

LegCo Security Panel - 7 July 2015

Questions by the Hon. Dennis Kwok to the Administration

Refusal to accede to 1951 Refugee Convention and need for durable solutions

The Government's position on the 1951 Refugee Convention in para. 6 is regrettable, stating that the convention has "never applied to Hong Kong, and illegal immigrants seeking non-refoulement in Hong Kong are not to be treated as 'asylum seekers or 'refugees'." In fact, one of the most frequently made recommendations by the various UN human rights treaty bodies, in their concluding observations to Hong Kong, is that the Hong Kong Government consider seeking extension of the Refugee Convention.

In this regard, it is worth pointing out that the UN Committee against Torture will be reviewing Hong Kong later this year. Just last month, they issued their list of questions, with several specific questions on the USM (see para. 6 -10 of attachment).

In para. 5, the government asserts that the "illegal immigrant" status of non-refoulement claimants will not change because of their non-refoulement claim, regardless of the result. They also state in para. 18 that "as with all other illegal immigrants, non-refoulement claimants are prohibited from taking up employment in Hong Kong under the law" and that (in para. 17) the humanitarian assistance is "not intended to provide them with extra assistance than is necessary to meet their basic needs".

For those who would not fall under the scope of the UNHCR's mandate and could not be referred for a durable solution, no additional rights or protection is conferred other than non-refoulement. The assumption underpinning the discussion on substantiated claims is that their stay in Hong Kong is temporary, pending a change in the situation of their country back home. In para. 5, it is mentioned that the purpose of the USM is to see whether removal action should be "temporarily withheld until his claimed risks cease to exist". The concern is that there may be people unable to access durable solutions through the UNHCR, but who may have risks that do not cease to exist for several years, if not indefinitely. These people would be stuck in legal limbo in Hong Kong.

Question 1: Of the 8 substantiated claims that have been recognized in the USM, have procedures started for referral to UNHCR? How many have been able to receive a durable solution?

Question 2: Of the 8 substantiated claims under the USM and the 24 substantiated under the enhanced administration mechanism, can the government please provide the length of time it took from when they lodged a claim to when they received a positive decision, be it at first instance or appeal), how many are still in Hong Kong, and of those still in Hong Kong, how long it has been since their claim was substantiated?

Question 3: How many requests for expedition of screening were made in the first year of the USM? How many of these requests were granted? How many of those who were granted have been handed down a decision on the claim?

Question 4: The government mentions resources that go into the USM in regards to manpower, particularly public legal aid, but language interpretation is often crucial for a fair chance in a system. Can the government provide information on how many interpreters it has, in which languages, and where there are interpretation shortages?