

Vision First comments to questions in Legco on 28 October 2015

<http://www.legco.gov.hk/yr15-16/english/counmtg/agenda/cm20151028.htm>

A. Hon Paul TSE (Tourism constituency) asked:

(1) of the nationalities of the people, apart from those of Indian nationality, by whom a relatively large number of claims were lodged since the implementation of the unified screening mechanism for non-refoulement claims ("unified mechanism") in March 2014; given that a law firm has concurrently represented several persons of Indian nationality to make non-refoulement claims, whether the authorities have investigated if the law firm participated in soliciting persons of Indian nationality to come to Hong Kong to make such claims; if they have investigated, of the outcome;

VF comment: Citizens from any country worldwide may lodge protection claims in Hong Kong and must be treated with high standards of fairness as guaranteed by this jurisdiction. Vision First is a proponent of the view that every asylum claim (be it cruelty, refugee or torture) must be approached on the premise that it is genuine unless and until it is proven that it cannot be substantiated by the claimant. The number of claims from any one country has no bearing on the merits of each individual case. Law firms may receive request for assistance from claimants in Hong Kong, or who intend to come to Hong Kong.

(2) of the total amount of public expenditure incurred by the Government on processing non-refoulement claims since the implementation of the unified mechanism; given that there are already 10 200 cases received in the first eight months of this year pending determination, whether the Government has assessed if the \$640 million-odd funding provision for this financial year is sufficient; if it is not sufficient, of the amount of shortfall; and

VF comment: Hong Kong is committed to offer international protection to persecution claimants, as such a complex (and expensive) framework was established to determine asylum claims according to a "high standard of fairness". There are over 10,000 pending claims, the majority of which were lodged prior to 2015. The problematic development of asylum law (see attached) is at the root of the backlog and fosters the confusing perception of USM both locally and overseas. The high welfare expenditure is related to the number of claimants and their prohibition to work whether newly arrived, or stuck in limbo for a decade.

(3) whether it will publicize to foreign countries through the Internet and other channels the message that persons making non-refoulement claims in Hong Kong will not be issued employment visas, and that the Government will stringently combat unlawful employment and the acts of abetting others to work unlawfully in Hong Kong; whether it will consider urging, through the Ministry of Foreign Affairs of China, the Indian Government to assist in curbing intermediaries abetting its nationals to make such claims; whether it will enact legislation to provide for a time limit for lodging claims and the procedures for screening claims?

VF comment: it is well-known in Hong Kong that claimants are prohibited from working and will be prosecuted together with employers. It is unlikely that claimants call home to say the opposite. HK Government is well advised to liaise with overseas counterparts to publicize policy and debunk myths about “asylum visas” apparently sold the gullible. Such activities should not hinder the arrival of asylum claimants. It is believed that only an effective, credible and expert-driven asylum system will improve local conditions in the long term.

B. Hon IP Kwok-him (DAB) asked:

(1) of the number of non-refoulement claims received by the authorities each month since the implementation of the unified screening mechanism for non-refoulement claims in March 2014 and, among such cases, the respective numbers of cases the non-refoulement claims of which have been (i) substantiated and (ii) rejected (with a breakdown by claimant's nationality and ground for lodging the claim);

VF comment: as a duty towards citizens, the Immigration Department may consider publishing on a monthly basis data relating to: new USM applications by country of origin; claims determined at first instance (substantiated under which head of claim and rejected); appeals lodged; appeal decisions (successful and rejected); voluntary departures; total pending claims.

(2) of the number of claimants, among the claimants in (1) whose claims have been rejected, who are still staying in Hong Kong and their average length of stay in Hong Kong;

VF comments: consideration ought to be given to the “Right to Life” claim (BOR2) which is currently being lodged by failed USM claimants and has not been legislated into the Immigration Ordinance. It should be noted that BOR2 claimants cannot be removed from Hong Kong until such claims have

been determined. Consideration should also be given the 99.7% rejection rate of asylum claims since 1992 which marginalized failed claimants with a genuine fear of returning to their homeland.

(3) of the various amounts of public expenditure incurred for handling non-refoulement claims each year since December 2009 (including expenditures on legal aid, humanitarian aid and payroll);

VF comments: these are useful figures to assess whether Hong Kong is prudently spending taxpayers' money on an asylum system that has identified just 37 refugees among over 17,000 asylum-seekers since 1992. More doubts appear to rise about the quality of the system, than the quality of the claimants.

(4) of the respective numbers of solicitors and counsels currently listed on the Legal Aid Panels; the respective numbers, in each year since December 2009, of solicitors and counsels listed on the Panels who handled non-refoulement claims, and the respective average numbers of cases handled by them; and

VF comments: the number of lawyers has no correlation with the expertise offered and the credibility of their advocacy. More relevant would be questions about the training received by USM-qualified lawyers, who presently attend a 5 day course without examination. It is complained that low fees fails to attract higher caliber professionals, which might arguably affect representation. The opinions of the Law Society and HK Bar Association should be carefully evaluated.

(5) whether it has studied if the following measures were adopted by overseas places in the past three years for preventing abuse of their non-refoulement mechanisms: stepping up law enforcement efforts to intercept illegal immigrants, expediting the procedure for assessing claims, setting a statutory time limit for lodging claims, capping the legal aid costs, and reviewing the arrangements for granting visa-free access to visitors; if it has studied, of the results, and whether it will follow the relevant practices?

VF comments: deterrence, enforcement, standardization and fast-tracking will be less effective in resolving the problems suffered by the USM, than an effective, credible and expert-driven system that actually protects refugees in a timely fashion. Further, to meet the local demand for imported labour and to offer international migrants regulated employment, a temporary work visa should be considered. Restriction on the Foreign Domestic Helper scheme might also be relaxed to reduce marginalization that vents into the asylum channel.