

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.: SBCR 7/3221/15

來函檔號 Your Ref.:

Secretary of the Establishment Subcommittee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Miss Sharon Lo)

27 May 2016

Dear Miss Lo,

**Follow-up to the meeting of 25 May 2016
of the Establishment Subcommittee**

At its meeting of 25 May 2016, the Establishment Subcommittee (ESC) of the Legislative Council (LegCo) discussed the proposal to create two directorate posts at the Security Bureau (SB) and the Immigration Department (ImmD) to steer and support the comprehensive review on the strategy of handling non-refoulement claims¹. In response to issues raised in the letter from the ESC on 25 May and other requests raised by members during the meeting, the Government seeks to provide supplementary information as follows.

Figures on claims

2. In response to non-ethnic Chinese illegal immigrants (NECIIs) who smuggled into Hong Kong via the Mainland at sea or on land, the Ministry of Public Security of the Central People's Government has commenced dedicated operations (from 20 February 2016 to mid-2017) and mobilized its Border Control Department and immigration authorities in Guangdong, Guangxi, Yunnan and Xinjiang to work jointly with the

¹ Discussion paper EC(2016-17)2 for the ESC of the LegCo.

Hong Kong Police, ImmD and the Customs and Excise Department to combat smuggling activities at the Hong Kong-Guangdong boundary by stepping up cooperation on interception, investigation, intelligence exchange and enforcement, in order to combat the smuggling of NECIIs.

3. Since the dedicated operation commenced on 20 February, the Border Control Departments at Guangdong, Guangxi and Yunnan have arrested almost 5 000 NECIIs. In March and April 2016, the number of NECIIs intercepted by or surrendered to the Police and ImmD in Hong Kong was 272 and 206, representing a respective decrease of 35% and 50% over January (416 NECIIs), and was 14% and 35% lower than the monthly average of 2015 (318 NECIIs). In May 2016 (up to 25 May), there were 189 NECIIs. Law enforcement agencies of the Mainland and Hong Kong will continue to step up enforcement actions to stem the influx of NECIIs.

4. In March and April 2016, 397 and 358 non-refoulement claims were made to ImmD, representing a respective decrease of 13% and 21% over January (455 claims), and was 6% and 15% lower than the monthly average of 2015 (421 claims). In May 2016 (up to 25 May), 269 claims were made.

5. As at 30 April 2016, 11 178 non-refoulement claims were pending determination by ImmD. Information on claimants' nationality, mode of entry, etc. is at **Annex**.

The concluding observations in relation to the unified screening mechanism of the United Nations Committee Against Torture on HKSAR's third report

6. Separately, members requested that the Government should explain how the views of the United Nations Committee Against Torture (UNCAT) made in December 2015 in relation to the unified screening mechanism (USM) would be addressed during the comprehensive review of the strategy of handling non-refoulement claims.

7. The UNCAT held a hearing at Geneva in November 2015 on the HKSAR's third report under the United Nations Convention Against Torture (the Convention), and issued its concluding observations in December 2015. The Government will brief the LegCo Panel on Security on 7 June 2016 on the UNCAT's concluding observations and the Government's response. Deputations will also be invited to give views.

Later on, we will submit our reply on specific issues and recommendations raised by UNCAT in accordance with established procedures in December 2016.

8. To facilitate consideration by ESC of the proposal to create two directorate posts under SB and ImmD, the UNCAT's concluding observations in relation to the USM are summarized in the ensuing paragraphs.

9. In the concluding observations, the UNCAT welcomed the adoption of the Immigration (Amendment) Ordinance 2012 in July 2012, which underpins the screening procedure for torture claims by statutory provisions and the commencement of the USM in March 2014 to screen non-refoulement claims on all applicable grounds including torture, cruel, inhuman or degrading treatment or punishment and persecution in one go.

10. At the same time, the UNCAT made the following suggestions on handling non-refoulement claims:

- (a) Ensure unhindered access to the unified screening mechanism to all individuals wishing to claim protection, irrespective of their immigration status;
- (b) Enhance the fairness and transparency of the screening process by, inter alia, ensuring that non-refoulement claims are thoroughly and individually examined; allowing sufficient time for claimants to fully indicate the reasons for their application and to obtain and present crucial evidence, such as their own medical expert evidence; and publishing redacted versions of the decisions of the Torture Claims Appeal Board;
- (c) Develop mechanisms for the early identification of victims of torture, their priority access to the unified screening mechanism and their immediate access to redress;
- (d) Grant an alternative immigration status to refugees and substantiated unified screening mechanism claimants that would allow them to remain legally in Hong Kong, China until the end of the process and facilitate their access to legal work in order to avoid destitution and degrading treatment; and
- (e) Consider extending to it the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

11. On paragraphs 10(a) to (c) above, presently, any non-refoulement claim made by a foreigner in Hong Kong who is subject or liable to be removed will be screened under the USM, whether he is an NECII, an overstaying visitor, or a person who is refused entry upon arrival. During the screening process, claimants will be provided with publicly-funded legal assistance and have all reasonable opportunities to submit his grounds and supporting evidence to establish his claim. The screening procedures must meet with the high standards of fairness required by law. Both ImmD and the Torture Claims Appeal Board must inform claimants of their decisions and reasons in writing. ImmD's case officers have received suitable training to attend to special needs of vulnerable claimants as necessary². Claimants are also reminded from time to time that, if they wish to have their claims processed expeditiously or have any special needs for their screening, they shall approach ImmD to make such a request; ImmD will prioritize the processing of their claims and address their needs having regards to the circumstances of the case.

12. As regards the UNCAT's suggestion to consider extending the application of the United Nations Refugee Convention to Hong Kong and to allow claimants to work here (paragraphs 10(d) and (e) above), the Government reiterates that the Refugee Convention has never been applied to Hong Kong. In view of Hong Kong's unique circumstances, we have maintained a firm policy of not recognizing the refugee status of and not granting asylum to anyone. That said, having considered each application on its own merits and taking into account any special extenuating circumstances, the Director of Immigration may grant permission for a substantiated claimant to take employment as a matter of discretion. On humanitarian grounds, the Government, through non-governmental organization, provides in-kind assistance (including accommodation allowance, food coupons, transport allowance, and utilities allowance) to claimants to prevent them from falling destitute whilst in Hong Kong.

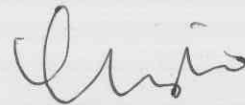
13. Anyhow, the Government would consider the UNCAT's views carefully during the comprehensive review on the strategy of handling non-refoulement claims, and ensure that the screening procedures

² Examples of assistance that may be arranged include: female case officers for those female claimants who alleged to have been sexually abused or so requested on religious grounds; relative/guardian to accompany minors or incapacitated claimants in interview(s); barrier-free access for disabled claimants; extra accommodation when interviewing children, elderly, or the infirmed; assistance from a social worker or other trained professionals where necessary, etc.

continue to meet the required high standards of fairness. We will also continue to liaise with our stakeholders and consult their views in the process.

14. Please contact the undersigned at 2810 2506 should there be any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Billy Woo', written in a cursive style.

(Billy Woo)
for Secretary for Security

Annex

Overview of Non-refoulement Claims

The unified screening mechanism (USM) commenced operation on 3 March 2014. Up to 30 April 2016, there were 11 178 outstanding non-refoulement claims in total. The nationality breakdown is as follows:

Nationality	No. of Claims	Percentage
Vietnam	2 545	22.8%
India	2 078	18.6%
Pakistan	1 947	17.7%
Bangladesh	1 335	11.9%
Indonesia	1 115	10.0%
The Philippines	438	3.9%
Sri Lanka	303	2.7%
Nepal	299	2.7%
Gambia	160	1.4%
Nigeria	149	1.3%
Other countries (tabulated below)	809	7.2%
Total	11 178	100%

Among the 809 claims from the other countries, the nationality breakdown is as follows:

Africa		
Uganda	91	0.8%
Togo	56	0.5%
Tanzania	51	0.5%
Rwanda	49	0.4%
Somalia	46	0.4%
Ghana	39	0.3%
Egypt	37	0.3%
Yemen	31	0.3%
Guinea	29	0.3%
Kenya	22	0.2%
Democratic Republic of Congo	20	0.2%
Niger	19	0.2%
Mali	18	0.2%
Benin	17	0.2%

Burundi	10	0.09%
South Africa	10	0.09%
Cameroon	9	0.08%
Central African Republic	9	0.08%
Republic of Congo	8	0.07%
Ethiopia	7	0.06%
Liberia	7	0.06%
Angola	6	0.05%
Botswana	6	0.05%
Mozambique	6	0.05%
Zimbabwe	5	0.04%
Namibia	4	0.04%
Tunisia	4	0.04%
Burkina Faso	3	0.03%
Eritrea	3	0.03%
Morocco	3	0.03%
Sierra Leone	3	0.03%
Algeria	2	0.02%
Chad	2	0.02%
Côte d'Ivoire	2	0.02%
Guinea-Bissau	2	0.02%
Gabon	1	0.01%
Lesotho	1	0.01%
Total	638	5.7%

Asia and Oceania		
Thailand	48	0.4%
Mongolia	24	0.2%
Afghanistan	12	0.1%
Jordan	9	0.08%
Fiji	3	0.03%
Iran	3	0.03%
Armenia	2	0.02%
Myanmar	2	0.02%
Syria	2	0.02%
Georgia	1	0.01%
Kazakhstan	1	0.01%
Malaysia	1	0.01%
New Zealand	1	0.01%
Republic of Korea	1	0.01%
Total	110	0.98%

Americas		
Colombia	40	0.4%
Peru	3	0.03%
U.S.A.	3	0.03%
Belize	1	0.01%
Brazil	1	0.01%
Canada	1	0.01%
Mexico	1	0.01%
Total	50	0.45%

Europe		
Russia	7	0.06%
Ukraine	3	0.03%
Finland	1	0.01%
Total	11	0.1%

The mode of entry and the length of stay of claimants:

Mode of Entry	No. of Claims	Percentage	Length of stay before making claim (Average)
Illegal immigrants	5 704	51%	4 months
Overstayers	4 770	43%	19 months
Total	11 178³	100%	11 months

³ Including 704 passengers whose entry was refused by ImmD at control points and who subsequently made non-refoulement claims to resist removal.