

## **LAN HOANG, Hong Kong's Unified Screening System: Lack of unification to Improve Asylum Seekers' Reality**

*After much effort from Hong Kong's human rights advocates fighting against the notoriously low recognition rate of asylum claims, the Hong Kong government introduced the Unified Screening System early 2014. This article gives an account of this new mechanism after two years of its implementation. It argues that the unified mechanism provides little effectiveness to improve Hong Kong's refugee situation, merely acting as a reactive and resistant response mechanism. The government should address systemic issues, including the lack of institutional transparency, biases in institutional and cultural narratives of forced migrants, and inadequate contextual knowledge of decision-makers.*

### **Introduction**

Hong Kong is among Asia's major strategic and prosperous ports, becoming a desirable destination for asylum seekers from Africa, Asia, and the Middle East. In 2012, Hong Kong hosted 750 UNHCR Refugee Status Determination claimants and around 5,800 applicants for protection under Article 3 of the Convention against Torture (CAT) (Shum 2014). This number has increased<sup>23</sup> along with the number of urban refugees and asylum seekers in the Asian region. Approximately 90% are from South Asia (predominantly Pakistan, Nepal, and India), 9% from a wide range of African nations and 1% from countries such as Iran and Palestine (Mathews 2014).

Asylum seekers in Hong Kong find themselves restrained in an unwelcoming legal system (Justice Centre Hong Kong 2014; UNHCR 2015). They may get stuck in legal limbo for years with little chance of resettlement, when seeking protection. As Hong Kong is among the most popular tourist destinations in Asia, its lenient visa requirements not only facilitate smooth tourist travel to the region, but also creates favourable opportunities for both regular and irregular migration.

### **Hong Kong's Unfavourable Refugee Policy and its Ramifications**

The experience of asylum seekers in Hong Kong is distinct from that of asylum seekers in most countries that are signatories of the 1951 Refugee Convention. In signatory countries, national asylum systems are in place, providing a process to determine who qualifies for international protection. Although China signed and ratified the 1951 Refugee Convention, Hong Kong did not. Under the Hong Kong Basic Law Article 154, as a special administrative region, the Hong Kong Government has controls over its own law and policies, including its immigration regulation (Hong Kong SAR 1997). It has maintained "a firm policy not to grant asylum", which has not included plans to participate in the 1951 Refugee Convention (Loper 2010; Vecchio 2015).

Those who wanted to make asylum claims, prior to March 2014, had the option of choosing from a two-track asylum screening system. That is, asylum seekers in Hong Kong could turn to the local government for temporary protection, as it is signatory to the 1984 Convention Against Torture, and thereby, obliged to comply with the principle of non-refoulement<sup>24</sup>.

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<sup>23</sup> In the period from 2014-15, at the same time after Hong Kong Government introduced the Unified Screening Mechanism to consolidate the claims for both persecution and torture, there was a sudden surge in the number of asylum seeker claims, rising by 70% from early 2014 to mid-2015 (Hong Kong Immigration Department 2015)

<sup>24</sup> As a signatory of the 1984 United Nations Convention against Torture since 1992, the Hong Kong Government was required to establish an administrative screening mechanism. It did so in June 2004 and

Alternatively, asylum seekers had the option to turn to local UNHCR offices to make their claims, as UNCHR is allowed to screen migrants/refugees as part of its mandate<sup>25</sup>. Asylum seekers are usually forced to remain in legal limbo while waiting for the determination of their refugee status under the government's or UNHCR's mechanisms; it takes at least three and up to ten years to evaluate a case (Mathews 2014).

While waiting, asylum seekers are barred from volunteering or legally working to gain income. They are provided with only a basic monthly allowance managed by International Social Service, a local government-contracted NGO (Mathews 2014; Vecchio 2015). This allowance is far from adequate considering high living costs in Hong Kong. The assistance packages offered by the government merely intend to 'prevent destitution,' leaving a large number of asylum seekers to struggle in acquiring even the bare necessities. This is in spite of efforts from independent NGOs to bridge the poverty gaps by providing assistance and advocacy; most of the asylum seeking population faces poor living conditions for a long period with an uncertain future (Lee 2013; Vecchio 2015).

### **The Shift Towards a Unified Screening System**

Hong Kong has a very low recognition rates (Mathews 2014; Vecchio 2015). Human rights advocates have long questioned the transparency and effectiveness of these screening mechanisms.

The Hong Kong government after much effort from human rights advocates adopted the Unified Screening Mechanism (USM) on 3 March 2012, combining two pre-existing screening tracks to enhance the process of determining asylum claims (Hong Kong Legislative Council 2013). UNHCR then "ceased the screening under its local mandate", allowing the government to conduct the assessment itself (Justice Centre Hong Kong 2014)<sup>26</sup>.

It was not until February 2015, that the Hong Kong government confirmed that it had substantiated five new claims, the first batch of successful cases under USM. This raised the total number of recognitions in its territory to 28, out of the current 20,000 applications, in other words, an acceptance rate of 0.14% since the extension of CAT to Hong Kong in 1992 (Vision First 2015).

The implementation of USM to enhance the process of determining refugee status signifies a crucial step forward in the long struggle for refugee rights in Hong Kong. However, based on empirical evidence, the unified mechanism provides little effectiveness to improve Hong Kong's refugee situation. Rather, it is a reactive and resistant response that will not suffice without structural policy changes.

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enhanced it in December 2009. The Immigration Department's Torture Claim Assessment Section was in charge of this process (Vecchio 2015).

<sup>25</sup> Due to Hong Kong not being a signatory to the 1951 Convention relating to the Status of Refugees, "and has no legal framework governing the granting of asylum UNHCR carried the main responsibility for refugee status determination, assistance to asylum-seekers and refugees, as well as the identification and promotion of durable solutions (mostly resettlement) under its mandate" (UNHCR 2015; UNHCR 2013).

<sup>26</sup> UNHCR will continue to provide international protection to refugees in accordance with its mandate. In this connection, persons whose *non-refoulement* claim is substantiated under the USM on grounds of persecution risk will be referred to UNHCR for recognition as refugees under its mandate and, if so recognised, arrangement of resettlement to a third country.

That is, despite the government's insistence on having the seemingly proper assistance mechanism in place, refugee rights advocates have made claims of an unfair system<sup>27</sup>. Particularly, local NGOs and members of civil society regret the lack of consultation and collaboration during the design stage, as well as the lack of proper information dissemination and accessibility during the implementation of USM (Justice Centre Hong Kong, 2014; Vision First 2015). Moreover, a recognition rate close to zero remains enigmatic, largely due to the lack of transparency in the screening process. As of December 2015, there are 10,922 outstanding non-refoulement claims according to The Immigration Department (Hong Kong Immigration Department 2015). These numbers were not published by the government's own volition, but after multiple requests from civil society groups (Justice Centre Hong Kong 2014). NGO staff, lawyers and scholars also suggest the low rate can be explained by insufficient knowledge "of the relevant areas of refugees and training on international humanitarian law" as well as cultural and historical biases of the decision-makers at the Immigration Department as well as by officers in pro bono legal assistance schemes for claimants (Daly interview, 28 April 2015; HKRAC 2013).

The lack of favourable and effective policy towards asylum seekers in Hong Kong also comes from the fear of otherwise attracting large inflows of asylum seekers. Historically, this had happened with 20,000 Vietnamese refugees arriving in Hong Kong in the 1980s, after which the Government insisted that UNHCR repay the city [for over HK\$1162 million] it spent over 20 years assisting Vietnamese refugees<sup>28</sup> (Choi 2014; Mathews 2014; Vecchio 2015). This is compounded by a sense of cultural bias and superiority over those of South Asian descent - accounting for over 90% of Hong Kong's asylum seeking population - leading to the current xenophobic discourse blaming local issues on problems caused by asylum seekers (Barnett 2002; Vecchio 2015). The government also upholds a neoliberal post-colonial legacy, valorizing free-market competition, as the locomotive of economic development, and allocating very little resources to social and public welfare (Lee 2005). Hong Kong's approach to refugee policy maintains, as Vecchio (2015) puts it, "an indifferent stance before the human suffering". This is demonstrated through asylum community in Hong Kong subsisting on the fixed and limited 'in-kind support' provided by International Social Service amidst rising living costs, without any long-term solutions (Goodstadt 2003; Vecchio 2015; Zhao et al. 2004).

## **Conclusion**

Despite the introduction of the USM, the situation of asylum seekers in Hong Kong is far from improving. The Hong Kong government's approach to refugee policy still contains systemic issues. These include a lack of transparency, biases in institutional and cultural narratives about asylum seekers, as well as inadequate contextual knowledge of decision-makers. There is thus a need for cooperation between Hong Kong policy-makers and civil society to tackle the situation of ineffective processing of asylum seekers. Comprehensive approaches ensuring transparency and efficiency within the system are necessary. Decision-

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<sup>27</sup> Claimants are entitled to pro bono legal assistance, a medical examination, an interview, an appeal mechanism among other measures. 'The process might be prolonged if the claimants fail to cooperate. Any purported correlation between the number of substantiated claims and the standard of fairness or effectiveness of the screening procedures has no rational basis'.

<sup>28</sup> As cited by Vecchio (2015), 'Thomas (2000) demonstrates that after the international community retracted much of its support for the resettlement of these refugees, Hong Kong's public opinion turned very much against new arrivals. They came to be viewed as a threat to society and, consequently, were identified as migrants seeking to escape poverty rather than political persecution.'

makers also need to receive relevant up-to-date trainings to address the lack of knowledge of global and humanitarian affairs.

*Lan Hoang is a Vietnamese national who graduated from the University of Hong Kong in 2015 with a Bachelor degree in International Relations and Sociology. She previously conducted research for her final year thesis to examine the service provision of Hong Kong's asylum sector. She is currently a research intern at the United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP), focusing on social policy, population and migration.*

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