

LegCo Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims

Submission of United Nations High Commissioner for Refugees (UNHCR)

Purpose

1. This paper is intended to brief Members on the role of UNHCR in Hong Kong, outline global developments in forced displacement, and detail the ongoing support available to the Administration from UNHCR.

Background

2. UNHCR, the UN Refugee Agency, is a global organization established in 1950, dedicated to saving lives, protecting rights and building a better future for people who are in need of international protection, having fled violence, persecution, war or disaster at home.
3. UNHCR has had a presence in Hong Kong since 1952, and a permanent UNHCR office was established in Hong Kong in 1979 to help cope with the influx of Vietnamese refugees. Since that crisis UNHCR has remained in Hong Kong to assist those who arrive from foreign countries seeking safety from persecution.
4. UNHCR has maintained a strong and evolving working relationship with the Administration in Hong Kong to ensure that people who are displaced can find safe refuge here. Through our ongoing partnership, thousands have benefitted and found durable solutions to their often desperate situations. UNHCR re-emphasises its commitment to co-operative engagement with Hong Kong SAR Government (hereafter referred to as 'the Government').
5. Recently published UNHCR statistics reveal that, globally, the forcibly displaced population increased in 2017 by 2.9 million. By the end of the year, 68.5 million individuals were forcibly displaced worldwide as a result of persecution, conflict, or generalized violence. As a result, the world's forcibly displaced population is now at its highest level since record keeping began¹.

Shared responsibility for refugees

6. In 2016's historic New York Declaration for Refugees and Migrants, all 193 Member States of the United Nations agreed that protecting those who are forced to flee, and supporting the countries that shelter them, are shared international responsibilities that must be borne more equitably and predictably. Each State has a part to play in sharing the responsibility for protecting those who have fled their homes, and each State will face its unique challenges and opportunities in doing so, depending on the local context.

¹ <http://www.unhcr.org/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>, accessed 17/07/18

7. The Declaration handed UNHCR the task of developing a 'Global Compact on Refugees'. UNHCR has been engaged in consultations with governments and other stakeholders to develop the Compact, and the High Commissioner has recently submitted the final text of the Global Compact on Refugees in his 2018 annual report to the UN General Assembly for their endorsement.
8. The Global Compact on Refugees comprises widespread commitments by UN member states, but of particular relevance to Hong Kong are the calls to enhance refugee self-reliance, and to promote complementary pathways and more comprehensive solutions beyond sole reliance on resettlement².

The Universal Screening Mechanism (USM) and Comprehensive Review

9. On 3 March 2014 in Hong Kong the Government launched a Unified Screening Mechanism (USM), to determine claims for non-refoulement protection against expulsion, return or extradition from Hong Kong to another country. The USM includes consideration of whether individuals might be at risk of persecution with reference to the principle of non-refoulement under Article 33 of the 1951 Convention Relating to the Status of Refugees. The USM is operated by the Government, not UNHCR. UNHCR therefore ceased conducting its own refugee status determination in Hong Kong as of 3 March 2014, and no longer registers or assesses new claims for international protection in Hong Kong.
10. Since the establishment of the USM, as per agreement with the Government, UNHCR has provided technical advice and capacity building for officers and adjudicators involved in the USM system, and has sought durable solutions for refugees. UNHCR has also been given the opportunity to make confidential, non-binding recommendations to the Government on the screening procedures in general, having regard to international best practices. Furthermore, it was agreed at the outset of the USM that its implementation arrangements could be developed, further extended or amended from time to time as the operational experience develops, if necessary.
11. UNHCR sees the development of the USM by Hong Kong SAR as a promising model and recognises the Government's invaluable contribution to the international protection framework. Whilst recognizing the need for the review and development of the USM that is ongoing at the moment, UNHCR considers it equally important to highlight that the unique system in Hong Kong offers an alternative to detention, free provision of legal support, access to social services, medical care, education for children, and assistance with housing and subsistence costs. It should be noted that such core tenets to human dignity are missing in many developed asylum systems today.
12. UNHCR welcomes the Government's decision to undertake a Comprehensive Review of the USM, and notes their commitment to reform, ensuring an effective protection mechanism, as well as reducing abuse and delivering value for money at an efficient pace.

² <http://www.unhcr.org/towards-a-global-compact-on-refugees.html>, accessed 17/07/18

13. UNHCR is encouraged by the associated work of the Legislative Council Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims (hereafter referred to as 'the USM Subcommittee'), and its aim of ensuring protection of refugees and preventing abuse of the system.
14. Notwithstanding these positive developments, UNHCR wishes to highlight serious concerns regarding the subject of holding centres, camps or detention of USM claimants discussed at the USM Subcommittee. UNHCR's global strategy *Beyond Detention* aims to make the detention of those seeking protection an exceptional, rather than routine, practice. Additionally there is in fact, no evidence that detention has any deterrent effect on irregular migration. UNHCR wishes to draw the attention of the Government to its global strategy on detention which details this, and request that careful consideration be given to the same in any further deliberations regarding this matter³.
15. Moreover UNHCR sees the potential opportunity for the Comprehensive Review to take into account the spirit of the Global Compact on Refugees by offering complementary pathways for refugees and widening the scope of solutions for refugees, for example by formalizing education, training and employment opportunities for refugees during their temporary stay in Hong Kong.

UNHCR engagement

16. UNHCR's involvement in the Comprehensive Review has been suggested by several LegCo members at the USM Subcommittee meetings held between March and May 2018. UNHCR welcomes their proposals, as well as the Administration's confirmation that it is committed to continued collaboration with UNHCR⁴. UNHCR expresses its continued commitment to ongoing assistance to the Government as required in support of the USM, as well as assisting the Government to consider how to implement the Global Compact on Refugees in the unique context of Hong Kong.
17. UNHCR remains committed to its consultative role to the Government, and recognises the difference of that role from the supervisory role which it plays in other contexts. Meanwhile, UNHCR appreciates the opportunity for ongoing engagement and recognises the importance which this plays in ensuring the independence of decision making within the USM, as required to meet the necessary high standards of fairness⁵.

³ <http://www.refworld.org/cgi-bin/telex/vtx/rwmain?page=search&docid=536b564d4&skip=0&query=beyond%20detention>, accessed 16/07/18

⁴ http://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/minutes/hs5420180327.pdf, pp 1, 5 & 6, accessed 11/07/18

⁵ In *Sakthivel Prabakar v Secretary for Security* ((2004) 7 HKCFAR 187), the Court of Final Appeal ("CFA") held that high standards of fairness must be demanded in the determination of CAT claims, which was elaborated in *FB & Ors v Director of Immigration and Secretary for Security* (HCAL 51/2007) and which now applies to USM decisions.

18. Nonetheless UNHCR stands ready to provide country and thematic background information, as and when required, to support the work of decision makers in assessing claims and making decisions on individual applications.
19. Furthermore, UNHCR will continue to assess whether substantiated claimants are of concern to UNHCR, and if so attempt to seek durable solutions, including resettlement opportunities, for them. It should be noted, however that global resettlement places remain limited, and refugees in Hong Kong are not considered as the highest priority by resettlement countries, when considered alongside other global resettlement needs.
20. UNHCR remains committed to supporting the Government and its USM and to provide technical advice. Themes gathered through UNHCR reviews of USM referrals will be offered into the capacity building and training support which we will continue to provide to the Government.
21. UNHCR emphasises the importance of quality in decision making and recommends that the Comprehensive Review ensures that a quality assurance and feedback mechanism is built into any revision to the current system. This will ensure that quality stays at the heart of decision making, and that decisions are compliant with accepted international standards. UNHCR stands ready to use our significant international experience and expertise, employing similar techniques to those initiatives facilitated in some countries in Europe and the Americas, to engage with the Government and support its efforts in introducing and implementing quality assurance within the USM.
22. In addition UNHCR is committed to supporting refugees in other complementary pathways such as international private sponsorship schemes, student or humanitarian visas, as well as meaningful local opportunities such as academic, internship or employment possibilities. UNHCR invites the Government to support its efforts in this regard, in line with calls set out in the Global Compact on Refugees. Moreover UNHCR continues to extend out its arm of assistance in any way requested by the Government to enhance the consistency and credibility of the USM, in the elimination of abuse of the system, and ultimately in enhancing the protection of refugees in Hong Kong.
23. UNHCR looks forward to ongoing collaboration, and to seeing the implementation of the findings of the Comprehensive Review, and associated feedback, in the next iteration of Hong Kong SAR's own Universal Screening Mechanism for non-refoulement claims.

4th October 2018

United Nations High Commissioner for Refugees