

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1751/17-18(02)

Ref : CB2/PL/SE

**Panel on Security**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 10 July 2018**

**An update on the comprehensive review of the strategy of handling  
non-refoulement claims**

**Purpose**

This paper provides background information and summarizes Members' past discussions on issues related to the strategy of handling non-refoulement claims.

**Background**

2. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") has been applied to Hong Kong since 1992. Article 3 of CAT provides that no State Party shall expel, return 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. Pursuant to several court rulings since 2004, the Administration has reviewed and revised the administrative screening mechanism for torture claims. The revised mechanism, which commenced in December 2009, includes the provision of publicly-funded legal assistance ("PFLA") to torture claimants through the Duty Lawyer Service ("DLS"), enhanced training for decision makers and a petition procedure involving adjudicators with legal background who may conduct oral hearing if required.
4. The Immigration (Amendment) Ordinance 2012, which came into operation in December 2012, provides for a statutory process for making and determining claims, including how a torture claim is made, the time limit for a claimant to return the torture claim form, the requirements for the Immigration Department ("ImmD") to arrange screening interviews and issue written notices

of decision, etc. It also provides that a claimant who was aggrieved by the decision might lodge an appeal, which would be handled by a statutory Torture Claims Appeal Board ("TCAB").

5. In March 2014, the Administration commenced operating the unified screening mechanism ("USM") to screen non-refoulement claims on all applicable grounds.<sup>1</sup> The screening procedures of USM follow those of the statutory screening mechanism for torture claims, which has been in place since the enactment of the Immigration (Amendment) Ordinance 2012. Since then, there were increasing numbers of non-ethnic Chinese illegal immigrants and non-refoulement claimants. At the same time, the number of claims pending the commencement of screening procedures by ImmD was on the rise. As a result, the Administration launched a comprehensive review of the strategy of handling non-refoulement claims in 2016, focusing on the following four areas:

- (a) preventing potential claimants from entering Hong Kong;
- (b) expediting the commencement of screening procedures for pending claims, shortening the screening time per claim, and expediting the handling of appeals;
- (c) expediting repatriation of the claimants whose claims have been rejected; and
- (d) studying detention policies and stepping up law enforcement.

### **Members' deliberations**

6. Concerns about the strategy of handling non-refoulement claims had all along been raised by members and their major views are summarized in the following paragraphs.

#### Combating illegal immigration

7. According to the Administration, the top source countries of non-refoulement claimants were India, Pakistan, Bangladesh and Vietnam. Most of the claimants from Pakistan, Bangladesh and Vietnam smuggled into Hong Kong by sea or by land via the Mainland. To tackle the problem,

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<sup>1</sup> A claim by someone subject to be removed from Hong Kong to another country that if removed to that country, he will be subjected to torture, or his absolute and non-derogable rights under the Hong Kong Bill of Rights ("HKBOR") will be violated (including being arbitrarily deprived of his life as referred to in Article 2 and cruel, inhuman or degrading treatment or punishment as referred to in Article 3 of the HKBOR), or be persecuted, etc.

members were advised that heavier penalties were imposed on syndicates smuggling illegal immigrants from the above countries after the coming into effect in May 2016 the Immigration (Unauthorized Entrants) (Amendment) Order 2016.

8. The Administration further advised that a dedicated joint operation with the Mainland had been launched to combat illegal immigration since February 2016 and seven joint operations against smuggling syndicates had been conducted. Given that smuggling syndicates would adjust their tactics from time to time (including varying their routes and operation modes), both sides had agreed to continue the dedicated joint anti-smuggling operations until mid-2019. The Administration had also stepped up security measures and law enforcement actions along the land and sea boundaries.

#### Online pre-arrival registration

9. Members noted that 80% of claimants from India arrived in Hong Kong as visa-free visitors. As such, ImmD has since January 2017 implemented the pre-arrival registration ("PAR") requirement for Indian nationals, under which Indian nationals must first apply for PAR online before visiting Hong Kong visa-free. For Indian visitors who failed to successfully complete PAR, they must submit their visa application to ImmD direct for visiting Hong Kong.

10. Some members were concerned about whether the introduction of PAR would discourage Indian passport holders from visiting Hong Kong and some members asked whether the number of non-refoulement claimants from India had decreased. The Administration advised that PAR had been operating smoothly and about 340 000 visitors had successfully registered as at the end of March 2018, representing a success rate of over 90%. Meanwhile, the number of Indian visitors overstaying in Hong Kong had decreased by 80%, and non-refoulement claims lodged by Indian nationals had decreased by 74%. To further improve service, ImmD had set up a dedicated email account for PAR in December 2017 to facilitate registrants to make PAR-related enquiries. In addition, ImmD would continue to enhance promotion of PAR arrangement to Indian nationals and remind those who intended to visit Hong Kong to complete PAR early. The Administration would also keep the PAR arrangement under review and make adjustment as necessary.

#### Expediting the screening of claims

11. Noting that there were 3 925 claims pending determination by the end of April 2018, members were generally of the view that measures should be introduced to expedite the screening of non-refoulement claims. Some members suggested that instead of giving 49 days for a claimant to complete a claim form, the time allowed for filing a claim form should be shortened and the

application of a claimant who failed to attend an interview without a valid reason should be revoked. In addition, more manpower resources should be provided to ImmD to speed up the screening of claims.

12. The Administration advised that the existing deadline for submitting a completed claim form had been determined after deliberations in the enactment of the existing laws and was further lengthened as a compromise to the strong request of DLS. Claims submitted beyond the deadline were dealt with in accordance with existing laws. According to the Administration, ImmD had created 83 new posts in 2016-2017 to handle such claims. Additional interpreters and translators were also recruited to provide interpretation for claimants at briefing sessions and screening interviews and translation of documents submitted by claimants. The screening of pending claims was expected to be completed by the first half of 2019. Members were further advised that the Administration was carrying out a review of the existing regime and would come up with legislative proposals to expedite the screening of claims.

13. Some members expressed concern about an average time lag of 11 months between the arrival of a claimant in Hong Kong and the lodging of a claim. According to the Administration, the average time lag arose from the fact that many illegal immigrants and overstayers did not lodge a claim until they were intercepted by law enforcement officers in Hong Kong. Besides, the capacity of DLS in supporting the provision of PFLA to claimants was also a limit to the processing of claims.

14. To further expedite screening, members were advised that the Administration had launched the "Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants" ("Pilot Scheme") since September 2017, under which a supplementary roster of lawyers was set up to run in parallel with the "Legal Assistance Scheme for Non-refoulement Claimants" provided by DLS. Eligible lawyers currently participating in the DLS Scheme were welcome to join the supplementary roster of the Pilot Scheme. The daily number of claims for which the screening procedures could be commenced was thereby increased to 23 cases per day from the original DLS ceiling of 13.

15. Members were also advised that ImmD had enhanced the efficiency of screening procedures by flexible staff deployment and optimized workflow, including advanced scheduling of screening interviews and handling of claims involving claimants from the same country by dedicated officers. The handling time per claim (i.e. from the commencement of screening procedures to determination by ImmD) had been expedited from about 25 weeks on average at the early implementation of USM to the current average of about 10 weeks.

### Appeal cases

16. Currently, a claimant may lodge an appeal within 14 days upon receiving the notice of decision to reject the claim if aggrieved by the decision. According to the Administration, there were about 6 200 pending appeals as at the end of April 2018. As speedier screening of claims by ImmD would likely be followed by a large number of appeal cases, some members were concerned how the Administration would handle the increasing number of appeal cases.

17. The Administration advised that new members had been appointed to TCAB since July 2016, making its membership expanded from the original size of 28 to the current strength of 102. In addition, extra manpower and financial resources were allocated to TCAB for expediting the handling of appeals. Besides, TCAB had put in place a number of measures to streamline and improve its workflow, and was provided with additional hearing facilities. As such, the number of appeals determined by TCAB in 2017 had increased by 3.8 times over 2016, and would be expected to further go up in 2018. It was expected that the pending appeal would be completed in 2021.

### Substantiated non-refoulement claims

18. Noting that there were only 96 substantiated claims since the implementation of USM which was less than 1% of the total claims, some members expressed grave concern about the effectiveness of USM. The Administration explained that whether a person's non-refoulement claim would be substantiated depended on the individual circumstances of his case as well as the situation in his country of origin. In determining a non-refoulement claim, the duty of ImmD was to assess whether an illegal immigrant should be removed immediately, or whether removal action should be temporarily withheld until his claimed risks ceased to exist. Claimants could also lodge appeals and seek judicial reviews if deemed appropriate.

19. Some members also expressed concern as to whether substantiated claimants had been referred to the United Nations High Commissioner for Refugees ("UNHCR") for resettlement in other countries. The Administration advised that substantiated claimants would be allowed to remain in Hong Kong and their removal would be withheld until their claimed risk ceased to exist. Where a non-refoulement claim was substantiated on grounds of, inter alia, persecution risks, the claimant would be referred to UNHCR for consideration of recognition as refugee and arrangement of resettlement to a third country. Members' attention was drawn to the fact that the 1951 Refugee Convention and its 1967 Protocols had never been applied to the Hong Kong and the Administration would never consider non-refoulement claimants as "refugees" or "bogus refugees". The Administration has a long-established policy of not

granting asylum to any non-refoulement claimants nor determining the refugee status of anyone.

### Public expenditure on handling non-refoulement claims

20. Most members were concerned about the increasing estimated expenditure for handling of claims and provision of support for claimants. Some members expressed the view that the Administration should consider imposing a cap on PFLA to claimants. The Administration advised that while some countries had imposed statutory limit on PFLA to claimants, it needed to study such overseas experience before drawing up concrete proposals.

### Detention

21. Some members considered that accommodating non-refoulement claimants in closed camps/holding centres would better protect the personal safety of claimants and facilitate the maintenance of law and order in Hong Kong. This would also reduce the incentives for claimants to come to Hong Kong. Some other members, however, pointed out that the cost involved in the closed detention of a claimant in the United States and Australia was in the region of \$984 to \$3,856 per day, which was 10 to 40 times of the subsidy provided to claimants in Hong Kong. These members queried the need to examine the establishment of closed camps/holding centres for claimants.

22. According to the Administration, the detention of non-refoulement claimants involved legal and other complex issues. All the views and suggestions of members would be considered in the context of the comprehensive review of the strategy of handling non-refoulement claims.

### **Relevant papers**

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

## Appendix

### Relevant papers on the strategy of handling non-refoulement claims

Committee	Date of meeting	Paper
Panel on Welfare Services and Panel on Security	18.7.2006 (Item II)	<u>Agenda</u> <u>Minutes</u>
Panel on Security	31.7.2006 (Item I)	<u>Agenda</u> <u>Minutes</u> <u>LC Paper CB(2)2994/05-06(01)</u> <u>LC Paper CB(2)526/06-07(01)</u>
	5.12.2006 (Item V)	<u>Agenda</u> <u>Minutes</u> <u>LC Paper CB(2)2429/07-08(01)</u>
	27.10.2008 (Item IV)	<u>Agenda</u> <u>Minutes</u> <u>LC Paper CB(2)366/08-09(01)</u> <u>LC Paper CB(2)433/08-09(01)</u>
	3.2.2009 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	6.7.2009 (Item III)	<u>Agenda</u> <u>Minutes</u>
	29.9.2009 (Item I)	<u>Agenda</u> <u>Minutes</u>
	1.12.2009 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	12.4.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	Bills Committee on Immigration (Amendment) Bill 2011	--

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Security	2.7.2013 (Item II)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	3.6.2014 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	7.7.2015 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a> <a href="#">LC Paper CB(2)2048/14-15(01)</a>
	3.11.2015 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	2.2.2016 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	24.2.2016	<a href="#">Official Record of Proceedings (Question 18)</a>
Panel on Security	7.6.2016 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Subcommittee on Immigration (Unauthorized Entrants) (Amendment) Order 2016	--	<a href="#">Report of the Subcommittee to the House Committee</a>
Panel on Security	11.6.2016 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	15.6.2016	<a href="#">Official Record of Proceedings (Question 12)</a>
Panel on Security	11.11.2016 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	6.6.2017 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Subcommittee to Follow Up Issues Relating to the	27.3.2018	<a href="#">Agenda</a> <a href="#">Minutes</a>

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Unified Screening Mechanism for Non-refoulement Claims	24.4.2018	<a href="#">Agenda</a>
	21.5.2018	<a href="#">Agenda</a>

Council Business Division 2  
Legislative Council Secretariat  
4 July 2018