

**Submission to the Panel on Security of the Legislative Counsel
Comprehensive Review of the strategy of handling non-refoulement claims
LC Paper No.CB(2)1794/17-18(01) – July 2018**

PREFACE

This submission to the Legco Panel on Security has two sections. SECTION 1 is written in response to the Security Bureau's comprehensive review strategy paper of 4 July 2018. SECTION 2 advocates a new strategy based on a realistic assessment of Hong Kong's responsibilities as both a receiver and a sender of refugees

SECTION 1 : Commentary on the present proposals

Introduction

The Security Bureau submission of July 2018 (ref as above) describes 23 amendments to the Immigration Ordinance (Cap 115) which are being considered by the Immigration Department to put pressure on protection claimants by measures such as reducing time frames for submission of documents and procedures, establishing binding schedules, limiting translation facilities, reducing consideration of mitigating circumstances, refusing to assist claimants in their claims, arranging for repatriation while an appeal is pending, and others. The issues under consideration are clearly being directed at those who are seen as **abusing** the USM system for their own purposes by delaying the process. In fact the whole of this document and government efforts and resources represented by it are focused on dealing with USM abusers in order to remove them as soon as possible. There is not one issue in this document that is concerned with improving the process for the benefit of those who are in desperate need of protection, or any consideration of the negative effects of these proposals on those who are hoping for protection.

Detailed responses have already been made by lawyers and human rights advocates to the Security Bureau submission so this submission looks at the proposals from a more global ethical standpoint and assesses the outworking of the government's principles and processes in terms of them being a legitimate use or an illegitimate abuse of its powers.

Assessment

This assessment is based upon the existing policies and procedures prevailing in Hong Kong. It does not in any way imply endorsement of those policies and procedures.

1. Non-acceptance of refugees in Hong Kong

Hong Kong has a self-proclaimed '*long established firm policy of not granting asylum to or determining the refugee status of anyone*'. As a consequence of this policy it proceeds with many actions to deter refugees from coming to Hong Kong to seek asylum. Some of these are appropriate actions while others are inappropriate.

- Appropriate actions:
 1. Establishment of strong border control procedures to deter illegal immigrants from entering Hong Kong
 2. Pre-checking of entry visas in high immigrant source countries prior to arrival
 3. Liaison with source countries to combat illegal agencies promoting Hong Kong as a suitable destination country
- Inappropriate actions:
 1. Depriving protection claimants of a sustainable standard of living in order to combat a 'magnet effect'.
 2. Depriving those fleeing from countries where war and political persecution are known to be causing humanitarian crises, the opportunity for pre-screening at port of entry.

2. Use of illegal immigrant status

Hong Kong has a long history of economic migrants entering Hong Kong from poorer Asian countries seeking better life. As a result of this experience it has developed a comprehensive policy for dealing with illegal immigrants which includes deprivation of any rights of citizenship as long as they are in Hong Kong. Some of these are appropriate actions and others are inappropriate.

- Appropriate actions:
 1. Treating all those discovered in Hong Kong without a valid visa/permit as Illegal Immigrants even if they make a claim for protection after discovery
- Inappropriate actions:
 1. Treating those who enter Hong Kong with a visa as an Illegal Immigrant even when they try to make a claim for protection during their visa validity period.
 2. Forcing people to become illegal immigrants by preventing them from making a claim until they have overstayed their validity period.

3. Right to work

Hong Kong has consistently conflated refugees with economic migrants and has established policies to deter economic migrants from seeing it as a potential source of work. One of these is the denial of work to protection claimants. Some of these denials are appropriate and others are inappropriate.

- Appropriate actions:
 1. Denying those who are making claims for protection the right to work PROVIDED that a sustainable standard of living is provided during the USM screening period
- Inappropriate actions:
 1. Denial of ability to work WITHOUT adequate support.
 2. Denial of ability to work after a successful claim has been made.

4. Citizenship and residency

Hong Kong has protected its citizenship and restricted access to social services, medical facilities and education only to those who satisfy strict immigration requirements. Residency is open to those who have been lived here continuously for seven years or more. In respect of protection claimants some of these restrictions are appropriate actions and others are inappropriate.

- Appropriate actions:
 1. Denial of legal access to citizenship to those in the process of making claims PROVIDED that they are granted unfettered access to social welfare, medical facilities and education.
- Inappropriate actions:
 1. Denial of legal access to citizenship AND denial of unfettered access to social welfare, medical facilities and education.
 2. Denial of legal citizenship to those who have made successful claims and who have virtually no possibility of resettlement .

Conclusions

1. In the present system the government has not only adopted a policy which vigorously protects its right not to accept refugees but has pursued that policy to a place where it is prepared to make peoples lives as miserable and difficult as possible in order to make the point to others that Hong Kong is no destination for those who are seeking a better life. These are inappropriate actions that goes beyond the limits of common decency and humanitarian principles.

2. It is clear from the government's own communications that the main objective of the USM is to determine if the Immigration Department can legally conduct repatriation without violating its duty to provide protection. It has been set up to facilitate the governments *'long established firm policy of not granting asylum to or determining the refugee status of anyone'* in order to repatriate unsuccessful claimants as soon as possible. This is an inappropriate use of the screening process. The main purpose of the screening mechanism should be to provide a humanitarian safeguard against torture, or other forms of persecution.
3. The present process presents a conflict of interest. When an immigration department charged with removing illegal immigrants is called upon to conduct a human rights determination under a policy that does not even recognize refugees or grant asylum then the potential for misuse of the system will always present a danger. At present that danger seems to go unrecognized. While such a potential for misuse of the system exists it is essential that some form of independent assessment or quality verification of the USM is conducted in order to restore confidence in the integrity and impartiality of the system.
4. By focusing Legco and the general public attention on the issue of protection claimants who are misusing the USM system and causing public concern with a number of well publicised incidents of crime and disorder the government is creating a negative image of refugees in order to justify its proposals for tighter controls and quicker repatriation of those who fail to qualify for protection. This agenda is also intended to draw attention away from its own shortcomings in the humanitarian treatment of protection claimants. Instead of focusing on USM misusers the government should be focusing on its own misuse of power.

SECTION 2: A new agenda for Hong Kong

Introduction

The review and assessment conducted in Section 1 above reveals that the Immigration Departments current focus on USM misusers has created a very one-dimensional view of refugees and asylum seekers in Hong Kong as a result of two things: 1) the build up of a number of claimants awaiting screening, and 2) a very defensive and aggressive policy towards asylum seekers and refugees staying in Hong Kong. As described above these policies have been followed through to their logical outcome and as a result have caused some unacceptable actions.

In fact it was the build-up and backlog of protection claimants that had previously created a sense of urgency in Immigration Department to increase resources in order speed up the screening process and respond to the situation at hand. As a result of these measures and increased border controls the present situation is already well under control with good progress being maintained. It is therefore important at this stage that the government does not allow various anti-refugee pressure groups to prevail in their calls for rather draconian measures to be introduced in response to a situation which has already been brought under control. In fact it is important for the government to react in a totally different way and take this opportunity to conduct a broader and more comprehensive review of its policies and practices rather than merely focusing on the USM.

There are a number of compelling reasons why it is important to take a broader view:

- Despite a policy which denies any recognition of refugees or asylum seekers there will always be those who will come here seeking protection. Denial will not solve the

problem or provide the basis for a zero acceptance rate. A refugee-free Hong Kong is an unrealistic outcome from the present approach.

- Experience from overseas shows that while a tough immigration policy in respect of refugees may slow the flow of those seeking entry it does not stem the flow completely no matter how strong the policy may be. In the end refugee migration is not determined by a magnet effect on those attracted to a better economic future but by a repellant effect forcing those who live in conditions of war and persecution to flee for their lives. Under such circumstances refugees will look for politically stable countries where their cases can be heard within the rule of law, and they will find a way to enter that country regardless of policy.
- Despite a general prejudice against refugees due to a lack of multi-ethnic exposure and cultural training Hong Kong society is built upon the roots of a refugee culture. The majority of local families can trace their heritage back two, three or four generations to someone who came to Hong Kong to escape persecution or extreme poverty and found it to be place of refuge. The present policy designed to protect its borders from unmanageable mass migration does not easily align with the broader acceptance of daily one-way immigration quotas from the mainland. A better and fairer way of managing its 'refugee' population is desperately needed if Hong Kong is to avoid the accusation of pursuing a racist agenda.
- Hong Kong has a small but growing number of successful claimants who have been in Hong Kong for many years and who will not be able to resettle overseas due to a number of difficulties. At present they remain under the threat of repatriation and are still considered to be illegal immigrants unable to work, receive benefits in Hong Kong, or integrate easily into Hong Kong society. This denial of citizenship is an egregious affront to their dignity as human beings and casts an unwelcome slur on Hong Kong's human rights record. The willful exclusion of this group of refugee survivors from citizenship in the dubious interests of border control is a growing issue which will become the achilles heel of Hong Kong's refugee policy unless it is reframed in a more acceptable context.

A management approach

As has been described in Section 1 most of the governments effort in respect of refugees has resulted in making the lives of 'protection claimants' difficult in order to prevent a magnet effect, and in removing unsuccessful claimants as speedily and efficiently as possible. The USM is just one stage in this process that the government has had to take responsibility for in order to carry out its policy within a legal framework.

In the broader context little thought been given towards establishing a management approach to dealing with Hong Kong's small refugee population. Within the present approach 'management' is largely seen as providing the minimum humanitarian assistance necessary to prevent destitution, and with providing the minimum legal assistance necessary to process claimants through USM.

In other jurisdictions 'management' implies a much more positive humanitarian role in assisting refugees to become positive contributors to society and the economy in what ever situation they might eventually find themselves, and in preparing society at large to be receptive and welcoming of immigrant nationalities.

In order to make effective use of 'positive management' of this sort it would be necessary to accept that some changes of approach would be needed especially in areas which have been identified Section 1 as a misuse of power. In such cases a positive approach would

turn what has become a difficult management problem in the present system into a potential benefit for Hong Kong.

The first stage in adopting such an approach would be to review the case of successful claimants who could be allowed to work and live in Hong Kong as citizens with little pushback to Hong Kong's existing policy and with positive benefits to its economy. The present low acceptance rate through USM would be a sufficient deterrent to any possible magnet effect. It is important to also recognise that most successful claimants have high skills and abilities which would not make them a threat to those working in the lower skill end of the economy.

Adopting a management approach does NOT imply that Hong Kong's tough approach to border control would change. In fact it would be necessary to maintain an even stronger border particularly in regard to those wanting to make 'protection claims' coming from countries where there is no record of war or persecution. Such cases need to be dealt with using a rapid pre-screening process so that the USM can focus on the more complex determinations without getting overwhelmed by the majority of more straightforward cases.

The second stage would be a review of the humanitarian conditions imposed on protection claimants during the USM process. While it may be necessary that their condition of stay should not include permission to work, there is a management opportunity to provide positive input by requiring mandatory participation in training, internship, volunteering and social action as a condition of the USM process and of receiving viable financial support. This would achieve a number of benefits for the protection claimant and for the government such as:

- opportunity for protection claimants to improve and utilize their skills
- opportunity to contribute to society
- reducing the need for illegal work
- development of a positive community spirit
- development of positive personal wellbeing
- positive preparation for resettlement, repatriation or integration
- positive contribution towards multicultural development of Hong Kong society

While the variety and intensity of appropriate opportunities will need detailed consideration there is the prospect of involving wide segments of Hong Kong society in this process so as to include business, ngo's, professions, social welfare, education, medical etc etc as well as the government. There is a real possibility that this refugee management process could become a distinctive feature of Hong Kong society and a bench-mark for others to follow.

Conclusions

1. The present approach to handling refugees in Hong Kong is becoming increasingly difficult to resolve in a way which both recognizes the aspirations of the government and which at the same time fully embodies humanitarian principles. Hong Kong's inadequate approach to the treatment of refugees is being noted in international circles and will receive increasing scrutiny from outside.
2. There are compelling reasons for Hong Kong to take a broader view in developing its policy towards refugees in order to avoid these problems compounding and bringing unnecessary criticism on the administration.
3. By adopting a management approach which acknowledges the existence of refugees as part of its population and making adjustments to its existing approach Hong Kong can over time develop a positive outcome to its refugee problems and become a significant leader in refugee management.