

## Taiwan urgently needs refugee law

Written by Clarence Chou and Chiu Ee-ling  
Sunday, 15 September 2019 05:08

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Article 18 of the Laws and Regulations Regarding Hong Kong and Macau Affairs (香港及澳門基本法) states: "Necessary assistance shall be provided to Hong Kong or Macau residents whose safety and liberty are immediately threatened for political reasons."

In Taiwan, with the escalating violence and ongoing protests in Hong Kong, Hong Kong democracy activist and Demosisto Secretary-General Joshua Wong (黃之鋒) published an article last week expressing hope that the Taiwanese government would include Hong Kong demonstrators in Article 18.

He also called on the government to move the draft refugee act through its three readings as soon as possible.

The government has expressed its support for the Hong Kong protest movement, but it has also said that the legislative review process for the draft refugee law is incomplete, with questions lingering over the definition of a refugee and limits on numbers.

If the legislation is passed, it would allow the Chinese government to send spies to Taiwan, passing them off as refugee asylum seekers.

In addition, the government believes there are mechanisms already in place, and so the passage of a refugee law is not a top priority. However, it is far from certain that this is the case.

First, the passage of a refugee law is not only necessary for what is going on in Hong Kong at the moment. There have been many cases of foreign nationals fleeing war or political oppression in their own countries and arriving in Taiwan, or those already in Taiwan who have sought asylum.

In many cases, the government has had to refuse to provide any assistance, as Taiwan does not have a refugee law on its books. This has led to these people becoming displaced.

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Second, the draft refugee act has been around since 2005, from its initial proposal in the first Democratic Progressive Party (DPP) administration, when the draft was first sent to the legislature, to 2008 when it was listed as a legislative priority when the Chinese Nationalist Party (KMT) returned to power. In 2016, when the second DPP administration took power, the draft law passed out of the review stage with no reserved clauses, requiring no further talks between the respective party caucuses.

In July 2016, during a meeting of the Legislative Yuan's Internal Administration Committee, many legislators engaged in a substantive debate on the draft refugee law.

The majority recommended that the phrase "suffer oppression based on sexual orientation or gender" not be included in the articles, but written into the legislative comments instead. There were no questions raised over the other definitions of refugee.

In the intervening time, the draft law has not been sent through to a second or third reading. Consequently, any suggestion that the draft refugee law still has many questions simply does not hold water, as it has not been sent for further review by any political party or lawmaker since 2016.

In addition, Taiwan actually receives asylum seekers every year from countries such as China, Hong Kong, Tibet, Syria, Uganda and Turkey, irrespective of whether a refugee law exists.

The authorities are unclear regarding how these cases are to be processed, with different government agencies passing the ball from one to the other, saying that this is the responsibility of the other agency and not being willing to take responsibility themselves.

Sometimes they even refer the individual to a civic group, asking either the group or a person to vouch for the asylum seeker: If the asylum seeker can find an organization or person to vouch for them, they can come into the country, or at least, will not be sent back to their own country. These cases carry the most serious potential national security risk.

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Given the government's lack of a clear review mechanism, anybody with an agenda would find it easier to penetrate the country and be more difficult to find. It goes without saying that lowering the thresholds and required documentation to apply for a normal short-term visa only exacerbates the situation.

Reviews have also shown that, in the absence of a formal process for applying for asylum seeker status, it is likely only rich people who would be able to obtain residency rights in Taiwan under existing laws. This would then probably exclude young protesters from Hong Kong.

The agencies concerned lack the legal basis by which to allocate the budgets or personnel to deal with related cases, and personnel receive regular training on how to handle such cases.

The government says the current mechanisms are sufficient, but from what we have seen thus far, the majority of asylum seeker cases have relied on the personnel of civil groups, which have had to rely on their own resources in terms of finding the persons in question a place to stay, medical treatment or psychological counseling.

Despite legal clauses directly pertaining to people from Hong Kong and Macau, namely the Laws and Regulations Regarding Hong Kong and Macau Affairs, questions remain as to whether Article 18, in the absence of clear stipulations in the law, are sufficient to implement the detailed regulations consistent with international procedures on seeking asylum, or whether this would raise questions of unconstitutionality.

In addition, with the lack of clear legal stipulations guaranteeing procedural justice and the rights of asylum seekers, any action taken by the government is merely done out of benevolence, and any decision not to act has no recourse to oversight or relief.

As long as the draft refugee act itself remains a displaced entity, there would be no foundation of legal rights for asylum seekers, nor for institutions to allocate budgets or establish supporting measures or regular training for personnel.

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Today it is Hong Kong. Tomorrow there might be asylum seekers from other countries.

Would the government continue to just keep patching up leaks in the system as they arise, or would it put in place a permanent solution? The best way to do this is to enact a refugee law, and quickly.

*Clarence Chou is chairperson of the Taiwan Association for Human Rights. Chiu Ee-ling is the association's secretary-general.*

Translated by Paul Cooper

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