

立法會
Legislative Council

LC Paper No. CB(2)1976/15-16
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by the Administration)

Ref : CB2/PL/SE

Panel on Security

Minutes of special meeting
held on Saturday, 11 June 2016, at 9:15 am
in Conference Room 2 of the Legislative Council Complex

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon CHUNG Kwok-pan (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon WONG Kwok-kin, SBS
Hon WONG Yuk-man
Hon Kenneth LEUNG
Hon KWOK Wai-keung
Hon Alvin YEUNG Ngok-kiu

Public Officers attending : Item I

Mr T K LAI, SBS, IDSM, JP
Secretary for Security

Mr Joshua LAW, JP
Permanent Secretary for Security

Mr Billy WOO
Principal Assistant Secretary for Security D

Mr Michael YAU
Principal Assistant Secretary
(Constitutional & Mainland Affairs) 5 (Acting)

Mr Godfrey KAN
Senior Assistant Solicitor General
Department of Justice

Mr C F CHOW
Chief Superintendent (Support Branch)
(Support Wing) (Acting)
Hong Kong Police Force

Mr P H FUNG
Assistant Director of Immigration
(Enforcement and Removal Assessment)

Mr Y M WOO
Assistant Commissioner (Operations)
Correctional Services Department

Ms Queenie WONG
Assistant Commissioner (Policy Support)
Labour Department

Ms Annisa MA
Chief Social Work Officer (Domestic Violence)
Social Welfare Department

Attendance : Item I
by invitation

PathFinders

Miss Linny NG Kit-tong
Access to Justice-Legal iNTERN

Justice Centre Hong Kong

Miss Piya Muqit
Executive Director

Individual

Mr IU Tsz-san

Society for Community Organization

Mr Richard TSOI Yiu-cheong
Community Organizer

No More Refugees

Mr Fun CHEUNG
Spokesman

Individual

Mr Dan CHAN

Daly & Associates

Ms Karen McClellan
Associate

Liberal Party Youth Committee

Mr Dominic LEE
Chairman

Hong Kong Unison

Miss Kayla TAM

Individual

Mr POON Wing-lok

Justice at the Dark Corner

Mr LEUNG Hoi-fu

The Lion Rock Institute

Miss Katherine Pemberton
Research Assistant

The Vine Community Services Limited

Mr Thomas Franz
CEO

Individual

Mr KWOK Wing-kin

Labour Party

Mr CHENG Sze-lut
Representative

Manpower Concern Group

Mr WONG Kwai-sang

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Mr Raymond LAM
Senior Council Secretary (2) 7

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Hearing of the Hong Kong Special Administrative Region's third report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (LC Paper Nos. CB(2)1617/15-16(03) and (04))

Presentation of views by deputations/individuals

At the invitation of the Chairman, a total of 16 deputations/individuals presented their views on the Hong Kong Special Administrative Region's third report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). A summary of these deputations/individuals' views is in the **Appendix**.

Discussion

Administration's overall response to the views expressed by deputations

2. At the invitation of the Chairman, Secretary for Security ("S for S") gave a consolidated response to the views expressed by deputations/individuals as follows:

- (a) in Hong Kong, non-refoulement claims were determined under the unified screening mechanism ("USM") which met high standards of fairness as required by court and the requirements under Part VIIC of the Immigration Ordinance Cap. 115, which implemented Article 3 of CAT, and the Hong Kong Bill of Rights Ordinance (Cap. 383). There were avenues for aggrieved claimants to lodge an appeal or seek judicial review;
- (b) the publicly-funded legal assistance provided in Hong Kong to non-refoulement claimants was more generous than those provided by most other countries;

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- (c) concerns had been raised by the court over the abuse of the non-refoulement claim scheme. It had been stated in the judgment of the High Court in *HKSAR v. Villan Palpandi and another* (HCMA 569/2015) that "I have voiced my serious concern in previous Magistracy Appeal cases about the phenomenon and upsurge trends of torture claimants in Hong Kong. The system is being abused, and is being abused sadly and badly, which clearly calls for certain remedial actions to be taken by the executive government". It had also been stated in the judgment of the Court of First Instance in *HKSAR v. Tarok Das* (HCMP 1872/2015) that "..... more needs to be done to weed out promptly the unmeritorious and unworthy claims this is becoming a serious problem for the courts and the legal system in general, as well as for the community, and there is the added risk that the system in place is being abused not only by unmeritorious claimants but possibly by claimants with a more sinister purpose in mind". There was a need for review and improvement of USM under the existing legal framework; and
- (d) about 80 additional non-directorate posts had been created in the Immigration Department ("ImmD") in the current financial year to expedite the screening of non-refoulement claims.

Crime committed by non-refoulement claimants

3. Mr CHAN Kam-lam expressed concern that the rapid increase in the number of non-refoulement claims in recent years and the increase in crime committed by claimants had aroused concerns about law and order in many districts. He said that more resources should be provided to the Police for stepping up patrol in different districts. Mr NG Leung-sing expressed concern about the law and order problems arising from non-refoulement claimants and said that the Administration should combat the smuggling of non-ethnic Chinese illegal immigrants ("NECIIs") into Hong Kong at source. Mr Christopher CHUNG also expressed concern that non-refoulement claimants were affecting the daily life of Hong Kong residents, including ethnic minorities.

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4. Mr YIU Si-wing said that the hotel and guesthouse sector had recently complained that many non-refoulement claimants were loitering in the vicinity of their premises. The ethnic minorities in Hong Kong had also complained that their daily life was affected by the large number of non-refoulement claimants in Hong Kong. He considered that the Police should step up patrol in districts, especially in Yau Tsim Mong District and Sham Shui Po District where there were many non-refoulement claimants.

5. Mr LEUNG Che-cheung expressed concern about problems relating to law and order as well as illegal employment arising from the large number of non-refoulement claimants in different districts, especially in Yuen Long District. He considered that besides expediting the screening of non-refoulement claims, the Police should step up patrol and ImmD should launch more operations to combat illegal employment. He expressed concern about the number of non-refoulement claimants convicted of crime in Hong Kong.

6. Dr Fernando CHEUNG said that problems associated with non-refoulement claimants had been exaggerated. He queried whether the crime rate of non-refoulement claimants was exceptionally high in comparison with the overall crime rate of Hong Kong.

7. S for S said that the total number of NECIIs released on recognizance who were arrested for crime in 2014, 2015 and the first five months of 2016 were 665, 1 113 and 542 respectively, with the number involved in some major offences as follows:

<u>Offences</u>	<u>2014</u>	<u>2015</u>	<u>2016</u> (January to May)
Serious Drugs Offences	79	159	54
Miscellaneous Theft	86	110	56
Wounding and Serious Assault	67	100	44
Forgery and Coinage	40	80	48

8. Regarding the problem of illegal employment, S for S said that section 38AA of IO prohibited illegal immigrants or persons who were subject of removal or deportation orders from taking up employment or establishing business. In 2015, more than 200 NECIIs released on recognizance, who were mostly non-refoulement claimants, had been arrested for taking up illegal employment in Hong Kong. Prosecution had been instituted against claimants who took up illegal employment as well as their employers, who were both in breach of the law.

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9. Dr Elizabeth QUAT said that consideration should be given to increasing the manpower of ImmD to relieve the work pressure of frontline immigration staff. S for S said that additional financial resources had been allocated for increasing the manpower of ImmD in the current financial year.

Accommodation of non-refoulement claimants in closed camps

10. Mr CHAN Kam-lam said that consideration should be given to the accommodation of non-refoulement claimants in closed camps. Mr YIU Si-wing considered that the Administration should draw reference to its experience of handling the Vietnamese boat people crisis in the past and consider accommodating non-refoulement claimants in closed camps.

11. Mr Christopher CHUNG said that claimants should be accommodated in closed camps on outlying islands and those convicted of crime in Hong Kong should be immediately repatriated. Dr Elizabeth QUAT considered that measures should be introduced to prevent abuse of the non-refoulement claim scheme. Consideration should be given to accommodating non-refoulement claimants in closed camps on outlying islands to reduce the incentives for claimants to come to Hong Kong.

12. Dr CHIANG Lai-wan said that since 2013, she had received complaints from ethnic minorities who were Hong Kong residents that they were blackmailed by non-refoulement claimants. There were also reports that a non-refoulement claimant had died after being assaulted. She considered that accommodating non-refoulement claimants in closed camps would better protect the personal safety of claimants and facilitate the maintenance of law and order in Hong Kong.

13. Mr Dennis KWOK said that consideration should be given to the availability of manpower and land before a decision was made on whether to introduce closed detention of claimants.

14. S for S responded that detention of non-refoulement claimants involved legal and other complex issues. While the Administration would study the issue, it had not formed any views on the matter. He said that measures had been introduced to address the rapid increase in the number of new claimants, including the tightening of immigration control,

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the launching of enforcement operations in parallel with relevant Mainland authorities to combat smuggling of NECIIs across the boundary and the commencement of the Immigration (Unauthorized Entrants) (Amendment) Order 2016 to impose a heavier penalty on syndicates involved in the smuggling of NECIIs into Hong Kong. He added that even if a claimant was convicted of crime, the Government still needed to meet with the court's request to screen his non-refoulement claim under procedures which met a high standard of fairness. In this connection, the Administration was seeking to complete the screening of such claims before the claimants concerned had completed their sentence terms.

Expediting the screening of non-refoulement claims

15. Mr Christopher CHUNG considered that measures should be introduced to expedite the screening of non-refoulement claims.

16. Mr Dennis KWOK expressed concern that among about 11 000 outstanding non-refoulement claims, 6 340 claims were lodged before 2009 and ImmD had been requested by the Court of Final Appeal to screen these claims again under procedures which met a high standard of fairness. Principal Assistant Secretary for Security D ("PAS(S)D") said that the number of such outstanding claims had already decreased from 6 340 in 2009 to 2 591 in February 2014.

17. Mr YIU Si-wing said that even if the screening of non-refoulement claims by ImmD was expedited, there might not be a decrease in the number of outstanding claims, if it could not catch up with the increase in the number of new claims.

18. Mr Dennis KWOK said that the Civic Party had made a number of suggestions on USM, including requiring a claimant to submit a claim within a specified time period from his time of arrival in Hong Kong, shortening the time allowed for completion of a claim form and revocation of the application of a claimant who failed to attend an interview without a valid reason.

19. Dr Elizabeth QUAT said that a claimant should be required to submit a claim within a certain time period from his time of arrival in Hong Kong and the time allowed for the completion of a claim form should be shortened.

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20. Mr Michael TIEN considered that claimants should be required to submit a claim within seven weeks from the time of arrival in Hong Kong and the deadline for completing a claim form should be reduced from seven weeks to about two or three weeks.

21. S for S said that the Administration had briefed the Panel on proposals to expedite the screening of non-refoulement claims. The Administration shared the view that the time limit for completing a claim form should be shortened. However, the suggestion was opposed by some stakeholders. He added that about 80 additional non-directorate posts had been created in ImmD in the current financial year to expedite the screening of claims. Mr CHAN Kam-lam said that additional resources should be allocated to further increase the manpower of ImmD, if the addition of these 80 additional staff was found inadequate.

22. Mr LEUNG Kwok-hung sought information on the development in relation to the Administration's screening of non-refoulement claims.

23. PAS(S)D explained that in *FB v. Director of Immigration and Secretary for Security* ([2009] 2 HKLRD 246), the Court of First Instance had ruled that "the Government must implement a series of measures, including the provision of publicly-funded legal assistance to claimants during the torture claim screening process". In 2009, ImmD introduced an enhanced administrative screening mechanism for torture claims to ensure that high standards of fairness were met. The mechanism was subsequently underpinned by statutory provisions under Part VIIC of IO from 2012. S for S said that it had been stated in the judgment of the Court of First Instance in *SC v. Torture Claims Appeal Board* (HCAL 99/2014) that "In fact, Hong Kong is still in the development phase of the jurisprudence relating to torture claims, and the Director is facing tremendous pressure both in handling the vast number of torture claims and in conducting the screening process in accordance with the latest standard set by the courts".

[To allow sufficient time for discussion, the Chairman advised that the meeting would be extended by 15 minutes.]

Expenditure on non-refoulement claimants

24. Mr NG Leung-sing expressed concern about the recurrent expenditure incurred in the provision of various kinds of assistance to non-refoulement claimants and asked whether such cost was to be borne by the United Nations High Commissioner for Refugees ("UNHCR"). He

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expressed concern that UNHCR had not yet repaid the advances incurred by the Hong Kong Government in relation to Vietnamese migrants.

25. S for S responded that UNHCR had indicated difficulties in repaying the outstanding debt of about \$1.1 billion in relation to Vietnamese migrants. He said that the recurrent expenditure relating to non-refoulement claimants was borne by Hong Kong. Where a non-refoulement claim was substantiated, arrangement would be made by UNHCR for the claimant concerned to resettle in another country.

Cessation of application of CAT to Hong Kong

26. Mr Dennis KWOK shared the views of some deputations that the Administration should not seek for the cessation of application of CAT to Hong Kong.

27. Dr Fernando CHEUNG said that as CAT provided protection for the human rights of all persons in Hong Kong, the cessation of application of CAT to Hong Kong was inconsistent with the protection of human rights.

Other issues relating to non-refoulement claimants

28. Mr Christopher CHEUNG said that assistance should be provided to non-refoulement claimants who were genuinely subject to torture. However, measures should also be introduced to prevent abuse of the non-refoulement claim scheme. He expressed grave concern that some political parties were providing support to non-refoulement claimants who abused the non-refoulement claim scheme. Mr NG Leung-sing said that the low percentage of substantiated claims reflected the low percentage of claimants who were genuinely subject to torture. Mr Michael TIEN said that the influx of non-refoulement claimants despite the low percentage of substantiated claims reflected that many claimants were actually economic migrants.

29. Dr Fernando CHEUNG expressed concern that non-refoulement claimants were described as "bogus refugees". S for S responded that the 1951 Refugee Convention and its 1967 Protocols had never been applied to HKSAR and the Administration would never consider non-refoulement claimants as "refugees" or "bogus refugees". He stressed that all non-refoulement claims were screened in accordance with relevant laws and court judgments in Hong Kong.

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Work of the Independent Police Complaints Council ("IPCC")

30. Mr Christopher CHEUNG declared that he was one of the Deputy Chairmen of IPCC. He disagreed with the views expressed by a deputation at the meeting on 7 June 2016 about the work of IPCC. He said that one of the missions of IPCC was to monitor the handling of complaints by the Complaints Against the Police Office ("CAPO") to ensure that complaints against police officers were handled in a fair, impartial and independent manner. There were cases in which IPCC disagreed with the views of CAPO and sought more information or explanation from the latter. There were cases in which CAPO had revised its classification of a complaint after receiving IPCC's request for review of the case concerned.

Separate confinement of persons in custody ("PICs")

31. Noting that some deputations had expressed concern about the separate confinement of PICs by the Correctional Services Department, the Chairman sought information on statistics regarding such separate confinement. Assistant Commissioner (Operations), Correctional Services Department ("CSD") responded that CSD had received a total of about 20 000 PICs in 2015. Amongst them, there were 2 905 cases of separate confinement ("SC") as a result of disciplinary proceedings and 1 267 cases of removal from association, representing a daily average of 7.96 cases and 3.47 cases respectively. Given that there were 29 correctional facilities in Hong Kong, the number of SC were insignificant. Concerning the 1 267 cases of removal from association, there were only 11 cases removed from association between four months and one year. All such cases were requested by the concerned PICs. About 99% of the remaining cases involved removal less than four months. Around 61% of them were removed not more than 72 hrs.

32. There being no other business, the meeting ended at 11:30 am.

Panel on Security

Meeting on Saturday, 11 June 2016, at 9:15 am
Meeting to receive views on "Hearing of the Hong Kong Special Administrative Region's
third report under the Convention Against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment"

Summary of views and concerns expressed by deputations/individuals

No.	Name of deputation/individuals	Submission / Major views and concerns
1.	PathFinders	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1756/15-16(01)
2.	Justice Centre Hong Kong	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1702/15-16(01)
3.	Mr IU Tsz-san	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1687/15-16(01)
4.	Society for Community Organization	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1702/15-16(02)
5.	No More Refugees	<ul style="list-style-type: none"> ● The non-refoulement claim scheme was being abused by a majority of claimants for taking up illegal employment in Hong Kong. ● There were syndicates which provided comprehensive services for non-refoulement claimants, ranging from arranging their transportation to Hong Kong, assisting them to lodge non-refoulement claims, provision of legal advice and arranging illegal employment for claimants. ● Non-refoulement claimants should be put under closed detention and those convicted of crime in Hong Kong should be repatriated.
6.	Mr Dan CHAN	<ul style="list-style-type: none"> ● About 70% of claimants did not lodge a non-refoulement claim until an average of about 19 months after their arrival in Hong Kong, usually when they were intercepted or arrested by law enforcement officers. ● Non-refoulement claimants should be put under closed detention. ● The non-refoulement claim scheme was being abused by a majority of claimants for entering Hong Kong to take up illegal employment.
7.	Daly & Associates	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1756/15-16(02)

No.	Name of deputation/individuals	Submission / Major views and concerns
8.	Liberal Party Youth Committee	<ul style="list-style-type: none"> ● Measures should be introduced to prevent abuse of the non-refoulement scheme. The ethnic minorities in Hong Kong, including the Indian Chamber of Commerce, had expressed support for the introduction of such measures. ● Although the screening of non-refoulement claims had been expedited in recent years, the number of new claimants had also increased rapidly. Merely expediting the screening of non-refoulement claims could not effectively address the problem of a large number of outstanding claims. ● Since 2009, over 3 800 non-refoulement claimants had committed various crime, including rape, assault and drug offences, in Hong Kong. The crime rate of claimants was about 10 times the overall crime rate of Hong Kong.
9.	Hong Kong Unison	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1687/15-16(03)
10.	Mr POON Wing-lok	<ul style="list-style-type: none"> ● The Administration should allocate more resources for expediting the screening of outstanding claims. ● The low percentage of substantiated claims under the unified screening mechanism ("USM") reflected that the threshold for substantiation of a claim was too high. ● The Administration should not seek for the cessation of application of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") to Hong Kong.
11.	Justice at the Dark Corner	<ul style="list-style-type: none"> ● Many Hong Kong residents were refugees in the past. Discrimination should not be made against non-refoulement claimants. ● CAT protected members of the public from abuse of powers by police officers. ● The Administration should not seek for the cessation of application of CAT to Hong Kong.
12.	The Lion Rock Institute	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1756/15-16(03)
13.	The Vine Community Services Limited	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1702/15-16(03)
14.	Mr KWOK Wing-kin	<ul style="list-style-type: none"> ● Protection was provided under CAT to Hong Kong residents, including persons in custody. ● The Administration should expedite the screening of outstanding claims. ● The number of non-refoulement claimants convicted of crime in Hong Kong only amounted to less than one percent of the total number of persons convicted of crime in Hong Kong.

No.	Name of deputation/individuals	Submission / Major views and concerns
15.	Labour Party	<ul style="list-style-type: none">● There was abuse of power by police officers against demonstrators.● More should be done to protect the rights of foreign domestic helpers in Hong Kong.● The Administration should not seek for the cessation of application of CAT to Hong Kong.
16.	Manpower Concern Group	<ul style="list-style-type: none">● LC Paper No. CB(2)1702/15-16(04)

Council Business Division 2
Legislative Council Secretariat
12 August 2016