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Panel on Welfare Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 13 January 2014**

**Situation of mandated refugees, asylum seekers and torture claimants
in Hong Kong**

Purpose

This paper gives an account of members' discussions on the situation of mandated refugees, asylum seekers and torture claimants ("the protection claimants") in Hong Kong.

Background

Claims for refugee status

2. The 1951 Convention relating to the Status of Refugees ("the Refugee Convention") and its 1967 Protocol do not apply to Hong Kong. According to the Administration, it has always maintained a firm policy of not granting asylum, and accordingly, asylum claims (on grounds of a claimed fear of persecution) have always been assessed by the United Nations High Commissioner for Refugees ("UNHCR") in Hong Kong. However, before exercising powers of removal or deportation to another country, the prevailing practice of the Director of Immigration is that he would, on humanitarian grounds, have regard to a person's claimed fear of persecution. Where UNHCR determines such claim to be well-founded, that person will not be removed to the country of putative persecution. This practice is consistent with the principle of non-refoulement expressed in Article 33 of the Refugee Convention¹, despite that the Convention does not apply to Hong Kong.

¹ Article 33 of the Refugee Convention provides that : (1) No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion; and (2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Torture claims

3. According to the Administration, the Immigration Department ("ImmD") has put in place an administrative mechanism to determine torture claims². In December 2009, the Administration enhanced the mechanism to meet with the high standards of fairness required by the Court. The mechanism was underpinned by statutory provisions since December 2012. Subsequently, the Court of Final Appeal made two further judgments³ that before ImmD removes or deports any person to another country, it should also consider that person's claimed risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment under Article 3 of the Hong Kong Bill of Rights, and/or fear of persecution with reference to the Article 33 of the Refugee Convention. Accordingly, the Administration has announced its plan on 2 July 2013 to introduce a unified screening mechanism ("USM") to assess these claims for non-refoulement in one go by end 2013.

Members' deliberations

Support for protection claimants

4. Some members of the Panel on Welfare Services ("WS Panel") and Panel on Security were gravely concerned that protection claimants were treated in an inhumane manner in Hong Kong. They were dissatisfied that no allowance-in-cash was provided for protection claimants to meet their daily needs.

5. The Administration advised that on humanitarian grounds, the Social Welfare Department ("SWD"), in collaboration with a non-governmental organization (i.e. the International Social Service Hong Kong Branch ("ISS-HK")) and on a case-by-case basis, offered in-kind assistance to protection claimants to prevent them from becoming destitute. The assistance covered temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances and medical service. In the Administration's view, offering assistance-in-cash would likely create a magnet effect. As such, it had no intention to change the present arrangement of providing assistance-in-kind to the claimants. Some members considered the arrangement of providing assistance-in-kind to protection claimants appropriate because it could prevent a person from becoming destitute without creating a magnet effect.

² Since 1992, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been extended to Hong Kong. Its Article 3(1) provides that "no State Party shall expel, return ("refouler") 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.

³ *Ubamaka Edward Wilson v. Secretary for Security* (FACV 15/2011) in December 2012 and *C & Ors v. Director of Immigration* (FACV 18-20/2011) in March 2013.

6. At its meeting on 31 July 2006, the Panel on Security passed a motion urging the Government to, among other things, ensure that during the vetting process of their claims, refugee and torture claimants, would be attended to and treated in such a manner that upheld human dignity and humanity.

7. In reply to the written question raised at the Council meetings of 6 June 2012 regarding the Administration's expenses incurred in providing support for torture claimants, the Administration stated that as at the end 2011-2012, 5 703 persons were receiving humanitarian assistance. The corresponding expenditure on such assistance was \$143 million.

8. According to the Administration, the current recipients of humanitarian assistance include torture claimants, asylum seekers and mandated refugees. As at end May 2013, 4 700 persons were receiving the assistance. In the 2013-2014 financial year, the Administration earmarked \$203 million for humanitarian assistance, which would be extended to those who made other claims that would be assessed under USM.

Accommodation

9. Some members of the WS Panel expressed grave concern about the living conditions of the accommodation arranged by ISS-HK at Ping Che for protection claimants. They were also worried about the difficulties protection claimants encountered in seeking proper accommodation with a monthly rental allowance at \$1,200 per person. Some deputations expressed disappointment that ISS-HK had actually offered no practical help to assist the protection claimants in moving out from Ping Che. Prior to seeking help from ISS-HK for removal, the protection claimants had to look for other accommodation by themselves.

10. The Administration advised that ISS-HK had offered to look for other suitable residence for the protection claimants residing at Ping Che if they agreed to move out. The Administration stressed that a mechanism was in place to allow other protection claimants to raise similar requests during their monthly meeting with the ISS-HK staff. If service users could not identify suitable premises on their own, they could live in abodes arranged by ISS-HK or enlist assistance from ISS-HK in securing a suitable accommodation. To ensure that the basic needs of the claimants were met, each case was reviewed monthly by ISS-HK. SWD monitored the programme closely, reviewed the assistance level from time to time and made adjustments as necessary.

11. The Administration advised that the current rental allowance of \$1,200 for singletons, which had been adjusted since 2006, served only as a reference. The assistance level was being reviewed with reference to the trend of the rental market prices and adjustment would be made as appropriate. Service users,

who were in need of rental allowance higher than the amount in the grid, could provide justification with supporting documents. ISS-HK would consider each and every application on individual case merits.

12. In the light of the difficulties experienced by the protection claimants in securing proper residence with the rental allowance so provided, some members suggested that the Administration should explore the viability of accommodating protection claimants on vacant school premises.

Food

13. Some members of the WS Panel were concerned that protection claimants had not been provided with sufficient food. Some deputations raised a similar concern and stressed that the whole community of protection claimants, instead of individual claimants, complained about the inadequate supply of food.

14. According to the Administration, service users were provided with a variety of food items catering for nutritious, cultural, religious and other specific needs of individual service users, from which they could make their own choice. While the types of food would be increased as necessary, the provision quantity should be able to satisfy the needs of adults and children. On the frequency of collecting food items at the food supplier shops, it would be adjusted in accordance with individual circumstances.

Education for minors of protection claimants

15. Members of the WS Panel and the Panel on Security expressed grave concern that a number of children of protection claimants were denied access to education during their stay in Hong Kong.

16. The Administration advised that the Education Bureau would handle schooling applications from minors of protection claimants according to individual circumstances, upon consultation with ImmD that their removal from Hong Kong would be unlikely in the near future. Depending on case details, including the age, vacancies for placement and educational background of the minor, arrangement for schooling would be made accordingly.

17. Members of the Panel on Security urged the Government, by way of the carried motion mentioned in paragraph 6, to ensure that all children of refugee and torture claimants would have the opportunity to receive education during the vetting process of their claims.

Permission to take employment

18. Some members of the WS Panel noted with concern that pending

assessment of claims, protection claimants in Hong Kong were prohibited from taking employment while their counterparts in some other countries were allowed to work. They were of the view that it would be beneficial to protection claimants if they were permitted to work to sustain their own living.

Relevant papers

19. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant papers on situation of mandated refugees, asylum seekers and torture claimants in Hong Kong

| Committee | Date of meeting | Paper |
|---|---------------------------|--|
| Panel on Welfare Services and Panel on Security | 18 July 2006 (Item II) | Agenda Minutes |
| Panel on Security | 31 July 2006 (Item I) | Agenda Minutes LC Paper CB(2)2994/05-06(01) LC Paper CB(2)526/06-07(01) |
| Legislative Council | 6 June 2012 | Official Record of Proceedings Pages 122 – 125 |
| Legislative Council | 20 February 2013 | Official Record of Proceedings Pages 107 – 114 |
| Panel on Welfare Services | 22 July 2013 (Item I) | Agenda Minutes |

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