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Panel on Welfare Services

Updated background brief prepared by the Legislative Council Secretariat for the meeting on 8 June 2015

Situation of non-refoulement claimants in Hong Kong

Purpose

This paper summarizes past discussions of the Council and its committees relating to the situation of non-refoulement claimants¹ 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 ("Director") 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 Convention², despite that the Convention does not apply to Hong Kong.

¹ Non-refoulement claimants include mandated refugees, asylum seekers and torture claimants.

² 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 claims³. 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, pursuant to two rulings⁴ by the Court of Final Appeal in December 2012 and March 2013, the Administration commenced operating a unified screening mechanism ("USM") to screen non-refoulement claims lodged by foreigners subject or liable to be removed from Hong Kong to another country on applicable grounds. These applicable grounds include 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 Article 33 of the Refugee Convention. Torture claims lodged before commencement of USM in March 2014 have become non-refoulement claims under applicable transitional arrangements.

Members' deliberations

Support for non-refoulement claimants

4. Members were gravely concerned that non-refoulement claimants were treated in an inhumane manner in Hong Kong. At its meeting on 31 July 2006, the Panel on Security passed a motion ("Carried Motion") urging the Administration 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.

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 non-refoulement claimants to prevent them from becoming destitute. The assistance covered temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances and medical service. In 2014-2015, 7 357 persons were receiving humanitarian assistance. The corresponding expenditure on such assistance was \$246 million.

³ 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.

⁴ 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. Noting that the Administration planned to enhance the humanitarian assistance package for non-refoulement claimants in terms of accommodation, food, transportation and utilities allowances with effect from February 2014, some Members considered that the enhancements were not adequate to prevent claimants from being destitute. They said that claimants should receive a cash allowance at a level comparable to that of the Comprehensive Social Security Assistance ("CSSA") which sought to meet basic needs of beneficiaries. On the other hand, some Members considered that the proposed enhancements were appropriate and assistance for claimants should not be pegged to CSSA. Otherwise, an abundant assistance might attract more claimants which would create a heavy burden on Hong Kong.

7. The Administration advised that the proposed enhancements had taken into account the scope of the existing service contract signed with ISS-HK and the situation of claimants. With the enhanced humanitarian assistance package, the Administration had fulfilled its legal obligations in preventing claimants from being destitute. In addition, offering assistance-in-cash would likely create a magnet effect, and in-kind assistance provided for claimants should be distinguished from the welfare assistance provided for eligible Hong Kong residents. To provide more flexibility to cater for timely adjustment of the humanitarian assistance package where warranted, the Administration would consider building in a regular review mechanism based on objective indicators in the next service contract. These objective indicators included the Consumer Price Index (A), information obtained from the Rating and Valuation Department, etc.

Accommodation

8. Some Members expressed grave concern about the living conditions of the accommodation arranged by ISS-HK at Ping Che for non-refoulement claimants. They were also worried about the difficulties non-refoulement claimants encountered in seeking proper accommodation with a monthly rental allowance at \$1,500 per person. Some deputations expressed disappointment that ISS-HK had actually offered no practical help to assist the non-refoulement claimants in moving out from Ping Che. Prior to seeking help from ISS-HK for removal, non-refoulement claimants had to look for other accommodation by themselves.

9. The Administration advised that ISS-HK had offered to look for other suitable residence for non-refoulement claimants residing at Ping Che if they agreed to move out. The Administration stressed that a mechanism was in place to allow other non-refoulement 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 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.

10. The Administration advised that the current rental allowance of \$1,500 for singletons served only as a reference. The assistance level would be 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.

11. In the light of the difficulties experienced by the non-refoulement claimants in securing proper residence with the rental allowance so provided, some Members suggested that the Administration should explore the viability of accommodating non-refoulement claimants on vacant school premises or building up community in rural areas for them to receive social support. The Administration advised that the existing mode of assistance was workable as 98% of claimants were able to find accommodation with the assistance provided. In view of the large number of claimants in Hong Kong, it would be difficult to find suitable premises for them to live together. That said, the Administration did not rule out other forms in-kind assistance provided that they were feasible and could achieve the policy objectives.

Food

12. Some Members were concerned that non-refoulement claimants had not been provided with sufficient food. Some deputations raised a similar concern and stressed that the whole community of non-refoulement claimants complained about the inadequate supply of food.

13. 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. Upon the implementation of the enhanced humanitarian assistance package since February 2014, the average budget for food for each claimant was increased from \$1,060 to \$1,200. The amount was not a monetary-equivalent ceiling since the amount of food distributed to service users was based on actual need. Moreover, claimants might choose to collect food either three or six times in a month depending on their own preference and circumstances.

Permission to take employment

14. There were divergent views on whether claimants should be allowed to take employment during their stay in Hong Kong, which could be a few years.

Some Members urged the Administration to permit claimants to take up paid job under certain conditions or work as volunteers in non-governmental organizations so that they could live a more meaningful life which was a basic human right. On the other hand, some other Members considered that claimants should be prohibited from taking employment in Hong Kong to avoid giving the claimants and the public a wrong impression that claimants could prolong their stay in Hong Kong.

15. The Administration advised that under the law, persons not having the right to enter and remain in Hong Kong were forbidden to take employment, whether paid or unpaid, unless with the permission of the Director on exceptional circumstances. It was pivotal to avoid the misunderstanding that claimants could work during their stay in Hong Kong. Otherwise, it would impose a serious risk on immigration control and create a heavy burden to society at large.

16. Some Members were concerned that ImmD took unduly long time in processing applications from mandated refugees for taking employment and the Director rarely granted such applications. They asked about the factors that the Director took into consideration in handling such applications and the average processing time of these applications.

17. According to the Administration, the Director would consider such an application from a substantiated claimant or mandated refugee on a discretionary and exceptional basis, having regard to individual case merits and the entire circumstances of the case, taking into consideration an array of factors such as details of the intended employment and the prospective employer, personal circumstances and health condition of the applicant, impact on the relevant local employment sector, impact on the maintenance of effective immigration control in Hong Kong, whether there was any record of the applicant's failure to co-operate with the authority concerned in the course of any departure (or resettlement) arrangements, etc. The Director would also take into account any strong compassionate or humanitarian reasons or other special extenuating circumstances in making the decision. The time required to assess and decide on an application depended on the complexity of each application and whether the applicant had submitted all the required information and supporting documents in a timely manner. In 2014, ImmD was able to make a decision in two to five weeks after all the required information and supporting documents had been received from the applicants.

Education for minors of non-refoulement claimants

18. Members expressed grave concern that a number of children of non-refoulement claimants were denied access to education during their stay in Hong Kong. The Carried Motion urged the Administration to ensure that all children of refugee and torture claimants would have the opportunity to receive

education during the vetting process of their claims.

19. The Administration advised that the Education Bureau would handle schooling applications from minors of non-refoulement 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.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
3 June 2015

**Relevant papers on
situation of non-refoulement 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
Panel on Welfare Services	13 January 2014 (Item IV)	Agenda Minutes
Legislative Council	21 January 2015	Official Record of Proceedings Pages 74-76
Legislative Council	29 April 2015	Official Record of Proceedings Pages 47-54