compared the situation in Hong Kong with that in Germany:

‘You take Germany as an example. There is a board. There is one immigration officer, a refugee expert, a country expert and a lawyer together to decide if a case is valid or not. In Hong Kong, the first two screenings are done by Immigration

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

Officers. No liberal democracy in the world that refugee claims [or torture claims] screening is done by Immigration Officers because the mind of Immigration Officer is about deterrent. Their training is about stopping people from abroad. So, their heart and mind are not giving asylum seekers (and torture claimants) a chance.¹⁵⁸

Beatson's concern is similar to that of Loper. Loper's worry is that the Immigration Officers are well-trained with immigration controls, and therefore they might be quite tempted to view torture claims as control rather than protection.

Another reason why Immigration Officers might not be suitable for screening torture claims is that they are not well trained enough. As mentioned in our findings from Desk Research, Sze believes that these people may not have sufficient knowledge about the changes or condition in a particular country. In other words, 'many Immigration Officer don't know the countries because they are not countries experts,'¹⁵⁹ as explained by Beatson.

C. Inadequate Training Offered by DLS

Although a Pilot Scheme under the DLS was launched to provide publicly-funded legal assistance for applicants who have passed the eligibility test, there are challenges as to the quality of these legal assistance and services. According to Parker, the quality is 'terrible'. Parker thinks that it is far too easy to join the panel as the current requirements are a four-day training course and three-year post admission experience.

Regarding the requirement of joining a four-day training course, Donnelly thinks that 'a two-weekend training is not adequate to be trained in human rights law so as to properly represent someone in a protection procedure.'¹⁶⁰ Similarly, according to Beatson:

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

‘in the DLS, there is no book with country of origin information. So the guy has no idea. There are 339 lawyers helping the torture claimants. They are not obliged to study it...[they] actually base everything on bias and on [their] personal opinion.’¹⁶¹

Lau did not comment on whether a four-day training is sufficient. Instead, she questioned if there is any evidence to prove that such training is insufficient. If there is any, she said she would be pleased to discuss the matters in LegCo meetings.

D. Procedural Unfairness - the Present Medical Procedures and the Assessment of Credibility

As explained in the findings from Desk Research, it is an Immigration Department officer (instead of a lawyer) who decides whether a medical examination should take place. Loper points out the problems with such arrangement:

‘I have heard that there have been problems relating to confidentiality and medical reports. It’s the Immigration Officer who arranges the medical appointment...and very often medical evidence is very important in this type of claims...So to have an Immigration Officer responsible for arranging the appointment and getting the reports is problematic and probably unfair...that would not meet the high standards of fairness required in the system.’¹⁶²

In addition, Clause 37ZD of the Immigration Ordinance lists out a number of situations that the decision makers can take into account ‘as damaging the claimant’s credibility’. The Joint Professions believe that this may lead to injustice. Parker even thinks this is ‘completely non-sense’,¹⁶³ and that it is ‘insane to codify in the statute certain factors to

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

make a person not creditable.’¹⁶⁴ Parker thinks this provision is dangerous and would indeed empower the Immigration Officer to disbelieve claimants.

3.2.1.3 *Problems of Having a Dual System*

The findings from the Desk Research reveal that having two separate systems to determine torture and refugee claims respectively adds to the length of waiting time, and that it is ‘a waste of resources and taxpayers’ funds.’¹⁶⁵ As Donnelly pointed out, another problem of having a dual system is that it ‘leaves the process open to take advantages of as someone could go through the whole torture procedures and then open RSD case.’¹⁶⁶

Parker also believes that there is no point for the Government to pursue torture claims screening process alone without also handling the refugee claims and CIDTP claims. According to Parker, the Claimants, despite being vulnerable people, are required to recount their painful experience and go through the stressful process more than once under the current dual system.

3.2.2 **Difficulties in Claimants’ Daily Life in Hong Kong**

Some of the difficulties that the Claimants face when living in Hong Kong have been mentioned above in our findings from Desk Research. Most of the interviewees also talked about these difficulties during our interviews. In short, the difficulties can be summarized as:

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

3.2.2.1 *Poor Living Conditions*

The compound in the Ping Che rural area is just one of the many similar ‘homes’ for Claimants in Hong Kong. This is how Beatson described his experience of visiting that compound:

‘I took the Barrister to look at this place and he cannot even start to describe the problems...there is [no] roof, the electricity is illegal, the toilet is flooding to field...it is a disgrace in a proper city like Hong Kong, we have 500 people living in this condition right now.’¹⁶⁷

Worse still, there are people who do not even have a place to live – most of these homeless people would sleep near the Culture Centre in Tsim Sha Tsui, and stay at parks during the day time.

One of the reasons of not having a ‘proper’ place to live is that the assistance the Claimants received is too limited, according to Lin from SoCO. Currently these Claimants can apply for rental allowance from ISS, and a maximum of \$1200 per month as rental allowance would be paid to the landlord directly. As pointed out by Lin:

‘The assistance they get is not very helping...around \$1200 or a little bit more. Of course with that you cannot really rent a very good place. Because the amount is so small, so the places they live are very small, in cramped up conditions, not very hygienic as well.’¹⁶⁸

Similarly, according to Daly, ‘it is hard to find a place to live with \$1200. Ridiculous, right?’¹⁶⁹ Besides, the fact that the assistance is paid directly to the landlord ‘allows the

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

very unscrupulous landlord to take advantage of [the Claimants]’,¹⁷⁰ as stated by Donnelly.

Regarding the policy of giving only limited assistance to the Claimants, according to To, ‘the Government maintains a policy that would only allow a very minimal subsidies to such person in that capacity. They would only maintain a living standard so as not to cost the international body to have a conclusion that [they] are treating them inhumanly.’¹⁷¹

In addition, as further informed by Lin, there were Claimants who complained that ‘it is difficult to get landlords to agree to them staying there because they don’t have HK IDs, plus there is a language and cultural barrier...sometimes some racial discrimination as well.’¹⁷²

3.2.2.2 *No Right to Work*

Claimants generally do not have the right to work in Hong Kong. As shown from the findings from Desk Research, a lot of Claimants have voiced that they want to work in Hong Kong so that they can sustain their livings. As described by Beatson, ‘[being an] asylum seeker in Hong Kong means you have to be a professional beggar. You do not have the right to work.’ Daly considers the absence of right to work as an major important point’.

Besides, according to Beatson, the fact that Claimants are not allowed to work ‘destroys the most legal ways to make a living.’¹⁷³ In other words, as a Claimant normally needs \$800 to 1000 a month to pay extra rent, electricity and food, to afford that, ‘they have to work illegally.’ Donnelly believes in the same, ‘for many case people are forced to commit criminal activities. It is a very costly society.’¹⁷⁴ Dadu’s story (as mentioned our

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

findings from Desk Research) reflects the dilemma that these Claimants face in Hong Kong.

Beatson also makes it clear that there is a difference between ‘illegal work’ and ‘working illegally’:

‘Illegal work involves another criminal acts and working illegally means you are in breach of your condition to stay, but the job you are doing is legitimate, like cleaning and construction work, loading container, handyman job.’¹⁷⁵

3.2.2.3 *Food Provided not Meeting Expected Quality*

Under the current ASTC programme, food is distributed to each service recipient every 10 days. Each service recipient is given a food order list to select the types and quantity of the food every month. There are complaints about the quality of food, which Donnelly mentions:

‘This had been abused, because some people who provide food give rotten food or food [that is almost expired] to asylum seekers, and there is no real complain mechanism that this can be investigated.’¹⁷⁶

Some have suggested that a food coupon should be provided to the Claimants so that they could go to supermarkets to purchase the food they need. As Lin suggested, ‘we have been advocating for something that they should get cash or coupons or some schemes where they can really get those food items they want.’¹⁷⁷

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

In short, as put by Daly, the food distribution system ‘has had problems’,¹⁷⁸ and there is ‘a long way to go’¹⁷⁹ before establishing a satisfactory system for food assistance.

3.2.2.4 *No Right to Education*

As mentioned, access to children’s education can only be done with the permission from the Hong Kong authorities. Beatson described the right to education as a ‘massive problem’.¹⁸⁰ He refers to a very recent piece of news which talks about a decision by the Education Bureau to ban a three-year-old asylum seeker to attend a public kindergarten has been challenged by the child’s family. According to Beatson:

‘The child’s father is a torture claimant and has been here for 7 years and he has an open case. He has not been rejected. And the father also has a CIDTP claim. The mother is not a random person. They are married in Hong Kong with a HK marriage certificate. The child is born in Hong Kong with a Hong Kong birth certificate. This is not a random kid... there are no reasons for the Education Bureau to deny this son for education.’¹⁸¹

However, Lin’s focus is on education offered to adults instead of children. As she points out, ‘with education, [the issue of] children going to school is fine now...we have not heard for anyone who lacks access to education.’¹⁸²

On the contrary, ‘if you are above 18, then it’s much more difficult. Most schools, like secondary schools, don’t take people above 18 because that person would not really fit into the class. And also the Education Bureau will not refer you to anywhere if you are

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

over 18.¹⁸³ Regarding the possibility of offering education to Claimants who are over 18, Lin and SoCO have tried to contact the Vocational Training Council to see whether they would accept these Claimants, but ‘they have a strict policy that they will not do that, because their courses are aimed for people who will be employed in Hong Kong.’¹⁸⁴ Since Claimants generally do not have the right to work in Hong Kong, they cannot take courses offered by the Vocational Training Council.

Lin thinks this policy should be changed because taking up courses help adult Claimants prepare for their future resettlement, or even if they remain in Hong Kong, ‘the fact that they have something to do is much better than not doing anything.’¹⁸⁵

3.2.2.5 *Unable to Claim all Transportation Fees Spent*

Claimants who go to see their legal representatives, UNHCR, or Immigration Department can, theoretically, receive the money they spent on transportation. However, as put by Donnelly, ‘[since] this is not paid until the end of the month, so when they are actually travelling, they may have no money to actually make that journey.’¹⁸⁶

Besides, Donnelly has heard that ‘[the Claimants] are not able to get the full amount back...they are being told to get the cheapest mode of travel, which is fair enough. But in many cases, they have been told to walk 20 to 40 minutes to get the cheapest mode of travel that is actually not the cheapest mode of travel. For example, a single woman who has 3-4 children...may need to walk 30 minutes crosstown in order to get a bus for interview, [when] she actually can take a bus closer which she can’t get the full amount back.’¹⁸⁷ This is exactly how the Claimants describe their lives in Hong Kong, as mentioned in the findings from Desk Research:

‘Sometimes asylum seekers had to travel from as far as Yuen long to attend an interview in [C]entral...because of the problem of transportation costs some of us

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

would have to walk from Mei Fu to Star Ferry, and then to take the ferry to the interview centre.”

3.2.2.6 *Misperception from the Public*

Beatson believes the misperception from the public is a factor that creates the hardship that the Claimants are now facing:

‘The biggest problem is perception. I think Hong Kong still has a cultural baggage with the Vietnamese Boat People. With the fact that Government propaganda for the last 30 years has always depicted asylum seekers as economic migrants, I think underpinning all the problems we have is cultural issues. It is the biggest obstacle for things to change.’¹⁸⁸

Daly also criticizes the way the Government portrays the Claimants:

‘I think the Government is really nasty. The Government goes out instead of...reducing the situation by putting a neutral story or a story in favor of the statistic, they go out and do their best to senile the minority. I think that is not [what] a responsible government does.’¹⁸⁹

Besides the Government propaganda, as suggested by Donnelly:

‘What you see in the paper, especially the Chinese language media, would [undertake] an exercise of a negative story about asylum seekers and those who seeking protection based solely on criminal conviction.’¹⁹⁰

Donnelly’s view is in line with what we observe, as discussed in findings from Desk Research, that some media do not report news about the Claimants in a neutral and

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

objective manner. They are often being referred as ‘illegal immigrants’, ‘economic migrants’, ‘criminals’, or simply someone that does not make contributions to Hong Kong at all.

This issue of misperception is addressed in the public survey we conducted. When being asked the reasons that the Claimants came to Hong Kong, which is an open ended question, a significant number of respondents put answers like ‘coming to Hong Kong for money’. When being asked about how the Claimants sustain their living in Hong Kong, 589 respondents answered ‘work illegally’. Moreover, realize that the public do not have sufficient knowledge about the Claimants. For instance, lots of the respondents are unable to distinguish between ‘refugee’ and ‘asylum seeker’.

3.2.3 Legal Justification to the Need for Reform

As discussed above in the findings from Desk research, the CFA in the *Ubamaka* held that Hong Kong has an obligation to offer protection to those facing threat of both torture and CIDTP, instead of just torture. In another significant case, the *C* case, the CFA made it clear that, when deciding whether to deport a refugee claimant, the Director of Immigration can no longer rely solely on UNHCR’s RSD. Instead, ‘it is essential that the determination must be made by the Director [of Immigration] and his duly authorized officers and that the determination must satisfy the high standards of fairness required.’¹⁹¹

Based on these two CFA judgments, it is safe to conclude that the current screening procedures for torture claims and refugee claims have to be changed. There has to be some new systems, or, a unified system to implement the decisions in *Ubamaka* and the *C* case. In addition, the new system (or systems) should be able to avoid all the problems associated with the existing screening procedures.

3.3 Unification

3.3.1 Support of a Unified System

¹⁹¹ *C v Director of Immigration* [2013] HKEC 428

It is crystal clear that there is a need to reform both the torture claims screening procedure, which is conducted by the Immigration Department, and the RSD assessment process, which is conducted by UNHCR. The present question is what options are available. With reference to various paper submissions (e.g. the Joint Submissions of the Joint Professions on Immigration (Amendment) Bill 2011 dated 18/11/2011) and articles (e.g. *Refugee and CAT law in Hong Kong: an update* by Daly¹⁹²), the most feasible option is to unify the screening procedures for the torture claims and refugee claims. With this appreciation in mind, we consulted stakeholders from different sectors. Our findings from personal interviews indicate that all of the interviewees¹⁹³ call on the Government to unify the screening process.

According to Beatson, unification is the only way forward and the Government should realize that they have continued to offer some solutions which have been struck down by the courts repeatedly.¹⁹⁴ Daly agrees on this point and according to him, ‘instead of listening to the advice of international experts, Hong Kong prefers a piecemeal approach that only responds favourably when spanked by the courts’¹⁹⁵ and ‘the genuine claimants are the ones who are hurt in the process.’¹⁹⁶ Given that the ground of the claims may be overlapping, as indicated by Karani, the head of the Hong Kong Office of the UNHCR, a unified procedure can facilitate the performance of its supervisory function.¹⁹⁷ Apart from this, Loper stated that a unified system will be much more economical on money and time.

We believe that adopting a unified screening mechanism is the best available option to Hong Kong since there is no justification to do the same process twice. By that, it means

¹⁹² Daly (2012)

¹⁹³ See Findings of Interviews in Section 2

¹⁹⁴ Ibid.

¹⁹⁵ UNHCR (2013)

¹⁹⁶ See Findings of Interviews in Section 2

¹⁹⁷ UNHCR (2013)

the piecemeal approach which has been driven by litigations and judicial reviews should be abandoned for the purpose of human rights protection.

3.3.2 Unified System Should Include CIDTP Claims

As illustrated in our findings from Desk Research, Hong Kong has a legal obligation to offer protection to those facing the threat of CIDTP due to the CFA's decision of *Ubamaka*. However, this has not been implemented yet.

All our interviewees, which are from different sectors such as NGOs, legal scholar, and legal practitioner, all agree that the new unified screening procedure, if implemented, should also deal with CIDTP claims. Donnelly points out that there is no point of having separate claims procedures while most of the claims are based on the same narrative, and this would be very time consuming and costly to maintain separate procedures. Again, Daly supplemented to this point by referring to the system in other jurisdictions in which the RSD is the basis and torture claims and CIDTP claims serve as complementary protection.

Although the need seems to be straightforward, To raised some concerns with the Government's reluctance to comply with the decision of *Ubamaka*. The reluctance may be shown by the fact that there has been no update from the Government officials even 6 months have already passed since the handing out of the CFA judgment, and 4 months have passed since the release of the Government press release dated 18/2/2013 in which the Immigration Department promised to figure out the way to comply with the judgment.

We believe that *Ubamaka* is a strong case which imposes a legal obligation on the Government to include protection for CIDTP in the new unified process. Such obligation cannot be avoided by delaying the implementation and fast-tracking the current torture claims screening.

3.3.3 The Need to Sign the 1951 Convention

After recognizing that it is a common expectation to have a single, government-led, unified system to screen refugee claims, torture claims and CIDTP claims, many stakeholders, such as the UN Committee on the Elimination of Racial Discrimination¹⁹⁸ and the UN Human Rights Committee¹⁹⁹, have urged the Government to become a party to the 1951 Convention. This is consistent with our findings from some personal interviews. For instance, law makers such as Lau and To support such move. In particular, Lau emphasized that the Government's excuse of refusing to do so not acceptable.

However, some of our interviewees, such as Daly and Loper, are of the views that the Government can implement a single and unified procedure even without being a party to the 1951 Convention. The reason is explained below:

The legal basis for a unified mechanism is the principle of non-*refoulement* which applies to Hong Kong through the International Covenant on Civil and Political Rights ('**ICCPR**'). The UN Human Rights Committee clarified that there is an implied right to non-*refoulement* under Art 6 & 7 of the ICCPR, which state that states parties must not expose individuals to the danger of torture or CIDTP upon return to another country by way of their extradition, expulsion or *refoulement*.²⁰⁰ The ICCPR itself has been incorporated into Hong Kong laws by Art. 39 of the Basic Law and Art 2 & 3 of the Hong Kong Bill of Rights Ordinance.

Our findings from Desk Research also support the idea that become a party to the 1951 Convention is not a prerequisite for setting up a unified mechanism to. Put it simple, the CFA's decision in the *C* case was based on the duty to conduct RSD in accordance with the high standards of fairness identified in *Prabakar*, having regard to the gravity of the consequence of the determination.²⁰¹

¹⁹⁸ UNHCR (2009)

¹⁹⁹ Concluding observations on the third periodic report of Hong Kong, China - 107th session 11–28 March 2013 Item 8 of the provisional agenda Consideration of reports submitted by States parties under article 40 of the Covenant

²⁰⁰ UNHRC (1992)

²⁰¹ *C v Director of Immigration* [2013] HKEC 428

Accordingly, we believe that becoming a party to the 1951 Convention is not a prerequisite for the setup of the new unified screening mechanism. Nevertheless, we agree with Beatson who said that ‘we have to make sure that they live in a humane way and a healthy way, in a way...that is acceptable even to our citizen.’ Although becoming a party to the 1951 Convention is not required, we believe that Hong Kong as a developed city should take up international responsibility to offer comprehensive protection to vulnerable people.

3.4 Elements of the New Unified Screening Mechanism

Consultation is one of the keys to a successful legal reform. We therefore consulted different experts in this area, law makers, and the public. The findings from our research indicate that the new mechanism must be fair, transparent, efficient and effective. Key elements that are required in the new mechanism are also identified. In short, these key elements primarily concern 4 aspects:

- (1) legal representation;
- (2) procedural and evidentiary matters;
- (3) adjudication and decision making; and
- (4) appeal mechanism.

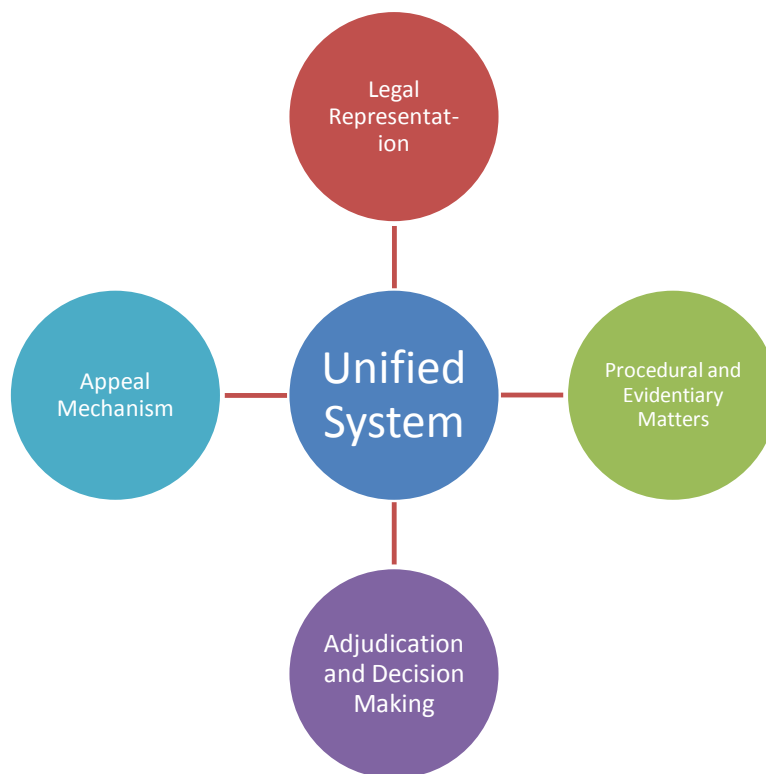


Figure 62: Aspects of the Key Elements Required in the New System

3.4.1 Legal Representation

3.4.1.1 *Access to Publicly-funded Legal Representation*

The right to legal representation is a fundamental legal right guaranteed by Art. 26 of the ICCPR and Art. 22 of the BORO. These provisions apply to ‘all persons’ in the jurisdiction without discrimination.

As illustrated above, although legal representation is allowed in the current RSD assessment process, neither legal aid nor the DLS is available to refugee claimants. In contrast, DLS is available to torture claimants. Thus, there is consensus that in the new unified mechanism the existing Pilot Scheme under the DLS has to be extended to offer publicly-funded legal assistance to not only torture claimants, but also asylum seekers and CIDTP claimants who have passed the eligibility test.

The Joint Professions support the introduction of a statutory scheme after necessary refinements.²⁰² It is noteworthy that the pilot process in the UK SOLIHULL project is said to lead to a much fairer and quicker process.

We believe that a Claimant’s right to legal representation and assistance must be guaranteed. We agree that the extension of the Pilot Scheme will be necessary in the unified mechanism. Equally important, the Government should study how other jurisdictions are doing this and consider the introduction of a statutory scheme.

3.4.1.2 *Training for Lawyers and Quality Control*

The findings from our research indicate that lawyers in Hong Kong are not adequately trained on refugee and human rights law. As per Loper, some studies have found that the

²⁰² The Law Society of Hong Kong and Bar Association (2011)

quality of the legal representation has a significant impact on the results of refugee claims and legal representation of higher quality would lead to a much higher rate of success.²⁰³

The Pilot Scheme under the DLS offers a 2-weekend training (4 days in total) to newly joined lawyers (both solicitors and barristers). This is commonly considered as inadequate and insufficient because in Hong Kong refugee law is a new area of law, which is built upon international law and human rights law. Regarding knowledge about the information and conditions of a particular country, this requires a high degree of expertise. Adequate training on these subjects should be provided.

Moreover, counseling skills may also be necessary due to the vulnerability of the Claimants. Parker also suggests start the training at an earlier stage, e.g. law degree, the P.C.L.L. and pupillage/ training period.

The lack of quality control mechanism in the Pilot Scheme is a big problem that severely affects the quality of legal representation. This structural problem should be addressed. The findings indicate that the admission requirements (currently: attending the 2-weekend training and 3-years post-qualification experience) should be tightened and they should not be allowed to waive in the new mechanism. There are suggestions that only barrister-at-law should be allowed to join the scheme, but this is unrealistic at all because the DLS is co-operated by the Joint Professions. Apart from inserting quality control mechanism in the Pilot Scheme, it would attract better lawyers if the scheme is publicly funded by Legal Aid Department which can offer a higher pay to lawyers.

We believe that adequate training for lawyers and quality control mechanism should be provided in the new mechanism. The new training programme can be a more structured course that provides a comprehensive training on international law and human rights law. Regarding the quality control issue, we agree that the admission requirements should be

²⁰³ Loper (2010)

tightened and that the quality of lawyers would be improved if it is funded by Legal Aid Department.

3.4.1.3 *Accreditation System of Legal Representative*

It is suggested by the HKRAC that the Government should adopt in the new unified mechanism the accreditation system currently in place under the Hong Kong Office of the UNHCR. The accreditation system is mentioned in Unit 4.3.3 of the Procedural Standards for Refugee Status Determination under UNHCR's Mandate,²⁰⁴ which states, "...implementing an accreditation system to acknowledge the qualification of legal representatives who regularly represent Applicants in UNHCR RSD procedures and who are known to the UNHCR Office.'

In the UNHCR procedure, the legal representative can be either qualified lawyers or a person who possesses: (i) a working knowledge of refugee law and RSD procedures, (ii) experience assisting refugee claimants, and (iii) a thorough understanding of the Applicant's claim. Apparently, this is different from the system currently in place under the enhanced procedure for torture claims in which only qualified lawyers are permitted. The rationale behind is that having those accredited legal representatives who have the necessary skills and experiences to handle the case would be a good starting point in a new system in Hong Kong.

The finding from our interview shows that most of the interviewees do not object the idea as long as it does not bypass or circumvent the practicing requirements in Hong Kong, but there are some concerns that it may be unrealistic and too ideal to allow some lawyers qualified in other jurisdictions to enter into this particular sector of the legal market in Hong Kong.

²⁰⁴ UNHCR (2013)

We believe that the accreditation system is a good option to Hong Kong, though it may be too ideal. For the protection of claimants, the Government should attempt to negotiate with the professional bodies to see how the system can be modified and implemented.

3.4.2 Procedural & Evidentiary

3.4.2.1 *Burden of Proof*

The burden of proof in the current torture claims screening procedure is not clearly stated in the Immigration Ordinance. S.37ZA of the Immigration Ordinance only provides ‘the duties of a claimant to substantiate a torture claim.’ According to Parker, the burden of proof, in compliance with the judgment of *Prabakar*²⁰⁵ and *TK v Michael C Jerkins*²⁰⁶, should remain on the claimant to prove that there are substantial grounds for believing his or her case.

In order to comply with the high standards of fairness derived from *Prabakar* and the notion of ‘joint endeavor’ derived from *CH v Director of Immigration*,²⁰⁷ the Director of Immigration is required to conduct investigation and obtain relevant information and materials on general country conditions depending on the facts and issues raised in a case. Specifically for internal relocation cases, the burden of proof should also remain on the claimant, as per Parker. This is consistent with the ruling in *TK v Michael C Jerkins*. And it is confirmed in *TK v Michael C Jerkins* that the Director of Immigration does not bear any legal burden of proof in the process.²⁰⁸

It is our view that the new unified system should incorporate the recent decisions illustrated above and state expressly that the burden of proof is on the claimant.

²⁰⁵ (2004) 7 HKCFAR 187

²⁰⁶ CACV 286/2011

²⁰⁷ [2011] 3 HKLRD 101

²⁰⁸ CACV 286/2011 [36]

3.4.2.2 *Medical Examination and the Evidence Obtained*

The findings from our research indicate a serious concern over the medical examination and the evidence obtained thereof, the two problems that should be avoided in the new unified mechanism. Firstly, it should not be the case that medical examination can only be requested by Immigration Officers or Claimant when the ‘physical or mental condition of the claimant is in dispute.’²⁰⁹ The rationale is succinctly summarized by the Joint Submission by the Joint Professions that ‘it is possible to imagine some cases where the physical condition may not be in dispute, but it would be safer to assume – given the onus on the claimant – that all claimed conditions will be disputed or at least not accepted by the examiner.’²¹⁰

Secondly, the doctor/ patient confidentiality must be ensured and the report should not be disclosed to the Immigration Officer directly without prior consent of the Claimant. The Hong Kong Medical Association considered that the current screening procedure for torture claims will lead to a breach of doctor/patient confidentiality.²¹¹ According to Loper, the potential breach of confidentiality may be unfair to the extent that it would not meet the high standards of fairness required in the system.

We agree with the points mentioned and believe that medical examination should be available to a Claimant in the absence of any relevant disputes. The doctor/patient confidentiality should also be observed and ensured in the new unified system.

²⁰⁹ Immigration ordinance (Cap 115)

²¹⁰ The Law Society of Hong Kong and Bar Association (2011)

²¹¹ Ibid.

3.4.3 Adjudication and Decision Making

3.4.3.1 *Adjudicator of First Instance*

A. *Training for Adjudicator*

The findings from our interviews indicate that in the new unified mechanism more adequate training should be provided to the adjudicators of first instance, i.e. Immigration Officers. Although there are debates as to whether a board of adjudicators which consists not only of Immigration Officer should be adopted, the common ground between Loper and Beatson is that immigration officers must be involved in the first tier interview process. Acknowledging the danger that Immigration Officers are often well-trained for immigration control, there is a genuine need for adequate training to enlighten them the purpose of the screening procedures – for human rights protection.

We believe that a proper training programme should be offered to the Immigration Officers before they can handle the claims in the new unified mechanism. The programme should address international human rights law, RSD procedure and the proper attitude/ mentality towards the Claimants. An internal exit-exam after the programme will be necessary to assess their ability.

B. *Country Expert and Country Information*

Having accurate information of country of origin of a Claimant has serious impact on the decision because it forms part of the context of understanding the claims, as per Loper. As illustrated above, the lack of accurate country information is one of the biggest weaknesses in the current torture claims screening procedure, and this should be improved in the new unified mechanism. Recognizing the difficulty of obtaining information of some countries (e.g. Uganda, Togo and Mutumba), it may be an option to introduce country expert into the new unified system either by joining as an expert witness or by joining as an adjudicator. According to Beatson, the board making the first decision has one country expert in Germany. But Daly has reservation towards the latter

idea as it is not a local practice to bring foreigners into our judicial process, save for the CFA.

Another way to address the problem is to setup a government-funded country of origin information resources centre where country experts together with staffs will provide accurate and detailed information of different countries. One of the successful cases is New Zealand, according to Loper. By setting up such a country of origin information resources centre, not only do the Immigration Officers and adjudicators can access to the information and benefit from it, but also the legal representatives and the Claimants.

We believe that accurate country information should be available to all the parties involved in the process to meet the high standards of fairness. After thoughtful consideration, the team inclines to the suggestions of: (i) setting up a government-funded country of origin information resources centre, and (ii) allowing country experts being expert witnesses in the process. We consider that appointing country experts to be adjudicators may be too radical to be accepted in Hong Kong.

3.4.3.2 *Credibility Assessment*

The team is aware of Parker's concern over the credibility assessment in the current torture claims screening procedure. Basically, he suggested remove the statutory list of factors/ behaviors of a Claimant that may discredit him or her under s.37ZD of the Immigration Ordinance. The rationale is that only the content of the claim is relevant but not the behavior of that Claimant in Hong Kong. This is in line with the suggestion provided by Vision First, which stated:

‘In order to examine the credibility of the claimants, we have to look at the claimants’ background and the situation of his/her home country at the time.’²¹²

²¹² Vision First (2013b)

The findings from our search also indicate that there is no particular list of factors that may discredit a Claimant prescribed in the Procedural Standards for Refugee Status Determination under UNHCR's Mandate.

We agree that the list should be removed in the new unified mechanism. The removal may assist the adjudicator in focusing on the merit of the claims. In addition, the list may render any screening procedure unfair.

3.4.3.3 *Reasoning for Decision*

The findings from our interview indicate that the reasoning of the decision is not adequate and sufficiently detailed. Although the decision in *FB*²¹³ held that the decision-maker has no absolute duty to give reasons, the fact that an appeal mechanism is in place entails a sufficiently detailed reasoning. Daly suggested that the following matters should be improved: (i) sufficiency of the reason, and (ii) the logic in the reason. The findings from our research show that publication of the decisions can be a means to enhance transparency of the system, which would also provide a better monitoring of the process as the public can see how the a particular decision is reached. It is also possible that the publication of good quality decisions may reduce the number of appeal cases. Noting the concern over confidentiality of the Claimants' personal information, this can be easily resolved by redacting certain details if necessary.

We believe that it is necessary for the Immigration Department to publish the decisions with enhanced quality, for the purpose of facilitating the appeal process, in order to meet the high standards of fairness. We understand that the Immigration Officers are not well-trained for writing decision so that we suggest provide training on decision write-up.

²¹³ [2008] HKEC 2072

3.4.4 Appeal Mechanism

3.4.4.1 Oral Hearing

It is noted that a torture claimant is not entitled to an oral hearing as of right in the appeal process under the current torture claims screening procedure. It is entirely at the discretion of the adjudicator from the Torture Petitions when the circumstances of the claim warrant an oral hearing.²¹⁴ The findings from our research indicate that this situation should be improved in the new unified system. In particular, Daly is advocating for changes that make oral hearing more like a norm than an exception, for oral hearing is one of the main safeguards of avoiding mistakes which may arise from paper determination. We note that there is a judicial review case to challenge this position right now. As mentioned above, refinement by litigation/ judicial review may be effective, but it must be limited in effect and must not be expeditious to address the problem.

In view of this, we support the idea of making oral hearing a general rule in appeal process of the new unified system, subject to some exceptions where an oral hearing would not be necessary (e.g. the case is apparently unmeritorious). Consequentially, this would clear the risk of being struck down by court due to the failure to meet the high standards of fairness.

3.5 Protection or Rights in addition to having A Unified Screening Mechanism

In addition to having a single, government-led, unified screening mechanism for all the Claims, it is necessary to have protection regarding different rights of the Claimants. As Loper suggested, some conditions are needed to create a truly fair system that fully

²¹⁴ Security Bureau, 'Frequently Asked Questions on Lodging a Petition,' available at 'http://www.sb.gov.hk/eng/special/pdfs/faq_petition.pdf'

complies with the rule of law and protects the human rights of everyone in Hong Kong regardless of their residency or immigration status.²¹⁵

Thus, in addition to the ‘procedural’ elements as mentioned above, the Government must also pay attention to socio-economic conditions. For instance, access to employment, education, adequate food and housing are crucial to ensure that Claimants live their lives in dignity and respect.²¹⁶ It can also enhance a claimant’s ability to present his or her claim effectively. If a claimant is merely attempting to ‘survive’, he or she does not usually have energy left to devote to the determination process. Regarding these issues, this section below analyzes the opinions and suggestions from our findings referring to the protections that should be offered to the Claimants.

3.5.1 **Right to Work**

Currently, the Claimants are generally not allowed to work.²¹⁷ Our findings above indicate how this brings hardship to the Claimants, such as being forced to commit crimes to sustain their living. In general, Beatson said that giving the right to work to the Claimants can be a cure for many issues mentioned above. Daly also considered the right to work as the key to reduce hardship of the Claimants. According to him, Claimants with the right to work would not sit in limbo and could support their family instead.

Donnelly stated that if the Claimants were granted the right to work, they would be less dependent on the welfare assistance in the first place. Giving people right to work could also improve the current social aid system by reducing the number of people who rely on it. Most importantly, work would give the Claimants a sense of self-worth, dignity, purpose in life and a connection to the community as well as preparing them for integration after resettlement. In fact, according to the findings from our survey, 95% of the respondents indicate that they would want to work pending the determination if they

²¹⁵ Loper (2010)

²¹⁶ Ibid.

were to apply for refugee status or torture claim in Hong Kong. Certainly, they are eager to give back to the societies that host them and have talents and skills to share. For example their languages skills are much needed for interpretation services in Hong Kong. By way of working, they contribute to the Hong Kong economy and tax revenue.

On the one hand, the Claimants need the right to work to survive. On the other hand, it is important not to attract economic migrants as a result of granting the right to work to the Claimants. Accordingly, as Beatson mentioned, Hong Kong can adopt the approach that is currently being used in Europe, where the governments would take 6 months to screen out economic migrants, criminals, terrorist before giving a genuine Claimant the right to work. In other words, people cannot come to Hong Kong and start work immediately, but have to wait 6 months. Alternatively, a more conservative solution suggested by Lin from SoCO might be adopted: at least (or only) allow those who have been recognized as refugees by the UNHCR, and those whose claims have been successful under the torture claims screening procedure to work in Hong Kong.²¹⁸

No matter whose suggestion were to be adopted, it should be noted here that, it has been mentioned by all three LegCo members we interviewed, Lau, To and Leong, that the decision to grant the right to work to the Claimants is not an easy one. Lau said that there has to be enough education to the public as to why such policies are implemented, and the possible impact on the general public. To thinks it is difficult to convince the general public to allow the Claimants to work in Hong Kong. Leong also considered this as a sensitive issue in respect of the local labor union force, and that he is not certain if the public welcomes such decision. In fact, their concerns are consistent with the findings we obtained from the public survey: 54% of our respondents do not support the idea of granting working permits to asylum seekers and refugees.

²¹⁸ SOCO, Submission to LegCo Panel on Security regarding the legislative proposal for the torture claim screening system

In any events, we support the policy of granting the right of work to Claimants since we understand there are lots of genuine Claimants who are suffering heavily in Hong Kong. Yet, in light of the possibility of attracting economic migrants and the public's concern, we think Lin's suggestion should be adopted. In addition, we are of the view that the Government should explain fully and clearly to the general public as to reasons of making such decision, such as the true reasons the Claimants come to Hong Kong, their difficulties in daily life, etc.

3.5.2 Right to Education

In general, our findings reach a general consensus to support the children or teenagers Claimants to have a right to education in Hong Kong. Leong thinks that it is reasonable for a child to receive education as the claims against, for example, deportation, could last for years. Lau also agrees with the need to provide such education.

3.5.2.1 Official Education – Under 18 and Above 18

In SoCO's view, official education to those people in Hong Kong is not a problem for those children under 18. Despite its opinion, Vision First provided an example of rejection by Education Bureau for a case of child under 18. Upon consulting the Immigration Department, they told a torture claimant father that his child is not eligible for admission to school in Hong Kong. The father had been here for 7 years, married his wife in in Hong Kong with a Hong Kong marriage certificate. The child is born in Hong Kong with a Hong Kong birth certificate. From a legal perspective, Vision First emphasized that the right of child is protected by BORO Art 20, ICCPR Art 39 and UN Convention regarding right of the child Art 28. These treaties and conventions, which Hong Kong has signed, state that the right of primary education is compulsory and available free to all. So in law, there are no reasons for the Education Bureau to deny the son for education. For those above 18, SoCO considered the issue more difficult. First, it requires general permission from Immigration to study. Moreover, most secondary schools do not take people above 18 because that person would hardly fit into the classes. Moreover, the Education Bureau will not refer the person under 18 to anywhere.

3.5.2.2 *Unofficial Education – NGOs and Other Organisations*

If official education could not be provided, can other courses fit their needs? Unfortunately, SoCO stressed NGO courses would not be enough because it is based on a voluntary basis. Moreover, those courses are generally short and not comprehensive. It's not like a progressive English course where you can go from Beginner's lesson to higher levels. But there are problems even for the progressive courses. SoCO mentioned a case about taking courses at British Council. For example, they have an entry test to determine which English level one fits in to determine the appropriate course. So apart from the general permission, the claimant needs another permission from Immigration to take the entry test as well. Ultimately, it would take a very long time before a person could enroll. Despite the opinions above, 68% of respondents did not support giving them free education. One analysis is that they support the claimants or claimants' kids having paid education.

3.5.3 **Aid, Housing and Food**

3.5.3.1 *Housing and Aid*

First of all, the HK\$1200 Housing Allowance does not cover other fees, such as utilities or housing deposits. Even purely for housing, this amount is evidently low given that Hong Kong has one of the most expensive property markets in the world, which means refugees have to live in substandard housing that is overcrowded, unsanitary, unsafe, and located in areas far from services. The poor living conditions of the Claimants have been mentioned above in our findings from Desk Research. Moreover, the level of assistance failed to reflect changes in the cost of living, meaning that the assistance loses real value over time. Organizations like SoCO advocate that the amount of aid should be increased. Daly also suggests that the amount of \$1,200 should certainly be increased.

3.5.3.2 *Food*

Again, as mentioned above, there are problems with the quality and quantity of the food provided, and that there is no complain mechanism. Some Claimants believe that it would be better for the ISS to provide them with food coupons which they could use at any supermarkets. This is also what NGOs like SoCO is advocating for.

3.6 Mass Perception and Public Education

In our findings from questionnaire, 98% of respondents say they know what a ‘refugee’ is. However, 61% of respondents admitted that they are not able to distinguish between ‘refugee’ and ‘asylum seekers’. Together with our personal interviews, there is a general consensus in the need for public education, including perception and knowledge towards them. From a political point of view, Lau stated that the Government must fully explain the policy and rationale regarding the Claimants to the public. Otherwise, Hong Kong people may become repugnant to it.²¹⁹

Public perceptions towards refugees are partly based on their knowledge towards them. Daly advocated the need of more education to change people’s perception. He described this area as being ‘nasty’ as a subset of racial discrimination, parallel with the treatment of foreign nationals, mainland people and domestic helpers, which Vision First agreed. Instead of a merely depicting the situation as a neutral point of view, the media tried their best to demonize the minority. HKRAC concurred and pointed out that the media in HK, especially the Chinese language media, undertake an exercise of a negative story about asylum seekers and those who seeking protection based solely on criminal conviction. Daly then drew a stark contrast with Canadian press which often write favorable story of refugees who contributes to Canada after leaving their home country.

Moreover, education begins with teenagers or children - it is certainly easier to convince a 7-year-old son than a 70-year-old grandfather. One reason of discrimination, as Vision First explains, is that Hong Kong people seldom has exposure of human right issues in tertiary educations, not to mention primary or secondary schools. For instance, some students in Chinese Secondary Schools don’t even know where Pakistan is. That underpins racism and misunderstanding. People are always afraid of what they don’t know, but when we encounter the unknowns, build a relationship and open up, the foreigner becomes familiar. First Vision classifies this negative perception as a cultural

²¹⁹ See Interview Section 2

baggage which can be traced back with the Vietnamese People Boat incident. Since then, it has been the Government's propaganda in the last 30 years to depict asylum seekers as economic migrants, who generally come to take advantage from richer local citizens.

It is the responsibility of legislator and government officials to foster the essential idea of culture-multism. While there are anti-refugee groups in the country, there is at least a balancing act from its government. First Vision also considers the Hong Kong government as incompetent in educating the public about perception towards asylum seekers. Daly thought that the effect of culture-multism might take long to appear. Similarly, Vision First said it is not something that we can fix in 2 years, but perhaps 20 years. Because of this, Daly thought that the promulgation of culture-multism should start now to avoid things 'heating up'. Indeed, Hong Kong should be more inclusive, international and globalized, in substance, apart from its general impression as modern city.

3.7 Concluding Remarks

In the context of law reform, the existing problems and new elements of the unified mechanism are interlinked. Despite the judicial review cases and the amendment to the Immigration Ordinance in 2012, there is still a lot of problems arising from the procedures and Claimants welfare and challenges against the system by judicial review maintains. There is clearly need for a reform of the whole system and unification of different procedures seems to be the best way forward. The team believes that the problems identified above cannot be redressed by law only. Legislations, on paper, can be drafted without flaw, yet perfect and effective enforcement still cannot be guaranteed. Ultimately, it is all about enforcement by human actors, especially the adjudicator in the process. As illustrated, the adjudicators of first instance are having a mind-set of immigration control and they are inclined to reject rather than offer protection. Yet, there is no adequate training for the adjudicators and the legal representatives. At the macro level there is a "culture of rejection" that forms the public's perception of Claimants, and

that explains why our community is inclined to isolate and eliminate Claimants. As such, the team believes that alongside unification by legislation, adequate training and public education are the key to successful protection of Claimant. In order for us to offer a comprehensive protection which is of international law standard, a holistic approach would need to be adopted to transform the culture of rejection into a culture-multism.

4 SECTION 4 Comparative Studies of Overseas Jurisdictions

4.1 Legislation and Procedure in Other Jurisdictions

This part of the discussion paper will focus on the immigration policies on asylum seekers in foreign jurisdictions, namely Australia, Canada, Germany Macau and the United Kingdom. The purposes of this analysis are to attain a deeper knowledge on foreign refugee policy in effect and to facilitate the perfection of our propose system. (See recommendation part below) Australia was chosen because of its a long-established tradition in protecting refugee's right. UK and Canadian were chosen for their new refugee-screening regime introduced on 2007 and 2012 respectively. Germany was chosen because it is currently the second largest host country of asylum-seekers in EU. Finally, Macau was chosen because it is the only Special Administrative Region with the 1951 Convention rectified.

4.1.1. Australia

Australia became a signatory to the 1951. It ratified the CAT in 1989. In Australia, both refugee claims and torture claims are lodged under the comprehensive refugee system. The system for determining refugee status is administered by the Department of Immigration and Citizenship ('DIAC'). Even if an asylum claim is rejected under the refugee system, but if there are compelling humanitarian reasons such as 'a real risk of torture', the case would be referred to the Minister for Immigration and Citizenship for determination of granting residency on humanitarian grounds. Since 1992, the Minister have started to grant protection visas to applicants who are found not to be refugees but cannot be returned to their home countries because there is a real risk of certain types of harm. The effect of the protection visa is to allow a person to remain permanently in Australia and, after satisfying the statutory criteria for citizenship, including a residency requirement, to be granted Australian citizenship.²²⁰

Australia implements a two-stage administrative determination procedure: primary and review stages. In the primary stage, an asylum seeker lodges an application for refugee

²²⁰ Migration Act 1958

status with DIAC. If the application is accepted, the asylum seeker is granted a permanent protection visa. Applicants granted permanent protection visa receive work rights, access to health care and an entitlement to support payments through the social security system. If a claim is rejected, the asylum seeker has the option to lodge an application for a review of this decision. At the review stage, applicants can seek review of the decision by taking the matter to the Refugee Review Tribunal. The jurisdiction, powers and procedures of Refugee Review Tribunal (RRT) are governed by the Migration Act 1958 and the Migration Regulations 1994. It is an independent statutory body, which has the power to affirm, vary or remit to the Minister for Immigration and Citizenship for reconsideration of decisions regarding refugee protection. Unsuccessful applicants of the review stage could further challenge the lawfulness of the tribunal's decision in the courts.

Applications are assessed by case managers who are DIAC officers. Case managers are trained with sensitive interviewing skills and handling techniques of people suffering from post-traumatic stress disorder or other psychological or emotional issues. While legal representation is not allowed in the asylum interview, applicants' friend, relative or migration agent may attend the interview. Interpreter, if necessary, will also be arranged in the interview. At the appeal stage, applicants may have a legal adviser present at the hearing to assist them. Free professional migration advice and application assistance are available to all asylum seekers in immigration detention and to the most disadvantaged visa applicants living in the community through the government's Immigration Advice and Application Assistance Scheme. The final grant rate of protection visa (primary and review stages completed) for the year 2011-12 is 44%.²²¹

The Australian government provides limited assistance for asylum seekers during the period when their applications for protection are being processed. Asylum Seeker Assistance Scheme was operated so as to provide financial assistance, health care and

²²¹ Department of Immigration and Citizenship

other services to vulnerable applicants in the community. The scheme is administered by the Australian Red Cross under contract to DIAC.

Permission to work is available to applicants who have remained lawfully and actively engaged with DIAC to resolve their immigration status. For applicants who have become unlawful and have not voluntarily approached DIAC, permission to work is only available in limited circumstances.

Australia agreed to the Convention on the Rights of the Child (CRC) on 17 December 1990, obliging it to give all children, including asylum-seeking children, special treatment. Also, child protection and education are governed by State and Territory legislation, which contains mandatory protection provisions. However, the provisions are not fully practiced. Teachers of refugee children do not receive any specific training for teaching refugee and asylum seeking children with their individual needs, whilst additionally they are inadequately resourced. Also, meeting individual student's educational, emotional and welfare needs required additional work and effort from education personnel and schools. Teachers opined that the lack of support they received whilst trying to perform their job.²²²

Besides, the recent establishment of a new refugee detention center on Christmas Island was heavily criticized by human rights advocates. The prison-like detention center on the remote island keeps boat people from Afghanistan and Sri Lanka away from the mainland. The government's own human rights commission are urging the government to close the place down and sort the asylum-seekers on the mainland. It is because the

²²² Bourgonje (2010)

boat people constitute only about 10 percent of all asylum seekers to Australia and they are far more likely to be a genuine asylum seeker than economic migrant.²²³

4.1.1 Canada²²⁴

Canada is well-recognised for its leadership in offering safe haven to people who need refugee protection. It has an obligation to grant protection to refugees under a number of United Nations conventions to which it is a Party State. These include the 1951 Convention, the ICCPT and the CAT. Hence, it offers comprehensive protection to people who fear the risk of persecution or the danger to life and limb if they were repatriated.

On 15 December 2012, Canada's asylum system changed. Under the new Balanced Refugee Reform Act²²⁵ and the Protecting Canada's Immigration System Act²²⁶, all eligible asylum claimants will still get a fair oral hearing before the independent Immigration and Refugee Board of Canada.

Applicants can apply for refugee status at either his port of entry or any at designated Citizenship and Immigration Canada offices. The officers will then decide if the claims are eligible to be referred to the Immigration and Refugee Board of Canada. The Immigration and Refugee Board of Canada is an independent tribunal responsible, through its Refugee Protection Division (RPD), for deciding refugee protection claims in Canada. RPD members have received special training on refugee protection. Interpreter and free legal assistance will also be available at hearing stage at no cost. If a claim is

²²³ Norimitsu Onishi, 'Australia Puts Its Refugee Problem on a Remote Island, Behind Razor Wire', *The New York Times*, New York, 4 November 2009

²²⁴ For more information on how to claim asylum in Canadian, please refer to the website of the Citizenship and Immigration Canada: <http://www.cic.gc.ca/english/refugees/index.asp>

²²⁵ S.C. 2010, c. 8

²²⁶ S.C. 2012, c. 17

rejected, the RPD will send applicant a written Notice of Decision and an explanation of the reasons why the claim was rejected. In 2011, there are 24,981 new applications with 41,852 pending. The 2011 acceptance rate is 38 percent.²²⁷

Asylum seekers can apply for employment authorization to work while they are waiting for a decision on their claims. Usually, only people who cannot live without public assistance are usually eligible for employment authorization. They can also apply for student authorization to attend school while they are waiting for a decision. Children will automatically be eligible to attend school when they arrive in Canada.

The Resettlement Assistance Program gives refugees immediate supports for their most basic needs. Support services include temporary housing and introduction to Canada's education and health care systems. Canada also provides income support to eligible refugees who cannot pay for their own basic needs a one-time household start-up allowance as well as monthly income support payment. The level of monthly financial support is generally based on the prevailing provincial social assistance rates in the province where the refugees settle. Financial support can last up to one year after a refugee arrives in Canada, or until they can support themselves, whichever occurs first.

4.1.2 Germany

In 2010, Germany hosted 48,490 asylum-seekers (including 41,255 new claims). Thus, it is the second largest host country of asylum seekers in EU after France. German asylum law acknowledges the 1951 Convention, which accord special protection to refugees. On top of that, the right to asylum in Germany is constitutionally guaranteed in the Basic Law.²²⁸ Subsidiary protection under European law entails bans on deportation under Art. 15 of the Qualification Directive. They cover 1) torture, inhuman or degrading treatment or punishment, 2) danger of sentencing to or enforcement of capital punishment and 3)

²²⁷ University of Ottawa, IRB Refugee Status Determinations (1989 – 2011 Calendar Years), <http://www.cdp-hrc.uottawa.ca/projects/refugee-forum/projects/documents/REFUGEESTATSCOMPREHENSIVE1999-2011.pdf>

²²⁸ art 16a (2)

considerable individual danger to life and limb in the context of an international or domestic armed conflict.

The Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge (BAMF)) is responsible for the asylum procedure as well as the Dublin procedure.²²⁹ Applicants can apply for asylum directly at an office branch of the BAMF or the initial reception center for asylum seekers, and the asylum applicants can give an account of their persecution during a hearing. It is possible to seek advices and supports for this interview from lawyers or social workers in the initial reception center. Moreover, an interpreter will be present at the interview. After applying for asylum, applicants will be accommodated in the initial reception center close to the branch of the Federal Office for Migration and Refugees and for the duration of the examination of asylum application. In 2010, the Federal Office for Migration and Refugees took around 6 months on average for a final decision. If, after 6 months, no decision has been declared, applicants can ask the Office to notify in writing when the decision would be available. If it were ascertained that he/she qualifies as a refugee, a residence permit would be issued, which as a rule expires after three years. The renewal of permit is subjected to the review of the Federal Office. In first instance, 45,310 decisions were taken, including 10,445 positives (7,755 refugee status, 545 subsidiary protection and 2,145 status for humanitarian reasons).²³⁰

Under the Asylum Seekers Benefits Act, asylum seekers are entitled to government aid if they have no income or assets from their home countries and are unable to pursue gainful employment.²³¹ If asylum seekers suffer from an illness requiring treatment or acute pain,

²²⁹ The Dublin Procedure establishes which European State is responsible for examining an asylum application. The Dublin Procedure was set up in order to ensure that the content of every asylum application that is lodged in the EU, Norway, Iceland and Switzerland is examined. This ensures that only one Member State examines the asylum application. The intention is to prevent those who wish to apply for asylum from making multiple applications within the European Union.

²³⁰ Dublin Transnational Project, <http://www.dublin-project.eu/dublin/Germany>

²³¹ The Germany Supreme court has recently declared the Act unconstitutional, as it was evidently insufficient. See Zimmermann Elizabeth, German Supreme Court declares asylum seekers benefit law

they are entitled to medical assistance. However, if there is no emergency, approval from Services Office is required before visiting a doctor. Medical treatment may be refused if it is not absolutely necessary or it can be performed at later date. Generally, asylum seekers are not allowed to work during their first year in Germany. They must wait one year before they can submit an application for "Permit to Hold Employment". Schooling is not compulsory across all German territory lowers their children's chance of education.²³²

4.1.3 Macau

On 27 April 1999, the Government of Portugal informed the UN Secretary-General that the 1951 Convention would apply to Macau. Contrary to Hong Kong, after the handover, the 1951 Convention with the reservation made by China will continue to apply to the Macau Special Administrative Region.

Domestic legislation has been enacted in 2004 to recognise Macau's obligation under the 1951 Convention.²³³ Under the legislation, Refugee Commission will be set up to direct the conduct of proceedings for recognition or loss of refugee status; to prepare draft decisions on them; and to ensure the necessary cooperation with UNHCR.²³⁴ Since 2002 to September 2011, a total of 15 requests for refugee status were submitted, 10 of which were denied and one was cancelled due to the death of the applicant. The remaining four were pending requests submitted by citizens from Afghanistan, Syria, Pakistan and Cameroon, but no refugee status ever granted.²³⁵ Due to the small population, there is a lack of reports on refugee's living condition in Macau.

unconstitutional, World Socialist Web Site, 7 August 2012, <http://www.wsws.org/en/articles/2012/08/asyl-a07.html>

²³² Lucía González López, Pushed Into Exclusion: The Legal Status of The "Tolerated" in Germany (2008), http://Migrationeducation.De/Fileadmin/Uploads/The_Status_Of_The_Tolerated.Pdf

²³³ Regime de reconhecimento e perda do estatuto de refugiado, Lei n.º 1/2004

²³⁴ Ibid.

²³⁵ No refugee status ever granted, MacauDaily Times, Macau, 29 September 2009

4.1.4 United Kingdom²³⁶

The UK has a proud tradition of providing a place of safety for genuine refugees. In the UK, refugees' rights are protected by the European Convention on Human Rights and the UK Human Rights Act. The 1951 Convention was adopted in 1951. The Human Rights Act became effective in the UK on 2 October 2000.

From the 5 March 2007, all new asylum applications are being dealt with by the Home Office through the New Asylum Model (NAM). The NAM aims to deal with and conclude an asylum case within 6 months. This means that within 6 months a successful applicant will start integration into the community; or an unsuccessful applicant will return home, either voluntarily or by enforced removal. Currently, most new asylum applications will receive a decision within 30 days.

There will only be one person, called a Case Owner, assigned to every single case from start to finish. The Case Owner's responsibilities include interviewing the asylum seekers, making the asylum decision, presenting any appeals if the case is refused, having on-going contact with the applicant, providing and managing support and facilitating any voluntary returns or removal back home.

The Home Office will only grant refugee status to those who are considered to meet the criteria of the 1951 Convention.

Besides, The Human Rights Act works alongside the 1951 Convention in UK. The Home Office may grant Humanitarian Protection to a person who is facing a breach of their human rights as defined in the European Convention of Human Rights (ECHR).

²³⁶ For more information on how to claim asylum in the UK, please refer to the website of the UK Border Agency: www.ukba.homeoffice.gov.uk/asylum.

This is a status outside the Immigration Rules and it may be granted, for example, based on a medical condition or severe conditions in refugees' country of origin, which would make return contrary to Article 3 or Article 8 of the European Convention on Human Rights. If an asylum seeker's application is initially refused, he/she has the right to appeal to Asylum and Immigration Tribunal. In 2011, there are 19,865 new applications and acceptance rate is 33 percent.²³⁷

Publicly funded legal advice and representation would be available for asylum cases. While applicants are personally responsible for the interview questions, legal advisers or lawyers may attend asylum interviews. Preparation of evidence, submissions to and participation in hearings before the appellate body are also covered by the legal aid system. Beside, non-governmental organizations also provide free legal assistance and representation to the most vulnerable asylum seekers.²³⁸

Asylum seekers will not normally be allowed to work while the Home Office is considering the application. However, if asylum seekers have waited longer than 12 months for an initial decision, he/she may request a permission to work. The children of asylum applicants have the same right to education as all other children in the United Kingdom. It is compulsory for children to have full-time education between the ages of 5 and 16.

4.2 Concluding Remarks

Our comparative studies on overseas jurisdictions have generated much insight into the way to reform the whole system of Claimant protection in Hong Kong. The practice in

²³⁷ The Migration Observatory at University of Oxford, Briefing Migration to UK: Asylum <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing%20-%20Migration%20to%20the%20UK%20-%20Asylum.pdf>

²³⁸ Huen Yuki, *Mechanisms for handling torture claims in selected jurisdictions*, (2011) RP05/10-11

other jurisdictions has proved that the piecemeal approach in Hong Kong is not of the international standard at all, failing to offer comprehensive protection to Claimants. To move forward, many jurisdictions (Australia, Canada, Germany and the United Kingdom) have adopted a unified screening mechanism for Claims. In addition, those jurisdictions have also permitted Claimants to have right to work and established a screening mechanism to filter out economic migrants inserting a buffering period. As an international city, our system is extremely behind the global legal development. In order to update our system, the team suggests to Hong Kong Government to make reference to the Australian, Canadian, German and the British models. These models have earned a reputation in offering comprehensive protection to Claimants. With reference to these models, the team has made some recommendations in Section 5.

5 SECTOIN 5 Recommendation and Concluding Remarks

5.1 Recommendations

In the analysis section, we summarised the suggestion or solutions from our findings referring to the existing problems concerning Claimants. Indeed, these conditions are necessary for their protection under the Basic Law, the Bill of Rights Ordinance and any other international law instruments applying in Hong Kong when their applications are pending and after their decision. In this part, with reference to the overseas jurisdiction, we respectfully lay out certain recommendations for the government and other organizations to consider improvement regarding the issues of how the system as a whole can be reformed.

5.1.1 Unified Screening Mechanism

A piecemeal approach of reform has deeply rooted in Hong Kong's Claimants protection law. As our findings indicate, this approach should be replaced with a thoughtful reform with sufficient consultation. With reference to the models in other jurisdictions, we have made the following recommendations regarding the possible reform model and the elements to be included in the new system:

5.1.1.1 *Unification of Screening Procedures*

Recommendation 1:

In general, we recommend that a unified screening mechanism to handle Claims in Hong Kong should be adopted in order to meet the high standard of fairness required in *C, Ubamaka* and *Prabakar*.²³⁹ Reference should be made to the Canadian and the British models.

Recommendation 2:

We recommend that, in addition to unification, Hong Kong should request an extension of the Refugee Convention and its Protocol. The implement of such convention and its protocol will provide very useful guidance to improve the screening process

²³⁹ *Ubamaka Edward Wilson v Secretary for Security* [2011] HKEC 716; *Secretary for Security v Sakthevel Prabakar* [2005] 1 HKLRD 289

5.1.1.2 *Elements of New Screening Mechanism*

A. *Legal Representation*

Recommendation 3:

We recommend that an extension of the Pilot Scheme of the Duty Lawyer Service will be necessary in the new mechanism to guarantee the right to legal representation and assistance. Hong Kong should consider whether to include the Scheme in the Legal Aid system. Equally important, the Hong Kong Government should study how other jurisdictions are doing this (such as the SOLIHULL project in the United Kingdom) and consider the introduction of a statutory scheme.

Recommendation 4:

We recommend that adequate training for lawyers and quality control mechanism should be provided in the new mechanism. The new training programme can be a more structured course that provides a comprehensive training on international law and human rights law. The admission requirements to the publicly funded legal representation scheme should be tightened.

Recommendation 5:

We recommend that the accreditation system of legal representatives under the Unit 4.3.3 of the Procedural Standards for Refugee Status Determination under UNHCR's Mandate²⁴⁰ is a good model for Hong Kong to adopt. In view of the potential resistance of legal profession, the Hong Kong Government should attempt to negotiate with the professional bodies to see how the system can be modified and implemented.

²⁴⁰ UNHCR (2013)

B. *Procedural and Evidentiary*

Recommendation 6:

We recommend that the new unified system should codify the recent decisions *Security v Sakthevel Prabakar*²⁴¹ and *TK v Michael C Jerkins*²⁴² by explicitly providing that the burden of proof is on the claimant.

Recommendation 7:

We recommend that that medical examination should also be available to the claimant in the absence of any relevant disputes and the doctor/patient confidentiality should be observed and ensured in the new unified system. A provision like s.37ZC of the Immigration Ordinance (Cap 115) should be modified to that effect in the new mechanism.

C. *Adjudication and Decision Making*

(a) *Adjudicator of First Instance*

Recommendation 8:

We recommend that a proper training programme should be offered to the immigration officers before they can handle the claims in the new unified mechanism. The programme should address international human rights law, RSD procedure and the proper attitude/ mentality towards the non-refoulement claimants. An internal exit-exam after the programme will be necessary to assess their ability.

Recommendation 9:

We recommend that accurate country information should be available to all of the parties involved in the process to meet the high standard of fairness. With reference to the New Zealand model, we suggest:

- (i). establishing a government-funded country of origin information resource centre; and
- (ii). allowing country expert being expert witness in the process.

²⁴¹ (2004) 7 HKCFAR 187

²⁴² CACV 286/2011

(b) *Credibility Assessment*

Recommendation 10:

We recommend that the statutory list of factors/ behaviors of the claimant that may discredit the claimant under s.37ZD of the Immigration Ordinance (Cap 115) should be removed in the new unified mechanism. The list may render any screening procedure unfair so that it cannot meet the high standard of fairness. The removal may assist the adjudicator in focusing on the merit of the claims.

Recommendation 11:

We recommend that it is necessary for the Immigration Department to publish the decision with enhanced quality, for the purpose of facilitating the appeal process in order to meet the high standard of fairness, and the immigration officers should be offered training on decision write-up.

D. *Appeal Mechanism*

Recommendation 12:

We recommend that oral hearing should be made a general rule in appeal process of the new unified system, subject to some exceptions where an oral hearing would not be necessary (e.g. the case is apparently unmeritorious) in order to meet the high standard of fairness.

5.1.2 Additional Protections

Apart from a fair screening procedure, their basic human rights should also be protected. We have explored the models in other jurisdictions to consider improvement regarding the issues of employment, education, food and housing. In general, these recommendations, if implemented, would enable a claimant to have access to basic rights of living during and after the determination process of their claims.

5.1.2.1 *Right to work*

Recommendation 13:

In general, we recommend that refugees and asylum seekers should be allowed to work to support their family and themselves.²⁴³ This basic right should not be granted under discretion or case-by-case basis by the Immigration Department.²⁴⁴

Recommendation 14:

We recommend that the law prohibiting illegal working by refugees or asylum seekers should be separated from those concerning economic migrants. In reference to overseas jurisdiction in Europe, we recommend that the Hong Kong government should implement a 6-month screening procedure to screen out economic migrants, criminal, terrorist before giving refugees a right to work.²⁴⁵

Recommendation 15:

We recommend that the government should grant long-term working visa to successful claimants and recognized refugees in order for them to have the legal right to work before resettlement in foreign countries.²⁴⁶ This should be based on the basic right derived from Bill of Rights Ordinance.²⁴⁷ It should be granted mainly to those who cannot live without public aids.²⁴⁸

Recommendation 16:

Even after unification, the authority still needs reasonable time to process the claims. For claimants or asylum seekers pending their applications, we recommend that the

²⁴³ SOCO, Submission to LegCo Panel on Security regarding the legislative proposal for the torture claim screening system

²⁴⁴ South China Morning Post, April 16; The Sri Lankan is the first torture claimant to be allowed to work in the city. The Immigration Chief recently gives Sri Lankan refugee temporary right to work in HK

²⁴⁵ SOCO, Submission to LegCo Panel on Security regarding the legislative proposal for the torture claim screening system; James To: There is currently no international law allow them to work in Hong Kong while pending consideration of the claim

²⁴⁶ See Interview Section 2

²⁴⁷ SCMP, April 16; The Sri Lankan is the first torture claimant to be allowed to work in the city. The Immigration Chief recently gives Sri Lankan refugee temporary right to work in HK

²⁴⁸ The current public aids given by Hong Kong Government are minimal.

government should still grant them short-term working visa in order for them to support their living.

Recommendation 17:

Before the implementation of granting working visa, we recommend the government to consult a committee consisting of employers' associations, employees and their respective unions. As importing foreign labors is both a practical and sensitive issue, a consultation with relevant parties about wages, working hours, worker's welfare shall be needed.

Recommendation 18

We recommend that the Vocational Training Council (VTC) and the Employees Retraining Board (ERB) should relax their strict policy to allow any refugees or asylum seekers to take their vocational courses. In fact, if the government gives them a right to work, this matches VTC's and ERB's aim to provide training for those who have a right to work.²⁴⁹ The courses module could be built on those currently provided for ethnic minorities in the community.

5.1.2.2 *Right of Education*

Recommendation 19

We recommend that the Education Bureau of Hong Kong Government should provide primary education to them. Even the situation is currently satisfactory, the government should maintain a consistent policy and implement a more comprehensive referral system to ensure that not one child would lack primary education.

Recommendation 20:

For those above 18, or above primary level, they should not require general permission from Immigration Department to study. We recommend that the Education Bureau should provide secondary education to them. In light of the difficulties the school or

²⁴⁹ SOCO, Submission to LegCo Panel on Security regarding the legislative proposal for the torture claim screening system

teachers might face towards refugees' children, we recommend that the government should provide detailed guidance and resources regarding the system and method of fitting these foreign students into classes.

Recommendation 21:

We recommend that NGOs should offer more progress courses where the learners could take from beginner's lesson to higher levels. In light of their limiting resources, the government should provide them adequate subsidies so that they could offer more comprehensive courses with improved quality.

Recommendation 22:

We recommend that the Immigration Department should maintain a consistent policy in granting them general permission to study and to take entry test. This could speed up the process and ensure that they have reasonable access to non-official education.

5.1.2.3 Aid, Housing and Food

Recommendation 23:

We recommend that the Social Welfare Department should increase the social aid to 3000 HKD per month. This is especially due to the reason that 500HKD provided by UNHCR would be ended in July 2013. The 3000 HKD should take into consideration their rental allowance, travel expenses, food, electricity fees etc.

Recommendation 24:

We recommend that the government should provide the claimants with adequate housing – for instance, by setting up an initial reception center, or by renewing the old industrial buildings as temporary houses for them. In a long term consideration, some claimants should be eligible apply for public housing if they would stay in Hong Kong longer.

Recommendation 25:

We recommend that the government should improve the current system by:

- (i). Allotting food every 3 days instead of 10 days, so that they could get fresh food apart from dry food; or
- (ii). Providing food coupons as another option for them to get the food in supermarkets by their choice; and
- (iii). Setting up a complaint mechanism so that claimants could report if they found the food having defective quality

5.1.2.4 *Proper Call for Special Group*

Recommendation 26:

We recommend that the Hong Kong government should cooperate with UNHCR and other organizations to ensure that relevant personnel are provided for claimants special groups.²⁵⁰ In specific, there should be:

- (i). Social workers accompanying a minor;
- (ii). Psychiatrist or psychologist accompanying those with mental health issues like post-traumatic syndrome;
- (iii). Professional Interpreters accompanying their interview process;
- (iv). Council service provided by government, apart from those currently provided by Christian Action and other NGOs;
- (v). Lawyers specialized in Human Rights area or having past experiences working in the area of refugee law

5.1.2.5 *Mass Perception and Public Education*

Recommendation 27:

Public Education: we recommend that the Hong Kong Government should educate the public about the policy towards refugees. This purpose could be achieved by:

- (i). promoting videos about refugees and asylum seekers through media;
- (ii). holding seminars about refugees and asylum seekers in schools; and
- (iii). printing leaflets about refugees and asylum seekers in government office.²⁵¹

²⁵⁰ Donnelly (2013)

5.2 Concluding Remarks

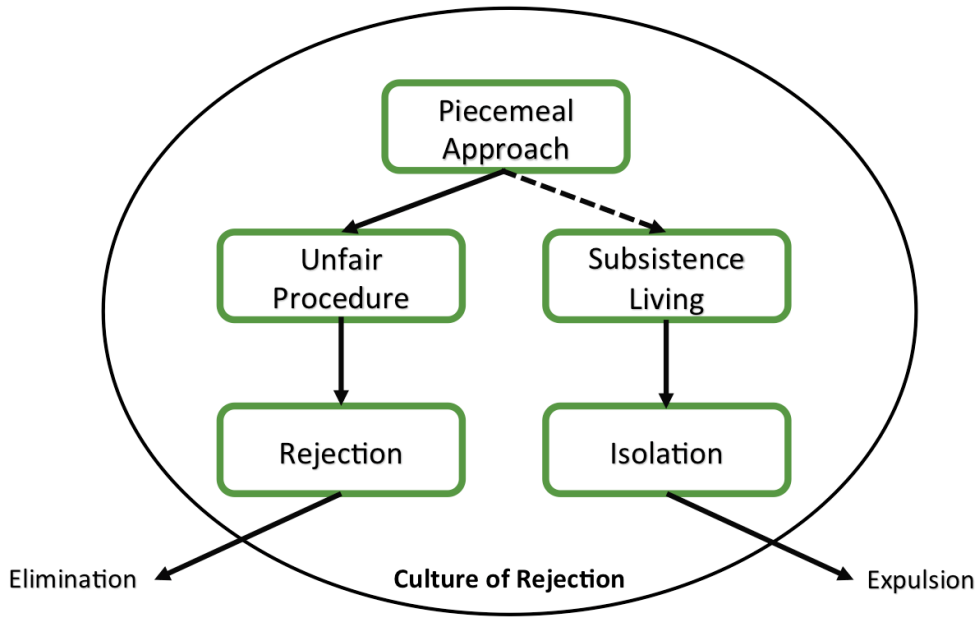


Figure 63: Concept Map of the Culture of Rejection

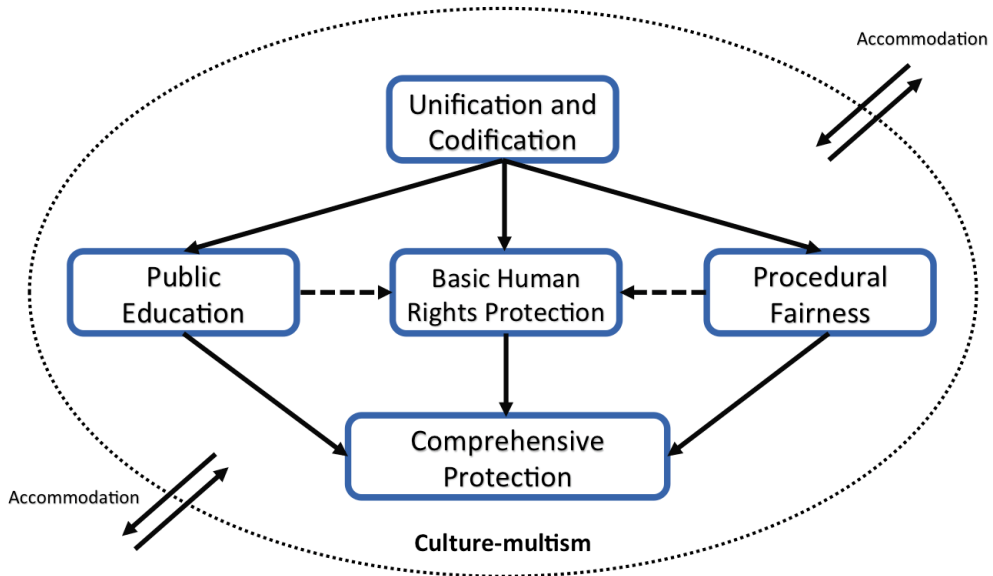


Figure 64: Concept Map of the Culture-multism

²⁵¹ See Interview Section 2

Over the years, the two isolated procedures for torture claimants and refugee claimants have been criticised for being the single most brutal execution by expulsing thousands of asylum seekers back to their home countries every year. As a public authority, Immigration Department embraced the culture of rejection and exercised its discretionary powers on immigration matters restrictively, frequently giving little or no consideration to compassionate or humanitarian circumstances. On top of that, the daily lives of asylum seekers in Hong Kong are supported by their sole reliance on minimal allowance, which further isolates them from normal social activities. (See **Figure 63** above) The underlying reason for this culture of rejection, on its face, was to protect Hong Kong's unique geographical, economical and social circumstances. It is true that our Government faces budget constraints, and in a social hierarchy dominated by local taxpayers, community concerns such as public housing and medical expenditure would inevitably take precedence over refugee welfare in the annual policy address, particularly when tension arises between the two.

The recent Court of Final Appeal decision in *C v Director of Immigration* revealed that the Immigration Department's sole reliance on the UNHCR on refugee status determination failed to satisfy the high standard of fairness, and therefore a thorough reformation on the current refugee policy is inescapable. The *C* judgment agreed that a unified and efficient system consisting of one domestic screening exercise covering torture, CIDTP and refugee claims to avoid duplication and to reduce unmeritorious and protracted claims merits careful consideration. Therefore, this research set out, as its overriding objective, on determining whether a unified system could be reconciled with the required high standards of fairness. The results of this comprehensive research, which employed both quantitative and qualitative methods to gather data, have yielded the surprising result that a unified approach received unanimously support from all the stakeholders we interviewed

Not without merit per se, the unified approach could, with details presented in the recommendation, significantly, *if not fully*, improve the screening mechanism imposed on asylum seeker, most notably in "efficiency" and "fairness" for the screening mechanism to fill in the gaps and clear the ambiguities from piecemeal modifications in recent years

by virtue of case laws. It ultimately helps uphold the high standards of fairness to stand against the wiles of the devil - abuse by economic migrants.

Although the eagerness of reform is here as manifested in the cases of *C* as well as *Ubamaka*, our research paper respectfully submitted that the goal has been misplaced as without the thorough institutional reform. This is where, despite its overwhelming merits, our recommendation does not seem “fit” largely if not at all with the domestic legal institutions, where a single, government led unified approach would be doomed to fail without any institutional enhancement especially on the extension of the Duty Lawyer Service, the formation of accreditation system of legal aid practitioner and the establishment of a government-funded country of origin information resource centre.

Without understanding the intrinsically interwoven nature between public perception and law enforcement, a mere procedural reform would not be a fully utilised one. The Hong Kong Government should instill the value of cultural-multism to the public and cultivate an open and accommodative public perception towards refugees. (see **Figure 64**). It is the researchers' sincere hope that through the compilation of this study and the interaction with stakeholders from academics, LegCo, NGOs and legal practitioners, we are able to help bridge a gap between the asylum seekers as a growing minority and the general public, or at least begin the process of dialogue on this critical issue.

To be or not to be, that is *not* the question. Rather, what to be or what not to be, is.

- END-

6 TABLE OF APPENDICES

6.1 APPENDIX 1: The Standardized Consent Form for Interviewee Informed Consent Form

“Should Hong Kong Adopt a Single, Government-led, Unified Screening Procedure to Process RSD, Torture Claims, and CIDTP Claims?” -- INTERVIEW

Researchers:

1. LEUNG, I Lee, J.D. Candidate, Faculty of Law, CUHK
2. NG, Wai Nam, J.D. Candidate, Faculty of Law, CUHK
3. WONG, Ngai Man, J.D. Candidate, Faculty of Law, CUHK
4. YIU, Chin Wang, J.D. Candidate, Faculty of Law, CUHK
5. YUEN, Wai Chung, J.D. Candidate, Faculty of Law, CUHK

You, _____, are invited to be a part of a research study on whether Hong Kong should adopt a single, government-led, unified screening procedure to process RSD, torture claims, and CIDTP claims. We invite you to participate because we genuinely believe that including your insight and opinions in our research study would be extremely valuable. The purposes of this research study are:-

1. to discuss the historical development of refugees screening procedure in Hong Kong;
2. to critically analyse the treaties and case laws in relation to torture claimants and asylum seekers in Hong Kong, including the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
3. to examine the concerns from different stakeholders, including NGOs working on refugee's rights, the legal practitioner, the lawmaker, and the citizens;
4. to analyse corresponding overseas practices, in particular to consider whether any of those asylum seeker screening procedures can be adopted in Hong Kong; and
5. to reconcile the differences of all parties concerned, in the hope to propose a comprehensive reform agenda for the Hong Kong Government.

If you agree to be part of the research study, you will be asked to participate in a face-to-face interview at the location of your choice. The interview should take no longer than half an hour. The interview topics include:-

1. the existing problems associated with the current refugees screening procedure and torture claimants screening procedure in Hong Kong;
2. the possibility and the need to reform such procedures (and how); and
3. the possibility of unifying such procedures and its impacts.

We would like to audiotape the interview to make sure that our conversation is recorded accurately. You may still participate in the research study even if you decide not to be audiotaped. You may choose not to answer any interview questions and you can stop your participation in the research study at any time.

We plan to publish the results of this research study, which will include information that would identify you. To keep your information safe, the audiotape of your interview will be placed in a locked file cabinet until a written word-for-word copy of our conversation has been created. As soon as this process is completed, the audiotape will be destroyed and all confidential documents will be shredded. You may still participate in the research study even if you decide not to be identified. Then, your real name will not be used in the written copy of our conversation to protect confidentiality.

The researchers will enter study data on a computer that is password-protected and is only accessible by the researchers. The study data will be exclusively used for this research study and the researchers will not keep such study data for other future research studies.

There are some reasons why people other than the researchers may need to view information you provided as part of the research study. This includes organizations responsible for making sure the research study is done safely and properly, including The Chinese University of Hong Kong.

As this research study covers issues on refugees and torture claimants, if you tell us something which makes us believe that you or others have been or may be physically harmed, we may be compelled by law to report that information to the appropriate agencies.

If you have any questions about this research study or your rights as a research participant, please contact Mr. NG, Wai Nam by 9657-5486 or sammy.ng.w.n@gmail.com, or Mr. YUEN, Wai Chung by 9680-2040 or coody.yuen@gmail.com.

By signing this form, you are agreeing to be part of the research study. Participating in this research study is completely voluntary. Even if you decide to participate now, you may change your mind and stop at any time.

You will be given a copy of this form for your records and one copy will be kept with the study records. Be sure that questions you have about the research study have been answered and that you understand what you are being asked to do. You may contact the researchers if you think of a question later.

I agree to participate in the research study.

Signature

Date

I agree to be audiotaped as part of the research study.

Signature

Date

I agree to reveal my identity.

Signature

Date

6.2 APPENDIX 2: The Standardised Questionnaire Survey

The Chinese University of Hong Kong
The Faculty of Law



The Individuals, the Community and the Law

“Should Hong Kong adopt a single, government-led, unified screening procedure to process RSD, torture claims, and CIDTP claims?”

Questionnaire

問卷調查

We are a group of final year law students at The Chinese University of Hong Kong. We are conducting an academic research about the screening procedure of refugees and other similar categories of claimants. In particular, we aim to find out whether Hong Kong should adopt a single, government-led, unified screening procedure to process RSD, torture claims, and CIDTP claims.

我們是來自香港中文大學法律系的學生，現正進行一項民意調查關於香港政府應否單一系統處理難民身份申請，酷刑聲請及殘忍不人道對待的申請。

Please be assured that your personal information will be kept anonymous and treated with strict confidence. There are a total of 15 questions and it takes about 5-10 minutes to complete them. Thank you very much for your participation. Your response is highly appreciated.

本問卷共有 15 個問題，請花 5–10 分鐘作答。您的答案將保持匿名並絕對保密。謝謝您的參與。

PART I - Demographic Details 背景

1. What is your age? 年齡：

< 18 18 – 25 26 – 35 36 – 45 46 – 55 > 55

Prefer not to answer 不願置評

2. What is the highest level of education you have completed? 教育程度：

- Doctorate 博士
- Postgraduate 碩士
- Undergraduate 大學
- Post-secondary 大專
- Secondary 中學
- Primary six or below 小學或以下
- Other 其他
- Prefer not to answer 不願置評

3. Do you have the right of abode in Hong Kong? 香港的居住權：

- Yes 擁有
- No 沒有
- Prefer not to answer 不願置評

PART II – Public Awareness / Perception of Refugees and Asylum Seekers

公眾對難民與尋求庇護者的認知

4. Do you know what a ‘refugee’ is? 難民的定義是：

- Yes 知道
- No 不知道
- Prefer not to answer 不願置評

5. Are you able to distinguish between ‘refugee’ and ‘asylum seeker’? 分辨難民和尋求庇護者：

- Yes 可以
- No 不可以
- Prefer not to answer 不願置評

Based on your understandings of ‘refugees’ and/or ‘asylum seekers’ and/or the definition below: 就你對難民或尋求庇護者的認知或以下定義，回答第6—8題：

***Definition of ‘Refugee’ and ‘Asylum Seeker’:* 難民和尋求庇護者的定義：**

A ‘refugee’ is a person who is outside of his or her country of origin because he or she has a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group, and is unable or unwilling to avail himself or herself of the protection of his or her home country. Such a person may be referred to as an ‘asylum seeker’ until being recognized by the state where he or she makes the claim.

難民是指因種族、宗教、國籍、特殊社會團體成員或政治見解，而有恐懼被迫害的充分理由，置身在原籍國領域外不願或不能返回原籍國或受該國保護的人。這一類人在獲得難民身份確認前被稱為尋求庇護者。

6. Can they legally work in Hong Kong? 能否合法的在香港工作：

- Yes 可以 No 不可以 Do not know 不知道 Prefer not to answer 不願置評

7. Why do they come to Hong Kong? 來香港的原因：

8. How do they maintain their daily life in Hong Kong? (can choose more than one)

如何維持在香港的生活（可選多於一項）

- Rely on their own saving 個人存款
- Rely on social aid provided by the Hong Kong Government and /or NGOs 政府或志願團體的資助
- Work illegally (e.g. work in restaurants without work permits) 非法工作，例如：黑工
- Perform illegal work (e.g. drug trafficking) 執行非法工作，例如：運毒
- Become beggars 行乞
- Other 其它 (Please specify 請說明:
_____)
- Do not know 不知道
- Prefer not to answer 不願置評
-

If the Hong Kong Government decides to: 如果香港政府決定：

9. Grant working permits to refugees and asylum seekers in Hong Kong (i.e. they are allowed to legally work in Hong Kong), will you support? 給予難民和尋求庇護者工作簽證：

Yes 同意 No 不同意 Prefer not to answer 不願置評

10. Offer free educations to refugees and asylum seekers in Hong Kong, will you support? 給予難民和尋求庇護者免費教育：

Yes 同意 No 不同意 Prefer not to answer 不願置評

11. Do you think more asylum seekers and refugees will be attracted to come to Hong Kong if the policies in Q.9 and Q.10 above were adopted? 如果實施以上政策，難民和尋求庇護者會湧來香港：

Yes 會 No 不會 Prefer not to answer 不願置評

Please turn to the next page for Part III.

請翻到下頁。

PART III – Scenario Questions 情景問題

Please answer Q.12 to Q.15 based on the scenario below: 請就以下情景會答第 12 - 15 題：

Imagine that you had been tortured by the government of your home country, Togo. You just fled to Hong Kong since you believed it was a safe place to stay. However, you subsequently learnt that, you might be deported to Togo from Hong Kong unless:

試設想你被原籍國，多哥政府逼害。你逃難來香港，一個你深信安全的地方。但是，你隨後了解到你可那能會被驅逐出香港並遣返多哥。除非：

- ❖ you apply for refugee status or make a torture claim to the respective departments in Hong Kong;
在香港對相關部門作出難民身份或酷刑聲請申請
and 和
- ❖ you are granted the refugee status or become a recognized torture claimant in Hong Kong.
成功在香港申請難民身份或被認可的難民申請者

As a result, you want to apply for refugee status and / or make a torture claim in Hong Kong.

因此，你希望在港申請難民身份或酷刑聲請。

12. You prefer to: 你選擇：

- Make one application to one department for both refugee status and torture claim; or
向一個部門為難民身份和酷刑聲請提出同一個申請 或
- Make separate applications to different departments for refugee status and torture claims.
向不同部門為難民身份和酷刑聲請提出兩個申請
- Prefer not to answer 不願置評

13. Do you need legal advices and services (e.g. legal representation in screening procedures)?

法律服務：

- Yes 需要
- No 不需要
- Prefer not to answer 不願置評

14. How long are you willing to wait before getting any determination for your applications?
你願意在確定你的申請前等多久？

<1 year 年 1 - 2 years 年 2 - 3 years 年 3 - 4 years 年 4 to 5 years 年 > 5 years 年

15. Do you want to legally work in Hong Kong pending the results of your applications?
你希望在等待申請結果期間工作嗎？

Yes 想 No 不想 Prefer not to answer 不願置評

THANK YOU! YOUR RESPONSE IS VERY IMPORTANT TO US!

謝謝！

6.3 APPENDIX 3: The News Reports related to Claimants

RECENT CRIME RELATED NEWS INVOLVING REFUGEE	
Date (In reverse chronological order)	News Report (with English Translations) & Extracts from the news
21 June 2013 The Sun	<p>South Asian burglars rampage through Yuen Long Village SUN 驚奇:南亞竊匪橫行元朗村屋</p> <p>南亞爆竊黨肆虐新界!元朗八鄉部分村落近年接連遭受連環爆竊,有村民在寓所加裝閉路電視防盜,惟最終仍被賊人如入無人之境。有事主在單位被爆竊後,從閉路電視片段發現,兩名南亞裔賊人,不需十五分鐘便抬走夾萬及掠走價值三十萬元財物,懷疑事先到村內踩線,揀選目標單位再安排同鄉入村犯案。事主不滿警方調查效率,因為呈交的閉路電視片段,賊人容貌清晰可見,但案發至今近三個月,警方依然束手無策,破案無期。</p> <p>(http://the-sun.on.cc/cnt/news/20130621/00410_096.html)</p>
8 June 2013 Oriental Daily News	<p>Ethnic minority recruited as triad mod 少數族裔出路窄 易為錢“賣命”</p> <p>南亞裔及非華裔等少數族裔中文能力欠佳,就業及升學都面對困難,加上若手持酷刑聲請「行街紙」外籍人士在港打工屬違法,容易被本地黑幫利誘招攬,淪為黑幫打手,近年不少人都涉及不同的罪案,警方去年共拘捕近五百名涉嫌傷人及嚴重毆打的非華裔人士,問題令人關注。</p> <p>(http://orientaldaily.on.cc/cnt/news/20130608/00176_011.html)</p>
8 June 2013 Sing Tao Daily	<p>Kung Yan-sum's son got raid; crimes involving South Asian increased 涉南亞人罪案增 言語不通追查難</p> <p>襲擊龔仁心兒子被捕的「印巴兵團」,當中五人是以難民身分提出「酷刑聲請」,正待核查身分及獲入境處發出「行街紙」留港。消息稱,當局關注近年政治難民衍生罪案不斷上升,包括搶劫、械鬥或被黑幫招攬為從事不法勾當。</p> <p>(http://news.singtao.ca/toronto/2013-06-08/hongkong1370672921d4534547.html)</p>
5 June 2013 Apple Daily	<p>Refugees with “going-out pass” join triad 擅行街紙「難民」易變黑幫</p> <p>據保安局今年向立法會提交文件,2008至2012年共接獲約一萬</p>

	<p>宗「酷刑聲請」,但據入境處資料,09年至今,每年平均處理一千宗有關申請,重慶大廈高級經理梁錦華相信,留港長達五至七年的「難民」中,約有2,000人經常在重慶大廈流連,他們的背景不明,叫保安十分頭痛。</p> <p>(http://hk.apple.nextmedia.com/news/art/20130605/18284618)</p>
<p>5 June 2013 Oriental Daily News</p>	<p>Chung King Mansion becomes the breeding ground of crime 探射燈：重慶大廈罪惡叢生</p> <p>重慶大廈淪為「罪惡之都」！尖沙咀重慶大廈賓館內日前發生強姦疑案,事件震驚全港。本報記者一連兩日在重慶大廈巡查,發現大批南亞裔及非洲裔人士終日流連,打架、爭執事件時有發生;晚上則群鶯亂舞,四出搵客。另外,大廈內割房多,無牌賓館林立,多條走火通道被雜物堵塞,防煙門未有關上,遍地垃圾,形成治安、防火、衛生、管理四大問題,成為區內一大毒瘤。地區人士促請警方加強執法。學者更擔心,不同國籍人士混雜其中,隨時會被用作全球情報交流站,甚至「特務窩點」。</p> <p>(http://orientaldaily.on.cc/cnt/news/20130605/00176_097.htm)</p>
<p>3 June 2013 Sing Tao Daily</p>	<p>Crimes derived from Political Refugees 政治難民衍生罪案</p> <p>非洲及南亞裔政治難民不斷湧港,提出「酷刑聲請」待審查身分,這些「無根一代」變相長期居留,為了生活,政治難民衍生的罪案不斷上升,當中包括搶劫、械鬥或被黑幫招攬從事黃賭毒,更有女難民涉及賣淫活動,為本港治安敲響警鐘。</p> <p>(http://news.singtao.ca/toronto/2013-06-03/hongkong1370246538d4526000.html)</p>
<p>3 June 2013 Sing Tao Daily</p>	<p>Mainland tourists got raped by an Indian refugee in Chung King Mansion 內地女師範生賓館被姦 偕同學來港購物 警閃電拘印度色魔</p> <p>「龍蛇混雜」的尖沙咀重慶大廈發生駭人聽聞強姦案,一名內地師範大學女生,前晚在一家平價賓館沐浴後,遭持「行街紙」印度漢闖入強姦,警方憑大廈「天眼」片段緝魔,鎖定疑人為同層另一賓館租客,迅即於案發四小時後拘捕涉案「重慶色魔」。</p> <p>(http://news.singtao.ca/vancouver/2013-06-03/hongkong1370246601d4526013.html)</p>

<p>11 May 2013 Sing Tao Daily</p>	<p>Young refugees got addicted to drugs 年輕露宿染毒癮無人幫</p> <p>香港融樂會總幹事王惠芬從九十年代起協助本港少數族裔人士,她表示,現時愈來愈多二十多歲的南亞裔年輕人因租金貴,找不到工作等多種原因,淪為露宿者,擔心會有年輕化的趨勢,造成惡性循環「在油麻地露宿的南亞裔人士,不少都染有毒癮,愈來愈多年輕人要淪落街頭,最怕他們結交到損友,意志消沉而沉淪毒海。」她指南亞裔露宿者多數是尼泊爾或巴基斯坦裔人士,多數持有本港身分證,部分持有俗稱「行街紙」的臨時身分確認書,正等待難民或政治庇護甄別。</p> <p>(http://www.flickr.com/photos/willylo/8741850364/)</p>
<p>11 May 2013 Apple Daily</p>	<p>Ugandan woman threatened neighbours with her knife 睡眠受擾 烏干達婦襲擊人舞刀警出動鐵甲威龍對付</p> <p>以難民身份來港等候甄別、曾控訴懲教人員近距離施放胡椒噴霧的烏干達女子,前晚在油麻地一志願者組織租用的地舖休息期間,不甘被人打擾,先飛擲鐵棍再舞雙刀,警方聞訊派出鐵甲威龍上陣對峙並拘捕該女子扣查。</p> <p>(http://hk.apple.nextmedia.com/news/art/20130511/18256361)</p>
<p>16 March 2013 Oriental Daily News</p>	<p>Five South Asian bandits fight with police 南亞五匪與警肉搏戰</p> <p>警方粉碎專劫回收場南亞匪幫。五名南亞裔蒙面匪徒,昨晨配備玻璃樽及鉸剪,在油麻地街頭埋伏,截劫一名身懷六十萬元巨款的回收場東主,但懵然不知身陷警方重案組包圍網,警匪爆發激烈肉搏戰,五疑匪一網成擒,混亂中其中一名疑匪被伸縮警棍擊傷,東主幸保不失。警方懷疑匪幫與元朗區多宗回收場劫案有關,又不排除今次案件有「內鬼」通風報訊,始得知東主行蹤及有巨款在身,正展開追查。</p> <p>(http://orientaldaily.on.cc/cnt/news/20130316/00176_077.html)</p>
<p>18 February 2013 Ming Pao Daily News</p>	<p>A Mongolian refugee caught stealing 偷 CHANEL 香水蒙古難民被捕</p> <p>一名來港兩年正向港府申請酷刑聲請的蒙古女子,前晚約 7 時許於尖沙嘴麼地道 77 號一間免稅店,趁無人注意把兩瓶總值 1800 元的香奈兒(CHANEL)香水放進手提袋,遭店內保安員發現,當場人贓並獲。警方到場拘捕女子,目前調查她是否與其他同類案件有關。</p> <p>(http://news.sina.com.hk/news/20130218/-2-2897533/1.html)</p>

<p>18 January 2013 Sing Tao Daily</p>	<p>Two African prostitutes robbed a foreigner in the motel 兩非洲艷女色劫外籍男誘往開房 趁沐浴掠 5000 元</p> <p>非洲妓女入侵中環、灣仔及尖沙嘴酒吧區，專門色誘外籍醉客伺機偷竊財物。一名六十歲外籍男子，昨在灣仔街頭遇上兩非裔女子，以為飛來艷福，被帶到時租酒店，兩姝變身賊匪，乘事主脫光衣服進入浴室，偷取其五千元奪門逃走，事主穿回衣服已追不及，警方調查不排除兩女賊乃持行街紙「政治難民」。</p> <p>http://news.singtao.ca/toronto/2013-01-18/hongkong1358499596d4303002.html</p>
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RECENT NEWS ABOUT REFUGEES' WELFARE	
Date (In reverse chronological order)	News Report (with English Translations) & Extracts from the news
<p>9 June 2013 SCMP</p>	<p>Asylum seeker fights ban on son's schooling</p> <p>A government decision to bar a three-year-old asylum seeker from attending a public kindergarten is being challenged by his family. The boy's 34-year-old father, who comes from Sri Lanka, says he is a torture victim and that the boy and his Indonesian mother are in the process of seeking refugee status. The father said that should make his son eligible to go to school while their claims were being reviewed. The family has been refused legal aid for a judicial review as the Legal Aid Department views the Education Bureau's ban as reasonable.</p> <p>http://www.scmp.com/news/hong-kong/article/1256691/asylum-seeker-fights-education-bureaus-ban-son-attending-kindergarten</p>
<p>19 May 2013 SCMP</p>	<p>Activists deplore conditions in compound</p> <p>Twelve Bangladeshi asylum seekers are enduring "unliveable conditions" in Ping Che that should shock the government into doing more for a community excluded from society, local human rights activists say.</p> <p>Their compound is pest- infested and lacks proper sewerage. Officials must take drastic action before the stark existence of these Bangladeshis worsened, said Vision First, an NGO that advocates rights for people seeking protection, and human-rights barrister Robert Tibbo.</p> <p>http://www.scmp.com/news/hong-kong/article/1240911/refugees-</p>

	shabby-compound-appals-activists)
11 May 2013 Sing Tao Daily	<p>South Asian encroached rooftop as camp-like accommodation 露宿者侵佔元朗唐樓 天台梯間搭屋如集中營</p> <p>油麻地渡船街天橋底去年獲政府撥款增設綠化帶, 露宿者被要求遷出, 當中不少是南亞裔人士。有社工擔心, 露宿者問題將延伸到佐敦及元朗等較多南亞裔人士聚居的地方。本報記者走訪元朗 多幢唐樓, 發現大廈因無看更、無大閘, 梯間及天台已成為露宿者的「集中營」, 他們更用牀墊及紙皮搭建臨時屋。據了解, 高峰期內, 十個樓梯中, 有七個被佔據來露宿。元朗區區議員亦反映, 南亞裔人士露宿情況日多, 對附近居民造成滋擾。</p> <p>(http://www.flickr.com/photos/willylo/8741850364/)</p>
16 April 2013 SCMP	<p>Sri Lankan refugee wins temporary right to work</p> <p>A torture claimant received a temporary work permit from the Immigration Department just a day before he is to lodge a legal challenge against the department in the city's top court today.</p> <p>The Sri Lankan is the first torture claimant to be allowed to work in the city. His lawyer, Mark Daly, said a letter from the Immigration Department arrived at the law firm yesterday, saying his client was granted "temporary permission to work on the [immigration] director's discretion".</p> <p>Daly described the news as "miraculous" as his client was due to apply for leave to seek to fight in the Court of Final Appeal for his right to work. Daly said the man would pursue his case, despite the temporary permission.</p> <p>(http://www.scmp.com/news/hong-kong/article/1215575/immigration-chief-gives-sri-lankan-refugee-temporary-right-work-hk)</p>
7 March 2013 SCMP	<p>Use fraction of budget to aid refugees</p> <p>In last week's budget, the financial secretary announced spending of HK\$440 billion, of which HK\$291 billion is recurrent spending. In this city of overflowing surpluses, isn't it possible for the government to find just HK\$1 million per year to provide a very minimal safeguard for these vulnerable people?</p> <p>The various non-governmental organisations, charities, churches and human rights groups forming the Refugee Concern Network are already providing financial help and in-kind assistance to offset the government's shortfall in provisions to refugees, as well as the larger group of asylum seekers and torture claimants in Hong Kong.</p> <p>(http://www.scmp.com/comment/letters/article/1183967/letters-</p>

	editor-march-7-2013)
27 February 2013 SCMP	<p>UNHCR axes all aid for HK refugees in budget cuts</p> <p>In a shock move, the Office of the United Nations High Commissioner for Refugees in Hong Kong (UNHCR) has announced that it will cut all financial aid to recognised refugees living here.</p> <p>There are 132 people with official refugee status in Hong Kong. Each one receives HK\$500 from the UNHCR per month. But this will now be stopped from June.</p> <p>In a letter sent to all refugees in Hong Kong, the organisation said the events happening around the world, such as the recent unrest and violence in Syria and the lingering 2008 global financial crisis, have led to budget cuts. All their offices worldwide have been asked to take similar measures.</p> <p>“We regret to inform you that we do not have enough money to continue to provide monthly cash assistance to refugees after June 2012,” the letter read. “As a result, the last cheque will be distributed in early May.”</p> <p>Refugees in Hong Kong get government assistance with rent (HK\$1,200 per month, paid directly to the landlord), groceries every ten days and other basic necessities, such as toiletries and money for transport to UNHCR/government appointments. This is given in kind – not in cash – by the International Social Service, commissioned by the Social Welfare Department.</p> <p>(http://www.scmp.com/news/hong-kong/article/1159313/unhcr-axes-all-aid-hk-refugees-budget-cuts)</p>
27 February 2013 The Sun	<p>The UN cease to distribute \$500 allowance to refugees 聯合國取消港難民 500 元津貼</p> <p>現時尚有一百一十名難民滯留本港, 惟聯合國難民署駐港辦事處近日接獲總署通知, 今年七月起削減支出, 取消向在港難民提供每月五百元現金津貼。有志願團體指, 由於難民不能 在港工作, 每月接受港府提供的租金津貼及糧食, 不足以應付生活開支, 若難民署再停止發放現金津貼, 將令難民生活更加困苦, 要求港府施以援手, 向在港難民提供實報實銷租金津貼, 以解燃微之急。</p> <p>(http:// the-sun.on.cc/cnt/news/20130227/00407_040.html)</p>

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