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What don't we know about asylum seekers and how does this affect refugee work? The missing issues hampering advocacy in Hong Kong

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This article presents an overview of current attitudes towards Hong Kong's asylum policies and proposes an alternative advocacy strategy that values the significant economic benefit that asylum seekers deliver to society.

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In recent months, Vision First has actively engaged the public forum to emphasize how government policies that deny legal status and economic rights to asylum seekers, and at the same time limit their social support, force many refugees into great hardship. Elsewhere we have argued that refugees are sandwiched between very low recognition rates – which contribute to the impression that all claimants are illegal economic migrants – and inhuman living conditions imposed on refugees to prevent others in their footsteps to seek asylum. These conditions reinforce official and public perceptions of foreigners seeking asylum in Hong Kong as driven by economic motives. Further, it criminalizes their survival behaviour that is aimed at eking out an existence, often a miserable one.¹

The authorities in Hong Kong have long maintained that, were comprehensive refugee policy implemented and the *Convention relating to the Status of*

Refugees extended to the territory, Hong Kong would be flooded by illegal economic migrants posing as asylum seekers. Moreover, in the High Court judgment *Ma v Director of Immigration*, the judges rejected the argument for the right to work of a group of recognized refugees because any 'potential relaxation in the Government's attitude towards illegal immigrants would likely be interpreted ... as "a ray of hope" for illegal immigrants'.² Currently, the UNHCR screens application for refugee status and the Immigration Department screens claim under Article 3 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Following the judgment of *C v Director of Immigration*, the government announced plans to introduce the Unified Screening Mechanism incorporating refugee and torture claims. However, the government affords no legal or economic rights to individuals seeking international protection in the territory; and working in any form is a crime. Refugees identified as generating an income face harsh punishment for their disregard of the law. Indeed, there is a common perception that they pose a threat to local economic prosperity by offering cheaper labour while also draining welfare resources citizens would rather have spent on their own.

In our view, the emphasis placed on the supposed deviancy of refugees in the official discourse has diverted public attention from the fair evaluation of the economic contribution of refugees to Hong Kong. Further, it absolved the government from its responsibility for creating conditions that force refugees to work illegally in the first place. As Vision First has strongly argued on our website, the current limited assistance – supposedly designed to prevent refugees from becoming destitute – places refugees under unbearable economic hardship. It should be noted that the level of assistance has not been adequately adjusted since it was introduced in 2006, despite increasing rent and inflation in one of the world's most expensive cities. Moreover, dubious and possibly criminal practices of assistance delivery – such as housing refugees in illegal slums – have further increased refugee vulnerability, perpetuating their precarious status and struggle for cash. In turn, refugees work in low-paid, labour-intensive sectors of the economy, below the radar of the authorities, where exploitation is rife.

Refocusing public discussion

The government policy towards asylum seeking has been discussed in the media and two conflicting views have emerged. On the one hand, the present flow of asylum

seekers from South Asian and African countries is framed in light of previous momentous refugee emergencies, such as the arrival of over 200,000 Vietnamese 'boat people' in the 1970s-1990s. To this extent, some commentators argue that the Hong Kong Government already played its part in offering assistance to refugees in the past. Moreover, they maintain that the international community must reimburse Hong Kong the funds the British Colony disbursed assisting Vietnamese refugees. The official tirade is often bolstered by the caution that Hong Kong's relatively liberal visa regime, and location in a densely populated, developing region, require careful immigration controls, in order to protect its wealth from hordes of destitute economic migrants bent on abusing the asylum system for profit.³

On the other hand, refugee advocates maintain that the government has a moral obligation to place human values above bare economic concerns. Several considerations are predominant in this regard. First, Hong Kong should merge the ineffective two-track torture and refugee systems into a single process to deal more fairly with bona fide refugees.⁴ Second, as Hong Kong prides itself on its civil society and rule of law, and vigorously promotes itself as a global centre of business

excellence and financial security, the government should uphold international standards and protect the human rights of vulnerable minorities, which are now a permanent feature of Hong Kong's multicultural landscape.⁵ Third, it has rightly been argued that Hong Kong is a city of immigrants, which benefited from the occasional, at times significant, inflow of refugees escaping political persecution and poverty in Communist China between 1950s and 1970s. Hundreds of thousands of Mainland refugees contributed their sweat, skills and ingenuity to the economic miracle of the 'Fragrant Harbour' vis-à-vis the tragedy unfolding across the border.⁶

Regrettably, while the economic contribution of Chinese refugees has been partly recognized, a fair appraisal of the economic benefit brought by contemporary asylum seekers to Hong Kong is missing. Such myopia is surprising and, we believe, must be dispelled. Indeed, we believe that to-date refugee advocacy hasn't achieved its goals because the economic perspective has not been adequately factored into the asylum picture.

Overcoming the advocacy impasse

Two arguments need to be made here. First, it is a point in fact that expedient, economic

prosperity has always been regarded as the cornerstone of state's legitimacy in Hong Kong. Together with other academics, Law and Lee have extensively argued that the territory has a long tradition of using economic conditions as the most important premise for policy-making.⁷ Refugees are excluded from society because their integration is seen of little value to the advancement of Hong Kong economy. In a similar fashion, after the handover in 1997, the government called on authorities in Beijing to restrict the right of abode in Hong Kong of 1.67 million Mainland Chinese amid fears of economic sustainability. This attitude is echoed in a recent Court of Final Appeal case deciding whether foreign domestic helpers have the right to seek permanent residency, even after working over a decade in the city. It is feared that they could invite thousands of relatives to potentially collapse the city's limited social welfare system.

Second, it is apparent that the current lack of economic considerations in refugee advocacy stems from the misinformed conceptual 'segregation' of refugees into two groups: the 'genuine' deserving international protection; and the 'bogus' abusing the system, who draw the ire of the government that slams closed the asylum gate. As a consequence, the agency of the

former is diminished to highlight vulnerability, traumatic experiences and their need of international protection. Instead the agentic individuality of the latter is demonized and ostracized a priori despite both groups' need to work. Hong Kong's propaganda about the supposed vulnerability of the asylum process and welfare, aimed at justifying tough policies, has impacted local advocacy. The nature and extent of such an influence is presently being researched.⁸ Here, we anticipate that the homogenization of refugees into distinctive, antithetical categories promotes suspicion. This situation seems to directly affect the understanding of refugee needs, and the way these are communicated to the public. Consequently, refugees' involvement in the informal economy is typically dropped from conversations, as most advocates would rather avoid admitting they work illegally for fear of jeopardizing their legitimacy.

Our research into the refugees' lived experiences in Hong Kong explores their assets and strategies within the institutional framework constraining their agency.⁹ The results demonstrate that asylum seekers benefit the economy both as flexible, cheap labourers, who are physically able to endure long, arduous work, as well as innovative entrepreneurs. Many meet demands in

market niches that cater to numerous tourist-traders seeking opportunities at the gateway of China's manufacturing powerhouse. Limited in scope by immigration policies that prevent local integration, many asylum seekers adroitly negotiate these difficulties by forming partnerships with residents who are willing to empower, and often exploit, these business opportunities.

For the foregoing reasons, asylum seekers deliver significant economic benefits to Hong Kong, precisely because they are constructed as criminals and are forced to proactively ensure theirs and their family's survival. We maintain that highlighting these contributions opens new avenues for advocacy. First, we should draw attention to the involuntary, if not alarmingly complicit responsibility of the Hong Kong Government in creating conditions of exploitability and illegality contrary to the rule of law. Second, we should offer asylum seekers the chance to regain their individuality and resist the homogenization that has seriously impacted their livelihood.

The way forward

We propose an alternative approach to refugee protection in Hong Kong: in order to significantly improve the lives of asylum

seekers, and concurrently retain their meaningful economic contribution, the government could offer limited economic rights in specific sectors, for specific jobs, where local skills are lacking. While confining asylum seekers into limited economic spaces might be discriminating, such a measure would be a welcome response to their pressing demands for practical solutions. Most refugees desperately need to provide for themselves and are forced underground for fear of arrest. A pragmatic change in policy would allow asylum seekers to do legally what they are already doing illegally. Such limited economic rights would improve refugee mental health; reduce welfare costs; and ensure the rule of law is upheld by those who presently struggle to survive in the informal economy.

Moreover, labour migration channels could be expanded to increase arrivals from developing countries. Our research demonstrates that were certain travelers given the choice to apply for temporary, non-renewable work visas, they would certainly choose this pathway to a stable income, particularly if a fair and fast asylum process deterred abuse. Many asylum seekers revealed that they would gladly return to their families at expiration of temporary visas, if they had the chance to

work legally overseas to solve problems back home. In fact, many asylum seekers in Hong Kong flee conditions of 'temporary' persecution due to threats their authorities failed to prevent, but may recede in the course of time.

We believe that by rooting advocacy in a realistic context, the above pragmatic, economic-oriented approach would result in tangible improvements. While it is undeniable that Hong Kong must play a greater role in sharing responsibilities for the protection of vulnerable people, the government has demonstrated time and again that human rights are often downplayed before economic prosperity. By fully appreciating the economic contribution asylum seekers already make to the city, we can add a persuasive arrow to the quiver of those striving for positive change. [4]

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¹ Beatson, C. and Vecchio, F., 'Stark realities for asylum seekers in Hong Kong are alien to Edward Snowden, *South China Morning Post*, 20

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<http://www.scmp.com/comment/insight-opinion/article/1264392/stark-realities-asylum-seekers-hk-are-alien-edward-snowden>.

² *MA v Director of Immigration*, HCAL10/2010, 6 January 2011.

³ For example, Fung, V., 'Opening a floodgate to refugees would be a big mistake', *China Daily*, 7 December 2012:

http://www.chinadaily.com.cn/hkedition/2012-12/07/content_15993799.htm.

⁴ For example, Chiu, J., 'Legal experts call for unified screening of foreigners seeking sanctuary in HK', *South China Morning Post*, 19 February 2013: <http://www.scmp.com/news/hong-kong/article/1153371/legal-experts-call-unified-screening-foreigners-seeking-sanctuary-hk>.

⁵ Read, T., 'Hong Kong's do-little policy on refugees must end', *South China Morning Post*, 1 January 2013:

<http://www.scmp.com/comment/insight-opinion/article/1116762/hong-kongs-do-little-policy-refugees-must-end>.

⁶ Kanani, P., 'Adopting refugee convention would not be a slippery slope for Hong Kong', *South China Morning Post*, 27 December 2012:

<http://www.scmp.com/comment/insight-opinion/article/1113049/adopting-refugee-convention-would-not-be-slippery-slope-hong>.

⁷ Law, K. Y. and Lee K. M., 'Citizenship, economy and social exclusion of mainland Chinese

immigrants to Hong Kong', *Journal of Contemporary Asia*, 36, 2006.

⁸ This study is part of a larger research project by Vision First Research and Charles Sturt University aimed at exploring how the securitization of migration impacts refugee work.

⁹ Vecchio, F., *Asylum Seeking and the Global City*, Abingdon: Routledge, forthcoming.