

Commentary

**Why Taiwan Should Develop Exclusive
Refugee Laws for Hong Kong Political Asylum
Seekers so as to Defy Beijing’s Interference**

Jason **Hung***

University of Cambridge

Abstract

The author would first discuss how the absence of refugee laws put Hong Kong’s political asylum seekers in limbo. Second, the author would argue that the formation of such laws would be conducive to Taiwan’s growth in global diplomatic standing and economic competitiveness. Third, the author would analyze Taiwan’s primary concern about the development of inclusive refugee laws – potentially resulting in the influx of mainland Chinese political dissidents that may enrage Beijing and prompt the communist government to accelerate her political, legal and military interference in Taiwan’s affairs. To conclude, the author recommends Taipei to form exclusive refugee laws in order to standardize and transparently process the management of political asylum applications filed by Hong Kong citizens in a timely fashion. To avoid Taiwan from becoming “the second Hong Kong” in the foreseeable future, the acceptance of political asylum applications

from Hong Kong is a necessary instrument for Taiwan to declare her emphasis on democracy and autonomy, in order to defy any heightened process of mainlandization on the self-governing island.

Keywords: *Taiwan, Beijing, Hong Kong, political asylum, political persecution, national security law*

1. Introduction

Since the outbreak of the socio-political unrest in mid-2019 and the implementation of the National Security Law (NSL) in mid-2020, over 10,000 Hong Kong protestors and pro-democracy activists have been arrested and many have surrendered their travel documents (*Quartz*, 19th January 2021). On 6th January 2021, a total of 53 Hong Kong pro-democracy activists were arrested. Although they were released without charges, these activists were still ordered to surrender their passports (*ibid.*). Due to the political persecution and suppression from Beijing and increasing socio-political divide within Hong Kong, Hong Kong citizens and residents have been considering to flee to democratic countries or regions, including Taiwan. According to the Taiwan's Immigration Agency, over 10,800 Hong Kong citizens obtained local resident permits in 2020, compared to only 5,858 in 2019 (*Republic World*, 4th February 2021). The enforcement of the NSL has prompted more Hong Kong citizens to relocate to Taiwan, especially when both Taiwan and Hong Kong share similar Chinese cultural values while the former, relative to the latter, experiences limited degree of political and cultural mainlandization. Democratic-minded Hong Kong citizens, who emphasized on their distinct political, civil and cultural values than those from the mainland throughout the entire socio-political unrest, have been appealed to relocate to Taiwan. However, Taiwan has an absence of

formal refugee laws, casting doubts on how she can host politically persecuted Hong Kong citizens for long-term settlement.

In this article, the author would first discuss how the absence of such laws put Hong Kong's political asylum seekers in limbo. Second, the author would argue that the formation of such laws would be conducive to Taiwan's growth in global diplomatic standing and economic competitiveness. Third, the author would analyze Taiwan's primary concern about the development of refugee laws. To conclude, the author recommends Taipei to form exclusive refugee laws in order to standardize and transparently process the management of political asylum applications filed by Hong Kong citizens in a timely fashion.

2. Taiwan's Existing Humanitarian Aids Given to Hong Kong Political Asylum Seekers Are More Rhetorical than Pragmatic

To date, Taiwan's claims of the delivery of humanitarian aids to politically persecuted Hong Kong citizens are primarily rhetorical. Taiwanese President Tsai Ing-wen noted on 19th July 2019 that Taiwan would consider granting Hong Kong citizens asylum based on humanitarian concerns (*Deutsche Welle*, 19th July 2019). Under the existing regulations, Hong Kong citizens can apply for residency in the host region if they are studying in Taiwanese academic institutions, are having connections with Taiwanese residents or being employed by Taiwanese government, companies or academic institutions (UNPO, 21st August 2019). However, for arrested and politically persecuted Hong Kong citizens, their travel documents have been confiscated. They are therefore barred from legally applying for education or working visas in Taiwan. Also, as politically persecuted Hong Kong citizens urgently need to leave their home city, they are unable to undergo the prolonged visa application process. Any delay of leaving Hong Kong may increase

such cohorts' possibility to be imprisoned in the semi-autonomous city under the violation of the NSL.

It is noteworthy that 12 Hong Kong pro-democracy activists fled for Taiwan by boat were intercepted by mainland Chinese authorities in 2020, where 10 of them were sentenced to spend up to three years in prison in Shenzhen (*Quartz*, 19th January 2021). Such an incident might discourage other political asylum seekers from leaving Hong Kong, whose travel documents have been confiscated, to flee for Taiwan through illegal means. With an absence of travel documents, illegal immigration by boat remains the most likely, if not the exclusively, available option for Hong Kong citizens to relocate to Taiwan. However, the illegal maritime immigration route between Hong Kong and Taiwan lies in the territorial waters of mainland China. So far as Hong Kong citizens attempt to illegally immigrate to Taiwan, very likely would they be arrested by mainland Chinese authorities. As mainland Chinese authorities are notoriously known for their practices of inhumanely torturing detainees, Hong Kong citizens should be more fearful of being arrested by mainland Chinese authorities because of illegal immigration than being detained by their Hong Kong counterparts due to the violation of the NSL. Here in mainland China, the government would muzzle political dissidents and critics by making them disappear, put their families under house arrest based on ungrounded charges, threaten to kill their families and forbid them to flee away from China (Ma, 2018). Hong Kong's political dissidents would therefore be more likely to encounter inhumane treatments if they are detained by mainland Chinese authorities, especially when mainland China, compared to Hong Kong, practices a much higher degree of political exclusion.

Even if illegal immigrants from Hong Kong have not been arrested by mainland Chinese authorities, according to Article 74 of Taiwan's *Immigration Act*, illegal immigrants are subject to detention, limited-

term imprisonment and fines (Sun, 2020). Taiwan has not waived such a penalization to any incomers, despite their declaration that humanitarian aids would be given to Hong Kong political asylum seekers. As a result, very likely would illegal immigrants from Hong Kong receive inhumane treatments by Taiwanese authorities to some extent. It is also unclear whether Taiwanese authorities would deport illegal immigrants or permit them to seek for asylum in a third country after detention. Usually, unsuccessful asylum seekers being subject to deportation would be sent to their places of origin. If that applies to Taiwanese immigration policies, deported Hong Kong asylum seekers would be politically arrested soon after they arrive in Hong Kong territories.

3. Taiwan Should Form Refugee Laws

Although Taiwan does not have formal refugee laws, it is necessary for Taiwanese authorities to develop relevant immigration policies on how persecuted illegal immigrants' cases would be handled. This is because a growing number of Hong Kong protestors and pro-democracy activists have been charged with NSL violations, whose passports have been confiscated. Due to the absence of available travel documents, very likely would those Hong Kong citizens choose to immigrate illegally to Taiwan rather than western democratic countries due to the proximity, insofar as they decide to leave Hong Kong.

When formulating such policies, a minimization of illegal treatments against persecuted illegal immigrants, including deporting them to their places of origin and detaining indefinitely, should also be taken into account. Only by developing relevant policies can Taiwan present a rather transparent and standardized approach when responding to the entry of Hong Kong political asylum seekers, in which Hong Kong citizens intending to flee for Taiwan will be able to expect whether

they will be treated humanely and, thus, foresee if Taiwan is a reliable and safe destination to escape from persecution.

To date, asylum applications filed by Hong Kong political dissidents are considered on a case-by-case basis, due to the absence of refugee laws (Cody, 2020). The circumstance casts significant uncertainty on whether Taiwan is able to promptly deliver humanitarian aids to Hong Kong political asylum seekers. For example, so far those seeking asylum in Taiwan have to submit their applications as per Article 18 of the *Act Governing Relations with Hong Kong and Macau*, which stipulates that “necessary assistance shall be provided to Hong Kong or Macau residents whose safety and liberty are immediately threatened for political reasons (*Breitbart News*, 28th May 2020).” Yet, Hong Kong and Macau’s special administrative region (SAR) status may be revoked by Beijing. If revocation applies, citizens from Hong Kong and Macau will not be seen differently than their mainland Chinese counterparts and the current Article 18 will be voided. The absence of relevant refugee laws and its implications of the vague humanitarian services may, therefore, bar those of Hong Kong origin from applying for asylum in Taiwan. If the SAR status is revoked but Hong Kong political dissidents can still claim asylum in Taiwan, it is unclear whether mainland Chinese political dissidents can follow the same route to seek for long-term settlement in Taiwan. It is therefore necessary for Taiwan to develop and enforce their refugee laws, in order to standardize and transparently process the management of political asylum applications filed by eligible candidates in a timely fashion.

Article 18 has several loopholes. First, the legislation only states Taiwanese government would provide “necessary aids” to political asylum seekers from Hong Kong and Macau, lacking precise procedural

details on how the assistance would be executed (Sun, 2020). Second, the legislation indicates that Taiwan would exclusively offer humanitarian aids to asylum seekers who enter the island lawfully. As, again, travel documents of most politically persecuted Hong Kong dissidents are confiscated, it is hard for them to satisfy the requirement of “lawful entry”. The relevant legal framework is therefore vague and exclusive, barring many political persecuted individuals from receiving humanitarian support in Taiwan.

Zhang Wen is one of the mainland Chinese dissidents and pro-democracy activists. Being tortured by mainland Chinese authorities, the politically persecuted mainland Chinese fled for Taiwan in 2019 to seek for asylum. However, with an absence of refugee laws, Taiwan has failed to deliver humanitarian assistance, including the reluctance to provide shelter and subsistence subsidies, to Wen. Taiwan has also failed to help Wen seek for asylum in a third country (Jensen, 2020). Although helping Hong Kong rather than mainland Chinese political asylum is a better leverage to raise Taiwan’s global standing due to substantial international attentions on Hong Kong’s human rights issues and political affairs, Taiwan’s indifference to help Wen demonstrates that her so-called humanitarian services given to political persecuted populations may be more rhetorical than pragmatic. Developing formal refugee laws and the associated outcomes of having clear, standardized regulations on how political asylum applications will be handled, alongside declaring who are eligible to claim asylum on the island, shall assure Hong Kong political dissidents to seek for asylum in Taiwan in order to escape from Beijing’s persecution.

4. How Appropriately Welcoming Hong Kong Political Asylum Seekers Can Raise Taiwan's Diplomatic Standing and Economic Competitiveness

A proper, transparent and humane management of the influx of Hong Kong political asylum seekers will be conducive to the rise of Taiwan's global standing. In August 2020, the United States and Taiwan held their first highest-level diplomatic meeting since 1979, symbolizing the United States' re-recognition of Taiwanese government in over 40 years (*The Washington Post*, 5th August 2020). Taiwan's humane approaches towards Hong Kong political asylum seekers, while China is continuing to persecute Uighur Muslims in Xinjiang, shall prompt the reinforcement of positive diplomatic ties between Taiwan and western powers.

Moreover, aside from those seeking political asylum, Hong Kong professionals, especially those aged between 25 and 35, are increasingly inclined to emigrate to Taiwan or western democratic countries since both the outbreak of the socio-political unrest and the implementation of the NSL (*U.S. News*, 24th September 2019). When Hong Kong has been experiencing the problem of brain drain, Taiwan should seize such an opportunity to welcome more Hong Kong talents in part through earning Hong Kong citizens' appreciation on how Taiwanese government is helping those facing political persecution in the semi-autonomous city seek asylum. The bigger the share of Hong Kong young professionals Taiwan can attract, the more the foreign capital from Hong Kong Taiwan can enjoy. It is noteworthy that Hong Kong is predicted to experience capital outflows of HK\$ 280 billion (US\$36 billion) due to the NSL-influenced problem of brain drain (Lau, 2021). Moreover, Taiwan's further demonstration as being a humane and democratic sovereignty is beneficial to attracting more foreign investments. For example, Google decided to establish an Asia's data center in Taiwan,

in lieu of Hong Kong, on 3rd September 2020 (*Taiwan News*, 3rd September 2020). When mainland China continues to politically interfere Hong Kong affairs, more western leading technological and business companies, apart from Google, may consider Taiwan as an alternative to establish their Asia's headquarters. A proper management of Hong Kong political asylum seekers can, therefore, in the long term, raise Taiwan's global diplomatic standing and economic competitiveness.

5. Taiwan's Major Concern about the Formation of Inclusive Refugee Laws

Hong Kong and Macau are former European colonies who were returned to China from the UK in 1997 and Portugal in 1999 respectively. These two SARs practice "one country, two systems" where they have their own sovereignties, despite being Chinese cities. Beijing has a higher degree of tolerance if Taiwan hosts political asylum seekers from these two SARs than from mainland China. If Taiwan forms inclusive refugee laws, Taipei is fearful of a potential influx of political dissidents from mainland China. So long as Taiwan hosts mainland Chinese political dissenting cohorts, Beijing is likely to be enraged and capitalizing on Taiwan's political interference of mainland Chinese affairs to pressure the self-governing island. Here Beijing will be expected to pressure western democratic countries and global leading technological and corporate firms from building or consolidating ties with Taiwan. While Taipei has been endeavoring to provide political assistance to Hong Kong dissidents in order to signalize that Taiwan does not accept mainlandization, Taipei is also cautiously avoiding to enrage Beijing. Due to the citywide anti-China civil disobedience happened between 2019 and 2020, Beijing has nearly completely taken over Hong Kong by

enforcing the NSL from 1st July 2020. If Taipei hosts a raft of mainland Chinese political dissidents, very likely will Taiwan follow the path of Hong Kong and be significantly politically, legally and militarily interfered by Beijing. Taiwan is therefore reluctant to develop inclusive, non-discriminatory refugee laws but considering political asylum applications from Hong Kong (and Macau) exclusively on a case-by-case basis.

6. Conclusions

So far, western democratic powers are struggling to contain the coronavirus (COVID-19) outbreaks. Also, countries such as the United States and Spain have been experiencing a heightened level of socio-racial and socio-political rioting respectively. Western democratic powers' formation or consolidation of diplomatic and economic ties with Taiwan as to defying Beijing's expanding global influence would therefore be lessened. With a reduced level of western powers' support, Taiwan shall be less willing to overly host anti-China political dissidents at the expense of compromising Sino-Taipei relations. While inclusive, non-discriminatory refugee laws are unlikely to be formed, at least Taipei can develop exclusive laws for Hong Kong political asylum seekers. Here Taiwan needs to specify and standardize the humanitarian assistance Hong Kong political asylum seekers can claim; accept illegal immigrants from Hong Kong whose travel documents are confiscated; and, if applicable, help persecuted Hong Kong citizens seek for settlement in any third country.

Beijing's implementation of the NSL within, and significant interference of affairs of, Hong Kong demonstrate that Taiwan may become "the second Hong Kong" in foreseeable future. Accepting political asylum applications from Hong Kong is a necessary instrument

for Taiwan to declare her emphasis on democracy and autonomy, in order to defy any heightened process of mainlandization.

Note

- * Jason Hung (洪子誠) is a PhD in Sociology candidate at the University of Cambridge. He graduated with an MA in Education, Gender and International Development at University College London and an MSc in Sociology at the London School of Economics. He held research attachments at Stanford University (2019), King's College, London (2018-19) and University of California, Berkeley (2018). He pens his columns at *South China Morning Post* and *The Diplomat*. <Email: ysh26@cam.ac.uk>

References

- Breitbart News* (28th May 2020). Taiwan begins accepting Hong Kong activists seeking asylum. (Reported by Ben Kew.) <<https://www.breitbart.com/national-security/2020/05/28/taiwan-begins-accepting-hong-kong-activists-seeking-asylum/>>
- Cody, Jenna Lynn (2020). For Hong Kong (and everyone), Taiwan needs a formal asylum process. *Ketagalan Media*, 26th May 2020. <<https://ketagalanmedia.com/2020/05/26/for-hong-kong-and-everyone-taiwan-needs-a-formal-asylum-process/>>
- Deutsche Welle* (19th July 2019). Taiwan open to granting Hong Kong protesters asylum. <<https://www.dw.com/en/taiwan-open-to-granting-hong-kong-protesters-asylum/a-49645959>>
- Jensen, Sally (2020). 'I need asylum': Chinese political dissidents left in limbo in Taiwan. *Hong Kong Free Press*, 6th December 2020 (*HKFP Reports* by guest contributor). <<https://hongkongfp.com/2020/12/06/i-need-asylum-chinese-political-dissidents-left-in-limbo-in-taiwan/>>

- Lau, Jessie (2021). As British migration scheme opens, more Hong Kongers opt for life in exile. *The Diplomat*, 4th February 2021 (*China Power* blog). <<https://thediplomat.com/2021/02/as-british-migration-scheme-opens-more-hong-kongers-opt-for-life-in-exile/>>
- Ma, Alexandra (2018). Barging into your house, threatening your family, or making you disappear: Here's what China does to people who speak out against them. *Business Insider*, 19th August 2018. <<https://www.businessinsider.com/how-china-deals-with-dissent-threats-family-arrests-2018-8>>
- Quartz (19th January 2021). A new immigration law could make it harder for Hong Kongers to flee. (Reported by Mary Hui.) <<https://qz.com/1952305/a-new-immigration-law-could-impose-exit-bans-on-hong-kongers/>>
- Republic World (4th February 2021). Around 11,000 Hong Kongers moved to Taiwan in 2020, double the number from 2019. (Reported by Riya Baibhawi.) <<https://www.republicworld.com/world-news/rest-of-the-world-news/around-11000-hong-kongers-moved-to-taiwan-in-2020-double-the-number-from-2019.html>>
- Sun, Kevin Ting-chen (2020). Taiwan's refugee policy offers little help to Hongkongers. *East Asia Forum*, 7th October 2020. <<https://www.eastasiaforum.org/2020/10/07/taiwans-refugee-policy-offers-little-help-to-hongkongers/>>
- Taiwan News (3rd September 2020). Google confirms plans to build 3rd data centre in Taiwan. (Reported by Huang Tzu-ti.) <<https://www.taiwannews.com.tw/en/news/4001183>>
- The Washington Post (5th August 2020). Taiwan and U.S. to hold highest-level meeting since 1979 as China tensions soar. (Reported by Gerry Shih.) <https://www.washingtonpost.com/world/asia_pacific/taiwan-and-us-to-hold-highest-level-contact-since-1979-as-china-tensions-grow/2020/08/04/63d84cb4-d6be-11ea-a788-2ce86ce81129_story.html>

- Unrepresented Nations and Peoples Organization (UNPO) (21st August 2019). Taiwan: Political asylum offered to Hong Kong protesters. <<https://unpo.org/article/21629>>
- U.S. News* (24th September 2019). Hong Kong protests fuel emigration wave. (Reported by Matthew Keegan.) <<https://www.usnews.com/news/cities/articles/2019-09-24/hong-kong-protests-spark-new-wave-of-emigration>>

Geopolitics and Biopolitics

