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Clerk to Panel of Welfare Services
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Ms Catherina Yu)

Dear Ms Yu,

**Legislative Council Panel on Welfare Services
Information on Non-refoulement Claimants in Hong Kong**

Taking into account Members' views on ways to improve situation of non-refoulement claimants in Hong Kong as expressed in the meeting held on 22 July 2013, the Government has reviewed the humanitarian assistance programme and reported the service enhancements to be implemented from 1 February 2014 at the meeting on 13 January 2014 via the paper "Humanitarian Assistance for Non-refoulement Claimants in Hong Kong" [LC Paper No.: CB(2)626/13-14(06)]. The latest development of the humanitarian assistance programme was also reported to Members on 8 June 2015 via the paper "Humanitarian Assistance for Non-refoulement Claimants" [LC Paper No. CB(2)1594/14-15(05)].

In response to the information requested by Members raised at the previous meetings (Please refer to Appendix VI to LC Paper No.: CB(2)/15-16(02) for reference), they are set out as follows -

(a) the number of minor claimants who had been denied access to schooling during their stay in Hong Kong

If minor claimants will not be removed from Hong Kong in the foreseeable future and would wish to attend schools whilst in Hong Kong, the Education Bureau (EDB) will, depending on case merits, arrange them school placement as appropriate. Over the past five years, all those minor claimants who reach the age of schooling and have made such applications were arranged placement for school by EDB.



(b) *the average processing time for determination of a claim lodged by a protection claimant and whether it could be shortened*

The present screening process is lengthy. Enhancements on both efficiency and effectiveness are necessary¹. The Duty Lawyer Service (through which publicly-funded legal assistance is currently provided to claimants) demands that a minimum of 49 days be given for duty lawyers to take instruction from claimants to complete the claim form². In 2015, screening interviews can be successfully scheduled only 13 weeks on average after a claim form is submitted, and 33% of them need to be rescheduled for one reason or another³. Seeking extension to submit supporting documents but not submitting any in the end, requesting that an interview be conducted in a rare dialect (whilst the claimant could previously clearly communicate with Immigration Department (ImmD) in English), refusing to undergo medical examinations arranged on the claimant's own request and challenging the professional qualification of medical practitioners from the Hospital Authority and its data storage security arrangement, etc. are not uncommon.

As reported to the Panel on Security in July 2015, the Security Bureau (SB) also identified, within the existing legal framework, measures to speed up the screening process as far as practicable⁴ (with a target to reducing average screening time from 25 weeks to 15 weeks per claim). In view of the different views expressed by the legal professional bodies, SB is seeking further legal advice and these measures have yet to be implemented.

Whilst the Government will continue to seek additional resources for ImmD and Torture Claims Appeal Board where necessary to enhance screening output and efficiency, this alone is unable to contain and reverse the growing number of claimants stranded in Hong Kong. The Government

¹ In *HKSAR v. Tarok Das* (2015) HKCFI 1396, the CFI observed that “it seems more needs to be done to weed out promptly the unmeritorious and unworthy claims. ... [T]his is becoming a serious problem for the courts and the legal system in general, as well as for the community, and there is the added risk that the system in place is being abused not only by unmeritorious claimants but possibly by claimants with a more sinister purpose in mind.”

² Whilst overseas jurisdictions such as Australia and Canada require that the claim form be already completed when a claim is lodged or within up to 15 days thereafter.

³ Of all screening interviews rescheduled in 2015, 69% are due to claimants claiming to be sick (often without medical proof) or being absent without reason, 13% to unavailability of duty lawyer (despite that their diary had been reserved for the interview before), 10% to interpreters being unavailable, 6% to change in claimants' circumstances (e.g. abscondance, withdrawal), and 2% to ImmD or other reasons (e.g. case officers having medical leave or summoned by the Court, etc.)

⁴ Including advancing the scheduling of screening interviews with claimants, and providing a screening bundle to claimants to save them from having to lodge a data access request.



needs to launch a comprehensive review of the strategy of handling non-refoulement claims with a view to addressing fragilities in areas of pre-arrival control, screening procedures, detention and enforcement. SB has reported to the Panel on Security on the details of the review on 2 February 2016.

- (c) *a detailed breakdown of the expenditure, including the administration fee, provision of humanitarian assistance to protection claimants through ISS-HK, which amounted to \$203 million in 2012-13*

For the provision of humanitarian assistance to non-refoulement claimants through International Social Service – Hong Kong Branch (ISS-HK) in 2012-13, 23.6% of the expenditure was spent on administration and operating costs (including staff personal emoluments) whereas 76.4% is for the expenses on direct assistance (including accommodation and basic utilities (41.7%), food (29.5%), clothing and basic necessities (1.8%), transport allowance (3.1%) and counselling activities (0.3%)). The relevant percentages in subsequent years were similar while the expenses on direct assistance increased to 84.9% in 2014-15.

- (d) *the number of convicted cases concerning unlawful employment which involved protection claimants*

According to figures from ImmD, in 2015, 232 illegal immigrants (mostly claimants) were arrested for taking up unlawful employment, a 40% increase over 2014. In addition, the Police recorded 1 113 cases of illegal immigrants on recognizance (mostly claimants) arrested for theft, wounding and serious assault, serious drugs offences, as well as other criminal offences in 2015, a 67% increase over 2014.

- (e) *the practice of neighbouring countries, including Singapore, regarding the provision of assistance to protection claimants*

According to information from the Office of the United Nations High Commissioner for Refugees (UNHCR), 8 of 10 countries under the Association of Southeast Asian Nations (ASEAN), including Brunei Darussalam, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, and Vietnam, are not signatories to the 1951 Convention relating to the Status of Refugees. For the two ASEAN countries which are signatories (Cambodia and the Philippines), the Government is unaware that they have a similar programme providing assistance to asylum seekers or protection claimants.



(f) a list of food items which were not covered by food coupons

While food coupons remain to be restricted for purchase of food, the scope of food items have been widened extensively. From December 2015 onwards, only cigarettes and alcoholic drinks are excluded from the list of food items.

(g) whether there were cases involving an unreasonable number of non-refoulement claimants using the same residential address

As at July 2015, out of the 4 466 shared rental cases, 335 were sharing flats in groups of 6 and up to 10 service users. All cases were assessed by caseworkers to be living at suitable accommodations which were larger flats with higher rental.

(h) the number of non-refoulement claimants who took up illegal employment in Hong Kong before they made a non-refoulement claim

See part (d).

(i) the time required for an illegal immigrant in detention to obtain a recognizance, and the treatment of illegal immigrants in detention, such as conditions of their living environment and meal arrangement, etc

ImmD must act in accordance with the law and prevailing policy to ensure that each decision in relation to detention is lawful and reasonable.

In a relevant judicial review case in 2014 (*Ghulam Rbani v Director of Immigration* [2014] 17 HKCFAR 138), the Court of Final Appeal ruled that if ImmD cannot complete the removal process of illegal immigrant (including the determination of his non-refoulement claim if any) to remove him, then the ImmD may not continue to detain him. Therefore, the ImmD would release most non-refoulement claimants pending screening on recognizance.

However, not every illegal immigrant who lodged a non-refoulement claim would be released on recognizance whilst his claim is being processed. If a claimant poses a security threat to Hong Kong, or has a risk of absconding, etc., then the ImmD would consider detaining him and commencing the screening process immediately so as to reach a determination within a short time. If his claim is unsubstantiated, the claimant will be removed immediately.



ImmD's detention policy has been uploaded to its website for public access. In this relation, ImmD would review its detention capacity to ensure its operational needs can be met.

Pursuant to the Immigration (Treatment of Detainees) Order, (Chapter 115, sub. leg. E), all detainees are provided with adequate facilities such as food, water, accommodation, shower and exercise, etc. Every detainee will be informed of their rights upon admission. Detainees who feel sick will receive proper medical treatment. Detainees are free to consult with a solicitor or barrister in private if so required.

At present, only a very small percentage of claimants are detained pending or during screening. SB will carefully consider the feasibility of clarifying and strengthening ImmD's legal power⁵ to detain claimants pending screening, whilst screening or appeal is underway, and / or after their screening is complete but they are remaining in Hong Kong for some other reasons (e.g. they have lodged a judicial review), so as to minimize their security impact, to prevent them from taking up unlawful employment, and to ensure more efficient screening and subsequent removal. If this proposal is considered legally feasible, the Government will identify suitable facilities for refurbishment to expand immigration detention capacity as necessary.

Yours sincerely,

(Ms LUI Siu-ying, Mickey)
for Director of Social Welfare

c.c. Secretary for Labour and Welfare (Attn: Ms Martina LEE)
Secretary for Security (Attn: Ms Zorina WAN)

⁵ Under the Immigration Ordinance, the Director of Immigration is empowered to detain an illegal immigrant under specific circumstances, e.g. when considering whether to make a removal order against the subject (section 32(2A)), when his removal is pending (section 32(3A)), when his non-refoulement claim is pending final determination (section 37ZK), etc., subject to applicable restrictions under the law, e.g., the *Hardial Singh* principles which require that ImmD cannot continue to detain an illegal immigrant if it becomes apparent that it will not be able to effect his removal within a reasonable period.