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**ADMINISTERING ASYLUM SEEKERS
IN HONG KONG:
GOVERNMENT POLICIES AND ACTION**

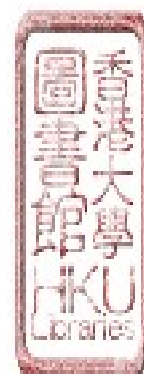
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in partial fulfilment of the requirements of
the Master of Public Administration

Department of Politics and Public Administration
The University of Hong Kong

July 2016



DECLARATION

We declare that this Capstone Project Report, entitled “*Administering Asylum Seekers in Hong Kong: Government Policies and Action*”, represents our own work, except where due acknowledgement is made, and that it has not been previously included in a thesis, dissertation or report submitted to this University or any other institution for a degree, diploma or other qualification.

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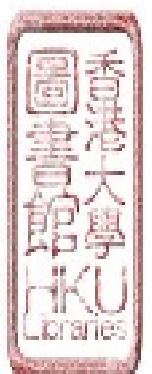
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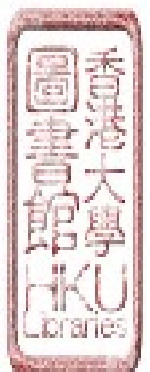


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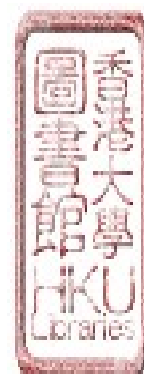
ABSTRACT

This project studies the history of Hong Kong in administering asylum seekers along the timeline from managing Vietnamese refugees to today's non-refoulement claimants, and outlines how government policy has been developing following a series of incidents and evolutions. Types of social problems have been resulted from the influx of asylum seekers would also be examined.

The objective of this project is to recommend practical and appropriate policy choices for the Government to administer the asylum seekers through comprehensive study and analysis on current foreign practices as well as the governance, political dynamics and policy tools adopted by the Government to handle this issue over the history of Hong Kong.

In analysing policy processes involving administration of asylum seekers, three interrelated aspects of importance are identified: the governance arrangements concerning how policies are initiated, regulated and sustained; the reasons for, and dynamics involved in, the adoption of particular policies; and actions taken through the use of various policy tools. These aspects, considered together, establish the analytical framework of the project.

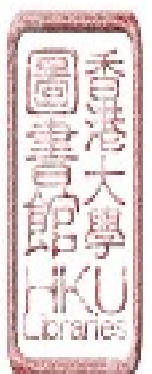
This framework put together theory of Knill and Tosun about mode of governance, three-streams model of Kingdon and McDonnell & Elmore's theory in categorizations of policy tools as skeleton, which is supplemented by Braithwaite's theory of responsive regulatory pyramids prioritizing various policy tools and to construct a



comprehensive policy plans. Applying this framework, a systematic method is used to analyse how policies on asylum seeker have been shaped and administered in Hong Kong. Empirical studies are also conducted upon policy choices adopted by the government along from the past to the present in administering asylum seekers.

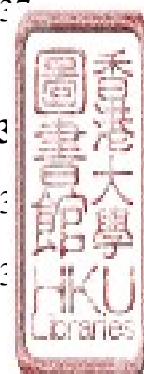
By reviewing the practices adopted by Germany, Australia and UK, foreign practices were evaluated to ascertain whether their policies are applicable to Hong Kong under full assessment of the socio-political environment, culture, legal system and population of refugee in Hong Kong.

Lastly, through extensive and thorough analysis and assessment on various policy choices, recommendations about an appropriate set of policy tools, together with comprehensive policy proposals are made to the Hong Kong SAR Government with a view to better administering asylum seekers in Hong Kong.

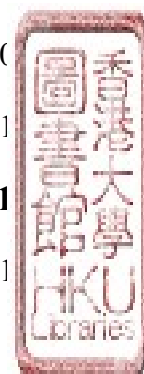


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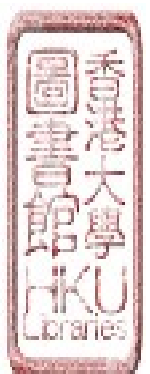
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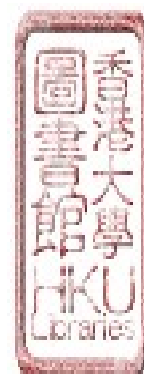


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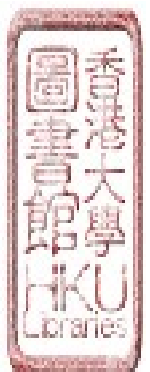
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Abbreviations

BOR3	Article 3 of Bill of Right Ordinance
CAT	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPA	Comprehensive Plan of Action
CSD	Correctional Services Department
DLS	Duty Lawyer Service
EDB	Education Bureau
HA	Hospital Authority
HKBA	The Hong Kong Bar Association
ICCPR	International Covenant on Civil and Political Rights
II	Illegal immigrant
ImmD	the Immigration Department
LAD	Legal Aid Department
LegCo	Legislative Council
LSHK	The Law Society of Hong Kong
NECIIs	Non-ethnic Chinese illegal immigrants
NGO	Non-governmental organization
NRC	Non-refoulement Claimant
SWD	Social Welfare Department
TCAB	Torture Claims Appeal Board
USM	Unified Screening Mechanism
VBP	Vietnamese boat people
VR	Vietnamese refugee



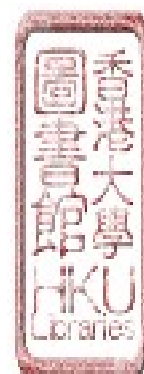
CHAPTER ONE: INTRODUCTION

Focus, Objective and Background of the Project

The objective of this project is to recommend practical and appropriate policy choices for the Government to administer the asylum seekers / non-refoulement claimants (NRCs) through comprehensive study and analysis on current foreign practices as well as the governance, political dynamics and policy tools adopted by the Government to handle this issue over the history of Hong Kong. Along the timeline from managing Vietnamese refugees (VRs) to today's NRCs, the Government has taken the leading role to formulate systems and policies to administer NRCs in accordance with laws, conventions and experiences.

Since Hong Kong is not alone to face this prolonging and complicated issues stemmed from the NRCs, other states in particular developed countries around the world are also making effort to formulate various policies to handle these issues. Nonetheless there is no a perfect policy which could perfectly cope with these matters up to now. This project starts with the history of Hong Kong in administration of asylum seekers by a variety of policy tools. It then outlines how the policy has been developing, following a series of incidents and evolutions and what types of social problems have been resulted from the influx of NRCs.

Since the introduction the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT convention) to Hong Kong in 1992, the Government has an obligation to protect people who are in danger of being subjected



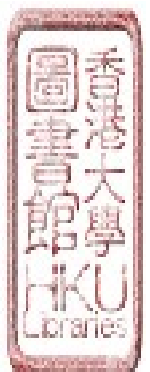
to torture. In addition, a set of court rulings have been handed down since June 2004 and therefore, the screening procedures for the non-refoulement claims are of much higher standards of fairness. Meanwhile, the claimants pending screening assessment are fighting for better humanitarian assistance and legal support.

The influx of the NRCs and demanding standards required for managing them have generated a number of social problems, such as upsurge of crime rate committed by the claimants, excessive public expenditures originated from prolonging screening process, abuse of the screening mechanism and insufficient humanitarian support to the claimants. The problems are becoming more pressing, which have drawn tremendous attention from both public and private sectors. In adherence to the overriding principle of safeguarding genuine claimants, the Government inevitably has to take initiative to formulate and introduce suitable policy choice so that the problems led by fake claimants and abuse of screening mechanism could be properly addressed.

Research Questions and Related Propositions: Theory and Practice

In order to achieve the objective of this project, the following research questions are addressed:

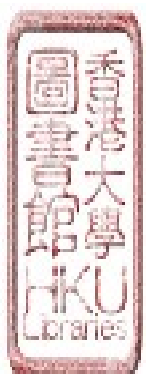
1. What range of policies and tools could the HKSAR Government adopt to administer asylum seekers?
2. What particular policies and tools has the Government adopted in this regard – and, why?



3. How could the Government's policies and tools be improved and/or complemented by the adoption of other potentially more effective policies and tools in the light of experience to-date and also of the experience of other countries?

This project aims to find out practical and appropriate policy choices for the Government to administer NRCs in Hong Kong. However, before conclusive recommendations could be made, it is important to first study the pros and cons of policies adopted over the history and identify socio-political changes from past to present, and then formulate the most suitable policies to cope with current situation with reference to previous experience and overseas practices.

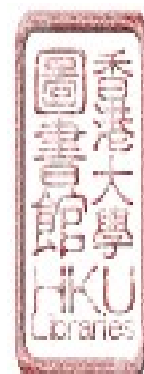
The above three questions are not straightforward at all, which require high level of research and analysis. Through figuring out answers for the first two questions, a thorough study on the problems, strategies and political forces in relation to refugee / NRCs handling in different eras is required, coupled with in-depth research on the rationales behind. The study is supported with extensive data and evidence collected from various stakeholders facing the issues of the refugee handling and from materials in open sources around the world. Feasible policy choices are to be analysed and evaluated in this project by means of a tailor-made analytical framework covering the governance, policy dynamics and policy tools of punitive and supportive in nature. Subsequent to a comprehensive analysis and evaluation of possible policy choices, several policy tools believed to be the most practical and appropriate will be set out so as to address the third research questions.



Overview of the Analytical Framework

In analysing policy processes, including that involving the administration of asylum seekers, there are at least three interrelated aspects of importance: the governance arrangements concerning how policies are initiated, regulated and sustained; the reasons for, and dynamics involved in, the adoption of particular policies; and actions taken through the use of various policy tools. These aspects, considered together, establish the analytical framework of the project, as set out in Chapter 2. The framework provides a systematic method to analyse how policies on asylum seeker have been shaped and administered in Hong Kong.

Firstly, in respect of the governance arrangements, the modes and types of governance are under direct influence by the nature of policy, legal and regulatory framework, socio-political environment, and power of the public. The modes and types of different governance evolving in different regimes over the history of Hong Kong will be discussed by making reference to the theory of Knill and Tosun (2012). Secondly, policy dynamics comprising of different forces to drive the policy making will be analysed in order to determine the easiest and best timing when the policy window widely opens to introduce planned policy. Kingdon's (2003) three-stream theory will be applied to study the three kinds of dynamics, namely policy, problem and political forces. Lastly, all policies are realized through the employment of various policy tools. Works of Elmore and McDonnel (1987) are then used to categorize policy tools into 4 types, i.e. mandates, inducement, capacity building and system changing. To determine the success of policy tools employed, the three streams addressed by Kingdon (2003) as well as appropriate governance types mentioned by

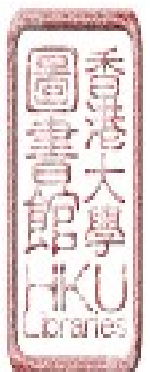


Knill and Tosun (2012) are heavily depended upon. Supplementary to Elmore and McDonnell (1987), a responsive regulatory pyramid of support and sanction outlined by Braithwaite (2011) is incorporated in the policy tools framework in order to assess how and when the four types of policy tools could work together.

The above interrelated aspects establish an analytical framework which assists to explore the policy choices with a systematic method over different eras of Hong Kong. Based on the analytical findings, recommendation could be made to the Government to make right policy choices in administrating the NRCs under suitable regime.

Research Methodology

The research of this project is based on a desk-and-computer research methodology, focusing on administration towards asylum seekers in Hong Kong as well as foreign countries as well as relevant factual figures and statistics. As such, the primary sources of information and data are obtained from websites of the UN Refugee Agency and relevant government departments including the Immigration Department and Hong Kong Police Force, the official records of LegCo meetings and documentations from established committees handling the non-refoulement claims such as Human Right Committee, Duty Lawyer Service and Finance Committee etc. Those information and data are considered reliable and accurate in nature as they are formally scrutinized by the Administration and LegCo members, reflecting the factual situation and opinions of the public and other stakeholders. In particular, the LegCo members are representing the community, who would canvass views from the public and their constituencies. Therefore, the questions and arguments raised by the

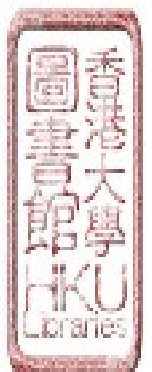


LegCo members during the Council meeting are to certain extent showing the concerns, interests and expectations of the general public.

With regard to the legal aspect of the refugee matters, reference has been taken from the Bill of Rights, CAT Conventions, Immigration Ordinance, court rulings as well as other regulatory policies. The development of the regulatory and legislative framework enhances the Government's capability in administering and governing the non-refoulement claims, and meanwhile, provides better protection on the rights of the genuine claimants from inhumane treatment. The experience and evaluation in dealing with the refugee matters over the decades have definitely given an insight on how to cope with the challenges in the future.

In addition, this research also takes reference from secondary sources from newspapers, TV programmes, articles, books, and related reviews on this topical issue. Those secondary sources especially serve as strong indication of the public concern. On the other hand, through the news reports, editorials or press interviews, the claimants express their views on the current policies adopted by the Government at a different way. With such massive information, the research analysis becomes more comprehensive, thorough and convincing.

It has once been considered to approach NRCs pending screening assessment and related NGOs to have interview or surveys in order to have first-hand understanding about the problems encountered by NRCs, and to have more insights on what kind of policy tools could accommodate their living in Hong Kong. Nonetheless, it is



considered impractical to invite suitable interviewees who are in position to give unbiased and impartial comments on the current situations of NRCs in Hong Kong.

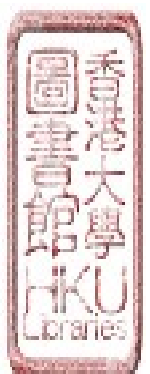
Lastly, this project also took reference from overseas practices adopted by Germany, Australia and UK in managing the refugee. Analysis was then made on whether those practices are suitable and applicable to be introduced into Hong Kong context. The official departmental websites of the countries are the main source of information.

Chapter Outline

This report consists of seven chapters, including this introductory chapter which covers the focus, objectives and background of this project, research questions, overview of analytical framework and research methodology.

In Chapter 2, an analytical framework was derived from literature review and academic studies on four traditional theories. The framework was set out to address and analyze several crucial factors determining the success of a policy, including governance, policy dynamics and policy tools. Those factors in policy making process are tightly correlating with each other. The analytical framework was applied to conduct an empirical analysis on the policy choices adopted from the past to the future along different chapters of this project.

Administration and policies in handling asylum seekers have been evolving over the history. Meanwhile, new conventions, bills and legislations are developed and

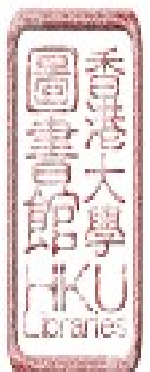


amended from time to time to cope with the ever-changing situations. UNCHUR has introduced guidelines to make sure the refugees are duly protected throughout the world and is also keeping a close eye on the treatment towards the refugees by different countries. Chapter 3 briefly illustrates all the evolution and development regarding refugee handling in Hong Kong with a timeline of critical incidents, and concludes with a comprehensive empirical analysis on the policies adopted along the timeline. Whilst, Chapter 4 outlines the introduction and development of all relevant conventions and court rulings on refugee handling in Hong Kong, and the response given by the Government towards those conventions and rulings.

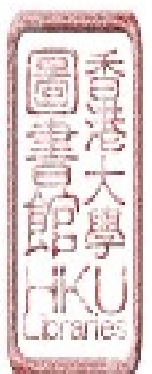
Chapter 5 addresses the current situation of NRCs and social problems stemmed from the claimants. On the other hands, the grievances from the claimants pending determination of the screening process have been included in this chapter. To conclude, an empirical analysis was applied to evaluate the current policies to tackle the challenges, which provides an overview on how the Government could improve the situation.

By reviewing the practices adopted by Germany, Australia and UK, Chapter 6 evaluates whether those foreign practices were suitable to Hong Kong under full assessment of the socio-political environment, culture, legal system and population of refugee in Hong Kong.

Through extensive and thorough analysis and assessment on various policy choices, a set of policy tools were recommended to the HKSAR Government in the last chapter,



coupled with recommendations on how the Government could accommodate the implementation of the policy proposals.



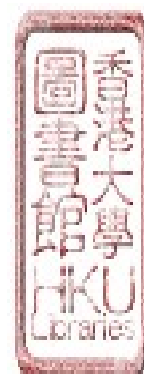
CHAPTER TWO: ANALYTICAL FRAMEWORK

Introduction

Nowadays public administrators and policymakers face an ever-changing, dynamic and diversified environment and thus are greatly influenced by multi-faceted factors in designing and implementing policies and actions to administer different issues, as well as reviewing their appropriateness and effectiveness. The issues of asylum seekers in Hong Kong are becoming increasingly sophisticated and there are rising concerns and heated debates from the public and numerous stakeholders about those policies adopted by the Government in administration of asylum seekers.

In this regard, this project intends to study various interrelated aspects to establish a comprehensive analytical framework in order to analyse systematically how government administer asylum seekers by initiating, regulating and sustaining appropriate policies and action in Hong Kong. This chapter outlines the analytical framework established for this project and discuss relevant theories, concepts and models in details.

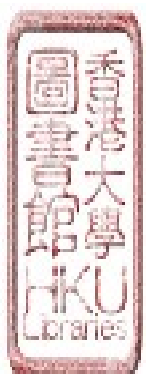
In drawing up analytical lens in the framework, this project identifies the most important interconnected aspects to study policy process, i.e. the governance arrangements concerning how policies are initiated, regulated and sustained; the reasons for, and dynamics involved in, the adoption of particular policies; and actions taken through the use of various policy tools.



Firstly, this project reviews mode and type of governance along the historical timeline for the public and private sectors in handling particular social issue or affairs, i.e. administering asylum seekers in this project. In initiating government policies, policymakers should take into account the governance arrangement previously and currently in effect which affect respective roles of public and private sectors, their relationships and respective powers, the existing institutional and political structure as well as degree of legal obligation. Reference is made to the work of Knill and Tosun (2012) to identify the type and mode of governance in order to study the level of government intervention as well as degree of cooperation and interaction between public and private sectors in administering asylum seekers.

Based upon understanding about the appropriate governance arrangement and its influence, the public administrators could be able to initiate the agenda setting phase and to create / identify a policy window by evaluating the reasons for, and dynamics involved in, the adoption of particular policies. This framework will study policy dynamics in three different aspects, i.e. problem, policy and political streams using theory of Kingdon (2003). Focuses are put upon recognizing specific problems and their nature (problem stream), preparing feasible and acceptable policy proposals (policy stream), and determining the political feasibility of a policy proposal by balancing the forces and concerns of actors from different political spectrum (politics stream).

After analyzing the governance arrangement and policy dynamics in adoption of particular policies by the Government in administration of asylum seekers, the framework will look into available policy tools and instruments which could be



applied by policymakers to deal with a particular policy problem. Policymakers need to take into account diverse means and limited resources such as law and regulation, money, goods and services, manpower, culture of the society as well as competencies of the public and private sectors, in short and long run in policy formation and implementation. As such, administering asylum seekers is a gradual and long-term process and policymakers should assess the circumstances and context, behaviour and culture of those being regulated or administered before rushing to a monotype of policy tools. Theory of McDonnell & Elmore (1987) is applied in this framework to categorize different policy tools into mandates, inducement, capacity building and system changing to be adopted by the government, and to assess their implication and effectiveness to administer asylum seekers.

In administrating and regulating a policy issue, ranges of policy tools in nature of support could be considered in the first place with the aim of build strengths upon the foundation of the system and the society as a whole. Policy tools in nature of sanction should be considered in case the policy problems could not be resolved solely by tools to support. Responsive regulatory pyramids outlined by Braithwaite (2011) will be applied to complement theory of McDonnell & Elmore (1987) with a view to structuring a comprehensive plan of policy tools and plans in administering asylum seekers.

Figure 2.1 presents the interlocking components of analytical framework applied in the study on administering asylum seekers in Hong Kong. Details of each theories and models are illustrated and elaborated in details in the following paragraphs.

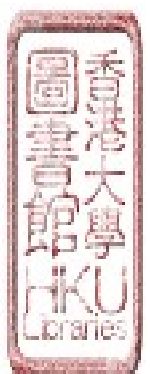
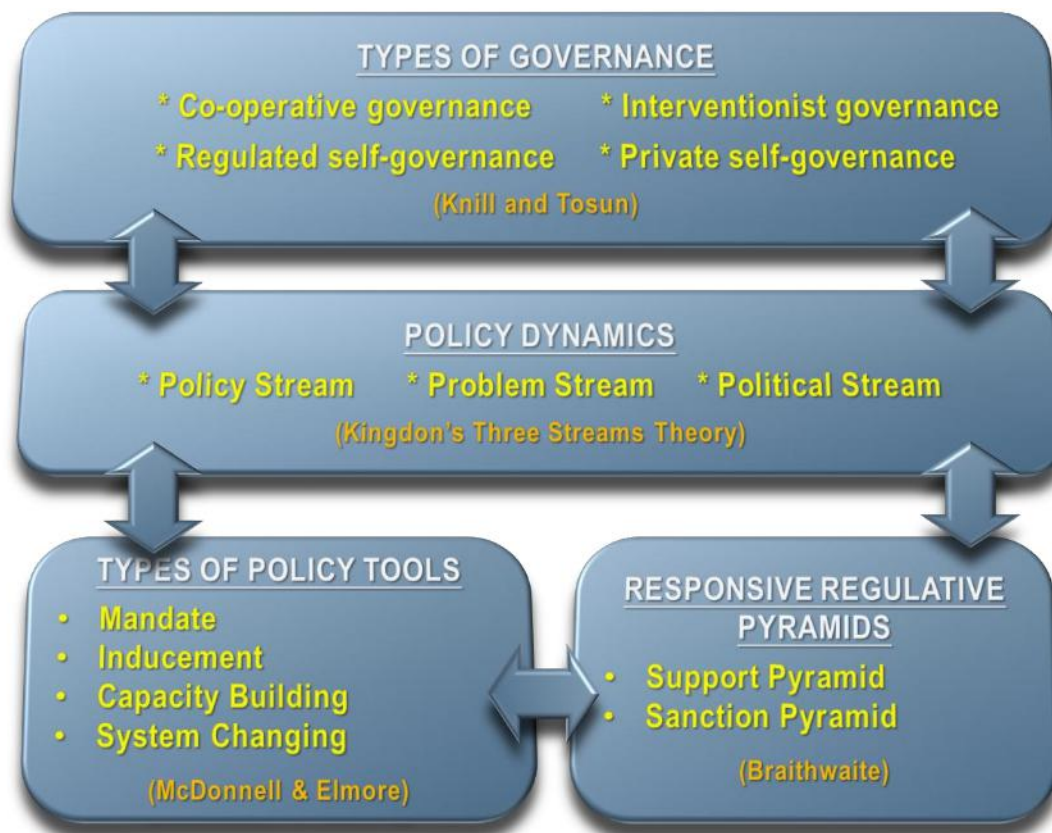


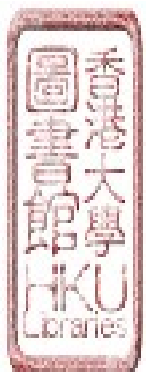
Figure 1.1: Components of Analytical Framework



Types of Governance

Definitions

Despite no generally agreed definition of “Governance” in literatures, governance can generally be referred to structure of government, networking between the government and the individuals or private sectors, or process adopted by government to achieve various policy goals. Amongst various literatures, Knill and Tosun (2012) has clearly addressed that “governance refers to the collective settlement of social affairs in a polity, including a broad range of different modes, such as hierarchical



intervention and non-hierarchical steering, based on cooperation between public and private actors or patterns of private self-governance.”

As stated by Knill and Tosun (2012), four ideal types of governance have been developed based on two dimensions i.e. the degree of cooperation between public and private actors, and the degree of legal obligation. The four types of governance could also be regarded as a combination of the three governance modes i.e. “hierarchy, markets and networks”. In brief, the hierarchy mode of governance stresses on setting formal rules and procedures to govern both public and private actors. Public and private actors are having an asymmetrical relationship since the government is the ultimate policy maker formulating legal framework to force, in particular the private actors to comply with the public policy. The opposing model to hierarchical governance is market governance where the market participants without the intervention by the government allocate and trade their resources efficiently based on price given an assumption that the participants are all rational. In network governance mode, the interdependent public and private actors have informal interaction among each other and have better understanding of their own right so that their distinctive but interdependent goals could be achieved.

Table 2.1 summarizes the distinction between the four ideal types of governance, in terms of degrees of legal obligation and public-private cooperation, incorporated with three governance modes.

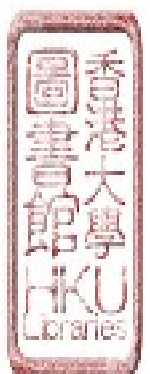


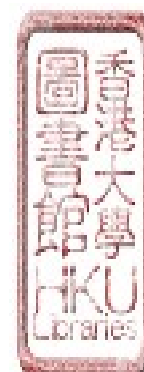
Table 2.1 Types of Governance

Cooperation between public and private actors			
Legal Obligation		High	Low
	High	Regulated self-governance <i>(Hierarchy & Market modes)</i>	Interventionist governance <i>(Hierarchy mode)</i>
	Low	Cooperative governance <i>(Market & Network modes)</i>	Private self-governance <i>(Market mode)</i>

Source: adapted from Knill & Tosun (2012)

Interventionist Governance

The first type of governance, “interventionist governance” decentralizes the governance capacity of the private sectors. The government has a sanctioning power which far exceeds the power of the private actors, which causes the relationship between public and private sectors becoming hierarchical. The government intervenes under top-down approach into society through defining rules and regulations to bind over both the public and private actors involved. Under this model, “command and control” approach is adopted by the government in policy making and implementation. The hierarchy mode has been dominating in interventionist governance over the market and network modes. Therefore, under this type of governance, the government tends to generate fair conditions for both public and private actors to supply common goods under a reliable framework with a view to sustaining economic activities.

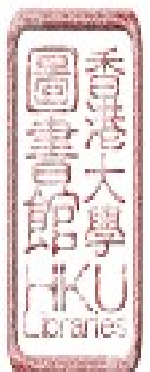


Regulated Self-governance

The second type is “regulated self-governance”, under which hierarchical intervention through legally binding rules is adopted by the Government during the formulation and implementation of public policies. Different from interventionist governance, the Government would have closer cooperation and interaction with public and private actors, which is a typical mixture of hierarchy and market modes. This type of governance highly relies on the markets and involves more participation of the society in formalized and institutionalized procedures. The private actors are empowered in various forms by the government but the final decision on policy contents and regulatory arrangements are still controlled by the government. The government is undertaking “shadow of hierarchy”, and is capable to intervene whenever any governance failures.

Cooperative Governance

The third type of governance is “cooperative governance”, which is a mixture of market and network modes. The private actors play more proactive and dominant role than the government in policy formulation and implementation. The rules and regulations are established and developed through negotiation and voluntary agreements by the markets instead of legal binding and obligation. During the negotiation process, a wide range of public and private actors are taking part in, and such “joint policy making” has replaced the hierarchical intervention with voluntary agreements by the actors. Mutual trust and complementarity of resources within the network are of utmost importance. The government is, in principle, just responsible



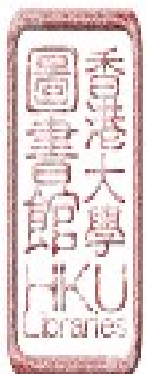
for working closely with those actors and offering valuable resources to support the policy making and implementation.

Private Self-governance

The remaining type of governance, “private self-governance” is another extreme type of governance opposite to interventionist government where the markets are playing a dominant role in this governance type. The market participants tend to weigh their individual benefit more than the society’s welfare, causing negative externalities. As a result, basic requirements have to be constituted to ensure the functioning of the markets. However, the cooperation between state and society is very close during the process of defining and implementing public policies, but the decision making is completely in control by the markets. Similar to cooperative governance, private self-governance is based on voluntary agreements among actors rather than legal obligation. However, the autonomy on decision making of private self-governance is far higher than that of cooperative governance. The government may only make contribution in providing complementary governance or act as facilitator to enhance the legitimacy of private governance and resolve the conflict between interest groups.

Influence of Governance in Agenda Setting

Institutional and political context are the key factors determining which type of governance is the most appropriate to be adopted. For example, interventionist governance or regulated self-governance are the most appropriate approaches to address political problems if institutional constellations enjoy high governmental governance capacity but weak societal capacity. In the case of “weak government,



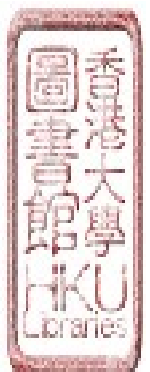
strong society” scenario, private self-governance or cooperative governance are definitely a better options.

With a variety of institutional and political context, different countries and policy sectors may adopt different modes of governance or develop various types of governance composed of a mixture or spectrum of the aforesaid governance modes.

In policy setting process, different type of governance, which has different level of legal obligation and degree of cooperation between public and private sector, has significant influence upon policymakers to determine how and when policies could be initiated, regulated and sustained and types of policy tools are to be adopted.

Problem, Policy and Political Dynamics

Based upon understanding about the appropriate governance arrangement, policymakers could be able to initiate the agenda setting phase and to create / identify a policy window by evaluating the reasons for, and dynamics involved in, the adoption of particular policies. According to Kingdon (2003), agenda setting is the first step in the policy process and the policy agenda is the list of issues or problems to which government officials pay serious attention. This theory focuses on the agenda-setting phase of the policy process and takes into account different processes at work and the politics of policy processes, which are described as “*three streams*” – the problem stream, the policy stream and the political stream. The three streams explain the drives necessary to place an issue on the public policy agenda by uplifting



the government agenda to decision agenda and ultimately for a change of public policy.

Theory of Kingdon (2003) focuses upon studying specific problems and their nature (problem stream), preparing feasible and acceptable policy proposals (policy stream), and determining the political feasibility of a policy proposal by balancing the forces and concerns of actors from different political spectrum (politics stream).

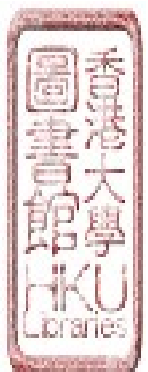
Figure 2.2 Three Streams Model for Analyzing the Policy Process



Source: Adapted from Kingdon (2003)

Problem Stream

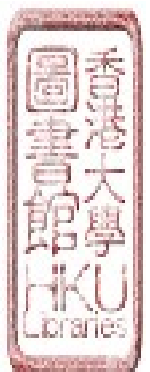
The problems stream concerns about recognition of problem and process of persuading policy decision makers to pay attention to one specific problem among



various ones. A policy issue would not be regarded as a problem until it could attract attention from mainstream media, members of the public and persons with political influence including legislative councilors who recognize the existence of a problem and reckon that remedial actions are required. For instance, influx of Vietnamese refugee had been identified as problem a few decades ago as it adversely affected the social order and security and caused other major problems which aroused the concern of the general public. On the other hand, attention of government or the authority should be properly sought in order to place the problem recognized on top of the government policy agenda. If the problem is not duly brought up to an appropriate level, the government may consider that existing actions are able to tackle the problem, or may fail to probably address the problem.

Policy Stream

Policy stream represents the process by which policy proposals are generated, debated, revised, and adopted for consideration by policymakers (Kingdon, 2003). It is a process for policymakers to select appropriate policy initiatives to resolve a problem. In doing the selection, policymakers should take into account the feasibility of all policies in term of technical feasibility, resource constraint, predominant social values... etc.

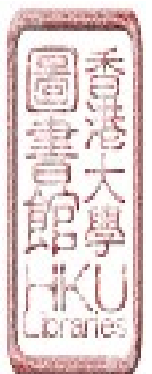


Political Stream

According to Kingdon (2003), political stream is political factor that influence policy agendas, such as changes in elected officials, political climate or mood and voices of advocacy or opposition groups. Change in elected officials refers to turnover of key personnel after change of administration, which is considered as a prime time for change in policy agenda. Also, any political deliberation or disputes between the administrators and politicians may affect the progress in policy making and alteration. Voices of advocates and opposition groups usually create as much noise as they can in order to arouse the attention from the government and to gain opportunity to bargain. National mood or “a general social trend” represents common values or ideas possessed by majority of people in the society. It is common for government to take sample surveys from the mass public in order to discern or gauge the popular reference that made up national mood or climate in the community.

Policy Window

The three streams describe important factors in the policy making process and the model essentially describes the interrelationship between various streams. For agenda setting to be successful, at least two streams should converge at a critical

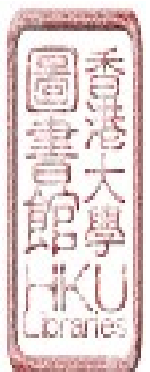


moment to open a “policy window”. The open of policy window offers opportunities for advocates to frame their proposal, to attract attention and arouse attention of government officials and other stakeholders with political influence. There are also occasions during with an existing problem deteriorates which creates chance for advocates to promote their solutions.

Policy window may open unpredictably and sometimes within a short period of time. The window may close shortly because of (i) feeling of the government that problem has already been solved, (ii) failing to take action, (iii) change of important personnel, (iv) pass of focusing events, or (v) absence of available alternatives (Kingdon, 1984). It is vital for policymakers to recognize important elements in three streams, to grasp the opportunity when policy window opens and to place their policy proposal firmly on the top of the government agenda.

Categorization of Policy Tools

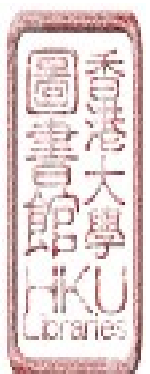
After analyzing the three streams policy dynamics in adoption of particular policies, the policymakers would look into all available options to determine the most desirable and feasible policy as solutions to the problem in the existing governance arrangement. Due to different interests and values, policymakers usually had a preference on how or when they should react to the problem. They would design or choose policies with a view to accomplish an outcome, mostly likely to induce changes in the behaviour of



the target, with the available resources and the constraints such as law and regulation, money, goods and services, manpower, culture of the society as well as competencies of the public and private sectors. McDonnell & Elmore (1987) call these policy tools and instruments as “authoritative choice of means to accomplish a purpose” and they are categorized into “mandates, inducements, capacity-building and system changing” which had their respective goals, assumptions, characteristics and costs for implementation.

Mandates are rules governing the actions of individuals and agencies. It seeks the compliance or consistent behaviour of the targets by coercion. In setting up the rules, policymakers should make sure that the targets were capable of following the rules, sufficient information was stated, which is most likely the minimum standard, and the frequency of the occurrence of the desired or undesired action would change in accordance to the level of tolerance accepted.

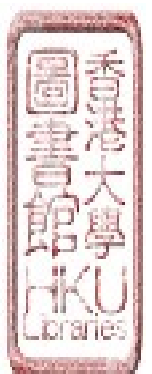
Inducement refers to the transfer of money to individuals or agencies in return for the production of goods or services. Usually, money is granted under the condition that the individuals or agencies would produce certain stated values. Policymakers should be aware of the capacity and the preferences or values of the implementing agencies. Their capacity and preferences could severely affect the effectiveness and the outcome of the policy. If the implementing agencies have not got the required personnel, expertise or authority, they could not accomplish the goal effectively or they could only reach the minimum standard or they could not even accomplish anything planned. The main costs of this policy tool are the inducement itself as well as the cost to oversight.



Capacity building is the transfer of money to individuals or agencies for the purpose of investment in future benefits such as material, intellectual or human resources. Capacity building is always a long term investments when the individuals or institutions fail to perform. By investing into those future benefits, the targeted outcome is the improvement in the competency of the institution or individuals of concern. Since capacity building looks into some future outcomes, the results are, most of the time, uncertain, intangible and immeasurable. Due to this reason, it may be difficult to gain the support of the policymakers and the society to agree to the investment at first.

System changing is the transfer of official authority among individuals and agencies involving changes in the institutional structure. System changing aims at increasing the efficiency of the services and provision of goods and redistributing the authority and thus the political power in the existing system. Such transfer of authority may cause the creation of a new agency or the dissolution of an agency. Granting authorities to agencies usually require the granting of respective resources for the provision of service. New authority always comes together with new responsibility. It is necessary for the government to ensure that the agency was capable for the new responsibility and that the new mandates were taken seriously, properly and effectively

All the four types of policy tools may have something in common. However, they are different primarily on the resources to be employed. Which are law, money and authority, and on the aim of such employment, short term provision of services and goods of inducement versus long term investment of competency in capacity building.

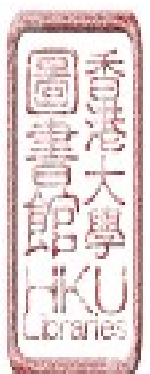


In occasions, policymakers may only employ one of the four tools while in other occasions they may employ more than one tool to attain their goals. Sometimes they use one tool complemented by the others or, sometimes, they may need a few tools working together to give a desired outcome. It would be worth looking into the possible way of a policymaker to formulate a set of policy tools so that policies could be realised.

Regulatory Pyramids – Support and Sanction

It is a continual and long-term process to adopt a set of policies to resolve a complicated problem such as administering asylum seekers. In adopting and implementing policy tools and instruments, policymakers should assess the circumstances and context, behaviour and culture of those being regulated or administered before rushing to adopting a basket of monotype policy tools simultaneously. It is necessary to study how, when and whether could mandates or sanction, inducement and capacity building work together such that policymakers could achieve optimal result. Moreover, in a diverse society nowadays, it is important for policymakers to liaise with whom they are administering before designing and taking actions to regulate and rectify the deficiency and inefficiency in the society. In this regard, the regulatory framework of Braithwaite (2011) will be applied to supplement this analytical framework in adopting potentially more effective policies and tools in administering asylum seekers.

The responsive regulatory theory started out as a theory for business regulation in the 1980s focusing upon how regulators who did their jobs well achieve positive results.

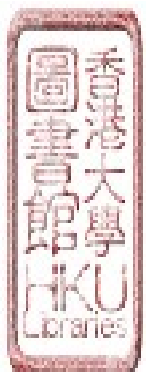


It has been evolved over the years and is now applied in crime prevention, peace building and a wide range of different public and private governance applications. The theory also emphasized that policymakers or regulator should consider ranges of policy tools in nature of support in the first place with the aim of build strengths upon the foundation of the system and the society as a whole. Policy tools in nature of sanction should only be resorted to if the policy problems could not be resolved.

Regulatory Pyramids

Braithwaite (2011)'s responsive regulatory theory outlined responsive regulatory pyramids, i.e. the *pyramid of supports* and the *pyramid of sanctions* and introduce the gradual process the policymakers should employ by utilising capacity building, inducement and, lastly, mandate one by one to construct a set of policy tools. Its crux is that by having a capability to escalate to tough enforcement, administrators would first take actions to build strengths based on collaborative capacity building and to reward positive behaviour and contributions. A public or private regulator should not rush to law enforcement solutions to resolve the problem before considering and exploring a range of approaches that support capacity building. Policymakers could seek to use one strategy after another that might further build strengths on a foundation by moving up from the lower levels of the pyramid.

On the other hand, Braithwaite (2011) stated that if escalating actions in the support pyramid failed to solve specific problems sufficiently, policymakers should resort to the pyramid of sanction. Other than the exceptional circumstances which require immediate intervention and stringent enforcement, policymakers should first use restorative and dialogue-based approach at the base of the pyramid of sanctions to



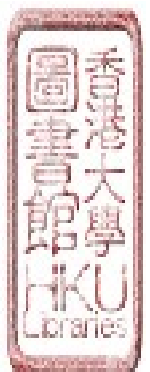
ensure compliance and improvement by regulated actors. If regulated actors still show persistent defiance, regulators would resort to moving up in the sanction pyramid to take increasingly demanding intervention and punitive approaches, from shame, sanctions, prosecutions and punishment to incapacitation.

The theory of Braithwaite (2011) also stipulates that both pyramids of supports and sanctions could be used simultaneously or interchangeably, i.e. policymakers might use sanctions pyramid to insert pressure on the regulated actors to ensure compliance while at the same time recognized the good performance and measures of the regulated actors. This practice could avoid stigmatizing respective actors unfairly.

In this project, responsive regulatory framework is used to study how, when and whether could various policy tools which were categorized as mandates or sanction, inducement and capacity building could work together and used simultaneously and interchangeably in the pyramids of supports and sanctions in a collaborative manner. The framework could assist the policymakers in prioritizing various policy tools and to construct a comprehensive policy plans.

Concluding Comments

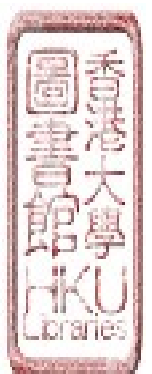
This project put together theory of Knill and Tosun about mode of governance, three-streams model of Kingdon and McDonnell & Elmore's theory in categorizations of policy tools as skeleton in establishing an analytical framework, which is supplemented by Braithwaite's theory of responsive regulatory pyramids prioritizing various policy tools and to construct a comprehensive policy plans.



In this connection, this analytical framework provides a structured and systematic methodology in analyzing three interrelated and important aspects in policy processes of administering asylum seekers in Hong Kong, i.e. the governance arrangements concerning how policies are initiated, regulated and sustained; the reasons for, and dynamics involved in, the adoption of particular policies; and actions taken through the use of various policy tools.

To sum up, this framework sets a foundation to guide the empirical analysis in the following chapters. Detailed studies would be conducted upon the governance, policy dynamics and policy tools of Hong Kong in administering asylum seekers along the historical timeline. Based upon these findings, a comprehensive analysis will be made on the recent situation in Hong Kong as well as overseas practices to explore appropriate policy tools to administer the asylum seekers.

By applying this framework with extensive and thorough analysis and assessment, this project will make recommendations to the Government about an appropriate set of policy tools and policy proposals with a view to better administering asylum seekers in Hong Kong.



CHAPTER THREE: ADMINISTERING ASYLUM SEEKERS – VIETNAMESE REFUGEES

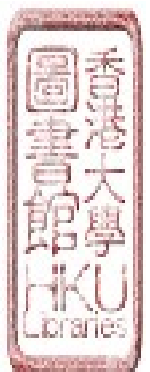
Introduction

Hong Kong has a long history in dealing with the refugee issue, notably the Vietnamese refugee issue which started in 1975 when the first batch of 3745 Vietnamese refugees (VRs) arrived Hong Kong. These VRs fled from persecution by the communist regime after the Vietnamese war ended. Hong Kong soon became one of the destinations of VRs. The issue lasted in Hong Kong for 25 years and officially came to an end in 2000. During this period, the HK government had taken various policies and measures, within its own capability, according to the then situations practically and politically.

Vietnamese Refugee Issue (1975-1979)

Significant developments before the 1979 International conference on Indochinese refugees

Before the 1979 International conference on Indochinese refugee held in Geneva, the HK government simply reacted to the fast changing situation. Initially in 1975, the HK government, on humanitarian grounds, temporarily accommodated these refugees in open camps established by the army. These camps were operated and basic needs were met by the HK government while other voluntary agencies and United Nation High Commission for Refugee (UNHCR) also contributed for additional needs and

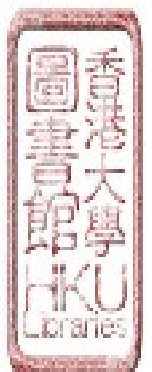


care. At the same time, the HK government negotiated with foreign governments for the resettlement of those VRs. The resettlement offers were mainly from Canada, USA, Australia and France. (Hong Kong Legislative Council (Legco), 1975)

From 1975 to 1976, resettlement of VRs was fast and smooth. Since 1976, Hong Kong had employed the port of first call policy. Some of the refugees who have relatives in Hong Kong were allowed to settle here for family reunion purpose (Legco, 1975). In 1978, the arrival of VRs increased vigorously. The then HK government reached an agreement with the UNHCR to provide temporary accommodation to the VRs arriving Hong Kong against a guarantee from UNHCR to arrange for resettlement of VRs as soon as possible. In the same year, the HK government had, in collaboration with voluntary agencies, opened a camp in the urban area (Hughes & Kristen Grim, 1985).

In late 1978, the HK government discerned that a series of arrivals from vessels involving refugee business or human trafficking activities. The HK government amended the Merchant Shipping Ordinance and the Immigration Ordinance promptly in January 1979 with a view to stopping the abuse of the provision of temporary asylum by imposing sanction (Legco, 1979).

In this period, VRs in Hong Kong were not imposed any condition of stay. They were allowed to take up employment and walk freely in Hong Kong. VRs were regarded as a source of low-cost labour and required less assistance by allowing them to work. This is a type of inducement for local resident to accept temporary asylum in Hong Kong (Hughes & Kristen Grim, 1985).

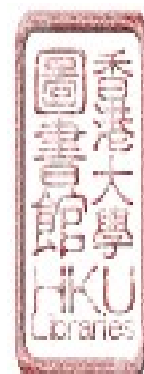


The 1979 International Conference on Indo-Chinese refugee

The exodus of Vietnamese peaked in the first half of 1979. In mid-1979, some Asian countries warned that they have reached the limit to accept more refugees. The international conference on Indo-Chinese refugee was held in Geneva (UNHCR, 2000). Hong Kong was represented by its then sovereignty, the British and agreement was made in the conference by the participants. Mrs. Rita Fan summed up precisely part of the agreement “The first asylum countries, mainly Hong Kong, Thailand, Malaysia, Indonesia and the Philippines, would accept all refugees landing on their shore; they would not tow their boats to the sea and they would not refuse them sanctuary.” (Legco, 1987).

Governance Mode in Relation to the Issue

The refugee issue was a brand new issue to the then government. The government had no policy or legislation with reference to the issue. The Hong Kong government took the initiative to deal with the issue while UNHCR and voluntary agencies had more significant roles, by contributions in various ways, in the issue as time went by. The policy of the government slowly formed. UNHCR collaborated with the local government, adhered to the local policies and sought the consent of the authority to accommodate the refugees temporarily. The UNHCR and various voluntary agencies played a supporting role to implement the government policy. The HK government took a leading and dominant role in the issue which had all the power to implement different policies and to employ different tools. The issue was dealt with under a mode of regulated self-governance.

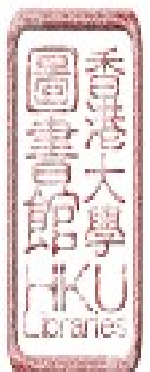


Policy Dynamics in Relation to the Issue

Problem arose when refugees continued arriving Hong Kong. There was very little debate in the legislative council in relation to the issue. More importantly, the local people had no strong objection to help the refugees and allowed them to wait in Hong Kong for resettlement although concerns and discontent was seen within the public in 1979. In a newspaper commentary in 1978, the commenter showed concerns on the issue but did recognize the need to help the VRs on humanitarian grounds (Kung Sheung Evening News, 1978). Since a regulated self-governance mode was employed by the government, voluntary agencies had little power and authority to change the government policy. That is to say, problem stream issues dominantly opened up the policy window for the government to handle the issue.

Policy Tools Employed in the Early Development of the Refugee Issue

Without political resistance, the government had the power to deal with the problems on its own. In 1979, to avoid the abuse of the policy and facilities offered to the refugees, laws were enacted to regulate the behavior of the related actors. The Civil Aid Service and Social Welfare department were deployed to manage the camps and deliver basic needs initially which involved the allocation of a new authority and resources to these two agents for such provisions. Lawful employment of the VRs was indirectly a kind of inducement to VRs, the public and the employers, at that time. The HK government had in fact applied various types of policy tools such as Mandates, System Changing and Inducement.



Open Camp Policy (1979-1982)

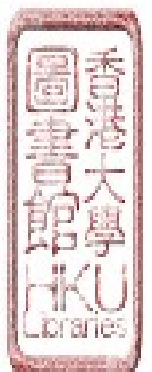
Government policy

After the 1979 Geneva conference, Hong Kong was obliged to act as a place of first asylum. No major change in policy was taken place since Hong Kong had taken up the role since 1976. All new arrivals were automatically regarded as refugees. By then, parts of the open camps were managed by the government and the others by UNHCR. UNHCR funded these camps and employed voluntary agencies to manage the camps.

The HK government, at the meantime, continued to modify its refugee policies. It enacted new laws or amended existing laws. For example, the Hong Kong government amended the law to impose conditions on refugees to prohibit them from rejecting resettlement offers without reasonable excuse. It had also negotiated with foreign countries to promote resettlement opportunities and opened and relocated refugee camps (Legco, 1981).

In 1980, the local government tightened the immigration control to Mainland Chinese illegal immigrants. It changed its “touch base” policy to the “repatriation upon arrest” policy and prohibited employment of IIs (Legco, 1980). The decision had hindered Mainlanders from reunion with their families in Hong Kong. The policy dynamics of the refugee issue was seriously influenced in political aspect and was a factor for a subsequent implementation of the close camp policy.

Development of the Vietnamese Refugee issue (1982)

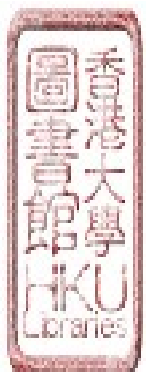


The arrival rate of refugees in Hong Kong dropped after the 1979 Geneva conference. Resettlement rate increased initially in 1979 and gradually reduced afterwards. The resettlement countries adopted more restrictive criteria in choosing who to offer resettlement and reduced the resettlement quota in 1981. As resettlement opportunity of the VRs diminished significantly, VRs stranded in Hong Kong for an extended period which became main root cause of refugee related social problem in later stage (Legco, 1982a).

In 1982, continuous arrivals of VRs, with majority believed to be merely economic migrants, had already obsessed the countries of first asylum. Both resettlement countries and places of first asylum take measures to deter Vietnamese boat people (VBP) from entering their country, known as humane deterrence (Ta Kung Pao, 1982). Hong Kong became the only place to accommodate all refugees arrived in camps without any condition of stay imposed. As a result, Hong Kong was an attractive destination to VRs. Together with the inability to resettle the refugees, problem arose later (Legco, 1982a).

Disturbance Inside Open Camp

In addition to the above problems, gang fights and disturbances in the Kai Tak open camp pushed the public sentiment to a the highest level (Kung Sheung Evening News, 1982). The local government swiftly prosecuted the instigators, reviewed the management of the camps and maintained law and order within the camp. Subsequently, the contract terms of UNHCR with the voluntary agencies had to be refined. Nonetheless, the mounting public concern on public security causes a



change in policy dynamic in political aspect again (Legco, 1982b).

The Closed Camp Policy (1982-1988)

Difficulties encountered by Hong Kong

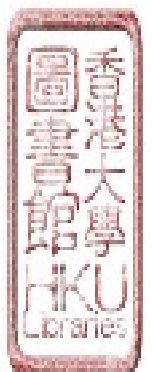
Hong Kong has dense population and had insufficient space to take in VRs endlessly. Economy was down turning with a high unemployment rate in 1982 and Hong Kong was left with limited resources in public spending. Continual influx and prolonged stay of VRs in Hong Kong further consumed resources and occupied scare land in Hong Kong (Legco, 1982a).

Actions of the Government

In order to administering VRs problem in Hong Kong, the local government considered various policy tools which included restriction of employment, setting up refugee camps outside Hong Kong, repatriation of refugees or towing away the arriving VBP in the sea (Ta Kung Pao, 1982). UNHCR was consulted on the alternatives. The HK government later leaned towards setting up closed camps after assessed the feasibility of each options. The above mentioned disturbances later prompted the local government to take action immediately. (Legco, 1982a)

Implementation of Closed Camp Policy

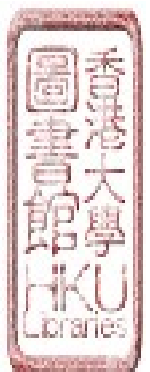
In 1982, the government decided to implement the closed camp policy. Relevant



legislations were made to set up closed camps, to appoint Correctional Services Department (CSD) to manage the closed camps and to authorise additional power to concerning departments. Any refugees arrived afterward would be confined within the closed camp (Legco, 1982a). In the closed camps, refugees cannot seek employment outside or leave the camps. Facilities were provided inside camp to gratify their basic needs. Education and trainings were arranged to prepare VRs for resettlement. VRs also had the opportunities to take piece works inside the camps. To Hong Kong people, the treatment of VRs inside closed camps is considered as humane enough (Legco, 1985).

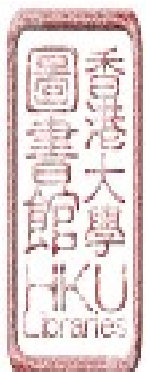
The closed camp policy was an effective policy to deter VRs from coming to Hong Kong at initial stage. However, the closed camp policy never came to perfection. The local government kept reviewing the policy and adjusted the details of the policy to cope with the ever changing situation. The local government collaborated with UNHCR and voluntary agencies for an additional family life education program in 1983 (Legco, 1983). It also improved facilities in the camps and brought in voluntary agencies to manage the camps after gangs fights in 1984 (Legco, 1984). In addition, facing criticisms from voluntary agencies within and outside Hong Kong, the then HK government decided to adopt some recommendations derived from criticisms (Security Branch, 1986). For instance, the HK government improved the provision of education inside camps after comparing merits of four options and consulted UNHCR and other voluntary agencies (Security Branch, 1987).

Analysis of Closed Camp Policy



The mandates of the local government and UNHCR were totally different. The first priority of the local government was to govern Hong Kong and take care of welfare of local residents. The main objective of the closed camp policy was to deter further influx of VRs. In contrast, UNHCR opposed to the closed camp policy and intended to protect and assist refugees (Rita Fan, 2004). The problem arose and public opinion and sentiment forced the local government to implement the closed camp policy. In order not to damage international reputation of Hong Kong, the HK government improved the policy on its own ways and abandoned suggestions from voluntary agencies. The cooperation between the government and UNHCR was still in place and strengthened. By and large, the mode of governance did not change. UNHCR and voluntary agencies were consulted, but their suggestions were not necessarily adopted. Under the mode of regulated self-governance, the local government continued its leading role and acted as the final decision maker to policies.

The policy dynamics in the enactment of the closed camp policy were much complicated when being compared to the previous policies. All the three streams, i.e. problem, political and policy stream contributed to opening of policy windows and the ultimate decisions. The problem stream issues discussed in the previous section had induced the government to consider a policy change. Politically, the tightening of the immigration policy on IIs was referred as an unfair treatment towards the Mainlanders. Local residents thus requested the government to stop accommodating VRs. Gang fights inside the open camps raised further public concern. Out of the four options suggested, the HK government selected the closed camp policy after deliberation. Policy stream issues played a relative minor factor and a bigger role later in the improvement of closed camp policy. The problem stream issues had effectively



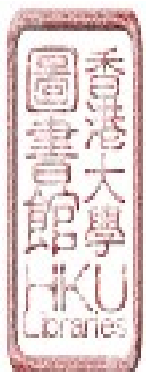
led to the opening of the policy window while the political stream issues acted as catalyst to implement the new policies efficiently.

When a particular policy has been adopted, relevant sets of policy tools were used to achieve its objectives. The closed camp policy involved legislation to grant authority to different government departments and to control the behaviour of the VRs. As an inducement, NGOs were engaged and brought into the closed camps to facilitate its proper management. Tools of capacity building was also employed e.g. the training of teachers in camps. That is, all the four policy tools of Capacity Building, Mandates, Inducement and System Changing were employed.

Policy of Repatriation

Without significant progress in resolving the predicament of Hong Kong caused by the huge amount of boat people in short term, Executive Council of Hong Kong endorsed the policy of repatriation in 1985 (Security Branch, 1986).

In 1986, more than half of the VBP came from North Vietnam were economic refugees but not political refugees. At the meantime, the main resettlement countries reduced their intake quota for VRs from Hong Kong drastically. It was envisioned that refugees in Hong Kong would be difficult to be resettled and stranded in closed camps. Against all odds, the Hong Kong government looked seriously into all feasible solutions, particularly repatriation and abolishment of the first asylum policy. (Security Branch, 1986).

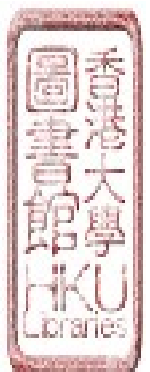


While the Hong Kong government considered the repatriation policy, screening procedure was recommended to ensure genuine refugees were not wrongly repatriated resulting in inhumane treatments. Both screening and repatriation required the collaboration and agreement of the British government and the Vietnamese authority. In 1986, Hong Kong government had no contact with the Vietnamese government, nor did the British government consider it as the right timing to negotiate with the Vietnamese authorities. In addition, UNHCR had clearly objected to such a screening policy towards the refugees (Security Branch, 1986).

Screening Policy: Commenced on 1988

Details of Screening Policy

In 1987, the predicament in Hong Kong was not relieved. Hong Kong became one of the very few places which still accommodate all newly arrived Vietnamese. To avoid attracting more VBP to Hong Kong, the Hong Kong government turned down the request from UNHCR and NGOs to abolish closed camp policy. In the same year, the public have developed antipathy and resentment towards the VBP issue due to their unstoppable influx, the apparent unfair treatment towards Chinese IIs, financial burden and continuous stretching of resources of Hong Kong. The Mainland government continuously pressured the British government to solve the VBP issue in Hong Kong after the Sino-British Joint Declaration was signed (QS Yuan, 2015). As the British government was reluctant to offer resettlement or to contribute financially to the issue, it finally agreed to the proposed policy of repatriation of VBP in a humane way.

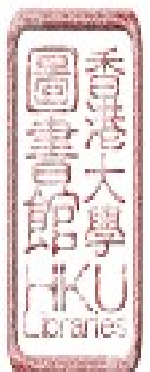


To implement such as repatriation policy, legislators in Hong Kong proposed a screening policy and introduced a set of new measures. All VBP were treated as IIs upon arrival and were required to undergo a screening procedure. The procedure, designed in accordance with UNHCR guidelines, was conducted by ImmD and monitored by UNHCR. Those screened-out would be classified as IIs pending repatriation while the screened-in would be classified as refugees and be accommodated in refugee camps waiting for resettlement to a third country. Only basic facilities were provided in detention centres managed by CSD. Several closed camps were gradually liberalised to open camp after years which was managed by UNHCR (Security Branch, 1988).

Analysis of Screening Policy

The implementation of the policy was initiated by the HK government with the support of both British government and UNHCR. UNHCR had a more vital role in the policy design and implementation owing to monitoring from foreign countries. Nevertheless, the local government still upheld the leading and dominating role and the mode of governance still remained as regulated self-governance.

The policy window was opened with a combination of issues in problem stream and political stream. The stretching of resources from Hong Kong, dense population and huge influx of VBP had imposed real difficulties to Hong Kong. The deterrence effect of closed camps had gradually vanished and the administration had shortage in manpower and resource to accommodate increasing number of VBP. Problem stream issue alone had overwhelming pressure for opening of policy window for HK



Government to implement new policy tools to tackle the issue.

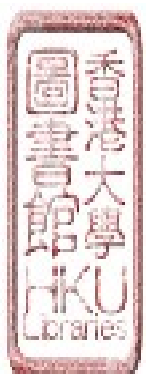
In political aspect, the public resentment was noticeable. The support from UNHCR and the British government was the key for the screening policy whilst the refusal of the Vietnamese and British authority to negotiate on repatriation had shelved the alternative option at that time. The Sino-British Joint Declaration and the potential financial burden to Britain were catalysts for British government to give green light upon the screening and repatriation policy. On the other hand, the policy stream issue was not as prominent as the other two streams. The policy choice of the HK government was limited and bounded by the requirement of the British government to act as place of first asylum,.

Similar to the implementation of the closed camp policy, screening policy also involved new legislations for the provision of detention. Rights and authorities were granted to officers of ImmD and CSD for screening and detention camp purpose. The employment of NGOs within camps was also a kind of inducement to better administer VRs. To sum up, the new screening policy also made use of policy tools of Mandates, Inducement and System Changing.

Repatriation of Vietnamese Boat People (1988 – 1999)

Comprehensive Plan of Action (CPA)

In 1989, another international conference was held in Geneva in respect to the VBP issue. Agreement was made in the conference, known as the CPA. The agreement



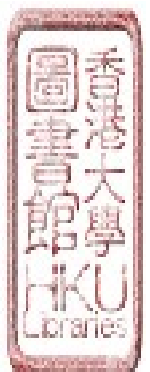
endorsed that “If, after the passage of reasonable time, it becomes clear that voluntary repatriation is not making sufficient progress towards the desired objective, alternatives recognized as being acceptable under international practices would be examined (Legco,1989a).

CPA was carried out in accordance with the International Covenant on Human Rights. According to the CPA, UNHCR would make arrangements for resettlement for those Vietnamese who were screened in as refugees. VBP who were denied refugee status after screening would be repatriated to Vietnam. These procedures were subject to the scrutiny of UNHCR. If VBP were aggrieved at the decision on their status, they might lodge appeal through a proper channel.

Development of the Vietnamese Boat People Issue

The screening policy alone did not deter VBP from coming to Hong Kong. Although Hong Kong and British government had engaged the international community and gained the support to the screening policy, the negotiation with the Vietnamese authority regarding the repatriation of the screened-out did not succeed (Legco, 1989b). The repatriation could finally be realised after the agreement of CPA.

In October 1991, it was recorded that the number of VBP in Hong Kong peaked at 64,300. In the early 1990s, the HK government commenced voluntary repatriation programme and was poorly received by the VBP despite an agreement reached with the Vietnamese government to prohibit any revenge against them upon their return to



Vietnam. Later, mandatory repatriation was enforced upon the agreement made by countries worldwide.

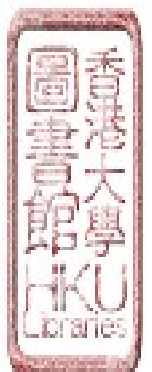
Broadcast of Updated Information in Detention Centres

According to the legislation paper on 11-03-1992, only a small amount of VBP were screened-in as refugees, i.e. 4 414 out of 31 682 VBP. Suggestion to broadcast a one-hour programme at detention centres daily was brought up with a view to providing VBP with all kinds of important information and news so as to lure them to accept voluntary repatriation.

In order to promulgate to implementation of the Screening and Repatriation policy and dissuade the influx of VR, the Hong Kong government began to broadcast a Vietnamese radio announcement in the government funded radio, Radio Television Hong Kong. This was known as the *Bắt đầu từ nay* broadcast. This was an effective measure in assisting repatriation which is a considered as Inducement under the policy tool of Elmore and McDonnel.

Reception of VRs by British Government

During a CPA meeting in Bangkok in 1994, the HK government requests the British Government to consider accepting VRs in Hong Kong who had no family links thereat. In return, only around 2 000 refugees from Hong Kong were resettled since then. With the reluctant attitude of the British government to accept more VR, its effort to press other resettlement countries to accept VRs from Hong Kong was in



vain. Repatriation was literally the only way to resolve the predicament in Hong Kong.

Integration of Vietnamese refugee under Local Resettlement Scheme (2000)

Repatriation Situation

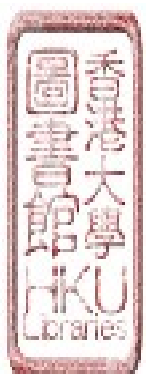
The resettlement figures were declining steadily from 1990 to 1999, dropping from 7,600 to 70. Given the fact that many of them had no relatives abroad and a portion had drug addiction problem or criminal record, it became virtually impossible to resettle them.

HK Government has seriously explored other options, including resettlement in the Mainland, voluntary return to Vietnam, and even revocation of their refugee's status, but none is feasible.

In 1999, the population at Pillar Point Vietnamese Refugee Centre (PPVRC) consists of about 600 VRs and 550 Vietnamese migrants (i.e. non-refugees). There were over 400 moved out from the Pillar Point Centre to self-arranged accommodation. They were all employed and did not require any government assistances. As such, some refugees had gradually integrated into society.

Implementation of Local Resettlement Scheme

There was a group of VBP, who have stayed in Hong Kong for over 10 years, known

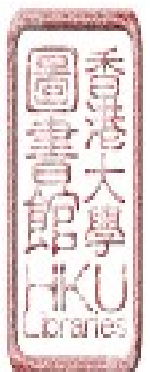


as “non-national” Vietnamese migrants. They neither had the opportunity to be resettled elsewhere nor chance to return to Vietnam. Integration to the Hong Kong community was the only viable humane solution. Then Secretary for Security Mrs Regina Ip said “allowing the problem to drag on would only aggravate the burden on Hong Kong.... Moreover, the existence of the PPVRC has created a host of problems such as drugs, violence and other crimes. It is also a stumbling block to our efforts to encourage VRs and Vietnamese migrants to lead a normal and self-reliant life”.

In February 2000, the HK government announced that it would widen the Local Resettlement Scheme for Vietnamese Migrants. The Scheme was introduced in 1986 to provide an opportunity for a limited number of VRs to settle in Hong Kong. Under the widened scheme, all 973 VRs stranded in Hong Kong, 327 Vietnamese migrants and their 108 families were eligible to apply for settlement here. Successful applicants would be allowed to settle in Hong Kong.

Analysis of Local Resettlement Programme

In gist, the major issues encountered in dealing with the VBP were the riots, the commission of crimes and enormous expenditure. The HK Government had adopted the policy tool of “Mandate” and amended the Immigration Ordinance in order to integrate the last batch of VRs and the VBP in Hong Kong via the Local Resettlement Programme. With the unprecedented scheme launched for non-Chinese immigrants, those Vietnamese were issued with Hong Kong Permanent Identity Card in which they were allowed to work legally in Hong Kong. They were granted permanent residency and the eligibility to apply for Hong Kong travel document. The HK



government regarded that it was the last but the only option to tackle and end the problem.

Problems Caused

According to the Official Record of proceedings of Legislative Council on 30 June 1999, Legislative Councilor Mr. Ambrose Cheung mentioned that there was a riot broke out in a Vietnamese Refugee Centre. He questioned the criminal cases involved with the VRs. The then Secretary for Security Mrs Regina Ip provided figures in Table 3.1 & 3.2 in the next page.

With the available information gathered and the figures in Table 3.1 & 3.2, it showed a high crime rate regarding to the VBP. Together with numerous riots happened either in the close camps and open camps which caused casualties and deaths, the order and safety in Hong Kong were adversely affected at that time.

In dealing with the VBP issue, the repayment of the outstanding advances to the UNHCR stood at \$1.16 billion. Mrs Ip stressed in 2000 that the HK Government had made repeated appeals to the UNHCR, but efforts had produced no result. With the failure in getting the repayment from UNHCR, the expenditure was shared by the Hong Kong taxpayers. The last payment, HK\$3.9 million, was made in 1998. In 2012, The UNHCR revealed that they were unable to afford for paying the debt. They requested the debt to be forgiven in. In gist, the HK government spent an estimated HK\$8.7 billion for the overall incident.

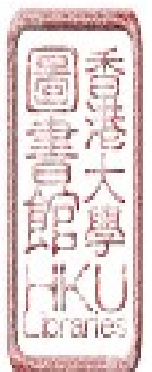


Table 3.1 Numbers of Criminal Cases involving Vietnamese in Vietnamese Centres and Other Areas in Hong Kong in 1996 and 1997 (January - September)

	Open Centres						Closed Centres								Other Areas		Total		
	Pillar Point		New Horizons		Kai Tak ^{*1}		High Island		Tai A Chau ^{*2}		Whitehead ^{*3}		Green Island		1996	1997	1996	1997	
	1996	1997	1996	1997	1996	1997	1996	1997	1996	1997	1996	1997	(Jan-Sep)	(Jan-Sep)					(Jan-Sep)
Assault on Police	6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	-
Fighting in Public Place	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Murder/Manslaughter	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	-	-	3	-
Possession of Offensive Weapons	-	-	-	-	-	-	-	-	-	-	1	-	-	-	6	3	7	3	
Rape	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1	-	
Robbery	2	-	-	-	-	-	-	1	-	-	-	-	-	-	11	5	13	6	
Serious Assault	9	1	-	-	-	-	5	2	1	-	7	-	-	11	16	33	19		
Wounding	4	2	1	-	-	-	10	5	-	-	7	1	-	11	12	33	20		
Others#	34	12	-	-	-	-	3	2	-	-	7	1	-	340	268	384	283		
Total	55	15	1	0	0	0	22	10	1	0	22	2	0	0	379	304	480	303	

*1 Closed in March 1997.

*2 Closed in September 1996.

*3 Closed in June 1997.

Included other non-violent crimes such as burglary and theft, fraud and forgery, dangerous drugs related offences, immigration offence, and so on.

Source: Legislative Council Report 30-06-1999



Table 3.2 Numbers of Criminal Cases involving Vietnamese in Vietnamese in Vietnamese Centres* and Other Areas in Hong Kong since October 1977

	<i>1996</i>	<i>1997 (Jan-Sept)</i>	<i>1997 (Oct-Dec)</i>	<i>1997 (Total)</i>	<i>1998</i>	<i>1999 (Jan-May)</i>
Assault on Police	6	-	1	1	6	3
Fighting in Public Place	-	-	-	-	6	-
Murder/ Manslaughter	3	-	-	-	-	-
Possession of Offensive Weapons	7	3	1	4	1	-
Rape	1	-	-	-	1	1
Robbery	13	6	1	7	11	3
Serious Assault	33	19	3	22	23	-
Wounding	33	20	4	24	11	6
Others#	384	283	78	361	335	140
Total	480	331	88	419	394	153

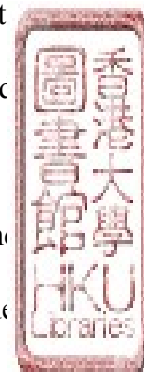
* Include Pillar Point, High Island (closed in May 1998), New Horizons (closed in March 1998) and Green Island. With the closure of more and more Vietnamese centres, the police does not keep separate crime statistics for individual centres since October 1997.

Include other non-violent crimes such as burglary and theft, fraud and forgery, dangerous drugs related offences, immigration offences, and so on.

Source: Legislative Council Report 30-06-1999

Concluding Comments

When the refugee issue started in 1975, the government had taken the sole responsibility to tackle the problem. As it was an unprecedented issue, the then Government literally had no policy or legislation to make reference to. The HK government took a leading and dominant role in the issue which had all the power to implement different policies and employ various tools. Throughout the whole period, the issue was dealt with under

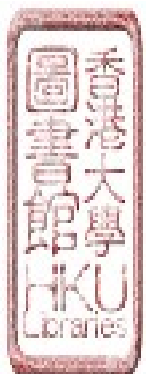


regulated self-governance mode. The UNHCR and various voluntary agencies played a supporting role to implement the government policy. They had been cooperative to policies of the government. Although UNHCR and voluntary agencies were consulted, their recommendations may not be employed. Their political influence to the government was quite little.

Enormous public concern ascended whenever problem arose. Although the general public recognized the need to help VRs on humanitarian grounds, much of them concerned the emerging influx of refugees, security issue to the community, overpopulation, etc which ultimately accelerate the implementation of new policies. The problem stream influenced the political atmosphere and contributed the most in this situation to open the policy window for the government to handle the issue.

Acting mostly as the supporting role to the government, UNHCR gave little political resistance to the government. The government had the power to react to the problems as well as social pressures and act on its own will e.g. the closed camp policy. Against opposition from the UNHCR, voluntary agencies and NGOs, the government took firm action in a view to solve the problem and soothe public resentment after assessed all alternatives. It was observed that from the planning, establishment and monitoring of the closed camps, all four policy tools of Capacity Building, Mandates, Inducement and System Changing were employed.

Another characteristic of the issue was the stance and attitude of the then sovereignty Hong Kong, the Britain. Since VR issue was a foreign affair, Hong Kong had to rely Britain for diplomatic efforts and many policies had to be endorsed by the Bri

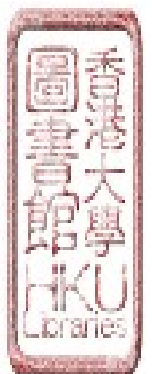


government, and sometimes from other related countries, before being put in place, such as the screening and repatriation policy. The then colonial government had to face international politics which was a very unique political stream issue. The political situations had indeed limited the policy choice of the then government. Similar situation will be observed when the current HKSAR government seeks to tackle the issue of asylum seeker in some ways involving foreign affairs.

Coupling with political issues, the HK government was prompted to implement new policies or improve existing policies when problems were found and when situations changed, for example overpopulation, gangs fight in camps and enormous influx of VR. Problem stream issues and political stream issues were the major factors opened policy windows and affected selection of available policy choices.

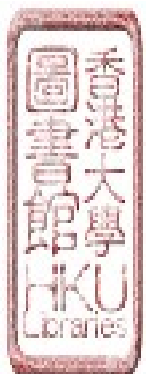
The HK government had implemented different policies comprehensively by employing all four types of policy tools at the same time, such as Inducement to bring in NGOs and voluntary agencies, Mandates to control the behaviour of the VRs, System Changing to draft new legislation and authorise different departments for certain purpose and Capacity Building to raise the education standard in camp.

Analysing with responsive regulatory framework, it is observed that the colonial government did not only rush to law enforcement and sanction solutions to resolve the VR problem. The government indeed firstly engaged UNHCR and NGOs and explored available policy tools to support capacity building of the society to handle VR issues, first allowing legal employment, to open camps policy supplemented with adequate facilities and education. Until the support policies failed to resolve the issues owing to the reasons



such as withdrawals of other countries to accept VRs, deteriorating public security, exhausting public resource and rising public sentiment, the government resorted to sanction pyramid and escalated intervention and punitive actions from closed camp, screening policy to the ultimate means of repatriation. In fact, the government had used actions in pyramids of supports and sanctions interchangeably to resolve the issue as a continuous process which had avoided stigmatization of VRs.

In administering asylum seekers in Hong Kong, the incumbent HKSAR government could make reference to the above empirical analysis and thoroughly studied the lessons learnt in and policy plan used by colonial government to handling VRs. The coming two chapters will outline the current situation of administering NRCs and emerging social problems in Hong Kong. An empirical analysis using the same analytical framework will be conducted to evaluate the current government policies in administering asylum seekers.



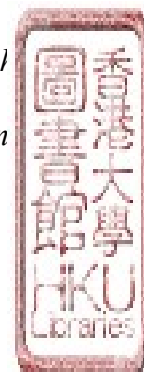
CHAPTER FOUR: ADMINISTERING ASYLUM SEEKERS – NON-REFOULEMENT CLAIMS

Introduction

Comparing to the issue of VRs, the history of on-going NRCs issue is still short. In 1992, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT Convention") has been extended to Hong Kong and until 2003 the issues arising from the NRC claim and torture claim emerge in Hong Kong. On the other hand, as the 1951 United Nations Convention relating to the Status of Refugees ("the 1951 UN Convention") does not apply to Hong Kong, it is the policy of Hong Kong government not to grant asylum to refugee. This Chapter will outline development of all relevant conventions and court rulings on handling NRCs in Hong Kong, and the response given by the Government towards those conventions and rulings.

CAT Convention

Article 3 of CAT convention was specifically related to non-refoulement claim, which stated that "*No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*" and "*For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant mass violations of human rights*" (General Assembly of United Nation, 1984).



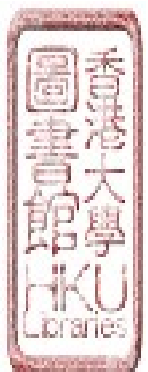
Situation in Hong Kong Before Relevant Court Judgement in 2004

Prior to 2003, the CAT convention was followed and exercised to the extent that the local government would prevent police or public officers to deliberately impose any pain, physically or mentally, to any person while performing official duties. Measures were introduced to detect physical torture and investigations would be performed upon the lodgment of complaint by the designated unit within or outside the alleged departments.

Furthermore, Article 39 of the Basic Law secured the provisions of the ICCPR in Hong Kong and was formulated in the Bill of Right Ordinance. Laws in Hong Kong also provided the protection to different kinds of persons against torture.

Initially, notwithstanding the obligation of the local government not to repatriate persons to another state where the person may be subjected to torture under the CAT convention, the local government had no independent assessment as to torture claim or asylum cases. It relied solely on the UNHCR which assessed both torture claim and asylum cases. The local government made decisions on torture claim cases based merely on assessments and determination of UNHCR. Even more, the local government had not provided asylum seekers, torture claimants and refugees any welfare assistance while they were in Hong Kong. It was the UNHCR who supported the vulnerable with welfare assistance (Hong Kong (China) Security Bureau (SB), Health, Welfare and Food Bureau (HWFB) & Education and Manpower Bureau (EMB), 2006).

In 2002, an appellant lodged a judicial review against the decision of the Secretary Security to deport him to a state where he may face physical torture. Consistent with

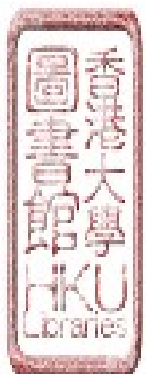


general procedures and basis of decision, the Secretary for Security and the ImmD merely relied on an unexplained rejection of refugee status of UNHCR to determine the torture claim case of the appellant as well as to make the decision to deport him (Hong Kong Judiciary (Judiciary), 2004). In the ruling, the court judged that the administration should undertake independent assessment with the high standards of fairness in determining the potential deportee's torture claim and whether to remove such person. The potential deportee should be given every reasonable opportunity to establish his claim and such claim should be properly assessed, with all relevant matters considered, by the Secretary. The potential deportee should be given the corresponding reasons to reject his claim by the Secretary. The decision of the Secretary should also be subjected to administrative review and judicial review base on rule of law (Judiciary, 2004).

Government Policy After 2003 Court Judgement

The Administrative Screening Mechanism: 2004

The government, after the aforesaid court judgement, swiftly established an independent administrative screening mechanism to handle the torture claim cases under Article 3 of the CAT convention. All torture claim cases would be assessed by the ImmD which officers would interview the claimants and determine whether the case was substantiated. Those screened-in would not be removed to a country he may be in danger facing torture. However, the claimants may be removed to another country where he would not be tortured or to the country if there was a change in condition so that the claimant's claim would not substantiate anymore. If the claimant failed to establish his claim, he would be removed in accordance to the law of Hong Kong (SB, HWFB & EMB, 2006).



Normally, torture claimants would not be detained unless he had breached his condition of stay or other laws in Hong Kong. They may be released on recognisances on the discretion of the director of the ImmD on a case by case basis.

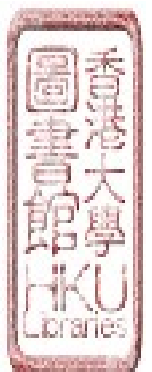
Other Court Rulings

Since then, torture claimants consistently made use of the administration review and judicial review to challenge the decision of the local government in respect to the procedural fairness and treatments to the claimants. Many of the judgements in the period of 2004 to 2014 had caused changes to the procedures of the screening mechanisms and the treatment to the claimants.

Three of these court judgements had caused significant changes in the screening mechanism. The court judgement in 2008 ruled that the administration should implement a series of measures to meet the high standard of fairness which forced the then administration to introduce the enhanced administrative mechanism to screen the torture claim cases in 2009 (Judiciary, 2009).

The Court of Final Appeal ruled in the case of *Ubamaka Edward Wilson vs the Secretary for Security* in 2012 requiring the administration not to remove foreigners to a country where his claim of facing danger under Article 3 of Bill of Right Ordinance (BOR3) was substantiated, and BOR3 was absolute and non-derogable. The content of BOR3 is extracted below.

Article 3 of Bill of Right (BOR3)

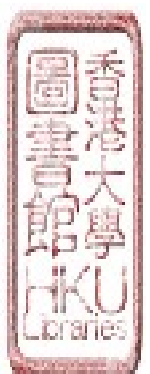


The Bill of Right Ordinance in Hong Kong incorporated the International Covenant on Civil and Political Rights (ICCPR) which applied to the territory. Article 3 of this ordinance was formulated in relation to the Article 7 of ICCPR. BOR3 stated that: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation*” (HK government, 1991).

In 2013, The Court of Final Appeal ruled again in the case of *C & Ors vs Director of Immigration* in relation to non-refoulement claim in Hong Kong. The court considered in its ruling that the local government normally halted the removal of a person, for humanitarian grounds, who made an asylum claim to the UNHCR and it would not repatriate the person if his claim was substantiated. Coupling the above practice with the memorandum of understanding signed between UNHCR and the local government, the government should consider the removal of the claimants case by case independently on its own merit while UNHCR had the full responsibility to the determination (Judiciary, 2013).

The above two court ruling had forced the administration to implement the latest screening mechanism, the Unified Screening Mechanism (USM), in 2014. The mechanism does not only assess all torture claim cases in Hong Kong, but also claims under BOR3 and asylum claims. All these claims were known as Non-Refoulement Claim. It should be reiterated that the change in policy or rulings did not change the stance of the local government of not granting asylum to any person in Hong Kong.

Regarding the social welfare policy towards torture claimants, the local government not provided any welfare assistance to the vulnerable torture claimants, asylum seeker



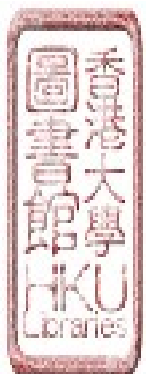
refugees prior to 2006 and those assistances had been provided by UNHCR. Similarly, court rulings had great influence on government policy in this area. After a series of judicial review, the local government was obliged to provide with the claimants and refugees in kind assistance (Mark Daly, 2009 & Ramsden and Marsh, 2014). The assistances, which are less than social security assistances given to the local resident, intended only to meet the basic needs of the vulnerable so as to prevent a magnetic effect to attract influx of torture claimants and asylum seekers to Hong Kong (Security Bureau, 2015). Details of the assistance will be discussed in the next chapter.

Analysis on Refugee Policy Development

Roles and influences of NGO in refugee policy development

The role of NGOs and their influence to the policy formulation or amendment could influence the mode of governance and policy dynamics and thus affect the choice of policy tools available of the local government. In addition to the collaborative role of the NGO in providing in kind assistances, NGOs and advocates, who have put tremendous effort in advocating a humane and generous refugee policy, in terms of welfare assistance and screening policy, had in fact play a key role in change of refugee policy in Hong Kong. It is also undeniable that the obligation of Hong Kong in the international covenant on Civil and Political right (ICCPR) and CAT convention have given NGOs, UNHCR and advocates certain political powers in administering asylum seekers in Hong Kong.

The international covenant on Civil and Political right (ICCPR)

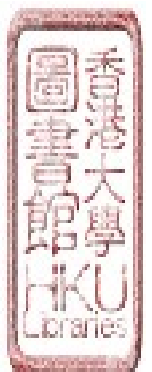


ICCPR is an international human right treaty which stipulates general principles of basic human rights and fundamental freedom. All state parties have to periodically report to The Human Rights Committee (HRC), the body to monitor the implementation of the ICCPR, the latest development and implementation of human right in the state. Recommendations and views of NGOs were also considered by HRC as shadow report. HRC would compare the facts and analysis against the report submitted by the government while compiling its conclusion (American Civil Liberties Union, 2014).

The British Government extended ICCPR to Hong Kong in 1976. As stipulated and agreed in the Sino-British Joint Declaration, ICCPR would continue to be effective after the handover of Hong Kong to China. Hong Kong would submit report separately the implementation of ICCPR in the HKSAR, to the HRC. The second report of HKSAR was submitted in 2005 and the hearing was held in 2006.

The monitoring system employed by HCR had allowed NGOs to express their concern and present their recommendations internationally to pressure the local government to response and react. The NGOs and advocates had a monitoring role to the compliance of the local government to the human right treaties. However, the administration of Hong Kong seemed to be reluctant to commit to new policies and may not response to the recommendations given by the HRC. For instance, the concluding observation of HRC in 2006 recommended the administration the following: *“The HKSAR should establish an appropriate mechanism to assess the risk faced by individuals expressing fears of being victim grave human rights violations in the locations to which they may be returned.”* (Human R Committee, 2006, P3).

The administration had until the respective court rulings in 2012 and 2013 to put in p



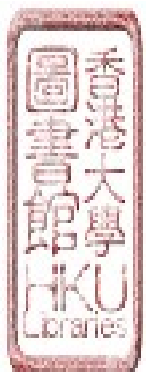
the mechanism recommended. The local government also stayed firm not to grant asylum to anybody in Hong Kong and resist the idea of extending the 1951 refugee convention and 1967 refugee protocol to Hong Kong. Notwithstanding this, the local government was open to listen to the opinions of the public and NGOs, and was willing to take into consideration opinions received.

Separation of Powers

Hong Kong, as a common law jurisdiction, has an effective check and balance system between the three branches of executive, legislative and judiciary in Hong Kong. The rule of law and judicial independence in Hong Kong had ensured the work of the Government duly monitored. In a recent speech of the Chief Justice Mr. Geoffrey Ma Tao-li, Ma assured that "*Those components of the rule of law which are of particular relevance to Hong Kong - indeed to all common law jurisdictions, of which Hong Kong is one - comprise first, the due recognition of rights and fundamental freedoms,*" and "*Decisions of the courts may sometimes not be to everybody's liking - whether they be private individuals, political and other groups, or even the government - but it is not the role of the courts to make popular decisions*", "*The function of the courts is to adjudicate on disputes according to the law and its spirit*" (Stuart Lau, 2016).

Role and Function of Judiciary in Refugee Policy Development

In Hong Kong, the court judge cases based solely on the legal basis. Nonetheless colonial era, it could be seen that the law was a part of the refugee policy which was a tool made use by lawmakers and the British government. The court rulings and the subsequent



changes of policies are corrections of the administration towards the implementation of a general policy stipulated in different ordinance, rather than formulation of new policies. The role of the court should be regarded merely as a monitor within the system.

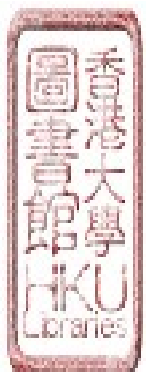
It is commonly observed that NGOs working together with and supporting NRCs to apply for judicial review to challenge decision of USM. Claimants and NGOs usually quote human right related provisions in domestic laws to challenge the decision of the administration and to fight for more favourable treatments to them or their moral believes. Although the ruling may not be in favour to claimants all the times, NRCs, NGOs and the judiciary in fact lines up a monitoring mechanism which may cause changes to the implementation of refugee policy.

Mode of Governance in Refugee Policy Development

As part of the check and balance system, the administration and the legislation had all the means and power to adjust the policy or to formulate a new policy whenever they found the general policy outdated or ineffective. In other words, the local government still possesses administrative powers and legal obligations in administering asylum seekers. The mode of governance is thus regulated self-governance.

Policy Dynamics in Refugee Policy Development

Under the regulated self-governance and limited influence of the NGOs, the governn could accord priority to the interests of local residents and the government as a whol policy making process. Prior to implementation of USM, the general public was not f



aware of the issue and thus no demand for policy change was urged. Before the court ruling required the administration to rectify its action, there is no political pressure or other initiative to place the issue upon the policy agenda. As such, the change in government policies and actions at this stage is solely based upon problem streams.

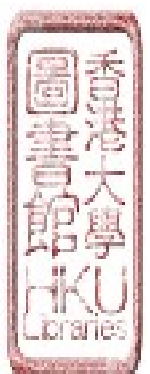
Policy Tools in Refugee Policy Development

Different court rulings had resulted in a variety of change in actions and policies of the local government. The implementation of the administrative screening mechanism by authorising the ImmD to screen all torture claim cases is an responsive policy tools of system changing. ImmD officers were trained before taking up the screening responsibility and the training is a kind of capacity building activity. The collaboration between local government and NGOs in the provision of in kind assistances had employed the policy tools of inducement. Last but not least, the newly legislated statutory screening process in USM it is also a type of mandate. All in all, all four types of policy tools, i.e. Mandate, Capacity Building, Inducement and System Changing were adopted in the general policy to administering NRCs in Hong Kong. Those policy tools could be regarded as actions in the support pyramid and no sanction actions have been used in absence of any exceptional circumstances which require immediate intervention and stringent enforcement.

Concluding Comments

The mode of governance throughout the above period is regulated self-governance.

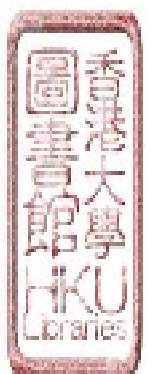
Government had all along taken into considerations the opinions and recommendation



HRC and NGOs and upheld its legal obligation to react to emerging problems by taking responsive actions or implementing new policies. At the meantime, the Government had to be aware of the international politics and practices about administering asylum seekers that may affect the local situation significantly even alter the mode of governance.

The general policy of not granting asylum was unchanged. One of the reasons why the government has not introduced new policies before establishment of USM was the lack of public concern about the issue or any critical problematic issues. The sole dominating factor that resulted in changes of policy, i.e. establishment of USM is the court ruling instead of other politics and policy issues.

The next chapter illustrates the current situations of Hong Kong in administering asylum seekers, details of existing government policy and the USM as well as evolving and imminent social problems.

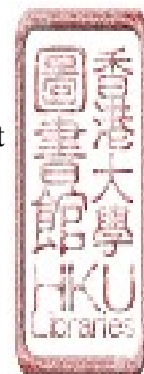


CHAPTER FIVE: ADMINISTERING ASYLUM SEEKERS – THE CURRENT SITUATION

Introduction

As stipulated in the Immigration Ordinance (Cap. 115), foreigners smuggling themselves into Hong Kong, and visitors overstaying beyond their limit of stay or being refused entry to Hong Kong by the ImmD are liable to be removed from Hong Kong as soon as practicable. However, if foreigners claim to be facing a risk of being subjected to torture, or cruel, inhuman or degrading treatment or punishment, or persecution in the country of origin, the ImmD should not remove them unless going through an established screening mechanism to determine their claims. There has been a rise in torture or non-refoulement claims under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) since it was introduced to Hong Kong in 1992. In accordance with Article 3 of the CAT, it is stipulated that "*no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*".

Followed by a series of court rulings since June 2004 in Hong Kong, the screening procedures for the torture / non-refoulement claims are of much higher standards of fairness nowadays. In particular, the Court of First Instance's judgment in the *FB & Others* in December 2008 ruled that the screening procedures put in place by Administration were not able to meet the high standards of fairness and required that screening mechanism for torture claims should be improved, among others, on following aspects:-



- (a) publicly-funded legal assistance to needy claimants should be provided;
- (b) the decision-maker on a claim should be the officer who has interviewed the claimant;
and;
- (c) oral hearing of a petition should be arranged where required.

In order to ensure the screening process for non-refoulement claims could meet the high standards required by law, the Government enhanced its administrative mechanism in this regard in December 2009. In March 2014, the Government implemented the Unified Screening Mechanism (USM) to determine for claims for non-refoulement protection against expulsion or extradition of the claimants to another country from Hong Kong on all applicable grounds. The protection covers the circumstances as laid in risks of torture under Part VIIC of the Immigration Ordinance (Cap. 115), torture or cruel, inhuman or degrading treatment or punishment under Article 3 of the Hong Kong Bill of Rights in section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383), and persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees, which is also in compliance with the rulings of the Court of Final Appeal (CFA) in December 2012 and March 2013. Upon the commencement of the USM in 2014, a total of 6 700 non-refoulement claims were pending assessment.

Up to the end of March 2016, the number of claimants pending assessment has accumulated to 11 201 claimants. The top five countries of origin of the claimants are south or Southeast Asian countries, i.e. Vietnam (22%), India (19%), Pakistan (18%), Bangladesh (12%) and Indonesia (10%). 51% of claimants were smuggling into Hong Kong, and 47% of which were overstayers or visitors being refused to land.

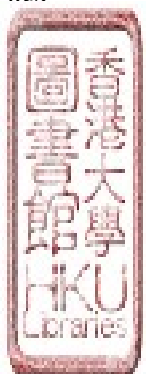


Table 5.1 – Number of Torture / Non-refoulement Claim Cases in Hong Kong

<i>Year</i>	<i>Received</i>	<i>Determined</i>	<i>Withdrawn or Taken No Further Action</i>	<i>Outstanding (Cumulative)</i>
Before 2005	53	0	4	49
2005	211	1	30	229
2006	528	43	54	660
2007	1 584	82	51	2 111
2008	2 198	179	132	3 998
2009	3 286	0	1 037	6 340
2010	1 809	214	1 186	6 749
2011	1 432	932	802	6 447
2012	1 174	1 575	1 154	4 892
2013	491	1 813	778	2 792
2014	8 851	1 047	978	9 618
2015	5 053	2 339	1 410	10 922
2016 (Jan-Mar)	1 157	545	333	11 201
Total on Torture / Non-refoulement Claims	27 827	8 770	7 949	11 201

<i>Nationality</i>	<i>Number of Claimants</i>
Vietnamese	2 484
Indian	2 073
Pakistani	1 996
Bangladeshi	1 353
Indonesian	1 134
Filipino	427
Nepalese	304
Sri Lankan	304
Gambian	159
Others	967
Total	11 201

Source: Website of Immigration Department HKSAR (<http://www.immd.gov.hk/>)

According to ImmD's records, 74% of claimants are male, 76% of them aged ranging from 18 to 40 years old, and 94% came to Hong Kong alone without their family. Around 70% of them lodged a claim whenever they were intercepted or arrested by enforcement agencies.



An average duration of stay in Hong Kong of the claimants before a claim is lodged is around 19 months. The reason why they came to and hid in Hong Kong and how they survived in Hong Kong without permission to work during such a long period of stay are in doubt.

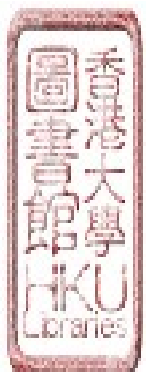
Between late 2009 and March 2016, a total of 8 465 torture/non-refoulement claims have been determined where only 52 of them were substantiated (27% from Sri Lankan; 17% from Cameroonian; 15% from Jordanian; 7.7% from Congo, Iranian and Rwandan each) but none of them were Vietnamese, Indian, Pakistani, Bangladeshi or Indonesian (i.e. the top five countries of origin for the claims). In this light, there exists a doubt on whether the claimants have abused the non-refoulement system.

In the following sections, an empirical analysis will be conducted on the existing policy to administer the asylum seekers as well as the problems thus generated by this issue based on the analytical framework devised in Chapter Two.

Existing Policy for Non-refoulement Claimants

Elmore and McDonnel (1987) had categorised policy tools into 4 types, i.e. mandates, inducement, capacity building and system changing. The four different dimensions of policy tools have indeed been currently adopted by the Government in administering the NRCs, which is going to be elaborated in the following paragraphs.

Unified Screening Mechanism (USM)

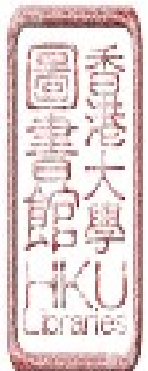


Pursuant to a number of court rulings requiring high standard of fairness, the Hong Kong Government has refined the USM to determine for claims for non-refoulement protection in March 2004. Under USM, only the following two types of persons who are outside their country of their nationality and in Hong Kong are entitled to claim non-refoulement protection:-

- (a) the person is subject or liable to removal from Hong Kong and, apart from a Risk State, the persons does not have a right of abode or right to land in, or right to return to, any other State in which the person would be entitled to non-refoulement protecton; or
- (b) the person is a person whose surrender is requested in surrender proceedings.

A written intention for seeking non-refoulement protection is required to be signified by the claimants to ImmD. Fingerprints and photographs will be taken with the claimants. Once the ImmD officer is satisfied with the grounds for making non-refoulement claim, a briefing session will be arranged by the Removal Assessment Section of the ImmD to the claimants in respect of the non-refoulement screening procedures, and their right and welfare offered by the Government.

Upon commencement of the screening procedures, the claimants have to submit an official non-refoulement claim form listing out the basis of their claim, together with necessary supporting documents if any. In addition to the statutory period of 28 days as stipulated under Part VIIC of the Immigration Ordinance, Cap. 115, the Government would provide extra 21 days for completing the form through administrative means as per the agreement with DLS in 2014 so as to smoothen the USM. The claimants are allowed to apply extension if so warranted.



Once the claim form is received, screening interviews will be arranged by the ImmD to the claimants, which generally will be completed in 13 weeks. Based on the supporting documents submitted by the claimants and assessment during screening interviews, the ImmD may determine the claim in around five weeks. In theory, the non-refoulement claim could be determined within six months upon its commencement.

An appeal mechanism is available for the claimants to lodge appeal to Torture Claims Appeal Board (TCAB) against the ImmD's decision within 14 days. The TCAB normally needs another three months to determine the appeal. However, the duration for screening a claims mostly depends on whether the claimants are cooperative in the process. In reality, many claimants have failed to contact their duty lawyer, attend screening interviews or submit necessary supporting documents as requested by ImmD, which will delay the screening process. The non-compliance of the claimants may jeopardize their credibility on the non-refoulement claims. However, under the current jurisprudence, the ImmD still requires to maintain high standard of fairness as stipulated by law to follow every step of the screening procedures strictly. Otherwise, the claimants may have grounds to lodge a judicial review because of the possible procedural unfairness, which will further delay the screening process and removal of the false torture / NRCs.

Amongst the 11201 claimants pending determination for their non-refoulement claims at the end of March 2016, the average duration they have remained in Hong Kong is around 2.7 years. The procedures of the USM are illustrated in the following figure:-

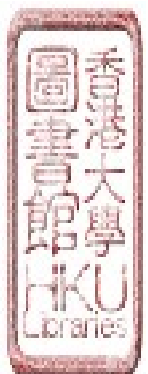
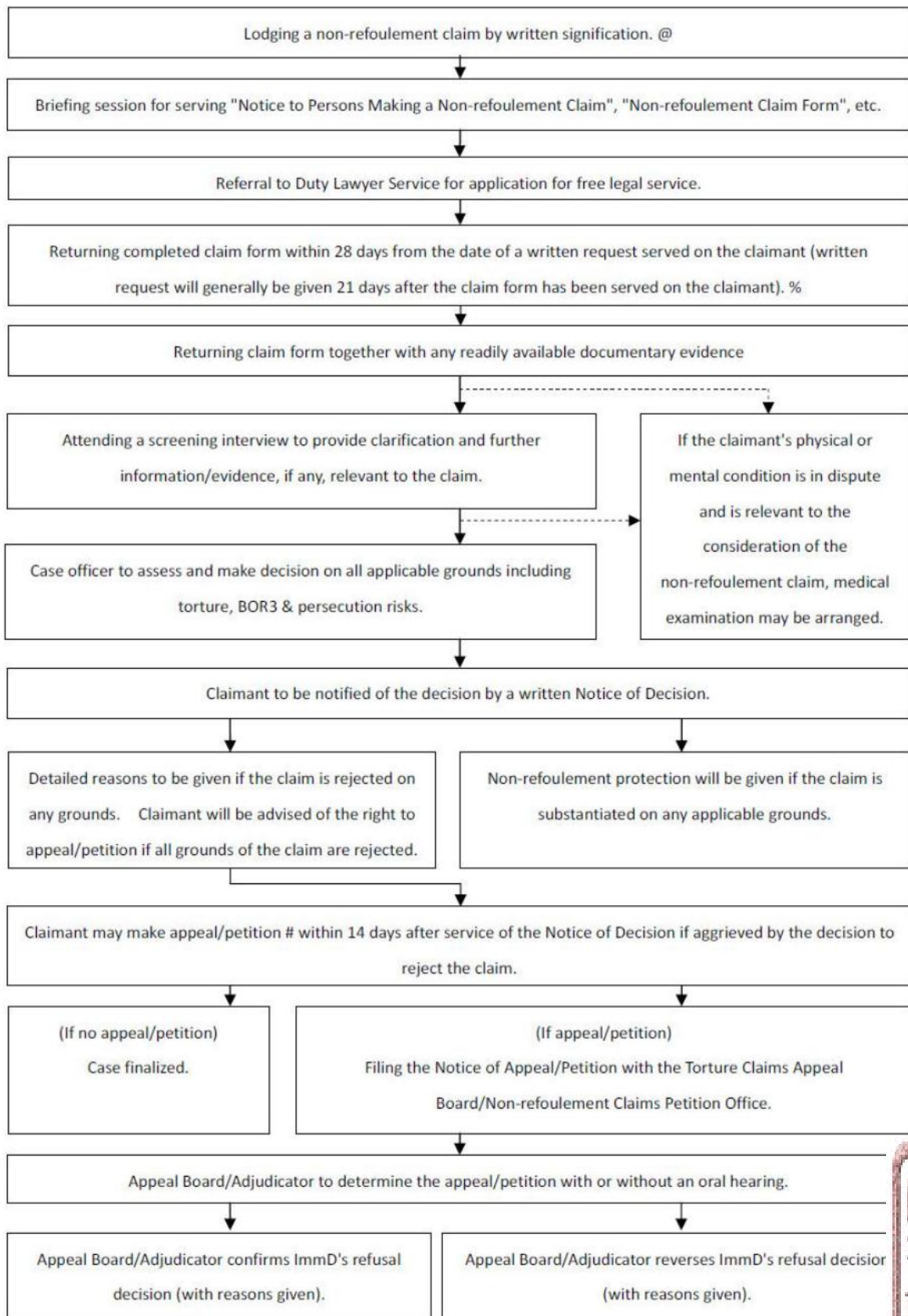
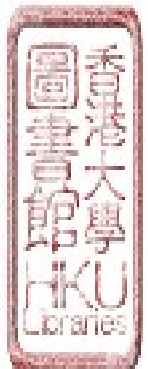


Figure 5.1– Processing Non-refoulement Claims under the USM



Source: Website of Immigration Department HKSAR (<http://www.immd.gov.hk/>)

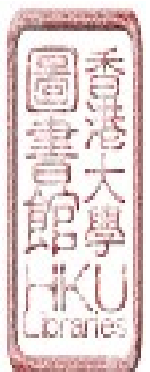


Legal Aid Assistance

Meanwhile, once the screening procedures commence, the NRCs will be referred to the DLS by the ImmD. A duty lawyer will be assigned to the claimants, following its established assignment system for handling the referrals. The lawyers under the assignment system of the DLS are mostly appointed by The Hong Kong Bar Association (HKBA) and The Law Society of Hong Kong (LSHK).

The scope of legal assistance to the claimants under the Scheme is as follows:

- (a) To advise the claimant of his legal right and the procedures in the process of his non-refoulement claim(s) on applicable grounds.
- (b) To assist the claimant to complete and submit the non-refoulement claim form.
- (c) To accompany the claimant to attend screening interview(s), if considered necessary by the duty lawyer.
- (d) To assess merits of appeal and/or petition for claims rejected by the Immigration Department.
- (e) To prepare submissions for the appellant and/or petitioner for meritorious appeal and/or petition cases; and
- (f) To represent the claimant at oral hearing, if any.
- (g) To assist the claimant in making a request to re-open a non-refoulement claim or to make a subsequent claim in meritorious cases
- (h) To prepare submissions for the claimant in an objection notice on revocation in meritorious cases



The legal assistance is entirely free of charge only if the claimants make a statutory declaration that they could not afford to pay the legal cost and are eligible for the assistance.

The Humanitarian Assistance Programme

On humanitarian grounds, the Government has to make sure the NRCs pending determination could meet their basic needs for living and thus has been rendering assistance to prevent those claimants from becoming destitute. Under the assistance programme offered by the Government since April 2006, the claimants are provided with temporary accommodation, basic utilities allowance, food, clothing, basic necessities, appropriate transport allowance and counselling activities.

The responsible government authority for the assistance programme is the Social Welfare Department (SWD). However, through tendering exercise in compliance with the Stores and Procurement Regulations, non-governmental organizations (NGOs) will be awarded with the service contracts to operate the assistance programme under Government funding, instead of being run by SWD itself. SWD will closely monitor implementation of the assistance programme by NGOs through regular and surprise inspections and established mechanism on handling complaints from service users.

In addition, the Hospital Authority (HA) or SWD will grant one-off waivers of medical expenses at public clinics or hospitals to those claimants in need on a case-by-case basis. The Education Bureau (EDB) will arrange appropriate school placement to meet the needs of claimants who are willing to receive education and will not be dispersed from Hong K



in the foreseeable future. The Working Family and Student Financial Assistance Agency will consider any extra subsidy to the needy.

In view of the rise of price level, the Government has increased the allowances on accommodation, food, transportation and utilities allowances to the claimants since February 2014.

- The rent allowance grid per adult claimant has been increased to \$1,500 per month; rental deposits of up to \$3,000 or an amount equivalent to two months of rent, whichever is less; and property agent fees of up to \$750 or an amount equivalent to the rent for half a month, whichever is less;
- The budget for food for each claimant has been increased to \$1,200 per month;
- The allowance for utilities per claimant has been increased to \$300 per month; and
- The transportation allowance per claimant has been increased, ranging from \$200 to \$420 per month depending on their location of residence and the number of routine journeys.

In lieu of the provision of in-kind food assistance, food coupons to the claimants, which are non-cashable and non-transferable, in the amount of \$1,200 per month have been introduced. For exceptional cases, in-kind food assistance will continue to be provided to the claimants.

The above policies for administering and supporting the NRCs are developed, following a series of court rulings which have been made to urge the Government to formulate an effective system to screen the claims of a high standard of fairness in accordance with

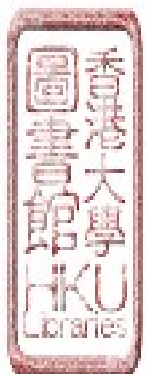


relevant conventions and local legislations.

As such, the Government has modified and implemented a set of policy tools to administer the non-refoulement claims. It is basically mandatory for the Government to review and refine the local legislations and policies from time to time in order to fulfill the conventions and court rulings. The USM and humanitarian assistance programme to the claimants are thus introduced by the Government to govern the screening process. All these initiatives are regarded as “Mandates” as defined by Elmore and McDonnel (1987).

To attract the most competent NGOs to provide support to the claimants during screening procedures, the Government would call for an open tender and invite NGOs to bid for offering humanitarian assistance to the claimants. Through a stringent selection process, contract under public funding would be awarded to the most competent NGOs. The favourable funding and formal recognition would be given to the chosen NGOs by the Government, which should be categorized as “Inducement” according to Elmore and McDonnel.

The possible abuse of the screening mechanism has generated plenty of social problems to the Hong Kong society. To relieve the sentiment of the society, the Government needs to streamline the screening procedures to avoid unnecessary delay, i.e. “System Changing” and build up greater capacity of ImmD to handle the sheer number of non-refoulement claims. i.e. “Capacity Building”. As such, the manpower and resources of the ImmD to be increased to expedite the screening process against the non-refoulement claims with trainings to the ImmD officers are also required in order to maintain high efficiency.

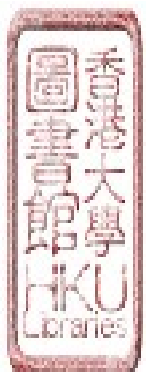


All along, a large policy forces are being exerted by different players in the society or even the world. The policy window to change the policy has opened. In recent years, the policy window becomes far wider due to unprecedented challenges generated from the refugee problems over the world. In facing the challenges under such as mandatory circumstances, the Government is the one having the highest legal obligation to take the lead to address and solve the problems with a view to fulfilling the expectation of the public and the claimants pending determination. However, it is definitely not efficient and effective enough to solely rely on the Government's resources and expertise to manage these social matters, such as the humanitarian support towards the claimants.

Therefore, the government needs to facilitate closer cooperation and interaction between public and private actors, such as LegCo members, NGOs and other concerned groups. When formalizing a comprehensive policy to tackle these topical issues, the Government takes initiative to encourage the participation from the public and other stakeholders so as to enhance the transparency and acceptability of the policy. According to Knill and Tosun (2012), the type of governance currently being adopted by the Government in administering the non-refoulement claims is "Regulated Self-governance", which is a mixture of hierarchy and market modes. Through addressing the social problems led by the issue of asylum seekers, the policy dynamics thus created and respective policy tools applied by the government will be further explored.

Social Problems Stemmed from Non-refoulement Claimants

Commission of Crimes



According to the figure from ImmD, the total number of non-ethnic Chinese illegal immigrants (NECIIs) in 2015 is 3819, in which 2278 of the IIs came from Vietnam. As per the analysis by ImmD, besides upturn of Hong Kong's economy and attractive job opportunity in Hong Kong, the main cause of the increase of IIs is believed to be seeking refugee protection from Hong Kong Government. The following table shows the breakdown of nationality of NECIIs in 2015:-

Table 5.2 – Nationality Breakdown of NECIIs in Year 2005

<i>Nationality</i>	<i>Number of NECIIs</i>
Vietnam	2 278
Pakistan	686
Bangladesh	414
India	380
Nepal	31
Others	30
Total	3 819

Source: Official Record of Proceedings of LegCo on 13 April 2016 - IIs and Torture/NRCs

According to the record of Police since 2013, the number of arrested NRCs was drastically increasing between 2014 and 2015. The criminal offences committed by those NECIIs are tabulated in Table 5.3 on the next page.

In 2005, the total number of arrested persons by Police was 33778 while 3% of which were NRCs. The most common criminal offences committed by those claimants were shoptheft, serious drugs offences, miscellaneous theft and assault, which caused disturbance to the Hong Kong citizens. The majority of the culprits were from India, Vietnam and Pakistan, which were not the countries involved in the 52 substantiated cases.

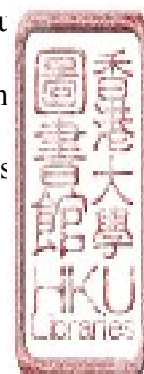


Table 5.3 – Number of NECIIs arrested for Criminal Offences between Year 2013 & 2015

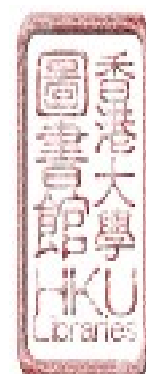
<i>Offences</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
Shop Theft	78	147	277
Serious Drugs Offences	79	79	159
Miscellaneous Theft	80	86	110
Wounding and Serious Assault	100	67	100
Serious Immigration Offences	30	34	85
Forgery and Coinage	31	40	80
Disorder / Fighting in Public Place	35	43	64
Other Offences	175	169	238
Total	608	665	1 113

Source: Official Record of Proceedings of LegCo on 24 February 2016 – Public Expenditure Relating to Handling of Torture and Non-refoulement Claims

In November 2009, the Immigration (Amendment) Ordinance 2009 came into effect where a new section 38AA to the Ordinance was added to prohibit IIs and persons who are subject to removal or deportation orders from taking any employment, or establishing or joining in any business. The number of NRCs arrested for breach of section 38AA is tabulated below:

Table 5.4 – NECIIs on Recognizance arrested for Breach of Section 38AA

<i>Year</i>	<i>Number of Persons Arrested</i>
2009 (since November)	36
2010	172
2011	156
2012	190
2013	165
2014	166
2015	232



Source: Official Record of Proceedings of LegCo on 24 February 2016 – Public Expenditure Relating to Handling of Torture and Non-refoulement Claims

Up to now, over 1000 of them have been prosecuted and sentenced by the Court but the deterrence effect is still in question. Apart from the above criminal offences, the number of NRCs participating triad activities is on a rise according to the Police's record from 3 in 2014 to 24 in 2015. The significant upsurge of the crime figures involving the NRCs has drawn the public concern about their well-being and safety. To certain extent, the Police also concerned about whether any terrorists have sneaked into and remained in Hong Kong seeking refugee protection.

Excessive public expenditure

NRCs are IIs or overstayers, may not take up employment in Hong Kong as stipulated in the Immigration Ordinance, Cap. 115. On humanitarian grounds, the Government, in collaboration with non-governmental organization, is using the public fund to offer financial support to the NRCs in accordance with court rulings, including accommodation allowance, food coupons, and other allowances for basic necessities, public utilities, transport and counselling services so as to prevent the claimants from falling into destitution during the screening procedures. The relevant expenditure and service users of the in-kind assistance services during the past three years are tabulated below:

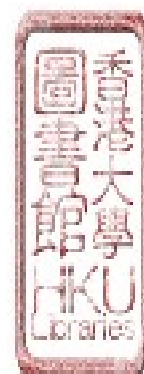


Table 5.5 - Expenditure on Humanitarian Assistance from Year 2012 to 2015

<i>Financial Year</i>	<i>Humanitarian Assistance (\$million)</i>	<i>Service Users (Monthly Average)</i>
2012-2013	191	5 687
2013-2014	204	5 153
2014-2015	246	7 357

Source: Official Record of Proceedings of LegCo on 29 April 2015 – Possible Abuse of Mechanism for Making Claims for Non-refoulement Protection Against Expulsion, Return or Extradition from Hong Kong

On the top of the above humanitarian assistance, HA and SWD will grant one-off waivers of medical expenses at public clinics or hospitals to claimants on a case-by-case basis. Moreover, EDB will also arrange school placements to some eligible minor claimants whenever necessary.

According to the HA's record, the situations of medical fee waiver granted to claimants between 2008 and 2015 are tabulated below at Table 5.6 on the next page.

Since the commencement of the modified screening mechanism in December 2009, legal assistance to NRCs has been made available through DLS. 480 duty lawyers (either barristers or solicitors) are at present on the DLS roster, who have received specialized training to provide assistance to claimants.

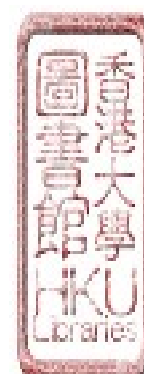
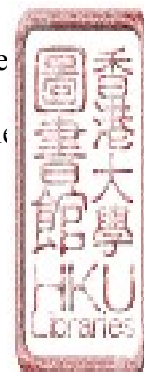


Table 5.6 - Public Hospital Services with Fee Waiver Granted to Claimants between Year 2008 and 2015

	2008	2009	2010	2011	2012	2013	2014	2015
Number of in-patient cases with fee waiver	182	265	606	815	610	367	954	1 421
Number of in-patient cases with fee waiver	2 911	6 109	8 477	8 728	8 096	6 386	10 792	15 685
Total Number of Cases	3 093	6 374	9 083	9 543	8 706	6 753	11 746	17 106
Amount waived for in-patient services (\$million)	3.9	4.1	8.1	19.5	14.7	13.8	18.6	29.5
Amount waived for in-patient services (\$million)	1.5	2.8	4.1	4.3	4.0	4.6	8.8	13.5
Total Amount (\$million)	5.4	6.9	12.2	23.8	18.7	18.4	27.4	43.0

Source: Official Record of Proceedings of LegCo on 24 February 2016 – Public Expenditure Relating to Handling of Torture and Non-refoulement Claims

In sum, the estimated expenditure relating to the handling of non-refoulement claims amounts to \$644 million in 2015-2016, including \$207 million for screening claims and processing appeals (i.e. manpower and resources from ImmD, the Torture Claims Appeal Board, and the Department of Justice to screen the claims), \$108 million for the provision of legal assistance, and \$329 million for humanitarian assistance. The public expenditure for non-refoulement claims has been drastically increasing in the past few years from \$287 million in 2010-2011 to a projection of \$644 million for 2015-2016. There has already been a dramatic jump of rate over 124%, not to mention other relevant costs, such as legal aid granted to the claimants for lodging judicial reviews, public healthcare services, judicial proceedings against claimants involved in the commission of crimes.



According to the ImmD's record, the total number of cases where leave is granted by the Court to claimants for lodging judicial reviews against the decisions in relation to their claims between 2009 and 2015 are tabulated below:

Table 5.7 – Judicial Reviews granted to Claimants against the Decisions in relation to their Claims between Year 2009 and 2015

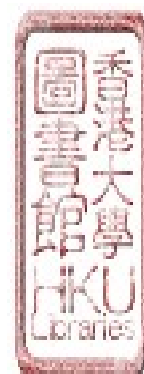
Year	Number of Judicial Review Cases
2009	0
2010	1
2011	1
2012	15
2013	9
2014	42
2015	24

Source: Official Record of Proceedings of LegCo on 24 February 2016 – Public Expenditure Relating to Handling of Torture and Non-refoulement Claims

The following table has summarized the respective legal costs for handling the judicial reviews filed by the claimants according to the Legal Aid Department's (LAD) record:-

Table 5.8 – Legal Costs incurred for handling the Judicial Reviews granted to Claimants between Year 2009 and 2016

Financial Year	Total legal cost incurred (including costs paid to the DoJ (as book entry)) (\$million)
2009-2010	0.27
2010-2011	2.61
2011-2012	0.23
2012-2013	6.58
2013-2014	7.68
2014-2015	7.00
2015-2016 (up to January 2016)	11.28



Source: Official Record of Proceedings of LegCo on 24 February 2016 – Public Expenditure Relating to Handling of Torture and Non-refoulement Claims

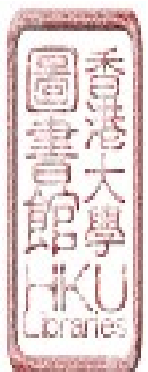
Abuse of Screening Mechanism

In between late 2009 and March 2016, a total of 8 465 torture/non-refoulement claims were determined but only 52 of them have been substantiated, consisting of 27% from Sri Lankan, 17% from Cameroonian, 15% from Jordanian, 7.7% from Congo, Iranian and Rwandan each. However, none of substantiated claimants came from Vietnam, India, Pakistan, Bangladesh or Indonesia, which are the top five countries of origin for the claims.

From the above figure, it appears that the majority of NRCs are actually false refugees. The possibility that the claimants are seeking allowances, illegal employment or quick money from crimes could not be ruled out. In any case, if the abuse of the screening mechanism does exist, it would definitely cause heavy burden to the Hong Kong society.

In the *HKSAR v Tarok Das case*, the Court of First Instance of the High Court also pointed out that the number of claims had seen a dramatic increase, seriously impacting the operation of the court and the legal system. The unmeritorious and unworthy claims should be weeded out promptly to avoid the abuse of the system by claimants with a more sinister purpose in mind to achieve illegal purposes (Secretary for Security, 2015).

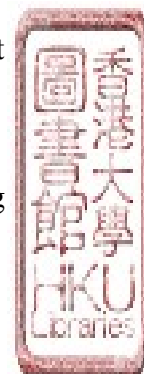
In addition, the recent intelligence revealed that agencies or intermediaries are available in India to provide on-stop service, called “*asylum visa*” to Indian national. The agencies would provide transportation for their nationals to Hong Kong, arrangen



of non-refoulement claim as well as unlawful employment in Hong Kong during the screening procedures. This topic has been brought up in LegCo meeting, and the Government has also held meetings with the Consul General of India in Hong Kong to deter this kind of illegal activities. The Government would look into whether similar situation would exist in other countries. The investigation is still underway.

It is observed that the Government is taking the lead to address and solve the problems with various departments and stakeholders, which provides more and clear evidence that “Regulated Self-governance” is being adopted in tackling this matter under close cooperation between the market and the government. It is evident that the NRCs growingly created greater burden to the society in terms of crime rates and public expenditures. The problems have attracted the concern from the press and public about the well-being of the local citizens. However, the existing policies to manage the non-refoulement claims including the USM, duty legal service and humanitarian assistance programme are not effective and comprehensive enough to swiftly filter the abuser of the system. As such, a huge amount of resources have been wasted in entertaining the bogus refugee, which does not tally with the objectives to protect the genuine refugee, defined by UNCHR and the local judges. It is necessary to revise the policies to balance the expectation of all parties under the current legal framework in order to enhance its efficiency and cost effectiveness.

Apart from the local Government, other stakeholders involved in this topical issue, such as LegCo members, Judiciary, media, NGOs and the public are highly concerned about social problems resulted from the non-refoulement claims. In addition, how Government treated and managed the NRCs is also under the close monitoring UNCHR.

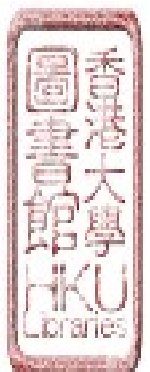


According to Kingdon (2003), the three streams, i.e. problem, policy and political are representing the important dimensions for the government policy making process, and this model describes the interrelationships among them on how their connection leads to the generation of a policy window. Based on the above observations on the problem, policy and political aspects, there is a great political force and dynamic urging for a change of policy for this refugee issue. Under such circumstances, the policy window has been widely opened in policy making in administering the NRCs in Hong Kong.

Grievance of Lacking Support to Non-refoulement Claimants

As mentioned above, NRCs face a prolonged screening process in the USM which is alleged to be abused by bogus asylum seekers as mentioned above. On the other hand, the situation is widely criticized by human rights activists, refugee group and critics that USM is overly harsh, deeply flawed and designed to screen people out. The recognition rate of USM, which stands at 0.6 per cent since it was introduced in 2014 is worryingly low when being compared to the recognition rate of 60 per cent in European countries.

In a number of interviews with NRCs and asylum seekers who was managed to be recognized in USM conducted by reporters and journalists, those interviewees recalled that they were in terror with nightmare after they left their home country to survive due to torture and political and religious persecutions. Most of them have their life broken and are still in trauma, but at the same time are required to go through bureaucracy and a series of interviews and documentations as requested by ImmD. NRCs also found the situations more difficult when they are not able to work in Hong Kong and need to tolerate comments and labels of ‘fake refugees’, ‘criminals’ and ‘black labour’. A portion of the

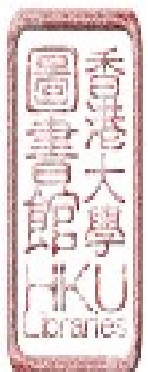


feel ashamed and hopeless and are required to attend counselling, or in medication for depression and other illnesses.

It is also heavily criticized that the areas of assistance available to those vulnerable NRCs are grossly narrow and inadequate. Those assistances could barely meet their basic needs of survival which further damage their dignity and social status. Moreover, life is tough for NRCs who are facing language barrier, discrimination and culture shock. It is a common phenomenon for claimants to be discriminated by local Hong Kong people who are reluctant to communicate with them and refused to rent properties to them at market price. A large portion of asylum seekers are forced to reside in accommodations in remote location, sub-standard hygiene and poor facilities and living condition such as subdivided flats, and are in fact isolated from the community.

Due to the recent heat debate, intense coverage by some media outlets and political parties portraying NRCs as fake asylum seekers, illegal economic immigrants and syndicated criminals, as well as the emphasis by government officials about the abuse of the USM, the refugee cause earns minimal sympathy and support from the general public. As claimed by human rights group of NRCs, the scale of current situation of NRCs has been exaggerated which may fuel race discrimination and hostility towards NRCs and ethnic minorities, and create division in the community.

Despite there are allegations that the USM is abused by bogus asylum seekers and illegal economic immigrant, there is a lack of support, both in term of economic and social NRCs who are minority group in the society with low social status, poor living standard and community bonding. The situation renders the community of NRCs vulnerable



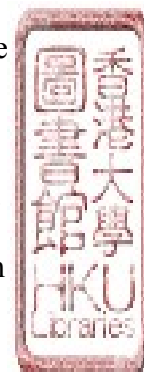
exploitation and ill treatment in Hong Kong and change in government policy is thus long desired.

Concluding Comments

According to the above analysis on the policy dynamics under current situations, it is widely accepted that the policy window has widely opened for a better policy choice. To comply with the relevant conventions and laws to protect the real refugees while safeguard the welfare of Hong Kong citizens, the Government under “Regulated Self-governance” has to line up all stakeholders and launch a comprehensive review of policy tools in handling non-refoulement claims with no further delay.

According to ImmD’s information, 51% of claimants were smuggling into Hong Kong as IIs while 47% of which were overstayers or visitors being refused to land. In order to intercept IIs on land and at sea as well as deter the human trafficking syndicates at the source, the Hong Kong Police has set up a joint investigation team together with other enforcement agencies, including ImmD and the Customs and Excise Department, which should be regarded as “Capacity Building” locally in the enforcement against bogus NRCs. In the meantime, the Ministry of Public Security has also started coordinating its Border Control Department and Immigration Authorities in Guangdong, Guangxi, Yunnan, and Xinjiang to work jointly with Hong Kong Police through interception, investigation, intelligence and enforcement with a view to combating cross border smuggling activities.

As regards “asylum visa” issue which may create social problems to Hong Kong, Government will consider seeking Ministry of Foreign Affairs of China to liaise with

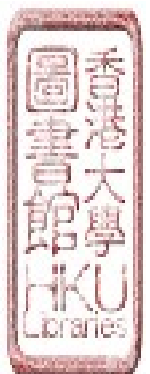


Indian Government or else (e.g. Pakistan, Bangladesh, Nepal, Sri Lanka, Somalia, Afghanistan, and Nigeria) to stop the intermediaries arranging its nationals to come to Hong Kong and make non-refoulement claims.

To reduce human trafficking or smuggling of IIs to Hong Kong, law enforcement agencies need to step up responsive enforcement actions. On the other hand, as many as close to 50% of the claimants have smuggled themselves into Hong Kong. To achieve the deterrence effect, penalties against human trafficking or smuggling of IIs activities, in particular to aiding and abetting syndicates, should be enhanced through legislative amendments, for example revising Immigration (Unauthorized Entrants) Order (Cap. 115D) by expanding the definition of "unauthorized entrants" to include major source countries.

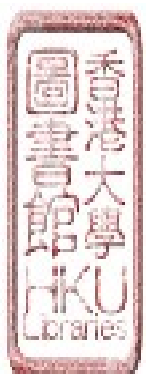
The change of system and strategies against those illegal activities and abusers of the system has been expeditiously stepped up with a view to fulfilling the expectation of the society. On the other hand, the Government has to take the welfare of the genuine claimants into consideration. As such, the USM should be modified and streamlined in order to enhance its effectiveness while meet the high standards of fairness as per the court rulings. To reinforce “Regulated Self-governance” under close cooperation with the markets and stakeholders, the Government is collaborating with HKBA, LSHK, DLS and some NGOs to improve the existing USM. In addition, the other aspects like uplifting the employment prohibition against the claimants pending assessment and legal aid services granted to the claimants are under review. To formulate a legal base, it is necessary to enhance the existing administrative measures through the enactment of legislation.

During LegCo discussion, some councilors have suggested setting up open or clc



reception centres for the claimants pending determination from screening procedures, with reference to the experience of handling Vietnamese boat people crisis in the 1980s. Although this proposal is a feasible move, it involves complicated problems in amendments of the existing legislation, capacity building to the responsibly agencies managing the centres, inducement to NGOs giving counselling and support to the claimants as well as extensive consultation from the councilors, other concerned groups and the public. In coming chapter, the analysis on the above possible policy choices will go further deeper with reference to foreign practices.

The Government is actually on the right track in managing the non-refoulement claims but more policy tools could be introduced with reference to the good foreign practices. In addition, the Government could also take reference from Braithwaite's regulatory pyramid in respect of sanctions and support when introducing the policy tools. Taking into account the underprivileged status of NRC, the Government should consider and explore a range of support actions in building capacity of the society as whole to better handle asylum seekers such as improving the USM and educating the community before rushing into taking enforcement actions. In case the circumstance requires immediate intervention and stringent enforcement actions, policymakers should first use restorative and dialogue-based approach at the base of the pyramid of sanctions and move up in the pyramid only if situation persist.

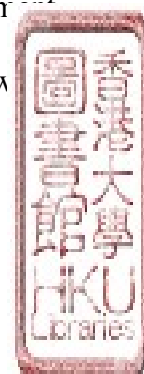


CHAPTER SIX: SELECTED OVERSEAS PRACTICES

Introduction

In this chapter, various countries practices in administrating the situation of asylum seekers are studied. Respective worldwide countries, including Germany, Australia and the United Kingdom, are encountering the mass influx of asylum seekers. . These three countries are chosen as they are facing similar situation as in Hong Kong. In order to manage the situation, different policies are adopted and implemented. The increasing numbers of asylum seekers in these three countries has caused great concerns to the citizens as well as the government in recent years. Respective government endeavor to review and modify the asylum policy and the screening policy so as to administer the situation. With the comprehensive study of the governance arrangements of these three countries on how the policies are initiated, the dynamics involved and the adoption of various policy tools, the Hong Kong government could take reference on the best practices from overseas experiences.

In the following sections, an empirical analysis will be conducted on the policies adopted and implemented by various countries based on the analytical framework devised in the Chapter Two. Elmore and McDonnel (1987) had categorised policy tools into 4 types, i.e. mandates, inducement, capacity building and system changing. The four different dimensions of policy tools have indeed been currently adopted by respective government in administering the asylum seekers, which is going to be elaborated in the following paragraphs.



Analysis of Overseas Practices - Germany

Situation

In 2014, the asylum applications in Germany were 173,072. New asylum applications in Germany have nearly doubled to 362,153¹ in the first 10 months of 2015 (between January and October 2015), due to the outbreak of European refugee crisis. In 2014, amongst 97,275 initial decisions were made in Germany, in which 40,650 cases were granted protection. At the present moment, applicants had no deadline in submitting the applications upon their arrival.

Major Legislation and Implementation Authority

In Germany, Article 16a of the Basic Law grants victims of political persecution an individual right of asylum. According to the Asylum and Refugee policy in Germany, the fundamental right of asylum thus has high priority and expresses Germany's willingness to fulfil its historical and humanitarian obligation to admit refugees. The admission procedure for asylum seekers is governed by the Asylum Procedure Act. Asylum seekers whom border authorities permit to enter the Federal Republic of Germany or who are found in the country without a residence permit are transferred to the nearest reception centre of the relevant state. In sum, the asylum seekers are assigned to reception centres of the individual German states according to a formula defined in the Asylum Procedure Act.

Screening Procedure

The standard screening procedure includes filing application form, submitting neces

¹ Source from Asylum Information Database: Germany Country Report.



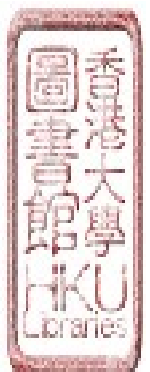
identity proof and document and conducting personal interview. The asylum application is subsequently submitted to the responsible branch of the Federal Office for Migration and Refugees (BAMF) for examination and decision. Asylum seekers receive a certificate of permission to reside which grants a preliminary right to stay in the Federal Republic of Germany during the asylum procedure.

BAMF case workers question the claimants (with the help of an interpreter) on their travel route and the reasons for persecution. Upon request, female claimants may be questioned by a trained female case worker if the reasons are unique to women. The interview is recorded in writing and translated into the claimants' language. The decision on the application is based on the interview and the further enquiries if any. The claimants are notified of the decision in writing and are given information on legal remedy.

If the application is accepted, persons granted asylum status and those granted refugee status receive a temporary residence permit and are given the same status as Germans within the social insurance system. They are entitled to social welfare, child benefits, child-raising benefits, integration allowances and language courses as well as other forms of integration assistance.

If neither asylum nor refugee protection can be granted, the BAMF examines whether there are grounds for a deportation ban. The objective is to conduct an extensive review to ensure that there is no delay in processing. In general, claimants whose applications have been rejected are required to leave the country.

According to the directives on asylum procedures of the European Union ("EU"), "countries of origin" refers to those countries with stable democratic system and compliance with international human rights treaties. Migrants from these sources are presumed to



safe upon return. The list of safe countries is different among member states of EU. For instance, there are 26 countries included in the safe countries list in the UK, but only six in Germany.

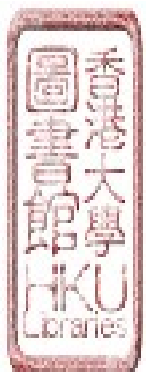
Owing to the European refugee crisis, Germany amended the list of "safe countries" in 2014 and 2015, adding countries like Serbia, Kosovo and Albania². Asylum seekers from these countries are still allowed to file application, but their applications are more likely to be dismissed, unless they could provide valid reasons that they face political persecution in their country of origin. There is a separate airport procedure for applicants from safe countries of origins. The whole process will not last more than 19 days and the applicants stayed in premises at the airport during the process.

Furthermore, fast-track measure is implemented for applicants from Syria, Eritrea and ethnic minorities from Iraq. The German government has skipped conducting personal interview with applicants from Syria and ethnic minorities from Iraq since November 2014, and applicants from Eritrea since June 2015 in the application process.

In general, publicly-funded legal assistance was available for applicants. They are required to pass some merit tests. There is no cap on legal assistance. Legal assistance was only available for appeal cases, but not in other stages of application and screening.

The above policies for administering and screening the asylum seekers following the laws in Germany and the directive of EU, which have been made to urge the German Government to formulate an effective system to screen the claims of a high standard of fairness in accordance with the relevant legislations and directives. The German government implemented the above-mentioned policy tool to govern the screening process.

² Source from Germany: Parliament Adopts Legislative Package on Asylum and Refugees.



In sum, the screening initiatives are considered to be “Mandate” as defined by Elmore and McDonnel (1987).

Appeal Procedure

Appeals can be first filed to the Administrative Court, and further appeals to the Higher Administrative Court and Federal Administrative Court. If there is suspected violation of rights, the applicants can also lodge complaints to the Federal Constitutional Court.

Detention of Applicants

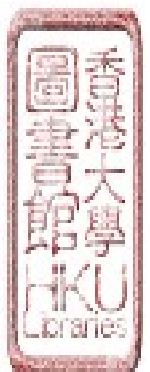
For up to three months after application, applicants stay in the initial reception centres which are not regarded as detention centres. They can move out after three months.

Employment

Applicants pending decisions can generally be allowed to work after a three-month stay at the initial reception centres. The policy on the detention and employment are regarded as “Inducement” according to Elmore and McDonnel. Both policies encourage the asylum seekers to integrate into the community and allow them to earn money with a view to supporting themselves. These policies could speed up the community integration and reduce the tension between the residents and the asylum seekers.

Publicly-funded Humanitarian Assistance to Claimants

Each applicant in reception facilities can receive monthly assistance ranging between € (HK\$865) and € 143 (HK\$1,473). • For those staying outside, monthly assista



ranged from € 133 (HK\$1,370) to € 216 (HK\$2,225).³ Applicants staying in the initial reception centres receive essential items in kind or vouchers, while those staying in accommodation outside the centres receive cash allowances.

Annual Public Expenditure

According to media reports, Germany spent a total of €1.5 billion (HK\$15.45 billion) on asylum benefits in 2013. The Germany Federal government is expected to spend €6 billion (HK\$61.8 billion) to cope with the influx of asylum applicants in 2015-2016, including €3 billion (HK\$30.9 billion) for the states to accommodate the rising number of new arrivals of applicants.⁴

Policy Implications

As mentioned above, NRCs are allowed to access to the labour market, which results in the relaxed freedom of movement of applicants. This policy is welcomed by claimants and related interested parties. Moreover, accelerated asylum procedure for the Syrian and other eligible countries is noted with satisfaction by different agencies, including Human Rights of the Council of Europe.

However, the continued influx of refugees overloads the asylum system in Germany and creates substantial government expenditure in administrating the NRCs. Moreover, the mass influx of NRCs adversely affects the labour market, in which some local labour unions oppose the policy. To address the above issues, the German government is looking into some policies. One of the considerations is to deploy more resources: speeding up the screening process in assessment, which is categorized as “Capa

³ Source from Germany: Parliament Adopts Legislative Package on Asylum and Refugees

⁴ Source from Germany: Parliament Adopts Legislative Package on Asylum and Refugees



building” according to Elmore and McDonnel (1987) .

In Germany, asylum seekers whom border authorities permit to enter the Federal Republic of Germany or who are found in the country without a residence permit are transferred to the nearest reception centre of the relevant state. The policy creates tension between the Federal Government and state governments responsible for accommodating asylum applicants. To relieve the tension between the Federal Government and state governments, the German government is exploring the relevant policy to administer the distribution of NRCs. According to Elmore and McDonnel (1987), this is a potential “System changing”.

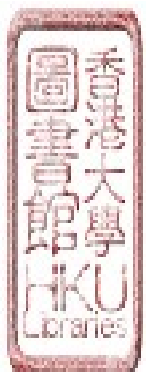
Due to the increasing of NRCs landing in Germany and various interested parties raised concerns over the welfare of claimants, the policy window has recently opened. According to Knill and Tosun (2012), the type of governance currently being adopted by the current German Government in administering the non-refoulement claims is “Regulated Self-governance”, which is a mixture of hierarchy and market modes. Undoubtedly, the government is the leading role in dealing with the situation and has legal obligation to solve the problems.

Analysis of Overseas Practices - Australia

Situation

As in 2014, the number of asylum applications in Australia was 18,718⁵. 68% of them entered Australia by boat, whilst the remaining of them (33%) entered by air.

⁵ Source from Department of Immigration and Border Protection, Australian Government.



Major Legislation and Implementation Authority

In Australia, Migration Act 1958 and Migration Regulations 1994 are implemented by the Department of Immigration and Border Protection ("DIBP"). Applicants had no deadline in submitting the applications upon arrival.

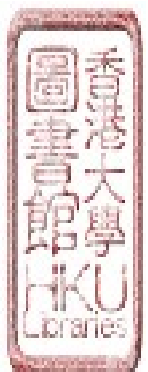
Standard Screening Procedure

The screening procedure includes the submission of protection visa application form, conducting interview and making decision. Unlike Germany, there is no list of safe countries of origin.

Fast track assessment ("FTA") is implemented for a backlog of applications. FTA was introduced in Australia in December 2014, targeting the sudden influx of 30,000 asylum seekers by boat between August 2012 and December 2013. While the duration of claim assessment under FTA is generally shorter, the review procedure for refused applications is handled without hearing. •

Enhanced screening process ("ESP") is another screening policy implemented for applicants from Sri Lanka who arrive by boats. ESP was introduced in October 2012, as the number of asylum applicants from Sri Lanka surged that year. If an asylum applicant does not raise any protection concerns during an initial interview made by DIBP, they are "screened out" and will be returned to Sri Lanka without having the opportunity to formally lodge a protection claim. However, the system is criticized for lack of transparency and preventing asylum seekers from being able to have their claims assessed fairly.

In general, applicants held at closed detention centres have stayed in the country for



average of 14 months in August 2015, according to DIBP. According to the Refugee Council of Australia, for those living in the community on bridging visas, it was estimated that most of them have already stayed in Australia for at least two years for the opportunity to lodge a claim.

The above policies for screening the claimants and fast track assessment are due to the sudden influx of claimants in 2010s. The sudden and mass influx of claimants has created tension between the Australia citizens and the concerned groups. Some citizens criticized the mass influx of claimants affected the community, including the resources allocation and the law and order. In sum, the screening initiatives are considered to be “Mandate” as defined by Elmore and McDonnel (1987).

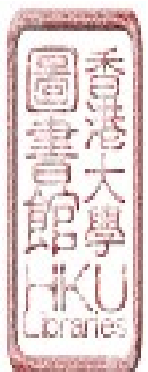
Appeal Procedure

Regarding the appeal procedure, decision is made by the Administrative Appeals Tribunal ("AAT") after hearing.

75% of review cases were finalized within 52 weeks (1 year) after lodgment. For the rest of 25% of review cases, they could not be concluded within 12 months due to the various reasons, including the delay caused by the backlog of cases, more than one hearing required, etc.

Availability of Publicly-funded Legal Assistance

The publicly-funded legal assistance is only available for those asylum applicants with valid visa. Since 31 March 2014, the Australian government has restricted the access to publicly-funded legal assistance to those asylum seekers who arrived lawfully on valid visas. In other words, those asylum seekers without valid visas are not covered. Publ



funded legal assistance to qualified asylum seekers are provided through the Immigration Advice and Application Assistance Scheme ("IAAAS") through its registered providers.

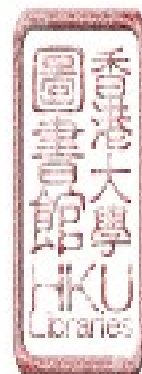
The applicants are also required to pass the merit test. The scope of legal assistance is well-defined and the assistance is only available for completion of application form and assessment procedure, but not in the appeal and judicial stages. Expenditure on legal assistance in 2015 was AUD\$2.5 million (HK\$17.5 million).

Detention of Applicants

In 1992, the Australian government introduced the mandatory detention policy on asylum applicants. "Unlawful non-citizens" would be detained in closed facilities. However, since 2005, the Australian government has been moving away from such policy to other arrangements such as community detention and granting bridging visas that allow applicants to legally live in the community, after initial health, identity and security checks. By August 2015, only 11% of the overall asylum applicants stayed in closed detention centres, while the majority (87%) lived in the community with bridging visas. The other 2% lived in community detention centres.

The change in detention policy is considered to be "System Changing" as defined by Elmore and McDonnel (1987). The claimants are originally detained in the centres. The policy changed when the concern groups criticized that the policy had deprived the freedom and right of claimants. After careful review, the Australian government considered to modify the detention policy. The claimants are allowed to live in community.

Employment



They were not permitted to work. In August 2012, the Australian government removed the right to work attached to bridging visas.

A single person can receive up to a welfare of AUS\$1,020 (HK\$7,140) per month, including rental assistance. Financial assistance is available for applicants living on bridging visas under the Asylum Seeker Assistance Scheme administered by the Australian Red Cross.

Annual public expenditure

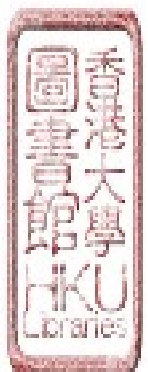
In 2014-2015, humanitarian assistance amounted to AUS\$143 million (HK\$ 1,001 million), while legal assistance was AUS\$2.5 million (HK\$17.5 million). The detention cost was AUS\$2.9 billion (HK\$20.3 billion).

Policy Implications

The non-refoulement policy in Australia has been regarded as effective in deterring irregular migrants. The gradual replacement of closed detention by community detention and bridging visas in recent years has been regarded as a move to bring Australia into a closer alignment with its international human rights obligations.

However, the government is seriously criticized for the fast-track screening procedures as the screening appears to be unfair and lack of transparency.

Similar to Germany, due to the increasing of NRCs landing and various interested parties raised concerns over the welfare of claimants, the policy window has recently opened. According to Knill and Tosun (2012), the type of governance currently being adopted by the current Australia Government in administering the non-refoulement claims is “Regulated Self-governance”.



Analysis of Overseas Practices - The United Kingdom

Situation

In 2014, the asylum applications in the United Kingdom were 25,033⁶. These were new claims after implementation of the USM in March 2014.

Major Legislation and Implementation Authority

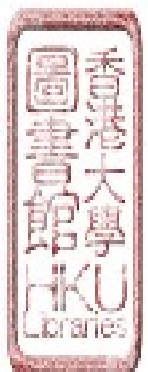
In the United Kingdom (the UK), Nationality, Immigration and Asylum Act 2002 is implemented by the Home Office. Applicants must lodge application as soon as possible upon arrival in the UK. Any delayed reporting may affect the credibility of the application.

Standard Screening Procedure

The screening procedure includes the lodging application, screening application, conducting interview and notifying decision. Same as Germany, there is a list of safe countries of origin.

Detained fast track ("DFT") measure is adopted for asylum applicants but such measure has recently been suspended. The UK government introduced DFT in 2003. For those asylum applicants whose statuses were expected to be able to be quickly decided, applicants would be put into detention and were given two days to appeal the in decision. In 2014, there were 3,865 applicants accepted onto the fast track procedure. However, after the court ruled in July 2015 that DFT was "structurally unfair" to asy

⁶ Source from Refugee Council. Asylum Statistics Annual Trends.



applicants, the measure has been suspended since late July 2015. More than half (52%) of asylum applications were concluded within 52 weeks (one year) in 2014-2015.

The above policy for administering the claimants are developed after a number of court rulings which have been made to urge the Government to change the screening in accordance with the relevant conventions and local legislations. The initiative is regarded as “Mandates” as defined by Elmore and McDonnel (1987).

Appeal Procedure

Appeals could be made to the First Tier Tribunal, Upper Tribunal and Court of Appeal.

Availability of Publicly-funded Legal Assistance

There was publicly-funded legal assistance. The applicants were required to pass the merit tests. The legal assistance is available throughout the entire screening and appeal procedure.

The expenditure on legal assistance in 2015 was £40 million (HK\$511 million). This figure refers to the legal aid expenditure on completed immigration cases during the period from July 2014 to June 2015. The scope of "immigration cases" includes asylum, immigration-detention, victims of trafficking and judicial review.

Regarding the legal assistance policy, in general, the government offers assistance to the claimants at all stages. The UK government is exploring the policy tool in changing scope in legal assistance, including the availability of assistance in difference stage screening and the consideration of the ceiling in the amount of assistance. The change legal assistance policy is considered to be “System Changing” as defined by Elmore McDonnel (1987).



Detention

The detained fast track was temporarily suspended, following the court judgment made in July 2015.

Employment

As a general rule, asylum applicants are not allowed to work in the UK. However, asylum applicants who have waited for more than 12 months for an initial decision are eligible to apply for permission to work.

On grounds of humanitarian, each person could apply for cash allowance of £161 (HK\$2,057) per month, plus accommodation in kind if needed. In the UK, humanitarian assistance is provided to the destitute asylum applicants whilst their claims are being decided. At the end of March 2015, around 30,500 asylum seekers were being supported. Each person could apply for cash allowance of £36.95 (HK\$472) per week.

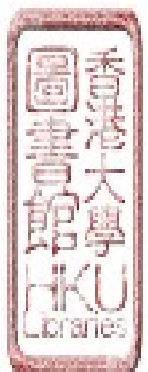
Annual asylum cost excluding detention and legal expenses was £235 million (HK\$3,003 million) in 2014-2015⁷.

Policy Implications

In the UK, the government adopts measures in giving special care and protection to children. The policy is welcomed by the concern groups and relevant agency, including United Nations High Commissioner for Refugees.

Before the suspension of the detention measure, the detention policy was criticized as inhuman. The detention period has no statutory time limit and there is no independent

⁷ Source from Asylum Support: accommodation and financial support for asylum seekers



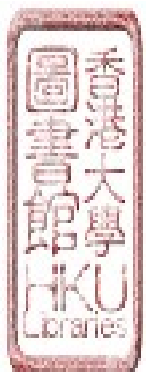
agency to oversight this issue.

Similar to Germany, due to the increasing of NRCs landing and various interested parties raised concerns over the welfare of claimants, the policy window has recently opened. According to Knill and Tosun (2012), the type of governance currently being adopted by the current UK Government in administering the non-refoulement claims is “Regulated Self-governance”.

Concluding Comments

According to the above analysis on the governance, policy dynamics and policy tools in three different countries, it is obvious that the policy window has widely opened in these countries. The refugee crisis in these countries remains a great concern for the community, particularly there were a number of violent incidents relating to the asylum seekers in these countries. It is expected the asylum policy and the screening policy may be reviewed frequently in order to administer the situation.

Similar to Hong Kong government, the situation is causing higher and higher concerns to the public. Taking reference with the practices in other countries, it is observed that the Hong Kong government can consider some policy tools, including the expedition of the USM, uplifting the employment prohibition and the establishment of close camp, to manage the situation. In the following chapter, the potential policy tools will be critically analysed.



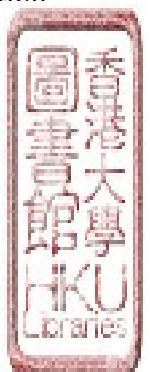
CHAPTER SEVEN: RECOMMENDATIONS AND CONCLUSIONS

Introduction

In the previous chapters, the NRC issue has been comprehensively researched and analysed in various perspectives. Hong Kong had faced an enormous challenge in the issue of VR occurred in the 1970s to 1990s. Through an in-depth study of the history of VR issue and the respective administration, the type of governance, policy dynamics, the policy tools adopted by the then Government had been clearly defined. The Government gained invaluable and pains-taking experience in tackling the problem of refugees. These experiences are beneficial to assist in analysing the current situation of NRC and devising possible solutions. After that, the current situation in administering the NRC has been comprehensively researched and analysed in different angles. By studying the prevailing practices adopted by the overseas countries in handling the refugee's issues, it was observed that there were areas in common in which some recommendations can be referenced with their experience.

Having the above research and analysis, three feasible and practicable recommendations are suggested i) Expedition of USM, Uplift of Employment and the establishment of close camp. Each of the recommendation will be illustrated in detail and a conclusive suggestion will be given at the end of this chapter.

Recommendation: Expedition of Unified Screening Mechanism (USM)



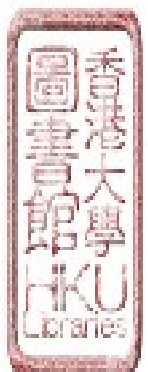
Current Situation in Hong Kong

Since March 2014, the Hong Kong government implemented USM to determine for claims of non-refoulement applications. In general, claimants are required to make a non-refoulement claim application with necessary supporting documents if any. With the statutory period of 28 days as stipulated in the Immigration Ordinance, Cap. 115, ImmD would provide extra 21 days for completing administration procedures for the applicants. Once the claim form is received, screening interviews will be arranged by the ImmD to the claimants, which generally be completed in 13 weeks. Based on the supporting documents submitted by the claimants and assessment during screening interviews, the ImmD may determine the claim in around five weeks. In theory, the non-refoulement claim could be finalised within six months upon its commencement.

However, the duration for screening a claim mostly depends on whether the claimants are cooperative during the process. It was observed that many claimants delayed the processing time intentionally by failing to contact their duty lawyers, being absence for screening interviews or unwilling in submitting necessary supporting documents as requested by ImmD.

Inspiration from Overseas Experiences

Taking the experience from the overseas countries, we can be inspired with various recommendations suggested. Due to the indifference mode of governance, resource culture and etc, some practices from overseas administrations may not be directly applicable to the situation of Hong Kong. However, a number of the prevailing proced

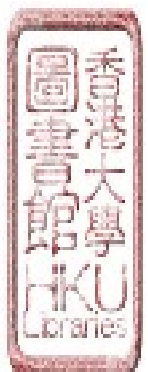


and practices may be adopted by the Hong Kong administration.

As mentioned in Chapter 5, with the available information, the average required time for finalizing the asylum seeker applications were 7.1 months in Germany, 14 months in Australia and 52 week in UK.

One of the major differences of average time span between those countries was that the Germany government implemented the "safe countries of origin" list, which was endorsed by the EU, during the application assessment. The list refers to those countries with stable democratic system and compliance with international human rights treaties. Migrants from these sources are presumed to be safe upon return. The list of safe countries differs among member states of EU. The Germany government included countries like Serbia, Kosovo and Albania in the list. In this process, Asylum applicants from these countries are still allowed to file application, but their applications are more likely to be dismissed as manifestly unfounded, unless they could provide reasons to believe that they face political persecution in their country of origin in spite of the general situation there.

For the three countries being analyzed, all those governments adopted some kinds of fast track measures. In Germany, adopted a fast-track measure for asylum applicants from Syria, Eritrea and ethnic minorities from Iraq in which personal interviews with these applicants were skipped since 2014 and 2015 to streamline the process. In addition, Australia government introduced FTA for a backlog of applications and ESP implemented applicants from Sri Lanka who arrive by boats in 2012. Subject to legal challenges, the measures were criticized for lack of transparency and unfairness in assessment. In UK, DFT was adopted since 2003, but after the court ruled in July 2015 that DFT



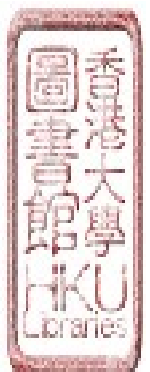
"structurally unfair" to asylum applicants, the measure has been suspended since late July 2015.

Introduction of “Safe Country of Origin” List

By taking reference of the list adopted in Germany, Hong Kong government may introduced to set up a similar list, namely “Safe Country of Origin” List (SCO list), to identify the countries with relative stable political situation (i.e. no domestic or international war is happening at that country) and comply with the international human right treaties.

The Hong Kong government should closely liaise with Ministry of Foreign Affairs of the People’s Republic of China via the Office of the Commissioner of the Ministry of Foreign Affairs in Hong Kong to gather the information of prospective countries to be added in the list. Moreover, the Hong Kong government should liaise with the consulates of the prospective countries in Hong Kong to gather the latest current situation with a view to determine for the inclusion of those countries into the list. In fact, efforts have been made and are ongoing to set up contacts with relevant governmental organisations in those countries for establishing an objective and credible database on information of major localities of source countries.

Before compilation of the list, vetting from the Department of Justice of Hong K government is required. Afterwards, the list should be submitted to UNHCR for cleara prior to implementation with a view to avoid any non-compliance to the internatio requirements. With the approval from the UNHCR, relevant ordinances and procedures



required to be amended accordingly. Upon implementation, reviews should be made in the pilot stage to evaluate the effectiveness. An independent committee from government officials should be set up to regularly review and update the list. In wake of any sudden incident, the committee should also made consideration to either include, amend or remove any country onto/from the SCO list.

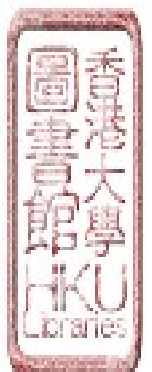
Advantages of SCO list

The major objective is to expedite the screening process for all cases and deter clear abusers, whilst ensuring that screening procedures will continue to meet with the high standards of fairness required by law.

With the SCO list, the assessment process of Non-refoulement claim is expected to be speeded up and the procedures would be streamlined for the applicants of the countries on the list. In the current situation, top five countries of origin of the claimants are south or southeast Asian countries, i.e. Vietnam (22%), India (19%), Pakistan (18%), Bangladesh (12%) and Indonesia (10%) which contributed 81% of the total applications. If some or all of those countries are included on the SCO list, a substantial improvement of the processing time may be observed.

Disadvantages of SCO list

Regardless of the vetting from the DOJ and the approval from the UNHCR, establishment of the list may subject to judicial review and legal challenges of “unfairness”. Criticisms may be made that the assessment is not comprehensive and jeopardize



individual merit of the case. In addition, the creditability of the independent committee is in question.

Policy Tools

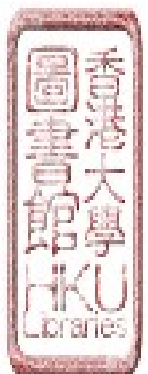
The establishment of the SCO list is adopting the policy tools of Mandate and System changing under Elmore and McDonnel (1987). It involves in law amendment and changing of the prevailing practices and streaming the process to expedite the processing time. With the implementation, the application time may be much shorter and subsequently reduce the expenditure for the overall assessment.

Recommendation: Uplift of Employment Prohibition

Current Situation in Hong Kong

In November 2009, the Immigration (Amendment) Ordinance 2009 came into effect where a new section 38AA to the Ordinance was added to prohibit those NRCs from taking any employment, or establishing or joining in any business. The number of NRCs arrested for illegal employment recorded over 1000 cases from 2009 to 2015. However, deterrence effect as being the initial objective of the amendment of Ordinance is still in question.

As mentioned in Chapter 4, it is observed that the majority of NRCs were actually 1 refugees and attempted to seek illegal employment in Hong Kong while the applicati were under processing. In a specific country, recent intelligence revealed that agencie intermediaries are now available in India to provide one-stop service and prov



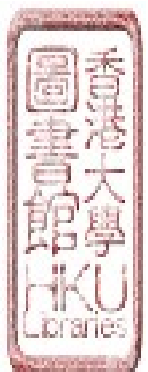
transportation for their nationals to Hong Kong, NRCs would be arranged to engage in unlawful employment in Hong Kong during the screening procedures. This issue has been brought up in LegCo meeting, and the officials of Hong Kong government have also held meetings with the Consul General of India in Hong Kong to deter this kind of illegal activities.

Currently, the Director of Immigration (DOI) may grant permission to the screen-in claimants to take up employment in Hong Kong. DOI will consider such an application on a discretionary and exceptional basis, taking into consideration an array of factors such as details of the intended employment and the prospective employer, personal circumstances, health condition and etc. However, some refugee concern groups criticized that the process of granting permission to work by DOI takes unduly long time and most importantly, permission is rarely granted. In response to the long processing time, the ImmD revealed in 2014 that they were able to make a decision in two to five weeks after all the required information and supporting documents had been received from the applicants.

Inspiration from Overseas Experiences

As mentioned in Chapter 5, Asylum applicants pending decisions can generally be allowed to work after a three-month stay at the initial reception centres in Germany.

In Australia, the government removed the right to work in 2012. Asylum seekers applicants would be provided with financial assistance including rental assistance the Australian Immigration and Citizenship Department (ICD) and the Australian Government. Cross.



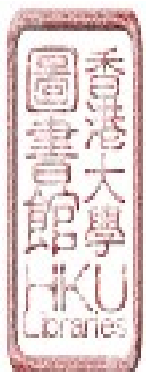
In UK, asylum applicants are not allowed to work in the UK for the first 12 months of asylum seekers application. However, asylum applicants who have waited for more than 12 months for an initial decision are eligible to apply for permission to work.

Conditional employment in Hong Kong

In striking the balance between the security concerns to the society and the personal needs of the Non-refoulement applicants, the stringent measure of employment prohibition is recommended to be relaxed. It is suggested that the Non-refoulement applicants may allow to work after six months upon all the required documents have been submitted. In addition, they are only allowed to take a certain kinds of employment. The government should explore the local labour market and determine which certain kinds of jobs are lacking of manpower resources in Hong Kong.

Nowadays, the Hong Kong government adopted the Supplementary Labour Scheme (SLS) which imports labours at technician level or below and allows employers with genuine difficulties in finding suitable employees locally to import workers from outside the HKSAR. As such, it is recommended that those Non-refoulement claimants are only permitted to work in those sectors. This policy may only have minimal effect to the local labour market with the relaxation of employment restriction. Furthermore, those kinds of jobs usually require low technical skills and knowledge which are easily trained and suitable for short term contract.

In addition, it is also suggested that those screen-in refugee will automatically grant permission to work without having to submit any application to DOI. As the screen



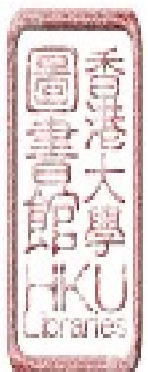
claimants are allowed to stay in Hong Kong pending for resettlement overseas and determined as being the genuine victims, on humanitarian grounds, they should be allowed to work to earn their own living. Those claimants are not subject to any employment restrictions mentioned above. Given the few amount of screen-in cases, the effect to the local labour market is insignificant.

Advantages of Conditional Employment

From the perspective of the NRCs, it was an incentive for the genuine ones to swiftly submit all the required documents and thus expedite the whole process of the screening. For the fake claimants, as they are able to submit all the required documents and failing to show up the interviews, they are unable to take up legal employment in any ways. Moreover, as the government has been spending substantial expenditure to provide financial and welfare assistance, relaxation of the employment restriction would save considerable amount of expenditure.

Disadvantages of Conditional Employment

Obviously, public concerns would be a great issue as it adversely affects the local labour market even though regarding only a certain employment sectors. In the security concerns to the community, as those non screen-in claimants may also taking employment in Hong Kong, it may again induce or attract more prospective claimants coming to Hong Kong. Also, the ordinance had been amended in 2009 to inhibit employment, change in policy would reflect the capricious image of the Hong Kong government.



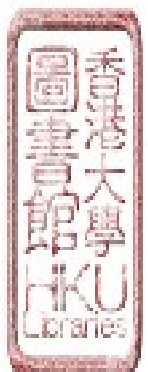
Policy Tools

The types of policy adopted of Conditional employment are Mandate and Inducement under Elmore and McDonnell (1987). It involves in law amendment and changing of the prevailing practices and streamlining the process to allow the claimants to have more freedom in terms of employment at the same time to supplement the inadequate labour force in certain markets. With the implementation, the whole processing time may also be shortened by inducing the genuine claimants to submit all the required documents so as to expediting the screening process.

Recommendation: Establishment of Detention Camp

Current Situation in Hong Kong

In Hong Kong, there is no detention camp designated for NRCs. In general, many claimants come to Hong Kong illegally. They enter in Hong Kong illegally with different means, such as sneaking on boat or hiding inside the cross-border trucks. Their illegal status are revealed when they are intercepted by the law enforcement agencies, including Hong Kong Police Force and the Immigration Department. They were detained in an Immigration Centre pending further processing. The purpose of the centre is to process the illegal immigrants. In the course of processing, many illegal immigrants launch their non-refoulement claims based on different reasons. Hence, they are not removed. Instead the HK government allows them to stay in the community pending the result non-refoulement assessment. In that sense, Hong Kong does not have the detention camp for NRCs. The claimants are only required to report to the Immigration Centre regularly,



one time in every six months, to update the assessment progress and handle other administrative issues.

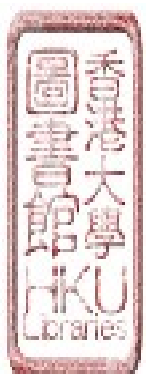
Inspiration from Overseas Experiences

Taking the experience from the overseas countries, detention camp could be considered as an option. Due to the indifference mode of governance, resources, culture and etc, some practices from overseas countries may not be directly applicable to the situation of Hong Kong. However, a number of the prevailing procedures and practices may be adopted by the Hong Kong administration.

As mentioned in before, in some countries, the policy in detention camp could speed up screening process. As the claimants are detained in the camp, it would be more efficient for the law enforcement agency to process the application. Unlike the current situation in Hong Kong, when the claimants enjoy their freedom to stay in the community, the agency could barely manage the cooperativeness of claimants. It is not unusual that the claimants do not report to the Immigration Centre at the designated date. When the claimants do not report to the Centre, the Immigration officer would attempt to locate them with their provided address and telephone. However, it is common to observe that the Immigration officer could not reach the claimants with the provided information. This situation certainly hinders the progress in the assessment of non -refoulement claimants.

Introduction of Detention Camp

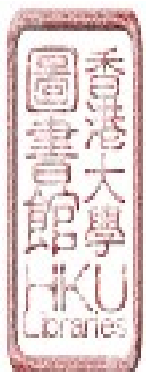
The consideration of Detention Camp is a complicated decision. Taking reference of



experience of other countries, many concern groups or interested parties would show strong opposition to this policy tool. One of the key arguments is that the detention camp deprives the right and freedom of the claimants. They are detained in the close facility, which restrict their freedom. It would definitely attract the judicial review in the depriving of human rights of the claimants. In addition, the detention camp restricts the claimants' interaction with the community. They are not able to integrate into the community during the detention period. It would be make them more difficult to join the community when they pass the screening sometime later.

When considering the detention camp, the Hong Kong government should consider few aspects. Firstly, the choice of location is a key issue. It is expected the local residents would oppose the detention camp to be built in their residential district. The local residents would concern over the security of the camp, including the capacity of the law enforcement agency in managing the camp. On the other hand, some friends of the claimants may also visit the claimants inside the camp. This would create another security concerns.

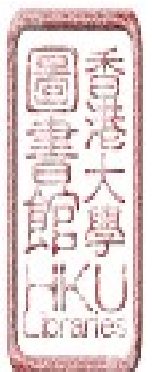
There are some suggestions that the camp should be located in outlying island, which is far away from the city. And some politicians even suggest that the Hong Kong government should work closely with the People's Republic of China and arrange the camp to be situated in the Mainland. For the former proposal, it would definitely substantial resources, including time and financial expenses, in building a detention camp in outlying island. Hence, it would be a rather long-term proposal if the public support it. Regarding the latter proposal, it would involve some legal implications. If the camp is situated in the Mainland, there is legal implication for the officers from Hong Kong law enforcement agency



executing their duty and power. In general, the Hong Kong law enforcers do not have the power to manage the camp situated in the Mainland as the legislations only empower them to execute their power in Hong Kong. On the other hand, if the claimants break the law in the camp, it is questionable whether the claimants should face the punishment in Hong Kong legislation or the Mainland legislation. There are a number of legal implications in arranging the claimants being detained in the camp in the Mainland, particularly “One Country, Two System” is a controversial discussion topic in Hong Kong. It is forecasted that many politicians would oppose this proposal and even exaggerate it as the damage to “One Country, Two System”.

Secondly, the management of detention camp is another concern. If the claimants are detained in the camp, it would have resource implications to the law enforcement agency. The agency is required to redeploy more manpower and resources in managing the camp. In general, the claimants are rather strong-built, the officers are required to receive suitable training in dealing with the claimants, especially when some claimants turn emotional or violent. The officers may need some equipment to put the violent detainee under control. Definitely, resources are required to offer training and equipment to the law enforcers. There is past experience in overseas countries that the detainees created riot inside the camp in order to escape from the camp. Hence, security management is another consideration in managing the detention camp.

Thirdly, the arrangement of different claimants inside the detention camp is also another consideration. Some claimants may be a genuine asylum seeker and are cooperative with the law enforcers in the screening process. Resource-wise, the Hong Kong government may consider giving exemption for them to be detained in the camp. They can mingle



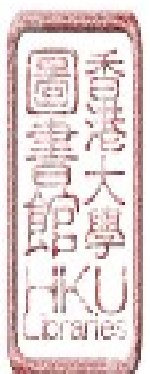
the community to enhance their integration with the public. Undoubtedly, there should be a comprehensive screening on the potential genuine claimants, in which the Hong Kong government may consider their degree of cooperation with law enforcers, the submission of their supporting evidences...etc. Regarding other claimants, the law enforcers may consider to categorize them for different level of detention. For claimants without genuine proof in assessment, they can be considered to be detained until the result of assessment. For claimants who show some degree of cooperation and produce some supporting evidence, the government could consider to allow them to report the camp in certain period of time, such as daily, twice a week or once a month. The law enforcers could adjust the reporting period depends on the cooperativeness of the claimants. It would help the law enforcement agency in managing the situation of claimants. Furthermore, it could save the resources in managing the camp and prioritize the resources in dealing with the claimants, who are likely to be troublemakers.

Advantages of Detention Camp

The major objective is to managing the claimants, which could expedite the screening process for all cases and deter clear abusers. It could ensure the screening procedures will continue to meet with the high standards of fairness required by law.

Disadvantages of Detention Camp

The establishment of the camp is likely to subject to judicial review and legal challenge “unfairness”. Criticisms may be made that the assessment is not comprehensive jeopardize individual merit of the case. In addition, the creditability of the independ



committee is in question.

Policy Tools

The establishment of the detention camp is adopting the policy tools of Mandate and Capacity building under Elmore and McDonnel (1987). It involves in law amendment and capacity building in the establishment of the detention camp. With the implementation, the management of the claimants would become more effective, in which the screening process could be enhanced

Application of Policy Tools in Array of Recommendations: Pyramid of Support

According to Braithwaite (2011), in applying responsive regulatory theory in order resolve the problem arising in different areas, a public or private regulator should not rush to law enforcement solutions to resolve the problem before considering and exploring a range of approaches that support capacity building. In general, regulators then use the pyramid of supports and seek to try one strategy after another that might further build strengths on a foundation by moving up from the lower levels of the pyramid. Regulators should strive to move up in the pyramid of support in order to further expand strengths of the regulated actors to solve more and more problems of concern.

If escalating actions in the support pyramid failed to solve specific problems sufficient regulators should resort to the pyramid of sanction.

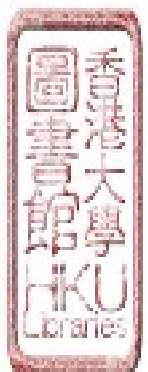




Figure 6.1 Pyramid of Support for Non-refoulement Claimants

Regarding the above figure 6.1, it is a diagram illustrated for the regulators, the Hong Kong government, in providing incentives to the prospective genuine NRCs. Currently, the welfare assistance is provided by the NGO which is offered tendering contracts from SWD. As being the foundation of the pyramid of support, Hong Kong government should review the current welfare assistance programme whether the assistance itself is sufficient for the present needs. Moreover, the SWD should closely monitor the operation of the authorized NGOs. A comprehensive complaint mechanism should also be established. As mentioned in Chapter 4, HD and EDB are currently providing medical and education assistance respectively. Other than the mentioned welfare, it is recommended that the rent assistance should be increased from HKD \$1500 to HKD \$2000 as the flat prices surged over



time. Alternatively, Housing Authority may make use of some long vacant public housing flats to serve as temporary flats for the NRCs. By reviewing the welfare assistance, the genuine prospective NRCs will be given more financial support and even accommodation to resist the high inflation rate and rising property market.

On top of the foundation, the Hong Kong government may adopt the above mentioned SCO list to expedite of the screening process. At the top of the pyramid , the Hong Kong government may apply the relaxation of the employment prohibition by allowing screen-in claimant to work automatically and NRC six months after all the required documents are submitted.

With the pyramid of support, the Hong Kong government will evaluate the situation of the issue to determine in escalating while the issue is improving or descending while the issue is deteriorating. For the worst case, the pyramid of support may be suspended until situation is warrant and considering adopting the pyramid of sanction.

Application of Policy Tools in Array of Recommendations: Pyramid of Sanctions

According to Braithwaite (2011), regulators should first use restorative and dialogue-based approach at the base of pyramid of sanctions to ensure compliance and improvement by regulated actors. If the regulated actors still decline to have dialogue or display negative feedback by showing persistent defiance, regulators would resort to moving up in sanction pyramid to take increasingly demanding intervention and punitive approach from shame, sanctions prosecutions and punishment to incapacitation.

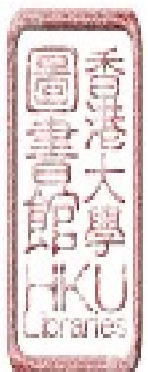
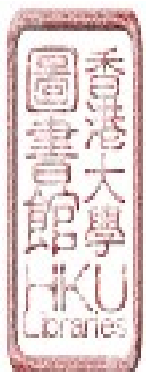




Figure 6.2 Pyramid of Sanctions for Non-refoulement Claimants

Regarding the above figure 6.2, it is a diagram illustrated for the regulators, the Hong Kong government, in implementing sanctions to the NRCs. In general, the NRCs first entered the Mainland and then smuggled into Hong Kong with different methods, such as by boat or hiding inside the cross-boundary truck. As being the foundation of the pyramid of sanction, Hong Kong government should enhance the enforcement actions against the syndicate into arranging the NRCs coming to Hong Kong. The enforcement agencies shall maintain close liaison with the Mainland Authority strengthen the enforcement actions against the syndicate. Furthermore, deter punishment, such as enhanced imprisonment, shall be considered.

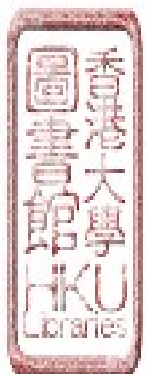


On top of the foundation, the Hong Kong government may devise a SCO list, in which some countries or areas are identified as relatively stable in political situation. The SCO list could ensure those bogus NRCs could be repatriated to his/her country of origin promptly. With the implementation of a SCO list, it could stop the mass influx of bogus NRCs as they were aware that repatriation would be enforced.

At the top of the pyramid, the Hong Kong government may consider the Close Camp. NRCs are detained in the camp when they were located in Hong Kong. In the extreme situation, they are not allowed to leave the camp. It would help the government in managing the NRCs situation.

Main Conclusions

All in all, three practicable and viable recommendations have been suggested: (i) Expedition of USM; (ii) Uplift of Employment; and (iii) Establishment of Closed Camp. Although there are shortcomings for these recommendations, the advantages outweigh those unfavourable factors. For Expedition of USM by different approaches such as introducing the SCO list, genuine NRCs are induced to submit the required documents with a view to expedite the screening process. For Uplift of Employment, the welfare of the NRC are greatly improved at the same time decrease the enormous expenditure of the Government in providing relevant assistance to them. For establishment of close camp, the NRC could be more effectively monitor and have a positive effect to the public security. All these recommendations employed the policy tools of Mandate, System Change, Inducement and Capacity building under Elmore and McDonnell (1987). It is suggested that the Government may apply all of the recommendations simultaneously in order



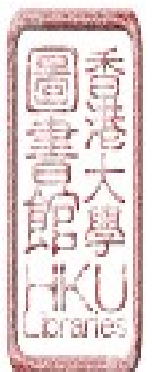
have the largest effect to administer the issue.

Moreover, further analysis in applying the policy tools in array of recommendations has been conducted. The pyramid of support and sanctions are employed. It was suggested that the Government should make regular review to evaluate the situation and apply the appropriate magnitude of the policy tools. In other words, in short term, the foundation of pyramid of support and sanctions i.e. review of welfare and Enforcement, can be applied. If the situation improve in a certain period of time, then the Government may consider to move up the pyramid of support and suspend the actions in the pyramid of sanction. Vice versa, the Government may consider to take actions in the higher level of pyramid of sanction. In alternative, the pyramid of support and sanction can be applied concurrently. In the long term, the ultimate objective is to effective administer the NRC and provide necessary assist the genuine NRC in accordance with the conventions by applying the appropriate level of pyramid of support or sanction individually or concurrently.

Final Observations

The objective of this project is to recommend practical, appropriate and feasible policy choices for the Hong Kong Government to administer the NRC through i) in-depth study and analysis on the current foreign practices; ii) the Governance, political dynamics and policy tools adopted by the then Government to handle the challenge over the VR and iii) the inspiration of the overseas countries via thorough analysis.

By analyzing policy processes, an analytical framework has been initially set out which comprises three interrelated aspects of importance: the governance arrangements concerning how policies are initiated, regulated and sustained under Knill and To



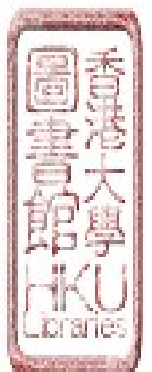
(2012),; the reasons for, and dynamics involved in, the adoption of particular policies under Kingdon (2003); and the action taken through the use of various policy tools under Elmore and McDonnel (1987) with the supplement application of array of actions under Braithwaite (2011).

This project commenced with the study on the policies adopted by the then Hong Kong Government to administer VBP issue by means of a variety of policy tools. With the evolution and development regarding refugee handling in Hong Kong illustrated, policies adopted have been analyzed.

The current situation of the NRC was then thoroughly analyzed which was the major foundation of “how”, “what” and “why” the Hong Kong government in arranging different policies. The influx of the NRCs and high standards required for managing the claimants has generated a number of social problems and the situation is becoming extremely alarming. To comply with the relevant conventions and laws in protection of the NRC while safeguard the welfare of Hong Kong citizens, the Government all along employed “Regulated Self-governance” in dealing the issue. It was observed that the Government introduced various policy tools in order to combat illegal activities and to deter the abusers of the Non-refoulement screening mechanism as well as to take the welfare of the genuine claimants into consideration.

By analysis on the governance, policy dynamics and policy tools in three different foreign countries, it revealed that the policy window has widely opened in these countries. V the overseas country experience and similarity to the situation in Hong Kc recommendations made in the forthcoming have been greatly inspired.

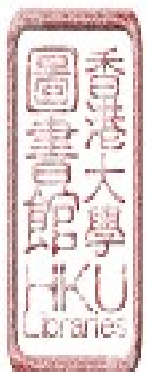
This project integrates various theories on modes and types of governance policy dyna



and the adoption of particular policies through the use of policy tools. Through the systematic analysis across various scholars' theories, the project identified that the mode and type of Governance has been all along to be "Regulated Self-governance" in administration of asylum seekers in the VR issue and the current NRC. With the tremendous attention drawn from the press and public, the Government inevitably has to take an active role to formulate and introduce suitable political choice so that the problems led by the problematic or bogus claimants could be properly addressed and tackled. In response to the imminent situation, the policy window has widely opened for a better policy choice.

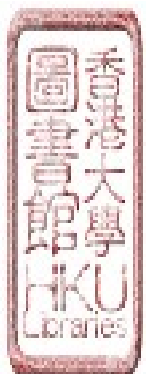
Having the above research and analysis, three feasible and practicable recommendations are suggested i) Expedition of USM, Uplift of Employment and the establishment of close camp. All these recommendations employed the policy tools of Mandate, System Changing, Inducement and Capacity building under Elmore and McDonnel (1987). It is suggested that the Government may apply all of the recommendations simultaneously in order to have the largest effect. Moreover, further analysis in applying the policy tools in array of recommendations has been conducted. The pyramid of support and sanctions are employed. It is suggested that the Government should make regular review to evaluate the situation and apply the appropriate magnitude of the policy tools.

With the analytical framework set in this project, inter-relationship between mode of governance, observing the policy dynamics and evaluation of tools and situation requiring the government to choose policy arrangement has been identified and clearly illustrated. It is believed such an analytical framework could assist the government in formulating appropriate, effective and timely policies and tools to administer the NRC which is beneficial to the society. The government is recommended to use the above framework



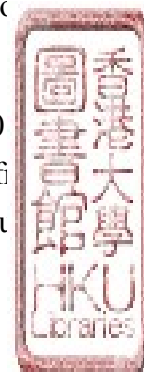
formulate, review and evaluate, not only the policy tools adopted in the aspect of NRC issue, but also other measures in different policy areas.

-END-

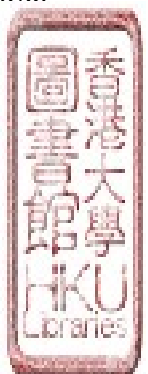


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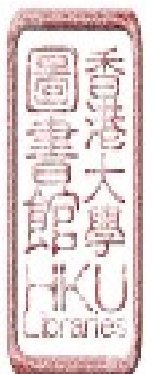
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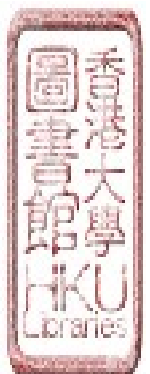


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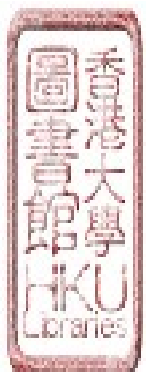


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