

LC Paper No. CB(2)1688/13-14(02)

3 June 2014

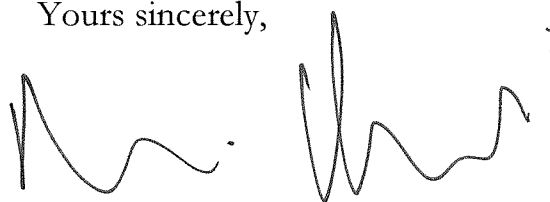
Hon IP Kwok Him, GBS, JP
Chairman of the Panel on Security
Legislative Council

Dear Chairman,

Implementation of the Unified Screening Mechanism

The attached Schedule, prepared with the invaluable assistance of Justice Centre Hong Kong, identifies important questions relating to the implementation of the unified screening mechanism for screening non-refoulement claims (USM) discussed during the meeting of the Panel on Security on 3 June 2014. I would be most grateful if the Administration would let me have the response in writing at its earliest convenience.

Yours sincerely,



Dennis Kwok
Member of the Panel on Security

Schedule

1. Announcements and Communication with Claimants and Duty Lawyers

The Administration's paper states that it contacted people who were previously in the torture screening mechanism (those with open claims and those with rejected claims). It states that relevant documents have been put on the websites for the public.

It does not state anything about how information about how to file a claim is communicated to people who are entering the system for the first time, which includes people with previous UNHCR asylum claims but not torture claim who now wish to file a non-refoulement claim.

The information that is provided is totally inadequate. The Notice that is available on the Immigration Department's website is highly technical, legal and to our knowledge, only in available in English.

In this connection, will the Administration inform this Panel:

- What information pamphlets, brochures, etc. are available to give people an understanding of the system in easily understandable language;
- Whether it has plans to translate these documents;
- What information is available to assist people to understand how to provide "written signification" to begin the process of filing a claim;
- Whether there is a dedicated telephone extension or desk at Immigration that people can approach to receive more information;
- How the USM has been communicated to other relevant government departments, particularly frontline staff who provide services to claimants?

2. Special Needs

In para. 7 of the Administration's paper (CB(2)1621/13-14(06)), it is stated that a claimant will be invited to a briefing session by the Immigration Department to serve on him the "notice" which summarizes the procedures

of the USM, to explain to him the screening process (with assistance of a qualified interpreter if necessary) and to attend to his special needs (if any) as well as to establish a means of contact with him and refer him to the Duty Lawyer Scheme.

The report submitted by the Justice Centre Hong Kong (CB(2)1621/13-14(07)) flags concern about the ability of the most vulnerable people to navigate this new system. The UNHCR had acceleration criteria to fast-track people with vulnerabilities. They also had a social worker focal point who was a liaison with the Immigration Department, Social Welfare Department, and civil society service providers.

In this connection, will the Administration inform this Panel:

- Whether, when and how it screens for special needs, and the procedures are in place for persons who meet them;
- The extent to which people must self-identify that they have special needs;
- How the Immigration Department is prioritizing its backlog of cases as listed in its statistics and whether they have such sort of acceleration criteria for vulnerable people?
- Should special needs not be identified early on at the time of making the claim, rather than at the time of the briefing session, which could result in a considerable delay?

3. Humanitarian Assistance

The Social Welfare Department recently made enhancements to the humanitarian assistance programme, which the Administration's paper highlights. It is noted however that the service contract with ISS will finish in August/September of this year. In a paper prepared by the Administration for the Panel on Welfare Service on "the way forward" for the package (CB(2)626/13-14(06)), it is mentioned in para. 13 that the Administration will consider "where warranted, building in a regular review mechanism based on objective criteria."

Justice Centre Hong Kong and other groups have long called for assistance levels to be regularly adjusted, like the CSSA, to inflation; for the assistance, particularly food, to be granted as a cash transfer or at least as a coupon or

voucher system, and: for protection claimants to be granted permission to work to not be dependent in the first place and given the manpower shortage in Hong Kong.

A problem with the statutory torture screening system that has been entrenched in the USM system is the fact that people must be liable to removal before they can be eligible to file a claim. That means that for new arrivals, they have to overstay their visa (a process that can take weeks or even up to several months) before they can enter the system. In the UNHCR system, one did not have to be liable for removal before being able to file a claim.

Having an open claim is a requirement to get referred for humanitarian assistance. This is causing lots of problems for people to be quickly helped and making people have delays in obtaining assistance. We have also seen cases where a person's ability to surrender to Immigration Department to then be able to file a claim is further delayed due to lack of interpretation to make the appointment to surrender. We have also seen issues with people who were receiving assistance in the UNHCR system having difficulties in automatically keeping the humanitarian assistance in the process of now filing a USM claim.

The government mentions the CFA judgment that held that claimants do not have a constitutional or common law right to work in Hong Kong, but it is worthwhile to note that the UN Committee on Economic, Social and Cultural Rights, which monitors States' compliance with the ICESCR, to which Hong Kong is bound, noted just last week, the following:

“The Committee recommends that Hong Kong, China adopt legislation on asylum-seekers and refugees in order to improve their enjoyment of economic social and cultural rights, granting them access to legal employment, including vocational training and adequate housing.”

In this connection, will the Administration inform this Panel:

- How the Immigration Department and Social Welfare Department are communicating to ensure people with claims are receiving assistance swiftly;
- What assistance will be available to vulnerable people who are not yet liable to removal and are therefore unable to file a USM claim but need support;

- Whether the Administration will consider changing the way that assistance is granted in the next service contract and how;
- Whether the Administration will allow more people permission to work in order to be self-reliant and not dependent on assistance in the first place, especially considering the manpower shortage (acknowledged by the Administration) and the fact that there are low numbers of substantiated torture claimants (22) / mandated refugees (less than 100 approx.)?

4. Long Term Solutions

The Administration's paper states that persons whose non-refoulement claims are substantiated under the USM on grounds of persecution risks will be referred to the UNHCR for recognition as refugees under its mandate and arrangement of resettlement of them by the UNHCR to a third country.

The fact that the USM was rolled out before details about what long-term solutions will be available for successful protection claimants is a problem that has been raised in many previous occasions. It is also an omission for which we still do not have full answers that is causing a lot of distress in the protection claimant community.

The UNHCR offers three types of "durable solutions": voluntary repatriation, resettlement to a third country and local integration. The latter is not possible in Hong Kong because HKSAR is one of the only well-developed jurisdictions in the world not to allow it. The first option is not possible in most countries because it is still too dangerous for people to return.

Resettlement to a third country was the only real durable solution in the UNHCR system. Even still, some mandated refugees had challenges finding a country of resettlement to host them and were often in Hong Kong several years, if not indefinitely, before a durable solution was found. Despite having a substantiated claim, they still do not have any legal status.

In the USM, successful claimants, unless they are under persecution grounds and can be referred to UNHCR, will be stuck in legal limbo, forced to live in poverty (no additional rights are conferred and they still have to rely on the humanitarian assistance package) and stuck indefinitely in a situation that offers them no hope for the future. The situation is unsustainable as more and more people are processed.

In this connection, will the Administration inform this Panel:

- What long-term solutions will be made available to successful claimants under torture/CIDTP grounds;
- If they are to be resettled to a third country, what negotiations the HK government has had with potential host countries;
- What the Hong Kong government will do for persons who are unable to be resettled to a third country but who are unable to return to their country of origin;
- Given the small numbers, the rationale for continuing not to allow local integration?