

**For information on
22 July 2013**

LEGCO PANEL ON WELFARE SERVICES

Humanitarian Assistance for Torture Claimants, Asylum Seekers and Mandated Refugees in Hong Kong

Purpose

This paper briefs Members on humanitarian assistance for torture claimants, asylum seekers and mandated refugees in Hong Kong.

Background

2. The Immigration Department (ImmD) had in place an administrative mechanism to determine torture claims¹. 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 judgments² that before the 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 1951 Convention relating to the Status of Refugees. 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.

¹ Since 1992, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 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.

² *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

Humanitarian Assistance Provided

3. On humanitarian grounds, the Administration, in collaboration with non-governmental organisations and on a case-by-case basis, has been offering in-kind assistance to torture claimants, asylum seekers and mandated refugees who are deprived of basic needs during their presence in Hong Kong.

4. The in-kind assistance provided to torture claimants, asylum seekers and mandated refugees is not welfare assistance provided to eligible Hong Kong residents. Its aim is to provide support which is considered sufficient to prevent them from becoming destitute, while at the same time not creating a magnet effect which could have serious implications on the sustainability of our current support systems and on our immigration control. The types of assistance offered include temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances and counselling.

5. The Social Welfare Department (SWD) has commissioned the International Social Service Hong Kong Branch (ISS-HK) to provide the above in-kind assistance services since 2006. As at end May 2013, 4 700 persons were receiving the assistance. In the 2013-14 financial year, the Administration earmarked \$203 million on this front (similar to last year's expenditure).

6. The current recipients of humanitarian assistance (service users) include torture claimants, asylum seekers and mandated refugees. The assistance will be extended to those who made other claims that will be assessed under the USM.

Scope of Assistance

Accommodation

7. Service users in genuine need are provided with temporary accommodation together with the supply of electricity, water and other basic utilities. The types of accommodation assistance offered include –

- (i) Private flats in Yuen Long rented by ISS-HK. The flats are equipped with basic furniture, beddings, household utensils and cooking facilities;

- (ii) Accommodation self-arranged by the service users. ISS-HK will enter into a direct payment arrangement with the legitimate landlord. The tenancy agreement will be renewable on a monthly basis; and
- (iii) ISS-HK's Anthony Lawrence International Refuge for Newcomers to Hong Kong. Service users in need of supervised housing, including women or minors, are arranged to stay in this shelter.

8. There is no monetary-equivalent ceiling on the humanitarian assistance, including the rental allowance, for individual service users. The assistance will be rendered to individual service users in accordance with their needs, health conditions, availability of own resources, etc.

9. Over 90% of service users choose to identify accommodation on their own. Very often, they would prefer living together with others of the same ethnic groups. In most cases, service users will enter themselves into a tenancy agreement with the landlord before they approach ISS-HK to applying for rental allowance. For these service users, ISS-HK has a rental allowance grid drawn up and updated with reference to the prevailing rental market prices (currently \$1,200 for singletons). No rental deposits are included in the humanitarian assistance.

10. Service users who are in need of rental allowance higher than the amount in the grid can provide justification with supporting documents for ISS-HK's consideration on individual case merits. If service users cannot identify suitable premises on their own, they can live in abodes secured by ISS-HK or enlist assistance from ISS-HK to secure a suitable accommodation.

Food

11. Service users are provided with a variety of food items, including 21 meat/meat products, 35 vegetables, 12 grains/cereals, 12 beverages, 9 fruits, 20 condiments/spices, 7 milk/dairy products and 40 baby food (where applicable), catering for nutritious, cultural, religious and other specific needs of individual service users. There is no monetary-equivalent ceiling on food rations, which are distributed to service users on an actual need basis.

12. Service users may collect food items at seven food supplier shops located in different districts in Hong Kong³. While singleton cases are usually arranged to collect food items 3 to 5 times a month, all family cases are arranged to have their food collection 6 to 8 times a month to ensure that food items collected are fresh and of manageable size in bulk.

Clothing and Basic Necessities

13. Clothing and other basic necessities, including personal toiletries, household cleansing articles, sanitary items for female service users and baby or children items, are provided to service users as necessary.

Transport Allowance

14. Transportation allowance is provided for service users according to their individual needs and personal situations (e.g. any resources available to them from other sources). Service users with genuine travelling need for various purposes, including reporting to the ImmD, attending medical appointments, attending spiritual worship, meeting with lawyers, collecting food and basic necessities as well as meeting with ISS-HK, etc. are provided with petty cash to meet with the travelling expenses by the cheapest means of transportation available. If service users can submit documentary proof (such as appointment slips) to ISS-HK before attending the scheduled appointments, they will be given travelling expenses in advance.

Medical Services

15. In accordance with the current practice for waiving of medical charges for non-eligible persons, recommendations for one-off waiver of medical expenses at public clinics or hospitals will be given to torture claimants, asylum seekers and mandated refugees on a case-by-case basis, subject to the assessment by the Hospital Authority or service units of the SWD.

³ The shops are located in Yau Tsim Mong, Sham Shui Po, and Yuen Long districts.

Education Arrangement

16. For torture claimants, asylum seekers and mandated refugees who are minors, if it is expected that they will not be removed from Hong Kong in the near future, the Education Bureau (EDB) will handle schooling applications from them according to individual circumstances in consultation with the ImmD. The EDB will, depending on case details (e.g. whether there are enough school vacancies for placement; the duration of schooling required; the age and educational background of the minor, etc.), arrange for applicants' admission to primary or secondary schools, or to a six-month full-time Initiation Programme designed for newly arrived non-Chinese speaking children. The Student Financial Assistance Agency will also consider applications for relevant fee subsidy on a need basis.

Level of Assistance

17. The in-kind assistance provided to individual service users varies according to the needs and personal situations of the person concerned, including availability of his own resources and the resources available to him from other sources. There is no monetary-equivalent ceiling on how much an individual service user in genuine need may receive.

Monitoring of Service Quality

18. To ensure that the basic needs of service users are met, each case is reviewed monthly by ISS-HK. The SWD monitors the programme closely, reviews assistance level from time to time and makes adjustment as necessary.

Security Bureau
Social Welfare Department
July 2013